



Minutes of Meeting of the Authority of Broadcasting Authority of Ireland

Date 29/03/2018 **Time:** 11.00am **Venue:** BAI Offices

Minutes

Attendance

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

Executive: Michael O'Keeffe, Celene Craig, Andrew Robinson (Secretary), Clare O'Sullivan (items 4.2, 4.3, 4.4, 5.1), Elizabeth Farrelly (items 4.4, 4.6, 4.7), Liam Boyle (item 3.1), Philip Cooper (item 4.1).

1. Minutes of Previous Meeting and Matters Arising

The minutes of the previous meeting of the Authority, held on 26th February 2018, were approved by the Members and signed by the Chairperson. Matters arising were as follows:

a) BAI Gender Action Plan

The Authority noted that a soft-launch of the BAI Gender Action Plan would take place during April. The Chief Executive advised members that the European Commission had established a Forum on Gender Matters through the ERGA Regulatory Group. The Commission had very positively commented on the Action Plan and the BAI would be represented on this Forum.

b) Referenda Guidelines

The Chief Executive advised members that the guidelines for the upcoming planned referenda were published on 13th March. He also noted that a briefing with political parties and joint committee members took place on 21st March.

c) Broadcasting Services Strategy Stakeholder workshop

The Chief Executive advised members that the stakeholder workshop on the draft Broadcasting Services Strategy will take place in the Aviva Stadium on Tuesday 24th April next.

2. Excellence & Accountability

2.1 Board Assurance Framework

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

3. Enhancing Innovation & Sectoral Sustainability

3.1 PSBs: Five-Year Review of Funding 2018 - 2022

The Deputy Chief Executive advised members that the draft BAI Report to the Minister had not yet been completed and was expected to be circulated to members for consideration at its April 26th meeting.

Members were also advised that any observations or contributions in respect of the draft Report could be circulated to the Deputy Chief Executive in advance of the April meeting as an aid to discussion and finalisation of the report.

4. Promoting Plurality & Diversity

4.1 Sound & Vision - Round 30 Outcomes

The Authority was presented with the outcomes of the assessment process for Round 30 of the Sound & Vision 3 Scheme. The Authority's approval was sought for a package of recommendations, providing funding support for 126 radio and television projects, with a total value of €5.991m. It was noted that the funding amount recommended was in excess of the indicative allocation for the round of €5m.

Members noted that the report was structured according to the BAI's strategic themes and the extent to which the package of recommendations supported their achievement, and included details regarding the genre and format of successful projects. Members also noted and welcomed that, for the first time, the strategic assessment process included a criterion in respect of gender, specifically the extent to which the creative team includes women in a leadership role.

In considering the package of recommendations, the Authority had regard to summary details of the applications received; an analysis of the projects recommended for funding, with reference to the Scheme's objectives; and, an Executive analysis of the round outcomes.



Following discussion, the Authority was satisfied to increase the indicative allocation for Round 30 from €5m to €5.991m, as recommended by the Strategic Assessment Panel. The Authority was further satisfied to approve the package of recommendations, as presented.

The Authority also noted that the Executive had received and processed four contractual variations for additional funding to projects since Round 29 in October 2017.

4.2 Contractual Variation: TV3

[REDACTED]

[REDACTED]

[REDACTED]

4.3 Contractual Variation - Eircom Limited - Proposed Acquisition by Toohil Telecom Holding

At its February 2018 meeting, the Authority considered a request for Authority approval of the proposed acquisition of Eircom Holdco SA (EHSA) by Toohil Telecom Holdings Limited ("Toohil"). EHSA is the parent company of Eircom Limited and Eircom Sport Limited ("Eircom Group") which holds five content provision contracts with the BAI, further to Section 71 of the Broadcasting Act 2009. The Authority noted that should the Proposed Transaction proceed, Mr. Xavier Niel, a French citizen, would have a controlling interest in the Contractors.

In assessing the request, the Authority noted that it was required to consider the Proposed Transaction in the context of the following criteria in the BAI Ownership and Control Policy (2012):



- a) Interpretation of Terms - "Control" and "Substantial Interest"
- b) Character, Expertise and Experience
- c) An undue amount of communications media in a specified area
- d) Programming
- e) The Competition Act
- f) Non EU Entities

The Authority was satisfied that the proposed transaction did not raise any issues under criteria (a), (c), (d), (e) and (f), or on the expertise and experience element of criterion (b). The focus of the discussion related to the character element of criterion (b), particularly in respect of Mr. Xavier Niel, which in the Authority's view, had not been sufficiently addressed in the Submission. The Authority agreed that the Executive would request the Contractors provide further detail regarding the nature of the offence that led to Mr. Niel's conviction¹ and the French legal rehabilitation process, noted in the Submission.

Additional detail regarding the nature of the offence that led to Mr. Niel's conviction and the French legal rehabilitation process was considered by the Authority. It noted the nature of the offence and the process of the automatic legal rehabilitation in French law. Similarly, the Authority noted the provisions of Irish law in respect of this concept.

Following discussion, the Authority was satisfied that while the conviction was disclosed, it is spent and that in both French and Irish law, the legal consequence of this means that the conviction and sentence retroactively disappear and there is no requirement for disclosure of same to a third party. Accordingly, the Authority was satisfied that the Proposed Transaction satisfied the relevant criteria in respect of Character, Expertise and Experience and the Proposed Transaction was approved.

