

THE HEARING RESUMED AS FOLLOWS ON THE 23RD NOVEMBER, 2000,

AT 10:30 AM:

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CHAIRMAN: Morning everyone.

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MR. HANRATTY: Morning Sir.

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The next witness, Sir, will be Mr. Laurence Crowley. Mr.

Crowley please.

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LAURENCE CROWLEY, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MR. HANRATTY:

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CHAIRMAN: Morning.

A. Morning Chairman.

1 Q. MR. HANRATTY: Good morning Mr. Crowley.

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Mr. Crowley, you were the Chairman of Century
Communications Limited from some point in 1989, is that
right?

A. From February '89, yes.

2 Q. Yes. I think you were an accountant?

A. Yes.

3 Q. Can I just ask you to very briefly give us a brief account
of your background prior to your involvement with Century
Communications and your position at that time?

A. I was a partner in KPMG chartered - what is now KPMG, and I
specialised mainly in solvency work.

4 Q. Yes. And at the point in time when you became involved
with Century, were you still with KPMG?

A. Yes, I left a year later.

5 Q. Yes. Can you say when you first became involved with
Century Communications Limited?

A. I joined the Board in February 1989.

6 Q. Yes.

A. I would have become involved a little earlier than that,
probably very early in 1988, around the time they were
awarded the license.

7 Q. Well, did you have any discussions with either of the

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directors of the company, Mr. Stafford or Mr. Barry in 1988?

A. I probably had one or two discussions, just on the sort of business plan and how the application for the license was being processed.

8 Q. Yes. Can you say when you were first approached by either of them?

A. Very close to the end of 1988 is my recollection.

9 Q. Was it before or after the establishment of the IRTC, which we know was in October of 1988?

A. It was after it.

10 Q. I see. And was it after they had indicated to the IRTC that they intended to apply for a franchise?

A. I believe so, yes.

11 Q. And what was the proposal or proposition put to you?

A. That if they got the franchise would I join the Board as Non-Executive Chairman.

12 Q. You have been referred to in various documents and in evidence as the "Chairman Designate", which I take it to mean the period prior to you actually being appointed Chairman. I think it occurred in the context of 1988, at least in your case. Were you in fact involved in the preparation of their business plan?

A. No.

13 Q. And were you involved in anyway in the preparation of their submissions to the IRTC?

A. No.

14 Q. Were you in discussions with them at the time that they made their application to the IRTC?

A. My recollection is that they had made the application to

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the IRTC after, before I entered into any discussions with them.

15 Q. Well, the actual submission to the IRTC went in on the 16th of December of 1988, that's the document on which their application for a franchise was based?

A. Right.

16 Q. I take it you were talking to them before that?

A. Yes, probably not much before that, but a little before that, yes.

17 Q. Yes. Can you just tell me what information you were given when you were first approached in relation to their proposal?

A. I believe I was given the business plan, but I can't recall exactly what I was given.

18 Q. Well, would that be in effect a draft of their submission to the IRTC?

A. It would have been similar to it, yes.

19 Q. Yes.

A. As I would understand it.

20 Q. And what information were you given in relation to what advisers they had at that point?

A. That Century had?

21 Q. Yes.

A. Well, I would have been made aware of who their solicitors were and who their auditors were.

22 Q. Yes. Were you told, for example, that they were receiving information from a Mr., or sorry advices from a Mr. Ray Hills?

A. Yes, from the IBA, yes.

23 Q. Yeah. Were you told that their advisor was the IBA or Mr.

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Hills himself?

A. Mmm, I didn't differentiate so I am not sure what I was told, but my feeling was it was the IBA, but I am not sure what I was told.

24 Q. Yes. And what information were you given as to who the investors in this project were going to be?

A. The only information I was given was the investors were going to be Mr. Stafford and Mr. Barry.

25 Q. Were you not told about Mr. Mulhearn?

A. No. Mr. Mulhearn was present at some of the meetings, one or two meetings in the earlier stages, not all the meetings, but I was not told that he was an investor.

Neither was he, of course, as I recall, an investor in Century. What arrangement he had with other people I simply was not told of.

26 Q. Well, the evidence before the Tribunal appears to suggest that he was, including his own evidence, appears to suggest he was in fact an equal investor with Mr. Barry and Mr. Stafford as to whatever share of the company they were taking, which we know to be 51 percent. Did you not know that?

A. No, because he is not a registered shareholder as far as I recall.

27 Q. No, I appreciate that.

A. No.

28 Q. And we understand that. But nonetheless, he was an equal contributor as to the extent of one-third of the original investment funds being put in by the promoters of the company. Did you not know that?

A. No.

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29 Q. When did you first become aware of that?

A. I think when this Tribunal started, I think when it emerged at this Tribunal.

30 Q. And what did you think his involvement was?

A. I thought his involvement was that he would have had some share in the upside, some due - the ability to get some future share if the company was profitable, I didn't know that but that was my assumption.

31 Q. When did you first --

A. To myself.

32 Q. When did you first become aware that he had any interest in the company?

A. As I say, he never had any interest in Century. My surmise was that he would get some share in the upside.

33 Q. Well --

A. It was only my surmise.

34 Q. Well, he did in fact have an interest, in that he invested the same amount of money as Mr. Stafford and Mr. Barry, and that was the original arrangement which we have been told was reached between the three of them. But we have also been told that Mr. Stafford decided that his involvement would be kept secret. Are you saying it was kept secret from you?

A. Yes.

35 Q. When did you first become aware that he had any involvement or interest in, and I don't mean registered interest, as a shareholder?

A. Yes.

36 Q. But that he had any form of involvement or interest in the project?

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A. I would - I arrived at that surmise sometime, I believe, during 1989.

37 Q. Can you say when?

A. I am - regrettably not.

38 Q. Would it have been before, for example, the grant of the franchise, which was in January?

A. No, it certainly wouldn't have been before the grant of the franchise.

39 Q. Would it have been around that time?

A. If you asked me to guess I would say it was later than that time.

40 Q. Yes. And what was the nature of the information you first received in relation to Mr. Mulhearn's interest?

A. It really wasn't any information I received, it was a surmise I arrived at from the fact that he was very close to these two people and had participated in some of the meetings, but not the board meetings which I attended.

41 Q. We know that at the end of January of 1989 you paid a visit to London and that yourself, Mr. Barry, Mr. Stafford and Mr. Mulhearn, and I believe his wife, stayed in Claridges of London for, I think a couple of days. Do you remember that?

A. No.

42 Q. Could we just have 596 please? That's the hotel invoice in respect of your own accommodation on that occasion?

A. Mmm.

43 Q. And if we can have 594? That's the invoice to Mr. Stafford, which was the invoice which incurred a number of expenses for the other members of the party, but it is in respect of the 30th and 31st of January of 1989. Then on

595, it is the invoice to Mr. and Mrs. Mulhearn for, I presume their room on the same occasion, but only on this occasion for the 30th. And then your own one was also for the 30th and 31st of January of 1989.

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So it appears that this party of yourself, Mr. Barry, Mr. Stafford and Mr. Mulhearn went to London and stayed in Claridges at this point in time. Do you have no recollection of that?

A. No.

44 Q. Do you think it is likely that if you did stay in Claridges, which these documents would seem to suggest you did, that you would have become aware at that point in time that Mr. Mulhearn was one of the investors in the project?

A. I can't say.

45 Q. Well, would you agree with me that it seems unlikely that the matter didn't come up, given the particular context in which it occurred, namely that Messrs. Barry and Stafford were at that stage going to be the registered shareholders in the company, and indeed directors of the company. You were about to become the Chairman of the company, and Mr. Mulhearn was, by prior agreement with them in the previous year, going to be an equal one-third investor with them. And in circumstances where the franchise had in fact been given, just over a week previously on the 18th of January. Would you agree with me that it seems unlikely that you would not have been appraised at that point in time of Mr. Mulhearn's involvement?

A. No, I can't agree with you because I can't recall.

46 Q. And do you not recall any occasion when you went to London

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with Mr., stayed in London with Mr. Mulhearn or Mr. Barry or Mr. Stafford?

A. No, I can't recall staying in London with Mr. Stafford, but I cannot recall - I obviously did.

47 Q. Yes. Would that have been this occasion?

A. Well, I can't recall staying with the others, so I don't know whether it was this occasion or not.

48 Q. Yes. What information were you given as to how much Mr. Barry and Mr. Stafford were putting into the company?

A. I seem to recall a figure, but it could be wrong, of about 500,000.

49 Q. Was this their initial investment?

A. Yes.

50 Q. We know that, I can refer you to a document at page 2387, this is the minutes of the meeting of the company which was chaired by you on the 30th of August of 1989, and if I can refer you to page 2392 which is page six of the document?

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It sets out or records a resolution which was passed to allot further shares to Messrs. Stafford, Barry, Wogan and Mr. De Burgh. And what it says is:

"The Board resolved that having received subscription applications from Messrs. Stafford, Barry, Wogan and de Burgh, that subject to the consent of the IRTC that the company allot 1,300,000 ordinary shares of 10 pence each as follows:

James Stafford - 575,000.

Oliver Barry - 575,000.

Terry Wogan - 100,000.

Chris de Burgh - 50,000.

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Making a total of 1,300,000.

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As a result the total shareholding of these four individuals should be

James Stafford- 825,000.

Oliver Barry- 825,000.

Terry Wogan - 100,000.

Chris de Burgh - 50,000.

Making a total of 1,800,000."

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Now, that was the point where the company was, in the form of the Board of Directors of the company, were making an allotment of shares bringing the individual shareholders up to these totals as herein recorded, isn't that right?

A. Yes.

51 Q. And it is clear that as between Messrs. Stafford and Barry, they share between them 1,650,000 of the shares, and the remaining 150,000 is split in the manner indicated between Messrs. Wogan and de Burgh, isn't that so?

A. Yes.

52 Q. Did you know at that time that in fact the 1,650,000 shares were to be allocated, albeit not registered, on the basis of a one-third shareholding between Messrs. Stafford, Barry and Mulhearn?

A. No.

53 Q. You didn't know that?

A. No.

54 Q. Could I just refer you to - sorry, I don't have a page number, but on the 11th of October of 1990, Mr. Stafford wrote to Mr. Eugene Fanning, the company's then solicitors

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and saying: "Could you arrange to have my share certificate for 825,000 shares in Century Communications Limited divided into share certificates for

1. 250,000.
2. 275,000, and
3. 300,000."

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And it would appear from that, I think Mr. Stafford has confirmed that the 300 and 250 would have constituted his own share or one-third share of the 1,650,000, namely 550,000 shares, and that the 275,000 certificate would, in effect, represent the half share of Mr. Mulhearn's 550,000 which he would have been holding.

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Do you say that you didn't know anything about this?

A. I have no recollection of that letter.

55 Q. Either - I am sure you don't know anything about the letter, but the letter clearly indicates that there was an intention on the part of Mr. Stafford and Mr. Barry, that each of them would hold on behalf of Mr. Mulhearn one-half of his one-third share of 550,000 shares in the company.

You say you didn't know that?

A. No.

56 Q. Well, at the point in time when this meeting took place, which was just immediately before the going on air of Century Communications Limited, that went on air on the 4th of September, this meeting took place on the 30th of August, so it was presumably the last meeting or one of the last meetings prior to going on air. What was the state of your knowledge with regard to Mr. Mulhearn's involvement in

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the company at that particular point in time?

A. As I stated earlier, that he, my surmise was that he had an interest in the future of the company, if you - I don't know what interest that was or what form it took, but I surmised he had some interest in the upside future of the company.

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I had a small interest in that way myself, in the end I had an option to acquire some shares, that was publicly noted.

57 Q. Yes. But the point is, that the IRTC were provided with certain information in connection with who the owners and controllers of this company were?

A. Mm-hmm.

58 Q. And indeed you yourself were involved in correspondence with the IRTC in connection with the terms and conditions of the broadcasting contract which was being negotiated between say February and July of 1989, isn't that so?

A. Yes, I think I was, yes, in contact with the IRTC.

59 Q. And one of the matters that came up was the question of who was going to hold the majority shareholding in the company and who the promoters of the company were, and who the investors in the company were.

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And it is an objective fact that the IRTC were not in fact informed in anyway of Mr. Mulhearn's involvement.

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Did you at any stage receive any instructions or directions from Mr. Stafford that they were not to be so informed?

A. No.

60 Q. Did it ever occur to you, whenever you did come to the

knowledge that Mr. Mulhearn was in fact an investor in the company, that they ought to have been informed?

A. No, it didn't. It - once I reached that surmise it occurred to me that the IRTC would have to permit Mr. Mulhearn to have any interest in the company, and if they refused then he, in the future, if they refused then he wouldn't be able to have any interest.

61 Q. Undoubtedly their permission would have been required, I think you specifically agreed to this in the correspondence, their permission would have had to have been required for any change in the company, that is the registered shareholding?

A. Yes.

62 Q. But I think the position of the IRTC was, if I do not misrepresent it, they were interested in knowing any form of interest held by anybody in the company, whether it be by way of registered shareholding, nominee shareholding option or otherwise, isn't that right?

A. I am sure they were, yeah. Certainly my option was made known to them.

63 Q. Did the question of informing the IRTC of the true position vis-a-vis Mr. Mulhearn come up at any time within the company?

A. Not when I was there, not with me.

64 Q. And was it ever discussed at board level, as to whether or not it would be appropriate or proper to inform them of Mr. Mulhearn's involvement when it did become known?

A. I don't recall that was ever discussed.

65 Q. Yes. In 1988 the promoters of the company were pretty well exclusively focused, I think, on the question of

making their submission to the IRTC for the national radio franchise. Did Mr. Stafford or Mr. Barry explain to you why it was that they had decided to apply for the national franchise as opposed to one of the local franchises?

A. That was generally - I certainly remember some conversation about that, that the - they would have regarded the national franchise as the big opportunity. And they decided to go for the big opportunity.

66 Q. Yes.

A. Words to that effect.

67 Q. And was there any discussion as to the relative merits of national franchises versus local franchises?

A. I seem to recall that it was suggested that local franchises would be lower risk.

68 Q. Yes.

A. Less cost, but it was felt that it would be less rewarding.

69 Q. Yes. You say that you were aware of the business plan which they were preparing, which was presumably analogous, if not the same document as the actual submission that they were making to the IRTC. Did you provide any advice to them in connection with at least the financial aspects of the proposal?

A. I don't recall any particular advice, no.

70 Q. Specifically did they tell you what figure they were putting in for transmission charges from RTE?

A. I can't recall that - I can't recall any figure that was, or they told me any figure. I would have seen a figure for transmission charges presumably in the business plan.

71 Q. Yes. It was, in fact, contained in the profit and loss account, and it was projected rising from, I think

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initially 160 to 375 over a period of either three or four years, I can't remember. You would have seen that figure?

A. I'm sure.

72 Q. It seems to have been accepted from the outset, that this company was going to have to use the RTE transmission system, and that it would not have been otherwise viable to establish, for example, a completely independent transmission system?

A. I think that was talked about at one stage but not considered to be viable.

73 Q. Yes. And it is clear from the evidence which has been heard so far by the Tribunal, that there was a wide divergence between the figures then quoted by RTE and the figure which Century had included in its business plan, isn't that right?

A. I believe so.

74 Q. I take it you were aware of that divergence at the time?

A. I am sure I was, I can't recall, but I am sure I was.

75 Q. Well, were you aware as to how this difficulty was going to be overcome vis-a-vis the IRTC in the first instance?

A. Well, I think I would have been aware that there were two facets to it, one was the negotiations between RTE and Century. And the other was the assistance of the IRTC, if necessary, who could seek a directive, as I recall, from the Minister, to fix the transmission fee.

76 Q. Well, was it always the intention of Century to seek a directive, I am talking now about 1988?

A. Not in my opinion, not in my knowledge. I wasn't there in 1988, as you know.

77 Q. Well you - as I understood your evidence, you were involved

in discussions and saw the business plan --

A. Yeah.

78 Q. -- which was incorporated into the submission?

A. I do not recall that it was part of the strategy, to seek a directive.

79 Q. Yes. There was correspondence which has been put in evidence, between Mr. Stafford and Mr. Hills, in which the matter was referred to on at least two occasions, one in November, I think, and one in December of 1988?

A. I see.

80 Q. But you were unaware of that?

A. I am not aware of that correspondence but, as I say I am unaware that it was there. What I am actually saying is that I believe that their primary objective was to seek an agreement with RTE for the use of the national transmission service.

81 Q. Yes. Were you aware that Mr. Stafford prepared a briefing document to the Minister for Communications in relation to transmission charges on the 8th of December of 1988?

A. No, I can't not remember that.

82 Q. Well, did you subsequently become aware of that fact?

A. No, not to my recollection. I may have, I may have read about it in the newspapers, because it is difficult going back so far without any papers to sometimes, you know, know something that you have read as evidence in this Tribunal, whether you remember it then or remember it now, so-to-speak.

83 Q. Yes. Can you assist the Tribunal as to why Mr. Stafford would have been preparing a briefing document to the Minister for Communications at a point in time before the

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submission by the company even went into the IRTC?

A. No, I cannot assist you in that sense, in that perspective.

84 Q. You were aware at that point in time, I take it, that the IRTC, having been established by the legislation, was an independent body, was the body exclusively charged with the responsibility for awarding both national and local radio franchises?

A. I was aware at the relevant time, certainly.

85 Q. And that the Minister for Communications had no function in the matter?

A. Absolutely.

86 Q. Do you have any information which would assist the Tribunal in understanding why Mr. Stafford was making a, or preparing at least a submission or a brief for submission to the Minister for Communications on the 8th of December of 1988?

A. No, I have no information whatever to assist the Tribunal.

87 Q. We know that the submission went in on the 16th of December, and there was scheduled for the 12th of January of 1989 a public session of the IRTC at which various applicants would make their pitch, as it were. Were you actually present on the 12th of January?

A. No.

88 Q. There was a meeting of Century Communications Limited on the 5th of January of 1989. If I can just put that up? 6199, and if I can just go through to 6200? There was obviously discussion at this as to the proceedings and the procedure at the forthcoming public sitting of the IRTC, isn't that right? This is Mr. Fanning's note of that meeting?

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A. I am finding it very difficult to read, I don't know what the note is about.

89 Q. It is about a meeting of the 5th of January of 1989. Where you at the, this meeting of the company on the 5th of January of 1989?

A. No, I have no recollection of that at all.

90 Q. You have no recollection of it. We know that you were in fact recorded as having attended all subsequent meetings, although there is no record in this meeting as to who was or wasn't present?

A. I see.

91 Q. But you can't recall?

A. No, no recollection.

92 Q. Do you have any reason to think that you were not at it?

A. Yes, because I have no recollection of it.

93 Q. I see. It is recorded at page 6201 in relation to transmission charges, under the heading "Transmission Questions" it says: "375,000 is our figure. The Commission will avoid that figure. May have the information afterwards."

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Do you remember, whether by reference to this meeting or in conversations you may have had with either Mr. Stafford or Mr. Barry, or indeed anybody else around that time, that there was the possibility that the IRTC might ask a question in relation to the transmission charges and as to how that question would be dealt with in the event that it was asked?

A. No.

94 Q. Did anybody discuss that with you at the time?

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A. No.

95 Q. Do you remember the position that Century adopted in their submission in relation to transmission charges, apart from the actual figure of 375,000?

A. No.

96 Q. That they were relying on a point of principle that the transmission system should be kept available for anybody who wanted to use it?

A. No, I was not aware that they were making that as a submission. I was aware that the strong feelings, that we were talking here about a national transmission service which was paid for by the taxpayers of Ireland, and that if the government, as happened I gather in New Zealand, if the government wanted to encourage the market-place for independent radio, that the government should acquire the transmission service and license it out to all newcomers, approved by them, including RTE, that it was not RTE's transmission service, it was the nation's. I remember that argument being strongly made.

97 Q. Yes. By whom?

A. Sorry?

98 Q. By whom?

A. By Mr. Stafford and Mr. Barry.

99 Q. Yes. Who did they suggest should pay for this transmission system that would be available to everybody?

A. They would suggest it had already been paid for by the taxpayer.

100 Q. Yes, but it was going to have to continue to be upgraded and maintained?

A. Certainly the users would pay for that.

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101 Q. On a proportionate basis presumably?

A. Yeah.

102 Q. Yes. Do you remember the public submissions on the 12th of January? I understand you to have said you weren't present, but I take it you would have been aware that this was happening?

A. I was aware that there was a public hearing. I don't recall the date, but I am sure that's the date.

103 Q. And did you become aware that subsequent to that hearing a query was raised by the IRTC to Century with regard to their transmission charges?

A. I did not become aware of that.

104 Q. We know that a meeting took place between the Chairman of the IRTC and the Secretary of the IRTC and Messrs. Stafford and Barry on the 13th of January, that is the day after the public submissions. Did you become aware of that at any point of time?

A. No, not until I may have read about it recently in the, arising from this Tribunal.

105 Q. I see. Yes. May I take it from that then, that you did not become aware of the fact that Mr. Stafford went back to Mr. Hills and asked him to prepare some information for transmission to the IRTC?

A. I can't recall any of that, no. You must remember, I was not an executive of this company.

106 Q. I understand that.

A. And I was not a promoter of this company.

107 Q. Yes.

A. I was a Non-Executive Chairman.

108 Q. Well, in fact you weren't even the Chairman at this

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particular time?

A. I wasn't even the Chairman.

109 Q. I think you were referred to as "Chairman Designate" at this point in time until, I think it was the 14th of February, when you were actually made Chairman, or thereabouts. But nonetheless, were you not au fait with what was going on in the company, and in particular the most important aspect of its existence at that point in time, namely their application to the IRTC?

A. In a general sense I was au fait, I was au fait with their application, with the result of the application, and I was au fait in a general sense with the difficulties between RTE and Century over transmission.

110 Q. Well, there wasn't really any difficulty between the IRTC, sorry between Century and the IRTC at this particular point in time. RTE had given a quotation, Century had made the submission to the IRTC and no issue really had arisen up to this point in time, that is the point, say the 18th of January when the decision on the franchise was made. No issue had arisen between Century and the IRTC - RTE up to that point in time.

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We know from the documentation that Mr. Stafford was keeping that Mr. Mulhearn was appraised on a regular basis as to what was going on. Would I be correct in thinking he kept you apprised as well?

A. He kept me appraised generally, certainly.

111 Q. If we look at page 5600? This is a fax which Mr. Stafford sent to Mr. Hills seeking this information urgently, in which he made reference to the meeting with the IRTC on

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that date, and in which he refers to the meeting as a "very satisfactory meeting with the Chairman". Did he ever tell you that he had a very satisfactory meeting with the Chairman of the IRTC on that date?

A. He could well have, I don't recall. He could well have.

It is not something that would stick in my mind for the subsequent 12 years.

112 Q. Well, except to the extent that this was the focus of all the attention, presumably, of all the people involved with Century at the time, and this statement was being made five days before the IRTC itself met to actually make the decision as to who should get the franchise?

A. I don't recall being told at any stage that there were meetings of this nature prior to the franchise being granted.

113 Q. And from your perception, is it your recollection that you were entirely unaware as to who might be successful vis-a-vis getting the national franchise until the decision was actually announced?

A. Absolutely.

114 Q. The evidence before the Tribunal to date appears to suggest that in fact there were no negotiations of any kind at all between Century and RTE in relation to transmission charges. Are you aware of that evidence?

