



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

**Date** 18/11/2013 **Time:** 9.30am **Venue:** 2-5 Warrington Place, Dublin 2

## Minutes

### Attendance

**Authority:** Bob Collins (items 1-4c; 5-8), Larry Bass, Paula Downey, Colum Kenny, Michelle McShortall, Maria Moloney, Michael Moriarty, John Waters (items 1-2; 4-8),.

**Apologies:** Siobhán Ní Ghadhra.

**Executive:** Michael O'Keeffe, Celene Craig, Aoife Clabby, Diarmaid Breathnach, Margaret Tumelty, Neil O'Brien, Freda Comiskey, Brian Furey, Anne O'Brien (item 2c-3), Clare O'Sullivan (item 2c-3), Andrew Robinson (item 3b)

### 1. Minutes of Previous Meeting and Matters Arising

Minutes of the previous meeting of the Authority, held on 14<sup>th</sup> October 2013, were approved by the Members and signed by the Chairperson.

#### a. Joint Oireachtas Committee on Transport and Communications

The Chairperson apprised the Members of the presentation made to the Joint Oireachtas Committee on Transport and Communications on the outcomes of the BAI's five-year review of public funding for public service broadcasters. Members discussed the focus of the subsequent debate at the Committee meeting between its members and the BAI representatives.

#### b. Financial Statements

Members were informed that the final audit cert for the BAI and Broadcasting Fund Financial Statements 2012 had been provided by the Comptroller and Auditor General and that the Annual Report and Financial Statements 2012 would now be submitted to the Department of Communications, Energy and Natural Resources, in accordance with the relevant statutory provisions.

#### c. Broadcasting Funding Scheme: Consultation on Sound & Vision 3; Operational Plan 2014

Members noted that the public consultation on the draft Sound & Vision 3 Scheme was scheduled to open on 20<sup>th</sup> November and that a stakeholder event was scheduled to take place on 2<sup>nd</sup> December.

With regard to the operational plan for 2014, it was noted that the views of stakeholders had been canvassed and that a preference had been expressed regarding the order in which the open and targeted rounds will take place in 2014.



**d. BAI Public Event**

Members were reminded that the BAI Public Event, focussing on the outcomes of attitudinal research in respect of the BAI Code of Programme Standards, was taking place in Smock Alley on the morning of Thursday 12<sup>th</sup> December.

**2. Policy**

**a. DTT Policy Paper**

Members were presented with an Executive note, identifying a range of policy issues emerging from the review of commercial DTT, undertaken on the Authority's behalf by Oliver & Ohlbaum Associates. In this regard, the Authority's statutory obligations and policy objectives in respect of commercial DTT were considered and it was acknowledged at the outset that, while many of the policy concerns raised were a matter for Government, these national policy objectives were echoed in the Authority's own strategic goals and objectives.

At its October meeting, the Authority had supported the views expressed by O&O in their report that the market in Ireland could not support a commercial DTT proposition. Members discussed a range of policy implications arising from the acceptance of this contention including:

- The implications for diversity, specifically the range of Irish content available to the viewer;
- The implications for plurality of news sources and cultural content;
- Free Access and a consideration of the case for State Aid for the platform;
- Sovereignty over the transmission system;
- The implications for funding of Public Service Broadcasters; and,
- The future of the relevant spectrum.

The Authority also noted other recent developments including UTV's application for a section 71 licence, and developments in respect of IPTV and in particular, Eircom's IPTV offering.

Following detailed discussion on the key policy issues outlined in the Executive note, the Authority agreed the manner of their communication to the Minister, relevant stakeholders and the general public, in the context of the Authority's discharge of its statutory obligations in respect of commercial DTT and its strategic goals and objectives.

The Authority agreed that the policy issues raised during the review process should be the subject of further consideration involving ComReg, the BAI and the Department and that a proposal for a consultation process between the three agencies would be made to the Minister.



