



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

**Date** 11/04/2019 **Time:** 11.00am **Venue:** BAI Offices

## Attendance

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

**Executive:** Michael O'Keeffe, Celene Craig, Andrew Robinson (Secretary), Declan McLoughlin (items 3.1, 4.3), Elizabeth Farrelly (items 3.2, 3.3), Gillian Collins (items 4.4, 4.5, 4.6) Patrick Goodliffe (item 2.1) Richard Brennan, Sally Kennedy (item 4.2).

## 1. Minutes of Previous Meeting and Matters Arising

### 1.1 Minutes of Authority Meeting 5<sup>th</sup> March 2019

The minutes of the meeting of the Authority of 5<sup>th</sup> March 2019 were approved by the members and signed by the Chairperson.

Matters arising were as follows:

#### a) **Irish Language Action Plan – Irish Language Advisory Committee**

The Chief Executive advised members that the first meeting of the reconvened Irish Language Advisory Committee took place on 4<sup>th</sup> April.

He noted that the meeting was well attended with representatives from the broadcasting industry and Irish language groups. The focus of the meeting was to identify priority areas for development and progression in 2019.

#### b) **Environmental, Social & Governance Practice**

The Chief Executive advised members that the BAI would shortly be tendering for the appointment of a Sectoral Sustainability Co-ordinator. The tender will be published on eTenders and promoted on the BAI's website and social media channels.

## 2. Communicating and Influencing

### 2.1 BAI response to Public Consultation on the Regulation of Harmful Content on Online Platforms and the Implementation of the Revised Audiovisual Media Services Directive

Members were presented with the draft BAI response to the Department of Communications, Climate Action and Environment's ("DCCA") public consultation on the Regulation of Harmful Content on Online Platforms and the Implementation of the Revised Audiovisual Media Services Directive ("the Directive").

Members noted that a working group, comprising members of the Authority and Executive, was established to develop the draft BAI submission. Five meetings of the working group were held between January and April 2019 to consider the consultation proposals concerning rules to improve online safety for Irish residents, and the broader regulatory framework to support both the implementation of these rules and the transposition of the Directive.



Members noted that a significant focus for the working group was to consider the concept of combining online safety and audiovisual regulation under a single “media” regulator, and the associated governance structure of this new regulatory Authority. It noted the proposal from the Working Group that new regulation for online audiovisual media services and new online safety regulation for Irish residents could be most effectively accomplished through the introduction of a single, comprehensive regulatory scheme and regulator.

With regard to governance structure, members noted that the working group did not reach a decision on this matter as it believed further consideration of the advantages and disadvantages of each option was required. It also noted the specific, detailed, proposals of the working group in respect of the regulatory approach to each of the four strands identified in the consultation documents.

Subject to a number of minor emphasis and wording amendments, the Authority was satisfied to approve the BAI response as drafted. In particular, the Authority wished to clearly articulate the vision it has developed in respect of online media regulation. It also wished to emphasise that the interests of citizens had, at all times, been at the forefront of the Authority’s consideration.

The Authority also wished to acknowledge the significant effort of the working group in teasing out the numerous complex issues arising and in developing the draft response.

## **2.2 Annual Meeting with Virgin Media Group**

Members were presented with an Executive note on the annual meeting with Virgin Media Television, held on 15<sup>th</sup> February 2019. It was also presented with a copy of the accompanying document “Virgin Media Television - The Future of Connected Entertainment” and a copy of the letter from Virgin Media, dated 30<sup>th</sup> October 2018, concerning the BAI statement on the Five-Year Review of Public Funding.

Members noted that the review provided an update on corporate plans, programming developments and a review of financial and trading performance. Members also had particular regard to the serious concerns expressed by Virgin Media in respect of the BAI’s recommendation to increase RTÉ’s public funding by €30m.

In the first instance, the Authority was keen to note and compliment Virgin Media on the many positive developments within the company as outlined in the report. In particular, members complimented the significant investment in programming, resources and infrastructure which has been undertaken by Virgin Media over the last number of years. Members also acknowledged the successful rebranding of the Virgin Media channels and introduction of the new sports channel; the strong growth in audience share; and the strong financial performance in the ongoing challenging advertising environment.