A. No, not particularly.

115 Q. Well, if you just take my word for it for the moment?

A. Sure.

116 Q. The evidence has in fact been that there were no negotiations. It was Mr. Stafford who appeared to suggest that there had been, but was unable to identify any meeting

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where any such negotiations took place. And the clear evidence from a number of witnesses in RTE appears to suggest that there weren't in fact any negotiations. And in particular, that at no point in time, did anybody from Century ever put any figure on the table, as it were, to RTE.

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Does that surprise you?

A. It does.

117 Q. Was it your understanding at the time that there were negotiations going on?

A. Yes, it was. Mmm.

118 Q. And on what basis was it your understanding that there were such negotiations?

A. I can't remember what basis, but it was my understanding.

119 Q. Were you told sometime in January that an agreement had been reached between the Department of Communications and RTE in relation to a figure for transmission charges, and that such an agreement had in fact been reached prior to the decision by the IRTC to award the national franchise?

A. No.

120 Q. Can you say when you first became aware that such an agreement had been reached between the Minister and his Department and RTE?

A. I think the first time I became aware of that was when agreement was reached between Century and RTE. When the contract was agreed.

121 Q. Well, the contract wasn't --

A. August or --

122 Q. -- executed until July?

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A. Yeah.

123 Q. But --

A. No, when it was agreed, it would have been agreed prior to that date, obviously.

124 Q. Not terribly long prior to that date?

A. No, probably not.

125 Q. Yes?

A. Probably not.

126 Q. But just going back to --

A. That's my recollection.

127 Q. The documents which the Tribunal has seen in evidence appear to suggest that on the 12th of January, namely the day of the public submission, Century received from the IRTC the figures which had been agreed between RTE and the Department, and the figure for FM transmission was ú692,000.

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Can you say when you first became aware of that agreement?

A. The first time I can recall hearing the figure ú692,000 is just now.

128 Q. May I take it from that, that you were unaware of that figure in 1989?

A. I think that would follow.

129 Q. Well, in fairness to you, Mr. Crowley --

A. The first time I have heard that figure is now, that I recall.

130 Q. Well, in fairness to you, that figure we know was subsequently reduced again by agreement, to ú614,000. Do you remember the figure of 614,000?

A. No, I don't remember the figures, Mr. Hanratty, I regret to

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say, because I have had many figures in my head in my life and I just don't remember them.

131 Q. I understand.

A. That's the kind of negotiation I am talking about. There was clearly some negotiation to reduce the figure from one figure to another.

132 Q. Yes.

A. And I was aware there were negotiations going on. I was not involved in the negotiations and I was obviously interested that they reached a satisfactory ending.

133 Q. Where did you understand, and I am referring to January of 1989; where did you understand as Chairman Designate of the company, the figure of 375,000 found for transmission charges came from?

A. Would I be correct in saying it came from the IBA?

134 Q. Unfortunately you wouldn't. Mr. Stafford did give evidence to the effect that it did come from the IBA.

.

Perhaps I will tell you the totality of what he said and what the other evidence appears to suggest?

A. Sure.

135 Q. Mr. Stafford originally said in his evidence in July, that the IBA signed off on \$375,000. He was unable to demonstrate by reference to any document that they had in fact done so, and he subsequently said that the IBA came up with a figure of about 293 or 295, which he rounded up to \$300,000 and added on 25 percent, bringing it up to \$375,000. That was his evidence. But, all the evidence, including the documentary evidence which has so far been brought before the Tribunal appears to suggest that the IBA

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never produced any figure of ú375,000 in respect of transmission charges, or indeed any other composite figure.

.
But was it your understanding, in January of 1989, that that figure had in fact come from that source?

A. Well, as I say, my guess - I asked you - gave it to you as a guess, I can't confirm it is my understanding, that my guess is that it would have come from the IBA.

136 Q. Well, was that on the basis that something, somebody had told you?

A. I assume so.

137 Q. We know that as time went on, this transmission charges issue continued to be an issue and continued to be raised at successive meetings and to be included in successive agendas for meetings of the Board of the company, isn't that so?

A. Yes.

138 Q. And we know that --

A. There were very regular meetings, perhaps every month.

139 Q. Yes indeed, and we know that, it is recorded in various places in the minutes of these meetings, that Century stuck to their figure of ú375,000?

A. Yes.

140 Q. In the course of that period of time, and I am talking from I suppose January on, into February, March, April, up to the time the contract was signed, was it your belief that the ú375,000 figure was a professionally produced figure rather than a figure that somebody had come up with out of the clear blue sky?

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A. Well as I said earlier, my guess was that the figure came from the IBA. If that's correct, then it would be professionally produced.

141 Q. Well, were you given to understand that it came from the IBA?

A. I can't answer that unequivocally. As I say, in answer to your question I said "my guess is", because I would have assumed it came from somewhere, but don't forget we are dealing with a very inexact science. What is the price of transmission? It is a very inexact science.

142 Q. Undoubtedly it is. But the figures which had been produced by RTE were produced on an empirical basis, if I might call it. Each of the various constituent elements making up the total was broken down into their constituent elements and costings provided.

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But here was Century including in its financial projections incorporated in its submission to the IRTC a figure of ú375,000.

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We have been told by witnesses from the IRTC, including the Chairman of the IRTC, that they took in good faith the information that was given to them, and in particular the information that this figure had been produced or stood over by the IBA?

A. Mmm.

143 Q. And therefore that they relied upon it and that they took comfort from the fact that it came from the IBA in their deliberations as to which of the various franchises they should or which of the various applicants they should

include in the deliberations, and ultimately to who they would grant it?

A. Right.

144 Q. Did you become aware that in, on the day after the award of the franchise, Mr. Hills wrote, or sent a fax to Mr. Stafford apologising for the quality of the submission or the information which the IBA had provided on the 17th of January?

A. No.

145 Q. I will just read out the passage. He congratulates in paragraph one, I don't have - I have a page number but it is obscured, but in paragraph two he says, Mr. Hills addressing Mr. Stafford: "I was appalled to see the very poor response from IBACS on the issue of RTE costs. I have to tell you that most of it was my own text prepared on Saturday morning as an aide memoire and delivered by hand to John Thomas on our way to the airport. I had expected them to put much more flesh on my bones. I apologise for their poor showing. Is it sufficient? If not I will prepare something more detailed as soon as we return to the UK on the 1st of February. Please let me know."

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Now, the document to which he was actually referring was a document which IBACS had faxed to Mr. Stafford on the 17th, and which was sent in by him on that date to the IRTC, but which didn't in fact provide a figure of ú375,000 or provide any opinion on a figure of ú375,000 or provide any breakdown. All it did was to effectively parrot back an aide memoire which Mr. Hills himself had given to IBACS. Here he is the day afterwards apologising. Did you ever

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become aware of that, of any of that?

A. No. Who by the way are "IBACS"?

146 Q. The Independent Broadcasting Authority Consultancy Service.

A. I see.

147 Q. Which is a sub-group of the IBA?

A. IBA.

148 Q. You didn't become aware of any of that?

A. No.

149 Q. You didn't become aware of the fact that Mr. Hills apologised for the input received by Mr. Stafford from IBACS?

A. No.

150 Q. Could I refer you to page 2295, and I'm afraid again this is in, it is a longhand note by Mr. Fanning, and it is a note of a meeting which is undated, but we believe happened sometime after the 14th of February of 1989. And as you can see from the note on the top left-hand corner it was attended by Mr. Stafford, Barry, Wogan, yourself, and Mr. Fanning. "EF" for Eugene Fanning and "CD" for Colm Duggan, the solicitors to the company?

A. Mmm.

151 Q. As you can see from the document, page 2296, there are various matters dealt with. Finance is dealt with, advertising, Head of Programmes is dealt with. At page 2297 premises are dealt with. But on page 2298 under the heading of "Transmission", if you go about six lines down you can see, "Could pay up to ú520,000. A steal at ú375,000."

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Now, it would appear from this note that there was a discussion at this meeting about transmission charges and that somebody said, and that Mr. Fanning noted, that the company could pay up to \$520,000 in respect of transmission charges, and that it would be "a steal" at \$375,000. Do you remember who said that at the meeting?

A. No.

152 Q. Well, first of all --

A. It certainly wasn't me.

153 Q. Are you happy that it wasn't you?

A. Absolutely. Because I couldn't value the value of or the cost of the transmission agreement.

154 Q. Yes. Well, I take it you would agree it is unlikely to have been Mr. Fanning or Mr. Duggan?

A. (Witness nods.) They would be in a similar position to me.

155 Q. Undoubtedly. So that would seem to narrow it down to either Mr. Stafford, Mr. Barry or Mr. Wogan, and would you agree that it is unlikely that Mr. Wogan would have had any such information?

A. Yeah, I mean he obviously had much more knowledge than Mr. Fanning, Mr. Duggan or myself of broadcasting, but I doubt if he had technical information.

156 Q. Yes. So it would seem that the statement to that effect or words to that effect must have come from either Mr. Stafford or Mr. Barry?

A. That's a surmise, Mmm.

157 Q. Well, do you have any recollection of either Mr. Stafford or Mr. Barry expressing an opinion that the figure which Century we know was then advancing, had included in their submission to the IRTC, was regarded by them or either of

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them as, to use the phrase, "a steal"?

A. No, I have no - do I have any --

158 Q. Any recollection of --

A. No.

159 Q. -- that having been said to you?

A. No.

160 Q. Or that opinion having been expressed in your presence?

A. No, but I am sure Mr. Fanning will be able to help you.

161 Q. And do you have any recollection of either Mr. Stafford or

Mr. Barry informing you that Century could in fact pay up
to ú520,000 per annum?

A. No, I don't.

162 Q. Yes.

A. You have to remember the background to this. If I may just
make a point here?

163 Q. Yes.

A. That the biggest competitor that RTE was involved with was
going to be Century and it was not in RTE's interests to
reach a cheap agreement with Century, it was in RTE's
commercial interests to extract the maximum price possible
from what was potentially their biggest competitor. So it
is a very difficult situation to be trying to lease a
critical piece of your equipment from your biggest
competitor.

164 Q. Undoubtedly so. But insofar as they provided figures,
those figures can be looked at and can be analysed?

A. Indeed, I can think of many situations where figures have
been provided and they just have been unacceptable
commercially and no deals have been done.

165 Q. Yes.

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A. I mean you can be right in many ways in life, in relation to figures.

166 Q. Yes. But, if the figure was too expensive for Century, assume that the figure was correct for a moment and was still too expensive from Century, where do we go from there?

A. I think you then negotiate and in the ultimate you would use the legislation of getting the Minister, seeking the Minister to make a directive. At the end of all of that process, if the figure is still unacceptable then you wouldn't proceed.

167 Q. But if, for example, the figure was based on actual cost?

A. You see, I don't believe there is any such thing as "actual cost" in this kind of a circle infrastructure, is there? They are making all kinds of assumptions about life, appreciation and interest rates. It is too simplistic to talk about actual cost, in my opinion.

168 Q. Yes, but the situation that we had here in January of 1989 was that there were two other terrestrial applicants for the national franchise, each of which included a very substantially higher figure, one of which was around ú900,000, the other was in excess of ú700,000. These were two willing competitors in an open market situation prepared to pay those kinds of money for transmission charges.

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Was it the view of Century at the time that they should in effect be subsidised by RTE?

A. No, the view of Century, I think, would have been more accurately stated as they did not want to subsidise RTE.

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169 Q. And was it your view that there was any question that RTE were going to be subsidised?

A. I think there could well have been, at the kind of monies that were being tossed around, bearing in mind that, arriving at a cost is an extraordinarily difficult exercise.

170 Q. At the point in time when the Minister reached agreement with RTE, and subsequently reached agreement on a figure, and asked them to reduce it even further, do you consider there was still subsidy involved?

A. I don't know, I am not saying there was a subsidy involved, I am saying that was what Century were trying to stop.

171 Q. Yes. There was another meeting which was actually on the 14th of February, and therefore probably was before the meeting to which we have just referred, page 2301. And I think you were at this meeting, and again a whole range of topics were discussed at this meeting, but I think it is page 2306 that there is reference to transmission charges, yes.

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And if I can just refer you back for a moment to page 2300? Where it records the persons who were present at the meeting. James Stafford, Oliver Barry, Laurence Crowley, John Mulhearn, Terry Wogan, Mary Finan, Mr. Fanning and Mr. Duggan.

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Mary Finan, I think, was a PR consultant, is that right?

A. Mm-hmm.

172 Q. Mr. Mulhearn was at this meeting as well. Can you recall what Mr. Mulhearn would have been doing at a board meeting

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of Century?

A. I don't know. Is this recorded as a board meeting or just a meeting?

173 Q. Well, it is not --

A. Is it in the minute book?

174 Q. It is recorded in the same way as board meetings are subsequently recorded, although in subsequent cases we have typed minutes. Yes, in fact we know that it was a board meeting because at page - if I can refer you to page 3975? This is a letter from Century to the Chairman of the IRTC, and the first sentence says:

"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 of Directors."

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This is, in fact, a meeting of the company at which you were elected Chairman. Do you remember that meeting?

A. No.

175 Q. Do you remember being elected Chairman of the company?

A. I do.

176 Q. Mr. Mulhearn was at this meeting?

A. Right.

177 Q. And he was at a meeting of the Board which elected you Chairman. Do you recall him being at the meeting?

A. No, I don't actually recall the meeting. I recall being elected Chairman.

178 Q. Yes. Can you assist as to what your understanding would

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have been as to why Mr. Mulhearn would be at this meeting?

A. Not any more than I have told you.

179 Q. Yes. Well, in any event if we can go to page 2306. Again the question of transmission charges is discussed, and it records that, under the heading of "Transmission": "ú375,000 offered. RTE get a license fee increase, not viable. Minister will give a direction at ú375,000. Downtown is charged ú100,000. Major question is loss of face."

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Now, the first thing that's recorded there is the ú375,000 is offered, and you have already, I have already put to you that in fact no figure was ever offered by Century to RTE, and you expressed surprise at that proposition. But in any event, it does appear that somebody at the meeting informed the meeting that 375,000 had actually been offered, isn't that right?

A. It certainly appears so.

180 Q. It appears there was a reference to the license fee increase, and it was not to be a runner, as it were. But it is then recorded that the Minister would give a direction that ú375,000 - now, do you remember a meeting of the Board of Century, in fact the meeting at which you yourself were elected Chairman, being told by somebody that the Minister was going to give a directive for ú375,000?

A. No.

181 Q. It would, I take it, have been something of a surprise to the persons present to hear it?

A. It would, but the usual person that communicates these things would be Ministers.

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182 Q. Undoubtedly. But this is at a point in time before the company itself had even decided to apply for a direction, isn't that right?

A. I believe that's right, I am not aware that they --

183 Q. The application for a direction was incorporated in your letter to the Chairman of the IRTC of the 20th of February?

A. That's right, right.

184 Q. There is no record in any of the minutes of the Board of Century as having resolved to apply for or request a directive at any point prior to the 14th of February. But yet, on the 14th of February somebody at this meeting is informing persons present that the Minister was actually going to give a directive that ú375,000 --

A. The only comment I could make, merely a comment, that could have been kind of loose talk. Some people say things a bit loosely in life without necessarily having the authority to back it up, saying "of course I will get you", that kind of thing and then they have to go out and get it.

185 Q. There was nothing loose in the manner in which it was recorded by a solicitor, where he says "the Minister will give a direction"?

A. I am not saying the recording is loose, I am only making a comment.

186 Q. Absolutely. Is it not reasonable to infer if a solicitor wrote it in that way, he wrote it on the basis of a perception that somebody had made that statement?

A. I would have no question-mark about the way Eugene Fanning recorded anything.

187 Q. There is also a reference to "Downtown is charged ú100,000", and obviously whoever made the statement, who

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may or may not have been the same person, had some information of some kind in connection with Downtown and what the Downtown charges were in Northern Ireland, isn't that right?

A. It certainly is apparent, yes.

188 Q. Do you remember the Downtown issue subsequently being mentioned in the context of representations being made on behalf of Century Communications Limited?

A. Representations being made by- by Downtown.

189 Q. No, by Century, that Downtown was referred to, reference was made to Downtown?

A. I don't recall that.

190 Q. Is it possible that this meeting was informed that the Minister was in fact going to give a direction at ú375,000, but that it was first of all necessary that certain procedures be implemented, including an application or request to be made by Century to the IRTC?

A. I don't know what the meeting was informed of, I can only read what's here.

191 Q. Well, we know as an objective fact that for the directive procedure, as it were, to be invoked, this is the directive procedure in Section 16, it is necessary for a request to be made from the IRTC to the Minister, and consequentially it is necessary for a person or entity seeking such a directive to address themselves to the IRTC in the first instance, isn't that so?

A. Yes, that's why I suggest this could be in a sense loose talk.

192 Q. Well, if it isn't loose talk, doesn't it suggest that the person who made that statement knew that the Minister was

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in fact going to give a directive, and if that is so
wouldn't it have been obvious to everybody that the
procedures would have to be implemented before it could be
done?

A. I can't comment on that, I don't know what the person
knew. I don't even know who the person was.

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MR. HANRATTY: Would you like to take a break at this
point, Sir?

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CHAIRMAN: I think so, yes. I was just about to say so.
We will rise for about a quarter of an hour or
thereabouts.

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

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MR. HANRATTY: The witness is on his way, Sir. He will be
here presently.

A. I apologise for --

193 Q. MR. HANRATTY: That's all right.

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Mr. Crowley, we were just talking about this entry under
"Transmission Charges" at this meeting of the 14th, as
recorded in that minute. That appears to be the totality
of the note, and one presumes of the discussion. Obviously
it is a shorthand note and may not by any means record
everything that was discussed, but we do know that the next
thing to happen was that a letter was sent three days later
on the 17th of February, 1989, signed by Mr. Barry and Mr.

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Stafford to the Chairman of the IRTC. At page 302. And this letter makes specific reference to the meeting. And after informing the Chairman in the first paragraph of your appointment as Chairman and other appointments to the Board, it says in the second paragraph:

"The Board meeting reviewed the question of transmission charges. They were of the unanimous opinion that the €375,000 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. 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 has not been given to RTE."

.
Now, here is Mr. Barry and Mr. Stafford writing pursuant to this meeting and stating specifically that the Board had been of the unanimous opinion that the 375,000 offered to RTE for a full transmission service was, given the advice that they had from the IBA, "fair and reasonable".

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Now, is that true? Was the Board of the unanimous view by reference to advice from the IBA that €375,000 was fair and

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reasonable?

A. Well, I cannot recall personally the meeting, as I have already said to you. But I know, I have no reason to doubt what was said in this letter.

194 Q. But the problem, Mr. Crowley, is that it would appear from the evidence to date that the IBA gave no such advice?

A. Yes, but that - maybe the Board believed they did.

195 Q. Well, if the Board believed they did, it could only be on the basis that somebody told the Board that they did?

A. Yes.

196 Q. Well, do you remember anybody telling the Board that the IBA had given advice that this figure was "fair and reasonable"?

A. Not specifically as such I don't remember, no.

197 Q. Well, I fully appreciate that you didn't write this particular letter. Were you aware of this letter being sent to the IRTC?

A. I don't recall this letter.

198 Q. Well, was it concluded at the meeting that whatever was discussed at the Board and on whatever basis that a letter would be written to the IRTC?

A. I don't recall. The minutes presumably would reflect the decisions of the Board.

199 Q. It also goes on to say: "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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Now, if the note taken by Mr. Fanning to the effect that the company was in fact prepared to go to \$520,000, then

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that statement is not, to put a tooth in it, false, isn't that so?

A. Well, there is a lot of statements made in negotiations. Positions are adopted but yet, you know, people have, might say "Well, we will in certain circumstances. Go a little more if we are pushed." That's quite a normal feature of business negotiations.

200 Q. But that didn't happen with Century, they never went beyond 375, either vis-a-vis the Department or the IRTC or anybody else, isn't that so? And here they are informing the IRTC of a factual statement, or supposedly factual statement that it simply would not be viable beyond ú375,000?

A. Mmm.

201 Q. And they are making that statement in circumstances where it is recorded in the previous minute of the meeting that the company was perfectly happy to go to ú520,000, and went so far as to say it was "a steal" at 375?

A. Yes.

202 Q. So would you not agree that it appears that the IRTC are being mislead by these statements?

A. Well, I didn't write this letter.

203 Q. I understand that.

A. I don't even recall its existence. I accept that it exists because you are showing it to me. I still believe that this is all part of an overall negotiation.

204 Q. But there are no negotiations with the IRTC, and the IRTC are not in anyway involved in any negotiation with anybody else?

A. Except to seek a directive from the Minister.

205 Q. Well, it appears from the last sentence in the paragraph

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that, where it says "In the circumstances they" - that's the Board - "could not understand why, given that the Minister has power under the Act, a directive has not been given to RTE"

.
You see, what I want to explore with you, Mr. Crowley, is this: Since it was stated by somebody at the meeting or it appears to have been stated by somebody at the meeting, at least according to the handwritten note that we have, that somebody said that the Minister would give a directive at 375, obviously it was going to be necessary for somebody to put the procedures in place, isn't that so?

A. To obtain a directive, absolutely.

206 Q. And the next thing to happen is that Messrs. Barry and Stafford accepted a letter to the Chairman of the IRTC making a dogmatic statement that their service, they being the company to whom the IRTC has already committed itself on the 18th of January, would not be viable beyond €375,000.

.
Doesn't it appear that what this letter is, is in effect an implementation of a decision to implement the procedures, as it were, to apply for a directive to the IRTC and to do so on the basis that they are not either willing or able to pay more than €375,000?

A. Yes, the letter, while it isn't actually asking for a directive, it is expressing surprise that one has not been given.

207 Q. But how can it do that when one had not up to that point in time, as far as we are aware, been requested either by the

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IRTC or by Century?

A. Sure.

208 Q. This is the first time that Century has mentioned, at least to the IRTC, the question of a directive. We know that there was some exchange of correspondence between Century and Mr. Hills in 1988, before they even applied for a franchise, about a directive. This is actually, as far as we are aware, the first time that Century mentioned a question of a directive to the IRTC, and they are doing it in circumstances where they are making a factual statement to the effect that the service would not be viable beyond 375. Isn't that right?

A. That's right, that's what they are stating.

209 Q. It is clearly done pursuant to whatever was discussed at this meeting of the 14th?

A. I assume so. It may also be done, of course, for transmission, if you pardon me using that word, to RTE.

210 Q. But the IRTC weren't in any form of contact at any stage with RTE?

A. I don't know.

211 Q. Mmm. At page 303 there is a document which appears to have been enclosed with this letter setting out certain figures, and essentially what it amounts to is a breakdown of ú375,000?

A. Well, it amounts to not a breakdown, but in my opinion it amounts to how ú375,000 was arrived at.

212 Q. Yes. That's what it appears to purport to be, isn't that right?

A. That's - yes.

213 Q. And the letter, at the second last paragraph, contains

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effectively a threat to the IRTC where it says: "At this stage we must advise you that unless the matter is resolved within the next seven days there is no way in which we can be expected to meet the original date envisaged, and furthermore, we will have to reconsider our entire position."

So the message that the IRTC is getting from this letter is "Either we get transmission access for \$375,000 or else."

Isn't that essentially what Century was saying to the IRTC?

A. I wouldn't necessarily agree that that is a threat.

Probably a statement of fact.

214 Q. How could it be a statement of fact if the company has already acknowledged that it could go as far as \$520,000?

A. I am talking - I am talking about the reference to the timescale.

215 Q. Yes. But I am talking about the threat to have to reconsider their entire position?

A. If the timescale, I interpreted that when you read it out, if the timescale is not adhered to.

216 Q. Well I think they are, if I may suggest to you, disjunctive because it says: "And furthermore, we will have to reconsider our entire position." That would leave the IRTC in a rather awkward situation if that position developed, wouldn't it, they having decided to award the franchise to Century the previous month?

