

THE TRIBUNAL RESUMED AS FOLLOWS ON MONDAY, 27TH NOVEMBER,

2000 AT 10.30AM:

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MR. O'NEILL: Morning, Sir. The first witness today will

be Mr. Enda Marren. Mr. Marren, please.

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ENDA MARREN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY

MR. O' NEILL:

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1 Q. MR. O'NEILL: Mr. Marren, I think that you are a solicitor
in practice and you are the Principal in the firm of Martin
E. Marren & Company, which conducts its practice at
Northumberland Road in Dublin?

A. Was.

2 Q. You have retired now, have you.

A. I wouldn't call it that. My son has taken over as
Principal.

3 Q. I see. If we can revert to the 1980s. In the 1980s, I
think Mr. Oliver Barry was a client of the firm, is that
so?

A. For a long time, yes.

4 Q. And in the course of your dealings with Mr. Barry in and
about 1987, did you learn of a potential interest that he
had in getting into the business of radio broadcasting?

A. I did.

5 Q. And to that point in time, had Mr. James Stafford been a
client of your firm?

A. No.

6 Q. Or Mr. John Mulhearn?

A. No.

7 Q. Did you learn in 1987 and the beginning of 1988 of the intention of these three gentlemen to engage in a business venture which would involve their becoming involved in radio broadcasting?

A. Well, I first met Mr. Mulhearn with Mr. Barry in relation to a possible radio licence in November of 1987, Chairman.

8 Q. Had --

A. After Mr. -- at that first meeting, to the best of my recollection, Mr. Stafford was not there, but at subsequent meetings Mr. Stafford was there.

9 Q. Right --

A. So that would have been, I would imagine, towards the end of '87 or the beginning of '88.

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CHAIRMAN: So you had Mr. Barry, your client, there on the first occasion?

A. Absolutely.

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CHAIRMAN: And then, at a subsequent occasion, he was joined by -- and joined in the sense of physically joined by Mr. Stafford?

A. Absolutely right.

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10 Q. MR. O'NEILL: Just to get the sequence correct, as I understand it: Mr. Barry firstly consulted you in an individual capacity, is that right?

A. I believe he invited me to this meeting.

11 Q. Well, when you attended that meeting, was that a meeting which was attended by Mr. Mulhearn in addition to

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Mr. Barry?

A. Oh, it was.

12 Q. But not Mr. Stafford at that point in time?

A. Not to my recollection.

13 Q. Right. At a subsequent time, the three participants,

Mr. Barry, Mr. Mulhearn and Mr. Stafford, were together, is that correct?

A. They were, yes.

14 Q. And in subsequent meetings, did those three meet together for a period of time?

A. They did, there was certainly a number of meetings.

15 Q. Right. As best you can, can you say when it was that

Mr. Stafford, Mr. Mulhearn and Mr. Barry appeared to you to be the principals at this meeting?

A. I would imagine, although I am not clear on this, I would imagine at the beginning of '88.

16 Q. At the end of '88?

A. At the beginning of '88.

17 Q. And did that position remain the situation until the formation of a limited liability company called Century Communications Limited?

A. The formation of the three of them being together?

18 Q. Well, we know that there was an incorporated limited liability company called Century Communications Limited which was formed and was the applicant for the franchise?

A. That's right.

19 Q. But prior to incorporation of that entity, your dealings had been with the three individuals, isn't that so?

A. There was, at some point of time, I can't be precise on it, I met Mr. Stafford socially, I think it was at lunch time,

and I mentioned something about the forthcoming radio application or application for the radio licence, and he made it quite clear to me that he wasn't involved.

20 Q. Now, you mention Mr. Stafford there, Mr. Marren --

A. Mr. Mulhearn I mean --

21 Q. I know Mr. Mulhearn is the person you are referring to?

A. I beg your pardon, yeah.

22 Q. So initially, we know from your evidence that Mr. Barry was involved, joined by Mr. Mulhearn, joined by Mr. Stafford, that position pertained for quite some time, and then you say you met Mr. Mulhearn at a social occasion where he indicated to you that he no longer had an involvement, is that so?

A. That's my recollection.

23 Q. Can you say when it was, as best you can, by reference to any of the dates, for example, the incorporation of the company in 1988 or the application for the licence in December, when it was that Mr. Mulhearn indicated to you that he was no longer involved?

A. I can't.

24 Q. In any event, then, from that point onward, you believed that the only two individuals concerned were Mr. Barry and Mr. Stafford, is that right?

A. And Mr. Wogan.

25 Q. Mr. Wogan -- so Mr. Wogan had come onto the scene by this time, had he?

A. I am sorry, I am slightly confused. Was this before or after the incorporation of Century Communications Limited? Certainly it was intimated to me that Mr. Wogan and Mr. De Burgh would be shareholders in Century

Communications Limited and that the other shareholders were Oliver Barry and James Stafford.

26 Q. What did you understand Mr. Mulhearn's role to have been, either by way of an investor or shareholder or otherwise?

A. I didn't know. He disappeared off the scene absolutely.

27 Q. We know that his evidence is that he contributed ú300,000 to this venture initially, that this is a matter that is not in dispute by the other investors. Was that ever a matter brought to your attention?

A. Not to my knowledge.

28 Q. Whilst you may have been unaware of his exact shareholding, was it your belief that he, in fact, was one of the promoters of the scheme and financially --

A. I don't think I believed at the time of the application.

29 Q. But the time of the application is fixed at the 16th December of 1988. Is it your belief that between 1987 and some point in 1988, when he indicated to you that he was no longer involved, that he had, in fact, had a financial involvement in what was intended to be the franchisee for this application?

A. I believe I never knew what his involvement was, financially or otherwise.

30 Q. Well, without knowing exactly what his financial --

A. Until -- sorry, Mr. O' Neill, until Century went -- it was gone. Once it went into liquidation, then I was told by Mr. Barry.

31 Q. Right. Were you told by Mr. Barry that Mr. Mulhearn had, in fact, been involved all the way through?

A. My recollection is that I was told he was in for a third.

32 Q. And that that position had pertained from the beginning?

A. So I believe.

33 Q. When Mr. Mulhearn indicated to you that he was no longer involved, did he say why he was no longer involved, or did he make any mention as to what was to happen to his interest, if any?

A. My recollection is that I got a very curt dismissal, that I am not involved in that any more.

34 Q. But you can't fix that in time for us?

A. No, I cannot.

35 Q. We know that at a later point after the formation of Century Communications Limited, that a second firm of solicitors, Arthur Cox & Co., involved themselves as the solicitors to Century Communications Limited and dealt with certain legal aspects of their dealings with RTE and with others, isn't that so?

A. I think Arthur Cox were involved prior to the incorporation of Century Communications, I think it was they who incorporated the company.

36 Q. And as between your firm and their firm from a point, let's say, in December of 1988, what were your respective roles? What function, in other words, was your firm performing in relation to the affairs of Century?

A. Well, they were primarily involved in the corporate end of things. I certainly had an involvement in the preparation of the submission to the IRTC.

37 Q. Now, we know that the submission to the IRTC came in two formats: Firstly there was a written application form which followed a template which is set out by the IRTC, and that had to be submitted by the 16th December; and equally, there was to be an oral presentation by the applicants at

the National Concert Hall. This procedure applied to all applicants, isn't that so?

A. That's correct.

38 Q. I think it is the case that you were made aware of the detail of the submission which was being put in in writing and you also advised your clients in relation to the oral submission and presentation which they intended to make on the 12th, isn't that so?

A. I did. I certainly had a draft of the submission. I submitted that draft submission to counsel for a critical analysis of it with a view to preparing the clients for the interview with the IRTC and with the possible questions that could arise or might arise at that interview.

39 Q. If we look to the document at page 828 which will appear on the screen before you, Mr. Marren, and we can give you a hard copy if you wish.

(Document handed to witness.)

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You will see that this is a letter, it's dated 5th January, 1989, and it's from yourself to Mr. Barry at 16 Parnell Square, and it's re: Century Communications Limited. And if we look to the third paragraph on the first page, you state there that you and counsel have carefully read Century's submission. "We have done so with a critical eye and with a view to probing the weak areas, if any, within the proposal. This has been the exclusive nature of our approach and, because of that, what follows may appear to be negative. This should not be interpreted as a reflection on the overall document which has many positive aspects. However, we consider that the

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undermentioned queries should be addressed."

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So in the body of this letter, then, I think you addressed 35 questions to your client which covered matters which were to the relevant at the oral submission, isn't that so?

A. That's right.

40 Q. And I'd like to draw your attention firstly to question number 15 which appears at page 821 of that document.

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Question 15 reads: "Why should a purely commercial entity be permitted to utilise the existing transmission network? Does this not represent an unacceptable subsidisation of a commercial venture whose stated aim is to erode the market share of what is, indisputably, a national network catering to the entire of the country."

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We go on to question 16, then: "Where Century's proposal speaks of the national interest being 'best served by the replication of the existing RTE/VHF/FM network on an agency basis', is this not, in an unwarranted fashion, equating its own sectional interest with those of the nation?"

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Reference then to question 17: "Specify the national interests which are best served in this way."

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Question 18, you go on to ask: "Is the Century proposal viable in circumstances other than those in which they would have access to the existing transmission network? In circumstances where they were denied such access and had to construct their own network, what additional funds would be

required?"

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Question 19: "It's noted that Century regards the historic cost of the establishment of a national transmission network as assets of the State already paid for by the State and that they should be "available to be used in the national interest without a further burden of charge". If Century is to avail of and profit from the use of the national assets on a permanent basis, surely it must make a significant contribution related to the cost of the creation of the assets concerned? Otherwise is it not casting itself in the role of a parasite?"

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Question 20: "Is it not the position that Century does not have the capacity to be independent and stand-alone? Is its absolute dependence on the existing network not a negation of the concept of independence? Is this not a case of a commercial enterprise seeking, without justification, substantial State subsidisation?"

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If we turn then to question 22: "It is noted that the financial projections are posited in a transmission charge 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?"

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Then there is a general query: "Are not the financial projections essentially unsound? Must they be discounted

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as having no basis in fact?"

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That's a representative sample of the questions which are directed, really, towards one of the issues which was to present itself as a difficulty, and that was the RTE transmission charges and the extent to which Century was either able or prepared or willing to enter into negotiation with a view to a resolution of this issue, isn't that so?

A. Well, I think, Chairman, that that letter and those questions have to be put in the context in which they were sought and in which these questions were put. For the very simple reason, it was anticipated that there could be fairly hostile questions coming from the submission by the Chairman and the members of the IRTC to Century, and that letter was an attempt to alert the clients to the type of questions that might be raised and to try and see what answers they could come up with.

41 Q. Obviously, Mr. Marren, the questions were formulated by yourself and counsel after reading the submission and endeavouring to establish, from having read the submission, what issues seemed to stand out as ones which might be subject to questioning, isn't that right? That's why these questions were formulated?

