

THE HEARING RESUMED ON THE 19TH OF DECEMBER, 2000, AT 10:30

AM, AS FOLLOWS:

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CHAIRMAN: Good morning everyone.

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MR. GALLAGHER: Good morning Sir.

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There are two summonses returnable for this morning.

One is a summons addressed to Mr. Ambrose Kelly, of Flemmings Court, Flemmings Place, Dublin 4. An address, I understand, which unfortunately no longer exists.

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Mr. Kelly is here, represented by counsel and a solicitor, and has produced some of the documents; and I should say that he has come here at very short notice, because - the notification of your decision issued a summons requiring him to attend following the evidence that you heard last week was sent out. It, unfortunately, wasn't delivered, and as a result, Mr. Kelly only became aware of the necessity to turn up here today and to produce documents.

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He has done so, with such documents, as I understand it, that he had available to him. He doesn't have all the documents. He has, I understand it, contacted his accountants and has asked them to furnish whatever additional documentation they have.

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Perhaps Mr. Kelly will be able to tell us about that and, you can if necessary, I suggest, adjourn the matter for a few days perhaps, to enable the additional documentation to

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be produced.

Mr. Ambrose Kelly please. Perhaps if Mr. Kelly could be sworn? You will be handed the testament.

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MR. AMBROSE KELLY, HAVING BEEN SWORN, WAS EXAMINED BY MR. GALLAGHER AS FOLLOWS:

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1 Q. MR. GALLAGHER: Mr. Kelly, thank you for coming. I am aware that you only received notification yesterday of the decision of the Sole Member to require you to attend to produce certain documents. That decision arose out of evidence that was given last week. I know that you have come here at short notice and that I understand that you have asked your accountants to provide to you, and through you, to the Tribunal, further material that may be available to them; including invoices, receipts, documents, etc., is that correct?

A. Yes, Mr. Gallagher. I, unfortunately, got notice at about 20 past four yesterday afternoon. Now unfortunately, due to circumstances, Flemmings Court doesn't exist anymore, it was knocked down. But I immediately have gone into action to get whatever is required for you.

2 Q. I understand that you have with you, draft financial statements for the Prague office in relation to '95?

A. February '95.

3 Q. Can you identify please the company to which those documents relate?

A. Yeah. They are the expenditure, well mostly the expenditure - there was a BS company, Chairman, Ambrose Kelly (Eastern Europe) Limited, organised by me to develop

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work in the new merger in Central Europe. I suppose originally in the '90's, Chairman, this was - work wasn't very plentiful in Ireland, we were trying to spread our capabilities of getting work outside Ireland.

4 Q. I think the accounts you refer to are the accounts of Ambrose Kelly International (Eastern Europe) Limited?

A. That's correct.

5 Q. And I think you have the accounts, financial statements for the years ended the 30th of April 1995; the 30th of April 1996; 30th of April 1997; 30th of April 1998; and the 30th of April 1999; is that correct?

A. Correct, well just - sorry.

6 Q. Would you mind handing those, please, in to the Tribunal?

A. Are these those documents?

7 Q. Those documents. Will you just confirm that they are the statements that you have for each of the years that you have --

A. '94, '95, '96, '97, '98, '99.

8 Q. Thank you. Would you hand those in to the Sole Member please? (Documents handed to Chairman)

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You also are handing in a draft financial statement from the Prague office, dated February of '95?

A. '95.

9 Q. My understanding is that this is the only document which you have been able to obtain in the short time available to you?

A. This was already in, on my, available in my office, so I just picked it up this morning and brought it in. It is a helpful document.

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10 Q. Do you have any other documents?

A. Yes, the accountants are delivering in all the files, the bank statements, everything.

11 Q. When do you expect that you should have those?

A. Chairman, I should have them this afternoon.

12 Q. Well then, perhaps the matter could be adjourned until

Thursday morning Sir? There are a number of --

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CHAIRMAN: Yes, Thursday is probably the convenient day to do it.

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MR. GALLAGHER: There are a number of other matters to be dealt with on Thursday. I think it will probably be convenient to all concerned.

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MR. HAYDEN: Sorry Chairman, in relation to Thursday morning, if that matter is coming back that morning I have a personal difficulty that morning. I am not trying to be difficult, it is just that on that date I am being abandoned by a senior elsewhere.

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MR. GALLAGHER: Well, I don't anticipate that Mr. Kelly will be subjected to any lengthy or detailed questioning on that occasion. Perhaps I can summarise at this stage some of the issues that the Tribunal is concerned with.

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The schedule that you have now furnished, the draft financial statement for the Prague office, that, I take it, was the only schedule or draft that you have had in your possession in recent times, is that correct?

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A. Yes, but there are probably - like, "yes" is the answer,  
Chairman.

13 Q. Now, about the financial statements for the years other  
than the year ended February of 1995?

A. Yes, there were probably other ones, Chairman. I would  
have to go through and find them. This is the most  
comprehensive one that I could get for this morning. It  
sort of brings it up to where, it sort of covers the most  
comprehensive situation.

14 Q. Can I ask you when you last handled or examined this  
financial statement?

A. Not for a good while now, Chairman.

15 Q. When you say "not for a good while" approximately when, Mr.  
Kelly?

A. Probably three or four years.

16 Q. I see. Have you ever - have you been asked in the recent  
past, by any person, to produce to them or to hand to them  
a schedule of payments?

A. On --

17 Q. In relation to the company in question, in relation to your  
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A. Not really, no, Chairman, no.

18 Q. Did you, to the best of your knowledge or belief, did any  
other person on behalf of the company furnish any such  
statement to any person within the last three months or so?

A. Not that I know of Chairman.

19 Q. Yes. I see. Well perhaps, Sir, if you would adjourn the  
matter until say 10:30 on Thursday morning next?

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MR. HAYDEN: Again, if I could just reiterate the fact

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that I am in difficulty on that morning. I have no doubt that Mr. Gallagher indicates that he doesn't anticipate any difficulty on the morning, but anticipation is a dangerous thing. I would ask if at all possible --

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CHAIRMAN: Let's just make some small inquiry. When does your problem, when is your problem likely to end on Thursday?

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MR. HAYDEN: I think when the case finishes. It starts --

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CHAIRMAN: That, I would have assumed, is axiomatic. What I mean by "how long" is, how long are you going to be?

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MR. HAYDEN: The case starts on Wednesday, I am then left to my own devices on Thursday. It may finish by lunchtime on the Wednesday, Chairman. I can't be sure.

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MR. GALLAGHER: Would you consider sitting at 10 o'clock?

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CHAIRMAN: I was even going to be more helpful, 9:30?

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MR. HAYDEN: I have no difficulty with that.

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CHAIRMAN: We will say 9:30.

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MR. HAYDEN: Perfect.

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CHAIRMAN: That is always assuming the traffic allows you to get here. We will make every effort. I will do that

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for you, certainly, because I do anticipate that there should be very little to be done but receive the documents, until we read them. There is not an awful lot one can do until you read documents.

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MR. GALLAGHER: Thank you Mr. Kelly.

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CHAIRMAN: Thank you very much, Mr. Kelly, for coming down. It is our sincere apology for the contre temps that happened.

- A. This is the sort of week, Chairman, that you have to take what goes along. It is Christmas week, you just roll with whatever happens.

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CHAIRMAN: Thank you very much.

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THE WITNESS THEN WITHDREW.

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MR. GALLAGHER: There was also a summons issued on your instructions, in relation to certain documents which were understood to be in the possession of Binchy and Partners Solicitors. There was a summons served requiring the attendance of the senior partner of Binchy and Partners.

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MR. MILLER: I am here, Hugh Miller, from Crowley Miller representing Binchy's. Likewise we are in the same position as the last witness, we got the summons yesterday afternoon. Mr. Duke is unavailable to be here this morning. He is involved in a matter in the High Court.

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The situation is that our clients are carrying out a trawl of the documentation going back to 1987. There is a problem, in that up to 15 solicitors who dealt with the affairs up to 13 years ago have left the firm, and it is going to take a matter of time to track these matters down. I am seeking an adjournment as well.

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I did call about it when we got the summons here yesterday, but unfortunately the office was closed. I am not sure that I would have anything for you on Thursday. If it was anticipated to put it in on Thursday, that might be too short.

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I would suggest, if that is acceptable to yourself, Chairman, that we obviously undertake to give custody of whatever documentation is there, and put the matter back to some date in the new year.

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MR. GALLAGHER: I suggest that it be put back to Thursday morning at a quarter to 10 or thereabouts. The main document that the Tribunal is concerned with is a draft for £203,000, dated the 10th of December, 1987.

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CHAIRMAN: That should be traceable. The records should show that document.

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MR. MILLER: I wasn't aware of any specific document. If there is a specific one, certainly we will concentrate on that.

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MR. GALLAGHER: That is one. There are files in relation to that period, I would have thought, sorry, on the basis of the evidence we were told. It was the documents relating to that time that we want at this stage. In the circumstances, I would suggest that we put it back to, say

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CHAIRMAN: I haven't seen the actual correspondence, whether there was correspondence in relation to this matter. But certainly we should for the moment, as far as Thursday is concerned, concentrate our attention on that particular draft, and any documents that are allied to it. I am not confining it to one document. There should be no reason why a draft of that size, with clients involved in it, being made payable to the firm, it must, there must be records within the firm as to what happened to it.

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MR. GALLAGHER: I should say, Sir, that it is my understanding that notification was sent to Binchy and Partners last Friday in the same way. It was intended to be sent to Mr. Kelly. There may be some communication error. In any event --

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CHAIRMAN: There may have been some small upset. If Mr. Miller would be helpful enough to see if he can concentrate on the draft and if you want any more details, perhaps you would be in contact --

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MR. GALLAGHER: Perhaps I can have a word with Mr. Miller?

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CHAIRMAN: Or alternatively, contact Miss Howard in the office.

MR. MILLER: Just to emphasise, I wasn't aware of any draft until now. The cover letter did simply enclose the summons.

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CHAIRMAN: Wait now, just a moment. I don't want to air this too much in public until you become fully aware of what the situation is. I don't want to embarrass you in any way. Mr. Gallagher, perhaps, and yourself might have a chat, or alternatively Miss Howard and yourself. So we will see you then at a quarter to ten, hopefully bearing the weight of one draft on Thursday morning at half past nine or thereabouts. Thank you for coming.

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MR. MILLER: Thank you very much, Chairman.

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CHAIRMAN: Mr. O'Connor, before we actually take up and continue the evidence, there is an outstanding matter of discovery of Mr. Barry; and to put it mildly and without being any way judgemental, it is in a not terribly attractive state, the discovery at the moment, you would appreciate.

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I think the best thing to do is to make an order encapsulating all the other orders; a fresh order; so we encapsulate all the documentation that we know about at the moment, and anything else that you may, if there is

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anything else, that you may know about or become aware of, and cover everything in it.

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Now, normally one would send you written notice of all these things, but I think you have full notice of the last couple of days, of the sort of documentation that we are looking for, and in the circumstances I am just simply going to make the order without any further notice.

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In addition, there is another person whom I consider an order should be made, and this one; I don't want to name anybody in public, who has no notice; I propose to write, or to have correspondence addressed to your firm in relation to that person, and you will become aware when you get your correspondence, of who we are talking about.

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Again, that person is obviously entitled to the ordinary time limits for compliance, for complying with the order, but I think in the case of Mr. Barry himself, he has had adequate notice. We are simply trying to pull together all the strings of the evidence which we have heard, or which has emerged, to put it that way, and encapsulate it in one order, so we know what the situation is and you know what the situation is.

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MR. O'CONNOR: That is fine Sir. I take it, Sir, that it is a consolidation of the existing orders?

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CHAIRMAN: It is effectively so. It will, obviously, cover the various bank accounts which have, shall I describe it

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as, "emerged". Put it that way.

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MR. O'CONNOR: Emerged and been disclosed, Sir.

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CHAIRMAN: Of course. I want the whole thing --

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MR. O'CONNOR: That is fine.

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CHAIRMAN: I want it regularised. I think the best way to do that is to make an order. You can check your situation against the order and comply with it in the ordinary way within reasonable - we do want it --

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MR. HANRATTY: Well I think, Sir, given that you have decided to do it by way of, as I understand it, a consolidated order, I think given the incremental manner in which discovery has been made before, to put it neutrally, I think the order should be, if I may respectfully so suggest, more explicit and make reference to not just financial institutions which simply yielded a limited number of bank accounts, but should make reference to credit cards, separately from bank accounts; because "financial institutions" appears to be interpreted as simply bank accounts and not to include, not to include credit cards.

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So, might I respectfully suggest, Sir, that the order be provided, perhaps to Mr. O'Connor tomorrow to give us time to prepare a draft for your perusal and that it be as explicit as it can be in terms of what the Tribunal

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requires.

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CHAIRMAN: Yes, that solves the matter of detail. As I say the question of notice, I don't think arises in this particular circumstance. We will have the order for you tomorrow morning. We will make it up this evening. If you accept service of it.

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MR. O'CONNOR: I have no difficulty with service.

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CHAIRMAN: Very good.

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MR. HANRATTY: The other thing, Sir, I think it could be, once you have made the order, it could be provided directly to Mr. O'Connor. It wouldn't be necessary for him to attend, because as you are aware there won't be any evidence tomorrow in relation to the Century inquiry.

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CHAIRMAN: If we transmit it to you, Mr. O'Connor.

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MR. O'CONNOR: That is fine, Sir.

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CHAIRMAN: Because there are other matters taking place here tomorrow, which don't involve you.

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Very good, we will do that in the morning, or possibly tonight. It depends on how quickly that can be put together.

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Mr. O'Connor has said that he has no difficulties with

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service. We will simply transmit it to you. Very good, thank you very much.

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MR. HANRATTY: Just in relation to the course of the evidence, Sir. I think the position is, just in relation to the information of some parties that we have been inquiring into.

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Mr. Barry's examination will now resume. Yesterday, as you know, we had adjourned the inquiry of Mr. Barry's financial matters, even if his examination-in-chief does not conclude today, that will be the conclusion of the evidence of the Century inquiry prior to the new year.

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As you know, you are dealing with another matter, dealing with the previous inquiry, tomorrow. There are some administrative matters, shall we say, to be dealt with on Thursday, but no evidence on Thursday in relation to the Century inquiry, just so that parties could be so aware.

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CHAIRMAN: Very good. Thank you.

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MR. HANRATTY: If I might then call Mr. Barry, please?

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MR. HANRATTY: Before I resume the examination of Mr. Barry, Sir, you will recall that at one stage during his evidence earlier this month, I put it to Mr. Barry that the figure of ú375,000 in respect of transmission charges was not produced by Mr. Hills, and Mr. Walsh indicated that he had an application to make in relation to that

proposition.

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So perhaps, given that I have now finished leading Mr. Barry's evidence so far as transmission charges is concerned, this might be an appropriate time to deal with the matter, insofar as there is any application to be made.

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MR. WALSH: Yes. My application at the time, I recall I think it was the first day that Mr. Barry was giving evidence. Mr. Hanratty phrased a question, the gist of the question phrased was that the ú375,000 which was referred to in Century's correspondence to the IRTC was not a figure that was stood over by Mr. Hills, and effectively was invented by Century or Mr. Stafford and/or Mr. Barry. I interrupted at that stage and indicated that, as a matter of fact, that was not the true position and did not accord with the evidence that was given by Mr. Hills.

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Now, I should say, Sir, that my intervention is as *amicus curiae*, so-to-speak.

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CHAIRMAN: That was - I was just wondering on what basis --

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MR. WALSH: Just to correct the facts. I understand from the transcript that a similar suggestion was made by Mr. Hanratty. The first time I stood up I just had the benefit of notes. The next morning I had transcript references, which I gave to you, Sir, and Mr. Hanratty. I know the context of my objection is that the evidence that had

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already been given by Professor Hills was synthesised by Mr. Hanratty and put in the form of a question to Mr. Barry as concurrent - and I objected to the accuracy of the synopsis. And it doesn't conform with my notes and it doesn't conform with the transcript. And my only objection, Sir, is that since this inquiry is being conducted fairly, you have always given parties a chance to correct any errors that may have been made. I am simply asking for this error to be corrected.

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Now, I understand errors can arise from time to time. In this situation, Sir, you will recall that Professor Hills was lead in evidence by Mr. O'Neill. I am not sure whether or not Mr. Hanratty was present in the chamber of the Tribunal when that evidence was being given. So it is perfectly understandable that at the time he asked the question, and since Professor Hills' evidence was given last July sometime, or certainly September, that there was a slight lack of recall or inaccuracy. That was all I was seeking to correct.

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If I could refer you to the transcripts, a number of transcript references, which I say correct the proposition.

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I would then ask you, Sir, to rule that the correction should be made, and any inaccurate questions should be stricken from the record, so-to-speak.

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The first day is Day 182, that is Tuesday the 3rd of



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October.

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CHAIRMAN: Sorry, just a moment. Tuesday --

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MR. WALSH: The 3rd of October.

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CHAIRMAN: What is the date? What is the --

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MR. WALSH: 182.

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CHAIRMAN: 182. Could we have a question number or page?

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MR. WALSH: Yes, I have page no. 75, Sir.

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MR. HANRATTY: I wonder could we be given the question number, Sir?

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MR. WALSH: Certainly.

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CHAIRMAN: Page 75, question?

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MR. WALSH: The first question of relevance is Question 251. Mr. O'Neill, this is evidence-in-chief of Mr. Hills, he is dealing with a draft of an aide memoire which Mr. Stafford had prepared, which he was proposing to send to the Minister, and had sent a copy of it to Professor Hills. You will recall that evidence.

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CHAIRMAN: Yes. It was going out by fax.

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MR. WALSH: By fax. In fact Mr. Hills redrafted it.

There was the figure of 375 mentioned in it. He didn't change the figure.

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Question 251 was:

"I think you were, in general, unhappy with the approach which was intended to be adopted in this document to the Minister, and you suggest a different approach, and having done so you went on to draft an alternative to the remainder of the memorandum after the first paragraph, isn't that so?"

Answer: Yes. I am not sure that "unhappy" was the right word to use, what I actually said to Mr. Stafford was "it is not the way I would have approached it. This is how I would have dealt with it."

