

1 THE HEARING RESUMED AS FOLLOWS ON THE 9TH NOVEMBER 2000 AT

2 10:30AM:

3 .

4 CHAIRMAN: Good morning, everyone.

5 .

6 MR. HANRATTY: Morning Sir. Morning Mr. Finn.

7 A. Good morning.

8 1 Q. I think, Mr. Finn, I was just about to ask you about this

9 letter, I think, of the 19th of May. This was a very long

10 letter, written, apparently, by Mr. Laffan, and it was

11 directed to you, now you are familiar with the letter, I

12 take it?

13 A. I am, yes.

14 2 Q. And you are aware that Mr. O' Brien has gone through the

15 letter in some detail in his evidence and I don't propose

16 to take you through it again in such detail, but I think if

17 I might summarise the letter it is a long complaint about

18 RTE and in particular it seeks to make out a case that

19 really, Century has no function or role whatsoever in

20 transmission and it is entirely a matter for RTE to provide

21 whatever is necessary to get them the same level of

22 transmission throughout the State as RTE had, without any

23 input from them?

24 A. Yes, that's the way I read it and that's the reason for my

25 shortish reply. I felt it essential anyway to refer to

26 that point, which Mr. Laffan seemed to miss, that under the

27 1988 legislation independent radio contractors, they had

28 to, under the provisions of the Act, they had to establish

29 and maintain and operate transmitters.

30 .

1 And there was a particularly puzzling reference in Mr.
2 Laffan's letter to the separation of broadcasting from the
3 use of transmitters, which is an impossibility. You can't
4 broadcast without using transmitters- that's what
5 broadcasting is: dissemination of a signal through
6 transmitters. So, it seemed to me that my first
7 inclination was to write back a very short and probably
8 somewhat discourteous reply because the whole letter to me
9 was so misinformed but it had one single objective and that
10 was to try to establish this mythical concept of a public
11 highway in the skies that everyone would have access to for
12 free or virtually free.

13 3 Q. Yes?

14 A. Which, of course, wasn't provided for in the legislation at
15 all.

16 4 Q. Or indeed in the directive?

17 A. Or in the directive.

18 5 Q. What did you make of this letter, what was there from your
19 perspective what appeared to be the purpose of this letter?

20 A. Well, I must say, I felt that Mr. Stafford's fingerprints
21 were all over this. It was signed by Mr. Laffan, but most
22 of the arguments we had heard before, not repeated at such
23 length.

24 .

25 I felt that the use of the phrase "The national custodian -
26 custodians of the national transmission network" I think
27 that phrase was used at least ten times in a five page
28 letter. I thought that was, even for Century was a bit of
29 an overkill. I thought they wanted to try and yet again,
30 although it was, it had no basis in law at all, they still

1 wanted to argue this case because if somehow or other it
2 could even partly succeed, as I say, it would open the way
3 to their getting access to this supposed " public highway"
4 in the sky for next to nothing, which was their basic
5 objective all the way through.

6 6 Q. Yes. Well, we know that you have already told us about
7 the figures which were agreed in January, reduced in
8 February and ultimately the directive which was issued,
9 which was not obviously to your liking. We have been
10 through all of that.

11 .

12 But the directive was there. RTE reluctantly agreed to go
13 along with it, subject to their getting the agreement of
14 the Minister, which they got to a review in 18 months time,
15 to the maintenance charges?

16 A. Correct.

17 7 Q. So the position of the parties as and from the 14th of
18 March was there was a directive. The directive set out a
19 basis on which the transmission service had to be proceeded
20 with, isn't that right?

21 A. Well, we did look for clarification, so in fact.

22 8 Q. Yes?

23 A. As it were, the situation was clarified by the Minister.
24 Well, first of all by Mr. McDonagh's letter of the 30th of
25 March and then further by a small amount of clarification
26 by the Minister at the meeting with the Authority on the
27 31st of March.

28 .

29 So from that, that was kind of Day 1.

30 9 Q. Yes?

1 A. In relation to the directive. So we were starting at the
2 beginning of April.

3 10 Q. Yes?

4 A. To work with Century to get things moving.

5 11 Q. Yes. So after you got your clarification from Mr.
6 McDonagh, which is the letter we saw yesterday and after
7 your got your agreement with the Minister on the 31st of
8 March, that you were going to have a review in 18 months
9 you moved along from there?

10 A. Yes, on the engineering front there were several meetings
11 in April with the engineering division and Century and on
12 the financial front. Mr. O'Brien, in his evidence, was
13 showing the efforts that he was making on his side to
14 progress things and progress the project.

15 12 Q. Yes. And this letter, I think, was written in the context
16 of the negotiations which were then commencing in
17 connection with the terms of the transmission contract, is
18 that so?

19 A. My letter of the 22nd of May, is it?

20 13 Q. No, this letter of the 19th of May?

21 A. Yes. The letter of the 19th of May. Yes, that's right.

22 14 Q. In fact, I think you said yesterday the first contract was
23 drafted by RTE in mid-June, I think it was mid-May in
24 fact. At least, so the documents appear to indicate?

25 A. Yes, I must apologise that was a slightly faulty memory.
26 In fact, I said that the first one was on the 19th of June,
27 but in fact the first one was the 19th of May.

28 15 Q. Yes.

29 A. The fourth draft was the 19th of June, which is evidence I
30 think, of work and trying to progress matters, but the

1 first draft was sent to Century's solicitors on the 19th of
2 May, 1989.

3 16 Q. Yes. Well, whatever about the fine detail of the terms of
4 the transmission agreement of which you have already told
5 us, there was a certain difficulty, the parameters of the
6 charges at least had been established such as they were in
7 the directive, as clarified by both Mr. McDonagh and the
8 Minister; isn't that so?

9 A. Yes, that's right. Yes.

10 17 Q. How does this letter of the 19th of May sit with the
11 directive?

12 A. Well, to me it didn't seem to sit very well at all.
13 Because this continuing emphasis on the national
14 transmission system - that actually was at variance with
15 the Minister's directive because he was saying in part six
16 of the directive that equipment should be acquired and so
17 on. I mean it seemed to me, and this would be logic and in
18 accordance with the legislation, that the Minister and the
19 civil servants understood the position that there were-
20 that the independent broadcasters operating under the 1988
21 legislation would have to set up their own transmission
22 arrangements.

23 .

24 So this notion of - and not as I say, not mentioned once
25 but repeated, as I think I counted at the time, ten times,
26 this concept of a national transmission system was totally
27 at variance with that.

28 18 Q. Yes. Century obviously had already achieved major
29 concessions in the directive, in the sense of a reduction
30 from what was originally agreed. But what did you think

1 they were now seeking to achieve beyond the directive in
2 this letter?

3 A. It seemed to me that they wanted RTE to buy and operate
4 their transmitters for them and because it was "a national
5 transmission system", in quotes. It was a national asset
6 and charging for it and so on wouldn't arise.

7 .

8 I thought that was the objective behind it. It was the
9 only reason I could think of, for somebody, for a Chief
10 Executive to another Chief Executive using this expression
11 "Custodians of the national transmission system" ten
12 times. I know there is at least ten such uses of that
13 phrase.

14 19 Q. Yes. For example, on page 5304, the first paragraph of
15 that directive says, "The clarification of the Ministerial
16 directive, dated March 30th 1989, from the Secretary of the
17 Department of Communications makes it clear ultimate
18 responsibility for payment to the lender financing the
19 purchase of the extension equipment for the national
20 transmission network will rest with the then franchise
21 holder. This envisages that the financial obligations
22 being 14 years at 7 percent, will be paid for through a
23 form of contract i.e. the license holder will have a
24 contractual obligation to pay RTE as the custodian of the
25 national transmission network both charges as part of his
26 franchise retention" .

27 .

28 Now that appears to be suggesting that they were not
29 actually buying and repaying the equipment at all, but they
30 are paying some sort of a levy to, as they describe it, the

1 " custodians" of the network, isn't that right?

2 A. Yes. That's - I thought that was, that was the
3 objective. The general purpose, I thought, of the letter
4 was to try and get us to do as much as possible and to take
5 as much financial responsibility as possible.

6 20 Q. Yes.

7 A. For them to distance themselves from all that and to
8 minimise as much as they possibly could, the financial
9 implications for them of the service and the equipment we
10 were going to provide.

11 21 Q. Yes. Now Mr. O'Brien has dealt in detail with the
12 assertion of the obligation under the directive being 14
13 years at 7 percent, which he says was not the obligation
14 under the directive and that the extrapolation of the 7
15 percent figure, which was given as a leasing figure in
16 November was in his words " misleading".

17 A. Well, yes. Mr. O'Brien has dealt at great length with the
18 7 percent and I must say, to be honest it annoyed both him
19 and me intensely, every reference to this 7 percent, as Mr.
20 O'Brien explained in detail and that time, in 1989, talking
21 about seven percent money, as a loan, you will get that
22 rate of interest through perhaps a five year lease or so,
23 but talking about loan capital to a company whose existence
24 hinged on a franchise, talking about that kind of company
25 getting loan capital or loan money at 7 percent, it was a
26 financial impossibility. And if we - if Mr. O'Brien or I
27 could have identified such a source anywhere in the world,
28 we would have utilized it to the maximum, possibly for
29 RTE's benefit first.

30 22 Q. Yes.

1 A. I mean, it was just - it is misleading to continue to use
2 it. I don't believe there was ever a misunderstanding
3 with Mr. O'Brien. I think his presentations to Century
4 would have been perfectly clear. I don't think there
5 could ever- even briefly- have been a misunderstanding.
6 But to continue to refer to 7 percent in mid-May of 1989
7 was, well to put it at its mildest it was mischievous but
8 it certainly bore no relation to financial reality.

9 23 Q. If it wasn't being put forward on the basis of a
10 misunderstanding, on what basis do you think it was being
11 put forward?

12 A. Well, I think much of this letter, most of this letter
13 really bears no relation to reality at all. Statutory
14 reality, the legal situation surrounding broadcasting
15 generally in Ireland, as applied to RTE and as applied to
16 the independent sector and - but it seemed that this
17 letter, for some reason or other, although it was seriously
18 flawed for the reasons I mentioned, it still was being put
19 forward at this point as a serious argument by Century.
20 Still trying to get, as I have said, I feel the purpose of
21 it was to try to get the best deal possible, to put as much
22 onus as possible on RTE both in terms of the selection of
23 equipment and the paying for it, and as little obligation
24 on Century as possible in paying us in turn for such
25 services.

26 24 Q. Yes. Well, Mr. O'Brien explained it on the basis that as
27 he told us, the 7 percent had been put forward by him as a
28 leasing figure on the basis that the lender or lessor,
29 would have available to him capital allowances that he
30 could avail of and on that basis and that basis only be in

1 a position to make leasing arrangements on a relatively
2 short-term basis, probably five years at 7 percent?

3 A. Yes.

4 25 Q. But he says that under no circumstances was there any
5 conceivable possibility of borrowing money at 7 percent and
6 in fact he pointed out around that time the DIBOR rate was
7 around 9 percent and the best that could be obtained by
8 somebody the likes of RTE would be 2 percent above DIBOR
9 and if it was Century doing the borrowing it would be more
10 like 3 and a half or 4 percent?

11 A. Absolutely. A lending rate of 7 percent at that time, it
12 was, it was impossible.

13 26 Q. But what I am trying to understand is - on the assumption
14 which you make, that Mr. Stafford was putting this forward,
15 not on the basis of a misunderstanding, what, from your
16 perspective at the time, did you think he was seeking to
17 achieve by putting it to RTE? Presumably, he must have
18 known that RTE knew that DIBOR was 9 percent and they could
19 only get money a couple of percent above DIBOR. What do
20 you think Mr. Stafford was seeking to achieve coming at RTE
21 with these kind of figures?

22 A. Well I think it was just an attempt to put as much of the
23 financial responsibility for all of this on us, and
24 suggesting, wrongly, that we had committed ourselves in
25 some way or other, which we never had. That we had
26 committed ourselves in several discussions to this 7
27 percent rate.

28 .

29 I think, he chose way back in November 1988 to
30 misunderstand the reference to 7 percent, money at 7

1 percent and although it was pointed out many many times,
2 that that 7 percent applied to a particular form of
3 financing/ leasing and not a straight loan, he persisted
4 and continued in using it. But that wasn't unusual with
5 Mr. Stafford, and that was one of the reasons why I said
6 yesterday the negotiation of the contract was one of the
7 most difficult I had ever encountered, because he persisted
8 in points of view that had no logic. The 7 percent rate
9 just could not be obtained.

10 .

11 He persisted in concepts such as that RTE were
12 " custodians" of a supposed national transmission
13 network. But, that was the way he approached a lot of
14 things, just with a persistence and ignoring logic and
15 statutory arrangements and so on. That's what made - that
16 was one of the reasons why negotiating the contract was so
17 difficult. It was like trench warfare, every line, every
18 word was contested.

19 27 Q. Yes. But do you know that Mr. Stafford himself has
20 actually given evidence to this Tribunal, that the
21 difficulties in the negotiations of the contract which he
22 laid at the door of RTE were one of the contributory
23 factors to the difficulties which Century subsequently
24 encountered, including the difficulty that delayed its
25 launch date. Were you aware that he gave that evidence?

26 A. That he gave evidence, that we had delayed the launch.

27 28 Q. Yes. By among other things being difficult in relation to
28 the negotiation of the terms of the contract?

29 A. Yes, yes. I am aware he said that. But Mr. Stafford's
30 notion of being difficult is that if you contest any

1 proposition he puts forward. That was the impression I had
2 all through all the dealings with Century until the time
3 they went on air. That any contrary point of view that
4 didn't accord with his, no matter how illogical, no matter
5 how poorly based it was or it might even have been totally
6 illogical, but unless one assented to that immediately, RTE
7 was categorised as unhelpful, hostile, uncooperative,
8 afraid of competition. All these kind of characteristics
9 were attributed to us,. Which I and the other senior
10 people in RTE found really quite difficult to take because
11 I would submit that there is a wealth of evidence that we
12 went to extraordinary lengths to try to facilitate Century
13 in getting on air.

14 .

15 And the fact that we couldn't agree and wouldn't agree with
16 a lot of their propositions, that seemed to them to be
17 something that we should be faulted for.

18 .

19 I mean, negotiation means negotiation and arriving at,
20 however reluctantly, a mutually agreed situation. But,
21 Mr. Stafford, for some reason, seemed to feel that all he
22 had to do was declare something to be so and it would be
23 so.

24 29 Q. Yes. I did ask you yesterday if you could, at this remove
25 in time, instance the kind of difficulties which you
26 described as the most extraordinary that you ever
27 encountered and you fairly said that you couldn't remember
28 it at this point. But may I ask you this, the kind of
29 points that are made in this letter, are they
30 representative of the kind of points that Mr. Stafford was

1 taking with RTE or were they entirely different points
2 altogether?

3 A. No. My recollection is that they were entirely
4 different. That they were entirely different points.
5 Because, as a result of getting this letter I replied to
6 Mr. Laffan -.

7 30 Q. Is that on the 22nd of May, page 5308?

8 A. Yeah, that's the one. And I really was getting quite
9 concerned at this stage at receiving from the Chief
10 Executive of Century, such an extraordinary letter, which
11 had so many misconceptions and mistakes in it.
12 .
13 So I said in that letter to Mr. Laffan, this is 5308, and I
14 did, I spoke at length with the Secretary of the IRTC -
15 which was quite unusual because RTE didn't have very much
16 to do with the IRTC. In fact, apart from that first
17 meeting on the 7th of December 1988, I am not sure that I
18 had spoken much with Mr. Connolly at all in the intervening
19 6 months. But it seemed to me that a five page missive
20 such as this, delivered by courier, that although as I say,
21 it was an annoying letter in some respects because of so
22 many errors and misconceptions in it, I felt we had to do
23 something soon to move this along.

24 .
25 So I spoke with the Secretary of the IRTC and the letter
26 explains what I did and that I tried to put all this in
27 context and hence my references to the Broadcasting
28 Authority Acts and the 1988 legislation. Because of this
29 major misconception in Mr. Laffan's letter about this
30 mythical national facility - and our role in relation to it

1 as " custodians".

2 .

3 So, that lead in turn, to meetings with, I think with the
4 Department, and where we began to engage really in reducing
5 all this to contractual terms. But, I don't - amongst the
6 many difficulties in negotiating the contract, I actually
7 don't remember this concept of our role as custodians of
8 the national transmission system coming up at all. I
9 didn't hear much about it since then.

10 31 Q. Since then. Yes. In fact, just looking at the beginning
11 of the letter of the 19th of May to which your letter of
12 the 22nd was a response, it starts off referring to three
13 different communications from RTE, which appear to be
14 efforts on RTE's part to achieve various things. The
15 first was a letter from Mr. G O'Brien, Director of Finance
16 dated 16th of May regarding equipment purchase and
17 financing. The second was a letter from Mr. O'Brien,
18 dated the 17th of May seeking clearance on financing and
19 the third was a letter from Mr. Branigan, head of
20 engineering design seeking formal approval in relation to
21 equipment. Obviously there were advances and approaches
22 happening from RTE?

23 A. Absolutely. In fact, as I said, if one regards April 1 as
24 sort of " D day", in relation to, or the Day 1 in relation
25 to the Ministerial Directive, our engineering division had
26 a meeting on April 6th with Mr. Stafford and Mr. Barry
27 about equipment questions. So although we were, as I have
28 said yesterday, although we were shocked very much by the
29 contents of the directive, we felt at the same time that
30 once it had been accepted that it had to be implemented

1 that we should move ahead and put the past behind us. And
2 the first meeting between the engineering people and Mr.
3 Stafford and Mr. Barry about equipment matters actually was
4 a week later, on the 6th of April. And things moved along
5 from then.

6 32 Q. Yes. And we know that ultimately the contract was signed,
7 I think, in July of 1989?

8 A. Eventually, yes because there were parallel discussions, of
9 course, between Century and the IRTC, because we felt it
10 very important that the broadcasting contract should be
11 concluded before we could really sign up. So in the
12 event, the Century IRTC contract was signed, I believe on
13 the 21st of July and the Century RTE contract was concluded
14 on the 28th of July.

15 33 Q. Yes. Now, moving onto the question of the capping of
16 RTE's advertising. You may or may not have heard the
17 evidence to the effect that at a meeting on the 19th of
18 December of 1990, sorry 1989, Mr. Burke instructed Mr.
19 McDonagh, the Secretary of the Department, in the presence
20 of Mr. Stafford and Mr. Barry, to take whatever steps were
21 necessary to implement capping on RTE's advertising.