A. Yes, and I would say that those questions were set down like that -- they were rather hostile.

42 Q. Perhaps they certainly require a very specific response and obviously they were areas, firstly, where there was likely or possibly likely to be controversy, isn't that right?
You didn't cover the controversial aspects. There was a

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very lengthy document which you had considered. It had a number of appendices to it. It had various financial projections to it, but, from consideration of it, it was capable of identifying or throwing up three areas which may be the subject of questioning, whether it be hostile or otherwise, isn't that right?

A. Yes.

43 Q. And it follows from that that you were able to critically view the document and identify these particular areas?

A. With counsel, yes.

44 Q. With counsel. And we know that this advice was communicated to Mr. Barry, and I take it you would have expected that Mr. Stafford, also, would be made aware of this, isn't that so?

A. Well, I would imagine so.

45 Q. And we know that there were -- it was going to be a meeting a week after this letter where possibly any one of these questions might be asked, isn't that so?

A. That's correct.

46 Q. And with that in mind, presumably, you wanted to elicit from your client or put your client on notice that this might be the range of questioning that they would be asked about and they should be in a position to address it, isn't that so?

A. Yes.

47 Q. And presumably, therefore, when they received that letter at some point in time before the 12th, you met with them and you discussed the content of this letter and their potential responses in the event that these questions were asked, isn't that so?

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A. I am not sure whether it was -- there was certainly a meeting held in the Shelbourne Hotel before the IRTC meeting in the National Concert Hall where, and again I am -- my memory is not accurate, but I assume that these questions would have been put to the people at that meeting and to see what type of answers they'd give; it was in preparation, which I considered it a prudent thing to do for the presentation.

48 Q. It was a dry run?

A. A dry run.

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CHAIRMAN: It was a dress rehearsal, a dry run?

A. It was a dry run.

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49 Q. MR. O'NEILL: And can you indicate what was said at that

dry run in response to the query, in particular number 22

here: "It's noted that the financial projections are

posited in the transmission figure of ú375,000 per annum.

What is the figure sought by RTE?"

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Firstly, presumably, Century were able to tell you that

there was a figure sought by RTE and that that figure was

substantially in excess of their own figure. That was

apparent before the oral submissions, isn't that so?

A. To the first part of your question, I wouldn't be able to tell the Tribunal what answers we got at the dry run. In relation to the figure of ú375,000, this was a figure that was in Century's submission to the IRTC and my recollection is that the submission itself pointed out that this figure of ú375,000 did not meet up with the figure that RTE was

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looking for.

50 Q. That is so.

A. So the submission itself highlighted that.

51 Q. The submission highlighted that. You, having read the submission, were able to identify that as a potential area for questioning and there remained, at the time of the oral presentation, a wide gap between the Century figure and the RTE figure. Those are the facts. Isn't that so?

A. Yeah.

52 Q. Right. So in your questioning -- in formulating your question, you had suggested, why is the RTE figure not being put in here because that is the figure that RTE are prepared to provide their service for? And there was no indication that they were prepared to reduce that, isn't that so?

A. I suppose that's right. But at the time there were all sorts of experts on broadcasting and transmission advising Century.

53 Q. In your draft question here, you were asking them, "Why this figure" -- that being the RTE figure -- "does not form the basis of the financial projections?" And that invited, really, Century to offer an explanation as to why their figure, as opposed to the RTE figure, was the appropriate figure. And what I am asking you at this point is, if you can recall what response was given by Century to you to justify their figure as being appropriate and RTE's figure as being inappropriate?

A. I have no real recollection of that. All I know is that RTE's figures were considered to be off the wall.

54 Q. You had had the benefit of reading and analysing their

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submission, and you may, in that regard, be happy to confirm to me that in that submission there was no report from any technical expert or from any representative of the IBA standing over the figure of 375,000 as being appropriate, no such report available or contained within the submission, isn't that so?

A. I think that's probably correct, yeah.

55 Q. And that remained the position throughout, that whilst Century had the benefit of an independent consultant in the UK, Professor Ray Hills, it never, in fact, either sought or received a report from him setting out what he believed to be the appropriate level of charge for transmission?

A. I don't know that, because talking about transmission charges to me wouldn't sit too easily on my shoulders because I wouldn't recognise a transmission charge if it hit me in the face.

56 Q. Whilst that, of course, may, and probably is the case, Mr. Marren, it nonetheless was one of the areas which you identified in your critical review of their submission as being one which was likely to cause your client certainly questioning at a minimum, isn't that so?

A. Yes, but I suppose it was raised because the submission itself pointed out, if my memory is correct, that this did not equate with what RTE was looking for for transmission charges.

57 Q. Yes, it went further and said that the figures that were contained within the submission were figures above which Century would be unwilling to go on the basis that the whole project would not be viable, so they actually were pinning their collar very much to 375,000.

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A. That was subsequent to the submission?

58 Q. No, that was in the transmission document itself and that led to the Commission secretariat drafting its own independent set of questions which certainly touched upon the question of transmission charges as well, because they formulated a question which was one, possibly, to be asked of Century at their presentation which asked, in effect, would Century be prepared to go ahead with the project if the Minister and RTE decided on a particular figure as being reasonable? Which was not a figure reflected in Century's application.

A. I have no real recollection of that.

59 Q. Well, you wouldn't have, because certainly these questions were not circulated by the IRTC in advance of its oral hearing firstly; and secondly, that particular question was one which was not asked at the meeting, and we have heard evidence from the Chairman that he decided that he would not ask the question on the basis that it was not - he considered it unfair, and therefore he did not ask the question. But, in any event, it was clear at an early stage to you that of the range of questions being capable of being put to your client and ones which they would have to research and be in a position to answer, the question of RTE transmission charges was one of them, isn't that right?

A. Well, the transmission charges would be one of the matters that would be raised.

60 Q. The question of transmission charges and questioning in relation to that was also a matter which was being considered by the board of Century at a meeting which was taking place, on the same day as you had written this

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letter, in the offices of Arthur Cox & Co. which was
minuted by Mr. Eugene Fanning, who was the solicitor to the
company in its corporate affairs. And that memorandum
records that there would be no questions asked of the
Century applicants on transmission charges at the public
hearing. Were you ever made aware of that fact?
Obviously you didn't know it before you wrote this letter
because there are questions here postulated on transmission
charges.

A. There is part of my statement now that I must correct. I
said in the statement that I had no knowledge. Last week
I discovered a note on my file to the effect that
transmission -- questions in relation to transmission
charges would probably not be asked. Now, that's my
only --

61 Q. Firstly, do you remember from your note when you made that
notation that questions in relation to transmission charges
would not be asked?

A. I don't think it was my note.

62 Q. I see. Were you reviewing Mr. Eugene Fanning's note which
does, in fact, record that to be the case?

A. I don't know.

63 Q. Perhaps if we put it up on screen, it might be familiar to
you. It's at page 2315 -- sorry, that's not the
reference. We can pass from that for the moment,
Mr. Marren, we may come back to it when we have found the
appropriate reference to it. But you are satisfied you
read a note, which is a contemporaneous note, indicating
that it had been decided, prior to the hearing at the
National Concert Hall, that questions would not be asked of

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Century on the financial side, is that right?

A. I think that the question of transmission charges probably would not be asked, is what I remember.

64 Q. Have you any recollection yourself as to how this information was imparted to Century and by whom?

A. I wouldn't know that, no.

65 Q. Do you have a memory, then, of the dry run or rehearsal in the Shelbourne Hotel concentrating on matters other than the RTE transmission charges and not dealing with the RTE charges?

A. I think one of the items we dealt with there was Section 31 of the Broadcasting Act, what attitude did they have towards it? But my recollection is so vague at this stage on that dry run, I couldn't answer any question with any degree of accuracy.

66 Q. Right. So you don't know of there being any review, either amongst the body of persons present for the dry run or otherwise, of the RTE charges issue immediately before the public presentation on the 12th, is that the position?

A. I have no recollection of it.

67 Q. Did you know and were you kept aware of the fact that the IRTC had made certain requests of the Department of Communications regarding the level of RTE charges and that that had taken place prior to the grant of the franchise to Century?

A. Sorry, when was the date of the grant of the franchise?

68 Q. It was the 18th January of 1989, and the IRTC apparently had been in communication with the Department of Communications since a date in November in relation to the RTE charges.

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A. I have no recollection of that.

69 Q. Were you ever made aware of the fact that the Minister had, in fact, agreed a level of charge with RTE and that he did so on the 11th January of 1989, the day before the oral presentation at the Concert Hall? Did you know that?

A. There was a copy of the letter given to Century by the IRTC which had certain figures --

70 Q. That's right?

A. -- that the Minister had agreed for various years, 1988, '89 onwards, yes.

71 Q. So --

A. I think that would be my first knowledge of it.

72 Q. That would be your first knowledge of it?

A. I think so.

73 Q. That would appear to have been received by Century either on the 11th or the 12th, isn't that so?

A. Of?

74 Q. Of January.

A. Oh, I don't know that. I thought that came in February.

75 Q. No, it didn't. There were later letters in February.

The sequence firstly, Mr. Marren, was that the Minister met with and his department agreed a figure for RTE charges on the 11th January of 1989, that was one week before the grant of the franchise and one day before the submission by Century at the National Concert Hall; in other words, the Minister and RTE had agreed ú692,000 as being the appropriate level for annual charge at the end of the four year introductory period. And that agreement was reached, as I say, on the 11th January. It was then communicated to Century. Century, in turn, communicated it to its

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expert in the United Kingdom, Mr. Hills, on the 13th.

Were you aware at the dry run meeting, in other words, that the Minister and RTE were in agreement as to the level of charge?

A. I have no recollection of it, Chairman.

76 Q. You don't remember it being discussed at all?

A. No.

77 Q. Obviously if there had been an agreement between the Minister and RTE, your question here, question 22, would have a particular relevance because now you knew what the Minister was prepared to agree to and one could rightly ask, why should this figure not form the basis of a financial projection by Century? Isn't that so?

A. This question was raised on the 5th January --

78 Q. It was indeed.

A. -- in my letter.

79 Q. It was raised at a point when the figure which was being sought by RTE was a €1.12 million figure, where that figure had not been agreed by the Minister, where the department had not carried out any analysis of the figure. However, when we move forward to the 11th January, matters changed; the figure was now €692,000, that is in respect of annual charges for the FM service and that was a figure which had been subject to critical review by the department to the extent that the Minister apparently was satisfied to accept that the level of charges for any candidate, which wasn't specifically directed towards Century at this point in time, but that the successful franchisee, whoever it might be, would have to pay, at this level of charge, 692,000, and that, I am suggesting to you, would have been a matter

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of critical importance to Century to know that before their oral submission?

A. I have no recollection of that.

80 Q. You don't remember, I see. Do you have a recollection of attending at the oral presentation itself?

A. I do.

81 Q. And you may recall that after that presentation, which was one of four, the IRTC did not indicate any preference at that point in time, publicly, to any of the candidates at the conclusion of the day's business, isn't that right?

A. That's right.

82 Q. And did you learn that, on the day after the oral presentation, that a meeting was convened between the Chairman and secretary of the IRTC and Mr. Stafford, and possibly Mr. Barry, to take place the following morning? Did you know of such a meeting?

