

THE HEARING RESUMED AS FOLLOWS AT 10:30 AM ON THE 18TH

DECEMBER, 2000:

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CHAIRMAN: Morning everyone.

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MR. HANRATTY: Morning Sir.

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Sir, you will recall that the week before last, when Mr. Barry's evidence was being taken, a number of queries were raised by me in relation to the financial balance on the, particularly the capital account of Century Communications Limited, as of the 27th of September of 1990, the date of the closing of the deal with Capital Radio. And in particular, the issue which we were addressing there was how was the ú35,000 paid to Mr. Burke and the ú5,000 paid to Fianna Fail dealt with.

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You will recall that the evidence was to the effect that in making his contributions to this capital account, Mr. Barry withheld or took credit for the 35,000 and the 5,000. And we were interested to know how was that dealt with then on the closing, because presumably it would have shown up as a shortfall to that extent on the capital account.

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We know that there was a shortfall on the capital account on closing which was in fact made up, but it wasn't ú40,000, and we also know that after the closing with Capital, and notwithstanding a complete absence of any disclosure to Capital of any such indebtedness, Mr. Barry seemed to be claiming ú40,000, and ultimately succeeded in

claiming  40,000. He said it was for something entirely different, 16 weeks work at  2,500 per week, even though, as you can recall, there was no evidence of that. And Ms. Hynes, the then Financial Controller of the company, said her understanding was he was not to be remunerated for such management services, as he provided in the first half of 1990.

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So, it was in the context of whether in fact Mr. Barry got credit twice or at least credit once and a payment a second time of  40,000 that we were trying to, as it were, square the circle in relation to the capital account.

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It was also to some extent, at least in that context that we were interested in ensuring we had full disclosure of all of his bank accounts, and in that context, Sir, we have had occasion to carry out a review of Mr. Barry's discovery so far as his bank accounts are concerned, and with your permission, Sir, I would like to briefly address you on the history of the Tribunal's relations with Mr. Barry so far as discovery of documents is concerned, and to outline to you the up-to-date position.

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The Tribunal first approached Mr. Barry in relation to information and documents in July of 1999, by letter. You will recall, Sir, that the letter, although it was sent to Mr. Barry's house was sent back to the Tribunal twice again. Ultimately we did, I think sometime before the end of July, manage to communicate with Mr. Barry by post.

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We didn't actually manage to receive a response until the 11th of October of 1999, and in a letter from his then solicitors of that date, we were informed that Mr. Barry had no documents relevant to the Terms of Reference of the Tribunal.

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On the 14th of October of 1999 the Tribunal requested Mr. Barry to consent to discovery of documents, and also to provide the Tribunal with a narrative statement of his involvement with, in particular Century Communications relative to Mr. Ray Burke.

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No response was received to that letter in October, and on the 4th of November of 1999 a reminder was sent to him by the Tribunal, and the request for discovery and a voluntary statement were repeated.

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On the 5th of November of 1999 we were told by Mr. Barry's then solicitor that he was out of the country. There was no indication as to when he would be back, and they said they would seek instructions from him when he did come back. At this stage, bearing in mind the Tribunal had started its endeavors to get information and documents from Mr. Barry in July, and had made virtually no progress at all.

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On the 17th of November of 1999 following further correspondence from the Tribunal, we received a letter from Mr. Barry's solicitor saying that he had decided that he was not going to provide a voluntary statement to the

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Tribunal. The Tribunal repeated its request for such a statement on the 24th of November of 1999, and also indicated its intention, or your intention, to consider making Orders for Discovery of certain categories of documents which were referred to in that letter.

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That was responded to by Mr. Barry's solicitors by letter of the 30th of November of 1999, in which they challenged the Tribunal's authority or jurisdiction to make an Order for Discovery in the proposed terms.

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On the 10th of December of 1999 you made an Order for Discovery directing Mr. Barry to discover and produce to the Tribunal all documents and records in his possession or power relating to any payments to Mr. Ray Burke between the 1st of January of 1989 and the 1st of July of 1989. And those documents were to be discovered and produced to the Tribunal by the 17th of December, 1999.

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No documents were produced or discovered to the Tribunal by that date, or indeed by January.

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And on the 13th of January, 2000, a letter was written on your direction by the Solicitor to the Tribunal, pointing out to Mr. Barry that he was in default of compliance with the Tribunal's Order of the 10th of December, and warning him that if he did not comply with the Order certain steps would have to be taken by the Tribunal.

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There was no response to that letter and by, on the 24th of

January of 2000 you then issued a witness summonses to Mr. Barry to attend and produce documents of the kind specified in the previous Order, and he was to attend on foot of that summons on the 3rd of February, 2000.

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On the 2nd of February, 2000, the day before Mr. Barry was to attend the Tribunal to produce documents and be examined in relation to the documents, we received an affidavit from his solicitor enclosing six documents, on each of which every single entry except one entry on the page was obscured in circumstances where it was impossible to identify the nature of the documents, the author of the document or the provenance of the document, and which effectively gave virtually no information whatsoever to the Tribunal.

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On foot of furnishing those useless documents to the Tribunal Mr. Butler, Mr. Barry's then solicitor, took it upon himself to advise Mr. Barry that it was unnecessary for him to attend in response to the summons on the following day, notwithstanding the fact that Mr. Barry's solicitors had been told explicitly in correspondence that his attendance would be required.

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Mr. Barry's solicitor then attended without his client on the 3rd of February of, 2000, and informed the Tribunal that his client did not attend in the belief that it was unnecessary for him to do so, on the basis that he had furnished this affidavit with these six documents.

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Mr. Colm Allen, Senior Counsel, then appeared that afternoon on behalf of Mr. Barry and apologised for his non-attendance, and indicated that it was Mr. Barry's intention to provide the relevant documents to the Tribunal and in unexpurgated form.

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Subsequently those six documents were produced in their full form, but no other documents were provided at that stage.

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The Tribunal queried the adequacy of this discovery on the basis of an assumption or inference that, given the nature of the business of Century Communications around the time of the payment into which it was inquiring, that there must be in existence other documents relating to the transaction. And by letter of the 8th of February, 2000, the Tribunal queried the adequacy and completeness of the discovery which had been made by Mr. Barry.

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On the 9th of February, 2000, the Tribunal was informed by Mr. Barry's solicitor that the only relevant bank account which Mr. Barry had which had any relevance to the Terms of Reference of the Inquiry and the matter into which it was inquiring, was the account known as the "Frank Sinatra Account" that's in the Bank of Ireland branch in Lower O'Connell Street.

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On the 9th of February, 2000, the Tribunal requested Mr. Barry through his solicitor to provide a Letter of Authority addressed to all the banks in the State to enable

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the Tribunal to proceed with its own inquiries in the absence of the documents which it felt it ought to have had from Mr. Barry.

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On the 14th of March of 2000 Mr. Barry said he would provide the further documents requested by the Tribunal, but these had not been provided to the Tribunal by the 14th of April, and nothing having happened in the meantime.

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A reminder was sent by the Tribunal to Mr. Barry pointing out that he had agreed to furnish these further documents, this reminder was sent on the 14th of April, and no response was received to that. So that on the 12th of May of 2000 the Tribunal informed Mr. Barry's then solicitors, Messrs. LK Shields, that the matter was listed for public hearing on the 16th of May. That was deferred, I think, and on the 29th of May, 2000, a further witness summons was issued returnable for the 6th of June, 2000, and that required Mr. Barry to attend on the 4th of June and to produce a number of categories of documents, including all documents relating to any bank accounts in Mr. Barry's name or on his behalf.

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On the 13th of June you made a further Order for Discovery against Mr. Barry directing him to make discovery of the documents which had previously been referred to in the witness summons, and these included Mr. Barry's bank accounts.

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On the 16th of June of 2000 Mr. Barry swore an Affidavit

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Documents in which he listed, among other things, what he said were his, all of his bank accounts. And I can tell you, Sir, that in that affidavit reference was made to approximately 20 or thereabouts bank accounts.

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It is true to say that when Mr. Barry swore this account he clearly knew that there was a bank account, at least one bank account in the Isle of Man which he was not disclosing because his own solicitor had been in correspondence with the bank in the Isle of Man the week before this affidavit was sworn. Notwithstanding that fact and the fact of such communication both between Mr. Barry himself, I believe, and his solicitor, no reference of any kind whatsoever was made in this affidavit of the 16th of June, 2000, to any bank account in the Isle of Man.

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On the 20th of June, 2000, for reasons which are unknown to the Tribunal, the instructions of Mr. Barry's then solicitors, Messrs. LK Shields and Partners, were then withdrawn, and subsequently Mr. Barry's present solicitor, John O'Connor & Company came on record.

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In the meantime, however, on the 20th of June, 2000, the Tribunal wrote to Mr. Barry, stressing the necessity that all accounts of Mr. Barry be identified to the Tribunal, and if I can just briefly refer you to that letter, Sir, a passage in that letter.

