

THE HEARING RESUMED ON THE 7TH OF NOVEMBER, 2000, AS
FOLLOWS:

.

CHAIRMAN: Good morning everyone.

.

MR. GALLAGHER: Morning Sir.

.

REGISTRAR: Pursuant to the order of the High Court of Mr.
Justice Smyth, dated the 24th of October, 2000, and the
direction that "It is ordered that the Defendant, Liam
Lawlor, do make discovery on oath in accordance with the
order made on the 8th of June, 2000, for the period
beginning 16th day of June, 1997, to date. The first
period of discovery to be made within a week from the day
hereof, and as amended by the order of the Supreme Court
dated the 27th of October, 2000, extending the time within
which to make discovery by a further week."

.

Is Mr. Lawlor, Mr. Liam Lawlor present?

.

MR. DELAHUNT: May it please you, Sir. I appear on behalf
of Mr. Lawlor, instructed by Delahunt Solicitors in
relation to that.

.

MR. GALLAGHER: Is Mr. Liam Lawlor present?

.

MR. LAWLOR: Yes.

.

MR. DELAHUNT: Yes, he is.

.

THE REGISTRAR: And pursuant to paragraph 2 of the order of the High Court dated the 24th of October, 2000, of Mr. Justice Smyth, where it is ordered that "The Defendant, Liam Lawlor, shall attend before the Tribunal and do have with him, and there and then produce and hand over to the Tribunal, together with all the documents and records mentioned in paragraphs A, B and C of the order of discovery in respect of the first period on any date determined by the Tribunal after one week from the date of the delivery of the Affidavit of Discovery."

.

Does Mr. Liam Lawlor confirm that the documents delivered to the Tribunal Offices on Monday the 6th of November, 2000, at 8 p.m. are the total of the documents required to be discovered?

.

MR. DELAHUNT: Yes, Sir, they are indeed.

MR. LAWLOR: Delivered as requested, yes.

.

MR. DELAHUNT: Perhaps, Sir, if I can address you in the matter very, very briefly. In relation to the issue of representations, I would seek your direction in relation to it, but at this juncture I would like to reserve my position in relation to that. I know I don't have a right of audience without such representation. If you would entertain my application?

.

CHAIRMAN: Just relax, we will cope with that --

.

MR. GALLAGHER: Is there an application for representation?

.

CHAIRMAN: Are you now making an application --

.

MR. DELAHUNT: I would like to reserve my position in relation to it.

.

CHAIRMAN: You - either you are making an application or you are not?

.

MR. DELAHUNT: I am not at this juncture, Sir.

.

MR. GALLAGHER: In those circumstances it appears that My Friend isn't in a position to act for and speak on behalf of Mr. Lawlor. It would appear that Mr. Lawlor would, as it were, speak for himself in relation to this - the question that I think that has to be asked is whether - Mr. Lawlor clearly has attended before the Tribunal, and the question I think the Tribunal should ask is whether the documents and folders of documents which were produced to the Tribunal yesterday evening at approximately 7:45 p.m., were produced and handed over to the Tribunal pursuant to paragraph 2 of the order of Mr. Justice Smyth made on the 24th of October, 2000?

.

CHAIRMAN: I note the fact that that was done but obviously we have not have an opportunity to see what the documents --

.

MR. GALLAGHER: Can I suggest, Sir, that you ask for confirmation of that, that the documents that were handed to the Tribunal's office last night and delivered there, were produced and handed over pursuant to paragraph 2 of the order of Mr. Justice Smyth made on the 24th of October?

.

CHAIRMAN: Are the documents that were handed over to the Tribunal on last, last night at 7:45, the documents directed by the order of Mr. Justice Smyth dated the 24th of October, 2000, at paragraph 1 A, B and C, are they contained in the box? And are they --

.

MR. GALLAGHER: A and B, in fact.

.

CHAIRMAN: Of course, yes. And in compliance with that order.

.

MR. DELAHUNT: Yes.

.

CHAIRMAN: Yes, Mr. Delahunt says they are, and he, as he is presumably instructed by Mr. Delahunt, Delahunt Solicitors.

.

MR. DELAHUNT: Yes, Sir.

.

CHAIRMAN: Who are the solicitors who have been corresponding with us.

.

MR. DELAHUNT: Yes, Sir.

.
MR. GALLAGHER: Well in those circumstances, Sir, I would ask that the matter be adjourned, the matter of the examination of Mr. Lawlor, in relation to the documents which he has discovered, be adjourned for one week.

.
You will recall that initially Mr. Justice Smyth made an order requiring Mr. Lawlor to furnish an Affidavit of Discovery within one week from the 24th of October and he was further ordered to attend before the Tribunal and hand over to the Tribunal all the documents and records mentioned in paragraphs A, B and C of the order of the Tribunal of the 8th of June, 2000. That was to be done by today.

.
The order for the, the period for the furnishing of the order the Affidavit of Discovery was extended by one week by the Supreme Court. Mr. Lawlor delivered to the Tribunal's office, at 7:45 p.m. yesterday evening an affidavit in purported compliance of the order of Mr. Justice Smyth as amended, and he also delivered to the Tribunal's office a box of documents containing approximately nine lever arch folders and a number of files. The Tribunal clearly hasn't had time to look at those documents and examine them. In those circumstances I am not in a position to ask any questions in relation to the documents contained in that folder and I ask that the matter should be adjourned for one week.

.
I should inform you, Sir, that a Notice of Appeal has been

served in relation to the judgement of Mr. Justice Smyth.

It essentially is an appeal on two grounds, one that the order of Mr. Justice Smyth which permits the Tribunal, if it finds it necessary to do so, to seek discovery as, back as far as the 1st of October, 1964 and the second is the order of Mr. Justice Smyth that Mr. Lawlor should attend and give evidence in public in relation to the documents which he is producing to the Tribunal and which are mentioned in paragraphs A, B and C of the Order for Discovery.

.

That Notice of Appeal is dated the 3rd of November and I am instructed that it is the intention of the Applicants - sorry - the Appellants, that is Mr. Lawlor, to apply to the Supreme Court on Friday next for a stay on the order of Mr. Justice Smyth. That hopefully will be dealt with on Friday and in those circumstances I would ask that the examination of Mr. Lawlor in public should be deferred for one week.

.

CHAIRMAN: I will make that order. Further the examination of, I will defer the examination of Mr. Lawlor until Tuesday next, which is Tuesday the 14th of November at 10:30. It is, of course, possible, that events may overtake that date on Friday and I would have to see what, I would have to abide by that situation. But for this moment of time I am adjourning it to 10:30 a.m. on Tuesday the 14th. Mr. Lawlor is bound to be present on that date at that time. Thank you.

.

MR. DELAHUNT: Very good, Sir.

.

MS. O'RAW: Mr. Gerry O'Brien, please.

.

Sir, if we might continue with Mr. O'Brien please? Mr.

O'Brien please.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.

.
MR. GERRY O'BRIEN RETURNS TO THE WITNESS-BOX AND CONTINUES
TO BE EXAMINED AS FOLLOWS BY MS. O'RAW AS FOLLOWS:
.

1 Q. MS. O'RAW: Good morning Mr. O'Brien?

A. Good morning, Ms. O'Raw.

2 Q. Mr. O'Brien, just very briefly before we look at the 1990

Act, what I would like to put to you is a document at page

4998, please. This is an internal Bank of Ireland memo

dated the 24th of the 8th, 1990 and at page 5001, Point 4,

it reads as follows: : "Guarantee in favour of RTE expires

in February 1991 and will not be renewed on cancellation.

The facility will reduce to 2 million pounds. We have been

advised that there is little risk of the guarantee actually

being called upon. "

.
Could I ask you, Mr. O'Brien, what was the position of RTE

in relation to the guarantee and the possibility of calling

in that guarantee as at the 24th of the 8th, 1990. Do you

recall?

A. Yes, just to say, Ms. O'Raw, the guarantee that RTE had was

to some extent limited. It was related to particular

aspects of the contract and certainly it was always looked

at as a back stop, that in the event of serious problems

that RTE could, perhaps, call on that guarantee. At this

particular date I don't know the basis on which this

comment is made because we had our options and they

remained throughout the period. The date of February 1991

is correct, indeed, in which it ceased and was under review

at regular intervals in RTE as the debt situation with

Century become worse.

3 Q. Well, had you ever informed Mr. Stafford, Mr. Barry or anyone from Century, or from the Bank of Ireland for that matter, that there was little risk of the guarantee being called in?

A. Well, I certainly hadn't. I am not aware if anyone else did. So on my part and on behalf of the Finance Division, let's say, certainly I wasn't aware of that.

4 Q. Was there any discussion within RTE about the renewal of that guarantee?

A. No, it was felt really that it was unlikely that the guarantee would be renewed. There was a date, February, as I say, 1991, when it expired. I am not clear why it was that there was a view that it wouldn't be renewed. I think in reality it was because it had been negotiated as part of the contract.

5 Q. Yes?

A. It would have been probably difficult to renegotiate it. I think that was the general position.

6 Q. And whose was that view, that it would be unlikely?

A. Well, this is a general view of the Executive Board at the time.

7 Q. - yes?

A. - in RTE, that it was unlikely that it would be renewed.

8 Q. Yes. If we move on then, please, in relation to the 1990

Act and I just want to have a look at the issues relating to RTE's advertising policies in 1989. Now, I know Mr. Molloy was Head of Marketing and would be involved directly with that but I would like to have a look at the consequences of the 1990 Act and also in the run up to your

involvement in the advertising and your knowledge of advertising revenues and advertising practices at that time.

.
It appears at page 4951, please. This is a letter dated the 5th of December, 1989. It is from Mr. Gahan to Mr. Kiberd of the Sunday Business Post and he says "Sir, I refer to your article under the heading RTE 2 accused of depressing advertising rates at 2FM. A statement attributed to Mr. Michael Laffan of Century Communications surprises us since we would expect this media department to be aware that No. 1; RTE increased its advertising rates by 5% since Century came on air and No. 2; that the offer of free nighttime spots, i.e. between 7 p.m. and 7 a.m. with each nighttime package booked was introduced from 1st of May, 1987 when 2FM become a 24-hour station. Clearly the rate card policy was in place long before the radio franchises were announced or allocated and was part of the general marketing of our radio air time. "

.
Can I ask you, Mr. O'Brien, from a financial point of view, were you aware of particular decisions being made with Century coming on air in relation to how adjustments were being to be made to RTE's advertising policies?

A. No, I wasn't, Ms. O'Raw.

9 Q. Were there any concerns expressed in relation to advertising revenue with the introduction of Century, a new national operator?

A. Well, RTE saw it as somewhat of a challenge, obviously, and there was, the reaction of RTE would be simply to ensure

that it put its best foot forward and there was no particular action, I think. Obviously there were some, I think there was some additional monies spent on promotion, perhaps, of the station, of RTE radio generally, but that is all I would think.

10 Q. Well, were you involved in any calculations as to what the likely effect would be on revenues of the introduction of Century?

A. Well, not particularly Century, but in relation to the, to the independent sector there was a view that obviously RTE's rate of growth may be less than it had been in the past. That was the only general view. So that in setting, say, advertising targets for the budget purposes, we curtailed, as it were, where we increased them we didn't expect them to increase as the same rate as they had increased previously.

11 Q. Are you aware of any decisions to take steps to address that?

A. Not really, no. I am not. I think it was a, there was a general tendency for RTE to increase its rates every year. I think that happened as well.

12 Q. Yes. Well, was there any reluctance in increasing those rates?

A. No, not that I am aware of.

13 Q. Because of the introduction of Century or National --

A. - No, no.

14 Q. We have heard during the course of Mr. Stafford's evidence, comments to the effect of price-cutting activities that had been carried out by RTE. Are you aware of such price-cutting activities?

A. No, I am not at all. I don't believe that any such thing happened either. My recollection is that we were increasing our rates but I mean I don't want to go into that in detail because I haven't researched it recently. But my general view was that we increased our budget for our advertising revenue every year.

15 Q. Yes.

A. And didn't do anything different that year.

16 Q. Well, could I refer you, please, to page 3381. This is a document prepared by Mr. Laffan for a board meeting of the 12th of December of 1989 of Century Communications. At Point 9 on page 3382, he is discussing "a number of fundamental factors adversely affecting our ability to achieve the revenue targets".

.
At Point 9 he says: "Increased competitiveness of radio advertising market with RTE Radio, 2 FM particularly aggressive: At average, 30 second spot cost of 45 pounds".

Are you aware of aggressive advertising or aggressive marketing by 2FM?

A. No, I am not at all. I couldn't really comment on that. I wasn't aware that there was any change really. RTE tended to operate on a sort of a fairly level, you know, way. Its actions would have been, you know, pretty similar year-by-year. I am not really aware at all of any particular repressiveness or any particular action. All that I know is from the budget side, was that we were monitoring the revenue.

17 Q. Well, was it the case that it was seen that Century was in competition with 2FM or which particular RTE service?

A. I couldn't really comment on that in detail because I am not involved in the selling side.

18 Q. Yes?

A. But my general recollection of it was that we looked at the independent sector as a total.

19 Q. Yes. Was there any discussion that 2FM would be used to, against Century in anyway?

A. I don't believe RTE would have used any - no, I don't think so, not at all. I am not sure that 2FM was particularly looked at, as where the, I mean the local stations obviously were music stations and they were, certainly were, 2FM was strongest because it is also a music station. The new national station I think was more seen to be a mixture of, you know, broad programming more in line with Radio 1 than 2FM, I thought. That is only my recollection. I don't remember any particular views being expressed at all inside in RTE in relation to Century, per se. The general position was that the independent sector was seen as where the competition was coming from.

20 Q. I see. Could I refer you, please, to page 4234. This is a copy, I am afraid it is a poor copy, of an article from the Sunday Tribune dated the 21st of January, 1990. On the left-hand column, the very bottom of that column, it says "but last month Century's Managing Director Michael Laffan said that advertising revenue was running at half projected levels, although he blamed RTE 2's predatory pricing policy. "

.
Could you make a comment in relation to RTE 2's predatory pricing policy? Are you aware of such a policy being used?

A. No, there was no such policy being used at all. Excuse me, I would think that RTE's rates were increased during that time, was my general recollection.

21 Q. Yes. What about RTE 2's costs at this particular time?

A. Well RTE 2's costs hadn't moved very much either. It was the station. The number of people employed there were about 25 directly, and its costs between 1989 and 1990 and subsequently moved only very little really.

22 Q. And in movement, was that movement upwards --

A. Upwards.

23 Q. It was an upwards?

A. Yes.

24 Q. In relation to the relationship between costs and the, the costs of the station and the prices charged for advertising, could you make a comment on that, please?

A. Certainly, Ms. O'Raw. There is absolutely no connection whatsoever between the cost of running the station and what one charges for advertising.

25 Q. Why is that the case?

A. Because advertising is sold on market rates, whatever the market rate is, on a cost per thousand. In other words, what is the cost to deliver a message to a thousand listeners or readers or viewers or whatever the case may be. That is the rate which actually determines the rate of which one sells their advertising. It has nothing to do with the cost of production. I mean, for example, whether you are selling or handing out free sheets, whether it is newspapers, radio or television, the cost of your production is only, relates literally to the type of product you are producing. There is no relationship at

all, except that it was appealing to viewers. Obviously the more viewers that look at it the lower the cost per thousand would be so the rate can go up - could go up. Advertising is sold, my colleagues will explain this better than I can, advertising is sold on a market rate relating to what people view as a price that they should be paying for, to reach, let's say, a thousand listeners or viewers or readers, whatever the, as the case may be. It has nothing to do with the cost of producing the programmes that underline your station.