A. Sure.

217 Q. When was the first time that you saw this breakdown of \$375,000?

A. I think it would have been around that time, in February,

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because I wrote a letter, I signed a letter which was, on behalf of the company to the Chairman of the IRTC, I believe it was sometime in February.

218 Q. It was on the 20th. Before we come to that, in the meantime --

A. Which includes that breakdown.

219 Q. Yes. What happened in the meantime, that is between the letter about which we have been speaking, was the IRTC received a letter from the Minister, 3974, and this is a letter which we have had a number of times in evidence, but essentially where it says, where the Minister informs the IRTC that the originally agreed figure had "at my own strong urging, been reduced further by RTE from 692,000 to 614,000." And he says, as you can see under the column of figures in the letter, "I am satisfied that in Irish conditions the foregoing charges are not unreasonable."

.

Now, we know that having received that letter Mr. Henchy had a meeting with the IRTC and gave them a copy of this letter. So at that point in time, Century would have been faced with a situation where the Minister was saying, at least to the IRTC, that in his opinion ú614,000, that's in respect of FM, was not unreasonable. And that it was in response to that, that your letter of the 20th of February of 1989 I think, was sent.

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I think it is page - can we just have a look at page 37?

Yes, and if I can just scroll back to the first page of that document? Yes.

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Now this, this is your letter to the Chairman of the IRTC. It is written in circumstances where the Board of Century has had its meeting, has been informed that the Minister will give a directive at 375. This is on the 14th. That pursuant to that a letter is written on the 17th by Century, in which they effectively threaten to pull out unless they get the figure pitched at 375. Where the Chairman of the IRTC, possibly on the same date that he received the Century letter, received a letter from the Minister saying that in his opinion €14,000 was not unreasonable, and it arises in circumstances where the Chairman having convened a meeting between himself and the Secretary of the IRTC and people from Century, handed over a copy of the Minister's letter, as a result of which this particular letter was written by you.

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If we can just go through it, it says:

"Dear Chairman, thank you for seeing us at such short notice today, when you were kind enough to give us a copy of the Minister's letter, dated 16th of February."

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Now, do you remember receiving the Minister's letter of the 16th of February, and in particular do you remember the reference that he made in it to the, his opinion that in Irish conditions €14,000 for FM charges was not unreasonable?

A. No, I don't remember receiving that letter.

220 Q. Well, it is quite clear that you did because you make reference to it in your letter. You say: "As stated in our letter of the 17th of February, we are convinced that

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€375,000 for a full transmission service is fair and reasonable and the suggested charge by RTE would render the entire project economically unviable."

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So now here we are, you are saying to the IRTC that it would be unviable beyond €375,000?

A. This is a response from the company, Century Communications Limited, signed by the Chairman.

221 Q. Mr. Crowley, your signature appears on the letter and we have to take it as we find it.

A. That's exactly what I said. This is a response from Century Communications Limited signed by the Chairman.

222 Q. Well, do you disown what is in it?

A. I don't disown what's in it, I am acting on behalf of the company, not giving a personal view, I wouldn't have personal - I wouldn't have enough technical knowledge to develop personal views, I must rely on my advisers.

223 Q. I understand that completely, Mr. Crowley. I am asking you do you stand over what's in this letter?

A. I - in that context I do.

224 Q. And do you stand over the assertions of fact which are contained in the letter?

A. In the context of a letter written on behalf of the company by my advisers and signed by me I do.

225 Q. Do you stand over the veracity of what's contained in the letter?

A. Are you suggesting there were untruths in the letter?

226 Q. Yes.

A. There are no untruths in the letter.

227 Q. Right. Can we just go through the letter? It says:

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"As stated in our letter on the 17th of February, we are convinced that ú375,000 for a full transmission service is fair and reasonable, and the suggested charge by RTE would render the entire project economically unviable."

.

Now, I have already referred you to the fact that the company had already recorded in its minutes that they were prepared to go or were capable of going to ú520,000, isn't that right?

A. That has been recorded, yes.

228 Q. It says: "The original quotation from RTE, dated 1st of November, 1988, provided for a full FM transmission service providing the same level of coverage as RTE 1 and 2. The transmission requirements for the national independent commercial radio are the same as for RTE, and we are convinced for the reasons set out in our submission, that the only way to provide the service is through the use of the national transmission network managed by RTE.

.

The quotation given to us by RTE on the 1st of November, 1988, was 1.140 million for the FM service only."

.

Now, I take it you must have been aware at this point in time that the RTE figure was now standing for FM at 614,000, isn't that right?

A. I don't recall.

229 Q. Well, you make specific reference to the letter from the Minister where he tells you that?

A. Yeah.

230 Q. In the first paragraph?

A. Right.

231 Q. "We have considerable difficulty in reconciling the different RTE quotes and can only conclude that the Minister's letter of the 16th of February, 1989, constitutes as it states in paragraph two no more than a reduction of ú78,000. Furthermore, we believe those figures quoted for 1989/'92 are misleading, in that they do not include rent of equipment, project management fees, installation costs, power and spares.

.

Before we made our submission to you on the 15th of November, 1988, we held several meeting with RTE as managers of the national transmission system. We told them the view of our advisers, the IBA, that the cost of providing us with this facility in accordance with the criteria set out in the letter of 1st November, of 1988, was less than ú300,000 per annum."

.

That, I have to suggest to you, is not true?

A. As far as I am concerned it was what I believed to be true.

232 Q. Why did you believe it to be true?

A. Because I must have been told.

233 Q. By whom?

A. That the IBA had provided this advice.

234 Q. By whom?

A. I cannot recall.

235 Q. May I suggest to you that whether you were told it or not, you certainly never saw any such advice from the IBA?

A. I may not have seen it.

236 Q. Because as far as we can find, there never was any such

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advice from the IBA either verbally or in any written form, certainly?

A. And of course there is reference to the IBA in the previous letter that you showed from Mr. Barry and Mr. Stafford.

237 Q. That is undeniably true, but the reference in the previous letter is a reference to the fact that the Board had unanimously come to the decision that 375 was fair and reasonable based on information that they had, the Board had received from the IBA?

A. Mm-hmm.

238 Q. But, the problem is that they not in fact received any such information from the IBA?

A. I see. They may not have received it in written form directly from the IBA, but clearly received it from the executives.

239 Q. My point is that the IBA never ever gave such advice?

A. Obviously the Board didn't know that.

240 Q. It seems to follow that the Board was misled?

A. If the IBA never gave that advice the Board certainly believed that they did.

241 Q. May I take it when you are making this statement you are making it not on the basis of having seen such advice from the IBA yourself or heard it, but on the basis of what somebody else told?

A. Based on what you say that would appear to be correct.

242 Q. "As you know, we stated in our submission a figure of \$375,000 in order to avoid any possibility of it being suggested that we were seeking the service at cost."

.

So what you are actually saying here is that the figure in

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fact advised by the IBA was €300,000 per annum, "but to make absolutely doubly sure", as it were, "we have rounded it up to €375,000"?

A. As the previous letter demonstrates.

243 Q. Yes. In other words, the IBA figure was 300,000, not 375?

A. (Witness nods.)

244 Q. Now, it goes on in the second page to say:

"Having had the IBA assess our transmission requirement, we calculate, on the advice of the IBA, the cost of providing the same national FM coverage, and including AM transmission in Dublin and Cork, to be as follows:" And then you set out a breakdown of a number of various constituents of this €375,000.

.
Am I to take it from what you have just said, that you are not in anyway in a position to stand over the validity of any of these figures?

A. That I personally?

245 Q. Yes.

A. I am not in any position, in anyway, in a position to stand over the validity of those figures, no.

246 Q. Who gave you these figures?

A. I can't recall, but they were clearly provided to me by our expert executives, by our executives.

247 Q. Which executives?

A. I just can't recall, I am sure Mr. Barry or Mr. Stafford, one or other of them would have been involved in it.

248 Q. When they gave them to you, did you read them?

A. Did I read them?

249 Q. Yes.

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A. Sure.

250 Q. You see, I have to put it to you that --

A. Of course I must have read them.

251 Q. -- that these figures are fairly seriously misleading so far as the IRTC is concerned or the recipient of them is concerned. You know, for example the \$70,218 which is Item A, rent of transmitters/combiners, etc.; did you get any explanation from anybody about what that figure was or did you have any idea where it came from or how it came to be calculated?

A. I have no recollection of how those figures are made up at this stage.

252 Q. If we just go back for a moment to the enclosure with the letter of the 17th of February?

A. Mm-hmm.

253 Q. Page 303, and again it is Item A, rent of transmitters/combiners, etc..

.

Capital investment \$747,000, 20-years life at 7 percent per annum.

.

Now, were you aware that the \$70,218 was thus calculated?

A. I am not aware now.

254 Q. No, I mean were you aware then?

A. I don't know.

255 Q. Yes?

A. I can not recall.

256 Q. Because first of all we have been told, and it appears to be supported by documentation, that the \$747,000 was an estimate which RTE had given to Century in November as to

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what they thought the purchase of the equipment, the transmitting equipment that is, would cost. It wasn't a quote, it was an estimate?

A. I see.

257 Q. We were also told that they quoted, that is RTE, mentioned the figure of 7 percent on the basis of a five year leasing arrangement, and that the figure of 7 percent could only be achieved on the basis that the person or that the lessor would have the benefit of capital allowances.

Does that make sense to you?

A. As a, as a, an illustration of how things can be financed?

258 Q. Yes.

A. Yes.

259 Q. They said at the time that DIBOR was approximately 9 percent, and they said that nobody could get anything, could borrow money at that time for less than 2 percent above DIBOR, certainly RTE couldn't, and they were regarded as a good prospect, as it were. And that if Century were to go looking for it they would be looking at approximately 13 or 14 percent. Does that sound right?

A. Again as an illustration, yes. I can't recall the circumstances. What DIBOR was or --

260 Q. But isn't it clear, that what has happened here, by whoever produced this document, is that they lifted the figure of \$747,000 which was originally provided as an estimate, and that they lifted the figure of 7 percent which was provided as a leasing charge and not as an interest, and spread it over 20-years, thereby suggesting to the IRTC that you could get, you could borrow money at 7 percent over

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20-years. Isn't that effectively what's being suggested?

A. You know, you are the one who knows the facts about this, I don't.

261 Q. If those facts are correct, isn't it quite clear that that figure of 70,000 - ú70,218 in respect of rent of transmitters and combiners is profoundly misleading?

A. It is a leasing charge, not interest charge.

262 Q. It is not being proposed as a leasing charge?

A. Rent.

263 Q. Sorry, if it is proposed - it is proposed over 20-years. We have been told that it was absolutely inconceivable that anybody would have been given a loan at 7 percent over 20-years, or indeed any percent over 20-years. Does that sound right?

A. I can't comment on that.

264 Q. Do you consider that ú70,000 was misleading or not?

A. I obviously did not consider it was misleading when the letter was written.

265 Q. Again, do you now consider it misleading?

A. There are many sides to the story. I would have to get independent advice on what you are saying before I could take a view.

266 Q. Mr. Crowley, you are an accountant?

A. Yes.

267 Q. You are also Chairman of a bank?

A. Yes.

268 Q. You know what kind of money is available to what kind of clients?

A. I am not in the lending business, never have been.

269 Q. And would you not even know in a general way that 7 percent

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over 20-years at a time when DIBOR is 9 percent is absurd?

A. If DIBOR was 9 percent it certainly sounds an unachievable rate of interest.

270 Q. And if that is so, then clearly this figure --

A. A 20-year term is not unreasonable, is not unknown.

271 Q. For leasing?

A. Exactly, depending on the lifetime of the equipment.

272 Q. At a rate below DIBOR?

A. No, I am talking about the timescale.

273 Q. Yes. Well, the evidence we have had about lifetime of the equipment is that RTE writes its equipment off over 14 year, 13 or 14 years?

A. I see.

274 Q. Does that not sound right?

A. Well, you know, I would have thought - I can't take a view, because it depends on how long the equipment remains economically viable, and I would have thought some of that equipment, as in places like the ESB, transmission services could remain viable for 50 years, I don't know.

275 Q. What I am trying to elicit is, Mr. Crowley, if this figure of ú70,000 was calculated on the basis indicated on page 303, do you stand over that?

A. If --

276 Q. If the ú70,000 was, which is contained in your letter of the 20th of February --

A. The letter from the company?

277 Q. -- was calculated - I know it doesn't say in your letter the basis on which it was calculated, but if it was calculated on the basis indicated at page 303, do you agree with me --

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A. I just can't recall. Page 303?

278 Q. It is on screen. Paragraph A?

A. Yeah.

279 Q. That appears to be a calculation resulting in \$70,218?

A. Yes.

280 Q. What I want to know is, are you standing over the validity of that figure or do you agree with me that it is a misleading figure?

A. If the DIBOR was 9 percent and if the capital investment is incorrect, then the figure would need to be adjusted. Yes, at the time I believed it to be correct.

281 Q. Well, might I suggest to you, you couldn't have believed it to be correct if you had known the basis upon which it was calculated?

A. Maybe I didn't know the basis on which it was calculated. I accepted what my executives, the executives of the company were telling me, and based on the IBA.

282 Q. You see, the figure of \$30,000 which you included for maintenance, going back to your letter, page 36, is it?

A. I do - sorry. I am just looking at it.

283 Q. The previous page. Where did that figure come from?

A. On the page that was just up beforehand it had brackets beside it, "(IBA assessment.)"

284 Q. Yes. Is it your evidence that you just lifted the figure out of the document we have had up and put it into this letter?

A. Lifted the figures, I used these, the same figures are used.

285 Q. Yes, but not --

A. Which would have been quite understandable.

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286 Q. But not precisely the same descriptions?

A. The IBA assessment is not included.

287 Q. Well, if you look at the figures, the descriptions do appear to be different. For example under Item B on page 303 it says "Maintenance (IBA assessment.)" In your letter it simply says "Maintenance \$30,000."?

A. Yes, I don't attach any significance to that.

288 Q. You don't?

A. No.

289 Q. Well, do you attach any significance to the fact it is a completely unrealistic figure?

A. If I believed at the time that it was a completely unrealistic figure I would have attached significance to it.

290 Q. Well, do you know where it came from?

A. The IBA assessment.

291 Q. I don't want to go around in circles, but what IBA assessment?

A. It is stated in the previous letter that it is based, it came from an IBA assessment.

292 Q. I see. I take it the figures you included in your letter to the IRTC were taken from you, by you from a document which you believed to have been based on an IBA assessment, is that right?

A. Yes, yes.

293 Q. Did you think that it might have been appropriate to check the figures, given that you were advancing them to the IRTC as valid figures?

A. No, I didn't, because expert people had provided them.

294 Q. What expertise does Mr. Stafford have in transmission

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charges, or indeed Mr. Barry?

A. The IBA had the expertise.

295 Q. Yes. So you accepted their word that these were IBA figures?

A. I did.

296 Q. It was in the belief that these were IBA figures that you incorporated them in your letter to the IRTC?

A. Sure.

297 Q. Well, if you look at the calculations that are done in this letter, it then goes down to a sub total of ú295,218, and it is rounded up to ú300,000, isn't that right?

A. Yes.

298 Q. Now, it then says: "Fee to RTE for provision of service - ú75,000." And that makes a total of ú375,000.

.

What is the basis of adding on ú75,000?

A. I think that's a project fee for RTE to provide the service.

299 Q. But did anybody tell you where that figure came from?

A. I don't recall.

300 Q. You see, even on Mr. Stafford's own evidence it didn't come from the IBA. Mr. Stafford's evidence, as I indicated to you this morning, was that he got an estimate from the IBA of about 293 or 295, that he rounded it up to ú300,000 and then that he added on ú75,000 for good measure, as it were, and that's where he originally came up with the ú395,000, sorry ú375,000.

.

So is that the basis on which this 75,000 is included in this?

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A. My recollection is that that 75,000 is included as a fee to incentivise RTE to provide the service.

301 Q. Well, we know that whatever about the rest of the breakdown that went above that figure, we know that the 75 definitely did not come from the IBA?

A. Right. I understand what you are saying.

302 Q. So what basis was given to you for the €75,000 or what explanation was given to you for the €75,000?

A. The explanation was a fee to RTE.

303 Q. Well, was it calculated by reference to anything or was it a figure Mr. Stafford thought up or picked out of the sky?

A. Not that I am aware, it was calculated by reference to anything.

304 Q. Was it like a sort of present to RTE?

A. No, no, not at all.

305 Q. Why wasn't it 25 or 50 or 100?

A. Yeah, I don't know.

306 Q. This was being advanced to the IRTC as a figure beyond which Century were not viable?

A. Mm-hmm.

307 Q. And beyond which they would have to reconsider their position?

A. Mm-hmm.

308 Q. One has to look at this letter from the point of view of the IRTC, in the light of the letter they had previously received suggesting that Century would have to reconsider its position if they were required to pay any more than this, isn't that right?

A. Yes.

309 Q. If we go on, it says at paragraph one, at the bottom of the

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same page it says: "RTE quoted on the 2nd of November, 1988, a cost financing the capital investment at 7 percent per annum. There is no dispute that the life of the equipment is 20-years and we have calculated the annual rental to be ú9.40 per annum for 20-years for each ú100 capital required.

.
RTE advised us on the 11th of January, 1989, that the cost of transmitters/combiners and the other equipment necessary to provide the transmission service would be ú747,000. Advised by the IBA, we accepted that these costs are of the right order. This would amount to an annual rental charge of ú70,218 and the integration of our transmission requirements into the national network in this manner is both logical and sensible."

.
So this is now setting out the basis on which the 70,218 is in fact calculated, isn't that right?

A. Yes.

310 Q. And it specifically says that "RTE quoted in November 1988 a cost of financing the capital investment at 7 percent per annum."

.
Now, we have been told by, the Tribunal has been told by several witnesses from RTE that that is a complete distortion and misrepresentation of what RTE said, that they never said that they could finance on the basis of 7 percent over 20-years. That the 7 percent was quoted as a leasing charge on normal commercial leasing terms, namely over a period of over 5 years, sometimes 3, 4, 5 years, and

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on the basis that the lessor has the benefits of capital allowances.

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Do you have any reason to dispute that?

A. It is news to me.

311 Q. News?

A. I was not at any meetings with RTE. I had no discussions or correspondence with them.

312 Q. Well, do you disagree with what they say?

A. Do I disagree with what they say? You know, I don't know the capital cost for example.

313 Q. You don't know the capital cost, but we do know that it appears, and I don't think anybody is disputing that the ú747,000 was quoted as kind of an estimate?

A. That, I was never told.

314 Q. Were you not?

A. No.

315 Q. But here you have applied 7 percent per annum over 20-years to that very figure?

A. Yes.

316 Q. Do you consider that you were misled?

A. In the light of what you are saying, yes.

317 Q. Just going back for a moment to the ú75,000. When you wrote that, were you aware that RTE themselves were quoting a project management fee of ú250,000 --

A. No.

318 Q. -- for FM only and a further project management fee for AM?

A. No.

319 Q. And were you aware that over and above the ú614,000 for FM, they were quoting an additional figure for AM?

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A. No.

320 Q. Does that mean that you weren't told this?

A. It means that, it could mean that or it could also mean that I have no recollection of it.

321 Q. Well --

A. But I certainly wouldn't be stating things in that letter of which I was, if I had been told different things at the time.

322 Q. Had you been told, had you been aware, for example, that RTE were in fact quoting ú250,000?

A. I might have suggested 75, yeah, I might have gone with the suggestion of 75.

323 Q. Well, does that mean that you were aware that RTE were in fact quoting 250,000?

A. No, it doesn't. I don't recall. But because RTE - that is part of the negotiation if you, of life's rich pattern. I am - the view may have been taken that 250,000 was an outrageous amount of money.

324 Q. But you are - but it is a figure that was approved by the Department of Communications and by the Minister, and presumably you were aware of that at that point in time?

A. I have not seen that.

325 Q. Well, are you saying that you weren't aware of that fact when you wrote this letter?

A. I don't recall being aware of that fact, absolutely. I don't recall --

.

CHAIRMAN: May I intervene here and inquire, if you were aware of that fact would you have signed the letter?

A. Which particular fact, Sir?

.
CHAIRMAN: The fact of the figures that we have just been quoted to you from RTE, the Minister's letter?

A. The Minister's letter that he was going to direct --

.
CHAIRMAN: No, the Minister's letter in which he says that "The sum of ú614,000 is, in the circumstances, not unreasonable."

A. Right. Well, certainly I believe I would have reconsidered this letter, the contents of this letter if I had been aware that the Minister and his advisers took a different view. I would have certainly put it back to the Century people and said --

.
CHAIRMAN: Weren't you, by putting your signature to this letter, adding the imprimatur of a very experienced and a very distinguished member of the commercial community and it wasn't - weren't you duty bound to inquire as to the correctness of the substance of the letter?

A. I believe, Chairman, that I made all the inquiries that were appropriate and necessary, and that at all times I discharged my duty as a director of Century Radio to the highest possible standards.

.
That has also been ruled on already in the High Court, post the liquidation of Century Radio, Century Communications Limited, and I believe that I made all necessary and appropriate inquiries that I considered necessary and appropriate at the time to verify that what was being proposed in this letter is fair and reasonable on behalf of

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Century Communications.

326 Q. MR. HANRATTY: Well, if we can just then move on with the next page, page 3 of the letter? It says:

"RTE's quote on the 11th of January, 1989, for access to the national transmission network was ú185,000 per annum.

We are unable to determine what, if any, reduction in this is reflected in the figures contained in the Minister's letter of the 16th inst..

.

The principle of public service broadcasting is the provision of a service to each citizen irrespective of the economics of doing so. Century as a national franchise holder is bound to this concept.

.

The citizens of Ireland in paying license fees funds inter alia the gross cost of the national transmission network. Public service broadcasting commenced in Ireland in 1926 and the existing national transmission system has evolved over the last 63 years."

.

Now, it appears from the evidence which the Tribunal has so far heard, that this argument did not come from the IBA.

Did you think it had come from the IBA?

A. Not necessarily.

327 Q. Where did you think it had come from?

A. I think it stems from a view that I have explained earlier this morning, about the role of the national transmission network.

328 Q. You see, we have heard evidence from Mr. Curley, from RTE, he was the head of their Technical and Transmission

Division, who himself went over to the IBA at the beginning of, in fact the beginning of this month that we are speaking of, February of 1989, to explore with them the basis upon which they in fact apply their charges, and he found that in fact, the proposed basis of charge being proposed by RTE and incorporated in the RTE figures, including the original figure of 692 for FM, subsequently reduced 614, was essentially the same with some minor differences, including a Robin Hood principle which applies to particular circumstances in England, was essentially the same as the basis on which RTE charges were calculated.

.
Did it ever occur to you to check with the IBA what their basis of charge was before making an argument of this kind to the IRTC?

A. Not personally, it did not occur to me, no.

329 Q. We know that Mr. Hills advised in a letter to Mr. Stafford in November of 1988 in relation to the question of access, and he did not say that in England they do not pay access charges, but simply drew attention to a difference in the manner in which they calculated them in England to the manner in which RTE were proposing, but on no occasion did Mr. Hills ever say or ever come up with the proposition that the appropriate way to proceed was that RTE should not be paid anything for access. Were you aware of that?

A. No.

330 Q. Were you aware of the fact that Mr. Hills had in fact given that advice to Century?

A. No.

331 Q. And may I take it from that, that you were not aware of

that information when you wrote this letter?