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It says - dated the 20th of June, 2000:-

"Dear Mr. Barry, the Tribunal has today been informed by

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Messrs. LK Shields and Partners that their instructions and those of Mr. Colm Allen, SC, have been withdrawn by you and that they no longer act for you in connection with this Tribunal.

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Please let me know as a matter of urgency whether you have yet appointed a new solicitor, and if so, the identity of your new solicitor. You are no doubt aware of urgent outstanding correspondence to which the Tribunal awaits your reply or of that of your new solicitor. You are currently in breach of the Sole Member's Order of 13th of June, 2000, concerning production of documents. The Tribunal received confirmation on your behalf that those documents had been prepared and would be delivered no later than this morning. At the time of writing the documents had not been delivered to our offices.

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With regard to the Order of Discovery and Production, dated 13th of June, 2000, and in particular the sections thereof dealing with bank accounts, you will be aware that it is clearly stated in the Order that all such accounts be identified. In the event that you wish to file a Supplemental Affidavit of Discovery, the Sole Member has directed that one final Supplemental Affidavit to ensure full compliance with the Tribunal's Order may be delivered up to the close of business on Thursday the 22nd of June, 2000."

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So that was the position as of the 20th of June, Sir. And I think on the 23rd of June there was a further letter from

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the Tribunal to Mr. Barry referring to his failure to make discovery. That was on the 30th of June. And if I can just refer to a passage towards the end of that letter on the second page, it says: "On the 16th of June, 2000, Messrs. LK Shields furnished an Affidavit of Discovery of your client purporting to comply with a Discovery Order, yet on the same date your client informed the Tribunal the bank records furnished on the 2nd of June, 2000, were incomplete.

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Apart from your client's clear failure to make discovery on oath as initially requested and subsequently ordered, it is clear to the Tribunal that the documentation furnished on foot of the witness summons and Order remains incomplete. The Tribunal was informed by you on the 21st of June, 2000, that following receipt of the three boxes relating to Century, the Tribunal could expect to receive bundles of documents from you over the next couple of days in further compliance with the Order.

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I am directed by the Sole Member to state that unless your client furnishes to the Tribunal by close of business on Monday, 3rd of July, 2000, all further documents and records required by the summons of the 29th of May, 2000, and Order of the 13th of June, 2000, the Tribunal will have no option but to call your client in public on 5th July, 2000, on foot of the witness summons aforesaid and receive evidence from your client concerning each category of documents."

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That ultimately resulted, Sir, on the 11th of July, 2000, in the Tribunal receiving a further list of further bank accounts, and this was in the form of a letter from the solicitor. It lists another number of bank accounts which had not previously been included in the previous Affidavit of Documents, in which Mr. Barry swore that these were all of his bank accounts, and it contained, I think, approximately eleven further bank accounts which had not previously been disclosed. And it contained reference for the first time to one account in the Isle of Man.

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That was followed, Sir, by an Affidavit of Documents dated the 14th of July, 2000, and in this context there was a claim to privilege maintained in respect of certain documents or categories of documents or files of documents which had been in the possession of Mr. Marren, solicitor to Mr. Barry, and in respect of which I think you are due to make a ruling in the near future.

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Sorry, I understand that that ruling has been given and I think the effect of the ruling was that - yes, you have made the ruling that you will read the documents to decide whether or not they were properly the subject matter for a claim for privilege. And I think you have then to revert on that issue in due course, but be that as it may, the Affidavit of Documents of the 14th of July contained reference to yet further accounts which had not previously been mentioned, and that in effect was the last discovery which the Tribunal had received from Mr. Barry in relation to his bank accounts

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Now, there had been some indications, a belief on the part of the Tribunal legal team, that there may well have been other accounts which were not in fact discovered, and this turns out to be true, because as you recall the week before last, evidence was given by Mrs. Maeve McManus, and in the course of her evidence, she made reference to a file which she said was in the possession of Oliver Barry, and that she had received a copy of that file from Mr. Barry, I think it was in July.

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On further inquiry it appeared that there was in fact such a file, I think it became known as the "golf bag file", and we obtained a copy of that file, and having perused it it appears there are a number of further bank accounts which have not been disclosed.

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In addition to that, looking at the accounts which were disclosed we came across two transactions, one for a cheque for €30,000 and one for a cheque for €35,000, and on scrutinising the endorsements and stampings and bank references on the back of these cheques, we established that they were negotiated in a branch of Allied Irish Banks in Patrick Street in Cork. And upon further inquiry, it transpired that Mr. Barry had two accounts in his sole name in that branch, and that Ms. McManus had an account in her name, which Mr. Barry then told us in his evidence while, that while the account was in the name of Ms. McManus that the funds in that account and the monies put into that account were monies which belonged to either him or Quality

Artistes Management Limited.

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So here were three further accounts. And as a result of that body of evidence the week before last it transpires now, Sir, that there are, it would appear, nine accounts to which, of which no disclosure of any kind whatsoever has been made by Mr. Barry to the Tribunal, notwithstanding the fact that he has sworn two Affidavits of Documents to the Tribunal, in which he has deposed that the affidavits in each case included all of his bank accounts, and notwithstanding the enormous volume of correspondence which has been exchanged between Mr. Barry and his two firms of solicitors since July of 1999.

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And if I can just briefly go through the accounts, Sir. On a document which bears the Tribunal reference AIB MMM 1 - 2, there is an account in the name of Allied Irish Banks, Patrick Street, Cork. This is an account which was in Ms. McManus' sole name, and we have now been told was an account which effectively belonged to Quality Artistes Management Limited, and in respect of which we have now been told by Mr. Barry that that company has no records of any kind relating to that account.

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There was a further account, number 35780-079 in the sole name of Mr. Barry. That also became apparent from inquiries which the Tribunal made directly with this branch, having discovered the involvement of this branch, and this is a further account bearing a different number also in the name of, the sole name of Mr. Barry in that

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branch.

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One of the documents of this account is the one which bears the Tribunal reference OB 16 - 82, this is from the "golf bag file", and it is a letter of the 10th of December of 1990 from Mr. Oliver Barry to Mr. Pilley, the Manager of Barclays Finance Company (Isle of Man) Limited.

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Now, you will recall, Sir, that rather belatedly Mr. Barry discovered one bank account in Barclays Bank plc but made no disclosure of any kind whatsoever to any account known in Barclays Finance (Isle of Man) Limited.

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"Dear Mr. Pilley, with reference to our telephone conversation of this morning, this is to inform you that I wish to wire the sum of 12,500 US Dollars to" - he gives an account in Santa Monica. I will come back to that account in a moment. This account was not disclosed at any time up to the present time by Mr. Barry, and not a single document has been discovered or disclosed to the Tribunal in relation to this account.

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There was another account which emerged from these documents in a letter to a Mrs. Cowen in the Prime Account Department of Barclays House, Victoria Street, Douglas in the Isle of Man. And this is an account in the joint names of O and M Barry of an address in Cork. Again this appears to be a joint account in the Isle of Man, in the joint name of Mr. Barry and somebody else, and again this is an account of which no form of disclosure of any kind

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whatsoever has been made by Mr. Barry to the Tribunal, and in respect of which no document of any kind whatsoever has been discovered to the Tribunal.

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There is another document in this same file called OB 16, or with a reference OB 16 - 8. And this document is addressed to Mr. Alverio in Barclays Finance Company (Isle of Man) Limited from Mrs. McManus. It says: "Dear Mr. Alverio, further to my telephone call to you today, this is to confirm that I wish to have Oliver Barry's name included in the following accounts." She listed two accounts in her name in Barclays (Isle of Man) Limited, of which, as a result of this letter, Mr. Oliver Barry became joint shareholder, and again Mr. Barry has failed to disclose his involvement or interest in either of these accounts to the Tribunal.

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It says in the letter: "As I explained to you, I will need a letter by Wednesday, 26th of September, from Barclays Finance Company acknowledging that Oliver Barry has... And a copy of his signature is below." (Document not available for cross reference)

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And the letter does in fact contain a copy of Mr. Barry's signature. So those are two further accounts in the Barclays Finance (Isle of Man) Limited which have not been disclosed.

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You will recall, Sir, that in the course of the evidence there was evidence that there were two transactions both,

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one from Ms. McManus' Isle of Man accounts, and the other from Mr. Barry's Isle of Man account or one of his accounts, to a company called Mercury Offshore Sterling Trust. On each occasion, two sums - one sum of ú30,000, a total of ú60,000 was transferred from these Isle of Man accounts to Mercury Offshore Sterling Trust to Barclays plc in Saint Helier in Jersey in the Channel Islands, and the account was to SG Warburg, in Jersey, Limited with Account No. 10947156. It bears the reference "Mercury Offshore Sterling Trust."

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Now, obviously there is an account in this bank, obviously the account was the ultimate destination of these two sums of ú30,000. No disclosure of this account was ever made to the Tribunal prior to this correspondence by Mr. Barry, and the position at present is that the Tribunal has not received one single sheet of paper from Mr. Barry concerning this account, no document of any kind whatsoever.

