



Minutes of Meeting of the Authority of Broadcasting Authority of Ireland

Date 15/09/2014 Time: 9.30am Venue: 2-5 Warrington Place, Dublin 2

Minutes

Attendance

Authority: Bob Collins (Chairperson), Larry Bass, Paula Downey, Colum Kenny, Michelle McShortall, Maria Moloney (items 1-2d), Seamus Martin (by conference call, items 1-3a, 4-6), Michael Moriarty, Siobhán Ní Ghadhra (items 1-2c).

Executive: Michael O'Keeffe, Celene Craig, Aoife Clabby, Diarmaid Breathnach (items 1-2a), Roger Woods (item 2b), Clare O'Sullivan (items 2 & 5a), Louise McLoughlin (item 2).

1. Minutes of Previous Meeting and Matters Arising

Minutes of the previous meeting held on July 28th were reviewed by the Members. A query was raised in respect of the minute relating to the annual review of public funding for public service broadcasters. It was agreed that the query and related concerns would be addressed in the context of item 2(a) of the agenda. On this basis, the minutes were approved by the Authority and signed by the Chairperson.

a. BAI & Broadcast Fund 3-Year Estimates

Members noted that the three year estimates for the BAI and the Broadcast Fund were scheduled for submission to the Department of Communications, Energy and Natural Resources in advance of the 30th September deadline.

b. BAI Libel & Slander Insurance

Members were advised that a meeting had been held with the nominated legal advisers of the BAI's insurance company in relation to legal proceedings with Mr. Rob Morrison. It was further noted that a transfer of the legal papers pertaining to the proceedings had also taken place. Members noted positively the insurer's approach in respect of costs associated with the proceedings.

c. Section 71 Content Contracts

Members were advised that a section 71 content contract had been signed with Irish TV and that the service would broadcast under a licence issued by the BAI from mid-September onward.

d. Meeting with Minister for Communications, Energy and Natural Resources

The Chairperson advised the Members that he had met with the new Minister for Communications, Energy and Natural Resources, Mr. Alex White T.D. on 4th September. The purpose of the meeting had been introductory in nature and to avail of the opportunity to apprise the Minister of a number of issues which had been the subject of Authority discussion in recent years. In particular, the Chairperson highlighted to the Minister what the Authority considered were priorities for legislative amendment. It was noted that these



matters were the subject of on-going discussion between the Department and the BAI at Executive level.

The Chairperson informed the members that the Minister had highlighted his term of office would be short, given that a general election would be held no later than 2016, and had outlined a number of competing priorities to be addressed in that period of time.

e. Public Availability of BAI Minutes

The Authority expressed its disappointment that an earlier decision, agreed in April 2012, to make publicly available the minutes of Authority meetings on the BAI web-site, had not been progressed by the Executive. The Chief Executive outlined the need for a process of review and redaction, if appropriate, of material needed to be undertaken and that the process to make the minutes public had been de-prioritised, in the context of other work priorities and limited resources. The Chief Executive further emphasised that the minutes were available through Freedom of Information. However, a commitment was made to progress the public availability of minutes before year end.

2. Policy

a. Annual Reviews of Public Funding for RTÉ & TG4

Members considered a revised report, submitted by O&O, in respect of the Annual Review of Public Funding for RTÉ and TG4. The Authority was advised by the Executive that the changes made had not been substantial. Further information was sought by the Members in respect of each of the items raised for clarification and/or modification at the July meeting. In particular, a breakdown was provided in relation to RTÉ's indigenous hours by genre and it was clarified that the table heading in the previous draft of the report had been incorrect. Additional observations were made regarding commentary in the report on the reduction in spend in the independent production sector.

Following discussion, the Authority expressed its satisfaction that O&O had delivered on the terms of reference specified in the review. In formulating its recommendations to the Minister, the Authority agreed that a number of observations would be made in respect of each PSB under the following headings:

TG4

- *Audience performance, including reach and share:* The Authority noted TG4's success in reaching wider audiences through its online offering. While considering reach to be a more relevant audience measure in the case of the service, the Authority remained concerned regarding TG4's low market share.
- *Level and nature of programming:* The Authority noted that TG4's programmes are generally well enjoyed by its audiences. However, it expressed a degree of concern at the broadcaster's strong dependence on certain programme genres, in particular sport and international film.