**b. PSB: 5 Year Review of Public Funding-Status Report**

Members considered a report providing an update on developments since the submission, by the Authority, of its Five-year Review of Public Funding for Public Service Broadcasters to the Minister in July. Members noted the response of both RTÉ and TG4 in relation to the outcomes of the review; progress on the implementation of the various recommendations arising from the BAI's Review, including actions assigned to the Department, NewERA, the broadcasters and the BAI itself; and, a range of other related developments.

The Authority was informed that the BAI had been requested by the Minister to consider a further submission from TG4 in respect of its five-year plan and that the Executive would revert to the Authority once a submission had been received from the broadcaster.

Members had regard to work undertaken by the Executive in relation to the annual and multi-annual funding review processes, including the development of a new framework of broadcaster returns and related metrics, based on recommendations contained in the Crowe Horwath report. It was agreed that a copy of the framework would be circulated for information at the December meeting of the Authority.

Finally, regard was had to a number of other developments which had occurred since the submission of the Authority's report and recommendations, including a meeting with DG Competition to outline the outcomes of the BAI Review; the DCENR consultation on the proposed broadcasting charge; and, the budget decision by the Government regarding the amount to be paid by the Department of Social Protection towards the television licence fee.

**c. BAI Strategy Statement: Consultation Outcomes**

Members were presented with the outcomes of the consultation process on the BAI draft Strategy Statement 2014-2016. It was noted that a total of 39 submissions had been received from a mixture of broadcasters, representative industry bodies, civil society organisations, NGOs and members of the public.

Members welcomed the general endorsement of the draft Strategy among respondents, in particular the support articulated for the positioning of the audience as being core to the BAI's decision making; the positioning of the organisation and its strategy within a larger and evolving media environment; the proposal to increase collaboration and a partnership approach; the commitment given to better equipping audiences to engage with the complaints process; and, the stated intention of reducing regulatory burden.

Members then had regard to the key concerns expressed through the consultation process, expressed from a variety of viewpoints and spanning the themes of disability, Irish content, the BAI's commitment to the Irish language and a concern expressed by a minority of respondents that the positioning of the audience as central to the BAI's decision making is



misleading and that the document should re-position the broadcasting sector as being central to the organisation's decision making process.

Members discussed the issues raised in the consultation process and considered in detail the proposed amendments to the draft Strategy Statement. The Authority did not support the proposal that the broadcasting sector should be central to the BAI's decision making process, as it believed that this proposal ran contrary to the statutory provisions. The Authority was further satisfied that the following matters would be reflected in the final strategy statement:

- The important role that broadcasters play in engendering trust among audiences and the related importance of providing audiences with a level of information which enables them to make informed choices;
- A broadening of the reference to Irish content, which reflects Ireland and its place in the world;
- A more specific reference to the Irish language;
- An amendment to more specifically reflect the accessibility requirements of people with disabilities in an audience context;
- A clearer recognition of the role of community radio in empowering audiences.

It was agreed that a final version of the Strategy, incorporating the amendments agreed, would be circulated to the Members prior to its launch early in the New Year.

### **3. Contractual Matters**

#### **a. Contractual Variations**

##### **(i) Beat FM**

Members considered a proposal received from the Contractor to transfer the shares held by Thomas Crosbie Holdings (TCH) in WKW Limited (trading as Beat 102-103) to a new entity, Sappho Limited. It was noted that a receiver had been appointed over the assets of TCH and certain other TCH companies by AIB Bank Plc on 6<sup>th</sup> March and that the transfer of shares was subject to the provisions of a signed Share Purchase Agreement. In considering the proposal, the Authority had regard to a submission made by the Contractor, a submission received from solicitors acting on behalf of Sappho Limited, and the opinion of the BAI's legal advisors.

The proposal received was assessed further to the relevant statutory criteria, as expressed in the BAI's Ownership and Control Policy, 2012.