Question 252: Now, in drafting the response or your own interpretation of what would be appropriate, you included in the ultimate paragraph of it the words "It is our view that an annual rental fee of around ú375,000 is a reasonable one with the provision and operation and maintenance of the transmission facilities which provide a fair return to RTE beyond their real additional costs and does not place an insupportable financial burden on the new operator, especially during the early years."

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Am I right in saying that in drafting that that you were, in effect, redrafting the content of the brief rather than yourself expressing a final opinion that that was the position?"

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And the answer to that is at page 76: "Yes indeed, I was merely putting different words around the ú375,000."

The next question, 253: "Yes, to that point in time the ú375,000 figure had not been precisely referred to in any other documentation, but you do indicate that you had carried out certain costing exercises in manuscript or annotation which you had added to one of the earlier documents which had been provided to you by RTE, isn't that right?"

Answer: That is so."

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That is the point I made at the, on the very first day, that 375 had been created by Professor Hills, that he had made some manuscript notes on an RTE quotation and had a high figure and a low figure, which made an average.

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Question 254: "That is the document of the 18th of November?"

Answer: Correct, yes, yes. That is the source document, yes."

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Question 255: " That is at Tab 32 behind the folder." Then there is a dispute over what, which tab it is. Then if you go down to Question 257: "We also have it at Tab 27."

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Now, Tab 27 in the general book, My Lord, is at page 2526.

And the answer there was: "That only includes the initial annotations."

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Now, you will see at page 2526 it is headed "National FM

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coverage." You will see that there is some handwriting print from the very start. For example, Transmitter - 150 is the upper limit. 100 is the lower limit.

287 is the RTE figure. 302 is a figure that he has given. There is an annotation at the bottom I can't read. The date he made the annotation is obviously given as the 18th of November, 1998. I think that is the date that Mr. O'Neill was referring to earlier.

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Now, if you scroll down to the bottom, sorry to the middle of that page, he has under the heading "Upper figures - 462", under the figures, "Lower figures - 291.", then he goes down "AV" meaning "average" "equals 375.5". Then there are a lot of other notes which aren't directly relevant. That is the document that I was referring to when I made my objection.

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Just go back to the transcript, Question 258:

"Yes, if we just go through those first because there are dates beside them. You will see the 8th of November and the 17th of November." I think the 8th of November is obviously, if you scroll back up to the top of the page, it is the typewritten date typed in by RTE, submitted at the meeting of 8th of November, 1988. I think that is the reference to the 8th of November. I think the reference to 17th of November is probably an error and it should read the 18th of November which is the handwritten date that you can see in the first column there.

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The answer to that question is "Yes."

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"It follows, obviously -" - Question 259 - "That these annotations were made certainly on the 17th at the earliest, isn't that right?"

Answer: Yes, possibly later."

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He then goes on at Question 261. "Then there are the other documents that I must refer you to, where you have projected high and low figures and you reach a figure of 367,500, it is behind Tab 31." Then we were going on about tabs.

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If you turn to the next page, page 78, and the question, Question 269: "Well, reviewing the documentation which we have seen up to this date, and indeed up to the 4th of December and immediately after the 4th of December, there would not appear to have been any new information which came to you, either as a result of your own researches or as a result of any further breakdown from RTE of their figures?"

Answer: I believe that is the case. These were further estimates on my part based on the same information sources, yes.

Question: Now, on this occasion going through the figures you have both an upper and a lower figure in relation to each of the items which are set forth there, isn't that right?

Answer: Yes.

Question: And the total that you reach is a sum of 4376,500, being a mean between 462 and 291, isn't that right?" Again that is referring to the document on screen,

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Sir.

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Then the next document, the relevant, the portion of  
relevance is page 86 of the same transcript.

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CHAIRMAN: Page 86?

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MR. WALSH: Page 86 of the same book. And the topic that  
is generally being dealt with here is the course of  
correspondence between Mr. Hills and IBACS. You remember  
Mr. Hills, Professor Hills was going to Hong Kong. At  
Question 313 at the end of that page. "Of course. The  
next document in sequence in the booklet of documentation  
is behind Tab 42, and I think this is a typed note from  
your own dot matrix" --

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CHAIRMAN: Sorry, on page 86, question?

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MR. WALSH: 313.

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CHAIRMAN: Thank you.

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MR. WALSH: Sorry, on the same page, if we start the  
relevant sequence at Question 310? The question there  
was: "Has it ever been suggested to you that that was not  
the case, or have you determined from any of the documents  
that you have considered subsequently whether there was  
anybody else was advising." This is the question was anyone  
else advising Century?

Answer: "There was nothing in the documentation that would

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lead me to believe that there was a further advisor, although I became aware that IBACS was still a player in the game.

Question: "Yes. The extent of their playing in the game from this date, on the 13th December, was, in effect, to confirm that the submission which was going into the IRTC had their imprimatur, isn't that right?"

Answer: Yes.

Question: They were not being asked to rewrite it or to comment on it in any way, but to countersign it or stand over it, is that the position?"

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Then Professor Hills in the answer said: "Essentially, yes. I think the reports referred to, of course, were reported, referred to myself when with IBACS, so in a sense it was not unreasonable to ask IBACS to stand by them.

Question: Of course. The next document in sequence in the booklet of documentation is behind Tab 42, and I think this is a typed note from your own dot matrix typewriter or system at home where you title it "Working Papers For Meeting with Sean Connolly, Secretary to the IRTC, on Thursday, 15th of December 1988." That is Tab 42 on the special booklet. Now, the general page number for this, Sir, is page 2521 on the general booklet. Perhaps if we have that on screen?

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Now, it doesn't appear very clear. At the very top in handwriting you will see "Rental Tax" which I take it was shorthand for rental calculations. Then underneath that "It says quoted by Mr. O'Neill" in his question. Then in

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the hard copy it is obviously from a dot matrix printer, as Mr. O'Neill said, in his working papers for a meeting of Thursday, 15th of December, 1988.

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Going back to the question, Mr. O'Neill continued to read from the document, he quoted: "These papers are annotated with the calculations to show that an annual rental of around ú375,000 is a reasonable figure." In the transcript he says 375, in the document it says ú375,000 Irish, as a reasonable figure".

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Now the question then goes on to say: "Now, am I correct in saying that the documents which are referred to here as the "working papers" are the ones which we have just dealt with, namely the RTE figures, the handwritten annotations?" That is because this rental calculation at page 2521, the dot matrix document appears to be the cover note for a bundles of papers that Mr. O'Neill was seeking to identify, the papers that this was a cover note and a summary.

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The answer of that question is: "With the extensive annotations, yes.

Question: Exactly. And do you understand that these were the documents that you were going to bring with you to the meeting with Mr. Connolly scheduled for the 15th?

Answer: It was quite clear from my covering note that I understood those were going to be papers that were needed for that meeting.

Question: At this point in time you were not in a position to say what discussion in relation to these figures took



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place, or whether indeed these figures were specifically  
were put to Mr. Connolly.

Answer: No."

Then it goes on to deal with other topics.

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In the next day's transcript, Sir, if I could refer to  
that, it is Day 183. If we could turn to page 45. This is  
during the cross-examination of Professor Hills by Mr.  
James Connolly on behalf of Mr. Stafford.

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Yes, Mr. Connolly's cross-examination started at page 40.  
Now, Sir, this is a couple of pages in, at page 45. The  
question was Question 150. "Again, insofar as figures were  
mentioned in the document which was prepared at this stage  
for the Minister, or for that matter in the submission for  
the IRTC, if the figure being put forward by Century was an  
absurd figure, you wouldn't have regarded it as something  
you could have stood over." The answer to that  
is: "Absolutely. I would have gone back and said, 'No, you  
know, this figure just has no credibility.'

Question 151: So while I think you told Mr. O'Neill  
yesterday that the €375,000 wasn't put forward by you with  
the intention that it should go into a ministerial  
briefing, at the same time if you had seen a figure in the  
documentation that was intended to be put to either the  
Minister or the IRTC which was absurd or untenable, you  
would have withdrawn back from having any part of the  
submission on that basis?

Answer: Yes.

Question 152: "If we turn to Tab 42 we have, this is - it's

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a heading for working papers. It is headed "Working Papers For Meeting with Mr. Sean Connolly, Secretary of the IRTC, Thursday, 15th December, 1988."". That is page 2521 which is on the screen. Again he quotes from that document, as I have quoted. The question is "Is that your document?" The answer is. "Yes, yes."

Then Question 153: "And I haven't actually seen the figures. Do you have figures on the file?"

Answer: Well, this was the cover sheet.

Question 154: I don't want to go into the figures.

Answer: The paper is the annotated RTE schedule we have already referred to.

Question 145: Which we have already looked at."

The answer is: "Which came out with, at the average figure.

Question 156. Well, I take it what comes from the contents of that document is that this reflects a document under your preparation, with a view to showing the reasonableness of the figure of ú375,000.

Answer: At this distance in time I can only speculate on the relationships. They may have been no more than that, I had done my averaging and the result of that averaging was indeed a figure which was very close to ú375,000. I seem to recall from reading other papers that Mr. Stafford had actually arrived at 375,000 by a slightly different route, coming up with a figure, if my memory serves me, of ú300,000 and then adding 75,000, in a sense, as the mark-up.

Question 157: Without getting into the chicken and egg, and there may well have been an evolving figure for the

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appropriate figure for transmission charges through your figures and Mr. Stafford's views, but they evolved, can I suggest, by the 15th of September into a situation such that you were prepared to stand over ú375,000 as being a reasonable figure for transmission charges as of that date when this document was prepared?"

The answer to that is "yes."

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Then, Chairman, you intervened. You say: "May I intervene at this point? Professor Hills, do I understand your evidence to be that while you never - the 275,000" - I think that should be 375,000 - "is not a figure which you devised or produced, you are now adopting it as one that you would be prepared to stand over?" The answer to that is "Yes, in essence that is true. It was sufficiently close to the figure that I had arrived at from my own annotations on an average figure. It was a figure I felt comfortable with.

Question 158: Well, just arising from the Sole Member's question, he is asking you are you now adopting it. My question is, you were effectively adopting it in December of 1988?

Answer: Sorry, I misunderstood the Sole Member's question. If you ask do I stand by it today, the answer to that, of course, is yes.

Question: No, but my question was that you were effectively adopting it on the date of that document, the 15th of December, 1988?

Answer: On the 15th of December, 1988, I was quite clearly prepared to defend the figure of 375,000, although

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I may have arrived at it through a different route to Mr. Stafford.

Question 160: The extent to which you carried out calculations leading to the figure was, as you described to Mr. O'Neill yesterday: There was an upper figure and a lower figure and a mean figure came out at 376 - 376,500?

Answer: Yes.

Question 161: Are you prepared to accept there was an evolution of your views and Mr. Stafford's at that point?

Answer: Yes, I think --

Question 162: And the synthesis of views --  
answer. Yes. I mean, we clearly arrived at a similar bottom line by possibly different routes, but it was a bottom line that I felt was a defensible one."

It went on to deal with a different topic.

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If I could go to the next page, page 49, Question 167? We were dealing with the relationship between IBACS and Ray Hills Associates, and the Question 167: "All right, but if it was, if it was to say 'Ray Hills or Ray Hills and Associates' in that first sentence, is the rest of the sentence correct, in your view?"

Answer: Yes. Well, I can't speak whether it was on the unanimous opinion of the Board because I wasn't --". That is referring to the Century letter.

Question 168. "No, but they had advice that the figure of £375,000 was fair and reasonable, that was correct as of that time. That was not a misrepresentation of the situation if we take into account what you wrote on the 15th of December.

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Answer: Mr. Stafford was clearly aware by the 15th of December that I felt that €375,000 was an amount that I could stand over. I can only assume that at some stage he reported this formally to the Board", meaning the Board of Century.

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They are the transcript references of relevance.

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All I say Sir, is that through perhaps an understandable error, it was suggested to Mr. Barry that Professor Hills or Mr. Hills or Hills Associates or IBACS, were not standing over €375,000. I say from that synopsis of the evidence, it is quite clear that that is not the tenor or affect of Professor Hills' evidence. My only objection is that that question, or questions, giving the gist of evidence being that Professor Hills did not calculate €375,000 or did not stand over €375,000. Those type of questions are in error and should be rephrased and any references to those questions should be deleted or stricken from the record.

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I am not seeking anything, rather just a correction and a clarification.

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CHAIRMAN: I note what you have submitted.

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MR. WALSH: That is all I am saying. I mean, I note that Mr. Hanratty wasn't here, I accept that.

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MR. GAVIGAN: Sir, on behalf of Mr. Stafford I think I am

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in a little stronger position than simply animus curiae.

My client is directly affected by these statements. I would like to explore Mr. Walsh's application, but if I could just add one simple addendum, it is a reference to one paragraph Mr. Walsh didn't refer you to. It is paragraph - it is page 48, the paragraph beginning at --

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MR. HANRATTY: Sorry, which day is this?

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MR. GAVIGAN: It is the same day Mr. Walsh was referring to, Day 183, page 48, Question 163 and the following questions up to Question 167 which Mr. Walsh did refer you to. If I could just read it out? It starts at Question 163, the question is: "If I can turn then to the document at Tab 57, it is dated 17th of February, 1989, to the IRTC, to Century.

Answer: Yes.

Question: You may not have seen that document at that time. It is under the authorship of Mr. Barry and Mr. Stafford, but I just wanted to note the contents of the second paragraph which reads: 'The board meeting reviewed the question of transmission charges. They were of the unanimous opinion that the ú375,000 offered to RTE for a full transmission was given from the advice that he had... Furthermore, they were of the unanimous view that they were not prepared to negotiate other increases that were offered, as this would affect the viability of the service.' Just pause there. Whether it was the IBA or your own representation is neither here nor there. Your brief didn't change when you went out on your own as a

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consultant, did it?"

The answer is "no."

Question: So whether it was the IBA advice or your advice, could we just leave that to one side because it may be that the two views are being merged and that you were effectively being put in the same position as the IBA in that letter? Let's leave that to one side or do you want to quibble with that?

Answer: I would just like to make an observation, if I may?

Question: Yes.

Answer: At the time we reached this stage of the proceedings, as far as I was aware, the IBA were not providing any figures in terms of costing. Why Mr. Stafford and Mr. Barry chose to use those words and mention the IBA, I don't know, but to the best of my knowledge it was actually the figure that I was standing over."

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And that is where Mr. Walsh took it up. I would just like to refer you to the paragraph that deals essentially with the question of the IBA and Mr. Hills and the merger, if you like, of the IBA's position and Mr. Hills' position. Which I say is relevant from that paragraph. Thank you.

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MR. HANRATTY: I wonder is there anybody else, Sir, that wishes to address you before I reply?

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MR. O'CONNOR: Sir, I don't propose to address you further in relation to the matters canvassed by Mr. Walsh and Mr.

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Gavigan. I did refer you yesterday to question 159 in the transcript which set out Mr. Hills' position in relation to the entire matter of the ú375,000.

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Mr. Hills --

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CHAIRMAN: Sorry, just before you say - question 159 on day what and page what?

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MR. O'CONNOR: On transcript no. 183, Sir. Which was the 4th of October, 2000.

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CHAIRMAN: That is all right. I just want to get it, Question 159. Right, Mr. O'Connor, I have noted that.

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MR. O'CONNOR: Page 47, Sir. And the answer to reiterate it, is in yesterday's transcript, Mr. Hills' response to that question was: "On the 15th of September, 1988, I was clearly prepared to defend the figure of ú375,000." His position is distilled, Sir, in that answer. I don't propose to say anything further.

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CHAIRMAN: Very good.

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MR. HANRATTY: Sir, the question which I put to which objection was taken, or the proposition which I put to which objection was taken, was that Mr. Hills did not produce the figure of 375,000 on foot of which an application was made to the IRTC and transmitted to the Minister for a directive. He did not produce the figure.



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We know from the evidence that he produced an averaging document where he came out on a sort of a "doodle" as he described it, as £376,500. We know that he made reference to, in what is known as his dot matrix document, but the question which I was addressing, Sir, was who was behind that figure? Who was the person who produced the breakdown of that figure as a costing, as a costing, as a costed breakdown of the cost of transmission? And I put that proposition to Mr. Barry, and indeed I put it to Mr. Stafford on the basis that Mr. Hills was not behind that figure.

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Having put that proposition to this witness, you then received an objection from Mr. Walsh, which now appears to be the basis of an application for a ruling. Mr. Walsh appears to be asking you now to make a determination on evidence, before hearing all the remaining evidence, for a ruling that I was incorrect, or that I was in some way in error, or that I perhaps wasn't entirely au fait with the evidence because I wasn't physically present in the room.

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I want to say first of all, I reject that, and I am surprised that that sort of application is made on what I have to say is a most selective selection of bits of the evidence, which by no means give a complete picture of Mr. Hills' evidence on this.

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Now I don't propose Sir, to debate that particular issue and I can't see how it would add to the work that you are

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doing, by me debating it. I do think it is appropriate for me, Sir, to refer you to the other portions of the transcript where this particular matter was addressed and which have not been referred to by either Mr. Walsh or Mr. Gavigan or Mr. O'Connor.

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As far as we can ascertain, Sir, it first came up on Day 182 at Question 177. The question was:

"Yes. Did you envisage that at some point in time prior to making the submission to the IRTC that you would have been called upon to stand up figures as the likely costings and value of the RTE transmission?"

Answer: Well, I was really working to Mr. Stafford's requirements. If he had, if he had wanted figures from me he would have asked for them and I would have provided them. I provided what was asked for.

Question: Yes. Well, are you surprised at the fact that - well firstly you might indicate whether or not you were ever specifically asked for the final figures for RTE transmission charges?

Answer: I have no recollection of ever being asked to set down a final definitive statement. There is certainly nothing in my files to suggest that I did."

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That was the first time that we had ascertained that the matter was specifically referred to in the transcript.