The Authority also considered the concerns raised by Virgin Media in respect of the BAI's recommendation to increase RTÉ's public funding by €30m. On this matter, the Authority noted that the recommendation was made with the specific purpose of supporting RTÉ in the achievement of its public service objects, as required under the Broadcasting Act, 2009, and was made subject to a number of conditions attached. In this regard, the Authority noted that any public funding that RTÉ receives cannot be used to compete unfairly against other commercial broadcasters, and the use to which public funding is put is monitored carefully by the BAI on an annual basis through the annual review of performance and public funding process.

As a matter of policy, the Authority will require RTÉ to address the question of deficits. The Authority noted that this issue will be raised in the context of the BAI's statutory requirement to undertake funding reviews.

On the question of efficiencies in RTÉ and the sectoral impact assessments for the proposed RTÉ 2+1 service, the Authority noted that the recommendations of independent consultants in respect of both these matters were accepted by the Authority.

[REDACTED]

The Authority agreed that the Executive would draft a response letter to Virgin Media on the basis of the above.

### **3. Promoting Plurality and Diversity**

#### **3.1 Ownership and Control Policy**

Members were presented with an Executive Note which set out the issues for consideration and decision by the Authority arising out of the public consultation phase in the development of the BAI Ownership and Control Policy ("the Policy"). Members noted that the Policy is used to assess the ownership and control elements of licence applications (in tandem with the 2009 Act) and to assess relevant requests for variations to the ownership and control of existing contractors, for example, changes in shareholdings and directors. The Policy also frames the BAI's assessment and determinations in respect of the extent to which a concentration of ownership may be permitted.

Members noted that seven submissions were received in response to the consultation, comprising broadcasters, representative bodies and private individuals. A summary of the submissions to the consultation was provided in the note with full submissions also appended. Members were also provided with a copy of the targeted stakeholder consultation report. These



submissions informed the development of a revised draft Policy by the Executive. Members were also provided with legal advice received in respect of the section on 'Character Tests'.

In considering the revised draft Policy, the Authority had regard to the submissions of respondents, noting the broad range of views expressed by stakeholders in response to the consultation questions.

Following discussion, the Authority agreed on the following substantive issues:

***Section 1: Introduction***

Under this section, the Authority noted that no issues arose from the consultation responses received and so was satisfied to adopt the wording as set out in the draft revised policy.

***Section 2: Legislative and Policy Background***

No issues arose from the consultation responses received and so the Authority was satisfied to adopt the wording as set out in the draft revised policy.

***Section 3: Policy Objectives***

The Authority noted that the consultation invited views on the addition of a policy objective which identified support for the viability of individual broadcasting services and the sustainability of the broadcasting sector as a whole. The draft revised policy also included reference to the importance of diversity of ownership and content.

The Authority noted that while the additional objectives were broadly supported by broadcasters, other respondents did not favour the inclusion of these objectives. Following consideration of all responses, the Authority agreed to include the objective in respect of viability and sectoral sustainability as proposed. It was also satisfied to include in the objectives reference to diversity of ownership as an objective of the policy. The Authority also noted that the objectives were not ordered by priority but that there may be benefit in grouping them together where objectives have similar themes.

***Section 4: Statutory Definitions & Interpretations of Key Terms Used in the Policy***

The Authority noted that this section focused on the key statutory definitions and terms used in the policy. In this regard, the Authority noted the inclusion of the statutory definition of 'Communications Media' as it is an important definition in the decision-making process. The Authority noted that the definition of 'communications media' includes broadcasting services and platforms and newspapers and periodicals consisting substantially of news and comment on current affairs but does not include internet media.



It also noted that, as there are no statutory definitions for 'control' and 'substantial interests', these terms as outlined in the current version of the policy have been adopted in the draft revised policy.

The Authority noted that there was broad support for this section of the draft revised policy and so was satisfied to adopt the wording as drafted.

### ***Section 5: Policy Provisions***

#### ***5.1 Character, Expertise and Experience***

The Authority noted that this section of the draft revised policy reflected the statutory obligation of the BAI to consider matters relating to the character, expertise and experience of individuals/legal entities when assessing applications.

Following consideration of responses received, and legal advice concerning which criminal offences should be included as part of the character tests, the Authority agreed the following:

- given the importance of the roles, the management positions to which character tests would apply are both Chief Executive and Company Secretary.
- the list of additional criminal offences and non-criminal findings of statutory bodies highlighted by the legal advice would be reflected in the character test section of the policy.
- the Authority was satisfied to adopt the remaining wording as proposed.

#### ***5.2 Financial Resources and Good Business and Economic Principles***

The Authority noted that this section of the draft revised policy reflected current policy provisions. It noted that respondents to the consultation were broadly supportive and so were satisfied to adopt this section as proposed.

