

THE HEARING RESUMED ON THE 24TH OF NOVEMBER, 2000, AS

FOLLOWS:

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CHAIRMAN: Good morning everyone.

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MR. HANRATTY: The next witness, Sir, will be Mr. Michael Laffan.

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Mr. Laffan please.

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MICHAEL LAFFAN, HAVING BEEN SWORN, WAS EXAMINED BY MR.
HANRATTY, AS FOLLOWS:
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1 Q. MR. HANRATTY: Good morning, Mr. Laffan.

A. Good morning.

2 Q. Mr. Laffan, I believe that you were the Chief Executive of
Century Communications Limited?

A. That's correct.

3 Q. And am I correct in thinking that you commenced on the 1st
of May of 1989 in that capacity?

A. That is correct. I commenced on the 1st of May.

4 Q. And did you - were you engaged by Century Communications
Limited on the basis of a three year contract?

A. That is also correct. I had a three year contract with
Century Communications Limited.

5 Q. Am I correct in thinking that you were, in fact, approached
by somebody on behalf of Century to see if you would be
interested in the position?

A. Yes, that's correct. I was approached during February and
March of 1989 at a time at which I was already well settled
in an existing position with an international company.

6 Q. Was that Electrolux?

A. Yes, I was Managing Director of the Electrolux Group in
Ireland and had been for a number of years.

7 Q. Yes. Can I just briefly ask you what position do you now
hold?

A. I am now a company director.

8 Q. Yes. Can you just briefly tell us what you understood
your duties and responsibilities would be in your capacity

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as Chief Executive of this company?

A. When I arrived at Century Radio in May of 1999, it was clear to me that the key issue for my particular task was to ensure that the organisation, the structure, the management, the team and the facilities were put in place to enable Century Radio to go on air. In fact, at the beginning I think the ambition was June 1989 as opposed to what subsequently, what I subsequently agreed as in September.

9 Q. Yes. To whom would you, as Chief Executive, be reporting?

A. My formal reporting line was to the Non-executive Chairman, Mr. Laurence Crowley. The founder directors, Jim Stafford and Oliver Barry took a very active day-to-day involvement and role in the business, and as such, I would have had most day-to-day contact with Jim Stafford and Oliver Barry.

10 Q. Yes, could you just confirm to us that the other principal members of the management team were Miss Noreen Hynes who was on the financial side and Mr. Seamus O'Neill who was on the sales side, is that correct?

A. That is correct. But there were other members of the management group.

11 Q. Who were there?

A. There would have been Mr. David Davin-Power who was the Head of News; Mr. Mark Story, who was Head of Programming.

12 Q. Yes?

A. Mr. Keith Pringle who was Head of Music.

13 Q. Yes. Now, Mr. Stafford and Mr. Barry, we know, were directors of the company, but it also appears from the evidence that we have heard, that they were very much hands-on directors?

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A. That is correct.

14 Q. And that they were in the premises, as it were, on a regular basis?

A. They were in the premises on a regular basis, but to be precise, I would have met with Jim Stafford and Oliver Barry throughout that period up to the launch date on a daily basis more frequently in Jim Stafford's office in Kildare Street or in the Shelbourne Hotel early in the morning.

15 Q. Yes. Now, the project, we understand, was a fairly ambitious project in that it envisaged, first of all, 24-hour broadcasting, 24 hours a day broadcasting?

A. Correct.

16 Q. It envisaged a promotion of talk show or talk input programming which is more complicated, I understand, than simple music transmission?

A. Yes.

17 Q. It requires more organisational skills and organisational resources?

A. Correct.

18 Q. What were the financing arrangements as you understood them when you commenced with Century in May of 1989?

A. When I commenced in May of 1989 a significant level of activities and costs had already been engaged upon and completed. My understanding was, at the point of commencement, when having asked that question, was that the availability of funds would not be an issue once the right management team was available.

19 Q. Yes?

A. And that it was capable therefore, of driving this business

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and this project forward.

20 Q. Yes. But was there any particular budget agreed upon or arrived at or decided upon by the Board, for example?

A. At the time of my arrival, a Mr. Eamonn Griffin of Quinlan Ryan at the time had prepared draft budgets and those budgets indicated an expected level of analysed revenue in Year 1 in the order of €3.2 million, to my memory, and expected to see losses of approximately half a million pounds which would move towards break-even and profit in the second and third year, but it was clearly seen at the outset as a minimum of a three year project, and from the experiences in parallel developments in the UK at an earlier stage, it was seen as more likely to be a seven to ten-year project. Funding was seen as being necessary initially to get the project up and going to enable the management group to put the programming in place, and then to make sure that the confidence in selling marketing was in situ to generate revenue in the top line, and that in turn would dictate or determine the level of incremental monies that might be required as the project evolved and developed.

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At the outset it was also understood that availability of funding through placement was an option for the business and as such, depending upon the subsequent evolution of the business plan, that could be subsequent sums of money.

21 Q. Yes. I think you have told the Tribunal in your statement that at the outset that there was an assurance from the founding directors that money would not be a problem?

A. Correct.

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22 Q. And I think in August of 1989 the directors raised ú1.5 million through a private placing, is that correct?

A. Correct.

23 Q. However, it does appear at some point not very long after start-up that funding did, in fact, become a problem?

A. It did.

24 Q. Perhaps I might just come back to that in a moment. If we could just go back to May when you started. I take it would you have been brought up-to-date by somebody as to the history of the company up to that point in time in relation to, for example, the award of the franchise to Century?

A. I was assured at the outset that it was one of the key questions that I would have asked, that there was little point in giving up the position of Managing Director in a well established company with the benefits that went with that position.

25 Q. Am I correct in saying that you had a fairly successful, apart from Electrolux, you had a very successful business career up to the point when you went into Century?

A. Yes, I am sure I would have.

26 Q. I understand that you have enjoyed a successful business career since you left Century?

A. That's correct, yes. But to come back to your original question, I was particularly keen to make sure that there was a license in place that in actual fact the promoters were in fact the holders of the National License, because I would not have been privy to, nor aware of, nor interested in the developments that were going on in independent radio development in Ireland. I was busy doing my own job and

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wasn't particularly keen or interested in getting involved in the sector. I was aware that there was a need to finalise the broadcast contract with the IRTC, but that was presented more as an issue of approval of the programming content and as such, compliance with the 20 percent odd speech programming content requirement, and the content of Irish language programming to be consistent with, I understood, the application for the license that had been submitted.

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I was also aware that while there had been initial discussions on the idea of independent transmission, that the principled decision and policy decision had been taken that Century Radio was going to effect its broadcasting by effectively using the national transmission network as owned and operated by RTE. So it was not an issue really for discussion of an alternative means of generating a national signal and therefore, that was an area that was already settled.

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So I was quite confident at the outset that there was a transmission network in place, which to me at the time seemed a great advantage.

27 Q. Yes.

A. There were issues of the broadcast contract that needed to be finalised with the IRTC, but that was more content than principle or substance, and that the license was in place. So the fundamental documents or infrastructure, I felt, were there and now it was a matter for me to apply my skills in organisational development, planning

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coordinating, controlling and getting the project off the ground.

28 Q. Yes. So from your prospective as Chief Executive, the franchise, we know, had been awarded on the 18th of January of 1989, we know that the Minister had issued a directive to RTE in respect of transmission charges under Section 16 of the Act on the 14th of March of 1989?

A. Mm-hmm.

29 Q. So that when you came into your position there were two significant matters outstanding, as it were, namely the necessity to conclude a broadcasting contract with the IRTC and the necessity to conclude a transmission contract with RTE?

A. That's correct.

30 Q. In addition to which you were also confronted with the requirement to take whatever organisational steps were necessary to get the station ready to go on air at whatever point in time that could be achieved?

A. Correct, absolutely.

31 Q. And that involved a settling on the, all the various organisational and staffing arrangements that had to be made and settling on the programming which was also necessary for the contract with the IRTC in any event?

A. It was. I should clarify that prior to my arrival a number of positions that would be reporting to me had already been either settled upon or substantially settled upon.

32 Q. Yes. Very much so. For example, in the submission which Century made to the IRTC they set out their stall in relation to what their intentions vis-a-vis programming was?

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A. Mm-hmm.

33 Q. They set out their stall in a whole range of issues in which the IRTC were interested in and the Act itself had certain requirements that had to be complied with as preconditions and conditions which, in effect, one could reasonably expect were going to be incorporated in the contractual terms between Century and the IRTC, isn't that so?

A. And were, in fact.

34 Q. And were, in fact?

A. Yes.

35 Q. Would I be correct in saying that you were not in any sense left with the brief to achieve this conclusion of this contract on your own, but that Mr. Barry and indeed Mr. Stafford took a very hands-on proactive input in these matters?

A. Absolutely.

36 Q. We have heard, both from RTE and the IRTC, that the negotiations which they had, each of them with Century, were extremely difficult?

A. Yes, they were long and arduous and my recollection was that there was very long days and some very late night and it was seven days a week sometimes, but in the nature of this ground-breaking project, personally I wasn't surprised at that. I think what seemed to be quite difficult to come to terms with at the stage was the apparent degree of anger or frustration which seemed always to affect the discussions between Century and RTE, more so than between Century and the IRTC.

37 Q. Well both RTE and the IRTC have witnesses from these

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organisations who have given evidence in relation to the negotiations. In the case of the IRTC, the evidence essentially was that Century was inclined to make demands and requirements which were unreasonable or in some cases impossible such as, for example, an automatic renewal after the expiry of the 7 years which the IRTC witnesses have told us was legally impossible, that they could not bind any future award of a franchise. Do you remember that issue?

A. I do, I remember that issue. It is ten years ago now, but I do remember it. I think that the genesis of that issue was borne more out of the need to look at the UK market and to realise that many of the independent stations in the UK hadn't succeeded, in fact, in coming, in breaking even or becoming profitable until after quite a period of time, in some cases in Capital Radio, I believe it was more than seven years. I think that the motivation was on the basis that certain long-term financial commitments were needing to be made by Century, and the ability to look at a period longer than a guillotine of seven years, if it was seven years a right to renew, to automatic renewal for a further seven year period, it meant in looking at certain financial arrangements one could take a 14 year view instead of a seven year view. That was an issue.

38 Q. It is a difficulty obviously that will confront anybody taking a franchise for seven years if they buy equipment that has a longer life than seven years. That is always going to be a problem?

A. Correct.

39 Q. It is something that they are going to have to factor in.

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Would I be right in thinking this was a matter that was essentially insisted upon by Mr. Stafford?

A. You would be correct in that.

40 Q. On the RTE side they were saying that Century were taking a position which essentially appeared to be an attempt to improve their position even beyond the, as they would see it, advantageous position which they achieved in the directive?

A. RTE, I can understand how RTE would see that and say that.

At the very outset and at the background to all of this, RTE fundamentally did not and would not welcome Century Radio. RTE saw Century Radio has coming into their territory, using their equipment to become an effective competitor to them and at the same time publicly high profile people such as Oliver Barry were directly approaching people such as Gay Byrne and Marion Finucane. There was an underlying core of anger and none, if you like, non, if you like non commercial background noise and activities which set the tone for all elements of discussion.

41 Q. Well, leaving aside any decisions at policy level for the moment, just look at the coal face, as it were, the interface between operatives in RTE and Century. We have heard evidence from Mr. Curley who was the technical head of RTE at the time, and Mr. Branigan who was intimately involved as the roll out, as it were, of the transmission system. Each of them have given evidence to the effect that they were, at all times, willing to and anxious to enter into a contract with RTE or with Century, which was appropriate to the directive, and that they did, in fact,

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comply with all of their obligations under their arrangements with Century. Mr. Curley, for example, said that they, having received the directive, immediately set about producing and did, in fact, produce the first draft of the contract fairly, relatively quickly after that.

And, in fact, by the middle of, I think it was June, had produced four draft contracts.

Is that your recollection?

A. My recollection is that is correct. I would not for a moment dispute - in fact, I would quite positively praise the technical competence of RTE and their ability to provide a national transmission network. I believe the pace at which progression to develop the national transmission network, the expected level of pace on the part of Century facing an on-air date time of the 4th of September, and the sense of ability to deliver on that by RTE were, relatively speaking, miles apart.

42 Q. Well, we will just look at that a little bit more closely.

We know that the contract was signed in the second half of July?

A. Correct.

43 Q. RTE took the view that they obviously weren't in a position to do anything in relation to it, apart from producing specifications and so on, and perhaps doing some planning, but in terms of actually ordering equipment until the contract was signed, that doesn't appear to be an unreasonable view, does it?

A. Not at all unreasonable, no.

44 Q. The contract having been signed in the latter half of July, they actually had Century broadcasting on the 4th of

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September, isn't that right?

A. They had Century broadcasting on the 4th of September.

45 Q. The contract which was signed with Century had specific provisions in, I think it was Clause 7, dealing with their obligation to provide a transmission system progressing over a period of, I think it was three years or so?

A. That is correct. My recollection was that they were - I think there was a programme to put out transmission equipment over 16 sites, from memory.

46 Q. That's right.

A. So it was a very substantial volume of activity, no more than if CIE tomorrow had a competitor setting up a separate rail network across the country.

47 Q. The evidence from RTE appears to establish, and they appear to be borne out by the contents of the actual contract which was signed, that they didn't, in fact, have any contractual obligation to provide any kind of coverage to Century at any time in 1989?

A. That is true, but the backdrop of that discussion, I mean, obviously these discussions were going on long and hard with the involvement of the Department of Communications. My recollection is, specifically Mr. Bernard McDonagh, was that there was always an understanding, and this is reflective, on a willingness of all parties - IRTC, the Department, Century itself and RTE, that there would need to be, and it was agreed that there would be a temporary transmission arrangement which would facilitate the 4th of September launch date, but that that was seen as an agreement in principle between the parties, and that - well, I don't remember the details of the actual document

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itself, I believe that the discussion, the detailed difficult discussions that took place took place in the context of the long-term establishment of a national transmission network of a permanent nature, but it, at all stages throughout the period up to the end of July, there were repeated discussions about that we can get on-air by the 4th of September using temporary transmission links and temporary transmission facilities which is, in effect, what happened.

48 Q. Yes. If we just look, for example, at the schedule, the second schedule to the contract and we will deal with the contractual position first and then move on from the contractual position.

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That sets out what the contractual obligations of RTE are in terms of the provision of transmission coverage, isn't that so?

A. That's correct, from memory.

49 Q. And the first obligation arising not until the third quarter of 1990, in fact, isn't that so?

A. That is true. That is true.

50 Q. Aside from that, RTE said that they were requested by Century to effectively get them up and running as quickly as possible by the use of temporary transmission facilities in the meantime?

A. Correct.

51 Q. And essentially what they were requested to do, we have been told, was to put up a transmitter for them in Dublin, Cork and Limerick, so that they could get as much of the population of the country as possible in the shortest space

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of time possible?

A. Correct.

52 Q. RTE have told us that they did that by putting up temporary transmitters in Dublin, Cork and Limerick as requested, these being transmitters which RTE used as spare capacity in the event of breakdown?

A. Correct. I think they may also have purchased some small 2 kilowatt transmitters, which was not a huge cost, to ensure that they had back-up to back up.

53 Q. Yes. They say that they not only met every contractual milestone which they were obliged to meet but that they exceeded them?

A. I am sure if you take the contractual situation as per that schedule and per the contract concluded at the end of July, that is, in technical terms, absolutely correct. In terms of the principle of providing a level of coverage through a temporary transmission network, which was not the subject of a precise specification of how it would be done or with which type of equipment it would be done or how a coverage map might be verifiable, that the actual level of 60 percent plus coverage from Day 1 was being delivered, no, there was no specification on that. But it was understood and agreed and accepted from the outset that RTE, with the use of a temporary transmission facility, were in a position to deliver 60 percent plus national coverage.

54 Q. Well, can we just look at that for a moment, and we will perhaps stay for a moment with the temporary arrangements.

A. Okay.

55 Q. What we have been told about the temporary arrangements were that there was good coverage in Dublin which covered

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the majority of the population, that there was reasonable coverage in Cork, there were certain difficulties in Cork, and that there was unsatisfactory coverage in Limerick in that the temporary transmitter was located in the middle of the town?

A. Mm-hmm.

56 Q. So some RTE premises I think in the middle of the town of Limerick, there were technical difficulties which couldn't be overcome. There was a possibility of a site on a hill outside Limerick, I can't actually remember the name of it, but they couldn't have access to it because Telecom owned it, I think. Do you remember that?

A. I remember discussions about that, yes I do. I think that is a fair comment.

57 Q. What Mr. Curley, in particular, and to a lesser extent Mr. O'Brien, Mr. Branigan have told the Tribunal is that it was never envisaged that there was going to be 60 percent coverage on Day 1, albeit that Century advertising personnel were telling advertisers that there would be 60 percent coverage on Day 1?

A. I remember discussions and conversations during those lengthy meetings. While I cannot say that it was specifically a commitment or an undertaking or a specification, the understanding, the genuine understanding of those discussions was that the provision of temporary facilities, temporary transmission facilities in that interim period between the start-up date on the 4th of September and the time at which our own, if you like, RTE based permanent facilities would come in place, absolutely my understanding was that RTE did not contest or dispute

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the fact that it was possible to deliver 60 percent plus national coverage by the use of reliable temporary links from existing structures based in Dublin, Cork and Limerick, and the extent to which some local radio stations placing relatively unsophisticated masts and equipment in Three Rock mountain were able to provide very good quality coverage of the whole of the Dublin area and stretch as far as Naas and north as perhaps as Dundalk at times depending on weather and west towards Athlone. That gave us confidence that a temporary facility using RTE's higher and four powerful masts should have enabled us to get the 60 percent which was not refuted in discussions with RTE prior to the conclusion of the formal broadcast contract.

58 Q. Well, what we have been told by the technical personnel from RTE is, to summarise it, that they provided as much coverage on a temporary basis as they could within a short a timescale as they could.

A. I believe in good faith and in hindsight they probably did, but the reality is that the discussions that lead us to get into a situation where we were willing to proceed with the establishment of the first national radio station, independent radio station on a temporary transmission basis were predicated on the understanding that coverage from the 4th of September would be in excess of 60 percent.

59 Q. Well, who in RTE, do you say, told you that?

A. I believe in the discussions which would have involved the persons that you have named on the technical side, that was always the understanding. My recollection of being at those meetings is that they would have had great difficulties, it would be a gross misrepresentation on the

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part of Century Radio to have put out a rate card and to have stated publicly that we were going to have 60 percent national coverage from RTE's network if knowingly we weren't going to have. We would not have, I certainly would not have stood over that and would not have done that.