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Further on in the transcript of the same day, at Question 225, and two paragraphs down, the question having dealt with a number of other unrelated matters it says "This

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memorandum" - this is the memorandum I think to the Minister, then concludes with the sentence: "We believe that in fact everything above ú375,000 will constitute a contribution to RTE. Now, was that the first occasion upon which you had seen the figure of ú375,000 in print as a total contribution figure envisaged by Century?"

Answer: In print?

Question: Yes."

The question then is: "This was a document which came to you in this format and therefore its inclusion in the document itself was something of which you were unaware before its promulgation?"

Answer: I can't say whether I was aware of it or not because that is a matter which you will come to shortly, as my annotations.

Question: Just as regards this particular document itself, the briefing document in the form it came to you from Mr. Stafford, you had not directly inputted any of the figures or propositions that is contained in this document, because I take it you were unaware of this memorandum being prepared prior its being prepared?

Answer: I was certainly unaware that it was being prepared, yes.

Question: How --" and then Mr. Hills goes on on the subject of input on the ú375,000, we will have to come to that shortly.

Question: "True. It may be that this figure came through a process of discussion and was entered here, but you yourself did not provide that figure for the purpose of its inclusion in this document, isn't that so?"

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Answer: That is correct, I didn't."

And then at Question 252 Mr. O'Neill asks Mr. Hills:

"Am I right in saying that in drafting that, that you were in effect redrafting the content of the brief rather than yourself expressing a final opinion that that was the position?"

Answer: Yes, indeed. I was merely putting different words around the 375,000."

That is the passage to which Mr. Walsh did refer.

Then at Question 427, this is still on Day 182, Mr. O'Neill says: "Now, were you in any way consulted about the fact that Century Communications Limited had decided to write to the IRTC in an effort to advance the ú375,000 as a figure that should be paid in respect of the service at that time?"

Might I just pause there Sir? You will recall the evidence that was actually revisited again yesterday to the affect that the Century Communications wrote a letter to the IRTC in February of 1989 advancing their figure of ú375,000. That is what is being referred to here. The question is "Were you in any way consulted about the fact that Century Communications had decided to write to the IRTC in an effort to advance ú375,000 as the figure that should be paid in respect of the service at that time?"

Answer: I believe not.

Question: Did the Board ever ask you to specifically, at that point in time, advise them as to what the realistic or

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reasonable figure should be for this service?

Answer: Again, as far as I recall not."

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And at Question 468 then, where Mr. O'Neill says: "There is a document, Professor Hills, which I don't believe that you have, we will hand you a copy of it now. It is from Century Communications to Mr. Justice Henchy of the 20th of February, 1989. Its book reference as circulated to all parties so far as page 34. If we could put that on the screen?

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I think this document has been referred to as Mr. Crowley's letter to the Chairman of the IRTC. You may be familiar with it, I am not sure?

Answer: It does ring a bell.

Question: If you look to the second page of that document there, you will see that there was a breakdown of the ú375,000. That was being urged upon the Commission at that time as a reasonable figure?

Answer: Yes. And you will see the breakdown of the component parts there, rent of transmitters, maintenance - 30, power and spares - 115, linkage - 80. To some extent those figures are subsequently replicated in the Minister's directive, isn't that right?

Answer: Yes.

Question: This, however, just to confirm it, was not a breakdown which was prepared by you for the Board on the 20th of February, isn't that right?

Answer: That is correct.

Question: As far as you are concerned, it was not a

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document prepared by the IBA for that purpose either?

Answer: I had no knowledge of them preparing such a document.

Question: The draft document to which I have just referred was sent to you for your views and you considered the document and suggested final paragraphs by way of amendment?

Answer: Yes, I did.

Question: Which you sent to Mr. Stafford. You then asked for a copy of the final version of that, but I think you tell us in your statement that you never, in fact, received a final version of the document, if one did in fact go to the Minister?

Answer: I certainly don't seem to have one on file."

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And then on Day 183, Sir, there are further passages to which no reference has been made. Mr. Hills was questioned at Question 181 on that date by Mr. O'Higgins, where he says. "Professor Hills, I have to ask you some questions now on behalf of RTE, and I would just like to establish in the first place, it has been my impression as a result of answers you have given Mr. O'Neill yesterday, that at no time before the presentation of the proposal to the IRTC on the 16th of September, 1988, were you in a position to give measured or final figures, which as far as you were concerned, covered the likely cost of transmission. Is that right or wrong?

Answer: I believe that to be correct, because there were still some unknowns about exactly what the engineering implications were going to be.

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Question: So when you told Mr. Connolly some time ago that you subscribed to the ú375,000 figure which was mentioned by Mr. Stafford on the 15th of December, 1988, in what sense did you subscribe to that, given the problems which you had expressed to exist in arriving at any concluded figure?

Answer: I obviously came to that figure as the arithmetical average of upper and lower limits."

Then he goes to say something else.

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Now, on the same date Mr. Hills was questioned by Mr. Connolly on behalf of Mr. Stafford at, I think Question 82. And the question is: "Any documents under your authorship, would you stand over the contents of those documents?"

Answer: Yes, in the context of the information that was available to me at the time.

Question: But likewise, as an expert you wouldn't take figures that were simply fed to you and pass them on as if there was some sort of authority or validity in the figures without satisfying yourself that the contents of the document could be reconciled with your own self, your own sense of intellectual honesty and integrity?

Answer: That is, if I may say so, something of a leading question, and I suspect I know where you are leading it to. To the extent that, did I stand over the ú375,000 as a specific figure? I was never asked, as far as I can recall, to stand over it as a specific figure. I did those calculations which lead to upper and lower limits of what I thought the costs might be, and the average of that came

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out very nearly at ú375,000. Whether that was a coincidence or not, I don't know."

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And on the same date, at Question 428 when Mr. Hills was being re-examined by Mr. O'Neill, Mr. O'Neill put the question: "Right, in view of these unknowns", I think he was referring to unknowns about further information in relation to the technical aspects, "is it in fact the case that you never gave your client a final figure of what you thought the actual cost should be for the provision of the services?"

Answer: This is so.

Question: Yes?

Answer: Yes."

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Now, in addition to those passages to which My Friends have not referred to, Sir, there is the entirety of the evidence of Mr. Stafford, and you will recall that Mr. Stafford's evidence was very specific and very clear. He said that the IBA came up with the figure of 295,000. That he, Mr. Stafford, rounded it up to ú300,000 and added on 25 percent. That was the evidence of Mr. Stafford.

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So, in my respectful submission, it is disingenuous in the extreme for My Friends to ask you to make a ruling in, an interim ruling on evidence; and it is my respectful submission, Sir, that in the fullness of time when you come to consider the evidence you will look at the evidence in its totality, and in particular the evidence of Mr. Hills in relation to who produced this figure.



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Now, I don't propose to put the matter any further than that at this stage, Sir, other than I have just draw your attention to the fact that the references to the evidence of Mr. Hills on this figure are incomplete and appear to be designed to place reliance on the averaging document which was done in November, the handwritten entries into this document and the dot matrix document, to persuade you to somehow decide now that Mr. Hills, in fact, produced the breakdown of £375,000 as a transmission figure which was subsequently then relied upon by Century in their submission which was sent into the IRTC, and ultimately formed the basis of an application for a directive under Section 16.

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In my respectful submission, Sir, that is not an appropriate way for you to proceed.

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Now, so far as putting the proposition is concerned, there is no point in me obviously putting the totality of Mr. Hills' evidence to this witness. And what I propose to do is simply leave the question aside and leave it over to you, given that we have had to go through this exercise to consider all of the evidence in its totality, including Mr. Stafford's evidence on this point, so you can decide where the truth lies.

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So I won't put it any further than that at this stage, Sir.

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CHAIRMAN: I simply note the submissions that have been made and we --

MR. KEANE: Before, Sir, you indicate your position in relation to the matter, I ought formally to indicate on behalf of RTE that we would join the submission made by Mr. Hanratty. I would have sought to open all the various references in the transcript that Mr. Hanratty has opened to the Tribunal, in addition to one other reference.

I am sorry to burden the Tribunal with references to the transcript, but perhaps for the sake of completeness and perhaps - various references to the transcript of Day 182 and 183 have been opened, but I would just draw your notice to one other extract which appears in the transcript, at Day 183 at page 4 of the transcript. It relates to Mr. O'Neill's examination-in-chief of Mr. Hills. It commences at Question 11. I may be in error here because Mr. Hanratty may have already mentioned it. I didn't understand him to have made direct reference to it. It is a rather brief extract, Sir. I might very quickly open it to you, with your permission?

CHAIRMAN: Certainly, carry on.

MR. KEANE: Question 11, Mr. O'Neill asked, was quoting I beg your pardon, Sir, from a letter which is identified at page two of the transcript as that letter written by the Chairman of the Board of Century Communications to the Chairman of the IRTC on the 20th of February, 1989. He

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begins by quoting an extract from that letter. I am reading here from the transcript at question 11, page 4, Day 183: "We had several meetings with RTE as managers of the national transmission system. We told them the view of our advisors, the IBA, that the cost of providing us accordance with this facility in accordance with the criteria set out in the letter of the 1st of November, 1988, was less than ú300,000 per annum."

Mr. O'Neill then says: "Now, would you have approved a draft in those terms from the knowledge that you had at the time of the participation and interpretation which had taken place with RTE to that date".

The response, Sir, is - the answer is: "No, I think the first question I would have asked is, 'Well, what were those meetings?' Because they were meetings that I knew nothing of, and in terms of the figure, certainly the IBA at that stage, as far as I knew, were not advising them of any financial figures. And furtherly, the figure of the ú300,000 is one that I would have questioned because it doesn't tie up with my annotations on the earlier document."

MR. KEANE: There is simply one further extract, Sir, from the transcript that I would wish to draw to your attention specifically on the part of RTE. I would also merely echo in what Mr. Hanratty said, in that I don't understand the nature of Mr. Walsh's submission to you, Sir. I think that he seems to be inviting you to make an ultimate finding of

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fact and to rule on a premise of a question and allow a question on that basis. I would have thought that was a matter for you, Sir, at the conclusion of evidence.

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Equally, nor did I ever understand Mr. Hanratty to ask the question whether or not Mr. Hills was standing over or use as the premise for any of acquisition questions, the proposition that Mr. Hills was standing over the disputed figure. Rather, I understood Mr. Hanratty to premise his question on the basis that Mr. Hills did not originate the figure. I think the evidence in that regard is quite clear, although that is subject to my earlier submission. Findings of fact are ultimately only a matter for yourself, Sir. That is the only matter that I would wish to add, Sir, on behalf of RTE. I am obliged.

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CHAIRMAN: Thank you very much for your assistance.

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MR. WALSH: If I could just reply briefly, Sir?

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CHAIRMAN: No.

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MR. WALSH: For a ruling in evidence --

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CHAIRMAN: "No" is the answer to that. You have made your submission, I have noted your submission. I will take it into account in due course of time when I come to formulate a view on the evidence as a whole.

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MR. WALSH: Of course, Sir.

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CHAIRMAN: If you wish to make in due course of time - I gather you are going to be here tomorrow morning, but I am really not going to revisit part of the evidence on the transcript.

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MR. WALSH: I just want to clarify. My objection is to the form of a question, not to the evidence. That is all I want to clarify.

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CHAIRMAN: Certainly, I have no problem with that.

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MR. WALSH: Everybody seems to think that I want you to make the submission, a finding on the evidence, I don't.

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CHAIRMAN: I note the submissions. I note what has been said. I will give a due, I will give it due consideration at an appropriate time when I am looking at and evaluating the entire evidence of --

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MR. WALSH: I know, Sir. I just wanted to clarify it, because the transcript reference will read that I am looking for an ruling on evidence. I am not, I am just seeking a correction --

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CHAIRMAN: I note that. I am not going any further today in any circumstance.

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MR. OLIVER BARRY RETURNS TO THE WITNESS-BOX AND CONTINUES  
TO BE EXAMINED AS FOLLOWS BY MR. HANRATTY:  
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20 Q. MR. HANRATTY: Mr. Barry, I want to now, if I may, move on

to the question of the events which transpired after the  
going on air of Century, on the 4th of September of 1989.  
I think it is true to say that between September of 1989  
and the end of the year, the financial position of Century  
deteriorated fairly rapidly to the point where it was quite  
critical in December?

A. That is correct, Mr. Hanratty, yes.

21 Q. After an initial few weeks it began to become apparent that  
there were growing financial problems?

A. A few weeks at least, I can't remember exactly how many  
weeks, but it was very early on in time.

22 Q. Yes. The problem was certainly obvious by the middle of  
November?

A. It was, yes.

23 Q. And by the beginning of December it was serious?

A. It was serious, yes.

24 Q. There were discussions at that time with the bank, and  
obviously there was a growing difficulty with the bank in  
the context of these financial difficulties?

A. That's correct, yes.

25 Q. And as a result of these difficulties the bank,  
effectively, started putting pressure on Century in  
December, I think?

A. Yes, yes. From memory, yes.

26 Q. Now, we know that yourself and Mr. Stafford went to see the

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Minister and had two meetings with him on the 19th of December?

A. I believe that is the case, yes.

27 Q. Why did you yourself and Mr. Stafford decide to go and see the Minister on that date?

A. Maybe, I can't - I can't recollect a meeting with the Minister, the actual meeting with the Minister, but maybe we were informing him that the company was in serious financial trouble and maybe on the brink of collapsing.

28 Q. Well, it appears that he was certainly told that and that he was told that the company was in very serious financial difficulties?

A. Yes, yes.

29 Q. Was he also given a suggestion as to how he might alter that situation?

A. I can't remember at the time whether we requested him to see the Bank of Ireland on our behalf or he suggested that he would do it, I can't remember, Mr. Hanratty.

30 Q. Well, there are some indications in the documentation we have seen from Mr. Stafford, that Mr. Stafford and yourself requested the Minister and that he agreed that he would cap RTE's advertising at that meeting; sorry, this is the meeting now on the afternoon of the 19th of December?

A. I don't recollect that, I thought the issue about the capping came in much later than that, but if there is written, if there is written evidence to that effect, I wouldn't deny that, no.

31 Q. Well, if I could just refer you to a document at page 589? Which is part of Mr. Stafford's instructions to his solicitor, subsequently. At paragraph nine he says:

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"On the 19th of December, 1989, both Mr. Barry and I had a meeting with the Minister for Communications, Ray Burke, and advised him that if RTE's abuse of their dominant position was not and could not be curtailed then we would have no alternative but to go into liquidation before Christmas. At a meeting later that day in the presence of the Secretary of his Department he gave us sufficient reassurances and encouragement to continue."

Now, first of all, do you remember that there were in fact two meetings on the 19th of December with the Minister?

A. I don't recollect that meeting, but I have no doubt that that meeting occurred.

32 Q. It appears that Mr. McDonagh, the Secretary of the Department of Communications, was at the second meeting?

A. If you say so, yes.

33 Q. And it would appear from a subsequent letter of Mr. Stafford, that at that meeting Mr. McDonagh was there and was then instructed by the Minister to bring in capping by whatever means was appropriate?

A. Does it say that?

34 Q. It says it in a letter from Mr. Stafford which we will be having in a moment?

A. If you say so, yes.

35 Q. Well, Mr. Barry, is it your position to this Tribunal that you don't remember anything at all about these two meetings with the Minister?

A. Absolutely, yes.

36 Q. You have no recollection of any kind at all?

A. The only recollection I have of a meeting with the Minister



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was the day we met him with the bank. I don't remember having these two meetings with the Minister prior to the bank meeting, Mr. Hanratty, but I am sure we had them.

37 Q. Do you remember having discussions with Mr. Stafford as to what you were going to do about the company's financial difficulties?

A. We were having on-going discussions about it, morning, noon and night.

38 Q. Do you remember Mr. Stafford asserting to the Minister that RTE was engaging in abuses of its dominant position?

A. I have no doubt that both of us probably felt like that at the time.

39 Q. On what basis did you tell the Minister, or did Mr. Stafford, that RTE was abusing its dominant position?

A. Well, obviously the relationship between RTE and ourselves had deteriorated. Our transmission was not what we expected it to be. I think our sales people told us that RTE had been in the market place against them and offering packages that were detrimental to the sales of Century Radio.

40 Q. Well, I think we have been over the transmission ground; but could I draw your attention to the fact that the contemporaneous document with the bank at this time, and we will be going through it in a moment, does not seem to indicate that you had any complaint with RTE vis-a-vis transmission?

A. That definitely hurt our sales, Mr. Hanratty.

41 Q. The fact that the level of transmission was at a particular level, which as it turned out was lower than what the advertisers had been told, undoubtedly was unhelpful to the

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company?

A. Yes, and it cost us a lot of money.

42 Q. But that is not, that is not a matter for RTE?

A. Oh, we felt it was a matter for RTE, I say, at the time.

43 Q. Well, I am not going to revisit all of the discussions we had previously about transmission charges. What I am simply drawing your attention to at this time, is to the fact that the contemporaneous documentation, while they recognised that there was a shortfall in the transmission in the sense that it wasn't as widespread as would you have required it, you were not blaming RTE for that at the time?

A. We were blaming RTE. I think our relationship with the Engineering Department was good enough, but certainly the RTE sales people were very aggressive against our sales people in the market-place, because prior to us going on air, our sales people were very confident that, that the sales of Century would - even that the projections that we had for the year, that once we went on air and the transmission wasn't what was anticipated, our sales fell off drastically.

44 Q. Well, isn't it fairly clear that the reason that your sales did not match up to expectation was that people just simply did not tune in?

A. Obviously, it was a new station and there was going to be a buildup of audience. I think we accounted for that in our projections, but what we didn't account for, we had got in - I think in advance of about £1 million of advertising before we went on air.

45 Q. But that was on the basis of representations that you made to advertisers as to the level of coverage that you would

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have and specifically that you would have 65 percent coverage on Day 1, isn't that right?

A. That is true. Yes, our sales people sold the Century advertising on the basis that we would have 65 percent of the population.

46 Q. But leaving that aside entirely. I suggest to you that the most alarming feature, from an advertiser's point of view, was that people weren't listening, even in those areas where you did have coverage?