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The Tribunal has been told by Mr. Barry that this was a bond, I don't know whether it was one bond or whether the two sums of ú30,000 went to make up two bonds, but whatever be the case, and even assuming that Mr. Barry's explanation was correct, the Tribunal has not been provided with any document of any kind whatsoever to enable the Tribunal to verify the version of events given by Mr. Barry, or exclude it from its inquiries, if necessary, from its Terms of Reference.

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There is another document in this file, dated the 10th of December, 1990, again to Mr. Pilley in Barclays Finance Company (Isle of Man) Limited, signed by Mr. Barry, and it says: "Dear Mr. Pilley, with reference to our telephone conversation of this morning, this is to confirm that I wish you to wire the sum of 12,000 US Dollars to the account in the name of Seagal and Feldstein Trust account, Wells Fargo Bank, Beverley Hills, California." And it gives the branch number and account number, and it says from which account number and gives the account number of one of his own Isle of Man account numbers in the name of Oliver and Noleen Barry.

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Now, the account from which those funds are to be transferred, this account in California, is another Isle of Man bank account which has not been disclosed to the Tribunal, and no documents of any kind have been provided to the Tribunal in relation to that account.

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And finally, there is a document bearing reference OB 16 - 5. There is - it consists of what appears to be a telegraphic transfer order, and it is for 12500 US Dollars, and the beneficiary is stated to be Seagal and Feldstein Trust account, and it gives an account number in the branch in Santa Monica already referenced to, but at the bottom of it it seems to indicate that the account to be debited is Mr. Barry's or perhaps Mr. Barry's and Ms. McManus' Sterling account with a reference number 50156493. And insofar as that refers to a bank account, which it appears to do, that is a bank account which has not yet been

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disclosed to the Tribunal either, and it is an account in respect of which no documents have been furnished to the Tribunal.

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So that is, Sir, the - sorry, there was one further document which indicates the possible existence of a further account, being a Dollar account, and that's OB 17 - 12, and that indicates that in April of 1992 Mr. Barry provided \$175,000 to Ms. Maeve McManus, and on the assumption or inference that presumably this came out of some Dollar account, presumably held in the US, that would seem to indicate the possible existence of yet another account which has not been disclosed to the Tribunal.

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So, the position, Sir, is entirely unsatisfactory from the Tribunal's point of view in terms of its attempts to close off its investigation of the financial aspects of it pinned to Mr. Burke. And in the circumstances, Sir, the only thing I can do is to indicate to you that it would appear the documents which I have just opened, and in particular the up-to-date documents, that there has not been anything approximating a complete disclosure and discovery and production to the Tribunal of bank accounts in accordance with the original Orders.

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It would appear, that the discovery by Mr. Barry is still incomplete to a substantial extent, and in these circumstances I would have to ask you, Sir, to effectively revisit the whole question of Mr. Barry's discovery to this Tribunal, and that it would, should be reviewed in detail

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and, if necessary, further Orders should be made.

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I would ask with your leave, Sir, that I be permitted to defer further questioning of Mr. Barry in relation to the financial aspects of the matter until such time as that discovery process has been completed.

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I can indicate, Sir, that if you were disposed to proceeding in the manner in which I suggest, I am in a position to proceed with other evidence and other questioning of Mr. Barry which does not relate to the financial aspects of the matter, namely the transmission charges and capping of RTE's advertising.

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CHAIRMAN: Mr. O'Connor, do you want to say anything?

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MR. O'CONNOR: Sir, just briefly if I might put Mr. Barry's position in context.

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As you are aware, I came into the case on the 20th of June of this year. On the 14th of July we furnished an affidavit on behalf of Mr. Barry which had reference to 1,956 separate documents. Included in those documents was reference to the Barclays bank account.

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Now, I am specifically instructed by Mr. Barry, Sir, at the time his affidavit was furnished by LK Shields in June, he is of the firm belief that the existence of the Barclays account was in fact flagged, as it were, by a letter from LK Shields. I can't confirm that, Sir. I would like to

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put it on the record.

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If I might turn to the specific accounts which Mr. Hanratty opened to you this morning?

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The very first account, Sir, is the account which was in the sole name of Maeve McManus in Patrick Street in Cork. I am not making any excuse whatsoever about that account, Sir. Mr. Barry is putting his hand up and saying "It should have been disclosed." However, Sir, by way of explanation, what I would say is in his Affidavit of Discovery Mr. Barry also disclosed the existence of a bank account in his name in that - sorry - a joint account with Ms. McManus in his name in that bank.

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I also wrote to the Tribunal and outlined to the Tribunal's legal team that he did in fact have accounts with that particular institution in Patrick Street. Now, Sir, I don't think those actions are compatible with a mindset of somebody who is trying to conceal a bank account from this Tribunal. I would simply leave it at that, Sir, just to put some context on it.

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I don't have any instructions, Sir, in relation to Items 2 and 3 referred to by Mr. Hanratty this morning. I will take instructions and come back to you on those accounts.

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In relation to the Barclays Finance account: The existence of that account, Sir, was disclosed from information furnished by Mr. Barry to the Tribunal. Again, Sir, I am

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not saying that it is a proper means of disclosure, but I am simply making the point, if Mr. Barry wished to conceal that account he would not have furnished documentation relating to it to the Tribunal, nor indeed, Sir, would he have furnished a written authorisation to the Tribunal, which he did on the 12th of July of this year, authorising the Tribunal to make any inquiries they wished with Barclays Bank Finance.

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The account referred to as Item No. 5, he had no beneficial interest in that and we will deal with that at a later date.

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The reference to Barclays Finance Bank: Sir, he was joined as an account holder with Maeve McManus, and that, Sir, was pointed out in a letter from my firm to the Tribunal, I think on the 16th of November of this year. Mr. Barry did outline the fact that he was named as a joint account holder on that account. Now, he actually had no beneficial interest in the account, Sir; in fact the reason why he was joined, I am instructed, was to give him credibility with the Bank of Ireland because at that particular time, which was in or about the time of the Century buying - sorry, Sir, the Capital buy into Century Radio, he did need to produce funds to the bank to satisfy Bank of Ireland that he was in a position to furnish a guarantee.

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Dealing, Sir, with Item No. 7: I think it may very well prove to be the case, Sir, that the account number referred

to there at Item No. 7 is, in fact, a bank account number which was used to receive monies to purchase a bond. Now again, Sir, the existence of this bond was disclosed in my letter, which I think was the 16th of November, and I think when we have an opportunity to pursue our inquiries with Barclays Bank you may be satisfied in this regard.

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Item No 8, Sir, refers to a transfer of monies to the United States. That was actually an annual retainer to an agent who was an agent, I believe in Santa Monica in California, for various artists who were engaged from time to time by Quality Artistes Management.

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The final reference, Sir, was to a figure of \$175,000. I can confirm to you, Sir, unequivocally that that figure relates to a refund from the Michael Jackson concert. It was monies being refunded by the Michael Jackson organisation to Quality Artistes Management.

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Now again, Sir, I only saw this document literally about five or ten minutes ago, but I do believe, Sir, if you give Mr. Barry an opportunity to set out his case fully, I think at the end of the day you will see there is not a deliberate policy on the part of Mr. Barry to conceal anything from this Tribunal.

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We did offer as recently as Friday of last week, Sir, to meet with the Tribunal team and answer any query such, for example, as the refund of £175,000 from Michael Jackson. It is not the case that those monies come from some account

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which has not been disclosed to the Tribunal. It is quite simply a refund of monies which were due to Quality Artistes Management.

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You may recall, Sir, on Thursday the 14th I think it was, or Thursday the 7th of December, you did suggest that Mr. Barry should sit down with the Tribunal team and we would welcome the opportunity to do so.

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Again, Sir, I simply say, I am not making any excuses, Sir, if an account should have been disclosed there is no grey area, it should have been disclosed. I am simply setting out the foregoing by way of explanation. I would ask you to defer making any judgment until such time as Mr. Barry has an opportunity to consider all these matters and provide explanations to the Tribunal, Sir?

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CHAIRMAN: Mr. O'Connor, I hear what you say and I hear what Counsel for the Tribunal say. The last thing in the world I want to do is to in anyway, abuse the powers that this Tribunal has. I have every desire that in the course of the investigations matters which do not, which incidentally arise for disclosure should not get publicity unless they are relevant to the matters in issue.

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Now, far be it from me to advise distinguished and senior members of the profession such as yourself, but might I suggest this to you, and I do so in an endeavor to accept what you say has provenance and should be given appropriate consideration.

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Now, I think the answer to this might well be, if I might suggest it: You have the transcript or you will have the transcript of what complaints are being made here this morning. I suggest that perhaps if this matter were dealt with in somewhat of a similar manner to what you would deal with requisitions on title. The complaint may be set out on one paragraph and set out the response together with a reference to the documentation which you say is a response, and if we had that coming through to the Tribunal - first of all it is a basis of understanding, and secondly, it is a basis of which yourself and your colleagues, Counsel and Solicitor for the Tribunal, can discourse, as it were, and try and reduce the area of conflict.

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Now, that's my desire in the first instance.

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I would hope that that will produce a resolution which would at least show what are the issues to be considered. And I would invite you to do it as soon as practical.