60 Q. Well that may well be so and it does appear to be the case that advertisers were, in fact, told by somebody in Century that the coverage was going to be 60 percent from Day 1, but I have to suggest to you that the evidence which this Tribunal so far has received from the technical people, principally Mr. Curley and Mr. Branigan, does not support what you say and that neither of them gave any assurance to Century that there would be 60 percent on Day 1.

A. I have not aware of that. As I said, there was a specification. In taking, in fact, on board the principle that there was goodwill in the technical side of RTE which I fully recognise, there was goodwill, and I personally worked quite well with the technical people in RTE and found them to be competent capable people, but I have to say quite sincerely that there was a, there was an understanding that while we were hammering out a difficult and contentious long-term transmission arrangement, the fundamental understanding at those meetings was that temporary links covering Cork, Limerick, and the greater Dublin area would provide Century from Day 1 with an excess of 60 percent coverage.

61 Q. Well, could I suggest to you that if Century had such an understanding, it must have been a misunderstanding?

A. Clearly in the light of subsequent events it proved to be

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so, but in the course we would not have put out a rate card based on an expected coverage, based on a transmission, a temporary transmission system knowing what was happening at that time also in the Dublin area, knowing where we could receive 104 or 98FM, given the capacity of the 2 kilowatt transmitter on Three Rock mountain to do as much as it was doing despite the certain restrictions in terms of where the signal was supposed to cut off for local radio. It seemed to us that this was not a huge technical exercise. It was not linking 16 stations. That said, we had taken a fundamental position that the experts, the technical experts and the technical expertise in managing the topography and the geology and the transmission of air wave or radio system or TV system in Ireland indeed resided in RTE. We were not, as an organisation, in a position to actually unilaterally go and technically verify or validate that what they were proposing in Limerick would or would not breakdown. In the light of subsequent events, the coverage itself was an issue, as clearly became obvious fairly quickly, but what was of greater con --

62 Q. Sorry, the level of coverage. The level of coverage in terms of the coverage that was coming --?

A. What was of even greater concern was that the signal broke down frequently and without explanation, so this created problems.

63 Q. Are you talking about Limerick?

A. I am talking about Limerick and also in Cork, from my memory.

64 Q. We have been told that the difficulties within Limerick and Cork stemmed precisely from the fact that these were

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temporary transmitters commissioned specifically to try, as far as possible, to get as much coverage as possible for Century in as short a time as possible?

A. And that is absolutely true, but from the point of view of Century Radio on air from the 4th of September, whether the coverage was 30 percent, 40 percent or 60 percent, in fact, what was even more damaging was that you would have marketing managers or marketing directors of companies or key executives from advertising agencies in Limerick on a particular afternoon or in Cork on a particular afternoon in the centre of the city and no Century signal to be heard, regardless of whether it was 60, 50, 40 or 30, there were times, and repeatedly there were times when the signal simply disappeared.

65 Q. I accept that, Mr. Laffan. What I really want to elicit from you, are you suggesting that anybody in RTE deliberately, as it were, sabotaged the level of coverage or withheld the level of coverage that should have been available to Century?

A. Not for a moment.

66 Q. Right.

A. Not for a moment.

67 Q. Can I just refer you to a document --

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CHAIRMAN: Could I intervene here. Is it your - the level of coverage which you believed you could get, was, as I understand it, dependant upon the acquisition of particular kit and equipment or facilities. The purchase, which, in fact, the delivery time for such was, I think, four months or thereabouts and by virtue of the fact that no agreement

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was reached, I don't want to say why it wasn't, those contracts were not entered into and consequently the problems that you are just after addressing arose. Isn't that a fact? Have I got it wrong?

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MR. HANRATTY: I think you are referring, Sir, to the permanent installation.

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CHAIRMAN: Yes, I know it was permanent but the fact of the matter was that if the contracts had been entered into at an appropriate point of time, the kit and equipment for the permanent would have been available and this problem wouldn't have arisen. That is as I understood it. I may be wrong.

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MR. HANRATTY: Yes, I think the evidence was that it would - if the orders were placed earlier obviously --

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CHAIRMAN: It was the problem of not placing the orders not agreeing to or finance them.

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MR. HANRATTY: Yes. I was, in fact, going to come to that.

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CHAIRMAN: Sorry, I beg your pardon. I am sorry for interrupting. That is, as I understood the station. Perhaps we could clarify that whole situation.

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MR. HANRATTY: I certainly will, Sir.

68 Q. Can I just refer you briefly to page a 236, Mr. Laffan.

Essentially the timescale appears to have been that the Minister gave his directive on the 14th of March. There was a meeting, there was clarification sought in respect of certain aspects of the directive in correspondence which occurred subsequent to the directive and there was a meeting between the Minister and RTE at the end of March, at which, among other things, he agreed to a review of the maintenance charges after 18 months. But essentially the start-up date was therefore the beginning of April. This is a document which is dated the 12th of April. This is a minute of a meeting which was held between Mr. Stafford and Mr. Barry and certain personnel from RTE. You weren't at the meeting. But what it clearly indicates is that this meeting was held at the request of RTE, and that at that meeting, a range of issues referable to getting Century up and running were addressed and dealt with. And that was regarded as the first of, at least by Mr. Curley, of a series of meetings which he considered essential to keep the show on the road, as it were, and to progress the matter.

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It appears from the documents which have been previously put in evidence, I am not going to go through every one of them with you, that Mr. Curley did appear to be driving the thing and to be trying to set up these meetings and driving to have an agenda for the meetings to move things along, was that your recollection?

A. May I go back to the Justice's comment earlier just to clarify. There is a point I would like to clarify on that.

69 Q. Is this on the permanent transmitters?

A. It is on the point that was raised. The fundamental issue was that the provision - and the agreement between Century and RTE that the launch date of the 4th of September was a feasible date - was dependant upon two factors; number one, the management group's ability to get facilities and programming on air to be received, and number two, the understanding that we had, that RTE could use temporary facilities, in other words, back-up transmitters that did not need to be purchased on a long league time, which was at sites for Dublin and Cork and Three Rock in Dublin and therefore the ability to provide the 60 percent plus, as we understood, coverage was not a function of the long-term transmission agreement that was being negotiated arduously tortuously but was a function more of the fact that there was already available capacity on antenna existing on these sites and that there were temporary or back-up transmitters, to use your phrase that could be brought into action quickly with links to make sure that the coverage was in place. That action enabled us to talk about the 4th of September and was quite separate and independent from the other issue of the long-term purchase of transmitters and the development of the --

70 Q. Which we will deal with separately.

A. I just want to clarify that point before coming on to this.

71 Q. I just want to stick, if I may, with the temporary transmission arrangements first. We know the 4th of September was ultimately the nominated start-up date. We know from the signing of the contract everybody was working towards that date. You have, as I understand your evidence, already accepted that the technical personnel in

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RTE did their best to get Century as much coverage as possible in as short a time as possible?

A. That is correct. I do believe that, ultimately that proved to be less than what we understood was capable and maybe was less than they anticipated that they could do.

72 Q. That is what I wanted really to explore with you, because the evidence from the RTE witnesses seems to suggest that if anything, they got you more coverage than you could reasonably have expected by the 4th September, for example?

A. They may very well have but the reasonable expectation, I again have to say, was based on the understanding throughout the discussions that I was privy to, that 60 percent plus was a very deliverable level of coverage.

73 Q. Well --

A. It proved subsequently not to be, but sincerely that was the understanding throughout those discussions, while it did not form part of any precise contractual commitment or obligation or technical schedule.

74 Q. It would seem to follow if, as you say, you accept that RTE technical people did their best to get you as much coverage as possible in as short a space as possible, it seems to follow that the Century expectation of having 60 percent on the 4th of September was, in fact, unrealistic?

A. Well, again we couldn't have fabricated that number. We couldn't, because we didn't have a transmission system, we didn't have transmitters. We didn't control links of a temporary nature. We couldn't have come up with the number, 60 percent. The only organisation that could have come up with that number was RTE. They could have said to us Day 1: 'look, temporary facilities using these two

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kilowatt back-up transmitters which we have for emergency purposes will deliver 50 percent or 40 percent.' Had that been the case, had they said, 'Look, no we can not deliver you Limerick or we can not deliver you Cork,' we could have taken a view of putting a 2 kilowatt transmitter of our own which are readily available at short notice and like most of the taxi cab companies in Dublin, put on an antenna or like FM104 or 98FM we could have put a mast somewhere on Three Rock Mountain and actually covered the Dublin area on its own right off of our own steam, because it was a national radio station and it was a national license, it was imperative that we were dependant upon the ability of RTE to give us a degree of national coverage from Day 1, hence 60 percent was a figure that came out of that discussion.

75 Q. Well what you are saying is that it was your understanding or at least Century's understanding which arose from discussions with RTE that there would be 60 percent, is that right?

A. Absolutely. Can I also add --

76 Q. I just want to try to be as clear as possible on this particular point. On what statements by whom did you base an understanding that you were going to have 60 percent on Day 1?

A. On the basis of statements and discussions that took place throughout the period when we were discussing and negotiating the long-term permanent contract. The issue of short-term temporary transmission was discussed on that basis and also --

77 Q. Sorry, Mr. Laffan, let's just be clear about this. Did

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anybody in RTE say to you that you would have 60 percent coverage on Day 1, on the 4th of September? And if so, who?

A. I am quite sure that in the course of the conversations it would have been discussed between myself, Peter Branigan, Mr. Curley, Mr. Barry - Oliver Barry, Jim Stafford at different stages. That is my recollection but there is a document --

78 Q. Leave Mr. Barry and Mr. Stafford out of it. I am talking about discussions you had with Mr. Branigan or Mr. Curley. Are you saying that either of those gentlemen told you that Century would have 60 percent coverage on the 4th of September?

A. I would have had discussions, particularly with Peter Branigan, where in discussions with him we would have discussed the deliverability of 60 percent of coverage, and at no stage did Peter Branigan say to me, "You will absolutely not have of 60 percent coverage or you will have X percent coverage. We should be able to deliver the coverage."

79 Q. Were you asking for 60 percent coverage?

A. We were asking for a coverage of Limerick, Cork, the greater urban areas of Limerick, Cork and Dublin which by definition would give such coverage. Therefore, facilities were being put into those cities precisely on the basis that the definition of the population of those cities delivered 60 percent. That was our basis and that was --

80 Q. So it was not on the basis that anybody said that you would have 60 percent. It is on the basis that they said they would put transmitters in each of those three cities, is

that right?

A. They would cover those areas. They would cover Cork, Limerick and Dublin.

81 Q. We know that they did, in fact, put transmitters into each of those areas. We know that there were problems, particularly with the Limerick transmitter?

A. Clearly that is true. We would not have anticipated, as not being the technical experts in this area, that if RTE, as the undoubted technical experts, were giving, putting transmission facilities into Cork, Limerick and Dublin, that they were doing so on the basis of providing us with coverage for those cities.

82 Q. You see, can I put it to you, Mr. Laffan, that perhaps it was wishful thinking on Century's part that they had 60 percent coverage, and that on that basis and on no other basis, they started informing their advertising customers that they did, in fact, have 60 percent coverage when they knew they didn't?

A. While there may have been, with respect, there may have been wishful things that there was wishful thinking about, sincerely the expectation and the understanding was that RTE, in the temporary transmission facilities, would cover Cork, Limerick and Dublin, and that the links would not breakdown. That was the expectation.

83 Q. Could I refer to you a document which was produced, I think by Mr. Curley on the 11th of December, 1989. Page 4943.

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It is a letter to you, in fact, from Mr. Curley. It is under the heading 'Provision of transmission facilities for Century Communications'. He says, "It is worthwhile

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summarising what has been achieved to date. As can be seen from the attached schedule, RTE has not only honoured its commitments but has in fact provided radio coverage ahead of the timescales agreed on the 28th of July, 1989 in the formal Century/RTE agreement. It is important that any public statements reflect the actual position.

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In addition to the installations agreed in the formal agreement RTE has diverted staff and facilities in order to respond to additional requests from Century, even though this has caused serious disruption on occasions to RTE's own activities and services.

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The coverage achieved is determined by the assignment characteristics in the license issued by the Minister for Communications. RTE conforms with the terms of the licenses issued to both Century and to other independent broadcasters for whom RTE provides transmission facilities. It should therefore be clear that RTE does not determine can be achieved by independent local broadcasters.

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On an on-going basis, it is desirable that regular review meetings be continued between Century and RTE concerning the provision and maintenance of transmission facilities. I have asked T Keenan, Manager Engineering Administration to liaise with you concerning these meetings."

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And in the schedule which he enclosed with that letter, it is on page 4945, it appears that they had a transmitter

installed for Century at the Three Rock station on the 4th of September, 1989. They had a transmitter installed for Century at Spur Hill on the same date. At Mount Leinster on the 9th of November and Maghera on November 1989. And at Mullaghanish they were planning one for March 1990. They also put one in Limerick city. He makes the point that there was no provision in the contract at all for any transmitter in Limerick city. Equally in Woodcock Hill, which they expected to have in commission for Century in January of 1990. There was no provision at all in their contract for that.

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So what Mr. Curley was recording in December of 1989 was a level of satisfaction and pride in the achievement of RTE in getting the level of coverage which they did, in fact, get. Isn't that right?

- A. Obviously the earlier document is referring to the permanent situation. The comment here is - I think Spur Hill is Cork, I am not certain. Again the 4th of September is showing Three Rock for Dublin. I think Spur Hill is for Cork and 4th of September is showing Limerick city. I think Woodcock Hill is outside of Limerick city, I think, it is a long time ago now. Again, I am not for a moment disputing the fact that RTE and its technical staff were engaged in this execution of a decision to establish the first national independent radio station and were doing so to the best of their ability. I am not doubting that. I am simply stating that there was an understanding and agreement, an acceptance, that from the 4th of September temporary transmission facilities using existing antenna,

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using existing transmitters that they had were capable of covering as per that temporary schedule and the letter you have just shown me so many years later, capable of covering Cork, Limerick and Dublin, an as such by definition, that meant 60 percent coverage or 60 percent plus coverage. And if what transpired subsequently was less than that, yes, we were, we were mistaken in our understanding that by covering those cities with transmission equipment and broadcasting equipment that we would get 60 percent plus. We didn't. But we went out and we certainly, in good faith spoke to advertising agencies, spoke to advertisers and signed up business on that understanding and on the basis of that schedule there.

84 Q. Do you not think you should have checked it before you told advertisers that you actually had of 60 percent?

A. I believe you can't check if you are launching a national radio station, you can't check a transmission until it actually goes on-air. You can only check it - you can't therefore sell ads to advertising agencies or marketing companies unless you say this is what our plan of coverage is going to be.

85 Q. I take it you agree that advertisers were actually told there was going to be 60 percent coverage from Day 1?

A. Absolutely.

86 Q. Can I refer to you page 3065 which appears to be a schedule of the coverage which was in actual fact achieved. You can see there it is broken down progressively by date by reference to each of the transmitters that were, in fact, commissioned. It indicates by the 29th of September, 1989 you had 45.6percent of the population covered. That by the

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24th of November, 1989 you had 48.9. By the 1st of December, you had 56.6. And we have been told that by the end of December you had, in fact, 75 percent.

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That appears to be --

A. That appears to be.

87 Q. That is the position?

A. That is the position.

88 Q. There is another document at page 4948 which is really moving more into the permanent transmission facilities, but perhaps we might just look at it for the sake of completeness. This indicates the progress of the implementation, but in the case of Mount Leinster, for example, which was to be in by the third quarter of 1990, it is stated that "It is not possible to give an implementation date due to deferral by Century of orders for transmitters on the 31st of January, 1990." I think that is what the Sole Member was referring to a few moments ago. And a similar comment is geared against the Mullaghanish transmitter which was to be in by the fourth quarter of 1990, when at this stage it says "not possible to give implementation date due to deferral of Century of order for transmitters on 31/1/90." Then there was another alteration to Woodcock Hill.

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What these documents appear to suggest is they appear to bear out the assertion by RTE that they, that they, first of all, did their best in getting as much coverage as they could within a short a period as they could, you accept, that by the 4th of September, and in relation to the role

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out of the permanent installations within the parameters of such alterations as were made by Century, they exceeded each milestone set out in the contract. Is that not so?

A. I believe that the performance on the temporary transmission side, as soon as RTE were capable of delivering at the time, I believe they did their best to do so. I believe also that the actual level to be delivered using temporary facilities proved, in hindsight, to be imprecise as opposed to being capable of covering the cities I have mentioned. So it ended up being what it was. Subsequently I think that the, the deferral of the purchase of transmitters was more driven by the emerging financial situation in Century rather than any other factor.

89 Q. Yes. There is a document at page 4950. It is a document which was generated by Mr. Robert Gahan who was Assistant Director General of RTE. It is dated the 26th of February of 1990. Under the heading 'Installation' it reads:
"RTE had first Century signals on air on the 4th of September - less than six months later. This was done using RTE standby equipment and putting the RTE services at some risk.

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The cooperation and speed of the RTE installation was the subject of compliments in speeches by the Chairman, Director and Executives of Century at the launch reception on the 4th of September. It was clearly understood by all that RTE was reacting positively to the Century need to be on-air quickly to match their commercial competitors, particularly in Dublin and Cork, and that these temporary

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installations would be replaced as soon as the Century equipment was received and put in place.

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RTE has now 74 percent coverage of the country for Century and this figure will rise to 82 percent by the end of March. This is a unique performance in eight months and well ahead of the contracted schedule."

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So certainly Mr. Gahan appears to be clapping himself on the back or clapping RTE on the back for their performance both in relation to the temporary roll out transmission and also the temporary transmission as far as it progressed at that time?

- A. He is certainly complimenting himself. As I said to you, I believe RTE did their very best. I believe also if you look at the pattern of the evolution of weekly revenues in Century, it is very clear that it was a very high profiled project. That confidence in the advertisers and in the advertising agencies and in the ability to deliver the product was fundamental in the first four, five, six seven weeks and that once it became apparent to everybody that the expected coverage of 60 percent plus was not happening for whatever reason, that had a very serious impact on the fledgling station at that time in terms of advertisers' willingness to continue to commit advertising expenses and costs at rate card levels which were based on the initial assumptions.