A. I couldn't really agree with you totally there. I think for a new station, the penetration we had with the audience was reasonable. I am not saying it was fantastic, but it was reasonable. I think the biggest --

47 Q. The evidence we have heard today suggests that you didn't get it up to 15 percent?

A. I think we did. At that particular time?

48 Q. Yes. This is the time when the problem really became serious, in December?

A. Even at 15 percent, I can't remember all the figures now. Even if we had 15 percent of, two-thirds of the population, I think our rate card was still attractive at that, Mr. Hanratty. I mean we had very experienced sales people in Seamus O'Neill, who had been with the Irish Times, and he was the main man in our sales force. And this is, I believe what he conveyed to us, that a lot of the clients that he had lined up for advertising withdrew, maybe because of programming, and also because of transmission.

49 Q. Well, isn't it a fact that programming was identified at a very early stage as a serious problem, and the fact that the programming was such that it was not attracting the

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levels of listenership that were required?

A. Well, it was a new venture, Mr. Hanratty. We had recruited some top, very successful music programming people from the UK, who also had Irish experience, and they were confident that they would build an audience for us because they had done so in the UK.

50 Q. I am sure that is true, Mr. Barry, but all I am suggesting to you is that it seems clear from the documentation including, and in particular minutes of meetings that you had, you had with banks, extensive meetings, that you yourself identified that there was a serious listenership problem and that that problem was attributed to programming?

A. I wouldn't totally agree with that. I think some of it was programming, there is no doubt about that, but transmission and, especially when, if you like, we disappointed the people who bought into our packages and then they discovered that instead of getting 65 percent coverage the RTE sales people went out into the market-place and said we have only 35 percent coverage. That did us a lot of damage.

51 Q. Mr. O'Neill's evidence was that, firstly, he told people that Century had 65 percent coverage because he was told that by yourself and Mr. Stafford?

A. That is, I would like - I don't remember it. I mean --

52 Q. Would he have got the information? If he was in the sales department trying to sell a product to advertisers, he would need to know what the level of coverage was?

A. Mr. Hanratty, Mr. Hanratty. Mr. Stafford and myself were non-executive directors of the radio station. We had

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recruited a high-powered team. We paid them huge amounts of money. They recruited too many staff. We stood back and we let the professionals at it at that stage.

53 Q. Sorry, Mr. Barry, I appreciate that.

A. For Mr. Seamus O'Neill.

54 Q. His expertise was in sales?

A. For Seamus O'Neill to say that Jim Stafford and myself told him, whatever whether he said, they would have been dealing directly with RTE at that stage.

55 Q. Mr. O'Neill was not dealing directly with RTE. Mr. O'Neill was dealing with sales. Mr. O'Neill needed to know so that he would have the information to pass on --

A. Michael Laffan was the MD.

56 Q. I am simply putting to you, Mr. Barry, what is the evidence of Mr. O'Neill, that he received this information from yourself and Mr. Stafford?

A. I think that would be totally incorrect. We wouldn't be in any position to say that to him. Mr. O'Neill was a very experienced advertising man.

57 Q. Does that mean, just to pause it there, you say you wouldn't be in any position to tell him what the coverage was from Day 1?

A. He wouldn't, I mean he wouldn't be taking our word for it.

58 Q. Sorry, were you in a position to tell Mr. O'Neill what the coverage was at start-up?

A. I am sure Mr. O'Neill and Mr. Laffan and the executives had on-going meetings with RTE --

59 Q. Were you, yourself, in a position to tell Mr. O'Neill what the level of coverage was at start-up?

A. We were, maybe we were, maybe we relied to him that RTE

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said that, on this principle that if you have Dublin, Cork and Limerick you had 60 percent of the population, and maybe on that basis Mr. O'Neill sold the advertising, but I think to attribute it to the fact that we told him --

60 Q. The question I am putting to you, Mr. Barry; were you yourself, Mr. Oliver Barry, in a position to tell Mr. O'Neill at start-up, what the coverage was, at that time?

A. I suppose you could say that, if you had, if I knew for a fact we had coverage in Dublin, Cork and Limerick, everybody would have assumed that that is two-thirds of the population.

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MR. HANRATTY: Perhaps I should revisit the question after the break, which I notice we haven't taken, Sir.

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CHAIRMAN: Also in the interim, my recollection is that there was a document, I am not quite certain, there was a document in which RTE set out, specifically the one that I remember is 45 percent on the, on start-up.

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MR. HANRATTY: Yes, there were several documents. One of them was the actual contract schedule, the other one was a document produced by RTE as to what the actual temporary start-up figures were.

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CHAIRMAN: That is the one I am referring to.

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MR. HANRATTY: Yes.

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CHAIRMAN: I remember the 45 percent, the 45 percent.

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

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MR. HANRATTY: Mr. Barry, please.

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MR. BARRY RETURNS TO THE WITNESS-BOX AND CONTINUES TO BE  
EXAMINED BY MR. HANRATTY AS FOLLOWS:

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61 Q. MR. HANRATTY: Mr. Barry, you were telling us before the  
break that you wouldn't have been in a position to give  
this information to Mr. O'Neill, is that right?

A. Yeah, I mean, Mr. Hanratty, from memory, I think that  
Century had an obligation to the IRTC to have a minimum of  
60 percent coverage before we went on air, and we were  
relying on RTE to do that for us.

62 Q. The only thing you were entitled to from RTE was what was  
in your contract, isn't that right?

A. Well, there was a Ministerial directive to RTE.

63 Q. No, as between yourself and RTE there was a contract, and  
the obligations and rights of the parties were defined in  
that contract?

A. That's correct, yes.

64 Q. And the contract indeed incorporated the provisions of the  
directive, did it not?

A. I can't remember, I am sure they did.

65 Q. In terms of the price at which the service had to be  
provided, this was all dealt with in the contract, once the  
directive had issued?

A. Yes, but I think the price in the contract was higher than

the directive.

66 Q. Now, just in relation to this evidence that Mr. O'Neill couldn't have got this type of information from you. Can I refer you to a meeting of Century Communications Limited which took place on the 12th of September of 1989. Page 2397?

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This is a meeting of the company. It is attended by Mr. Crowley in the chair, yourself, Mr. Stafford, Mr. Wogan and Mr. Burke, attended by Mr. Laffan the Chief Executive, and Mr. Marren. Can I refer you to the third page of that document, page 2239? Just before paragraph 7 there is a paragraph which says: "It was resolved that a committee of the directors, consisting of Oliver Barry and James Stafford, be and are hereby appointed to deal with all issues relating to transmission and to take all steps necessary or desirable to increase the coverage of the company's signal."

A. Yes, what date was that, Mr. Hanratty?

67 Q. This was the 12th of September?

A. That is after us going on the air, yes. Obviously we had difficulties with the transmission then, yes.

68 Q. Yes. Mr. O'Neill, at this stage, was going around telling advertisers that you had 65 percent coverage?

A. Yes, that's correct. Yes.

69 Q. In fact he continued for some time after start-up to tell them that, until he was told by them that it was incorrect?

A. Yes.

70 Q. I suggest to you, if he wanted information as to coverage, all he had to do was to go to yourself or Mr. Stafford,



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because you constituted the committee dealing specifically with the question of transmission in September?

A. Yes, if it says so, yes. Obviously we had difficulties and we were called in, probably to solve the difficulties.

71 Q. This appears to refute what you have been saying before the break, that you wouldn't have had access to that information?

A. No, I thought you were - I mean this surprises me, but certainly before we went on air I was talking about, maybe there was a misunderstanding, but I am not denying this at all. But before we went on air and when Seamus O'Neill was selling advertising on behalf of Century during the months of June and July and August, he was selling it on the basis of 65 percent coverage; and I don't remember Jim Stafford or myself confirming to him at that stage that we had 65 percent coverage.

72 Q. Can I draw your attention to the fact that in your submission to the IRTC you indicated to them that it would take you eight months to get up to 63 percent coverage, at page 5712.

A. It would take us?

73 Q. Eight months to get up to 63 percent coverage. If we go down to the bottom of the page under heading "D" and under the heading "Rate of Development of Coverage" it says: "We assume that it will be possible to reach agreement with RTE as described above. On that basis, we propose that the network should be developed according to a phased timetable, to ensure a healthy income base as quickly as possible, and thereafter to invest in the further extension of coverage out of cashflow.

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On the advice of RTE, with which our consultants concur, we propose the following first phase: Three Rock, Mullaghanish, Cork City and Maghera. We understand "-", this is on the next page - "that this would achieve coverage of something like 63 percent of the population and could be provided within five months of instruction to proceed for the first three stations, Maghera coming into service in month eight."

A. Yes.

74 Q. "In addition, we would commission as soon as possible, the medium wave AM stations in Dublin and Cork" that clearly postulates eight months to get up to 63 percent?

A. That is what it says in that document, yes.

75 Q. That is what it says in your submission?

A. Yes.

76 Q. Well then, on what basis was Mr. O'Neill given information that you would be at 65 percent on Day 1?

A. I can't tell you exactly. I mean, as far as I remember the IRTC, as being the national station, we needed a minimum of 60 or 65 percent before they would allow us go on air.  
That is from memory.

77 Q. Regardless of what the IRTC requirement was, Mr. O'Neill has actually given evidence to this Tribunal to the effect that had he been told the true position, namely that you were below 45 percent, he would have strongly advised you that you should not go on air?

A. If that is what he said, I can't contradict that, Mr. Hanratty.

78 Q. Going back to the meeting of the 19th of December, the

company. A decision, according to Mr. Stafford, had been made that without some major intervention the company was going to have to be put into liquidation?

A. That's correct, yes.

79 Q. You had invested a very substantial sum of money at this stage, probably about £700,000?

A. Personally?

80 Q. Yes. How much had you invested by the end of 1989?

A. 275, I believe. 250 and then 25 --

81 Q. Sorry, your first tranche would have gone in?

A. Yes.

82 Q. So your two £33,333's, your £148,000 would have gone in, and the £19,000 didn't go in until the following January?

A. That's correct.

83 Q. So you had invested, in any case, very substantial sums of money and indeed time and effort into this venture?

A. Yes.

84 Q. You were on the brink of liquidation within months of going on air?

A. Yes.

85 Q. I suggest to you, in these circumstances those circumstances Mr. Barry, it was inconceivable that you didn't remember your meetings with Mr. Burke on the 19th, in circumstances where you were in this very dire situation and where he was the only hope of salvation?

A. But Mr. Hanratty, you make a lot of suggestions, don't you?

86 Q. Well, I am suggesting to you that it is rather incredible that you don't remember anything about your meeting with Mr. Burke in these circumstances?

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A. I am under oath here, Mr. Hanratty. You made very serious suggestions about me yesterday, about my bank accounts, that is totally false, utter rubbish. I have no bank accounts in Los Angelus, I have no bank accounts in Jersey. So what you suggest, Mr. Hanratty, can be taken, you know, sometimes as --

87 Q. Mr. Barry, I read out a factual schedule of your compliance with the Discovery of this Tribunal. Your solicitors admitted a number of them --

A. Three of the nine were not bank accounts, if you had any decency you would reject it and withdraw it.

88 Q. He admitted a number of them and said he would come back to us in relation to two others?

A. You got your headlines this morning, Mr. Hanratty, that was what you were looking for.

89 Q. I got what?

A. You got your headlines in the press.

90 Q. I would have to reject that, Sir. Could you confine yourself now to answer questions, answering questions which I put to you, Mr. Barry?

A. I hope the press heard what I said.

91 Q. I am suggesting to you, Mr. Barry, that in circumstances where your substantial investment was about to be lost in its entirety --

A. Yes?

92 Q. In circumstances where a decision had been made that unless some major intervention occurred?

A. Yes.

93 Q. And in circumstances where the only hope that you had was an intervention by Mr. Burke, that it is inconceivable that

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you don't recall any aspect of your meetings with Mr. Burke on the 19th of December?

A. I have no recollection of the meetings with Mr. Burke, Mr. Hanratty.

94 Q. No recollection at all?

A. None.

95 Q. Of anything to do with it?

A. I am not denying the meeting took place. If the meeting took place, the meeting took place. As I said to you, I have some faint recollection of Mr. Burke meeting some bank officials with us. I have no recollection of any meeting prior to that meeting with Mr. Burke. The meeting obviously took place. I don't recall where the meeting took place. I don't even remember how the meeting was convened.

96 Q. Now, can we just leave aside for the moment, Mr. Barry, things that you are not denying. I want to confine myself entirely to things that you remember yourself or don't remember, as the case maybe?

A. Yes.

97 Q. Do you remember having discussions with Mr. Stafford as to whether or not you would go and see Mr. Burke?

A. No, I remember having a discussion with Mr. Stafford and I think we went to see the Chairman of the IRTC, and we told them the serious position we were in. I think he was our first port of call. Maybe as a result of that meeting we went to see the Minister.

98 Q. When was the meeting with the IRTC?

A. It was with the Chairman, it wasn't with the full IRTC, it was with the Chairman.

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99 Q. Is this another meeting with the Chairman on his own?

A. I am not sure on that point by, wait, if I just might revert to a moment? I did make a call to Mr. Marren last night about that meeting with the Chairman of the IRTC. He does recall that meeting. There is only one point of difference between us. He said as far as his recollection was, that there was another person with Seamus Henchy on that particular day. Sorry, will I continue?

100 Q. Sorry, it is a rather important detail, wouldn't you have thought?

A. Yes.

101 Q. The fact that the Chairman of the IRTC attended the meeting with a franchisee and his solicitor without somebody else from the IRTC?

A. Well, as I said yesterday, my recollection was that he was on his own, but Mr. Marren last night said his recollection is that there was somebody with him. So I am glad of the opportunity to make that point clear to you, Mr. Chairman.

102 Q. Well, thank you for doing so. Now, can we get back to the question of the meeting with the IRTC? You are now talking about a meeting, presumably in December of 1989, with the Chairman of the IRTC, is that right?

A. With the Chairman of the IRTC.

103 Q. And who else was present at this meeting?

A. I am not sure that I can remember the Chairman being there. Mr. Stafford was with me.

104 Q. Mr. Stafford and yourself went to a meeting with the Chairman. Was Mr. Connolly there?

A. I don't recollect that he was there, but it is possible that he was.

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105 Q. And what was the purpose of the meeting?

A. Well, the purpose of the meeting was to tell him that the company was about to go under.

106 Q. And what did he say?

A. He was very sympathetic and maybe we discussed the possibility of ministerial intervention. I can't remember fully what was discussed, but he was quite taken aback about it.

107 Q. And are you suggesting that the Chairman of the IRTC suggested ministerial intervention for a company that wasn't succeeding?

A. I am not suggesting it for one moment. But all I am saying is that we did make him aware of it. I can not recollect as to how or who convened the meeting, the meetings with the Minister. But I do recollect that Jim Stafford and myself did discuss our very serious problems with Seamus Henchy; and I think that Mr. Stafford said it was quite likely that the company would go into liquidation before Christmas.

108 Q. Unless I am very much mistaken there does not appear to be any minute of this meeting with the IRTC, either in the Century records or in the IRTC records?

A. It is my recollection that Jim Stafford and myself had a meeting with Seamus Henchy.

109 Q. Well, would you not expect that there would be a minute of such a meeting?

A. I don't know whether there is minute within the IRTC or whether we met him in the IRTC office. I am not even sure where we met him, Mr. Hanratty.

110 Q. What are you seeking to convey? Are you seeking to convey

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to the Tribunal that it was as a result of something that was said to you by the IRTC that a decision was made to go to the Minister?

A. Not at all.

111 Q. Then what relevance does it have?

A. I am only telling you that that meeting took place, I am sorry to mislead --

112 Q. Let's get back to where we were. Who decided to go to the Minister and why?

A. I can't remember. I am sure it may - I can't remember. It was either Jim Stafford or myself or both of us.

113 Q. If you can't remember, you simply can't remember?

A. That's right. I mean who else would it be?

114 Q. Do you remember making any decisions, or with Mr. Stafford or the board of the company, you would have to go to the Minister to sort this out?

A. I don't remember, Mr. Hanratty, no.

115 Q. Do you remember seeking legal advice from Arthur Cox as to what the powers of the Minister were to limit RTE's advertising revenue before this meeting?

A. I don't. As I say, Jim Stafford was the man who recruited Arthur Cox. He would have had most of the dealings with them.

116 Q. We know that you did in fact receive such advice in November of 1989. That a specific request was made to Arthur Cox to give legal advice as to the powers of the Minister to curtail, or cap, RTE's advertising. Do you remember that?

A. I don't remember it, but I am sure it is a fact. I mean at that stage we were --



117 Q. We know --

A. -- we would have looked for help from anybody to keep the station alive, and 70 odd jobs, I think.

118 Q. We know that the meetings took place between yourself and Mr. Stafford and the Minister on the 19th of December?

A. Yes.

119 Q. We also know, if we could have page 15? That on the 19th of December of 1989, Mr. Fanning was asked to and did send a copy of his advices, his previous advices as to the Minister's powers to Mr. Stafford on the 19th of December. Do you see that fax?

A. Yes.

120 Q. Page 15. Was the Minister given a copy of this letter of advice on the 19th, at your meeting?

A. Mr. Hanratty, I told you already, I don't even remember the meeting on the 19th.

121 Q. Well, I am going to explore this with you, if I may, Mr. Barry, to ascertain the extent of your recall.

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Do you recall Mr. Stafford giving a letter of advice from Arthur Cox to Century over to the Minister at the meeting?

A. As I say, I don't even remember the meeting taking place at all, Mr. Hanratty.

122 Q. Do you recall if any documents were given to the Minister at the meeting?

A. Mr. Hanratty, if I can't remember the meeting, how can I remember documents that were handed over at the meeting?

123 Q. What do you recall was the reason for the decision for yourself and Mr. Stafford to go to the meeting?

A. I am sure that it was to tell the Minister about our dire

financial situation, and that the national radio station was about to go into liquidation.

124 Q. What was the purpose of telling the Minister that?

A. Well, we assumed that it would be an embarrassment for the Minister, that it would be an embarrassment for the IRTC, and that independent broadcasting would probably suffer as a result of it.

125 Q. There were all kinds of companies around the country who get into financial difficulties, their business fails for reasons of competition, for all kinds of reasons, they don't go in to the Minister. Why was this decision made to go in to this particular Minister?

