

Minutes of Meeting of the Authority of Broadcasting Authority of Ireland

Date 30/11/2020 **Time:** 10.30am **Venue:** Conference Call

Attendance

Authority: Pauric Travers (Chairperson), Alan McDonnell, Grace Smith, Mary Curtis, Vivien McKechnie.

Executive: *Michael O’Keeffe, Celene Craig, Andrew Robinson (Secretary), Anne O’Brien (item 2.1), Philip Cooper (item 2.1), Ciarán Kissane (item 2.2), Clare O’Sullivan (items 2.3, 4.1, Elizabeth Farrelly (item 2.3), Neil O’Brien (items 2.4, 2.5), Patrick Goodliffe (item 2.6), Roger Woods (item 2.7), Liam Boyle (item 2.7), Sally Kennedy (item 4.3), Richard Brennan (items 4.3, 4.4), Declan McLoughlin (item 4.5), Anne Louise O’Donovan (item 5.1).*

1. Matters Arising

1.1 Minutes of Authority Meetings 10th September and 21st October

The minutes of the meetings of the Authority, held on 10th September and 21st October 2020 were approved by members.

Matters arising were as follows:

- a) **Joint Committee on Tourism, Culture, Arts, Gaeltacht, Sport and Media**
The Chief Executive advised members that the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media had written to the Joint Committee on Tourism, Culture, Arts, Gaeltacht, Sport and Media, in which she requested the Committee to reappoint the four Committee nominated members. The Chief Executive noted that the matter is expected to be considered by the Committee in the coming weeks and hoped that a resolution to this matter would be found before the end of the year.
- b) **Three-year estimates 2021-2023**
The Chief Executive advised members that the BAI was still awaiting Departmental approval for publication of the three-year estimates 2021-2023.
- c) **Meeting with Minister Martin**
The Chief Executive advised members that the Chairperson, Chief Executive and Deputy Chief Executive had met with Minister Martin on 12th November in order to provide an introduction to the BAI and its key activities. The Chief Executive noted that the meeting was very positive and the Minister had expressed a keen interest in the activities of the Authority.
- d) **Launch of Sustainability Network Roadmap**
The Chief Executive advised members that the Sustainability Network Roadmap was launched on 25th November with the keynote address from Minister Martin. He noted that the event was well attended with very positive feedback received from attendees.

The Board wished to record its gratitude to Authority Member Alan McDonnell for his leadership in bringing this project to fruition. The contribution of Declan McLoughlin and the Executive team was also acknowledged.

2. Promoting Plurality & Diversity

2.1 Broadcasting Funding Scheme: Sound & Vision: Rounds 36 (community proposals) and 37 (open round)

Members were presented with the outcomes of the assessment processes for Rounds 36 (community proposals) and 37 (open round) under Sound & Vision 4. Approval was sought for a package of recommendations for the purpose of delivering a wide range of projects across all broadcasting sectors.

Round 36 (community proposals)

Members noted that the community radio funding initiative was developed further to a request from the Minister for Communications, Climate Action and Environment for the BAI to prioritise funding initiatives for the independent commercial radio and community radio sectors. Members noted that a funding initiative for the commercial radio sector ran earlier in the year.

The community radio funding initiative was open to community / community of interest / community of special interest and special interest Christian / religious sound broadcasting contractors with a total fund of €750k being made available. Members noted that, by the closing date, a total of 22 applications were received, seeking funding of €694k.

Open Round

With regard to the open round, Members noted that a total of 190 applications were received, seeking €22.2m in funding. Members noted that 128 of these passed the qualitative phase, necessitating a strategic assessment phase.

In considering the package of recommendations, members had regard to summary details of the applications received; an overview of the assessment process; and an analysis of the projects recommended for funding, with reference to the aims and objectives of the funding round, the Scheme and the Authority's Strategy Statement.

Following discussion, the Authority was satisfied to approve the package of recommendations, as presented. With regard to the community initiative, it noted that all recommended projects had demonstrated that they could adequately fulfil the objectives of Round 36 and S&V4 more generally.

With regard to the open round, the Authority noted that the round was significantly oversubscribed, remarking in particular on the trend of RTÉ to oversubscribe support for applications submitted in recent rounds. It noted that the Executive would review this trend and discuss the issues arising with the broadcaster.

On a positive note, the Authority welcomed the fact that all commercial and community sound broadcasting contractors engaged with the two focussed rounds in 2020.