- 90 Q. Mr. Barry has told the Tribunal that he paid ú5,000 for distribution to providing entertainment to members of the RTE technical staff throughout the country at the end of

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August, so pleased he was with the effort that they had made to get Century up and running as quickly as possible.

Were you aware of that?

A. Not at all. I was not aware of what Oliver Barry paid to whom at any stage in that respect, no.

91 Q. It does appear to be established that he certainly paid 15 or ú1,600 to Mr. Branigan which was distributed to certain members of staff, of transmission staff around the country for drinks parties I think?

A. In all my years as a director of a company or as having rights to manage the finances of company, I would not get involved in that kind of activity, nor have I done. I was not a cheque signatory in Century and was not a director of Century. I was not aware, I was not aware at all that such payments were being made from either Mr. Oliver Barry personal finances or indeed from Century's.

92 Q. Yes. In the Board meetings of Century, certainly up to December, the end of November, subject to correction, I don't think there is any reference to any suggestion that the level of coverage was disappointing relative to what RTE said that they would provide, although there were references to coverage?

A. There were extensive discussions within the organisation almost on a daily basis about the extent to which coverage was not reliable, was breaking down or was not what we had expected it to be. That was an on-going discussion internally. I can't recollect the specific minutes of boards meetings.

93 Q. You made reference to it in a memorandum which you produced on the 6th of September, 1989. Page 3381.

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Where you record that "The single major difficulty encountered by Century Radio from the outset has been the non-achievement of revenue targets as set.

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A number of fundamental factors adversely affected our ability to achieve the revenue targets:

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1. Less than 40 percent national transmission coverage from 4 September expanded to 45 percent by the 29th of September and only developed to 50 percent by the end of October, 1989. These figures contrast with the pre-launch publicity stated expectation of 66 percent national transmission."

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It would appear from that that Century's pre-launch publicity appeared to suggest that it would have 66 percent national coverage?

A. Obviously when I became a little bit aware of radio broadcasting, whether it does impact on precise levels of coverage that is provided in a moment of time but certainly the figure that I always understood was in excess of 60 percent, yes, it would appear that we were talking in the area of 66 percent from Day 1. It was a figure we were able to say could be achieved or would be achieved provided Limerick, Cork and the greater Dublin area were covered.

94 Q. That being the case, may I take it that the 66 percent claim was based on the understanding which you say Century had, based on what had been said at meetings with RTE personnel, is that so?

A. Yes, that is so.

95 Q. You don't actually say here that the coverage is less than what we have been led to believe by RTE. You simply record what the actual coverage was. Isn't that right?

A. Well, clearly that is correct, but I wouldn't have made point one unless it was a statement of a reason why in fact revenue was slipping and advertisers were not committing to us, because we were genuinely, in good faith, promising plus over 60 percent but delivering less than that.

96 Q. You do, in paragraph 2, make the point that there was poor quality of signals in Cork and Limerick?

A. Mmm, absolutely.

97 Q. In paragraph 3 you refer to an extensive marketing campaign being conducted by RTE and the RTE Guide on-going since June of 1989?

A. Mm-hmm.

98 Q. What we have been told in relation to that is that RTE launched a promotional campaign involving Gerry Ryan in May 1989 in the belief, mistaken as it turned out, that Century were going to go on air in May 1989 which they originally had intended to do I think, but that otherwise they didn't make any particular arrangements by reference to Century going on air on the 4th of September?

A. They wouldn't particularly have focused on it. They wouldn't have advertised Century - certainly my recollection is that on a cost per thousand basis there was, I think cleverly there was a very good two tier pricing system in RTE where if you look at the cost per thousand on the Gay Byrne show on Radio 1, compared to the cost per thousand on the Gerry Ryan Show on 2FM, it proved

extremely difficult for Century to compete on a less than 40 percent national coverage with an embryonic audience development plan, given that the Gerry Ryan Show, I think was capable of delivering an audience of 750,000 people and that there was a package of spots available for the equivalent, I think of at the time of maybe 40, 45 now for a 30 second spot.

99 Q. It was also clear, it was always clear that RTE was going to compete?

A. Yes.

100 Q. And was going to try and 'hack it in the market' as anybody else has to do in a competitive market. I assume Century proceeded on that assumption?

A. I think a monopoly national station doesn't really have anything to do other than share at the time of point when competitors come in, and yes, they decided that they would use their position of commercial and station strength and transmission strength to ensure that it was as difficult as possible for any new national independent radio station to compete, and they did so very effectively.

101 Q. Well, the point though really is that Mr. Stafford has claimed, and indeed made complaints to the Minister on the basis of which he appears to have taken certain fairly serious steps, that RTE engaged in an abuse of its dominant position, that it engaged in predatory pricing, that it engaged in cross subsidisation of FM2 by FM1. But when we look at the evidence that we have received so far, and subject to any further evidence that we may hear about it, it appears that RTE did not reduce their rate card either for RTE1 or FM2 in the three years in which Century was in

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existence, and that, in fact, they increased each year as they always had done and have done since?

A. I am quite sure that is the case. I think there was also package spots available where you buy a bulk package. If you buy a spot rate, that is absolutely true. In every radio station you can buy packages of spots whether it is 50 or 40 spots and inevitably for those type of packages you get a discount.

102 Q. And promotions?

A. And promotions, absolutely.

103 Q. Do you suggest that they should have stopped doing that when Century came along?

A. No. I am simply saying that it became extremely difficult, there is no doubt, if you take, I think it was by about the 7th or 8th week and bearing in mind that I was responsible for the station for 17 weeks after going on air, 450 advertisers had placed advertisements with Century Radio. The weekly, the average weekly capacity utilisation of the station was in the order of 65 percent of what it was capable of going out under the IRTC Rules and Regulations. We had pitched a spot rate at about ú50 a spot. We were delivering to, relatively speaking, a very small audience at that embryonic stage. There was a very good sense of goodwill in the advertising agency towards Century at that stage, evidence of which 450 advertisers committed to it. The point being that once the transmission coverage issue and the breakup of the signal issue became quite public knowledge --

104 Q. We have been told --

A. -- there was a reluctance to actually continue to commit

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resources to Century Radio by advertising agencies and as such, a \$45 package of 30 or 40 spots from 2FM was, for any advertiser or marketer, a far better proposal.

105 Q. Wasn't there also another difficulty in that even in the areas where the company had coverage, it wasn't attracting the listeners?

A. I think that is, I think that is true in specific areas of programming. I think there were some excellent broadcasters. There was an excellent music policy. When you were trying to compete under the terms of the IRTC license and effectively comply with speech programming, I think news programming was excellent and I think it was recognised as such. In areas of mid-morning, mid-morning competition --

106 Q. Mr. Laffan, the point I am putting to you was there has been extensive evidence before this Tribunal and appears to be supported by documentation that Century itself recognised and Century banks recognised that there was a significant programming problem. Do you suggest that there wasn't?

A. No, I don't suggest that at all.

107 Q. And that was the core reason why people, even in areas that did have coverage, simply weren't tuning in?

A. It, as every station has shown, it takes time to build an audience, time to build an audience. You cannot get an audience overnight. You cannot get people to switch overnight. I believe that the subsequent experience of the replacement of Century has shown that with tweaking of programming over time you build an audience.

108 Q. Would it be fair to say --

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A. It is remarkable, I think, that there was such a significant commitment by advertisers to a station that had no audience on the 4th of September.

109 Q. Well, wasn't the problem with the advertisers that they had been told, incorrectly, in advance and made, made advance commitments on the basis of this information that there was going to be 66 percent coverage from the 4th of September, and they were somewhat disappointed when they found out that there wasn't?

A. That is absolutely true.

110 Q. In this document which we have been looking at page 3381, you go on to look at the causes of the problems in the company and issues which were of concern to you at this point in time. Again this is the 6th of September. At paragraph 6, for example, you refer to low level of station promotions since the 4th of September due to high cost of launch marketing. Now, the launch costs was an issue which came up on a number of occasions, isn't that right?

A. I think it did.

111 Q. I think it is fair to say that yourself and Ms. Hynes thought it was that they were excessive?

A. Yes.

112 Q. And they depleted the funds available to the radio station?

A. That's correct.

113 Q. "B. High cost of launch day.

C. Multiplicity and temporary nature of 1989 Network 4 frequencies.

D. Absence of a "national" station to establish cost effective promotions.

E. Necessity to reduce costs with reduced revenue."

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So you had identified the low level of promotion as a problem?

A. I had.

114 Q. At paragraph 8 you say: "The dramatically altered nature of the radio advertising market during the second half of 1989 with the advent of ten additional radio stations, including Capital and 98FM in the dominant Dublin market." So it wasn't just RTE that you had to compete with, there were a whole new range of new stations?

A. Absolutely.

115 Q. At paragraph 9 on page 3382 you are saying, "Increased competitiveness of radio advertising market with RTE/2FM particularly aggressive in their selling of packaged advertising deals at average 30 second spot cost of ú45."

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Now what we have been told by RTE is that essentially the didn't have to change their promotional packages or practices in any way because of Century because Mr. Molloy, I think it was, gave evidence that Century programming didn't seem to be getting it right and while they anticipated they were going to have a competitive programme, they didn't, in fact?

A. Well, clearly that is the case. We would be contacted by senior people in advertising agencies, all of whom I would have met personally, but the reports back from the market-place was that in the normal cut and thrust of the competitive environment, that was now emerging, the winning of additional income on advertising rates from RTE did not hesitate in saying that Century do not have that coverage,

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don't have that coverage. We were, if the word 'aggressive' is used, it is used in the sense that certainly our competitors, including among whom were RTE were not backwards for coming forwards to find reasons why people should not advertise with Century.

116 Q. At the bottom of 3382 you note "At the weekly directors' meeting held on Tuesday the 21st of November, 1989 at Christchurch and attended by Mr. J. Stafford and Mr. O. Barry, M. Laffan stated to the promoters that within the context of the original concept of the Century Radio project and given the nature and cost of the staff which have been brought on board by the promoters it was not possible to reduce total station operating costs during 1990 to 2.5 million pounds without re addressing afresh the definition of the national independent radio concept as had been originally conceived, and addressing also the nature, caliber and cost of the company staffing."

I think essentially you were making the point a package of programming was put together which involved and implied a certain level of cost which implied a certain level of quality and service?

A. Correct.

117 Q. And it was based on a particular budget which I think is in excess of around 4 million which was then reduced to 2.5 million?

A. Yes.

118 Q. You were effectively saying you can't make a silk purse out of a sow's ear.

A. To put it bluntly, yes.

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119 Q. You can't deliver that level of programming on a reduced budget of one and a half million pounds?

A. Equally from my own point of view, I wouldn't have joined an organisation that had a commitment to 20 percent speech programming, a 24-hour seven day a week, an international news facility, a modern finance and administration facility with AS400 IBM computer driving a traffic management system, knowing that under the fundamental IRTC levy, royalty fees and transmission costs in their own right were going to cost approximately ú1 million and then finding that I had, that I was involved with high caliber people, ex Irish Times, ex Irish Distillers, ex Capital Radio London, who were costly people, and therefore in that context, yes, we were in a position intellectually and experience wise to deliver the mandate as defined by the IRTC license, but not at 2.5 million annually. No, it could not be done at that level in my honest opinion.

120 Q. And it is true to say that the significant reduction in your budget severely restricted your ability to promote the station and to put out the level and quality of programming that was originally envisaged?

A. Absolutely. I think that a shorter term view was taken of what was fundamentally and strategically a long-term project.

121 Q. I think at one point you recorded somewhere that the ability of the staff in the company to do anything seemed to be predicated on the following week's budget?

A. It - before, in the 17 weeks in which I was in charge of this on-air radio station, it did degenerate to that.

122 Q. Yes.

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A. Just before I decided to leave.

123 Q. In fact, I think in October it was already recognised that there were significant cost overruns, and by November you were involved in being required to put together proposals for substantial cost reduction, isn't that right?

A. It is not that there were cost overruns. I need to be absolutely clear about that. The budget cost level for the radio station in the 17 week period to the end of December 1989 was of the order of 1.8 million excluding the IRTC, IMRO, and PPI transmission or transmission costs. The actual costs came in at 1.8 million. The issue was far more driven by the revenue line. The expected revenue level for that 17 week period per the budget was ú2 million. It came in as slightly less than that. It was not that costs, I have to say, went out of control. Costs were absolutely kept in accordance with the budgets that had been agreed at Board level. The revenue dropped off substantially from what the budgeted level and expected level was.

124 Q. Well, whatever the reason, is it the case that in November you were required to bring forward proposals for fairly stringent cost cutting within the company?

A. Yes, I was required to bring forward, with my Head of Finance and Administration I was required to bring forward 40 percent odd cost reductions within five/six weeks of going on-air.

125 Q. Five or six weeks of going on-air?

A. Well, the 4th of September, say, to the end of November, so it is more like --

126 Q. Yes. And at this point is it true to say --

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A. Ten weeks.

127 Q. -- is it true to say that the issue of the availability of funds from the investors also became an issue?

A. Clearly, absolutely. There was a requirement to inject further funds into this business at the level of cost, at the level of revenue that was being generated. Without that the company was headed for very difficult waters.

128 Q. Yes. Would that be an appropriate time to break, Sir?

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CHAIRMAN: I think that would be an appropriate time to break for a little while.

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

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129 Q. MR. HANRATTY: Mr. Laffan, just to finish this document.

On page 3383 you record that "the current and widespread insecurity at all levels in Century Radio is based on the clear perception that the promoters and directors' mandate to the management team does not extend substantially beyond each week's revenue. This is the illusion to which I referred to previously." That was, I take it, your view at the time that you wrote this?

A. Sorry, I am trying to pick that out.

130 Q. It is on the second last paragraph.

A. The second last paragraph. Sorry. Yes. That is true. I mean I think that the initial submission to the IRTC expected a level of revenue, a level of cost that generated a loss of half a million a year way back before I ever came

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on board. The nature of cost structures that the promoters had particularly required and insisted upon three year contracts, in many cases made that initial submission to the IRTC, irrelevant as a financial structure, for what subsequently became the nature of Century. I think that that didn't immediately fall exactly into place. I think there was a degree of panic on the part of the promoters to require immediate action on structural issues within a matter of ten weeks of setting up and taking people out of serious long-term careers from major institutions, having signed up in good faith proper contracts which could not be liquidated at the stroke of a pen. So, yes, it was more, I think there was a degree of panic in the promoters rather than -- certainly this was never - I signed a three year contract on the basis that this was going to be a company making to the tune of at least half a million a year in Year 1 and hoping to break-even in Year 2 and then beginning to go into profit.

131 Q. Was this a company, which in your view, required any further investment at this point?

A. Absolutely. It required further investment and I believe with further investment and a much steadier hand on the tiller at Board level, I believe that this business could have been made to work because --

132 Q. Did you draw anybody's attention to the fact that while you had been originally assured that money would be no object, here we are in a situation where the company is in difficulty, needs, among other things, need more promotion and there is no money forthcoming?

A. Of course I did.

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133 Q. You record on the next page, page 3384 again on the second last paragraph, "Refusal to sign cheques in respect of expenses to which staff members are contractually entitled is wrong. The issuing of instructions directly to a department head by any director, but most particularly by a promoter-director, without reference to the Chief Executive, amounts to organisational suicide. The calling into question of the validity of employment contracts entered into by the Chief Executive with full authority, by a promoter-director in conversation with the Head of Finance and Administration is not acceptable practice to me as Chief Executive."

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That indicates a fairly significant level of dissatisfaction and disquiet on your part at the activities of promoter/directors. Is that a fair comment?

A. That is a fair comment. I believe fundamentally this was a strategic organisation built on issues of a structural nature and broadcasting facilities and transmission facilities. It required individuals who had patience and expertise and experience in managing people and developing organisations and I believe that those skills were lacking.

134 Q. Yes.

A. At a board/promoter level, they were lacking.

135 Q. Would you say you were given a free hand in managing this company?

A. Quite the reverse. I think this was very much a - I have never experienced directors so involved, and I have been Managing Director of perhaps four different companies in my career to date. Never have I seen such an involvement by

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directors in the day-to-day activity, down to the level of approving the purchase of flowers or the cleaning services or minor expenses items such as mileage for individuals, almost from Day 1.

136 Q. Yes?

A. So it was a degree of interference and involvement in, there was little point in recruiting a senior management team of people and appointing them to an organisation if you hadn't any intention of letting them get on in running the business.

137 Q. We know you parted company with the company on the 1st of February, 1990, in other words, you hadn't even completed the first year of your contract of three years, isn't that right?

A. I was with Century Communications Limited for a total of nine months.

138 Q. Yes. And in general terms, without getting into any detail on it, would it be true to say that there was an element of dissatisfaction on your part?

A. I was extremely dissatisfied with the fact, I think that letter reflects that, on the 6th of December.

139 Q. Yes?

A. Which if you take the 6th of December, you have got September, October, November, so you have got effectively three and a half to four months to arrive at a point where, having achieved what we did achieve from scratch, from nothing as late as May, having put in a radio station on air, having 24-hour broadcasting seven days of a week, having state-of-the-art facilities and all of the things that were done, there was a lot done by a lot of people,

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including myself, to arrive at a point in time where that major strategic challenge and that fundamental movement in Irish broadcasting was to be predicated upon a very short-term view of how to develop this. So I was very dissatisfied and had made up, having made up my mind at that time, as I recall at that time correctly this is not for me, I am going to be moving on here. I am not happy to move on, on the basis that I will abandon ship without making a clear record of what I believe to be the issues.

140 Q. Yes. I think by the time you left, the company was in dire financial straits?

A. Well, I had had a number of discussions with my finance, my Head of Finance and Administration, and clearly we, having been involved in the management of companies before, we were very aware of the requirements to fund the company, the outstanding share capital that was needed to be put into the company, the extent to which we were not in control of sometimes significant expenses, and ultimately, the obligations to comply with Section 40 of the Companies Act. We discussed this and said, yes, this company is in serious financial difficulty, you have to put money into this company to make it work.

141 Q. Yes. Ms. Hynes gave evidence, I think the day before yesterday, and she said that she was actually worrying about the financing situation of the company even before it went on air.