A. Because, I mean, he was the Minister in charge of broadcasting. He had just brought in the legislation and we went and we spoke to him about it.

126 Q. This is a Minister to whom you had given ú35,000 in cash the previous May?

A. That is correct.

127 Q. You were coming in asking him for a favour?

A. I would say we were coming in asking him for help, yes, a favour? Yes, if you call it a favour.

128 Q. Was it decided in advance of this meeting that the Minister would be asked to curtail RTE's revenue?

A. No, I think the purpose of the meeting was to tell the Minister that the station was in dire circumstances, and what help or assistance or advice he might give us, give to us to keep the company going, as it were.

129 Q. There were two meetings, according to the correspondence and the document which I have read out to you earlier. Do you remember being at the first meeting?

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A. I think I have told you already. The only meetings that I remember in December, I can't fully recall them, I do remember the meeting between the, I have some recall about the bankers and the Minister meeting and Jim Stafford and myself being present.

130 Q. Do you remember whether either yourself or Mr. Stafford informed the Minister that RTE was engaging in abuses of its dominant position?

A. I am sure we would have said that at the time.

131 Q. Do you remember saying it?

A. No, I don't.

132 Q. Do you recall any abuses of a dominant position that you might have asserted to the Minister at the time?

A. I don't, but I mean obviously we were, we were at loggerheads with RTE, I suppose.

133 Q. I am talking specifically now about abuses of a dominant position, this is referred to in the documentation. You don't have any specific recollection of either yourself or Mr. Barry, or Mr. Stafford, telling the Minister that there was an abuse of a dominant position?

A. I don't, Mr. Hanratty.

134 Q. I want to know do you have any recollection of an abuse of a dominant position?

A. The only recollection I would have at the time is that we believed that RTE treated us badly as far as transmission was concerned, and that their sales people were unfair in the market-place against us.

135 Q. Is that what you characterise as abuse of a dominant position, or is there anything else?

A. Well I mean, I would also say that, say that going back to

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the Gay Byrne situation, that when they used the heavy hand, let's say of taking away The Late Late Show from him if he joined independent radio, and they also refused to take any advertising for the radio station on television.

136 Q. Did you think that it was an unreasonable view that RTE took that if Gay Byrne went to Century to broadcast on radio that he was still entitled to remain broadcasting in RTE?

A. I don't think they would have been able to sustain the end view, because there would have been a general outcry if Gay Byrne was taken off The Late Late Show.

137 Q. Is that, in your view, an abuse of a dominant position?

A. Yes, if they were heavy handed and wouldn't take our advertising.

138 Q. Are these the alleged abuses of a dominant position that were conveyed to the Minister?

A. No, I didn't say that, Mr. Hanratty.

139 Q. What abuses of a dominant position on the part of RTE were told to the Minister?

A. I can't remember. I don't even remember if he was told anything about dominant abuses by RTE.

140 Q. I see. Do you remember attending a meeting with Mr. Enda Marren in May of 1990, at which he was told about this meeting with the Minister?

A. I don't, no.

141 Q. If we could have page 2685? This is a handwritten note taken by Mr. Marren of this meeting with yourself and Mr. Stafford, and as you can see from the top of it, it refers to something on the 19th of December of 1990. It says: "Century Radio", maybe "Sat" indicating Saturday,

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"May of 1990", which appears to be the date of this meeting. "Shelbourne Hotel, Enda Marren, Oliver Barry, and James Stafford."

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It says: "James Stafford/Oliver Barry met Minister and told him you were liquidating. In the afternoon he asked you what would save it? In the presence of the Secretary said he could halve RTE's advertising time on both channels. The following week bank came in, Paddy O'Donoghue", I think, "Mr. Connolly, Manager Credit Controller with James Stafford and Oliver Barry. At this meeting Minister repeated undertaking". This appears to be you informing Mr. Marren of what had occurred. That he didn't know if he had to introduce legislation or directives. So this is a meeting --

A. If you just go back to the top of the page, Sir, could it be clarified on what premise that it is suggested that this is Mr. Barry telling Mr. Marren what occurred?

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142 Q. MR. HANRATTY: It is not. It is just simply that Mr. Barry was at the meeting at which Mr. Marren was informed of these matters. That is the only premise I am putting?

A. There is a date on the top the 19th of the 12th, 1990.

143 Q. Presumably it is intended to refer to 1989 because this document appears to have been written prior to the 18th or the 19th of the 12th 1990.

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The text of the document refers to the meeting with the Minister on the 19th and also the subsequent meeting with the bank, isn't that clear?

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A. Yes.

144 Q. We know that the meeting with the Minister was in fact on the 19th of December of 1989?

A. Oh yeah, maybe - sorry Mr. Hanratty, yes.

145 Q. At the bottom of the page Mr. Marren writes down: "If it goes, horse must be dead. Never to rise. Minister resignation. Executive resignation. Independent investigation."

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What do you think Mr. Marren was referring to when he wrote that down?

A. I would say he was saying that if Century Radio goes down there will be serious repercussions.

146 Q. It wouldn't necessitate a ministerial resignation if a radio station went bust because it couldn't compete in the market place, would it?

A. I think that Jim Mitchell and some of the other politicians were on his back at the time because it was public knowledge that Century was in dire circumstances, and I suppose it was going to be an embarrassment for him; and if that was Mr. Marren's view that he would have to resign, maybe that is why he wrote it down.

147 Q. Well, what would he have meant by "If it goes, horse must be dead, never to rise."

A. I can't, I don't know what he would mean by that, Mr. Hanratty. All I know is that when Century did go into liquidation eventually, it was a long time afterwards before national radio emerged again.

148 Q. What do you think he might have been referring to when he wrote down "independent investigation"?

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A. I haven't a clue.

149 Q. Is it possible that he might have been referring to the fact that the Minister had met bankers to Century Communications Limited?

A. You would have to ask Mr. Marren about that.

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MR. WALSH: Sorry Sir, this witness isn't the author of that document. I don't see how he could give an opinion as to what that shorthand phrase meant by the author, Mr. Marren. He can only give evidence as to fact, not as to an opinion, his opinion interpreting the document.

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CHAIRMAN: I don't know that you are wholly correct there, for the simple reason; this witness was present at, on the occasion described in this document, was present with Mr. Marren when he wrote, when he annotated - so he is entitled to give his opinion on what he thought was happening in front of his eyes. No more and no less. It doesn't give

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MR. WALSH: Sorry Sir, if that was the question it is a perfectly legitimate question, but the question is what does the document, the note on the document mean? In other words, what do you interpret that document to mean, what is your opinion?

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CHAIRMAN: What did he understand was transpiring, or the conversation, what did he understand by the conversation? That is a record, the shorthand record of a conversation.

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MR. WALSH: Well, we don't know, Sir. It may not be.

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CHAIRMAN: Well now, look on the whole, if an attendance is taken - an attendance document is taking an attendance of a contemporaneous event or sequence of events by people. He is taking something that is happening there and then. It may be accurate or inaccurate. One has to accept that this is a free hand, rough note taken by a solicitor.

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MR. WALSH: Exactly Sir.

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CHAIRMAN: It is no more and no less.

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MR. WALSH: The point is, Sir, from your own experience and practice, sometimes people make notes being aide memoirs for themselves, or they --

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CHAIRMAN: And you can't understand them five minutes later.

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MR. WALSH: It could be one of those. Again, you have constantly ruled about documents that the author is, somebody who isn't in the witness-box, that the person in the witness-box can't be offering opinion on the --

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CHAIRMAN: Mr. Marren was the person who was present when the document was made and can certainly give evidence on what was transpiring on that occasion. I do not say, and never have, I am unlikely to accept that as a verbatim, as an actual note of what did take place. One has to express



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a judgement as to what extent the topic was obviously under discussion.

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MR. WALSH: But we don't know when Mr. Marren wrote this document. This could be after the meeting for all we know.

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CHAIRMAN: Mr. Marren has given evidence. I can't recall whether this document was put to him, I am sure it was.

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MR. HANRATTY: He has given, Sir, and he can remember nothing about it at all, as far as I understand it.

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CHAIRMAN: I would have to go back to the text.

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MR. HANRATTY: There is some part of it, apparently, he did recall, but the remainder of it he did. Can I ask you this, Mr. Barry --

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MR. WALSH: Sorry, Mr. Hanratty. If Mr. Marren, who wrote the document, can't remember anything about it, I don't think this witness should be asked to interpret what Mr. Marren's shorthand --

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CHAIRMAN: This witness can undoubtedly be asked his recollection of what transpired on the occasion, on his recollection.

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MR. WALSH: Exactly.

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CHAIRMAN: There can't be any doubt about that.

MR. WALSH: I have no objection to that, if that is the question.

150 Q. MR. HANRATTY: It is clear that the document down to the part "If it goes, horse must be dead, never to rise", he appears to be recording what he has been told by somebody, isn't that right?

A. Well, we will read through it, Mr. Hanratty, if you wish, again. As I say, I don't have any recollection of the meeting.

151 Q. The meeting took place on the 19th of May, which was a few months after the meeting with the Minister, five months approximately?

A. Yes.

152 Q. The first part of the document does appear, in fact, to be Mr. Marren recording things that people are giving to him, because he wasn't present himself at the meeting himself, with the Minister, isn't that right?

A. He wasn't present with the Minister, no. I don't think he was, no.

153 Q. When he writes down things that happened at a meeting with the Minister, it is obviously something he received either from yourself or from Mr. Stafford or from both of you, isn't that so?

A. Yes.

154 Q. Equally, we know that he wasn't at the meeting between the Minister and Century's bankers, isn't that right?

A. No, I don't remember him being at that meeting, no.

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155 Q. As far as he is recording anything in this document, he is recording something that he was told, either by yourself and Mr. Stafford or Mr. Barry?

A. Yes.

156 Q. Mr. Stafford or Mr. Barry, yourself and Mr. Stafford are the only two people here giving him information, isn't that right?

A. That is what it says, yes.

157 Q. And when you get down to the next part of the document when he records, it goes: "If it goes, horse must be dead never to rise. Minister resignation. Executive resignation. Independent investigation."  
Is he recording there something that either yourself or Mr. Stafford said, or is he expressing his own views do you think?

A. I don't know. I don't think anything, I don't know what he is recording there.

158 Q. You don't think anything?

A. No, I mean think what? I don't think, because I don't know.

159 Q. Well, did you express a view, or did Mr. Stafford express a view that if the thing goes, presumably Century, "the horse must be dead, never to rise"?

A. Mr. Hanratty, why do I have to keep saying to you that I don't remember the meeting? If I don't remember the meeting, I don't remember what went on at the meeting.

160 Q. So you don't recall who might have said any of these things, or whether anybody said any of these things, whether this was --

A. Exactly.

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161 Q. Whether this was Mr. Marren's own opinion that he was writing down?

A. Exactly, Mr. Hanratty, I don't recall.

162 Q. So this is another meeting of which you have absolutely no recollection whatsoever?

A. No. My life was full of meetings at that stage. Meetings from eight o'clock in the morning until 12 o'clock at night. There were meetings, meetings and more meetings.

163 Q. You see, I have to draw your attention, Mr. Barry, to the fact that you do appear to be in a position to recall meetings with the IRTC, indeed meetings of which nobody else has any recollection, or indeed record; but yet when we come to a meeting --

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MR. O'CONNOR: Sir, that is not a fair description of Mr. Barry's reference to meetings with the IRTC.

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MR. HANRATTY: Well, we have heard about two meetings with the IRTC. One yesterday, or perhaps two yesterday, and another one today which nobody else has ever mentioned, which has never been put to any witness, of which there is no meeting, either in the records of Century and the IRTC; that's as far as I put it, Sir.

A. When you mentioned the IRTC, I am not talking about the IRTC as the board of the IRTC. The meetings that I referred to were with the Chairman.

164 Q. Yes. Well you do, you did relate to us, if you recall, yesterday, a meeting with the Chairman which you have corrected today, to say that Mr. Marren recalls that the, that somebody else was there?

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A. There may have been somebody else there.

165 Q. You also recalled a meeting which you have just told us about earlier this morning, with the Chairman of the IRTC and Mr. Stafford in December of 1989, isn't that so?

A. That's correct, yes.

166 Q. So there are some meetings that you remember?

A. Yes, I remember that. I remember, yes.

167 Q. Do you not think that your memory is somewhat selective?

A. No, I don't. No, I think that they were two very specific meetings, whether I was present with - especially the first one with Seamus Henchy, because I remember complimenting Enda Marren on it. Certainly the one with Jim Stafford and myself was quite a serious meeting because I think there was only three of us at that time, and it was about the company. The company was about to go belly up.

168 Q. Mr. Barry, may I suggest to you that the problem about that is that while undoubtedly the meeting with the IRTC in December of, or with the Chairman of the IRTC - that he would have been informed about the true position of Century. Might I suggest to you that the meeting with the Minister was infinitely more important from your point of view, because it was the only hope that the company had of survival?

A. As I said, Mr. Hanratty, I can't remember the two meetings with the Minister. I can recall, as I said repeatedly, I have some recall of the meeting with the Minister and the bank.

169 Q. Does it not strike you as odd that you can't recall the meeting with the Minister, but you can recall the meeting with the IRTC?

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A. Unfortunately, Mr. Hanratty, it is 11 years ago. My memory is hazy. Even if I recall the meetings, I can't recall what was said at the meetings. It is a long time ago.

170 Q. It is just after one o'clock, Sir.

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CHAIRMAN: Shall we rise until a quarter past two?

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MR. HANRATTY: Thank you Sir.

A. Chairman, just may I said one word before I go? My outburst before, I apologise to you for it, you have been more than fair throughout all of this.

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CHAIRMAN: Thank you very much.

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THE HEARING THEN ADJOURNED FOR LUNCH.

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THE HEARING RESUMED AS FOLLOWS AFTER LUNCH:  
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MR. HANRATTY: Mr. Barry, please.  
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MR. BARRY RETURNS TO THE WITNESS-BOX AND CONTINUES TO BE  
EXAMINED AS FOLLOWS BY MR. HANRATTY:  
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171 Q. MR. HANRATTY: Mr. Barry, we are still at the 19th of  
December. Can I ask you who was it that asked the Minister  
to come along to a meeting with the company's bankers?

A. It was, either Jim Stafford or myself, Mr. Hanratty.

172 Q. Are you in a position to say which of you?

A. I am not really, no.

173 Q. Whose idea was it that Mr. Burke would be asked to go along  
to a meeting with the company's bankers?

A. I am not sure, but obviously the suggestion would have come  
from either the Minister, Jim Stafford or myself.

174 Q. It's quite a thing to do to ask a Minister to come along to  
a meeting with your bankers, isn't it?

A. I don't know, Mr. Hanratty, is it? I mean, at that time  
the company was about to go under, there was, they were  
tough times economically. There was new legislation. It  
was a new enterprise, if you like. There were 70 jobs at  
stake, and I think it was pretty normal at that stage if an  
enterprise such as this got into financial difficulties,  
that the people behind it would do their best and use all  
their best endeavors to ensure its success no matter what type  
of lobbying it might have taken to do so.

175 Q. Including using any political clout that they might have?

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A. Well I mean, if you are talking about that, I am sure we lobbied many politicians at the time.

176 Q. But you paid Mr. Burke €35,000 in cash the previous May?

A. I have already explained that payment, Mr. Hanratty.

177 Q. Yes. But here you were in December of the same year, in serious trouble, with a view that the Minister had within his power to solve the problem, asking him for a very significant favour?

A. Well I mean, I think that it is no more than I would have asked any Minister or any politician at the time if the same circumstances prevailed.

178 Q. Did you consider that Mr. Burke was obligated to you in anyway at this time?

A. None whatsoever, except that he - I am sure the motivation for him is that he didn't want the flagship of independent broadcasting to collapse, I suppose.

179 Q. Why should he have any interest in a national independent radio station as opposed to any other radio station?

A. Because the national one was the biggy, we were supplying the news to all the other stations. It was, at the time it was certainly the one that was, the flagship, because TV three still wasn't there. Obviously the national franchise was the big one, if you like. Pirate radio, as you know, was there prior to that and that was mainly local, this was the first independent national radio station.

180 Q. Had you discussed with Mr. Burke, before going to this meeting on the 19th, the question of the possibility of his meeting your bankers?

A. I can't remember how the meeting with the bankers came about. As I said, it would have come about because of the



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pressure that was on us from the bank at the time, and as I said, we, I have a recollection of a meeting in the chamber of the IRTC, whether it was before or after the meeting with the Minister I am not too sure, and he agreed obviously to attend the meeting with the bankers to, I suppose give them some comfort that they wouldn't foreclose on us.

181 Q. But what I was asking you was, prior to the meeting with the Minister, or even at the meeting with the Minister, did you canvass with him whether he would attend a meeting with the bank?

A. To be honest, Mr. Hanratty, and I don't - I think I am probably coming over as evasive here, because you have said so already. I don't remember exactly what happened. Obviously it was a traumatic time for me personally, it was a traumatic time for Century, and anything that we could do to ensure the success of the radio station by lobbying politicians of any colour we would have done so.

182 Q. Well, can I ask you to tell me, who was it that first suggested to the Minister that he might attend a meeting with the bank and when was that suggestion first made to him?

A. I can't remember. As I say, it is quite likely that the Minister might have suggested himself or that Jim Stafford might have suggested it, or that I might have suggested it.

183 Q. These are all possibilities that you are putting up, but the bottom line is you can't remember, is that right?

A. I can't remember, Mr. Hanratty.

184 Q. Well given --

A. Again I just want to emphasise that I don't want to be

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evasive here, Chairman. I am trying to be as helpful as I can, but if I can't remember a meeting I can't remember a meeting.

185 Q. Well, do you consider it is more likely that you were the one that asked him, given that you were the one that gave him €35,000?

A. I wouldn't, I mean I can't say yes or no to that, Mr. Hanratty, because as I said I can't remember. Certainly it is, as far as the financial matters of the company were concerned Jim Stafford would have been the key man there, it wasn't my area, if you like, but I am not saying that Jim Stafford asked him, or that I asked him, or that indeed maybe the suggestion came from himself, he knew the company was about to go into liquidation.