26 Q. Well, then was 2FM involved in the, in below-cost selling?

A. The concept simply doesn't exist.

27 Q. Why does the concept not exist?

A. Because there is no connection between your production values, as it were, or your production cost and what you charge for your advertising. I mean, it isn't like selling your product, whether it is, widgets, let's say, of any description, which are related to the cost of producing them. Whereas the cost of advertising or the price one gets for advertising is related entirely to the, to what the market is willing to pay. There is no other relationship at all, at all. It would be based on, for example, what are the newspapers charging, what are other media charging on a cost per thousand? That is really the rate at which advertising is sold. Whether it is in a newspaper, on a pamphlet or free sheet or whatever.

28 Q. Well, am I correct in thinking, that - this was one of the issues that I raised on the first day that you were giving evidence?

A. Yes.

29 Q. That there isn't a segregation of costs between the various services that RTE provides?

A. Well, there is really. That every area, whether it is Radio 1, 2FM, the RTE Guide, let's say TV 1, let's say TV 1 and TV 2. In those days TV 1 and TV 2 were separate operations, which is no longer the case, they have their budgets and the their costs relate directly to their output and production. That has no connection whatsoever with what the advertising rate is or can be. The only thing that determines the advertising rate is what is your audience and what does it cost to reach, give a message to 1,000, what is the rate for a competitive media, can you charge that or more? And RTE, from my recollection clearly is that RTE always charged more on a cost per thousand than other media. It didn't change that policy in any way that I am aware of.

30 Q. Well, that may be the case but was RTE 2's advertising revenue enough to cover its costs?

A. Oh, yes. RTE 2's advertising revenue in 1989/1990, subsequent years, was approximately four million and growing, not very fast, but growing. Its direct costs were actually, in fact, two million. And between 1989/1990, for example, there was an increase of roughly, I think it was £50,000 in the running costs.

31 Q. So its revenue was exceeding its costs?

A. Yes, there was a margin there of two million pounds for any indirect supports that it would have got in RTE generally for, whether it was finance personnel or whatever.

32 Q. Did that position continue then? You said those were figures in 1989?

A. Yes, that position has continued and indeed, improved significantly over the years.

33 Q. Well, prior to - during that period you said the difference was two million cost to four million revenue?

A. Yes.

34 Q. Prior to that time was the ratio the same?

A. Yes, I think actually, in fact, that 2FM's revenue started to increase fairly substantially in 1988 and 1989. In 1988 there was, I think, a relaunch of the station.

35 Q. Yes?

A. And this was all built around Gerry Ryan, as far as I recall. Colm Molloy will be able to fill you in on that in more detail. There was a significant increase in the revenue. It may have gone from 1.6 million to 2.1 million, that sort of situation.

36 Q. Did the ratio narrow between the, during the period when Century was in operation?

A. Not at all. In fact, its advertising increased.

37 Q. I see.

A. Yes, and its costs remained the same. Because, as I said to you, there is no connection at all between costs and advertising. But in, if you take 2FM, which is a music station, in those days it was - I think there was 25 people directly involved in it. Currently I think the figure is 26. So there is no change. It is sort of a - I don't want to use the word "bland" again, but it is, in fact - it is a fairly even type of business. There is no, nothing new in it. It is sort of more of the same and just a slightly different nuance, etc.. So there is no extra cost really.

38 Q. I see. Could I refer you, please, to a document at page 4755, please. That is a document around about the 27th/28th/29th of March in Mr. Stafford's discovery. It is entitled "Century proposal" and I would like to take you to paragraph 4, please. It says "There is general acceptance now for the proposition that it is not possible to maintain an independent and national broadcasting service in this country whilst the artificial situation in which RTE uses 2FM entirely sustained by license monies to compete on unequal terms and upon an uneven basis with the present exclusive license holder Century. "

.
 Could I ask you to what extent do license fee monies support 2FM - or at that time supported 2FM?

A. Just really to go back in time, and I was there during all of that time in RTE in my present role, in 1979 I think it was, in May 1979 2FM was launched and one of the principal matters underlined for RTE by the Department at the time, or the reason it actually, in fact, got approval, was that it would be sustained entirely from commercial activity.

39 Q. It would be sustained entirely?

A. Entirely, that it would not be a burden. This was the great phrase in the Department, 'it would not be a burden' on the license payer or on the license fee.

40 Q. Well, were the costs of 2FM segregated in such a way that that be could be ensured?

A. Yes, it were. It had its own budgets and still has.

41 Q. And has, have license fees ever been used in any way?

A. No, no, in fact, even to the extent that its transmitters were leased and charged to it.

42 Q. I see.

A. Mm-hmm.

43 Q. It then goes on: "It has been established that RTE utilises its monopoly position and its control of 2FM to distort market trends and situations. The classic illustration of this trend is that RTE sells advertising at 58% of the actual cost, the difference being the license fee subsidy."

Can you comment on that figure?

A. I mean it is totally absurd. I don't know where the figure of 58% and actual cost, I don't know what "actual cost" means. The cost of advertising to the rate which the advertiser is prepared to pay relates entirely to what competitive media are charging for reaching similar demographics. Now, I am not going to go into that in great detail because my colleagues in the sales area will but that is a nonsense statement. As I said to you, Radio 1, for example, its cost of production, for example, would be entirely different to that of Radio 2 but it is, its rate, advertising rate would be roughly the same or may be a bit more because you would be looking at, let's say, a different demographic - i.e. people who had more money to spend. Whereas, in fact, 2FM was, in fact, aimed at younger people who were perceived as not having as much money to spend. That is how the rates, the rates of advertising are struck, on that basis. Much it is what competitive media are charging to reach a similar demographic. It had no - it has nothing to do with getting the service up and running and keeping it up and running, no relationship.

44 Q. This isn't attributed specifically to 2 FM. The comment is

RTE sells advertising at 58% of the cost?

A. That is a nonsense. I don't know where that figure came

from. I saw it earlier in those papers. That is just not true. It is not the case. It can't relate to two things.

There is no relationship whatsoever to, the cost of the production, let's say, to the advertising rate. I can give a very good example. If you take, for example, whether it is on radio, Gay Byrne or, the example that we used to have, or Pat Kenny or The Late Late Show. The Late Late Show in terms of cost of production is one of the lowest cost programmes made in RTE because it is, you know, there is a large production, it is every week the same thing, roll in this, roll in that. It all works out very straightforward, etc.. Whereas in fact - and that commanded, in fact, the highest rate, we charged a very, very big premium for that and indeed, for example, and for the Gay Byrne hour, and as far as I know, for Gerry Ryan on 2FM. The cost of production has no relationship at all to what it was, to what we charge for advertising.

Advertising is entirely for the demand in the advertising market for a slot on that show. That is what people are prepared to pay for it. If they deem that is a lot of people, a lot of the people they reached listening or viewing that show, that is what they go for, that is how the - and the rates are charged accordingly and RTE has always charged, you know, the maximum the market will bear, if you like, in this whole area. That has always been its policy.

45 Q. Then can I ask you where do the license fees go? How are

they spent?

- A. There is a lot of - RTE, a lot of, whether it is religious programming, Irish language programming etc., the fact that we maintain two orchestras and Radio na Gaeltacht, this and a whole lot of other non-profitable, if you like, production both on radio and on television, and indeed the radio, after 7 o'clock in the evening. Radio 1 in particular would actually have, have a high cost because they are all sort of documentary-type programmes. It bears no relation at all to the, to the advertising we would earn for those. I mean the cost is way beyond what we would earn.

- 46 Q. I see. Could I refer you to page 4758, please. It is a continuation of that bunch of documents and at paragraph 8 it says "apart from the matters referred to above, the principle weapon deployed by RTE in its campaign against Century is 2FM. This is a station which was set up in 1979 for the sole purpose of combating the private radio - the pirate radio. To this extent its raison d'etre no longer exists. RTE has admitted that it only came into marginal service in 1989 after many relaunches. It is a service which is subsidised by license fees without which it has no commercial viability. "

.

Could you comment on that please?

- A. As I said earlier, in fact approval for 2FM was on the basis that it would not be a burden on the license fee. It has not been a burden on the license fee. It always paid its way and continues to pay its way. RTE didn't have any campaign against Century. RTE was competing in the market against the entire independent sector. That is the

reality.

47 Q. I see. If we move on to page 2124, please. This is an internal Bank of Ireland document dated the 20th of April, 1990 and at the second page on that, 2125, under the section "present position", the second paragraph down?

A. Mm-hmm.

48 Q. It says "Ray Burke has advised that the drafting of the bill is well advanced and that a draft will be available for circulation in two weeks time. Stafford and Barry have made representations to him with a view to reducing RTE 2 advertising time and preventing the cross subsidisation of FM2. "

.

Was there cross subsidisation of FM2 at that time?

A. No.

49 Q. How can you be certain of that?

A. It had an income of four million and it had direct expenditure of two million. No matter what additional supports it was getting, they would be very little. As I said, there was only 25 people employed in the place. It is a very low- cost operation.

50 Q. I see. Vis-a-vis RTE Radio 1, how did their costs compare?

A. Oh, they would be a fraction.

51 Q. They would be a fraction?

A. A fraction.

52 Q. Why is that the case?

A. Because Radio 1 is a far more expensive operation. It has all sorts of programmes, whether it has music and drama and all of that, it has very heavy programming, both after 7 o'clock in the evening, Sunday programming etc.. Radio 1

is a very expensive speech- based radio whereas, in fact, 2FM is really, if you like, a disk- based, music- based station.

53 Q. I see?

A. - entirely, except for the Gerry Ryan Show which is actually, in fact, probably its most expensive show. That would be a lot less expensive than, let's say, the Gay Byrne equivalent. There would be a lot less people working on it.

54 Q. Were there different obligations as between the two?

A. 2FM was actually, in fact, set up, or if you like Radio 2 was set up, that is the one correct statement here that I have seen, that it was set up, indeed, to combat the pirates, because pirate radio was really basically popular music and RTE didn't have a slot for popular music on Radio 1. It had MF 3 which is a semi classic station and Radio na Gaeltacht. In reality it didn't have a service to, let's say, to the younger people that the pirates were actually, in fact, fulfilling. So that is why it was set up.

55 Q. I see?

A. It was set up on the basis that it would actually not be a burden on the license fee.

56 Q. Is Radio 1 subsidised by the license fee?

A. Yes, heavily.

57 Q. Heavily?

A. Heavily.

58 Q. And why do you think that is a permissible - or is it permissible?

A. Because it is a really public service. I mean, you

couldn't, it wouldn't pay anybody to replicate Radio 1.

59 Q. Yes?

A. It is too expensive. It deals with a whole lot of minority issues, minority programming, all, a huge range of programming, everything, religion, sport, everything. It really is a totally different animal, let's say, to Radio 2.

60 Q. I see. Could I refer you to page 5373, please, and these are minutes of the RTE authority meeting on the 11th of June, 1990. Now, I know you weren't a member of the authority, but just in relation to the section dealing with the Broadcasting Bill, 1990?

A. Yes.

61 Q. It says here that "RTE, the Chairman and the Director General pointed out the very difficult situation which RTE was facing and that a loss of 8 million would entail taking out 400 jobs and even at that there would be about four million pounds savings still to be found elsewhere in the organisation. "

.

Were you involved in the calculation of or the estimation of what the effects of the Broadcasting Bill would be?

A. Yes, yes, as Director of finance I was indeed. We had to revamp and revise and revisit every cost centre, every expense in the organisation. Staff numbers were reduced. We did have a staff reduction programme. I think the aim was to get a reduction of 200 people at the time. That went on. It cost us money. We reduced everything in sight, even, in fact our, the payment to, for example choirs and so on, were reduced. For example, everything

that was seen as in anyway peripheral was sort of rooted out, as it were. There was a massive reduction across the board in every aspect, particularly in television.

Television was very heavily hit, particularly home production.

62 Q. I see. And the figures given here are losses of 8 million?

A. Mm-hmm.

63 Q. Yes?

A. Yes, well in the first year of the cap, if you like, did actually, in fact, I think the liability was something like nine million.

64 Q. In the first year of the cap the loss was in the region of nine million?

A. Yes.

65 Q. Was that in RTE as a whole?

A. No, that was in RTE, that was arising directly from the cap. It was revenue earned in excess of cap but our expenditure was, I can't remember exactly what deficit we had in that year, it was certainly - certainly we were, we had to reduce our costs significantly.

66 Q. Yes. But vis-a-vis each of the stations, RTE 1, RTE 2, FM2 and RTE Radio 1?

A. Mm-hmm.

67 Q. That nine was deriving from each of those, was it?

A. No, it wasn't really. Television was probably the worse hit of all.

68 Q. In relation to advertising revenue?

A. Yes. You see, it was very difficult. The cap actually, in fact, was an overall thing. It related to quantum, a total quantum of revenue. So it was very difficult to say it

actually arose 'here and here and here'. It was actually a total figure. It was based on the license fee plus CPI of the previous year.

69 Q. Yes?

A. And it was just a total figure. It wasn't allocated between the different services. But in terms of cost reduction and so on, interestingly enough, 2FM has so little cost if you like, it was run on, if you like, the bare threads required to run it. It probably suffered least in this.

70 Q. Can I ask you about the timing of these alterations that had to be made?

A. Mm-hmm.

71 Q. What was the amount of timing that you had available to you to put these procedures in place?

A. Well, my recollection is that, in fact, this whole capping issue came into effect in our, or came before the Dail in early 1990.

72 Q. Yes?

A. I think came into effect, I think, from the 1st of September, 1990.

73 Q. Yes?

A. We actually, in fact, immediately there and then had to look at, you know, the following years and the impact of this, if it was to continue - which it was set to continue - and the impact it would have had on RTE's services. Obviously we were looking at five years ahead, or three years ahead in particular, and we were looking particularly at what, where we could save money, what reductions we would have to put in place, etc. That happened immediately

this whole thing looked like happening.

74 Q. Did it come as a surprise to you, this particular Bill?

A. Oh, yes, total surprise, I must say.

75 Q. And what about RTE's level of involvement in negotiating the bill or what was to happen in it?

A. I don't think RTE had any involvement. I mean, I am open to correction. I mean, at my level certainly there was no involvement. This came as a bolt out of the blue.

76 Q. I see. In relation to job losses do you recall the Minister's position in relation to proposed job losses in RTE?

A. Truthfully I can't. I don't know whether he had a position on it or not. I am not sure whether I was aware of what his position was.

77 Q. If I can refer you to a document at page 5423, please.

A. 5423.

78 Q. This is a press release and the date handwritten at the top seems to be the 25th of the 9th, 1990?

A. Mm-hmm.

79 Q. And it is " RTE 1991 proposals and prospects".

A. Yes.

80 Q. " The RTE Board of Management at a meeting this morning finalised the details of a major review of the revenue and expenditure budgets. This has been necessary following the recent changes in the broadcasting legislation with the enactment of the Broadcasting Act 1990. "

.

Were you a member of the Board of Management at the time?

A. I was.

81 Q. And you were involved, were you then, in putting together

these proposals?

A. I was. Yes, I met all of my colleagues in every division.

We would have had numerous meetings and discussions. They would have been given targets and reductions, target reductions, and discussions would have ensued on how they might be achieved. Various papers would have come before the Board of Management. I mean this went on for months.

I mean this was an industry.

82 Q. When we were discussing the transmission charges and we spoke about, you know, the magnitude in the overall scheme of things and how RTE negotiated with the Minister over it, and how far they were prepared to push the issue with the Minister, in relation to the whole RTE revenue pool, how significant were these changes that were being proposed?

A. These were really - I mean, the full impact of this was massive, really. My recollection, from my recollection we were looking at, we would have expected a growth in revenue, so we - first of all there was going to be no growth in revenue. We would be looking at, you know, at that time probably six million pounds growth in revenue. There was the opposite. There was a reduction in our revenue prospects because advertising was a higher percentage of the total. I think it was around maybe 51 or 52 percent of total revenue, sorry it wasn't, it was 57 percent of revenue from my memory. The license fee therefore was the balance, 43. So we were in actual fact going to reduce to what the license fee was, under the license fee, if you like. There was a massive change, there was a huge reduction.

83 Q. Had RTE plans for that growth prior to being notified

about?