#### ***5.3 Viability and Sectoral Sustainability***

The Authority noted that this provision was added to the draft revised policy having had regard to feedback to the prior targeted consultation undertaken with a view to informing the draft policy. It also reflected recent research undertaken by Mediatique in the context of the review of the Broadcasting Services Strategy, and the BAI's Strategy Statement 2017-2019.

Noting that the views of respondents to this section were broadly aligned with those provided under Section 3 above, the Authority was satisfied to adopt the new policy provision dealing with viability and sectoral sustainability.





*5.4 An undue number of sound broadcasting services*

*5.5 An undue number of sound broadcasting services in a specified area*

*5.6 An undue amount of communications media in a specified area*

The Authority noted that sections 5.4, 5.5 and 5.6 of the Draft Revised Policy gave effect to Sections 66 (2)(g)(h) and (i) of the Broadcasting Act 2009. These statutory provisions require the BAI, when assessing applications for new contracts, to consider the desirability of allowing any person or group of persons to have control of, or substantial interests in, an undue number of the total number of broadcasting services in the State, as a whole (Section 5.4), or in a specified geographical area (Section 5.5). In addition, the BAI must consider the desirability of allowing any person or group of persons to have control of, or substantial interests in, an undue amount of communications media (Section 5.6).

The Authority noted the views of stakeholders from both the targeted and public consultations on these issues, particularly the divergent views of respondents concerning the current upper threshold of 25% of the total number of sound broadcasting services that any one person or group of persons may own (*Section 5.4*).

Following discussion, the Authority agreed to adopt the approach taken in the draft revised policy which would retain the upper threshold of 25%. It was the view of the Authority that it was the best way to ensure plurality in terms of a diversity of ownership and diversity of content. The Authority noted that the highest percentage of the total number of services currently owned by any one individual or company is 18% and therefore there already remains scope for consolidation under the current and revised policy thresholds.

The Authority noted that the other draft revised policy provisions detail the tests in respect of 'an undue number of sound broadcasting services in a specified geographic area' and 'an undue amount of communications media'. As these provisions received a generally favourable response, the Authority was satisfied to approve the wording of sections 5.5 and 5.6 as proposed.

#### *5.7 Programming*

Section 5.7 of the draft revised policy highlighted the requirement for the BAI to consider the quality and/or type of programming proposed by applicants for new contracts. The BAI also had regard to these considerations when assessing proposals to change ownership at the level of 'substantial interest' and 'control'.

The Authority noted that the draft revised policy retained the current criteria and proposed an additional criteria as follows:- "*Whether, in the context of news and current affairs programming proposals and/or practices, the proposals reflect a sufficient and demonstrable commitment to achieving and sustaining impartial, credible and independent journalism.*"



While noting that many respondents did not favour the adoption of the additional criteria, the Authority was of the view that the additional criteria in respect of news and current affairs programming were warranted and should be included.

In this regard, the Authority noted that while broadcasters were correct to highlight that the regulatory framework includes strong protections in respect of ensuring news and current affairs content is broadcast and complies with the Code of Fairness, Objectivity and Impartiality in News and Current Affairs, the current policy did not include an assessment of how these are applied in practice. The Authority agreed that the inclusion of a reference to practice in addition to proposals in respect of news and current affairs would allow an assessment as to how the contractor demonstrated a commitment to achieving and sustaining impartial, credible and independent journalism in practice.

The Authority was also satisfied to adopt this section as a whole.

#### *Section 5.8 Non-Eu Entities*

The Authority noted that this section of the Draft Revised Policy stated that, in considering ownership and/or control proposals, the BAI requires that non-EU entities shall have established a registered office within the EU.

No issues arose in respect of the consultation responses received in respect of this section and therefore the Authority was satisfied to adopt the draft provisions.

#### *Appendix 1 – Legislative Provisions and Appendix 2 – Statutory Definitions*

The two appendices provide information regarding the statutory provisions, including statutory definitions underpinning the Policy. The Authority noted that no issues arose from the consultation responses received and so were satisfied to adopt the wording as set out in the draft revised policy.

#### *Removal of Policy Provisions in respect of 'Assignment of Contracts' and 'Concrete Indicators of Diversity'*

The Authority noted that there were no significant issues highlighted by respondents in respect of the proposal to remove the section titled 'Concrete Indicators of Diversity' and so the Authority was satisfied to approve this change.