A. I have no memory of that.

83 Q. Or that, at that meeting, there was a request made of Century that they should produce figures which would challenge the RTE figures and which would stand up to the Century figures, were you aware of that?

A. I have no memory of such a meeting the day after.

84 Q. I see. Did you understand that there was any outstanding matter which required resolution between the oral presentation and the decision date, which was a week later on the 18th?

A. I am not conscious of it.

85 Q. Obviously the efforts of having a dry run were to try and endeavour to identify and deal with any potential unresolved issues which remained after the written

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submission had been sent, isn't that right?

A. The dry run was to anticipate the type of questions that the Commission might ask.

86 Q. So as to ensure that there was a complete presentation available to the IRTC as of the 12th. It wasn't intended, for example, to hold anything back for further review or further information?

A. No. I have a recollection that everybody was very satisfied after the dry run.

87 Q. You never considered that the application process was one where you could keep sending in further information, but rather, that the written submission should be complete and should be in by the deadline of the 12th December, isn't that so?

A. It was my view that the written submission and the interview, that that would decide who got the licence.

88 Q. Right. Exactly. Did you ever know of there being further inquiries made then between the conclusion of the oral submission and the date upon which there was a grant of the franchise to Century?

A. I have no recollection of that. I have no recollection. I wouldn't be involved in transmission charges.

89 Q. You became involved in February in the ongoing difficulty with regard to transmission charges and its effect on the ability of Century to enter into a contract with the IRTC or with RTE, isn't that right?

A. Yes.

90 Q. And we know that on the 20th February, there was a letter which was written to the Chairman of the IRTC expressing the concern which had arisen within the board of Century at

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a meeting which was held initially on the 14th February and subsequently, following the receipt of a letter which had been given by the Minister to Century dated 16th, isn't that so?

A. I can't remember being present at any meeting on the 16th February -- or the 14th February.

91 Q. There was a board meeting on the 14th February, and at that board meeting a letter was drafted on the 16th February reflecting the views of the board. That was sent to the IRTC. In the interim, the IRTC have received from the Minister a letter setting out a level of charges broken down year-by-year between 1988 and 1991 in which the Minister had gone on to further reduce the ú692,000 figure, which I mentioned earlier, to ú614,000, and he indicated to the Chairman of the IRTC that he considered that, in Irish conditions, this sum was not unreasonable. Now, the effect of that decision, Mr. Marren, was to reduce the charges for each one of the years between 1988 and 1991 and to reduce the figure from 1991 until 1994, which is when the franchise would expire, after the seven year term, and it indicated that there would be a saving of some ú636,000 over the period between the Minister's figures on the 11th January of 1992 -- sorry, 1989, and the 16th February of 1989.

A. That's the letter of February that I was referring to earlier on as being the letter whereby I realised that he was reducing.

92 Q. Exactly. Are you saying that that's the first letter that you became aware of and you weren't aware of the earlier communication, which was an RTE calculation, which was

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agreed by the Minister at 692 and which was forwarded to Century either on the 11th or 12th January?

A. To my knowledge, yes.

93 Q. Right. So in any event, the letter of the Minister's was a letter of the 16th February and it was handed to Century by the Chairman of the IRTC at a meeting on the 20th February, 1989. And if we look to document 3976. This is a document, firstly, which emanated from your firm by way of fax. You will see at the very top corner your fax reference here is "890220, 15.42 hours, Marren". Do you see that?

A. Mm-hmm.

94 Q. So this document in this format was sent by fax to the IRTC?

A. It was. And I think my recollection is that at the meeting in the morning with the Chairman of the IRTC, when Century asked that he seek a directive under Section 16, that the Chairman of the IRTC asked Century for a draft of a letter or setting out whatever basis that they wanted to have this directive, that that is the draft of the letter, and I think it was sent to Mr. Connolly, the secretary of the IRTC.

95 Q. Yes, it certainly was sent by fax and your fax cover sheet is unfortunately indecipherable in its original form.

A. I accept that it was sent by fax.

96 Q. This is the draft which was sent, firstly?

A. Yes.

97 Q. Secondly, the next document that I would refer you to is at page 34. This document again is in the format of a fax and it seems to have come from the Department of Tourism

and Transport, if that is correct; though it may be that they shared a fax facility, but in any event, this letter here is a letter dated 20th February and is a letter from the Chairman -- sorry, to the Chairman of the IRTC from the Chairman of Century, Mr. Lawrence Crowley. You will see that at page 37 where he signs off on that letter.

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Now, if we can revert to page 34, please. This follows a very similar format to the draft which you forwarded to the IRTC but, in fact, is not an identical letter, though both are sent on the same date. It would appear that the draft which you forwarded was not mirrored by the letter which the Chairman sent in that there was an alteration in the text, and the alteration in the text deals, in the main, with a breakdown of how the figure of ú375,000 has been calculated. We see that at page 35.

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Here at page 35 is, in fact, the first breakdown that the IRTC receives of how the ú375,000 was calculated. Now, that is not a calculation which had been contained in the earlier draft which was forwarded by your office to the IRTC. So we may take it that your draft, firstly, was revised at some point in time and sent out in this final format by the Chairman, isn't that right?

A. By the Chairman of Century?

98 Q. Of Century?

A. Oh, yes, that's true.

99 Q. Have you any recollection of there being a discussion as to why the initial draft should be amended so as to provide a breakdown in this format?

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A. No particular recollection.

100 Q. Right. Did you play any role in either of the drafting of the first letter which was sent out through your fax facility or the drafting of the ultimate letter which went --

A. I don't believe I did. Although, from an examination of my files, I was present at a meeting of the 20th February. But, as I said, I wouldn't have any knowledge or hold myself out to have any knowledge whatsoever about transmission charges, what they did, how they should be calculated. I knew nothing about it. I didn't know how it worked.

101 Q. So we know that once these documents were sent, they received consideration in the IRTC and the document was forwarded with others to the Minister by the Chairman of the IRTC on the same date, that is the 20th February, 1989. If we look to page 38. Here you see the Chairman of the IRTC is writing to the Minister saying, "Please see the enclosed copy of a letter received today from Century Communications regarding the charges being sought by RTE for the provision of services. Please note that Century Communications are seeking a ministerial directive under Section 16 of the Radio and Television Act, 1988."

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Now, we know, Mr. Marren, that Century, as a body, was aware of the existence of a provision, being the legislation contained in the Radio and Television Act, which allowed for the Minister ultimately to make a decision as to the level of cooperation which RTE should provide and the cost of that, isn't that so?

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A. That was Section 16.

102 Q. Section 16?

A. Mmm.

103 Q. Do you have a memory of advising your clients in relation to the operation of that section, or how it would come to be triggered?

A. I have a memory of being at a meeting with the IRTC, with the Chairman and -- certainly the Chairman, and I have a memory of pointing out that under Section 16 he could apply, the IRTC could apply for a ministerial directive.

104 Q. Is that the same meeting we are talking of here on the 20th or was it at an earlier point?

A. I think it could have been at the meeting of the 20th.

105 Q. Right. Did you have a copy of the act with you and you were able to show it?

A. Yes, I would have, yeah.

106 Q. And it appears clear from the reading of the act, I am sure you would agree, that it involved an ultimate decision being made by the Minister that that decision would be made following a request made of him by the Commission firstly; and secondly, after consultation by the Minister and RTE. Those were the requirements of the section, isn't that right?

A. I accept that, yes.

107 Q. And did the Chairman at that meeting with you indicate that he intended to convene a meeting of the IRTC for the purpose of considering your request and for the purpose of he, then, on behalf of the IRTC, making a request of the Minister to exercise his power under Section 16?

A. I have no recollection of that.

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108 Q. You will note from the letter itself that this letter did not purport to be a request by the IRTC for a ministerial directive, but rather conveys the concern of Century regarding the matter and indicating that they, Century, are looking for a ministerial directive. I mean, there is an obvious difference between those two, isn't that right?

A. Yes.

109 Q. You were then to learn later that following month that the Minister, in fact, did make a directive on the 14th April -- sorry, March, in which he fixed the level of RTE charges at a figure which was not the Century figure, but neither was it the RTE figure, isn't that right?

A. I believe that's correct, yes.

110 Q. And did you learn of any communications between either your client, Century, or your individual directors of the company, with the Minister on this issue? Do you know whether or not they met to discuss it or to propose or propound figures?

A. I don't know that.

111 Q. I take it you were aware of the fact that Mr. Barry and Mr. Burke were social acquaintances in addition to having a relationship of director of the franchise holder and the Minister of Communications at an official level, isn't that right?

A. Well, I knew they were longtime friends.

112 Q. Did Mr. Barry ever indicate to you the extent to which he had discussed this matter with Mr. Burke either privately or otherwise?

A. I don't believe he did.

113 Q. Once the decision was made in March fixing the level of RTE

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charges, there was a relatively protracted period of negotiation which took place both as regards RTE and the IRTC with a view to entering into contracts with Century Communications for the provision of the service, isn't that right?

A. I am only familiar with the IRTC/Century contract. I had nothing got to do with the contract with RTE.

114 Q. Were you aware of the fact that certainly as regards the IRTC and Century, there were difficulties with regard to Century's wish to go on air as early as possible, with certain derogations in what they had contracted to provide, and the IRTC's insistence that they would, from day one, provide what was initially envisaged, namely a full news service, number one; secondly, an Irish news service; thirdly, there being no opt out provision available to them. They were all issues which were the subject of -- certainly of sensitive correspondence and positions taken by the respective parties, isn't that right?

A. That's right.

115 Q. Did you know that Mr. Barry and Mr. Burke had met in that period of time?

A. I have no recollection of being informed.

116 Q. Right. Did Mr. Barry --

A. They might have.

117 Q. Sorry?

A. They might have, I don't know.

118 Q. Well, as much as you can tell us, of course, is whether you were informed of it, and that's the question I am asking you about: Were you informed that there were such meetings between them?

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A. I have no recollection of that whatsoever.

119 Q. We know that these negotiations continued all the way up to July when matters were finalised on a contractual basis, isn't that right?

A. Negotiations with the IRTC were very protracted.

120 Q. And unless the IRTC was very satisfied that they were going to receive the full service as promised, they were not prepared to grant a licence, isn't that right?

A. I believe that is correct, particularly in relation to the Irish language.

121 Q. And did you know that the Minister had intervened on Century's behalf with the IRTC and suggested that they be allowed to go on air without having provided the Irish service and with a limited news facility and in a limited area pending further work being done; in other words, that they wished to go on air in a limited form initially and to expand the transmission into a full service at a later date? Were you aware that the Minister had supported that argument of Century's vis-a-vis the IRTC?

A. I have no memory of that. I know that Century were very anxious to be up and running before the local radio started. I have a recollection that they weren't getting the coverage from RTE that they thought they were going to get.

122 Q. Well, I think that's something that would have arisen later, Mr. Marren, because they didn't actually start to broadcast until the 4th September. We are talking now about a time when their coverage would not have been an issue, and the issue was whether or not they were prepared to provide news services contracted for, whether they were

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prepared to provide an Irish-speaking service. And apparently the intention in Century, for some reason at that point in time, was that they wanted to get on air without having provided these services and would say they would undertake to provide them at a later stage. The IRTC indicated it was not willing to accept that and the Minister then made representations on behalf of Century to say they should be allowed to go on air as a matter of urgency.