A. We would always have had the concern that if the revenue budgets that were, first of all, presented to the IRTC in, I believe December of 1988, expected a level of revenue of less than €2 million per year, and we had come on board in

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good faith and looked at it in detail, and it satisfied ourselves that analysed revenues of 3.25 million were achievable and at the stroke of a pen these moved to ú5 million, more by virtue of trying to cover the costs that had been brought into the company rather than any realistic assessment of what was achievable. Yes, we were both very concerned --

142 Q. Are you saying that the revenue projections were increased not by reference to any belief in the fact that they were achievable but because of the necessity to make them look respectable against the costs that were being incurred?

A. I believe that the revenue levels were increased for a number of reasons, and I believe that was one of them. I believe also that there was an expectation on the part of the founding directors that with this caliber of team, we should be able to achieve far more revenue far more quickly. But the proof of the pudding is that again you have to build an audience over time.

143 Q. Yes.

A. If you look at the 17 week period to which I was there for, actual revenues achieved were of something less than ú1 million, which would have indeed been very close to, despite the difficulties in transmission that we did encounter, but would have been very close to what our original budgeted expectation was for that period, despite the fact that the subsequent increase in August of '89 to an expected level of ú2 million proved to be entirely non achievable.

144 Q. But to achieve whatever levels you might regard as realistic would require promotion?

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A. It would require promotion and programme development and sponsorship and a variety of activities including outside broadcast facilities. Yes, it would require a lot.

145 Q. And most particularly it would require money?

A. Like any new venture, yes, it would require seed capital to do these things.

146 Q. Was this company underfunded do you think?

A. For the cost structures that were imported and set up Day 1 relative to the size of the total market and the market share objectives, yes. If that was the case, it was possible to do this business at a different level but not if you were engaged in, if you had pre-launch expenses which were something in the region of 600-ú750,000, if you get into that level of national activity, then it is extremely difficult, as per the submission to the IRTC, to run a business at an annualised revenue level of ú2 million and overall costs of 2.25. It could have been done at a different level in a different way but with great difficulty to comply with the speech programming requirements and the 24 hour a day national news, international news requirements as per the license.

147 Q. You say in your statement under the heading 'Internal Developments in the Station'.

"In late October statements that were attributed to one of the founder directors appeared in the Sunday Press expressing critical views about Century's programming and one programme in particular. This was very demoralising for the staff and undermining of advertisers' confidence in the station. About this time revenue began to slip and the Board requested proposals to substantially reduce total

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annual operating costs."

We have already discussed the costs. What are you referring to there?

A. It is a long time ago now. As I recall it, I recall that there was an article, I think it was the back end of November, in the Sunday Press at the time, where I think Jim Stafford was interviewed and he sounded off on a number of issues, but particularly on the mid-morning show, branded the broadcaster 'Eimer Woeful', and I believe it was a very demoralising factor, because we were working very well as a team. We recognised that we were in quite a fight and we recognised that we, for instance, we knew that a number of the advertising agencies had directly written to us say that RTE sales directives says that you don't have the coverage and it is breaking down. For this to happen at this juncture, for a founder director to come out and say and to condemn what was a show that we knew that we had problems with, that we knew we would have to work with was very demoralising. That is what I am referring to.

148 Q. Am I correct in saying in reference to the person concerned, that was not a view shared by the management in the company, including the programming people?

A. Absolutely not. I think it was a very difficult task to take on that mid-morning slot. I think that she was an excellent broadcaster and did not deserve to be singled out publicly and condemned in that way.

149 Q. Mr. Gay Byrne has given evidence to the Tribunal that one of the concerns he had was that if figures go wrong, it is 'muggins at the microphone', as he described it, that gets the blame?

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A. And indeed that comment was an unfair and incorrect manifestation of that. You cannot build an audience in five weeks.

150 Q. Yes. Now, I think at the end of November, you, I understand, sought legal advice, presumably based on instructions, as to the legal implications of the termination of employment contracts, isn't that right?

A. That is correct.

151 Q. And here you are only less than two, well two months out broadcasting, being asked to consider the question of the termination of contracts of employment?

A. Correct.

152 Q. I think at that time you were also requested, were you, to seek legal advice on the question of the power of the Minister to cap RTE's advertising?

A. I do not specifically recall that I was asked personally to check if the Minister had power to cap --

153 Q. Could I just refer you to a letter?

A. I am sure there were discussions about it.

154 Q. If you look at page 861. It is a letter from Messrs. Arthur Cox, I think Mr. Fanning, in fact, to yourself, where he appears to be setting out the legal position about possible powers for limiting the minuteage in RTE and related matters, isn't that right?

A. That is what - I recall, I now recall this. I believe the genesis of that discussion on the phone with Arthur Cox, with Eugene Fanning in Arthur Cox was on the basis that was there any way, if we were compelled to comply with a 20 percent speech programming, the initial thinking behind that discussion was there any way that we could get leeway

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or freedom from the IRTC to enable us to increase the number of ads or the quantum of ads that we could actually put on, because the quantum of ads, as I recall, were limited on an hour basis. You could not put on more advertising than X minutes per hour or X seconds per hour. Rather than us increasing the rate card to compete with RTE, the issue I think at that time, if I remember it correctly, was could we in fact get a license, temporary or otherwise, long-term from the IRTC to permit us to do double the number of minutes on per hour that we currently were permitted to do?

155 Q. I see. The letter itself and the text of the letter appears to deal, or address the issue of powers or potential powers to limit RTE's advertising?

A. Okay now. I just need to read it.

156 Q. If you look at the second page, for example, under the heading 'Advertising Time on RTE Radio', and Mr. Fanning makes a number of points in that presumably in relation to the query, often as it was, that he had received. It also does indeed, deal with on the third page with Century's right to broadcast advertisements.

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Then at paragraph 4 on the fourth page it deals with advertising time on RTE television, and then it deals with EC developments.

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Can I ask you this, did Mr. Stafford have any discussion with you or give you any instructions in relation to an idea about capping RTE's advertising?

A. I recall, he certainly didn't give me any instructions, Jim

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Stafford didn't give me any instructions about trying to contrive that. I think at the time discussions, those discussions were very much what were the options open to Century in terms of how could revenue be increased by whatever means possible? Those discussions were taking place. And I would have been present in conversations about RTE in general license fees, the availability of license fees, license fees exclusively to RTE, why should RTE be getting all of the license fees was one discussion? And also the extent to which if RTE had de facto a commercial radio station in 2FM versus a national broadcaster in RTE Radio 1, that advertising could be limited.

157 Q. We know that Mr. Stafford and Mr. Barry went to the Minister and had two meetings with him on the 19th of September 1989 at which they requested him to cap RTE's advertising and that in the course of the meeting in the afternoon he instructed a civil servant, the Secretary of his department, to put matters in train to do so. Did you know in advance of that meeting that they intended to make that request of the Minister?

A. I would not have known that.

158 Q. Mr. Crowley, the Chairman of the company, gave evidence yesterday. He said he didn't know about it either.

A. I wouldn't have known that. I wouldn't have been privy - there were always discussions or meetings or phone calls taking place.

159 Q. Yes.

A. Which I would not, you know, I wouldn't have been aware. There was a day-to-day involvement, but I wasn't aware of

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that.

160 Q. Does it strike you as odd, given that we know that it happened, that the Chief Executive wouldn't have been informed about it?

A. There were a number of things, in my experience, in the way in which the Board and the Board members interacted with the senior management group which were extremely odd. It was not my experience that normally companies are run in the fashion that Century Communications was run.

161 Q. Yes. Well, we know, for example, that Mr. Burke met the bankers to Century on the 22nd of December, did you know that?

A. I knew that there was a meeting scheduled from memory. I was not privy to the content or who was to be present and I was not present, to my recollection, at that meeting.

162 Q. No, you weren't. Did you know that Mr. Burke, first of all, was going to meet the company's bankers?

A. No, and I wouldn't be aware whenever he was going to meet the company's bankers.

163 Q. Did you become aware of it then after it happened?

A. I do recall that as we came towards the year end there were a number of discussions about the requirement per the agreements with the bank to provide finance management accounts to the bank and that Mr. Barry, Oliver Barry or Jim Stafford would, from time to time, be in regular contact with the bank directly, but --

164 Q. Can I just refer to you page 4460? This is a fax from Mr. Fanning to Mr. Stafford where Mr. Fanning is enclosing a copy letter to Mr. Stafford which I believe to be the letter to which we have just referred from Mr. Fanning to

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you of the 30th of November. Did you know anything about that or were you involved in seeking a copy of this letter for any purpose on the 19th of December?

A. No, I was not.

165 Q. All right.

A. No, not at all.

166 Q. Now, just moving back a little for a moment, a few weeks after you commenced with Century, on the 19th of May, 1989 you wrote a very long letter to Mr. Vincent Finn of RTE, the Director General. We have been through this in some detail with previous witnesses. Can I ask you first, was this your letter or was it somebody else's letter?

A. If I could see the letter?

167 Q. Yes, it is page 5299. It is a seven page letter which makes a number of points or perhaps one or two points and a in a number of different ways. Essentially I think the central tenet of it is contained in page 5301, the end of the first paragraph where it says: "Century should not be implicated in the development of the national transmission network, an obligation which is not properly theirs. Accordingly, Century does not have a role in the selection, purchase, or technical approval of the equipment as required to develop the national transmission network. It is" - I am reading from the paragraph on page 3.

A. Okay.

168 Q. "... It is not the intention of Century to become involved in the transmission business or to be in any way responsible for the setting or maintaining of transmission standards."

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And again if I can refer you to page 6, the third last paragraph, it says in the second sentence, "No franchise holder could at any stage consider themselves to be the actual owners of the transmission equipment as required for the extension of the national network. We have, however, a residual interest in the equipment by virtue of the payments made over time up to that point, where there may be an alteration with the terms of the license retention."

Now you were in the company about three weeks at the point in time when this letter was written, and you are making some fairly significant points here which Mr. Finn subsequently pointed out appear to be at variance with the actual provisions of the legislation. What was the purpose of this letter or was this done on your own initiative or was it done on the instructions of Mr. Stafford?

A. It wasn't done on my own initiative, no, it wasn't. As I recall, this was a document which was crafted together by - I was involved in the crafting of this. It was as much part of my education about the whole transmission situation at that time, having joined the company 18 days earlier. I, from memory, I think this letter was crafted initially in Jim Stafford's office in Kildare Street over a couple of days, and it is also my recollection that in the course of those two days odd, there would have been, that Oliver Barry would have been present on a number of occasions.

169 Q. Well, Mr. Finn, in his own evidence dealing with this letter, says that it has 'Mr. Stafford's fingerprints all over it' - that is his phrase. Is that a fair comment about this letter?

A. I think that is a fair comment, but may I also say, to be absolutely fair, that I did sign this letter, I did discuss the content of the letter. I was, you know, I was aware of the content, and whilst not trying to deal with every single item in it right now, there were elements of principle being articulated here that if government policy required the policy of national independent radio, it was akin to suggesting that Century Radio would have to go off on its own way and establish its own transmission network system, just like Ryan Air would need to build an airport before it could come into the market and if CIE, if somebody wants to get into the rail business, they have to build their own national rail network. There were genuine elements of the presentation and situation here if the government was serious about putting up national independent radio, there needed to be an access to fundamental national infrastructure to enable that policy to be implemented. Those were issues that I could not disagree with.

170 Q. Mr. Laffan, we know that this was Mr. Stafford's argument that he made previously and indeed subsequently, but to take, for example, the transmitters, the point being made in this letter is that Century had no or should have no hand, act or part in the transmission system, that was exclusively a matter for RTE, to use the phrase used, as Mr. Finn pointed out ten times at least in this letter, 'custodian of the national network'. Now, the evidence that we have heard here is that transmitters have to be specifically ordered. They have to be specifically ordered to a particular specification, and the specification is

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dependant, upon among other thing, the frequency at which the broadcasting will be done?

A. Correct.

171 Q. So it is not correct, strictly speaking, to say if transmitters that are specifically manufactured on behalf of Century to Century's permitted frequencies, are an extension of any national network. They are there for Century and for no other purpose, isn't that right?

A. If I may just clarify a point of view on that? Insofar as the license is for a period of seven years, or indeed seven years with a right for renewal for further periods, the allocation of frequencies, as I understand it, is a matter of international coordination. And therefore, once a license is issued at 103 or 101 or 100, then that becomes the allocated, if you like, coordinating license or frequency for that particular license. In the context that there was a policy decision to set up an independent national radio station which might be owned by a certain operation for seven years at a time, then the view was, the view was taken in Century that the equipment that would be purchased and the use of the national transmission network as coordinated, owned and controlled by RTE, was as much a determining factor of the existence of the equipment to co-link, link into their system to the fact that there was a seven year useage of the existing frequencies by a given company. In that context, Century did not develop the level or quantum of expertise or staffing to be single handedly capable of determining how to exactly link 16 different sites with transmitters that were available to be, if you like, calibrated at a certain frequency level

but which were ultimately delivered, installed, technically maintained and operated by RTE.

172 Q. Mr. Laffan, we all know what the directive says. The directive made provision for linkage. It made provision for the purchase of the transmitters. It made provision for charges of access and maintenance and all of that was going to be done. Mr. Curley was engaged in setting up regular meetings to progress the matters. What was the point of this letter?

A. I think the point - I recall, I am sure there were several points. My understanding was that it was a letter at the time trying to establish the fundamental principle that Century Radio was going to create a set of programmes and a broadcast signal up to the point of acceptance into the RTE network, and that all other activities, that by virtue of the decision taken that the national transmitter network was going to be the means by which Century was going to broadcast its signal, that all other associated technical compliance, installation requirements were at the call for RTE and not for Century. There was a lot of confusion, I recall, in the discussions that --

173 Q. Mr. Laffan, I am just trying to find out what was the point of the letter.

A. I think the point of the letter was to say transmission is RTE's responsibility, as long as we pay a certain price for it.

174 Q. Well, for example, can I refer you to the top of page 6.

A. I haven't read this letter now please in ten years, so --

175 Q. I fully accept that. If you look at the top of page 6 it says, "The clarification of the Ministerial directive dated

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March 30th, 1989, from the Secretary of the Department of Communications makes it clear that ultimate responsibility for payment to the lender financing the purchase of extension equipment for the national transmission network will rest with the then franchise owner. This clearly envisages that the financial obligations being 14 years at 7 percent will be paid for through a form of contract, i.e. the license holder will have a contractual obligation to pay RTE, as the custodian of the national transmission network, both charges as part of his franchise retention."

I take it you got that information from Mr. Stafford?

A. Yes, but can I say that I think that the idea behind that paragraph was how is this, how is the adaptations, adjustment or enhancement of RTE's network to deliver the Century's broadcast signal, how is it going to be funded over what period and at what cost?

176 Q. Wasn't this particular paragraph an attempt to get RTE to purchase it on the basis of finance at 7 percent for a start?

A. Oh absolutely.

177 Q. Now the evidence that we have heard about that from Mr. O'Brien, who was the Head of Finance in RTE, is that this is totally and utterly absurd and is a complete misrepresentation of figures which RTE gave to Century in November. What he says is that in November of 1988 RTE quoted to Century a rate of 7 percent on the basis of a normal commercial leasing arrangement over five years, perhaps four years or five years. And that 7 percent was a rate which was possible because capital allowances would be

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available to the lessor. That is what he said. But under no circumstances could that, could that reasonably or realistically be construed as a commitment to provide finance over any period at the rate of 7 percent. And he pointed out that the DIBOR rate at that time was 9 percent. That the best terms for lending at the time that could be achieved which could be achieved by RTE because they were a good prospect from a banking point of view, would be 2 percent above DIBOR and that Century would be looking at perhaps 3 or 4 percent above DIBOR. What Mr. O'Brien was effectively saying, this is essentially dishonest, misleading, misrepresentation of what RTE was talking about, namely, a leasing charge based at capital allowances.

Now, I take it, or may I ask you, is this your argument or is it somebody else's argument?

A. I recall it at the time, there were a number of investigations made by the founder directors on how best could one fund or finance the actual equipment? And I recall at the time that Jim Stafford did say that on the basis of a certain finance package constructed, perhaps involving the actual suppliers themselves of what was a substantial quantum of equipment, this level of funding would be achievable, this level of funding, this level of cost of funding would be achievable, and from that point of view --

178 Q. That Mr. Stafford was saying this?

A. Yes, he was saying that on the basis of specific investigations, because we had - the company had employed

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broadcast specialists, and I recall, as I recall at the time the 7 percent was not plucked out of the air. The 7 percent came as a result of a number of calculations that would have been done, from my recollection, by Mr. Stafford saying this was achievable --

179 Q. Sorry, Mr. Laffan, it didn't. 7 percent was a figure which was quoted by RTE in November 1998 as a leasing charge, based on capital allowances being available to the lessor.

A. Okay.

180 Q. But Mr. Stafford extrapolated that, took it completely out of context and applied it to lending, and what I am suggesting to you is --

A. If he did so, then that particular construction on the funding possibility came from Mr. Stafford, but insofar as that I relied on that information, I did so, I relied on it.

181 Q. Yes. Now in relation to the main point of the letter, namely, the fact that Century had nothing to do with the transmission network, Mr. Finn replied at page 4038 by letter of the 22nd of May of 1989. Where he says: "I received your letter of the 19th of May, delivered by courier. There are many points I would want to respond to when time permits, but the central concern that I have is about Section 4, sub section 5 of the 1988 legislation. This provides that sound broadcasting contractors shall establish, maintain and operate transmitters."

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That appears to be correct.

A. Right.

182 Q. That seems to effectively rebut the arguments which were

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set out in your letter?

A. Indeed, but I think that at that stage, again the context of the conversations and the discussions which were taking place were very much that it was impossible to impregnate the RTE network with specialist transmitters which ourselves, Century, would have to buy, even though the legislation was saying this, from a practical point of view if we were not to hire trucks and hire staff to drive up mountains in 16 locations and to seek permission to access the transmission sites that were sealed off by RTE, then we would have to say to RTE if we create a funding mechanism which enables to you purchase that equipment, then it is far more sensible for you technically to take over responsibility, to go and put them in.

183 Q. This was all provided for in the directive. I mean, this was all provided for in the directive. The point that Century were making, or you were making on the behalf of Century on the 19th of May would appear to be that Century would have absolutely nothing to do whatever with transmitters and in fact you drew a distinction between Century being a broadcaster and having nothing to do with the transmission system. Mr. Finn drew your attention in this letter, not in his letter, in his evidence, in fact, that you could not draw a distinction between broadcasting and transmitters. He makes the point "that you are obliged under the legislation as a sound broadcasting contractor to establish, maintain and operate transmitters." You were saying in the letter of the 19th of May precisely the opposite, that you were having nothing to do with transmitters?