186 Q. Yes, and it didn't take any financial genius to explain that to him?

A. No, I mean the bankers obviously were calling the shots there.

187 Q. Well, was there a discussion between yourself and Mr. Stafford before you met Mr. Burke on the 19th, or indeed prior to the 19th, as to whether or not you should broach with the Minister the possibility that he might go to a meeting with your bankers?

A. Honestly, Mr. Hanratty, again, and I for the umpteenth time don't want to be over evasive here, it is a long time ago and I can't remember the exact detail of it.

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CHAIRMAN: I wonder could I just intervene here for one moment? First and foremost what I want to know is this, and I hope I am using the correct phraseology: Did you

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monitor the, what I call the TAM rating or the audience that you were attracting?

A. There was an independent --

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CHAIRMAN: That's right, did you do it by independent assessment?

A. No, we didn't do it, Chairman. There was an independent assessor who monitored all them, and then gave you your appropriate --

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CHAIRMAN: Yes, that's what I want to find out.

A. It was a company out in Dun Laoighre somewhere.

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CHAIRMAN: Yes. Now accepting that, would you tell me this, I simply ask this question quite innocently: If the TAM ratings are, using that phrase, to cover whether it is correct or incorrect, I don't really know, if the TAM ratings were showing that you weren't attracting an audience, and that's the basis upon which you would be selling advertisements, what good to you was capping RTE? If you couldn't attract a trade, what was the point of wrecking, or attempting to spencil, to use a country phrase, to spencil RTE? Where is the logic in that?

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Now as I say, I can assure you it is a perfectly innocent question.

A. I appreciate that, Chairman. If I can take the first part of your question first. As far as the TAM ratings are concerned, I don't know when the first TAM ratings were issued for Century Radio. Normally I would, my guess is

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that there was no TAM ratings prior to Christmas because it was so new on air.

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CHAIRMAN: Well then, how did you know that you were losing, apart from the fact that people were coming back to you saying "We won't book again"?

- A. Well, that came back to us through our sales people because, as I said earlier, they had sold advertising time and they were quite successful I think before we went on air on the 4th of September, they had over a million pounds booked advertising, and we were all very bullish about that, and the institutional investors came in on the foot of that, and subsequent to that after a very, very short time, I will admit, because of the transmission, and certainly because of the programming, Mr. Hanratty, there is no doubt that there was flawing in that as well, and maybe some other reasons, there was internal problems in the station with staff and it was, it was a new situation, the advertisers and the buyers of advertising lost confidence, let's say, in the station.

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CHAIRMAN: Well, the second thing that I find very difficult, perhaps I am wrong, I want to be shown that I am wrong if I am; if you are not attracting market share, how does the increase in the cost improve your prospect of picking up market share?

- A. Would you repeat that question, Chairman?

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CHAIRMAN: As I understand it, you were losing market share as the months went by, your sales staff were finding

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more and more difficulty in selling advertising, isn't that so?

A. That's correct, yes.

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CHAIRMAN: So encapsulating it in perhaps a not particularly correct phrase, you were losing market share. How do you improve your prospects to acquire market share by increasing your cost, which you did in, as I remember it, in December, November or December of 1990? How were you hoping to increase your market share? I mean, everything has been heaped on the top of RTE and what they did or what they didn't do?

A. I am not saying that, Chairman. I am saying that Century was without doubt responsible for many of the wrongs and the failure of it, I am not attributing all of Century's failures by a long shot to RTE, Chairman, but if you ask me the question about 1990, that's what you are referring to.

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CHAIRMAN: Sorry, the first three months of operation, which was --

A. Yes, that was '89.

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CHAIRMAN: Sorry, beg pardon, '89, I mistook my date.

A. Sorry, Chairman, in 1989 as I say, I don't think we would have had TAM ratings as they were at that stage because the station was new. Obviously we all knew it would have to build an audience and, but I mean to build an audience --

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CHAIRMAN: Whether you call it TAM ratings or not, you were getting a feedback through your sales staff that yo

weren't getting, you weren't attracting advertising, basically because you hadn't got an audience. Now, it may be that you hadn't got an audience in the sense you hadn't extensive coverage, that's a different matter, I am not going into that, that depends on an entirely different premise.

A. That was one of the factors.

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CHAIRMAN: But you also appear not to have attracted an audience in the first instance?

A. Well, Chairman, it is very debateable as to what audience you would hope to attract in the first three months of a completely new scenario, for example Today FM which is quite popular today, I think they started off at about 4 percent of the audience.

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CHAIRMAN: Okay. So-be-it. Perhaps I shouldn't have intervened, however, I just want to clarify something in my own mind, what an alternative view is. Right. Thank you.

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188 Q. MR. HANRATTY: Just to pick up one of the points made by the Sole Member; I think it is true to say that there was a decision to increase the rate card before the end of 1989, is that right?

A. I don't recollect that, Mr. Hanratty, but normally coming into the Christmas period in radio advertising, the market would be a bit more buoyant. RTE would be full, they couldn't take on any further advertising and maybe on the foot of that we decided to increase the rate card, but I

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don't think I would be part of that decision.

189 Q. My recollection is, and I stand subject to correction, that there was such a decision, but that the advertisers wouldn't pay it on the grounds, I believe, that there wasn't sufficient audience to warrant it?

A. That may be so, Mr. Hanratty, yes.

190 Q. But going back to the 18th, sorry the 19th of December, what I asked you was: Was there any discussion between yourself and Mr. Stafford as to whether or not the subject of the Minister coming to meet Century's bankers should be broached with the Minister when you met him?

A. I can't recall that. As I say, I can't remember how that meeting was convened.

191 Q. The gist, as I understand it, of Mr. Stafford's evidence was that the relationship with the Minister, if I may use that phrase, was with you. You were the one that was a friend of his, you were the one that met him on a regular basis, he didn't really know him that terribly well in that sense?

A. That's absolutely true, Mr. Hanratty.

192 Q. And that the point of contact with the Minister was primarily you, albeit he undoubtedly did meet the Minister himself also from time to time?

A. Obviously I was the point of contact with the Minister, I would have met the Minister far more times than Mr. Stafford ever did. I am not saying that each time I met the Minister I discussed Century Radio with him, because we were friends, we were political friends, I was a political supporter, and when it came to the business end of things it was Jim Stafford who usually made the running on those

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situations, if you like. He was a close friend of mine and it was, when I say "a close friend", he was a man that I had met regularly on social occasions and political occasions during elections etc., and it wouldn't be always, say business I would be discussing.

193 Q. Undoubtedly so. But when it came to business, presumably you would be, your representations would be falling on receptive ears?

A. Without a doubt. But not alone with Minister Burke, I am saying to you that we lobbied the Minister, we lobbied - I better not name the other politicians.

194 Q. No.

A. We lobbied the PDs, Fine Gael, we lobbied Labour, we lobbied anybody that we could get the ear of at the time, I suppose explaining that we were going through difficult times and that we needed maybe some political support to ensure the future of Century.

195 Q. But, at this particular meeting, while it manifested itself in the form of yourself and Mr. Stafford coming to the Minister with a very serious problem, the problem essentially was the problem of Century Communications Limited, that was the company that was about to go into liquidation?

A. That was the problem, oh, yes, no doubt about that.

196 Q. And it was the business of this company that was in difficulty?

A. Yes.

197 Q. And it was this company in fact, on the evidence you have given us before, that in fact made the donation of ú35,000 to Mr. Burke in cash, albeit handed to him by you in May of



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1989, isn't that right?

A. That's correct, Mr. Hanratty, yes.

198 Q. Your evidence was to the effect that while you handed over the cash, that you made this payment on behalf of Mr. Mulhearn and on behalf of Mr. Stafford, and on the basis that it was to be a donation from Century Communications Limited?

A. Well, it was a donation say from the three promoters.

199 Q. Yes. And in addition to that, you yourself had provided services to the Minister in his own constituency during the course of the mid-year election campaign?

A. I had.

200 Q. And you have already told us that that manifested itself in the form of being present in the constituency at times, providing vehicles and whatever, the kind of things people do provide to people at election time?

A. Yes, I wouldn't have been present myself maybe, but people I would have hired to do so or staff of mine would have helped, yes.

201 Q. Would you have provided vehicles?

A. Yes.

202 Q. And would you hire those vehicles?

A. No, they would be vehicles belonging to the staff or maybe my own car, whatever vehicle was available on the day, just on election day.

203 Q. And so when you came to Mr. Burke on the 19th of December indicating to him that you had a problem, you would have expected, presumably, that Mr. Burke would be receptive to your difficulty?

A. Not really, I would have respect and regard for his

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position as Minister, and that he would have to look at it from, you know, from his own point of view.

204 Q. You would have been rather disappointed, I suggest, if he had told you that there was nothing he could do about it, that Century was going to have to stand on its own two feet, after having given him the ú35,000 and having provided such extensive assistance to him in his election.

A. In hindsight wouldn't it have been the best thing he ever did? That we went belly up in December of '89. The trauma that I went through after that and the financial losses I incurred after that, I would have been spared it, but hindsight, I suppose, is a great thing.

205 Q. Well, Mr. Burke could reasonably suppose, could he not, that you would have been extremely disappointed, to say the least, if he had told you that you were going to have to stand on your own two feet?

A. I don't think Mr. Burke would take my disappointment that seriously at all.

206 Q. When did Mr. Burke actually agree to attend this meeting with the bank?

A. As I said, Mr. Hanratty, you keep asking me the same question, and, Chairman, I am sorry again here, I cannot remember and I don't want to be evasive about it, it is a long time ago. It was a traumatic time for me. I have had umpteen meetings since then. I have gone out of my way to put the whole Century thing out of my mind, in the past, forget it, it is over. It is like the Titanic, it is gone under and move on with the rest of life.

207 Q. Well, we know that the meeting he did attend with the bank

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occurred on the 22nd of December. Did you have any discussions with Mr. Burke between the 19th of December and 22nd of December?

A. I hate saying it again, Mr. Hanratty, but I don't remember. Chairman, I hope you are understanding of my position here, because it is - I would hate to be coming over here in this, under oath here as being hedging in anyway. If I can't remember, I can't remember. If I do have some recall I will assist the Tribunal with the recall, but I don't have any recollection of the meetings prior to the meeting with the bank and how the meeting was convened. And I have, only some recall of the meeting with the bank.

208 Q. Would you agree with me that it was obviously considered important that he should meet the bank to provide certain reassurances to them?

A. No doubt.

209 Q. And it was important both to yourself and Mr. Stafford that he should meet the bank, apart from the bank having a view that it was important that they should receive this?

A. It was important to Mr. Stafford and to myself, it was important to all of our investors, all of our staff, it was important to a lot of people.

210 Q. Did you have any discussions with Mr. Burke on your own, without Mr. Stafford being present in relation to a possible meeting with the company's bankers?

A. I can't recall that, Mr. Hanratty. No, I can't recall that I did. I would say if it was to do with the bankers normally Mr. Stafford would be present with me.

211 Q. We know that you went along to the meeting with the

Minister or between the Minister and the bank, isn't that right?

A. Yes, that's correct, yes.

212 Q. Do you remember that?

A. I - faintly.

213 Q. Well, do you remember going along to the Minister's office?

A. I can't remember the venue actually.

214 Q. You can't remember where the meeting was?

A. No.

215 Q. Well, can you remember that it wasn't in the bank?

A. It wasn't in the bank admittedly, yes.

216 Q. And can you remember that it wasn't in Century?

A. It wasn't in Century, so - I am not disputing the Minister's office. If it was in the Minister's office, it was in the Minister's office.

217 Q. But you can't remember where it was?

A. In the Minister's office, not exactly, no.

218 Q. Can you remember who was there?

A. I can remember that the Minister was there, and I can't remember Bernard McDonagh being there, but I believe he was there. Jim Stafford was there, and I think there was at least two or three bankers there.

219 Q. And Mr. McDonagh wasn't there?

A. I can't recall him being there, but I think previous evidence has said that he was there.

220 Q. No, the evidence of Mr. McDonagh himself, and subject to correction, I think also Mr. Stafford, is that he wasn't there?

A. Okay, I accept that.

221 Q. Did you consider anything unusual about the fact that the

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Minister was meeting outside parties, shall we say, and their bankers without the presence of a civil servant?

A. No, I didn't really. I thought - no, I didn't.

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CHAIRMAN: Well may I inquire, did you consider it was a private meeting? I mean, sorry I better indicate what I mean by that - a Minister will meet a number of people in the course of his work, which I consider official business. Did you consider this was a private meeting, basically because you were a friend of his?

A. It has nothing got to do with my friendship at all with the Minister, why this meeting took place. I would say a crisis meeting, a private meeting and a meeting with the comfort - the bank not to foreclose on the company. It was a business meeting.

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CHAIRMAN: Would you have been upset or something less than upset, if a minute had been made of this meeting and put on the Departmental file?

A. I wouldn't be upset about it, Mr. Chairman. Sorry - no I wouldn't - no. I think that if an enterprise like that is in crisis, what does one do? They try and go to the powers that be to try and get some help or assistance or guidance, they just don't lie down and die without doing anything.

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222 Q. MR. HANRATTY: But at least, as I understand what you have said, was that the purpose of the Minister agreeing to meet the bank was to give comfort to the bank so they wouldn't foreclose?

A. Without a doubt, yes.

223 Q. That was your understanding in advance of the meeting as to what the Minister would do?

A. I didn't know what the Minister was going to do, but obviously we thought that if the Minister would meet the bank, that the bank would be happy as a result of some assurances that the Minister may give them at the meeting.

224 Q. Well, what was your understanding in advance of the meeting, as to what the Minister would do or say to the bank when they came to his office?

A. I didn't know in advance.

225 Q. Well, what was your understanding then of the purpose of the meeting before it happened?

A. That the Minister was going to give them some comfort that the future of Century was viable.

226 Q. But we know that at the meeting of the 19th in the afternoon at which Mr. McDonagh, the Secretary of the Department, was present, was that the Minister turned around and instructed Mr. McDonagh to cap RTE's advertising?

A. If that's the case, that's the case, yes.

227 Q. And if he did that, it would seem then that your perception as to what the Minister was going to do in relation to giving comfort to the bank was to tell them that he had given this instruction or made this decision, so that they could be, as it were, comforted by this information?

A. Yes.

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CHAIRMAN: Sorry, I wonder can I intervene again just for one final time? To whom - I am going back to the meeting with the bank, to whom did you consider that the benefit of

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that meeting would accrue?

A. To - well, obviously Century Communications Limited, hopefully. There was no point in calling in our bankers unless they got the comfort, that Century were going to benefit in some way as a result of the Minister in charge

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CHAIRMAN: Would you accept that Century was the only person to whom a benefit could, the only body to whom a benefit could accrue?

A. From - well, at that particular meeting I didn't know what the Minister was going to suggest, but certainly the suggestion that he made about the capping of RTE, benefitted all of the independent broadcasting and also benefitted the newspapers, so the benefit of capping wasn't exclusively a benefit to Century Radio, Chairman.

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CHAIRMAN: Thank you.

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228 Q. MR. HANRATTY: But am I not correct in thinking that the suggestion of capping RTE's advertising came in the first instance from Century, not from the Minister?

A. I think - I am open to correction here - I think the capping was mentioned in the middle 80s by the National Newspapers of Ireland because of the unfair advantage that they perceived RTE to have because of the license fee, but I am open to correction on that, Mr. Hanratty.

229 Q. Yes. No, I think it was correct that they made an application to the Department around that time, perhaps 1986/'87 but that was dealt with and a decision was made

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that there would be no such capping. But I am talking now about 1989, I am talking about the end of 1989, and what I was suggesting to you was, and you correct me if I am wrong, that the suggestion that capping of RTE's advertising for the benefit of Century came from Century, not from the Minister?

A. I wouldn't agree with you totally there. I think the suggestion of capping may have come from the Minister.

230 Q. Really? And why do you say that?

A. Because I say he wanted to assist independent broadcasting in general, and even though as you say, the NNI didn't succeed in getting in capping, I think they were still a pretty high-powered lobby group, and they were still say knocking on the Minister's door to do something about RTE's advantage in the market-place of advertising.

231 Q. Well, there is no indication that this was a live issue at all in 1989 up until when it arose in this context in December. It was, as far as all of the Departmental documentation would suggest, a dead issue by then. So what I am trying to explore is, on what basis do you suggest that it was the Minister who came up with the idea at the end of the 1989 of capping RTE, as opposed to Century coming up with the idea?

A. As I say, Mr. Hanratty, I am not definite about it and I am not disputing for one minute that it wasn't probably one of the solutions that Century put forward.

232 Q. Well, given that we know for a fact, that Century Communications had taken the step of seeking specific legal advice from its solicitors, as to the powers of the Minister for capping, and in fact had received that advice



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in an opinion dated the 30th of November. The opinion was in fact to the effect that he didn't need legislation to do so, and given that that advice or copy of that opinion was at Mr. Stafford's request faxed to him on the 19th of December, which is the date that you met the Minister, would that not give you an indication as to which side, as it were, might have first suggested capping as a solution to Century's problem?

A. I wouldn't dispute what you are saying at all, Mr. Hanratty, no.

233 Q. Doesn't that point to the conclusion, if I put it no higher than that, that the suggestion came from Century and not from the Minister?

A. As I say, I can't give you a cut and dried answer to that, Mr. Hanratty.

234 Q. In the absence of any recollection on your part, and in the absence of anything else to inform you, would you not agree that it would seem to point to that conclusion?

A. I am not disagreeing with you there, but I think that we had other solutions for Century at the time, like we were hoping maybe we might get some of the RTE license fee because of our news room, because there was a high cost of the news room. I think at one stage we floated the idea that maybe we would be entitled to maybe a small piece of the RTE license fee, and I think from memory that Jim Mitchell was reasonably favourable towards that. So any help we could get in the form of capping, license fee, or whatever, we would be very happy to take it at that time, to survive.

235 Q. It is true to say, is it not, that at this point in time,

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one of the major issues within the company was controlling costs?

A. Yeah, we were over-staffed definitely, and there is no doubt about that, and I have to say that Century was very much its own, at fault there itself, within the company, no doubt about that.