A. I have no recollection. It could have happened. I have just no recollection of it.

123 Q. I see. We know from the evidence which has come to the Tribunal to date that Mr. Barry paid a sum of €35,000 in cash to Mr. Burke in his office as Minister. Now, that was during the period of time when these were ongoing negotiations, isn't that so? The contract with the IRTC and with RTE had not, in fact, been concluded when that payment was made?

A. No, the contract with the IRTC was -- I don't think it was concluded until a day or two before Century went on air.

124 Q. Now, did Mr. Barry tell you in advance of that payment being made that it was his intention to make a payment to Mr. Burke of €35,000?

A. No. Mr. Barry told me after the event that he had contributed €35,000 to Mr. Burke.

125 Q. Right. Can you recollect firstly when it was that he indicated to you that he had made such a payment?

A. Sometime after he had made it; when it was, I don't know. I couldn't put a date on it.

126 Q. Could it be weeks, months or years afterwards?

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A. Well, my recollection is that -- it's a fact there was an election --

127 Q. In June of 1989?

A. -- going on at that time. That's --

128 Q. The 15th June, 1989, is the date of the election, if that helps you. Was it after the election had been concluded and a new government had been formed or was it before that that you were heard about the payment?

A. I frankly couldn't tell you, I don't know. I can't place it in time except that it was roundabout the time of the election.

129 Q. Well, can you place it in any context? Can you, for example, remember now where it was that he told you about it and what other matters for discussion were being considered by you at that time?

A. I think he just happened to tell me over lunch. That's...

130 Q. And when he told you about this, did he tell you that it was a payment which he made personally or did he tell you it was a payment he was making on behalf of Century or did he tell you it was a payment that he was making on behalf of any one of his other business enterprises?

A. My understanding was that he said, "I have given £35,000" -- my understanding is that it was a personal contribution. That's my recollection of it.

131 Q. Did he ever tell you that he intended to recoup this £35,000 from the assets of the company?

A. I don't believe he did.

132 Q. Did you ever know that that is, in fact, what he did, because in contributing his shareholding to the capital side of the business he retained a sum of £35,000 which he

set off against the fact that he had paid ú35,000 to

Mr. Burke?

A. I wouldn't have been aware at the time what he was doing,

but if that's what happened, that's what happened.

133 Q. So you understood, from what Mr. Barry had said to you,

that this was a personal donation made by him to the

Minister?

A. That is my recollection.

134 Q. Is there any particular reason that you can think of as to

why he was telling you that he had made a political

contribution in that amount to Mr. Burke at that time?

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MR. FOX: Chairman, may I intervene at this stage. I

don't want to interrupt My Friend's examination of the

witness, but I think that is an unfair question to put to

this witness.

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MR. O'NEILL: I think the question, Sir, certainly is fair,

but I am happy to rephrase it and put it in another way.

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135 Q. You had a long relationship with Mr. Barry obviously,

extending back a number of years?

A. I had.

136 Q. And you place the conversation at which he referred to this

payment as being one which occurred in and around the time

of the general election in 1989, which was probably -- the

15th June was the election, it was probably either

immediately after or immediately before that you had that

discussion, is that fair?

A. My recollection is that it was during the time of the

general election.

137 Q. Right. And during that time, your professional relationship with Mr. Barry was concerned with negotiating a contract with the IRTC and with RTE to enable this company to get on air, isn't that so?

A. That's correct.

138 Q. And it was a matter of considerable concern to everybody in Century that they had not got on the air and they were writing indicating it was costing them \$5,000 a day not to be on air, isn't that so?

A. Just in case I give the wrong impression, the delay in dealing with the IRTC contract was that it was a very long complicated contract. The contract was being, as far as Century was concerned, was being led by Arthur Cox & Co.. Towards the end of the negotiations, I used to sit in at meetings with the IRTC and Cox's. The delay -- there was a whole question of what would have been at the end of the seven year contract because Century was going to lose money from the first three years; would it be fair not to put in some provision whereby Century would have an assurance that if they behave themselves and if they complied with their contract with the IRTC, that they would have a reasonable chance or, in fact, that they would have their contract renewed and thereby give them an opportunity of recouping their investment?

Now, that took up a considerable period of time and I think the transmission charges had absolutely got nothing whatsoever to do with the delay in negotiating that contract.

139 Q. Well, the transmission charges, we know, had been resolved

by ministerial directive on the 14th March and that RTE accepted those figures relatively shortly thereafter. So that any delay from the end of March onward could not have been a delay which was referable to transmission charges because that had been finalised, it had been taken out of the equation by the Minister's intervention in giving the directive. There was, nonetheless, from March, as I say, all the way to September, considerable negotiation going on over that period.

Now, I just want to focus on that in the context of the discussion or conversation which took place between yourself and Mr. Barry whereby Mr. Barry indicated to you that he had paid a sum of ú35,000 to the Minister. When he did so, it was at a time when you were in detailed negotiations over the terms of the contract, firstly, with the IRTC, and secondly, with RTE; amongst other persons, not necessarily involved with the transmission charge, isn't that right?

A. I know about the IRTC contract. I know nothing about the transmission contract with RTE.

140 Q. Right. So at the time that Mr. Barry was talking to you about the ú35,000, it was contemporaneous with you acting for the company in relation to the contract with the IRTC which was a difficult contract and one upon which, on at least one occasion, the Minister intervened to adopt the position of Century, isn't that right? That is the history of the background against which any discussion which you would have been having in June or July --

A. That may be your interpretation of it, Mr. O' Neill, but I

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was certainly never conscious of that in relation to the IRTC's contract with Century, that Mr. Burke had anything got to do with it.

141 Q. You were not conscious of it?

A. Certainly not.

142 Q. We know from the evidence that, in fact, he did intervene, and I am not asking you to comment in any way on that. I am just indicating to you that it took place at that particular time. It took place in and around the time when the payment was made to Mr. Burke and I am asking you whether or not at the time that Mr. Barry made the payment of \$35,000 to Mr. Burke, and at the time when he indicated to you that he had made such payment, whether you raised with him the fact that some connection might be drawn between such a payment and the fact that his company, Century, was in ongoing negotiation on these issues?

A. I don't believe I did.

143 Q. Nor did he obviously seek your advice on it in any way?

A. No.

144 Q. So that there was a \$35,000 payment that you believed had been made by him personally. You did not know it was made by Century, isn't that so?

A. I believe it was made by Mr. Barry personally.

145 Q. Right. And having been now informed, and you may accept that the payment was a payment made on behalf of Century, is that something which would have been of concern to you to advise your client about having made such a payment during the time scale when these ongoing negotiations were taking place?

A. That never struck me.

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146 Q. Presumably Mr. Barry never indicated to you why he didn't request a receipt for the payment of these monies from Mr. Burke?

A. A question of a receipt never arose.

147 Q. Did he ever indicate to you that he had made the payment by way of cash?

A. Oh, he told me by way of cash.

148 Q. Did he tell you why he chose to pay it in cash?

A. Not to my knowledge.

149 Q. But you have a specific recollection of him saying "I paid Mr. Burke €35,000 and it was in cash"?

A. And it was in his office.

150 Q. And it was in his office?

A. Yes.

151 Q. And you didn't ask him why it was that he paid him in cash as opposed to cheque or otherwise?

A. Only three ways you can give money.

152 Q. Yes.

A. Cheque, draft or cash.

153 Q. But where the individual was your client, outlines to you that he paid the money to the Minister in cash, did that not cause you to inquire of your client as to why he did not pay by way of the other two methods, which are methods which would have a record, namely either draft or cheque?

A. I certainly didn't question him.

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CHAIRMAN: On that point, could we just pause for ten minutes, ten or fifteen minutes.

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MR. O'NEILL: Very good.

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THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED
AS FOLLOWS:
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154 Q. MR. O'NEILL: Mr. Marren, if we could move on then from June of 1989 until the end of 1989. We know that transmission commenced on the 4th September of 1989 and I take it that you had some dealings with your clients between then and year's end, is that right? Did they keep you informed of how the business was progressing?

A. I think they did, yeah.

155 Q. And we know certainly that they were in very serious financial difficulties by the time they had reached year's end, isn't that right?

A. I believe so, yes.

156 Q. And the whole viability of the project, in other words, was under review. Their bankers, for example, were pressing them severely in relation to what their financial projections would be for their turnover in the following year and how they intended to finance their ongoing and growing losses, isn't that right?

A. I think that is so. I wouldn't necessarily be privy to it, though, Chairman.

157 Q. Right. We will be dealing with a meeting that you had in May of 1990 which records the fact of there having been a meeting between the Minister, Mr. Burke, and your clients, Mr. Stafford and Mr. Barry, in his offices regarding RTE. Do you remember there being such a meeting in May, firstly?

A. From my files, yes.

158 Q. From your files. Is it your evidence that it was not until May of 1990 that you became aware of the fact that your clients had met with the Minister in December of 1989 regarding the financial difficulties of Century?

A. I believe that is the case.

159 Q. And is it equally your evidence that that is the first time that you learned that the bankers also had met with the Minister and your clients in December of 1989 in the Minister's offices and had discussed the matter with him?

A. I believe that is so, because I made an attendance on the meeting.

160 Q. As matters progressed, then, into the year 1990, the financial situation did not improve but continued to disimprove, isn't that right, as far as you are aware?

A. As far as I am aware, that is so.

161 Q. And I'd like now to deal with a memorandum which was prepared by you following a meeting which you had with your clients on the 19th May of 1990. It's at page 2685, on the screen.

A. Yes.

162 Q. Now, this -- I think you will remember this document, Mr. Marren, it's a handwritten memorandum written by you, and we will try and decipher it insofar as we can. Firstly, in the top left-hand corner, it has a date, the 19/12/1990. We move across then, "Century Radio, Saturday 19/5/1990, Shelbourne Hotel." There are three persons present, M.E. Marren, Oliver Barry and James Stafford.

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I think, firstly, that the reference to the 19th December, 1990, should read 19th December, 1989, isn't that so?

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A. That is correct.

163 Q. And this is a memorandum prepared by you following a meeting with Mr. Barry and Mr. Stafford at the Shelbourne Hotel five and a half months after that meeting, isn't that right?

A. That's correct.

164 Q. In this memorandum you record that "J. Stafford and Oliver Barry met the Minister. Told him you were liquidating the company". Is that right?

A. Yes.

165 Q. And "that" being Mr. Barry and Mr. Stafford informed the Minister, from your note here, on the 19th December, 1989, that they were liquidating the company.

A. That's right.

166 Q. "In the afternoon he asked you what would save it?" The "he" being the Minister here, is that right?

A. That's correct.

167 Q. And the "you" being Mr. Barry and Mr. Stafford?

A. That's correct.

168 Q. It then goes on to say, "In the presence of the secretary, he said he would halve RTE's advertising time on both channels." Then, "Following week bank came in" -- then there are the names of three bank officials here. "At this meeting, the Minister repeated the undertakings." He didn't know if he had to introduce legislation or directive, is that so?