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A. I accept your point. But the actual practicalities of having technical people from Century in every single site to go up and apply the equipment to the existing sites would in itself, in fact, I recall discussing this with Peter Branigan, RTE's own technical people would have grave concern of opening up their network and permitting third party staff that were not privy to their own particular precise engineering configurations and electronic requirements, getting access to links and transmission equipment and marrying up transmitters to the existing equipment, so that there was the other side of the coin. While the directive clearly states what it states, once the decision was made to use the national transmission network and once it was decided that that was going to be enhanced, expanded or otherwise altered to cope with Century's signal, there was, within that definition in distinct contrast to, say, local radio, there was a need to ensure consistency of technical performance of installation and maintenance standards and in real practical terms that could only be done by those people who were actually managing and operating and technically performing on the national transmission network. While the directive says what it says, this was clearly a more practical solution, if, in fact, we were ever going to get the second national transmission network married up to RTE's.

184 Q. It provided, for example, that RTE were going to do the maintenance?

A. Yes, it did.

185 Q. Can I just move on to something else, Mr. Laffan, finally. That is, I think relations between the IRTC and Century

were somewhat bruised by the time that Century went on air. One of the issues that had apparently come up between them was the issue of the Irish language which was ultimately resolved in the manner that was acceptable to the IRTC, isn't that right?

A. That is correct.

186 Q. But after going on air there was a meeting on the 15th of September which was attended by yourself and Mr. Story on behalf of Century, and Mr. Sean Connolly and Mr. Paul Appleby on behalf of the IRTC. They had lunch in the Grey Door. Do you remember that meeting?

A. Yes, I do. Yes, I do. I remember them having the meeting. Details I would need to be reminded of.

187 Q. It appears to have been a fence-mending sort of a meeting. There are some aspects on page 2293 which I would like to ask you about.

Mr. Story records that the people in the IRTC had a view that Century was far too highly politicised and that they tended to, when they weren't getting their way, to run off to the Minister, in effect. Do you remember that view being expressed by the people, by Mr. Connolly on behalf of the IRTC at this meeting?

A. I do, yes. I do.

188 Q. If you look at page 2993 in the second paragraph, he says, Mr. Story records: "At this stage, Mr. Connolly stated that the promoters of Century Radio were too highly politicised. He stated there was a high degree of suspicion with regard to the motives behind the actions of the promoters of Century Radio. He stated specifically that this was

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evident in respect of the manner in which the negotiations with RTE were handled and subsequently was very obvious in the way in which 'Century attempted to hijack the signing of the broadcast contract on the day of signing'."

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If you look at the second last paragraph he says, he stated that "Century felt empowered" - I think this is Mr. Connolly - "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 Minister on the matters which rightly belonged to discussions and negotiations between Century, the IRTC and RTE."

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Now, those were fairly strong comments, I would have thought, from the IRTC, to people involved in Century. In your own experience from the 1st of May, would you agree that those comments were justified or would you take a contrary view?

A. Firstly, I wrote that.

189 Q. Sorry, I thought it was Mr. Story?

A. I think I believe that I wrote that.

190 Q. Perhaps I am mistaken about that. Yes, it is not signed but you wrote it, did you?

A. I wrote that document. I wrote that document.

191 Q. I see.

A. And I wrote that document for a number of reasons. And I wrote it very quickly after the meeting, so it was a very clear recollection of what happened at that lunch meeting. And it is a fairly comprehensive, now that I am reminded of

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it, it is a fairly comprehensive statement.

192 Q. Yes.

A. And I did so for a number of very specific reasons. One was that I wanted to represent exactly what the IRTC, what the Chief Executive of the IRTC was thinking and saying in what was an informal lunch meeting which we had been invited to which was an attempt, I believe, as you say, at mending fences. There was indeed a charged atmosphere between the IRTC and Century at the level of promoter/directors particularly, so the phraseology there and the, I think the clarity is what I expressed and what I felt at that meeting.

193 Q. Well, the document itself records that it was copied to Mr. Barry and to Mr. Stafford.

A. And another reason why I wrote it was precisely to copy it to Mr. Barry and Mr. Stafford.

194 Q. I was just going to ask you that, you don't appear to have copied it to the Board as such?

A. Well...

195 Q. Although you may well have done, but it is not recorded in the document?

A. No, I don't believe I did. I believe that if that - the date of that I think is probably still May, is it?

196 Q. It is the 15th of September.

A. Sorry, September. Well at that stage, having just gone on air, there would be little point in engaging the Board members of Terry Wogan and Chris de Burgh and others in a form of sort of hyping the situation more than was necessary. I felt it was important that if the main focus of attention of the key members of the IRTC was effectively

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an attempt to say can you turn down the volume and can you begin to normalise relationships now that we are on air? I would have felt that it was quite sufficient to deal with it in the way that I dealt with it. It was not necessary to go to a board level, I felt, at that juncture.

197 Q. Can I just ask you this with specific reference to the two passages on page 5 to which I have referred you; what was your purpose in recording in such a detailed way the particular matters which are there recorded?

A. On page 5?

198 Q. Yes, the two, perhaps one is the second paragraph, and the second one is the second last paragraph on that page.

A. Second, "Mr. Connolly has explained from his point of view he felt that he had --"

199 Q. No, that is the third paragraph.

A. Sorry, I can't see the second paragraph.

200 Q. It begins with the words "At this stage..."

A. I believe that the purpose of stating it was that there was a degree of frustration that matters that rightly belonged to normal discussion between the Secretary of the IRTC and the staff of the IRTC and the management of Century Radio which could have and should have been dealt with at that level were very quickly elevated to discussions at a different level. Some discussions would take place unbeknownst to management, but we were not privy to all of the discussions that were taking place behind-the-scenes, and I think that the purpose of that statement was to say that the IRTC's, at an official level, point of view was that they would far prefer to have dealt with the management team at Century Radio and to try to establish

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exactly what was the game plan for Century in Century in programming, on the Irish language, on news coverage and speech programming, and if that was the case, they were dealing with decision makers, that then they could make decisions. If they found whatever was discussed at that level was what was actually desired or thought of or planned --

201 Q. I think given that you recorded it in this way, clearly this was, this was a view which they held and expressed at this meeting?

A. Clearly.

202 Q. And they instanced the question of the transmission charges. Obviously you can't speak for that because you weren't there at the time of the directive.

A. I wasn't there.

203 Q. But it implies that they, what they particularly had in mind, of course, was their own dealings with Messrs. Barry and Stafford, presumably in relation to the broadcasting contract?

A. Correct.

204 Q. And you were there since the 1st of May?

A. I was there from the 1st of May.

205 Q. Do you consider that the points that they made were reasonable?

A. I consider that the points they made were reasonable, yes. There was too much activity involved in behind-the-scenes discussions. We were very much in a situation where the management of the company were, in effect, not laying out their stall to the IRTC on a point by point basis and getting on with it. It was going to

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take more time, I believe, to resolve those issues than the founder directors were either willing or perhaps even able to entertain.

206 Q. Thank you, Mr. Laffan. Would you answer any questions anybody else may have for you?

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MR. FOX: Chairman, I have a few very short questions for the witness.

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CHAIRMAN: Very good. Anyone else? I just want to find out.

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MR. O'HIGGINS: I will have a few questions afterwards, Sir. I shouldn't be very long.

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CHAIRMAN: Very good. Carry on.

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

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207 Q. MR. FOX: Mr. Laffan, you referred in your evidence to anger and frustration by Century at RTE when you joined the company in May 1989, is that correct?

A. I think there was a lot of - I think there was a lot of anger and frustration. It came out from time to time at some of the meetings.

208 Q. Did that predate your joining of Century?

A. Did it predate --

209 Q. I mean, was it present when you joined Century?

A. I would have felt that when the meetings happened there was - yes, I would say so, yes. I think so.

210 Q. Did you know what it was about?

A. I didn't at the time, because I had dealt with organisations at all levels. I formed the opinion over time that it must have been that RTE felt that they were being imposed upon in terms of the obligation to do things that perhaps they felt they shouldn't have to do for Century as a well funded, seemingly very well funded organisation that had plenty of money to talk to Gay Byrne or talk about millions of pounds to broadcasters. I feel that they felt that if they were being imposed upon with a transmission contract price that they didn't agree with, and that they didn't find themselves that they could make a viable performance on, they felt that they were being really set upon.

211 Q. Thank you very much, Mr. Laffan.

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CHAIRMAN: Thank you.

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THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. O'HIGGINS:

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212 Q. MR. O'HIGGINS: Yes, Mr. Laffan, in relation to the question of transmission in the first place of coverage from September onwards, I think you accept that RTE did their very best to seek to achieve the level of coverage which could be achieved on a temporary basis, is that so?

A. That is correct. I accept that.

213 Q. Yes. Now, I have to suggest to you that whatever your recollection may be now, that the figure of 60 percent was never promised by RTE as a temporary measure, and that their consistent approach was not to promise particular

levels or grades of coverage, although hoping that they might be achieved?

- A. I think that there was a genuine intent and aspiration, an expectation and hope that by covering Cork, Limerick and Dublin, that that would in itself deliver 60 percent plus, and while technically you can't, I don't recall anybody specifically saying "I hereby undertake and warrant and guarantee it will be X," there was an understanding that when transmitters went into those urban areas, given the fact that a 2 kilowatt transmitter from Three Rock can blast all over Dublin, there was an expectation, naive perhaps with the benefit of hindsight, there was a genuine expectation and a sincere expectation that if a two and a half kilowatt transmitter could cover the greater Dublin area and a transmitter could cover Cork and Limerick, and that you would have a very reliable transmitter, that you have 60 percent, that was the expectation.

214 Q. I am not challenging the genuineness or otherwise of your expectation. I am suggesting to you that it did not come about from anything that was said to you by RTE?

- A. It did not come about on the basis of any specific commitment but may I add, that it was equally not denied that it could happen.

215 Q. But can I suggest to you that in the thousands and thousands of pages of documents generated in relation to transmission issues among others, that there isn't one which hints at a promise of that kind at or about or before the time of the signing of the transmission contract?

- A. I accept that point.

216 Q. Furthermore, can I suggest to you that Century were advised

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by their own transmission expert from time to time, then
Mr. Hills, now Professor Hills, is that correct?

A. Ray, I believe, was recruited way before I got involved in
Century. He was there and I met him once I think, yes.
He did advise them, yes.

217 Q. Can I suggest that if a figure of 60 percent came from
anywhere, and I am not challenging your bona fides, Mr.
Laffan, I have no interest in doing so, but if it came from
anywhere, it came most likely from Mr. Hills?

A. I sincerely don't know that. I sincerely don't know that.

218 Q. Could we look at page 791 for a moment please? Perhaps 790
in the first instance. I think it is a report by Mr. Hills
to the promoters of what later become Century on the 2nd of
September, 1988. And he records, at paragraph 2.3, which
is on page 790, that "exploratory meetings with engineers
from RTE have not so far produced any detailed quantitative
evidence about the coverage of their existing stations
either MF/VHF/FM."

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I am suggesting at all times the RTE engineers were very
guarded about giving any guarantees -- what I am
suggesting --

A. (Witness nods).

219 Q. But I am suggesting Mr. Hills made his own assumptions and
own inquiries and if we turn the page to 791, at paragraph
2.4 he says, "We are advised that a national population of
3 million, nearly 60 percent is located in the area of
greater Dublin, over 1 million, and greater Cork up to half
a million..." it goes on to talk about that. Now, I
suggest to you that as far as the figure of 60 percent came

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from an expectation vis-a-vis Dublin and Cork coverage, that that is most quickly where it came from and it certainly never came from RTE?

A. Well, obviously this is a document that I have not seen before, and it is a document that preceded by quite an amount of time my involvement via several months in Century, but clearly there is a 60 percent on that page, and it would be coincidental if not - I mean, I don't know where else the 60 percent came from, other than in discussions with RTE. Genuinely it was not denied that it could be achieved so --

220 Q. Can I suggest to you that RTE personnel who have given evidence here and who were opened to be cross-examined have never had it suggested to them that they ever gave that undertaking and they say that such coverage would not, even on the basis of their own transmitters I think in the relevant areas, be achieved?

A. I accept that they would never have given such an undertaking.

221 Q. Yes?

A. They would never have given such an undertaking, I would also say that discussions that lead us go down the road of a rate card definition was with the expectation of 60 percent plus from Day 1 and that was something that was known to RTE even if they say we will never give you an undertaking but the coverage of Limerick, Cork and Dublin, by definition, would have given us that.

222 Q. Yes. Now, Mr. Stafford made significant complaint about what he alleged to be delays by RTE in getting transmission, the transmission contract finalised and in

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ordering equipment and getting things ready to commence transmission at the earliest possible time. Now, I want to ask you this, first of all, can I preface it by saying that Mr. O'Brien, who gave evidence to my recollection, suggested that his dealings with you at all times seemed to be rational and constructive, but that there were times when he couldn't understand what may have happened in the background and might I come back for a moment to May 1989, after the franchise had been given and when RTE say that they were making urgent efforts to try to get the transmission up and running, including ordered equipment. If we could have page 4011 please?

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Yes. You will see that is a letter written on the 11th of May, 1989, where Mr. O'Brien writes to you looking for some guarantee or bond to cover the ordering of ú250,000 worth of equipment, isn't that so?

A. That is so.

223 Q. I think in a constructive vein you write back the following day and you suggest that rather than having a bond straightaway, because it will take some time to appear and that matters are urgent, that ú250,000 could be put by Century on joint deposit until the bond had been worked out, isn't that so?

A. That is correct.

224 Q. And Mr. O'Brien thought that this was, that was a perfectly sensible arrangement, and you understand that he was concerned that if RTE ordered equipment which was required by Century without some guarantee as to payment, that it would be wholly exposed to for some or other if Century

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rejected it?

A. I would never have debated that as being anything other than a reasonable position.

225 Q. So what, and I accept that we have no reason to believe that it was yourself, what led to the extraordinary situation then, where by the 19th of May, seven days later in a letter which you understand was "crafted" as it was, up in Mr. Stafford's office, that suggestion was modified to effective extinction. If we could just have the last paragraph of the 19th of May. Page 5305.

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If we could just go to the very last paragraph. You will see there that in place of the perfectly sensible suggestion which you have made, a suggestion is made as a substitution that a £250,000 bond or bond deposit good for 21 days will be put up by Century as a gesture of good faith.

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Now, can I suggest to you that that was of virtually no value and practically expired before the income, the bond would be dry?

A. I think undoubtedly that in the intervening period there would be, there would have been discussions internally in Century and there would have been an evolving attitude to how can the national transmission network be called to accommodate Century's signal in a cost effective way?

226 Q. Mr. Laffan, isn't the plain fact this, wasn't there agreement to put up a bond in the first place so matters could be got going in proper time and that without any explanation of a particular kind, that agreement was simply

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withdrawn?

A. I agree with you, but please remember, I did not sign or write the cheques.

227 Q. Yes. And can I ask you, can you see any value whatever in offering a bond for 21 days in respect of equipment, the ordering period for which the delivery period for which is going to be of the order of three months to six months in many cases?

A. I think that this was very much an attempt to try to package the entirety of the transmission requirements of Century or perhaps an interpretation of the obligations of RTE in a way which would have facilitated Century's capacity to execute it, rather than any sense of equity or the value of the bond for 21 days. It was an attempt to find a solution that was going to least expose Century.

228 Q. In other words, in effect, it was an effort by Century, I am not blaming you personally for this necessarily, to have the equipment ordered and delivered without itself paying for it or exposing itself for a liability for it?

A. Well, I think that --

229 Q. Or at least not a guaranteed liability?

A. Not a long-term guaranteed liability, but at the end of the day, some thinking behind that perhaps was also that Century was in its own right the holder of the franchise for the defined period and ultimately once that equipment was tied into the national transmission network, de facto it become part of the national transmission network and really from a practical point of view, could never again with any value be extracted from the national transmission network, regardless of how Century performed. There was

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that thinking behind it as well.

230 Q. But, Mr. Laffan, surely that is the very point that, in effect, this was a prelude to Century saying you can have the equipment, you can own the equipment, we will use it or pay for it at a minimal rate because it is now in your network and we don't ultimately intend to foot the bill for it ourselves at all?

A. I think there was always an expectation that there would be a, that the ministerial directive payment in respect of transmission, there would be an expectation that there would have been other fees and costs. I think in principle the decision was taken that Century Radio was not going to create a duplicate national transmission network, regardless of what the terms of the license or the terms of the legislation might have said. That we were not in a position to really replicate the entirety of the RTE network. Once RTE were the designated deliverer of the signal, the reality was that the current holder of the national independent radio license for this time, Century, would have access to that network at a cost effective rate and if in two years or seven years time, that license went to somebody else, that equipment, that network was there for somebody else.

231 Q. Mr. Laffan, aren't we very simply talking about an effort by Century to step back even from the requirements which were contemplated by the directive of the 16th of March?

A. From a practical point of view, yes, insofar as that we were not going to be the owner or controller and manager of broadcast equipment or of transmission equipment at 16 sites around the country. That was never going to be part

of what Century was going to do.

232 Q. You certainly weren't, or Mr. Stafford perhaps, wasn't proposing to pay for it at that time, isn't that so?

A. Well --

233 Q. Notwithstanding what the directive had said?

A. Insofar as Century's principled attitude to the transmission site was, if the network is in existence can we effectively lease time off of that network? Can we pay for the time that we use off that network? But without necessarily owning, controlling and funding the totality of the equipment that is required to deliver the signal. However, that may be in, sort of in contradiction to or at odds with the terms of the actual legislation itself. From a practical point of view, it seemed to be an inordinately difficult definition problem of where responsibility and accountability lay if, in fact, Century did not make RTE technically and financially accountable for the expansion or adaptations of the network, therefore, to deliver the signal. The subsequent negotiations on how that was to be funded or what guarantees were to be required were for more of a commercial and financial debate rather than a technical issue.

234 Q. Mr. Laffan, can I suggest to you that ultimately that kind of to-ing and fro-ing led to the necessity to have some form of arbitration by the Department, by the Secretary of the Department to try to sort things out?