Rounds in 2021

The Authority was also satisfied to approve, in principle, the schedule of funding rounds for 2021 as proposed.

In concluding the discussion, the Authority wished to record its appreciation to Anne O'Brien and the S&V team for their efforts in the delivery of four funding rounds in 2020. It noted the significant impact of the S&V Scheme on the audiovisual industry and its contribution to the Arts sector more generally.

In this regard, it welcomed the recent announcement of the BAI funded Irish language film *Arracht* as Ireland's nomination for Best International Film at the 2021 Oscars.

2.2 A Proposal to the Board on Interpretation of Ownership and Control Policy

Members were presented with an Executive note setting out a request from an industry stakeholder seeking clarification on the BAI's interpretation of an element of the BAI's Ownership & Control Policy 2019. In particular, clarification was sought on whether the iRadio services would constitute one or two services under the Policy in the context of the maximum percentage of services permissible under the O&C Policy, which stands at 25%.

In considering the clarification request, the Authority noted that there may be some ambiguity with the wording of this section of the Policy and that it may be open to interpretation. As a result, the Authority was satisfied to make a determination on the matter and publish the outcomes of its consideration.

Noting that iRadio holds two licences but only provides one service under a single sound broadcasting contract, the Authority was satisfied to determine that iRadio would constitute one service for the purposes of determining the ownership thresholds as set out in the Policy.

The Authority noted that the BAI clarification, as set out above, would be published on the BAI website in the coming weeks.

2.3 Application for a derogation from the 20% News and Current Affairs Requirement: 98FM

[Redacted]

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

2.4 Contract Extension Request: Spirit Radio

Members considered an Executive note seeking Authority approval for a contract extension for quasi-national Christian and religious sound broadcasting service Spirit Radio Limited t/a Spirit Radio to 31st May 2021. Members noted the current contract for this service is due to expire on 31st December 2020.

In considering the request, members noted that the Contract Awards Committee is due to consider the Fast Track Proposal for Spirit Radio at its meeting on 15th December 2020 and that the extension is to facilitate the completion of the application process by the BAI.

Following discussion, the Authority was satisfied to extend the term of the contract to 31st May 2021. As the period of extension is required to meet a BAI administrative purpose, the Authority was also satisfied that the terms of the new Contract would not be reduced to compensate for the extension period.

2.5 Contract Extension Request: Athlone Community Radio

Members were presented with an Executive note seeking Authority approval for a contract extension for community radio service Athlone Community Radio Limited t/a Athlone Community Radio to 30th November 2021. Members noted that the Contract expiry date was 29th November 2020.

In considering the request, members noted that Athlone Community Radio was included in the 2019 licensing plan, and an application was received by the broadcaster during the year, but the Board of the radio station subsequently resigned in November 2019. Since then, a new Board has been appointed but the updating of policies and implementation of other governance procedures has been delayed by the impact of Covid-19. The proposed extension would facilitate the completion of the work of the new Board, a review by the BAI and any subsequent decision to include the service on a future licensing plan.

Following discussion, the Authority was satisfied to extend the term of the contract to 30th November 2021.

2.6 Contractual Variation: Eurasian Broadcasting Enterprise Limited

Members were presented with an Executive note which set out a request for Authority approval of the proposed 100% acquisition of Eurasian Broadcasting Enterprise Limited ("EBEL") by Temur Ugulava, a Georgian entrepreneur. Members noted that EBEL holds two content provision contracts with the BAI for two channels: Setanta Sports 1 (*Eurasia*) and Setanta Sports 2 (*Eurasia*).

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 (2019):

- Interpretation of Terms - "Control" and "Substantial Interest"
- Character, Expertise and Experience
- An undue amount of communications media in a specified area
- Programming
- The Consumer Protection and Competition Act 2014
- Non-EU Entities.

Following discussion, the Authority expressed broad satisfaction with the proposed transaction when assessed against the criteria set out in the BAI Ownership and Control Policy. However, a number of queries were raised by the Authority in respect of the "Character" criteria.

While the Authority was satisfied to approve the character of the Contractor's proposed directors, secretary and senior management following the proposed transaction, it reserved its position on the character of the proposed acquirer – Temur Ugulava. [REDACTED]

[REDACTED] The Authority also agreed that confirmation of Mr. Ugulava's good standing, possibly by the Georgian audiovisual regulator or equivalent body, would assist in the assessment.