A. No.

332 Q. The letter goes on to say: "The cost, by whatever accounting criteria one chooses, must at this stage be written off as sunk costs. That RTE as the national broadcaster should seek to recover as custodian of the transmission system a fee from Century for their benefit as broadcasters is, in effect, seeking a subsidy from Century. Accordingly, it is inappropriate that any cost be levied on us for this success." That's part of the same argument.

.
Well, if the IBA did not come up with this argument, who came up with it? Whose idea was it to put up this proposition to the IRTC "that we shouldn't have to pay anything for access"?

A. Whatever, that whole philosophy, that whole argument, I should say, would have been articulated by various members of the Board.

333 Q. Whose idea was it?

A. I can't say specifically, but it was adopted by the members of the Board.

334 Q. Was it your idea?

A. No. It might have been Mr. Stafford's idea.

335 Q. Yes. And at "3" then it is stated: "RTE quoted on the 11th of January, 1989, ú364,000 per annum for the maintenance of the additional equipment required to provide Century with national coverage. We are unable to determine what, if any, reduction has been made in the Minister's figures in his letter of the 16th inst."

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.
Now, in fact that statement is factually incorrect as well, because the quotation from RTE was not in respect of the maintenance of additional equipment. It was calculated as a proportionate share of the total maintenance costs that would be incurred, but obviously you were not told that, and may I take it that what you wrote here is what you had been told, presumably by Mr. Stafford?

A. What I have wrote here, what was written here and signed by me was what I was told by Mr. Stafford and Mr. Barry, principally there may have been other inputs as well.

336 Q. And that paragraph concludes with the statement:
"The IBA have assessed the additional cost involved for maintaining the Century equipment, and concluded that it should not be more than ú30,000 per annum."

.
And again I have to suggest to you, that that statement is entirely false and without any foundation in fact whatsoever?

A. That was obviously what I was informed the IBA had said.

337 Q. What the IBA did do was that in this IBACS fax to Mr. Stafford of the 17th of January, for which Mr. Hills subsequently apologised, was that they commented on ú30,000. Perhaps I might just get out the comment that they made?

.
They say: "Increased maintenance costs would arise due to additional visits to service the new equipment, together with any" - this is at page - I will get the page number in a moment - "with any extra payments for emergency call-outs

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and overtime incurred. We understand -" 6081 - "We understand that RTE plan to carry out maintenance of the new equipment without increasing their staff resources, and it has been assumed that any training costs and any new test equipment that may have required have been included in the total capital cost for the new plant. It is also assumed that RTE will provide for the same level of transmission availability as the existing services. On this basis the additional maintenance costs arising for the new equipment will be modest and should not exceed say ú30,000."

.

That was a piece of text drafted by Mr. Hills and sent to IBACS, and in respect of which he subsequently apologised.

.

But the statement here is: "The IBA have assessed the additional cost involved for maintaining the Century equipment and concluded it should not be more than ú30,000 per annum."

So there doesn't appear to be any basis for that statement, isn't that right?

A. The basis presumably is that fax which I have never seen.

338 Q. Were you aware of the instructions which IBACS had received through Mr. Hills from Mr. Stafford?

A. No.

339 Q. Were you aware that among other things that they were instructed that whatever figure that they could come up with, it should be in or around ú375,000 because that's what was in Century's business plan?

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A. No.

340 Q. That's page 6607 - 6072 if I quote, this is Mr. Hills speaking to Mr. Stafford and confirming his understanding of Mr. Stafford's instructions to the IBA:

"The brief they are working to is:

(D) Ensure that the bottom line is of the order of ú375,000 which is the figure in the business plan."

.
So the figure of ú375,000 existed before IBACS ever got near it, isn't that right?

A. I am completely unaware of that.

341 Q. Yes. And IBACS' brief in effect, was to in fact try and justify a figure which Mr. Stafford had already produced?

A. I am completely unaware of that.

342 Q. And you are also completely unaware of the fact that they didn't even do that?

A. I am completely unaware of that.

343 Q. In paragraph 4 of this letter, going back to page, I think it is 37: "The cost of providing the first leg of the programme distribution circuit from our Dublin studios to transmitters at Three Rock and Kippure lies outside the present discussions with RTE."

.
Was it your understanding that there were actually discussions going on with RTE at that point in time?

A. It has always been my understanding that there were discussions with RTE.

344 Q. Was it your understanding that there were negotiations going on with RTE at that time?

A. Negotiations would have, in my book, been included in

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discussions, yes.

345 Q. "An Bord Telecom costs have not yet been resolved, but we consider that any charge beyond that equivalent to the one-off capital cost of provision of those circuits by radio link, estimated to be around ú40,000 would be unsustainable and would further jeopardise the viability of the project. Further, the economic provision of land links for the distribution of a news service to other stations will be critically dependent on An Bord Telecom tariffs.

.
The concept of RTE as custodians of the national transmission network acquiring the transmitters and renting them to us at 7 percent per annum over their economic life of 20 years as set out in their letter of the 1st November, 1988, is acceptable."

.
And here again is a repetition essentially of the argument, that what RTE was offered, which they say they were not, was 7 percent over 20-years.

.
"As indeed is the figure quoted in their letter of 11th January, 1989, for use of their linkage at ú80,000 per annum for the period that we continue to use it, equally acceptable is actual cost recovery of power and spare parts used originally estimated by RTE at ú115,000 per annum and subsequently revised on the 11th January, 1989, to ú140,000 per annum. The main issue in dispute remains the access to national transmission facility and the cost of maintenance of the system."

.

Now, presumably in making that reference to the main items in dispute, you were told or were you, that there was in fact a dispute?

A. Yes, clearly I wouldn't have said it otherwise.

346 Q. It couldn't obviously have been a dispute if RTE had never been presented with any alternative figure, isn't that so?

A. I am sure that's right.

347 Q. But so far as the reader of this letter is concerned, and in particular the IRTC is concerned, what it conveyed to them is that there has in fact been an attempt between Century and RTE to reach consensus or agreement on a figure but agreement was not achieved, and that they were still, in effect, in dispute on the figures, isn't that so?

A. That was exactly my understanding of the position.

348 Q. And obviously that would have been the IRTC's understanding reading this letter?

A. To the, except to the extent that they were in consultation and discussion with RTE.

349 Q. What makes you think that, Mr. Crowley?

A. I don't know, but I always assumed that they would be discussing these things with RTE.

350 Q. With the exception of one meeting which took place on the, I believe the 15th - sorry - some date in December, on the day immediately prior to a board meeting of the IRTC, the Chairman of the IRTC and Secretary of the IRTC did have a meeting with RTE executives, I think it was on the 7th of December, a board meeting being on the 8th, did have a meeting with RTE executives at which RTE explained in detail their rate card and the basis of the calculation of

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the various constituent elements of their rate card.

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With the exception of that meeting there is no evidence that there was any other form of contact, as far as I am aware, between the IRTC and RTE.

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Did somebody tell you that there was such contact?

A. I have always assumed that. I can't recall whether anybody told me or what I was aware of such contacts.

351 Q. Yes.

A. Or at what level.

352 Q. What was your understanding about the negotiations between RTE and Century which you understood were taking place or had taken place?

A. My understanding was to try and agree the cost of the access to the transmission network.

353 Q. What was your understanding as to who was participating in these negotiations and what the progress of the negotiations were and where they were taking place, and --

A. My understanding in particular was that Mr. Barry was participating in the negotiations, excuse me, leading the negotiations from Century's perspective.

354 Q. Yes. It says: "It is difficult to understand how anybody can dispute our offer of ú375,000 for national coverage when the transition cost for Dublin local station covering a third of the population is quoted by RTE at ú40,000 per annum and even that figure is currently being challenged by the applicants as excessive. Furthermore, rental levied by the IBA for coverage of the whole of Northern Ireland at Sterling ú100,000 per annum shows our own figures are of

the right magnitude."

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Again I'm afraid I have to put to you, that statement is profoundly misleading so far as the recipient is concerned.

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Firstly if we take the IBA reference, that it is true to say that there were two transmitters in Northern Ireland for which £100,000 was being levied by the IBA, but the information that we have been given is that to compare that with access to the entire transmission system in the south is not comparing like-with-like, particularly because of the fact that each of the two transmitters in Northern Ireland are low powered transmitters, and that the great majority of the transmitters in the 16 sites on, in the South which was envisaged for Century were high powered transmitters. I take it you were not aware of that fact when you made the statement?

A. No.

355 Q. Sorry, there were four transmitters in Northern Ireland for which the access of £100,000 was charged. But I take it you were not aware of the fact that you were not comparing like-with-like when this statement was made?

A. I certainly would not have been aware.

356 Q. And I take it, had you been aware of it you would not have made this statement?

A. I would have made a statement which was comparing like-with-like.

357 Q. Yes. We have heard evidence in fact, that after the application for a directive was received, which is

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contained in this letter, that Mr. McDonagh, the Secretary of the Department of Communications, had another look at the figures and did a comparative analysis or comparison of the Century arguments and the RTE arguments, and that in the course of that exercise Mr. Grant phoned Mr. Tinman in the IBA or, sorry in Downtown Radio in Northern Ireland, who expressed the view that ú800,000 would be reasonable for access to a national transmission system in the South.

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Did you know that?

A. No.

358 Q. Did Mr. Stafford ever give you any basis for this comparison that he was drawing and which you received, presumably, from him?

A. No.

359 Q. It says: "It appears, therefore, that we were unable further to progress the negotiations with RTE, and accordingly we respectfully request the Commission to seek a Ministerial directive in accordance with the Commission's powers under Section 16 of the Radio and Television Act 1988.

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We are pleased to note that you share our view that the suggested transmission charges are excessive, and until the problems above as set out can be dealt with we will not be in a position to conclude the negotiations in the broadcast contract or meet our target date of the 1st of May."

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On what basis did you make a statement that the IRTC shared

your view?

A. I presume as a result of the meeting the previous day.

360 Q. We know that a document was sent in early February from the IRTC to the Department, in which effectively the Century arguments were set out. Is it possible you might have been referring to that?

A. I don't have any recollection of that document.

361 Q. Yes. But it is quite clear that it is on the basis of the arguments set out in this letter that Century is applying to the IRTC to request a directive under Section 16, isn't that so?

A. Yes.

362 Q. And you note a reference to negotiations with RTE in the penultimate paragraph?

A. Yes.

363 Q. Suggesting that, again that you had been told that there were in fact such negotiations going on, or had in fact been such negotiations taking place, is that right?

A. I am sorry?

364 Q. It suggests that you had been told that such negotiations either had taken place or were still going on?

A. Sure.

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MR. HANRATTY: I wonder is that an appropriate time, Sir, to break?

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CHAIRMAN: Gentlemen, it is just on one o'clock. We will sit again at quarter past two.

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MR. HANRATTY: Yes.

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CHAIRMAN: Thank you.

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THE HEARING THEN ADJOURNED FOR LUNCH.

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THE HEARING RESUMED AFTER LUNCH AS FOLLOWS:

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LAURENCE CROWLEY RETURNED TO THE WITNESS-BOX AND CONTINUED
TO BE EXAMINED BY MR. HANRATTY, AS FOLLOWS:

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MR. HANRATTY: Mr. Crowley, before --

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MR. McMENAMIN: Before we resume Chairman, sorry John
McMenamin here, Mr. Hanratty, speaking from behind you.
Chairman, it may be, it would assist me if we were in any
position to be reassured that our witness, and my client,
Mr. Mara, would be heard on Tuesday, because we have had
quite a number of different schedules of witnesses, I would
like to be reassured about that?

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MR. HANRATTY: We can't give appointments Sir, except to
people coming from aboard. The position is we have been in
contact with all of the solicitors for all of the
witnesses, and we have given them the timetable as it
progresses. The position about Mr. Mara is that we will
not know until tomorrow morning whether he will be
definitely taken on Tuesday or not. We will indicate that
to Mr. McMEnamin's solicitors as soon as we know
ourselves.

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CHAIRMAN: That is the best we can do for you.

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MR. McMENAMIN: Very good Chairman.

365 Q. MR. HANRATTY: Mr. Crowley, just to finish with this

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letter; can I ask you, did you draft this letter yourself
or did somebody else draft it?

A. This is the letter I wrote to the Chairman of the IRTC.

366 Q. Yes. The letter applying for a directive under Section 16?

A. No, I did not draft it.

367 Q. You didn't draft it?

A. No.

368 Q. Who drafted it?

A. I cannot recall that. It was a company response signed by
me, as Chairman, as I have said to you many times.

369 Q. Who put it in front of you?

A. I don't recall.

370 Q. Did you check anything in it before you sent it out?

A. I checked with the, with the Board - not the Board, the
executives - Mr. Barry and Mr. Stafford, that this was
correct.

371 Q. And what did they tell you?

A. I relied upon them.

372 Q. Yes. And did they confirm to you that it was?

A. Of course.

373 Q. Now, we know that the Minister issued a directive on the
14th of March, isn't that right, of 1989?

A. If you say so.

374 Q. Yes. What was your reaction when this directive issued?

A. I actually cannot recall what the directive was.

375 Q. Well, it was for substantially less than even Century was
suggesting; do you not remember that?

A. No.

376 Q. Were you not over the moon?

A. No. Perhaps you would refresh my mind as to what the

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directive was.

377 Q. Page 3984. He allowed this figure of ú30,000 for maintenance which was suggested in your letter. Do you see that on paragraph 2?

A. I do, 2A.

378 Q. Yes.

A. Yes.

379 Q. And that was for all 16 sites. He allowed ú35,000 for access, which was the figure in respect of which he had previously agreed 185,000, I think it was. And the other figures are essentially figures in respect of which there wasn't any great dispute. Except that the project management figures he allowed of ú250,000 were allowed in respect of AM and FM only, and all of the figures he allowed included AM, albeit that the figures that were agreed by his Department in January and subsequently in respect of FM on a reduced basis in the February, were or FM and AM. So that must have come, I suggest, as a very pleasant surprise, even to Century?

A. I don't recall any surprise.

380 Q. Well, do you not recall being surprised that he did this, given that he himself had said in a letter not a month earlier, that 614 wasn't unreasonable in respect of FM alone?

A. As I say I don't recall this letter.

381 Q. I see. And do you not recall anything at all about the directive issued by the Minister or about the reaction that it, we presume it must have provoked within Century?

A. No.

382 Q. Do you not recall the fact that he appears to have adopted

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your suggestion in relation to maintenance of ú30,000 per annum?

A. No.

383 Q. After that directive, the IRTC entered into negotiations with Century in respect of the broadcasting contract, isn't that right?

A. Yes.

384 Q. And you were involved in those negotiations, I think?

A. I never was involved in negotiations with the IRTC.

385 Q. Were you not?

A. Not that I can recall.

386 Q. Well, you were involved in correspondence with them?

A. That may be.

387 Q. In relation to the terms of the contract, the various aspects of the terms of the contract, is that not right?

A. I am sure you will demonstrate that it is right, I just cannot recall.

388 Q. Well, the IRTC witnesses have described these negotiations as the most difficult negotiations they have had with any applicant for any franchise. Do you remember the negotiations being difficult?

A. I remember them lasting quite a long time.

389 Q. Well, there were various points raised by Century including an insistence at one stage that they get an automatic renewal after the original seven year expiry?

A. I do, now that you mention it, I do remember that point being made.

390 Q. The IRTC were trying to explain to Century that this was legally impossible, that they couldn't bind the hands of some future IRTC when the time came around to renew, but

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Century were insisting for a considerable period of time that they wanted such a renewal, isn't that right?

A. The reason for that, I would believe, is to protect the investment that Century were making in setting up the whole station.

391 Q. Yes, but didn't that apply to any franchise application, they were only going to get a seven year period regardless of what the transmission system cost them?

A. I don't think there is any harm in asking.

392 Q. It wasn't a question of asking, Mr. Crowley, I suggest it was a question of insisting for a considerable period until the IRTC finally put down their foot, they said "This is the position, you cannot have it, we can not give it". Do you remember that period being a difficult one in relations between Century and the IRTC?

A. I don't remember any particularly difficult relationships.

393 Q. Do you remember negotiations in relation to the transmission contract with RTE, and do you remember those being difficult as well?

A. Yeah, they were fairly robust negotiations, as I said earlier this morning, between RTE and Century.

394 Q. And would you agree that the reason that they were difficult with RTE was because Century were trying to improve, even on the position that they found themselves in on the directive?

A. Century were, I believe, trying to do the best commercial deal that they could.

395 Q. Are you aware that after the going on air of Century on the 4th of September, there was a sort of a mending fences meeting between Century executives and the IRTC?

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A. Well, I am not aware that many fences were broken. And I don't particularly recall such a meeting.

396 Q. Well, I don't think you were at the meeting, but a meeting apparently took place between executives of Century Communications Limited and persons, or personnel from the IRTC; were you aware of that meeting or the fact that it had occurred?

A. I could have been, and I would, I would welcome those kind of meetings after a problem has been resolved, a little get together is obviously helpful.

397 Q. It was between Mr. Connolly and Mr. Appleby from the IRTC and Mr. Laffan and Mr. Story from Century. Do you even remember that there was a perception at the time that Century went on air that relations were in fact strained with the IRTC?

A. No, I do not recall that.

398 Q. Well, do you remember a serious difficulty arising, for example, on the question of broadcasting in the Irish language?

A. I remember there was an issue on that.

399 Q. Wasn't there a stand-off, effectively on it?

A. Well, there was a normal robust negotiation and discussion and it was resolved.

400 Q. Wasn't it clear to Century from the outset that there were certain minimum statutory requirements which had to be met?

A. I am sure it was.

401 Q. And wasn't it clear to them that coming towards the forthcoming commencement date, the IRTC were becoming concerned that they did not have a schedule of Century programmes which included broadcasting in Irish?

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A. I remember an issue arising that there was no broadcasting in Irish.

402 Q. Do you remember it coming to the point where the Chairman of the IRTC effectively threatened that unless Century satisfied his requirements, that he would not permit them to go on air?

A. I don't recall that.

403 Q. Do you not recall --

A. I recall strenuous negotiations.

404 Q. Do you recall there being an ultimatum issued by the IRTC in relation to this issue?

A. Yes, that is possible. Yeah.

405 Q. In any event, this meeting took place in the Grey Door Restaurant on the 15th of September, 1989. I want to refer you to something - this is a memorandum which was taken by one of the Century executives, at page 2993. Recorded by Mr. Story, I think.

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And he says in the second paragraph on the page you see: "At this stage Mr. Connolly stated that the promoters of Century Radio were too highly politicized. He stated that there was a high degree of suspicion behind the motives of the promoters of Century radio. He stated specifically this was evident in the manner the negotiations with RTE were handled and subsequently was very obvious in the way that Century attempted to hijack the day of signing."

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This was Mr. Story recording the view as expressed at that meeting of personnel from the IRTC. Would you agree that Century were, in fact, highly politicized and appeared to

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be such to the IRTC?

A. I am not sure what that word means.

406 Q. That they appear to have a high level of political contact?

A. Of?

407 Q. Of political contact?

A. I am not aware of that.

408 Q. I see. And are you not aware of the fact that there was, in fact, a high level of contact between Mr. Barry and Mr. Ray Burke?

A. I was aware there was certainly contact between Mr. Barry and Mr. Burke, yes, on a personal level.

409 Q. Were you aware that there was contact between them in relation to issues which were of interest to Century?

A. Yes. I have no details of those issues, but I know he was discussing certain issues in relation to Century with him.

410 Q. Yes. And are you aware that in, for example, January and February of 1989, there were regular meetings between Mr. Barry and to a lesser extent Mr. Stafford and the Minister, Mr. Burke?

A. I am not aware that there were regular meetings. I am aware that there were some meetings.

411 Q. Well, how many were you aware of?

A. I was aware of a couple.

412 Q. Yes. Further down the page, Mr. Story says:

"He stated that Century," this is, I think, Mr. Appleby if I am not mistaken, Connolly I am sorry.

"He stated 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 consultation with the

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

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So again he is recording a view expressed by the Secretary of the IRTC, that in effect Century were going behind the back of the IRTC where they should be sitting on the far side of the table and trying to get their way by going to the Minister.

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Now, were you aware that the IRTC were of that view at the time?

A. No.

413 Q. Would you dispute the validity of --

A. I neither confirm nor dispute it.

414 Q. On a number of occasions an issue, I think, was raised within the company and subsequently by the auditors of the company in relation to a figure of ú26,250. Do you remember that?

A. I remember receiving, I remember a copy of a letter which was written to me by the auditors. I remember receiving a copy of that letter a couple of weeks ago.

415 Q. Yes. Well, in fact what happened was that the matter was raised in correspondence directly to you in November of 1989, by Mr. Laffan, when he said that this sum had been put into a suspense account and he was raising the issue with you. Do you remember that?

A. I don't remember it, but I accept it.

416 Q. But it is the same issue which subsequently came up the following year when the auditors then raised it with you, isn't it?

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A. When did Mr. --

417 Q. Mr. Laffan raised it at page 461 on the 13th of November of 1989. And if you look at paragraph 3 of that letter under the heading "suspense account"?

A. Yes.

418 Q. It is addressed to you and it is signed by Mr. Laffan. It says "The suspense account relates" do you see it? It refers to the figure of ú26,250?

A. Yes, I do.

419 Q. Did you initiate any inquiry at this stage as to what this money --

A. I am certain I would have spoken to Mr. Stafford and Mr. Barry and asked them to resolve the problem.

420 Q. Did you receive any explanation as to what it was for?

A. No.

421 Q. Mr. Laffan was raising it with you because his understanding was that under the terms of his employment he was reporting to the Chairman of the company?

A. That's news to me. I was the non-executive Chairman of the company. It is news to me that anybody was reporting directly to me.

422 Q. That is what Mr. Laffan has told us anyway, but it is news to you?

A. Yes.

423 Q. It was raised again --

A. I would have no difficulty with Mr. Laffan raising such issues with me, but he was not reporting to me.

424 Q. But it came up again in August of 1990 when you received further correspondence, including this issue, but this time from Mr. Brian Gaffney of Touche Ross, the company's

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auditors, at page 104?

A. That is the copy letter I received some weeks ago.

425 Q. Yes.

A. Mm-hmm.

426 Q. And as you are aware, in paragraph 5 of that letter, this figure of £26,250 is raised yet again?

A. Yes.

427 Q. Isn't that right?

A. Yes.

428 Q. At this stage you must have been wondering "What is this £26,000 all about? Obviously it hasn't been sorted out since the last time Ms. Hynes, the Financial Controller, had raised it with me". Did you make any inquiries at that stage as to what this was about?

A. I am unaware what this is about. I would have made inquiries to ensure that the auditors were - that it was dealt with to the auditor's satisfaction.

429 Q. Yes.

A. And supplied whatever information they asked.

430 Q. Well, it appears from the Tribunal's inquiries --

A. I understand that it had been repaid at that stage.

431 Q. Well, what actually happened was that it was paid out from Century to Quality Artistes Management in June of 1989. It was refunded in January of 1990 but paid out again in December of 1990. When Mr. Gaffney was asking about it he was auditing the accounts up to the end of December, 1989. He was wondering how was he going to deal with this particular matter in the accounts of the company.

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Now, he told us that he made several inquiries and

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ultimately he was instructed by Mr. Stafford to treat it as pre-incorporation expenses in the books of the company. Do you remember anything about that?

A. No.

432 Q. Do you remember receiving any explanation about what it was for?

A. No.

433 Q. As far as the Tribunal have established, a sum of €21,250 was paid out by Quality Artists Management to Pascal Taggart on the 28th of December of 1988. And this was in respect of an investment that was being made in a local Dublin radio station, known as Dublin 1. Did you know anything about that at the time?

