

THE HEARING RESUMED ON THE 20TH OF NOVEMBER, 2000, AS

FOLLOWS:

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CHAIRMAN: Good morning everyone.

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MR. O'NEILL: Good morning Sir.

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The next witness to be called will be Mr. Sean Connolly.

Mr. Connolly, could you come forward to the witness-box, please?

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MR. O'SCANAILL: Good morning Sir. Before Mr. Connolly is sworn in, Micheal O'Scanaill is my name. I just want to tell the Chairman that I have been instructed by Miss Michele Finan of Gollogly and Co. Solicitors, to act on Mr. Connolly's behalf. I know the Tribunal has made rulings in this regard for previous witnesses, just to say that I have been instructed to ask for limited representation on behalf of Mr. Connolly at this stage.

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CHAIRMAN: As I understand it, Mr. Connolly is simply a witness of fact. The practice has been not to give representations to individual witnesses. If per chance some problem arises and it is manifest that he should, that there is some relationship in his evidence to some other - I will certainly reconsider the application, but I won't grant it now.

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MR. O'SCANAILL: I am obliged, Chairman.

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CHAIRMAN: Right.

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SEAN CONNOLLY, HAVING BEEN SWORN, WAS EXAMINED BY MR.
O'NEILL AS FOLLOWS:

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1 Q. MR. O'NEILL: Good morning Mr. Connolly. In 1988, I think
your position was that of Assistant Principal in the
Department of Communications; is that so?

A. That's correct.

2 Q. And I take it in that capacity you became aware of the
passing of the Radio and Television Act of 1988, which came
into law on the 3rd of July of that year; isn't that so?

A. Just to be absolutely factual, I was an Assistant Principal
of the Department of Finance and I was moved to the
Department of Communications for the purposes of becoming
involved with the IRTC.

3 Q. I see. In August of 1988 I think it was indicated to you
that you were, you would definitely be going to this new
body; is that right?

A. Yes, that is correct.

4 Q. How was that information conveyed to you, can you
recollect?

A. In my job with the Department of Finance I got a phone call
from the Secretary of the Department of Communications, who
explained to me what was going ahead with the legislation,
and to say, he asked me would I be interested in becoming
involved as Secretary to the Commission itself. So I came
to meet with Bernard McDonagh, the Secretary, and with Mr.
Ray Burke. And obviously they asked me was I keen to go
ahead, I said "yes" I was.

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5 Q. Right. And can you recollect when it was that that meeting took place, or indeed where it took place? Was it in --

A. It would have taken place in the Minister's office. I am not one hundred percent certain whether it was his office in Scotch House or Kildare Street. It was in the Minister's own office, probably correct in saying it was August sometime.

6 Q. Did you then move into Scotch House once you had accepted this position?

A. I sort of had - anywhere you can get a seat to sit down, that was the way it was, certainly it was Scotch House.

7 Q. Obviously you had a number of matters to attend to before the Commission itself got up and running, and we know that the letter of appointment went out to the individual members on the 17th of October, the establishment order for the Commission was made on that date; isn't that so?

A. That's correct.

8 Q. But you had been doing behind-the-scenes work leading up to the inaugural meeting; is that correct?

A. I had. Mainly of an administration nature to get together the beginnings of a team who would actually service the needs of the IRTC when it was formed, and also to begin to prepare the early press releases which went out on the 17th of October, the day the Commission was appointed.

9 Q. Right. Did you have any other meeting with the Minister between the time of the indication being given that you would be seconded to this particular authority, or Commission, and the setting up of the Commission itself on the 17th of October?

A. I would have had on-going meetings with him about just

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minor things, about how the administration was actually going. As it drew closer to the date of the 17th of October, I would have been meeting him on almost a daily basis, largely to make sure that arrangements had been made for the actual launch of the IRTC itself. This was in Newbridge House, that they were in place, and also to make sure that all the press releases were correct and in order, and finally then just before the actual Commission was launched itself, I was asked to go and meet with Mr. Justice Henchy in his rooms in the Four Courts.

10 Q. Yes. And --

A. That was purely for an administration viewpoint as well, just to touch base with him and see how he wanted to handle affairs on the 17th.

11 Q. In the hierarchy of the IRTC itself and in particular in the Secretariat element of it, you were to head up the Secretariat and report to the Chairman, Mr. Justice Henchy, who was effectively to be an Executive Chairman at that point in time?

A. That's correct.

12 Q. Isn't that right? You would accompany him and advise him in his dealings also with the Board of the IRTC itself; isn't that so?

A. Yes, indeed.

13 Q. Until such time, obviously, as the IRTC itself had been set up you would, in effect, be reporting to the Minister; isn't that right?

A. Oh, yes. Yes, I was a civil servant of the Department of Communications at that point, and I was reporting to the Minister, yes.

14 Q. At any time in the course of that did the Minister indicate to you any particular preferences, either as regards the philosophy which might be adopted by the IRTC or the manner in which it should conduct its business?

A. Not at all. I think the only thing was that the Minister was keen that the IRTC should work quickly, and if you remember at the time there was a plethora of pirate stations broadcasting right around the country, he was anxious to see an end to that.

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One of the purposes of the legislation was to regularise all that whole wing of broadcasting, to provide local broadcasting. The legislation itself envisaged that there would be alternative broadcasting at national level, both in television and radio, to RTE, and I think the Minister was anxious that that should happen quickly, there shouldn't be a protracted period of time to do so. Apart from that he showed no preferences what so ever.

15 Q. Right. Now, we have heard evidence last week from one of the Commission members, Mr. Donal O'Sullivan, that he was requested by telephone to meet with the Minister in Fermoy in County Cork and a meeting there took place, where the Minister indicated to him a preference in respect of the bankers, the lawyers, and the accountant who would be used by the, to the newly formed IRTC; were you aware of the fact that these particular individuals had been considered by the Minister as the persons who should be nominated for those positions?

A. I wasn't aware of the meeting at all, with Mr. O'Sullivan, but certainly in the immediate lead up, I imagine it wasn't

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probably longer than four or five or six days before the 17th of October, the Minister did express to me that O'Connor and Co. should become solicitors to the IRTC. And he made no reference at all to the accountants to the company, that wasn't mentioned at all, it was purely the solicitors.

16 Q. Right. And what about the bankers?

A. I am sorry, the bankers as well, yes, solicitors and bankers; both of those.

17 Q. Right. In the knowledge that this was the Minister's wish, do you know of any discussion which took place prior to the 17th, with either the Chairman or any of the individual members of the Commission, regarding the Minister's view that these persons should be so appointed?

A. I am not aware of any discussions whatsoever.

18 Q. Did you convey, at any time prior to the motion being put forward for their appointment to these positions, the fact that you were aware that this was the Minister's view?

A. No, not at all. I hadn't met, I think any of the members of the Commission until the 17th, with the exception of the Chairperson.

19 Q. I see. Did you tell the Chairperson that this was the Minister's wish that these --

A. To the best of my recollection, no. I think, on the basis of our discussions on the day or two before the launch of the Commission itself, was purely of an administrative nature, just to ensure what was going to happen on the day and so on. It certainly didn't cover any matters of that kind.

20 Q. I see. Were you ever asked by any of the Commission

members, or by the Chairman after the nomination and appointment of these individuals to those positions, as to why they had been appointed or whether you were aware of their appointment?

A. I was never asked at all, never asked.

21 Q. I see.

A. In fact, it would have been open to any member of the Commission at its opening meeting to have proposed who ever they wished, but these people were proposed by Mr. O'Sullivan, as I said, and were accepted and went through --

22 Q. The one individual proposed all the officers or all the advisors to the Commission isn't that the position? There was no alternative --

A. I cannot be certain of that. He says that is true, I have no reason to doubt him. But --

23 Q. On the 17th the meeting took place in Newbridge House in Donabate, and after the Minister had made his inaugural speech the first sessions of the IRTC took place; isn't that right?

A. That's correct.

24 Q. And at that session, in addition to the nomination of people already mentioned, there was a decision taken with regard to the minuting of meetings; isn't that so?

A. That is correct.

25 Q. Insofar as there were to be any meetings, these were to record the decisions only; isn't that right?

A. That's correct.

26 Q. And you, I think, attended virtually all of the subsequent meetings in your capacity as the Secretary to the IRTC?

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A. Yes.

27 Q. Isn't that right?

A. That's correct.

28 Q. And in the course of those meetings, I take it and understand that you would have taken a note of the issues that were raised and the decisions which were taken; isn't that right?

A. Yes.

29 Q. Did you draw up the minutes at the end of the --

A. Yes.

30 Q. Or subsequent to the meetings?

A. I would have drawn up the minutes, certainly, yes.

31 Q. And the standing orders, I think, provided that they would be circulated in advance of the next meeting; did that happen, as a matter of course?

A. I think as a matter of course, yes, it would have done. There were times when the meetings were happening at weekly intervals, at the very early stages I think it would have been impossible perhaps to get them out within the three or four days; within reason, yes, they were circulated in advance.

32 Q. They were generally signed by the Chairman and adopted by him and opened at the next sessions; isn't that right?

A. That's correct.

33 Q. The notes of what actually took place at that meeting were not notes that were retained by the IRTC apparently, do you know why that was, what has become of those notes of those meetings?

A. At this point, at this remove I don't know what became of them. I certainly would have taken notes of key points

which were arising or information that the Commission was in need of, or acquiring, that I would bring back to the staff of the IRTC itself, where they went to, I don't know, I certainly have no idea where they went to.

34 Q. I see. Now we know that there was a Board, there were ten members in all including the Chairman, and the Chairman was an Executive Chairman; isn't that right?

A. That's correct.

35 Q. And without trying to demean the status of any of the other members, it was a part-time position for them; isn't that right?

A. Oh, very much so. I think they were in the nature of an Off-State Board at that time, they were paid a very small fee, I don't remember the exact amount, probably about \$800 or whatever it was, it would have paid the travelling expenses, I mean that is about it. The Chairman was a salaried Chairman, an Executive Chairman.

36 Q. Right. And he played a very full role on, perhaps not perhaps on a daily basis, but certainly for a very substantial part of the week?

A. He would have come to the office on a number of occasions, certainly in the early stages, he would have come in two or three times a week, minimum. He would have been available to me at any given time. We probably had daily phone contact.

37 Q. One of the many issues that the IRTC had to deal with and the Secretariat and Chairman in particular, had to deal with, was the question of the RTE transmission cost; isn't that right?

A. It was one of the issues certainly, yes.

38 Q. It is one that we will be focusing on in the course of the evidence that I hope to elicit from you in the course of the day?

A. Incidentally, it was by no means the key point if you wish, of the Commission's deliberations. I think the totality of the package being offered by people was equally important to the Commission.

39 Q. Yes. The first note we see from the minutes is that on the 3rd of November 1988, the IRTC resolved that they should seek from the Minister the charges which RTE would be looking for in respect of transmission charges, and we will see that at page 5554 on the screen, 5554.

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You will see here: "Cost of RTE services: It was agreed the Commission should request the Minister for Communications to seek from RTE the scale of costs for the use of the transmission and other facilities."

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Obviously from that, it is clear that the IRTC was aware of the fact that there was an existing system, transmission network in place, that it was one which was likely to be utilised by, certainly the national alternative to RTE, and maybe by the local operators as well, depending on cost; isn't that right?

A. That's correct.

40 Q. Do you know what steps were taken, following this resolution, to approach the Minister to seek from RTE the scale of costs; do you see how it is worded here?

A. Yes, yes. At this remove I cannot remember whether it was done by formal letter or whatever. Certainly I would have

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had on-going contact with the officials of the Minister's department, the Secretary and various other people. It is, it was certainly would - it certainly would have raised itself in conversations with him. I would have asked him whether or not the Commission actually wrote to the Minister or sought a meeting with him, I couldn't tell you at this point.

41 Q. Right. It certainly doesn't appear that the, through the channel of the Minister, the RTE figures came to the IRTC, I am just wondering if you can assist as to exactly how it was that contact was made with the Minister at this point? Do you have a recollection of meeting the Minister?

A. No, I don't have a recollection of meeting - not at that early stage, certainly no recollection. I do know that the Commission, the Commission staff, if you wish, were meeting during all of the early months leading up - about a variety of different things, not so much about the cost of transmission, but what might be technically feasible for the various broadcasters that were likely to come on air, because part of the job of the Commission, you will recall, was to suggest the areas which would be franchised for local stations. That would be contingent upon what areas could be serviced by frequency availability at the time. So the likely conduit for that information could well have been official-to-official.

42 Q. Okay. Now, obviously this Commission was setting out into new territory, there hadn't been an independent radio and television before this, and many of the persons who were either members of the Commission or indeed the Chairman himself, were not persons who had a history of either

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broadcasting, or the technical aspects of transmission;
isn't that right?

A. That's correct.

43 Q. And I think it became obvious at a relatively early stage
that independent advice would have to be considered on
these issues, both technical and otherwise; isn't that
right?

A. That's correct.

44 Q. And if we look to the minutes of the 24th of November 1988,
at page 5560, we will see that the IBA was brought into the
equation, this is the first reference to them in the
minutes, under the heading "IBA assistance"; at the end of
the page it says:

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"It was agreed that the Secretary should approach Mr.
Baldwin of the Independent Broadcasting Authority with a
view to obtaining advice for the Commission in its approach
to deciding on applications, particularly in areas where
commercial and technical expertise may be required."

Do you see that?

A. Yes.

45 Q. Obviously you had been in touch with the IBA to the extent
that you were able to identify this gentleman, Mr. Baldwin
as somebody who might be able to assist the Commission;
isn't that right?

A. That's correct.

46 Q. And did you understand the IBA equally to be an independent
authority engaged in the regulation and licensing of
broadcasting in the UK?

A. At the time we would have regarded them pretty much

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analogous to what the IRTC was trying to achieve in the Irish context.

47 Q. Right. There were two aspects in respect of which it was felt that they may be able to assist, that was in relation to the approach to be taken on commercial and technical expertise. What do you identify as the commercial aspect that they would have been able to advise you on? Was it the viability, or financial viability of applicants, and the terms upon which they should be regulated or licensed?

A. I can recall meeting with Mr. Baldwin, the Chairman was with me as well. And one of the key things he said was that in the setting up of any new radio station to have sufficient funding within the setup group, as it were, to sustain them over a period before they begin to turn profit, was critically important. I think the Commission actually took that as a cornerstone for all its stations, subsequently. If the financing wasn't correct, the Commission would seek to ensure that the applicants came up with additional financing. It would certainly have been, excuse me, it would certainly have been true in relation to the national station as well. There was not a shadow of doubt that it was going to be an expensive operation to get the show on the road for a start off, but equally to maintain that on the road until the revenue began to be generated from advertising, or whatever. That would have been the cornerstone of that particular - the share hold, if you wish --

48 Q. We know that one of the criteria in the Act itself, at Section 6, was that the Commission would have to have regard for the financial status of any particular

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applicant, and to see whether or not in economic principles they would be a viable contender for the license for which they were applying for; isn't that right?

A. That's correct.

49 Q. And I think the commercial realities of setting up a new entity like this are that it would have to function for a certain period of time in a nonprofit situation and be able to bear that loss; isn't that right?

A. Yes, that's correct.

50 Q. And equally it would have to be able to afford the facilities that are necessary for broadcasting. You would have to be able to afford the hardware for a start?

A. Yes.

51 Q. And as it was to transpire in this case, they would also have to be able to afford the costs inherent in using another transmission system; isn't that right?

A. That would be correct, yes.

52 Q. At that point in time in November of 1988, of course the Commission had not yet received any applications from individuals who were wishing to broadcast on a national basis; isn't that right?

A. That's correct.

53 Q. And it was not yet clear that all of the contenders who were intending to use land based systems, would in fact be using the RTE transmission system?

A. Mm-hmm.

54 Q. Do you know whether or not at this meeting or following upon this resolution having been made on the 24th, whether you discussed with Mr. Baldwin or any other member of the IBA what would take place in the event that the new

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applicant was to endeavour to seek to broadcast its signal through an existing system; was that something that was --

A. I don't remember that specifically as being a key item for discussions with him at all. I think the Commission itself was acutely conscious that to service, we did have some people like Fred O'Donovan for example would have had considerable experience of broadcasting. He was a member of the RTE authority and so on. We were quite aware that it was going to be a major technical achievement to achieve full coverage of the country, which was what the Act envisaged would happen.

Really there were two options that suggested themselves at the beginning. One was to go and build your own transmitter network and get the sites and everything else.

It was quite clear from my discussions with the Department, and indeed from the knowledge of people like Fred O'Donovan, that RTE had already, if you like, commandeered all the best sites that were going to be available for transmission, quite obviously down through the years they had done so. So that was the other alternative, to try to do some deal with RTE to put a transmitters on their masts.

55 Q. Yes. Again that would be a relatively limited involvement by RTE; isn't that right, relatively limited?

A. Yes, relatively.

56 Q. In the sense that the new broadcaster would bring in its own equipment and utilise the site as such, or the mast?

A. Yes.

57 Q. If that be the case?

A. Or as transpired, have RTE purchase the transmitter

material on its behalf and sell it back.

58 Q. Yes.

A. You see, part of what emerged at a very early stage was that the communications people told us that you can't just stick any one piece of equipment up on the transmitter, it had to be capable to work with what was in existence, if that was the road anyone was going down, you would have to sit down with the RTE technical people and sit down and work out the technical things involved, apart from the costings as well.