22 .
23 Did Mr. Burke at any time prior to the 19th of December
24 1989 give you any indication, or anybody else in RTE, that
25 he was considering any proposal to impose capping on RTE's
26 advertising revenue?

27 A. No, not at all to my knowledge.

28 34 Q. We know that the capping legislation was under
29 consideration in most of the first half of 1990. We know
30 that the Minister was seeking advices from the Attorney

1 General during that period and we know from the evidence
2 before this Tribunal that there were extensive discussions
3 between Century and, for example, its bankers, in relation
4 to the capping proposal.

5 .

6 Can you say when was the first time that you heard that
7 there was any proposal to cap RTE's advertising, under
8 consideration?

9 A. I think it would have been when that, the Broadcasting
10 Bill, when all these provisions emerged as a Bill. I
11 don't remember there being any, certainly no advance
12 discussion or anything such as that. I don't know when,
13 at this stage, I just can't recall when it would have, when
14 these provisions would have been put together in the
15 Broadcasting Bill.

16 .

17 But it would have been around then. Certainly it was
18 quite sudden.

19 35 Q. The Bill, I think was published in around July, sometime in
20 the month of July of 1990, I am subject to correction on
21 that, and it was enacted in September of 1990?

22 A. Yeah, yes I - I can recall that there was a new Authority
23 appointed on, I think the 1st of June of 1990. And they
24 had - my recollection is that they had their first meeting
25 in RTE with the Minister.

26 36 Q. Yes?

27 A. In early July. And there was a little, just a bit of
28 discussion with them because we were all still trying to
29 absorb what the implications of that would be for RTE and
30 there was just a limited discussion between the Authority

1 and the Minister about this new Bill, because as I say we
2 were still trying to absorb its provisions. So there
3 wouldn't have been - we wouldn't have been aware much in
4 advance of that because we didn't have any sort of position
5 papers for the Authority or anything such as that. It
6 was, it was so recent and so new, that as I say, we were
7 still trying to assess, absorb its contents and assess its
8 implications for RTE. So there was no- for that reason I
9 would say there was no prior consultation or knowledge.

10 37 Q. Yes. Well, I think just to be slightly more precise, as
11 far as I recall the Bill was enacted sometime prior to the
12 20th of July. I think signed by the President around the
13 20th or 21st of July, came into force around September. As
14 far as you can recall it, you would have been aware at the
15 time of the change over in the new RTE Authority and at the
16 time they were addressed by the Minister?

17 A. Well that address, well meeting and a short address by him
18 and a meeting, that was in early July 1990. So, it was
19 --

20 38 Q. Yes?

21 A. It was --

22 39 Q. Is it your recollection that your first knowledge of it was
23 when the draft Bill was published?

24 A. That's right, oh, yes.

25 40 Q. And what was your reaction at the time, what was the
26 reaction of the Authority at the time?

27 A. We were very seriously concerned on two grounds really.
28 One was the financial implications for RTE, there would be
29 very severe because it would mean a pretty immediate and
30 substantial reduction in our revenue. We had to guess,

1 had to estimate that, but it was of the order we recognise
2 of 10 to 12 million I would think, and that taken off our
3 revenue, almost at a stroke, the implications of that for
4 all our operations would have been and they were quite
5 severe.

6 .
7 The second aspect of it was, if you wish, a more practical
8 one. How was this actually going to be implemented?
9 Because it is one thing to introduce these administrative
10 arrangements, it is another thing to work out in detail
11 with advertisers, advertising agencies, people involved in
12 the production of commercials and so on, how are we
13 actually - if this, well it did happen - how are we going
14 to address this in such a way that it, as far as possible
15 we comply with the legislation and still not result in
16 turmoil in the advertising market.

17 41 Q. Yes. We will come to, as it were, the consequences of the
18 legislation in a moment. But can I just refer you to a
19 memorandum, which was already, I think, put in evidence.
20 It is dated 16th of March 1990, page 1646. I think it is
21 to Mr. O'Morain from Mr. Grant, if I am not mistaken. It
22 records the fact in relation to the new legislation, the
23 second sentence "In relation to RTE 1, I tried to change
24 the stress. I formed the impression from your draft that
25 the issue should have been addressed in the 1988 Act if we
26 knew what we were at. Maybe I am unduly sensitive, I
27 think it is important that it be on record formally that
28 the Department has not consulted RTE in regard to the
29 consequences for programming or on the estimate of income
30 diverted no matter what form our submission to the Minister

1 eventually takes" .

2 .

3 So there he is recording he thinks it is important that
4 they the officials in the Department record that RTE had
5 not been consulted as to what the consequences of this
6 proposed legislation would be on RTE. Is that, in fact
7 your recollection, that RTE were not in fact consulted?

8 A. No, no. Not at all, no.

9 42 Q. Did anybody from the Department, either the Minister
10 himself or any of the officials in the Department at any
11 stage, ever contact anybody in RTE to find out what would
12 happen if a cap of the nature proposed in this draft
13 legislation were to be implemented?

14 A. No not at all to my knowledge, because any such even
15 informal or tentative inquiry, I mean - we would certainly,
16 it is such a major issue, that we would all have been
17 alerted to it instantly. But that wasn't the case.

18 43 Q. Did anybody from the Department, again either the Minister
19 himself or any of the officials from the Department, at any
20 time prior to the publication of the Bill, ever make any
21 complaint to RTE about any alleged abuse of RTE's dominant
22 position, or any alleged predatory pricing on the part of
23 RTE to the detriment of Century, or any alleged price war,
24 or any alleged cross-subsidisation of FM 2 to the detriment
25 of Century. Were any of those things ever raised by
26 anybody in the Department with RTE?

27 A. This is prior to the publication of the Bill?

28 44 Q. Yes?

29 A. Mmm, well certainly Century complained loudly and publicly
30 about all of these matters, about predatory pricing and so

1 on. But there wasn't any real basis in that. But that's
2 just part of the commercial world, competitiveness and so
3 on.

4 .

5 No, I can't remember prior to the publication of the Bill
6 any such advance discussions or anything such as that.

7 There was discussion as soon as the Bill began, I remember,
8 particularly about 2 FM, what its future might be.

9 45 Q. Yes. We know that Mr. Stafford had made complaints to the
10 Minister in relation to alleged practices on the part of
11 RTE, which he alleged were giving rise to difficulty for
12 Century. Did the Minister ever communicate any such
13 complaints to you?

14 A. Certainly not to me, no. I don't think to anyone else in
15 RTE either, I don't think so, no.

16 46 Q. Was RTE ever given any opportunity to make representations
17 to the Department prior to the publication of this Bill?

18 A. Prior to it, no. But we did make representations
19 obviously once it was published.

20 47 Q. Yes. And what was the nature of those representations, in
21 general terms?

22 A. Well, we were extremely concerned, because if our income
23 was affected in the way for seen in the legislation, it
24 would have major consequences for our broadcasting
25 operations.

26 .

27 I think the Bill also had some provisions or proposed
28 provisions about use of the license fee. But they were
29 dropped at an early stage. So, our representations had
30 some effect, but with regard to the advertising and the

1 limiting of our advertising income, we didn't have much
2 success. I think, minor changes but nothing substantial.

3 48 Q. Just to take that point for a moment in relation to the
4 license fee. We know that at some point in time an
5 amendment to the draft Bill was made by somebody, we
6 haven't yet, I think, established from where it came, to
7 the effect of inserting two new sections the effect of
8 which would have been to remove a proportion of the license
9 fee from RTE and to distribute it through the IRTC to
10 independent commercial broadcasters.

11 .

12 Did you hear about that at any point in time?

13 A. In advance of it appearing in the Bill.

14 49 Q. Yes. Sorry, no. We know that the draft Bill was
15 published. You have told us that you say you knew that the
16 draft Bill was published. I think the draft Bill, as
17 published, did not contain such a provision. It did
18 contain provision for the capping of your advertising?

19 A. Oh, yes.

20 50 Q. Both by limiting the hourly minuteage and by imposing an
21 overall maximum limit equivalent to the previous year's
22 license fee. It did not, as previously, place a limit for
23 the redistribution of the proportion of the license fee but
24 it subsequently transpired that somebody had inserted two
25 sections in the draft Bill to the effect that in addition
26 to the capping of advertising, a proportion of the license
27 fee would be taken from RTE and distributed to the
28 commercial operators. Did you ever hear about that at the
29 time?

30 A. Yes. I did. But my recollection - I thought it appeared

1 in a draft Bill and then was deleted.

2 51 Q. That's correct, it was deleted?

3 A. Yes.

4 52 Q. Can you recall how you came to know about it?

5 A. Well, when it appeared in the draft Bill.

6 53 Q. Yes?

7 A. Yeah, but we made representation about that. I think also

8 there were probably legal, actual in terms of actually

9 implementing it, I think there may have been legal

10 difficulties.

11 54 Q. Yes?

12 A. Because, yeah I think there were legal difficulties.

13 55 Q. Yes. There was apparently a reference to it in a presence

14 release issued by Mr. Jim Mitchell TD, in February of 1990

15 where he appeared to complain about a proposal he appeared

16 to suggest existed. This was before talk of capping of

17 advertising in public, do you remember anything about that

18 or were you aware of it when it happened?

19 A. Yes, I remember the publicity about it at the time, yes.

20 56 Q. It seemed to go nowhere, nothing was to come of it at that

21 point in time?

22 A. At that time, no.

23 57 Q. Yes. Well, in any event the license fee redistribution

24 provision was removed from the draft Bill?

25 A. Yeah.

26 58 Q. So you were left to deal then with the remaining capping

27 provision?

28 A. That's right.

29 59 Q. Now, did RTE make representations to the Department, as

30 such, in relation to the proposed legislation?

1 A. Well, to go back to the meeting that the Minister had with
2 the then new Authority, I think it was in July 1990 --

3 60 Q. Well, can I refer to you page 5373. There is a meeting
4 there which was actually in June of 1990. It may well be
5 the meeting to which you are referring?

6 A. I am sorry. I have - yes, I have misquoted the month.
7 Sorry, it was the 11th of June not July.

8 61 Q. Is that the one on screen, the minutes of the meeting to
9 which you are referring?

10 A. That's right.

11 62 Q. You see under heading two, Broadcasting Bill 1990, where it
12 records "The Authority only had a short time to consider
13 the Broadcasting Bill before the arrival of the Minister
14 for Communications to address the meeting The Chairman and
15 DG pointed out the very difficult situation which RTE
16 was facing and a loss of 8 million pounds would entail
17 taking out 400 jobs and even at that there would be about
18 ú4 million savings still to be found elsewhere in the
19 organisation. Various Authority members expressed concern
20 at the situation being faced, some pointing to the dilemma
21 in following the statutory obligations under the existing
22 Act while taking on board the provisions of the new Act.
23 The suddenness of the cuts were regretted and it was agreed
24 to suggest to the Minister that some deferment of the
25 implementation be made which might be to the government and
26 RTE's advantage, particularly vis a vis the introduction of
27 TV3. The Authority felt it should have some elbow room to
28 look at forward plans and implications of the new
29 legislation.

30 .

1 The Authority also agreed that the executive should
2 urgently carry out an appraisal of the impact of proposals
3 on employment quality and quantity of output, relationship
4 with the private sector and staff morale" .

5 .

6 Then, under a heading " Meeting with Minister for
7 Communications, Mr. Burke TD.

8 The meeting was then joined by Mr. Burke TD, Minister for
9 Justice and Communication and Mr. Mc Donagh, Secretary to
10 the Department of Communications.

11 .

12 The Minister congratulated the Authority on their
13 appointment and stated that they had a five year job to do
14 and should look at it in that way. He emphasised the
15 government's view of broadcasting was there had to be
16 choice and they were determined that alternative
17 broadcasting be available to the Irish people. The
18 Minister said it was not the government's task to protect
19 any particular company and the franchises for national
20 independent radio and TV3 were a matter for the IRTC. He
21 said the belief that there should be an alternative source
22 of news and current affairs available to Irish people was
23 not in anyway a dissatisfaction with the present output of
24 RTE and he went on to praise RTE's achievements. The
25 Authority was now faced with tough and difficult decisions
26 but the Minister was not suggesting that the Authority
27 should go about shedding jobs automatically. He believed
28 the Authority would have to look at the overall picture.
29 The Minister made passing reference to the Atlantic 252
30 situation and noted the change that was being proposed in

1 the Bill regarding the audit of RTE accounts. He stated
2 from now on there would have to be separate accounts for
3 all RTE's various operations.

4 .

5 With regard to 2 FM, the government wished that as well as
6 carrying music it would make opportunities to provide other
7 services particularly for young people, but that was
8 recognised as being strictly a matter for the Authority, as
9 was programming on any of its services.

10 .

11 In response, the Chairman assured the Minister that the
12 authority was committed to ensuring that RTE met and
13 fulfilled its obligations. He stated that he was a great
14 believer in efficiency and completely accepted that there
15 would be alternatives to RTE available to the public.
16 However, he stated the dramatic change in revenue now being
17 proposed would be very difficult to cope with. He noted
18 in recent years RTE had increased its home grown production
19 and was at all times trying to encourage excellence. With
20 the sudden change in revenue base now being proposed it
21 would be necessary for the Authority to speedily address
22 the question of cutting its costs and doing so fairly
23 quickly. Normal commercial practice in such operations
24 would be to achieve two thirds saving in the area of staff
25 costs and one third in other areas. This, in effect,
26 meant in RTE's case around 400 jobs could be at risk. He
27 went on to state that the Authority would like elbow room
28 to make changes in a more acceptable way.
29 The Chairman expressed the Authority's view that it might
30 be in the mutual interests of both parties to defer

1 implementation of the advertisement capping but the
2 Minister replied that he was prepared to take the risk as
3 regards TV3 and he would not be making any more significant
4 changes in the legislation. The Minister reiterated his
5 view that there should not be an over concentration on job
6 losses. Some members of the Authority reiterated the
7 Chairman's request to the Minister that there should a
8 moratorium on the introduction of the capping
9 arrangements.

10 .

11 The meeting then adjourned for lunch and on resumption, the
12 Authority briefly reviewed it's discussion with the
13 Minister and requested the Director General to urgently
14 prepare a strategy paper so the Authority could look at all
15 it's options" .

16 .

17 I think that accurately reflects what was discussed at the
18 meeting?

19 A. It does, very accurately.

20 63 Q. In essence, the Authority appear to be accepting the
21 inevitability that there was going to be capping of their
22 advertising and they decided before the Minister came they
23 would make a case to him, at least it should be deferred or
24 perhaps phased in so that they could take whatever steps
25 that they could take in, I suppose, an orderly basis?

26 A. That was the, their hope. Their plan.

27 64 Q. And what, what response did they get from the Minister?

28 A. Well, he said, that he really wasn't going to vary the
29 legislation to any degree and things would have to proceed
30 as they were. That there would be a cap and it would be

1 introduced very soon.

2 65 Q. What was the reason or the rationale behind the request
3 that it be, that it be deferred, from RTE's point of view?

4 A. Well, the financial implications of the capping would mean
5 that we would drop, within a space of a few months, our
6 income would, in effect, fall by about 10 to 12 million per
7 annum and this was a huge reduction, unexpected so far as
8 we were concerned, unplanned, unbudgeted, and particularly
9 in broadcasting, one lays out one's broadcasting plans for
10 months, perhaps a year in advance. It is not a question of
11 just producing this week's programmes this week. Some of
12 them take weeks, months to put together. I know others in
13 studios can be put together quite quickly, but there are
14 commitments made in advance to programme participants, to
15 actors, to writers. There are all sorts of forward
16 commitments and to turn the income tap off almost
17 overnight, particularly in broadcasting, where one in
18 certain areas has, as I say, to make medium term
19 commitments, it can be extraordinarily difficult.

20 .
21 And while the Authority accepted the concept of capping,
22 there was great concern which I certainly shared about
23 introducing of it in a few months time. But, the Minister
24 didn't give any indication and he didn't in fact, vary
25 really the provisions of the legislation. So, as that
26 document that you have gone through says, the Authority
27 wound up its meeting by asking that an overall strategy, a
28 financial, a broad financial plan be prepared for
29 consideration by them at their next meeting in July.

30 66 Q. Yes. And did you, did you prepare such a strategy?

1 A. An outline one, yes, I did for the July meeting. I think
2 it is in the documentation.

3 67 Q. Yes. If you had obtained or achieved the deferment which
4 was being sought, what would it have enabled you to do?

5 A. Mmm, well it would have meant that the cut backs that we
6 had to introduce in many areas could have been planned in a
7 better way. Because of the urgency and the immediacy of
8 this problem, a lot of measures had to be undertaken quite
9 quickly and if it had been phased in over a period of time,
10 well, I suppose it would have perhaps given us an
11 opportunity to see are there any other ways of earning
12 income other than through advertising? To explore that
13 side, that - could we generate more income from sources
14 that weren't capped to study and consider that for a while,
15 and also it would, as I say, have enabled us to introduce
16 in a more orderly way any cut backs that were necessary,
17 but as it was because of the urgency of the situation, we
18 really had to address it quite quickly in order to preserve
19 our financial position.

20 68 Q. Yes. At page 5380, there is a letter from you to the
21 Secretary of the Department on the 18th of June of 1990 and
22 in it, you appear to set out RTE's stall, as it were, in
23 relation to this proposed legislation, isn't that right?

24 A. Yes. That's correct.

25 69 Q. And you say under the heading Broadcasting Bill 1990,
26 amendments "RTE welcomes the proposal of the Minister for
27 Communications to have sections 2 and 3 of the Bill 1990
28 deleted and thereby withdraw the proposal to have part of
29 the license fee diverted to private commercial
30 broadcasters.

1 .

2 In Section 4, however, it is proposed by the amendments to

3 limit RTE advertising revenue to the amount paid to it from

4 the license fee revenue in the previous year. i.e. RTE's

5 advertising revenue in 1991 cannot exceed 48.815 million.

6 It would be difficult for RTE to even achieve that revenue

7 when an inflexible maximum of 4 and a half minutes of

8 advertising per hour is imposed.

9 .

10 The broadcasting revenue of RTE for 1991 has, therefore,

11 been set at 93.63 million and with Dail statements that the

12 licence fee will not be increased and little likelihood of

13 any substantial increase in total license revenue. The RTE

14 figure has, in fact, been pegged for years to come.

15 .