Following discussion, the Authority was satisfied to approve the proposed transaction, in principle, subject to Executive consideration of, and satisfaction with, the responses provided by EBEL in respect of the character of Mr. Ugulava.

2.6 Ratification of Contract Awards Committee recommendations

Section 71: Content Provision Contract

Eir Sport 1 and 2

Members considered an Executive Note assessing an application for a content provision contract, further to Section 71 of the Broadcasting Act 2009, from Eircom Limited for two services entitled "Eir Sport 1" and "Eir Sport 2". Members noted that both services currently operate under separate, five-year section 71 licences, which are due to expire in December 2020.

Members noted that the proposed services will broadcast a range of live sport, including Rugby PRO14, GAA Allianz leagues and the Golf Masters.

In accordance with Section 71(4) of the Broadcasting Act 2009, the Authority was satisfied to ratify the recommendation of the Contract Awards Committee, to award in principle a content provision contract to the applicant Eircom Limited.

Really and HGTV

Members also considered an Executive Note assessing an application for two content provision contracts, further to Section 71 of the Broadcasting Act 2009, from Discovery Ireland Broadcasting Limited for two services entitled “Really” and “HGTV”. Members noted that both services are available to viewers in Ireland by virtue of existing Ofcom licenses held by the applicant, and that the application is being submitted in order to ensure continuity of service for Irish viewers.

Members noted that *Really* is a general entertainment channel which focuses on real live events and live entertainment. *HGTV* is a lifestyle channel providing content focused on the home, cookery and gardening.

In accordance with Section 71(4) of the Broadcasting Act 2009, the Authority was satisfied to ratify the recommendation of the Contract Awards Committee, to award in principle content provision contracts to the applicant Discovery Ireland Broadcasting Limited.

Section 68 – Temporary Licence Applications

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 services:

- Rosses Radio (Guth na Rossan Cuideachta Faoi Theorainn Ráthaíochta),
- Limerick City Community Radio (Limerick City Community Radio Limited By Guarantee), and
- Owenea FM (Donegal Sounds Community Radio CLG).

3. Communicating and Influencing

3.1 AVMSD and Harmful Online Content: Overview of Key Activities

Members were presented with an Executive Note setting out the ongoing key activities of the BAI in the areas of the Audiovisual Media Services Directive (“AVMSD”) and Harmful Online Content (“HOC”). The note detailed how these activities have contributed to the discussion on the future of online media regulation in Ireland, in the furtherance of the BAI’s strategic goal of being an informative, authoritative and influential voice on media matters.

Members were provided with an overview of the work of the BAI Executive at national, European and International level. Key activities highlighted during the discussion included the exploration of regulatory issues arising from the changes introduced by the revised AVMSD

and the online harm element of the Online Safety and Media Regulation Bill; significant stakeholder engagement in respect of both AVMSD and HOC; and desk-based research in support of the above. The BAI's significant work at a European level was also highlighted, including active participation at ERGA, most notably in the development of a Memorandum of Understanding for all European audio-visual regulators with the objective of seeking to ensure the effective and consistent implementation of the AVMSD. At an international level, the BAI has joined the recently formed Online Content Regulators Forum which seeks to share experiences and explore challenges that online developments present to meeting policy objectives in the traditional/linear media world.

The Authority welcomed the comprehensive document which gave visibility to the wide range of BAI's activities at both a national and international level. Noting the significant work undertaken across both the AVMSD and HOC, the Authority was satisfied that the BAI is well positioned to lead the debate and influence policy development on the future legislative and regulatory framework for digital and broadcasting media services in Ireland, a key objective set out in the 2021-2023 Strategy Statement. It commended Celene Craig and the AVMSD team on its significant work to date on these key regulatory issues.

4. Achieving Excellence and Accountability

4.1 BAI Strategy Statement 2021-2023 Consultation: Summary of Outcomes

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 Strategy Statement 2021-2023 ("the draft Statement"). Members noted that the draft Statement was agreed by the Authority at its meeting on 10th September 2020 with the launch of the public consultation on 11th October.

Members noted that fourteen submissions were received in response to the consultation, primarily comprising broadcasters and representative bodies. The consultation process also included a workshop with BAI staff and a combined special review meeting of both the Compliance and Contract Awards Committees in October. Members also noted that the development process was informed by broadcaster and industry stakeholder consultations which took place in March 2020.