A. It was. RTE was operating on the basis of increasing the services. RTE is a nonprofit making organisation. Any surplus it has or that it can foresee having goes into enhanced programming, particularly on television, and indeed Radio 1, but particularly television because television at that time was very heavily reliant on upping programmes. There was a huge effort in RTE for years before that to try and get past a magic figure of home production being over 50 percent of total output. It required several hundreds hours of output to be generated, home-produced programming. That was a very big objective. This immediately put stop to that and, in fact, had a devastating effect on television home production.

84 Q. I see. The memo says "in deciding whether reductions are to take place the objective of the Board of Management of to continue the current range and quality of programming as far as possible in order to serve our public and maintain audience levels, while at the same time complying with the statutory obligation to be financial viable. "

A. Yes, but in actual fact that is, that was our objective, but it wasn't easily achieved. It wasn't achieved, from my memory.

85 Q. I see. It goes on and says - in what way was it not achieved?

A. Well, we reduced - indeed, it says here "we will continue our current range an quality of programming"- perhaps, well certainly at a reduced level.

86 Q. Yes?

A. And people would argue that quality has suffered,

obviously, and the hours of output were reduced and additional required programmes were bought in, obviously.

87 Q. And it goes on and it talks about reductions in the numbers of staff. How many staff were actually let go?

A. Well, this went on for, I would say, probably two years, and I - probably around one hundred and - I don't know, 160, 170 I would think, at least. Then there was also, in fact, freelance staff whose contracts wouldn't be renewed. All-in all the target was 200 people.

88 Q. Around about 200 people?

A. Yes.

89 Q. It also says on page 2 of that document "a substantial cut in capital expenditure of 3 million pounds per annum is unavoidable".

.

What was that that capital expenditure targeted at?

A. Well, really again, the greater part of capital expenditure would be targeted in those years at increasing our capacity to produce television home production programmes, home-produced programmes. So that is where that axe fell, I am afraid.

90 Q. The capital equipment expenditure - ?

A. For example we were to, if I remember we had a two studios where there wasn't a full lighting grade in place and cameras weren't available etc., and they were postponed or put off to another day.

91 Q. I see. It goes on and talks about the correspondence" the East European correspondent for the immediate future will travel to various occasions to cover events as the need arises".

.
What was the position prior to that?

A. Prior to that we had a person resident actually covering East Europe.

92 Q. And "hours of transmission too will be affected somewhat, with running past midnight very much the exception"?

A. Yes, so in other words really we aimed to finish at around a quarter to twelve every night.

93 Q. I see. And would cost --

A. To avoid overtime.

94 Q. I see?

A. Additional overtime being spent, as it were.

95 Q. I see. And "to discontinue the existing annual contract with the Vanburg String Quartet, to stand down the Chamber Choir and I am - I am afraid the remainder of that has been photocopied out. I can't --

A. In fact these were all part of the costs.

96 Q. The RTE Chorus?

A. Choirs.

97 Q. Yes. So you were standing down the Chamber Choir and the RTE --

A. - quartet. We did that, except the Quartet did some deal with us, whereby they would supply a certain level of service and we would pay for that as provided, whereas we were providing a full quartet before that. The choirs we reduced hugely. I think we eventually agreed to give them some small subvention on an ex gratia basis, but we didn't have any control or management over them after that. The orchestra numbers were frozen, as it were. We were planning to increase the Symphony Orchestra, by maybe ten

or 12 people, to bring it to a full symphony. That didn't happen either. There was massive reductions right across the board for everything.

98 Q. It appears from Mr. Molloy's statement that in some circumstances RTE actually overshot the budget. The amount that was going to be allowed under the legislation and revenues that came in exceeded the threshold, the cap?

A. Yes, they did.

99 Q. Can you tell me what happened in relation to those revenues?

A. Yes.

100 Q. 17.8 million was paid to the Exchequer, it went to the Exchequer?

A. It did, yes.

101 Q. Yes?

A. Of that 13.4 million went to the Exchequer and ú4,500,000 was left on deposit, which was the seed capital for Teilifis na Gaelige.

102 Q. I see?

A. So RTE --

103 Q. When RTE overshot that capped amount?

A. It was paid to the Exchequer.

104 Q. Did it ever retain any of those amounts?

A. It didn't get any. Not a penny.

105 Q. It didn't get any?

A. No.

106 Q. Why is it the case that RTE did overshoot the cap, do you recall?

A. I do, indeed. I mean, we were faced with a situation in, I think, 1991, in the Autumn where, in fact, literally we

had, we had achieved, as it were, the full level of revenue and I remember discussions time, and again at Executive Board level that, you know, were we to refuse advertising? How could we refuse it? Could we tell the industry that we were taking no advertisements? Could we take them out free? All these discussions went on. I mean, what had happened is, and actually my colleagues in Marketing will explain it better than I can, there was a total distortion of the market-place and RTE's product - I mean advertisers go after, as it were, giving messages to people or trying to sell production to people. They were - the way they pay for that is based on the number of people that you were hitting, your target audience, and delivering a target audience. Now, we were in the position whereby we could take less revenue by law than actually, in fact, these audiences were generating through the market-place. We had no control over it really. The only way we could have ceased that or stopped that, is to say 'No, we aren't taking any more advertisements from, let's say, the 1st of October'. Where would that leave the Christmas period?

107 Q. Why was it that the market, that the market was offering more money?

A. They saw it for value for money in that RTE had and has good audiences. They were paying on a cost per thousand as I explained before. There is, you know, there is a demand for television. RTE was the only home producer of television programmes really. It had the largest share of the audience, more than 50 percent for television alone. RTE 1 had a huge audience, RTE had a good audience. People were prepared to get on to those stations to deliver their

message. They found it, you know, that if, it was - well it was a way, probably one of the only ways of getting the message across.

108 Q. Well, was RTE naming the price at that stage?

A. Well, RTE was in the position that, in fact, it had increased its rates significantly on all media.

109 Q. Mm-hmm?

A. Yet the advertising was rolling in. Here we were, as it were, exceeding our legal permission, so we were, as it were, breaking the law on the one hand and trying to provide for the industry on the other.

110 Q. Did you notify the Department of Communications of what was happening?

A. We did. There was lengthy letters and so on sent and a lot of correspondence about it. As usual there was very little advice or reaction. I mean, basically the decision made, and this was an RTE decision, it was made on its, that it made on its own, that it simply couldn't refuse to take advertising, that it would be devastating to its clients and devastating to the market, etc.. And it would have been just bad policy. It was decided that it would have been just against the public interest to do it.

111 Q. Did the Department offer any suggestion at all as to what RTE should do when it was about to break the cap threshold?

A. My recollection is, no, that they said 'it is up to the RTE authority, it is their decision, it is their problem'.

112 Q. I see. There are a couple of matters just in Mr. Burke's statement that I would like to put to you and ask for your comments?

A. Yes.

113 Q. You don't have a copy of the statement in front of you, but if I can read out the particular suggestion or particular comment. It says "a similar approach from Mr. O'Brien in the memo of the 14th of November of 1988, and I quote; agreed we use this for all bargaining in regard to the common infrastructure charges but I suggest we increase the capital charge by ú130,000."

Do you recall that particular memo?

A. I do indeed. I recall answering that same question before.

114 Q. And what Mr. Burke says here "I suggest this shows figures coming out of the air"?

A. No, that is not true at all. The background to that particular memorandum was that we were preparing to come into a, come into a heavy negotiation, we thought, with Messrs. Barry and Stafford in relation to the charges for transmission. We were, we were looking at all of the costs. We were looking at, you know, where arguments we could, we had discovered a mistake ourselves in relation to the full capital value of the infrastructure. We had left out in our assets register, we had actually only the actual equipment cost. We added in subsequently the project management an installation cost. They increased that charge from 210,000 to 247, I think. That was ú37,000 of an increase. It was in relation to that we said that we would use that for a bargaining - we were prepared to actually forgo it because it was a mistake. That was what that comment made in relation to the 230,000 error crept in, I don't know how, into the project management. It had been quoted previously at ú250,000. Somehow or other it

had gone down or restated and it had gone down to 250. Telemetry software had been overlooked. That was 130. They were charges that we had to simply, as it were, add on. They were once-off charges and we said that they had to be maintained because that was what it was costing us in relation to the infrastructure. We were prepared to forego it in a bargaining session but that didn't happen.

115 Q. I should have referred to the document before that, to which Mr. Burke refers, reverts to in his statement as well, which was a memo of the 10th of November, 1988 from yourself. It says in that "the only other figure likely to be queried is the rigging services and the total cost here is 525,200. We are charging a sixth of this. Perhaps we could reduce this and increase something else. However we could say that rigging services cost ú650,000 on the basis of adding overheads to the cost centre of twenty percent and then the ú86,000 pounds would be 13% or one eighth of the cost. Could we discuss this before Tuesday? And I am adamant that we should not give anyone access to our budget reports etc."

A. Yes, well that again was part of the discussions taking place prior to what we expected to be a heavy negotiation and obviously when you are looking at a list of figures and they are all in the region of 6 and 8,000, I think all the other figures around it were - the only large figure, excluding labour, was, in fact, the transmission services and was in relation to, it was in relation to that I was asking our engineers to look again at that figure and to see was it correct, was it a sustainable figure etc.? In fact, I think the result of that was that they increased it

from 86 to 94.

116 Q. Yes, the transmission services being the rigging services?

A. That's right.

117 Q. Yes. I see. And so I think you have referred to it previously as 'head room'?

A. Yes, there was a discussion about that, head room. But on the other hand there was a lot of discussion about whether a 6th or an 8th was a direct charge. There was then the additional work that be involved for the additional equipment on the masts and so on. The figure was increased. I think overall the maintenance figure had gone from 384 to 364. So we reduced the figures rather than increasing them.

118 Q. I see?

A. As a result of that whole negotiation internally and we were prepared to, as I say, negotiate on those figures in an negotiation session, which didn't happen.

119 Q. Another comment that Mr. Burke makes in his statement is that "the major element which created a considerable disadvantage for competing services was identified as RTE's dual funding. We recognised that while the primary purpose of RTE's State subvention through TV license fees was to enable it to meet certain public service obligations it also, in effect, enabled RTE to sell its advertising time at rates which were below cost relative to the level of service provided and thereby artificially dominate the market. "

A. That is simply not true. As I said to you before, the advertising is sold relative to the market rate for advertising, and RTE was out there charging as big a figure

as it could charge. In fact, it had a pre-empt rate card on television, which was a Dutch Auction system which was complained about a lot, i.e. a lot of my colleagues in the financial world were saying to me on many occasions, 'oh, RTE advertising rates are too high'. I would say 'well, that is demand for you'. That is the way they were driven, driven by demand. So the advertising rates had nothing to do with the license fee, nothing to do with the cost of actually producing the programmes. At the end of the day advertising is related to the market rate for advertising, on a cost per thousand basis and it relates entirely to what the market is willing to pay. Of course it has to be, to get into that you have to have an audience and you have to have an audience of the nature and the demographics that the advertiser is keen to buy. And that is the key.

120 Q. We heard the evidence of the witnesses from the Department of Communications saying that they didn't carry out any analysis to find out about cross-subsidisation or below-cost selling. But do you know of any information to that effect being given to Mr. Burke from RTE?

A. I am certainly not aware of it. I don't know what information was sought on this issue. But I mean this whole notion was, is simply, simply not true. I mean, there is no cross-subsidisation. There is no below-cost selling. RTE is out there charging the rates that everybody else was charging and we were charging more than anyone. We had higher rates than anybody. So, I don't know where this notion could have come from. It simply makes no sense at all.

121 Q. I see. I think that is the end of the questions I have for

you, Mr. O'Brien but there may be others that would have questions?

A. Again, Ms. O'Raw, thank you.

.

CHAIRMAN: Well, first of all can we find out how many people want to raise matters with Mr. O'Brien? I have in mind it is just coming up to twenty to twelve. Perhaps if we found out now and we could break now and we could start immediately after the break.

.

MR. GAVIGAN: I have some questions on behalf of Mr. Stafford, Chairman, I don't think they will last longer than 20 minutes, 25 minutes.

.

CHAIRMAN: Right. What about RTE themselves?

.

MR. O'HIGGINS: I will probably have a few questions but I would certainly wait until after Mr. Gavigan and Mr. Walsh in the circumstances, I think.

.

MR. WALSH: Yes, I have some questions. I am not sure exactly how long I will take.

.

CHAIRMAN: That is a matter we have to see what happens. I just want to have an idea what we are going, where we are going. I think the best thing to do now is to break and everybody can sort themselves out between now and resuming at about twelve o'clock.

.

THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED

AGAIN AS FOLLOWS:

.

CHAIRMAN: Have counsel over the interval agreed the order in which they are intending to proceed?

.

MR. GAVIGAN: I think I am to go first.

.

CHAIRMAN: Very good. Once there is no objection I have none.

.

MR. GAVIGAN: I think it is agreed, Mr. Chairman.

.

THE WITNESS WAS CROSS-EXAMINED BY MR. GAVIGAN AS FOLLOWS:

.

122 Q. MR. GAVIGAN: Mr. O'Brien, my name is Gabriel Gavigan. I am Mr. Stafford's counsel I just want to ask you a few questions?

A. Certainly.

123 Q. Mr. O'Brien, if we can just start off with the directive and if we could deal with the question of compliance with the directive?

A. Yes.

124 Q. Did RTE comply with the terms of the directive, Mr. O'Brien?

A. Fully.

125 Q. Completely?

A. Completely.

126 Q. In relation to the cap, did RTE comply with the cap?

A. Fully and completely, RTE's minuteage was adhered to, the reduced minuteage and the cap was fully, or the limitations

were fully adhered to.

127 Q. The limitations; what do you mean by that, Mr. O'Brien?

A. The limitations on RTE's advertising minuteage from 10% to seven and half percent were fully adhered to.

128 Q. Did it not, in fact, as I understood your evidence to be this morning, did it not in fact breach the terms of the cap by selling advertising over and above what was permitted, Mr. O'Brien?

A. Yes, advertising revenue in excess of the cap was earned but RTE didn't willingly do that. It was the market insisted on our wish to - wished to place advertisements on RTE and wished to buy time with RTE. We checked with the Department what to do. They said it was a matter for the Authority. They didn't have any particular view. Any excess of the revenue earned was kept in a separate account.

129 Q. It was the Authority's decision then to sell the advertising, willingly or unwillingly, in breach of the terms of the cap, that's what you are saying?

A. Ultimately.

130 Q. Ultimately it was the Authority's decision to breach the terms of the cap?

A. It was the Authority's decision to continue selling advertising on both --

.

CHAIRMAN: Just a moment, let me understand what you are talking about in, what is "breaching the terms of the cap". The terms of the cap, as I understand it, and I am subject to correction, was there was a limitation on the period of advertisement RTE could broadcast during the

years, during the hours in which it was open. That is the only, it was dropped from, what was it, 10% per hour, ten minutes per hour, to seven and half. That is as I understood it.

.
MR. GAVIGAN: I think the witness this morning conceded-

.
CHAIRMAN: - let's understand what the cap is. The cap is a cap. It is not the witness' understanding of it. It is a fact. Have I got that right or have I got that wrong?

.
MR. HANRATTY: I think we may be slightly at cross-purposes. As I recall it the witness' evidence was first of all that they, that they complied with the minuteage limitation.

.
CHAIRMAN: That's correct.

.
MR. HANRATTY: They were, in fact were unable to comply with the absolute monetary limitation and this was what formed part of the fund which was handed over to the Department of Communications and that, and that the reason, I am surmising now at this stage, that the reason that they couldn't comply with the second part of the limitation, which was the absolute limit to the amount of the license fee was that they would, in effect, have to tell their customers, their advertisers, that they could sell no advertising after a particular point in time.