It was noted that the proposal would not result in any material change in ownership of the contractor, the Board of Directors, or senior management team. Clarification was sought by the members in relation to the financial arrangements pertaining to the proposed transaction and the financial resources available to the Contractor. The trading





performance of the Contractor, together with the projected income and expenditure account of Sappho Limited was noted. It was also noted that the number of sound broadcasting services and communications media in which the Contractor has an interest had decreased.

Following discussion, the Authority was satisfied to approve the Share Purchase, as submitted. Members were informed that the approval of the Competition Authority for the Share Purchase would also be required, under Part 3 of the Competition Act.

#### **(ii) iRadio**

Members were reminded that, in April 2011, the Authority had approved a request from Wilton Radio Group for a number of contractual changes to its regional radio services; key among them the operation of a single programme service which would be networked across both iRadio North West and iRadio North East and Midlands. This approval was subject to a review of the performance of both services over 2011/2012. The Authority was now asked to consider the outcomes of this review and a related proposal received from the Contractor to retain the single programme service. In addition, the Authority was asked to approve a number of additional requests involving a range of matters relating to, *inter alia*, the shareholding structure, advertising arrangements; and, a request to extend the licence period of iRadio North East and Midlands.

Having regard to the review, the Authority was satisfied that it had been completed in accordance with the conditions set out by the BAI in April 2011. [REDACTED]

[REDACTED]

In considering the proposal to retain the arrangements that had been agreed by the Authority in April 2011, Members had regard to the prevailing economic climate and the arguments made in respect of the viability of the services. It was noted that, despite the high degree of listenership to both services and to iRadio North West in particular, the services continued to operate at a loss [REDACTED]

[REDACTED] The Authority was therefore, satisfied to approve the continued networking of the iRadio North West and iRadio North East and Midlands until the expiry date of each of the respective services. The Authority was further satisfied to approve the request to maintain separate advertising minutage and staffing levels for both services.

With regard to shareholding structure, the members considered a proposal to retrospectively approve the purchase, by Mr. Peter Benson, of 14% of the shareholding in the Contractor. While it was noted that the Contractor had not sought the prior approval of the Authority in respect of the shareholding change, the Authority was satisfied, on the basis of the submission made, that no issues arose in respect of the BAI's Ownership and Control Policy and therefore the shareholding change was retrospectively approved.



Members were also asked to approve the acquisition, by Mr. John McEvoy, of an 8.5% shareholding in the Contractor. It was noted that Mr. McEvoy's company was not based in the EU and that the Contractor was, further, seeking derogation from the BAI's Ownership and Control Policy. The Contractor's rationale in support of derogation was considered by the Authority and, following discussion, the shareholding change was approved, by a majority decision, on the grounds that Mr. McEvoy's shareholding was not material. However, the Authority stipulated that any subsequent increase in Mr. McEvoy's shareholding in the contractor would require the establishment of a registered office within the EU.

Finally, Members were asked to consider a request received from the Contractor to extend the licence period of the iRadio North West franchise area to October 2018, in order to coincide with the expiration date of iRadio North East. While this request did not raise any issues in the context of the BAI Ownership and Control Policy, it was felt that it would not be appropriate to extend the licence period at the current time.

It was agreed that a review of performance of both services should be conducted again in 2016 and that such a review would assist with the approach to regional radio licensing activities in 2016/2017.

#### **(iii) FM104**

Members considered an application received from FM104 seeking a derogation from its statutory news and current affairs requirements. It was noted that the Contractor was requesting permission to reduce its news and current affairs output by 2% in the 7a.m.-7p.m. period, but that its overall news and current affairs output across the broadcast day would increase by 5% to 25% on weekdays and would remain at 20% at the weekend.

