



Minutes of Meeting of the Authority of Broadcasting Authority of Ireland

Date 11/05/2017 Time: 11.00am Venue: BAI Offices

Minutes

Attendance

- Authority:** Pauric Travers (Chairperson), Alan McDonnell, Mary Curtis, Rosemary Day, Séamus Martin.
- Apologies:** Denis Wolinski, Seán Ó Mórdha, Grace Smith, Maeve McDonagh.
- Executive:** Michael O'Keeffe, Celene Craig, Aoife Clabby (Secretary), Ciarán Kissane, Nuala Dormer (item 2.1), Andrew Robinson (item 2.2), Declan McLoughlin (item 2.3 & 2.4), Clare O'Sullivan (items 2.3, 2.4 & 5.1.1), Neil O'Brien (items 5-7).

1. Minutes of Previous Meetings and Matters Arising

The minutes of the previous meetings of the Authority, held on 6th April and 27th April 2017, were approved by the Members and signed by the Chairperson. Matters arising were as follows:

a. Sound & Vision: Ancillary Measures

The Authority was advised that the new Irish language initiative, led by TG4 and supported by the BAI under the Ancillary Measures of the Sound & Vision Scheme, had been launched at the Celtic Media Festival on the 3rd May.

b. Licensing Plan 2017

The Authority was advised that a letter of direction had issued from the Chairperson of the Authority to the Chairperson of the Contract Awards Committee requesting, the implementation of the licensing plan for the remainder of 2017. The plan had also been published on the BAI website on 25th April.

c. Media Merger Examination

The Chief Executive advised that the BAI's report on the proposed merger of CNML Limited and Independent News and Media Holdings (Ireland) Limited had been submitted to the Minister for Communications, Climate Action and Environment on the 9th May. It was noted that, in accordance with statutory timeframes, the Minister's decision regarding the merger was expected on 8th June.

2. Codes, Rules and Policy

2.1 PSBs: Annual Statement of Performance Commitments: RTÉ & TG4

Members considered the Annual Statement of Performance Commitments (APSCs) for 2017 submitted by TG4 and RTÉ respectively. The APSCs had been submitted further to the requirement for each public service broadcaster to consult with the Minister and the BAI, prior to the publication of its statement of commitments. In considering the ASPC of each broadcaster, the Authority also had regard to an executive analysis of the extent to which the public service objects of each PSB were reflected in their respective statements of commitments, together with



an assessment of the degree to which the commitments made would assist the Authority in fulfilling its regulatory role.

TG4

The Authority noted a change in strategic direction for the organisation, in particular the adoption of a 'twin-pole' audience strategy, aimed at enhancing satisfaction for the core Irish language audience, as well as increasing audience reach nationally. The Authority also noted new measures adopted by TG4 in support of the independent production sector and a commitment to partner with other broadcasters and agencies, while reducing its in-house content. Members had regard to strengthened commitments in respect of non-linear content and a renewed approach to audience measurement.

While noting some substantial differences in commitments made, when compared with 2016, the Authority was, nonetheless, broadly satisfied that TG4's commitments for 2017 were aligned with the agreed BAI framework and further, would facilitate assessment of performance against commitments, as part of the subsequent annual review of public funding. It was agreed that the revised approach was ambitious, in the context of the stretch created, but that it indicated a responsiveness on the part of the broadcaster to changes both in the wider media environment and particularly in relation to non-linear audiences.

Members considered executive proposals to provide feedback in a range of areas, in addition to seeking clarification, under a number of the framework headings, as to how performance might be measured in areas where no specific metrics were provided. The Authority also noted that the targets set for access services in 2017 were below those required by the BAI Access Rules. It was agreed that this matter would be the subject of further engagement between the BAI and TG4.

Members discussed in detail the removal of quantitative measures in respect of the number of hours of Irish language output per day. While it was agreed that such quantitative measures were helpful, it was also noted that the previous setting of such targets had not had a positive impact on the service's market share. The Authority agreed that it would monitor the new approach to serving TG4's audience, to assess its impact and performance over time.

Following discussion, the Authority was satisfied that feedback would be provided to TG4, on the basis proposed.

RTÉ

At the outset of its considerations, the Authority noted the context within which commitments had been made by RTÉ for 2017, in particular the proposed operational and structural changes for the organisation and the proposed sale of some of its site in Donnybrook. Against this backdrop, it was further noted that, to a large extent, the 2017 commitments built incrementally on those made in 2016, and that the impact of the various restructuring elements would not be seen until 2018. The Authority noted that the commitments made reflected available financial and other resources, rather than being aligned to the current five-year strategy.



Members then considered proposals for the provision of feedback to RTÉ under a number of framework headings, together with the requirement to seek further clarification in a number of areas. The Authority noted positively the further streamlining of commitments and targets, together with a number of new elements contained in the commitments for 2017.

Members expressed some disappointment in relation to the nature of the commitments made regarding the Irish language and requested that further detail would be provided on these commitments, in the context of the broadcaster's Irish Language Action Plan 2015-2019. The Authority also expressed strong support for any partnership arrangements or initiatives between RTÉ and TG4 that would further serve audiences in Ireland. While acknowledging current financial challenges, the Authority expressed disappointment regarding the static nature of spending within the independent production sector.