- *Value for money being delivered:* The Authority noted that TG4 continued to deliver good value for money.
- *Roles played in supporting creativity in Ireland:* The Authority noted and shared the view expressed by O&O that TG4 made a valuable contribution to supporting creativity in Ireland in a variety of ways.
- *Contribution towards the vitality of the Irish language and culture in Ireland:* The Authority supported the report findings that TG4 continued actively to support and broadcast comprehensive ranges of programming in Irish and further, that TG4 increased its output of new Irish hours, without the benefit of additional funding.

RTÉ

- *Audience performance, including reach and share:* While noting RTÉ's substantial audiences, an area of concern for the Authority was the corporation's consistent difficulty to more fully represent younger listeners across its radio services.
- *Level and nature of programming:* The Authority noted the review findings that RTÉ increased its television output, particularly in news and current affairs. While this was to be welcomed, the Authority did express a particular concern that other genres such as drama, factual, education and arts, as well as children's programming have been noticeably reducing year on year.
- *Value for money being delivered:* The Authority noted positively that RTÉ had balanced income and expenditure for the first time in five years, while also increasing its digital commercial revenue.
- *Roles played in supporting creativity in Ireland:* The Authority noted and shared the view expressed by O&O that RTÉ continued to make a valuable contribution to supporting creativity in Ireland in a variety of ways.
- *Contribution towards the vitality of the Irish language and culture in Ireland:* The Authority supported the report findings that RTÉ adequately supported and broadcast comprehensive ranges of programming in the Irish language.

In addition to the foregoing, the Authority agreed to make a number of further observations to the Minister, linked to the review but with a wider relevance to policy development in respect of public service broadcasters. In particular:

- The review of performance undertaken by the consultants was set firmly within the context of the five year review of public funding and the recommendations contained within that report. In that context the Authority expressed its disappointment that, absent the outcomes of the two separate studies arising from the five-year review; regarding efficiencies at RTÉ and a review of the advertising market, it was constrained from making a recommendation in respect of further public funding other than that contained in the O&O report.
- The Authority highlighted the implications of budgetary interventions for the statutory process and expressed its strong view that the effectiveness of section 124 of the Broadcasting Act would be impaired should direct intervention, via the budget, be



made regarding the funding of public service broadcasting, rather than through regulatory measures.

- In the context of considering the adequacy of public funding to meet public service objects, as opposed to the appropriateness of funding to meet the needs of existing activities, the Authority did not share the view of the consultants that the annual review should be reduced in scale and that the five-yearly review should be seen as the primary opportunity to review funding modification. The Authority expressed the view that this approach would be inconsistent with the requirements of the statute.
- The Authority expressed its concern over the level of reduction in independent production spend in the period since the financial crisis, in the context of its view that the inclusion of independently commissioned programming added value to the schedule and to the audience.
- The Authority also expressed its concern in relation to the impact on the schedule of the economic downturn, in particular the reduction in the range of genres broadcast by RTÉ. The Authority was further concerned that such narrowing of the range and depth of output could weaken the diversity and creativity available to Irish audiences.
- Finally, the Authority set out its position in respect of the legislative framework for the review of PSB funding and its reservations in this regard.

The Authority agreed that a recommendation would be made to the Minister for an increase in funding for both RTÉ and TG4 in line with the rate of inflation. The Authority also strongly recommended that the public funding of TG4 and RTÉ should not be reduced from current levels, in the context of the existing levels of service of both broadcasters.

b. Authority Paper on the Regulation of PSBs

Members considered a paper which had been circulated by the Chairperson, reflecting on the experience of regulation of the public service broadcasting over the term of office of the Authority. It was noted that the paper, as drafted, had expanded beyond the regulation of public service broadcasters and had addressed regulatory matters more broadly across the sector. Members were generally supportive of the views and recommendations expressed in the paper. A small number of suggestions for change to the document were made and it was agreed that any further observations would be forwarded to the Chairperson for inclusion. It was further agreed that the document would provide a useful overview of what had been achieved in the term of office of the existing Authority members in the context of new appointments.

c. Review of BAI Access Rules Consultation

Members considered a note providing details of submissions to the consultation on the BAI Access Rules, together with Executive comment and issues for decision.