A summary of the submissions to the consultation was provided in the note with full submissions also appended. These submissions informed the development of a number of wording proposals by the Executive for Authority consideration.

In considering the consultation responses, the Authority had regard to the submissions of respondents, noting a broad range of viewpoints and proposals. While noting that many were of direct relevance to the drafting of the new Strategy Statement, other matters raised were of

more value to the BAI work-planning decisions and activities. Other matters raised were considered outside of the BAI's current legislative remit.

Following discussion, the Authority agreed to the following:

Vision

- The Authority was satisfied that the Vision, as set out in the draft Statement would remain as is.

Mission

- The Authority agreed to revise the wording of the Mission section to reflect Option 1 as set out in the Executive note.

Values

- The Authority agreed to revise and reorder the Values section as set out in the Executive note.

Theme 1: Promoting Plurality and Diversity

- *Strategic Objective and Outcome 1:*
 - The Authority was satisfied that the Strategic Objective and associated Outcome would remain as originally drafted
- Strategic Objectives and Outcomes 2 – 4:
 - The Authority was satisfied to approve the wording as set out in the Executive note.

Theme 2: Achieving Excellence and Accountability

The Authority agreed to the proposed wording for all Strategic Objectives and associated Outcomes as set out in the Executive note.

Theme 3: Leadership in Change

The Authority was satisfied with the proposed wording for all Strategic Objectives and associated Outcomes as set out in the Executive note.

Theme 4: Empowering Audiences

The Authority agreed to the proposed wording for all Strategic Objectives and associated Outcomes as set out in the Executive note.

Theme 5: Enhancing Innovation and Sectoral Sustainability

The Authority agreed to the proposed wording for all Strategic Objectives and associated Outcomes as set out in the Executive note.

On the basis of the decisions above, the Authority was satisfied to adopt the Statement of Strategy for the period 2021-2023. It noted that the document would be officially launched by the BAI during the week commencing 11th January 2021.

The Authority reviewed the KPIs proposed for the final Statement (1-2 KPIs per Outcome) and noted that these would be included for illustrative purposes. The Authority agreed that KPIs should ideally contain a mix of both qualitative and quantitative elements and also acknowledged that at this high level, the BAI needed some flexibility for particular work activities that may require consultation and research prior to undertaking. Following discussion, it was agreed that these KPIs would continue to be reviewed and refined during the Strategy implementation period in the related BAI work and operational plans.

4.2 FAR Committee Duties and Capabilities Report 2020

Members considered a Report prepared by the FAR Committee, providing details of its annual review of Duties and Capabilities.

The report presented a number of proposals for Authority approval as follows:

- (i) A revised FAR Committee Terms of Reference
- (ii) Proposals for Committee-member training arising from its 2020 Review of FAR Committee Competency Framework
- (iii) Authority acknowledgement that the actions arising from the 2018 Performance Assessment have been completed or scheduled.

It also provided an update on the 2021 FAR Committee workplan and outcomes of its 2020 FAR Committee performance assessment report.

Following discussion, the Authority was satisfied to approve the FAR Committee proposals as set out above. It also wished to record its appreciation for the continued work of the Committee on behalf of the Board in providing a significant level of assurance for the Authority in fulfilling its statutory duties.

4.3 Ratification of Multi-Party Framework Agreement for Legal Services for the BAI

Members were presented with an Executive Note which sought Authority approval for the appointment of a multi-party framework for the provision of legal services for the BAI. Members

noted the three lots as set out in the framework as Private Law, Public & Administrative Law, and Employment Law.

Following discussion, the Authority was satisfied to ratify the establishment of the legal services framework and the award of contracts as set out in the Executive note.

4.4 Loan Facility NTMA

Members were presented with an Executive note which sought Authority approval for the BAI to formally request a borrowing facility for a period of one year, for an amount of up to €1 million, pursuant to section 35 of the Broadcasting Act 2009.

The Authority was satisfied to obtain a borrowing facility on the above terms, subject to the approval of the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, with the consent of the Minister for Finance and Minister for Public Expenditure and Reform.

It was also satisfied to approve the resolution in respect of the borrowing facility with the NTMA, and to authorise the Chairperson to sign the resolution in the required format, subject to the relevant approval having been granted by the Minister. Finally, the Authority was satisfied to ratify the NTMA Customer Mandate.