.
I think in fairness I should also draw your attention to

the fact that Mr. Stafford in his own, I think, conceded that the manner which it was done in the legislation rendered it difficult, if not impossible for RTE. I think the effect of his evidence was that he was suggesting it should have been done a different way. But that the manner which it was done, it was virtually impossible for RTE to comply with that. Again, I am surmising Mr. Stafford's evidence. I do believe that is the gist of what he said

.
CHAIRMAN: All right.

.
MR. GAVIGAN: The context in which I put the question, Chairman, was based on this witness' own evidence this morning that in fact RTE never refused to take advertising revenue. It simply didn't do that and by not doing that my question to Mr. O'Brien was, was it not in breach of the provisions of the cap legislation by not doing so. That is simply the context that the question was put.

.
CHAIRMAN: All right.

MR. GAVIGAN:

131 Q. If I could go back to that context, Mr. O'Brien. I am not seeking to trip you up in any way. Mr. Stafford's evidence was that he did not particularly agree with the way the government introduced the capping legislation. The question that I asked you, and I will ask you again, ultimately was, whose decision was it not to adhere to what was provided for in the cap legislation in terms of advertising?

A. Well, the Authority had only one role open to it. It checked with the Department. The Department didn't have a particular view. In the face of that, the Authority had no option but to decide that it couldn't refuse advertising from its customers. But any money in excess of its permitted limit was put into a separate account and not used by RTE.

132 Q. So in essence, Mr. O'Brien, didn't RTE take more money than it was entitled to under the cap legislation from its advertising revenue?

A. I don't like the word "take". It earned money.

133 Q. Sorry, my apologies. If you wish to use the word "earned" that is quite okay. Didn't it earn more money than it was entitled to do under the cap legislation?

A. Yes.

134 Q. That is evidenced by the fact that you said this morning that a 19 million pound surplus was handed over to the Exchequer at the end, isn't that right?

A. That's correct.

135 Q. I think I could be wrong in relation to this figure, I think the total surplus was in or around 28 million, isn't that right?

A. No, the actual figure was, I was wrong this morning by 100,000. We paid a dividend to the Exchequer of 13.4 million and four and a half million was left aside for Teilifis na Gaelige.

136 Q. How much was left aside for --

A. Four and a half million. That is 17.9 million in total.

137 Q. That was the amount which ultimately was the, that the cap was exceeded by?

A. Correct.

138 Q. I just want to ask you a little bit about 2FM and your evidence in relation to 2FM. Was the transmission cost effectively to 2FM, was that ever apportioned in relation to the RTE --

A. The full apportionment isn't in that two million. The leasing of transmissions was but the full cost of the apportionment wasn't.

139 Q. The full cost wasn't?

A. No.

140 Q. So effectively there was no similar charge to the charge made - sorry - I will just finish the question; to the charge made to Century. For example, the charges of say 1.40 million or the charge of 1.29 million, there was no equivalent charge made to 2FM in that context?

A. Well, first of all Mr. Gavigan, the figure isn't 1.4 or 1.
--

141 Q. I am only using those as examples as figures that were proposed?

A. In our internal accounting and in assessing whether in fact RTE obeyed the directive or, if you like, the stipulation that 2FM was not a burden on the license payer, it, did take its advertising, its network costs into effect, into account in such calculations when they were asked for.

142 Q. But the total transmission costs, Mr. O'Brien, they weren't taken into account, is that right?

A. They weren't in the two million I mentioned this morning but there was two million there in which to pay for those and any other expenditure.

143 Q. Okay. Can I just ask you what the total figure ultimately

charged by RTE to 2FM was in relation to the, in respect of the transmission facilities?

A. I can't recall fully. It would be in the region of about ú800,000.

144 Q. It was nowhere comparable to the 1.4 million proposed in the first - ?

A. 1.4 million was never proposed Mr. Gavigan. 1.14 included a lease purchase to buy the transmitters.

145 Q. I appreciate that, Mr. O'Brien?

A. Therefore the figure that was proposed, excluding that, was point 914, if you recall.

146 Q. Correct?

A. And then the similar figure, as I say, this was a figure in which we were prepared to, or with which we were prepared to, discuss and to negotiate, and that didn't arise.

147 Q. What effect did the charge made for transmission have on 2FM's accounts, Mr. O'Brien?

A. I mean, I am not sure.

148 Q. If you impact the transmission figure charges?

A. It would reduce its contribution from 2 million to roughly 1.3 million.

149 Q. And was that a profit situation or a loss situation?

A. Profit, well if it has income of four million, an expenditure of two million, the balance has to be a profit, doesn't it?

150 Q. Of 1.3 million?

A. No, of two million if you take 70,000 - or 80,000.

151 Q. The net figure is 1.3 million?

A. Yes.

152 Q. In the course of your evidence, you went to great length to

point out the cooperation that RTE afforded to Century,
didn't you?

A. Yes, I did.

153 Q. And you painted a picture that RTE was pretty helpful and
friendly towards Century?

A. RTE worked very hard to get Century on air.

154 Q. Mr. Stafford's evidence was to the contrary. I am sure the
evidence, you are aware of the evidence that Mr. Stafford
gave in this regard. He said the attitude towards Century
from RTE was very, very hostile?

A. If you only read Mr. Hills' letter of sometime around
September or even earlier, of July of 1988, where he says
that he is getting nothing but cooperation from RTE.

155 Q. Mr. Hills was but Mr. Stafford said that his particular
experience, Mr. Stafford's experience was that RTE was
hostile towards Century even antagonistic towards Century?

A. I totally disagree.

156 Q. He said in his evidence that RTE made things difficult for
Century?

A. I totally disagree.

157 Q. Do you remember the Today Tonight programme on the 22nd of
February 1990?

A. Vaguely.

158 Q. Vaguely?

A. Vaguely.

159 Q. Do you remember the attitude taken by RTE in the programme
to Mr. Barry?

A. I actually really don't feel that I can discuss the
particular programme because I don't recall having seen it.

160 Q. - okay, if you can't remember?

A. - it in great detail.

161 Q. That is fine, Mr. O'Brien. The general premise, perhaps you might just answer the question in this regard, the general premise was that the attitude towards Mr. Barry by RTE in that particular programme was anything but friendly?

A. I don't know, I can't comment.

162 Q. You can't comment in relation to that?

.

MR. HANRATTY: I should inform you, Sir, it is our intention, it was my intention to show the programme with a later RTE witness. If My Friend would prefer I can show it now so that any questions he may wish to put to this witness can be dealt with, with the knowledge of what was said in the programme. I don't know if My Friend would

.

MR. GAVIGAN: - I am in the Tribunals' hands in relation to this. I have to, obviously, put these questions anyway.

We did request a copy of the video a long time ago, Mr. Chairman. It would be helpful to see the video and to put it in this context but I am in your hands in that regard.

.

MR. HANRATTY: We can show it now then. Can I just consult with Mr. Lynn as to how long it will take to set it up? I think we are virtually ready.

.

MR. HANRATTY: The position, Sir, is we will be in a position to show the video immediately after lunch. So perhaps any questions then in that regard -

THE CHAIRMAN: We will show it after lunch. In that, in those circumstances, please depart from this subject until you have seen the video.

MR. GAVIGAN:

163 Q. I am happy to do so, Mr. Chairman. Just one or two other questions, Mr. O'Brien, in relation to the transmission fees and the offer, the negotiation process.

Initially when the fees were being negotiated why didn't RTE propose a contract at that particular stage?

A. First of all, Mr. Gavigan, let me say to you, I said it numerous times in my evidence here, there was no negotiation whatsoever with Mr. Barry and Mr. Stafford. We met them on three occasions; on the 2nd of November, 1988; the 8th of November, 1988; and the 18th of November 1988. There was simply total blanket dismissal of the figures from start to finish. No negotiation, none, and they left the meeting and there was no further contact. On the 29th of November as a teaser we sent out what I call the rate card, the cost of transmission services, asked them if they had any views on it and we heard nothing.

164 Q. The question that I asked you, Mr. O'Brien, was why didn't RTE produce a contract at the early stages of negotiation with Mr. Barry and Mr. Stafford?

A. How could it produce the contract when there was no negotiation?

165 Q. Surely it could have produced a contract to set out RTE's position at that particular juncture?

A. In November 1988 the franchise had not been awarded. I

mean, was RTE going to draw up a contract for everybody who came in?

166 Q. Heads of Agreement, Mr. O'Brien, surely at that stage Heads of Agreement could have been produced?

A. Why would we?

167 Q. RTE, in effect, didn't bother to produce a contract until June of 1989. Isn't that when the first contract came, came across from RTE to Century?

A. My evidence has shown that we were producing and we had asked our solicitors to draw up contracts as early as February 1989 and I think by the 11th of May, 1989, I stated in a letter that we were on the fourth draft of a contract.

168 Q. But in effect do you agree that the actual contract wasn't sent to Century until June of 1989?

.

CHAIRMAN: Mr. Gavigan, may I intervene here and point out to you as a matter, you know, that a contract is a consequence of an offer and an acceptance. I quite understand the question you have last put but until somebody reads an offer and comes back and says "I will accept or I will reject or I will only give A, B" it is unlikely that a contract will flow, isn't that so, from experience?

.

MR. GAVIGAN: Absolutely, Mr. Chairman. I am fully conversant --

.

CHAIRMAN: Can we proceed on that basis, not on the basis of a presumption that you are correct. It is a question of

what is the evidence.

.

MR. GAVIGAN:

169 Q. May it please you, Mr. Chairman.

.

Could I just ask you some questions in relation to the
lease rate, the 7% lease rate?

A. Certainly.

170 Q. In your evidence to the Tribunal, Mr. O'Brien, on Day 199,
which was last Thursday?

A. Yes.

171 Q. The question of the lease rate came up. Do you remember
that particular portion of your evidence?

A. I do.

172 Q. And I don't know if you have a copy of the transcript
before you?

A. No.

173 Q. If not, I can either read the relevant bit or perhaps the
transcript could be --

A. You can read it, yes.

174 Q. Yes. It is in relation to the 7% lease rate?

A. Yes.

175 Q. It all started, I think, back on the 2nd of November, 1988.

If Document No. 195 could be put up on the screen, please.

That is a letter of the 2nd of November, 1988 from you to
Mr. Stafford, 15 Kildare Street. Do you remember that
particular letter?

A. Yes.

176 Q. Re: National coverage. And the two middle paragraphs of
the four paragraphs are the relevant once. " The two

elements are the overall package costs including all capital equipment, design, installation and maintenance costs. The full package cost comes to 1.14 million per annum all-in. The capital equipment element in it is 0.1 million as detailed, and the charge included is for a five year agreement."

A. Yes.

177 Q. That is a five-year agreement, not a five-year lease rate, is that right?

A. In the schedule as attached to that from my memory there was the word "lease" written behind the figure of 256.

178 Q. In the next paragraph in regard to the annual charge for the equipment to be installed, this is based on a fixed interest charge of 7% per annum.

A. Yes.

179 Q. And the infrastructure charge is based on 12% per annum which is the rate charged to RTE by the Exchequer for loans advanced in connection with the infrastructure development?

A. Yes.

180 Q. And that is the initial proposal in relation to the charges, isn't that right?

A. Yes.

181 Q. And in your evidence at page 24, question 4, you discuss the question in answer to, I suppose I'd better put it in the context. Back at page 23, paragraph 17, you said "because we were getting prices in from suppliers, right, they were tentative, they may change depending on whatever, you know. These weren't fixed or written in stone as I said earlier".

Do you remember the context of that questioning?

A. Mm-hmm.

182 Q. Then you went on to say: "'And we were going to pass these on at cost as invoiced to us, to Century.' Here is a total and complete misrepresentation".

.

What exactly was "a total and complete misrepresentation" in your view, Mr. O'Brien?

A. It was explained in subsequent meetings following that letter of the 2nd of November, which is after the first meeting. It was explained and discussed and discussed in quite some detail on the 18th of November, that the figure was in a lease proposal. In fact, on the 8th of November, Messrs. Barry and Stafford asked me to exclude the lease charge from the all-in cost, which I did. That is how from there on we are talking about 914,000. That excluded the cost of acquiring and paying for and funding the equipment. The 7% rate was a lease rate based on a five-year lease, primary lease period in which the financial institution would get advantage of the capital allowances. Mr. Barry and Mr. Stafford said to me, in their meeting, and it is in my note, that they wanted the capital allowances for themselves.

183 Q. And this was based on, in your view, a five-year period, is that right?

A. This was actually, in fact, based on a five-year lease rate which we had obtained from some financial institution.

184 Q. And in your evidence you said at page 22 on the same day you said that "I would think myself that if Century went to borrow this money, and looking at their capital base and

all that goes with that, from a bank, I would say this; that they would pay three to three and a half percent, if not more, even if they got 20 year money." The three to three and a half percent more would be three or three and a half percent above the DIBOR rate?

- A. That was a totally different issue altogether. There are several ways in which you can obtain a financing package and Messrs. Barry and Stafford were well acquainted with those. One was a leasing rate whereby the bank are the lessor, the lessor owns the equipment so they have no risk, they own the equipment. They get the capital allowances, they charge you a lower rate of interest and you may effectively - for the entire equipment - in a five-year period and the following five-year period, the secondary period, you actually pay a peppercorn rate. That was explained fully. The discussion on the 18th of November covered that point. It went on to discuss then the, if there was, say, a 20 year loan, how it might be got. I was speculating that no such loan, no such loan to be available. But if you were to go for a variable rate loan, that is what it would be, other than a lease. You will pay DIBOR plus a margin and the case of Century, their margin would be probably three or four percent.

185 Q. Three or three and a half percent, you said on that particular occasion?

A. Yes.

186 Q. I have no truck with that. I have with the next piece of evidence that you gave on that particular day. You said "20 year money was not available"?

A. Correct.

187 Q. I have to put it to you that 20 year money was, in fact, available as a lease rate at that particular time?

A. Mr. Gavigan, I can assure you that the people that we were dealing with, all the many financial institution institutions that we dealt with, was unable to offer it. If you look forward to the papers that were presented here at this Tribunal when we sought to get leases on behalf of Mr. Stafford or on behalf of Century in April, 1989, the maximum period we got, I think was - I may be wrong here, but we may have got one offer at 14, at some huge rate of interest, I think it was 13 and 16 and the average would have been, I would say, at the most, ten years. And again the rate was around 12 or 12 and an 8th or thereabouts.

188 Q. My instructions, Mr. O'Brien, is that at that particular time you could have easily, readily have obtained 20 year money and that 20 year money was available to finance aircraft leases at that particular time and ship leases were done on a regular basis on 20 year money?

A. You are obviously dealing with an expert. They were responsible for acquiring the equipment. Why didn't they get it?

189 Q. The question that I put to you was --

A. I am saying to you that in the, from my experience and from the inquiries we had made for the sort of equipment that we were talking about, there was no offer of 20 year money from anybody, either in '88 or '89.

190 Q. I think the directive which came on the 14th of March, 1989 required you to finance it over a 14 year period, isn't that right?

A. That is what the directive said.

191 Q. And did you make any effort to acquire 14 year money at that particular time?

A. We did.

192 Q. Do you have any documents to substantiate that?

A. They are before the Tribunal a whole --

.
MR. HANRATTY: - and circulated to Mr. Gavigan

.
CHAIRMAN: - and circulated to Mr. Gavigan is what you have just been told.

.
MR. GAVIGAN: Just finally in relation to RTE's position on advertising and spending in 1988, just immediately before Century came on air, did RTE not spend two million in promoting its own services just immediately prior to Century --

A. I don't think so. I don't think that RTE ever spent 2 million on promoting its output. .

.
MR. GAVIGAN: Thanks very much, Mr. O'Brien.

.
THE WITNESS WAS CROSS-EXAMINED BY MR. WALSH AS FOLLOWS:

.
193 Q. MR. WALSH: I think I should go next. Mr. O'Brien, I think you are a certified accountant?

A. That's correct.

194 Q. Is it the Financial Director you are at the moment?

A. Yes. At the moment - my title changed literally in September of this year as Chief Financial Officer. That is what they are telling me but I haven't seen the evidence

yet. But anyway, at that time I was --

195 Q. Maybe when the finances improve next year?

A. Well, who knows?

196 Q. Yes. And you were involved in the finance, the internal finances of RTE, certainly from 1986 all the way through to 1991, isn't that correct?