A. No.

434 Q. When did you first know about the proposed investment in Dublin 1?

A. I have never known about it. The only time I ever heard of Dublin 1 was when I met with you in June.

435 Q. Yes. Well, now it appears from the documents which have been put in evidence, that this was an investment being made by Mr. Stafford, Mr. Mulhearn and Mr. Barry in another company or entity which was applying, this time for a local radio franchise. And it appears that this figure of €26,250 included the €21,250 which had been paid to Quality or to Pascal Taggart, but Mr. Stafford has given evidence specifically to the effect that it was in fact Century Communications Limited and not the three individuals that was making an investment in Dublin 1. Do you know anything about that?

A. No.

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436 Q. Do you think that as Chairman of the company, you would have known if the company of which you were Chairman was making an investment in another radio station?

A. I think the Board would have known.

437 Q. Yes. Did the question of an investment in any other radio station ever come up with the Board?

A. Not to my knowledge.

438 Q. Did anybody ever seek approval for an investment in any other radio station?

A. Not that I am aware of.

439 Q. Was the matter ever discussed at any board meeting?

A. Not that I am aware of.

440 Q. As far as you are concerned, did Century Communications Limited, as such, ever make any investment in any other company?

A. No.

441 Q. The second ingredient of the €26,250 we have been told consisted of a political donation of €5,000 to Fianna Fail. And we have been told that you were aware of that payment by Mr. Stafford, is that right?

A. I have no recollection of that.

442 Q. I see. The evidence has been that it was agreed between Mr. Barry and Mr. Stafford that Mr. Barry would make a donation of €5,000 to Fianna Fail, and that he, Mr. Stafford would make a donation of €2,000 to Fine Gael and that each of them did in fact do so, and that you were aware of that fact?

A. I have no recollection of it. It wouldn't be that unusual. As I have read in some letter, some piece of information you gave me, that there was an election, or

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some evidence that there was an election.

443 Q. There was an election in the middle of 1989, we know that?

A. So it certainly, at that time it was very usual for companies to give donations to a number of political parties, for the sole purpose of maintaining the democratic process. I would have known of a number of companies then who were giving modest, but not insignificant donations, to a number of parties at the same time, at election time.

444 Q. But if this was a political, or if these were political donations from Century, they don't appear to have been discussed at, or sanctioned at any meeting of the Board of Century?

A. Not that I am aware of.

445 Q. So did these executives have power unilaterally to make donations on behalf of the company, with the company's money?

A. I would not have thought so, no.

446 Q. The evidence has been that the donations were in fact on behalf of the company. But in any event, so far as you are concerned you say you have no recollection of being told about it?

A. No.

447 Q. Moving into the latter part of 1989, we know that the company was broadcasting from the 4th of September, it appears from the documents we have - I don't propose to canvass them in detail with you - that the company was already in financial difficulties in October. Do you remember that?

A. I don't particularly remember that, I remember that the company was essentially always in financial difficulties.

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I mean that is a generalisation, but since, certainly the beginning of 1990 or early part of 1990, we were looking for, the company was looking for another investor and then Capital Radio came along at the end of September, was it?

448 Q. Yes.

A. But the deal of course was negotiated in the early part of 1990. I don't specifically remember an event in October 1989.

449 Q. Well, if I could refer you to the minutes of a meeting on the 24th of October 1989, which was signed by yourself, page 2411.

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I think this was a point in time when Ms. Hynes was becoming concerned about various matters. At this meeting at point 3 on the first page you can see there:

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"It was resolved firstly that the budgets should be strictly adhered to and that any budget overages for one month should reduce proportionally the budget for the following month.

.
It was resolved that the company's overhead was substantially higher than the projected revenue and that the overheads must be substantially reduced.

.
Chief Executive proposed certain cost reductions. The overall cost reduction proposed was ú760,120 reducing the budgeted overhead ú4,070,000 to ú3,309,680."

He presented a detailed items of cost reductions.

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There were various discussions about various aspects of steps that could be taken to reduce costs. So clearly at that point in time there were already cost overruns; overruns in the sense that they were way above projections, isn't that right?

A. No, it doesn't say that there.

450 Q. Well, you can say, take it from me, that they were in fact way above projections, what it says is --

A. Budgeted overheads was reduced from 4,070,000 to 3,09,680. I don't notice any reference to overruns.

451 Q. It says that the company's overhead was substantially higher than projected revenue?

A. Yes.

452 Q. So the revenue projections were over optimistic obviously?

A. Yes, yes.

453 Q. And from then on I think the financial situation deteriorated fairly markedly through November and into December, is that right?

A. Again, I can't put a time frame on it.

454 Q. Well, by December the situation was that the banks had called in the executives and were seeking their proposals to reduce the debt of the company, isn't that right?

A. I can't put a timescale on it. I am sure that is correct.

455 Q. Do you not recall that by December the projections were totally unrealistic?

A. I certainly recall that they had to be revised dramatically. I can't remember whether it was December or early in 1990, is that the next year?

456 Q. Yes. Well, you can take it from me that that was the case. In fact one of the pieces of evidence that we have

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heard was that in November of 1990 the company, or somebody in the company sought legal advice as to the termination of contracts of employment of various members of the staff, including various members of the senior management staff. This was within a couple of months of them having started their work. The company was now seeking legal advice. That was a fairly serious situation, I suggest?

A. Yes.

457 Q. Ms. Hynes drew your attention to Section 40 of the Companies Act, where the proportion of the capital and the assets of the company was within a range which necessitated consideration under Section 40 of the Companies Act; and Mr. Laffan and Ms. Hynes were, I think at that point in time, starting to raise concerns with you and other people in the company about the deteriorating financial situation in the company, isn't that right?

A. I am sure it is. And I was raising my concerns very vigorously also.

458 Q. Even at this meeting in October, if you can turn to the second page, page 2412? It is recorded: "That it was resolved that the Chief Executive, in conjunction with the Head of Programming examined possible revisions to the programming schedule to determine what savings could be achieved on a cost affective basis. A report thereon would be made to the Board."

So programming was one of the items for consideration for cost reductions, isn't that so?

A. I am sure.

459 Q. It is recorded at paragraph seven on that page, that the Chief Executive reported to the Board on the development of

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the transmission facilities. Now, as one progresses through the minutes of the Board meetings, there are occasional references to what the level of coverage is at a particular point in time. But there are repeated references to various aspects of programming and promotion and publicity and so on which were perceived to be causing problems to the company.

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What I want to ask you Mr. Crowley is this: Mr. Stafford has given evidence to this Tribunal that the cause, or the primary or principle cause of the problems of this company was RTE, and in particular that they failed to honour their contractual commitments to provide particular levels of coverage in accordance with the contract. And secondly, that they engaged in abuses of their dominant position in the form of predatory pricing and below cost selling, and matters of that nature. Do you yourself, stand over any of those allegations by Mr. Stafford?

A. Mr. Stafford made those allegations, as you say, then and subsequently to the Tribunal.

460 Q. It is not recorded in any of the minutes that he made those complaints to the Board of Century?

A. It is certainly recorded in his affidavit to the High Court.

461 Q. Yes, but I am talking about the contemporaneous documentation. First of all, the Tribunal has heard evidence in relation to what the contractual obligations of RTE actually were, and it appears to have established, subject to anything you might wish to say on it, that there was no contractual obligation whatsoever to form any sort

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of coverage in the year 1989. And that what they did at the request of Century was to provide three temporary transmitters; one in Dublin, one in Cork and one in Limerick to try and get Century up and running by the 4th of September. Have you any dispute about that?

A. No, I was not aware of the details of that. I knew there was, RTE had a kind of a rush to coincide their transmission coverage with the opening of the radio station.

462 Q. Yes. And do you recall that Century was quite satisfied on the opening date, for example, at the level of coverage which RTE had managed to provide up to that time, and that they were actually thanked for it at the opening ceremony?

A. I don't recall any dissatisfaction, but you know, I don't actually recall the details of that.

463 Q. Mr. Barry has also told the Tribunal, and we understand will give evidence, that he paid €5,000 to RTE by way of a thank you to the transmission staff of RTE for getting them up and running so quickly. The RTE witnesses themselves have given evidence to the Tribunal to the effect that they exceeded each development milestone in the putting in place of the various transmission sites for Century Communications Limited. Have you any reason to suggest otherwise?

A. No, but there were some problems with the coverage and the RTE people, no doubt, would agree with that.

464 Q. Yes. But the reason was that it was a temporary transmitter; but not on the basis that RTE were in any sense "heel dragging" we were told. Do you have any reason to doubt that?

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A. I think, no, I haven't specifically, no.

465 Q. We have also been shown the actual rate cards for RTE for 1989, 1990, 1991. It appears that in each year of their operation they were increased both for Radio 1 and for FM2 and that there were no, as it was described "predatory pricing". Again, do you have any reason to suggest otherwise?

A. These are the advertising rate cards?

466 Q. Yes?

A. No, I have no reason to suggest that there was predatory pricing.

467 Q. Yes. You see it appears from the evidence that the basis upon which the complaints first of all that were made by Century to the Minister at the end of December, at the 19th of December at two meetings, and subsequently, was that RTE were engaging in these practices, and that it was on the basis of this that Century found itself in those financial difficulties, and on the basis of that that the Minister then decided to cap RTE's advertising. Do you agree with me that it doesn't appear to be recorded in the minutes of Century that there was any complaint either of an on-going nature or of any kind in relation to RTE?

A. I am not aware that there is any record in the minutes. I am aware that there were, that Mr. Stafford and Mr. Barry had points of dissatisfaction with the services from RTE. They may not have been recorded in the minutes.

468 Q. But I suggest to you they weren't made at that point in time?

A. Sorry, they weren't made to RTE?

469 Q. Yes.

A. I can't recall when they were made.

470 Q. For example, Mr. Stafford, in one of the minutes of the meeting in early December of 1989 actually recorded that by that time they had up to 75 percent coverage. In fact they didn't, they had 60 percent coverage but they had 75 percent by the end of the month, by the end of 1989, so that doesn't suggest any dissatisfaction on his part at that point in time, that there was any heel dragging on the part of RTE, isn't that so?

A. That's right. That would appear from that, yes.

471 Q. In general, I suggest to you, that at that point in time, I am talking about late 1989 and early 1990, there was in fact no perception in Century that RTE were responsible for the difficulties that Century were having, in the sense of abusing its position or not honouring its contractual commitments?

A. No, as I say I think there was some general dissatisfaction with some of the services that RTE were offering, but there would have been no, there would have been no strong vociferous criticism from Century over all of RTE. There would be some pockets of criticism which I am certain were justified.

472 Q. Well, what criticisms do you say were justified?

A. Some of the coverages criticisms, some of the black-outs or whatever they were called that were happening.

473 Q. The main coverage issue was the quality of reception in Limerick, and the reason we have been told by a number of technical people for that was that RTE who didn't have any contractual commitment, incidentally, to provide any coverage of any kind, or any transmitter at least of any

kind in Limerick, is that they were asked to put up a transmitter in Limerick and they did so. They up a temporary transmitter because they had to put it up in the middle of the city, not having a linkage from another transmitter with Telecom on the other side of the city. It was axiomatic that it was not going to be entirely satisfactory but better than nothing. That is surely, I suggest, not a criticism?

A. I am only telling you what I perceived at the time. I am not a technical man. I could not, I would recognise a transmitter from a hole in the wall. So I mean, I am only telling you in response to what you asked me, what the perception within Century was at the time. I am not talking about anything else.

474 Q. So you see what we are trying to explore is whether there was any basis at all for the complaints which we know that Mr. Stafford and Mr. Barry made to the Minister and on foot of which the Minister appears to have taken some fairly drastic action, at least so far as RTE is concerned?

A. I cannot comment on that.

475 Q. It is clear, both from the minutes of Century Communications Limited, and from the minutes of meetings between Mr. Stafford and Mr. Barry and the bank of Century Communications Limited, that a number of issues within Century were identified as being the major contributory factors to the difficulties that Century was having. The main one, of course, being lack of revenue?

A. Oh, yes, in my opinion that was the main consideration. The kind of programming, for want of a better term, was not working in terms of its audience reception, and

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consequentially the advertising revenue.

476 Q. Yes. And the difficulty with that, of course, was that because of reducing, or insufficient revenue, the company didn't have the resources available to itself to market itself.

A. Well, you know, I am not sure that it was necessarily a function of money. I think the, the formula didn't work.

477 Q. They didn't attract audience basically?

A. Yes.

478 Q. The listeners didn't tune in?

A. In sufficient quantities.

479 Q. Even in those areas where there was adequate coverage?

A. Yes. Because listeners drive the advertising revenue.

480 Q. Yes. And that problem was identified, obviously by Century itself, but not only by Century, but also by Century's bankers?

A. I am sure.

481 Q. And fairly drastic alterations were made, were they not, in the programming of Century?

A. Yes. You say they were "drastic" I can't recall now what they were, but there was major changes made to try and get a formula which worked.

482 Q. It has been suggested, I don't know whether you would agree or disagree, that the problem was that Century appeared to be trying to compete with RTE 1, which was hopeless, where they should have been trying to focus their attention on FM2 or a FM2 type of market?

A. Well, that is a view. My view was that they were trying to do both.

483 Q. Yes.

00100

A. I am no expert. Some programming schedules work and some programming schedules don't.

484 Q. Yes.

A. It is like the media business. Some magazines work and some don't.

485 Q. Yes. Were you aware that Messrs. Barry and Stafford had two meetings with Minister Burke on the 19th of December, 1989?

A. No.

486 Q. Were you aware, in general, that they were making complaints to the Minister about RTE being responsible for Century's problems?

A. I am aware that there was an issue with the, with RTE and a cap, a quota or am I --

487 Q. A cap on advertising?

A. Yes.

488 Q. When did you become aware of that?

A. I cannot recall. I think it was 1990 sometime.

489 Q. Well, did you become aware that they had in fact asked the Minister to impose such a cap?

A. I am not sure who asked whom, but I am aware that a cap was an issue.

490 Q. Yes. Well, did you know, for example, that Mr. Burke met with the bankers to Century Communications Limited in December of 1989?

A. No, I did not.

491 Q. Did you subsequently become aware of that fact --

A. Only through this process.

492 Q. Through the Tribunal?

A. Mmm.

00101

493 Q. And was that then the first time that you ever heard that Mr. Burke had met the company's bankers?

A. Yes.

494 Q. Did nobody tell you?

A. No.

495 Q. Did nobody tell the Board?

A. Not that I recall.

496 Q. Well --

A. Is it in the minutes?

497 Q. I don't think it is.

A. No.

498 Q. But did anybody tell the Board then that Messrs. Stafford and Barry had asked the Minister to cap RTE's advertising?

A. The issue, as I say, of a cap on advertising of RTE was discussed, but I don't recall anybody saying that Mr. Stafford or Mr. Barry requested the Minister to cap the advertising.

499 Q. Well, it would appear that it wasn't a Board decision to ask the Minister to do this anyway, or was it?

A. If it is not in the minutes; the minutes were very carefully recorded, and if it is not in the minutes it would not be a Board decision. It is unlikely to be a Board decision. I mean I can't say that, you know, minutes were kept of every board meeting.

500 Q. Yes.

A. There were 12 a year.

501 Q. By the Secretary of the company?

A. By the Secretary of the company.

502 Q. So the position appears to be that if, as it appears to be the case, Messrs. Stafford and Barry met the Minister for

00102

Communications twice, am and pm on the 19th of December 1989, they did so without any decision of the Board of the company that this step should be taken?

A. That would appear to be so, if it is not in the minutes, Mmm.

503 Q. Was the Board ever told that they had taken this step and that the Minister had in fact agreed that he would proceed on foot of this request, and cap RTE's advertising?

A. I wouldn't remember whether the Board were told, I think they probably were, that the Minister was going to cap RTE's advertising.

504 Q. Yes. And were you told why?

A. To ensure that the independent radio community survived.

505 Q. Not Century?

A. Not specifically Century.

506 Q. It is in fact recorded in the minutes of the meeting between the bank and the Minister that the bank asked Mr. Barry and Stafford to step out of the room and sought reassurance from the Minister specifically on the point, was he going to, as it were, benefit Century from the steps he was taking, and he confirmed that he was. I can't actually remember the form of words that were used but words to that effect. Did anybody ever tell you that?

A. No, and I am sure that would only be in the context of specifically Century because that was what the bank were interested in. But that would not in any way render impossible the fact that it was going to benefit every independent radio station.

507 Q. We know that.

A. Potentially.

00103

508 Q. In the first half of 1990 the financial situation of Century deteriorated markedly, isn't that right?

A. Yes, it was continuing to deteriorate.

509 Q. It was virtually insolvent, I think, for a lot of that period, wouldn't you agree?

A. Not necessarily. It was always in a position when it was paying its liabilities, as they fell due.

510 Q. Well, for example, it wasn't paying its staff because Messrs. Barry and Stafford had to set up a private account and pay the staff out of their own pockets?

A. I vaguely recall that at one stage that happened, simply to ensure that - this was their way of making a further advance to the company, and in the sense that they were using this advance to pay wages. If the company went broke that would be a preferential creditor.

511 Q. Well, would you describe a company which is unable to pay its staff --

A. I think this is quite late in 1990.

512 Q. I think it was around April or May?

A. As the negotiations with Capital were coming to fruition.

513 Q. No, this was April or May. Capital just came on the scene as a possibility around this time, we understand, and indicated a willingness, subsequently, to become involved in a joint venture, subject to capping legislation being brought in?

A. My recollection is that Capital, the reason that process which you refer to, the wages, was adopted was because there was a considerable degree of optimism, almost verging on higher than that, that Capital Radio were coming in, and that all that was needed to ensure the survival of this

00104

station, and the jobs involved, was to bridge it between that period and the injection of Capital Radio's money.

514 Q. In fact a substantial number of jobs didn't in fact survive, isn't that right? A very large proportion of the staff, including senior management staff were let go in February?

A. Some of them were let go, yes.

515 Q. No, I am saying "a substantial proportion" of them?

A. I can't recall that, but some staff.

516 Q. In excess of 40?

A. I know some staff were let go.

517 Q. Well, out a total staff of 78 or 80, do you think 40 is just some staff?

A. No, that would be 50 percent approximately.

518 Q. Including the Chief Executive, Mr. Laffan, and the Head of Marketing, Mr. O'Neill?

A. Yes.

519 Q. I don't want to be splitting hairs with you or dancing around this particular point, Mr. Crowley, isn't it obvious that this company was in serious, very serious and virtually terminal financial difficulties at this time?

A. It was obvious that the company, and you could read some of my letters to the company, if you cared to, to the directors, it was obvious that this company was in very serious financial difficulties. It was not obvious that it was terminal; and the arrival on the scene of Capital Radio was a tremendous achievement and could have been the salvation of the company.

520 Q. Capital's involvement, do you agree, was predicated upon the government bringing in capping legislation?

00105

A. I am not certain. I think they changed their mind later on about that.

521 Q. Well, that is what we have been told by Capital?

A. Well, they would know.

522 Q. So that, in effect, this company had no future without capping legislation?

A. I wouldn't think that is necessarily a consequence.

523 Q. Well let's look --

A. Perhaps you would ask Capital about that.

524 Q. Look at --

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MR. FOX: Sorry Mr. Hanratty, can we say at this stage that we haven't heard any evidence from Capital Radio or from Mr. Taylor. So when Mr. Hanratty is divulging what he knows about Capital, could he illustrate the evidence for the benefit of the other parties?

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MR. HANRATTY: Mr. Taylor will be giving evidence this day week and will be giving evidence to that effect.

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CHAIRMAN: You have been circulated, I am sure, with it, I am sure by now.

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MR. HANRATTY: It will be circulated on Monday. We have just received it this afternoon, I think.

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CHAIRMAN: If you are taken by surprise by any aspect you can deal with it now.

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MR. FOX: Just to say that it is not evidence before the

00106

Tribunal as yet. In fact, this was part of an argument which I was party to last week with Mr. O'Neill. There is a statement before the Tribunal, I take it, from Mr. Taylor; can I say at this stage that the Tribunal has not adduced evidence.

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CHAIRMAN: I am aware of that.

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MR. HANRATTY: I wonder if Mr. Fox would clarify if he is disputing the fact that Capital's involvement was predicated on capping, and if he is, on what basis he is doing so; because if he is, it hasn't been notified to us.

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MR. FOX: Chairman --

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MR. HANRATTY: It has been canvassed, as far as I recall, with several witnesses, including Mr. Stafford.

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MR. FOX: I am not disputing anything in this regard. What I am disputing is that this evidence has not been disputed in evidence before the Tribunal.

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MR. HANRATTY: It has and it has been put to Mr. Stafford and as far as I recall Mr. Stafford agreed that that was the position.

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CHAIRMAN: Yes, that is correct. This is part of the on-going saga which we know about. The actual proof, you can challenge it when you get Mr. Taylor in the witness-box in any particular aspect, and I will note your challenge.

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If you establish that we have gone wrong, we will correct it.

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MR. FOX: Thank you Chairman.

525 Q. MR. HANRATTY: Can I put it to you another way, Mr. Crowley? In the absence of Capital, in the absence of capping and therefore the absence of Capital, did this company, in your view, have any future?

A. In the absence of an investment by Capital Radio, or its equivalent, including the bringing to Century Communications the knowledge, the experience of running a successful radio station in several parts of the world, Century had no future.

526 Q. Yes. Now, in your capacity as Chairman, and I am going back, if I may, just to the first half of 1989; you were aware of course that the original capital injection to this company was to come from the investors, who you have told us, as far as you were concerned, were Messrs. Barry and Stafford.

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You have told us that your understanding was that each of them was going to put in a lump sum of money and there was a subsequent plan for a private placing, isn't that right?

A. Yes.

527 Q. We know from a document produced by Noreen Hynes, page 99, of the various sums of money which actually came into the company. And I think it is true to say, as time progressed, the company - I am talking about 1989 - the company had an increasing need for working capital, isn't that right?

00108

A. Yes, the share placement took place in --

528 Q. Later.

A. Later in 1989?

529 Q. Yes.

A. Yes.

530 Q. And this document which is dated the 8th of May 1989, which was produced by Noreen Hynes, where she is drawing attention to a problem of a shortfall on the capital account, which I think she raised with you on some occasions, isn't that right?

A. Yes, I believe I recall this, yes.

531 Q. Yes. And as you can see there, the first tranche of money to come in, as it were, was on the 15th of March 1989, in the sum of ú33,333.33, isn't that so?

A. That is what it says.

532 Q. And the second was ú66,667. Now, we have been told that the "33" came in from Mr. Barry, that the ú66,667 came in from Mr. Crowley. Sorry, I beg your pardon, from Mr. Mulhearn?

A. I see, I am not aware of that.

533 Q. Well, I take it that you were aware that money was coming in gradually from somewhere?

A. Yes, because I recall seeing this memo.

534 Q. Yes. And the third tranche of 33,333 again came in from Mr. Barry. Now, as we understand the position, it was agreed between the parties that both Mr. Barry, Mr. Stafford and Mr. Mulhearn would put in ú275,000 each; that Mr. Terry Wogan would put in ú50,000 and that Mr. Chris de Burgh would put in ú25,000. For reasons which are not relevant to the present issue, Mr. Wogan did not in

fact put in ú50,000.

But in respect of the ú275,000 to be put in by Mr. Stafford and Mr. Barry, they each put in ú250,000 in the first instance and subsequently put in ú25,000. And Mr. Crowley apparently, put in ú300,000 but we can leave that aside?