16 To put this 93.63 million in context, it should be noted

17 that for 1990 the main RTE expenditure headings are:

18 Payroll: 51.416 million,

19 Operational costs: 44.373,

20 Interest, depreciation and Vat: 6.650, making a total of

21 102.439 million and the expected broadcasting revenue is

22 licence fee 46.400 and advertisement revenue: 56.55

23 million, making a total of 102.950.

24 .

25 RTE is on break even path for 1990 with any surplus for the

26 year to be derived from commercial enterprises and other

27 associated activities. Therefore, with advertisement

28 revenue in 1991 to be cut from a projected 58.5 million to

29 46.8 million there is a cut back of almost 12 million

30 advertising revenue to RTE which would create a net loss of

1 10 million in 1991 unless immediate action is taken to cut
2 all costs.

3 .

4 From the figures above, it will be noted that 51.4 million
5 is the payroll costs this year but the operational total of
6 44.37 million also contains about 50 percent of contract,
7 short-term and programme participation employment. There
8 is, therefore, about 70 million paid out by RTE in salaries
9 and fees. To achieve the cutbacks necessary to stay within
10 the proposed budget and continue to meet the fundamental
11 obligation of meeting our costs and providing for capital
12 imposed in the Broadcasting Act 1960, it will be necessary
13 to achieve the 10 million cut backs and since so much of
14 the expenditure is on employment then it follows with
15 regret that jobs and work opportunities will be lost. RTE
16 does not wish to be scare mongering or alarmist but the
17 audited figures are there to show that the job losses will
18 have to be very substantial.

19 .

20 No other solution is possible on the basis of the revenue
21 restrictions in the 1990 Broadcasting Bill, as it does not
22 offer RTE any future opportunity of recovering the revenue
23 lost. Deficit financing, which could be the answer to a
24 short term problem, is not appropriate in this case.

25 .

26 If it is the will of the Oireachtas to limit RTE services
27 and to create a pool of revenue which may benefit Irish
28 media then it would appear reasonable to achieve that
29 objective in a planned way over a period of, say three
30 years. The RTE services did not grow in isolation but

1 rather in response to public needs, successive government
2 requests and the need to meet external competitive
3 challenges. These facts should be recognised in any new
4 legislation, together with government as well as RTE
5 responsibility to the audiences and to the workers, both
6 full time and contract and time allowed for RTE to be
7 restructured in an effective but humane way if that is seen
8 as being the best way to serve the Irish people.

9 .

10 RTE would ask, therefore, that sympathetic consideration be
11 given to approaching government objectives in three-ways.

12 .

13 1. The reduction of advertising to the license levels to
14 be achieved over three years.

15 .

16 2. The four and a half minutes per hour to be a daily
17 average with permission to use up to six minutes maximum
18 per hour.

19 .

20 3. The impact of these restrictions on RTE and the
21 benefits to other media and benefit/damage to Irish
22 industry to be reviewed after three years.

23 .

24 Yours sincerely,

25 Vincent Finn, Director General" .

26 .

27 Is that the position that RTE set out to the Department in
28 that date?

29 A. Yes, it is.

30 70 Q. Were any of the three requests contained at the end of that

1 letter on the basis set out in the letter granted by the

2 Minister?

3 A. Well, certainly the reduction of advertising to be achieved

4 over three years, that was the principal one that we wanted

5 for the reasons I have already explained. That wasn't,

6 the impact on these restrictions to be reviewed after two

7 years, after three-years, well events over took the

8 legislation, but I don't recall that one being conceded

9 either. And the four and a half minutes per hour, I think

10 that was retained as well. Yeah, that it was a four and a

11 half minutes per hour.

12 71 Q. Yes. RTE I think were, as we understand from previous

13 evidence, of the view that there were certain times in the

14 day where you have more minutes per hour and certain times

15 such as, for example, in the afternoon where it is not

16 terribly lucrative you have less minutes per hour and you

17 wanted to average it out?

18 A. Yeah.

19 72 Q. And the I think the position is that was not permitted in

20 the legislation either?

21 A. So far as I can recall, no.

22 73 Q. O.k. Was there any response by the Department to that

23 letter?

24 A. I am sure, I don't know whether there was a written

25 response, I don't think there was. There was probably

26 discussion which I can't immediately recall, but I don't

27 think there was a written, I don't recall there was a

28 written response.

29 74 Q. There doesn't appear to be one. At least, we don't appear

30 to have it if there was one?

1 A. I don't. Because, I think with regard to those requests
2 one has to take account of the meeting of the 11th of June,
3 you know, between the Minister and the Authority and while
4 these requests in my letter were ones that we would have
5 liked to have seen introduced, I think the Minister had
6 already indicated to the Authority that he wasn't very open
7 to suggestion, but we felt we should do so anyway- let's
8 just see what happens.

9 75 Q. Yes?

10 A. So, it was more in hope than in expectation that, well that
11 that part of the letter was written. The earlier part,
12 dealing with the impact on our operations, that was for
13 real. I mean those were factual figures from our accounts
14 and so on and most of what was said in that letter about
15 cost reductions and job losses and so on, in one way or
16 another, they did come to pass, but the last part, asking
17 for a relaxation generally of the legislation, that didn't
18 happen.

19 76 Q. Yes. As well as RTE, were there other entities or
20 companies to your knowledge, making representations to the
21 Minister and the Department in relation to this proposed
22 legislation- I'm thinking of people involved in the
23 advertising industry?

24 A. Well, the whole advertising world were very dissatisfied
25 this legislation as well. By which I mean other media,
26 advertising agencies and advertisers & companies that
27 produced commercials, television and radio commercials.
28 So there was a lot of anxiety and concern about it because
29 I mean amongst the many realities, one was that RTE at that
30 time commanded substantial audiences on radio and

1 television. And advertisers, they wanted to use RTE, this
2 was not out of love of RTE or hostility to any other media
3 operator, but advertisers and the advertising agencies they
4 take a very pragmatic view of these things. If you have
5 the audience that they want, they will advertise with
6 you. If you don't have it, they won't.

7 .
8 If the amount of time is restricted, severely restricted as
9 well, this has implications for availability of advertising
10 and so on. So they could, all those segments of the
11 media, of the advertising world, they could see
12 difficulties ahead, because the market was going to be
13 distorted because of the introduction of this legislation.

14 77 Q. We have been given to understand that they made the point
15 to the Department that the capping of RTE's advertising
16 would not result in a diversion of that revenue necessarily
17 to Century Communications or indeed the Irish private
18 broadcasting sector and it might well result in a diversion
19 abroad?

20 A. Absolutely, that if their preferred choice for advertising,
21 if RTE was their preferred choice for advertising and that-
22 for one reason or another- wasn't available they would go
23 to the next preferred choice, the one in their judgement
24 best met their advertising objectives and if that was a
25 television, say UTV or some other company, or - they just
26 look for the best return they can on the money they spend.
27 Where is the audience that they want, and that's what they
28 will follow. Measures such as this simply will not divert
29 advertising expenditure from one sector to another, it is a
30 very much a market-place and people look for the best value

1 for money. And that's solely the criterion on which they
2 make these decisions.

3 78 Q. Yes. We have been told by the previous witnesses that the
4 major impact of the capping legislation was obviously going
5 to fall in the area of employment and programming because
6 of the point which you make in your letter, that the
7 greater proportion, by far the greater proportion of the
8 expenditure of RTE is on the payroll and therefore any cuts
9 would take place in payroll. What, in fact, was the
10 consequence of this legislation when it was passed in
11 September, in relation to the organisation and I am not
12 really asking you about the figures because Mr. O'Brien
13 dealt with those. Just from an organisational,
14 administrative, management point of view, what were the
15 immediate consequences on the organisation?

16 A. The consequences were very severe because as I have said
17 already, we had to deal with the situation where almost
18 overnight a very major reduction in our income was going to
19 occur. We had to look very urgently through every area of
20 expenditure and we also looked at any opportunities, as I
21 have mentioned, for increasing our income in areas which
22 wouldn't be capped and to try and bridge this 10, 12
23 million gap through those two approaches, trying to see
24 could we increase our revenue. Mainly, unfortunately, it
25 had to be on the expenditure side and being in a service
26 business, like any service business the principal cost is
27 people, whether it is actually payroll or contract
28 employment or whatever, but it is - and that is
29 particularly the case in broadcasting. Whether it is
30 payroll or other similar payments to people for their

1 services, that's a huge element of it. So that had to
2 bear the brunt of these reductions in terms of actual
3 payroll, numbers were reduced by about 200, I think in the
4 space of about 18 months, but there had to be other cut
5 backs as well in relation to personal contracts for
6 programme contributors and so on.

7 .

8 We cut back the hours of broadcasting. It was a whole
9 range of measures.

10 79 Q. Yes?

11 A. Because the situation demanded that we had to look at
12 everything that we did and see were there any things that
13 we could do without, without majorly affecting broadcast
14 output. That was our principal concern.

15 80 Q. Well, if we can just take it stage by stage. First of
16 all, payroll as such, you say cost approximately 200 jobs?

17 A. Yeah.

18 81 Q. Was that a combination of voluntary redundancy and
19 involuntary redundancy?

20 A. It was pretty exclusively voluntary redundancy because a
21 lot of the people, most of the people on the payroll, they
22 wouldn't have been in benefit, in terms of social welfare,
23 and redundancy, statutory redundancy payment and so on. So
24 it was a very intensive exercise, largely on the part of
25 our personnel, I believe called "human resources" is the
26 current word, but anyway, they addressed this problem and
27 were successful in achieving about 200. It was mostly
28 voluntary, but then there were some people on contract.

29 82 Q. What was the position about the contract workers?

30 A. Well, as their contracts expired, sometimes they might be

1 six months but they could be a year, but as contracts
2 expired they were very carefully reviewed to see could we
3 do without this person for a while or maybe permanently.

4 83 Q. Yes.

5 A. So that had to be part of the process as well. But the
6 principal sector was were full time employees.

7 84 Q. Yes?

8 A. They were the biggest single area we concentrated on
9 because as I have said, in the business that we are in,
10 inevitably that's where your biggest costs are.

11 85 Q. Yes. Perhaps Sir that might be--

12 .

13 CHAIRMAN: I was just going to suggest that. Give the
14 witness a rest, say shortly after 12.

15 .

16 MR. HANRATTY: Yes.

17 .

18 THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED

19 AGAIN AS FOLLOWS:

20 ..

21 MR. HANRATTY: Mr. Finn, you have told us about the
22 staffing consequences of the directive, and I think on the
23 24th of July of 1990, a memorandum was issued from your
24 office to all staff, page 5408, where you say,
25 " To all staff - Impact on RTE of Broadcasting Bill 1990,
26 In just over two months time RTE will begin to lose
27 advertisement revenue of a rate of at least 1 million per
28 month or about 12 million in 1991.
29 Even if the advertisers accept fully the increased
30 advertisement rates on both radio and television which will

1 shortly be introduced.

2 .

3 This shortfall must be balanced quickly, partly through an
4 increase in licence revenue and in revenue from commercial
5 enterprise but primarily through a reduction in expenditure
6 across the board. We must at the same time strive to
7 maintain current levels of home production and programme
8 quality and retain our major share of radio and TV
9 audience. This will be a difficult task for all of us but I
10 have taken the optimistic view that a 5 percent average
11 saving in all divisional budgets and some increase in
12 revenue will reduce the anticipated impact on staff
13 numbers. However, it is an inescapable fact that at least
14 £4 million savings in payroll must be achieved and this
15 represents a cost of employing approximately 200 staff.

16 .

17 As a first step in this regard I have sought to identify
18 those who would wish to avail of voluntary early retirement
19 or severance package and who may be releasable. I have
20 invited applications immediately to Director of Personnel
21 and this process is already well in hand. Other changes
22 however, will be necessary to achieve the target reduction
23 by early 1991 and I have asked Robert Gahan, Assistant
24 Director General, to coordinate a group a total staff
25 activity and cost audit as a first stage in planning staff
26 reduction, redeployment and training programme, which will
27 ensure the most effective and fulfilling use is made our of
28 our most valuable resource.

29 .

30 Mr. Gahan and his group will welcome contact from staff

1 members or groups of staff who feel they can make a
2 positive contribution to the necessary changes that must
3 now be implemented quickly. Finally, I ask all managers
4 to communicate regularly and openly with their staff in the
5 coming months so we as to ensure that we can all to
6 cooperate in achieving the objective of maintaining a
7 successful National Broadcasting Service despite the
8 restrictions imposed on us" , signed by yourself.

9 .

10 I think you also issued a press statement on the 13th of
11 July of 1990, page 5407, where it says:

12 .

13 "The Radio Teilifís Eireann Authority today considered the
14 serious consequences of the Broadcasting Bill 1990 which
15 has passed all the stages in Dail Eireann and is now being
16 considered in the Seanad.

17 .

18 While the Authority recognises the purpose of the Bill is
19 to divert a substantial part RTE advertising revenue to the
20 commercial broadcasting sector and other media, it is
21 disappointed not to be given a reasonable time to introduce
22 an orderly restructuring to meet the changed
23 circumstances.

24 .

25 It is the intention of the Authority to preserve the
26 quality of its output and to serve the Irish publish as it
27 has done for 30 years. Every effort will be made to
28 maintain present revenue and to develop new revenue
29 opportunities. Inevitably, with such an immediate
30 reduction in income there will be cut backs and a

1 substantial lost of work opportunity for RTE staff and

2 those who supply talents and services.

3 .

4 The authority asks that the impact of this legislation will

5 be reviewed annually by the Minister for communications" ,

6 dated the 13th of July 1990.

7 .

8 Was that press statement, in fact, released?

9 A. Yes, I believe so.

10 86 Q. Now, apart from the implications for staff, what were the

11 consequences of this legislation on programming and

12 programme planning?

13 A. Well, as I have said and these documents show, our hope was

14 to try and shield the programme areas as much as possible

15 from these reductions. But they couldn't escape

16 altogether and amongst the things we did was on television,

17 that we had to reduce the hours somewhat of transmission

18 and look very carefully at programme budgets.

19 .

20 There were certain performing groups, choirs and music

21 quartets and so on, they had to be disbanded, but our

22 objective, as I say, was to try as far as possible to

23 maintain the quantity and quality of our output. It wasn't

24 possible to maintain fully the quantity.

25 87 Q. Yes. We know that the legislation or that part of the

26 legislation capping RTE was repealed in 1993. Could you

27 just tell the Tribunal looking at it and I suppose

28 backwards from the perspective of 1993, what was the

29 overall effect of the capping legislation on RTE during the

30 period when it applied?

1 A. Well, the overall effect was that during the three-years we
2 suffered a reduction in our advertising income of about 10
3 to 12 million pounds per annum. As a result we had to cut
4 back somewhat on broadcast output and we, of course, would
5 never recover that kind of money because once it is gone,
6 it is gone. So there was no opportunity of ever as it
7 were, catching up. It was a permanent loss to us.

8 88 Q. Yes. It was suggested I think yesterday, that the capping
9 in fact didn't cause any damage to RTE as a broadcasting
10 organisation. Is that a view that you would agree with?

11 A. Oh no. Because all of these cost reduction measures
12 really all they achieved was to more or less break even or
13 maybe make a small surplus when everything was taken into
14 account. But, breaking even or making a small surplus,
15 given the range of our activities really is not an adequate
16 financial performance. You need to have a worthwhile
17 surplus in any organisation, particularly the size of
18 RTE. Any organisation like that needs to have a
19 worthwhile surplus. It is to re invest in all sorts of
20 things. I am not just thinking of plant and equipment, but
21 that at that time re investment in new plant was an
22 important objective we had because a lot of new technology
23 coming in could generate, in turn, cost savings. So if you
24 can't invest you can't reap the benefit of cost savings
25 down the line. And I think in all, I must say in all the
26 circumstances we did the best that we possibly could.

27 .

28 As I say, and I said already , our primary objective was to
29 preserve broadcast quantity and quality to the maximum
30 extent. We felt that was an obligation we had to the

1 license payer and in addition of course if one begins to
2 cut back in those areas, it is, well it is just not a good
3 strategy, because it has all sorts of other implications.

4 89 Q. What were the circumstances leading to the repeal of the
5 legislation. First of all, were you involved in that in
6 any way?

7 A. I don't think so because I retired at the end of 1992.

8 90 Q. I see?

9 A. I think that came --

10 91 Q. That came after your time then?

11 A. Well, I think it was - I don't know whether, I don't think
12 it was - no that came after my time. Yes.

13 92 Q. Yes.

14 A. Even if I had left I was pleased to see that to some extent
15 the status quo had been restored.

16 93 Q. Thank you, Mr. Finn. If you answer any questions anybody
17 else may wish to put to you.

18 .

19 CHAIRMAN: Before we do that, can we find out how many are
20 going to take up the invitation and in what order?

21 .

22 MR. FOX: I have a few questions for Mr. Finn on behalf of
23 Mr. Burke.

24 .

25 MR. O'HIGGINS: I think I have about three questions and
26 no more

27 .

28 CHAIRMAN: Would you like to stand back?

29 .

30 MR. O'HIGGINS: I will wait for Mr. Fox to finish, I

1 think.

2 .

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

4 .

5 94 Q. MR. FOX: Mr. Finn, I am John Fox and I appear for Mr.

6 Burke?

7 A. Good day.

8 95 Q. Mr. Shannon is handing up a number of documents to you that

9 I will be dealing with during the course of the

10 cross-examination.

11 .

12 Can you tell me, Mr. Finn, was it or was it not the policy

13 of RTE and of the RTE Authority to obey the law and comply

14 with government policy?

15 A. To obey the law, yes. But not necessarily- it wasn't part

16 of our statutory obligations always to obey government, the

17 government of the day's policies, because -.

18 96 Q. When the policy as reflected in, into law, in other words

19 when the policy -?

20 A. Yes, if the policy is in law, yes.

21 97 Q. That would be a reflection of that. Can you tell me why

22 you made a speech in Cork, in which you lambasted

23 government policy as set out in the 1987 Bill. You made

24 this speech on the 28th of October of 1987 and you see it,

25 it is on the screen there before you, you see the headline

26 there

27 "New Bill disaster for RTE" can you recall or do you

28 acknowledge making that particular speech Mr. Finn?

29 A. I did, yes make the speech but I didn't write the headline.

30 98 Q. Yes. Well, I just want to go through the article and deal

1 with the issues, Mr. Finn.

2 .

