



Minutes of Meeting of the Authority of Broadcasting Authority of Ireland

Date 10/11/2016 **Time:** 10.20pm **Venue:** BAI Offices

Minutes

Attendance

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

Apologies: Denis Wolinski

Executive: Michael O'Keeffe, Aoife Clabby (Secretary), Ciarán Kissane, Stephanie Comey, Andrew Robinson (item 2.1), Louise McLoughlin (items 2.2 & 2.3), Clare O'Sullivan (item 2.3)

Stakeholder Meetings

Prior to the commencement of the meeting, the Authority met with representatives from the Community Radio Association of Ireland (CRAOL). CRAOL provided the members with an overview of its role in representing and advocating on behalf of the community radio sector, highlighting current and future challenges and opportunities for their members. The presentation given by CRAOL was grounded in the proposed BAI Strategy Statement 2017-2019. In that context, CRAOL identified a number of priorities for itself across the areas of governance, policy, community representation and the broad requirement for greater collaboration among relevant stakeholders and statutory agencies. Following the presentation, there was an open discussion with the Authority.

It was agreed that there were a number of issues arising which would merit further consideration and that these matters would be re-visited, following the finalisation and publication of the BAI Strategy Statement and associated three-year work-plan for 2017-2019.

1. Minutes of Previous Meeting and Matters Arising

The minutes of the previous meeting of the Authority, held on 6th October, 2016, were approved by the members and signed by the Chairperson. Matters arising were as follows:

a. Board and Committee Vacancies

Members were advised that the vacancies on the Authority and Statutory Committees had not yet been advertised by the Public Appointments Service and that the Executive would liaise with the Department of Communications, Climate Action and Environment on this as a matter of priority.

b. Annual Review of Public Funding: RTÉ & TG4

Members were advised that a response to the Authority's report and recommendations, arising from the 2015 annual review of public funding for RTÉ and TG4, was awaited, from the Minister for Communications, Climate Action and Environment.



c. BAI Strategy Statement 2017-2019: Consultation Launch

The Authority was advised that the public consultation on the BAI Strategy Statement 2017-2019 had been launched on 2nd November, with a closing date of 1st December. Members were also advised that part of the consultation process would include a forum with representative members of the public, to be held on 15th November. It was noted that the consultation outcomes would be brought to the December meeting of the Authority, for consideration and decision.

d. Contractual Matters

i) Contract Signings

The Authority noted that four contract signings had been scheduled for the 15th December with Raidió na Life, Dublin City FM, Liffey Sound and Newstalk 106FM.

ii) UTV Ireland

The Authority noted that the decision of the Minister for Communications, Climate Action and Environment was awaited, in respect of the sale of UTV Ireland to Liberty Global Plc, further to his functions under the Competition and Consumer Protection Act 2014.

2. Codes, Rules & Policy

2.1 BAI Guidance on PSB Code of Fair Trading Practice (Presentation)

As part of the process of continuous induction, a presentation was given to the Authority in relation to BAI Guidance on Public Service Broadcasters' Code of Fair Trading Practice. This item had been deferred from the October meeting of the Authority. The presentation addressed, among other things, the legislative basis for the code and the BAI's role in respect of the provision of guidance; an overview of key stakeholders; an overview of the key principles and main provisions of the BAI Guidance; and, an overview of the process of development of Codes of Fair Trading Practice by RTÉ and TG4 respectively.

Following brief discussion on the presentation, the Authority was advised that draft revised BAI Guidance would be brought to the December meeting of the Authority for consideration and decision.

2.2 General Commercial Communications Code: Consultation Outcomes

Members were presented with the outcomes of the public consultation on the BAI's draft General Commercial Communications Code, together with proposals for revisions to the draft Code, arising from the consultation process. In considering the proposals for revisions to the Code, the Authority had regard to an executive note outlining the consultation process, summarising the key responses, as communicated by stakeholders, and setting out the rationale for the changes proposed.

It was noted that almost all stakeholders had expressed broad satisfaction with the draft Code and felt that an appropriate balance had been struck between offering broadcasters commercial



opportunities, through various commercial communications, while ensuring the interests of audiences, particularly those of children, were protected.

The Authority also noted that some of the concerns raised by stakeholders through the consultation process were not within the scope of the Code and accordingly could not be examined. The Authority considered and agreed changes to the proposed draft Code, under eight key areas, as follows:

1. *Alcohol*

The Authority noted that many stakeholders expressed strong views in support of further restrictions regarding the advertising of alcohol. However, the Authority agreed that the adoption of some of the restrictions proposed would be premature at this time, in advance of the enactment of the Public Health (Alcohol) Bill. Accordingly, suggestions from these stakeholders in respect of audience profile, the introduction of a watershed and the prohibition of commercial communications for alcohol in and around sports programmes, were not adopted.

The Authority was satisfied to retain the rule prohibiting commercial communications for alcohol of 25% AbV and above.

