



Minutes of Meeting of the Authority of Broadcasting Authority of Ireland

Date 26/02/2018 **Time:** 11.00am **Venue:** BAI Offices

Minutes

Attendance

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

Apologies: Grace Smith, Rosemary Day

Executive: Michael O'Keeffe, Celene Craig, Andrew Robinson (Secretary), Anne Louise O'Donovan (item 4.1), Anne O'Brien (item 3.1), Clare O'Sullivan (item 3.2), Declan McLoughlin (item 4.1), Elizabeth Farrelly (items 3.2, 3.3, 3.4, 3.5, 3.6, 3.7), Liam Boyle (item 2.1).

1. Minutes of Previous Meeting and Matters Arising

The minutes of the previous meeting of the Authority, held on 25th January 2018, were approved by the Members and signed by the Chairperson. Matters arising were as follows:

a) **BAI Gender Action Plan**

The Authority noted that a soft-launch of the BAI Gender Action Plan would take place in March and would be circulated to Members for information when published.

b) **Brexit Update**

The Chief Executive advised members that the IDA, in conjunction with the BAI, would be hosting a joint marketing event for UK based broadcasters in London on 5th March. The event was designed to market Ireland as an alternative European licensing jurisdiction and would be attended by approximately 25-30 interested parties.

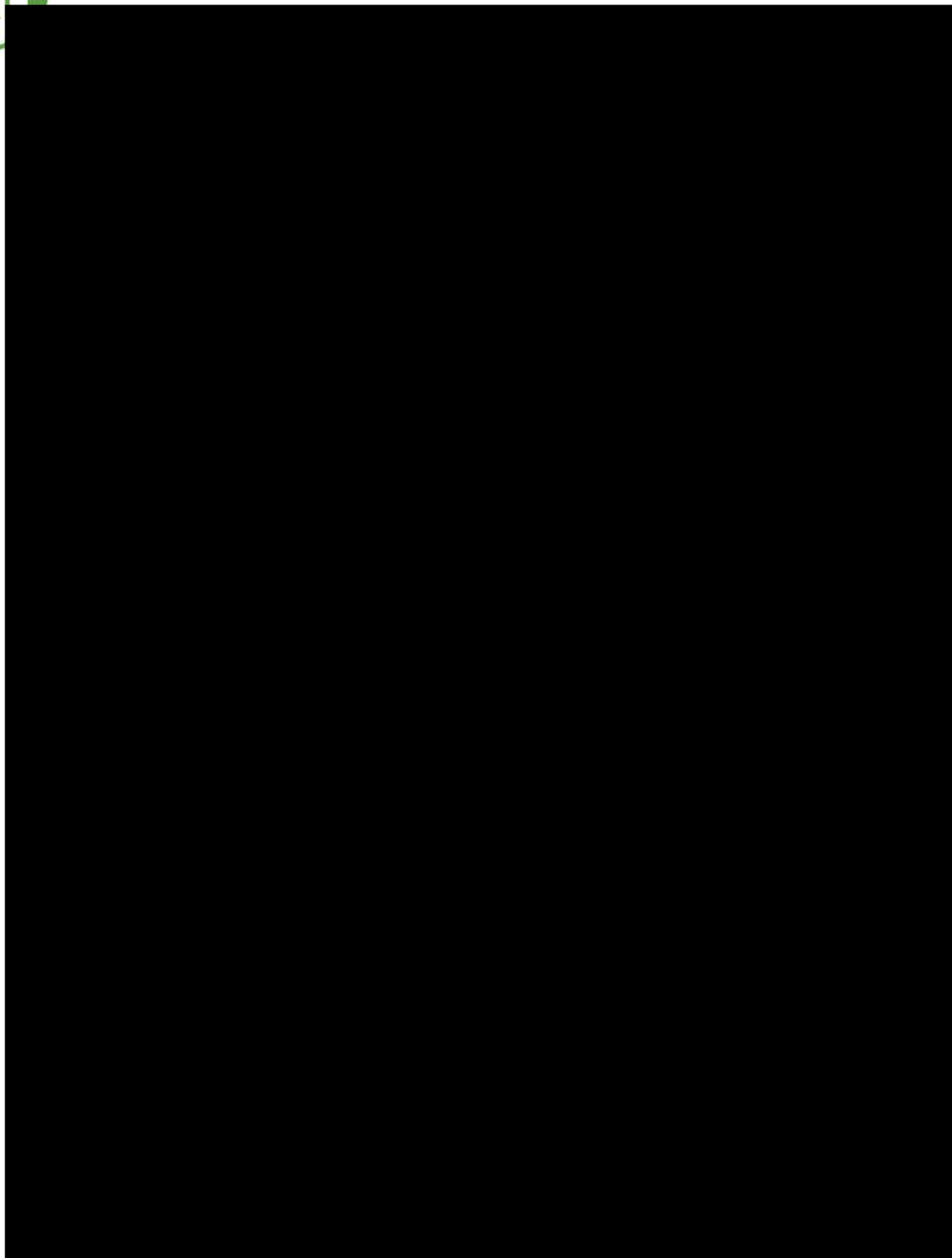
c) **Referenda Guidelines**

The Chief Executive advised members that the guidelines for the upcoming planned referenda will be published in the coming weeks.

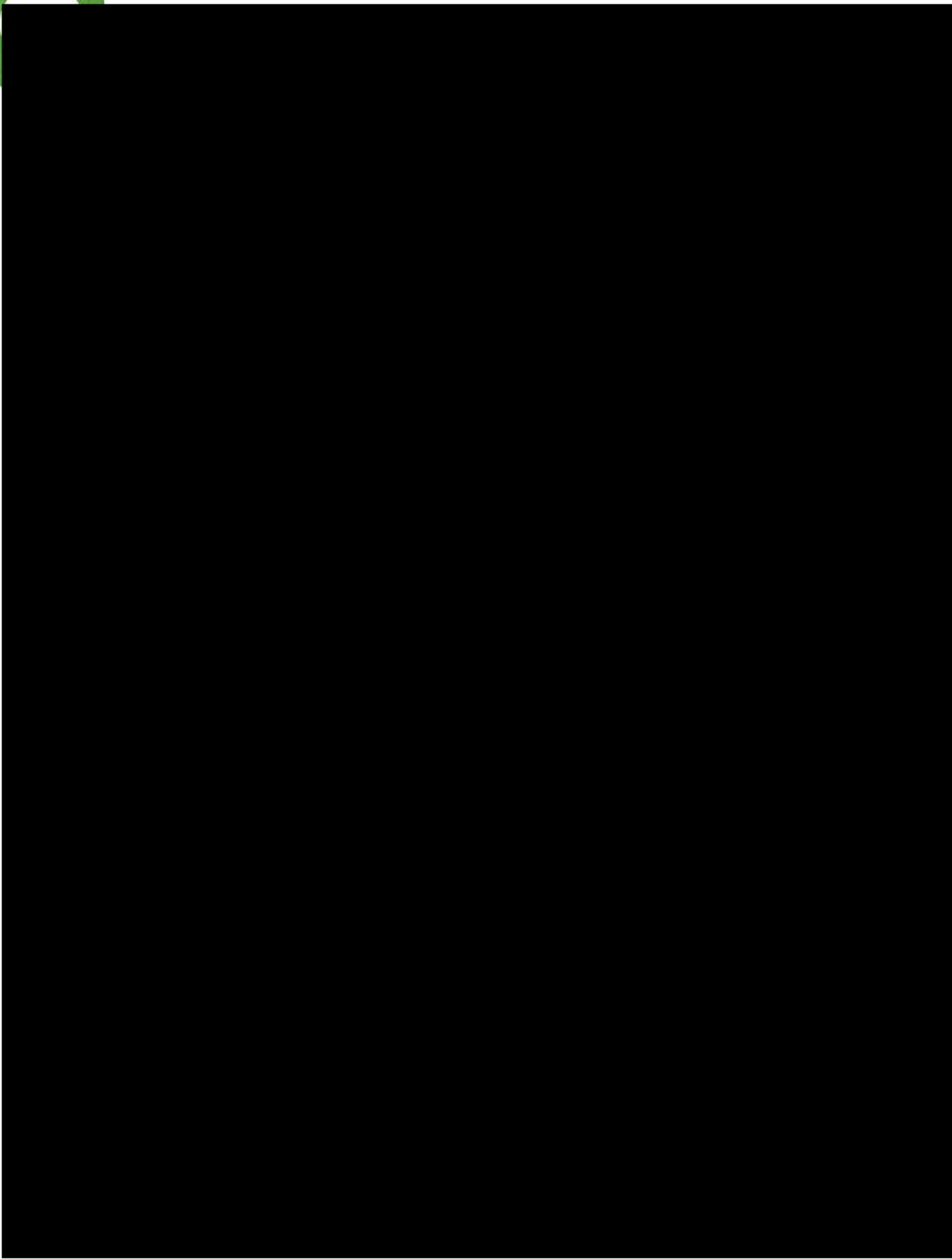
2. Enhancing Innovation & Sectoral Sustainability