3 It says "New Bill disaster for RTE- Irish Press article,
4 28th of October 1989. The Government's Local Radio Bill
5 will emasculate RTE and relegate the station to the role of
6 a minority service, the Director General, Mr. Vincent Finn
7 said in Cork yesterday evening. If RTE cannot retain its
8 present standing, he added, it would be better not to
9 maintain the pretense of providing a national service.

10 .

11 Mr. Finn was attending a ceremony marking the inauguration
12 of a week of local television in Cork, to mark 25 years of
13 RTE television.

14 .

15 He said that the proposed legislation to allow national
16 commercial radio and the moves towards commercial
17 television seemed to indicate a rush towards the
18 fragmentation of broadcasting without sufficient thought
19 for the inevitable consequences in terms of quality of
20 service to the audience.

21 .

22 Mr. Finn feared that an even more difficult environment is
23 now in prospect for the National Broadcasting Service and
24 cited Cork as an example where the local - I think that
25 word is legitimate station is confined to 3 hour - local
26 legitimate station was confined to three-hours of
27 broadcasting per week day while competing with around the
28 clock illegal stations.

29 .

30 He strongly criticised the illegal operatives who have

1 openly flouted the law for more than a decade. They
2 appropriated frequencies often without thought for the
3 consequence to emergency service and other legitimate users
4 of the air waves. They frequently flouted planning law.
5 They cheated performers of their rights to royalties and
6 were often less than perfect employers. He did point out,
7 however, that RTE was not opposed to the emergence of
8 commercial and community radio and had, in fact, offered to
9 assist in its development but he hoped that the liberal
10 legislation which is promised will not now legitimise
11 anyone who has broken the law in the past.

12 .

13 In respect of broadcasting the law has already been brought
14 into considerable disrepute to allow any illegal operator
15 to profit from his lawbreaking would be entirely
16 unacceptable, he added.

17 .

18 Again he expressed his fears that the commercial interests
19 would be given a free run of the lucrative Dublin market,
20 in which one third of the population and half the retail
21 spending of the country is concentrated. We will compete
22 vigorously but revenue losses are inevitable. Mr. Finn
23 went on to warn that if the government introduces a
24 national private television channel then neither element in
25 such a dual system would then have the ability to compete
26 effectively with the welter of foreign competition RTE now
27 faces.

28 .

29 RTE would not be able to maintain its current level of
30 services to its audience if its income base is undermined

1 while leaving it with all its existing statutory
2 obligations. He concluded by pointing out that given
3 Ireland's size and limited resources, a remarkable level of
4 public services had been achieved not least in the area of
5 broadcasting" .

6 .

7 Now Mr. Finn, you recall making that speech, I take it?

8 A. Yes. I do.

9 99 Q. And would you not agree with me that that reflects the
10 attitude and fears within RTE and in fact your own attitude
11 and fears as Director General of RTE in relation to the new
12 legislation and most importantly in relation to future
13 competition. Would you agree with me in saying that?

14 A. Well our concern was really there hadn't been any much
15 consultation with us. In fact I don't think there was any
16 consultation at all. And it was even, there were some
17 public discussion around that time that apart from local
18 radio, that there would be, there might be national
19 commercial radio as well and it was in that context that I
20 made this speech.

21 100 Q. Just -

22 .

23 MR. HANRATTY: Just to point out Sir, we do, in fact, have
24 a copy of the speech itself rather than the newspaper
25 report of the speech but we don't have it down here and we
26 have sent up for it.

27 .

28 MR. FOX: The reason I am reading it into the transcript
29 Chairman is it is part of Mr. Burke's statement. It is at
30 I think, at Appendix 1 in Mr. Burke's statement.

1

.
MR. HANRATTY: I don't know whether it is the newspaper
extract that's in the statement or the speech itself.

4

.
MR. FOX: The newspaper extract.

6

.
MR. HANRATTY: I am saying we have the speech itself.

8

.
CHAIRMAN: The original speech is available and should be
used.

10

11

.
MR. FOX: But it is in the context of Mr. Burke's own
statement, Chairman

13

14

.
CHAIRMAN: Carry on, but we have it for a matter of
reference here in a few moment its. It is coming down from
our archives.

16

17

18

.
MR. FOX: I will move on, Chairman.

19

20

.
CHAIRMAN: Certainly.

21

22

.
MR. FOX: Can you tell me Mr. Finn how much did Century
pay RTE between 1989 and 1991?

24

25 A. For what?

26 101 Q. For, as part of the services contracted for - can you tell

27 me what money they actually paid over to RTE during that

28 period?

29 A. No, I can't. But what I can say is it was, the best

30 answer I can make is they didn't pay anything like what

1 they should have paid under the contract signed.

2 102 Q. Yes but --

3 A. I don't know the exact figure. But it is available.

4 103 Q. You see Mr. Finn, I'm addressing to you now as Director

5 General at that time, that Mr. O'Brien was asked this

6 question at day 201 at page 106 line 12 of the transcript

7 and he said he did not know. I will refer to that passage

8 in the transcript, Chairman, if I may? .

9 .

10 This was a question put by Mr. Walsh on behalf of Mr.

11 Burke. He said to Mr. O'Brien "Can you recall how much

12 Century paid over the years and how much they paid RTE? I

13 know you said there were a lot of bills outstanding?

14 Answer: Unfortunately, I didn't have sufficient records

15 to say how much they paid but in terms of the services that

16 pent to that were rendered to them"

17 .

18 Now I would like to know what the actual figure was, the

19 actual figure that was paid over. Because we have heard

20 you and Mr. O'Brien indeed, projecting figures or giving

21 projections on potential revenue losses to RTE resulting

22 from the cap and you are willing to speculate on those

23 figures. But I am actually talking about a figure which

24 should be quantified it, should be quantified in the RTE

25 accounts at some stage. You should be in a position to

26 provide this figure to the Tribunal?

27 A. We are in a position to provide it, but we are not in a

28 position to provide it at this moment in time, but there is

29 no doubt about it. I am quite certain that every payment

30 was recorded was duly lodged to the RTE account. There

1 isn't a difficulty at all in providing that figure, but it
2 is not, it is not one I have just immediately available.

3 But there is no difficulty in providing it.

4 104 Q. This is a very important matter, Mr. Finn and that is the
5 reason why I wish to highlight it

6 .

7 MR. HANRATTY: Sir, with respect it is unfair to ask this
8 witness to produce out of the top of his head a figure. We
9 can easily get the figure if My Friend wants it but to be
10 persisting and criticising the witness that he can't give
11 it off the top of his head is unreasonable.

12 .

13 CHAIRMAN: Mr. Fox, I completely agree. This is not the
14 witness that this matter should be put to. You had the
15 Financial Director here two if not three, sorry, seven
16 days. Certainly it was within your remit either to advise
17 the Tribunal that you required this information or
18 alternatively, you ask if he hadn't got it, that we would
19 have got it for you.

20 .

21 As far as I am concerned, I am quite prepared to endeavour
22 to facilitate you by getting the figure. I will not have
23 this witness bullied in this way about a matter which is
24 not his direct, is not directly within his competence. I
25 am not saying he wouldn't, as Director General, know at the
26 time. It is not something he is going to have at finger
27 tips.

28 .

29 If you want to revisit the matter when we have the
30 document, when we have the documents - if you had given us

1 notice you want this had we would certainly have
2 endeavoured to get it for you. In any event, it is
3 available from two sources, one the RTE records and
4 presumably is available from the liquidators account's,
5 because he must know, the liquidator's accounts of Century
6 Radio, because he must know what his debts were.

7 .

8 MR. HANRATTY: The liquidator's accounts may have that
9 broken down, I am not certain but it is certainly available
10 from RTE and we can get it.

11 .

12 MR. FOX: For the record I want to say Mr. Walsh did put
13 this question to Mr. O'Brien and I have now referred to
14 that matter in the transcript

15 .

16 CHAIRMAN: That may be so, I have the transcript in front
17 of me also. But I - the suggestion, as I read it, or I am
18 not - I am only reading it here, is that it was ú600,000
19 short of what it should be.

20 .

21 MR. FOX: Chairman, the point I want to make here is that
22 RTE have put this figure forward very much of how much they
23 weren't paid by Century on the services that they rendered
24 towards Century and in fact, Mr. O'Brien speculated as to
25 the staff costs which were not quantified at that time.

26 .

27 Now if RTE are in a position to comment on the figures in
28 this respect I think it is a simple exercise for RTE to
29 come up with the actual figure that was paid by Century.
30 If they are prepared to speculate on figures, on losses

1 they say that they haven't quantified

2 .

3 CHAIRMAN: Mr. Fox, this was a commercial transaction.

4 The Minister made an order, effectively an order directing
5 the annual payments that were to be made and whether RTE
6 like them or not, those payments became contractual
7 payments.

8 .

9 The fact of the matter is the evidence is that they did not
10 pay them in full. Sorry, that Century Radio did not pay
11 them in full and that was, apparently, according to the
12 transcript I have, a shortfall of 600,000. I don't think
13 that the fact that you failed to pay, that a company fails
14 to pay its debts can be turned into a virtue. That's
15 effectively what you are trying to do.

16 .

17 MR. FOX: Chairman, it was only on the issue of quantity
18 case because RTE have very willingly quantified other
19 figures.

20 .

21 MR. O'HIGGINS: Sir, might I interject. It is my
22 recollection that Mr. O'Brien had said he had gone through
23 the RTE figures and as of yesterday he found it impossible
24 to extract the exact sum which Century had paid to RTE as a
25 gross sum. However, I would respectfully observe that the
26 debt of 600,000 and whatever it was thousand, was a matter
27 proved in the liquidation some eight or nine years ago at
28 this point and not disputed at that time.

29 .

30 I think the position is that perhaps all of the RTE ledgers

1 are indicating any payment that was made are not now
2 extant, but these matters were proved and crystallized many
3 years ago and to the extent that Mr. O'Brien has given that
4 evidence, that was not so much as I know, challenged in the
5 liquidation and any criticism which Mr. Stafford or Century
6 made was along the lines not that there wasn't money owing
7 but along the lines of having issues that RTE had not
8 delivered service in some respects to quality agreed or had
9 abuse a dominant position.

10 .

11 In my respectful submission to you Sir, these matters as I
12 say, were established in the liquidation and it is arising
13 out of that that the figure of 600,000 and I have forgotten
14 the precise number of thousand, can be identified with
15 precision

16 .

17 CHAIRMAN: Certainly 600,000 plus a figure of 88,000 which
18 RTE forgave, as far as I recall the evidence.

19 .

20 MR. O'HIGGINS: Yes, Sir.

21 .

22 CHAIRMAN: I don't see the point of this whatsoever.
23 However, you are welcome to continue it for a limited
24 time.

25 .

26 MR. FOX: I have no wish to continue, Chairman but I am
27 happy that RTE perhaps will be in a position to provide the
28 figure or may not, as the case may be.

29 .

30 MR. HANRATTY: We will try and check whatever ledgers we

1 have from the liquidator. I wasn't aware that the RTE
2 ledgers containing the Century payments were no longer
3 extant. We can check over lunch what information we have
4 from the liquidator and assist in that regard.

5 .

6 CHAIRMAN: We will do that for you.

7

8 MR. FOX: Thank you, Chairman. I will move on to another
9 topic. Mr. Finn, can you tell me, I want to refer to a
10 memo, an RTE memo which Mr. Lynn will put on the screen. I
11 think you have a copy of the original, a handwritten memo,
12 you have a copy in front of you.

13 A. Yes, I do.

14 105 Q. Yes and this, you can see there that there is, the RTE logo
15 is on the top of that there and it is - can you tell me is
16 it directed towards you. It says " DG" at the top?

17 A. That's right yes.

18 106 Q. Now, it says there on the memo, if I am reading it
19 properly, "This is really putting pressure on Century.
20 Contract going to Arthur Cox & Company today, pm" then the
21 word "File" circled and the date 15th of May 1989 and a
22 signature, I think that's Gerry O'Brien's signature, is it?

23 A. It is, yeah.

24 107 Q. Right. Can you tell me, what is the meaning or can you
25 tell me what you understanding the meaning of the phrase
26 "This is really putting pressure on Century," what does
27 that mean?

28 A. I am very clear what Mr. O'Brien meant by that note. What
29 he meant was that we were experiencing difficulty in
30 getting things progressed with Century. He, Mr. O'Brien,

1 had been working as he explained, in relation to getting
2 financing for the equipment, the engineering division had
3 been discussing with Century their precise equipment
4 requirements.

5 .
6 RTE was doing everything it could to progress matters and
7 yet we were not really making any headway, because Century
8 weren't making decisions that they should have made, and
9 what Mr. O'Brien, certainly as I understood it, what he was
10 saying in this note is that this further measures that we
11 were taking, that is to say " a draft contract going to
12 Arthur Cox & Company today", Arthur Cox & Company being
13 Century's solicitors. That this is going to put additional
14 pressure on Century.

15 .
16 It was no more sinister than that. That was the
17 background that Mr. O'Brien was doing all he could, but not
18 getting very far. The engineering division were doing all
19 they could but not getting very far. And now this was an
20 additional measures, an initiative taken by RTE, submission
21 of a draft contract to Century's solicitors and this, as
22 Mr. O'Brien said in his formal note, this would put
23 additional pressure on Century.

24 .
25 That was the kind of pressure that he was speaking of. At
26 least that was my clear understanding of what the note
27 meant.

28 108 Q. But Mr. Finn he didn't say in the note this was putting
29 additional pressure on Century there is an emphasis -?

30 A. Excuse me, he said," contract going to Arthur Cox & Company

1 today". That's the kind of pressure. You asked me what
2 was my understanding of this note.

3 109 Q. Yes?

4 A. What I have said is my very clear understanding of what the
5 note meant. That's what it meant to me.

6 110 Q. Right. And what is the emphasis on the word "Really".
7 "This is really putting pressure on Century" ?

8 A. Well this is an informal hand note of about 10 or 15
9 words. We didn't parse and analyse these kinds of notes
10 between each other. We had too much to do. I can't say
11 what he meant by " really putting", what the particular
12 significance of that adverb is, but I have told you, as
13 best I can, what meaning I took from the note and the word
14 "File" is my writing. That's what I did with it, I
15 filed it. It was just for information.

16 111 Q. I have to suggest to you Mr. Finn, that in the context of
17 your own speech which I referred to earlier, and in the
18 context of in fact of the wording of this document itself
19 now on the screen, that this reflects a further level of
20 hostility towards Century within RTE throughout this
21 process and indeed beforehand when you made your speech.
22 I am putting that to you?

23 A. Yes, I understand. Well, just to put certain events in
24 context. I made the speech in, I think it was October of
25 1987. This handnote is whatever it is, a year and a half
26 later. Things have changed a lot. Legislation has been
27 introduced. Century had been awarded the franchise for the
28 national commercial radio and following the Minister's
29 direction and clarifications on the 30th and 31st of March,
30 we are now engaged seriously in progressing matters, and

1 there is no evidence at all of hostility.

2 .

3 I mean, these people were going to be competitors. They
4 were going to compete with us for audience. They were
5 actively poaching some of our best talent. They were
6 trying to poach more of our best talent. It was just a
7 normal competitive situation. But as I was explaining
8 earlier, any time RTE objected or didn't agree with
9 something Century wanted, this was immediately interpreted
10 as hostility. There wasn't hostility. It was a very
11 difficult situation for RTE at that time, we were committed
12 from the Authority down and there had been ample evidence
13 to show that we were anxious to be as professional as
14 possible in our dealings with Century. But we were going
15 to compete with them as well.

16 .

17 I mean I could say that poaching some of our best
18 broadcasting talent, that that was a very hostile act, we
19 didn't. That's competition.

20 112 Q. I will move on from that Mr. Finn.

21 .

22 MR. HANRATTY: Before My Friend does, Sir, I think I
23 should point out to you that Century did not exist in
24 1987. Mr. Hills has given evidence to the Tribunal that
25 the name Century was his idea and as far as I can recall
26 the company Century Communications Limited was incorporated
27 I believe on the 30th of November of 1988

28 .

29 CHAIRMAN: That's what I was thinking.

30 .

1 MR. FOX: It wasn't referring to it Chairman in the
2 context of Century's existence in 1987

3 .

4 CHAIRMAN: The article must have been, must have some
5 relationship to Century, after all it was in 1987.

6 .

7 MR. FOX: Yes, Chairman I accept that point. I
8 introduced the article in the context of future competition
9 which is referred to in the article. And it was, it
10 wasn't specifically on the Century issue

11 .

12 CHAIRMAN: It is a comment to be made as to what you say
13 is the effect, nothing more and nothing less. The
14 Director General is perfectly entitled to take his view as
15 to what it meant.

16 .

17 MR. FOX: Very well, Chairman. Mr. Finn, can I refer to
18 you a joint statement from the Minister for Communications
19 of the RTE Authority which Mr. Lynn will put up on the
20 screen. This is the joint statement I want to read out to
21 you, I want to put something to you. "Joint statement
22 from the Minister for Communications and the RTE Authority,
23 at a meeting held today between Mr. Burke TD, Minister for
24 Communication and the RTE authority. The charges for
25 transmission services were discussed. The charges as laid
26 down by the Minister will be operated by RTE and the
27 Minister reiterated that these involved no question of a
28 subsidy from RTE to any independent contractor. A review
29 of the operation of the maintenance charges will take place
30 after 18 months to ensure that this is so. The process of

1 the finalisation of the contract between RTE and Century
2 will now proceed" and then the word " ends" there at the
3 end of the joint statement.

4 .

5 Now, did you, as Director General of RTE, agree with the
6 contents of the joint statement?

7 A. I did, yes.

8 113 Q. You did agree with the content of the joint statement?

9 A. Yes.

10 114 Q. And you had no difficulty about that?

11 A. No.

12 115 Q. You had no difficulty about that?

13 A. No.

14 116 Q. And finally then Mr. Finn, can I say to you, you accept
15 that the Broadcasting Act was fully debated in the House of
16 the Oireachtas and passed into law by the government and
17 reflected government policy at that time. This is a
18 matter which I referred to earlier, do you accept that
19 point?

20 A. Oh absolutely. Yeah, absolutely the broadcasting
21 legislation was debated by the Oireachtas and duly passed,
22 oh, yes.

23 117 Q. Yes. And that it was a government decision in the sense
24 of collective responsibility, a decision of the government
25 of the day?

26 A. That's the normal, yes, that's the normal arrangement.

27 118 Q. And whether RTE liked it or not, their likes or dislikes as
28 regards the legislation was irrelevant. It was the law of
29 the land and that was the way it was. Do you accept that
30 point?