A. Not me.

535 Q. Sorry, Mulhearn, ú300,000. Now, Mr. Barry in making up his ú250,000 appears to have taken credit for ú35,000 being the ú35,000 which he paid to Ray Burke. Were you aware of that?

A. That he took that credit? No.

536 Q. Well, were you not aware that he took credit for something?

A. No, I was aware that this money was coming in over a period of time.

537 Q. Yes.

A. That is all I was aware of.

538 Q. If I can just refer you back to the document, you can see there that the third tranche put in by Mr. Barry, which was ú148,000, that means that he put in two sums of ú33,333, and a third sum then of ú148,000 - which if you add them all together you get 215. Which Mr. Barry says was his first contribution of ú250,000, less the 35 which he paid to Mr. Burke in May of 1989. Now, you know that there was a shortfall on the capital account?

A. I do. I remember seeing a figure of this nature of 75,000.

539 Q. Yes. When it came to pay the second tranche to make up his 275, Mr. Barry would, of course, in normal circumstances, have had to pay in 25, but he didn't pay in 25 as you can see there on the 8th of January of 1990, he

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paid in ú19,787.

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He says that is his 25, but that he is taking credit for the ú5,000 which he paid to Fianna Fail, and an air ticket for another person who was interested in Century at the time, of ú213. So if you deduct 5,000 and 213 from 25 you get ú19,787.

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Mr. Barry's position is, as we understand it, that his initial capital contribution of ú275,000 was discharged, but as to ú35,000 of that, it was discharged by way of payment to Mr. Burke, and by way of a ú5,000 payment to Fianna Fail and this other ú213.

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Now, Ms. Hynes raised on a number of occasions, the fact that there was in fact a shortfall on the capital account, isn't that right?

A. Certainly on this occasion, yes.

540 Q. And on a number of occasions I think she raised it as well in similar terms, in fact she raised it on a couple of earlier occasions before other payments came in and she was keeping you up to date. Did you ever make inquiries as to what the basis of the shortfall was?

A. No, I do not recall either inquiring or hearing. I recall there being a shortfall and I recall requesting the two, the two executives, the two shareholders, the two promoters; Mr. Stafford and Mr. Barry, to make good their commitment.

541 Q. Yes. We know that Capital Radio made their investment in September 1990?

00111

A. Yes.

542 Q. We know that the payment of ú35,000 was made to Mr. Burke in May of 1989. Now, when were you first told, and by whom, that Mr. Burke had been paid ú35,000?

A. I was told by Mr. Stafford in the summer of, I think of 1989, that Mr. Burke had made this payment.

543 Q. Had received it?

A. Sorry, that Mr. Barry had made this payment and that the money had been refunded to Century. On some basis, that Century's funds had been involved in that payment, but the money had been refunded.

544 Q. Well, if it was late summer it would have been within a relatively short space of time of the payment actually having been paid, it having been made in May?

A. It was some time after it, yes.

545 Q. Yes.

A. I was not aware of it at the time. I was not aware of anything about it, and I would not have at all gone along with it.

546 Q. And was it Mr. Stafford that told you this, or Mr. Barry?

A. It was Mr. Stafford.

547 Q. What did he tell you about it?

A. Just as I have told you.

548 Q. Well, what did he say it was for?

A. He didn't specify anything.

549 Q. Well --

A. A political donation was what I drew the conclusion of.

550 Q. Yes. But presumably he was telling you in your capacity as Chairman of the company?

A. I assume.

00112

551 Q. And he was telling you that Mr. Barry had made a payment of
ú35,000 to Mr. Burke?

A. Yes.

552 Q. And you say that he told you that it had been repaid to
Century?

A. Yes.

553 Q. Presumably meaning that the money that was paid in the
first instance was Century's money?

A. That's the inference I drew.

554 Q. Yes. And in what form --

A. That does not appear to be correct.

555 Q. I was just going to say that. There is no evidence that
any ú35,000 was, as it were, repaid to Century?

A. Right.

556 Q. There is evidence that he took credit from his
contributions to the capital account of ú35,000, but that
that money was never put back into Century?

A. I am, I was not aware of that.

557 Q. That he took credit, but do you now accept that the money
never came back in? In other words, that the repayment as
you described it, was not made?

A. I certainly accept that the money never went out, only for
the evidence of this Tribunal.

558 Q. Yes.

A. That the money was paid from a Sinatra bank account or
something of Mr. Barry's.

559 Q. That Mr. Barry making the money, the payment to Mr. Burke,
yes, but just leaving, just staying with Century for the
moment, what you were being told at the end of the summer
of 1989?

00113

A. Mmm.

560 Q. Was that Mr. Barry had made this payment of ú35,000?

A. Mm-hmm.

561 Q. Presumably with Century's money, but that it had been repaid to Century?

A. Yes.

562 Q. Are you now satisfied that it hadn't been repaid to Century?

A. No.

563 Q. I see. Well, is there some payment that you are aware of?

A. No, all I am satisfied is that the money was never paid by Century to Mr. Burke.

564 Q. Yes. You didn't know that Mr. Barry had taken credit of ú35,000 against his capital investment in the company?

A. No.

565 Q. I see.

A. No.

566 Q. In 1991, in January of 1991 Mr. Barry was claiming that he was owed ú40,000 by Century. Do you remember that?

A. I remember at some stage that, I think there was an agreement reached between Mr. Barry and Capital Radio, that he would receive some amount of money in return for the amount of executive time that he had spent as an executive director of Century Radio, Century Communications.

567 Q. If we could just look at the background. Mr. Patrick Taylor was managing the company at that stage after the Capital Radio investment?

A. Patrick Taylor was the Financial Director of the company.

568 Q. Sorry, yes.

A. Yes. Mr. Nigel Walmsley --

569 Q. Yes, that's right. Mr. Taylor had received several requests for payment of this sum of £40,000 to Mr. Barry, and he had refused to pay it, on the grounds, as he then pointed out, that nobody had produced any vouchers or any documentary evidence of any kind supporting this claim. Do you remember that issue being there --

A. I remember the issue but I don't remember the explicit details that you --

570 Q. Mr. Taylor's position was that not only did Mr. Barry not produce any invoices or any vouchers of this kind to support this claim for 40,000, but that there was no disclosure of any such indebtedness in the disclosure letter which was given to Capital Radio when they were making their investment.

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And secondly, that in the due diligence which had been carried out by Capital Radio, there was no reference to any indebtedness or any alleged indebtedness of £40,000 or indeed of any sum, isn't that right?

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This Tribunal has heard evidence that there were certain things which Mr. Barry's company or Mr. Barry did for Century, and that when he did it he invoiced, essentially in the following month, but that there were no invoices of any kind raised for this sum. I think you have agreed that at a board meeting in January of 1991, a decision was taken that, effectively, it should be paid?

A. At some stage a decision was taken that some amount, I am not sure what amount it was, that should be paid and that decision was effectively taken by Capital Radio.

00115

571 Q. Actually taken by the Board, not Capital Radio, because Mr. Taylor refused to pay it?

A. He must have agreed to it because it was the Board, it was Capital's money. My recollection is that an agreement was reached between Mr. Barry and Mr. Taylor, that for whatever reason, some money, I don't know the amount, should be paid to Mr. Barry in return for his executive role, and the Board may well have approved that.

572 Q. Well, if I could just find the - if you could look at page 2935? This is a letter from Mr. Stafford, or a fax letter from Mr. Stafford to Mr. Taylor in connection with this matter, and he says: "Patrick, it is now over 12 weeks since the completion on the 27th of September" --.

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CHAIRMAN: Sorry, sorry?

573 Q. Sorry.

A. It is not actually what I am - it wasn't on the screen.

574 Q. Sorry. I am sorry, it doesn't appear to be in the system.

It was on the previous occasion, but I will just have to read it to you. It says: "Patrick, it is now over 12 weeks since the completion on the 27th of September and the payment of the €40,000 has not yet been dealt with and I can not finalise my accounts until it is paid. Despite my many requests, it seems to get deferred again until the point that I can only conclude that we are being played with us. A typical example was the fact that you and I agreed that it would be dealt with this morning, and of course it hasn't been.

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I am satisfied that the €40,000 is properly due and payable

00116

by the company but to avoid any doubt whatsoever I will want it as the first agenda item at the next board meeting on the 10th January 1991, when I expect it to be ratified and then paid without any further nonsense.

.
Furthermore, as it costs me interest I would expect interest from the 27th of September. I am satisfied that it was fully and properly disclosed between your own due diligence and the disclosure letter. I have no intention of either writing it or deferring settlement any longer. Any confusion there may have been can be traced back directly to the lose of Noreen Hynes for which your own investigating accountants are solely responsible.

.
Both Oliver and I picked up shortfall of ú118,000 not taken up by the existing shareholders. In addition to our full rights of 825,000 it is a pity that this ú40,000 has become such an issue between us but I am disappointed in the way in which it has been dealt with."

.
Now, I think on the following day there is a letter at page 748, from Mr. Taylor to Mr. Barry, in connection with the same matter. Where he says:

"Dear Oliver, I refer to the sum of ú40,000 which we again regretfully failed to resolve yesterday. May I say that there is absolutely no intention on our part to delay the resolution of this matter. I am sure you will agree with me, that to defer a settlement can only damage our relationship, which certainly is not in the interests of Capital Radio. I am afraid the fact is as evidenced by the

00117

discussion at our breakfast meeting yesterday that there are other matters that take priority in our discussions at the present time.

It seems to me that there are two stages to this matter.

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(A) If there is a proper liability of the company.

(B) If so, was that liability properly disclosed at the time of our investment, and if not then what redress exists under the investment agreement.

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As regards Item A, I think it important that we deal with this matter as we would with any other provider of professional services. Would you please therefore let either myself or Colin have a detailed statement of the work that was done by your colleagues for the company. The more detailed you can make it the better i.e. what was the nature of the services, were they provided on a regular basis or sporadic basis, from where was the work undertaken, who actually provided the services, at what charge out rate, were there specific projects that gave rise to the work. Obviously we will also need to receive a VAT invoice from your company before payment can be made.

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As regards item B, I believe it may be better to leave Mark Ryan and Enda to discuss the matter and see if they can establish whether or not there is a problem, and if so, what the potential solution is. With best wishes, yours sincerely, Patrick Taylor."

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That appears to define the kind of nature of the dispute or

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disagreement that they were having. Mr. Taylor was saying look, we first have to establish is there in fact an indebtedness, or secondly is there any vouchers or documentation to back it up?

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Mr. Barry was at the same time claiming that we have established at least from Mr. Stafford, we have not yet heard from Mr. Barry, that there are in fact no invoice or no records of any kind in the records or documents of Century Communications in relation to any such indebtedness. Did you ever see any vouchers or back-up documentation for this claim of ú40,000?

A. No.

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CHAIRMAN: Just might I intervene here to say the letter from Mr. Taylor, the reference number is 747?

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MR. HANRATTY: It may also be at 747. It is the one on screen, in any event.

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CHAIRMAN: That's right.

575 Q. MR. HANRATTY: And as far as we can see, there is no reference, or record of any kind, in relation to this alleged indebtedness in the records of Quality Artists Management or in Mr. Barry's own records. I take it that you wouldn't have seen those, in any event?

A. I would not.

576 Q. We know that Mr. Stafford, on the 21st of December 1990, drafted a letter for Mr. Barry to send to Mr. Taylor, in response to this letter from Mr. Taylor, which we have just

seen, in which he makes for the first time a case that Mr. Barry had provided services being charged at €1,600 per week for 25 weeks. If I could just show you that, page 750.

.
This is Mr. Stafford's draft. And it says:

"Dear Patrick, thank you for your fax of the 21st of December. I have already explained that these costs are my actual out-of-pocket expenses for the period during which I and my staff had to provide full-time management for the company. With regard to the costs which work out at €1,600 per week for 25 weeks, you will recognise that they have been heavily subsidised by me personally, by reference to your own consultancy agreement. There was never any question that these costs would be recovered from the company in the same way that the wages paid by James and myself would be. A point that can and will be confirmed at the January board meeting after which I expect immediate settlement. I see no reason to involve Mark Ryan or Enda Marren in this matter."

.
Now, I think the position there stood and no vouchers or invoices of any kind were in fact produced, and as far as we can establish there were no such invoices or vouchers.

.
We have also seen the disclosure document, and there is, in fact, no reference to this indebtedness of €40,000 in the disclosure document. Now, do you remember anybody coming to you in relation to Mr. Barry looking for this money?

A. No.

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577 Q. Well, do you remember it coming to the Board in January of 1991 on the 10th of January of 1991?

A. I don't actually, but if it is in the minutes, it came to the Board.

578 Q. There is only one reference in the minutes. Unfortunately I don't have a page number in this because it isn't in the system, it simply says under heading 124, "Any Other Business: Amounts due to Mr. Barry and Mr. Stafford. Raised the matter of monies due to Mr. Barry. It was resolved that the matter be agreed between Mr. Barry and the company."

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In effect Mr. Taylor is going to say, we understand, that in response to that he felt obliged to pay the money and did in fact pay it on, I think the 20th of February of 1990. Mr. Barry, in other words, received a payment of ú40,000.

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Now, that being the case, this would appear to be, if we are correct in what we have said about him having withheld ú35,000 and ú5,000, this would appear to be the second ú40,000 value, as it were, that he received out of Century Communications, isn't that so?

A. I can't really comment on that. All I can say to you is I was aware that there was a claim by Mr. Barry for executive services, as I recall it that he had given to the company and that some sum of money was agreed to and paid by Mr. Taylor.

579 Q. Yes.

A. To settle the matter. That is all I can say on that.

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580 Q. And the extent of the information which you had was that the money which Mr. Barry was claiming at that point in time, that is in the end of 1990 and beginning of 1991, was in respect of services which he was then saying he had provided to Century, prior to the involvement of Capital Radio, isn't that right?

A. Yes. And as they were services they would not be necessarily invoices, documents, vouchers or whatever.

581 Q. Well, were you aware that Mr. Barry had provided other services to Century in 1989, and I think indeed in 1990, for which he did send invoices?

A. I was not aware, no.

582 Q. I see. But given that that was the case, would it not raise a query in your mind, if he was now claiming ú40,000 after a substantial involvement by a third party, after a due diligence was carried out, after a disclosure letter making no reference to this; do you not think that it was surprising that there were no invoices in those circumstances?

A. I think it was a matter for Mr. Taylor, as the chief Financial Officer of the company.

583 Q. Mr. Taylor's position, as we understand it, is going to be given the attitude of the Board that he felt constrained to pay it?

A. I mean, I can't comment on what Mr. Taylor is going to say.

584 Q. Just in relation to what the Board decided, I mean do you agree that the Board was not provided with any vouchers in respect of this, these alleged services?

A. I am not aware that the Board were.

585 Q. And at any time were you ever shown any back-up

documentation in relation to this ú40,000?

A. Not to my recollection.

586 Q. Yes. Do you have any recollection then as to what the basis was that the Board decided that it would pay this ú40,000 to Mr. Barry?

A. My only recollection was that Mr. Taylor and himself had reached an agreement.

587 Q. Capital at this time of course were a minority shareholder in the company, isn't that right?

A. Well they had loan stock, convertible loan stock.

588 Q. But in terms of voting?

A. Oh, yes, but they could convert the loan stock and --

589 Q. If the Board of Century were of a mind to direct that this money be paid, if it went to the wire, there was nothing really that Capital could do about it?

A. Well, I mean it didn't go to the wire, so I am not --

590 Q. Oh, I see.

A. I am not surmising.

591 Q. Are you, you are not surmising. Do you recall it not going to the wire?

A. My recollection was that there was an agreement reached between Mr. Barry and Mr. Taylor.

592 Q. At the meeting?

A. Prior to the meeting, and that it was, the agreement was kind of, I remember, ratified at the meeting, that is my recollection.

593 Q. Well, given what we know of Mr. Taylor's position as disclosed in the letter that we have had from him that he wanted to establish (A) if there was an indebtedness and (B) of course if there was, to see some vouchers on what

basis was there agreement?

A. I think that is a matter you would have to ask Mr. Taylor and Mr. Barry.

594 Q. As I understand the evidence that Mr. Taylor is going to give, there was no agreement, and that was in deference to the Board, that he pay the money without having been given any such vouchers?

A. My recollection is that there was, I believe there was an agreement reached between Mr. Taylor and Mr. Barry for whatever reason, "a quiet life" or "get on with the job in hand", whatever.

595 Q. Mr. Stafford has given evidence to this Tribunal, that - sorry before I come to that, Ms. Hynes gave evidence yesterday, the Financial Controller, she said she never heard of this indebtedness for ú40,000 or any of these alleged services for which he was claiming 14 or ú1,600 per week at 25. I take it you would agree that if there was such an indebtedness, you would expect the Financial Controller of the company to know about it?

A. If there was a claim, you know, an invoice claim, in the normal way, of course the financial controller would know about it.

596 Q. Even if there were services provided in respect of which such a claim was made, you would expect her to know that such services had, in fact, been provided?

A. To the extent that she was there at the time, I am not sure.

597 Q. Yes. Well, she was there up until shortly before Capital came in, as I understand it, isn't that right?

A. That's right, she left before Capital came in.

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598 Q. I think she was there, if I am not mistaken, until the end of August 1990, they came in in September. I am not sure of the exact date, but I believe it was the 28th of August. So we have a situation now where Mr. Barry for whatever reason, is getting out $\text{€}40,000$ out of the company.

Now Mr. Stafford has given evidence to this Tribunal, that the first time that he ever heard of any payment being made of $\text{€}35,000$ to Mr. Burke was on the 20th of March 1990. In other words, just a month after Mr. Barry got this payment of $\text{€}40,000$. Although Mr. Mulhearn gave evidence recently that Mr. Stafford told him about this payment before the end of 1989. But be that as it may, we know that there was a meeting between Mr. Stafford and Mr. Barry on the 20th of March, at which Mr. Stafford took some notes, and if we could look at page 144? Mr. Stafford makes a reference to two figures at the top of that on the left-hand side. It says:

"Burke $\text{€}35,000$ equals" which I think should be a "plus" it is the upper case or lower version of "plus".

" $\text{€}5,000$ - FF" Obviously the total of that is $\text{€}40,000$.

We know from Mr. Stafford's own evidence that subsequently in 1992 he gave instructions to his solicitor, Mr. Synnott, in connection with monies which he, Mr. Stafford, said Mr. Barry owed him in the sum of $\text{€}28,000$. You can see on the bottom of that document there is a reference to $\text{€}28,986$.

Do you see that? The bottom right?

A. Yes.

599 Q. It is made up of two figures. One is $\text{€}15,652.57$.

The second figure of which it is made up, is ú13,333.33.

Which is exactly one-third of ú40,000.

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Now, Mr. Stafford in giving instructions to his solicitor in 1992, referred to the ú40,000 which Mr. Barry received from Century in February of 1991 as a payment which he disapproved of and wanted nothing to do with.

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Did anybody at any time after the payment was made to Mr. Barry in February of 1991 ever come back to you and make any comment to you in relation to what that money was for?

A. No.

600 Q. Did you ever discuss it with anybody?

A. No, because as I say, my understanding was that it was for his executive services.

601 Q. Did Mr. Stafford ever indicate to you that he disapproved of it?

A. No.

602 Q. We know that he indicated to his own accountant, Mr. Moore, that he disapproved of the payment to Mr. Burke of ú35,000 in 1989.

A. Sorry?

603 Q. We know that Mr. Moore has given evidence that he as much as told him before the payment was made to Mr. Burke that Mr. Barry was going to make a payment; although he didn't mention an amount that he, Mr. Stafford, disapproved of it, and that after the payment was made he came back to him and said that he had in fact paid ú35,000. I think on both occasions informed him that he disapproved of that payment.

A. I see.

604 Q. And if Mr. Barry is correct in saying that he took credit for the ú35,000 that was paid to Mr. Burke, in May of 1989, that was the shortfall on the capital account, isn't that right?

A. I am sorry, I have just lost you there?

605 Q. He was short ú35,000 on the capital account. We know that for a fact. It is quite clear from the payments into the capital account that he was short ú35,000, that he withheld ú35,000?

A. I see.

606 Q. He put in 215 instead of 250?

A. I recall you saying those figures, yes.

607 Q. He put in ú19,897 instead of 85. That was done and dusted in 1989. We now have a situation where a payment is made out of Century in 1991, in February of 1991 which Mr. Stafford subsequently describes as a payment of which he disapproved?

A. I am totally unaware of his disapproval.

608 Q. Did he ever mention to you in any context, at any time, his disapproval of the payment to Mr. Burke, or of the fact that Mr. Barry appears to have taken credit for ú35,000 or of the fact that Mr. Barry got a payment of ú40,000?

A. No.

609 Q. Do you have any idea why Mr. Stafford would be instructing his solicitor, among other things, to sue Mr. Barry for ú13,333.33?

A. No.

610 Q. I think you have probably heard that the Tribunal has received evidence from Mr. Stafford to the effect that he

was approached by Mr. Barry in or around October of 1988 when it was suggested to him that there was a going rate for applicants who were seeking local and National Radio Franchises, isn't that right? Did you hear that evidence?

A. I read it.

611 Q. Yes. Essentially the evidence was that there was a going rate which was nominated at a particular sum for, I think local radio franchises, for national television franchises but no rate was mentioned, I think, for National Radio Franchise?

A. Sorry, just to correct myself, you told me that.

612 Q. Yes. Well, Mr. Stafford has given evidence to the effect?

A. You are the first person I heard it from.

613 Q. Yes. He said that he was, that the context in which it occurred was in the context, I think, of "general gossip" was the phrase that was used. Now he does say, however, that he, after he was told it, he mentioned it to you?

A. I repeat that you are the first person I heard it from and he did not tell it to me.

614 Q. Well, can I just put to you what he says? It is in Day 176, which was on the 21st of September. He says:

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"I said however that I was aware that having been told by Mr. Barry that Mr. Burke and Mr. Mara expected ú90,000 for the TV license; ú75,000 for each of the two Dublin licenses and ú25,000 for each of the local licenses; I informed the Chairman Designate, Mr. Laurence Crowley, of this and subsequently told Mr. Barry that he must be extremely careful and ensure that Century were not a party to any such arrangements. The subsequent request by Mr. Barry is

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dealt with below.

The question was: Can you put a time when it was that Mr. Barry said to you that Mr. Burke and Mr. Mara expected ú90,000 from the TV license and ú75,000 each for the two Dublin licenses and ú25,000 each for the local licenses?

Answer: I think you want to be quite clear that Mr. Barry told me that he was aware, having been told - Mr. Barry - you know I never had any direct knowledge of this. All I have is hearsay evidence as for timing. "

You subsequently put the time at October of 1988.

But he did specifically say and gave evidence to the effect that he told you about this after it was told to him.

A. I have no recollection of him telling me that. My only recollection is that you are the first person I heard it from.

615 Q. Yes. Well, do you recall you attended a meeting with the Tribunal legal team?

A. Yes.

616 Q. Including myself?

A. Sorry, I am not making any other suggestion.

617 Q. Yes. But you told us then that you had no recollection of this?

A. That's correct.

618 Q. And in addition to that, Mr. Stafford has given evidence that subsequently on a number of occasions in 1989, that Mr. Barry had told him that he had been approached by Mr. Mara claiming that he, Mr. Mara, was owed money by Century, and Mr. Stafford gave evidence to the Tribunal that he told

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you of these approaches?

A. No, no recollection of that. I mean frankly if, speaking as of today, if I had heard any suggestion that this was the kind of deal that was going on, I would not ever more have been anything more than Chairman designate.