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Now, I am certainly going to accede to counsel's request not to deal with the financial affairs at the moment, and go on to other aspects, but I do hope I have been both fair and realistic in my approach to this situation.

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Needless to say, I do not want and I want to make it quite clear, I don't set out ab initio to kind of become a dictator as to what should be done. That's the last thing I want to do, I want to function in fairness, with

understanding for perhaps not the best bookkeeping that ever was in time, but that has to be now resolved and resolved frankly and openly.

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Now, the ball is in your court, if it comes back into mine I will deal with it in a very strong way, let me be quite clear about that.

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MR. HANRATTY: Could I just indicate, Sir, that assuming Mr. O'Connor takes up that suggestion, I think it will still be necessary for Mr. Barry to file a Supplemental Affidavit of Documents, because it is quite clear that the information which has come to us in the recent past indicates that there are documents, there must be documents in existence which have not been disclosed, and it would seem to be inevitable, Sir, whatever approach is taken it is still, it would still be necessary to have a further affidavit, and perhaps could I suggest, that the Tribunal perhaps sets out in a letter to Mr. Barry's solicitor the specific matters that it would require to be dealt with in a Supplemental Affidavit of Discovery.

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MR. O'CONNOR: That's very fair, Sir. I have absolutely no problem with any of the suggestions.

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CHAIRMAN: May I point out, I do understand we are coming up to the Christmas season, but there has to be action over the Christmas about this matter, there must be. There is no question of putting this on the long finger and revisiting it just as an Easter egg or something like this,

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that's not on. It is going to be dealt with and dealt with quickly, frankly and fully.

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Counsel - we will get a letter out to you, which when you combine with the transcript which is before you, gives you a full account of what is the problem, and I hope an equally full and frank account will come back.

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MR. O'CONNOR: Thank you, Sir.

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CHAIRMAN: Well, I will leave it to you to deal with where you go, what evidence you don't deal with today and --

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MR. HANRATTY: I propose not to embark at all on the financial material and to deal with matters other than the financial material which we still have to get through.

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CHAIRMAN: Okay. Well as we are coming up, would you like to take a short break and we will then resume, instead of breaking in ten minutes time?

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

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MR. HANRATTY: Sir, I should perhaps draw your attention to the fact that there doesn't appear to be any representation in the room for Mr. Burke. We just a moment ago checked to see was there any misunderstanding, and there doesn't appear to be, in that the Tribunal faxed Mr. Burke's solicitors on Friday to inform them that Mr.

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Barry's evidence would be taken this morning.

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We will check it again over lunchtime, but I would propose to proceed on the basis that they were told.

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CHAIRMAN: If a fax that - we have a fax on file, they were faxed that as far as - what time was the fax sent out?

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MR. HANRATTY: Friday afternoon.

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CHAIRMAN: Within office hours?

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MR. HANRATTY: Well, it was within office hours, it was after you rose on Friday having decided not to proceed any further with Mr. Lawlor's evidence. They were immediately told then that Mr. Barry's evidence would be resumed this morning.

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We can check it again over lunchtime. The only thing is, that it was agreed between myself and Mr. Burke's lawyers that, if you recall, I put to Mr. Barry that the ú375,000 transmission figure was not produced by Mr. Hills, and Mr. Aidan Walsh wanted to make some submissions to you in relation to that.

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I am now proposing to go into transmission matters.

Perhaps we can leave over the submissions that he wishes to make until such time -

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CHAIRMAN: I will take his submissions in retrospect and give the same credibility to them as if they were made now.

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MR. HANRATTY: Yes, thank you Sir. Mr. Barry please.

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OLIVER BARRY, HAVING BEEN PREVIOUSLY SWORN, RETURNED TO THE WITNESS-BOX AND CONTINUED TO BE EXAMINED AS FOLLOWS BY MR. HANRATTY:

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1 Q. MR. HANRATTY: Mr. Barry, I want to ask you, if I may, about events commencing in the period of approximately October of 1987.

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We know that the IRTC was established in October of 1987, and that immediately thereafter they advertised for applications for the National Radio Franchise, isn't that right?

A. I thought it was 1998 (SIC).

2 Q. Sorry, 1988?

A. Yes.

3 Q. Yes. Now, we already know from your own and the evidence of previous witnesses, that you had already had fairly extensive discussions with your proposed business partners

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in relation to setting up a radio station and applying for this franchise?

A. We had some discussions, yes.

4 Q. Prior to October of 1988, had you discussed this matter with Mr. Ray Burke?

A. Not to my recollection, no.

5 Q. Well, does that mean that you don't recall whether you did or not?

A. I don't recall whether I did or not, no.

6 Q. Yes. Could I suggest to you that it is likely that you had discussed the matter on more than one occasion with Mr. Burke prior to the actual establishment of the IRTC?

A. I can't recall.

7 Q. I appreciate that you say you can't recall, but would you agree with me that it seems likely that you would have done?

A. Well, if there was publicity about independent broadcasting, maybe, at the time, I might have told him that I may be interested if it ever came about.

8 Q. We know that the application for the franchise went in on the 16th of December of 1988, the IRTC having previously been notified by Arthur Cox that it was your intention to make such an application, isn't that so?

A. That would be so I am sure, yes, yeah.

9 Q. We also know that while originally you and/or Mr. Stafford had had some discussions with the IBA in England, in November - October/November of 1988, you had engaged the services of Mr. Ray Hills?

A. Yes.

10 Q. We also know that Mr. Hills attended, we understand, at

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least two meetings with representatives from RTE during the month of November of 1988?

A. I don't have a recollection of those, Mr. Hanratty, but I am sure he did, yes.

11 Q. Yes. We also know that in the month of November, at the beginning of November of 1988, RTE gave a quotation to Century both for FM transmission and AM transmission?

A. Yes.

12 Q. And we know that the quotation which RTE provided envisaged a comprehensive all-in service?

A. Yes.

13 Q. Including originally the purchase of all necessary equipment?

A. I believe it was an all-in package, yes, yeah.

14 Q. And that was approximately ú1.4 million I think?

A. Yes.

15 Q. We know that Mr. Hills sought certain information from RTE, both directly at his meetings and also through correspondence, in relation to certain aspects of their quotation, isn't that right?

A. I am sure that's right, yes.

16 Q. And he also sought information from RTE in relation to the technical aspects of the proposal?

A. Yes, he was - yes.

17 Q. We also know that in the month of December of 1988 Mr. Stafford prepared a document which he described as a briefing document for the Minister, in which it appears the intention was to brief the Minister in relation to the question of transmission charges?

A. I don't have a recollection of that but if you say so, it

is okay, yeah. If there is a document there, yeah, its okay.

18 Q. Yes. Well, were you aware that Mr. Stafford was actually preparing a document to brief the Minister in respect of transmission charges prior to the submission of the Century application?

A. I knew Mr. Stafford had some meetings with the Departmental officials, because he knew them from some previous business he was involved with, but I don't recollect him having any briefing with the Minister, Mr. Hanratty.

19 Q. If we could have document page 38 please? Sorry, it is not page 38, 2510.

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This is a fax that's dated the 8th of December of 1988. It is from Mr. Stafford to Mr. Ray Hills, and the message in it says: "I enclose herewith a brief which I wish to give to the Minister. Would you please check and adjust where appropriate and return before close of business tonight." And then he deals with another matter.

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I presume that you would have been aware at that time that Mr. Stafford was engaged in the business of preparing a briefing document to be sent to the Minister in relation to transmission charges?

A. I don't recollect it, no. I thought Mr. Stafford was dealing with Mr. Grant but he said "the Minister", I have no reason to contradict it.

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CHAIRMAN: Mr. Barry, I wonder would you be kind enough to draw the microphone into you, I hear you but --

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A. Sorry Chairman.

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CHAIRMAN: Thank you very much.
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20 Q. MR. HANRATTY: If we look at the document which is the following page, which he sent to Mr. Hills. It is entitled "Memorandum". It says: "A financial analysis of the UK independent radio companies indicates that the margin available for both transmission and return on risk capital is give or take 20 percent of turnover.

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In relation to transmission, there is an overriding criteria "ability to pay" in order to ensure the viability of smaller stations where realistic transmission costs would make such services economically unviable. The turnover anticipated for the national radio service in its fourth year is anticipated to plateau at 5 million pounds."

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And he goes on to give a number of figures. If I can direct your attention specifically to the bottom of the page. He says: "We believe that in fact anything above ú375,000 would constitute a contribution to RTE."

A. Yes.

21 Q. Now, Mr. Stafford has put this figure in here which he is suggesting to the Minister as the maximum figure effectively that should be paid in respect of transmission charges, and he is preparing this document as a brief to the Minister for Communications?

A. Did this document go to Ray Hills?

22 Q. No, it is a draft document which Mr. Stafford drafted with the intention of sending to the Minister, but before doing so, that, he was sending it to Mr. Hills for his comments?

A. Yeah.

23 Q. Now, why was Mr. Stafford sending a briefing document to the Minister suggesting a figure of ú375,000 for transmission charges?