In considering the proposal, Members had regard to the submission received and an Executive analysis conducted in accordance with the relevant provisions of the BAI's Broadcasting Services Strategy, specifically the innovative nature of the alternative editorial and schedule proposals submitted by the Contractor; the impact of the derogation on the overall quality of news and current affairs output in the relevant franchise area; and, the contribution the derogation would be likely to make to the diversity and quality of news and current affairs output for the relevant audience.

Following discussion, the Authority was satisfied to approve the application by a majority decision.

#### **b. Contractual Extensions: WLR FM; Red FM**

Members considered a request received from the Contract Awards Committee to extend the contracts held by South East Broadcasting Company Limited (t/a WLR FM) and Siteridge Limited (t/a Red FM). It was noted that the extension was being requested due to the changes in shareholding structure of both services and to enable sufficient time to implement the fast-track licensing process.



The Authority was satisfied to approve contract extensions for both services until the 28<sup>th</sup> February, 2014.

#### 4. Organisational Matters

**a. BAI Code of Business Conduct: Proposal for Revisions**

Members were presented with a revised BAI Code of Business Conduct for review and approval, on the recommendation of the Finance, Audit and Risk Committee. It was noted that the Code had been legally reviewed and that the revised Code now incorporated an anti-bribery policy and appended the BAI Policy on Whistleblowing.

Following a number of small points of clarification, the Authority was satisfied to approve the revised BAI Code of Business Conduct, as submitted.

### b. BAI Risk Register

In accordance with the requirements of the Code of Practice for the Governance of State Bodies, the Authority was provided with an update in respect of the BAI Risk Register. The Authority was advised of the total number of identified risks and it was noted that the full risk register and areas of high residual risk had been presented to the FAR Committee at its meeting on October 11<sup>th</sup>.

The Authority expressed its satisfaction with the comprehensive nature of the register and expressed the view that the register adequately captured all known areas of risk.

c. Investment Management: [REDACTED]

Members were reminded that approval had been given at the June meeting of the Authority to set up an account [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

In accordance with anti-money laundering requirements under the Criminal Justice Act, Members were advised that additional, personal information was required by [REDACTED] in respect of all members of the Authority [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Members were further advised that two members of the Authority would be required to sign the bank mandate and it was agreed that [REDACTED] [REDACTED] [REDACTED] would fulfil this function.

#### d. Dates for Authority Meetings 2014

Proposed dates for Authority meetings in 2014 were circulated for members' consideration. It was noted that the proposed date for the January meeting was problematic for some



members and it was agreed that this date would be reviewed and that the Executive would revert with alternative proposals.

## **5. For Information**

### **a. BAI/ComReg Proposed Merger of Back Office Functions: Update**

A note providing the Authority with an update on developments between the BAI and ComReg, following the Government decision in 2012 that the two agencies should merge their back office administrative functions, was circulated for Members' information.

### **b. Minutes of Finance, Audit and Risk (FAR) Committee**

The signed minutes of the FAR Committee meetings, held in May and July, were circulated to the Members.

## **6. Any Other Business**

### **a. Invitation from RTÉ to visit digital studios and meet with the Board**

The Chief Executive informed the Members that an invitation had been issued to the Authority to visit RTÉ's new digital studio and to meet with the Board. The Authority was satisfied to accept the invitation and it was agreed that the Executive would revert with further details in respect of arrangements and the approach to the meeting once a date had been agreed.

### **b. BAI and Broadcasting Fund Unaudited Financial Statements**

It was noted that the proposed dates for the Authority meetings in the first quarter would preclude approval, by the Authority, of the 2013 unaudited financial statements for the BAI and the Broadcasting Fund. It was therefore, agreed in principle, that the protocol for decision making between meetings would be invoked, should it be required, and that the unaudited statements would be presented for ratification by the Authority at the earliest opportunity thereafter.

## **7. Date of Next Meeting**

The next meeting of the Authority will be held on 16<sup>th</sup> December 2013, at 11a.m. in the BAI offices.

**Bob Collins,  
Chairperson**

**16<sup>th</sup> December, 2013**