1 A. Yeah, we accepted the law, but I'd just like to observe
2 that it is not, it is quite commonplace for there to be
3 discussion with affected bodies before legislation is
4 introduced or passed and there were instances where we
5 would have preferred, as I have already mentioned, there
6 were instances where we would have preferred that there had
7 been greater discussion with the Authority prior to the
8 legislation being introduced.

9 .
10 But at the end of the day, whatever the law says, that's
11 the law.

12 119 Q. Thank you Mr. Finn.

13 .
14 THE WITNESS WAS EXAMINED BY MR. O' HIGGINS AS FOLLOWS:

15 .
16 MR. O'HIGGINS: Just if we can leave on screen the press
17 statement which was referred to by My Friend? Just the
18 very last thing that was on screen. I just wanted you to
19 clarify that.

20 .
21 I think the first paragraph is purely factual and that
22 represents a fact which no one disputes, is that right Mr.
23 Finn?

24 A. Yes, the first paragraph, yes.

25 120 Q. And I think you said that you agreed with the contents of
26 the second paragraph as well?

27 A. The second paragraph, I agree with it.

28 121 Q. Let's look at what the contents are; that's perhaps what we
29 are both thinking about now. " The charges laid down by
30 the Minister will be operated by RTE". I think you agree

1 that that was something RTE had to do and intended to do at

2 that time, is that so?

3 A. Oh, yes, this was to carry out the direction under Section

4 16.

5 122 Q. Yes?

6 A. Of the 1988 - yes.

7 123 Q. And then it goes on to say that," the Minister reiterated

8 to those involved there was no question of a subsidy from

9 RTE to any independent contractor". I think that in

10 January the Minister had said that there wouldn't be a

11 subsidy, isn't that correct?

12 A. Oh he had said regularly, but certainly had said it in

13 January. But --

14 124 Q. And this appears to say that this, that on the 31st of

15 March, that the Minister reiterated that, is that so, that

16 he said again there was no question, there would be no

17 question of subsidy, is that so?

18 A. Yes.

19 125 Q. Yes. Well, although the Minister reiterated that, was it

20 the view of RTE or yourself that while the Minister had

21 reiterated that there wouldn't be a question of subsidy,

22 was it your view that there was subsidy or not, whatever

23 the Minister may have reiterated?

24 A. Oh, yes. Certainly my own view, and I believe the

25 Authority's view, was that there was some element of

26 subsidy involved and that's why the third paragraph was

27 important from our point of view.

28 126 Q. Yes. Well it seems to me, correct me if I am wrong, what

29 the statement records is a statement by the Minister and

30 not by the Authority, that there was no question of a

1 subsidy and that the Authority recognised no more than that
2 the Minister had said that, is that so?

3 A. Oh, yes. That's - although this is a short statement, it
4 took a little time on the day, although it is very short,
5 it took a little time to get a form of words that both the
6 Minister and RTE were satisfied with and I think that
7 second paragraph, from RTE's point of view, very accurately
8 reflects the situation.

9 127 Q. Yes. And I think that that was clarified and later days
10 by the letter from Mr. Culleton to the Minister following
11 the report of the " Irish Independent", is that so?

12 A. Yes it was. The Minister was quoted in the "Irish
13 Independent", whether accurately or not, I don't know.
14 But he was, there was a quote attributed him in the
15 " Independent" and the Chairman of the Authority felt it
16 necessary just to again clarify the Authority's view about
17 subsidy or no subsidy.

18 128 Q. Yes?

19 A. He did so in writing.

20 129 Q. Yes. If I can just turn to another letter briefly, but
21 the meeting of the 5th of January 1989, I had intended to
22 ask Mr. O'Brien about this. I am sure you can deal with it
23 either. When meetings take place between RTE and the
24 Department or RTE and the Minister, is there a protocol
25 whereby those meetings are arranged, time, place and so on?

26 A. Yes. There is a fairly well established protocol. I am
27 sure it doesn't apply to just to RTE, but to many similar
28 bodies. The normal interfacing is between the Minister
29 and the Chairman of the body,. The Chairman of the
30 Authority in this case or, between the Secretary or

1 Secretary of the Department as they then were, secretaries,
2 and the Chief Executive. And progressively down the
3 line.

4 .

5 But, there was a certain amount of flexibility as regards
6 arrangements between the civil servants and ourselves, that
7 was the general protocol, but there was some flexibility.

8 But, it was very much a long standing arrangement that
9 meetings between the Minister of the day and the Chairman,
10 that they would be arranged between the Minister's office
11 and the Chairman's office or vice versa. I mean, for
12 instance, I wouldn't ring the Minister's office and say,
13 " our Chairman wants to meet the Minister", that just
14 wasn't the protocol for such a situation.

15 130 Q. So, in other words, the Chairman made arrangements with the
16 Minister, so to speak, if the Minister and the Chairman
17 were to attend a meeting?

18 A. Well, if the Chairman wanted to see him the Chairman would
19 ring the Minister's office and if the Minister wanted to
20 see the Chairman, maybe with others, the Minister's office
21 would ring the Chairman or -.

22 131 Q. Yes. Would it be true say if the Director General was
23 making arrangements that his counterpart, so to speak,
24 would be the Secretary of the Department, as he was at that
25 time?

26 A. Yeah, yes.

27 132 Q. Yes. Would there be any ordinary situation in which a
28 meeting might be arranged between, let us say Mr. O'Brien
29 and Mr. O'Morain with a message then given to the Minister
30 and the Chairman, that Mr. O'Brien and Mr. O'Morain had

1 arranged to meet at a given time and they expected the

2 Minister and the Chairman to turn up on that date?

3 A. Never in my experience.

4 133 Q. Yes?

5 A. I think it - and I don't, I just don't believe that could

6 ever, that would ever be the way these things were

7 arranged. Certainly not in my time.

8 134 Q. So at this level one would expect that the arrangements

9 would have been made and the discussions take place in

10 relation to it at the highest level between the Chairman's

11 office and the Minister's office, is that correct?

12 A. Yes, that would be the, that would be the situation.

13 135 Q. Yes. Just one very last thing, in relation to your speech

14 of the 28th of October 1987, I think we have heard in

15 evidence that the text of a Bill wasn't submitted to

16 government until the 17th of November 1987, which was some

17 three weeks or so after you made your speech, was that so?

18 A. Yes, that is correct, there was just - at that time towards

19 the end of October there was a lot of speculation about

20 developments in broadcasting.

21 136 Q. Yes. I take it that as Director General you felt that you

22 had a legitimate interest in expressing your view about the

23 directions in which things might go?

24 A. Well, I felt it was important to state the RTE position and

25 this was an opportunity to do so publicly.

26 137 Q. Yes. Is it true that you had and could have no idea what

27 specifically was going to be proposed by way of Bill at

28 that time?

29 A. Not specifically, no.

30 138 Q. And I think it is a matter of history that the Bill, as

1 originally proposed, went through a series of amendments,
2 not least amendments which required the setting up of a
3 statutory independent to awards licenses, as opposed to an
4 advisory committee with the Minister awarding or whatever
5 even after the first Bill was proposed in November, is that
6 so?

7 A. Yes, what finally emerged at the end of the day was quite
8 different to what was being discussed as a possibility at
9 that time in 1987.

10 139 Q. Yes. Would it be fair to say that what appears to be the
11 general thrust of what you said in your speech was that
12 those who had profited for years from illegal operations
13 should not get the rewards of their illegality, is that so?

14 A. Yes. I know it is, the full text of the speech is
15 available and I know it is quite common for people when
16 they make public addresses to complain afterwards about the
17 headlines that they don't reflect the essence of what they
18 said but there is a lot of what I said which criticised the
19 illegal operators for the way that they had operated and
20 welcoming a more orderly broadcasting landscape.

21 140 Q. Yes. And there is a reference there to the reduction in
22 local RTE local broadcasting in Cork to three-hours a day.
23 Can you remember what that dealt with?

24 A. Well, I was in Cork so that was a relevant thing.
25 Actually in wasn't reduced to three-hours per week day, but
26 what it says here is correct. It was confined to
27 three-hours, but RTE's hope was that we would be given
28 permission and this was a Ministerial function, that we
29 would be given permission to extend the hours of
30 broadcasting in Cork and because the three-hours was being

1 well received by the audiences there and we felt that
2 because we had a presence in Cork for many many years, that
3 the operation that we had there, the three-hours warranted
4 an extension, but that wasn't forthcoming.

5 141 Q. And you appear to have regretted the fact that you were
6 competing with three-hours a day against illegal operations
7 which broadcast through 24 hours, is that correct?

8 A. Yes, that was the point. Well it was one of the points
9 that I wanted to make and particularly so, as I say,
10 because I was in Cork.

11 142 Q. And that you would welcome regulation and introduction of
12 orderliness into the business of non RTE broadcasting, is
13 that correct?

14 A. Oh absolutely. Yes. There were strong references in the
15 speech to those kind of issues that the illegal
16 broadcasters, to put it colloquially, had got away with too
17 much for too long and it was time to address the matter.

18 143 Q. Yes; and was that indeed the Minister's view at the time as
19 well?

20 A. I don't know for certain, but yes, I imagine it was. I
21 imagine it was because this was October. This was fairly
22 soon after that government came to power and I think one of
23 the issues that they were anxious to address was illegal
24 broadcasting.

25 144 Q. Yes. Thanks very much, Mr. Finn.

26 .

27 MR. HANRATTY: Sir, we have now just received copies of
28 the original speech and before I re-examine, I wonder if
29 Mr. Fox would like to have an opportunity to consider that
30 and indeed Mr. O'Higgins before we conclude the evidence of

1 this witness?

2 .

3 CHAIRMAN: Well, in those circumstances, I think the best
4 thing to do would be to rise for lunch until quarter past
5 two in the interval lunch can be had and the speech read,
6 digested.

7 .

8 MR. HANRATTY: Thank you, Sir.

9 .

10 CHAIRMAN: Right. Thank you . A quarter past two.

11 .

12 THE HEARING THEN ADJOURNED FOR LUNCH..

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THE HEARING RESUMED AS FOLLOWS AFTER LUNCH:

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MR. HANRATTY: Sir, the actual speech which Mr. Finn made

5

in October of 1987 has been distributed to all the

6

parties. It is at page five, and I would simply ask that

7

it be taken as read into the record, if nobody has any

8

objection. I have provided a copy to the stenographer and

9

copies are available for anybody else in the room who wants

10

it. And subject obviously to anybody's right to examine

11

the witness in relation to it, if they wish. Perhaps if

12

anybody wishes to examine Mr. Finn, they might indicate to

13

you.

14

15

MR. FOX: I have no questions, Chairman. I have no

16

objection.

17

18

MR. O'HIGGINS: No, I have no questions either, Sir.

19

MR. HANRATTY: Thank you very much, Mr. Finn.

20

21

CHAIRMAN: Thank you very much Mr. Finn. I am very sorry

22

that you were detained over lunch?

23

A. No problem. Thank you, Sir

24

25

CHAIRMAN: Thank you. Good bye now.

26

27

THE WITNESS THEN WITHDREW.

28

29

(SPEECH APPENDED TO TRANSCRIPT)

30

1 MR. HANRATTY: Mr. Molloy please.

2 .

3 MR. COLM MOLLOY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

4 BY MR. HANRATTY:

5 .

6 145 Q. Mr. Molloy, I think you originally came to RTE to head up
7 their sales and market division?

8 A. I did, yes.

9 146 Q. When was that?

10 A. October the 3rd, 1988.

11 147 Q. Yes. And can I just ask you to, briefly, tell us what
12 position you held prior to coming to RTE?

13 A. Immediately prior to coming to RTE I was based in North
14 America. I was the Vice President of International Sales
15 and Marketing with the Hertz Corporation. That's Hertz
16 Rent a Car.

17 148 Q. Yes. For what purpose were you recruited to RTE in
18 October of 1988?

19 A. RTE were looking into the competitive situation that had
20 not been there previously and they were recruiting somebody
21 to head up the sales and marketing division who had some
22 experience in a highly competitive field.

23 149 Q. Yes. Now, I think when you came to RTE, did they also
24 have an established sales and marketing team?

25 A. A very well established, a very professional team. It
26 comprised, I think at the time and subject to correction
27 here,. I would say there were about, I think, 64 people
28 in the division at the particular time. It was broken
29 into two distinct sales forces.

30 .

1 One dealing with the sale of television air time. And the
2 other, selling radio air time.

3 150 Q. Yes. And television air time would be for RTE 1 at the
4 start?

5 A. RTE 1 and Network Two.

6 151 Q. And the television similarly had two channels?

7 A. Radio had, no there were three channels. There was RTE 1,
8 the newly named, 2 FM, as it was.

9 152 Q. Yes?

10 A. And there was RTE Radio Cork, which was a local service.

11 153 Q. Yes?

12 A. Covering Cork city and County.

13 154 Q. Can you give us a general description of, as it were, the
14 Department, the Sales and Marketing Department at the
15 time. You told us there was about 64 people in it?

16 A. It would have been broken fairly evenly. There was a
17 Marketing Services Unit, that looked after such things as
18 brochure production, the analysis of data that would come
19 in as to listenership or viewership etc., and they produced
20 our rate cards etc. and they were a back-up service to both
21 the radio sales force and the television sales force.

22 .

23 Both forces, both sales forces would have been directed -
24 they sold to both the advertisers and the advertising
25 agencies.

26 155 Q. Yes?

27 A. I think that would be it, broadly speaking.

28 156 Q. Well, at the time that you came in then, I think the
29 legislation providing for new local radio stations had
30 already been enacted and the IRTC were in the course of

1 being established?

2 A. Yes. I came in to RTE at a time of great change and great
3 energy. People were very energised by the future
4 prospects.

5 157 Q. You were brought in in anticipation, as it were, of a new
6 competitive environment which the station had not
7 previously had to grapple with?

8 A. Yes. It was a changing environment and I suppose, in
9 essence, there was a certain element of "crystal ball
10 gazing". We were not quite sure what form the
11 competition would take. We knew--.

12 158 Q. Yes?

13 A. What the legislation said. We were expecting a television
14 competitor much earlier than it transpired. We, in the
15 sales and marketing division, we were expecting the
16 competitive national radio commercial radio service to be
17 up and running an awful lot earlier than it was.

18 159 Q. Than it was, yes. In the radio sphere, did you identify
19 any particular area where you anticipated the focus of your
20 attention in a competitive context would lie?

21 A. Yes. We identified 2 FM as being the most likely
22 target. Not because we believed that 2 FM was weak or was
23 a soft target, but rather that we honestly didn't think
24 that the competitor or any competitor was going to expend
25 the monies necessary to compete against Radio 1 and as it
26 transpired, we were right.

27 160 Q. Yes. Can you just give us a brief explanation as to why
28 you thought that was so?

29 A. Well, the easiest radio to put on air quickly and cost
30 effectively is a certainly not "talk radio". "Talk radio"

1 is an expensive commodity, as we know, in RTE. It was
2 easier to put out wall to wall music.

3 161 Q. So your expectation was that the new national radio station
4 for example, would take the music route, as it were?

5 A. Yes.

6 162 Q. Which was essentially the cheapest route in terms of
7 broadcasting?

8 A. Absolutely. Although, I have to admit that I found their
9 strategy absolutely confusing because the papers at that
10 particular time and indeed it was confirmed subsequently,
11 they were endeavoring to recruit Mr. Byrne, Gay Byrne to,
12 if you like, to be their Flagship Development programming,
13 and this was a totally at variance with the concept I
14 honestly believed they were coming with. Because Mr.
15 Byrne has a very wide appeal, but his strength was to an
16 audience base, a demographic older than pop music or a wall
17 to wall music station.

18 163 Q. Yes.

19 A. And this, I think, sent out a mixed messages to the
20 industry at large because it was now becoming pretty
21 obvious that if they got Mr. Byrne, he certainly is not a
22 disc jockey. He is an extremely experienced broadcaster.
23 Wonderful in a one to one interview basis and that was his
24 strength at the time with his radio show on RTE Radio 1.

25 164 Q. Yes and he obviously falls into the category of "talk
26 radio", as opposed to music radio?

27 A. Absolutely.

28 165 Q. And essentially the difference between talk radio and music
29 radio is, among other things, a difference in age of
30 listenership?

1 A. Yes.

2 166 Q. Or am I wrong about that?

3 A. No, you are not wrong. It is - it would be true, one

4 gravitates as one gets a little bit older more to talk

5 radio than to a music based station.

6 167 Q. Yes. Well, we know, just moving ahead slightly for a

7 moment, we know in fact when Century did start in September

8 of 1989, they had a mixture in fact of "talk radio" in that

9 they had this talk show in the morning time or talk shows

10 in the morning time actually, and the rest of it being

11 essentially music?

12 A. Mm-hmm.

13 168 Q. So, in that situation where did they stand vis a vis

14 competing with FM 2?

15 A. I suppose nobody - I would have been Century Radio's best

16 listener in those days because I listened to it very

17 regularly. I listened to it for about two months after

18 they came on air and decided for myself that they were not

19 going to be the competition I thought they were going to be

20 for the very fact that there was nothing new. When you

21 bring out a radio service or any service you have to add

22 something new to the mix. There was a sameness about what

23 they were doing, what they were endeavouring to do and they

24 weren't doing it as well as either 2 FM or Radio 1.

25 169 Q. Yes. What did you, in fact, do in anticipation then of

26 this new competition, in particular from Century?

27 A. Well, we were expecting it to come on air in May of '89 and

28 in the six weeks from about Easter of '89 from - I would

29 say from Easter up to Whit in that period.

30 170 Q. Yes?

1 A. We can, we endeavoured, because as I say, in the
2 expectation that the area of competition was going to be
3 the 2 FM listenership, we set out to heighten the profile
4 of 2 FM in the minds of listeners. We conducted a
5 nationwide competition, if you like, under the broad title
6 of, "Find a new sound of 2 FM". And fronting this
7 competition we had Gerry Ryan, who was the leading
8 presenter on 2 FM and indeed all the presenters on 2 FM
9 rolled in behind it and it was an outstanding success.

10 .

11 We ran that over about a six-week period, as I say, and the
12 new sound was found over the Whit weekend because the
13 failure of Century to come on air when we expected them to
14 come on air, indeed they didn't come on air until, I think
15 it was the 4th of September later that year, it gave us
16 time to consolidate what we had succeeded in doing with
17 2 FM.