A. I was, yes.

197 Q. And the - RTE itself, the management structure from your evidence appears to be that there is an RTE authority which is appointed by the government, that is like the Board of Management?

A. No, that is like the Board of Directors.

198 Q. The Board of Directors, I see. Below that you have the executives, who are the Director General, the Assistant Director General and I presume yourself and other people like that?

A. Correct.

199 Q. Below you again you have other management and staff people?

A. Yes.

200 Q. I see. And you weren't always privy to every single discussion and every decision of the Director General or the Assistant Director General, would I be right in that?

A. Certainly not, I wasn't.

201 Q. Yes. And similarly if they sent down orders or directives to Mr. Curley or to other people at your level, you mightn't always hear of what was going on in that channel of communication?

A. Well, just to say to you I was a member of the Board of Management during all that period of time and all of the major issues would have been discussed and all the issues

of principle etc., would have been discussed. But as regards individual areas, whether it be engineering or sales or marketing, or radio or television, or that, I would not be privy to the individual issues there on a day-to-day basis.

202 Q. I see. This issue of Century and license fee and so on, you described earlier on as a minor issue in the overall business and budgetary context of RTE?

A. What I described as a minor issue, Mr. Walsh, was the amount of money involved in providing transmission services.

203 Q. I see. So, I see, so the financial aspect was a minor issue?

A. Correct.

204 Q. I see. And it would seem that the RTE authority and then the Executive Board of Management, once the Act of 1988 came into being, obviously considered the Act and what their position or response would be to it, is that right?

A. Yes.

205 Q. Yes, and at some stage then in the Autumn of 1988 you were asked for financial figures in relation to the provision of shared facilities for local broadcasters or for a national broadcaster?

A. Well, the Authority always had in mind long before the 1988 Act came into being at all that other broadcasters may seek services from RTE and there had been a policy laid down in relation to the basis on which the charging for those services would be made.

206 Q. Yes, I see. And then the status of RTE in making this decision is that it would have been called a Semi-State

body at that time in the mid-1980's, early 1980's, isn't that right?

A. Yes.

207 Q. Which means that it is a company or an organisation set up to manage a business or assets for the government or for the people, is that right?

A. Yes. The authority represents, if you like, the people.

208 Q. Yes. And the financing of the organisation that is, for the staff, equipment, etc., would have been, the license fee would be one aspect of that?

A. It would.

209 Q. Yes. And the other aspect would be Exchequer borrowings that would be voted to RTE on an annual basis?

A. No, the revenue, the running expenditure of RTE as distinct from the capital expenditure of RTE was financed mainly from commercial revenue and the license fee.

210 Q. Yes?

A. The Exchequer borrowings were related entirely to, in the early days, I think they ceased in 1981, they related actually to the development of the infrastructure and of the basic development of RTE.

211 Q. Yes. So any, so in other words the capital borrowings from the Exchequer would relate to things like the building, the extension of the building in Montrose, just for one example?

A. It would be one of them, yes.

212 Q. Are you saying that from sometime around 1981 onwards there were no further capital borrowings to RTE from the Exchequer?

A. I am virtually certain that there were none from that

date. I would have to check the record.

213 Q. You didn't get a donation or a grant or a loan from the Central Exchequer?

A. No, I would say also, but I would need to check it as well, that RTE commenced repayment of the Exchequer advances to the Exchequer from 1981 onwards.

214 Q. So from 1981 onwards what you are saying is that the figures or the accounts will show that if they, RTE had an operating surplus and was able to afford it, it would use some of the surplus to pay back the government or the Central Exchequer the loan that it got in the earlier years?

A. Once it was decided to pay the Central Exchequer the monies were repaid.

215 Q. Obviously if you were in a huge loss- making situation you could defer payment a particular year, isn't that right?

A. I am not so sure you that you could.

216 Q. I don't think that RTE paid repaid Exchequer borrowings every year?

A. It did. From 1981 onwards it was repaying them on an annuity basis based on the rate of interest and a capital repayment.

217 Q. And the license fee income RTE received, RTE never had to pay tax on that, isn't that right?

A. RTE - in the situation the license fee was not deemed to be a commercial receipt.

218 Q. So it was non-taxable?

A. It was a grant-in-aid, if you like.

219 Q. Obviously the commercial income you would make from advertising or whatever is for revenue purposes taxable?

A. It would be, yes.

220 Q. But RTE was also able to avail of the huge capital allowances from the investments that it had made over the years with Exchequer borrowings?

A. RTE surpluses - RTE wasn't exactly a profit-making organisation and therefore the amount of surplus it had in a year would be less normally than its capital allowances.

221 Q. Yes, so in other words it had a huge capital allowance mountain built up to be used at a future year?

A. Yes, it had. It had allowances forward, yes.

222 Q. And in the annual accounts, do you divide or make any separate provision for the income from advertising for radio stations and the income from advertising on television stations?

A. Yes, in the annual report they are shown separately.

223 Q. Is it true to say, just as a general proposition, that the advertising from television is much greater than the advertising receipts from radio?

A. Yes.

224 Q. Is the factor something like 3-to-1 of a ratio or is it more?

A. No, I wouldn't - it may be 3-to-1, I don't really know. I just don't recall the exact figures at the time. It would be significant. TV is a major earner.

225 Q. TV would be the major earner. Just to marry that with the technical evidence of Professor Hills, he also said that TV consumed much more power at the transmission and broadcasting stage than a radio service and it was a far more costly service to run?

A. Well, I am not an engineer, Mr. Walsh, and.

226 Q. - I know, you have made that clear?

A. I have, and not only that, the power useage and the power consumption is related actually, in fact, to the power of the transmitters. In fact, there are more high powered radio transmitters than there are TV. TV generally operates on ten kilowatt transmitters. In fact, many radios are 100 kilowatts and higher. So they would eat, use an awful lot more electricity than the equivalent television.

227 Q. But against that you have two channels for each television, you have the sound and the vision, isn't that right?

A. Well, you have a single channel, yes, but it has sound and vision, of course, yes.

228 Q. Now, so the first time then in 1988 when you had to consider what you would charge, you said this is the first time you had to consider this and the IBA or anybody like that weren't able to help you in determining the basis of your charge or the quantum of your charge for the provision of services to a national station?

A. Well, we had to look at the figures and how we might apportion them, yes.

229 Q. I think to summarise your evidence earlier, you said it was a subjective exercise by RTE and there were no comparators out there for you?

A. The only comparator would have been the BBC but that is on a scale of such a size that it just wouldn't be a suitable analog.

230 Q. It wasn't suitable. Yes, I suggest to you a fair projective analysis from the documentation of RTE from 1988 onwards would suggest that you were massaging the figures

before you made a quote, that you were rounding up the figures, you were over- generous to yourselves and, to use one of your own words, you were giving yourselves plenty of "head room", allowing padding. Another quote you gave was that you were giving the figures an "uplift". Isn't that what you were doing? It may be for negotiations but that the figures were grossly overstated, that is the net result?

A. Mr. Walsh, just to say to you the figures were not grossly overstated. They were based on the direct cost, purely the labour and the direct budgets of the areas servicing the network. And if you look at those charts carefully you will find that they exclude any element of production people and exclude any management, they exclude any indirect direct services. They are the direct - only costs.

231 Q. Yes?

A. Purely direct cost.

232 Q. But you were in the box only a few minutes when the Learned Chairman asked you a very simple question which you wouldn't answer, which was "RTE had a certain cost structure before the arrival of Century. After the arrival of Century what was the extra costs associated".

.

Now, you wouldn't answer that simple question. Now, isn't that the marginal cost argument? What is the additional cost to RTE because Century arrived on the scene by virtue of obtaining the franchise from the IRTC?

A. Our policy --

233 Q. Have you done a simple calculation to say what the extra

cost was?

A. Our policy was to charge all users proportionally for the services for which they were benefitting for. To talk about marginal costing.

234 Q. We will come back to that in a minute. Have you done a simple calculation to decide what additional costs were to be borne by RTE as a result of the presence of Century and --

A. No, we didn't, we didn't deal with a probate.

235 Q. The next question is what is the written-down value of the assets you were charging Century for the use of? In any of the annual accounts from 1987 to 1991 what is the actual figure for the written-down value?

A. For the infrastructure, you mean?

236 Q. Yes?

A. It was five million, from memory.

237 Q. Five million?

A. Yes.

238 Q. Why then are you valuing it at the early stages, ten and a half million at the earlier stages, 12 and a half million and trying to bill Century one-sixth or one-eighth of that over a 7 year period?

A. Because we were trying to ascribe a value to a valuable asset that reflected its value to a profit-making user and therefore it had to relate to either a market rate and that would not have been unrealistic, a market rate. There was no analog in the market and what we had to do was to try and create one. We took the figures, we said 'Right, what would it cost to replace all of this? What is the value? What is its commercial value, what is its worth'. The

worth was 12 and a half million. That is the investment value on which people who wished to make a profit were willing or wishing to have access.

239 Q. But, so what you are asking Century to do, or were asking Century to do, was to pay now in 1989 and in 1990 for an expenditure that you might incur at some stage in the future, be it a year or ten years?

A. No.

240 Q. What else does it mean?

A. I'll tell you what it means. It means that the infrastructure was being replaced on a yearly basis. Part of the capital programme, a significant part of the capital programme of RTE year in year out is the renewal of the network radio and television, renewal of the infrastructure, the renewal of the masts, the station, the equipment the equipment on the past.

241 Q. Yes. Can you tell me, if that was going on on an annual basis what was the increase in the written-down value of the equipment, even allowing for this annual renewal from 1987 to 1988, 1989, 1990 to 1991? By how much did this expenditure increase the value of the equipment?

A. Significantly.

242 Q. If it is 5 million in 1990 how much was it in 1991 --

A. If you buy a car in 1960, let's say, and you redo it in 1990, what is the relationship there? Umpteen times the value?

243 Q. Yes?

A. And it is exactly the same in relation to all of the equipment that we were renewing. We were renewing at current values. We would be renewing at current values.

244 Q. Just to take that analogy, Mr. O'Brien, if Century come along in 1980 and rent that car from you, you don't rent it at the, at a figure that relates to what the cost price will be in 1990 in the future, you rent it at the cost price, at a figure that relates to the cost price in 1960 when you bought it?

A. No. I would say if you are comparing like with like, if you are going to rent a building, which would be similar, because you are talking about the rent or the charge for access to a valuable infrastructure, you don't pay the rent related to 30 years previously or 20 years previously, you relate it to what the market rate now is. That is what we were seeking to do.

245 Q. You didn't know what the market rate was because there wasn't a market in this equipment in --

A. - there was a basis for the market rate. We were paying Exchequer advances at 12%, you will recall.

246 Q. Yes.

A. That was the --

247 Q. Now you are after telling me that the annual renewal was met by your own funds so the Exchequer borrowings has nothing to do with the future?

A. That was an analog, if you like, relating to a current market price.

248 Q. But what, why do you have to have it both ways? You take the Exchequer borrowings, which changes from time to time, then you take the commercial rate, then you say you have to make a profit. Is that what you are saying?

A. No, no, you are getting mixed up there I am afraid, Mr. Walsh. The reality is this, that what we did was this; we

said 'What is the value of this asset to which Century wish to have access to make a profit'? Yes, and we said 'Right, it is a value of 12 and a half million', let's say, and we said 'What rate, what return should one expect or how would one relate a rent to that?' One could have taken, for example you could have taken what was, what was the yield on government bonds at the time, you could have applied that, it probably would have been significantly higher. We took a rate which was analog based on RTE's experience i.e. on RTE's experience based on the Exchequer advance rate, i.e. 10%. We took 12.5 million at 12%, divided by eight, so that was --

249 Q. - so that means you are going to pay for the assets over eight years?

A. It does not at all. Over eight services, there were eight services availing of this --

250 Q. No, no, if the return is 12 and a half percent, that is an eight, isn't it, in fractions?

A. No, I said 12% and an eight has nothing at all to do with the 8th I am talking about.

251 Q. - doesn't that mean that you want to have the capital costs paid back in eight years, is that what you are talking about?

A. No, it isn't at all. What I am talking about is this; it was costing RTE money year in year out to maintain and renew that infrastructure.

252 Q. I have that point. You have made that before?

A. To try and replicate a suitable charge, a rent, if you like for people coming on to this system, i.e. using this infrastructure, what would be a suitable basis on which to

charge them? And we decided that if you took the Exchequer rate that we were paying on borrowings as a reasonable rate of interest that would apply to a financial asset and then if you, if you say 'how many users are on that asset using it?', as it turned out we gave them the benefit of the doubt. We said that TV equals two radio, which was giving them the benefit of the doubt. We divided the cost of eight. That is how the figure of 185,000 was arrived at.

253 Q. Yes, but on that basis you were looking at the Exchequer borrowing rate of 12%?

A. We used that rate to, to arrive at a rental figure, if you like, yes.

254 Q. Now, if the money you were charging, proposing to charge Century was charged to each of the other seven services, would it not have paid back RTE the capital sum involved within a period of eight to ten years?

A. No, because RTE was continuously spending money on maintenance, part of the rent was to pay for the maintenance and the upkeep and renewing of that asset, so it was constantly increasing.

255 Q. You see, what I suggest you are doing, what Professor Hills and his analysis of the situation was, you were proposing a to charge a sum for access?

A. Correct.

256 Q. Some people called it rent. Additionally you were proposing to charge a sum for maintenance for the on-going fixing and repairing?

A. Yes.

257 Q. He says there was a duplication because in the high figure of 364 or 320 or whatever it is, there was an element of a

future capital expenditure which should already be covered in the access anyway?

A. I am not sure, Mr. Walsh, that he said that. What he actually said was they wouldn't pay rent because of the principle.

258 Q. - no, leaving aside the principle. In the bill you had the access was?

A. 185 --

259 Q. Was in relation to your capital charge?

A. It was in relation to a capital asset.

260 Q. Or asset or a rent to deal with what we have now and to what we might get in the future?

A. Yes.

261 Q. Also in the maintenance, if you analyse your figures for the maintenance, be it 364 or 320, there was also a capital charge involved there because you were talking about what maintenance you might have to build into a the figure for a couple of years time?

A. No, there was no capital at all in that. That was purely related to the payroll and the expenditure, the current running budgets, the direct cost of running the individual areas of the network where the 14 stations were located.

262 Q. Do RTE have any leases with rent reviews in them where you are the tenant and you lease property and you pay a rent and then it gets reviewed every so often?

A. Some of these mountain tops, we pay some ground rent, or rent, I think, to different people but it is very, very small money.

263 Q. Very, very small?

A. Yes.

264 Q. But from your commercial accountancy background you would be aware of the fact that there are agreements out there where the price charge is reviewed after a certain period, be it rent or whatever, isn't that right?

A. Yes.

265 Q. And typically you would have a business premises and a rent would be reviewed by agreement in three years, five years, isn't that right?

A. Yes.

266 Q. Now, if you were concerned when you were constructing your model standard charge for all the proposing independent operators, if you were concerned about the on-going capital expenditure that was going to take place in the future why did you not charge a realistic and modest price for the current year, say 1988 or say 1989, and allow for a review of that charge every two years, three years, four years, which could be reviewed upwards taking account of the expenditure that had taken place in the preceding couple of years?

A. Mr. Walsh, we charged a very or proposed a very modest charge for an infrastructure of a huge value that couldn't be replicated. We also said in our agreement or our proposal, that we would have no price increase for three years, and thereafter the figures would be subject to CPI.

267 Q. I know there was the Consumer Price Index increase. Didn't the Minister in his directive also provide for a review in 18 months, and that review in the directive was written in stone in the contract between Century and RTE, isn't that right?

A. That's correct.

268 Q. Yes. So that if RTE felt that the maintenance and access charges were too low, they could put the figures together and ask for a review in 18 months?