59 Q. They would be, broadly speaking, the two options. There would be the all-inclusive option which was the one that was selected by all three contenders and there would be a more marginal involvement, depending on what exactly the individual applicant wished to do. Obviously if you wanted RTE to provide most of it he would pay for most of it, if he wanted to provide them himself and merely use the facilities of RTE, he would presumably pay RTE a lesser charge, but would bear a heavier financial burden himself; isn't that right?

A. That's correct

60 Q. What is called the all-inclusive option, I think, did not identify itself until a meeting had taken place between yourselves and RTE itself; isn't that right?

A. Yes, that would be correct, yes.

61 Q. It wasn't, in other words, a strategy which had been initially conceived or identified by the IRTC as the route to go, but rather it had its origin in the thinking of the RTE people; isn't that right?

A. I think from the word go the Commission took the viewpoint

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that it was a responsibility of whatever broadcaster was to be given a franchise to produce a signal to satisfy the needs of the Commission itself. It didn't matter whether you were a local station or a national station, that was the station's own responsibility as such, the Commission didn't take a lead role in deciding how the signal was to be transmitted.

62 Q. Right. Obviously they would not close their mind to the existence of an existing system with RTE and the likelihood that to some extent, whether it be a small involvement or a large involvement, there would be some involvement by applicants in the RTE system; isn't that right?

A. I think the Commission would accept that that was the likely road, yes.

63 Q. And I think we see that at a meeting on the 1st of December 1988, the IRTC resolved that firstly that you should meet with Deloitte, the accountants, then to ascertain firstly their likely level of fees for providing services. We know that that firm had been engaged as financial consultants and accountants; and as we go through the minutes it would appear that their role was reduced from being financial accountants, advisors rather, and limited to doing the annual audit of the IRTC; isn't that right?

A. Mm-hmm, that's correct.

64 Q. It would appear from the evidence that some of the members of the IRTC who have given evidence to date, that it was initially envisaged that financial advice could be received from Deloitte Haskins and Sells, but ultimately that course was not pursued, and the financial advice was that of the members themselves to themselves, with the aid of the

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secretariat; isn't that so?

A. That's correct, yes.

65 Q. And was that done on a cost basis, on the basis that --

A. To the best of my recollection costing would have played a big part in it, because part of the job of the Commission, part of my job, if you like, as a Secretary, was to ensure that it stayed within a reasonable funding level. There were no funds available to the Commission in its early stages, other than a small subvention from the Department. The Commission was determined that it wouldn't go into a huge overrun situation in terms of money. To the best of my recollection, the Deloitte people proposed fees which were probably in keeping with what normally one would expect, but certainly were beyond the means of the IRTC at that time. Plus, I think it is important to bear in mind that within the IRTC there were business people of some renown and some repute, many of whom had been involved and set up businesses for themselves, and were certainly running major companies, and I think would be trying to say that they were just advising themselves, because I think they were well entitled to advise themselves.

66 Q. Of course. They were worldly wise and some of them had done very successfully in business; isn't that right?

A. Most of them.

67 Q. Right. Though none of them, in fact, had set up a radio station before or had conducted a radio station, because in effect they were pirate entities to that time; isn't that right? Two of the members had been members of the RTE Board, but nobody had actually got into the situation of financing a radio station themselves?

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A. That's correct. That's correct.

68 Q. It was new territory to everybody, except the pirates, and their accounts weren't readily available?

A. Sure.

69 Q. The IRTC then decided that it should meet with the Radio Telefis Eireann directors; isn't that right?

A. That's correct.

70 Q. And we will see at page 5530, a memorandum which was prepared by Mr. Vincent Finn and dated the 7th of December 1988, which records a meeting which took place with the IRTC and RTE. That is on screen now, and you will see that in attendance were Mr. Justice Seamus Henchy, the Chairman; yourself, Secretary; Mr. Sean Lackan, who to that point had been appointed as a technical advisor, who was a retired RTE outside broadcast unit manager; and Mr. Finn was accompanied by Mr. Gerry O'Brien, Director of Finance; Mr. Peter Branigan, the Manager of Engineering Design and Mr. Tom Quinn. RTE there set out what it understood its position to be vis-a-vis the Radio and Television Act of 1988 and its philosophy; isn't that so?

A. That's correct.

71 Q. And I think it was clear from that, that their philosophy in relation to charges was that there should be a specific charge which ensured that everybody was being quoted the same price, this was as between all the intending applicants for the use of their services?

A. Mm-hmm.

72 Q. And they went on to indicate that their cost structure had been devised on the basis that the already existing sites still service the capital outline on some of those sites.

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It was RTE policy that independent operators who wished to share these sites should bear their due share of the on-going costs of the enlarged operation; isn't that so?

A. That's correct.

73 Q. At that meeting I think a document was distributed to you, which we will see at page 3950, which is entitled "The Provision of Engineering Services to National Independent Radio. Schedule of Charges".

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This was a document which had, prior to your meeting on the 7th of December, been furnished to the applicants who had wished to avail of the services that was available from RTE; and if we turn to page 3951, which is an index of the contents of that document, you will see that it involved firstly the nationwide FM system and two options available to intending applicants; first a basic option, second the all-inclusive option.

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Secondly then, the AM transmission service, which involved three sites and you will see that they were Dublin, Cork and Athlone and you could have either Dublin and Cork and Athlone or Dublin and Cork without Athlone. And again a basic option on an all-inclusive option.

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The Appendix then indicated the main features of the all-inclusive option, an installation schedule and a detailed list of the engineering design project management and installation on services which were provided in the all-inclusive option.

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So am I right in saying that there was a fairly comprehensive presentation by RTE to the Commission at this point in time, which in effect reduced the RTE transmission facilities to pounds, shillings and pence under a number of readily identifiable headings; isn't that so?

A. Yes, yes.

74 Q. Now, can you recollect what examination or consideration was given by the Secretariat, to these figures?

A. I don't remember the detailed analysis of them other than just they were figures that were ballpark figures which we were beginning with. I think the Commission, its own viewpoint is probably in many ways more important than that of the Secretariat at the time. They took the viewpoint that this was very much an opening gambit by, if you like, the major rival to any independent station coming on, and that this was where we were starting from.

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There was certainly going to be a need for major discussion between any new franchisees and RTE, subsequently. That was the view they took. Certainly, as you say, it was a fairly clear break down, but it was put - I can recall people like Fred O'Donovan and so on, who had some knowledge of RTE, making the point that it seems very high, the initial quote that RTE was giving.

75 Q. I think we can look to the resolution of the IRTC on the day following the receipt of this information. This was received in an afternoon meeting on the 7th and there was a meeting convened of the IRTC for the following day and we will see that at page 5567. If we move from the accounts and scroll downward to the next page.

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You will see the RTE charges it says:

"Following a report from the Chairman and Secretary, on the meeting with RTE, regarding the costs of transmission facilities, etc., it was agreed that the sum being asked by RTE would be very detrimental to the interests of any group interested in setting up a National Radio Service. In the circumstances it was agreed that the Chairman, Mr. O'Donovan, the Secretary, Mr. Lackan, should approach the Minister in the matter."

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Now, whilst the Tribunal has had sight of the document last referred to, which has been called the "rate card", though it expresses itself to be a schedule of charges, we refer to it as the "rate card", was there any other information available to you upon which you could report to the body of the Commission on the findings of the meeting the day before with RTE? In other words had there been any analysis carried out in advance of this meeting of the 8th?

A. By the Secretariat?

76 Q. By the Secretariat.

A. No, the Secretariat, as I mentioned I think at the outset, the question of transmission was always left, if you like, as a major matter for the stations themselves to negotiate or to arrange in whatever way they wanted to do. The Secretariat would have been mainly concerned with the more technical aspects of getting the signal around the country, and that would have formed, in large measures, the bones of our discussions with the Department's technical experts.

77 Q. Right.

A. We certainly hadn't analysed the figures.

78 Q. Of course. As of this particular date, the 8th of December, the Commission was not to know that, in effect, all of the participants in the application for the new license would be relying upon the all-inclusive RTE option, which was contained within the rate card; isn't that right?

A. Except insofar as RTE in that meeting that you referred to that they had discussions with three of the applicants, subsequently, I suppose that is a reasonable indicator that they were all going to use that particular transmission service.

79 Q. Of course they could have rejected it or they could have put their own proposals of whatever it might be?

A. Yes.

80 Q. It certainly, this particular meeting dealt with the concerns which had been expressed in earlier meetings as to what the likely level of charge for RTE transmission should be; isn't that right?

A. Yes.

81 Q. And this effectively provided the answer to that query. It came as a result of the direct contact with RTE rather than through the Minister, but for the first time the Commission now had before it, in pounds, shillings and pence, what it was likely to cost; and the conclusion drawn from that by the body of the meeting, was that the sum being asked would be very detrimental to the interest of any group interested in setting up a National Radio Service?

A. I think, incidentally, it would be more true to say that it didn't provide the answer, it provided an answer to what the transmission services would be, because I have not the

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slightest doubt that the Commission took the viewpoint that there would be horse-trading no matter who got the franchise, subsequently, with RTE.

82 Q. So their view was that the figure being asked was one which would not allow for a viable business to be conducted with that level of expenses; is that right?

A. Yes, that would have been, to quote it, detrimental to the interests of anybody taking up the franchise.

83 Q. Right. But at that point in time, they hadn't any comparative figures to draw from, in that nobody else to the date of this meeting, had advanced alternative figures or a basis for any alternative figures to the RTE figures; is that right?

A. No, that is correct.

84 Q. So the --

A. Incidentally it would have been quite difficult to achieve those figures as well, because even within the British context there wasn't a national transmitter network in the sense that was being envisaged for the new independent station, so to get direct comparisons would have been difficult.

85 Q. Yes. There was in fact no comparison drawn, though a conclusion was drawn that it would be detrimental and that was from the general knowledge that was available to the Commission at that point in time?

A. Yes.

86 Q. Isn't that right?

A. Yes.

87 Q. The suggestion here contained within this minute is that there would be a meeting with the Minister in the matter.

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Can you recollect why it was that the decision was taken to meet with the Minister rather than to indicate to, let's say the contenders, that they should engage in a negotiation process and perhaps report on their status of negotiation to the IRTC so that it might evaluate their situation?

- A. Yes, I think the Commission would probably have taken the viewpoint that the RTE people were the ultimate responsibility of the Minister. He was the person, if you like, who was charged with ensuring that RTE did its business in an effective way, over and before the authorities, that was the conduit of approach was to - you musn't forget too, that I think RTE were at that point and still are, a very long established station with a very big track record. They were the only rival to a national station coming on air. The Commission using its business head, if you like, would have taken the viewpoint that it would be inconceivable that RTE would simply lie down and play ball with a rival coming on board. They were going to play hardball all along the line in terms of everything, ranging from how it ranked up its programming and everything else to meet the new challenge.

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But also in terms of how it would deal with anybody looking for access to its transmission service. That would have been a viewpoint, I think it is a reasonable viewpoint that if you are being challenged by a new kid on the block, so-to-speak you are going to react to it in every fashion that is available to you.

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I think the Commission, as I said at the outset would have taken the viewpoint that this was distinctly an RTE opening gambit which was priced deliberately high to frighten, do what you wish, or to set the parameters for negotiation.

88 Q. Whilst I accept that that obviously is what was felt by the members, I am trying at this point in time to establish what the basis for that was, other than an underlying suspicion, that in a commercial environment that one must always assume that if somebody is going to provide you with something under compunction that they would do so under a premium; other than that philosophy was there any test, any analysis, any evidence that was offered or particular area of the RTE charges which was identified in the course of this meeting on the 8th of December, as establishing the excessive demand of RTE at that point in time?

A. There wasn't a detailed analysis available or done at that meeting, I am quite certain of that. Just about everybody sitting around there was quite aware of the cost of a transmitter to put up, because if you work on the basis that, as I mentioned before, there were a plethora of pirate stations on air and doing quite well for themselves in terms of transmission signals. It was quite obvious that it was within reason, the cost of a transmitter itself. But whilst the Commission would not necessarily have been aware of any other technical back-up that was necessary, it certainly would have made the assumption that the cost of an actual transmitter was considerably lower than seemed to be suggested in RTE's figures.

89 Q. Right. But while RTE did not seek, in these figures, to cost any individual transmitter, what it was costing was an

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all-inclusive service on the one hand, and identifying this as being under such matters as "access" which was roads, buildings, masts, antenna etc. and contributions towards antenna, feeders, maintenance and those sort of things, they were all matters of some considerable technical detail?

A. Yes.

90 Q. I take it, notwithstanding that one had the availability of Mr. Lackan to advise on technical matters, he was not advising the Secretariat on the costings; isn't that so?

A. No, his expertise was technical.

91 Q. So that when it came to establishing costing figures, the knowledge of the members of the Commission itself was what was relied on at this point in time?

A. Yes, at this point in time.

92 Q. Now, obviously one had to await the receipt of the submissions by the three terrestrial based contenders to establish what the alternative figures to these figures would be; isn't that so?

A. That's correct.

93 Q. And we know that of the three figures that came in, no two were the same, and there was a considerable difference between the figures that were initially being offered by, let's say the Consortium, vis-a-vis Radio 2000 and ultimately Century Radio; isn't that right?

A. Yes.

94 Q. One of the tasks of the Secretariat was having received this information, to draw a comparison between the various contenders and to make that comparison available to the body of members. As far as we can see that was done on

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matters, not including the financial aspects on the 22nd of December, when Mr. O'Keeffe's analysis or listing of the various headings was circulated to the members?

A. That's correct.

95 Q. Isn't that right? At a later stage or what appears to be a later stage, from the evidence of Mr. Appleby, his financial analysis and sensitivity analysis was circulated and he is not sure whether that took place at the meeting on the 5th of January or whether it was in anticipation of that, but there was an amount of documentation made available to the members.

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If we deal firstly with the comparison figures, the comparison figures indicated, as I outlined, that for transmission charges there was a very wide difference, though all three contenders felt that the RTE charges were excessive; isn't that right?

A. Yes, that is correct.

96 Q. One of the contenders accepted that, notwithstanding that they were excessive, that it could build it into its business plan?

A. Yes.

97 Q. And for the purpose of its projections it accepted €914,000 as the annual transmission charge that would be incurred for the FM service that they intended to offer; isn't that right?

A. That is correct.

98 Q. The next ranking, financially, was the Radio 2000 figure, which was a figure of €747,000 for annual charges, and then it came down to the figure for Century, which was

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considerably less; isn't that so?

A. That's correct.

99 Q. It would appear obvious from looking at those three contenders, that they had taken, in one sense, a similar approach, in assuming that the amount was too high, but they had dealt with that in three different ways. One had said "Well, notwithstanding that it seems excessive, here is our business plan which shows that it is viable even at the RTE level"; isn't that so?

A. That's correct.

100 Q. The second then said "Well, let's take some figures off that, we will negotiate it down to what we believe to be a reasonable level", but they equally contended that if they couldn't reduce the RTE figures, that they would merely after three years, increase their rate of charge by 12 percent and meet the RTE charges, and that - and then you had the Century figure, which didn't make any allowance for any figure other than their own figure being accepted?

A. Yes.

101 Q. And I suppose if the parties had thought about it there would have to be negotiation; isn't that right?

A. I don't have any doubt that all of them would have got into negotiations on getting the nod, if you like, in the IRTC, that it was the chosen franchisee. It is interesting by the way, to bear in mind the other side of the costings produced by the three, these three stations, these proposed stations.

102 Q. Yes?

A. Of them all, Century was by far the most conservative bet in terms of expenditure on transmission, but also in terms

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of income that it expected to generate. The other two were in considerable advance of that, those figures. It is important to bear that in mind, that their figures were based upon what the anticipated income would be.

103 Q. There seems to have been, at some point in time, a relationship drawn by Mr. Stafford between the turn over of a radio station and its allowable transmission overheads as a proportion of total turn over; and certainly in his business plan he seems to have reflected the sum of ú375,000 as being a figure that related to turn over and was therefore acceptable as a charge, without necessarily referring it to the RTE charges. The basis, in other words, of this ú375,000 was something that was going to be inquired into as time passed; isn't that right?

A. There wasn't a shadow of doubt about that. I think it is, given the nature of the proponents of all of the stations, I am absolutely certain they took advices other than that given by RTE as to what the costs would be. I know for a fact that the Century people had already been in contact, even prior to putting in their application, they had been in contact with the IBA people in Britain as to likely charges. I think that would have weighed relatively heavily with the IRTC as well, that they were suggesting that the IBA had given them advice that the fees being sought by RTE were considerably in excess of what was realistic and reasonable.

104 Q. Right. And we know that in August of 1988, Mr. Barry had gone to the UK where he had met with the IBA, their consultancy services, and at that particular time that was headed up by Professor Hills, but within a number of months

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he had ceased to hold that position, he had left the IBA and had set up his own independent consultancy service, as distinct from the IBA; isn't that right?

A. That has now emerged, at that particular time I wouldn't, not necessarily, have been aware who Mr. Hills was, for example, but certainly that emerged later, that he had left IBA.

105 Q. Do I understand from that, that in the year 1988, Hills or the IBA was synonymous with the application of Century and no distinction was made between the two of them; isn't that right?

A. Not at that point, that I can recollect.

106 Q. It is suggested from some of the correspondence that there may well have been a meeting between Mr. Hills and yourself on the 15th of December, which was Thursday the 15th of December 1988. Have you a recollection of that?