A. Undoubtedly you are right and I was party to some of those meetings.

235 Q. And I think it is fair to say that the departmental conclusions, on every front, took the view that RTE's

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position was a reasonable one and that Century's wasn't balanced and not one --

A. I think I was asked earlier if was this an issue of principle or was it an issue of funding? Once, having gotten into this situation of establishing a national independent radio, if one read the terms of the license and the terms of the legislation itself, it required a substantial degree of funding over a longer period of time than the Century promoter/directors were willing to contemplate at that point in time.

236 Q. Well, I accept that that may be so, but I am suggesting to you that that unwillingness did not lead to any proper requirement that RTE should step in and fund it for them?

A. I have no doubt that you are right.

237 Q. Now, just in relation to advertising. I don't think there is any great dispute. I think RTE agree that there was an expected market for Century and that it hoped that it would prove an effective vehicle for advertising, but I think would you accept that the RTE advertising rates were never reduced in the context of the arrival of Century, and in fact increased in every year from Century's arrival to the date of Century's eventual liquidation?

A. I am quite sure that the rate card was increased, but I am equally sure that there were package deals offered on, particularly the Gerry Ryan Show, which proved to be very competitive, given the level of audience that the Gerry Ryan Show at the time was winning, relative to or compared with anything that Century could provide by way of an alternative.

238 Q. Can I suggest to you that the evidence has been that RTE 2

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at all time sold in packages up to and including that time, and that the Gerry Ryan Show was one such package that rate card has been proved and while RTE 1, you are perhaps right about this, sold in individual slots, RTE 2 was by and large sold in packages?

A. Well, it seemed to me at the time that certainly that there was a strong push on very cost effective package around the time that we were threatening to come on air and attempting to come on air. And I am not objecting to that. I am simply saying there was a, if you look, an objective statement of cost per thousand, and took the cost of a spot on RTE Radio 1, say in the mid-morning show, the Gay Byrne Show, that clearly established a cost per thousand. There was no arithmetic comparability between that cost per thousand and the cost per thousand that you could apply, say, to the Gerry Ryan Show if Gay Byrne was charging €400, €500 for a 30 second slot and delivering an audience of 2.1 million and Gerry Ryan was delivering perhaps 700,000 persons and charging €35, €45 per slot. There was a very substantial differential between RTE Radio 1 cost per thousand advertising and 2FM cost per thousand advertising and the willingness of 2FM to offer package deals which I am sure must have preceded my involvement in the radio industry seemed particularly very competitive and very different environment to try and, say, compete. If at the same time, the sales agents and sales officials on behalf of RTE were going in to advertising agencies and saying "Century do not have the coverage, the signal breaks down" it proved to be extremely difficult. We had letters from advertising agencies verifying that that was the case.

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239 Q. Well the evidence has been that the advertising agencies had no difficulty in working out for themselves what the coverage was because they were extremely expert at monitoring the advertisements themselves, that it did not require RTE to tell anyone that there wasn't 60 percent coverage, because they could tell that plainly for themselves?

A. I can't dispute that with you. All I know is that I do recall, certainly I recall one or two letters where advertising executives, agencies wrote to us asking us what was the coverage and what was the, could we verify that they were being told that was less than 30 percent.

240 Q. Indeed was RTE, if RTE was asked, it said it replied to what the coverage was if you did not volunteer such information, unless asked?

A. I am not for a moment debating the issue of 2FM to a right to a pricing policy, I am just saying for a fledgling national independent radio station which was trying to get its signal out through RTE, it was a very difficult environment to have a huge audience at mid-morning, key earning time delivering, let's say, ú400 to ú500 a slot on a cost per thousand basis on an index of 100 on a cost per thousand basis, on another successful show was maybe 20 percent of that. It was a very tight squeeze for a new station to try to establish a financial viability in. That is the only point I am making.

241 Q. Thanks very much, Mr. Laffan.

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MR. HANRATTY: Sir, there is one question. It is not by way of re-examination that I omitted to ask you.

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CHAIRMAN: Certainly.

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THE WITNESS WAS EXAMINED FURTHER AS FOLLOWS BY MR.
HANRATTY:

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242 Q. MR. HANRATTY: In my original examination, Mr. Laffan,
while you were Chief Executive of the company, did you ever
become aware that Mr. John Mulhearn was an investor in the
company on an equal footing with Mr. Barry and
Mr. Stafford?

A. I was never aware of that whatsoever, and only became aware
of it through the process of this Tribunal, it became
known.

243 Q. Thank you.

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CHAIRMAN: Thank you very much. Thank you very much for
coming down and you have been, as usual, of great
assistance.

A. Thank you, Sir.

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THE WITNESS THEN WITHDREW.

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MS. DILLON: There is one further witness for today, Sir.
Mr. Eugene Fanning from Arthur Cox and Co.. It is unlikely
that we will finish him shortly. I expect he will be in
the witness-box for approximately an hour.

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CHAIRMAN: Well, could we sit again shortly after two
o'clock, say ten past two?

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MS. DILLON: Yes, Sir.

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CHAIRMAN: We will try and move him forward at that point.

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THE TRIBUNAL THEN ADJOURNED FOR LUNCH

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THE TRIBUNAL RESUMED AS FOLLOWS AT 2.15PM:

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MS. DILLON: Good afternoon. The next witness is
Mr. Eugene Fanning, solicitor.

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MR. COLLINS: Perhaps before Mr. Fanning starts his
evidence, could I just out of courtesy tell that I act for
Mr. Fanning, instructed by Arthur Cox. I don't wish to
unnecessarily apply for representation or any order of that
kind at this stage, Mr. Chairman, but I would, if
necessary, and if it arises wish to be allowed to ask
Mr. Fanning any questions that arise from his examination
by Ms. Dillon.

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CHAIRMAN: We will deal with it when it arises. I am not
going to be difficult on the matter.

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248 Q. It was a proposal, I think, to become involved in radio stations?

A. That's right, yes, the national radio station.

249 Q. When Mr. Stafford first came to you with this, did Mr. Stafford indicate to you whether his interest was in a national or a local radio?

A. No, he indicated that it was in the national radio service only.

250 Q. And did he indicate to you at that stage who were the other persons who were involved or interested in the project?

A. He said he had been discussing the possibility with Oliver Barry as his partner and so, he had been speaking with him at that stage.

251 Q. I think you had a meeting with Mr. Barry in or around the 9th August, 1988. That's page 6215 please. It will come up on the screen beside you, if you don't have the hard copy, Mr. Fanning.

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Was this your first meeting with Mr. Stafford about this project?

A. I believe that's true, yes, yeah. He may have made a phone call a month or two earlier, saying there was a possibility he was going to be involved in it, but I believe this was the first time I actually met him in my office.

252 Q. Before we go through the documents in question, can I ask you, is it your normal practice to make notes in relation to meetings that you attend?

A. It would be normal to make notes of the kind of highlights of issues that I needed to remember for future. I

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wouldn't take kind of detailed attendances, but I would basically take down critical commercial or legal issues that I thought I could use in future.

253 Q. So you would always try and ensure that you dealt with the important matters in taking a note?

A. That's correct, yeah.

254 Q. In dealing with Mr. Stafford on this occasion, if we could move to page 6217, which is the final page of attendance.

A. Mm-hmm.

255 Q. And if we move down to the where the word "Co-location" appears, and if you would just read that out for us, Mr. Fanning?

A. It says: "Co-location. Rent reflects historic cost and index, percentage on service costs."

256 Q. That suggests a meeting with Mr. Hills on the 24th of August?

A. That's correct.

257 Q. And at this stage you hadn't met Mr. Hills?

A. No, I hadn't. I mean Mr. Stafford told me that he had retained a consultant, Mr. Hills, and I think he had worked for the IBA for a number of years, that was why he was an expert on transmission arrangements. He was an engineer.

258 Q. Can you assist us at all, Mr. Fanning, with what "rent reflects historic cost" and "index percentage on service costs" means?

A. That would have been a note on basically the principal issues that we would have talked about. Instead of having its own transmission network, basically co-location is a situation referred to where you put a transmitter on someone else's mast, so co-location basically would have

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said, on the RTE transmission mast we would have had to co-locate there and put transmitters on.

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Underneath that probably is the beginnings of thinking how one could actually reflect the cost of that. So there would have been a rent charged or a licence fee or a rent, and it would reflect the historic cost, that is the historic cost of putting the transmitter there in the first place. So we would have talked about how one prices that or begins to price it, and then an index would have been plus CPI, that could have been possibly, you know, the actual historic cost plus CPI from the historic cost.

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And then another element of the cost would have been the percentage on service costs, because equipment has to be serviced. It's electric equipment and engineers service it, put power and spare parts, but they also kind of go on and maintain it, check how it's going. So the service costs would have had a percentage on top of that.

259 Q. Your note doesn't seem to indicate that Mr. Stafford was of the view at that stage in August of 1989 that he should not in any circumstances pay historic costs?

A. That's probably correct.

260 Q. Thank you. If we can move to the next document which is a record of your next meeting with Mr. Stafford, which is the 28th August, 1988. Page 6218 please.

A. Mm-hmm.

261 Q. And this - Mr. Fanning, would this have probably been another meeting with Mr. Stafford?

A. That's correct, yeah.

262 Q. Would other persons have been involved at that time? You see Mr. Hills' name is there and Derek Quinlan, who was the accountant?

A. Yes. No, I think in those early days I think there was just himself and myself talking together. We probably would have referred to Ray Hills as well, but I don't believe he was present at that meeting, nor was Derek Quinlan, so you can just see "Ray Hills, IBA, engineering person."

263 Q. You think this was a meeting between yourself and Mr. Stafford?

A. Yeah.

264 Q. You have it on one side of the page, the word "Local" and "2 transmitters, ú120,000 each", and then beneath that, a pound sign and saying "Rent et al."?

A. Yeah.

265 Q. You have the letters "FM" and "AM" which were two radio frequencies, and then you have the words "National", is that right?

A. That's right.

266 Q. You have FM and AM and you have a costing of FM, "ú1 million outlay"?

A. Yeah.

267 Q. And beneath that you have "AM, 1.5 million pounds outlay."?

A. Yes, right.

268 Q. Who would have given you these figures, Mr. Fanning?

A. It would have been Mr. Stafford himself that would have been talking in general terms of what the cost was of running a national service, from an engineering point of

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view and local. So we would have been just - they would have been general figures. The "local" refers there to, I am sure, the cost of the transmitter and the Irish pound rent et al is basically the cost of servicing the transmitter.

269 Q. Yes. So the figures that Mr. Stafford gave you at this meeting on August 28th, 1989, for running the national station was 2.5 million?

A. Mm-hmm.

270 Q. Is that correct?

A. I mean it's difficult, looking back at those figures now to know exactly what they were for, but they would have been ballpark figures for transmission costs.

271 Q. Yes. And --

A. Probably in terms of capital costs like buying the equipment, putting the transmitters in place and so forth and the actual outlay, you can see "ú1 million outlay." So there would have been capital costs probably.

272 Q. But the total figure for both AM and FM is 2.5 million?

A. That's correct.

273 Q. And the only person who could have give you those figures at that meeting was Mr. Stafford?

A. Oh absolutely, yes.

274 Q. Can you confirm also, Mr. Fanning, in the balance of the memorandum of that meeting again no argument is raised at that stage in relation to historic costs not being payable?

A. Correct, there is nothing in the memo about that.

275 Q. And we have seen in the earlier memorandum, that it appears to suggest that historic costs would be payable or that was a view by Mr. Stafford, in the earlier memorandum and

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notes?

A. That's correct.

276 Q. If I could ask you to turn now to page 6199 please, which is a meeting which is dated 5th January, 1988, but in fact I think, Mr. Fanning, was a meeting on the 5th January, 1989?

A. That's correct, yes.

277 Q. And I think at this stage, a team had been put together, is that correct, to make the presentation to the IRTC in January of 1989?

A. That's correct. I think the presentation was the 12th of January. Therefore that would have been a few days before.

278 Q. Was this a meeting involving a number of persons or was this a note that you made for yourself, or can you tell us how this documentation came into being?

A. I think that particular, could you just flip on to the next page --

279 Q. 4200 please.

A. Yeah, that would have been - those pages would have been taken from a notepad that I would have been using. At that point in time I would have been collecting notes on procedures and issues that might come up in the presentation which was on the 12th. So during that week, people would have been discussing what was likely to come up and, so they would have been a sort of collage of notes that I would have taken rather than any one particular meeting.

280 Q. And did you have contact or meetings with anybody in the IRTC, in the Secretariat, for example?

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A. I didn't have any meetings with them.

281 Q. Did you have any telephone conversations with anybody?

A. I don't believe so. I mean, there might have been a telephone call just telling me what the timing was. I mean, we had actually submitted the letter I think for the application, so the officials of the IRTC might have phoned up and said, you know, "You are on at such and such a time." And it wouldn't have been any more than that.

282 Q. And would the information in this document then have come from the people on your side, in other words, the Century side who were involved in preparing the application?

A. Yes, the bulk of that information would have come in discussions with people saying what they thought might have happened and what people had spoken to them about.

283 Q. And who were the people with whom you were having most discussions at this time? Was it Mr. Stafford, Mr. Barry?

A. No, it was Mr. Stafford.

284 Q. If you could turn to page 6201 please? And this is a note I think that you made in relation to the transmission question, as to whether or not that question would be asked?

A. Right.

285 Q. And it says: "375 K is our figure. Submission will avoid that issue. May have the information afterwards."

A. Right. Yeah.

286 Q. That's your note?

A. That's my note.

287 Q. And can you tell us first of all, who gave you that information?

A. Well I can't tell you precisely, I can't remember who

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actually mentioned that, but that would have been - I would have jotted down what people would have been discussing. Obviously the 375 was the figure in the business plan and there would have been, a question as to that issue of transmission costs would have come up and it would have been the opinion of the people who would have been discussing it that they wouldn't deal with that issue at the actual public hearing.

288 Q. But, Mr. Fanning, who were the people who were discussing it?

A. Well, it would have been James Stafford, Oliver Barry, and the other advisers that would basically have been preparing for the meeting.

289 Q. And who was the person who dealt with, by and large with the question of the transmission charges or the financial aspect of the application?

A. By and large that would have been Mr. Stafford.

290 Q. And is it more likely then that this view in relation to the transmission questions and the \$375,000, was a view expressed by Mr. Stafford?

A. Well, I can't say really.

291 Q. I am not asking you to say, I am asking you as a matter of probability who was the most likely person on the team to have made a comment such as that?

A. It's difficult to know. It could have been Mr. Stafford. It could have also been Mr. Barry, because there would have been discussion between them, but it most likely would have been Mr. Stafford or Mr. Barry.

292 Q. Could we have page 828 please? This is a document, Mr. Fanning, that you may not have seen at the time, and

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first of all I'd like you to indicate whether in fact you did see it at the time? It's a letter from Mr. Martin Marren to Mr. Oliver Barry. Do you have any recollection of seeing that document?

A. No, I don't believe that I had that document at that time.

293 Q. And that document is not on your files?

A. I don't believe it is, no.

294 Q. Could I ask you at this stage, what was the respective position of Arthur Cox & Co. and Martin E Marren & Company insofar as the Century application was concerned?

A. Well, we had - we were acting for James Stafford and Martin E Marren & Co were acting for Oliver Barry. So the two parties were really joint ventures or partners in the proposal, so our two firms would have been providing legal services, in the end of day we did provide different legal services to Century Communications, but we both would have been involved on different aspects, but both involved in representing Century. But, historically, I would have acted for James Stafford and Enda Marren would have acted for Oliver Barry.

295 Q. Was it your tendency at this particular point in time to take your instructions primarily from Mr. Stafford?

A. Oh from Mr. Stafford, yes.

296 Q. And was Mr. Barry instructing Messrs. Martin E Marren & Company?

A. That's correct.

297 Q. And in this correspondence of the 5th January, 1989, which is a critical look at the Century application, a number of questions were raised by Mr. Marren in relation to the

financial situation of the company.

A. Mm-hmm.

298 Q. And if we turn to page 822 please? And if you look at paragraphs 21 and 22 and 23. At 21 it sets out that "The potential investment of Century, if awarded the franchise, appears to be in the order of 3 million. This excludes the cost of establishing the transmission network. What is the source of the funds? Are the funds if place?" Do you ever remember a query about matters such as that, about what the source of funding for Century was?

A. I don't remember that specific query, but obviously funding would have been discussed all the time by the parties, so the initial funding would have come from Mr. Stafford and Mr. Barry. But in subsequent discussions, there would have been discussions about raising the finance either from investors in the company or debt finance, so financing was obviously a key issue.

299 Q. And was Mr. John Mulhearn ever identified to you as an investor in the company?

A. No, Mr. Mulhearn was never identified as an investor. The investors really were James Stafford and Oliver Barry.

300 Q. If you look at Question 22, and I wonder was this something that you may have discussed with Mr. Stafford, which notes "That the financial projections are posited at a transmission figure of ú375,000 per annum. What is the figure sought by RTE? And why does this figure not form the basis of the financial projections? How would Century propose to persuade RTE in all the circumstances to accept a substantial reduction in the figures sought?"

00099

A. Mm-hmm.

301 Q. Can you assist the Tribunal as to whether you had any input in the figure of ú375,000 as being the transmission figure in the submission documents?

A. No, I had no direct input. I mean, that figure of 375,000 would have been produced by the company, presumably taking advice from Ray Hills and other engineering costs. I mean they would have had to go out and do that kind of a survey. Obviously that wouldn't have been within my area of responsibility. So I didn't get involved in how that particular figure was arrived at.

302 Q. Was it ever indicated to you that RTE had produced a scale of charges far in excess of a figure of ú375,000, of the order of ú1.1 million?

A. I am not sure if - before that particular time, but certainly around that time I knew that RTE were looking for a more substantial sum than the 375.

303 Q. And did anybody on the team address their minds at this point in time as to how the difference between the Century figure of 375 and the RTE figure of 1.1 million was going to be resolved?

A. Well not in my presence anyway, and I was never party to those discussions.

304 Q. Could I have page 2300 please? This is a list of people who apparently were at a meeting in your offices on the 14th February of 1989?

A. Yes, that's correct.

305 Q. I think, Mr. Fanning, that two meetings took place in your office on the 14th February, 1989, one of which was a board meeting and one of which was not. And I think this

00100

document relates to the meeting that was not a board meeting?

A. Yes.

306 Q. And the other handwritten notes relate, by reference to what's contained in the minutes, to the board meeting?

A. I believe that's correct.

307 Q. And can you confirm that the persons whose names are on the screen at the moment, were present at the non-board meeting?