A. That is correct.

169 Q. So what you were recording here is that your clients indicated to you that the Minister had, at that meeting, indicated, in the presence of the bank officials and his

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secretary, that he would halve the RTE rates, but it would be unclear if he was obliged to introduce new legislation or if he could do it by directive under the existing broadcasting legislation, isn't that so?

A. That's so.

170 Q. As best you can in May of 1990, can you say why it was that a review of that meeting was taking place and why you, for the first time, were being informed that such a meeting or meetings had taken place?

A. I can't, with any clarity.

171 Q. Obviously the decision which the Minister appeared to have made and which was reflected in this memorandum was a decision which had been taken in December, isn't that right?

A. Yes.

172 Q. And it may well be that the implementation of that decision and its various stages gave rise to this meeting having taken place. Obviously the Minister, having made a decision or reviewed the position and established that legislation would be required, would have to set about implementing the legislation which would give effect to this decision, isn't that right?

A. Yes.

173 Q. It may be of assistance to you to know that the Minister brought a memorandum to government in March, by way of an aide memoir, indicating that it was his intention to amend the existing legislation by means of a capping. That took place on the 22nd March, and at a government meeting on the 27th March the government decided to adopt the intended legislation in the form of the aide memoir. So that the

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Attorney General's office was then involved and asked to draft appropriate legislation.

The record of the legislation would appear to suggest that on the 23rd May of 1990 a draft of the intended legislation left the Attorney General's office for the Minister's office, where it would be considered. This meeting took place here four days before the Attorney General's directive or draft act was forwarded to the Minister. Is it possible that it was in the context of imminent legislation being published that the meeting between yourself and Mr. Barry and Mr. Stafford was considering the question of what the Minister had, in fact, agreed to do?

A. What the context of that meeting was, I couldn't tell you; whether it had to do with the legislation or whether it had to do with the possibility of Capitol Radio in London getting involved. But that's conjecture on my part.

174 Q. Well, what we are hoping to do, Mr. Marren, is to get behind the conjecture and try and find out what the factual base behind your record here was. Obviously, you don't record irrelevant material when you are dealing with your clients' interest, so this definitely had a relevance at the time you prepared the note?

A. Obviously.

175 Q. And I am trying to put in context what activities were taking place around that time in the hope that it might help you to elucidate on why you felt it necessary to record these facts. Firstly, you were talking about a matter which was six months old at that particular time, so it wouldn't have a particular relevance unless there was

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something current in May 1990 that could be considered in the light of there having been a meeting six months earlier -- five months earlier, isn't that so?

A. Well, Mr. O' Neill, I'd have made an attendance if I was learning of something for the first time, and that's possibly the reason I made the attendance. I can't recollect the context of that meeting in the Shelbourne Hotel until the memorandum was referred to me by this Tribunal. I wouldn't have -- I wouldn't even have recollected that meeting, so it's not something that's seared in my mind.

176 Q. Fine. Well, we know the meeting took place. We know that it took place at a time in and around the time that the Minister was considering bringing a bill before the House. Could I suggest to you that the most likely connection which exists between this memorandum and that information is that your clients were discussing with you, at this time, the possible legislative changes that would be effected to improve their position by the capping of the RTE charges?

A. They certainly might have been, but I can't -- I have no recollection of the context in which that meeting was held.

177 Q. OK. We know that there had been no optimistic signs in improvement in the finances of Century from November through to May of the following year, isn't that right? And obviously if the situation was one which was serious enough to merit a liquidation in November, that position was perhaps even more critical when you got to May of the following year, isn't that right?

A. Yes, that would be so.

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178 Q. Your clients, in other words, weren't expressing to you around this time any great optimism about matters improving significantly, isn't that right?

A. They might have been, but again it's speculation, they might have been if they were going to have an association with Capitol Radio.

179 Q. Yes. Now, we know that in May 1990 Capitol Radio had been one of a number of radio stations abroad which had looked at Century with a view to becoming partners in the scheme and hopefully to inject new capital and finance into it which would allow it to get over this troubled financial period, isn't that right?

A. Well, one I remember and I think it was a Scottish station.

180 Q. Yes, Clyde?

A. Clyde, is it?

181 Q. And Capitol being another?

A. Yes. Yes.

182 Q. And were you made aware by your clients that Capitol felt that the risk of investing in the entity was not a viable one given the fact that there would be profit only at the end of a three year period, but that the profit would not merit the level of investment that would be required over the three year period to keep it afloat until it became viable. Do you remember that being one of their concerns?

A. It certainly was, but not before the 19th May.

183 Q. When do you think that they expressed that view?

A. I would imagine it was once the legislation was introduced --

184 Q. Well, could I suggest to you --

A. -- or the bill was introduced, rather.

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185 Q. Could I suggest to you that it was once the legislation was introduced, they had an actual interest in acquiring a stockholding and interest in Century but they had indicated, prior to the legislation, that they would not be interested in engaging in the process because the returns which they would expect at the end of the period were not sufficient to merit the risk?

A. I have a recollection of that, yes.

186 Q. They, on the other hand, identified and specifically drew attention to the fact that one of the main impediments to their involvement was the fact that there was an existing well-established radio station, 2FM, which was competing with Century for revenue and had the advantage of being subsidised and in receipt of licensed fees from the hearing public, isn't that right?

A. Yes, and that, I think, was one of the avenues that Century were exploring, to amalgamate with 2FM or to have -- basically to amalgamate to 2FM because Century's argument was Century -- certainly it was Mr. Stafford's argument always, that Century and RTE were not competing on this famous level-playing pitch and that he felt that RTE had a double bite of the cherry; they had licence fees, they had their transmissions up for which the taxpayer paid and that some opportunity should be given to Century to compete fairly with RTE.

187 Q. Right. Putting it in the context of the new investor, Capitol, Capitol was not willing to become involved unless there was legislation in being which capped RTE's Revenue and limited the activities of 2FM, isn't that right?

A. I'd say they wouldn't have if it wasn't there, but I

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couldn't say --

188 Q. Well, I am suggesting to you --

A. -- whether or not that was a precondition.

189 Q. Well, I am suggesting to you that it was, in fact, a precondition, that they would have had no interest in coming in unless it was on the basis of RTE's activities being curtailed to the extent I have already mentioned?

A. It may very well have been.

190 Q. Right. And in that context, we know that the Minister proposed a bill or was proposing a bill which would cover both of those aspects. You had a meeting, again recorded at page 2674, by way of attendance on the 26th May of 1990. And we see from your attendance docket here it reads "Century Radio; O. Barry, J. Stafford, C. Allen, E. Marren, 26th May", a meeting which lasted some two hours, between half past two and half past four, at the Shelbourne Hotel, and as I read it it's "Discussed costings" -- or continuing, I am not sure?

A. "Discussed Century's problems".

191 Q. OK. "Discussed Century's problems. Century/2FM to merge." Next is "Issue taken", is it?

A. "Issue paper", I think.

192 Q. "Issue paper. Obligation re RTE to sell and" --

A. "Sell on the open market".

193 Q. "I.e. when it goes public in three years' time."

A. I presume the "it" means when Century goes public in three years time. I think that was the plan.

194 Q. OK. So the original investors intending, so far as they could, to go public in three years' time with the project, is that right?

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A. I believe that was the plan.

195 Q. The three years was the time in which Capitol believed that the matter would become profitable and would have got over its teething problems and would be capable, then, of obviously going public?

A. I wouldn't have a fix on when the three years would start.

196 Q. Right. Can you remember what the source of the reference to Century and 2FM merging was?

A. Just what I mentioned a moment ago, that that was one of the possibilities.

197 Q. Right. Who advanced that possibility that they may do so or that it would be desirable that they do so?

A. That might have been an aspiration, and I would have thought that it was an aspiration of Mr. Stafford's.

198 Q. To that point, clearly on the 26th, the role of 2FM had been clearly identified as being one in competition with Century and it would have to be dealt with in a particular way, either by merger or some other way, isn't that right?

A. I believe that is so.

199 Q. You believe that that was something which was raised by Mr. Stafford.

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Around that time I think you became aware of the attitude of Fine Gael to Century as a result of a fax which you received in your office from the Fine Gael press office on the 22nd May, 1990, and if we look at page 135 -- sorry, it's page 2676 on our second document. This was a view which was being expressed by Mr. Jim Mitchell?

A. Mm-hmm.

200 Q. And it issued, as we see, on Tuesday 22nd May, 1990, at

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5 p.m.. It deals with the independent radio and television matters. What I'd like to draw your attention to is at the very end of that page there where Deputy Mitchell stated that, "it would be equally rash of the Minister to try and redress his original mistake by rushing into the control and/or regulation of broadcasting advertising or other revenues without the most careful consideration and analysis."

Deputy Mitchell here had obviously received information to the effect that the Minister was intending to intervene in the control and regulation of broadcasting advertising. You may take it, Mr. Marren, that this was not a matter which was in the public domain until this particular document was circulated. You, on the other hand, had been discussing what the Minister had decided with regard to legislation in December 1989 at a meeting which took place three days before this particular meeting, and we have heard evidence in the Tribunal from the witnesses in the Department of Communications and RTE that they were having discussions and, at those discussions, the question of capping of RTE advertising revenue had arisen and, as a result of those discussions, apparently, Mr. Mitchell became aware of the fact and he issued this press release on the 22nd which brought into the public domain the fact that Minister Burke had intended, apparently, to cap advertising revenue, though it's not specifically set out in this press release, save to say that, "it would be equally rash of the Minister to try and redress his original mistake by rushing into the control and/or

regulation of broadcasting advertising or other revenues without the most careful consideration and analysis."

We may take it that Deputy Mitchell here foresaw that the Minister was, in fact, going to enter into this area and he was describing it here as "rushing in by mistake into this area."

Now, after this document was circulated, a motion came before the Dail on the issue of broadcasting, and that was responded to in the Minister's speech of the 29th May of 1990. And in that speech, and amongst other matters, the Minister refers to 2FM's position at page 1581. Starting at the top of the page there, the speech reads as follows:

"I mentioned earlier that the main rationale for the development of RTE's Radio 2 -- or 2FM as it is now known in the late 1970s -- was to respond to the demand being manifested by pirate stations then in existence. Apart from the fact that it is questionable whether that service actually responded to the real need at the time - which was for alternative services as much as for a popular music station - it is certainly questionable at this time, given the major developments and alternatives available in broadcasting, as to whether its current format represents the best use of what is, in effect, a scarce and valuable national resource.

"In this regard, it is considered that there is a whole area of broadcasting - closer to the primary public service broadcasting mission of RTE - which is not being adequately

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catered for at this time.

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"I have in mind, for instance, in the area of education and the contribution that broadcasting can make there - for example in the field of continental languages, which is particularly important as we approach 1992 and also, indeed, in respect of the Irish language because notwithstanding the excellent service provided by Radio na Gaeltachta, its primary focus is to serve the population of the Gaeltachtaí as distinct from the more general public whose grasp of the language may be limited but who nevertheless have a strong affinity with it.