Incidental references to alcohol brands: The Authority was satisfied that, as the types of commercial arrangements referenced were outside the scope of the Code, no further change in this area was warranted. The Authority expressed a similar view in relation to commercial communications for supermarkets and convenience stores, which may include references to alcoholic beverages.

Sponsorship of sports programmes: The Authority was satisfied to amend the rule relating to the prohibition of alcohol sponsorship of sports programmes, to include a specific reference prohibiting alcohol sponsorship of competitions within such programmes. In addition, the Authority approved a proposal to more clearly define 'solus/whistle breaks'.

Publication requirements: The Authority did not agree that the publication, by broadcasters, on their web-sites, of programmes not containing commercial communications was an administrative burden and accordingly, was satisfied to retain the rule, as drafted.

2. *Sponsorship on Television and Radio*

Reference to more than one product or service: Having regard to the submissions made under this heading, the Authority was satisfied that the concerns raised could be addressed through appropriate regulation and good practice in the area by the broadcasters. Consequently, there was no further amendment to proposed rules under this heading.



Calls to action and calls to purchase: The Authority noted that there was a divergence of views in relation to the proposals under this heading. In seeking to address the range of issues highlighted through the consultation process, the Authority had regard to a further range of options, proposed by the executive. In considering these options, the Authority was mindful of the varying impacts of implementing each of the proposals, in particular as between radio and television. Following detailed discussion, the Authority agreed with a proposal to remove the term 'call to purchase' from the Code, retain the prohibition on 'calls to action' for television and remove it for radio. In doing so, the Authority noted the critical requirement for the distinction between sponsorship and advertising on radio to be clear, in order to ensure that broadcasters operate within the legislative and regulatory parameters. [REDACTED]

Promotional references in sponsorship announcements: The Authority was satisfied to retain the prohibition on promotional references in sponsorship announcements, as contained in the draft Code.

Sponsorship of current affairs on radio: The Authority was satisfied to retain the provision enabling sponsorship of current affairs on radio.

3. *Definition of product placement-significant value:* The Authority had regard to the concerns raised in respect of the two proposed changes to the definition of significant value and in particular, the concern that the definitions, as drafted, could lead to a potential regulatory gap. Following discussion, the Authority was satisfied to approve proposed amendments to the definitions of 'sponsorship' and 'product placement' in order to provide more clarity, particularly in the context of 'significant value'. In light of the nature of the amendments to the definitions, the Authority was, accordingly, satisfied to include a currency threshold in respect of 'significant value' and to approve the inclusion, in the Code, of additional text to clarify meaning.
4. *Exclusions-trailers, self-promotions, and cross promotions*
The Authority had regard to feedback received through the consultation process which appeared to indicate a different application of this provision of the Code as between the RTÉ group of services and commercial broadcasters. In order to ensure that the rules under this heading applied equally to all broadcasters, the Authority was satisfied to approve a number of changes, among them, the inclusion in the Code of a definition of 'broadcaster', 'cross-promotions' and 'self-promotions'. [REDACTED]
5. *Financial services and products*
In considering proposals under this heading, the Authority had regard to the Central Bank Code, requiring regulated entities to include key information in the main body of



advertisements. In supporting the principle of consumer protection contained in the Central Bank Code, the Authority was mindful of the challenges that this presented to radio broadcasters in particular, having regard to the statutory limitations on minutage. In recognition of this fact, the Authority determined that mandatory regulatory disclosure statements should not count towards advertising minutage.

6. *Gambling*

The Authority considered a number of proposals for change to this section of the Code, under the following sub-headings:

Remote bookmaking operations: Following discussion, the Authority determined that, in the absence of legislation to regulate remote bookmaking operations, it would be premature for the BAI to devise restrictions for companies providing these particular services under the Code.

National Lottery and other lotteries: The Authority was satisfied to amend the proposed rule under this heading in order to clarify which types of lotteries are within scope.

Encouragement to gamble and promotional offers: Following consideration of the submissions received under this heading, the Authority was satisfied that no further change to the rule was required.

Protecting children: Having regard to the submissions received under this heading, the Authority was satisfied that no further amendment to the rule, as drafted, was warranted.

7. *Rules for all commercial communications-new rule for sponsored events/activities*

Having regard to a submission received under this heading, the Authority was satisfied to approve the inclusion of a new rule, which would ensure that sponsors of events/activities do not receive more prominence than the event or activity being promoted in the commercial communication.

8. *Changes to sections 12, 13, 15-medicinal products, medical treatments, hypnosis etc.*

On foot of a submission received and having regard to licensing arrangements of the Health Products Regulatory Authority, the Authority was satisfied to approve a proposal to re-categorise the proposed rules under sections 12 and 13 of the draft Code. The Authority was further satisfied to retain section 15, dealing with hypnosis and hypnotherapy. The Authority noted that other complementary and alternative therapies and products, while not specifically listed, would be governed by the general principles underpinning the Code.