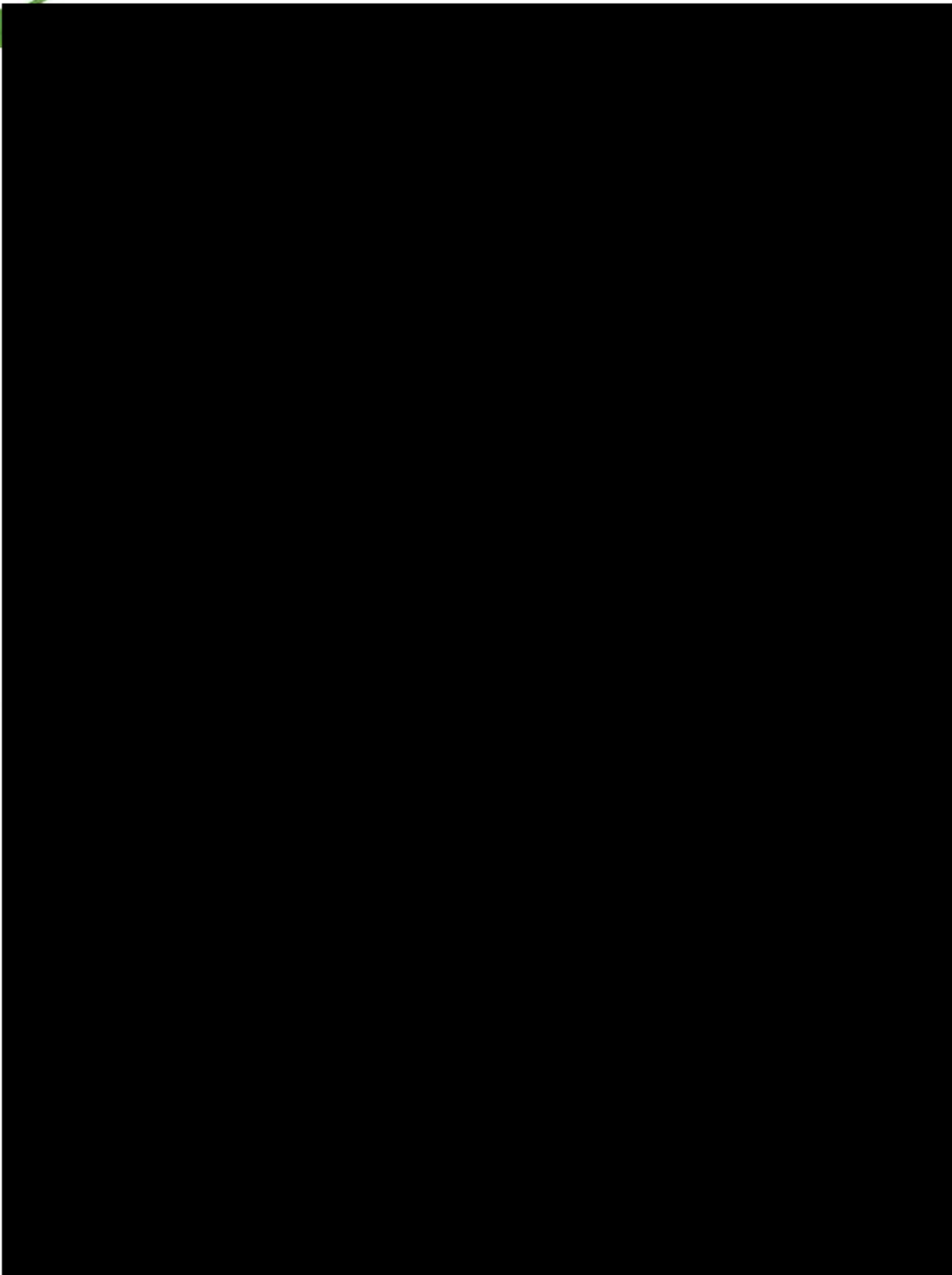
2.1 PSBs: Five-Year Review of Funding 2018 – 2022