A. RTE felt from the very first stage --

.

MR. HANRATTY: Sorry, Sir, my understanding was that the review related only to the maintenance charges, I am not sure if I am correct about that, but that there was no review envisaged with regard to access charges?

A. That's correct.

.

CHAIRMAN: That's right.

.

269 Q. MR. WALSH: I stand corrected on that. The fact of the matter, Mr. O'Brien, is that in 18 months or at any time after the 18 month period, no review was crystalised by RTE, they didn't ask for it?

A. No review was undertaken, for the simple reason that RTE couldn't get paid the pittance it was invoicing in the first place, so therefore what was the point in having a review with somebody who wasn't paying you the small amounts that were being invoiced on an on-going basis? There was no point at all.

270 Q. Not only that, you never complained that the - it is now 18 months on, "We put in a certain amount of extra new equipment and wires and so on, and we have had to maintain on so many call-outs because of the storms or whatever in 1989 and 1990, and it is clear that the ú50,000 per annum maintenance agreed is insufficient, and we are going to ask the Minister for a review." You never even complained that

the ú50,000 per annum was insufficient?

A. We said at the beginning it was insufficient. It remained insufficient.

271 Q. Yes.

A. And --

272 Q. Mr. Culleton said "Time alone will tell." Nobody ever got back to the Minister or the Department?

A. Century were actually in fact in serious financial trouble.

273 Q. Yes.

A. We were at - had huge difficulty in collecting the small amounts of money we were invoicing them. We gave them an ex gratia discount of 88,000 free of charge, if you like.

274 Q. That was in 1991, was it?

A. 1990.

275 Q. The end of 1990?

A. The end of 1990.

276 Q. Yes.

A. And we - or maybe it was very early 1991, I can't remember the exact date. That was on the basis of us trying somehow or other to get paid, and that position was maintained, and that was the position right through until they went out of business in December 1991.

277 Q. Yes. But meanwhile you never wrote to anybody, you never said "By the way we have looked at our figures, our management accounts, our cost centre figures, in fact the ú50,000 isn't enough." You never said that to anybody?

A. What was the point in writing to anybody when in fact we weren't being paid for the small amounts we were invoicing?

278 Q. When the next operator came along, independent operator,

Radio Ireland Today FM, I think they got their contract with you at the end of 1995, beginning of 1996. The figure for their maintenance contract was left at ú50,000, the same Century had agreed to in 1989?

A. Mr. Walsh, I don't feel free to talk about Radio Ireland.

I would just make one comment --

279 Q. Does the fact --

.

CHAIRMAN: Just a moment please, the witness must be entitled to answer the question.

A. I want to make one comment, it is this; the directive has been a source of problems to RTE, it has forced RTE ever since it was made into uneconomic contracts, over which we have no control.

280 Q. MR. WALSH: Yes, but has RTE not made a profit, an increasing profit every year since 1987?

A. If it has it has nothing to do with the charge it was making on its transmission services.

281 Q. Yes. The directive of Mr. Burke was in 1989, when Radio Ireland came in it was a different Minister from a different government party altogether, the maintenance charge was left at ú50,000. If RTE felt that that was not sufficient why did you not do something about it?

A. First of all I have to say to you I don't agree with the ú50,000 because I don't agree that it is accurate. I happen to know the figure, but I am not prepared to say it.

282 Q. At the start of the contract it was ú50,000 --

.

CHAIRMAN: Just a moment please, the witness must be allowed to answer the question.

A. Secondly, the Radio Ireland issue is a separate contract altogether with different people, but I can tell you that RTE was threatened by the IRTC umpteen times on several occasions, and made serious reductions on the basis of "Oh, the directive could be reissued" or "A new directive would be reissued", so it was held, if you like, over RTE's head and has been since, so it has been part of, I have mentioned here on Friday that RTE's whole debacle cost RTE about 20 million, I wasn't even taking that into account in that figure.

283 Q. But where do you get your 20 million, I must suggest to you that the figures don't add up at all?

A. We paid 17.9 million to the Exchequer, we wrote off 600,000. We did at least 400,000 to 500,000 worth of work for Century.

284 Q. Just take the 17.8 million; the 17.8 million was money you got in that RTE earned, isn't that right?

A. Yes.

285 Q. You got it in. It was profit, it was surplus?

A. It wasn't, it was paid to the Exchequer.

286 Q. No, before you paid it to the Exchequer it was surplus?

A. It was not RTE's money, it wasn't deemed to be RTE's money. In the accounting of RTE's accounts for those years it was put in with a note in the accounts to say that this money was not available to RTE in its normal business and in running the services for which the authority is responsible. That note was made in the accounts, because that figure, those figures and that money was not deemed to be RTE's money.

287 Q. I see. Now, just to take it very quickly in stages. That

money was dealt with like that because of the Broadcasting Act of 1990, is that the case, isn't it?

A. Yes.

288 Q. Because of the capping act?

A. Yes, the capping.

289 Q. Now, that act was brought to government, approved by the government, passed through the Dail; it passed through the Dail through various guises and was amended at a number of stages?

A. Yes.

290 Q. During the stages going through the House, RTE or its authority made various representations to the media and to the politicians of the various parties to try and get various things changed, isn't that right?

A. I am sure they did, yes.

291 Q. Yes. So they had an input at the legislative stage before the act came into force?

A. No, I wouldn't say that they had any input before the act came into force.

292 Q. I see.

A. In fact we knew nothing at all about the intention of the Minister in late '89 when he met the bankers of Century and when he was having correspondence from Mr. Stafford and others. We knew nothing about that at all, at all. We had no input whatsoever into it.

293 Q. Yes. But you made representations to the media, you had links to the media, you had letters to TD's or questions to TD's?

A. RTE does not make representations to the media.

294 Q. Yes. But I thought you said earlier, was it on Thursday or

Friday, that you had a PR lady, Fionnula Kelly, that you gave her certain facts and figures and that she spoke, was quoted in the journalist articles. Is that not a representation to the media?

A. No, it is to enable her to answer queries being put by journalists.

295 Q. If she answers queries and puts RTE's case in her answers, is that not a representation to the media?

A. I wouldn't say it is a representation, it is a reply to queries.

296 Q. But a representation is telling your side of the set, of the circumstances or putting your colour on the picture through your answer. Is that not a representation?

A. I can't understand why, how RTE could be deemed to be making representations of the media. RTE is a significant part of the media.

297 Q. Exactly. So it can tell its own story on the radio and television?

A. It doesn't do that.

298 Q. What did it do on the Today Tonight programme that we will see in the afternoon; was that not tell its own story?

A. We will to have see it first.

299 Q. But the act of 1990, when it came in it was the law of the land?

A. Yes.

300 Q. It had to be obeyed by RTE and everybody else?

A. Yes, it was.

301 Q. The 17.8 million that you got that was earned by RTE, kept aside and then paid under the law, passed by the Oireachtas through the central funds, isn't that right?

A. Correct.

302 Q. Just obeying the law?

A. Yes.

303 Q. But it is not a loss in that sense, a loss means you lost money, you had a loss in your commercial operation, you had a loan that went up?

A. It meant that income that RTE would otherwise have had and which up to then had the use of in its broadcasting services, was lost to it.

304 Q. Yes.

A. And I can't remember the exact out-turn for the year in question, but it would have pushed RTE into a loss making situation.

305 Q. It didn't, RTE wasn't in a loss making situation. Even after the 17 million went, it wasn't in a loss making situation, isn't that the reality?

A. I can't remember the exact details.

306 Q. If you look at the surplus of RTE in the 12 months to 1988, according to your annual accounts was 5.298 million, that is in 1988. Would you accept that?

A. If you say so.

307 Q. That had grown by the end of 1989, 5.98?

A. Yes.

308 Q. Now, at the end of 1990 with the benefit of 22 million from CableLink it went to 25.63 million?

A. No sorry, that was actually in fact a once-off profit on sale.

309 Q. I did say "with the benefit of CableLink"?

A. Oh, yes, yes.

310 Q. Y

A. But it wasn't a trading - what was the trading profit?

311 Q. The trading appears to be 3.14 million?

A. Of?

312 Q. In 1990?

A. Of a loss.

313 Q. Of a profit. Surplus. And then in 1990, that is the year ending the - sorry, the year ending the 31st of December, 1991, which would take into account the Broadcasting Act, etc. --

.

MR. HANRATTY: Sir, I think in fairness to the witness, if accounts are going to the put to the witness he should be provided with copies of them so he could see them.

.

CHAIRMAN: Not only that, I wholeheartedly agree with you. I am a bad mathematician; but if you have a surplus of 3.14 million and if you lose and have to pay over 17 million to an alternative authority, you certainly end up with a minus quantity?

A. You do.

.

CHAIRMAN: There is no doubt about that. It is now one o'clock and we will try and sort that out.

.

MR. WALSH: I have given Mr. Lynn the figures.

.

CHAIRMAN: Would you furnish the witness with the figures you are putting to him after lunch?

.

314 Q. MR. WALSH: I have done that. Sir, could I just point out

this figure I have pointed out is the net figure, it takes account of any monies that were paid to the Exchequer?

A. It doesn't.

315 Q. Where are the monies that were paid to the Exchequer?

A. They were paid to the Exchequer and they appeared in the 1993 accounts as a separate line, as an extraordinary item.

316 Q. They weren't dealt with in 1991 in 1992, so they were kept over for two or three years?

A. Legislation, new legislation was passed in the meantime and pending that, the enactment of that, the figures by agreement with the authorities were not paid until that year.

317 Q. Well, where is the 17.8 million in these figures, is it kept aside somewhere else?

A. It is included, it is included in advertising revenue, and you would want to look at the accounts for the year in question, read the note which in actual, which in actual fact defines the income and defines any issues relating to the income. In that note you will find, Mr. Walsh, that it says that RTE, that its income, its income, advertising revenue included money earned in excess of the cap, and therefore was not part of the, as it were long-term, if you like or whatever, I can't remember the exact words, but it was not part of RTE's revenue, but it is included in these figures here, because advertising was reported, including the capped amount. The capped amount was paid out subsequently as an extraordinary item.

318 Q. It didn't in that year, between 1990 and 1991, amount to 17.8 million?

A. It did.

319 Q. But weren't you allowed earn the same sum as you got paid
in the license fee --

A. We did.

320 Q. -- the previous year?

A. But if you recall commercial revenue was heavily in excess
of license revenue.

321 Q. Yes, but the license revenue the previous year was nearly
47 million, isn't that right, in the 12 months to 1990?

A. I don't have 1990 here in front of me, but I am looking at
1988, for example, and license fees were --

.

CHAIRMAN: Gentlemen, we are going to adjourn the Tribunal
until after lunch to enable figures - and let everybody
have a level playing pitch in which to answer questions.
Without the figures in front of him an accountant just
cannot be asked these questions. Sorry, cannot be expected
to reply, I am not saying you can't ask the questions, Mr.
Walsh.

.

MR. WALSH: Just to clarify, I have given the sheet to Mr.
Lynn.

.

CHAIRMAN: He must have an opportunity of having these
figures in front of him. They are very complex and they
are ten years ago.

.

MR. WALSH: Yes. Very good.

.

CHAIRMAN: Now, the next thing that arises is, I am told
that the video-link, video projection will be available as

of half past two, is that right? Now, do we start - how long more?

.

MR. HANRATTY: I think the engineer needs the hall to test it and --

.

CHAIRMAN: Well then --

.

MR. HANRATTY: We can't be at hearing while he is doing that.

.

CHAIRMAN: We will resume then and deal with the video at half past two.

.

MR. HANRATTY: Yes.

.

CHAIRMAN: Then whatever cross-examination is left it can be dealt with after that.

.

THE HEARING THEN ADJOURNED FOR LUNCH.

.

.

.

.

.

.

.

.

.

.

.

THE HEARING RESUMED AFTER LUNCH AS FOLLOWS:

.

MR. HANRATTY: With your permission, Sir, we will now play the video.

.

VIDEO EXHIBIT NO. 1 PRESENTED FOR VIEWING TO THE TRIBUNAL.

.

MR. HANRATTY: That's the portion of that video Sir that we are interested in, and perhaps on the transcript if that could be identified as Video Exhibit No. 1. That Sir, is the Today Tonight programme which was broadcast on the 18th of January, of 1989 which was the date the IRTC decided to award the franchise to Century. The next video, which I think can conveniently be identified as Video Exhibit No. 2, was broadcast in February of 1990. If we could see that one now.

.

VIDEO EXHIBIT NO. 2 PRESENTED FOR VIEWING TO THE TRIBUNAL.

.

MR. HANRATTY: I think that is the end of the tape as far as it is relevant, Sir.

.

CHAIRMAN: Mr. Walsh was on his feet just before lunch.

.

MR. WALSH: Yes, with your permission, Sir, I would propose pose to defer to Mr. Gavigan since it was he that raised the video. He is here now, so he could - it might be a convenient way of dealing with the subject.

.

MR. GAVIGAN: I am happy enough with that, Sir. Just in advance of going back to Mr. O'Brien, in relation to the contents of the video, I wonder would it be convenient for the Tribunal to rise for perhaps five minutes so that I could take instructions from my client, particularly in relation to the contents of the video, please? I don't want to delay matters.

.

CHAIRMAN: There is no problem but I am just wondering is five minutes a reasonably fair opportunity to you? I don't want to take you short.

.

MR. GAVIGAN: I appreciate that, Chairman.

.

CHAIRMAN: I also want an effective consultation because if you get it wrong - I beg your pardon - if you misunderstand your instructions then a lot of confusion will - we will waste time.

.

MR. GAVIGAN: I only propose to ask maybe one or two questions in relation to the video. I just wish to clarify matters.

.

CHAIRMAN: I will rise for five minutes. I want to get on with business. At the same time I want to do you justice.

.

MR. GAVIGAN: Thank you, Chairman.

.

.

.

THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

CHAIRMAN: Mr. Gavigan?

MR. GAVIGAN: Thanks very much, Mr. Chairman.

MR. GERRY O'BRIEN THEN RETURNED TO THE WITNESS-BOX AND CONTINUED TO BE CROSS EXAMINED BY MR. GAVIGAN AS FOLLOWS:

322 Q. Mr. O'Brien, just to refresh your memory in relation to the context where this question arose, I was asking you about RTE's attitude to Century, and I was going through your evidence where you said that a friendly and helpful relationship existed between, as far as you were concerned, between RTE and Century. Do you recall that particular part of your evidence?

A. Yes, yes.

323 Q. And the only question that I wanted to put in relation to this video was that this programme was hardly an example of RTE's friendly and helpful attitude to Century. What do you have to say in relation to that?

A. Well, a number of things. First of all the programme editors and the people in charge of programming have no relationship at all or no hand, act or part in the business side of RTE. It has total editorial independence. Secondly, if you are asking me about that video, it seemed to me to be very professional and I saw no evidence of hostility at all.

324 Q. I put it to you that in the first part of the video it was littered with patent inaccuracies, as Mr. Barry pointed out

in the second half?

- A. Well, Mr. Gavigan, if you are asking me was, did this represent RTE's attitude when Century were preparing to go on air, first of all that particular programme was made six months after it had already gone on air and, as I said to you, I saw no hostility. There may be inaccuracies. I don't have the highest regard for journalists and figures, as I mentioned earlier, but I don't want to go back into that again, but I must say that I thought that that was very professional, I have to say, and I saw no evidence of any bad faith whatsoever.

.

MR. HANRATTY: Sir, I think it would be desirable and indeed helpful if, insofar as it is being put that there was any particular inaccuracy or inaccuracies in the video, that they should be identified so, that the witness can deal with them individually, rather than it being put on a global basis.

.

MR. GAVIGAN: I am only pointing them out insofar as Mr. Barry refuted what he said were the inaccuracies in the programme

.