A. I have no recollection. If that is on record by somebody I would quite believe that, but I have no particular recollection of having met with Mr. Hills.

107 Q. The only note that there is of it is that he prepared notes for an anticipated meeting in Dublin on Thursday the 15th of December with yourself, Sean Connolly. I don't know, you don't know whether that actually took place?

A. Mm-hmm.

108 Q. Do you have a memory of meeting with technical representatives from the rival contenders in 1988?

A. For the IRTC license?

109 Q. For the national license?

A. No particular recollection. I think anything, any dealings I would have had with their technical people would probably

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have been purely about technical matters rather than anything else. So I am not certain that I can recollect any meetings, certainly if they were coming looking for technical expertise or help, that was why Mr. Lackan was employed, and he would have been involved directly, more directly than I would have been. Much of the technical discussions about frequency allocation and distribution would have been held with the Department of Communications, who were the people who would have allowed them to use frequencies or not.

110 Q. Right. Do I take it that it is the case that none of these applicants came to you to discuss the make up of their figures for the appropriate charge which should be paid to RTE in 1988?

A. None of them approached me personally.

111 Q. So when the Commission came to sit on the 5th of January of 1989, this was one week in advance of the oral presentation that was to be made in the National Concert Hall; isn't that right?

A. That's correct.

112 Q. And at that time the members had before them the original application, they had the comparative analysis of Mr. O'Keeffe, they had Mr. Appleby's financial breakdown of the figures, and they had the RTE charge which had been circulated as of the 8th of, the 7th, I think, of December; isn't that right?

A. Yes, that's correct.

113 Q. It is correct to say, I think, that they didn't have any other financial analysis of either the RTE figures number one, or of the figures advanced by either of the three

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terrestrial based contenders; isn't that right?

A. Nothing that I am aware of, no.

114 Q. Nothing?

A. Nothing.

115 Q. So that their ability to evaluate the competing applications, from the point of view of transmission charges, was one which really fell entirely to themselves to decide as a result of discussion between themselves; isn't that right?

A. That's correct.

116 Q. Yes. And can you remember to what extent, if at all, the question of transmission charges was addressed at that meeting?

A. I don't remember the details of it, but I do know that the, in looking at the applications, the Commission obviously were following the terms of the Act which governed their very existence, and that required it to look at a number of things, including news content, programming, Irish language content, the make up of the people who were sponsoring the particular stations, that type of thing. Transmission charges, per se, were not necessarily one of the big items that were discussed by the Commission at that early stage. They certainly were aware of them, obviously, because it was part of the plans and proposals of each of the, well of three of the applicants to achieve, it wasn't a major item for discussion.

117 Q. Certainly. It had been quite a movement from the 8th of January (SIC), when they were perhaps looking at the RTE charges as a possible means of transmission, to the 5th of January when each of the applicants was saying "This is the

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way we are going to go" and it followed then that whoever the successful applicant was, would have to be in the position to deliver on RTE's transmission; isn't that right?

A. That's correct, that's correct.

118 Q. So if they couldn't do a deal with RTE, there really was no point in considering their application further to some extent; isn't that right?

A. To some extent. I think, I can't argue for what was in the Commission members' minds, simply, but I particularly - but I do remember the discussions all around that particular time, both on the 5th and subsequently on the 12th, were to the effect that at least three of the applications were made by people who were reputable business people, had good business nouse and all the rest of it, and that in terms of their financial projections and everything else, the Commission, I think at an early stage was very satisfied that they would be able to match up, which is why they moved more carefully, to what precisely they were looking for, what they were proposing in terms of the station and how it would run.

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I think the Commission took the view at the very early stage that it wanted to have its stations, if you like, distinctive from what was on offer in the RTE services already available, and the Commission would have been anxious to see how the various applicants were proposing to do just that. I think from what I have read in newspapers and so on, that is mentioned for example, like for example Terry Prone who would have been acutely conscious of what

you put up against an established station already. That was important, that was an important part of the Commission's discussions.

119 Q. The --

A. Incidentally, equally the Commission would have been very interested in not just the shareholding of the company itself, but also the type of expertise that was going to be available to those applicant stations, both in terms of their Director of Programming the technical expertise that was going to be available to them, and so on.

120 Q. The result of the deliberations of the Secretariat were that a series of possible questions were circulated to the members of the IRTC, as appearing to be targeted areas by the Secretariat that merited further examination, having received the various proponents; and we know that in relation to Century there was a specific question which dealt with the question of RTE charges, and that appears at page 6086, under the heading "Engineering" at Question 10. Do you see that question there, it says that "on page 37 of your proposal" and just to refer to page 37.

A. Yes.

121 Q. Page 37 stated that: "We have to point out however, that the presently proposed terms of such an agreement cannot be accommodated within any sensible business plan, it would jeopardise the financial viability of the whole project." This is what was said in relation to RTE's proposed charges, so that it was a fairly direct message to the IRTC, that if you don't accept these figures, that it is a non-viable proposition above that?

A. Mm-hmm.

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122 Q. Which is not a position which had been adopted by the two other contenders. They certainly left the door open for negotiation and certainly this seemed to be a very positive statement that they weren't going to move; but in any event, it was possibly as a result of that, and it appears to be from the wording of the question, that they said: "On page 37 of your proposal you state that the financial demands being made by RTE for the siting of the transmitters of the independent radio service will jeopardise the viability of the whole project. Are you saying here that if the Commission and the Minister find these costs to be justified, that Century will not proceed with the whole project?"

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Now that seemed to have addressed a situation which might arise where the IRTC, having carried out its own investigations or receiving information from others, and having spoken with the Minister, came together on a figure that was in excess of that contained within the business plan? It certainly addressed that as a possibility; isn't that right?

A. It certainly - the job of the Secretariat, I think, was to inform, advise the Commission of areas that it may need to consider or look at, hence these questions were drawn up. I don't know for sure whether all of those were the initial list that was drawn up. I am sure the Commission members themselves would have added to them as they went along, or whatever. The job of the Commission was to highlight this as an area that needed to be considered. I don't know where you want me to go on with it?

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123 Q. Firstly, it is obvious that it was in fact an identifiable area of concern to whoever carried out a review of their particular application?

A. Yes.

124 Q. It would identify this immediately as a concern; isn't that right?

A. I think if you read that question, you can look at it in several different ways. The way I would interpret that was that as you said yourself at the beginning, Century had given a blanket of 375,000 or whatever it was, no further shall we go. Obviously the Commission had been taking the viewpoint that there was going to be discussion, irrespective of who got the franchise at the end of the day and would have been anxious to establish that Century's figure was, or was not its opening gambit to RTE's 1.1 million pounds. Hence that question.

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CHAIRMAN: Well, on that point we will just break for a quarter of an hour.

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MR. O'NEILL: Certainly.

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

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125 Q. MR. O'NEILL: Mr. Connolly, I think that whilst the IRTC was the recipient of these applications with detail in them, it also was communicating with the Department about the relatively high levels of charge that it felt RTE was seeking; isn't that right?

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A. That's correct.

126 Q. And to your knowledge it was the case that the Department and RTE were having their own discussions about --

A. To my knowledge they were, yes.

127 Q. -- as to what the appropriate level would be?

A. Yes.

128 Q. And we know from the records that this involved, certainly two meetings in January, on the 5th of January and the 10th or 11th of January, where the representatives of the Department and the representatives of RTE sat down and reviewed the asking price which was advanced by RTE and ultimately reached agreement as to what charge was considered by the Department to be appropriate, and that was a figure that was signed off on by the Minister; were you aware of that, at the time?

A. I can't be precise as to the exact time that I became aware of that, but yes, I was aware of it.

129 Q. It would be extraordinary if the Department did not inform you as soon as they had reached agreement with RTE because this was evidently something that had merited your writing to the Department and seeking their assistance on; isn't that right?

A. Oh, I have no doubt that the Department did communicate with the Commission.

130 Q. Right. We were discussing just before the break the fact that there were a number of questions which had been formulated by members of the Secretariat on their review of the documentation. And it seems that the question that I directed your attention to was one which intended to address the attitude of Century, if the Minister and RTE

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had agreed and if that figure was not an acceptable figure to RTE; isn't that right?

A. Yes, correct.

131 Q. We know from the transcript of the oral submissions which took place on the 12th, that that question was never asked of RTE, of Century?

A. That is true.

132 Q. So that one, at the end of the meeting on the 12th, was still somewhat in the dark as to what the intentions of Century would be; isn't that so?

A. That's correct.

133 Q. Now, the eventuality that had been, or the possibility that had been averted to in that question became a reality as of the 11th, when the Minister in fact agreed a figure, which was acceptable to him; and whilst you have no recollection of when exactly you learned of that particular agreement having been reached, you are in agreement that it is something that would have been made known to you in the normal course, as soon as possible; isn't that right?

A. Yes, that's correct.

134 Q. The probabilities it seems therefore, are that you would have received this information either on the 11th or the 12th of January?

A. I probably did, yes.

135 Q. And some support for that might be found in the documentation which was generated by Professor Hills in his communications with his principals, Century. If we look to document 6071 we will see that this is a fax which is dated the 12th of January of 1989. Do you see that? It is from Mr. Hills to Mr. Stafford, and we are told that this is a

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fax which was sent from the UK after Professor Hills had returned to the UK having attended the oral presentation on the 12th. So it is sometime in the late afternoon, or possibly the early evening of that date. The message reads: "Please fax by return the latest figure for RTE costs sent to you by the IRTC and which you referred to this afternoon. I need them for my meeting with IBACS on Friday afternoon."

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That appears to suggest, firstly, that the figures were available at some time on the 12th; isn't that so?

A. Yes. As you say possibly on the 11th, I am not sure what date.

136 Q. Possibly the 11th. Equally it would appear to indicate that the figures were figures which were sent to Century by the IRTC. Would that accord with your --

A. That seems to be correct.

137 Q. -- your memory of it?

A. Yes.

138 Q. It follows from that that the IRTC, certainly at some point on the 12th, had available to it the documentation from RTE in which there was a review of the figures initially advanced on the 7th of December to the IRTC; isn't that right?

A. That's correct.

139 Q. And can you recollect, considering those particular documents and the new figures from RTE and the Minister?

A. I think as I mentioned at the very beginning, the costs of transmission wasn't a major plank of the IRTC's consideration of it. In fact, I don't have the figures in

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front of me obviously, but to the best of my knowledge this wasn't an area that was going to dictate whether a station would be successful or unsuccessful. That would much more likely rise or fall on their ability to earn revenue. This is where the Commission was coming from. I don't have any doubt in my mind, but I can't read in the minds of Commission members, that even that figures which came from the, via the Department from RTE, was still a negotiating figure. It was getting closer to Century's stated figure. Incidentally, you have to bear in mind how they compute that figure, how Century computes their particular figure as well. They are much closer at this point than they were initially.

140 Q. Well, whilst that may appear to you now to be the case, there certainly wasn't any break down at that time as to how the €375,000 figure for Century arose; isn't that right?

A. That's correct.

141 Q. That was a bald statement, that that is the figure they were prepared to pay for transmission charges, on the other hand, you were aware that there had been a breakdown by RTE under specific headings for its all-inclusive scheme?

A. Yes.

142 Q. And that that in turn had been the subject of discussion and review by your former Department, the Department of Communications and RTE, with a view to trying to effect a reduction?

A. Yes.

143 Q. In line with the concern of the, which the IRTC was expressing that it had a view that the amount was

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excessive; isn't that right?

A. That's correct.

144 Q. It would appear certainly that the IRTC would not have ignored the process that lead to this reduction, and equally that it would have to have some reasons to believe that that figure was not the final figure?

A. Yes, I think it is, there are a couple of things worth bearing in mind. I certainly don't have an expertise in the cost of transmission or the cost of broadcasting in that sense. I doubt very much that the Commission had a specific knowledge, or any member of it had a specific knowledge of the actual costs. So obviously it was going to rely upon the proposers of each of the stations to do their own homework, which was exactly what the Commission did, and bearing that in mind that they would then go to whomsoever was going to provide the network to them and negotiate the figures.

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As I said at the outset, the Commission did take the viewpoint that RTE, as would happen in any business, was going to propose a figure that was way in excess of what they would ultimately be prepared to accede to, and that is the viewpoint they took.

145 Q. But would they not equally have regard to the fact that those figures had been subject to scrutiny by the Minister, that the Department was certainly a body which had the expertise which could in fact review the figures which were being proposed by RTE; both from its dealings with RTE over the years and the fact that RTE was, to an extent, being financed through that Department for shortfalls that might

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have to be met on licensing; isn't that correct?

A. I think it is - as you mentioned yourself at the beginning, the Commission was breaking new ground, that there hadn't been an IRTC before, there had been a Department of Communications and an RTE authority for many moons before, and they had grown accustomed to working together. I think the Commission took the viewpoint that because of the flow of information which would traditionally have been there, that it was quite likely that RTE would have, shall we say had a strong influence upon the Department's thinking. The Department doesn't broadcast, doesn't run transmission networks, so therefore it was going to be reliant upon the information provided to it by RTE. I am not saying that was wrong information or anything else, but they would have been relying upon that, so the Commission would, I think, I can't again read into their minds, would have taken the viewpoint that they were still at the negotiating stages.

146 Q. Yes. Do you think that they made that decision notwithstanding the fact that they were aware that the Minister had in fact agreed these figures, or did they proceed on the basis that this figure contained in the 11th of January memorandum, that this was only a negotiating position?

A. Again I can't answer for what the Commission members themselves felt. My understanding was that the Commission felt that they were still at the early stages of negotiating and that figure was likely to change again when whoever got the franchise started the detailed negotiations with RTE.

147 Q. And if, do you know if any comparison then was carried out

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with new figures, and just to identify what the new figures are, if we move to page 15 in the manuscript, it just carries the notification at the top of that, it is:

"Agreed with RTE and the Minister" with the inter department note on it. If we look to the body of the figures under annual charges on paragraph two, we are talking here of the national FM radio service only, and not the AM service?

A. Yes.

148 Q. Which is the subject of a later page there. You will see that the figure here now is ú692,000 under the heading of:

Access - 185.

Full maintenance - 364

Communications and links - 80

And overheads - 63. Being 10% of that total.

Then you have 692 as the figure.

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So do you remember whether the Secretariat, or the members of the IRTC who were specifically interested in this financial aspect of the work of the Commission, drew any comparison between these figures and the three individual contenders figures? That is the 914 from the Consortium, the 747 from Radio 2000, and the 300 odd from Century?

A. Again I cannot answer for the individual Commission members what comparisons they made. From the Secretariat's viewpoint as I think I mentioned before, none of us on the Commission were experts in broadcasting and transmission or in the financing of it. So to that extent these figures were simply another bit of information that had to be taken on board. So there wouldn't have been analysis carried

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out. The matter of costings for transmission was distinctly one that the Commission left in all cases, including the local stations, to the broadcaster who ultimately achieved the franchise. It stayed away from that, in large measures.

149 Q. But not in this instance, because there was firstly a recognition initially by the Commission that the level of charges was one which they felt was such that a commercial entity could not safely deal with these figures and make a profit?

A. Right.

150 Q. That was their decision?

A. Yeah.

151 Q. They then felt that this was a matter on which they should seek information from the Minister?

A. Yes.

152 Q. They also then obviously instructed you that you should communicate the concerns of the IRTC to the Department and suggest that some negotiations should take place?

A. Yes.

153 Q. So there was an involvement, certainly of the IRTC throughout, in an effort to ensure, I think, that at the end of the day the Commission would be in a position to know whether Century were prepared to negotiate further with RTE or in the event that they weren't, it then limited your range of potential franchisees for this particular franchise; isn't that right?

A. Quite right.

154 Q. If there had been a bald statement maintained by Century, that they were not going to involve the €375,000, that

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would have had allowed the Commission to write to the Minister and say either €375,000 is the sum which the RTE transmission charge should be fixed at or else we are going to have to move on to consider a slightly more limited pool of applicants; isn't that right?

A. That's correct, yes.

155 Q. But that course wasn't adopted, what was adopted was a grant of the license to this particular applicant, in some executive's expectation that negotiations would follow; isn't that so?

A. I think distinct expectations that negotiation would follow.

156 Q. I am just wondering what the basis that you could see for such an expectation being alive? One was at that time, had you established, in other words, from Century, whether they were prepared to move off the €375,000 figure? I know that a possible question would have elicited an answer which would have allowed you to know that. We know that wasn't asked. Was there any other form of inquiry from Century to establish whether or not they were prepared to move off their figure, or was it an assumption?

A. None that I can recollect at that early stage in advance of the actual formal hearings of the applications, there was no particular inquiry of Century, but we both know from the RTE contact and from talking with Department officials and so on, that Century were in the early stages of negotiating with RTE. They had begun to set out their stall. This was a negotiating position.

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I think that is, it is important to bear that in mind. It

is easy, I suppose with hindsight to say, to look back and say "why didn't you do, why didn't you do whatever", but at that time, the Commission apart altogether from being a regulatory authority for new stations coming on, took the view that it should actively work with whom so ever got franchises from it, within the framework of its legislation, which is why we got to the stage for example, of having public hearings in a series right around the country. This is when the Commission took the viewpoint that it was important that the franchise area, that the general public of Ireland should be made aware that, yes, there is an alternative from RTE coming up, it is coming fast and coming quick, that is the viewpoint they took. They also took the viewpoint that they would do nothing at that stage that would act to the detriment, in public, that is, of the commercial expectation or reality of proposals of any of the stations. This would have been distinctly the case with all of the applicants for the national radio franchise as well. The Commission would not have rocked the boat too much there in a way that it would tie the hands of these people in subsequent negotiations, but I have not the slightest doubt that the Commission took the view from an early stage of the application process that whoever got the franchise was going to wind up in very serious negotiations with, presumably, RTE.