3. Promoting Plurality & Diversity

3.1 BAI Broadcasting Services Strategy

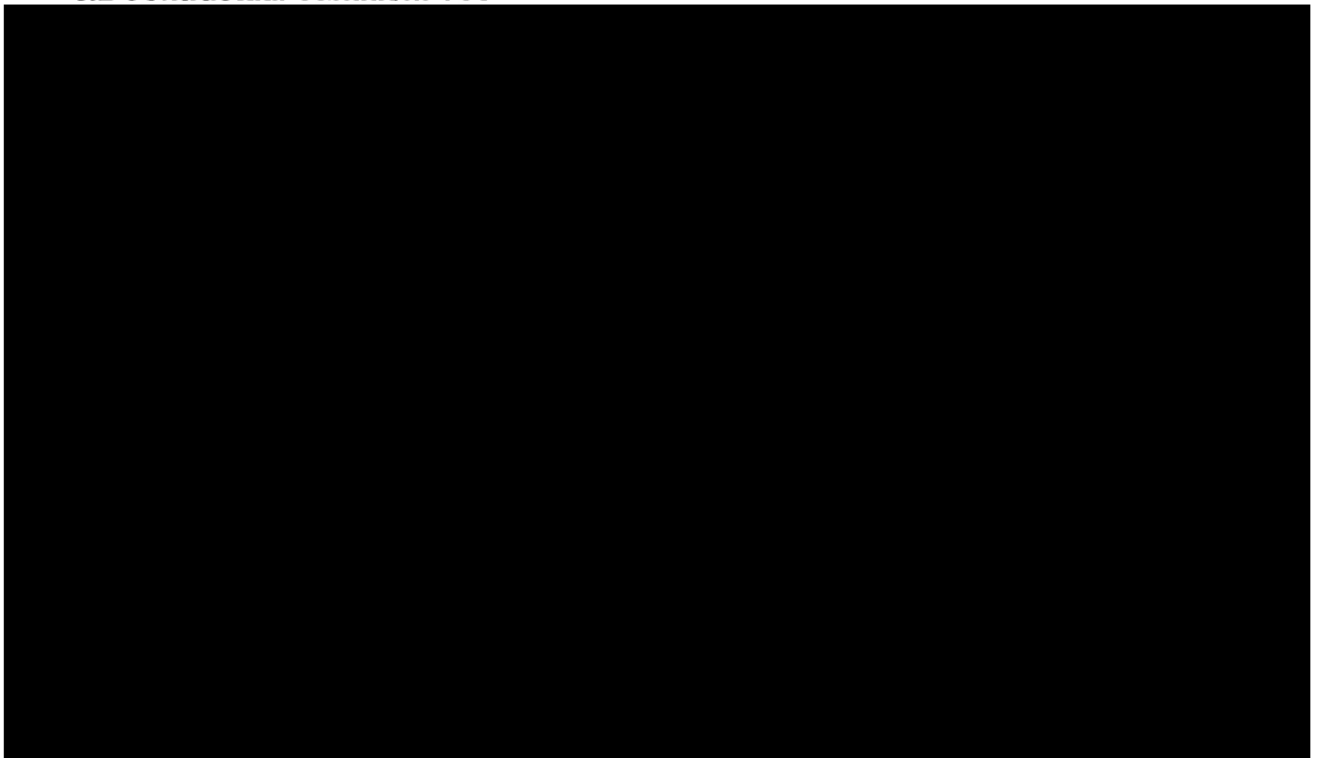
Members considered the draft Broadcasting Services Strategy ("BSS") consultation document which outlined the proposed approach and content for the consultation phase.



Following discussion, the Authority was satisfied that the draft text, as presented, reflected its intended approach, at a policy level, to the BAI's licensing and associated regulatory activities.

With some minor revisions, the Authority was satisfied to approve the draft consultation document as submitted. The Authority was also satisfied with the proposed approach to the consultation phase which included a public consultation and a stakeholder workshop.

3.2 Contractual Variation: TV3



3.3 Contractual Variation: Eircom Limited - Proposed Acquisition by Toohil Telecom Holdings Limited

Members were presented with a note which set out a request for Authority approval of the proposed acquisition of Eircom Holdco SA (EHSA) by Toohil Telecom Holdings Limited ("Toohil"). EHSA is the parent company of Eircom Limited and Eircom Sport Limited ("Eircom Group") which holds five content provision contracts with the BAI, further to Section 71 of the Broadcasting Act 2009.