CHAIRMAN: - wait now, I don't want to be misunderstood in this. What a witness says as to the accuracies or inaccuracies is the witness' approach to a particular problem. Accuracy or inaccuracy is a matter of fact. Now,, either you establish, you point out that Mr. Barry, that the statement made by the programme makers or on behalf of RTE saying X, Mr. Barry said Y and the evidence

is that Mr. Barry is correct. If that - that is the situation, that is the whole purpose of the cross-examination, is to establish the inaccuracy or the implausibility of a particular premise. Now, simply saying, looking at a witness and saying Mr. Barry, this witness claimed, said they were inaccurate, does not mean the statement was in itself inaccurate. I don't want something misunderstood. I am not being judgemental in relation to Mr. Barry.

.

MR. GAVIGAN: I am not saying, Chairman, whether it was inaccurate, or accurate for that matter. All I am saying is that it was pointed out by Mr. Barry in the film that there were certain inaccuracies in the first part of the film.

.

CHAIRMAN: Perhaps I am not making myself clear. What Mr. - Mr. Barry's view of what was said in the film does not make the facts accurate or inaccurate. They are based and independent. There has been a lot said here today which would appear to be at variance with Mr. Barry's. Again, I don't want to get into a judgemental situation, I am merely pointing out that there are two sides to this story. And Mr. Barry was simply propounding one proposition but he certainly didn't give any statement on camera which supports his point of view or destroys any other point of view. He simply made a comment. It is no more or no less, and he is not on oath on the occasion in question.

.

MR. GAVIGAN: I appreciate that. I don't want to go into

the specifics of whether the information given in the first part was accurate and whether or not Mr. Barry was correct, Mr. Chairman, or incorrect, as the case may be, in pointing out the inaccuracies. I don't think this witness is perhaps in a position to deal with whether or not the statements made in the first part of the film were accurate or inaccurate. And I will leave it at that, Mr. Chairman,

.

CHAIRMAN: Very good.

.

MR. GAVIGAN: Thanks, Mr. O'Brien?

A. Thank you.

.

CHAIRMAN: Anybody else want to deal - sorry, Mr. Walsh, you were in the middle of a different topic?

.

MR. WALSH: Yes. Anybody else --

.

CHAIRMAN: Do you want to continue on the topic which you were on or deal with the film as it is at the moment. Do you want to --

.

MR. WALSH: I have no question on the videos.

.

CHAIRMAN: You have no questions on the video.

.

MR. WALSH: It doesn't concern me. It is a matter between RTE and the Century.

.

CHAIRMAN: Do you want to go on with the remainder, with

your own topics?

.

MR. WALSH: If that is acceptable.

.

CHAIRMAN: Certainly, Mr. Walsh.

.

THE WITNESS CONTINUED TO BE CROSS EXAMINED AS FOLLOWS BY

MR. WALSH:

325 Q. Sorry for that interruption, Mr. O'Brien. If we can just go back, we were agreeing before lunch that when the government proposed legislation through the Dail and the Senate, and it was passed by the Dail an Senate, the Oireachtas, it is up to RTE, like every other citizen and body in the country, to obey the law, isn't that right?

A. Yes.

326 Q. And in fact the business of RTE is the production, broadcasting of programmes for themselves and others, isn't that right?

A. Yes.

327 Q. And they have to do so on certain frequencies on television and radio?

A. Yes.

328 Q. And the frequencies, as we know from the evidence that has been given to the Tribunal, essentially are obtained by the government, or by the Department, from the various international conventions and agreements and once the government has the permission of the world bodies, of the European Broadcasting Bodies to use these frequencies, it then licenses people within the State to broadcast television and radio on particular frequencies, isn't that

the case?

A. Yes.

329 Q. And the government, if they wish, can take the licenses off anybody they like, be they Century, Radio Ireland, and if they wanted to or had a change of mind and the Dail had a change of mind they could take the licenses off RTE, for example, and close down RTE if they wanted to?

A. I am sure they could.

330 Q. They could. And the effect of the Broadcasting Act of 1990, according to you, is that in 1993 some 17.8 million that RTE had earned from advertising, they paid back to the Exchequer?

A. Yes.

331 Q. Yes. So that was money given by RTE to the government for the use of the taxpayer, so-to-speak?

A. Went into the general fund.

332 Q. Went into the general fund. Those times, as you will remember, probably an accountant with particular knowledge, in the late 1980's early 1990s, were times of economic strife relative to the economic fortunes of the country today?

A. They probably were.

333 Q. Yes. And every million or 100,000 to the Central Exchequer funds was very well put to the government?

A. Yes.

334 Q. And I think RTE in the previous years had actually traded fairly well also and had repaid Exchequer borrowings, isn't that right?

A. Yes, we were repaying Exchequer borrowings since 1981.

335 Q. Did you complete repaying all Exchequer borrowings in the

1980's so that there was nothing outstanding?

A. No, the final amount was repaid after the sale of CableLink which was in 1990.

336 Q. So after the sale of CableLink you repaid everything?

A. Yes.

337 Q. And I think the sale of CableLink realised something over 20 million and you were able to use that to repay Exchequer borrowings?

A. Correct.

338 Q. I see. So around 1990 the Exchequer borrowings, I think the deficit at that stage was about 16 million in round terms, can you remember that?

A. Which deficit?

339 Q. The amount you owed to the Exchequer was about 16 million?

A. That was the amount owed outstanding on Exchequer advances, yes.

340 Q. You paid that in the year, sometime before the 31st of December 1990, was it?

A. Yes.

341 Q. And then monies that were earned from the coming into force of the Broadcasting Act in approximately October of 1990, any cap monies weren't repaid until some time in 1993, almost three years later?

A. Excuse me, yes, I think they were paid, repaid in 1993.

342 Q. Yes. But you held on to the money for a couple of years somewhere?

A. Well, the legislation hadn't been passed. Until amending legislation was passed the money couldn't be repaid.

343 Q. No, no, but you had the money and you didn't use it properly. You held on to it until the legislation was

changed?

A. Sorry, the money was left aside, it wasn't RTE's money.

The money had been left aside and was not available to RTE to use in its ordinary business.

344 Q. I see. But ultimately representations were made by and on behalf of RTE and others to have the legislation changed and the government of the day changed the legislation?

A. In 1993, yes.

345 Q. In 1993 and provision was made at that time for RTE to pay over the money it had earned, so to speak?

A. Correct.

346 Q. To the government?

A. Correct.

347 Q. Yes, I see. But RTE was trading very well, I suggest to you, from 1986 to 1991, the years we are concerned with. Do you remember those details? I handed in a summary of the financial statistics for the five years. I think Mr. Lynn has them up on screen. The one on screen shows 199 - 1984, sorry Mr. Lynn now has 1997 to 1991 on screen. Do you see those?

A. I do, I do.

348 Q. And if I just go along the very top line, the top column deals with income and moving from right to left deals with 1987 to 1991. You can see there for the year ending, the financial year of RTE used to be the 30th of September and then in 1987 it was changed to the 31st of December?

A. Correct.

349 Q. And that explains the 15 month period for 1987?

A. Correct.

350 Q. So the figures appear extra large but it is because they

take 15 months into account?

A. Yes.

351 Q. And the license fee income on that year, those 15 months, was 53 million-odd?

A. Yes.

352 Q. Isn't that right. Then for the year ended, 12 months ended end of December of '88 was almost, 43.6 million approximately?

A. Yes.

353 Q. And then the next 12 months it had gone up to 45.1 million?

A. Mm-hmm.

354 Q. And for the year ended 31st of December, 1990 had increased to 46.9 million?

A. Yes.

355 Q. For the 12 months ended the 31st of December, 1991 had increased to 48.9 million. The next column gives the advertising, which is a composite figure for the TV stations, two stations, and all the radio stations?

A. Yes, in this summary it is.

356 Q. I will leave aside the 15 months of 87. If we look at 1988 it is 47.9 million there so it is slightly higher than the licensing fees?

A. Yes.

357 Q. In 1989 it is 55.2 million approximately?

A. Yes.

358 Q. In 1990 it is increased slightly to 56.0 million?

A. Mm-hmm, yes.

359 Q. And then it went down slightly in 1991 to 55.05 million?

A. Yes.

360 Q. And then the other columns go on to deal with other

broadcasting income and we can see that sometime around 1990 the RTE Commercial Enterprises limited company was set up?

A. Yes.

361 Q. Is that the company that runs the RTE Guide?

A. Yes.

362 Q. And other publications?

A. Yes, yes.

363 Q. And its income increased from 1990 at 4.8 million to 9 million then?

A. Yes, yes.

364 Q. Yes. Is that right. Then the other figures go up to, there is a heading for expenditure, there is a heading for excess of income over expenditure which is in the middle of the page?

A. Mm-hmm.

365 Q. And then if you go down to the bottom of that particular column towards the centre of the page there is a heading "surplus attributable to RTE group after extraordinary items"?

A. Yes.

366 Q. And you will see in the 1987, the 15 months was 8.9 million. In 1988 it is 5.3 million and in 1989 it is 5.98 million. Because of the 22 million from the sale of the CableLink shares, it increased to 25.6 million in 1990?

A. Mm-hmm.

367 Q. Isn't that right?

A. Correct.

368 Q. And then the surplus in 1991 was 8.77 million?

A. Correct.

369 Q. And looking at the overall value or asset situation of the company, there is a balance sheet summary then dealing with the matter, is that the way, do I read that correct?

A. That's correct, yes.

370 Q. If you go down to the last column of that, going over to the right we see net assets 31.7 million approximately in 1987. It is 36.4 million in 1988, 43 million in 1989, 49 million in 1990, and 57.8 million in 1991.

A. Yes.

371 Q. I presume that progressive increase continued from 1991 on to the year 2000?

A. Well, I presume it did.

372 Q. Yes. I think if Mr. Lynn could look at the other sheet which shows the figures for the 1980's. I think the - this sheet, Mr. Chairman, shows the period 1984 to 1988. Again if you go to, say, the period, the 12 months to the end of 1996, the net asset position there was 26.133 million?

A. 1986?

373 Q. It was 12 months to the 30th of September 1986?

A. Yes.

374 Q. And just on the income side the license fee was 38 million, the advertising was 42 million and then there was a gradual increase of the net asset position then, it joins up with the previous sheet from then on. And so we see that the progression there is from the year ending the 30th of September, 1986 it is 26 million, the year ending the 31st of December, 1991 is 57.8 million, isn't at that correct? So between those two periods?

A. Yes, yes.

375 Q. The net assets of the company have practically doubled?

A. Yes.

376 Q. And that approximately coincides with the period in office of Mr. Burke as Minister for Communications, the net position of RTE, the net asset and value position of RTE doubled over those couple of years, isn't that what the figures show?

A. Yes, it does, yes.

377 Q. And embedded in those figures is the fact that additionally RTE paid off approximately 16 million to the Exchequer and then had some part of the 17.8 million which they eventually paid over in 1993?

A. Well, that wouldn't affect the figures.

378 Q. I see.

A. It wouldn't affect those figures.

379 Q. Isn't the other thing that when Mr. Burke came into office as Minister for Communications, RTE, do you know that RTE requested him to extend the broadcasting time or hours of the day for both radio and television and he consented to that extension of time, do you know that, in March of 1997?

A. I couldn't say 'yes' or 'no', but if we did, we did.

380 Q. And obviously that would help cope with the pirates and help generate advertising activity if the television programmes could start during the daytime and go on until nighttime?

A. The pirates were really on radio.

381 Q. On television if they could extend the broadcasting into the daytime and late at night it would obviously help advertising revenue?

A. It would also increase costs and advertising --

382 Q. Forever the accountant, forever the accountant?

A. And advertising on the afternoon isn't very lucrative, Mr. Walsh.

383 Q. Surely they can run some of these programmes automatically?

A. Not at all.

384 Q. Not at all?

A. Programmes have to be made.

385 Q. Yes.

A. It takes people.

386 Q. Yes.

A. I should also say, Mr. Walsh, just in case it has escaped your notice, that one of the main drivers of the increase in RTE's assets was in fact a valuable shareholding in CableLink.

387 Q. I highlighted that from the very start by saying to you 'Look, that figure included the 22 million'?

A. Sure.

388 Q. Now, the question of cross-subsidisation that you mentioned that, I think it was one of the last questions you answered before I started to cross-examine you. You said there was no cross-subsidisation. I, what I understand to be cross subsidising or am I being completely wrong about that, would be during an add break on RTE 1 television, there would be a minute or two minutes given up to telling you what was going to be on later that night or tomorrow on either RTE 1 or Network 2 television, so that would be advertising for free, so to speak. I think that is one of the complaints people have about advertising. And similarly with the radio, on Radio 1 there might be during the add break an information add from, on RTE 1 telling you

that 'By the way, if you tune over to 2FM now you can hear Gerry Ryan' or 'You can hear the match down in Limerick' or whatever. But that is what I think is the cross-subsidisation, isn't that right?

A. I don't know that it is. Station announcements were always a part of RTE's service. It is a public service broadcaster.

389 Q. I see. No, no, but this would be station advertisements advertising Coronation Street at the time when you were allowed to sell Coronation Street, isn't that right? You could say on RTE 'Listen, tune to 2FM at two o'clock and you would get Coronation Street' like you see at the moment on RTE 1?

A. Yes.

390 Q. 'Tune in at 7:30, you will see Gay Byrne on Who Wants To Be A Millionaire?'

A. Yes.

391 Q. If TV3 want to advertise a programme they have to pay for it, isn't that right? They are a competitor. If they want to advertise that they have a quiz show they are going to have to pay the market rate?

A. If we want to advertise on TV3 we have to pay them.

392 Q. Exactly. In the beginning one of the complaints in the paperwork, one of the complaints of Mr. Stafford in his evidence was that you would not carry any advertising on radio or television for Century Radio, which deprived them of the best means of promotion, that they asked you to carry adds for their existence and for their programmes, both on radio and television, and you wouldn't do it?

A. I believe so.

393 Q. And it was at the very end, just before the liquidator was appointed, there may have been some concession and you carried some advertising. Until the last minute you didn't carry any advertising?

A. I, yes, I think so.

394 Q. That was, in the context of what we saw in the video it seems to have been an important strategic decision which was taken by RTE which adversely affected their viability, would you not agree?

A. Mr. Walsh, I am really not involved in that aspect of RTE, but just to say to you the convention had been basically, in Britain, for example, BBC didn't carry ITV programme advertisements and neither did the IBA carry BBC. So it was a convention, if you like, that existed in broadcasting and we simply followed it.

395 Q. Yes. And before the independents, independent radio started broadcasting were RTE afraid that it would cause them losses in their money, in their annual income, the existence of independents?

A. I mean if you introduce more stations, as it were, or more programmes or alternatives, it, will have an impact on audience levels. And as we saw earlier, audience levels generate advertising and advertising is directly related to audience levels.

396 Q. Yes, we know from the evidence that RTE heavily promoted 2FM before the launch of Century, isn't that the fact?

A. I can't recall Mr. Walsh. I don't believe, I am not sure that we did.

397 Q. I put, I thought you conceded that there was a 2 million pound promotion?

A. I didn't. I said I don't think that RTE ever spent two million pounds on their promotion.

398 Q. There was other evidence given that they thought it was one million. Mr. Stafford thought it was one million?

A. I can't comment. I don't have the figures in front of me.

399 Q. But if money was spent on promotion it would obviously have had an adverse effect on the advertising market as far as Century are concerned because it would tend to make the advertisers stay with the known product of RTE?

A. - I think.

400 Q. - would that be a fair assumption?

A. - I would think myself really that every organisation carries out promotion of its product.

401 Q. Yes?

A. RTE did it long before Century.

402 Q. I am not criticising RTE for doing it at all?

A. Yes, sorry, the point I was actually going to make that in fact audiences tend to follow the programmes they wish to see and hear.

403 Q. Yes. But whether they did or they didn't promote it, the figures I briefly brought you through from the financial synopsis of the various annual reports of RTE show that the license fee income rose and that the advertising income rose steadily from the mid-1980's up until 1991, isn't that right?