157 Q. Yes. Now, whilst that might have been an assumption made by you at the time, the evidence which the Tribunal has heard to date would suggest that in fact Century never embarked on the process of negotiation with RTE, in the sense that if you are negotiating you make a proposal, and

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you suggest an alternative to the figures that were being asked. At no time did Century ever for example offer even €400,000 as a figure. They never got out of the starting blocks at all, but they would appear to have relied upon the efforts of the IRTC and the Minister, to achieve their business projected figure of €375,000?

A. If I can go back just on something you mentioned there? I certainly wouldn't have been aware of the details of any negotiations or meetings that Century were having with the RTE people. I wouldn't have known the detail of how it was progressing. I certainly wouldn't have been aware that they hadn't moved one whit upwards or downwards from their projected figure. The point I am trying to make here is that the Commission, as an entity, left the negotiations of that type between RTE and the broadcasters, I would not necessarily have been aware of that at all. I was quite aware that negotiations were going ahead and I mean, at that particular time I think, or certainly at a slightly later stage, the media, generally, were very aware that there were heavy negotiations going on between RTE and Century.

158 Q. Well, at some point obviously it was considered by you and by the Chairman of the Commission, and I am unclear as to whether it was considered in tandem with the body of the Commission itself, that there would have to be some basis for the figures which were being advanced by Century, and that there would have to be some grounds upon which the RTE figures could be challenged; isn't that right?

A. Yes, yes.

159 Q. We see that reflected as a fax communication which passed

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from Century to Professor Hills on the 13th of January of 1989, which is at page 5600. Now, if we scroll down to the message there, you will see, if we stop at the first underlined part there:

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"I have just returned from a very satisfactory meeting" -
underlined -"with the Chairman and Secretary of the Commission. Decision will be announced next week. Chairman and Secretary require with greatest possible urgency as much information as possible before close on Monday to challenge the RTE figures and justify ú300,000 as the correct charge."

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I think that this was on a Friday afternoon that this fax was sent, and it was the day after the oral hearing had taken place in the National Concert Hall.

Have you a recollection of, firstly, there being such a meeting and if you have, as to what the reason for yourself and the Chairman was to hold such a meeting and discuss this with an applicant whose oral submission had concluded the day before?

- A. Mm-hmm, this ties in obviously with a question which the Secretariat had prepared for the public hearings or the oral hearings subsequently. The Commission chose not to ask that question in public because - I don't know the reason behind it, but I suspect it was as I mentioned before, "we will do nothing to tie the hands of a potential broadcaster in going ahead with its negotiations with RTE." Century, as you mentioned yourself at the very beginning, had proposed a fee which was considerably less than either

of the other two applicants. The other two had come much closer to what RTE originally demanded and said that they would fund it. Obviously the Commission needed to know where exactly Century was coming from, what had happened and hence this particular meeting.

I think it was, it was done with a view that the Commission was to meet again on the following week, the 18th I think was the date, to make its decision. And the Chairman would have been very anxious to have a full set of information available to that board meeting, which would enable it to go ahead and say "yes, we can appoint A or B or C or D", because D was involved as well, as the appointees, that was the reason for the meeting.

160 Q. The members of the Commission, who have been questioned to date on this point, are not clear as to whether there was any remaining issue left after the oral presentation by Century that required resolution; but certainly none of them can recall that at the conclusion of the oral submission that it was considered necessary to direct yourself and the Chairman to pursue further inquiries. Do you remember this being the subject of resolution or decision, or was it a matter that yourself and --

A. I don't recall it as being, as it being a resolution of the Commission in, as a body. I do know that the Chairperson who was the man charged with asking the questions in public on behalf of the IRTC, didn't ask that question, but obviously felt that he needed some further information to bring before the Commission itself. He would have been the one that would have directed that meeting to take place and

would have asked for it.

161 Q. So the meeting took place, and we see that the subject matter of it was firstly to receive information, that is as much information as possible, before Monday to challenge the RTE figures and to justify 300 as the correct charge. Now, it seems to follow from that, that firstly there was a requirement for more information and as much as possible to be obtained; isn't that so?

A. I think so, yes indeed. If I can just reflect upon it.

This is the writing, presumably of Jim Stafford.

162 Q. It is, Mr. Stafford to his expert Mr. Hills in London?

A. Sure.

163 Q. What he is conveying to him that at the meeting with yourself and the Chairman, a requirement of yours was that with the greatest possible urgency, as much information as possible would be provided; in other words it wasn't that Mr. Stafford himself was looking for this information for his own purposes, but rather that he identified the Chairman and the Secretary as the persons who required it; isn't that so?

A. Yes, there is no doubt about that. The point I am trying to make is that how people phrase things and word things, there is a phrase there in terms of "possible", "if possible before the close of business on Monday, to challenge the RTE figures" is Jim Stafford's way of phrasing it. I should imagine that the Chairman would have been, indeed myself would have been acutely conscious that we were coming to crunch time, we needed to know where we stood. Not necessarily, I don't remember it being a case that the Commission was going to deliberately challenge the

RTE figures. It simply needed to know where Century was in terms of its negotiations with RTE? Was there a move? Were they going to be able to deliver at the end of the day? Were they to be successful? That is my memory of that particular meeting.

164 Q. I suppose, arising from that, what it meant was that the figures would have to be justified in economic terms. There would be a basis, in other words, advanced by Century for this calculation, as opposed to it being a figure which, to that point in time I suggest, had its origin in the business projections, but was not supported by any independent documentation, either supplied by Century, or as we know there was no analysis carried out by the Commission itself; isn't that correct?

A. That's correct. The Commission had been aware that the IBA, in whatever guise, was involved with Century, and hence it might not have directly asked them for IBA's opinion, but the intention was that they would bring forward their own commercial reasoning behind the figure.

165 Q. Right. So if we just take this in stages I think it follows, firstly, that if this message is correct, you and the Chairman considered, at that point in time, that there was not enough information available to stand up the figures of ú300,000; isn't that so?

A. Yes, probably that was one way of phrasing it, yes. But certainly the, I think the key bit was given that the figures that RTE were now proposing, and that Century were paying were justified figures. There was a gap, and the Commission needed to be certain that that gap could either be bridged or that the RTE figures would drop back to match

Century's, something had to give somewhere to enable

Century to continue.

166 Q. Yes. I mean the immediately identifiable problem is that there was a difference between 1.2 million on the one hand and 375,000 on the other and obviously a mile of difference between the parties, and that would have to be resolved?

A. Yes, yes.

167 Q. There then is the intervention of a third party, the Department, and the Department reduces the FM figures down to 692?

A. Yes, yes.

168 Q. And produces figures as to how that has been calculated. There now are two sides stacking up against one in a sense, in that both the Department and RTE have come to a figure in which they obviously agree consider to be reasonable and on the other hand a Century figure is still half that or thereabouts; isn't that right?

A. In or around, yes.

169 Q. And as between those two figures, the Commission itself had no independent information to plumb for one or the other, but if one did it on a numbers basis, it would appear that the Minister and RTE would win. So there would have to be some other argument advanced, or some further information advanced; isn't that right?

A. That's correct.

170 Q. Because it was never the intention, I take it, of the Commission, that if they selected an appropriate body as the franchise holder, that they could ignore commercial realities and give them the franchise, notwithstanding that it might contain an element of subsidy from RTE to keep

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them going. That was not within their remit; isn't that so?

A. That wasn't within the Commission's remit at all, no.

171 Q. So they had to adhere to a criterion of sound economic principles applying to each applicant and if the applicant couldn't stand on their own financial two feet, as regards acquiring a transmission service, on whatever the appropriate commercial terms were, then with sadness perhaps, one would have to pass on to consider another applicant; isn't that right?

A. That's correct.

172 Q. Whilst I can understand, Mr. Connolly, that one mightn't ask a specific question at the oral hearing about exactly how far Century were prepared to go with their negotiations on the basis that that would be, obviously, a commercially sensitive matter, it would negative the whole point of negotiation, it still was possible to establish in principle whether or not Century were prepared to negotiate without compromising their position; isn't that so? In other words, if they answered the question in the negative, were it simply not prepared to negotiate, well then the Commission could proceed with its business with other applicants, if they indicated that they were then, of course one would leave that to negotiation?

A. Mm-hmm.

173 Q. Isn't that right?

A. I think, just if you look at two possible scenarios, were the Commission to have brought that particular question forward in public, one was, in a sense, to say "No, we are not prepared to negotiate the natural outcome of that" as

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you suggested yourself, that they rule themselves effectively out of the competition.

The second scenario is "Yes, of course we will negotiate."

Now, I think that is handing a pack of aces to RTE in the negotiations with Century. So the Commission I think, would, could easily justify why it did not ask that question in public.

174 Q. What about on the following day then, when the Chairman and Secretary meet with Mr. Stafford, is there any reason then not to have asked them, "Look, are you prepared to negotiate as between ourselves with RTE, because if you are not we cannot entertain your application unless it can be absolutely established that this is the appropriate rate for the task, and the Department seems to have agreed a figure one hundred percent more than your figure"?

A. Again, I think, again I am recollecting back over the better part of 12 years at this stage. I think the Commission in the shape of its Chairperson and myself, going in to meet with Mr. Stafford, would obviously have wanted to get the reason behind his strong stance that the whatever it was thousand pounds of the figure that should be charged for transmission facilities, and that is essentially what they were looking for. If that figure was real and could be justified by good advice from Mr. Stafford, the Commission then had to make a decision which they, they subsequently did, that Mr. Stafford and the Century people could take that figure and could work with RTE and negotiate with RTE to that particular figure.

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It wasn't the job of the Commission I think, to decide what the figure was. That was a job for the negotiation teams of the two for start off, and ultimately if it came down to it to the Arbitrator, the Minister, as to what the fee should be.

175 Q. But just as it wasn't a role of the Commission to get into the ring or to make the bargain between the parties, equally it couldn't close its mind to the fact that if the parties were that far apart, they might never reach agreement, with the consequence that the process of putting an alternative --

A. And hence the need for reassurance from Century's advisors.

176 Q. Right.

A. That there was a basis upon which they were putting in their figure.

177 Q. True. But even if there had been a basis established for this figure, it didn't follow that that was the only figure that might be acceptable to RTE; isn't that right? There would still remain --

A. Oh, for negotiation.

178 Q. There would still remain the question of negotiation?

A. Yes.

179 Q. And it would involve, in principle, an acknowledgment at least that they would be prepared to negotiate, but they were never asked that, and I am curious as to why that was?

A. I can't answer that question easily, because obviously I wasn't asking the questions in that sense of the words, but I don't know why they weren't specifically, or if indeed they were specifically asked that question. I don't have a distinct recollection of it. I do know that on a purely

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personal basis, I would always make the assumption that if people are negotiating and they have a very strong sense that they want to take, they will stay with that as long as they possibly can, but ultimately you give somewhere along the line, but in fact the - the whole negotiations to this point had produced a very considerable drop in the fee which had been sought by RTE. They had practically halved what they were looking for. There was no reason for me, or presumably for the Chairman, to assume that we had reached the end of the line, because there was no space, if you like for manoeuvre, but we needed to know what was the basis for Century's argument because we didn't, at that point, know precisely.

180 Q. Well, was there any reason to believe that in view of the relatively significant reduction in the asking price, that there in fact was room for further reduction in; can one take it, for example, that as between the Minister and RTE, they were not really in the position of negotiants to a contract where each of them necessarily would be holding something back? There should, surely, in the negotiations between the Minister and RTE have been a very full and frank disclosure of all matters between them, because effectively the Minister was the boss at the end of the day, and his Department --

A. I have no knowledge whatsoever of the relationship between the Minister and the RTE authority as to who or how close indeed the negotiations were. I would assume that that would be the base, but equally, I think it is a point worth bearing in mind, even though RTE was the national authority for broadcasting at that particular time, they are

distinctly rivals of any station which would go up against them and would remain so; and unless they were silly they were going to do all in their power to resist the challenge being presented by, as it turned out, Century.

181 Q. But that surely was something that went in the teeth of the assurances which were given by RTE in the form of Mr. Finn at the meeting of the 7th of December. Where he had in fact outlined what was the philosophy of RTE and indicated that they would accept, of course, the role that they had to play in the provision of transmission services to others; isn't that so? So it involves an inference that there was a decision being made by RTE to be less than frank in their exchange with the IRTC, for example, that they were holding back?

A. Again, I can't answer for what RTE was thinking but certainly I think the Commission took the viewpoint that they were rivals and as such you had to treat the information coming from them, not with suspicion but as a commercial ploy, a commercial opening stance, or whatever.

182 Q. Can you recollect what other subject matters were discussed at this particular meeting? Particular in the context of Mr. Stafford indicating that he just returned from a very satisfactory meeting with the Chairman and Secretary.

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I take it firstly, that there was no immediate satisfaction to him in a demand being made of him that he should immediately set about with the greatest possible urgency to do so some research and produce figures; that in itself would have been something that would have caused him to have any satisfaction, particularly in view of the very

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short deadline for the production of this information from his experts in the UK. What other areas can you recollect discussing with Mr. Stafford at that time?

A. First of all the words "very satisfactory" are Jim Stafford's words, they are not mine.

183 Q. Of course.

A. I don't know what inference he took from the meeting itself. From my perspective the meeting happened and the key bit of information that was to emerge was the subsequent report which has been asked for, that is being asked for here from the advisors of Century. That would have been satisfaction. I have no recollection of any other items having been raised with Mr. Stafford at that time.

184 Q. Do you relate that in any way with the following sentence then that the "decision will be announced next week" certainly his position of his satisfaction with the meeting and the location of sentence that the decision will be announced next week, would appear to infer that there was a connection between his satisfaction and the fact of the decision being made the following week?

A. He may have chosen to draw that inference. It certainly was nothing to do with me, because the Commission stance at all stages is that they would move quickly and with all possible haste to get stations on air. In fact, I think other members have made this point, it is to the eternal credit of that Commission that so many stations came on air so quickly at a time, so all of the applicants would have been told an early decision will be made. This isn't something that was particular to Century, they would all

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have been told they would be made - I think it is quite likely that they may even have been told that there was a meeting of the Commission scheduled for the 18th and that would be decision time.

185 Q. Yes. So that even though --

A. You musn't forget that the Commission, at a very early stage, had taken a number of stances. One was for want of a better word, to "outlaw" pirate broadcasting was the first one. Secondly, it had said "We must produce quickly an alternative to RTE because we are now in a vacuum period, where RTE effectively has the broadcasting arena to itself, and the entire audience".

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In the entertainment, business or in anything you wish out of sight out of mind; so it was critically important from the Commission's viewpoint that all the stations would get on air quickly. So that that particular statement I think just bears out what the Commission's viewpoint all along was. We will make quick decisions and we expect stations to go on air quickly to make sure that the rivals, if you like, don't run away with the show.

186 Q. Yes. So that the inference that one might draw from the positioning of those two sentences, namely that there had been an indication given to Mr. Stafford that the decision would be favourable to him, is not an inference which can be drawn from the actual fact of the meeting; is that the position?

A. From my perspective nobody but nobody, whether it be national or local was ever told in advance "you are getting the franchise". Certainly it would not have happened in

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this case either.

187 Q. It would appear from a letter written by Mr. Stafford to the Commission in June of 1989, that matters other than the RTE and Century figures had been discussed at this meeting, and in particular that the question of renewal of the franchise on terms at the end of the initial period was also a matter which was the subject matter of this agreement.

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My basis for suggesting that is at page 4076 where Mr. Stafford was making a complaint in effect about the manner in which he claimed to have been treated by the Commission and Secretary. And if we look to the third paragraph down there, he says:

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"When we presented our submission to the Secretary of your Commission on the 16th of December, we made it clear that we needed a renewal, being a second seven year franchise on the same terms and conditions. At a meeting with yourself" this is a letter directed to the Chairman "and the Secretary on the 13th of January we again made it clear that this was essential. Furthermore, we understood that it had been accepted and agreed by both yourself and the Secretary at that meeting. It was in good faith we proceeded on the basis that this matter, having been agreed was agreed. And we must protest in the strongest possible terms, the attempts by the Commission executives to renegotiate this critical point."

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So whilst this is dealing with a separate issue, namely the

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question of the terms upon which renewal was to take place, the author of the letter, Mr. Stafford, is referring to the subject of renewal of the franchise as being one of the matters discussed at the meeting of the 13th of January.

Does that accord --

- A. I have no recollection of it being particularly discussed at that one. I do know that he wasn't - some of the local stations would have sought the same thing, which is an automatic extension at the end of the period. The Commission was reluctant, this is at the stage when we were working on the draft contracts which they would be obliged to do. The Commission were strongly reluctant to offer that to any station on the basis that, effectively or in reality you were offering a double contract, a 14 year contract, which the Commission might not want to do because if the stations were not, either behaving properly or matching up to the criteria that the Commission set, it would prove very difficult to remove them at that stage. So I would very much doubt that, I certainly would never have promised a renewed franchise at the end of it, and I would very much doubt that the Chairperson or indeed any member of the Commission would have done so either.