236 Q. Over-staffed and I suggest, that the costs in relation to even essential staff were excessive?

A. The costs, Mr. Hanratty, in hindsight were way out of line. Our legal costs I think, to get the two contracts negotiated with RTE and with the IRTC, again this was more or less Mr. Stafford's area because he hired the very big company called Arthur Cox to negotiate those two contracts, and from memory our legal costs were in excess of half a million pounds.

237 Q. But looking at the costs within the company, I think it is true to say that fairly swinging cost-cutting measures were being taken in December at the insistence of the banks?

A. Certainly in January, because I was part and parcel of that myself.

238 Q. Well, it was the subject of the discussion in a number of memoranda prepared by Mr. Laffan and Ms. Hynes in December as well?

A. I think it was probably only implemented really in January and February and March of the following year and I was part of the --

239 Q. And obviously one of the problems within the company is that the outgoings were on a progressive basis, substantially in excess of the income?

A. That was definitely the problem, yes.

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240 Q. One of the pieces of the information which the Tribunal has received was that Mr. O'Neill was on something of the order of €120,000 per annum, isn't that right?

A. Well I mean, we interviewed, we got - again we spent huge money in recruiting staff. We hired a headhunter and he was, I think €100,000 were his fees. And then we ended up with Michael Laffan, who was a Chief Executive. I felt myself he would have been sufficient, but Mr. Stafford had a strong leaning towards Seamus O'Neill because he was the sales expert, if you like, and had a fantastic reputation with the Irish Times. He had built up the Property Section in the Irish Times from nothing, and then we ended up with say two people at a very, very high level. As you know, Mr. Hanratty, both of them were paid large sums, "hello money", so there is no doubt we got all of our costs wrong.

241 Q. They were paid "hello money", but their salaries were also extremely high by the standards of the day?

A. Without a doubt, it was crazy.

242 Q. And we are not suggesting for a moment that Mr. O'Neill was not worth €120,000, the Tribunal has heard, for example, that his counterpart, Mr. Molloy in RTE, was on approximately a third of that salary?

A. Mr. Hanratty, we were totally wrong there, we got it all wrong there. I remember interviewing these gentlemen, with Laurence Crowley and with Jim Stafford, and when Michael Laffan came before us for the interview both gentlemen said he was the new Tony O'Reilly in Ireland and he was worth any money, so we got it wrong.

243 Q. Would it be also true to say at this time, particularly I am talking about the end of December and going into

00100

January, that there were management problems beginning to develop as well?

A. I agree, all over the place, you can imagine - at the top it is wrong, Michael Laffan was Chief Executive, Seamus O'Neill was Mr. Stafford's man, if you like, and that was even shaky at the top. It was a total disaster.

244 Q. And Mr. O'Neill was telling us that ironically one of his difficulties was at a time of serious cost-cutting not only was he not getting more money to market and sell the company but less money was becoming available to him?

A. There was no money available, Mr. Hanratty. I think we tried to rectify the problem, I suppose really in the light of a new enterprise the only, and I am not saying we didn't make a lot of mistakes, but I feel that after three months, especially with pressure from the bank, we went in and we were very severe with our cost-cutting in January, and we had unfortunately, and this was very traumatic time for me as well, because I had known a lot of these people, lots of people were hurt because they lost their jobs. I would say in the space of about three months we cut the staff from say 70 down to 35 or 40 and the bank were pleased about that.

245 Q. But these staff who had to be let go, a number of them, particularly in the management team, had been taken on only a few months previously on contracts?

A. Mr. Hanratty, I was the man that had to go in and do it, and believe me it was not a pleasant task.

246 Q. Was Mr. Laffan told any of this, or Mr. Burke when he was asked on the 19th of December to cap RTE's advertising?

A. I am sure if the bank were present we said "Look, we have

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to cut back here drastically." I always had a view, especially with my experience in RTE when I was on the Board there, that 2 FM was run with a much lesser staff and instead of 70 I felt Century Radio could have been run, and it was proved later, could have been run and should have been run with maybe about 35 or 40.

247 Q. 2 FM I think was a pure music station?

A. A pure music station, yes.

248 Q. And we have been told that a pure music station is a much cheaper operation than a talk station?

A. We weren't a talk station either, let's be honest here, we had to go to the Irish language, had to meet the Irish language on a regular, you know, news As Gaeilge three or four times per day, that was a high cost to us. We had to look after our news room, but we were playing music then for, I suppose roughly speaking 50 minutes or 45-minutes per hour.

249 Q. But there was a talk show in the morning which was intended originally to in fact - originally it was intended to be Gay Byrne's show but subsequently it was intended to compete with Gay Byrne's show?

A. That was a mistake. But that was a programming mistake, invariably in a situation like this where you are trying to get - I can say from my own concert promotion experience, there is trial and error here, you try and get the best experts you can in, then you have to go to the market-place before you know it is going to win audience or not.

250 Q. Well, it appears from some of the entries in the bank documents when various problems of the company were being discussed, that there was perhaps, and perhaps with the

00102

wisdom of hindsight, lack of clarity in programming policy. On the one hand you had this talk show in the morning which was aimed at a somewhat different market than music stations, and yet the remainder of the station was intended to be a music station or the remainder of the programming was appropriate to a music station in the way it fell between two stools?

A. That's correct, and maybe we were aiming at housewives in the morning and Gay Byrne was so strong, it was probably a wrong tack to take.

251 Q. Does this really bring us back to the point that was made a few moments ago by the Sole Member, that capping of RTE's advertising was not going to solve these particular problems?

A. No, we would have to - capping of RTE's advertising wasn't going to solve any programme deficiencies that we had. But like anything, you would hope that you would improve your programming as you build audience and you switch and you change and chop around, that's inevitable and that even happens today.

252 Q. Well, was Mr. Burke on the 19th of December told anything about this whole range of issues that undoubtedly contributed to the difficulty which the company then found itself in?

A. I can't remember.

253 Q. And was he told anything at all other than RTE was engaging in abuse of its dominant position?

A. I don't remember, but I imagine if, as you say we had serious discussions within the company about our costs running far in excess of what they should be. I am sure we

had to tell the bank, and the Minister was there, that we had to cut back, cut our cloth back down to our measure.

254 Q. There is no indication, in the case of the meeting with the bank, that there was any discussion about the internal problems of Century, or indeed any other problems, and the matter fairly closely confined itself to an assurance which the bank were expecting to receive from the Minister.

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If we can perhaps just refer to the bank's minute of that meeting on page 28. Sorry, it is 2147, 2144. This is a typed transcript of the handwritten note of the meeting. 2114, yes.

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And it is recorded there: "Minister for Justice, Communications, Mr. R Burke; James Stafford; Oliver Barry; Joe Maguire; Michael Connolly; P O'Donoghue."

A. Yes.

255 Q. "Minister confirmed:

1. Government commitment to independent radio and intention to eliminate RTE's excesses in recent months. Will limit their advertising either by way of Ministerial Order (Attorney General examining this at present) or legislation. Legislation will be initiated immediately post Christmas. Will try to get it through by Easter but at worse by summer recess.

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2. Talking to radio authority re: sharing of news between independent spend stations. Aware of cost impact to Century of present stand-alone system.

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00104

3. We asked Stafford/Barry to leave meeting for a few minutes. During this Minister confirmed commitment to Century (rather than just all independent stations in general)."

A. Yes.

256 Q. Now, can I ask you first of all, can you remember going to the meeting?

A. I can't, no.

257 Q. Can you remember meeting anybody outside of the Minister's office before you went into his office?

A. I can't, Mr. Hanratty, no.

258 Q. You have already told us that you can't remember where it actually was. Can you remember meeting the persons from the bank either before you actually met the Minister or after you had met the Minister?

A. I can't, Mr. Hanratty.

259 Q. Can you remember the discussion which appears from this minute to have taken place concerning RTE's excesses?

A. I can't remember this being discussed at the meeting. The best shot I would have is, if you want me to explain that, is that what you are asking me to do?

260 Q. Well, yes.

A. What I would gather there is that - but I mean I am not sure, I don't want to be running, you know, falling out with RTE over any comments I make here, that's not my intention at all. Obviously there was a view there that maybe RTE were exceeding their advertising per hour, minutes per hour, and taking in extra advertising but that's only a guess and I am not sure about it, I have --

261 Q. Well, nobody else has ever made that suggestion, that RTE



00105

were exceeding their then existing limit?

A. Well, they certainly exceeded it after the capping.

262 Q. Yes. We are talking about before the capping the end of 1989?

A. As I say, I am not, as you say, suggesting it, I am not definite about it.

263 Q. Are you saying that they did?

A. Oh, I am not, no. I wouldn't have absolute proof of that.

264 Q. Do you have any evidence at all of any kind whatsoever?

A. I think that's unfair, Mr. Hanratty.

265 Q. Sorry, you are the one that raised it.

A. I said to you the only explanation I can give you about excess is, off the top of my head, is that RTE may have been exceeding the minutes per hour that they were allowed, that's all, and it is only pure speculation on my part, no more than that. What other excesses could we be referring?

266 Q. Did somebody say this to the Minister?

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

267 Q. Did somebody make an allegation at the time that RTE was exceeding its then current limits?

A. I don't know.

268 Q. Mr. Barry, nobody has ever mentioned this before today, and it is a fairly serious suggestion to throw out, unless there is some basis for it?

A. I have no basis for it, unless - I am trying to think of other excesses RTE could be accused of.

269 Q. Let's stay with this one, this is now an allegation.

A. It is not an allegation. I withdraw it, Mr. Hanratty.

270 Q. You withdraw it?

00106

A. Yes, I have no proof.

271 Q. All right. Can I put to you on that subject the evidence we have heard from RTE in relation to what they did.

.  
They said, first of all in relation to pricing, their rate card increased in each of the three-years Century was in existence. This was in response to the allegations which apparently Mr. Stafford made that they had engaged in predatory pricing?

A. My recollection of that is that what happened over three-years I can't, I can't comment on, but certainly our sales people informed us after the first month or so, that RTE were offering attractive packages that they hadn't been doing prior to Century coming on air.

272 Q. They - RTE's evidence in relation to that was they offered the same incentive packages, which were basically package deals for buying in bulk for FM 2, that they always did?

A. I have no intention of going back and fighting the battle with RTE again, maybe what RTE are saying is too - all I am telling you is what our sales people conveyed to us, that's the basis for my comment.

273 Q. I understand completely, and I don't particularly want you to fight the battle again. What I am seeking to understand is whether there was any bases for any of these allegations. We know that certain allegations were made to the Minister on the 19th, and we know that on the 19th he made a decision to instruct Mr. McDonagh, and did instruct Mr. McDonagh to cap RTE's advertising. What I am trying to find out is, is there any independent evidence to substantiate the suggestion that in some way RTE was

00107

responsible for the difficulties Century was having as opposed to Century itself, if you follow my meaning?

A. As far as I know there was no independent evidence of that.

274 Q. Yes.

A. We relied on our sales people and management team to, for their opinion on it.

275 Q. Yes.

A. Michael Laffan and Seamus O'Neill.

276 Q. One of the things that RTE did do specifically in response to the fact that they were entering into a competitive market was that they ran a campaign based on Gerry Ryan for FM 2, but unfortunately they ran it in May in the mistaken belief that Century would be up an running May, whereas in fact they didn't come up and running in September, with the result that their campaign didn't coincide with the launch of Century?

A. Yes.

277 Q. In any event, we have dealt with that in your previous answer.

.

Going back to the meeting then, it says: "Will limit their advertising either by way of Ministerial Order", and that the Attorney General was examining that at present.

.

Now, that's precisely the question or one of the questions considered, was it not, in Mr. Fanning's opinion when he was advising Century on what the options were and what the powers were of the Minister to cap advertising, isn't that so?

00108

A. Yes.

278 Q. Whether or not legislation would have to be brought in or whether it could be done by Ministerial Order?

A. Yes.

279 Q. And in fact, for some reason or other, possibly at the suggestion of Mr. McDonagh, it was decided that the Attorney General's opinion ought to be obtained on the subject?

A. If that's what it says there, yes. Yes.

280 Q. We know from subsequent documentation that his opinion was in fact sought in January?

A. I don't remember that, Mr. Hanratty, no.

281 Q. It says: "Legislation will be initiated immediately post Christmas. Will try to get it through by Easter but at worse by summer recess." This appears to be indicating that the Minister assured the members present from the bank that he was bringing in this legislation, that he had made this decision and this would be done?

A. Yes.

282 Q. There is then a reference in the second paragraph to the question of the news sharing between independent stations, and then in the third section it refers to the fact that yourself and Mr. Stafford were asked to leave the room for a few minutes so that the persons from the bank could have a private conversation with the Minister. Do you remember being asked to leave the room?

A. I don't, no.

283 Q. It would, in normal circumstances, be a memorable sort of a thing?

A. It would be very unusual.

00109

284 Q. The fact that you were present with people and asked to leave?

A. I don't remember it, Mr. Hanratty. I am not saying it didn't happen, of course.

285 Q. Yes. So, again you really don't remember anything at all about this meeting?

A. No, other than that the Minister did meet the bankers and that he did give them some comfort that kept them off our backs, let's say, for a short period.

286 Q. Well, we know, for example, that, from the documents that we are about to start going into, mostly minutes of meetings that you had with Mr. Stafford and the bank, that it was, the subject of the progress of the legislation was the subject of constant review between the lot of you?

A. Oh, yes, the bank, yes, they certainly did, yes.

287 Q. We also know that the future of your investment of 275 odd thousand pounds rested on the outcome of this meeting --

A. Of this --

288 Q. -- between the Minister and the bank?

A. Yes.

289 Q. If the Minister had got given this assurance to the bank that would have been the end of Century?

A. That would have been the end of Century, and its an awful pity it didn't happen.

290 Q. But again, and I am sorry for being repetitive, Mr. Barry. I would have thought that's the kind of meeting you would not easily forget?

A. I admit that. As I said to you, it is a long time ago, I have gone out of my way over the past ten years to put the whole Century debacle out of my life. If I could help or

00110

assist the Tribunal in anyway by remembering the meeting I would only be too happy to do so.

291 Q. We know that the bank wrote two letters in fact to Century Communications on the 3rd of January of 1990, and if I can refer firstly to page 2142? This one is signed by Mr. Gallagher and he is the Area Credit Manager for Bank of Ireland and he says --

A. I know him well. He used to put me into the Intensive Care Unit.

292 Q. And I think you also know Mr. O'Donoghue who was your local Manager?

A. A gentleman.

293 Q. Mr. Gallagher says in his letter:

"I refer to our letter dated the 3rd of January, 1990, and subsequent discussions as a result of which the overdraft facility was allowed to continue in place at a level of ú1.4 million.

.

This letter will confirm approval for an additional ú100,000 overdraft to Century Communications Limited, subject to the bank's usual terms and conditions. The overdraft facility is repayable on demand.

.

The rate applicable is the bank's AA overdraft rate, currently 14.75 percent. This rate is subject to variation at the bank's discretion.

.

This additional approval will bring total overdraft/BI commercial finance limits to a level of 1.5 million pounds. Additionally, the guarantees in favour of RTE and

00111

Bord Telecom will remain in place.

.

Approval of the additional ú100,000 facility is subject to the provision of individual Letters of Guarantee for ú50,000 each from both Oliver Barry and Mr. James Stafford.

.

In addition, the existing security held by the bank will continue to be available to the bank for all the above-mentioned facilities.

.

To signify your acceptance of the terms and conditions outlined, please have the attached duplicate Offer Letter signed on behalf of Century Communications Limited by two of the directors."

.

I think that letter and some of the contents of that letter, and indeed the following letter, were a subject of some dispute between Century and bank, and particularly Mr. Stafford and the bank in subsequent meetings, isn't that right?

A. I am sure, yes.

294 Q. Mr. O'Donoghue said: "I refer also to the bank's Offer Letter of the 3rd of October, 1989, accepted by the company by way of Board resolution dated the 1st of November, 1989. The company has provided the internal financial statement to the bank which includes profit and loss and balance sheet information for the period 26th of November, 1989.

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Based on this information it is the bank's judgement that a material adverse change has occurred in the financial circumstances of the company which affect its viability -"

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That, I think, is the trigger mechanism for the bank being able to call in the loan in effect, isn't that right?

A. Yes.

295 Q. "Therefore, in accordance with the terms of our Offer Letter the facilities as approved in that letter are now cancelled, without prejudice to the bank's right to seek immediate payment of all amounts drawn together-"

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It also goes on: "- to deal with this situation at our meeting on Thursday the 4th of January of 1990."

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Now, I think it is probably fair to say the bank were, in effect, positioning themselves in the new situation in which they perceived themselves to be, obviously to their own advantage?

A. Yes.

296 Q. The letters don't make any explicit reference to the meeting that they previously had with the Minister, isn't that right?

A. They don't refer to that, no.

297 Q. Incidentally, nobody in Century appears to have taken a minute or note of the meeting with the Minister either, either the meeting of the 19th of December or the subsequent meeting on the 22nd with the bank officials and the Minister?

A. If that's the case, that's the case.



00113

298 Q. Is there any reason why no note or minute was taken of these meetings given the importance?

A. I would say the main purpose of the meeting was to satisfy the bank. If they were reasonably happy we had our mission achieved, I suppose.

299 Q. Now, there was a meeting with the bank on the 19th of January, page 2140?

A. This is torture, I can tell you, going through all these meetings with the bank at that time, but we will have to go through it, I suppose, Mr. Hanratty. It is not pleasant reading for me.

300 Q. Well, I am sorry about that, Mr. Barry, but I have to just put these matters to you and give you an opportunity of commenting on them.

A. I understand. I understand, yes.

301 Q. At this meeting there is a reference at the bottom of the page to where it says: "Barry and Stafford have both met with Taoiseach who has reassured them of the Government's commitment to independent radio."

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Now, do you remember meeting with the Taoiseach in January of 1990?

A. No, whose letter was this?

302 Q. This is a memorandum taken by the bank of a meeting between the bank officials, Messrs. Connolly, Gallagher, McHale and O'Donoghue with yourself and Mr. Stafford?