619 Q. You were Chairman designate in 1988 obviously?

A. No, I was not.

620 Q. You were --

A. I was Chairman designate about the month of December, January of 1989. Sorry, have I got the right year?

621 Q. Yes, you have. 1989 was when the conversations took place about the --

A. When was the license awarded?

622 Q. The license was awarded on the 16th of January?

A. 1989?

623 Q. The 18th of January 1989?

A. I would have been Chairman designate for about six weeks prior to that.

624 Q. Yes.

A. Possibly less.

625 Q. Mr. Stafford put the first conversation about the matters I have just referred to in or around October of 1988?

A. 1988?

626 Q. That's right?

A. I had nothing to do with the company at that stage.

627 Q. And then he says that in 1989 Mr. Barry came to him on a number of occasions saying that he, Mr. Barry, had been approached by Mr. Mara claiming that Mr. Mara was owed money, and on at least one and possibly two occasions, Mr. Stafford told you about these approaches from Mr.

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Barry, and that he and you both agreed that there was no monies due and that monies would be paid to Mr. Mara?

A. I have no recollection of ever hearing that Mr. Mara was owed money.

628 Q. I see. He then also said that in or around, he believes the month of May of 1989, he was requested by Mr. Barry to attend at a meeting in the offices of Mr. Dermot Desmond, at which this request was repeated and at which Mr. Desmond made representations that monies were due to Mr. Mara, and that he refused to pay, and that subsequent to this meeting he informed you that it had occurred and that you agreed with him that he had adopted the correct approach, and that there was no question of there being any question of Mr. Mara --

A. Again, I repeat I have no recollection of hearing anything about a meeting with Mr. Desmond, not - of any suggestion that Mr. Mara was owed money.

629 Q. I see.

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MR. McMENAMIN: I am obliged to My Friend for asking those questions Chairman. There is one issue. I am not certain that the time of that meeting, of the alleged meeting was May. I think the best that could be said is it was early 1990 at some stage. I am not in any way objecting to Mr. Hanratty's questions, which of course are helpful?

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MR. HANRATTY: It may well be that Mr. Stafford did give other accounts, he did at some stage say it was in May of 1989. It is indeed fair to say that there was an uncertainty, when in 1989 it occurred, although he did say

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that it was a number of months prior to the subsequent meeting or discussion that he said that he had in Kinsealy, which is a date that can be fixed.

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MR. McMENAMIN: Yes, I am obliged to My Friend.

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MR. HANRATTY: Those are my questions for Mr. Crowley. Would you answer any questions anybody else may wish to ask you Mr. Crowley, please?

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MR. FOX: I only have a couple of questions, Chairman.

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CHAIRMAN: First of all I just want to find out who else is involved?

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MS. EGAN: No questions Chairman.

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CHAIRMAN: Nobody else? Right, off you go.

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

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630 Q. MR. FOX: Mr. Crowley, over here, I appear for Mr. Burke?

A. Sorry, you are there, sorry.

631 Q. You indicated that it was not part of the strategy of Century Communications to seek a Section 16 directive under the Act. You said it is not part of the strategy; is that correct?

A. I said it was not part of the strategy when this whole process was --

632 Q. The formative stages?

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A. Correct. It was only as a last --

633 Q. Yes.

A. -- effort, the strategy was to negotiate.

634 Q. Yes. In fact your strategy was to seek agreement with RTE, would that be correct, at that stage?

A. Yes.

635 Q. Now, later on in your evidence you said that the introduction of the cap, as far as you could see it, I think you were speaking on behalf of the Board of Century as well, that the introduction of the cap was to ensure that independent radio, that the independent radio community survived. You said that in your evidence; is that correct?

A. Yes, I did.

636 Q. You agree with that, is that correct? Now, in the last half hour or so when Mr. Hanratty was asking you about the ú35,000 payments to Mr. Burke, you said that you were satisfied that the ú35,000 was not paid by Century to Mr. Burke; is that correct?

A. Sorry, I believed at the time that it was paid by Century and refunded. Sorry, I was told at the time that it was paid by Century and refunded to Century. I am only, the second part of that statement I made because of the evidence I read about, which Mr. Barry, Mr. Barry gave the evidence, I think.

637 Q. Yes?

A. About the Sinatra account, which was not part of Century Radio.

638 Q. Mr. Stafford. Thank you very much Mr. Crowley.

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MR. O'HIGGINS: Sir, there is just one matter that arises out of what has been asked, if I might be permitted?

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CHAIRMAN: Very good, carry on.

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THE WITNESS WAS CROSS-EXAMINED BY MR. O'HIGGINS AS FOLLOWS:

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639 Q. MR. O'HIGGINS: Mr. Crowley, you say that your strategy was to seek agreement with RTE on transmission charges. I take it that is subject to the caveat that you don't personally know whether any discussions ever took place, by way of negotiation on transmission charges; is that correct?

A. I was certainly not involved in any negotiations, no.

640 Q. I understand from you that you believed that Century had been at the time, but that you are not in fact personally aware of whether they were or weren't?

A. I believe certainly, that they were in negotiations with RTE. That is described in some of the exhibits which Mr. Hanratty put on the screen.

641 Q. Yes. You are aware that it has been RTE's evidence that in fact no negotiations ever took place, nor was any figure ever put by Century to RTE, as one which it would be prepared to pay for transmission charges?

A. I am. I accept of course what you say, but I am not personally aware of RTE's evidence.

642 Q. Yes. Just one other matter, I take it to be your evidence that in relation to the substantive question of what were or were not reasonable transmission charges, that you personally aren't in a position to offer comment on that

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one way or another?

A. No, I am no expert on any kind of technology of that nature.

MR. O'HIGGINS: Thanks Mr. Crowley.

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

643 Q. MR. McMENAMIN: Just, Chairman on behalf of Mr. Mara, could I just ask one question of Mr. Crowley?

If you had become aware, you interrupted yourself I think in the course of one answer, if you had become aware of any financial impropriety involving Mr. Mara or any other person, what would have happened to your relationship with Century? Would you have continued your relationship or not?

A. I very much doubt if I would have.

644 Q. Thanks.

CHAIRMAN: Right. Thank you very much Mr. Crowley for coming down.

A. Thank you Chairman.

CHAIRMAN: You have been of assistance and thank you kindly.

A. Thank you.

THE WITNESS THEN WITHDREW.

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CHAIRMAN: There are two other witnesses, is that right,
this afternoon?

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MR. O'NEILL: That is so Sir.

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CHAIRMAN: Might I suggest that we break for five minutes
and I will continue to sit on, hopefully to complete them,
rising somewhere around half past four, of that order.

Thank you. Just for five minutes.

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

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MR. O'NEILL: The next witness, Sir, will be Mr. Donagh
O'Donoghue, who is in the witness-box at present and shall
be sworn.

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DONAGH O'DONOGHUE, HAVING BEEN SWORN, WAS EXAMINED BY MR.
O'NEILL AS FOLLOWS:

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645 Q. MR. O'NEILL: Mr. O'Donoghue, firstly Mr. O'Donoghue thank
you for attending today. I understand you travelled from
Galway by air and you had all the inherent difficulties
that were involved in that, but you are here and hopefully
we will be able to release you shortly.

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You were one of the original members of the IRTC, isn't
that so?

A. That's correct.

646 Q. And we have heard of the qualities of a number of your
fellow members, many of whom had connections in the
entertainment industry, etc., I take it you had no such
connection?

A. No.

647 Q. Isn't that right?

A. No, I hadn't.

648 Q. I think you came to the Commission with a business acumen
as your strong point, isn't that right?

A. I suppose that would be right, yes.

649 Q. What is your history in business?

A. Well, I was group managing director of the McDonald group
of companies in Galway.

650 Q. Yes.

A. So I was involved in manufacturing and timber, builders'
providers, retailing, animal food manufacturer --

651 Q. You are well versed with commercial criteria for the

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success or otherwise of ventures. You are familiar with accounting practices and business projections; isn't that right?

A. That would be correct.

652 Q. Having come to this Commission you were in attendance on the 17th of October in Newbridge House in Donabate, which was the inaugural meeting of the IRTC, isn't that right?

A. That's right.

653 Q. You can recollect, I believe, the fact that certain persons were proposed for certain positions which were going to be filled, both as regards the bankers to the Commission, the financing advisors, the accountants to the Commission, and also their solicitors, is that right?

A. Correct.

654 Q. And we hear that the persons nominated for those positions were all names which had been given by the Minister to one your body, Mr. O'Sullivan. I take it that was not a matter which was known to you, is that right?

A. Oh I didn't know that, no.

655 Q. Were you surprised of the fact that no alternative names were proposed for any of these positions save for the names proposed by Mr. O'Sullivan?

A. I would have expected, you know, in normal commercial practice that we consider perhaps two at least under each heading, but that didn't happen. But it was the first meeting, one didn't want to be over --

656 Q. Of course. Now, you attended then on a regular basis the meetings of the IRTC, over the next number of months, and we are concerned at present with the question of the RTE transmission charges, and their importance in the context

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of the IRTC deliberations.

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We will see from document 5568, which is the minute of the meeting of the IRTC of the 8th of December of 1998, that the question of the RTE charges was considered by the Board and a resolution was contained within this particular minute, which reads: "Following a report from the Chairman and Secretary of 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 this matter."

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Now, as regards the end part of that particular resolution, there is no evidence that such a meeting took place, and Mr. O'Donovan is certain that he didn't attend such a meeting in any event. But as regards the resolution itself, it would appear to record the views of the Commission at that particular time, and to put that in context, it was on the day following the first meeting which took place between the Chairman and Secretary of the IRTC and RTE; and at that meeting what is known as the "rate card" for the transmission services was provided by RTE to the Chairman and Secretary. So where we read here of a report from the Chairman and Secretary to the meeting, I assume that in that meeting you were advised of the amount which was being sought by RTE for transmission services being made available to the independent national

00139

radio franchisee?

A. Mm-hmm.

657 Q. That accords with your memory of it, I take it?

A. I believe there was a figure of about a million pounds mentioned.

658 Q. It was over a million. 1.12 million pounds. And whilst this is a sizable sum of money, it equally would appear that the Commission itself had not commissioned any independent report from any financial experts or accountants, or any other independent body to set against the RTE figure by way of comparison, does that equally accord with your memory?

A. I don't think there was an independent consultant.

659 Q. No. There had, at the time of the initial appointment, been a firm of international consultants with offices in Ireland, Deloitte Haskins Sells, proposed as financial advisors to the Commission. But we will see that at this meeting it had been decided not to avail of their services as consultants, but merely to use them for the purpose of the annual audit of the IRTC and for accountancy purposes in that regard only. So, in the absence of them, it then remained solely a matter for the Commission itself, and its individual members' talents to weigh up the RTE figures, isn't that right?

A. Yeah.

660 Q. Now as one of the persons who was on the committee, by reason of your business acumen, did it fall on you or can you identify any of the other business related members of the committee who actually carried out any analysis or prepared any detailed report for your fellow members on

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these RTE charges?

A. We didn't specifically fit into the detail of the charges
and the transmission charges --

661 Q. Was it merely the fact of this figure being something over
a million that lead you to conclude that it would be
detrimental to the interests of any group hoping to set up
in this business?

A. Well, it just seemed like a lot of money.

662 Q. Yes. You weren't intending to infer in this particular
finding here that the money was either excessive or
anything of that nature in, let's say an unfounded figure?

A. I don't believe so, at the time.

663 Q. But it was a substantive, a substantial figure?

A. Yes.

664 Q. I take it you were equally aware of the criteria set out in
the Act under which you, as a Commission had to act, and
that one of those criteria was that you had to be satisfied
as to the adequacy of the financial resources of a
particular applicant for a franchise, isn't that so?

A. That's correct.

665 Q. Yes. And equally, that you had to consider whether any
particular application measured up to sound economic
principles, isn't that so?

A. Yes, but I mean you obviously had to assess any proposal
under various headings.

666 Q. Of course, I am not suggesting that this was the only
criteria to be judged. It was not a case where the
Commission was entitled to make a decision in favour of
somebody purely because of their programme content or their
attractiveness in some other way, if they didn't measure up

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financially, isn't that right?

A. Correct.

667 Q. Now, it would appear that other than a financial comparison which was carried out by the Secretariat itself, where it listed on a page by page basis the competing projections of the individual applicants, there was in fact no independent financial analysis carried out to evaluate in particular the Century application, isn't that right?

A. Well, I relied on the various submissions that were put in front of me.

668 Q. Right.

A. And whatever comments were provided by the Commission.

669 Q. The submissions that were put before you included three submissions from the land based operators who intended to use the RTE service, isn't that so?

A. I believe you are right, yeah.

670 Q. Yes?

A. I can't be absolutely sure.

671 Q. There was a wide variation between the provision which was made in the individual projections by these three rival candidates, which ranged all the way in the first year from ú914,000 as an annual charge down to ú160,000 as an annual charge, which was proposed by Century?

A. Mm-hmm.

672 Q. So that certainly it identified the, that there were wide variations firstly, isn't that right?

A. There was a broad spread.

673 Q. And equally you had the benefit of the RTE figures which at that point were fixed at 1.2 million pounds?

A. Correct.

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674 Q. Isn't that so?

A. Correct.

675 Q. So this issue of the RTE transmission charges, though it was far from the only issue considered, was an issue which concerned the Commission to the extent that it directed that the Chairman and sub-body of the committee should meet with the Minister on the issue, isn't that right?

A. That's right.

676 Q. And you may also be aware of the fact that the Secretariat was in communication with the Department of Communications on the basis that it conveyed, firstly its concern about the level of charge which was sought to be obtained from RTE, isn't that so?

A. I was aware there was discussions with you. I wouldn't be privy to the detail.

677 Q. Right. Well, I take it that the principle and the purpose of involving the Department was to put an honest broker in between the RTE and the figures for Century and others to see if there could be a scale of charges agreed as the appropriate scale that each of the contestants would have to pay at the end of the day, isn't that right?

A. I believe that is so.

678 Q. You tried for uniformity if possible, and certainly I think it is the case that nobody on the Commission claimed to have the expertise that would allow them to fairly judge the figures which were being put forward by RTE?

A. Correct.

679 Q. We know that the Department did carry out negotiations with RTE in January, and prior to the date upon which the oral presentation of Century and other candidates was to be

heard, that date was the 12th of January, there was an agreement reached between the Department and the Minister and RTE on the 11th, whereby the figures which had been sought by RTE and furnished to the IRTC on the 7th of December, were reduced. So that a figure of ú692,000 per annum for annual rental charges for transmission was agreed as of that date, and that was communicated to the IRTC.

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Now, have you a memory, prior to your listening to the submissions of the candidates on the 12th, that the Minister and the Department had agreed with the RTE scale of charges that would be appropriate?

A. I can't say, I have to be honest.

680 Q. I see. If you had done so, is that a matter which you would consider to be relevant to relate to the applications which had been made by the individual candidates, particularly for those candidates who had not proposed to pay that level of charge?

A. Well, obviously you would have to be concerned about the spread.

681 Q. Yes.

A. In the submissions.

682 Q. Now, of the three contenders who intended to use the RTE service, two of them in their submissions had put in figures which were above the 692 agreed by the Minister, so they would qualify on that heading anyway, they wouldn't require specific questioning on that point. But it would appear that the figure for Century was far short of the 692 agreed by the Minister, and this apparently was an issue which had been addressed in a draft question which was

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prepared by the Secretariat and circulated to the Commission, it is believed on a date prior to, but certainly at least by the 5th of January of 1989.

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That was a question, Question 10 which inquired or was intended to inquire of Century, whether in the event that the Minister and the IRTC agreed a figure, that Century would be prepared to accept the figure or whether they would not proceed in the event that the Minister's figure was not acceptable.

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Now, that question was not asked of Century at the presentation. Have you any specific recollection as to why certain questions which had been proposed as possible questions to be asked at the meeting, and in particular this question, was not asked?

A. I don't, but I mean when you, when you said on the questionnaire.

683 Q. Yes?

A. I did think it was a good question and it was a question that should have been asked, but I don't know why.

684 Q. In any event, it would appear that the application of Century proceeded on the basis at that time, as of the 12th of January, that they were proposing 375, the Minister had agreed a figure of 692, isn't that right? That seems to have been the factual situation?

A. That seems to be the position.

685 Q. And obviously somebody was going to have to manufacture, and did you know that on the day after the oral hearing, an agreement or a meeting was arranged between the Chairman of

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the Commission and the Secretary with Century Communications, at which their level of transmission charge was discussed? Did you know of that meeting?

A. I didn't know of that, no.

686 Q. Apparently at that meeting, the Century representatives, including Mr. Stafford, were asked to provide figures which would challenge the RTE figures, and which would justify ú300,000 as the Century figure.

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MS. EGAN: Chairman, just in that regard, that is Mr. Stafford's account of the meeting, but that has not been confirmed by any IRTC witness so far as I am aware.

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MR. O'NEILL: That is the basis upon which the question was framed, Sir, to this witness; it was to indicate that one of the parties present at the meeting, Mr. Stafford, left the meeting and conveyed this as being the purpose of the meeting. It is of course open to My Friend to cross-examine this witness, but I have not put a proposition which is not founded by the evidence, Sir.

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CHAIRMAN: That is true.

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687 Q. MR. O'NEILL: The individual who left the meeting and whose record we have of the meeting is Mr. Stafford?

A. Mmm.

688 Q. Mr. Stafford conveyed his understanding of that meeting by fax to his English expert, Mr. Hills, and in the body of that particular fax he requested Mr. Hills to provide details in response to a request made of him by Century, by

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the Secretary and Chairman of the IRTC.

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CHAIRMAN: That's correct.

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689 Q. MR. O'NEILL: Perhaps if we looked at the document it might put it in context?

A. I wasn't aware of that meeting at all, you know.

690 Q. Yes. I am aware that you weren't aware of the meeting, but I must ask you questions in relation to the understood reason for that meeting, because presumably any meeting which was carried out by the Chairman and Secretary would normally be reported upon by the Board, isn't that so?

A. Yes.

691 Q. And my next question will deal with the extent to which you learned of this, or whether this detail was provided to you in the subsequent meeting. We know that the subsequent meeting was going to be on the 18th of January of 1989, some six days after the oral presentation. What Mr. Stafford recorded, and this is at document 5600, was that he had "just returned from a very satisfactory meeting with the Chairman and Secretary of the Commission, and a decision will be announced next week."

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Now, firstly, as of the 12th, which was the day of the oral hearing, I think it is correct to say that no decision in principle had been taken as to who the successful contestant was, for the franchise, isn't that so?

A. It is, yeah, there is a separate minute on that.

692 Q. There is, in fact there is no minute of the meeting of the 12th?

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A. Isn't there a separate minute of the decision?

693 Q. Yes, that is on the 18th?

A. Yes.

694 Q. The sequence being on the 12th, which is the day before this fax, there was an oral presentation at the National Concert Hall?

A. Mmm.

695 Q. No decision appears to have been made at that meeting from what we know of the witnesses so far?

A. Mmm.

696 Q. And equally, no minute was prepared of what took place on the 12th. So we can assume that no decisions were taken on that date by the body of the Commission, isn't that so?

A. That's right.

697 Q. Equally, it would appear to follow from that, that there was no resolution by the Board that the Chairman and Secretary should attend a further meeting at the conclusion of the meeting of the 12th with one of the contestants, isn't that so?

A. Well, I would have thought that the Chairman and Secretary could talk to them if they wanted to.

698 Q. Of course, what I am asking you --

A. -- they are the executives really.

699 Q. I am asking you whether there was any resolution passed that at the end of the oral submission that there was an outstanding matter which merited further inquiry to be brought back to the Board?

A. I honestly don't recall that there was now.

700 Q. Right.

A. To be honest with you.

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701 Q. Can you recall whether on the 12th it had been agreed by the members that the decision, whatever it was, would be announced the following week?

A. I don't recall that specifically, but I do know that we were to have a meeting to make a decision.

702 Q. They what --

A. We were to have a meeting to make a decision.

703 Q. Yes. If you could, but you might require further information or anything might happen?

A. Well, that is possible.

704 Q. Yes. Do you remember, prior to the meeting on the 18th, which we know to be the next meeting after the oral submissions on the 12th, whether or not any further documentation was presented to the body of the members regarding the charges which Century believed would be reasonable?

A. I don't recall, honestly.

705 Q. You don't remember that?

A. No.

706 Q. Certainly the minutes for the 18th merely record the fact that a decision was made in favour of granting the franchise to Century, and no other detail; isn't that right?

A. Mmm, that's correct.

707 Q. Yes. Do you have a recollection, personally, of seeing a document with the accompanying letterhead of the Independent Broadcasting Authority Consultancy Services, and a fax behind that, being produced at any time?

A. I don't, to be honest.

708 Q. If you were to see the document would it jog your memory as

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to whether or not you had seen it before or whether it was circulated to the Commission?

A. There is no point, it was 12 years ago.

709 Q. Okay. If we look to document 6079? Do you see the logo and the facsimile cover sheet here? Have you ever seen any documentation before --

A. It doesn't ring a bell to be honest.

710 Q. It doesn't ring a bell. The decision which was made by the Commission to grant the particular franchise to Century, and at that point in time it would appear that there had been no resolution between their differing positions on transmission charges, isn't that right?

A. That's correct.

711 Q. And we know that on, within a relatively short period of time, the Secretary of the IRTC, Mr. Connolly, was writing to the Minister on the 6th of February 1989, enclosing documentation in relation to the charges being sought by RTE for providing transmission services to Century Communications for the independent national radio station; and in so writing to the Minister it enclosed a press of the views of the sender of this documentation.

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There is an unsigned memorandum dealing with RTE transmission charges, which is at page 177. It is headed "RTE transmission charges. Please see the attached copy of RTE quote for transmission of the new independent national radio station, and copy of the letter from Century Communications."

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Of those two documents referred to there, the first of

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them, the RTE quote, is a document which reflects the agreement between the Minister and RTE as regards transmission charges of ú692,000 per annum for the FM service. And as regards the copy of the letter from Century Communications, that was a letter of the 17th of January in which Mr. Stafford was setting out three matters which he considered relevant as regards the computation of costs.

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They were, in reverse order, the fact that Downtown Radio in the North of Ireland was paying ú100,000 for its service. There was a reference to the financing of the project where Mr. Stafford was saying that the period of amortisation for the equipment should be 20 years at seven percent per annum rather than five years which RTE were proposing. And then there was an argument in principle about the right to access to the national broadcasting system, and an argument that it should be on the basis of being, well not free, but that RTE were merely a custodian of a national asset and that should be reflected in costs. So those three matters were contained in this particular submission.

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Firstly I want to ask you whether or not this was a submission which was circulated to the body of members of the IRTC to your knowledge, before it was furnished to the Minister, and whether or not it was one which you approved of?

A. I don't remember whether I got it or not, to be honest.

712 Q. Do you remember there being any resolution made that the

Secretariat would prepare a brief for the Minister specifically, or did you consider that to be a matter for the Chairman and Secretary?

A. I would have felt that was a matter for the Chairman and Secretary.

713 Q. Right. We see from this particular document that in broad terms it embraces the arguments which are being advanced by Century, and it does so more or less in the same sequence that was contained in the letter of Mr. Stafford to the Secretary of the IRTC. We know that following this particular letter, three days later there was a further meeting of the IRTC which is minuted, and at that meeting the question of the RTE charges was again considered.