18 171 Q. Yes. So your promotional campaign designed to coincide
19 with the launch of Century actually took place after the
20 launch of Century?

21 A. Yes.

22 172 Q. And then Century came on air on the 4th of September. You
23 had already launched what you considered to be a successful
24 promotional campaign payable for FM 2?

25 A. Yes.

26 173 Q. Was that successful in the sense that before Century came
27 on air, it increased the listenership of FM 2 or --

28 A. Yes. It's fair to say that radio listenership dips across
29 the summer months. People are out and about more often.
30 They are not as easily "gettable", if there is such a word,

1 and what we did, we heightened the profile of 2 FM in the
2 minds of its target market, which essentially was the under
3 35s.

4 174 Q. Yes. Was that the first time that Gerry Ryan came to the
5 fore or am I mistaken about that, in terms of FM 2?

6 A. No, no. I would love to claim credit for his success but
7 I couldn't do that. Gerry Ryan was an outstanding, is an
8 outstanding broadcaster and was an outstanding broadcaster
9 in those days.

10 175 Q. On FM 2?

11 A. Oh, yes.

12 176 Q. I see. So he was just simply the focus of this particular
13 promotional campaign as well?

14 A. He was the hook that we were using to carry the promotion.

15 177 Q. I understand. Then moving into September of 1989, Century
16 then did come on air. From that point on, say between
17 September and December, how did you find yourselves then
18 vis a vis competition and I am obviously talking about
19 competition in the context of advertising, and
20 listenership, with yourselves and Century Communications
21 Limited?

22 A. We paid particular attention to them, naturally, in the
23 early days because it is important to know what your
24 competition is. But I can truthfully say that it wasn't
25 very long. They weren't very long on air when I and my
26 colleagues decided that they were not going to be the force
27 that we anticipated they might have been. They failed to
28 win audience. They over promised in terms of delivery to
29 advertisers and, they were, even at that very early stages,
30 they were going through their own problems which I suppose

1 can happen to any industry or business in its infancy.

2 There was comings and goings, reputed recruitment of other

3 RTE presenters because the Gay Byrne offer fell through.

4 They were talking, supposedly it was reported they were

5 talking to Marion Finnuccane, then of our "Liveline"

6 programme. They were talking to Gerry Ryan, supposedly,

7 and any name other than my own was mentioned as a possible

8 recruit for Century and none of this happened.

9 178 Q. Well, you say they failed on both of those fronts. Did

10 you have any view at that time on the programming of

11 Century?

12 A. Yes. As I mentioned earlier, there was nothing unique

13 about Century. They were not bringing anything new to the

14 market-place. They had no proposition that was any

15 different from what was widely available in the

16 market-place and if you come on stream, if you come out,

17 you have to have something that makes you different,

18 otherwise there is no reason. You have to be better or

19 cheaper, there is no other reason.

20 179 Q. Yes?

21 A. To buy.

22 180 Q. Well, you know that Mr. Stafford in his evidence, has laid

23 the blame for the ills of Century at RTE and particularly

24 made two criticisms towards the end of 1989; firstly, that

25 RTE had abused its dominant position in the sense that it,

26 I think, he said engaged in a price war. And he also

27 criticised it on the basis that they failed to provide the

28 level of coverage.

29 .

30 Now, I know that a different witness from RTE will deal

1 with the question of coverage. On the sales end first of
2 all, did you, in fact, engage in any price war?

3 A. I have been dealing with this argument all my life in RTE
4 and before coming to RTE. When you have nothing else to
5 say you can accuse the competition of engaging in a price
6 war or predatory pricing or all sorts of weird and
7 wonderful accusations, none of which are true. We never
8 lowered our price to compete with Century or with anybody
9 else. In fact, we increased our prices during that
10 period. We increased our prices on the 1st of October
11 every year.

12 181 Q. Yes?

13 A. That year was no different.

14 182 Q. Is it the position that before Century ever came on air,
15 you had a price list for advertising?

16 A. We had.

17 183 Q. Was it called a rate card?

18 A. A rate card, yes.

19 184 Q. Now, to avoid confusion it is different from the rate card?

20 A. Sorry, Mr. O'Brien's rate card was a different rate card.

21 185 Q. That was for engineering services?

22 A. Yes.

23 186 Q. You are talking about a rate card to advertisers for
24 broadcast time on radio and television?

25 A. Absolutely.

26 187 Q. And was there a rate card for Radio 1 and for FM 2?

27 A. There was, yes.

28 188 Q. And was there such a rate card in existence before Century
29 came along and was there one in existence after they had
30 gone?

1 A. Yes and for every year subsequently.

2 189 Q. Yes. And for all the years that Century was in existence?

3 A. Absolutely.

4 190 Q. And in respect of the RTE 1 and FM 2 rate card, was there

5 any price cutting during the entire period when Century

6 were in existence?

7 A. Never.

8 191 Q. Was it the normal pattern prior to Century coming on

9 stream, that there would be annual increases in the rate

10 card?

11 A. Yes. We endeavoured to increase our prices because an

12 organisation like RTE has a voracious appetite for money.

13 It requires money to improve the quality of our programming

14 and every year our targets were increased and the only way

15 we could increase our revenue stream was by increasing our

16 rates.

17 192 Q. Yes. And --

18 A. If I may just add to that, Mr. Hanratty please, in the

19 radio rate card is a fixed rate card. In other words,

20 there is a fixed price per time of day, time slot and the

21 only way you can increase your revenue on radio was by

22 increasing the rate. We couldn't - it is not like

23 newsprint, where you can add in a page of advertising, that

24 is not possible in the electronic media.

25 193 Q. I would like to just ask you to look at the rate card, if

26 you wouldn't mind, Mr. Molloy?

27 A. Sure (Document handed to witness).

28 194 Q. I think these have, in fact, been circulated, paginated and

29 circulated but I don't have the page number at the moment

30 Sir, so if we might proceed with the document. It is

1 really a question simply at this stage of identification

2 and demonstration that the rates did, in fact, increase.

3 I think what we have here are the rate cards for

4 '89/'90/'91, is that right?

5 A. No. The first one I have is for October '87.

6 195 Q. You have '87. Yes.

7 A. And there is Radio 1, and Radio 2 '87, and then the

8 following year, October '88, Radio 1 and Radio 2.

9 196 Q. Yes. And just looking at the Radio 1 and radio 2 rates

10 they seem to show various rates per time period, sometimes

11 per second between certain times of the day?

12 A. Yes. You know, to make it easy. I would suggest if one

13 looked at, take the 30 seconds which is traditionally

14 accepted as being the normal.

15 197 Q. Yes.

16 A. And in radio land our peak time, our prime time is

17 early-morning, from morning through lunchtime, then

18 audiences fall away.

19 198 Q. Yes?

20 A. And you will find that that is reflected in the rates.

21 199 Q. In the rates. Yes. And do these rate cards show an

22 annual increase in the three-years during which Century was

23 in existence?

24 A. I have looked at them, I know they do.

25 200 Q. Yes. Can you just confirm that?

26 A. Surely. Let me just -.

27 201 Q. Take your time.

28 A. I am looking at Radio 1, first of all.

29 202 Q. Yes?

30 A. Trying to get them in order. I have Radio 1, '88, o.k.

1 203 Q. Yes?

2 A. 30 seconds Radio 1, 1988 on the 1st of October it was 130
3 pounds. I am looking here at -.

4 204 Q. That's for 30 seconds?

5 A. That's for 30 seconds.

6 205 Q. Yes?

7 A. And in 1989 it is 137 pounds.

8 206 Q. Yes.

9 A. And it is ú150 in 1990.

10 207 Q. Yes. And Radio 2, sorry FM 2?

11 A. Sorry. Well, let me say to you first of all, that we
12 tended to sell - the same thing applies but we tended to
13 sell 2 FM in packages and -.

14 208 Q. Yes?

15 A. Rather than, people didn't tend to buy 2 FM in single spots
16 as they did on off times on Radio 1. So I would be more
17 inclined, subject to - to look at the daytime packages on
18 Radio 2.

19 209 Q. Yes?

20 A. I have here now, '87 and a 15 spot package on a daytime
21 package, between 7 in the morning and 7 in the evening was
22 ú884.

23 210 Q. Yes?

24 A. The following year in '88, it was ú887.

25 211 Q. Yes?

26 A. And I am looking for it here now, on - sorry - it is
27 ú1,118.

28 212 Q. Yes?

29 A. In, from October the first 1990.

30 213 Q. Yes and again --

1 A. That would be carried through, right through the rate card.

2 214 Q. The range of the rate card?

3 A. Absolutely.

4 215 Q. And it does appear to looking at, just throwing one's eye
5 down the column of the individual spots for Radio 2, there
6 also appears to be increases year on year?

7 A. Absolutely. But the only reason I mentioned the packages
8 is because that was the traditional way that 2 FM was sold.

9 216 Q. Yes. And are these, in fact, the rates that were then
10 charged by RTE both in respect of Radio 1 and FM 2 during
11 these years?

12 A. Absolutely.

13 217 Q. Was there any, as it has been described, predatory pricing,
14 practise engaged in by RTE during this period?

15 A. In my twelve years of with RTE we never engaged in
16 predatory pricing.

17 218 Q. Was there any form of below cost selling?

18 A. Never.

19 219 Q. Was there any form of cross-subsidisation?

20 A. Never. It would, I would not personally do it and even if
21 I was to attempt to do it the Board of Management would
22 never authorise it.

23 220 Q. Yes. Well, is it your position that there is no substance
24 in any of these allegations that Mr. Stafford has so
25 frequently made?

26 A. None whatsoever. I find that it is annoying, irritating
27 and grossly offensive to have heard Mr. Stafford to
28 continuously lay the blame of their failure to be a success
29 at the door of RTE, because I was there during the period.
30 I know the work that was done, the involvement of everybody

1 to make it work for them and then to hear, to see it thrown
2 in one's face.

3 .

4 At no stage did anybody in sales or marketing ever do
5 anything that would denigrate the competition. It is not
6 the way we sell. It is not the way we would ever sell.

7 221 Q. Yes. Yes. Just in terms of selling your market, of
8 course, essentially am I correct in thinking is advertising
9 agencies?

10 A. No. The advertising agencies is the conduit by which the
11 advertisements are placed.

12 222 Q. Yes but are they not the ones who place the advertisements
13 on behalf of their clients?

14 A. Yes but our sales would be to the advertising agencies but
15 also to the client, to the--.

16 223 Q. The clients themselves?

17 A. Absolutely.

18 224 Q. I see. And in each year you would presumably have a
19 promotional or marketing budget which you spend in a
20 variety of different ways, selling your wares as it were?

21 A. Yes.

22 225 Q. Yes. Well, what is the main criterion from the point of
23 view of your customers, that is the clients themselves, in
24 terms of their decision making as to whether to spend money
25 advertising on RTE 1 or indeed FM 2?

26 A. Advertisers are business people. They make their
27 decisions on where they will get the best return for their
28 investment. Advertising money is an investment in the
29 future placed by the advertiser through their agencies.

30 .

1 We won favour with the advertising community, if I may
2 refer to them as such, by virtue of the strength of our
3 programming. We had more of an audience than anybody else
4 and as Mr. O'Brien and I think Mr. Finn both said, in the
5 course of their evidence, advertisers follow audiences.

6 226 Q. Yes. What was the position vis a vis Century and audience
7 share in the first months of its existence, say between the
8 4th of September of 1989 and the end of 1989?

9 A. They failed to win audience.

10 227 Q. Yes?

11 A. Primarily.

12 228 Q. We know that Mr. Stafford has made an issue about coverage
13 and we will deal with that quite separately, but in those
14 area where they did have coverage, including Dublin, Cork
15 and Limerick, albeit with some transmissional problems, in
16 those areas where they did have coverage, what sort of
17 audience share did they, in fact, achieve?

18 A. I would be guessing to try and put a figure on it, but
19 figures like 6% would have been a very good performance for
20 them early on. And then it fell back. They failed to win
21 audiences because the proposition they were making didn't
22 stand up. Even in areas where they had, we had heard so
23 much about a level playing field that they were looking for
24 a level playing field, but there was one area that 2 FM
25 were not even on the field, and that was in the area of
26 alcohol advertising. 2 FM because of a decision by the
27 Authority when it was set up first of Radio 2, and because
28 it was targeted at a youth audience, they made the decision
29 then that they would just not accept alcohol advertising.

30 .

1 Well, Century failed to win the alcohol battle even though
2 2 FM weren't even on the field.

3 229 Q. And why do you say that was?

4 A. Because they didn't have an audience. You can skirt, you
5 can cloud, you can duck and dive all over the place, but if
6 you don't deliver an audience, you don't get advertisers.

7 230 Q. Yes?

8 A. And try as they might, as they did, in trying to accuse RTE
9 or others of predatory pricing, of abuse of a dominant
10 position, they just failed in the basic requirement of
11 broadcaster of delivering an audience.

12 231 Q. Yes.

13 A. And advertisers - by their own admission, they adopted an
14 interesting approach at their commencement of business,
15 just before they commenced they succeeded in getting 20
16 leading advertisers to invest a sum of money with them. I
17 believe it was something like €50,000, in return for that
18 they guaranteed them a delivery and failed in that and that
19 left a bad taste in the mouth of a lot of leading
20 advertisers.

21 232 Q. Yes. You do make reference in your statement to the fact
22 that you say that they "over sold"?

23 A. Yes. They over promised. They over sold and under
24 performed.

25 233 Q. Yes. Can you just briefly explain what you mean by that?

26 A. Well, by over selling they went into the market-place and
27 they promised more than they could deliver. They promised
28 a delivery. They promised a coverage at the start, I
29 think, of 60 or 65 percent coverage. They knew full well
30 that was not on by - had they spoken to their own

1 engineering people they would have known that was not
2 possible. The one thing I have learned as a life long
3 marketer is that you don't over promise.

4 234 Q. Yes.

5 A. If you under promise and over deliver now you have
6 something to sell the next time you go back, but don't try
7 and do it in the reverse.

8 235 Q. Yes. Well, can I just ask you when RTE is pitching its
9 own pricing, I know you told us there was no cutting of the
10 price in the rate card, you have demonstrated there was
11 increase in the rate card over the three-years in
12 particular that we are interested in. When it is fixing
13 its rates, in any event, to what extent does RTE take into
14 account rates being charged by others, or did it at that
15 time?

16 A. We set the price primarily because - I don't believe I ever
17 looked at a competitive price when we were setting our own
18 price. We were the market leaders and we set the scene.

19 236 Q. Yes. Would your price be, effectively, set on the basis
20 of what your judgement would be- as to what the market
21 would bear?

22 A. I tended to use that argument when I was talking to Mr.
23 O'Brien internally. But Mr. O'Brien and Mr. Finn and Mr.
24 Finn's successors would have had a slightly different
25 view. They would always push you to bring in more and the
26 only way you can bring in more was by increasing the price
27 on radio - I am dealing with radio. I appreciate we will
28 probably come on to television which is slightly different
29 in its approach.

30 237 Q. We are not actually concerned terribly much with television

1 except to the extent that it becomes relevant to the radio
2 situation?

3 A. It is in that context I thought we would come to it.

4 238 Q. Yes. But we have been told, for example, about this
5 policy where a particular client could book a spot but in
6 the event somebody else came along that was prepared to pay
7 more. There was a system in operation to maximise the
8 return from the demand that was there?

9 A. Absolutely it is a pure, pure market force system.

10 239 Q. Did that system run throughout the time, for example, that
11 Century was in existence?

12 A. It did - and for about 18 years before Century came into
13 existence.

14 240 Q. I see. What about discounts, did you give discounts in
15 any context during this period?

16 A. Yes, we do. We did, yes.

17 241 Q. And are these volume discounts?

18 A. Volume discounts. There were volume discounts, based
19 almost exclusively on increase of spend over a prior year.

20 242 Q. Yes. And was this a discount system that was in place
21 prior to Century coming on the scene?

22 A. We didn't change anything because Century came on the
23 scene.

24 243 Q. Did you in anyway increase the discounts when Century came
25 on the scene?

26 A. No.

27 244 Q. Was there any alteration of discounting policy as a result
28 of Century or because of them?

29 A. No, but when Century came on stream and the legislation
30 came into place, we had to have a very hard look because we

1 had problems on our hands to maintain our revenue streams
2 and in fact we had to cut back on any discounts or volume
3 discounts.

4 245 Q. I see. So, if anything, your discounts reduced?

5 A. They had to because the revenue was going to reduce.

6 246 Q. Yes.

7 A. As I say, we were, we operated on the basis of paying
8 volume discount on an increased spend.

9 247 Q. Yes. It has been suggested that by Mr. Stafford I think,
10 that RTE were in breach of a confidentiality agreement. I
11 am not going to ask you about the legality of the
12 confidentiality agreement that has been dealt with by Mr.
13 Stafford. Essentially his complaint was that RTE were
14 denigrating Century to their advertisers and effectively
15 the suggestion, I think, was they were deliberately setting
16 out to undermine Century in the market-place and he was
17 referring specifically to the sales Department in RTE?

18 A. I read the note. As I said, Mr. Hanratty, the poorest
19 form of salesmanship is to denigrate your competition.
20 You only do that when you have nothing else to say. We
21 never ever went out of our way to say a bad word about
22 Century. We left that to themselves.

23 248 Q. Yes.

24 A. All I will say is that from the time they came on air and
25 for the next 12 months, a day didn't pass that there wasn't
26 a Century story in the press. It was common talk,
27 journals, marketing journals, particularly advertising
28 journals, it was the topic of conversation, every sales
29 call I made over that period, all anybody ever wanted to
30 talk about was Century. And our problem was to get the

1 conversation around so that we could tell them what goodies
2 were in our package. But they wanted to know.

3 249 Q. Yes.

4 A. And --

5 250 Q. Is it true to say that your sales staff were receiving
6 inquiries from various sources as to what the level of
7 listenership or coverage was that Century had at any
8 particular point in time?

9 A. Yes. But it presupposes that the advertising agencies
10 themselves - they are a highly professional body of
11 people. They knew what the coverage was and all they were
12 looking for was confirmation. And we, I should say I
13 would have made it known to my sales colleagues what the
14 coverage was at any given time so, that they could answer
15 queries, but never initiated the conversation. That was
16 contrary to all our instructions.