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"Other areas which are poorly catered for would include the rural and farming sectors, business and trade union affairs, social welfare and social affairs advice and information, as well as a range of special interest and specialist music areas.

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"The government has, therefore, decided to ask the new RTE authority, as a matter of priority, to develop plans for alternative use of the 2FM network which would be more in keeping with the public service mandate of RTE."

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So to that point, certainly, it would appear that the Minister's pronouncement on RTE Radio 2 and your discussions, which predated it by three days, on the 26th May, were touching on the same subject of radio 2FM's role in broadcasting --

A. Sorry, I didn't say that the discussions that we had on the

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19th May were discussions in relation to 2FM.

201 Q. No, the 26th May, the last document I referred you to which was the shorter of the attendances where we see the reference "Century/2FM to merge on the 26th May", was three days before the Minister's speech in the Dail on the issue?

A. My reference to 2FM was solely related to the question of somehow or other allowing Century survive. It had nothing got to do, as far as I know, with this.

202 Q. What you were -- what was being addressed at the meeting which you attended on the 26th was a problem that existed between Century and 2FM, isn't that right?

A. No. A problem that existed between Century -- Century had the problem, was in difficulties. There was a suggestion brought up at that meeting that perhaps the answer is for Century and 2FM to merge, most certainly. Sorry, I was thinking earlier on about the meeting of the 19th May.

203 Q. Exactly. The 19th dealt with a different subject matter. But at this particular meeting, whilst I accept that the words "to merge" is not specifically referred to in the Minister's speech, there is clearly a reference here to the relationship which existed between Century and 2FM. They were obviously competitors; the removal of 2FM out of the scene would materially improve Century's position, isn't that right?

A. That was the belief, yes.

204 Q. Now, I was asking you earlier whether you knew why it was that at this particular meeting on the 26th the 2FM issue was raised, and you indicated that you weren't particularly aware of who had raised it or what the source of it was. And when we go on in time, we will see that, three days

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later, the Minister is referring to this specifically in the Dail and is stating, in effect, that the pop element of 2FM is going to be neutered and it's going to be replaced by a language station and social welfare information will be distributed on it. Clearly, if that scenario came to pass, it would no longer be a competitor to Century, isn't that right?

A. That's true.

205 Q. And could I suggest to you that that indicates whoever it was who raised the 2FM issue with you at this meeting on the 26th May, equally knew that the Minister had in mind to deal with the 2FM situation and that was not in the public domain?

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MR. FOX: Chairman, I'd be very slow to interrupt Mr. O' Neill's examination, but he is encouraging this witness now to speculate on a grand scale as regards the Minister's intentions when he made his speech and as regards a possible link between that and the memo, the noted memo of Mr. Marren himself. Now, this is encouraging the witness to speculate as to what was actually going on in the Minister's speech. I don't think that's a proper way to examine this witness.

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CHAIRMAN: Well, the Minister's speech is before me and I am reading it actually and so are you. And you know exactly what he said in it and I think the comment is a perfectly fair comment. It was going to effectively neuter -- I mean, appears that the Minister's speech, the effect of it would be to neuter 2FM as a music station.

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MR. O'NEILL: As My Friend, Mr. Fox, is probably aware, Sir, the evidence has already been given by the witnesses from the Department of Communications that the question of RTE being -- radio 2FM being dealt with in the manner described in the Minister's speech was not a matter which was discussed within the department prior to this speech being made, so that the speech which was made by the Minister, I am endeavouring to seek through this witness to establish if there is a connection between the FM reference in this meeting on the 26th May and the content of the Minister's statement on the 29th. I am not asking to interpret the Minister's decision of the 29th, but rather, to establish what took place at the meeting of the 26th in connection with the 2FM reference here to see what the source of it was and what that person was saying.

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MR. FOX: What I am - my objection --

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CHAIRMAN: In my opinion, the question is perfectly fair, to inquire whether the two are related, not whether there is a relationship in the thought process in one and the thought process in the other. That's all.

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MR. FOX: I want to be clear, Chairman: My objection relates directly to the speculative nature of the questioning.

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CHAIRMAN: That's not a speculative nature. That's a query. The two statements, they seem to have a common

theme. There is no reason why we shouldn't inquire as to whether they have or have not got a common theme.

206 Q. MR. O'NEILL: Well, Mr. Marren, just to return to the document which was on the screen, at page 2674, it's your attendance of the 26th May and the reference to "Century/2FM to merge". We know from what you say that obviously the 2FM issue was one which was raised at this particular point in time, and, by way of assistance to you, I can tell you that there is no contemporaneous documentation in the Department of Communications which indicates that the question of 2FM being in some way connected with Century was on the agenda for being discussed by the department. Now, we know that it was discussed by the Minister in the Dail on the 29th and I am asking you whether you can tell us what the source of the reference to a possible merger between 2FM and Century was? It was sufficiently of interest to you to note it in your attendance. We know that the meeting took place over a two-hour period, but you only seem to have noted three matters in this particular attendance, so I take it it was one of the major issues there and I want to know if you can tell us who raised the issue and in what context they did so?

A. Well, my recollection is that it was raised by Jim Stafford. I have no recollection whatsoever that it was raised as a result of what the Minister said to him or he said to the Minister or anything like that. It was raised as one of the avenues whereby Century could be saved.

207 Q. Right. So it was --

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A. I can't put it any further than that, Mr. O' Neill.

208 Q. Fine, I am not expecting you to go any further than your recollection supports, Mr. Marren, but you envisaged or you recollect this happening in the scenario where the very existence of Century was on the line at this point in time, isn't that right?

A. Yes.

209 Q. And had been a matter which was current over the, that immediate period in May; you had at least two meetings, one a week later than the other, where this was discussed, isn't that right?

A. Where Century's problems were discussed.

210 Q. Where Century's problems were discussed in the context of Century failing entirely unless certain radical steps could be taken, one, the advertising limits in RTE; and the other, finding a suitable investor through Capitol to bring in sufficient additional funding to allow the matter progress for three years or so until it could go public and the parties hopefully then could capitalise on that by disposing of some shareholding. Those were the issues that were being discussed at the time, isn't that right?

A. I suppose they were, yes.

211 Q. Have you any doubt about it? If you have, I mean --

A. I have no clear recollection of --

212 Q. If we can revert for a moment to the document, then, which was the memorandum prepared on the 19th May, which is page 2685. At the end of the document, towards the end of the document here, you will see that there were a number of notes made at the conclusion of having recorded the factual detail that I read out earlier. The first of them states,

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"If it goes, horse must be dead, never to rise."

The second reference is, "Minister resignation." The third is "Exec resign" -- perhaps executive resignation. The third, "independent investigation."

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Now, if we could perhaps try and interpret what you were recording here. Firstly, you were predicating what was below the reference "if it goes", which is underlined.

The four or -- the four postulated situations here, if it goes four things might happen: One, the horse must be dead, never to rise; two, Minister resignation; three, executive resignation; four, independent investigation.

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Can we take it that "if it goes" means that if Century fails?

A. Yes.

213 Q. If Century fails, four matters had to be covered, the first being the horse must be dead, never to rise. Were you recording somebody else's euphemism here, analogy?

A. I may very well have been, I don't know. I have racked my brains to try and find what was meant by that. The first one is fairly simple, that if Century went into liquidation, that was it.

214 Q. Well, it seems to go further and to say it must be dead, never to rise. Could I suggest that the inference there is if it is to be buried, it mustn't be dug up again and examined in any way?

A. No, no, no, no. I think it was the whole concept of independent radio that would have been dead, never to rise.

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215 Q. Well, why would that -- why would there be an objective retained by the unsuccessful promoters of Century that nobody else could come in at a later stage successfully, because there were, as far as we know, at least two active participants other than Century who required this particular franchise at a period only two years beforehand. There was nothing to suggest that they would not have had an interest in coming back in. So...

A. No.

216 Q. These particular notes or references, the four points which are here follow upon the reference earlier in the memorandum, the detailed reference that is to the meeting having taken place between the bankers, the Minister and the promoters of Century. Is it not the case that these three caveats which are entered here, four caveats, follow upon the earlier meeting, in particular, if Century was to fail, the fact of these meetings having taken place between the Minister and the bankers, the Minister and the promoters, were matters which should never rise again?

A. Could be. As I told you, I have racked my brains as to what precisely I meant by those notes, and I simply can't come up with an answer. I can't even put it in -- if I could find a context in which they were written.

217 Q. Well, could I suggest to you that the context is probably what's contained within the document itself. In other words, this was a memorandum which was prepared following a meeting with these two gentlemen in which they revealed to you matters which are certainly unusual, to say the very least, isn't that right?

A. Yes.

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218 Q. To use a solicitor, it is an indication that the promoters of a commercial venture had met with the Minister, the Minister had given them an undertaking, firstly, that the undertaking extended to introducing legislation, which is a matter which would be a matter for government rather than for an individual member and presumably not in your experience, a matter which would be tailored to suit the needs of any one individual or applicant, isn't that right? So all of this, I take it, was of considerable surprise to you to learn that this sequence of events had taken place. It's against that background, I suggest, that you went on to record these particular caveats that we see at the end of the letter; that if it goes, if the venture fails, the horse must be dead, never to rise. That that is, in the context of the Minister's activities to that date, that they should never be revealed?

A. Oh, I don't think anything like that ever arose.

219 Q. OK. In what context was the question of the Minister's resignation noted?

A. This had nothing got to do with any sort of secrecy or any underhand activities. This was a recording of a fact.

220 Q. Yes, but the fact that it was disclosing had, to that date, been a secret to you, namely that the promoters of this company, two of the directors had gone to visit the Minister in his office. That was a secret. You were never informed?

A. I wasn't informed, but then was it my business to be informed?

221 Q. Well --

A. I was a solicitor taking instructions.

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222 Q. Exactly, and when you learned of this, what you learned of is a most unusual situation?

A. A situation.

223 Q. A situation. Are you saying for a moment, Mr. Marren, that it is not a highly unusual situation; that you are informed by your clients who are engaged in a commercial activity that, firstly, the Minister was prepared to meet their bankers in his office and give undertakings to bankers in respect of a private individual. Isn't that extraordinary?

A. That was certainly unusual, no question about that.

224 Q. And equally, it was no less unusual, I suggest, that the Minister had, in the presence of two individuals, given them an undertaking that he would introduce legislation which would have a material interest on the commercial interests of a semi-state company by halving their Revenue?

A. I think what the note says, that he did not know if he had to introduce legislation or introduce a directive in order to give effect to the capping. That's what he told them.

225 Q. Exactly --

A. He didn't tell them "I am going to introduce legislation".

226 Q. No, he said he was going to halve the advertising. The method through which he did it was either by legislation, if he had to, or by directive, if that was capable of being done, so that what he was stating here was that he would bring a matter before the Dail, but rather, he would introduce -- he would cap their advertising or halve their advertising, and he gave them an undertaking to that effect. That's what it's stating?