Having considered and discussed various aspects of the consultation responses received, the Authority was satisfied that no substantive issues had arisen, such that further amendment of the Access Rules was warranted.



However, having given due consideration to the submissions received, as part of the consultation process and in particular from representative groups and members of the public, the Authority directed that broadcasters would be notified at this juncture that more ambitious targets would be a feature of the next review of the rules in 2016.

The Authority was satisfied to adopt the BAI Access Rules, as drafted.

d. Review of BAI Code of Programme Standards Consultation

Members considered a range of documentation in respect of the public consultation on the Code of Programme Standards including copies of submissions received, a report on a workshop held with broadcasters and an Executive note containing a summary of the submissions received and an analysis of issues arising for consideration and decision. Members then considered in detail each section of the Code.

General issues with the draft Code: Members noted positively that the principles-based and guideline approach to the proposed Code was welcomed. It was agreed that some of the language in the Code needed amendment to aid clarity in respect of the meaning and intention of the principles and guidelines attaching to the Code.

Members discussed the use of the word 'should' rather than 'shall' in respect of the guidance provided under each principle. It was the Authority's view that using 'shall' in the guidance would strengthen the requirement for broadcasters to follow the guidelines and thereby more readily fulfil the principles contained in the Code.

Foreword by the Chairperson: The Authority was satisfied that no issues arose in the consultation to warrant amendment of the foreword.

Introduction to the Code: Members noted that there was considerable feedback received in the consultation process to suggest that further clarity was required in respect of guidance for complainants on the complaints process. In this regard, the Authority discussed the need, over time, to consolidate the various Codes developed by the BAI in order to facilitate ease of reference and accessibility for members of the public in particular. In the context of the draft Code, it was agreed that clearer guidance was required for the public in relation to the complaints process. It was also agreed that further clarification was required in explaining the 'indivisibility' of the Code's principles. More generally, the Authority noted that a review of the complaints process was currently underway.

Principle 1: Respect for Community Standards: Members considered the key issues raised by respondents in particular requests for clearer definitions regarding various aspects of the principle and a request to change the title of the principle. The Authority was satisfied that the principle should be redrafted to provide greater clarity regarding what issues such community standards relate to.

Principle 2: Importance of Context: Having considered the submissions made and the analysis undertaken, the Authority was satisfied the concept of 'context', as outlined in the Code, would broadly



be understood by the public. However, it was agreed that some wording amendments should be made to provide greater clarity and to further highlight the contextual factors identified. It was also agreed to include 'type of programme' as an additional contextual factor in this principle.

Principle 3: Protection from Harm: The Authority was satisfied to ratify a number of proposed amendments in relation to this principle including an articulation of the right of programme makers to make provocative programming; an amendment to guidelines requiring the provision of advance audience information such as prior warnings, including prior warnings in accessible formats, where required, helpline details etc; the removal of a reference in the principle to particular types of programme content and; the inclusion of guidance in relation to news simulation.

Principle 4: Protection of Children: The Authority agreed that a change to the definition of a child should not be undertaken in isolation from other BAI Codes. However, it was agreed that the revised Code should acknowledge that varying degrees of protection may be required, dependent on the age of a child. The Authority also agreed that the principle would benefit from better emphasis on the shared role and responsibility for parents and broadcasters in protecting children from exposure to inappropriate or harmful material. Further, it was agreed that the revised Code would contain a prohibition on pornography and gratuitous violence in children's programming, as mandated in the Audio Visual Media Services Directive and that the revised Code should incorporate new guidelines regarding the scheduling of children's programming. The guidelines would also be amended to require broadcasters to have particular regard to the scheduling of children's programming.

Principle 5: Respect for Persons and Groups in Society: The Authority agreed a clarifying amendment regarding the guidance provided on religious views, images, practices and beliefs.

Principle 6: Protection of the Public Interest: The Authority was satisfied to approve a proposal that examples of content deemed to be in the public interest should be expanded upon in the revised Code. The Authority also agreed that the legislative requirements regarding incitement to crime, undermining the authority of the State and protecting the interests of the audience required articulation in the principle. In considering the inclusion of protection of the environment under this principle, and having had regard to submissions on the matter, the Authority was satisfied that the inclusion was appropriate and should be retained. However, it was agreed to amend the wording such that broadcasters would be encouraged rather than obliged to inform audiences of developments in respect of environmental matters in a manner that gave due weight to the balance of contemporary scientific knowledge.