17 251 Q. Yes. Well, can I just give you perhaps an instance, page
18 3387? This appears to be a memorandum from A, which was an
19 agencies to Mr. O'Neill, who was the head of sales in
20 Century, dated the 8th of September '89. This is within a
21 matter of days going on a air. "RTE are claiming the total
22 presentation for Century is 35 nationally and not 60
23 percent plus. They are claiming that Century are only
24 reaching 1.5 million households. Would you be kind enough
25 to clarify the position as this is becoming a matter of
26 confusion" . In fairness to you, it is not clear whether
27 when they referred to RTE they are referring to the sales
28 section or engineering section, but is that the kind of
29 inquiry that would have been received?

30 A. It would be the kind of inquiry that would be received, but

1 and it is possible that that response could have come out
2 of sales or out of engineering or out of the daily papers.
3 It could have come from any source, but if Dolores in Arks
4 had posed the question to whatever sales person they were
5 in touch with, had posed the question of what was the
6 coverage, we would have told them.

7 252 Q. Yes.

8 A. But we would not have gone in to Arks to tell them.

9 253 Q. Yes. Would that information be in the possession of the
10 Sales Department in RTE?

11 A. I would have put it in the possession of the Sales
12 Department.

13 254 Q. Yes?

14 A. Because we would have known that from the day they started
15 they said they had 60 percent coverage and they sold on
16 that basis.

17 255 Q. Yes. Well, we know that they didn't but I think Mr.
18 Curley is going to deal with the levels of coverage. But
19 what I want to ask you is you mentioned that the
20 advertising agencies themselves would know what the level
21 of coverage would be and I will come to listenership in a
22 moment, where would they get the information from as to
23 what a level of coverage was for Century at any particular
24 point in time?

25 A. Well, it is their job to know because they are selling.
26 They are selling on behalf of their clients, if they are
27 selling nationally, they need to know what coverage they
28 are getting nationally. So they would conduct their own
29 research. Every local radio station does their own
30 research. I would say advertising agencies are bombarded

1 with statistical information that comes in, if there is bad
2 news about a competitor, you can be sure that will be on
3 the top of the list.

4 256 Q. Yes. Turning to the question of listenership in those
5 areas where coverage does, in fact, exist would the
6 advertising agencies have that information or would they
7 get it from a particular source or would they assemble it
8 themselves?

9 A. There is a national, the JNLR, the Joint National
10 Listenership Research, it is industry wide, it is the Bible
11 by which radio is sold.

12 257 Q. Yes and is that a research organisation?

13 A. It is a research organisation.

14 258 Q. And is it independent research organisation?

15 A. It is funded by the members, RTE included, and the IRTC and
16 the individual radio services throughout the country.

17 .

18 CHAIRMAN: I wonder could we break here. We have only one
19 stenographer today.

20 .

21 THE TRIBUNAL ADJOURNED FOR A SHORT TIME AND RESUMED AS
22 FOLLOWS:

23 .

24 MR. HANRATTY: Just for the record Sir, if I might put on
25 the record the pages where the rate card can be located in
26 the documents are pages 4767 to 4775.

27 .

28 So we were discussing the question of information and the
29 source of information and I think we were talking, in
30 particular, at this stage about listenership information

1 which you said comes from this independent body. And is
2 that a body which carries out research on an ongoing basis
3 as to listenership for various type of broadcasts?

4 A. Yes, it is, as I think I said, it is the standard by which
5 all radio advertising time is sold. It measures by
6 quarter hour who is listening to what.

7 259 Q. I see. And so that if somebody advertisers, presumably,
8 wanted to know how many people were listening to Century
9 Radio in Dublin they would be able to find that, get that
10 information from that?

11 A. Absolutely.

12 260 Q. Yes. And would that information be in the hands, as it
13 were of RTE, particularly in the Sales Department for its
14 own purposes? In other words would you be monitoring what
15 the competition was doing?

16 A. Oh yeah. That, that - it is - the basis by which we all
17 sell. It is also the basis by which you actually decide
18 on your rate card.

19 261 Q. Yes. But ultimately would RTE not be selling by reference
20 to what its own listenership figures were?

21 A. Yes, but the listenership figures come out of the JNLR.

22 262 Q. Yes, so you would be selling your rate card, as it were, by
23 reference to the fact that you had a certain level of
24 listenership?

25 A. Yes, but Mr. Hanratty, bear in mind that the JNLR was also
26 in the hands of the advertising agencies and the
27 advertisers.

28 263 Q. Yes.

29 A. Everybody has it.

30 264 Q. But is it the position, in reality, that nobody can have

1 any doubts or illusions in that market as to what a level
2 of listenership in a particular area is; it is information
3 freely available?

4 A. In the market-place.

5 265 Q. It is not capable of being distorted by any competitor
6 because it comes from this body and is available to anybody
7 who is interested in having it?

8 A. Absolutely.

9 266 Q. If your- I am talking about RTE's listenership fell, would
10 that have an effect on its rate card?

11 A. Yes. Mr. O'Brien yesterday referred to cost per thousand
12 and it is on this basis that the cost per thousand comes
13 in. If you have 100,000 people listening to a programme
14 and your charge, the advertisers buy usually on a cost per
15 thousand basis, how much would it cost me to address a
16 thousand listeners at any given time of the day, that
17 determines the price.

18 .

19 Our programming attracted huge, huge listenerships. Huge
20 listenerships and in other words, on a cost per thousand
21 basis, we were good value.

22 267 Q. Yes. Do you know anything about Century's own rate card,
23 what happened to Century's rate card after they started
24 broadcasting?

25 A. No.

26 268 Q. I see. Moving on then, to the question of the
27 Broadcasting Act of 1990. Obviously the implications of
28 this Act were most sharp, I suppose, in the Sales and
29 Market Department?

30 A. Devastating.

1 269 Q. Yes. Would you just tell us what the position was from
2 your perspective and what sort of a job you had to do in
3 view of this forthcoming legislation?

4 A. Well, the first thing that we had to do was we had to try
5 and picture where we would pitch our rates to bring in the
6 level of revenue that was necessary with a product that was
7 diminished on radio by- I keep reading about this 25
8 percent- but the reality was it was reduced by 33 and a
9 third percent.

10 270 Q. Yes?

11 A. Because the bulk of radio money is made between 7 in the
12 morning and lunchtime and if I can bring in the television,
13 prime time on television is from in those day it would have
14 been from about 6.30 to close of transmission.

15 271 Q. Yes?

16 A. They were the times. And in those times we had seven and
17 a half minutes in the hour that we could sell.

18 272 Q. Yes?

19 A. As long as it averaged out at 10 percent of the
20 transmission time, which was 6 minutes in the hour. We
21 now had a situation where, effectively, a third of our air
22 time was removed from us but we still had to bring in a
23 level of revenue and to try and square the circle, so to
24 speak, was nigh on impossible.
25 .
26 It was extremely difficult because there was a minimum
27 amount of revenue that we had to bring in and that was the
28 minimum amount was the maximum in essence. We had to
29 bring in a level of revenue to equal the license revenue
30 that had been voted to us in the previous year, plus the

1 inflation factor of that year.

2 273 Q. Yes. You had to earn that but you couldn't earn, you
3 couldn't afford to earn any less?

4 A. Well, had we earned less, dare I say it, I wouldn't be
5 sitting here talking to you. It was - we just had to do
6 it. The company needed that kind of revenue stream.
7 Now, to bring in that kind of revenue on the radio rate
8 card, because the broadcast legislation impacted on
9 television just as much as it did on radio, so now the two
10 of them were lumped together.

11 274 Q. This is a point I was actually going to ask you about.

12 While it appears and we will have to hear what the
13 subsequent witnesses say, the intention behind this
14 legislation was to benefit the broadcaster, sorry, the
15 independent commercial broadcasters in general and Century
16 in particular, it at that stage all radio stations but the
17 cap on RTE applied not only to radio but also to
18 television, is that right?

19 A. Yes.

20 275 Q. So that the limitations on your ability to earn were not
21 confined to radio, but also extended into your revenue from
22 television?

23 A. Yes.

24 276 Q. Advertising?

25 A. Which, as we heard yesterday from, I think it was from Mr.
26 Finn, television revenue was by far the greater.

27 277 Q. Yes.

28 A. So it transcended both. Now bear in mind that the way we
29 sold radio was on a fixed rate card.

30 278 Q. Yes?

1 A. We had a fixed amount of time. We could adjust the rate
2 card to bring in the maximum amount of money.

3 279 Q. This is averaging?

4 A. No, if you just take the four and a half minutes.

5 280 Q. Yeah?

6 A. You can put a figure on your rate card that will help to
7 bring in what you allocate to radio.

8 281 Q. Yes.

9 A. But when it came to television that became nigh on
10 impossible because we the way we sell is on this
11 predetermined rate card, where you could buy and I am
12 working from memory now, you could buy a 30 second spot on
13 RTE television, for ú100 or ú4,000 or any of twenty steps
14 in between, depending on the number of people who were
15 viewing at the particular time, plus the demand for that
16 time.

17 .

18 It is a very complicated system. It is a bidding system
19 and in each time slot you can't have clashing products.

20 So it is - it becomes almost a mathematical equation.

21 282 Q. Yes.

22 A. And we could never pre determine what the demand was. The
23 agencies to whom we were working could never give you any
24 definitive answer of what the demand was because they
25 didn't always know when a car manufacturer was going to
26 launch a new car or a bear company was going to launch a
27 new bear and in those times more money came into the
28 market-place and consequently to try and eke out, in a
29 linear manner, so much money per day, per week, per month
30 was impossible, because the demand doesn't follow that kind

1 of a pattern.

2 283 Q. Yes. Well, does that mean that you were unable, as it
3 were, to comply with the requirements of the legislation to
4 ensure that you did not earn more than the total amount of
5 the license fee?

6 A. I was more worried in those days, Mr. Hanratty, in ensuring
7 that we brought in the maximum money we were permitted by
8 legislation. And indeed, in the first three months of the
9 legislation we came, I think we came within 1 percent of
10 what we were permitted to earn and I thought that was an
11 amazing achievement but I was 1 percent under it.

12 284 Q. Yes?

13 A. And the demand is never that great in the early months of
14 the year, now when you have a product in such high demand
15 as television air time and you reduce its availability by a
16 third, as happens when anything is in high demand, then you
17 reduce the availability, then the price surges.

18 .

19 I would have not been the favoured person of the
20 advertising world, the advertising agencies or the
21 advertisers' association in that period for the pure and
22 simple reason that in the first year of the enactment, the
23 price to advertisers rose by 50 percent, the cost to
24 advertisers. And that more so than anything else, is the
25 reason the advertisers' association were screaming.

26 .

27 I have to say that no thought was given to the marketing
28 implications of the introduction of the Broadcasting Act.
29 It seems as if nobody thought it important. It all but
30 destroyed the industry. We had Irish firms, because of

1 the price of advertising air time on television, Irish
2 firms more so than any other firms suffered most. I
3 recall on one occasion checking our advertising logs for
4 one day and only 15 percent of all the ads that went out on
5 RTE 1 and Network 2 were Irish made advertisements. That's
6 just on one evening.

7 285 Q. Is that because of the reduction of one third in the
8 availability the prices went up and the prices were more
9 affordable by foreign companies?

10 A. By multi nationals.

11 286 Q. Than they would be by domestic companies?

12 A. Absolutely. And the knock-on effect of this, of course,
13 is that Irish production houses were suffering.

14 287 Q. Because their services would be more likely to be used by
15 Irish companies?

16 A. They would be used by Irish companies, because invariably
17 multi national advertising, at that particular time, their
18 advertising, their advertisements were made abroad and came
19 in.

20 288 Q. Yes. I see. You do make the point in your statement
21 that the introduction of the Broadcasting Act 1990 was
22 potentially devastating to the broad advertising industry
23 and this is just what you have been describing?

24 A. Absolutely yes.

25 289 Q. What actually happened?

26 A. Yes. It - and there was no, there was no respite for
27 them. This was the way it was.

28 290 Q. You say that, "the Advertisers Association of Ireland, the
29 AAI and the Institute of Advertising Practitioners of
30 Ireland, the IAPI, led the campaign against the

1 implementation of this capping"?

2 A. Yes.

3 291 Q. And I understand that both of those organisations made
4 representations to the Department and the Minister as well
5 as RTE?

6 A. I believe so, yes.

7 292 Q. You say in your statement that the effect on the
8 advertising industry in the event when it was in fact
9 implemented was "immense"?

10 A. Yes.

11 293 Q. Is that in the manner in which you have just described?

12 A. Yeah, it is - I had visions of presiding over the migration
13 of marketing expertise out of the country because there was
14 no place for people to go. I myself had gone abroad
15 earlier to further my career and I saw the effect that this
16 was going to have on the industry at large.

17 294 Q. Was it going to have employment implications?

18 A. Oh absolutely.

19 295 Q. In the advertising industry?

20 A. In the advertising industry, yes.

21 296 Q. Well, would the multi nationals not still use the Irish
22 advertising agencies?

23 A. You can buy advertising time from anywhere, you don't have
24 to be in Dublin to buy it or Cork or Galway. It is an
25 industry, a very viable industry today, but we are talking
26 about pre "tiger economy". We are talking in terms of the
27 period of the Gulf War when Britain was in recession, the
28 US wasn't much better. It is very hard today sitting here
29 in the year 2000 and to recall what it was like in the year
30 1990.

1 297 Q. I see?

2 A. It wasn't very flathiulach out there.

3 298 Q. Yes. You make the point that,"the popularity of the
4 programmes", that's the RTE programmes, "still remained and
5 continued to draw their huge audiences", but you say that
6 "the competition programming got no better and
7 consequentially it didn't draw any greater numbers of
8 listeners"?

9 A. That's true.

10 299 Q. So you had a situation where RTE had the product, people
11 wanted to use it. The amount of time available to the
12 market was reduced by a third, the price had gone up,
13 foreign companies were dominating, squeezing out Irish
14 companies, but yet the competition were not producing the
15 programming product and therefore still not benefitting
16 from the cut back that RTE suffered?

17 A. That's absolutely true. It was a time when I had daily
18 representations from advertisers and advertising agencies
19 coming to see me to know what could I do and the reality
20 was that there was nothing I could do. Representations
21 were made in all directions.

22 300 Q. Yes?

23 A. And it was, Mr. Finn this morning, described that he looked
24 for a phasing-in of it, and perhaps had it been phased in
25 modifications could have been made to it, but that was not
26 a course that was open to us. We just, we just had to do
27 it. And our time logs were monitored to ensure that we
28 kept within the statutory time limitations and we would get
29 a phone call to say they wanted the logs for last Friday
30 and they would be parcelled up and sent off to the

1 Department, just to make sure that we -.

2 301 Q. Had complied?

3 A. As we always would.

4 302 Q. Yes. Well we know, in fact, that as it turned out in
5 absolute revenue terms there was a surplus which had to be
6 handed over to the Department because Mr. O'Brien dealt
7 with this in his evidence?

8 A. Yes. We continued to take in the revenue because as I said
9 earlier, we were never sure if we were going to make target
10 or not, and as soon as we got to a stage, traditionally
11 towards the back end of the year when it looked like we
12 were going to exceed target that would be reported, as
13 indeed, during all of this period the Director General
14 insisted on getting a fortnightly update on the revenue
15 trends, what was coming in and from recollection I would
16 say that I would be forecasting a figure on, we'll say the
17 15th of a month and by the end of the month, I would have
18 adjusted my forecast by upwards of ú2 million because there
19 was no way of gauging what was going to happen.

20 303 Q. Yes. Well, Mr. O'Brien said, in effect, it got to the
21 point where I think it was in October, they had to make
22 this extremely difficult choice between either exceeding
23 the limit in which event that the monies would have to be
24 put into a separate account in escrow in effect and handed
25 over to the Department or announcing to the advertisers
26 that they were effectively going to stop accepting
27 advertisements altogether?

28 A. Yes and that would have been devastating to the Irish
29 advertising industry.

30 304 Q. Yes?

1 A. And bear also in mind that we had contractual obligations
2 to many advertisers.

3 305 Q. Were these ongoing obligations?

4 A. They would be annualised, yes, in some instances. People
5 would approach us that they were going to launch a product
6 in October.

7 306 Q. Yes.

8 A. And they would require X.

9 307 Q. But they have, as it were, reserved slots?

10 A. But we would endeavour to accommodate them and tell them
11 what it would cost.

12 308 Q. Yes. I see. You also make the point in your statement
13 that advertisers have limited funds for advertising
14 promotions. If they believe the best method of addressing
15 the customer potential is via TV advertising they will draw
16 funding from other media?

17 A. Yes.

18 309 Q. For example, radio and press. Should the primary radio
19 outlet for their advertising not become available would
20 they go elsewhere?

21 A. Yes, they would. What we found is that television as I
22 say, the cost of television in the first 12 months
23 increased by 50 percent. That had to be funded from
24 somewhere, advertisers have a finite amount of money and
25 just because your product has got dearer, it doesn't
26 necessarily mean they will find more money for you. What
27 they actually did was took money out of their radio
28 budgets, their outdoor budgets and in some instances press
29 budgets in order to fund an ever increasing costly TV
30 campaign, because the power of television is such that if

1 you want to move product, the way to move it is to
2 advertise it on television.

3 310 Q. Well, you make the point that prior to its launch the
4 advertising industry, in general, was very much open and
5 welcoming of the prospect of an alternative and was
6 supportive of Century?

7 A. Absolutely, yeah. That worried me. That they no longer
8 loved us. They needed us, but we were, we would never
9 have been, you know, if you are in a monopoly situation you
10 are never loved and you learn that very quickly and the
11 responsibility of a radio competitor or indeed a television
12 competitor, it was almost used as a threat against you,
13 "wait until" and we waited and we waited and nothing
14 happened.

15 311 Q. Well, do you think that given the attitude of the
16 advertising industry to Century, and the fact that they
17 did, in certain instances, make significant commitments in
18 advance to them that if Century had drawn the audience they
19 would undoubtedly have drawn the advertisers?

20 A. Absolutely. There is nothing surer. Advertisers,
21 listeners, don't listen to services, they listen to
22 programming. And if the programming is better on your
23 station than mine, then they will listen to your station.

24 312 Q. Yes. You say that the cap or the cuts in the hourly
25 minuteage rates were implemented in RTE from Day 1, is
26 that, in fact, the case?

27 A. Absolutely, yeah, from Day 1.

28 313 Q. From the effects therefore felt within the industry,
29 effectively from Day 1.

30 A. They were so effective with us, that I shed six members of

1 staff to coincide with the loss of air time.