4.4 Contractual Variation - Sappho Limited - Proposed Acquisition by The Irish Times

Authority Member Rosemary Day declared an interest in the item under discussion and recused herself from discussion and decision on the matter.

Members were presented with a note which set out a request for Authority approval of the proposed acquisition of Sappho Limited ("Sappho") by Palavia Limited, a wholly owned subsidiary of The Irish Times Designated Activity Company ("ITD"). Sappho, currently a subsidiary of Landmark Media Investments Limited ("Landmark") is a significant shareholder in WLR, Beat 102-103, and Red FM ("the Contractors").

The Authority noted that the acquisition of Sappho by ITD would therefore impact the ownership and control of each of the Contractors, resulting in ITD rather than Landmark having a controlling interest, or a substantial interest in each of the Contractors.

¹ The Authority noted that Mr. Niel was the subject of a conviction in 2005 by the French courts for concealing the misuse of corporate funds, paid a €250,000 fine and received a two-year suspended sentence.



In assessing the request, the Authority noted that it is required to consider the Proposed Transaction in the context of the following criteria in the BAI Ownership and Control Policy (2012):

- Interpretation of Terms - "Control" and "Substantial Interest"
- Character, Expertise and Experience
- Adequacy of Financial Resources
- An undue number of sound broadcasting services
- An undue number of sound broadcasting services in a specified area
- An undue amount of communications media
- Assignment of Contracts
- Programming
- The Competition Act
- Non EU Entities
- Concrete Indicators of Diversity

Based on the Submissions received from the Contractors, the relevant criteria in the BAI Ownership and Control Policy and the Executive analysis and comment, the Authority was satisfied to approve the Proposed Transaction, subject to the submission of signed satisfactory responses to the Character Test by the proposed new directors of the Contractors, and the directors of ITD.

The Authority also noted that a phase two investigation into the proposed acquisition has been launched by the Competition and Consumer Protection Commission (CCPC).

4.5 East Limerick Community Radio

In their capacity as members of the Compliance Committee, Rosemary Day and Maeve McDonagh declared an interest in the item under discussion and recused themselves from discussion and decision on the matter.

The Authority considered a proposal to extend the period of contract suspension for Boherroe Broadcasting Company Limited (t/a East Limerick Community Radio) by three months. It noted that the contract between the BAI and the Contractor was suspended in October 2016 and the Compliance Committee instigated an investigation into the affairs of the Contractor, pursuant to Section 50 of the Broadcasting Act 2009.

The Authority was satisfied to approve the extension of three months to the period of contract suspension for the Contractor to 3rd August 2018, to facilitate the statutory investigation.

4.6 Community Radio Licensing Plan 2018

Members considered an Executive note on a proposed draft community radio licensing plan for the remainder of 2018.



Members noted that the draft plan takes into consideration the impending expiry of one existing community sound broadcasting contract, for Dundalk town and its environs, in 2019.

Following discussion, the Authority was satisfied to include the licensing process for a community radio service for Dundalk town and its environs in the Community Radio Licensing Plan 2018.

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

In their capacity as members of the Contract Awards Committee, Authority members Grace Smith and Seán Ó Mórdha, and Executive staff member Celene Craig, declared an interest in this item and recused themselves from discussion and decision on the matter.

Further to the provisions of Section 68(1) of the Broadcasting Act 2009, the Authority was satisfied to ratify the recommendations of the Contract Awards Committee in respect of the following temporary sound broadcasting service:

- BCFE FM (City of Dublin Education and Training Board on behalf of Ballyfermot College of Further Education).

5. Empowering Audiences

5.1 Access Rules: Presentation of Draft Revised Rules

Members were presented with a note which set out draft revised Access Rules which would be subject to public and targeted stakeholder consultation.

In considering the draft Rules, members noted that the revisions had been predominantly informed by the outcomes of the statutory review of the current Rules which was approved by the Authority at its meeting in December 2017. The revisions related to the introduction of new sections to the Rules, the introduction of new and revised Rules and, more generally, changes to the structure of the Rules to improve understanding and readability.

With some minor revisions relating to the carry-over of targets, the Authority was satisfied to approve the draft Rules as submitted. It noted that a public consultation on the proposals, and targeted consultation with broadcasters and users of access services and their representatives will be undertaken from mid-May to July 2018.

6. For Information

6.1 Minutes of Compliance Committee Meeting, 13th December 2017

Minutes of the Compliance Committee, held on 13th December 2017, were circulated to members for information.



6.2 Minutes of Contract Awards Committee, 18th December 2017 & 1st February 2018

Minutes of the Contract Awards Committee, held on 18th December 2017 and 1st February 2018, were circulated to members for information.

6.3 Executive Approvals

In accordance with the approved decision-making framework, the Authority was notified of 15 contractual variations that had been approved at Executive level since December 2017.

7. Any Other Business

The next meeting of the Authority will be held at 11am on **Thursday 26th April** in the Limerick Chamber of Commerce buildings and will be followed by a Board Policy/Performance review meeting. Members noted that a Board self-assessment evaluation questionnaire will be circulated in the coming week, the responses to which will inform the discussion on the day.

**Professor Pauric Travers,
Chairperson**

26th April 2018