Principle 7: Respect for Privacy: Having regard to the concerns of respondents and legal advice obtained on the matter, the Authority was satisfied that additional guidance should be provided in respect of the principle. In addition it was agreed that guidance related to consent and privacy, as articulated in the BAI Code of Fairness, Objectivity and Impartiality, would benefit from inclusion in the Code of Programme Standards. Having regard to matters of privacy and death, the Authority agreed that further guidance should be provided, in response to concerns raised in the consultation process.



It was noted that the revised Code would be reviewed by the BAI's legal advisors prior to its publication.

e. (i) Saorview Matters-Draft Code of Practice

Members considered a draft *Code of Practice for the Placement of Television Services on the Saorview Platform*. It was noted that the draft Code had been prepared on foot of a report on analogue switch-off and digital broadcasting submitted to the Minister in November 2012 and on receipt of a subsequent recent request from the Department of Communications, Energy and Natural Resources to prepare such a Code.

The Authority discussed the detail of the draft Code of Practice and raised a number of issues and concerns. While the Authority was broadly satisfied with the outline of the Code, in the context of the potential impact of the Code's implementation, it was agreed that it would be preferable that the draft Code should be the subject of a targeted consultation with relevant stakeholders.

(ii) Saorview Matters-Framework for Determining the Character of Public Service

Members considered a request received from the Department of Communications Energy and Natural Resources seeking the Authority's views in relation to an outline framework for determining the character of public service. It was noted that the development of such a framework was within the context of section 130 (1)(a)(iv) of the Broadcasting Act 2009 and that any decision to designate an operator as having the character of a public service was a matter for the Minister alone. In considering the item, the Authority also had regard to correspondence received from TV3 on the matter.

Members had regard to a number of observations made by the Executive concerning the proposed framework.

Following discussion, it was agreed that a letter of response would issue to the Department, outlining the Authority's support for the principle of having a framework to make determinations, further to the provision of section 130(1)(a)(iv) of the Act, but that the Authority was not in a position to comment on or endorse the framework, as presented. Further, the Authority suggested that any framework to be developed should take account of the statutory requirements of public service broadcasters contained within the Act and, in particular should recognise the distinction between the conditions imposed on the Section 70 contractor as compared with those applying to Section 71 contractors.

More broadly, the Authority discussed the exercise undertaken by it in 2011 when it sought expressions of interest in the provision of channels to be approved by the Minister for carriage on Saorview, under Section 130 (1) (a) (iv) of the Act. The Authority requested that the correspondence to the Department would emphasise that its report to the Minister following this exercise should not be regarded as providing a definition of what might constitute the "character of a public service" in present circumstances. The Authority was primarily concerned at that time with supporting the development of the public service multiplex in that initial development phase and in the context of the requirement for analogue switch-off in 2012.



3. Broadcasting Fund

a. Archiving Scheme: Round 2 Outcomes

Members considered the outcomes in respect of the assessment process for Round 2 of the Archiving Scheme and a related recommendation from the Assessment Panel to fund ten projects to a total value of €2.26m. Clarifications were sought in respect of one application received and in relation to the long-term availability of the material, as part of an archive. It was agreed that the Executive would clarify the matter of availability and revert.

Following discussion, the Authority was satisfied to approve the package of recommendations, as presented.

b. Sound & Vision Round 21 Outcomes

Members considered a note detailing the outcomes of the assessment process in respect of Round 21 of Sound & Vision II, the last open round of the current Scheme, and a related package of recommendations emerging from the assessment process, seeking approval to fund 122 projects to a total value of €5.223m.

In considering the proposal, the Authority had regard to a detailed overview of the applications received; the manner in which the assessment process was conducted; an Executive analysis of the package of recommendations; and, overall findings in respect of the round.

Following discussion, the Authority was satisfied to increase the indicative allocation for Round 21 from €4.75m to €5.233m and to approve the package of recommendations, as presented.