A. I don't remember meeting the Taoiseach about the matter, no.

303 Q. We know, since the memo was taken on the 19th of January, that the meeting with the Taoiseach must have taken place

00114

sometime prior to that?

A. Yes.

304 Q. You have no recollection of the meeting with Taoiseach, Mr. Haughey in, it was Mr. Haughey at the time, I presume it was, in January of 1990?

A. I don't have a recollection of meeting him, no, but it is possible that I did meet him.

305 Q. Well, what it says is: "Barry and Stafford have both met with the Taoiseach who reassured them of the Government's commitment to independent radio."

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Now, obviously this was a meeting, if this note is correct?

A. Could you tell me the source of this note again, Mr. Hanratty, please?

306 Q. Do you see the last sentence?

A. I am looking at the screen here.

307 Q. Yes, on screen?

A. What's the source?

308 Q. The three last lines of the page?

A. The source?

309 Q. Bank of Ireland.

A. Sorry, yes.

310 Q. 2141, bottom of the page?

A. Yes.

311 Q. You will see it is signed by Mr. McHale, Credit Department, Dublin, and dated 20th of January, 1990, although referring to a meeting which had taken place on the 19th. You have a hard copy now?

A. Yes.

312 Q. On the bottom of the first page is this reference: "Barry

00115

and Stafford have both met with the Taoiseach who has reassured them of the Government's commitment to independent radio."

A. I don't think I ever met the Taoiseach with Jim Stafford about Century Radio.

313 Q. It says here you did?

A. I have no recollection of it, I am sure I would remember that one.

314 Q. Did you have a meeting with the Taoiseach without Mr. Stafford being present?

A. I had a meeting, I met with the Taoiseach but not about Century Radio, as far as I know.

315 Q. Well, it is clear from this note that the bank were told by somebody, either yourself, presumably, or Mr. Stafford, that both of you had met the Taoiseach and that he had reassured both of you?

A. But this is not from, this is not a bank - I am trying to - who wrote this? What's the source of this?

316 Q. Mr. McHale wrote this?

A. Sorry, I have no recollection of this.

317 Q. He wrote this as a memorandum of what transpired at a meeting between yourself and Mr. Stafford with the bank on the 19th of January of 1990, if you look at the top of the first page?

A. Yes.

318 Q. It says "Re: Meeting at Credit Department."

A. Maybe there was a misunderstanding, I know Mr. Stafford met with Mr. Haughey regarding Century, whether it was before or after that I don't know.

319 Q. We know the meeting referred to, whoever was at it, must

00116

have taken place prior to the 19th of January?

A. Yes.

320 Q. Because this meeting was on the 19th of January at which this statement was made?

A. Yes.

321 Q. Well, let's just look earlier in the paragraph. It says:

"In his absence" - this is the Attorney General's - "On the programming side the company are presently examining the rate card with a view to improving packages.

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With regard to the Attorney General issue, his views will not be known for a further week. In his absence the company have taken legal advice from two Senior Counsel, Hugh O'Flaherty and Colm Condon, both of these hold the view that the Minister can give a directive and will not be required to introduce legislation to bring RTE into line. O'Flaherty's opinion was particularly strong, and his view is the Minister has a legal obligation to provide a level playing field.

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Barry and Stafford have both met with the Taoiseach who has reassured them of the Government's commitment to independent radio."

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Now, do you remember having a conversation with the bank about an opinion which the company had received from Messrs. O'Flaherty and Condon?

A. No I don't, but I am not saying, if we went to the trouble of getting an opinion from them I am sure we showed it to the bank.

00117

322 Q. Well, do you remember getting the opinion?

A. No I don't, that would be more Jim Stafford's area.

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CHAIRMAN: I think we will just take a very short break.

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MR. HANRATTY: Yes, Sir.

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

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MR. HANRATTY: Mr. Barry, please.

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

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MR. HANRATTY: Sir, the questions immediately before the  
break related to whether or not the witness met, had a  
meeting with Mr. Haughey, and there is a matter which -  
this is a matter which was raised at a private meeting in  
the Tribunal, and in the circumstances I would ask for  
leave to put to the witness the information which he gave  
on a previous occasion to the Tribunal?

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CHAIRMAN: Very good.

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323 Q. MR. HANRATTY: The relevant extract from the transcript of  
that meeting has been circulated to the appropriate  
parties, Sir.

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Mr. Barry, I just want to remind you in relation to the

00118

evidence that you gave us a few minutes ago, that on the 10th of November, 1999, a discussion took place between yourself and members of the Tribunal legal team in Dublin Castle, isn't that right?

A. 10th of November?

324 Q. Of 1999, and - I will just give you a copy of the extract from the transcript. (Document handed to witness.)

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CHAIRMAN: Sorry, have you got the date right?

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MR. O'CONNOR: I wonder could we clarify that date?

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CHAIRMAN: 26th of June.

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325 Q. MR. HANRATTY: Perhaps if you just give me a moment, Sir, I will check the date? We might have been taking the date from an earlier transcript. Yes, it is the 26th of June, 2000. There is a date written on the top of the page, Mr. Barry, which is incorrect. It should be the 26th of June, 2000?

A. Yes.

326 Q. And can I ask you not to deal with anything up to Line 5.

But on Line 6 it says, the question is: "Did you ever have any discussion with Mr. Haughey in connection with the license and the difficulties with RTE?"

Answer: I had, I had and I got no satisfaction."

A. Yes. Oh, yes, yeah.

327 Q. What - do you want to elaborate on that?

A. Yes, I did have a meeting with Mr. Haughey, I apologise for that. I think I said Mr. Stafford and myself. I did have

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a meeting with Mr. Haughey I think in, at some stage, and it was a very brief meeting and he told me he could be of no assistance.

328 Q. Well --

A. So I apologise to you for neglecting to tell you that. It was nothing intentional.

329 Q. The question was: "Did you have a meeting with the Taoiseach without Mr. Stafford being present?" And the answer you gave was, "I had a meeting. I met with the Taoiseach but not about Century Radio, as far as I know."

A. Yeah.

330 Q. That's what you said earlier today?

A. I was incorrect, I withdraw that, Mr. Hanratty.

331 Q. Well now, it goes on to say, you said: "I had, and I got no satisfaction.

Question: In what sense?

Answer: Semi-State, it should be easy with Semi-State bodies, it should be easy for commercials to take them on.

Question: Yes. What were you asking him to do?

Answer: I was asking him to help independent broadcasting. I went to Mr. Haughey, Alan Dukes, Jim Mitchell, Dessie O'Malley.

Question: It was, I understand, Government policy at the time to encourage development of private or commercial radio competition to RTE both at national and local level?

Answer: Yes.

Question: But what in particular would you have liked Mr. Haughey to do, for example?

Answer: To use his influence with the Department, and Burke to give us a break with the ball.

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Question: "Level the playing pitch" I think was the saying at the time?

Answer: Yes, it was, lobbying, yes.

Question: Yes, by doing what?

Answer: I mean Terry Wogan had a view that 2 FM should be closed. His view was that there was pirate radio there. 2 FM was set up to combat pirate radio. Now pirate radio ceased -" And then there was an interjection.

It does appear that, Mr. Barry, you did in fact have a discussion with Mr. Haughey and you had such a discussion in relation to Century Radio?

A. Yes it does, yes.

332 Q. When was that discussion?

A. I can't remember to be honest with you. As I say, it must be prior to this letter that you showed me.

333 Q. Well, the document that I was showing you before the break was a memorandum of a meeting in the Bank of Ireland of the 19th of January of 1990, in which reference is made to a meeting which you had with Mr. Stafford and Mr. Haughey?

A. I don't remember that meeting at all, Mr. Hanratty, it must be the --

334 Q. A different meeting?

A. I think Mr. Stafford definitely met Mr. Haughey and obviously I did. Sorry, it was remiss of me not to mention that to you.

335 Q. Yes. But what I want to draw your attention to is that the meeting referred to in the bank's memorandum is a meeting attended by both yourself and Mr. Stafford with Mr. Haughey?



A. That's what confused me, I don't have any recollection of such a meeting.

336 Q. So it must be a different meeting to the one you referred to in that meeting with the Tribunal?

A. I would, my guess is that it was two separate meetings.

337 Q. Yes.

A. So I apologise, Chairman, for that. It was an oversight on my part.

338 Q. Now, can you assist us in who arranged these meetings with Mr. Haughey?

A. I would have probably arranged it myself.

339 Q. And what, just pick up the phone and ask for a meeting?

A. Well, maybe, yes, at the time.

340 Q. Is it possible that Mr. Burke might have arranged the meeting?

A. I doubt it because I am asking him to talk to Mr. Burke, so I doubt if Mr. Burke arranged the meeting.

341 Q. Did you enjoy access to Mr. Haughey at that time, that you could pick up the phone to the Taoiseach and ask him for a meeting?

A. It is something you would do, but I am sure we were in dire straights and maybe he was one of the people that we lobbied. As I said, we lobbied the other gentlemen there as well, the other politicians, Alan Dukes, Jim Mitchell, Dessie O'Malley, anyone we could.

342 Q. There was another meeting in the bank on the 8th of February of 1990, and again, reference is made to the fact that you had yet another meeting with the Minister, Mr. Burke. It says on page 2136, under the heading "Attorney General": "Oliver Barry met again with the Minister for

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Communications. The Attorney General -"

A. Could I just have the top? What's the source of this letter?

343 Q. You want to see the top? It is page 2135, the previous page.

A. What's the source of this document?

344 Q. It is another minute of the bank's.

A. Sorry, yes.

345 Q. Taken by Mr. McHale again.

A. Yes, sorry, yes.

346 Q. It is a meeting at the Credit Department on the 8th of February of 1990, and deals with a number of matters, but on the second page under the heading "Attorney General" it says: "Oliver Barry met again with the Minister for Communications. The Attorney General's view is not yet to hand. And his response is expected in approximately one weeks time."

A. Yes.

347 Q. Would you agree with me, Mr. Barry, that from this time on, in fact from December of 1989 on, Century was in effect, marking time until such time as this legislation came in?

A. We were marking time to survive in order to get in an investor.

348 Q. Yes. It was the legislation which was the only hope for the company?

A. The legislation was one of the hopes, yes, or else a brave investor I suppose.

349 Q. Well, the investor which ultimately came in, we know, was Capital Radio?

A. That's right, yes.

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350 Q. We know their involvement was conditional upon the legislation being passed?

A. That's right, yes. Well, I think you asked me that question before. It certainly was a huge influence on Capital coming. Whether they would have come in at a lesser price without it I am not too sure, Mr. Hanratty.

351 Q. Well, I think all the information to date seems to suggest that there was no question of them becoming involved without such legislation?

A. Fair enough, yes.

352 Q. And indeed, the proposal for such legislation was well advanced at the time that they first expressed their interest, isn't that right, which would have been, I think in March, April?

A. I can't remember when Capital first expressed their interest.

353 Q. Well, I think it is probably fair to say that the bank would have been told as soon as it happened, and my recollection is, we will come to it in a moment, that the bank was told sometime in March/April of 1990?

A. Yes.

354 Q. Perhaps we will leave that over. But, in February of 1990, an event happened which I would like you to assist the Tribunal with, and that is that Mr. Jim Mitchell issued a press release. This is at page 733?

A. Yes.

355 Q. And at the top of it he makes two bullet points,  
"1. Urgent need for Commission into the future of broadcasting.  
2. Minister cannot divert RTE licensing revenues without

most careful consideration of the issues involved."

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Now, did you or Mr. Stafford ask the Minister in February of 1990 to redistribute the license fees?

A. It is possible that we did, yes.

356 Q. You had already asked him and he had acceded to your request to cap RTE's advertising to a certain limit?

A. Yes, but it hadn't been done at that stage I would say, had it?

357 Q. No, the legislation was being prepared and you were updating the bank on an on-going basis as to the progress vis-a-vis receiving the Attorney General's opinion as to whether legislation was necessary?

A. Yes.

358 Q. And during this period the question arose, which obviously came to the attention of Mr. Mitchell, of a further proposal to take away a portion of the license fee, which at that time was all being given to RTE and to redistribute that, obviously a portion of it to Century?

A. Yeah, I think I suggested that to you earlier on, that was one of the things we were looking at the time as a possibility to help.

359 Q. Yes. So what you were asking the Minister to do was not only to reduce the amount of revenue to RTE through its advertising, but that its revenue should be reduced from license fee sources as well?

A. I don't know was it either one or was it both we were looking for, I am not too sure, Mr. Hanratty.

360 Q. Well, you already had the Minister making the preparations to cap the advertising of RTE, he had told you and he had

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told your bankers that he was going to do so?

A. Yeah, but this was obviously --

361 Q. He had instructed Mr. McDonagh in your presence to do so?

A. I don't know did the Minister make any effort to divert license fee? This was a Jim Mitchell solution to the problem.

362 Q. No, Mr. Mitchell is protesting at the suggestion that such a thing should be done, that is why it would appear he issued this press release?

A. I don't know did the Minister go public and say he was going to divert the license fee.

363 Q. He may not have gone public, but certainly it appears Mr. Mitchell found out about the proposal, isn't that so?

A. I don't know what his source was.

364 Q. Well, did you discuss this with Mr. Burke?

A. I can't remember discussing it with Mr. Burke, no. The Jim Mitchell press release?

365 Q. No, no, the request for redistribution of the license fee?

A. I think it was one of the matters that we suggested, that because of our burden with the news and the Irish language etc., that may be a solution to independents, especially Century because that's all I was interested in, was to - maybe that some of the RTE license fee could be diverted to independent broadcasting.

366 Q. Did you or Mr. Stafford or Century at a subsequent stage also ask the Minister to effectively hive off FM 2 to Century?

A. Yes, that was another suggestion that we looked at. We looked at all scenarios I would say, that was my favorite, by the way, the one I really wanted, because Terry Wogan

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was a guy who said very early on, that a national independent music station would find it difficult to survive in a market-place against the music station in RTE, the national music station.

367 Q. And what was the Minister's reaction when this request was made of him?

A. I suppose at this stage he was probably getting a bit fed up of all the suggestions we were giving to him. We were certainly lobbying for help at any level we could get it.

368 Q. Well, did he or did he do anything about looking into the possibility of hiving off RTE?

A. I think he did something about changing the style of 2 FM at a later date.

369 Q. Yes. Was there a row about that at some stage in the Dail, can you recall?

A. I remember there was a row about it in the press because the NNI, I know, were much more in favour of capping, it suited their situation, but the changing of 2 FM would have been of no benefit to them, and I think the Minister experienced a huge publicity campaign and he did, he backed off and did a U-turn on the suggestion.

370 Q. Yes. He changed his mind in other words?

A. He changed his mind I believe, yes.

371 Q. Having previously decided to run with it, he decided against it?

A. It looks like it, yes. I would say he couldn't stand the publicity that RTE and the press put on him.

372 Q. Going back to the issue of redistributing the license fee; we know that Mr. Mitchell issued his press release in February, but we also know that at some point in time in

May of 1990, an amendment was actually drafted and inserted into the draft Bill which had the effect of redistributing the license fee. Do you remember that happening?

A. I don't remember that, Mr. Hanratty.

373 Q. Did you again ask the Minister in May to revisit this proposal to redistribute?

A. I think, Mr. Hanratty, I must make myself clear again here, we were non-stop lobbying everybody from the end of December '89 until Century went belly up.

374 Q. Well, were you not satisfied with the capping legislation?

A. You see, I don't think we would have known at that stage what benefit the capping legislation was going to bring to us, I don't know was it, I don't think it was reflected say in our revenue, and at that stage we were preoccupied in getting a new investor in, and anything we could do to make Century say more viable, that's what we were trying to do.

375 Q. As the Sole Member has pointed out earlier in the afternoon, the capping of RTE's advertising of itself was not going to put any money in Century's pockets, isn't that right?

A. No, I wouldn't totally agree there, eventually it would, once we got our market share, as the Sole Member said, then the capping might help.

376 Q. Of itself. But for you to get market share you would have to attract listeners?

A. Yes.

377 Q. Sort out the management problems, your programming problems and financial problems?

A. Yes. I think from January on, I honestly believe because I was in the station myself, and I am not clapping myself

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on the back because I made some mistakes in there as well, but at least we got our costs well cut back, our audience didn't seem to drop as a result of that, and I felt that this, the ship was let sail a little more steady.

378 Q. But the proposal to redistribute license fees would actually put money into Century's pocket if it went through, isn't that right?

A. Yes, you see we were arguing, I suppose, at the time that we were, we had a news room, that was pretty expensive, we were supplying news to the other local stations and we felt, I think we got some support from the political parties, that maybe there should be some subsidy given to Century for providing news nationally and also for the other local stations, saving them the burden of a news room and taking the news from Century, as it were.

379 Q. But the news requirement was, arose from the fact that Century in putting its proposal put together an elaborate news room and news infrastructure, isn't that right?

A. That's correct, yes.

380 Q. More than was the basic requirement of the IRTC in the legislation?

A. Indeed, Mr. Hanratty.

381 Q. And the Irish requirement was a requirement all contenders for the franchise had to meet and was fairly minimal, in Century's case four bulletins in Irish a day?

A. If you want me to discuss that with you, it is a pet subject of mine. And it was something that --

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CHAIRMAN: Well, I don't think we will go into a pet subject at 4 o'clock.



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A. Sorry Chairman.

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CHAIRMAN: I will leave it at that.

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MR. HANRATTY: Obviously, Sir, this evidence will have to be resumed at a future date. Tomorrow, as you are aware, you are taking the submissions in relation to the previous inquiry, and on Thursday you are dealing with matters in relation to the next inquiry.

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So, and we are not sitting on Friday. So I can resume it from this point in due course.

A. Chairman, before I leave, can I wish everybody in the Tribunal a happy Christmas.

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CHAIRMAN: That's very generous of you. Thank you very much. That's the least I can say to you. Thank you very much may. I reciprocate your good wishes.

A. Thank you.

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THE HEARING THEN ADJOURNED TO THE FOLLOWING DAY, WEDNESDAY, THE 20TH DECEMBER, 2000, AT 10:30 AM.