The Authority considered and approved a range of other proposed changes to the draft General Commercial Communications Code, as follows:

- Proposed wording changes to the introduction;
- Consistency of referencing in respect of children's programmes and children;
- A minor amendment in respect of principle 4, protection of children;
- A re-ordering of prohibited commercial communications within the body of the Code, in addition to more user-friendly language in respect of particular provisions;



- An amendment to the rule in respect of 'top-seller' claims;
- A re-ordering of rules in respect of teleshopping;
- An amendment in respect of prop placement in children's programmes;
- Further clarification in respect of product integration and thematic placement;
- The inclusion of wording prohibiting the offer of medicinal samples free of charge;
- A wording amendment enabling health claims in relation to the use of some cosmetic products (such as sunscreen);
- Wording changes in the rules relating to the respective rules for follow-on formula and for medicinal claims for food

The Authority noted that the changes to the draft Code would be finalised and would be subject to a final legal review prior to launch in the New Year.

2.3 Report on Industry Trends: Commercial Radio Sector

[REDACTED]

[REDACTED]

3. Broadcasting and Contractual Matters

3.1 Contractual Variations: Request for Contract Extensions

Members considered and approved requests for contract extensions to Claremorris Community Radio and Today FM to 30th June 2017. The contract extensions were granted to facilitate further work by the Compliance Committee in respect of Claremorris Community Radio and to facilitate the work of the Contract Awards Committee in considering proposals made by Today FM, as part of the fast-track procedure for the national, broad-format sound broadcasting service.



3.2 Recommendations of the Contract Awards Committee: Temporary Sound Broadcasting Contracts (Section 68)

Members Grace Smith, Séamus 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.

The Authority considered 6 applications for temporary sound broadcasting contracts, as recommended by the Contract Awards Committee. It was noted that there were three returning pilot community services and three thirty-day services. The Authority was satisfied to accept the recommendations of the Committee and to enter into temporary sound broadcasting contracts with each of the six temporary services.

The Authority also had regard to the notification of a decision made between meetings in respect of a temporary contract for Double R Media Limited. In view of the proposed start date of the temporary service, it was decided to invoke the agreed procedures for decision making between meetings and to delegate the decision in respect of the service to the Chief Executive and Chairperson. Having considered the application, as presented to the Contract Awards Committee, the Chief Executive and Chairperson were satisfied to accept the recommendation of the Committee and to enter into a temporary sound broadcasting contract with the applicant.

4. Broadcasting Funding Scheme

4.1 Sound & Vision: Round Plan Update

The Authority considered revised proposals in respect of the operational plan for Sound & Vision 3. The revised proposals were submitted on foot of feedback received from industry stakeholders. Following discussion, the Authority was satisfied to approve a proposal to run seven open rounds over three years to the end of 2019, with an indicative allocation of €5m per round.

5. Organisational Matters

5.1 BAI Borrowing Facility

The Authority considered and approved a request to seek sanction from the Department of Communications, Climate Action and Environment for the BAI to put in place a loan facility to support its cash-flow needs in 2017, should it be required. The Authority further approved a draft resolution in respect of the borrowing facility with the NTMA, authorising the Chairperson to sign the resolution and ratified the NTMA Customer Mandate.

6. For Information

6.1 Minutes of Compliance Committee Meeting

Members were circulated with minutes of the Compliance Committee meeting, which took place on 7th September, 2016.



6.2 Minutes of Contract Awards Committee Meetings

Members were circulated with minutes of the Contract Awards Committee meetings, which took place on 1st and 15th September.

6.3 BAI Irish Language Scheme: Approval

The Authority was circulated with a final copy of the BAI's Irish Language Scheme, further to the requirements of the Official Languages Act 2003.

7. Any Other Business

7.1 Meeting with Department of Communications, Climate Action and Environment.

The Chief Executive provided members with a short update in relation to a meeting held with officials from the Department of Communications Climate Action and Environment. The purpose of the meeting was to discuss the Broadcasting Act 2009 and potential legislative amendments, including amendments to the BAI levy. The Authority was advised that the possibility of legislative change would be further discussed with Department officials at a corporate services meeting in late November.

7.2 Invitation to Appear Before the Oireachtas Joint Committee on Communications, Climate Action and Environment.

The Chief Executive briefed the members on the appearance of the BAI before the Oireachtas Joint Committee on Communications, Climate Action and Environment. The purpose of the invitation to appear before the Committee was to provide a briefing in relation to the five-year review of public funding for public service broadcasters and public service media more generally. It was noted that the Committee had also invited representatives from RTÉ and IBI to appear before the Committee on the 22nd November.

7.3 Report on the Concentration of Media Ownership in Ireland

It was agreed that the *Report on the Concentration of Media Ownership in Ireland*, commissioned by Lynn Boylan, Sinn Féin MEP on behalf on the European United Left/Northern Green Left (GUE/NGL) group of the European Parliament, would be circulated to the members, together with BAI executive observations, having regard to the findings of the BAI's report on Ownership and Control of Media Businesses in Ireland 2012-2014.

8. Date of Next Meeting

The next meeting of the Authority will be held on 15th December at 2p.m. in the BAI offices.

**Professor Pauric Travers,
Chairperson.**

15th December, 2016