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



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

The Authority was satisfied that the proposed transaction did not raise any issues under criteria (a), (c), (d), (e) and (f).

The Authority noted that under criterion (b), the Ownership and Control Policy requires it to have regard to the character of the Contractor. It noted that should the Proposed Transaction proceed, Mr. Xavier Niel would have a controlling interest in the Contractors. Accordingly, the Authority had regard to the character of Mr. Xavier Niel, further to criterion (b) above.

While acknowledging Mr. Niel's significant experience and expertise in the telecommunications industry, the Authority noted that Mr. Niel was the subject of a conviction in 2005 by the French courts for concealing the misuse of corporate funds, paid a €250,000 fine and received a two-year suspended sentence. On this basis, it was noted that Mr. Neil did not meet one aspect of the Character Test set out in the *Ownership and Control Policy*; specifically, the question relating to a conviction of an offence involving fraud or dishonesty.

The Submission's contention that the conviction was historic and now spent under French law as a result of automatic 'legal rehabilitation' was noted. However, in the absence of further detail [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], the Authority was not satisfied that the issue of Mr. Niel's character had been sufficiently addressed in the Submission.

Having regard to the above, the Authority agreed that the Executive would request the Contractors provide further detail regarding the nature of the offence that led to Mr. Niel's conviction and the French legal rehabilitation process, noted in the Submission.

3.4 Extension Request for Sound Broadcasting Contracts: Choice Broadcasting Limited t/a Classic Hits 4FM and Claremorris Community Radio CLG

Members considered an Executive note proposing contract extensions for Claremorris Community Radio Company Limited by Guarantee, t/a Claremorris Community Radio, and Choice Broadcasting Limited, t/a Classic Hits 4FM.

In considering the request for an extension for Claremorris Community Radio, Members noted that the re-licensing process for this service was scheduled to be initiated in 2015 but this did not take place due to the emergence of compliance issues, primarily with respect to corporate governance and financial management practices at the station. The Authority noted that liaison



between the BAI and the broadcaster took place in 2016 and 2017 and that in December 2017, a performance review undertaken by the Compliance Committee determined that it was satisfied with the performance of the Contractor across all aspects of its operations.

The proposed extension request to 31st March 2019 would allow for the conclusion of the licensing process and negotiation of a contract, should there be a successful Applicant, in advance of the current contract expiry date of 31st December 2018.

With regard to Choice Broadcasting Limited, trading as Classic Hits 4FM, the Executive requested approval for a 10 month contract extension to the 16th December 2019. The Authority noted that this would allow for the completion of the Broadcasting Services Strategy and likely consideration of a licensing plan for commercial radio later in 2018.

Following discussion, the Authority was satisfied to extend the terms of both sound broadcasting contracts as requested.

3.5 Contract Extensions: DCTV and CCTV

Members considered an Executive note proposing contract extensions for community television services Dublin Community Television Society Limited t/a DCTV and Cork Community Television CLG t/a CCTV.

In considering the request, Members noted that the two community content contracts are due to expire on the 28th April 2018 and 14th May 2019 respectively. The award of a contract extension for both services to 28th April 2020 will ensure their continuation while the BAI reviews its statutory, policy and application processes. The Authority noted that the extension would allow for the completion of the Broadcasting Services Strategy; the review and possible development of further policy, the undertaking of a section 72(6) survey/reviews in the first quarter of 2019; and the undertaking of a licensing process for both services in the second half of 2019.

Following discussion, the Authority was satisfied to extend the terms of both community content contracts to 28th April 2020.

3.6 Licensing – Ratification of Decisions of the Contract Awards Committee

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

Community Radio Services: The Authority was presented with the recommendations of the Contract Awards Committee in respect of the award, in principle, of a contract to Youghal Communications Company Limited by Guarantee.

In accordance with section 64 of the Act, the Authority was satisfied to ratify the decisions of the Contract Awards Committee, and to award a contract, in principle, to Youghal Communications



Company Limited by Guarantee, subject to the successful conclusion of contract negotiations and the satisfaction of all of the conditions specified by the Committee.