4.5 BAI Investment Policy Revision

Members were presented with an Executive note seeking Authority approval of the updated BAI Investment Policy. Members noted that the revised Policy had been developed by the BAI's investment advisors (BCWM) at the request of the FAR Committee in June 2020.

Members noted that the proposed amendments primarily resulted from a key provision of the current Policy which provided that a maximum of 40% of BAI investments could be allocated to any one institution. This was raised as an issue for the FAR Committee when it agreed to a proposal to purchase Exchequer Notes from the National Treasury Services of NAMA in June 2020, due in the main to the limited number of financial institutions available to accept new investments and/or accept new investments that offered a positive interest rate. To facilitate this proposed investment, the revised Policy has been updated to reflect that NTMA is considered an exception to the institutional limit of 40%.

In considering this request, the Authority noted that the current terms and interest rate on Exchequer Notes issued by NTMA are very favourable in the current market. It also noted that any investments are State guaranteed and so no significant question of risk arises in respect of the placement of funds in Government Bonds.

Following discussion, the Authority was satisfied to approve the revised BAI Investment Policy as proposed.

4.6 Risk Update

Members were presented with an Executive note providing an update on the BAI's risk profile and Corporate Risk Register which were considered by the FAR Committee at its November 2020 meeting.

Members noted that the ongoing management of risk is delegated to the FAR Committee, and that it had considered an update report on the risk profile of the BAI at its most recent meeting. Members were presented with a copy of the report and a copy of the Corporate Risk Register.

Members also noted that the BAI Corporate risk register had been updated to reflect changes made to the Residual Risk Rating (RRR) of a number of risks. It also noted that the Risk Appetite Statement highlighted one risk theme which remains out of tolerance and that the Executive would be providing an update on progress in respect of this risk theme at its January meeting.

Finally, Members also noted the approach agreed by the FAR Committee in respect of its review of the Risk Management Policy and Risk Appetite Statement.

Having regard to the information provided, the Authority expressed satisfaction with the risk update.

5. For Information

5.1 Report to the Minister for Q3 on the Independent Commercial Radio Sector

Members were provided with a copy of the fifth BAI report to the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media on the Impact of COVID-19 on Commercial Radio Sector Revenue.

Members noted that the report covers the period July – September 2020 and was prepared further to the Minister for Communications, Climate Action and Environment's request to carry out an urgent review in order to quantify the financial impacts on independent radio stations arising from COVID-19 and to provide an evidence base to inform decision making in the period ahead. The Authority noted that the reports would now be submitted on a quarterly basis, following discussions between the BAI and Department officials.

The Authority acknowledged the continued value of the reports in providing a picture of the financial challenges faced by broadcasters over the period of the reviews.

5.2 Executive Approvals

In accordance with the approved decision-making framework, the Authority was notified of nine contractual variations that had been approved at Executive level since June 2020.

6. Any other business

6.1 Departure of BAI Chairperson

The Chief Executive noted that this was the last meeting for outgoing Chairperson, Paucic Travers, who will shortly complete his second term with the BAI. On behalf of BAI staff, the Chief Executive placed on record its appreciation for Prof. Travers' exceptional guidance and support over the previous six years in the effective implementation of two Strategy Statements. He noted that Prof. Travers will be sorely missed and wished him well on his departure.

The views were echoed by the Authority members, acknowledging Prof. Travers' strong leadership in ensuring the effectiveness of the Board in all its activities and practices. It also noted Prof. Travers role in encouraging respectful and open debate on matters which came before the Board.

Prof. Travers acknowledged the good wishes of his colleagues, and in turn, wished to thank the Board for their continued enthusiasm and support in the delivery of the BAI's objectives. He noted that his experience on the Board was an enjoyable and rewarding one, and also wished to acknowledge the good natured support of all BAI Executive staff he had engaged with over the years.

7. Private meeting of the Authority

6.1 Appointment of Chief Executive and Chairperson

[REDACTED]

Appointment of Chairperson

The Chairperson recused himself from this element of the discussion.

The Chief Executive advised members that the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media had requested BAI assistance in the drafting of the vacancy notice for the BAI Chairperson. He advised members that the Executive will commence this work in the coming days.

The Authority also discussed the procedure for appointing a BAI Chairperson while the recruitment process for a new Chairperson is ongoing. It agreed that legal advice would be sought on this matter, [REDACTED]

Chairperson

21st January 2021