2 314 Q. And those staff cuts, I think, impinged throughout the
3 organisation, including your own Department, the Sales and
4 Marketing Department?

5 A. Oh, yes. But it had a very interesting kickback, which
6 posed the problem for us because our programming was still
7 attracting the huge audiences. Because we were not in a
8 position to service the people, the number of calls to our
9 sales force increased apace also. And we had left staff
10 go in the expectation that we would be getting fewer calls,
11 but in reality we got more calls because there was nowhere
12 else for people to go.

13 315 Q. Your statement, if I may say so, is littered with slightly
14 colourful adjectives, like the effects on the advertising
15 industry were "devastating" and one phrase you used quite a
16 lot and in another case you used that the advertising
17 industry was "in turmoil". Is there any extent to which
18 you might be, shall we say, be overstating the position
19 there?

20 A. I am sorry that I didn't use, I didn't know any other
21 adjectives to use. It is hard, Mr. Hanratty, ten years
22 down the road to know the turmoil in which the advertising
23 industry at large was in. Everybody was frustrated
24 including, dare I say it, Century, for other reasons,
25 because what they believed was going to be the beneficial
26 fall out of the Act just didn't happen. The national
27 newspapers of Ireland must have been devastated because it
28 didn't work for them either.

29 316 Q. Yes, you do make the point that the introduction of the
30 Broadcasting Act 1990 was potentially devastating to the

1 broadcasting advertising industry with the exception of the
2 independent radio sector and national newspapers of Ireland
3 because they were supportive. They erroneously believed
4 any limit to RTE advertising and the cap would materially
5 benefit them. Why did the capping of RTE's advertising
6 not benefit the newspaper industry?

7 A. I think because it was broadcast money and advertisers had
8 decided that they wanted television and that's where they
9 were going and I think a lot of the money that we lost on
10 radio, we picked up on television. It is impossible to be
11 certain that that was the money, but I think that's where a
12 lot of it went. And of course, bear in mind, that at the
13 same time this was happening we had a very vibrant, alert,
14 local radio sector that was growing a pace and doing
15 exceptionally well and they did what Century failed to
16 do. They established a niche for themselves in the
17 market-place. And in many, in many instances it was a
18 niche that we could never get to. They went after the
19 local air I can't, the local, the local shop keeper, the
20 local area and got advertising locally. And within a
21 relatively short period of time, I would say about 50
22 percent of their total revenue, came from a new market.

23 317 Q. Yes. Well, does that mean that they weren't really
24 competitors to RTE or were they competitors to RTE to an
25 extent?

26 A. They were competitors to RTE because the other 50 percent
27 would have been national money spread out.

28 318 Q. Over the entire country?

29 A. Over the entire country, yes.

30 319 Q. I understand. Did, for example, the capping legislation,

1 create any benefit for the local radio broadcasters?

2 A. I would believe it did, yes.

3 320 Q. Yes. But not to Century?

4 A. Not to Century for other reasons.

5 321 Q. Yes. Which were to do with Century?

6 A. Which were to do with Century's inability to win audience.

7 322 Q. Yes. This capping legislation was repealed, as we know?

8 A. Yes.

9 323 Q. In 1993?

10 A. Mmm.

11 324 Q. And the status quo, certainly so far as television was

12 concerned, was completely restored and substantially

13 restored as far as radio was concerned?

14 A. No, it wasn't restored in radio. Radio never got its time

15 back. That irritates me too, I always hear about the

16 repeal of the cap.

17 325 Q. Yes. That it is supposed to be coming but it hasn't come?

18 A. No, no. It never came.

19 326 Q. I see. Just explain what you mean by that when the repeal

20 of legislation came in 1993?

21 A. Radio time was never restored.

22 327 Q. Never fully restored?

23 A. Never fully, no.

24 328 Q. Television was?

25 A. Television was but there was still an element of limit

26 retained in respect of radio. It is still 4 and a half

27 minutes.

28 329 Q. It was always 4 and a half minutes since the capping, is

29 that right?

30 A. Oh, yes.

1 330 Q. Thank you, Mr. Molloy. If you answer any questions any
2 other of my colleagues may wish to ask you.

3 A. Thank you.

4 .

5 MR. WALSH: Sorry Sir, we have no questions.

6 .

7 MR. O'HIGGINS: No, I have no questions either, Sir.

8 .

9 MR. HANRATTY: Thank you.

10 .

11 MR. FOX: I don't have a question for the witness, but
12 just in the course of the examination by Mr. Hanratty, Mr.
13 Hanratty made a statement and I want to clarify something,
14 the statement he made was that the intention of the
15 Broadcasting Act was to benefit the independent sector and
16 Century in particular. The reason I am raising this issue
17 Chairman is that there no evidence to the effect that the
18 Broadcasting Act was to benefit Century in particular.
19 This was a statement made by Mr. Hanratty. As far as I am
20 concerned it represents a new position. There is no
21 evidence to this effect at this point.

22 .

23 MR. HANRATTY: My Friend is factually incorrect in making
24 the statement that there is no evidence to that effect.
25 There are two pieces of evidence to that effect. The first
26 piece of evidence to that effect comes from the bank
27 witness's who attended the meeting with Mr. Burke where it
28 was, there was if you recall, Messrs. Barry and Stafford
29 were asked to leave the room and the bank who had been told
30 by Mr. Burke of his interventions with regard to

1 introducing this legislation sought re assurance in private
2 from Mr. Burke that it was his intention not just to
3 benefit the commercial radio sector in general, but Century
4 in particular and he gave them that re assurance. That's
5 the first piece of evidence.

6 .

7 The second piece of evidence came from Mr. O'Morain, the
8 Head of Broadcasting in the Department of Communications,
9 where he said that the purpose of the legislation was to
10 benefit Century in particular. So My Friend is factually
11 incorrect in making the statement that there is no evidence
12 and there are, there is documentary evidence supporting
13 those pieces of evidence.

14 .

15 MR. FOX: Chairman, just in response I wish to say that
16 the first issue which Mr. Hanratty raised there is
17 obviously hearsay in relation to the conversation
18 concerning the bank officials and secondly, the conclusion
19 that Mr. Hanratty arrived at himself when he made the
20 statement that this was to benefit the independent sector
21 and Century in particular, that, in effect, Chairman is a
22 finding that is for you to decide not for Mr. Hanratty to
23 decide and he should not have phrased it in the way he
24 did.

25 .

26 MR. HANRATTY: I simply said there was evidence of that
27 fact.

28 .

29 CHAIRMAN: It is a matter for me to decide the weight to
30 be given to that evidence. Let us be quite clear about

1 it, my recollection is that we have heard from the bank
2 officials, certainly yes, we have, bank officials as to
3 what assurance they asked for. There is no doubt about
4 that.

5 .
6 I am not saying what weight is to be given, I merely want
7 to be a factually accurate.

8 .
9 MR. FOX: I want to clarify the phrase Mr. Hanratty used.
10 "The intention of the Broadcasting Act was to benefit the
11 independent sector and Century in particular". He did not
12 refer to evidence, he made that statement carte blanche.

13 What I am saying to you, Chairman, is that is something for
14 you to decide. That goes to a finding that is something
15 you will deal with in your report. It is not for Mr.
16 Hanratty to decide.

17 .
18 CHAIRMAN: I note what you say and I take it on board and
19 give it the appropriate, when I come around to considering
20 the matter in detail.

21 .
22 MR. FOX: Thank you Chairman.

23 .
24 CHAIRMAN: Ten minutes more?

25 .
26 MR. HANRATTY: Yes, I have another witness Sir.

27 .
28 CHAIRMAN: Certainly.

29 .
30 THE WITNESS THEN WITHDREW.

1

MR. HANRATTY: Mr. Colm Curley please.

3

COLM CURLEY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY

MR. HANRATTY:

6

7 331 Q. Mr. Curley, from February 1988 I think you held the
8 position of Assistant Director of engineering in RTE?

9 A. From 1988, February to I think it was April -.

10 332 Q. April of the following year?

11 A. Of the following year that in fact I became -.

12 333 Q. Was it April of the same year?

13 A. No it was, in fact I held the position, I am not quite
14 clear now on exactly when I held the position of Assistant
15 Director of Engineering. I think it was for some years.

16 334 Q. Were you in that position, shall we put it that way, for
17 the entire position of the Century Communications?

18 A. Yes, I was in the position of Assistant Director of
19 Engineering.

20 335 Q. Yes?

21 A. At the time the whole discussions with Century started.
22 After about three months I became Director of Engineering
23 and you will see in the documentation that I had written
24 that the title changes during the very early period.

25 336 Q. Yes?

26 A. So I think it was although I need to look at the actual
27 documentation, I wasn't expecting to be called quite so
28 abruptly this afternoon, this evening.

29 337 Q. Well, you will have time to regroup before the morning
30 undoubtedly?

1 A. Hopefully. But in fact it was just, I remember very
2 clearly that in fact I was only a few months during that
3 period Assistant Director of Engineering, having been
4 Assistant Director of Engineering prior to that and then I
5 became Director of Engineering.

6 .
7 So it would have been one of the things, one of the
8 important functions I would have come into as Director of
9 Engineering.

10 338 Q. Yes. And in that capacity what would your
11 responsibilities be, in general terms?

12 A. Well in general terms, once I became Director, as Assistant
13 Director of Engineering naturally I would be involved in
14 the whole of engineering, but wouldn't have had direct
15 responsibility.

16 339 Q. Yes?

17 A. For a certain area in engineering.

18 340 Q. Yes?

19 A. I would have been responsible for network and would have
20 been as assistant for network design and development. As
21 Director of Engineering then, I would have responsibility
22 for the whole of engineering division and I would also
23 become responsible for the engineering decisions and
24 development.

25 341 Q. Yes?

26 A. Which then would incorporate not only network design and
27 development but the design and development for the studio
28 area as well.

29 342 Q. Yes. But I think that you were involved at all stages in
30 the technical aspects of the involvement of RTE with

1 Century Communications? .

2 A. Yes. I would be.

3 343 Q. Now we know the question arose in 1988 of the possibility,
4 as it then was, of Century Communications being a user of
5 the transmission system. Century and indeed others, prior
6 to the award of the franchise?

7 A. Yes, yes.

8 344 Q. What was the general approach in 1988 of the technical side
9 or the engineering side in RTE, vis- a- vis the provision
10 of access to the transmission system to other users?

11 A. Well, we had already in fact made our - here I think one
12 should distinguish between access into our broadcast
13 systems in a limited way and broadcasting access to our
14 broadcasting sites because there is an essential difference
15 between the two.

16 .

17 For quite a period, because the sites in our transmission
18 network would be the primary transmission sites, when it
19 comes to covering wide areas in the country.

20 345 Q. You are speaking about the 14 FM sites?

21 A. Not only the 14 but we had a whole range of our sites as
22 well. We would have in excess of maybe 80 sites at the
23 particular time.

24 346 Q. Yes?

25 A. But the 14 would have been the primary sites, the very high
26 altitude sites and the ones with very wide area coverage,
27 where the reach of coverage would be something maybe
28 stretching out to 80 kilometers or maybe 100 kilometers in
29 certain cases. So these would be very attractive sites
30 for people to get access to, say, for instance, for Health

1 Boards with emergency services. Ambulance services would
2 get very good coverage by siting their radio telephone
3 equipment on our sites.

4 .

5 But the essential thing about this particular type of
6 equipment, it would be the type of equipment you would be
7 able to accommodate in the boot of your car. And what was
8 important was the altitude of our sites and their ability
9 to put a very simple aerial on part of our mast or on a
10 separate service mast that might be on our sites.

11 .

12 So here we were accommodating, in the initial cases, very
13 minor equipment that would occupy very little room in a
14 separate users room on our stations and would take very
15 little electricity. You might be talking about ú100 worth
16 of electricity a year or something of that order and where
17 the aerial used would only take very little room on the
18 mast or something of that nature.

19 .

20 So we already had- to use my financial colleagues terms- we
21 were trying to establish "rate cards" for these particular
22 users.

23 347 Q. Yes, well in that context did you prepare a document in
24 January of 1989 entitled "Position Statement- January 1989.
25 Provision of Transmission Facilities at existing RTE sites
26 for Independent Radio Broadcasting" ?

27 A. Yes.

28 348 Q. Page 5206. I don't think it is necessary to go through
29 all the fine detail of this document because Mr. O'Brien
30 dealt in considerable detail with the various figures.

1 Just give us, in very general terms, an outline of what
2 this document does and why it was produced at this point in
3 time?

4 A. Well, I think what would very much have come out- we would
5 have, I would as - January, that would be '89, it was an
6 attempt on my part to clearly state for the benefit both of
7 myself and of my managers, the position as I understood it,
8 in relation to access and this would have been the purpose
9 of it. Or for anybody else who would ask me what the
10 position was.

11 349 Q. You would, of course, have known presumably there was a
12 series of meetings in early January between your colleagues
13 I presume in the financial Department and the Department of
14 Communications?

15 A. Yes, I would have known that.

16 350 Q. Yes.

17 A. And certainly this document, looking at it, would very much
18 be just - I tended to be in the habit whenever something
19 came up that in fact I would be either asked questions
20 about internally in RTE or by people who would ring us up
21 trying to inquire potential, maybe broadcasters or anybody
22 else because I remember at the time getting a number of
23 phone calls from potential broadcasters asking about the
24 possibility of access to our stations.

25 .

26 So it would have been an effort on my part to put down
27 clearly what I understood the position to be and then to
28 check it, to make sure the position as stated was the
29 accurate position.

30 351 Q. Yes. Now, I think in, yes in February of 1989 you had

1 some communication with the Independent Broadcasting
2 Authority, page 5220. This is a letter from the IBA to
3 you, obviously in response to some query which you made,
4 dated 15th of February 1989 from a Mr. Weldon, the Chief
5 Engineer in transmitters operations,

6 .
7 "Dear Colm, with reference to your telephone call, I
8 attach a press release dated November 1986, relating to ILR
9 rentals. You see the "Robin Hood principle" has a major
10 effect on the individual company rentals. I should mention
11 that rentals have been frozen since this date and figures
12 shown, therefore, are still correct in the majority of
13 cases. For your information, Downtown Radio covers
14 approximately 80 percent of Ulster on VHF."

15 .
16 He includes a fairly large enclosure with that document.

17 What does the "Robin Hood principle" to which he refers
18 mean?

19 A. I think the "Robin Hood principle", if I remember exactly
20 what discussions I had at the time, was purely and simply
21 the principle that where you, for instance, had a station
22 that covered a small population, that in fact the money
23 that was got from areas where you had a large population,
24 would be literally used to allow them to give services to
25 them at a much cheaper rate.

26 .
27 Now that was my understanding at the time. So --

28 352 Q. Well, the "Robin Hood principle", as we all know, was to
29 rob the rich to feed the poor?

30 A. I think this was precisely it.

1 353 Q. This is essentially to give stations not viable,
2 effectively, subsidy from stations which are very
3 profitable?

4 A. I understood you couldn't just pick out a small station and
5 use the rental on that particular station or the
6 maintenance charge or whatever, as being representative of
7 the general level of IBA charges that would be appropriate
8 in relation to the actual facility provided.

9 .
10 In other words, there was more related to the area rather
11 than to the normal policy which the IBA had and one of my
12 problems at the time in dealing with other users was trying
13 to establish a simple rate card where we weren't involved
14 in very much administration because all these other users.
15 We much preferred to have a very simple agreement whereby
16 we would quote a fixed charge to them and it would be the
17 same charge for the same type of particular station.

18 .
19 Now, in the IBA and in the BBC, where they tended to have
20 other users, they had a whole range of complex methods of
21 calculating what a certain height of mast or a position at
22 a certain height on the mast would be worth and you know,
23 they had a much more complex way where they would cost on
24 that basis, but in relation to radio, they seemed to have
25 departed from that and you have what they referred to as
26 the "Robin Hood principle".

27 354 Q. Yes. And am I right in thinking that the "Robin Hood
28 principle" related to local stations rather than--?

29 A. Very much so, it didn't.

30 355 Q. They were all local stations in England?

1 A. Yes. And in fact we did not feel say, for instance, when
2 Downtown, this would likely have arisen where for instance
3 I think for the first time you had some quotation in the
4 newspaper or something about Downtown Radio or something of
5 this nature, I am not quite sure arose, but it would have
6 been quite normal at the time. I had a lot of from 1985 to
7 1988 I had been very much involved with both the IBA
8 engineers and with BBC engineers in frequent negotiations
9 on an international level, and where I was a member of the
10 Irish negotiation team, the Department of Communications
11 team, and we had been seeking to reverse a previous very
12 unsatisfactory situation where Ireland had only, I think
13 you know, it was something of the order of 10 FM frequency
14 allocations. And if we were to cater for RTE's future
15 requirements and we were to cater for independent radio and
16 we were to cater for local radio and even further to
17 community radio and beyond that, because these conferences
18 set the mould for 25 years.

19 356 Q. I think we might be straying a little off our patch, if I
20 may say so. There was a Downtown issue and I think the one
21 to which you are referring was the one which came up in
22 February and we will come to that in due course, in terms
23 of comparing like with like, from a technical point of
24 view.

25 .
26 To stay with this particular letter from the IBA at the
27 moment. I think one of the documents enclosed was a
28 document called "Big new reductions in ... ". This was the
29 press release to which reference was made, if I might refer
30 you to the second last paragraph on page 5222, where

1 reference was made to the fact that the, "UK's independent
2 radio companies, working within the public service
3 requirement of the Broadcasting Act and of the contracts
4 with the IBA have to manage their businesses on a wholly
5 self financing basis. Independent radio, like independent
6 television makes no call on public funding". That
7 accurately reflects what the position was in the UK, isn't
8 that right?

9 A. Yes, as far as I had this information to me. I didn't
10 have any detailed personal knowledge of it.

11 357 Q. I understand that.

12 A. Yes

13 .

14 MR. HANRATTY: I am going to move into some of the detail
15 of this witness' evidence now, Sir. If you would like me
16 to break at that point?

17 .

18 CHAIRMAN: I think we will break now. Tomorrow morning
19 at half past ten?

20 .

21 MR. HANRATTY: Yes sir.

22 .

23 CHAIRMAN: Just, as we are on the subject matter of time,
24 on Tuesday next the Tribunal will sit at 10 o'clock and
25 rise at 3.30 pm.

26 .

27 THE HEARING THEN ADJOURNED TO THE FOLLOWING DAY, FRIDAY THE
28 10TH NOVEMBER, 2000 AT 10:30 AM.

29

30