A. Based on my notes I believe that they were there, because I would have jotted down who was actually in the room, so I would have recorded who they were.

308 Q. And the purpose of this particular meeting, this was the first - prior to the first board meeting of Century Communications?

A. I am not sure if it was prior or after, I mean --

309 Q. On the same day?

A. Certainly.

310 Q. And Mary Finan from Wilson Hartnell, the PR company; and Laurence Crowley who was the Chairman; and Mr. Stafford and Mr. Barry the founder shareholders; Terry Wogan who was a director and investor; and Mr. Fanning and Mr. Duggan were solicitors with Arthur Cox & Co.?

A. That's correct.

311 Q. And what was Mr. John Mulhearn's function at the meeting?

A. Well, I don't think he had - obviously I think he had been brought along by Mr. Stafford and Mr. Barry to the meeting. I don't particularly remember him at the meeting or participating in the meeting, but he would have been brought along by our client to the meeting.

00101

312 Q. Now, I think by the 14th of February, certain events had taken place, Mr. Fanning?

A. Yes.

313 Q. Century had made its application on the 12th January, 1989. They had been awarded the licence on the 18th January, 1989?

A. Correct.

314 Q. I think also, that the Minister for Communications and RTE had agreed a scale of charges on the 11th January, 1989?

A. Mmm-hmm.

315 Q. Of ú692,000 for annual charges?

A. Mm-hmm.

316 Q. And by the 14th February of 1989, the RTE figure was in or around 692,000 or in the process of moving down to ú614,000?

A. Right.

317 Q. I think you are aware of that from the documentation?

A. That's correct, yeah.

318 Q. That was the sequence of events?

A. Yeah.

319 Q. At any stage did the Century figure move off the figure of ú375,000?

A. Not at that stage, no.

320 Q. If we could look, first of all, at page 2307? Sorry, 2306. At the meeting that took place at which Mr. Mulhearn and the rest of the persons were present, this is part of your note in relation to that meeting and it's dealing with the question of transmission charges?

A. Yes.

321 Q. And if you can see there at the top of it, it says

00102

"ú375,000 offered."?

A. Yes.

322 Q. That was the Century figure?

A. Correct.

323 Q. And you go beneath that, it says: "RTE get a licence fee increase, non-viable."

A. Correct.

324 Q. Can you explain that please?

A. I can't really explain that particular note. There must have been a discussion about RTE getting increased licence fees, but obviously it was considered not viable. I can't really explain though how that related to the transmission costs.

325 Q. Beneath that: "Minister will give a direction at ú375,000. Downtown is charged ú100,000. Major question is loss of face."?

A. Right.

326 Q. Can you first of all tell us whether you think that's an actual quotation or whether you took that down reasonably verbatim from the person that said it?

A. It would have been sort of a highlight. I mean, there would have been a discussion, a frank discussion among the clients as to, you know, the transmission charges and where they had stood. So I would have kind of jotted down just a highlight, and obviously one of the parties believed that the Minister would give a direction at 375, and then they were comparing Downtown and other - they were trying to benchmark themselves against other comparable transmission costs that they knew about.

327 Q. Yes. Had Century Communications made an application for a

00103

direction at this stage?

A. I don't believe so. I think it occurred afterwards.

328 Q. And your note records that one of the individuals who was at the meeting was of the view that the Minister would give a direction at $\text{€}375,000$?

A. Yes. It may have been a statement, like the person said "we believe it" or "I would have" - I mean, it's not a verbatim - it's just a kind of a statement, somebody said, as part of a sentence, "They will give a direction of 375."

329 Q. And beneath that it says: "Minister has extended Millennium. Could pay up to $\text{€}520,000$."?

A. Yeah, "The Minister has extended Millennium" but, is probably a different point than "could pay up to 520." Because of the underline, that would clearly distinguish between the two notes. So I think the point about "extending Millennium" was slightly different, and then they would have continued on in the discussion and somebody said that they could pay up to $\text{€}520,000$.

330 Q. But the - that $\text{€}520,000$, Mr. Fanning, was in relation to the transmission charges?

A. Yes, I believe so.

331 Q. And it's referable back up to the earlier figure of "Minister will give a direction of $\text{€}375,000$ ", and $\text{€}375,000$ was the figure in the Century submission and had up to this point in time remained the Century figure?

A. Correct.

332 Q. And the figure of $\text{€}100,000$ in relation to Downtown, did you know at that stage who Downtown were?

A. Other than they were a radio service.

333 Q. So did the information in relation to Downtown being

00104

charged €100,000 come from the same person who was of the view that the Minister will give a direction at 375?

A. Well, I suspect that Downtown - I think Downtown was a Belfast radio service. It would have come from information I suppose, either through one of the consultants or through discussions that maybe one of the parties had had with other people. They would have been checking around to see what other people were paying for transmission costs.

334 Q. And who was the person on the Century team who was checking around with other parties, who are discussing with other parties as to what the costs were?

A. Of those parties in the group, it would either have been Oliver Barry or James Stafford.

335 Q. And your note records: "Minister will give a direction at 375."?

A. Mm-hmm.

336 Q. It doesn't say "Oliver Barry believes Minister will give a direction" or "Mr. Stafford believes Minister will give a direction"?

A. No, that's right. But I mean, in the same discussion, it would be quite unusual for the discussion to continue on and then say we could pay up to 520 if the Minister will give a direction, was an absolute statement.

337 Q. The comment "Could pay up to 520", was that reflecting what was said at the meeting, that Century had available to it €520,000 to pay for transmission charges or could afford to pay up to €520,000 for transmission charges?

A. Well, it's difficult for me to speculate, but it would have been more a question of looking at their business plan, I

00105

think, and actually seeing what the business plan could bear, rather than did they have available cash.

338 Q. I suggest, Mr. Fanning, that the only interpretation of "Could pay up to ú520,000" is that Century could afford to pay up to ú520,000 for transmission charges if they had to?

A. Based on their financial plans or projections, somebody made that statement at the meeting, yes.

339 Q. And the person who made that statement was one of the Century team?

A. Yes.

340 Q. And was that the same person who was talking about the Minister giving a direction of ú375,000 and Downtown being charged ú100,000?

A. No, I can't say that it was the same person.

341 Q. Is it likely to have been the same person who was concerned with the issue of transmission facilities?

A. Yes, it is likely.

342 Q. If we move down through the page, please, and it says "Contract 20 years. Inflated only for spares and servicing."?

A. Mm-hmm.

343 Q. Does that relate to the RTE figures or the RTE charges, "Inflated only for spares and servicing."?

A. I think the point would have been that they had wanted the transmission contract to be in the same terms as the broadcasting contract and therefore, you know, they would want the contract to be for the 20-year term of the licence.

344 Q. Century wanted the contract to be for 20 years because that was the life of the machinery?

00106

A. Sorry, yes, that's right, rather than - the contract was ten or fifteen years I think.

345 Q. And therefore, the comment, "Inflated only for spares and servicing" must relate to the RTE figures, isn't that right?

A. Correct.

346 Q. Because the 20-year period was a period that Century had wanted, because that was the life-span of the machinery?

A. The machinery, okay.

347 Q. So somebody expressed a view at that meeting that the RTE figures were inflated only for spares and servicing as of the 14th February, 1989?

A. Well, I am not sure if "inflated" may have referred to, you know like, escalated rather than actually, you know it may have been like inflation, a kind of a costings, you know, over the 20 years. If you have bought equipment for 20 years and you would have amortised it over 20 years, you would have had a fixed cost, but "Inflated only for spares and servicing" may have referred to the fact that spares and services couldn't have been bought for 20 years, therefore they would have had to pay the market price for spares and servicing during that time.

348 Q. You have seen, I presume, the RTE rate card which deals with all of these items under separate headings?

A. Yes.

349 Q. So you will know that the figure for spares and servicing was a separate item?

A. Correct.

350 Q. So the reference there in that, which I think you agree could only refer to the RTE charges seems, I suggest to

00107

you, to imply that the person who spoke those words considered the figures to be inflated only in relation to spares and servicing and the balance of the figures were not so inflated?

A. What do you mean by the word "inflated"? Do you mean that --

351 Q. There was too much fat in the figures for spares and servicing?

A. That could be an interpretation. I mean, I am not sure if that's the interpretation or if it's an interpretation based on kind of financing costs.

352 Q. Well, is there anything in that page of the memorandum to deal with the financial costs or references to CPI or matters such as that sort?

A. No, there isn't.

353 Q. And then beneath that it says: "UK IBA takes 10 percent for this service."?

A. Yeah.

354 Q. So somebody said IBA takes 10 percent for annual charge for providing a similar service?

A. Correct.

355 Q. And then beneath that: "Seems to be going our way."?

A. Yes.

356 Q. Does that comment, "Seems to be going our way", relate to the transmission charges?

A. Most likely, there were obviously negotiations and discussions occurring between the principals, so it was a negotiating position really.

357 Q. If we take the comment, "Seems to be going our way", in connection with "Minister will give a direction at 375",

00108

and a possible view that the RTE charges were only inflated for spares and servicing, it would seem to suggest that as of the 14th February the Century team were reasonably confident about the position with regard to transmission charges?

A. Yes. Obviously from our client's point of view it would have wanted to have paid, you know, as little as possible.

358 Q. It also acknowledges this, that they could have paid up to ú520,000?

A. That possibly their business plan could have permitted that as well, yes.

359 Q. Are you aware that in their submission to the IRTC that Century made the point that if a figure greater than ú375,000 had to be paid, the operation would not be viable?

A. Looking back at that letter, yes, I note that point.

360 Q. So that seems to be at variance with what's contained here?

A. I wouldn't say it's at variance, I mean from my perspective the parties were obviously in a negotiating position, and as with any business plan, it kind of projects forward and it's based on various parameters, so there may have been a view that 375 was the, you know, would have given them a sufficient cost to make the operation more viable.

361 Q. The document certainly suggests that Century could afford to pay up to 520,000 if they had to?

A. Yes, that's correct.

362 Q. The second meeting that took place on the 14th February, Mr. Fanning, was a board meeting?

A. Mm-hmm.

363 Q. And your notes of it are contained at page 6229 and that's, while it's an undated document, I think you have this

00109

morning compared this document to the actual typed minutes of the meeting and you are satisfied that represents the minutes of the board meeting on the 14th February?

A. That's correct, yes.

364 Q. And that sets out that the persons who were present were Mr. Stafford, Mr. Barry, Mr. Wogan, Mr. Crowley, EF, which is Mr. Fanning and CD, which was Mr. Duggan, also a solicitor?

A. Correct.

365 Q. And insofar as Mr. Duggan was concerned, some of these notes were made by Mr. Duggan, but I understand that you agree with the fact that Mr. Duggan made those notes, isn't that correct?

A. That's correct, yes, he would have jotted those notes down.

366 Q. And if we could turn to, on those notes, to page 6232?

A. Mm-hmm.

367 Q. And this is headed "Transmission", and this is a note that was made on the same day as the earlier note that we have looked at in relation to transmission charges.

A. Right.

368 Q. And it says "RTE involvement", is that correct?

A. That's correct.

369 Q. And beneath that it says, "I think 197 K."?

A. Yeah.

370 Q. And --

A. For, I think it's "for service work" or - it's "for service work". I am not sure what the first word is, it says "service work."

371 Q. Beneath that "375 K --"

A. "Our figure for" -- "as submission", yeah.

00110

372 Q. Beneath that?

A. "1,040,000, RTE's figure." Then it says, "Down to 800,000." And then there is a comparison of price, "11p per person. Our figure 7p per person in Northern Ireland. Could pay up to 520,000." It says, "A steal at 375,000."

373 Q. The figure of ú520,000 that's mentioned there is the same as the figure that was mentioned earlier?

A. Mm-hmm.

374 Q. And I suggest that taking the two together, it's an acknowledgment that they could afford to pay up ú520,000?

A. Apparently based on their projections that's what somebody said at that meeting, yes.

375 Q. Did somebody also say at that meeting that it was "a steal" at ú375,000?

A. I assume that they did, because it would have been jotted down by Colm Duggan, so somebody would have made that statement.

376 Q. And I suggest to you first of all that, the words "A steal at 375" is more likely than not to be a verbatim note?

A. That's correct.

377 Q. So that somebody at that meeting actually said "It's a steal at ú375,000."?

A. That's correct.

378 Q. And if you take that in conjunction with what had been said at the earlier meeting on the same day, that the Minister will give a direction at ú375,000, this suggests that somebody at the meeting was reasonably certain that ú375,000 was going to be the final figure?

A. Well, they might have believed it and they might have made

00111

that statement at that time. They would have believed it.

379 Q. Yes, but the words "A steal at 375,000" suggests somebody was in possession of knowledge or information about a final figure?

A. Well, I think they were basically saying there that it would have been good value at 375. It's like any negotiations, you obviously try and achieve the best price you can, so somebody was saying, okay, it would have been good value at 375. Perhaps "steal" mightn't have been the right way to say it, but it's good value at 375 might have been the way I would have said it. Somebody said "A steal at 375."

380 Q. But it's clear, Mr. Fanning, from the two sets of notes that were taken on the 14th February, 1989, that there was a degree of optimism that the figure would be ú375,000?

A. That's obviously correct, yeah.

381 Q. That if Century were to get it at ú375,000, they were getting it cheap?

A. They were getting good value.

382 Q. They were getting good value. And if they had to, they would pay up to ú520,000?

A. Correct.

383 Q. Is that fair?

A. I think that's fair, yeah.

384 Q. Can you recollect anybody at the meeting disagreeing with that?

A. No. Because in essence, those meetings would have been meetings at which people would have been reporting the progress to date on the discussions on the transmission. So they wouldn't have been making decisions as such. A

00112

lot of that discussion would have been reporting current status on the discussions.

385 Q. Subsequent to the meeting on the 14th February, a letter was sent to the Chairman of the IRTC, signed by Mr. Barry and Mr. Stafford. I think it's a letter you have certainly seen today and was probably in the circulated documents. It's at page 302?

A. Correct, Mm-hmm.

386 Q. Now, I think you can confirm, Mr. Fanning, that there is nothing in the minutes of any of the meetings to indicate authorisation for writing this letter?

A. Yeah, based on the minutes that I have seen of the Board, that's correct.

387 Q. And I think for the record, you should confirm also that there is nothing in the minutes of any of the meetings of Century to indicate authorisation for a request for a directive from the Minister for Communications via the IRTC?

A. I don't believe that there is a formal board meeting minuting that.

388 Q. Well, is there a minute of an informal board meeting minuting that?

A. No, no, there isn't.

389 Q. Okay. If we look then at the letter that's on screen, which is the 17th February, which is three days post the two meetings that we have just looked at, and the second paragraph says "The board meeting" - it refers to the board meeting on the 14th February. It refers to the fact that Mr. Crowley would be co-opted onto the Board of Directors, and Mr. Terry Wogan and Mr. Chris de Burgh were co-opted.

00113

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."

A. Mm-hmm.

390 Q. Is that statement correct in the light of the documents or the notes and memorandums we have just looked at?

A. Well yes, I believe it is.

391 Q. Okay. The two memoranda that we have looked at, the notes said "Could pay", and I think "could", you agreed with me, they could afford to pay up to \$520,000?

A. Somebody had made that statement all right and we had noted it.

392 Q. You noted it?

A. Yeah.

393 Q. You noted it at two places in two separate meetings involving different people on the same day?

A. Yes.

394 Q. And nobody at either of those meetings disagreed with the view that was put forward?

A. No, but they were reporting meetings rather than kind of decision meetings. I mean, he - the decision meeting at, I believe the actual board minute - there is a board minute I think on the same day, isn't there, a typed up board minute?

00114

395 Q. Yes, there is.

A. What does that actually say? Could you move to that document?

396 Q. 6228 please. It's coming up now. Paragraph 7 deals with the issue of transmission charges.

"The meetings which have taken place with RTE in relation to the provision of the transmission service were discussed. The figure offered and requested were considered. It was resolved that the negotiations continue and the offer of €375,000 be maintained."

A. Right. So the actual minutes of the board meeting which would have recorded decisions taken on that day, would clearly have - that the Board was of the opinion that the offer of 375 be maintained. So that was a formal decision of the Board. The other minutes would have been just merely discussions.

397 Q. But it's clear from the minutes that we looked at and the two discussions that took place on the 14th, that there was general agreement, I think from what you have told us earlier, that the company could afford to pay up to 520,000, and there was optimism that the Minister would give a direction of €375,000?

A. Well, you know, we would have recorded the fact that somebody at the meeting said that. But it would not have been a resolution of the meeting.

398 Q. I am not suggesting that it was a resolution of the meeting, Mr. Fanning. I am suggesting that it's an accurate note of what was said at the meeting?

A. Yes, by one person.

00115

399 Q. With whom nobody else disagreed?

A. Yes, but it may have been a report of the negotiations to date. I mean the difference between the minutes and the notes is that the minute records a resolution of the actual Board itself. So the Board itself would have considered what had been said and would have come to a decision, the directors would have come to a decision and that's their resolution, so the resolution passed by the directors would carry much more weight than just the actual minute that we would have recorded. That is only discussion.

400 Q. You said that the person who was dealing with the transmission charges would make a report to the Board?

A. Where is that said?

401 Q. You said a few moments ago that the person who was dealing with the issues was reporting. You were drawing a distinction between reporting meetings and decision meetings?

A. Correct.

402 Q. Who was the person who was dealing with the transmission charges?

A. I can't remember precisely, but I think it would either have been James Stafford or Mr. Barry.

403 Q. And in your recollection of the two of them, which was the more likely to have been dealing with the issue of transmission charges?

A. I am sorry, I can't say really at the moment, or I can't remember which of them it was.

404 Q. So we may take it then that if your notes are accurate and they were reporting to their team how they were getting on, that either Mr. Barry or Mr. Stafford made the assertion

00116

that the Minister will give a direction at ú375,000, and that the company could afford to pay up to ú520,000?

A. Yes. One or more people would have made that statement at the particular meeting. We would have jotted it down, but when it went into the formal board meeting, obviously the directors would have listened to that and, using their judgement, they would have then passed a resolution.

405 Q. And having been told by somebody at the meeting that the Minister was going to give a direction at ú375,000, doesn't it follow as night to day they were going to cap their level of expenditure at ú375,000?

A. But of course.

406 Q. Of course. So that the reason that the board minute reflects that they would maintain the offer of ú375,000 was because they had received an assurance at the meeting that the Minister was going to give a direction at ú375,000?