188 Q. Right. So whilst there certainly is a dispute as to whether or not there was such an agreement, you would be happy to acknowledge that it was a matter which was the subject of this particular discussion on the 13th?

- A. It could well have been. I don't remember it specifically, it could well have been. It certainly, if I remember rightly was part of their submission earlier on, that notion of --

189 Q. True.

A. As I said, they weren't alone.

190 Q. It had been, obviously, a matter which they had been concerned with before their oral presentation, but I am just wondering how it is that they came to enter into a discussion on this particular subject at a time when, as you say, they had not been given an indication that they were likely to be the successful candidate and they had been present to hear three other submissions made the day before, all of which we are told were relatively professional and certainly would not have allowed any one person to leave the auditorium in the knowledge that they were the obvious winners; isn't that so?

A. That's correct.

191 Q. I mean in the normal course if somebody had endeavoured to raise this issue as to what the renewal would be at a time when they hadn't even been appointed, they would have been given short shift and told that these were matters which would arise in the contract when it is drawn up with the successful franchisee?

A. Yes.

192 Q. Whoever that might be?

A. Yes.

193 Q. Yes, right. So there may have been such a discussion, you cannot remember?

A. I cannot recall.

194 Q. If there was or if there was such a discussion, whether it was concluded in the format suggested by Mr. Stafford, that it was agreed that he would have renewal on the same terms or not, is that the position?

A. Mm-hmm, that is correct.

195 Q. In any event, once this request was made of Professor Hills by Mr. Stafford, it was intended that it would be responded to, that the response would be received by close of business at the Commission offices, and presumably this was on the basis that the figures justifying 300 as the correct charge, would in some way, be analysed or reviewed to see whether or not there was reality in those figures; isn't that right?

A. Insofar as people who were not expert in broadcasting and transmission could do so. I think the Commission would have looked at those figures, as would the Secretariat, from the point of view of good sense; do these figures seem to make good sense? That is as far as we could go because none of us was expert enough to go behind-the-scenes and analyse those figures in any great depth.

196 Q. Yes. You were moving from a position where you had a bear figure of 375, had it not been broken down as far as you were aware, it was a take it or leave it; the project is not viable above that figure, according to Mr. Stafford?

A. Yes.

197 Q. Therefore, really you were in a position that you had to seriously consider these figures and see if they, in effect could stand up; isn't that right?

A. Yes.

198 Q. We know that a response was received on the 17th, the day before the decision was made, and that was in the form of a letter to yourself from Mr. Stafford, it is page 6078. And it is a letter of the 17th of January, 1989.

"Dear Mr. Connolly, I enclose a copy of the IBA fax just received here this morning. In addition, I would like to make the following observations."

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There are three observations made there. We will return to those in a moment.

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If we could move to the enclosure which accompanied this, this was the documentation from IBACS. Firstly at page 6079, there is a simple fax cover sheet saying:

"Enclosed herewith our memorandum commenting on the cost of the transmitter service given in your fax message of the 13th of January."

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Then if we turn to the next page, 6080, we will see the document itself. This is unfortunately a poor copy, it is as good as we have. It is a copy of a fax. But, firstly this document had, as its origin, Professor Hills who drafted an aide memoire for the purpose of allowing the personnel in IBACS, in particular Mr. Thomas, to review this and to go on and to produce a report in the line of a brief which had been furnished to him by Professor Hills. Professor Hills' brief was one which he had discussed with Mr. Stafford before he communicated with the IBACS.

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If we turn firstly perhaps to the brief which he received, and it is at page 6072. At paragraph 3 of that we will see that Professor Hills is advising Mr. Stafford that the brief that IBACS are going to work to, in order to come up with their figures, as set out in paragraphs A to D of

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paragraph 3. They are:

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"Firstly, are the capital costs about right? They will not address the issue of how and over what span of years they are to be repaid. I confirm a working life of 20 years for new plant.

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B. Ignore any aspect of historic costs since your argument is one of principle.

C. Assess operating and maintenance costs on a marginal basis, i.e. what are the additional costs that RTE will have to meet because of the new service?

D. Ensure that the bottom line is of the order of 375,000 Irish, which is the figure in the business plan."

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So the brief to which the IBACS were intended to work was one which limited them to the parameters of those four criteria; do you see that?

A. Mm-hmm.

199 Q. So that if they were acting to that particular brief in no circumstances could they deliver a report which found that those figures were inadequate, or that the figure should be €692,000 for example; isn't that right?

A. Mm-hmm.

200 Q. And obviously the IRTC were not aware of the fact that a limited brief, or a brief of limited instructions had been sent to IBACS, and that it had these preconditions to it; isn't that right?

A. Yes.

201 Q. In fact, IBACS did not prepare a report in which this brief

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is referred to at all. If we can revert back to page 6080, they merely regurgitated the instruction they had received from Professor Hills in his memorandum, and this follows the wording of the memorandum provided by him.

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There are few references specifically to costings, and certainly if we look through the document at no point in time does it come to a conclusion at the end that ú375,000 or any figure close to it is an appropriate figure for the costings. We see on page 6080 at paragraph 3, where they say that:

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"There will be some work involved in installing the plant, for which RTE should be reimbursed. There are reasonable staff costs on the basis that the staff involved are denied to RTE for that time.

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Secondly, there is the matter of sharing existing infrastructure of the site and its access, the buildings, the masts, transmitters, antennae etc.

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Section 5.3.6, I think that is the format of the application form, isn't that right? It is paragraph 5.3.6 dealt with transmission, "of the application, sets out the arguments that these existing assets should be made available to be used without charge."

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Now there is nothing in this to suggest that that argument is either accepted or rejected by the author. Really there are only two monetary amounts referred to and they are on

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the following page, page 6081, where they say:

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"Additional maintenance costs arising for the new equipment will be modest and should not exceed say ú30,000".

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As regards the distribution of programme they say they have proposed a fee of ú55,000 for this aspect of the service for which they believe to be justified. They are, in effect, adopting an RTE figure there; isn't that right?

A. Mm-hmm.

202 Q. This was the document which was sent by IBACS in response to the request made by the Chairman and yourself to Mr. Stafford to justify the ú300,000 figure. Having considered this document, did you believe that the ú300,000 figure had in any way been justified by this document and if so --

A. This document, if I recollect, came in literally before the subsequent day's meeting.

203 Q. It came in on the 17th of January. It accompanied the letter that I referred you to from Mr. Stafford to yourself in which he makes three points and then he encloses the IBACS letter?

A. Mm-hmm, yes. I think the critical point about this is that the Commission, at some point obviously made its own mind up, that this did answer any difficulties they may have had in relation to Century's proposed figures to pay. It obviously was taken into account when they were making their decision. I think it is a matter for the Commission members themselves to say whether or not they were happy.

204 Q. My question was really whether you, yourself, remember

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looking at this document, having received it. It was addressed to you?

A. Yes.

205 Q. And having considered it, did you yourself believe that this, in any way, addressed the issue of whether or not the €300,000 was a figure which could be justified by IBACS?

A. I cannot specifically recollect analysing the figures out of it and seeing does it actually justify; I think it is important again to put that correspondence in the context of a lot of other things which were happening around that time. And it was obviously a feature for newspaper chat and everything else, and I think the Commission took the viewpoint that it was likely that the figures were moving closer to the Century figure, particularly given transmission facilities for limited areas, service for example in Northern Ireland, they are serviced by particular bits of the British mainland in terms of what it was costing to mount those particular services.

206 Q. Well, this particular issue as to whether or not the RTE figures are, or the Century figures could be challenged in the case of RTE, or advanced or stood up in the case of Century, was the only issue that appears to have been the subject matter of any involvement of the Secretariat between the date of the oral submission on the 12th and the decision date on the 18th?

A. Yes, yes.

207 Q. So to that extent I mean it had an obvious importance that it had been identified as an unresolved issue. It had been identified as an issue which required urgent resolution. It had been identified as one which could be resolved by

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the independent body in the UK, coming back with a figure that the independent body in Ireland could accept?

A. Yes.

208 Q. And in that scenario we see a document returning which does not seem to comply with that criteria; isn't that right?

It didn't address --

A. On the face of it, yes.

209 Q. It didn't address the 300,000, therefore it couldn't stand up as a figure in contradistinction to what had been agreed by the Minister. Therefore, remained an unresolved issue which had been identified and remained unresolved; isn't that right?

A. At its meeting, as I mentioned, the Commission would have access to this particular letter and other information that was flowing around at the time. And it obviously took the viewpoint that they were happy to work with Century's figures.

210 Q. Well, I am wondering whether - certainly whether it is accurate to say that this document, or this communication was actually brought to the attention of the general body of the members, because certainly none of them had a particular recollection of having (A) indicated that there should be further communication with IBACS after the oral submission or (B) that further evidence came to them in this format for a consideration at their subsequent meeting. I am wondering are you certain that this documentation was in fact brought to the attention of the meeting, and if so --

A. I would be pretty certain that at least the information contained within it, whether they - they may not have had

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time to have access to it in advance. The reason behind the Chairman seeking a meeting with Century was to obtain this very bit of information. I think it would be extraordinary to expect that they wouldn't have brought that information to the meeting of his Board. I suspect that they did.

211 Q. Yes. Well, we will resume this, I think, after lunch.

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CHAIRMAN: Yes. A quarter past two.

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MR. O'NEILL: Very good.

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THE HEARING THEN ADJOURNED FOR LUNCH.

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THE HEARING RESUMED AS FOLLOWS AFTER LUNCH:

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MR. SEAN CONNOLLY RETURNED TO THE WITNESS-BOX AND CONTINUED
TO BE EXAMINED BY MR. O'NEILL AS FOLLOWS:

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212 Q. MR. O'NEILL: Afternoon Mr. Connolly.

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Before the lunch break we were discussing the detail of the
fax communication which was received from the IBA by Mr.
Stafford and in turn, I think, faxed on to yourself?

A. Yes.

213 Q. With a covering letter of the 17th of January. And this
was a fax which was provided in response to the request
that there would be detail to justify the €300,000. We
have analysed the document itself, and on its face it
certainly doesn't appear to offer an analysis of those
figures. I was asking you as to whether or not that
letter, or fax rather, was brought to the attention of the
IRTC board at the resumed hearing on the 18th, and as I
understand your response it was to the effect that you
believe that it would have been brought to them. And I
take it, that if that was the case it could only have been
in the context that there was no document provided to the
IRTC to justify the 300,000 - this was the document which
was provided and it was of limited use only, isn't that so?

A. Yes, okay, that's fine.

214 Q. So I take it the, insofar as the IRTC had information
available to it, to make any decision as to whether or not
the RTE figures were reasonable figures for the service

that was being offered, or not, they were limited by the fact that there was no alternative advance against it, isn't that right?

A. That's correct.

215 Q. Now, in the - in addition to having provided you with the fax, Mr. Stafford made a number of comments or addressed a number of arguments which he felt should be brought to the attention of the IRTC, and they are contained within the body of the letter of the 17th of January, at reference 6078.

.
Firstly, the argument is made by way of observation, that the transmission system for public service broadcasting is an investment that's already been paid for by license fees, etc.. Secondly, "In the discussions with RTE they told us they could finance capital investment and equipment at a cost of 7 percent per annum. However, they sought to amortise the equipment over a five-year period, whereas it has a life of 20-years. The cost of amortising ú100 of an investment at 7 percent over 20-years is ú9.44 per annum.

.
Thirdly, I draw your attention to the Sunday Tribune press report on the Downtown transmission charges, the whole of Northern Ireland is ú100,000. The IBA advise me that that involves four transmitters. Our proposal of 375 as a transmission charge is consistent with the Downtown transmission costs."

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Now, these three separate issues addressed in this letter were not matters which were dealt with specifically in the

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fax from the IBA, isn't that so?

A. That's correct.

216 Q. Did you understand, if we look to No. 3 here, that the reference to the IBA in the body of that particular paragraph, meant that the IBA in some way agreed that the 375 as a transmission charge was consistent with the Downtown Radio costs or not?

A. I think I mentioned Downtown before. As I say, I am not the expert on transmission charges. It was becoming clear, both in the public arena and indeed from letters from Jim Stafford as one, that the charge, the IBA charges, sorry the Downtown Radio charges, were, if you like, more consistent with the figures he was proposing, and if you take the obvious jump from ú100,000 to four times as many transmitters needed, you are approximately at the type of figure that Jim Stafford was proposing in his application.

217 Q. Right. My query was, the inclusion of the IBA as being an advisor in the context of this particular inquiry; did you believe that that advice extended to the IBA suggesting, for example, the 375 would have been a comparison one could make comparing Downtown with the service in the South of Ireland?

A. I don't recollect making that particular decision at the time.

218 Q. Right.

A. But I think it is, the Commission's technical people will be aware of the number of transmitters, anyhow, that Downtown had via the Department of Communications, so the information, it is only helpful, if you like, in the sense that it mentioned a figure of ú100,000 as opposed to

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numbers of transmitters or whatever.

219 Q. True. It could only be helpful if one was comparing like-with-like, other than the numbers of transmitters involved?

A. Yes, yes, correct.

220 Q. But it makes an assumption, obviously, that all other factors were equal and one would do a simple multiplication?

A. Yes.

221 Q. But it transpires, apparently, that all matters are not equal and that the Northern Ireland system is quite different from the system in the Republic for a number of reasons, including the size of transmitters, their output, some of them are 10 kilowatt as opposed to 200, etc.. So that this as a means of comparison, was certainly a very flawed one other than in the most general way, isn't that right?

A. Mm-hmm, quite.

222 Q. I am wondering when this document was received by the IRTC, whether any specific inquiry was made as to whether or not the views expressed in this letter had the support of others in the industry? In other words, there are firstly matters of principal or the philosophy of broadcasting encompassed here and there are other matters dealing with the acceptable practices for financing capital over a number of years, where equipment is being acquired. And thirdly, there is the Northern Ireland/Southern Ireland comparison.

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Was there any inquiry carried out by the IRTC or its

Secretariat to see whether or not these matters stood up to examination by other bodies, for example, the IBA?

A. The answer as far as I am aware is not. I certainly wasn't involved in making any specific inquiry about that. As I mentioned at the very beginning, I think the whole question of transmission and the cost of same was one which was left to the stations themselves to actually work out and come to a conclusion. It wasn't the policy of the Commission at all, to run behind the figures and start working out the costings, whether they were right or false or whatever. I suppose the other point worth bearing in mind is in its consideration anyhow of the various applicants, the charges, if you like, laid down for transmission, were relatively minor in relation to some of the other things that were going to cause difficulties. I think it would be true to say the Commission would have taken the viewpoint that it would not be transmission charges that would bring down a station. It was whether they could hit the advertising target or not. And in this context, it is worth bearing in mind, I don't have figures to hand, but it is worth bearing in mind, as I mentioned at the very beginning, that Century was very conservative relative to the other two stations. So it would follow naturally enough that they would be conservative too in terms of transmission. But the transmission wasn't the issue that was bothering the Commission. It was much more interested in finding out can these people put up a station that will get an audience and therefore get advertising?

223 Q. Mmm. Well, the facility, I take it you accept, was available to you to make checks either with the Department

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of Commerce or the Department of Communications rather, or the IBA, as two bodies which had the professional advice available to them to address any one of these issues?

A. Yes, that would have been available, yes.

224 Q. May we take it that no inquiry was made of the Department to see whether or not in their reduction of the figures initially asked by RTE to the figures which they agreed on the 11th of January, whether they had in fact borne in mind these arguments or these particular facts in their reduction of the figures?

A. The IRTC didn't make inquiries of the Department, how they arrived at their figures.

225 Q. Because, we know that RTE itself, went on to make inquiries of the IBA on the 9th and 10th of February in, that would deal with these specific arguments?

A. Yes.

226 Q. And they received the benefit of the views of the IBA on the principles of effectively marginal costings and various other aspects?

A. Yes.

227 Q. They - I take it, you had a pretty good relationship with the IBA throughout, isn't that right, they didn't feel --

A. Yes, this was a good relationship, yeah, but not what you call a frequent relationship. We certainly consulted with them at the very beginning, as seemed prudent to do, when starting off a new operation that has existed elsewhere. As a matter of on-going contact, we didn't have a huge amount of contact with them.

228 Q. They had not indicated any impediment to access from the IRTC on matters of principal or policy?

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A. No, in fact they would have been very helpful in any occasion we asked for information or help.

229 Q. Right. So there was a meeting, as we know, on the 18th of January, the result of that was that the franchise was awarded, subject to contract, to Century, and as I understand it, from the evidence of earlier witnesses, that was a relatively short and focused meeting, is that right?

A. Yes, it was called specifically for the purpose of deciding upon the national franchise. It was short, I wouldn't like to put an exact timespan on it, I suspect it wasn't longer than an hour or two in total.

230 Q. Yes. We know that information was given in advance of the actual press notification of the result to the successful applicant, for obvious reasons, that you would alert them and they would presumably be present at the press conference that would announce them as being the successful contender, isn't that right?

A. As it happens I think they weren't present. However, yes, that would be the facility available to them.

231 Q. Certainly one of your tasks I think on that day was to advise them of the fact that they had been the successful
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A. Yes.

232 Q. And we know equally that the Chairman on that day, met with Mr. Ray Burke, and was that for the same purpose do you know?

A. I don't know, I wasn't aware of this meeting, I have heard mention of it before. Just to, I don't particularly know when it happened, I know the meeting took place in Ray Burke's offices in Kildare Street.