Following discussion, and having regard to the commitments made, the Authority was broadly satisfied that they were sufficiently high-level, in line with the broadcaster's public service objects and of assistance to the BAI in fulfilment of its regulatory role. The Authority was further satisfied that feedback would be provided to RTÉ, as proposed.

2.2 PSBs: BAI Guidance on Code of Fair Trading Practice

Members were presented with a note detailing the outcomes of a process of engagement with relevant stakeholders to review the BAI's Guidance on a PSB Code of Fair Trading Practice, as required under statute.

The Authority noted a broad level of satisfaction among stakeholders with the Guidance, particularly the degree of alignment between those principles contained in the BAI Guidance and RTÉ's Code of Fair Trading Practice and the flexibility afforded, through both documents, to adapt to audiences' changing habits and future technological developments. The Authority noted that TG4 had yet to develop its Code of Fair Trading Practice and that this matter was being progressed by the Department of Communications, given the requirement for Ministerial approval of any such Code.

The Authority then considered three issues highlighted through the consultation process, relating to perceived specificity in the Guidance; a proposal to amend the primary rights period; and a wording amendment to facilitate rights negotiation on a multi-platform basis.

Following discussion, the Authority was satisfied that the BAI Guidance was sufficiently general in nature and accorded with statutory requirements. Regarding the primary rights period, the Authority noted the concerns raised by TG4, but agreed that, in the absence of a Code of Fair Trading Practice for TG4, it would be difficult to test the concerns on a practical basis. Accordingly, the Authority was satisfied to retain the clause relating to the primary rights period at this time. Finally, having regard to the proposals received in relation to rights on a multi-platform basis, the Authority was satisfied that the proposed, revised wording was appropriate and would sufficiently future-proof the Guidance.



The Authority noted that the revised BAI Guidance would be circulated to all stakeholders for their views and a summary of any responses received would be circulated to the Authority for its consideration at the July meeting.

2.3 BAI Access Rules: Approach to Statutory Review

The Authority was circulated with proposals for an approach to the statutory review of the BAI Access Rules. It was noted that the review of the effect of the Rules would encompass a jurisdictional review, engagement with broadcasters and access service users, a consideration of human resources and costs associated with access provision, a technical review and a review of the extent of compliance with the current Rules by broadcasters.

Clarification was sought and provided in relation to levels of compliance with the existing Rules by broadcasters.

Following discussion, the Authority was satisfied to approve the approach to the review of the BAI Access Rules, as proposed. It was noted that the review outcomes would be brought to the Authority for its consideration in the last quarter of 2017, with a view to highlighting those issues requiring further consideration in the context of any revision to the Rules in 2018.

2.4 Short News Reporting: BAI Code of Practice

The Authority was circulated with a copy of the BAI Code of Practice for Short News Reporting, for consideration and approval. Members were advised that no issues had arisen in the targeted consultation process with broadcasters and there had been no suggestions for amendment to the proposed draft Code.

Following discussion, the Authority was satisfied to approve the Code of Practice, as submitted. It was noted that the Code of Practice would be published in late quarter 2/early quarter 3.

3. Broadcasting Funding Scheme

3.1 Sound & Vision: Round 28 Ratification of Recommendations

The Authority was presented with the outcomes of the assessment process for Round 28 of the Sound & Vision 3 Scheme and was asked to approve a package of recommendations comprising 119 radio and television projects, to a total value of €5.5m.

In considering the proposals, the Authority had regard to summary details of the applications received; an overview of the assessment process; an analysis of the package of recommendations with reference to the Scheme's objectives; and, an Executive comment on round 28, in the context of the new three-year plan for the administration of the Scheme, announced in November 2016.

Following discussion, the Authority was satisfied to increase the indicative round allocation from €5m to €5.5m and to approve the package of funding recommendations, as presented.



4. Organisational Matters

4.1 Finance, Audit and Risk Committee: Extension of Members' terms

The Authority considered and approved a proposal to extend the terms of Finance, Audit and Risk(FAR) Committee members Alan McDonnell and Seán Ó Mórdha, by a period of one year, to September 2018. This extension was approved in accordance with the Terms of Reference for the FAR Committee. Members requested whether the length of the term of office could be re-examined, in the context of a review of the Terms of Reference for the FAR. It was agreed that this matter would be given further consideration.

The Authority was also advised that the external member of the FAR Committee, Mr. Robert Kelly, would complete his term of office in July and in that regard, proposals for a recruitment process for his replacement were submitted for approval. The Authority was satisfied to approve the recruitment process, as outlined.

The Authority also requested that correspondence would issue to Mr. Kelly, recording its sincere appreciation of his contribution to the FAR Committee over his term of office.