A. Well, they would have taken into account the fact that a senior person would have said he believed that the Minister would have issued that directive and on that basis, he would have acted commercially and reasonably to actually resolve then to continue offering 375,000.

407 Q. In fact, on the 16th February, the Minister issued a letter in which he found that the figure of ú614,000 for annual charges was not unreasonable. It's at page 406. And this figure of ú614,000 relates to FM charges only, the 14 FM sites. It excludes the two AM sites?

A. Mm-hmm.

408 Q. And in addition to the ú614,000, the hardware capital costs had to be added on, i.e. the equipment, the project management fee and the installation charges?

00117

A. Right.

409 Q. You can see that from that particular letter.

A. Correct.

410 Q. That letter - that was sent out dated the 16th of February, 1989, and was on the 20th February, 1989, given to the directors of Century Communications?

A. Right.

411 Q. Can you tell us, between the 14th February, 1989, and the 20th February, 1989, were there any board meetings?

A. I don't believe there were.

412 Q. We have seen from the minutes of the meeting of the 14th February, that there was no recorded decision to request the Minister for a directive?

A. That's correct.

413 Q. Are you aware of the existence of any formal or informal board meetings that record such a decision?

A. No, I am not.

414 Q. Isn't it a matter that would have required a board decision?

A. No. I am not sure. I mean, it could have been within the purview - the authority of one of the executive directors to write that letter.

415 Q. Such an authority would have derived, of course, from the board giving such authority to executive directors, isn't that right?

A. That's right.

416 Q. Can we go back and look through the rest of the minutes to see if we can find such authority?

A. Of course.

417 Q. There is only one board minute prior to the date of the

00118

20th February, and it's the one we have just looked at.

That's the minutes of the first board meeting of Century Communications, and there is no such derogation of authority - no such delegation of authority contained in the minutes of the meeting of the 4th February, which is the minutes of the first board meeting?

A. Mm-hmm.

418 Q. I think you would accept therefore, that there was no such delegation?

A. No. There would be no formal delegation, no.

419 Q. Are you aware of any document or memoranda that informally delegated to anybody the right to request on behalf of Century Communications, a directive?

A. I am not, no, but the people who would have written the letter may have felt that they had implicit authority.

420 Q. Was there ever an attempt by the Board to ratify in retrospect the application?

A. I don't believe so.

421 Q. If you look at the letter of the 20th February, which is at page 34, which is the request for the directive?

A. Mm-hmm.

422 Q. And it's addressed to the IRTC and they thank, at the very start of it, the meeting at short notice that day and that they had received a copy of the Minister's letter, dated 16th February. That's the letter we just saw a moment ago, Mr. Fanning.

A. Right, yeah.

423 Q. And it sets out: "As stated in our letter of the 17th February, we are convinced that £375,000 for a full transmission service is fair and reasonable and the

suggested charge by RTE would render the entire project economically unviable."?

A. Right.

424 Q. Now, was that a true statement, that the suggested charge by RTE would render the entire project economically unviable?

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MR. COLLINS: Mr. Chairman, I hesitate to intervene, but it does seem to me somewhat unfair that a witness who didn't write this letter is asked to comment on its veracity. Obviously the writer of the letter has given and very recently, the recipient of the letter has given evidence recently. The persons who are responsible for pulling together the information have or will give evidence. This witness, I think it's unfair to ask him to criticise --

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CHAIRMAN: I don't think you should put that question because Mr. Fanning is a solicitor. He is simply recording what happened at a particular interview, and then there is this undoubted letter which is somewhat at variance, to put it no stronger, with what happened.

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425 Q. MS. DILLON: I think you could comment, Mr. Fanning, on the fact that at this point, on the 20th February, 1989, Century were still sticking with ú375,000?

A. Yes, that's correct.

426 Q. And that that was and had been their figure from the date of the submissions being put in, in December of 1988?

A. Yes, that's correct.

00120

427 Q. If I could ask you to turn to page 2278 which are
handwritten notes of a meeting on the 7th March, 1989?

A. Mm-hmm.

428 Q. These seem to be handwritten notes of a board meeting?

A. Yes.

429 Q. 2278, and present were Mr. Crowley, Mr. Wogan, Mr. Barry
Mr. Stafford and yourself?

A. Correct.

430 Q. And it was agreed at that, that the minutes would be
circulated in future?

A. Correct.

431 Q. I think if you turn to look at the typed version of these,
it says that the meeting took place on the 9th March,
that's at page 6239. You will see at 6239 that Item 1
there resolves that the minutes of all future meetings
would be circulated?

A. Correct.

432 Q. That seems to be a reference to the document, the
handwritten notes we looked at a moment ago at 2278?

A. Correct.

433 Q. So, it's just to point out to you that the dates appear to
be different. The board minute is minuted as being the
9th March?

A. Yes.

434 Q. And your note here is the 7th March.

A. Right. I just can't explain the discrepancy at the
moment.

435 Q. But they do appear to be the same meeting?

A. That's correct, they do appear to be the same meeting.

436 Q. If you go back to 2278, you will see in relation to the

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issue for transmission charges, it says, "ú375,000 is where we are at."?

A. Yes.

437 Q. Would this have been your note of the highlights of the issues in relation to transmission charges?

A. Yes, they would have been notes of what the meeting was discussing. I think somebody would have said "375 is where we are at."

438 Q. And then it says, if you could just explain, "Discuss the history."?

A. It says, "RTE down" - oh, "discuss the history." Okay, there would have been a discussion, basically discussing the history of the negotiations between the parties, and the request for the directive. And then "RTE down to 620 and may come down to 470 plus power and spares." So, somebody would have reported to the Board the history of the discussions between the parties there.

439 Q. And the requests for the directive?

A. And the requests for the directive.

440 Q. And who was that person, can you recollect, Mr. Fanning?

A. Well again, I believe that it would have been either Mr. Stafford or Mr. Barry. I mean, a lot of discussions and meetings would be going on all the time. These particular board meetings would have occurred maybe every two or three weeks, and they would have only occurred when it was possible to get all the parties together, including Mr. Wogan and Chris de Burgh, so there would be a lot of developments happening in between those board meetings, and part of the board meetings would have been reporting on what had happened, so they would have been taking

00122

transmission charges and reporting the history of the discussions between the parties.

441 Q. And one of the things that had happened since the last board meeting was that on the 20th February, 1989, Century Communications made an application to the Minister for Communications for a directive?

A. Yes.

442 Q. In relation to the transmission charges against RTE?

A. Correct.

443 Q. And insofar as that directive is discussed or considered anywhere in the documentation, it's contained in the sentence "Request for directive." Is that correct?

A. That's correct.

444 Q. And the directive is not at all referred to or discussed in the formal notes or the typed version of the minutes of this meeting?

A. Yes. Again, probably because the minutes would only have recorded a decision, like a resolution. We wouldn't normally record discussion. Minutes are not a verbatim record of discussions, they are really a reflection of a resolution that's been passed by the Board, so there wouldn't have been a resolution there.

445 Q. But the earlier minutes had recorded the fact that the Minister will give a direction at 375. Do you remember - not the formal minutes, your handwritten notes?

A. My handwritten notes?

446 Q. Had recorded that?

A. Correct.

447 Q. That was not reflected in the typed notes that we saw, because you were recording only decisions?

00123

A. I was only recording resolutions, that's correct.

448 Q. This is now a discussion on the same issue?

A. Correct.

449 Q. And an application for a directive has been put in?

A. Correct.

450 Q. And this is not reflected again in the minutes of the meeting?

A. Mm-hmm.

451 Q. Isn't that correct?

A. That's correct, yes.

452 Q. So how - was the question of the directive not regarded as a matter of any significance?

A. Oh no. It would have been obviously a matter of great significance. But I suppose at that stage, the executive directors of Century who had been running with the project for several months maybe hadn't, you know, formalised their procedures of board minutes as much as you would have liked. It was difficult to get the board meetings together. They could only occur when Mr. Wogan and Mr. De Burgh would be in Dublin. So there would have been a process of the executive directors continuing on the business of the company.

453 Q. Yes, and if we could turn to page 6239, please? At this stage, what everybody was waiting for I suggest, Mr. Fanning, was the Minister's directive, whatever it may have been?

A. Mm-hmm.

454 Q. Isn't that correct?

A. I think that's correct, yeah.

455 Q. There were no negotiations in being at all between RTE and

00124

Century Communications at this stage, isn't that also correct?

A. I think that's absolutely correct, yes, we were waiting for a figure - I certainly was waiting for a figure because then I would certainly get working on the transmission contract. I couldn't start until a figure was determined.

456 Q. You were waiting for the Minister's directive?

A. Correct.

457 Q. There were no negotiations with RTE?

A. Well, at this stage that's correct, because there was too wide of a gap between them.

458 Q. The resolution at paragraph 2 there, notes that "It was resolved that the company continue to negotiate and endeavour to reconcile the position of the parties before the next meeting." The parties in question were Century and RTE?

A. Correct.

459 Q. What was the purpose of resolving to continue to negotiate when (A), there were no negotiations and everyone was awaiting the outcome of the Ministerial directive?

A. Well, I assume that there must have been some contacts between RTE and the company.

460 Q. The evidence has been that there were none?

A. That there were none. But that could change, because it was a rapidly changing environment. There may have been - there could have been discussions which could have occurred after that board meeting.

461 Q. Is it fair to say or so surmise, Mr. Fanning, that it was the same person who was giving you the information or the same two people who were giving you the information in

relation to the transmission charges at all times?

A. I think that's true, yes.

462 Q. And that in your recollection, it was either Mr. Barry or Mr. Stafford?

A. Correct.

463 Q. And you have no recollection of anyone disagreeing with the views that were put forward at those meetings?

A. No. Certainly none of the engineering people went to those meetings, so there would have been nobody else who would have been that familiar or would have had the knowledge of those discussions.

464 Q. Could we turn to page 861 please? This is a document that you'd be reasonably familiar with, Mr. Fanning, because you are the author of it. It's dated 30th November, 1989. It's legal advice that you gave in response to a request from Mr. Michael Laffan, and it details the power of the Minister for Communications to say fix the maximum time limits for advertising for RTE?

A. Right.

465 Q. This is a document that you prepared in November 1989 at the request, apparently, of Mr. Michael Laffan?

A. Right.

466 Q. And you set out how the legislation works. And on the second page, which is 862, you set out, at the second paragraph: "That the Minister informs the Authority by letter of the relevant period, and the Authority must write to the Minister for approval for any change which it seeks to make to the criteria set down by the Minister."?

A. Right.

467 Q. That suggests that it is the Minister for Communications

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who will tell the Authority what period of time they may have for advertising?

A. Correct.

468 Q. You then faxed this letter to Mr. James Stafford on the 19th December, 1989, page 1379 please. And you will see that's a fax from yourself on the 19th December, 1989, to Mr. Jim Stafford?

A. Right.

469 Q. Do you recollect anybody being requested to send that fax?

A. I don't have an immediate recollection, but I am sure I did send it.

470 Q. And you will see at paragraph 3 of the fax it says:

"Attached is a copy Section 20 (3) of the Broadcasting Act 1960 which enables the Minister to regulate the advertisements on RTE. As you can see, both the total daily time and the distribution throughout the day is subject to the Minister's approval."

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And that clearly was suggesting to the recipient who got this document that the Minister could unilaterally deal with RTE's advertising time?

A. That's correct.

471 Q. That the Minister in fact had the power?

A. Yes.

472 Q. Though I suggest that a slightly more careful reading of the legislation indicated that the initiation procedure in that process is a request from the RTE authority to the Minister to change the time before the Minister can make any decision?

A. Right.

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MR. COLLINS: Mr. Chairman, surely the correctness from a legal point of view of the advice given by this witness to a client some number of years ago is not an issue appropriate for ventilation. This is the advice that was given at the time. It may be right, it may be wrong, it may be relevant for the Tribunal to determine whether it's right or wrong.

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CHAIRMAN: It's the advice that was given. It's on record. That's all I can say about it. We can check it. I can make my own mind up.

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MR. COLLINS: Quite so.

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MS. DILLON: I am not in any way criticising this witness at all --

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CHAIRMAN: It's really the date of the advice, the 19th December, 1989, I take it is the essence of the document?

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MS. DILLON: The content of the advice is also important in the light of the instructions that were given on the 19th December, 1989, by the then Minister for Communications.

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CHAIRMAN: Yes, I know what you are referring to, yes.

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473 Q. MS. DILLON: Regardless, Mr. Fanning, of whether you were right or you were wrong in the advice that you gave in this document, your advice was to the effect that the Minister

00128

for Communications had the power or the authority to change or alter or curb RTE's advertising time, that that was the view you held when you prepared this document?

A. That's correct.

474 Q. And Mr. James Stafford requested you to furnish him with that opinion on 19th December, 1989?

A. Mm-hmm.

475 Q. Did you ever have any reason to send a copy of your opinion or this documentation to the Department of Communications?

A. No.

476 Q. And can you offer or assist us at all as to how this document came to be found on a Departmental file?

A. I can't, no.

477 Q. But what you can tell us is that on the 19th December, you sent this document to Mr. Stafford?

A. Yes, that's part of our file and that's our stationery and so forth.

478 Q. And we know from evidence that has been given here by the former Secretary General of the Department of Communications, that he attended a meeting with Mr. Burke on the 19th December, 1989, where he received an instruction to half RTE's advertising time, and your advices as contained in the document would have indicated to a reader of this document, that the Minister had such a power?

A. Right, yes.

479 Q. Is that correct?

A. Correct.

480 Q. All right, thank you. I have nothing further, Sir, for this witness.

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CHAIRMAN: Anybody want to ask any questions?

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MR. COLLINS: I have a couple of --

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MR. KEANE: I wonder before My Friend examines could I seek his assistance in relation to one outstanding matter?

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CHAIRMAN: Certainly.

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

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481 Q. MR. KEANE: I wonder, Mr. Fanning, if I could direct your attention to - it's at page 6232 of the Tribunal documentation. It's minutes that have already been referred to, which I understand may have been taken by Mr. Duggan of a board meeting which took place on the 14th February of 1989. I wonder if I could direct your attention in particular, My Friend --

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CHAIRMAN: Just hold on one moment till we identify the document and put it on the screen. Do you have a reference number?

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482 Q. MR. KEANE: I think it is now on the screen. It's page 6229. It's in particular the handwritten note that I am anxious to direct your attention to and seek your assistance. My Friend has already directed your attention to a number of matters but if you look at the bottom of the portion of that document that's on the screen at present,

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you will see a phrase that appears to begin "IRTC...",
there are four words there which appear to me, and I don't
wish in any way to prompt your recollection incorrectly,
but which appear to me to read "IRTC is anti RTE."?

A. Yes.

483 Q. I am anxious to obtain your assistance in relation to that
proposition. I wonder could you identify the originator
of the comment at the board meeting?

A. Unfortunately I can't, it would have again been a jotted
down comment that somebody would have said at that
particular meeting.

484 Q. Yes.

A. It may have been a shorthand version for, as I say, - or a
shortened investigation of just what somebody said.

485 Q. In the narrative or chronology of the document, I think My
Friend already put to you the various statements that
appear slightly higher up on the same page?

A. Yes.

486 Q. They refer to transmission figures, isn't that so?

A. That's correct.

487 Q. I just wonder if I could invite you to comment on the
proposition that it is likely that the person or persons
who had made the comments concerning transmission figures
were also the person or was also the person or were also
the persons who made this reference to the IRTC? Do you
think that on the balance of probabilities, is a likely
proposition?

A. I think that's likely, yes.

488 Q. I am obliged. Thank you very much Mr. Fanning.

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00131

CHAIRMAN: Just a moment, I don't want to be difficult, but I don't want to create precedent. So could you outline to me the basis upon which you say this witness - this witness - nothing adverse has been said in this hearing in relation to this witness at all and basically the right of counsel to appear is to cure or to in any way, ameliorate any adverse comment that might arise. As I say, the last thing I want to be is unfair to a solicitor. But that's my problem. I don't want to create a precedent. What is the problem that is troubling you, if I may put it that way?

MR. COLLINS: There are just two issues that I wanted to canvass. I certainly don't want to have any form of difficulty. Firstly was just to try and put this into context in terms of this - the issues obviously, and very naturally and reasonably the Tribunal is inquiring into one aspect of the dealings that Century were having at this time and focusing on one aspect of meetings which, as the Tribunal will be aware, ranged over a wide variety of topics. And I just wanted to put that on the record, so to speak, that transmission, which is the issue being focused on by the Tribunal, was simply one of a very large number of legal issues that were arising and were being discussed by the directors of Century with Mr. Fanning, and Mr. Fanning was dealing with those employment matters, matters relating to conveyancing --

CHAIRMAN: A whole range of things that a solicitor advising a company would be - a company in the course of

formation rather.

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MR. COLLINS: Yes. I just wanted also to perhaps explore as well, to a greater level of detail than Ms. Dillon had to do, Mr. Fanning's particular role, or indeed his absence of a role, if that's not a paradox, in relation to the question of transmission charges generally, and I just wanted to have Mr. Fanning confirm that neither from a financial point of view nor from a technical point of view was he having any input into the selection of Century's figure, nor was he in a position to say anything at all about the RTE figure.

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CHAIRMAN: Let me assure you that the matter that comes across the footlights to me is just the range of discussion that took place. I don't think that Mr. Fanning, he is a solicitor, he is advising, if advice arises, that the matter was in discussion, at a consultation effectively. It was a board meeting but in fact it amounts to a consultation. In the circumstances which it took place, I really don't think that you need worry that any adverse comment will flow from --

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MR. COLLINS: I wasn't apprehensive of that at all. My client has been dealt with most fairly. There was just one other matter. I wanted Mr. Fanning to confirm that the two letters that Ms. Dillon has referred to, which I think were written on the 16th and 20th of February to the Chairman of the IRTC, were letters into which he had no input and had no involvement.

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CHAIRMAN: There is no doubt about that.

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MR. COLLINS: I am very grateful to you, Mr. Chairman.

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CHAIRMAN: Thank you very much. Is there any other questions?

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Mr. Fanning, thank you very much for giving us your time and coming down here. We are much appreciative of your assistance. That's the end of proceedings for today.

Monday morning?

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MS. DILLON: Monday, 10:30.

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CHAIRMAN: Monday at 10:30.

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THE TRIBUNAL THEN ADJOURNED UNTIL MONDAY, 27TH NOVEMBER, 2000, AT 10.30 A.M..