A. I don't know why he would have done that.

24 Q. Well, did you not know that he was doing this?

A. I can't, I can't remember this document, Mr. Hanratty, no.

25 Q. Well, we know, for example, that you had lunch with the Minister in Ernie's the previous Friday?

A. I don't remember that lunch, no.

26 Q. This appears from the Minister's own diary. When you had lunch in Ernie's with the Minister, did you discuss this briefing document which him or did he ask to be sent a brief in relation to the transmission charges?

A. I have no recollection of having lunch with the Minister in Ernie's, Mr. Hanratty.

27 Q. You don't remember having lunch with the Minister?

A. At Ernie's, no. I remember having lunch with the Minister in the Old Dublin Restaurant.

28 Q. Well, Ernie's is a restaurant I think --?

A. I know exactly where it is, I have had, I have been to Ernie's, but I don't have a recollection of having lunch with the Minister in Ernie's, Mr. Hanratty.

29 Q. It would appear from his diary that he had a lunch appointment the Friday prior to this draft document?

A. I am not disputing that at all, all I am telling is you I don't remember having lunch with the Minister in Ernie's.

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30 Q. Because if the Minister asked you at that lunch for a briefing document, it would then explain why Mr. Stafford was preparing one?

A. I have no recollection of it, Mr. Hanratty.

31 Q. Do you consider it odd in anyway, that Mr. Stafford was briefing the Minister in relation to transmission charges even before the application went in?

A. Did this document go to the Minister?

32 Q. Well, we don't know whether it did or not.

A. It went, you are saying it is a draft document that he sent to Mr. Hills, for him to throw his eye over it, as it were, and then he was going to send it to the Minister?

33 Q. That's what is indicated by the fax document I have just read to you.

A. I'm afraid I can't help you much further than what I am trying to.

34 Q. What would be the point of Mr. Stafford briefing the Minister at that point in time?

A. I don't know, I suppose maybe to give him an indication, but I thought that Mr. Stafford was dealing with Michael Grant, I didn't know he was dealing with the Minister directly on this matter.

35 Q. Well, Mr. Stafford himself has told us about meetings which he had with the Minister, and you in early February - we will come to those in chronological sequence, but at the moment I am just trying to elicit from you as to whether you can assist us as to what conceivable function the Minister had in relation to the transmission charges at this stage, namely before the application for a license was even applied for?

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A. I am surprised to see this document, and I don't have any recollection of it.

36 Q. Would you agree with me that it is a rather odd thing to be doing, to brief the Minister in relation to the transmission charges before you even make your application?

A. I suppose maybe on foot of the conversations he had with the senior officials, which I wasn't at, maybe there was some reason as to why he might have done this.

37 Q. Well, there has been never any suggestion by anybody, including Stafford, that this document was in response to any request from any official, and as I understand their evidence, none of the officials had anything to do with this document?

A. I'm afraid I can't help you, the only thing I believe is that Mr. Stafford would have no experience in transmission charges and the figure of 375, he must have gone to Ray Hills or the IBA.

38 Q. Well, we know, for example, that under Section 16 of the Act, if I just read it to you, it says:

"The Minister may, at the request of the Commission and after consultation with Radio Teilifis Eireann, require the latter to cooperate with sound broadcasting contractors in the use of any mast, tower, site or any other installation facility needed in connection with the provision of a sound broadcasting service to be established under this Act.

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2. Sound broadcasting contributed in a small (inaudible) as the Minister after consultation with RTE and the Commission directs."

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So insofar as the Minister may have any role whatsoever, particularly in regard to transmission charges, it would only be in relation to a contractor, in other words somebody to whom a franchise has already been awarded, isn't that right?

A. That's right, yes.

39 Q. And of course, in December of 1988 Century Communications Limited could not be so described, nor could anybody else?

A. No.

40 Q. And the question of the Minister intervening in any event would only arise in relation to a person to whom a franchise had been awarded after the Commission had so requested such an intervention?

A. That's true.

41 Q. And after the Minister had then consulted with RTE in accordance with the section, isn't that right?

A. I thought he had to consult with the IRTC, was it?

42 Q. It says: "The Minister may, at the request of the Commission and after consultation with RTE."

A. Oh right.

43 Q. So a number of things would have had to have happened.

First of all, a franchise would have had to have been awarded so as to establish the identity of the contractor. Secondly, circumstances would have had to have arisen necessitating the intervention and the request by the IRTC as envisaged by the section, and pursuant to such request the Minister would then have had to have consulted in relation to it with RTE. All of those things are prerequisites for the Minister to exercise the powers conferred on him under Section 16, isn't that right?

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A. That seems to be the case, yes.

44 Q. It is only in those circumstances that the question of the exercise of the Minister's power could arise?

A. Yes.

45 Q. Why then was Mr. Stafford briefing the Minister on transmission charges before Century, or indeed anybody else, had even made an application for a franchise to the IRTC?

A. My honest answer to that is I don't know.

46 Q. Would you agree with me, that it seems rather odd to be briefing the Minister at this early stage in relation to --

A. Well unless as I say, I know he had conversations with Departmental officials, and maybe it was on foot of that. I am sure Mr. Stafford had a good reason for doing it at the time.

47 Q. Well, can you offer any suggestion as to what good reason Mr. Stafford might have had for briefing the Minister for Communications at this point in time?

A. I can't, I mean, I am sure that you will have to ask Mr. Stafford that, I don't recollect the letter.

48 Q. Isn't it likely to have been the subject of your discussion with the Minister at your lunch the previous week?

A. I doubt it, I don't remember discussing any figures, well I don't remember the lunch even, I have no recollection of the lunch with the Minister. If you say I had a lunch with the Minister in Ernie's maybe I had, but I have no recollection of it, Mr. Hanratty.

49 Q. Well, isn't it likely that if somebody went to the trouble of firstly drafting a briefing document and secondly having it vetted by the independent expert that you were using,

that that was done in response to a request for such a document?

A. Well, maybe it was, maybe we were getting our presentation for the oral hearing together and maybe that's why the document was prepared.

50 Q. Did Mr. Burke give you any prior indication, and I am talking about prior to the end of 1988, that he would, as it were, "mark your card" on the question of transmission charges?

A. I have read this in the papers recently because of evidence of further witnesses, that never happened. I can never remember Mr. Burke saying "I will mark your card", to me.

51 Q. Well, did he ever give you any indication that he would look after you if you couldn't reach agreement about transmission charges?

A. He certainly did not, no. The first that I remember about the Section 16, as you call it, I gave here. I told you my first memory of that power, as it were, that the Minister had, resulted from a meeting that I had with Enda Marren and the Chairman of the IRTC, Seamus Henchy, and that was subsequent to us getting the franchise.

52 Q. You see, the Tribunal has heard substantial evidence from a number of witnesses, particularly RTE witnesses, to the effect that there were no negotiations whatsoever between Century and RTE in relation to the transmission charges and the amount of the transmission charges?

A. Well, there must have been some negotiations when they gave us a figure of 1.4 million.

53 Q. No, no, there were no negotiations, there was first of all a quotation of -

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MR. O'HIGGINS: Sir, I don't want to interrupt but I think the figure in question is 1.4 million. I may be confusing two issues, but I think it probably was.
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54 Q. MR. HANRATTY: I stand corrected, Sir, it was 1.14 million. RTE came up with a quotation amounting to 1.14 million?

A. Yes.

55 Q. There were two meetings in November of 1988 at which Mr. Hills sought information and was given information?

A. Yes.

56 Q. There were adjustments of RTE's figures, and ultimately an adjustment of the basis on which they were charging, to do with whether or not they would purchase the equipment, isn't that right?

A. Yes, if you say so, there is evidence, yes.

57 Q. But the evidence has been to this Tribunal, that there were no negotiations of any kind at all between Century Communications and RTE?

A. Well, I suppose there was no point having negotiations with RTE unless we had the franchise.

58 Q. There were no negotiations with RTE even after you got the franchise on the 18th of January, that's according to the evidence that has been given by these witnesses?

A. I can't recall, but I am sure there must have been some negotiations with RTE subsequently to us getting the franchise.

59 Q. RTE witnesses have told the Tribunal that not only were there no negotiations but that at no stage, at no stage,

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did Century ever put its own figure on the table, even the 375?

A. Well, we put our 375 on the table to the IRTC, I suppose.

60 Q. But not to RTE?

A. Not to - well not to RTE, maybe, I can't remember whether we did or not. If you say we didn't, Mr. Hanratty, I accept that.

61 Q. Well, can you offer any explanation to the Tribunal as to why Century didn't bother entering into negotiations with RTE?

A. Well, the only explanation that I can give you is that it was our view at that time, and specially a view held strongly by Jim Stafford, that we went up front with this figure on our written submission to the IRTC, and we, I think there was something, there was a reference to, that we hadn't resolved our differences with RTE because RTE were looking for a higher figure, and then we had the view that if we were granted the franchise on the basis of that figure we were going to stick to it.