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

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

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

- Scariff Bay Community Radio (Scariff Bay Community Radio Company Limited by Guarantee),
- Autism Radio (Irish Autism Action),
- Diversity Radio (Diversity Media Communications Limited), and
- Raidió Rí Rá (Raidió X).

4. Excellence & Accountability

4.1 BAI and Broadcast Fund Draft Financial Statements 2017

The Authority was presented with draft financial statements for the BAI and the Broadcast Fund for the financial period 2017. Members were advised that the Comptroller and Auditor General was scheduled to commence its audit fieldwork in the BAI on the week commencing 9th April 2018 and that the final audited financial statements would be presented to the Authority for approval at its meeting in June.

The Authority noted that the statements had been endorsed by the Finance, Audit and Risk Committee at its meeting on 19th February. Following consideration, the Authority was satisfied to ratify the draft BAI and Broadcasting Fund financial statements for 2017, for submission to the Department of Communications, Climate Action and Environment in line with the statutory requirements.

4.2 Bank Mandate - Additional Signature

Members considered an Executive request for the Authority to pass a resolution to allow the addition of Anne Louise O'Donovan as a signatory to bank mandates held by the BAI.

The Authority was satisfied to approve this request.

4.3 Board Assurance Framework: Introduction

The Chairperson of the Finance, Audit and Risk Committee ("the Committee") provided members with an introduction to a draft BAI Board Assurance Framework ("BAF").



Members noted that the proposed BAF had been developed as an assurance of the oversight conducted on behalf of the Authority by the Finance, Audit and Risk Committee. The proposed BAF outlines a methodology and toolkit which is designed to support the Authority in its oversight role around performance and risk assurance, and to support the Authority in the achievement of the BAI's strategic objectives.

The Authority acknowledged the work undertaken by the Committee in developing the draft BAF. It also noted that documentation relating to the draft BAF would be circulated to Members in the coming weeks and agreed that a more detailed discussion on this matter would take place at its March meeting.

4.4 Communicorp/Irish Times - Letter from Compliance Committee

In her capacity as a member of the Compliance Committee, Authority member Maeve McDonagh declared an interest in this item and recused herself from discussion on the matter.

Members considered correspondence from the Compliance Committee ("the Committee") in response to the Authority's request for the Committee to consider whether any issues arose in respect of compliance by licensed Communicorp contractor stations with the statutory provisions and the terms of the individual contracts held with the BAI, further to Communicorp's decision to prohibit representatives of The Irish Times from appearing on Communicorp's contractor stations.

The Authority noted the Compliance Committee conclusion that the current contractual and legislative framework had not been infringed as a result of the actions of Communicorp. It also noted the Committee's conclusion that the prohibition was contrary to the spirit of one of the key components of the BAI Mission to "promote a plurality of voices, viewpoints, outlets and sources in Irish media." The Authority also noted the Committee's request that the Authority give consideration to any measures that could be adopted to strengthen the legislative or regulatory framework to ensure that this broader plurality concern is addressed.

While noting that no breaches of statute or contracts had occurred, the Authority expressed unease with the decision by Communicorp. It agreed that the BAI would communicate with both parties to the dispute, encouraging them to enter into discussion in order to investigate a solution to the situation.

The Authority also noted that the proposed introduction of a plurality policy and the revision to the current ownership and control policy would provide the most appropriate and realistic opportunity to address matters of this nature.

5. For Information

5.1 Law Reform Commission: Submission of Irish Regulatory Agencies



Members were presented with a copy of the submission of Irish Regulatory Agencies to the Law Reform Commission.

Members noted that the submission proposed an effective and consistent enforcement regime applicable to all regulatory bodies and the establishment of effective penalties for competition and other regulatory infringements. The submission was in response to the Law Reform Commission's *Issues Paper on Regulatory Enforcement and Corporate Offences* which forms part of its Fourth Programme of Law Reform.

5.2 Minutes of the Finance, Audit and Risk Committee Meeting, 14th December 2017

Minutes of the Finance, Audit and Risk Committee, held on 14th December 2017, were circulated to the members for information.

6. Any Other Business

Members noted that the Authority away day would take place on Thursday 26th April. Following discussion, the Authority agreed that the meeting would take place in Limerick City. Further information would be provided at the March meeting.

7. Date of Next Meeting

The next meeting of the Authority will be held on **Thursday 26th March at 11am** in the BAI offices.



**Professor Pauric Travers,
Chairperson**

26th February 2018