A. That's what it states.

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227 Q. In clear terms. What I am saying to you is that that was, of itself, a highly unusual set of circumstances, and, I suggest to you, is probably why you noted a number of caveats or qualifications at the end of the record of those facts which dealt with what might arise in the event that the venture failed. In the knowledge of what you knew above, these matters had to be addressed, one of them being the Minister's resignation.

A. Who would address the Minister's resignation?

228 Q. Well, you noted it down here as "Minister's resignation", and I wonder do you know of any context at which the resignation or possible resignation of the Minister was discussed at this meeting on the 19th May?

A. It could have been, certainly.

229 Q. Well, it had to be or you wouldn't have noted it, is that right?

A. No, because the legislation in relation to independent radio and Century was his -- he introduced it. It was his thing, for the sake of a better word, and, if it failed, what would the consequences be for him?

230 Q. And to --

A. I can't put it any further than that.

231 Q. Right. If the venture had failed rather than the principal had failed --

A. Well, the venture, yes.

232 Q. -- the reflection would be a reflection on the commercial viability of the promoters rather than on the Minister's deficiency in electing or in passing the principal?

A. I suppose that's fair to say.

233 Q. So it would be unlikely. The Minister surely would merely

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readvertise the position or the IRTC would do so, a new candidate would apply and the Minister's wish to have a national broadcasting service would be achieved through albeit another entity rather than Century, isn't that right?

A. Possibly.

234 Q. So I am suggesting that it was unlikely that ministerial resignation would follow as a result of a failure of Century per se, and certainly, I suggest it's unlikely that the promoters of Century, in discussing what would happen in the event of failure, would have any concern for the Minister's position and would not necessarily be discussing resignation by the Minister merely because their venture had failed?

A. I can't speculate. I can't put it any further than I have put it. I have racked my brains as to -- or my memory at least.

235 Q. The other issue you have noted here was the question of an independent investigation as being one of the consequences which might follow in the event that Century fail, and obviously one of the matters which was of concern to the body of persons present at this meeting. Do you know what investigation or independent investigation they had in mind and whether or not what is expressed here is a concern that there might be an independent investigation?

A. I have absolutely no recollection, good, bad or indifferent.

236 Q. Well, obviously you noted these things as an aide memoir for yourself either as a "to do" list or as something upon which, when your clients had left the meeting and sought

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advice from you at a later stage, you'd be able to refresh your mind by reference to this shorthand that you had taken, isn't that right?

A. Well, I am sure I had and it would be a good aide memoir if it came up, be it six months or ten months or twelve months, but not ten years later. And if I thought it would have come up ten years later, I am sure I'd have made a better note.

237 Q. As you tell us, you have racked your brains to try and interpret this document and the fact of the matter is you can't?

A. No.

238 Q. I will be turning to another subject now, Sir, which may take a little time, so I'd suggest if we were to break at five to one and perhaps sit at ten past two, if that would suit you? Alternatively we can resume at any time that suits you.

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CHAIRMAN: I'd like to resume slightly later, another ten minutes, because I want to investigate something that will take me about twenty minutes and also have lunch at the same time.

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MR. O'NEILL: Twenty past two?

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CHAIRMAN: I will be here at spot on twenty past two. Sorry for delaying you, but there is a problem I have to cope with.

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THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

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THE TRIBUNAL RESUMED AS FOLLOWS AT 2.20PM:

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CONTINUATION OF EXAMINATION OF ENDA MARREN BY MR. O'NEILL
AS FOLLOWS:

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239 Q. MR. O'NEILL: Mr. Marren, we were mentioning before lunch that in May of 1990, negotiations had commenced between Century Communications and Capitol with regard to Capitol acquiring an interest in Century Communications, isn't that so?

A. Around that time.

240 Q. And we know that that went on to develop to a point where, on the 25th July of 1990, heads of agreement were signed as between these two bodies with regard to an acquisition of a relatively substantial shareholding by Capitol Radio, isn't that so? The heads of agreement were signed on the 25th of the 7th. The actual concluded agreement was signed on the 27th September?

A. I accept that.

241 Q. But the heads of agreement certainly set out what the parties had in mind subject to standard conditions, including full disclosure being made of existing liabilities, isn't that so?

A. That's right.

242 Q. And you were instructed in relation to the disclosure aspect, isn't that right?

A. That's correct.

243 Q. And your firm spent time drafting an initial letter of disclosure and subsequently amending that and subsequently reaching a final agreement which was -- or letter which was

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adopted by the directors and accepted by Capitol, isn't that so?

A. That's correct.

244 Q. And if we look to the document at page 3467, we will see that this is a document expressed to be the second draft of the letter of disclosure. The "second draft" is in handwriting there, top right-hand corner?

A. Yes.

245 Q. I think some of the writing here is your own and some is another member of your firm, is that correct?

A. I think that's all mine.

246 Q. Is it all yours?

A. I think it is. Perhaps the one on the side is not, no.

247 Q. I think it's a slightly different hand. We'll see this is a relatively lengthy document dealing in considerable detail with all of the known liabilities that had been assumed or imposed upon Century and which were being brought to the attention of Capitol, isn't that the purpose of the letter of disclosure?

A. Yeah.

248 Q. Included in the matters covered in this disclosure letter was the reference to the outstanding capital balance which was due by the initial promoters and shareholders of the company, there was a shortfall in funds. And we see at page 3469, towards the end of the page there, that we see that the issued share capital is not fully paid up insofar as there is an outstanding sum of \$75,278 in respect of shares. You see that?

A. Yes.

249 Q. That is dealt with here in the letter of disclosure. It

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informs the acquiring interests that €50,000 is due at that point in time from Mr. Terry Wogan. "There was a fee, however, due to him in the sum of €45,000 in respect of a series of shows presented by him when the station was set up which, when paid, will be applied thereto."

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So that was, in effect, a contra for almost €45,000 of it. And if we turn to the next page, 3470, the initial draft provided at B, that: "James Stafford and Oliver Barry, in respect of the sum of €25,278. This outstanding balance is to be deemed fully paid by the advances made by the said James Stafford and Oliver Barry by way of loans to the company." Do you see that?

A. Yes.

250 Q. That then is struck out, and in manuscript I think you have written in an alternative clause under the same heading which states: "Since the preparation of the account in December and as of the 5th September, 1990, James Stafford and Oliver Barry advanced, by way of loans to the company, the sum of", and it's an indistinct figure there in the margin?

A. Blank pounds.

251 Q. Blank pounds. "The purpose of these loans were to enable the company to remain trading and, as such, should have been fully reflected in the management accounts."

A. That's right.

252 Q. Isn't that so? They had not, in fact, been so reflected in the accounts, isn't that right, as of that time?

A. I can't recall, but I know that these disclosure letters were sent to, or the draft disclosure letters, they were

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sent to everybody. And when I say "everybody", I think the accountants for Century -- to Century and to anybody that could give us information, and the information that we got we put into the disclosure letter.

253 Q. Exactly. And what, in effect, was being stated here was that these sums, in the first instance, had been deemed to be paid as opposed to being established as having been paid?

A. Should have been reflected in the accounts.

254 Q. They weren't. But in any event, this reference and a further reference at page 373, sorry, that's 1473, dealing with transactions since the balance sheet date at number 2 provides here that: "Both James Stafford and Oliver Barry have provided an advance to the company, additional working capital by way of loan." And then if we look to the margin, I think: "Which are repayable on demand as set out in 1 of W2", which is the earlier reference that we have already dealt with.

A. Mm-hmm.

255 Q. "Loans are supported by no documentation."

A. Yes.

256 Q. And then I am not quite sure what goes on after that?

A. "No security" -- I think -- "as to such was obtained".

257 Q. And "The implicit receipt is the --

A. "The unissued share capital of the company."

258 Q. Isn't that right?

A. That's right.

259 Q. So this was an assumption being made in respect of the shortfall of £25,000 that appeared, isn't that right?

A. Whatever the figure was.

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260 Q. Exactly. Now, the other references to financial matters outstanding in this particular document included everything from amounts due on foot of computers to rental of typewriters and all of that sort of thing, isn't that right?

A. Anything that we were told should be disclosed, was disclosed.

261 Q. And we may take it from having considered this particular draft, that there is no reference whatever in this document to there being an outstanding amount of ú45,000 due to Mr. Oliver Barry in respect of services provided by him to Century over a six month period at a rate of ú1,600 per week, totaling ú40,000.

A. If it's not in the disclosure letter, it's not there.

262 Q. It's not there. And does it follow from that that you circularised everybody in due diligence to find out exactly what liabilities were owed by the company before you drafted up this contract and amended it, as we see here, and it would follow then that you were not informed by Mr. Oliver Barry at this time that he was owed ú40,000 out of the company?

A. That would appear to be the case, certainly. There were several drafts of the disclosure letter. I don't know whether this is the final draft, the second draft, the third draft. There were umpteen drafts.

263 Q. Right. This is the second draft. We have found the first draft. We haven't found any later drafts.

A. OK.

264 Q. But I accept that, of course, it expresses itself to be a draft. Indeed, the original equally -- the completed

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document itself is not available to us because it hasn't been discovered by anybody?

A. I couldn't find it.

265 Q. They couldn't find it either. So the position, then, is that a dispute was later to arise in the same year in relation to the question of whether or not ú40,000 was, in fact, owed to Oliver Barry, isn't that right?

A. That is so.

266 Q. You became involved in that to the extent that Mr. Barry communicated with you -- sorry, Mr. Stafford communicated with you by fax on the 20th December, 1990, forwarding you a draft letter for your review. And if we look to page 2571, we will see a fax cover note dated the 20th December, 1990, from James Stafford to yourself, Enda Marren, at 11.11 hours, and it asks you to review the attached draft. And if we turn, then, to the next page, page 2572, we will see the draft there. It is a message headed "Patrick" and this is to the gentleman who was the financial controller and director of the company, isn't that right?

A. That's correct.

267 Q. "Patrick, it is now over twelve weeks since completion of the 27th September and the issue of this ú40,000 has not yet been dealt with and I cannot finalise my own accounts until it is paid." Now, you may or may not recall that Mr. Stafford was claiming money as being due and owing to him from Mr. Barry. Mr. Barry, in turn, was saying that he was owed ú40,000 from the company and that he would pay Mr. Stafford his due sum once he, Mr. Barry, had been paid the ú40,000 owed to him. Does that accord with your memory of events?

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A. I am not saying it doesn't, I have just no recollection of it.

268 Q. Very good. But certainly Mr. Stafford was involving himself in this document here in ensuring that there would be a payment but not to himself, rather -- sorry, Mr. Stafford was seeking to have the monies paid to Mr. Barry, not to him.

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The letters goes on: "Despite my many requests, it seems to get deferred again and again to the point where I can only conclude that we are being played with. A typical example is the fact that you and I agreed it would be dealt with this morning. Of course it hasn't been. I am satisfied that the ú40,000 is properly due and payable by the company but, to avoid any doubt whatsoever, I will want it as the first item in the next board meeting when I expect it to be ratified and paid without any further nonsense."