62 Q. But, to get to a point where you have to resolve your differences you have to establish in the first instance that there is a difference between you. You hadn't even got to that point because, according to RTE, Century never put any figure on the table, they never put down 500,000 or 375,000 or any other figure that they could start negotiating on?

A. It is a long time ago and my memory is a bit hazy about it, but I would have said that once we put our figure to the IRTC, they granted us the franchise on that figure and then we held our ground, and when we went in, when Enda and

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myself went into the Chairman he knew the figure was on our document, and when he was, it was pointed out to him about his power of seeking a directive from the Minister, we assumed, naively maybe, that the directive would have to be 375,000.

63 Q. But the IRTC had no function in fixing the transmission charges?

A. I am not saying they did.

64 Q. They simply awarded a franchise on the basis that you were going to have to enter into a transmission contract with RTE?

A. They did. Yeah, but I mean, we did flag this figure in our written --

65 Q. You indicated that it was included in your projections?

A. No, no, we flagged it. It was in the text.

66 Q. Yes, you made an argument in the text of principle, and you made a provision in your financial projections which were in the appendix to your submission for 375,000, the figure itself was not mentioned in the text I think?

A. I think it was.

67 Q. Perhaps it was. But essentially, aren't I correct in saying what you did in the text was made an argument on, to explain why you shouldn't have to pay access?

A. I can't remember that, but I can remember that the figure was written down in black-and-white on the text, and there was a reference made that the matter was unresolved with RTE in the text of our written submission.

68 Q. Yes, and you set out the point of principle, as it were, that you were relying on?

A. I can't remember that. We had Ray Hills to stand over that

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figure, and he was an expert in transmission, and then we believed that that was the figure, that we wouldn't have to pay 300,000 transmission if we were granted a franchise with 375, the onus was then on the IRTC and the Department to fix that figure, as it were.

69 Q. You see, one possible explanation for you not bothering to enter into negotiations with RTE was that you already knew that you would get 375 anyway?

A. Well, that is totally incorrect, Mr. Hanratty. With - that figure was, it was a figure that was --

70 Q. In the absence of any other explanation as to why you didn't bother to negotiate with RTE, can you offer any suggestion as to why you didn't negotiate with RTE?

A. Because I am giving you the best reason that I can about it, that once we submitted it to the IRTC and they said they were going to seek a directive, that we automatically thought, maybe naively, that the directive they would have to seek would be a directive of 375,000.

71 Q. They didn't indicate that they intended to seek a directive until sometime in February?

A. They indicated they were to seek a directive following the meeting that Enda Marren and myself had with Seamus Henchy, and there is a lot of publicity regarding the figure of, Eugene Fanning's figure of the 375,000 being "a steal", I - I am only assuming, and only surmising, that that figure was maybe put down subsequent to our meeting with Seamus Henchy.

72 Q. What date do you say Mr. Justice Henchy agreed that he would apply for a directive?

A. Well it was subject, it was subsequent to us getting the

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franchise. I can't remember, probably a week or so after we being granted the franchise.

73 Q. All the documents appear to indicate that it first arose in February of 1989?

A. I can't remember the date of the meeting with Seamus Henchy now.

74 Q. Well, we will come on to the events in February and I think that might refresh your memory on the point. But at the point in time that you received the franchise, you had not up to that point entered into any negotiations with RTE, and indeed you didn't subsequently enter into any negotiations with RTE, if the evidence that the Tribunal has received to date is correct?

A. Mr. Hanratty, I mean you have asked me this question a number of times, I am trying to be helpful to you. All I am saying is that we relied, rightly on wrongly, on the figure of 375 which was in our written submission to the IRTC.

75 Q. Did Mr. Stafford discuss with you the briefing document that he was proposing to send to the Minister?

A. I have no recollection of this document at all.

76 Q. You have no recollection of it?

A. Of this briefing document, no.

77 Q. Do you have any recollection of discussing with Mr. Stafford his plan to send a brief to the Minister in December?

A. I don't. I mean, I had, I remember discussing with Mr. Stafford about Ray Hills because I spent some time with Ray Hills showing him some of the RTE sites around the country, but really when it came down to the technical end of

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things, it was Ray Hills, you know, he was the man who came up with this figure, because neither Jim Stafford nor myself had no knowledge about transmission costs or what went on with it.

78 Q. There was nothing terribly technical about the briefing document that we have just seen. The most relevant bit of it is simply the fact that Mr. Stafford was proposing a, to the Minister, a figure of ú375,000?

A. The only way that he could have any substance for that figure would have been as a result of Ray Hills and the IBA's investigation and experience.

79 Q. Well, I have already put it to you that Mr. Ray Hills never produced a figure of 375 as the appropriate figure for transmission charges. And I know that Mr. Walsh intends to make submissions to the Sole Member about that, but Mr. Hills' own evidence to this Tribunal is that he did not produce that figure of ú375,000?

A. All I can say to you is that on the day that we made our presentation to the IRTC in the Concert Hall, Ray Hills was in the platform with us. The whole transmission section of that document was his, and as far as I was concerned anything that was in that transmission document that day regarding transmission, Ray Hills was standing over.

80 Q. But we know for a fact, that no question was asked about transmission charges during the presentation, isn't that right?

A. Well, I have read that recently, yes.

81 Q. And we know for a fact that it is recorded in the minutes of a Century meeting which took place several days beforehand that it wouldn't be asked?

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A. I have no recollection of that. That certainly was news to me.

82 Q. If we can have page 6199? That's the first page of this minute taken by Mr. Fanning, and you can see it is dated the 5th of January, it is incorrectly described as "1988" but we know it was "1989". If you look at the next page you can see there is a rough sketch of the layout in the National Concert Hall where this presentation is going to be held, isn't that right?

A. Yes.

83 Q. And it contains some information about the procedures and so on. If you turn to the next page, 6201, under the heading "Transmission Questions" it says: "£375,000 is our figure. Commission will avoid that issue. May have the information afterwards."

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Now, obviously Mr. Fanning wrote that down and he has so told us, because somebody said it to him. Was it you that said that to him?

A. I have no recollection of saying that. I mean I wouldn't, I don't even remember the matter being discussed.

84 Q. Well, how would anybody in Century Communications Limited know that the question about transmission charges would not be asked, accurately as it turns out?

A. My honest answer to that, Mr. Hanratty, is that I don't know. Why did we bring Ray Hills to the presentation with us if we weren't going to be questioned about transmission?

85 Q. Well, did anybody in the IRTC tell that you it wasn't going to be asked?

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A. No, I don't remember anybody in the IRTC telling me.

86 Q. Can you remember who told Mr. Fanning at this meeting that this question was not going to be asked?

A. I have no, I have no idea.

87 Q. If we can have page 818? This is a letter to you from your own solicitor, Martin Marren, of the 5th of January of 1989?

A. Yes.

88 Q. And it is a letter in which he is giving you certain advice which he has come up with in consultation with Mr. Colm Allen, Senior Counsel, isn't that right?

A. Yeah.

89 Q. And they are anticipating questions which the IRTC may ask in relation to various aspects of the Century proposal, isn't that right?

A. Yes.

90 Q. And if I can refer you to paragraph 19, it says, page 822. If we can just enlarge that?

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"It is noted that Century regards the historic costs of the establishment of a national transmission network as an asset of the State already paid for by the State, and that they should be "available" to be used in the national interest without a further burden of charge."

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They are dealing with this point of principle which was made in the submission in relation to access, isn't that right? And he then says: "If Century is to avail of and profit from use of national assets on a permanent basis, surely it must make a significant contribution relating to

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the cost of the creation of the assets concerned, otherwise is it not casting itself in the role of the parasite?"

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Now, that's an issue which your own solicitor raised with you as part of his advice to you prior to the presentation to the IRTC, isn't that right?

A. That's right, yes.

91 Q. And he was drawing your attention to the fact that you could well be asked in relation to your argument of principle, or point of principle "Should you not at least pay your proportional share of the cost of the transmission system rather than be given free access to it?", as you were arguing for, isn't that so?

A. That's his point of view, yeah.

92 Q. It is his point of view in the sense that he is anticipating you would be asked questions in relation to this matter by the IRTC?

A. I wouldn't quite agree, he probably had a look at our written submission and might have found a weakness on it, and maybe that was his reply to it, I don't know. Was it in reference to our oral hearing, Mr. Hanratty?

93 Q. This was written on the same date of the meeting at which somebody told Mr. Fanning that no such questions would be asked?

A. I have no idea, I mean I did --

94 Q. It also indicates a misgiving on the part of your legal advisers at the time about this point of principle, that you should have access to the national system free of cost?

A. I think if you read through, they were trying to be constructive about the written document, and this was their

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summary of maybe the weaknesses or the pluses in it.

95 Q. What he is saying is that you are effectively making an argument, and that if you act like a parasite and get it free without paying you fair share of costs, and that was a weakness in the principle argument that you were making?

A. Yes.

96 Q. It is obviously something that didn't give you any concern at the time?

A. I know Mr. Stafford held very strong views about RTE being the custodians of the transmission network and not the owners of it.