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233 Q. Yes.

A. We were using the conference facilities there and like, this was before the IRTC had its own offices, so I do recall, if you like, the Commission members and Ray Burke arriving more or less simultaneously in the Department. Ray Burke's comment was "You have work to do lads" and off he went about his business. I am not aware of any further meetings between the Chairman and the, Ray Burke, subsequently.

234 Q. Right. The documentation at page 60 is the diary entry, as I understand it, from January 1989, and we see on the 18th of January, at 2:30, I think the amendment is "Mr. Justice Henchy met with the Chairman", rather "with the Minister", isn't that so? Or his diary, you can't say whether he did in fact meet him, but there was to be a meeting at this time, and presumably therefore the decision of the Commission had been made prior to that time?

A. I would imagine so, because part of what I had to do subsequently was go and organise a press conference for the purpose of announcing the winners. That took place, if I remember rightly, in time for the evening news, about 5 o'clock or half five, so I guess the decision would have to have been made by then.

235 Q. Yeah, I think you had in fact left the discussion of the meeting on that date and you had gone to Century?

A. Yes.

236 Q. At a particular time?

A. I was asked by the Commission to go and meet with, Jim Stafford specifically as the representative of Century, his offices were very nearby, and the purpose of that

particular trip was to be assured of a number of things.

One was that they would meet the criteria in relation to news content and all that kind of stuff, plus Irish language content, because this was specifically laid out in the legislation, that they had to do, and the Commission had just some worry that Century might not be prepared to do that from the word go. That was the purpose of that, it was a short meeting.

237 Q. I see. Now, after the announcement was made on the 18th, obviously you would have expected that as a matter of course now that the franchisee was successful that it would set about concluding its negotiations with RTE, particularly as regards transmission charges?

A. Yes.

238 Q. Isn't that so?

A. Yes.

239 Q. And obviously, you learned between then and the next correspondence that we can find on file, which is the 6th of February of 1989, that there was difficulty in agreeing figures, isn't that right?

A. Yes.

240 Q. Do you remember the detail of that or how you learned of it? Did RTE come to you or did you go to them or did you go to Century or they come to you?

A. I don't recollect actually. In fact I am certain that we wouldn't have approached RTE looking for the figures, that was a matter of negotiation between the two. I do know that at this point I would have been having fairly regular discussions with the officials of the Department who were involved, shall we say, in the RTE/Century Department,

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negotiations about fees in any event, so I would have got some information from them as to where they'd arrived at.

241 Q. And obviously, those officials had concluded, as far as they were concerned, an agreement with RTE on the 11th and presumably the, it was felt that that would be the figure

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A. I assume so.

242 Q. -- being acceptable at the end of the day, but that transpired not to be the case, and I think you wrote to the Minister on the 6th of February, 1989. You see that at the document on page 176, where you write to Ray Burke TD, Minister for Communications.

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"Dear Minister, I enclose copies of documentation in connection with the charges being sought by RTE for providing transmission services to Century Communications for the independent national radio station. The matter is now extremely urgent as contracts for the provision of the new transmission equipment must be signed in the next few days, if the station is to make the proposed start-up date of May 1st. In the circumstances I would appreciate your urgent observation/decision on the charges now being sought."

From that the Tribunal can ascertain the documentation which accompanied that letter and is referred to here, as the "copies of documentation" included firstly a submission of a memorandum prepared by the Commission itself, and that's at pages 177 and 178, if we can put that on screen firstly?

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That document is headed "RTE Transmission Charges." It says: "Please see attached copy of RTE quote for transmission of new independent national radio service, and the copy of a letter from Century Communications."

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Is that document familiar to you, we are endeavoring to establish who the author of it is? Mr. Appleby says he may well have had an input because he recognises an analogy here being drawn between Aer Lingus and airports. In view of his previous background in the civil service he felt that that might well have been a parallel that he drew, but as regards the body of the document itself, he certainly wasn't in a position to say that he was the author of it. Can you assist in this regard?

A. I could not be certain. I would almost be certain that Paul Appleby would have been deeply involved in the preparation of that type of document, it was the type of function that he fulfilled for the IRTC, was to do that type of analysis, but I couldn't swear to it at this moment, that he is the author.

243 Q. Right. If we look at that document by comparison with the letter of the 17th of January from Mr. Stafford, it seems to adopt in the same sequence of argument, the issues which were advanced by Century as being reasons for its figures being preferred, isn't that right?

A. Yeah, it does, yeah.

244 Q. And you might just confirm that there had in fact been no further independent advise furnished or analysis furnished which lead the author of this document to make these

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proposals?

A. No, there is not, there is not, no.

245 Q. So it seemed to have been certainly that the author of this document embraced it and embraced the arguments of Century and encouraged the Minister to follow suit, is that right?

A. I think what he specifically asked for is for the Minister's observations and directions in it. The Commission - a lot of the information included, this wasn't just a matter between Century and the Commission, or Century and RTE, it was the stuff of comment in newspapers and television and radio and so on about do RTE actually own the transmission sites or do they not? Are they not owned by the State? It was a long argument, it went on for weeks on end. I think the Commission would have been quite cognisant of that kind of information. So it doesn't surprise me to see that the arguments are regurgitated in that particular way.

246 Q. Right.

A. I think, I mentioned at the very beginning that the arbitrator, if you like, of, the final arbitrator in any discussion between RTE and a prospective broadcaster about fees was going to be the Minister for Communications, so this was the Commission saying "We have no role in this particular area, it is a matter between Century in this case and RTE. It is your role, Minister, to see if you have a role to play in adjudicating upon it."

247 Q. Well, this document seems to go further than that, in the sense that it didn't present this as Century's argument, and on the other hand then include RTE's figures and say "These are RTE's figures which have equal merit", but

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there is a comment here at the very beginning of it that says, "There is substance about Century's argument about double payment for the transmitter network." Which is, I think, a pretty clear indication to the Minister that the IRTC was adopting a position that the philosophy should be that this is a service that has already been paid for by licenses, and therefore, whatever order is made should bear that principle in account, isn't that right?

A. That's right.

248 Q. In addition then, the second document enclosed with this was the RTE/Department of Communications figures which had been agreed, as we know, on the 11th of January. And we have referred to those documents already at page 179. We see the FM radio figures, isn't that right?

A. Yes.

249 Q. And on 180 we see the national AM figures?

A. Mm-hmm.

250 Q. And then if we move on to page 181 we see a breakdown or table which contains in the one hand once-off charges, underneath that the phasing of annual charges, and if you look down on the side there, you will see "Annual Charge Cumulative", as we move across from left to right, Year 1 to Year 4, isn't that right?

A. Yes, yes.

251 Q. Now, it is obvious from this documentation that when you wrote to the Minister you were aware that there had been quite a significant amount of effort put into breaking down the RTE figures, to the extent that they were broken down over the four-year period and quantified, isn't that right, under headings?

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A. That's right.

252 Q. And I take it that in writing to the Minister, it was to
drawn his attention to the fact that there remained an
on-going dispute?

A. Yes.

253 Q. Isn't that right?

A. Yes, as far as I know - plus I think it is true to say, I
think I mentioned at the beginning, the Commission didn't
have the expertise to analyse figures in the same way as,
for example a Department would have. When push comes to
shove at the end of the day, the Commission was saying to
the Minister "We have two distinctly different viewpoints
as to what transmission charges should be." The Commission
would have assumed that the Minister or his team of people
would carry out an analysis of those figures before they
would move any further. This was a role that I think the
Department was much more qualified to fulfill than the
IRTC.

254 Q. And they had endeavoured certainly to do that on the 11th
of January after a meeting which had taken place on the 5th
as well, I understand?

A. Yes.

255 Q. That had reached, what we call, a middle set of figures?

A. Yes.

256 Q. Between the original figures and subsequent figures. But
this invitation to the Minister was for the Minister to
redirect his mind to the issue, isn't that right?

A. That's correct.

257 Q. And it would appear that following upon your letter to him,
there were meetings both between yourself and the Minister,

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and the Chairman and the Minister. This appears certainly from the diaries, that there is a diary entry for a meeting with yourself and the Minister on the 14th of February?

A. Mm-hmm.

258 Q. About a week after this?

A. Yeah.

259 Q. And I take it, it was to discuss the subject of RTE transmission charges, was it?

A. I can't remember the specific meeting, but yes, at that point that would have been the only item for discussion I suspect.

260 Q. We do know that on the 16th of February, two days after that meeting, the Minister wrote to the Chairman, in which he set out alternative figures, and I'm assuming that prior to so doing he had been in consultation with yourself and with the Chairman of the Commission and discussed his view on these figures?

A. I can't remember the Minister at any point discussing his view on what the figures should be. I think he certainly would have, as Minister for Communications, been the person, if you like, who was responsible for the legislation coming into being. He would have had a more than fatherly interest in ensuring that the national station came on air. So his interest would be where are we at? Is there progress? Can we move ahead? This incidentally was becoming an issue for the Commission as well, because the Commission was quite determined to close the vacuum in broadcasting that existed and wouldn't want to see the Century/RTE row going on too long, and allow the gap to continue.

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To answer the question, the Minister certainly never made his viewpoints known to me as to what exactly he intended to do on foot of the Commission's letters. The first I was aware was when they wrote to the Commission.

261 Q. And the letter to the Commission was one addressed to the Chairman, it is at page 3974. And in this the Minister is saying, "Dear Chairman, I refer to our meeting -", and there was a meeting between the Chairman and himself, I take it that was a meeting you weren't at? I know there was another meeting between himself and yourself. "- And the documentation sent to me by the Secretary of the Commission." The documentation being that which accompanied your letter of the 6th of February, isn't that so?

A. Yes.

262 Q. It was, as we know, the RTE latest figures and the submission that had been made, in which it was urged on the Minister that there was support for Century's contention.

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Now, he goes on to say: "I have had the matter examined by my Department and discussed the issues again with RTE. At my strong urging they have now agreed to reduce their annual charge from 692,000 to 614,000. Depending on actual physical implementation of the project they would expect a build-up to this final figure in the following approximate manner, (all at October 1988 prices):

1989 - ú200,000.

1990 - ú430,000.

1991 - ú530,000.

1992 - ú614,000.

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I am satisfied that, in Irish conditions, the foregoing charges are not unreasonable."

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Now, if we revert for a moment back to page 181 and endeavor to establish the effect of this latest indication from the Minister, if we move to the annual charges as cumulative charges, can you see that on your screen there?

A. Yes.

263 Q. You will see that the figures which had been agreed in January, were that the Year 1 charge would be ú274,000, do you see that?

A. Yes.

264 Q. That figure under the Minister's letter of the 16th of February is now reduced to ú200,000. The figure for Year 2 is ú548,120, and that was reduced by letter of the 16th February to ú430,000.

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The figure for Year 3 provided for ú665,385. And the Minister has now reduced this to ú530,000. Finally, in Year 4 the 692 figure was reduced to ú614,000.

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Now, these, of course, were figures only in respect of the FM service?

A. Yes.

265 Q. Not in respect of the AM services, isn't that right?

A. Yes.

266 Q. So, if we look to the figures originally agreed and look to the new figures suggested in the letter of the 16th of February, we will see that there is a difference of

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ú402,565 affected by that decision of the Minister's up to the first four years of the conduct of the new business, isn't that right?

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And in addition to that, for the remainder of the franchise period of three-years, there being seven-years in any franchise period, there was to be an effective saving of ú78,000 per annum on what had been agreed?

A. Right.

267 Q. So that the difference between the January figure agreed by the Minister and the figure proposed on the 16th of February, was firstly the ú402,565 saving on the basis of four years set out in this table, and an additional sum of ú234,000 over the next three-years, making in total ú636,565.

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So during the period in question, that was going to be the new figure?

A. Yes.

268 Q. Isn't that right? And I take it that when you saw the letter of the 16th, when you looked at the figures, applied it to the figures which had been already agreed by the Minister, that it was clear that this was indeed a substantial alteration from the initial figures, isn't that right?

A. Yes, it was clear.

269 Q. Right. And there was a statement here by the Minister to the effect that he was satisfied that the "foregoing charges were not unreasonable in Irish conditions."

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At that point in time did you have any reason to believe that any further reduction of those figures would either be available or would be appropriate?

A. Again, I would have thought not. I am now trying to remember back what exactly I was thinking, but I think the Commission was coming to the viewpoint that we were coming close to the, if you like, the final figure which would be agreed upon.

270 Q. Yes.

A. And its anxiety remained to duly get Century on air, that's where it was coming from.

271 Q. Right. Obviously when this letter was received, it would appear that it was considered by the Commission to be very material, and that it should be forwarded immediately to Century?

A. Yes.

272 Q. In the hope, presumably, that they would act upon it and conclude matters, and we see in the, undated letter at page 3948, the Chairman wrote to the Minister thanking him for the letter of the 16th outlining the position?

A. Yes.

273 Q. "Dear Minister, thank you for the letter of the 16th of February, 1989, outlining the position regarding transmission charges by RTE for the new national independent radio station. There are a number of points of which I should like clarification.

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May we transmit a copy of your letter to Century Communications at this stage?"

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And I don't think we need necessarily consider the balance of the letter, but in fact the letter apparently was copied on to Century, isn't that right?

A. Yes, yes.

274 Q. Now, it is not possible to work out exactly what date this was, but it was some date between the 16th and the 20th, isn't that right?

A. Yeah.

275 Q. And I am not sure whether it was as a result of that letter and enclosure having been sent to Century or otherwise, that a letter was sent to the Chairman by Century, dated the 17th of February, 1989. Its at page 3975. It doesn't specifically mention the 614 figure in the body of it.

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It does state that, "Dear Chairman, we wish to advise you that at a board meeting of Century Communications Limited held on Tuesday, 14th of February, Laurence Crowley was co-opted to the Board of Directors and elected Chairman. Terry Wogan and Chris de Burgh were also co-opted to the Board. In due course the new directors will be participating in up to 12 and a half percent of the company's equity. This information remains confidential until 1700 hours, Monday, the 20th of February, when it will be released to the press.

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The board meeting reviewed the question of transmission charges. They were of the unanimous opinion that the ú375,000 offered to RTE for a full transmission service was, given the advice that they had from the IBA, fair and reasonable. Furthermore, they were of the unanimous view

that they were not prepared to negotiate or increase that offer, as it would affect the viability of the service.

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They expressed their concern that RTE as custodian of the national transmission network had an obvious conflict of interest with their role as providers of transmission services to the independent broadcasters, and that in the circumstances they could not understand why, given that the Minister has power under the Act, a directive had not been given to RTE.

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At the public hearing on the 12th of January, 1989, we stated that we could provide the service within 90-days of the signing of contracts. At that time there was 108 days to the 1st of May. When the award was made on the 18th of January there were 102 days left. We received the broadcast contract on the 9th February, and would hope to be able to agree the terms of that contract by the end of next week. As of today there are 72 days left to the 1st of May, and we are particularly concerned that the issue of the transmission charges has not been resolved, and that there appears to be no way in which it is going to be resolved to meet that date.

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We are prepared to meet all the extra studio installation costs associated with a shorter deadline and to be on air on 1st of May. We are particularly concerned that there seems to be no urgency to resolve the issue on transmission."

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So as of this date, just one day short of the month after the time they had been granted the franchise subject to contract, they were stating in the clearest possible terms that they were not interested in negotiating the 375, isn't that right?

A. Yes.

276 Q. It was effectively a "take it" or "leave it" situation?

A. Yes.

277 Q. Isn't that right?

A. Yes.

278 Q. At that point, obviously it would have been a disappointment, I am sure, to the IRTC to have lost them, but it was feasible, I take it, at that point to have considered another applicant in the event that the RTE charges issue could not have been resolved, isn't that right?

A. It would have been possible certainly, yes.

279 Q. And at this point on this date, the IRTC was still in the position that it had not received any documentation whatsoever other than internally generated Century documentation which stood up to ú375,000?

A. Mm-hmm.

280 Q. But on the other hand, it had been aware of the initial RTE figures, the reviewed figures by the Minister in January and the subsequent review of the figures down to a figure of 614,000 which had been assumed to be acceptable by the IRTC, isn't that right?

A. Yes, yes.

281 Q. Is there any reason therefore, why you can see or you are aware of from your attendance at any meetings or decisions

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which were made by you, that the Board or the Chairman, that it was not directly put to Century that the figure was 614 as agreed by the Minister, and unless they were prepared to conclude a transmission agreement with RTE you would have to go on to consider other applicants?

A. I don't know why that wasn't done. I think the Commission would probably have to, it wouldn't have been my responsibility to do or done that. The only thing I can say about this area, the point I was making from the word go is that the Commission didn't see itself as having a key role to play in the negotiation or conclusion of the size of fee to be paid to RTE for transmission services. This was regarded as a matter between the broadcaster and RTE, and that ultimately when, as did happen, the impasse was arrived at, the Commission then wrote to the Minister and said "This is the situation: Century are not prepared to go ahead without. What are your advices, at this point?"

282 Q. What - I mean, you appreciate that under the Act the Commission had a responsibility to apply the criteria which were statutorily listed, and these included a requirement that the matter be progressed on the economic principles and not otherwise?

A. Yes, yes.

283 Q. And there was now a situation which had arisen where there wouldn't appear to be any economic argument to support the figures which were being advanced by Century, other than their bald statement that this was an appropriate sum?