With regard to 'Assignment of Contracts', the Authority took the view that these restrictions were no longer necessary given the maturity of the broadcasting sector, having also had regard to the property right of shareholders and taking into account changes in the wider media market. The Authority noted the views of a number of respondents arguing against the removal of the section but agreed that its initial rationale for removing the restrictions remained valid.



Finally, the Authority noted that one respondent criticised the policy development and consultation process. Having considered the issues highlighted, the Authority was satisfied with the adequacy and integrity of the policy development process and consultation undertaken.

The Authority noted that the revised Ownership and Control Policy would be jointly published with the Media Plurality Policy in late May 2019.

### **3.2 Licensing Plan 2019**

Members considered an Executive note outlining the proposed draft Radio Licensing Plan for the remainder of 2019. Members noted that the draft licensing plan listed three commercial sound broadcasting services and one community sound broadcasting services with contract expiry dates in 2020.

Following discussion, the Authority was satisfied to include the licensing process for the following services:

- Commercial music-based services for a general audience in the 35-55 age group: Dublin City & County
- Commercial music-based classic rock service targeting 25+ age group: Dublin City & County & Commuter Belt
- Commercial Christian and religious service on AM & FM: Quasi-national
- Community service: Athlone town and its Environs.

With regard to the quasi-national Christian and religious service, the Authority noted that it was satisfied to include the potential for up to thirty low powered FM transmitters to be considered at the licensing stage. It was also satisfied to include the potential for a review of the AM transmission requirement for this service in 2025.

### **3.3 Ros FM: Contract Extension**

Members considered an Executive Note seeking Authority approval for a contract extension for community sound broadcasting service Ros FM Radio Company Limited by Guarantee t/a Rosfm Radio to 12<sup>th</sup> December 2021.

In considering the request, members noted that the current contract is due to expire on 12<sup>th</sup> December 2019 and there remained certain compliance matters which should be addressed before the service could be considered for inclusion in a future radio licensing plan. Members noted that the proposed extension would facilitate the continuance of the current radio service for the community while the Contractor seeks to address the compliance issues raised.

Following discussion, the Authority was satisfied to extend the term of the contract to 12<sup>th</sup> December 2019.





## **4. Achieving Excellence & Accountability**

### **4.1 FAR Committee annual performance assessment report to the Board**

This matter was deferred until the May 2019 meeting.

### **4.2 Ratification of the tender for facilities management services**

Members were presented with an Executive Note which sought Authority approval for the appointment of Aramark Facilities Management to provide facilities management services for a period of three years from 1<sup>st</sup> May 2019. Members noted that three submissions were received as part of the process.

Following discussion, the Authority was satisfied to ratify the award of the contract to Aramark Facilities Management.

### **4.3 Risk Update**

This is a stranding agenda item. No issues arose at the meeting.

### **4.4 Bank Mandates: Additional Signatories**

Members considered an Executive request for the Authority to pass a resolution to allow the addition of Andrew Robinson and Declan McLoughlin as signatories to bank mandates held by the BAI.

The Authority was satisfied to approve this request.

### **4.5 Application for a Credit Card for two Senior Managers**

Members considered an Executive request to approve the issuing of a credit card to senior managers Andrew Robinson and Declan McLoughlin. The Authority was satisfied to approve this request.

### **4.6 New Bank Account: Bank of Ireland**

Members considered an Executive request for the Authority to pass a resolution to allow the BAI to open an additional investment account to manage the BAI's investment portfolio in accordance with the terms of the BAI investment policy.

The Authority was satisfied to approve this request.

## **5. For Information**

### **5.1 Minutes of the Contract Awards Committee Meeting, 10<sup>th</sup> January 2019**

Minutes of the Contract Awards Committee meeting, held on 10<sup>th</sup> January 2019, were circulated to members for information.

### **5.2 Minutes of the Compliance Committee Meeting, 5<sup>th</sup> December 2018**

Minutes of Compliance Committee Meeting, held on 5<sup>th</sup> December 2018, were circulated to members for information.



**6. Date of next meeting**

The Authority Performance Review Day will be held at **10.00am on 2<sup>nd</sup> May** in the Glasshouse Hotel, Sligo.

The next meeting of the Authority will be held at **11am on Thursday 23<sup>rd</sup> May** in the BAI offices.

A handwritten signature in blue ink, reading 'Pauric Travers', is written over a horizontal line.

**Professor Pauric Travers,  
Chairperson**

**23<sup>rd</sup> May 2019**