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Now, in relation to that, Mr. Marren, I think you will probably agree that if this had been a liability which had been incurred by the company prior to the 27th September of 1990 and was extant at that time, it ought to have been reflected in the letter of disclosure, isn't that right?

A. I would have thought so.

269 Q. Right. The next letter we see on file is at page 768, and this is Patrick Taylor's letter of the 21st December, the day following upon the earlier fax that we saw, and it's a letter to Oliver Barry from Patrick Taylor in which he says, "I refer to the sum of ú40,000 which we again,

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regrettably, failed to resolve yesterday. May I say that there is absolutely no intention on our part to delay the resolution of this matter.

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I am sure you will agree with me that to defer a settlement can only damage our relationship, which certainly is not in the interest of Capitol Radio. I am afraid that the fact is, as evidenced by the discussion at our breakfast meeting yesterday, that there are other matters that take priority in our discussions at the present time.

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It seems to me that there are two stages to this matter:

- A. Is there a proper liability of the company?
- B. If so, was that liability properly disclosed at the time of our investment? And if not, what redress exists under the investment agreement?

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As regards item A, I think it is important that we deal with this matter as we would with any other provider of professional services. Would you please, therefore, let either myself or Colin have a detailed statement of the work that was done by your colleagues for the company. The more detailed you can make it, the better. For example, what was the nature of the services? Were they provided on a regular or sporadic basis? From where was the work undertaken? Who actually provided the services? At what charge out rate? Were there any specific projects that gave rise to the work?

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Obviously we will also need to receive a VAT invoice from

your company before payment can be made. As regards item B, I believe it may be better to leave Mark, Ryan and Enda to discuss the matter and see if they can establish whether or not there is a problem and, if so, what the potential solution is."

It would appear from that correspondence, Mr. Marren, that the parties had adopted differing views as to whether or not a sum claimed by Mr. Barry of ú40,000 was due from the company, isn't that so?

A. That's correct.

270 Q. And the position has polarised into the representative of Capitol, the financial director now of Century, saying that he would have to see documentation to back up this claim and it would have to be detailed for him, isn't that right?

A. Yes.

271 Q. Now, the evidence has been given by the previous financial director, a Ms. Noreen Hynes, that she was working in the company during the period which would be covered by the claimed 25 week period, had no knowledge of any charge being made of the company by Mr. Barry or any of his employees in respect of services, totaling ú40,000, but that there had been other work which had been separately invoiced by Mr. Barry for services provided and it had all been discharged on foot of invoices which were provided to Century at that time. You were being asked in this particular letter to involve yourself to the extent of establishing if there was such a payment and, if it was due, whether or not there was redress under the shareholders' acquisition agreement, isn't that right?

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A. That's correct.

272 Q. Do you remember involving yourself in any examination at that point in time as to whether or not this sum was legitimately due, because we do know that at a resolution, shortly after this letter, of the board, the money was paid at that point in time.

A. I have no recollection of that. I do know that Oliver Barry and his staff -- he moved in, I think, as chief executive of Century --

273 Q. Yes.

A. -- and he brought in his staff. Now, I have no knowledge of what invoices he sent in for that. I don't know how that -- the query from Mr. Taylor was resolved, but I believe it was resolved to his satisfaction and I can't put it beyond that.

274 Q. So you yourself have no knowledge of ever seeing any breakdown in invoice format of this particular sum as to how it allegedly became due?

A. I don't think I did because I have nothing on file to say that -- I don't know whether I dealt with that by way of telephone or not, I just have --

275 Q. If there was such a payment, have you any -- was any explanation given to you as to why it had not been included in the disclosure letter three months before this particular document here?

A. No.

276 Q. I mean, you have no recollection of Mr. Barry coming to you or Mr. Stafford coming to you and saying this was an oversight, we had forgotten all about this particular sum. And whilst the agreement or the letter of disclosure deals

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with all other matters, it fails to deal with this particular matter?

A. I have no recollection.

277 Q. Thank you, Mr. Marren.

A. Thank you.

MR. O'NEILL: I am not sure if anybody has questions of Mr. Marren.

MR. FOX: I have no questions for Mr. Marren.

MR. KEANE: There are just a number of very short matters, Sir, which I'd like to raise.

CHAIRMAN: Of course.

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

278 Q. The first of those, Mr. Marren, relates to your evidence concerning the transmission charges. I just want to put a number of propositions to you which, I understand from the evidence you gave in chief, encapsulate your position in relation to the transmission charges proposed by RTE and the offer made in respect of those transmission charges by Century Radio.

I understood you to say in your evidence-in-chief, in the course of your professional involvement with Century Communications Limited you had no involvement with the transmission charges issue, is that so?

A. Not with RTE.

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279 Q. Yes. Did you have any involvement in the transmission issue as regards any other party?

A. I don't believe I had, because transmission charges were not my function.

280 Q. I think, in fact, you said in your evidence-in-chief that you would not have had any knowledge or would not have held yourself out as having any knowledge of transmission charges?

A. I believe I wouldn't.

281 Q. I think, as Mr. O' Neill put it to you, you would not have been aware that, in effect, there was agreement between the Department of Communications and RTE in relation to the sum that RTE was charging for transmission as early as the 11th January of 1989. That's something I think you said you would not have been aware of, isn't that so?

A. I don't believe I was aware of it.

282 Q. And equally, and this is a matter that would have been dealt with in evidence to which I appreciate you would not have been directly privy. Would you not have been aware that from an inquiry conducted on behalf of the Department of Communications, that Mr. Michael Grant in the Department of Communications had established, in conversation with the managing director of Downtown Radio, a Mr. Tinman, that he, Mr. Tinman, took the view that, in all of the circumstances, a sum of ú800,000 sterling would not have been an unreasonable figure for transmission charges in respect of the provision of a national transmission network to Century Radio. That's a matter you would not have been aware of?

A. No.

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283 Q. I was just anxious to put those matters to you as the background to the statement that you made in your evidence-in-chief that it had been suggested by someone, and I don't believe you identified the party concerned, that the charges proposed by RTE were off the wall?

A. Yes, that's my recollection.

284 Q. Are you in a position to identify the person who made that statement to you?

A. I am not, but I think that that entire discussion was led by Mr. Stafford.

285 Q. I see. But just finally, in relation to that matter, to clarify with absolutely certainty: You are not in a position to express any view about the reasonableness or unreasonableness of the transmission charges proposed by RTE?

A. Absolutely not.

286 Q. I see. And just turning to the other matter that I'd like to deal with very quickly, hopefully, Mr. Marren. In relation to the meeting of which you took a memorandum, the meeting that took place at the Shelbourne Hotel on the 26th May of 1990 at which you are present and I think Mr. Allen, SC, was present and Oliver Barry and James Stafford were present, when you recorded in your note of that meeting that "Century and 2FM were to merge", and this was a proposal that had to be made, I think, in relation to the continuing viability of Century Radio --

A. I don't think it was a proposal. I think it was a possibility. It was a way out of Century's dilemma or difficulties.

287 Q. Yes. I think is it fair to say, perhaps to put this

proposition to you, that you would have been aware at that time that at the time the application for the national franchise was made by Century Communications in the autumn or winter of 1988, that 2FM would have been in existence at that time for a period of in excess of nine years?

A. Oh, I would have been aware of that, of course.

288 Q. And that, of course, in May of 1990, it would have been in existence for a period in excess, at that time, of ten years?

A. I would have been aware of that, of course I would. Anybody that passed along the road and watched the sign coming at you would have been aware.

289 Q. I see. In that regard, are you in a position to confirm that there was nothing in Century's application for the national independent radio franchise that suggested the proposal was not feasible, in the light of 2FM?

A. I don't believe the submission said that.

290 Q. And are you in a position to confirm that nothing at all was said by or on behalf of Century Communications in relation to its application, successful application for the national radio franchise, that this would have suggested that it was contingent upon the extension or merger of the new radio station with 2FM?

A. I would say that was not said.

291 Q. I see. I am very grateful, Mr. Marren. I have no other questions.

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MR. O'NEILL: I have no questions arising from that.

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MR. O'CONNOR: One issue, Sir.

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

292 Q. Mr. Marren, if I might just raise one issue with you and it's the issue of the payment of the €35,000 to Mr. Burke. It is Mr. Barry's recollection, and indeed his stated position, that that payment was made on behalf of Century Communications to Mr. Burke.

A. That's not what I was asked earlier. I was asked, did I believe it was paid by Century or by Mr. Barry.

293 Q. Very good. Well --

A. Then again, that's my perception.

294 Q. Very good. I think it's not in issue that the physical payment was made by Mr. Barry, but if you could just clarify it; if you can, well and good, if not, I don't want to push you on the issue. But insofar as you are in a position to offer an opinion, was the payment made by Mr. Barry on behalf of Century Radio, are you aware?

A. It might have been, I am not aware.

295 Q. It may have been?

A. It may have been.

296 Q. Very good. No further questions, Sir.

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THE WITNESS WAS FURTHER EXAMINED BY MR. O'NEILL AS FOLLOWS:

297 Q. Just arising out of that last matter, Mr. Marren. It is the fact, is it not, that, on your account of events, Mr. Barry did not tell you that he had made the payment on behalf of Century, merely he indicated to you that he had paid Mr. Burke the sum of €35,000 in cash, is that it?

A. I don't believe Mr. Barry made me aware that he was paying it for Century.

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298 Q. Right. Thank you.

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CHAIRMAN: Mr. Marren, thank you very much for coming down. You have been of very considerable assistance, and my deepest regret for retaining you for a matter of twenty minutes because of circumstances not within my control.

A. Not at all, Chairman. Thank you very much.

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THE WITNESS THEN WITHDREW.
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CHAIRMAN: The situation in relation to further hearings this week is as follows: Through a family bereavement - in fact my mother-in-law has died. The removal of the remains and funeral will be tomorrow and Wednesday and I will not be sitting. Thursday, in fact, some witnesses have found it difficult to make themselves available. I understand, I hope I am correct at this stage, that I am up to date, that those witnesses who are due to appear on Thursday are going to appear on Friday, subject only to the specially fixed witness who is coming from London who will sit -- and I will sit at ten o'clock to facilitate him.

So one would assume that the other witnesses would take their place accordingly somewhere after -- well from eleven o'clock on or thereabouts, as I understand the situation, and will sit, as far as I am concerned, until the remaining two witnesses on Friday are concluded, even though that may mean sitting late.

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MR. O'NEILL: I think, Sir, we may well be dealing with up to six witnesses on Friday in view -- I am quite sure,

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equally, that it's likely that we will conclude the
business of the day because some are quite short, but --

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CHAIRMAN: Sorry, I wasn't up to speed on the number of
witnesses, but that's the situation. Those who
are -- anybody who was -- you will be communicated with
specifically, but anybody who was listed for Thursday, I
understand they are not going to be taken until Friday.
And, with those few words, I will conclude the sessions
until ten o'clock on Friday morning.

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MR. O'NEILL: May it please you, Sir.

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THE TRIBUNAL THEN ADJOURNED UNTIL FRIDAY, 1ST DECEMBER,
2000, AT 10AM.