A. Yes, but I mean the market was growing anyway.

404 Q. Yes?

A. Mm-hmm.

405 Q. I see.

A. And in addition to that there was inflation and so on and

price increases --

406 Q. But the bottom line improved by RTE all along, isn't that right?

A. Yes, certainly we were having a good run then, yes.

407 Q. Yes. And at any stage the Exchequer borrowings that were repaid in 1990 or the monies that were paid under the cap, the new cap Act in 1993, they represented only a small percentage of the license fee that was granted in any year to RTE. The license fee that was granted, I think it was always up around the 50 million?

A. - well, in.

408 Q. - pounds per annum?

A. In 1991 it was, yeah, it was exactly 49 million.

409 Q. 49 million.

A. Mm-hmm.

410 Q. In 1990 it was, in fact, 53 million, so paying, repaying Exchequer borrowings of 16 million out of 53 million, it is still a very good deal for RTE?

A. In 1990 the advertising, the license revenue for RTE was 6.9 million.

411 Q. Sorry. It is still a fairly good, healthy percentage in favour of RTE. You get in license fees of something short of 50 million and you pay out 16 million?

A. Well, there are very heavy commitments against fees. The programming and the services that RTE is providing are actually, and were, reliant and had eaten up all of the license and advertising revenue in the years prior to the cap.

412 Q. The license fee income to RTE is a public subsidy, or it is a donation of public money from the government, to RTE to

enable it to survive and to enable it?

A. - to provide public service broadcasting.

413 Q. To an accountant it is a grant or a subsidy?

A. It is a grant in aid as it is described officially.

414 Q. Beside the license fee was there any other public money paid to RTE in the 1980's an 1990s?

A. Not that I recall except for the setting up of Teilifis na Gaelige, which happened long after that.

415 Q. Yes, I see.

A. But that was, then equally RTE is providing free programming to Teilifis na Gaelige.

416 Q. Yes. How much money, as a matter of interest, did RTE get from the Central Exchequer in 1992, 1993, 1994, 1995? Do you know that offhand?

A. For what?

417 Q. For licence fee?

A. It is here right in front of us. In 1992, 1993, I don't have 1993 but in 1992 I have the figures here, in 1992 license fee revenue was 48.9 million. The same figure as in 1991.

418 Q. And after the capping legislation did that income go up?

A. License fee wasn't related at all to the capital.

419 Q. No, no, but after the capping legislation was changed in 1993 did the license fee income obtained by RTE increase?

A. No, no.

420 Q. Yes. So?

A. The license fee is related to the number people buying a television license.

421 Q. I know but the receipt, how much money did you receive afterwards in 1994, 1995, 1996?

A. Very modest increases, I can assure you, because the license numbers were not growing very fast. And there was no rate increase until 1996.

422 Q. Yes. And after the rate increase in 1996 obviously that meant a financial increase in the amount of money?

A. It would have except for all of that money was spent in providing programming for Teilifís na Gaelige.

423 Q. But in 1996, are we talking about a license fee increase of up to about 70 million or what sort of money are we talking about?

A. Oh, no, the license fee increase was very modest, 8 million in total in one year, it came into effect in September 1996.

424 Q. So it means that the licence fee income of RTE for that year, allowing for modest increases every year, would bring it up to the late 50's or early 60's. Did it - what was the figure?

A. I can't really recall just off the top of my head the amount of increase in 1996 when it happened, which was for the last quarter, amounted to something in the region of 3.6 million.

425 Q. Yes, can you remember the last figures for the last year, the ending in 1999, what sort of money are we talking about in terms of license fee receipts by RTE?

A. Well, license numbers have grown considerably because the number of households has grown considerably.

426 Q. Yes?

A. And the license revenue, from memory, is around 64 million, I think, now.

427 Q. Yes, I see. And has advertising revenue also increased

with the --

A. Yes, in far greater proportion.

428 Q. What sort of money did RTE-

.

CHAIRMAN: - Mr. Walsh, what possible relevance has this information to a matter that took place in '88/'89, 1991, 1992, what possible relevance?

.

MR. WALSH: Just to show whatever took place in 1988 had no adverse effect to RTE.

.

MR. O'HIGGINS: Not since they repealed the legislation.

.

MR. WALSH: Even before that. That is the only possible relevance.

.

CHAIRMAN: Tell me this; in addition to that valuable piece of information, do you think you are going to be any substantial period, because otherwise I will open again at half past ten tomorrow morning?

.

MR. WALSH: A couple of more minutes. I will endeavour, I am conscious that we have lost time.

.

CHAIRMAN: Don't let's delay you.

429 Q. MR. WALSH: Yes. Now, in terms of the number of employees in the RTE company, leaving aside the subsidiaries, I think the figures that Mr. Lynn had on the summary of financial statistics for the five years ending 1991, if Mr. Lynn

could be so good to put that up again.

.
If you could just scroll up or scroll down the page a little bit towards the end of the page, please.

.
I think the first column on the right, it shows that the number of employees in 1987 is, I think, were 2,100?

A. Yes.

430 Q. Were 2,100 and then at the end of 1991 were 1,933?

A. Yes.

431 Q. Approximately 169 in the difference?

A. Yes.

432 Q. And that is over, that gradually decreased over that, those five years.

A. Yes.

433 Q. Isn't that right?

A. Yes, yes.

434 Q. There was a gradual decrease?

A. Yes.

435 Q. And RTE had before the broad, any of the broadcasting legislation under review by this Tribunal, had commissioned a consultants report, I think what is called the 'SKC Report on Challenge and Change'?

A. That is correct.

436 Q. And that had committed you to staff reductions anyway?

A. It did.

437 Q. There were no dramatic staff reductions, just looking at the numbers here. In percentage terms they are small. In fact, in numerical terms they are small and might be accounted by some normal retirement and some early

retirements?

A. My recollection was that post the capping roughly 200 people, was forcible retirement of roughly 200 people - not forcible - but voluntary early retirement, I am sorry my apologies.

438 Q. But you would have to be seeking some of those anyway under the programme for change, or whatever it was called, under the SKC report, isn't that right?

A. Well, I think by then, the SKC report came in, in 1986, and by 1990 was sort of completed and so on, well completed before that. And then there was a new round of staff reductions and, in fact, I think in 1991 or thereabouts we spent around five million pounds on voluntary early retirements.

439 Q. I see. But the company benefitted from that in that it become very healthy and a slimmed- down company that went on from strength to strength financially, isn't that a fair synopsis of the financial situation after 1990?

A. I wouldn't think so. I wouldn't think it was attributable to that at all.

440 Q. Well, the company continued to prosper?

A. Well, the economy was growing.

441 Q. I see. And when you bought, when RTE bought the equipment, the Century equipment off the liquidator, how much did it cost?

A. How much did RTE pay the liquidator?

442 Q. Yes?

A. Again, from memory ú145,000 or thereabouts.

443 Q. Yes. How much had it cost Century approximately two years earlier?

A. That I can't say. I really don't know.

444 Q. If we were going on the estimates that were being proposed in correspondence, it would be approximately a million pounds?

A. Well, Mr. Walsh, the problem with this is that, in fact, Century had postponed development of their network very significantly in 1990 and early 1990, shortly before going on air.

445 Q. Yes?

A. So I couldn't say. But it certainly wasn't a million or anything remotely like it. I don't know what they spent.

446 Q. I see. Can you recall how much Century actually paid over the years, how much did they pay RTE? I know you said that there were a lot of bills outstanding?

A. Unfortunately I didn't have sufficient records to say how much they paid. But in terms of the services that were rendered to them.

447 Q. - yes?

A. - not a great deal, I would think.

448 Q. Yes. But they did pay some of the bills but when they went into liquidation there were bills outstanding?

A. Yes, ú600,000 worth.

449 Q. Would that have been accounted for in the annual accounts as a debt?

A. A bad debt.

450 Q. A bad debt. I see. What label do you give it in the annual accounts, as a matter of interest?

A. It would be written off probably in bad debts or bad debts provision.

451 Q. Yes. I see. And I have just one other thing I want to

mention to you.

.

I have just one other topic. The various civil servants that gave evidence here, I don't know if you were here for them, Mr. Grant, Mr. McDonagh, Mr. O'Morain?

A. Partially for Mr. Grant but I was here for all of Mr. O'Morain's and all of Mr. McDonagh's.

452 Q. Yes. I think that the effect of their evidence on the pre-directive state of affairs vis-a-vis RTE, that is the Department with RTE, was that they had considered that they had consulted with RTE from the 5th of January until some time in February when there was toing and froing between meetings and information being transferred by you to the Department, they considered that consultation. That was the effect of their evidence?

A. Well, Mr. Walsh, the only consultation that we had with the Department in connection with the transmission fees was between the 5th and the 11th of January, 1989.

453 Q. Yes. But they had sought further information from you from time to time after that and you had furnished it. And then there was the 692 quotation --

.

CHAIRMAN: If, Mr. Walsh, if you want to put that question to the witness you are going to have to put it specifically; what additional information did they seek or did they give? You can't make generalisations like that.

.

MR. WALSH: Sorry, Sir, I don't want to go through every document individually.

.

CHAIRMAN: You have to make your mind up what you are trying to establish and what validity is to be given to what evidence you do establish.

MR. WALSH: Yes, Sir. I am saying there were numerous meeting and discussions from early January, that is the 5th of January, to early February, whereby there were at least two meetings, two formal meetings and I think in your evidence you said there were a number of informal meetings where you brought your books and papers and sat down and showed your books and papers and management accounts to the Department?

A. - yes.

454 Q. - officials. I think that was in January?

A. That was between the 5th and the 11th of January.

455 Q. Yes?

A. But there was no consultation, no discussions with the Department about the figures again until the Minister, I think it was, we established, spoke to Mr. Finn on the 14th of February. Following that the figure was brought down from 692 to 614.

456 Q. Yes, but as a result of the first round the figure was 692?

A. That was the agreed figure with the Department on the 11th of January, 1989.

457 Q. That's right. But as far as RTE were concerned, at that time your bottom line was 692 plus the extras. That was the figure you would give the service for; 692 for the specified items, plus the extras, just as the project management and so on?

A. They weren't exactly extras. That was the --

458 Q. - they weren't specified as being included in the 692?

A. No, no, they weren't, they were once-off charges in relation to putting the capital project in place.

459 Q. Yes. But that was your bottom line at that time in January?

A. 692 was for the annual FM charges.

460 Q. Yes. In January that was your bottom line?

A. Well, that was the figure that was agreed for FM charges.

461 Q. Yes?

A. Yes.

462 Q. Okay. And then after Mr. Finn and Mr. Burke met there was a concession on RTE's behalf and that figure was reduced to 614,000?

A. For FM radio.

.

CHAIRMAN: Did somebody not make a comment at that point on the 614, its appropriateness to Irish circumstances?

.

463 Q. MR. WALSH: Yes. Now, so the 614 was the bottom line as far as RTE were concerned, for sure, on that occasion?

A. That was the figure that Mr. Burke referred to in his letter.

464 Q. - of the 14th --

A. - of not being unreasonable in Irish circumstances, yes.

465 Q. Yes. So as far as RTE were concerned it was agreed and everything was certain at 614?

A. For FM. AM had already been mentioned. It was set down on paper what the AM charges were. They were not included in that figure.

466 Q. I know, but I think it would be fair to say that you could see that ambiguities and lack of clarity do arise if you

just look at a couple of the letters around that time, because, for example, the Departmental three-page memorandum had one page of FM costings, had one page of AM costings and the third page was the financial schedule which you will have to turn to 90 degrees to read - and that made no reference to the AM costings at all. Do you remember that page?

A. Just to make it clear.

467 Q. Yes?

A. Those figures were agreed with the Department. The first page set out what was required, the annual charges for the FM service.

468 Q. Yes?

A. In addition, project management and installation fees of ú250,000 and 125,000.

469 Q. Yes, I know that?

A. - on the second sheet.

470 Q. - I have said that, we agree with that.

.

MR. HANRATTY: I think he should be allowed finish his answer

.

CHAIRMAN: I think so too.

.

471 Q. MR. WALSH: Just, it was late-in-the-day. There is no disagreement on it, I was just trying to get to the point initially, which is that the third page of the schedule, Mr. O'Brien, that makes no reference to AM?

A. No, the third page was to do with the phasing-in of FM.

There would be no phasing-in of AM because there are two

stations involved, Cork and Dublin. It either happened or it didn't happened.

472 Q. And the letter from Mr. Finn referring to the 614, and the letter from Mr. Burke referring to the 614 they made no specific reference to AM or FM, they just talk about the provision of a transmission service?

A. It was clearly stated that that related to FM.

473 Q. I don't think so. I beg to differ. I think the two letters simply say "provision of the service". They didn't actually distinguish between FM and AM?

A. The figure of ú692,000 was based on a paper which clearly said FM radio service. That was the only figure put to RTE or put to Mr. Finn by Mr., by the Minister, which lead to a reduction in that figure.

474 Q. - yes?

A. - only. And that was the only figure that was changed. The AM figures remained as previously agreed with the Department.

475 Q. Yes. When you say the RTE offer is ú614,000, that isn't the be-all and end-all of the situation. It isn't really 614,000, it is 614,000 plus the AM and plus --

.

CHAIRMAN: Sorry, I must intervene here, the 614,000 was the bottom line for the annual payment.

.

MR. WALSH: Yes.

.

CHAIRMAN: The other figures were either once-off figures or capital figures. Now, we just cannot fire buckshot in the hope that you will hit a grouse.

.
MR. WALSH: No, Sir, you misunderstand me. That is not what I am saying. The question I make is drawing exactly that distinction to the witness', attention that the 614 is a limited quotation for a specific item which is the annual FM charges.

.
CHAIRMAN: That was made quite clear in the correspondence. There is no doubt about that. There is also no doubt that the AM charges were made quite clear and that the once-off charges were made quite clear.

.
MR. WALSH: Yes.

.
CHAIRMAN: These were all pieces of information which were supplied one after the other and any person who read them had to get that message.

.
MR. WALSH: Yes. I am just saying that there is evidence before you, Mr. Chairman, that the, from the civil servants, that the AM seems to have got forgotten and that maybe the parties got muddled.

.
CHAIRMAN: It didn't get forgotten by the civil servants. Nor did it get forgotten by RTE. I will not go on to say who it did get forgotten by.

.
MR. WALSH: No, I am just saying, My Lord, or sorry, Mr. Chairman, that is what the actual evidence was because there wasn't a continuing definite reference in the

correspondence. I know if you read all the documentation together it is obvious where the 614 comes from because it comes from the 692. It is obvious if you read the document before that, it is obvious where the 692.

.
CHAIRMAN: It is late in the afternoon. I won't pursue that.

.
MR. HANRATTY: Can I suggest Sir, I am subject to correction but I am not aware of any evidence from any of the Departmental witnesses of any confusion on their part. Now, if Mr. Walsh is suggesting to the witness, it is an important point, and if it is being suggested to the witness that there was, in fact, some confusion on somebody's part I think the point in the transcript where this confusion arises ought to be identified so it can be revisited and put specifically to the witness. The witness himself is clear on his own evidence. I think what Mr. Walsh is saying is that there was, in fact, confusion on some civil servant's part on whether or not AM was included. So, could I respectfully suggest, Sir, that that particular point be left over until the morning so that we can try and identify the point in the transcript where this alleged confusion may be found.

.
CHAIRMAN: Half past ten --

.
MR. HANRATTY: Could I also say Sir, that in relation to video exhibit No. 2, there is a transcript available of the text, that is the transmission of the Today Tonight on the

22nd of February, 1990. It has, in fact, been circulated to the parties. It can be found at page 2798. The loose copies are available here in the room for anybody that wants them or anybody that wants a loose copy.

.

CHAIRMAN: Tomorrow morning at half past ten.

.

THE HEARING THEN ADJOURNED UNTIL THE FOLLOWING MORNING, WE HAD THE 8TH OF NOVEMBER, 2000, AT 10:30 AM

.