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We see at page 5570 the minutes of the meeting of the 9th of February 1989, where under the heading "RTE charges" it is stated "as it seems unlikely that representations to the Department of Communications about the cost of RTE transmission facilities for the National Radio Service would produce the desired result, it was agreed that the Chairman should contact the Minister with a view to obtaining an early decision. This should be followed up by a letter of confirmation."

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Now, at this point in time can you recall what considerations were given by the RTE - IRTC - to the figures which it had before it and what did it consider the desired result to be, in that context?

A. I honestly can't remember.

714 Q. Right. The Minister apparently, and RTE, had agreed a

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specific figure?

A. Well, as I understand it they agreed a figure, of I think you said 690.

715 Q. 692. Obviously that would appear not to be a figure which found favour with the IRTC, if they were aware of that figure. Do you know whether they were aware of that figure or whether this minute reflects their view of the initial RTE figures?

A. I wasn't really involved in any negotiation on transmission charges.

716 Q. Right. Does that --

A. That was handled by the executive.

717 Q. Fine.

A. And the Sub-Committee.

718 Q. Does that go for each of the other members of the Commission, with the exception of the Commission Chairman, that you were not involved in the RTE transmission issue?

A. I think the only ones that might have been involved - I think there was a Sub-Committee set up.

719 Q. There is an earlier reference to Mr. O'Donovan being one of the persons --

A. I don't know whether he was actually involved, but I mean it was certainly handled by the Chairman and the Secretary.

720 Q. Right.

A. Now who else? Probably Sean Lackan.

721 Q. Right. Mr. Lackan, we have heard, was the technical advisor.

A. Correct.

722 Q. It has been indicated to the Tribunal so far that he was not a person that had financial knowledge and would not

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have offered financial advices but rather would have offered technical advices on transmission as such. Does that accord with your --

A. That would accord, yes.

723 Q. Does it follow then from what you are saying, that it was not at a meeting of the IRTC body that decisions were taken with regard to what the appropriate or desired level of charge would be for RTE's transmission charges?

A. Well, I would have regarded the transmission charges as a delegated function, as I would in a normal business, somebody was dealing with it.

724 Q. Right?

A. We had to take the advice we got.

725 Q. Okay. Well, firstly can you identify any particular advice which was offered to you, other than having the three submissions which we know, the financial comparison which was circulated by Mr. Appleby, and the Minister's figures which came via the RTE figures on the 11th of January?

A. When I said we would take the advice we got, I was referring to the advice we got from the Chairman and the Secretary.

726 Q. Have you a memory of them actually --

A. My recollection is that there was on-going negotiations throughout that whole period.

727 Q. Do you mean on-going negotiations between RTE and the Minister or on-going negotiations with Century?

A. No, between the IRTC and, certainly the Department of Communications early on, and later then with Century.

728 Q. Well, if we deal firstly with any negotiation procedure which may have taken place between the IRTC and either RTE

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or the Department, the Secretariat of the IRTC to date has indicated that it did not feel that it had any negotiating role with anybody. That it would encourage the application of their successful franchisee but it would not see that it had a role of negotiation, but it did inform the Department what the position was, and any negotiations that took place between the Department and RTE?

A. Fine.

729 Q. And not itself?

A. Yeah.

730 Q. So what I am seeking to establish from you, Mr. O'Donoghue, is whether or not you, as one of the, what I might call, "business orientated" members of this particular Commission, played any role in the analysis of the adequacy or otherwise of the RTE figures on the one hand, or the Century figures on the other, or --

A. I had no role in that really, in the transmission.

731 Q. Did you know of any other member of the Commission other than the Secretary?

A. No.

732 Q. And the Chairman who did play such a role?

A. I didn't know of anybody else.

733 Q. Right. Obviously you were kept aware of the fact that communications were passing between the Secretariat and the Department of Communications, and were you made aware of the fact that the Chairman firstly met with the Minister on the day after this recorded meeting on the 10th, on the 9th rather. He met with the Minister on the 10th?

A. I wasn't aware of that, no.

734 Q. Right. And apparently there was a communication from the

Minister on the 16th of February, where we see at document 3974, the Minister referred to the meeting with the Chairman - and to the documentation which had been sent to him by the Secretary of the Commission, with regard to the RTE quote for transmission services, and indicates that he had another meeting with RTE and that he had the matter examined by his Department, and that at his strong urging they had agreed to reduce their annual charge from 692 to 614. There then is a breakdown of further reductions in the figures which had been initially agreed between the Minister and RTE down to a figure of 614, which he states "in Irish conditions were not unreasonable."

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Now, in the first - firstly, were you aware that this further negotiation had taken place, and that it had resulted in a decision being made by the Minister to the effect that these particular new charges were appropriate, insofar as they were --

A. I remember hearing it at the time, but I mean I couldn't tell you the date now, I did hear it.

735 Q. Right. We know that from the date of this letter, which is the 16th, there was no further meeting of the body of the IRTC until the 21st of February of the same year, where a meeting took place in Cork, and that was a meeting which dealt with matters independent of the RTE transmission charges. And in the light of that, I want to ask you about the correspondence which subsequently flowed between the IRTC and the Minister, following upon this letter here.

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It would appear, firstly, that the contents of this letter

were made known to Century Communications by the Chairman of the IRTC handing a copy of this letter to representatives of Century at a meeting which took place on the 20th of February of 1989. And as a result of that the representatives of Century retired to consider the matter and they wrote a letter to the Chairman of the IRTC on the same date, the 20th of February of 1989, and that letter concluded with a request to the IRTC to seek a Ministerial directive under Section 16 of the Radio and Television Act of 1988.

Now, that request, that letter of request was forwarded to the Minister by the Chairman of the IRTC, on the same date as he received it. It was received on the 20th?

A. Mmm.

736 Q. I take it that being so, no meeting of the IRTC general body was convened to take place on the 20th of February, in order to consider whether or not the Commission should request the Minister to intervene pursuant to Section 16?

A. I don't think so, but I couldn't be sure.

737 Q. It would be exceedingly short notice for a start?

A. It would, very hard to get a quorum in.

738 Q. It would be unlikely and impossible for you to be informed of it and to have presented yourself, and indeed for any of the other country members of this Commission to have attended, isn't that so?

A. I believe so, yeah.

739 Q. Equally there are no records of any minutes of the IRTC having met on the 20th of February. In those circumstances may we take it that there wasn't a meeting of the body of

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the IRTC on the 20th?

A. Yeah, well the minutes would show anyway.

740 Q. Right. If we look to document 3980, we will see the letter of the 20th of February 1989, from the Chairman of the IRTC to Mr. Ray Burke, TD, Minister for Communications, and in it he states: "Please see the enclosed copy of a letter received today from Century Communications concerning the charges being sought by RTE for the provision of transmission facilities for the new independent national radio station. Please note, that 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 can not be entered into until this matter is cleared up. I look forward to hearing from you at your earliest convenience."

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Do you have a memory of this letter being written, or you being acquainted with its content at any point?

A. Obviously I haven't, because it is the 20th of February, as you say.

741 Q. Yes. As a matter of course these letters weren't circulated to the Board, every letter --

A. Oh God, no. I was getting enough correspondence.

742 Q. True. There were a number of applications to consider without considering the Secretariat's day-to-day correspondence with the Department. However, you were, presumably, aware of the facility which existed within the, under Section 16 of the Act, where a certain procedure could be followed by the Minister if a request was made of him by the IRTC, and if he had consultation with RTE, he

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could go on to make certain findings which would fix the level of charge for access and other facilities, isn't that right?

A. That's right.

743 Q. And as a member of the Commission, do you consider that that is a decision which would require to be made by the Commission rather than by the Secretariat, or any one member of the Commission?

A. Well, I would have felt that we delegated the transmission issue to the Chairman and the Secretary. He was, after all Executive Chairman. A full time Secretary --

744 Q. Well, what particular function do you think you were capable of delegating? Obviously you would have to have the power to delegate it in the first instance?

A. Mmm.

745 Q. Did you consciously delegate that the issue of whether or not the Commission should seek ministerial approval was one which was going to be removed from the Commission and passed on to the Chairman?

A. No, that wasn't --

746 Q. If so --

A. -- that wasn't signalled out.

747 Q. It wasn't signalled out?

A. No, it was the transmission issue left with the Chairman the Secretary and I would see that as part of it.

748 Q. In the event that you had been informed and were aware that the RTE figures had been reviewed on two occasions by the Department, had been reduced to a level that the Minister believed was reasonable in Irish conditions; would you see any reason for the Commission then to be directing or

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seeking the Minister to direct a further figure?

A. The only reason I can think of is obviously that it was the first radio station, national station and you wanted to give it every chance possible.

749 Q. But bearing in mind that the function of the Commission was not to subsidise, or seek to subsidise an applicant, whether they be the successful applicant or otherwise, and that they had to be judged on economic criteria. I assume that before you would have made a conscious decision to seek the Minister's intervention in light of his steps taken to date, that some review would have been carried out by you as to the difference which existed between the respective figures; that is the Century figure on one hand and the figure which the Minister had already found to be reasonable on the other, before you would request him, for the third time, to revise figures, isn't that so?

A. Yes, that is a reasonable assumption, yeah.

750 Q. And did you ever know, as a member of the Commission, that the Century figure of ú375,000, in their initial business plan, was one from which they were not prepared to deviate throughout their application?

A. I didn't, no.

751 Q. You weren't aware of that?

A. No.

752 Q. Were you of the belief that they were in fact going to negotiate the difference between their figures and the RTE figures when the license was --

A. I assumed they would negotiate.

753 Q. Now, obviously in a letter which was received on the 17th of February 1989, which is at document 3975, the Chairman

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was informed by Mr. Barry and Mr. Stafford that the Board had expressed the view that they were not going to negotiate those figures. If we look to paragraph 2 of that letter?

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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 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 effect the viability of the service. They expressed their concern that RTE, as custodian of the national transmission network had an obvious conflict of interest." Etc.

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Now, it is clear from that letter, obviously, that they were not going to budge, they hadn't budged, they wouldn't budge; isn't that right?

A. Mmm.

754 Q. This letter, again I take it, is not one which was circulated to you as a member, isn't that right?

A. I don't think so, but I cannot be sure.

755 Q. Right. And again, could I suggest to you, that in order for you to make an informed decision as to whether or not the Minister's involvement, by way of Section 16, should be sought in this instance, you would have wanted to have seen what the attitude of the other party was, because you might well have considered that unless they had very sound reasons for sticking to ú375,000, it would be inappropriate

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for you, as a body, to seek further ministerial involvement, isn't that so?

A. I am not sure of that.

756 Q. Mmm. Well, do you think that it is something that would have been --

A. Wasn't there a right under the Act to approach the Minister with a view to getting a reduced rate?

757 Q. There was of course.

A. So should the IRTC not be helping out somebody who was applying for it?

758 Q. Well, surely in making a decision as to whether they should or should not, they should have inquired themselves as to whether they were embracing or supporting a reasonable proposition on the one hand, or whether they were taking figures off-the-wall?

A. When you say "reasonable proposition" you are talking about 614 as against 375?

759 Q. A figure, without deciding what it might be, they would certainly have to inquire as to whether or not the figure that they were going to embrace, if they were embracing the Century figure was a reasonable figure, or whether it was a figure which came out of some accountancy projection, isn't that so?

A. It is reasonable. I think it is a reasonable assumption.

760 Q. Equally the fact that the Minister had considered on two previous occasions, at the request of the IRTC, the reasonableness of these charges, and had reached conclusions is something which would have to be borne in mind by the IRTC before it decided to further engage in this, isn't that right

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A. To a point, yes.

761 Q. You see in - throughout the documentation which has been furnished to the Tribunal, there would appear to be references in correspondence to the IRTC suggesting that the figure of ú375,000 was a figure which had been approved of by the English equivalent of the IRTC, or its closest equivalent, the Independent Broadcasting Authority, as being reasonable charges. And obviously that is something which would have some weight with the IRTC, isn't that right?

A. You showed me a document before that, but I don't remember seeing any document on that.

762 Q. Right. So it equally appears clear, that there was in fact no documentation which Century could rely upon which they could produce to the IRTC which stood up the figure of ú375,000?

A. Well, I can't comment for Century.

763 Q. As being one - no, I just want to make sure that we are on the same track here. The IBA did not ever produce a document for Century which stood over the ú375,000 figure. The correspondence on the other hand, from Century made constant reference to the ú375,000 being a reasonable figure, and inferentially suggested that it was a figure which had, as its source, the IBA; do you understand me?

A. Mmm.

764 Q. In those circumstances, if you were considering the question as to whether or not the Minister's involvement should be engaged in yet again, you would have some regard for the origins of the ú375,000 figure, isn't that so?

A. Yeah, if you thought it had the blessing of and the

imprimatur from the IBA, you know.

765 Q. And probably one of the first steps that anyone would have taken would have been to call on Century to produce the documentation, which they stated, stood up their figures with the IBA. And in the event that they were not able to do so, you might well consider whether it was appropriate to return to the Minister yet again to revise his figures, isn't that so?

A. A fair comment, yes. Hindsight is a, hindsight is a marvellous gift. There is a lot of things we should have done.

766 Q. I am sure there are. But if we go through the documentation, in particular the minutes of the IRTC, one of the things which does not appear to have been done in the decision-making process here, was to have authorised the making of a Section 16 application to the Minister?

A. You mean there was no formal board meeting authorising it?

767 Q. There is no record of it ever having been considered by the Board, whether it be formally, informally or otherwise; and certainly it was never the subject matter of a resolution of the Board?

A. I have no recollection of a discussion on it.

768 Q. Right. Were you aware that the Secretariat of the IRTC considered that the activities of Century were such that they, the promoters, firstly were too highly politicised in their relationships?

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Secondly, that they appeared to have unlimited access to ministers, and that this was on a whenever and wherever basis. This is a concern that was expressed by the

Secretary of the IRTC to Century, when they had a meeting in September, and they wanted to clear the decks as between them?

A. I wasn't, to be honest with you. I wasn't conscious of that.

769 Q. Mr. Connolly, the Secretary, whilst acknowledging that he stated both of these matters to the representative of Century at the meeting, was clear to indicate that he wasn't only expressing his own personal view, but that he was expressing the view which he understood to be the view of the general body of the Commission. Is that a surprise to you?

A. I mean, I wouldn't have been conscious of that, to be honest.

770 Q. Does it follow from that that you were not made aware of the Minister having an almost daily contact?

A. I wasn't.

771 Q. In relation to these matters?

A. I wasn't aware of that.

772 Q. That was a matter dealt with by the Secretariat and the Commission, as far as you are concerned?

A. Yes.

773 Q. Thanks.

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CHAIRMAN: The evening is moving on. Our stenographer has been working since 10 o'clock, so if there are any questions, I would like to let this witness go home. That is of course if he can get home, which is a different matter, which I can't control. Is there anybody now that wants to raise any matter and raise it briefly?

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MR. FOX: I have no questions Chairman.

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THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. O'HIGGINS:

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774 Q. MR. O'HIGGINS: Just very briefly, Mr. McDonagh, do I conclude from your evidence that you are not in a position to offer any comment of the reasonableness or unreasonableness of any of the particular transmission charge that was mentioned?

A. I am not really. I don't know enough about it.

775 Q. MR. O'HIGGINS: Thanks very much Mr. McDonagh.

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CHAIRMAN: Thank you very much.

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MS. EGAN: I have one or two brief questions Chairman.

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CHAIRMAN: Brevity is the sole of wit at this hour of the evening.

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THE WITNESS WAS EXAMINED AS FOLLOWS BY MS. EGAN:

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776 Q. MS. EGAN: Very good Chairman. Mr. O'Donoghue, several of the other members of the IRTC have had put to them the fact that the Chairman operated the IRTC decision-making process by consensus rather than by majority voting as such and equally, it was put to the other members of the IRTC, that Section 7(5) of the Radio and Television Act says that questions at meetings are to be put by majority and decided on by a majority vote of the members present. Are you able

to say from your experience, Mr. O'Donoghue, whether or not in fact decisions were made by the Commission on a majority basis?

A. This were always made by a consensus. I don't remember an occasion where it went to a vote.

777 Q. But when a decision was made on a consensus basis, did the decision go in accordance with the majority of the members expressing their opinion?

A. Oh yes, definitely.

778 Q. In relation to the appointment of the solicitors, accountants and bankers, to the IRTC at the first meeting, are you of the opinion, Mr. O'Donoghue, that if you had wished to propose alternative candidates you would have been in a position to do so?

A. I believe so. It was just that it was the first meeting and the inaugural meeting and one didn't want to be awkward, I suppose.

779 Q. In relation to the award of the license to Century, Mr. O'Donoghue, were you at any stage influenced by Mr. Burke in that regard?

A. No, I wasn't.

780 Q. And were you at any stage approached by Mr. Burke in relation to the award of the license to Century?

A. No.

781 Q. Are you aware or have you become aware, until recent times, of any rumours or allegations of fees in return for licenses?

A. The first I heard of that was when Eunice O'Raw spoke to me. I had never heard of it before. I was amazed.

782 Q. Finally Mr. O'Donoghue, in your opinion did the Commission

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at all times act independently of Mr. Burke, both in relation to the awarding of the license to Century and in relation to its other functions?

A. It always acted independently. They were very independent people on that Commission, all with minds of their own.

783 Q. MS. EGAN: Thank you Mr. O'Donoghue.

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THE WITNESS THEN WITHDREW.

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CHAIRMAN: Thank you very much for coming up in all the circumstances. I am sorry that we couldn't have been of more assistance in getting you from the airport.

A. The taxi drivers did a job on that.

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CHAIRMAN: They did indeed. There you are.

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MR. O'NEILL: I have remaining, Sir, one very short witness, Mr. Greg Lawless. I expect to conclude his evidence, certainly within ten minutes, if the stenographer and yourself --

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CHAIRMAN: If the stenographer is willing to carry on, I am willing to carry on. But she is the young lady who has been working very hard since 10 o'clock, since this morning. I do have sympathy for her at this stage.

Mr. Lawless, is he a Dubliner?

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MR. O'NEILL: He certainly is, by birth in any event.

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CHAIRMAN: All right, let's see Mr. Lawless.

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MR. O'NEILL: He will be quite short.

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CHAIRMAN: Let's see him. What I meant by being a
Dubliner; is he a Dublin resident? That is what I meant by
that.

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GREG LAWLESS, HAVING BEEN SWORN, WAS EXAMINED BY MR.
O'NEILL AS FOLLOWS:
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784 Q. MR. O'NEILL: Mr. Lawless, in 1989 I think you were a
member of staff of Davy Corporate Finance, is that so?

A. That's correct.

785 Q. And was that firm engaged to place the shareholding of the
new company, Century Communications Limited?

A. Correct.

786 Q. And I think in August 1989, you were in negotiation with
Century as to the terms of the placing agreement which
would be reached between your firm and the principals of
Century Communications, is that so?

A. Yes, that's correct.

787 Q. And an agreement was concluded between you. And is it the
case that that agreement was an agreement for a private
placing, with the consequences that no public disclosure of
the information would be made, save to certain nominated
persons?

A. Without the prior consent of both parties, yes.

788 Q. Without the prior consent of both, isn't that so?

A. Yes.

789 Q. As a result of that, was there a limited private placing
and circulation of documents?

A. Yes, less than 50.

790 Q. In the main were the persons who were circulated
institutional investors, and were the documents sent to
named individuals in those institutions for their
consideration?

00170

A. In the main.

791 Q. In the main, were those persons or bodies who would in the normal course be on your list as persons to whom private placings, such as this, would be circulated?

A. That's correct.

792 Q. Insurance companies, pension funds etc.

A. Standard investment firms.

793 Q. In two instances were the placing documents for Century Communications sent to persons who were not institutions as such?

A. Yes, that's right.

794 Q. Yes. And in one of those instances was that to an accountant, who in turn represented the interests, who had previously received private placing documents and taken up those placements?

A. That's correct.

795 Q. Was the remaining individual and only individual to whom documentation was sought, described as a Mr. PJ O'Mara of Government Buildings?

A. Yes.

796 Q. Yes. Now, can you indicate whether or not that individual was circulated as a result of a decision by Davy to do so, or whether you were informed by the promoters that he was a person to whom documentation should be sent?

A. I am guessing here to a certain extent, but I would imagine that in the main it is more likely that he was given that document as a result of a request from one of the promoters.

797 Q. Right. I would like you to look at a document which is at page 435, sorry 434. This is a facsimile transmission

cover sheet from Davy Corporate Finance. You will see that it is from you, as the sender, and it is to Mr. Jim Stafford. It is dated as far as we can decipher, the 28th of the 8th of 1989. And there is one page, "further information" which states "as requested" if we look to the next document, that is at page 435? Yes, this I am afraid is the only copy which we have received, and it has come to us through Mr. Stafford's records, and it is indistinct as we see. It is to Mr. PJ - it is somewhat blank - "Government" blank - Upper Mount Street perhaps "Dublin 2. Re: Century Communications". "Dear Mr. O'Mara, I enclose the Century Communications" and it runs out of text there. "As this is not a public document, I would appreciate - Kind regards, yours sincerely"

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Can you speculate as to what exactly you were saying in this letter to Mr. Mara, though addressed as Mr. O'Mara? Firstly, were you enclosing the Century Communications private placement documents?

A. Yes.

798 Q. And secondly, were you advising him that this was not a public document that he would have to maintain the confidentiality of it, not disclose its content to any other person and --

A. Nor distribute it.

799 Q. Nor distribute it.

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Do you know why it was that Mr. Mara addressed, here as Mr. O'Mara, was receiving this document?

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A. I can't fully recollect. The only thing I can conclude was that I was requested to send it to Mr. O'Mara at the request of one of the promoters of Century.

800 Q. Right. Was it normal in circumstances to circulate documents to private individuals for information purposes other than, rather than for subscription purposes?

A. It wouldn't have been unusual.

801 Q. It would not have been unusual?

A. It would not have been unusual.

802 Q. And what sort of persons would receive this documentation for information purposes?

A. Advisors of one kind or another.

803 Q. Right. Have you any recollection of Mr. Mara being named as an advisor, or any other capacity in which he should receive this documentation?

A. No.

804 Q. I see. As part of the placing - sorry, as part of your agreement with the promoters of any scheme in which you will place it with potential investors, is there a contractual obligation on the promoters to disclose to your firm the ownership, whether it be beneficial ownership, held in trust or otherwise, of the company in question?

A. Yes.

805 Q. Were you ever informed of the fact that Mr. Mulhearn had invested a substantial sum, equal to the sum by the named promoters of this scheme?

A. I can't recollect being told.

806 Q. Right. Is it a matter which would be material to you to know for the purpose of circulation, or advising potential investors that there was such an interest held by a person

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such as Mr. Mulhearn?

A. It would normally have been told, I know by us, and noted by us in the document.

807 Q. Obviously you might receive a request from the persons who were circulated with the documents to know who exactly was behind it and to what extent it was being promoted?

A. It would be standard practice to give the information in terms of the existing shareholders/promoters to the places.

808 Q. I see. Thank you very much.

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MR. McMENAMIN: For fear of adding to the stenographer's work. I am not even going to --

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CHAIRMAN: You are not even going to put your hand --

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MR. McMENAMIN: I am not even going to say "no questions."

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THE WITNESS THEN WITHDREW.

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CHAIRMAN: Thank you very much for coming down. I am glad to be able to get you back to other activities tomorrow morning. Thank you. Well tomorrow morning at half past ten.

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MR. HANRATTY: Yes Sir.

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CHAIRMAN: Half past ten tomorrow morning, very good.

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THE HEARING THEN ADJOURNED UNTIL THE FOLLOWING DAY, FRIDAY

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THE 24TH NOVEMBER 2000, AT 10:30 AM.