4. Contractual Matters

a. TXFM: Appointment of CEO

Members considered a proposal received from Dublin Rock Radio Limited (t/a TXFM), seeking approval for the appointment of Mr. Peter McPartlin as the CEO of the service. It was noted that Mr. McPartlin was currently the CEO of Radio Ireland Limited (t/a Today FM) and that the proposal received, if approved, would see Mr. McPartlin as joint CEO for both services.

In considering the proposal, Members had regard to rationale outlined by the contractor, together with an Executive consideration of the proposal, further to the relevant criteria contained in the *BAI Ownership and Control Policy (2012)*.

The Authority was satisfied that no significant issues arose and accordingly approved the proposed appointment, as submitted.

b. Ratification of Contract Awards Committee Decisions: Section 68(1) Applications

The Authority considered and approved a recommendation received from the Contract Awards Committee to enter into two temporary sound broadcasting contracts with Blackrock College and Tattersalls Ireland Limited.



5. Organisational Matters

a. Draft BAI Risk Register

Members considered the BAI Risk Register which had been updated, based on the BAI's new Strategy Statement and associated 3-year work plan. Members noted that the register had been reviewed by the Finance, Audit and Risk Committee at its meeting on 8th September.

The Authority was satisfied to approve the BAI Risk Register, on the recommendation of the FAR Committee.

b. BAI Workplan: Mid-Year Review

Members considered a note outlining progress toward the achievement of the workplan in the year to date, including a brief outline of priority activities and a general update on other activities. It was noted that, as it was the first year of a three-year workplan, many of the activities remained at an early stage of development. The Authority expressed its satisfaction with progress against the plan to date. It was agreed that further areas for prioritisation should be considered by the incoming Authority.

c. Review of the Functioning of the Authority and Committees: Report Outcomes

Members considered a report detailing the outcomes of the review of the functioning of the Authority and Statutory Committees. The Authority was satisfied that the report broadly reflected the views expressed at the facilitated session held with Opes Consulting. Having regard to the recommendations relating to a new induction process, it was agreed that this would be a matter to be progressed by the Executive, in consultation with the incoming members.

d. Bank mandate: Addition of Signatory

The Authority had regard to the compliance procedures for two financial institutions to enable the addition of signatories to current mandates. The Authority passed a resolution enabling the addition of Clare O'Sullivan to these mandates.

Further to the provisions of the Money Laundering Act, the Authority authorised the release of Members' personal details to a financial institution for use in relation to the bank mandate.

e. Standards in Public Office: Declaration of Interest-Statement on Leaving

Those members whose term of office was scheduled to expire on the 30th of September were reminded of their obligations under the Ethics in Public Office Acts 1995 and 2001.

f. CEO Contract-Update from Chairperson

The Authority noted that there was no update from the July meeting in respect of the contract of the CEO.



6. For Information

a. Contractual Variations: Executive Approvals

In accordance with the approved decision-making framework, the Authority was notified of contract variations that had been approved and finalised at Executive level, since March 2014.

b. Contract Awards Committee: Recommendation and Adoption of Decision-Making Procedure between Authority Meetings

The Authority was notified of a decision to invoke the formal procedures for decision-making between meetings in relation to an application received from Eurasian Broadcasting Enterprise Limited, for a *Setanta Sports* + service for audiences in the Baltic and Eurasian regions. It was noted that the Authority had approved a recommendation from the Contract Awards Committee from the same applicant in July. The Authority had regard to the rationale for expediting the contract award and negotiation processes and was satisfied to ratify, retrospectively, the decision of the CEO and the Chairperson to enter into a second three-year content provision contract with Eurasian Broadcasting Enterprise Limited.

7. Any Other Business

a. Members were reminded that the BAI Public Conversation on Media Plurality was scheduled to take place on 25th September.

b. It was agreed that the minutes of the Finance Audit and Risk Committee would be circulated to the members of that Committee for their observations, in advance of leaving office.

c. The Chairperson recorded his sincere appreciation to the members of the Authority for their openness, commitment and engagement with the work of the Authority, since their appointment. The Chairperson also recorded his thanks to the members and Executive staff for their support of him in the execution of his role. He commended the work of the statutory Committees and those members of the Authority who had participated on the Finance, Audit and Risk Committee. Finally, the Chairperson recorded his appreciation of the insights and leadership provided by the Chief Executive.

**Professor Pauric Travers,
Chairperson.**

22nd January, 2015.