97 Q. If we can go to paragraph 22 of it? It is on the same page.

"It is noted that the financial projections are posited in a transmission charge figure of ú375,000 per annum. What is the figure sought by RTE? And why does this figure not form the basis of the financial projections? How would Century propose to persuade RTE in all the circumstances to accept a substantial reduction in the figure sought?"

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Here again he is drawing your attention to the fact that you can't just come up with a figure of 375 in circumstances where the party providing the services is seeking a substantially higher figure, is that so?

A. They're making a point of that, but our reply to that would be that we hired the services of Ray Hills and paid him substantial fees, and he stood over this figure, and we were going to go with that figure.

98 Q. Mr. Barry, Mr. Hills' own evidence was that he did not stand over that figure?

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A. I would reject that totally, Mr. Hanratty. Mr. Hills came to the oral presentation with us, was present on the day, he knew exactly and precisely the, what was written in that document regarding transmission, it was his section of the document, and as far as I am concerned Ray Hills stood over that figure one hundred percent.

99 Q. What do you mean he "stood over"?

A. It was his figure, it was he that gave us that figure. I mean, Jim Stafford certainly wouldn't have the knowledge and I certainly wouldn't have the knowledge and we just didn't pluck the figure --

100 Q. Mr. Hills has sworn to this Tribunal that this was not his figure.

A. Well I mean --

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MR. O'CONNOR: Sir, there is a grave discrepancy in Mr. Hills' evidence to the Tribunal insofar as the evidence he gave to Mr. O'Neill and when he was subsequently cross-examined by Mr. Connolly on behalf of Mr. Stafford.

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I am not for a moment suggesting there was any ulterior motive, but Mr. Hills' position is succinctly set out on page 37 of the transcript of the 4th of October, when he replied to Mr. Connolly at Question No. 159:

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

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

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That was Mr. Hills' position, Sir, he was perfectly happy to defend the figure of ú375,000.

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101 Q. MR. HANRATTY: He included it in a draft document. What I am putting to the witness is that he did not either stand over the figure or produce the figure. And could I refer you to question, I am talking about Day 182, page 69, question 228.

"The subject of input on the ú375,000, we will come to that shortly." That's Mr. Hills.

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

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

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That's what Mr. Hills said. And he was questioned further about that and we will open all of the answers in the transcript in due course when this argument comes.

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But can I remind you what Mr. Stafford's evidence was? Mr. Stafford said that the IBA produced a figure of about ú295,000. Do you remember that evidence?

A. Yes, I remember. I don't remember the figure exactly but the IBA were involved also.

102 Q. He said the IBA produced a figure of ú295,000?

A. I can't remember that. As far as I was concerned the figure was 375.

103 Q. What Mr. Stafford said was that he, Mr. Stafford, rounded up the IBA figure to ú300,000 and then added on 25 percent

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to make it ú375,000. That's Mr. Stafford's evidence as to where the 375 came from. And it is quite clear, I suggest to you from that, that under no circumstances could that figure be said to have come from either Mr. Hills or indeed the IBA?

A. As far as I was concerned, Mr. Hanratty, the figure came from joint Ray Hills ex IBA and then they were, he also involved them in it, and Ray Hills stood over that figure as far as I was concerned.

104 Q. You see, what I want to put to you, Mr. Barry, is that both you and Mr. Stafford always knew that Mr. Hills never produced any figure, 375 or 295, or any other figure. That Mr. Stafford produced this figure and that that was always Century's figure and that they never deviated from it?

A. I would have to reject that totally.

105 Q. And not only that, but they presented it to the IRTC as if it had been produced by Mr. Hills?

A. I don't accept that for one moment. Ray Hills spent a lot of time, he charged a lot of high fees, he spent a lot of time researching the whole transmission network of RTE, and he is a highly renowned professional person, one of the best we could find at the time, and it was on the basis of what he told us that this figure was produced.

106 Q. If we can have page 5600 please? This is a fax from Mr. Stafford to Mr. Hills, and it is dated the 13th of January of 1989. This is the day after the presentation to the IRTC?

A. Yeah.

107 Q. Do you remember attending a meeting with the IRTC on the

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12th of January?

A. I don't.

108 Q. You don't remember meeting the IRTC the day after your presentation?

A. I don't, that was, that surprises me, I don't remember going to the IRTC on the day after the presentation. I am not saying I wasn't there, but I don't remember it, Mr. Hanratty.

109 Q. It says in the message: "Oliver Barry's office are faxing you details of the RTE charges." And it appears that you did in fact fax those details over to Mr. Hills, because he received them from you. Can I ask you first of all, where did you get details of the RTE charges?

A. I can't recollect where I got them from. Did you say that they came up with a figure of 1.14?

110 Q. No, at this stage the, RTE had reached an agreement with the Department of Communications for €692,000 for FM charges?

A. I don't remember this, no.

111 Q. And these are the figures which you faxed over to Mr. Hills. Can I ask you where did you get those figures from?

A. I can't remember. Could I see, maybe if I see the figures?

112 Q. Well, did you get them from Mr. Burke?

A. No, I got no figures from Mr. Burke that I can remember now.

113 Q. The evidence has been, and I am sure you have heard it, to the effect that a series of discussions was embarked upon between the Department of Communications and RTE in early

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January, culminating in an agreement on the 10th of January by the Department and the Minister, for transmission charges in the sum of ú692,000 for FM?

A. I don't remember anything about that meeting, no.

114 Q. Well, I am not talking about the meeting now, just the figures. I am asking you where did you get the figures from?

A. I have no recollection of getting the figures, Mr. Hanratty.

115 Q. Well, did you get figures from Mr. Burke?

A. I have no recollection of getting figures from Mr. Burke, no.

116 Q. Do you have any recollection of getting figures from anybody?

A. I don't.

117 Q. Do you have any recollection about anything to do with any of this?

A. I admit I am a bit hazy about it.

118 Q. Mr. Barry, in answer to virtually every specific question I put to you this morning your answer has been "I have no recollection."

A. That is what I am saying, Mr. Hanratty, to you; what do you want me to say? That I do recollect and give you wrong information, that is not my intention.

119 Q. Could we have page 15 please? These are the RTE charges as agreed between RTE and the Department of Communications on the 10th of January of 1989, and it appears to be the figures which you sent over to Mr. Hills on the 12th of January?

A. Could I see the figures that I sent to Mr. Hills?

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120 Q. If you just scroll down a bit please? You see the figure there of 692,000?

A. But did this come from me?

121 Q. That was, we understand, faxed by to you Mr. Hills on the 12th of January?

A. Could I see the fax?

122 Q. I don't think we have the fax, I think we have been told by Mr. Hills that he received these figures from you?

A. I have no recollection, so if I can see the fax maybe I can --

123 Q. Well, what can you tell us without the fax?

A. The only thing I can tell you is that I don't recollect these figures, I don't remember --

124 Q. Well, could we go back to Mr. Stafford's fax where he says "Oliver Barry's office are faxing you details of the charges." So Mr. Stafford is saying your office is faxing, and Mr. Hills is saying he got them. It seems to follow that you did send them, and it seems to follow that you got them from somewhere?

A. All I am saying is I would like to see them "from somewhere".

125 Q. On the fax, back to page 5600.

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"I have just returned from a satisfactory meeting with the Chairman and Secretary of the Commission. A decision will be announced next week."

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Now, you have already told us you don't remember whether or not you were at this meeting. Do you remember Mr. Stafford being very satisfied the day after the presentation with a

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meeting that he had with the people who were deciding who was going to get the franchise?

A. Mr. Hanratty, I have no recollection of it, and the fact that he says "I have just returned", he doesn't say "We have just returned", Mr. Stafford was at that meeting on his own, I don't remember being at the meeting. I was surprised that we had any meeting with the IRTC between the submission and the announcement.

126 Q. Do you remember Mr. Stafford saying to you that he was at a meeting and that he was very satisfied about the outcome of the meeting?

A. I don't, I don't.

127 Q. Yes.

A. Because I am surprised that any meeting took place between the submission and the announcement.

128 Q. Indeed. Mr. Barry, you as he, we understand it, were making a very substantial investment in this venture?

A. Yes.

129 Q. It would be true to say that it would put a considerable strain on your financial resources at the time?

A. Yes.

130 Q. You had a lot riding on it?

A. Oh, yes.

131 Q. You put an awful lot of work into the preparation of the submission?

A. Well, I would say that I put some work into it, but yeah, we had, we put --

132 Q. You had attended a considerable number of meetings with various parties?

A. Yes, prior to it, yes.

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133 Q. And you had invested a lot of your time in this project?

A. Yes.

134 Q. Are you saying to me that he, Mr. Stafford - you don't recall Mr. Stafford telling you that he had had a meeting the day after the presentation with the Chairman of the IRTC about your presentation?

A. I have no recollection whatsoever of it, I was more than surprised that the meeting even happened, but obviously it did.

135 Q. Isn't it something that you would have been very keen to know about?

A. Of course, absolutely.

136 Q. I mean, it is a very significant event, that you make a presentation to the IRTC where there are two other people or three, depending on how you look at it, competing for this franchise?