A. Yes, that's possibly true, but as I said the IRTC didn't have the expertise for further analysis, it was always going to be reliant on the Minister to give the judgement,

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the final say on this, hence the continual trucking of figures. You will note when the Minister wrote to Mr. Justice Henchy with his final figure, the most recent letter we have seen, it was simply passed on to Century, because the negotiations were not for the Commission to be involved in. There was a matter between Century and RTE and the Minister as the third part of the triangle. That's as much as they did.

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On economic principle, I hope - I have been at pains to point out the transmission services, the transmission facility, the cost of transmission was not the feature that was going to make or break whoever got the national franchise, it was going to be their ability to deliver a quality service that would win listeners and ultimately win advertisers, that was the key concern of the Commission. It is worth going back over the figures they presented and looking at that figure, because the figures that Century proposed, as I said before, were considerably less than any of the other broadcasters. It seemed reasonable to me they were being realistic, not to me personally but the Commission, they were being realistic about the figures of advertising costs. It didn't seem to be unreasonable to expect they were probably being reasonable with transmission fees as well.

284 Q. They were certainly expressing a concern about delays, ultimately to endeavor to level the blame for delays on the IRTC. That was vigorously rejected by the IRTC?

A. Yes.

285 Q. There was an indication very early on from that, that they

saw themselves in a situation where they were meeting costs of ú5,000 a day, and they thought that they would have to spend twice as much as they had originally envisaged, isn't that right?

A. Yes.

286 Q. These were all matters which certainly would not indicate that they were necessarily in the strongest financial position or would be in a position to meet additional costs as they arose, isn't that right?

A. I think if you are in the business of negotiating with a big player like RTE, and a Minister involved in the middle, you are going to use every possible card you have in your pack, in your deck. I know were I in Century's position I would make exactly the same position, "This is costing me every day it is going on. Do something about it. We are right, you are wrong, make the arbitration", that's where we were coming from. I don't think I would necessarily hold it against the Consortium, that they weren't strong enough to sustain, the Commission certainly took the viewpoint that they had the type of business people, the type of financing behind had, and indeed the type of potential broadcasters within their franchise to make them the most acceptable candidate.

287 Q. Certainly on receipt of this letter the Commission can have been in no doubt but the position of Century had remained as it was from the day of their first submission, they had not moved at all, whereas there was certainly movement on the part of RTE, and that had been directed by the Minister on at least two occasions, isn't that right?

A. Yes, that's correct.

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288 Q. So that, the next step we see, is that on the 20th of February, three days after this letter, a letter was written by the Chairman to Mr. Ray Burke, to be found at document 3980, re: Transmission charges for national independent radio.

.

"Dear Minister, please see the enclosed copy of letter received today from Century Communications regarding" - "concerning the charges being sought by RTE for the provision of transmission facilities for the new independent national radio station.

.

Please note Century Communications are seeking a Ministerial directive under Section 16 of the Radio and Television Act 1988. It would appear that a contract with Century Communications cannot be entered into until this matter is cleared up.

.

I look forward to hearing from you at your earliest convenience."

.

Now, that letter there is a notification to the Minister of the content of a letter which was addressed to the Chairman of the Commission by Century Radio, isn't that right?

A. That's correct.

289 Q. And had been set out. This appears to have been, as far as we can see, a letter which was treated by the Minister as being a request for him to exercise the powers which he had under Section 16 of the Act, in other words there is no resolution that we can find of a board meeting of the IRTC,

whereby the IRTC resolved that the Secretary or the Chairman should write to the Minister invoking the provisions of Section 16 and requesting him to carry out the duties imposed on him by that?

A. That's right, yeah. I think it is worth bearing in mind at this stage that the entirety of the Commission was quite aware of the difficult position that existed in relation to Century, it wasn't that they were completely in the dark as to what was happening. And they would have been very supportive of the executive actions of its chairperson in forwarding Century's communications to the Minister.

290 Q. Well, can you tell me whether or not there was ever a debate of the general body of the Board on the issues as to whether or not there should be an application brought or a request made of the Minister to implement the provisions of Section 16?

A. I can't recall any specific debate.

291 Q. I take it, if there had been, you would have recorded this because it is a significant?

A. Yes.

292 Q. A procedural statutory step envisaged in the context of the Act and not one which could have passed without being recorded, isn't that right?

A. Yes, yes, that's correct.

293 Q. So can we take it from that, that there was no such resolution? I am wondering to what extent did the individual members of the Board discuss the question of the €614,000 reduced annual charge having been agreed by the Minister? This took place on the 16th?

A. Yes.

294 Q. Sorry, it was communicated to you on the 16th?

A. Yeah.

295 Q. And we know that by the 20th the letter was going out to the Minister with the various enclosures that are referred to here. I am wondering to what extent did the Board consider the effect of the reduction in the asking-price of RTE's figures of in effect, 636,000 over the period of the initial franchise?

A. I cannot say the Commission either jumped up or down with glee or thought it was a dreadful thing to happen.

Transmission was just simply one aspect of the contract negotiations that were going to take place with Century, and this was the figure that came out, it was communicated directly to Century, the ball went straight back into Century's court. The Commission, I don't think, took a view as such, this was the end of the line or - I can't recall that happening. Certainly it would have been recorded as well, I suspect, had they made up their minds about it.

296 Q. True. Is there anything to indicate that the Commission members themselves were actually circulated with the letter which had been sent to the Chairman indicating that he had reduced the figure to 614,000 for FM, and that that was reasonable - there would not appear, on the file to say --

A. Yeah.

297 Q. -- to there being any circularisation of the individual members of this information, and therefore I am asking you whether or not to your knowledge they did in fact ever consider the 614,000 figure?

A. I literally cannot answer whether it was circulated to them

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or not. I would be absolutely certain at least at the subsequent meetings they would have been brought, you know, perfectly up to speed on exactly what happened. They were told this is the way in which the Chairman functioned, if something happened in between meetings we would relay that message to the entire board. I can't recall whether they were circulated at the time or not.

298 Q. The significance, of course, of the Commission making the request under the Section 16 is a matter which is, I suggest, vital if one is to consider the Minister's order as a whole; in other words he would have to be satisfied if he was to act under Section 16, that the Commission had in fact made a request of him, isn't that so?

A. Yes, that's so.

299 Q. Now, on its face this letter here does not state that the Commission has requested him to make a directive?

A. Yeah.

300 Q. It merely encloses a letter from an applicant --

A. Yes.

301 Q. -- which at that point in time was subject to contract, the successful franchisee, and that that party felt that it was appropriate --

A. Yes.

302 Q. -- that a Section 16 application be made, isn't that so?

A. Mm-hmm.

303 Q. There is a distinction.

A. Just to go back on something I said a second ago. You asked me was it my understanding that the Minister could not issue a directive under Section 16 of the Act without being requested by the Commission to do so? I literally

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cannot recollect whether that is what the law actually states or not, but it certainly seems to be, if you like, the interpretation the Minister took.

304 Q. Would it help if I put up the section?

A. If you tell me it is, I will believe you on that one.

305 Q. We might as well have a look at this point, it is page 5585, and it says:

"The Minister may, at the request of the Commission and after consultation with Radio Teilifis Eireann, require the latter to cooperate." Etc.. So that it is a discretion which the Minister has, he is not obliged to exercise it, he may do it, and it says "At the request of the Commission and after consultation with Radio Teilifis Eireann." So it would appear on its face he couldn't of his own motion decide he should step into the breach and make an order without a request having been made of him?

A. Yes.

306 Q. Now, it seems to me, looking at this letter of the 20th, that this is the letter which was treated by the Minister as a request?

A. Yes, yes.

307 Q. Equally it appears to me, looking at it, that it is not a request by the Commission, it doesn't express itself to be such?

A. Yes.

308 Q. Rather it conveys the concern of a potential franchisee, who at that point in time was, subject to contract, going to be the franchisee, isn't that right?

A. Mmm. Also in fairness, the concern of the Commission, that we were not going to get a national station this time

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out if this impasse wasn't resolved in some shape or form,
that was where the Commission would have been coming from.

309 Q. True, but presumably the Commission would have to balance
that concern against other concerns, and in particular the
concern that it acted in accordance with its statutory
function and doesn't substitute its own criteria which were
not recognised criteria merely to advance the progress of a
particular applicant?

A. Yes.

310 Q. Isn't that right?

A. Yes, yes.

311 Q. So this document then, enclosed the complaint of the
Century board, as far as I know it came to the Commission
in a faxed form from the solicitors to the Commission. If
we look to page 3973, obviously for reasons of urgency or
whatever it might be, it seems to have come in its draft
format to the Commission. If we look to the top left-hand
corner, of the 20th of February, 1989, at 15:42 from Mr.
Marran's office, and it then is a letter setting out the
particular concerns.

.

And if we look to page, it is down as "3973 C", as far as I
can see in the copy, it is four-pages on. If we can go one
or two pages further on, please? Yes.

.

"It appears, therefore, that we are unable to further
progress the negotiations with RTE, and accordingly we
respectfully request the Commission to seek a Ministerial
directive under Section 16 of the Radio and Television Act
1988."

.
So whilst that request was made of the Commission, the Commission itself did not make the request but merely forwarded it on for the Minister's attention, isn't that right?

A. Yes, yes.

312 Q. The Minister appears to have treated that as a request under the Act, and we will see in his letter containing the directive, which is at page 3984, that on the 14th of March he wrote to the Chairman as follows:

.
"Dear Chairman, I refer to your letter dated 20th of February 1989 regarding transmission charges for the national independent radio service. Following consultation with the Commission through you, and with RTE, I have now decided to direct under Section 16 of the Radio and Television Act 1988, that the following payments be made to RTE by the sound broadcasting contractor. "

.
And it then goes on to list the various headings here.

.
Do you know of any other request under Section 16 made by the Commission other than the letter of the 20th, insofar as that constitutes --

A. No, I am not aware of anything further, either oral or written.

313 Q. Right. Equally, are you aware of any discussion as to the detail of various headings and charges that we see set out under the paragraphs one to six in this paragraph, document? Were they, in other words, discussed with the

IRTC or did the IRTC express a view to the Minister on these individual headings?

A. Not to my knowledge, not to my knowledge.

314 Q. Right. So once this documentation had been received, firstly do you know whether the Commission was surprised that a directive was made or otherwise?

A. I suppose that's a question they can answer. I certainly think that surprise wouldn't have been out of the question, let's put it that way.

315 Q. Right. On the 14th of March, the IRTC then having received this notification from the Minister, wrote to Mr. Stafford indicating as follows at page 3986.

.
"I refer to our discussion and correspondence in the matter of charges by RTE for the provision of transmission services for the national independent radio station.

.
Following discussion with the Commission and RTE, the Minister for Communications has directed under Section 16 of the Radio and Television Act, 1988, the scale of payments to be made by RTE." Sorry, "to RTE by the national independent radio service. I enclose a copy of his letter to the Chairman which sets out the charges. It will be a matter for yourselves and RTE to hammer out the contractual arrangements based upon the directive.

.
I look forward to hearing from you and to finalise a contract between the IRTC and Century Communications."

.
Now, apparently when this letter was sent to Mr. Stafford,

he must have communicated by return his acceptance of those terms, because you then wrote, sorry the Chairman then wrote to the Minister on the same date at reference 3987 as follows:

.
"Dear Minister, I refer to your letter of the 14th of February, 1989, in which you have set out the schedule of charges to be paid to RTE by Century Communications for the transmission service for the independent national radio service.

.
You will be pleased to hear that Century Communications are happy with the schedule and are proceeding immediately to finalise the contract with RTE and the IRTC, with a view to bringing the new service on air as quickly as possible.

.
I would like to take this opportunity to thank you for your involvement in resolving this difficult situation."

.
And that was signed, presumably by the Chairman. RTE on the other hand had a more reserved view of this, and that is expressed in a letter of the 15th of March, page 3988, where Mr. Gahan, Assistant Director General, wrote to you as follows:

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"Dear Mr. Connolly, RTE has received a letter dated 14th of March from the Minister for Communications setting out facilities and other services, including the acquisition of capital equipment to be provided by RTE, and charges to be paid by Century Communications.

.
Some elements of this letter present difficulties for RTE, in that they appear to be outside the scope of Section 16 of the Radio and Television Act 1988, and contrary to obligations imposed on RTE by the Broadcasting Authority Acts 1960 to 1976. We are studying these matters with all urgency, but feel the Commission should be aware of our concern before entering into agreements with Century Communications."

.
I think this was probably the first indication to you that there were difficulties in RTE about the status of the directive under Section 16?

A. Yes, yes.

316 Q. And I think it became apparent subsequently that there had been no immediate negotiation or direct negotiation or consultation between the Minister and RTE as to whether or not it was appropriate to implement the provisions of Section 16?

A. Mm-hmm.

317 Q. And if so in respect of what particular aspects of the service which might be capable of being the subject of the Section 16 application, isn't that so?

A. Yes.

318 Q. The section itself, as we see from page 5585, gave the Minister power after the request of the Commission and after consultation with Radio Teilifis Eireann, "to require the latter to cooperate with sound broadcasting contractors in the use of any mast, tower, site, or other installation or facilities, needed in connection with the provision of

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transmission facilities for sound broadcasting services to be established under the Act." Isn't that so?

A. Yes.

319 Q. And there was certainly a query raised by RTE as to whether or not, for example the obligation to acquire new material or facilities as opposed to making use of existing facilities available could be encompassed under Section 16, isn't that right?

A. Mm-hmm.

320 Q. The end result of this particular directive was that that certainty was achieved, isn't that right?

A. That's correct.

321 Q. At the end of the day, after a period of review of the directive, RTE ultimately committed itself to standing over the directive, and there was to be a review, I think, of the performance of the franchise in due course?

A. Yes.

322 Q. With a view to establishing whether or not there was any subsidy involved in the transmission charges?

A. Yes, yes.

323 Q. I think it was a concern of RTE's apparent to the IRTC, that the RTE authority did not consider that the figures provided for in the directive reflected a Commission reality, but rather a directive that was based on principles that were not perhaps economically based but were policy decisions and philosophically based, isn't that right?

A. Okay.

324 Q. The extent to which the figures ultimately decided by the Minister and those initially asked for by RTE, have been

examined in a document prepared by the Tribunal which appears at page 6095. And this is an analysis of the figures that were in contention between the parties at various times, and if we look to the first line there we see that there are both FM and AM charges, and "D" and "C" represent Dublin and Cork. We can leave Athlone out of the equation here. And the figure for access sought on the 15th of February was ú252,000, that was made up as regards an access charge of 185,000 for the FM service, and 67,000 for the AM service. And the directive allowed for ú35,000 to be given under that particular head. So that the principle of access was one which the Minister appears to have acceded to?

A. Yes, yes.

325 Q. The next figure then was in respect of maintenance, and in February that was ú355,000 in the RTE figures, made up of ú320,000 for FM and ú35,000 for AM, and the Minister allowed ú30,000 for maintenance with an additional charge for visits over and above a certain number which may have increased that sum in due course?

A. Yes, yes.

326 Q. And then there were undisputed figures in relation to the linkage for the FM and AM service for Dublin and Cork at ú80,000, both in respect of the Minister's finding and also the RTE findings, and then there were power and spares under an actual heading, in other words the cost of actual powers and spares was to be paid for, and that was estimated by RTE at ú150,000 which was made up of 115 for FM and 35 for AM. The Minister allowed ú115,000 under that heading.

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So that the subtotal to that point was 837,000 in the figures for RTE and 260,000 in the Minister's figure. A five percent overhead figure was allowed on both of those items, to bring up the total ultimately to 871,350 in the case of RTE and 273,000 in respect of the Minister's appreciation and direction.

.

So that in addition to that now there were also, this reflected annual charges only, but there were other figures which were contained in the document as once-off figures. That's on the following page, where we will see that the once-off figures for RTE was a project management and installation charge of 485,000, for which the Minister allowed 250,000. And then an overhead of 12,500. So as between the once-off figures there was a difference of some 222,500.

.

In the overall identifying of the differences which were achieved by the directive and the figures that RTE had agreed in February of 1989, the total of the RTE figures in the annual charge and the once-off was 1.356 million, and the total of the Minister's figures was 535,500, a difference of some 820,000 between those two figures?

A. Yes, mm-hmm.

327 Q. Now, because the IRTC in fact had never carried out any analysis of figures as such --

A. Mm-hmm.

328 Q. -- I take it that it never discussed this level of difference in this detail, as between the RTE figures and

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the Century figures, isn't that right?

A. That's correct, there is a lot of stuff - I think you used the phrase yourself some time ago, it was a matter of finality of the IRTC, we can now get on with the business of finalising the contract with Century.

329 Q. Yes, but in reaching that finality, they did so on the basis of considering figures like ú375,000 as a total transmission charge --

A. Mm-hmm.

330 Q. -- without an analysis to establish exactly under what headings that was made up, or whether or not the individual headings were capable of independent review and substantiation, isn't that right?

A. That's correct.

331 Q. And the effect of it was that this was put up against RTE figures, and resulted in this substantial saving, which it seems there was to be a review on at the end of the first years of operation, to see whether or not it represented an element of subsidy, is that right?

A. That's correct.

332 Q. Right. It would appear, Mr. Connolly, from that point of view, that the position of the IRTC from its initial review and consideration of the RTE figures in December, on the 8th of December, 1988, remained unchanged throughout the deliberations which passed between RTE and the Minister until the final award of the contract?

A. I am not too sure what point you are making there, can you give me that again please?

333 Q. The position of the IRTC remained constant from the time it initially saw the RTE figures, it reached a conclusion that

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these figures appeared to be such that no independent contractor could be viable if this is the level of charges?