4.2 Code of Practice for the Governance of State Bodies 2016: Update

The Authority was provided with an overview of progress to date in ensuring that the BAI is in full compliance with the 2016 Code of Practice for the Governance of State Bodies, by 1st September 2017. It was noted that the organisation is substantially in compliance with the requirements of the revised Code. The Executive highlighted elements of the Code where revisions would be required to existing BAI protocols and procedures, or where additional actions would be necessary to ensure future compliance, and provided a related timeframe for the commencement of this work.

Members discussed the importance of good governance in underpinning the achievement of the BAI's strategic objectives and considered the ways in which this might be reported on by the organisation. The Authority welcomed the proposal to develop a governance handbook for future reference and support. The Authority also welcomed the proposals in respect of section 8 of the Code regarding relations with the Oireachtas, Minister and Parent Department, in particular, the Department of Communication's position on the BAI's independent regulatory role and the oversight framework provided through broadcasting legislation. It was noted that the Executive would be liaising further with the Department officials, to give formal effect to this position.

Following discussion, the Authority was satisfied to approve the approach to the implementation of the revised Code, as presented.

5. Broadcasting and Contractual Matters

5.1 Contractual Variations

5.1.1 Communicorp Services: Proposals for Changes to Management Structures

Members were presented with a restructuring proposal, submitted by Communicorp Group Limited, in respect of the radio services Today FM, Newstalk 106FM, 98FM, Spin 1038 and Spin



South West, for the Authority's consideration and approval. The proposal was accompanied by an Executive note, providing an analysis of the changes envisaged, further to the *BAI Ownership and Control Policy (2012)* and the relevant sound broadcasting contracts. It was noted that the request for approval of changes was retrospective and that the Communicorp Group had progressed the re-structuring arrangements that were the subject of regulatory approval.

Following a consideration of the proposal and the accompanying analysis, the Authority was satisfied to conclude that the proposed management structure for each of the licensed services appeared appropriate, having regard to the overall group management and operational structure. Furthermore, it was concluded that the revised arrangements did not appear to diminish the overall levels of experience and expertise of the management teams. Having regard to the commitments provided in the submission and contractual safeguards, the Authority was satisfied that no issues arose in relation to programming or other contractual commitments.

Following discussion, the Authority was satisfied to grant retrospective approval for the proposed changes to the management structures. However, in granting approval, the Authority stressed the importance of prior notification on the part of the contractor, in the context of any future proposals for change, particularly where such change would have the potential impact on contractual commitments relating to programme output.

5.1.2 Proposal for Contract Extension: iRadio

The Authority considered and approved a proposal to extend the contracts of iRadio Limited and iRadio NEM Limited to the 31st December 2019. [REDACTED]

Due to the length of the contract extensions proposed, the Authority agreed with a proposal to post a voluntary disclosure notice to the BAI web-site, stating its intention to extend the terms of the two contracts and providing reasons for adopting such an approach. It was further agreed that this notice would include a standstill period of 14 days after its publication, to facilitate any submissions objecting to the proposal.

5.1.3 Proposal for Contract Extension: Claremorris Community Radio

The Authority considered and approved a request for a contract extension for Claremorris Community Radio Limited, to 31st December 2018. It was noted that the extension had been requested in order to facilitate a further performance review of the Contractor by the end of 2017, to determine the Contractor's readiness for inclusion in a licensing plan in 2018.

5.1.4 Proposals for Contract Extensions: Raidió Corca Baiscinn; Tipperary Mid-West Radio; Life FM

The Authority considered and approved requests for contract extensions, to 31st July 2018, for two community radio services, Raidió Corca Baiscinn and Tipperary Mid-West Radio and one



community of interest service, Life FM. The extensions were granted to facilitate the continuance of the three services, while the licensing processes for the new contract periods are underway.

5.2 Recommendations of the Contract Awards Committee: Temporary Sound Broadcasting Services

In his capacity as a member of the Contract Awards Committee, Séamus Martin declared an interest in the item for consideration.

Arising from the declaration of interest by Séamus Martin, there was no quorum for the item under discussion. Consequently, the Authority delegated decision on the item to the Chief Executive and the Chairperson, in accordance with the *Protocol for Decision-Making between Meetings*.

6. For Information

6.1 Minutes of Compliance Committee Meetings

Members were circulated with minutes of the Compliance Committee meetings, which took place on the 16th and 29th March 2017.

6.3 Minutes of Contract Awards Committee Meetings

Members were circulated with minutes of the Contract Awards Committee meetings, which took place on the 2nd and 30th March 2017.

7. Any Other Business

7.1 Stakeholder Engagement: Meeting with TV3

In light of the requirement to defer the meeting between the Authority and TV3, members considered alternative dates to re-schedule. It was agreed that the BAI Chief Executive would liaise with the Chief Executive of TV3 to identify an alternative date.

7.2 Invitation to the Minister for Communications, Climate Action and Environment

It was agreed that the Executive would liaise with the Minister's office, to ascertain his availability to attend a meeting of the Authority and that a letter of invitation would issue.

8. Date of Next Meeting

The next meeting of the Authority will be held on the **22nd June at 10am** in the BAI offices.

Professor Pauric Travers,

Chairperson.

22nd June, 2017.