A. Yes, yes.

334 Q. Isn't that right?

A. Yes.

335 Q. And that is a position that was adopted at that point in time, and remained unaltered throughout the negotiations which were to take place with others which ultimately resulted at the end of the day in the Minister's directive?

A. Yes.

336 Q. And the Minister's directive gave effect to the projected figures for Century, isn't that right?

A. Yes, that's correct.

337 Q. Though in fact, there probably is an element in here that cannot be quantified just yet, as to where the capital costs were to arise, because the RTE figures, these particular figures which we have seen on screen, did not take account of the acquisition of the transmission --

A. Yes.

338 Q. -- material, which would have to be brought into the system to allow for the new signal to be produced, isn't that right?

A. Yes, that's correct.

339 Q. And it would appear from the RTE figures that an agreement was reached that in or about the sum of ú747,000 for hardware was likely to be the sum that would be incurred --

A. Mm-hmm.

340 Q. -- in order to put in the transmission facilities that would allow the new signal to be broadcast from the existing RTE towers, isn't that right?

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A. Yes, yes.

341 Q. And that, of course, under the Ministerial directive was going to have to be acquired by RTE, isn't that right?

A. That's correct.

342 Q. And that is a cost over and above these particular costs, but that it would be financed by a loan to be obtained by RTE, and the cost of that loan was to be visited on Century, isn't that right?

A. That's correct.

343 Q. So that if one looks to those figures and looks to the figures that the Minister here felt appropriate, insofar as there was a figure advanced by Century of ú375,000 for transmission, and insofar as that may have included the cost of acquiring the transmission equipment, the figure was woefully inadequate as regards a projected costing for transmission or for the equipment itself, isn't that right?

A. I think you have asked me to put conjecture for what Century were saying and were not saying. I simply can't do that. I don't think the Commission in any of its franchises around the country questioned the figures as penned by the companies concerned. They were taken as bona fide figures which the company had proposed and worked out.

.

The attitude the Commission would have taken, did take in fact, "If you get those figures wrong, on your own head be it", essentially, "they are the figures proposing, we are accepting those as working figures", that's where it came from.

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Like, there seems to be a notion that the Commission spent every day talking about transmission figures. It didn't. Transmission figures were actually a small proportion of the cost of setting up and running an effective station, be it national or local. No matter what happened with the figures, if Century were to fall on the basis of whatever, the transmission figures were, they were running a bad station anyway. The key to it was advertising, and obviously the programming and the support of the advertising, and so on, that's what bothered the Commission in its day-to-day deliberations.

344 Q. But the Commission equally couldn't close its mind to the fact that here was an obvious impasse, key to opening a service at all, was that there had to be agreement between RTE and Century for transmission?

A. Yes.

345 Q. And there was obviously a major dispute between them, and that major dispute was such that if this was not resolved there would be no service, and could I suggest that the IRTC appears to have adopted the position without there being independent evidence to back it up, that RTE's figures were excessive and therefore a fortiori one should accept the Century figures without any analysis of those figures?

A. I wouldn't put it quite as bluntly as that. I think the initial figures as presented by RTE were regarded as being too high, based upon the sensible analysis of the IRTC members and its Secretariat, they seemed to be just too high, and certainly were seen and taken to be an opening gambit in the negotiations.

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Ultimately the Commission always took the viewpoint that the transmission charges were a matter between the station and RTE, and didn't involve itself directly in the negotiations at any stage about those fees. Obviously when we arrive at the final figure the Minister's, the Commission would have taken the viewpoint "That's one more difficulty out of the way, let's get on now and get the station on air."

.
The Commission's anxiety was to get the station on air and was, I think I might have mentioned at the very beginning, that the Commission took a supportive view of every one of its franchisees. Once you were awarded the franchise the Commission would do all that it could within reason to support that particular station. In this case Century was the chosen one for what many people would regard as the flagship station. The Commission was, and continued to do all it could to support Century.

346 Q. We can see from - once the transmission charges argument was resolved by the Minister's directive, that there then arose the situation where RTE would have to reach its contract with Century, but equally the IRTC would have to reach its contract, isn't that so?

A. Yes, that's correct.

347 Q. And there appears to have been very tough negotiations as between Century and the IRTC, isn't that correct?

A. Yes, there were.

348 Q. And throughout those particular negotiations the IRTC Secretariat was mindful of the difficulties that it had in

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its negotiations with Century, isn't that so?

A. Yes.

349 Q. And I think relations became, it would be fair to say, strained as between those who were representing the IRTC's interest and those who were charged with the interests of Century, isn't that right?

A. Yes, I would go so far as to say that the contract negotiations with Century, of the radio stations, were by the far the most difficult we had had.

350 Q. And this was, I think, under a number of headings?

A. Yes.

351 Q. It would appear that they were seeking more than the Commission felt it could give?

A. Yes.

352 Q. Under headings, for example, of the terms upon which renewal might be granted?

A. Correct.

353 Q. The Commission felt that it couldn't give an unlimited entitlement of a franchisee to renew its franchise at the end of the seven year period, and they were arguing that in view of their capital costs they could get their money back if they were guaranteed, in effect, a second bite of the cherry, isn't that right?

A. That's correct.

354 Q. And of the same terms?

A. That's correct.

355 Q. And there were other complaints about opt-outs?

A. Yes.

356 Q. And the Commission was unwilling to allow Century to use an opt-out facility which was --

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A. Yes.

357 Q. -- which was a facility whereby they would target a particular market, perhaps to the detriment of another broadcaster?

A. To the detriment of the local stations it was about to bring on air at that time.

358 Q. Right. And they were insisting on this facility being granted to them?

A. Yes.

359 Q. And equally, they were endeavoring to reduce their commitment both as regards news, transmission and the obligation assumed under the application to transmit a certain proportion of their programmes in Irish, isn't that so?

A. Yes indeed, yes.

360 Q. So on virtually every one of the areas in which the Commission saw itself as having a regulatory role, they found themselves in conflict with Century on those issues, isn't that right?

A. That's correct, that's correct.

361 Q. Now, they eventually went on air, in September, isn't that right?

A. The 4th or 5th of September.

362 Q. 4th or 5th of September. I think it was deemed necessary that, with a certain pragmatism, that you would meet your opposite numbers on neutral territory and try and set out a basis on which your future relationships would progress, isn't that right?

A. That's correct.

363 Q. And that involved, among other things, the parties airing

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their own particular viewpoints so that they would
establish exactly the position --

A. Yes.

364 Q. -- of what each party was coming to this meeting for?

A. That's correct.

365 Q. And I think you extended an invitation to the executives
rather than the directors of Century to meet for lunch in
the Grey Door Restaurant, and a meeting took place in
September which was attended by yourself and Mr. Appleby on
behalf of the Commission, and Mr. Laffan and another member
of the, Mr. Story, on behalf Century, isn't that right?

A. Yes, that's correct.

366 Q. Whereas you didn't keep a memo of what had taken place at
that meeting, Mr. Laffan did take such a memo and I think
you have been acquainted with the detail of it?

A. Yes, yes.

367 Q. I would like just to deal with that with you. This is a
document at page 2989, and we will see that it, it is
headed "File note of lunch meeting held in Grey Door
Restaurant, Friday, 15th September, 1989, between Century
Radio and IRTC. Present: Mr. Sean Connolly, Secretary
IRTC; Mr. Paul Appleby, IRTC; Mr. Michael Laffan, Century;
Mr. Mark Story, Century."

.

And this is Mr. Laffan's memorandum and he says:

"Meeting was held at the request of the IRTC, Mr. Paul
Appleby, with the stated objective of improving relations
between the executive of the IRTC and the executive of
Century Radio."

.

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I think that accords with your understanding, isn't that right?

A. Yes, yes.

368 Q. Whilst the contact was made by Mr. Appleby, I think perhaps you were the initiator of this contact.

.
"At the outset of the lunch it was stated by Mr. Connolly that in his view it was a good idea to meet and discuss frankly any issues that might still exist between the Commission and Century Radio with a view to improving our understanding of each other's objectives."

.
Now, in the body of this document, if we look to page 2993, there were a large number of issues canvassed, but this document at page 2993 records your input under certain headings here. Firstly in paragraph 2, "At this stage Mr. Connolly stated that the promoters of Century Radio were too highly politicised. He stated that there was a degree of suspicion with regard to the motives behind the actions of the promoters of Century Radio. He stated specifically that this was evident in respect of the manner in which the negotiations with RTE were handled, and subsequently was very obvious in the way in which Century attempted to hijack the signing of the broadcast contract on the day of signing."

.
Now, does that jog your memory as to these two issues being matters which you were concerned about in September of 1989?

A. I think yes, it does. I think that particular meeting, at

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that point in time, it was evident that myself and people who worked with me were going to have to have regular, possibly even daily contact with the executives of Century. So we had a station now on air. I hoped we could move ahead and get to a clear understanding, where we could go, hence the reasoning behind it.

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I wouldn't quibble necessarily with what he has reported. I think that it was a very frank exchange of views as to why things had become difficult, I don't know whether it figures in this document, I can't remember at this stage, but I certainly would have pointed out that just about everything that the Commission needed to do with Century was the subject of almost a revolt and major discussion group and everything else. Everything was sort of horns locked as opposed to "Let's get on with it, we have a station to run. We are here to help you", as opposed to trying to knock lumps off each other. That was clearly where I was coming from.

.

Incidentally, in this case here I would have been reflecting not my own personal viewpoints but those of the Commission itself, my personal viewpoints don't particularly matter in relation to what I said or didn't say. These are the Commission's viewpoints, and I think the Commission at different stages during the course of the summer in the lead-up to the signing of the contracts were, to use a colloquialism, were getting a bit "cheesed off" with the length of time it was taking to finalise contracts.

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We had hoped, for example, that Century would be on air first. It transpired they weren't, for a variety of different reasons. So like, generally speaking the Commission was unhappy with the progress being made.

369 Q. Right. Whilst those unhappinesses clearly were stated in the body of this document, specifically what you, you are alleged to have stated to Mr. Laffan here was that the promoters were too highly politicised?

A. Yes, it is his words. I think possibly what I would have had in mind at the time was that, if you like the Commission being the people who were going to finalise the contract with Century, people who were giving them effectively the license to broadcast, felt strongly that Century should have as its first conduit of discussion information, straight to the Commission. We became aware from contacts with the Department and so on, and indeed contacts with Century themselves, that this in fact wasn't the case of the - there was a lot of discussion going on without the discussions we were having with Century direct. And I think this was a cause of some annoyance to the Commission which after all viewed itself as being an independent body with responsibility for put license or franchisees on air.

370 Q. Yes. I think we can see that at three paragraphs further down in this memorandum where Mr. Laffan quotes you as follows: "He stated" - that's you - "That Century felt empowered to enlist the support of Ministers wherever and whenever they chose. As evidence he pointed to the issue of the Ministerial directive and the almost daily

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consultation with the Minister on matters which rightly belonged to discussion and negotiations between Century, the IRTC and RTE."

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Now, if he is accurate in that account there, of that being a concern of yours, it is clear that a distinction was being drawn between Ministers and the Department, isn't that right? It wasn't that there was too much contact with the Department as such, but rather that there was a direct and almost daily Ministerial involvement --

A. Yes, I see what you are talking about.

371 Q. -- in matters which you felt that the negotiations and discussions were properly matters to be dealt with between Century on the one hand, the IRTC and RTE, isn't that right?

A. I should just add that the Commission felt, not just Sean Connolly felt.

372 Q. Fine. I am not saying that they mightn't have felt that, but insofar as Mr. Laffan records this, he attributes this as something that you stated, and I just want to establish whether or not having sight of this document, you agree that you may well have stated that?

A. I have no doubt that that would have been the general tenor of some of the stuff I had said, yes.

373 Q. So that there was a degree of Ministerial involvement here, which at a minimum was unusual, in that here we had an almost unfettered access by an application to a Minister in respect of the affairs which had been delegated to an independent authority, the IRTC, isn't that right?

A. That's correct, that's correct.

374 Q. And that was a matter which was of concern to the Commission and which was reflected in what you said to Mr. Laffan, isn't that right?

A. Yes, yes, yes. This meeting and discussion, I think there is another paragraph to follow?

375 Q. Yes.

A. It comes on foot of general annoyance on behalf of the Commission at the last minute, last ditch efforts by Century to negotiate or re-negotiate contracts. Don't forget this meeting here happened not very long before or after Century had gone on air, and it had been a reasonably traumatic experience for the IRTC, and indeed for me and for my people in negotiations, all this step-by-step-by-step along the way. So there was a fairly high degree of anger felt by members of the Commission about the way Century had conducted its business up to that point, not just in relation to the Minister now, I am talking about in direct negotiations with the IRTC.

376 Q. Certainly. In the normal course, you wouldn't have expected that there would have been Ministerial intervention in that area, it was uniquely a matter between the IRTC, for example, and Century as to what and to what extent the contractual terms should be agreed or should be enforced, or whether there should be any waiver in respect of any particular aspect of that, isn't that so?

A. Yes, that's correct, yes.

377 Q. Can you remember any specific involvement of the Minister, Mr. Burke, in relation to any of the contractual terms or its, let's say the withholding, perhaps, of obligations to broadcast nationwide initially or the question of the Irish

language? Were any of those issues which were raised by the Minister in your presence with either members of the IRTC and the Chairman, or solely with the Chairman and yourself?

- A. I have no knowledge whatsoever of the Minister raising the issues with the IRTC as a whole. But certainly I am quite aware that as the negotiations became more and more protracted with Century right across the summer period, long after the directive had been issued in relation to the RTE charges, the Minister was becoming, I suppose frustrated that the legislation could not be implemented because of delays, and had a number of conversations with myself and the Chairman, one in particular I can recall where the Commission had taken a strong stance in relation to things like the use of the Irish language which was required by the legislation, indeed in relation to the news content, how it should be transmitted, particularly news content as gaeilge. And they were firmly of the opinion that Century must honour this particular obligation and they must do it from Day 1, not subsequently.

I think the Minister made a strong suggestion that perhaps they could be allowed to, if you like, grow into a full news service or grow into a full compliance with the Irish language requirement. The Chairman effectively said "no", the legislation requires it to be done, and his comment, which was backed totally and absolutely by the members of the Commission, was that this was a requirement to which Century must comply, everybody else was being asked to comply and were.

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More importantly, the only serious and real method that the Commission had of ensuring compliance with the law was the franchise contract. And once you sign that you are on a loser, so the Commission very strongly held the viewpoint.

This became an issue with Century right up to the very end.

378 Q. And obviously the Commission's view as expressed by the Chairman to the Minister was one which was not finding immediate favour with the Minister, is that so?

A. That's correct.

379 Q. His wish was that the broadcasting would commence --

A. Yes.

380 Q. -- on the terms which at that point were --

A. Yes.

381 Q. -- being offered by Century?

A. Yes.

382 Q. And that at some point in the future things would change?

A. Yes.

383 Q. As regards any meetings which took place between yourself and the Minister, Mr. Connolly, or any meetings at which you attended with the Chairman, and met with the Minister, there don't appear to be any minutes of any of those meetings. Do you remember whether such minutes were prepared by you or whether there was a policy decision not to prepare them?

A. I don't think there was a policy decision not to have minutes of meetings. The meetings would have been called, I think in the main by the Minister himself, by the Minister's office.

384 Q. Yes.

A. And as such the duty, for want of a better word, would have rested within his own office. The Commission went along at the invitation of the Minister to brief and update him as to where precisely negotiations had been reached.

385 Q. Right. Thank you. I am not sure if there are any persons who wish to question Mr. Connolly at this time?

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MR. FOX: I have a number of questions.

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CHAIRMAN: You have no questions?

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MR. FOX: I have a number of questions.

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CHAIRMAN: I beg your pardon. Anybody else?

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MS. EGAN: I have some questions.

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MR. O'HIGGINS: I think I would have a number after Mr. Fox, Sir. So I don't know whether you wish to deal with that today or tomorrow?

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CHAIRMAN: It is just ten to four now. Just a moment. I am thinking about of the witnesses of tomorrow.

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MR. O'NEILL: Yes.

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CHAIRMAN: That's what's causing me to pause. I don't want to detain a witness here who is not being reached.

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MR. O'NEILL: I am sure equally that Mr. Connolly would

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like to see the back of the witness-box if he could today,
but I am not sure just how long it would take, Sir. I
think --

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CHAIRMAN: This is what I don't - I get the impression
that it is not just going to be ten minutes. I get that
impression overall. I tell you what we will do, I will
sit tomorrow morning at 10 o'clock, is that all right?

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MR. O'NEILL: Certainly.

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CHAIRMAN: Sit tomorrow morning at 10 o'clock and we will
defer dealing with Mr. Justice Henchy until say 11:30. Do
you think that would --

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MR. O'NEILL: If you said provisionally 11.

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CHAIRMAN: It would not be an unusual delay.

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MR. O'NEILL: Would that suit you?

A. Yes.

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CHAIRMAN: Right, we will deal with it on that basis
then. 10 o'clock tomorrow morning. And we will try and
kick off tight on 10, see if we can finish by shortly after
11. Thank you very much. Until tomorrow morning.

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THE HEARING THEN ADJOURNED UNTIL THE FOLLOWING DAY,
TUESDAY, THE 21ST OF NOVEMBER, 2000, AT 10 AM.