A. Yeah.

137 Q. Which you have invested so much time, energy and money in and to be told that the Chairman of the IRTC no less had requested a meeting the following day after your presentation?

A. I have no recollection.

138 Q. That's an extremely significant event, I suggest to you?

A. Absolutely.

139 Q. And I suggest it is inconceivable that you don't have a recollection of being told by Mr. Stafford that he had a "very satisfactory meeting" with the Chairman of the IRTC?

A. The word "inconceivable" I totally reject. I have no recollection of the meeting, Mr. Hanratty.

140 Q. Well, do you have any recollection of Mr. Stafford then

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embarking urgently upon endeavoring to obtain further information requested by the IRTC?

A. No.

141 Q. You have no recollection of this either?

A. No.

142 Q. Did you not know at the time that he was doing this?

A. If I had no recollection of it, I mean, I don't think that Mr. Stafford was doing anything that he wouldn't have made me aware of, but I have no recollection of it.

143 Q. Do you know, for example, that he sent a fax on the 13th of January of 1989 to Mr. Hills, page 6072? And sorry, Mr. Hills, I should say, sent a fax to Mr. Stafford acknowledging his instructions, and he says in the message:

"1. Figures received from Oliver. RTE have made it difficult to compare with earlier ones by changing their approach to certain items, e.g. Funding of the capital purchases, direct payment of electricity etc."

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So here is confirmation contemporaneously that Mr. Hills had in fact received figures from you?

A. Certainly looks like that, yes.

144 Q. Yes. So can you offer any explanation to the Tribunal as to why you got these figures?

A. I have no recollection of him even sending me the fax or where I got the fax from.

145 Q. Well, there is only two possible sources I suggest to you, one is the Minister himself or perhaps the - Three sources. One is the Minister, two is somebody in the Department, and three is the IRTC?

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A. I can't help you, Mr. Hanratty, I don't know where I got them from.

146 Q. Subject to correction, as I understand it, the Department have informed the Tribunal that no, none of the civil servants that is, provided these figures to you?

A. Could I have got them from RTE I wonder? I don't know, I don't know where I got them from. I have no recollection of getting those figures or sending them to Mr. Hills.

147 Q. In any event he goes on and says:

"2. Had a long meeting with IBACS this afternoon and briefed them as fully as I was able. I left them copies of your fax, the latest figures all the earlier ones tabled at our several meetings and other relevant information. Mr. Thomas is coordinating the preparation of the document you seek. His home telephone number is "-", and he gives the number there.

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Then he says at paragraph 3: "The brief they are working to:

(A) Are the capital costs about right? They will not address the issue of how and over what span of years they are repaid. I confirm a working life of 20 years for the new plant.

(B) Ignore any aspect of historic costs since your argument is one of principle."

.

Now, here is Mr. Hills confirming his understanding of Mr. Stafford's instructions that they are to ignore historic costs?

A. Mm-hmm.

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148 Q. Isn't that right?

A. Yes.

149 Q. Well, isn't it clear from that, that the reason why historic cost were left out was because Mr. Stafford decided they would be left out?

A. Is that not Mr. Hills advising him to leave them out?

150 Q. No, this was Mr. Hills confirming his understanding of the instructions of, that IBACS were receiving and the instructions on the basis on which they were to do their costings?

A. Yeah, they are to - yeah, sorry yeah.

151 Q. Instructed and confirmed here by Mr. Hills to ignore, that was Mr. Stafford's decision, clearly?

A. Yes, I don't know whose decision it was, whose instruction it was, whoever.

152 Q. Well, it could only be either yourself or Mr. Stafford I suggest?

A. It could be, I suppose it could be Mr. Hills, so it --

153 Q. No, this is Mr. Hills confirming Mr. Stafford's instructions. This fax is from Mr. Hills, where he says: The brief they are working to is to ignore any aspect of historic costs, since your argument is one of principle?

A. But who gave them the brief?

154 Q. Mr. Hills is confirming in this document, Mr. Barry, the instructions upon which IBACS are doing their work?

A. Yeah, but "the brief they are working to", I wonder who gave them the brief?

155 Q. Sorry?

A. Who decided "the brief they are working to", Mr. Hills - this is a fax.

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156 Q. Can you tell us who decided "the brief they are working to"?

A. I can't tell you, I am sure Mr. Hills must have had input into it.

157 Q. Are you suggesting this idea "ignore historic costs" came from Mr. Hills?

A. I think it is a possibility, maybe, yes.

158 Q. I have to put it to you, Mr. Barry, that that is absolutely incorrect, it was never put to Mr. Hills and is totally at variance with his evidence on this point?

A. Okay, I wouldn't be much up to speed with his evidence.

159 Q. In any event, if you look at the text of the document "Ignore any aspect of historic costs since your argument is one of principle." In other words, on the basis of which they are received in this, Mr. Stafford's argument being one of principle it is fairly clear it is not Mr. Hills' idea, it is Mr. Stafford's idea?

A. Okay.

160 Q. At C: "Assess operating and maintenance costs on a marginal basis. I.e. what are the additional costs that RTE will have to meet because of the new service." And again this is a confirmation of an instruction from Mr. Stafford as to the basis on which they are to assist the maintenance costs, isn't that right?

A. I am not 100 percent sure. Sorry to be vague here, but why are we so definite that there is an instruction from Mr. Stafford on his own?

161 Q. Because Mr. Hills is confirming the basis of the instructions as he understands them, which he has passed on to IBACS on which they are to do their work?

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A. Mr. Hills and Mr. Stafford would have had numerous conversations about all aspects of this, and maybe it was a joint, maybe it was something they discussed together, and maybe this brief might be either Mr. Stafford's and that Mr. Hills also might have some input into it, I am not too sure.

162 Q. Well, I suggest to you again, that that is completely clear from Mr. Hills' evidence, and that Mr. Hills did not come up with the idea of marginal cost, that he was instructed to do so by Mr. Stafford?

A. Okay.

163 Q. And this, that shows instructions were passed on by him to IBACS, and what he is doing here is confirming the instructions he passed on to IBACS?

A. Okay, if you say so.

164 Q. And at "D" it says: "Ensure the bottom line is of the order of ú375,000, which is the figure in the business plan."

A. Yes.

165 Q. So here we are now at this figure which you say was stood over by Mr. Hills or by IBACS, where Mr. Hills is confirming that the instructions to IBACS from Mr. Stafford were to ensure that the bottom line was ú375,000, because that's what he, Mr. Stafford, has in the business plan?

A. That's the figure that we had in our written submission, yes.

166 Q. So whatever they do, whatever their opinion of it is, it better come in at around ú375,000, isn't that right?

A. That's what it says, yes.

167 Q. That's what they were told to do?

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A. Yes.

168 Q. Do you think that's the basis for an independent opinion?

A. If you look at it like that, in those cold terms, and if you say that this, that this is the - the only part that puzzles me is that Jim Stafford wouldn't have a clue about the overall cost of it.

169 Q. Well, isn't it the position that even notwithstanding those instructions IBACS didn't in any event come up with a figure of 375,000, and they came up with a document which is at page 182, yes, this is IBACS's response, as it were, based on their instructions, and if we go to page 184, you see that they incorporate text which was effectively drafted by Mr. Hills, because Mr. Hills told us he drafted it and subsequently apologised to Mr. Stafford for IBACS simply parroting it back. But in particular I draw your attention to the fact that no figure at all is mentioned in the first page, isn't that right?

A. There is a figure of 30,000 that I am looking at here.

170 Q. That's on the second page.

A. There is only one page in front of me here.

171 Q. Could we have page 185 please? Can we have page 184 please? This is the second page of the IBACS document. And at the end of it they mention a figure of ú30,000, isn't that right?

A. Yes, yes.

172 Q. And further down the page there is a mention of a figure of ú55,000?

A. Yeah.

173 Q. There is no mention in that document anywhere of a figure of ú375,000, or nor is there any breakdown of any figure of

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ú375,000, isn't that right?

A. That's right, yes.

174 Q. And that is the only advice, I suggest to you, and the only document which emanated from IBACS concerning the question of transmission charges?

A. If you say so, Mr. Hanratty, yes.

175 Q. Apart from a letter which was incorporated in the submission of Century in which they confirmed that they had an input into some of the technical aspects of the submissions contained in the submission, isn't that right?

A. I don't, I have no difficulty with that, no.

176 Q. But apart from those two documents there is no document in existence in which IBACS make any reference to a figure of ú375,000, let alone stand over any figure of ú375,000, isn't that so?

A. If you say so, yes.

177 Q. Well, in those circumstances how do you assert that the ú375,000 was an IBACS figure?

A. Because I thought that Ray Hills had an association with IBACS, and he was working with them and then, I think he went independent, but still I thought he was relying on them for some sort of advice subsequent to his departure.

178 Q. Can I refer you to what they say in the first paragraph of the second page:

"We understand that RTE plan to carry out maintenance of the new equipment without increasing their staff resources and it has been assumed that any training costs and any new test equipment that may be required, has been included in the total capital costs for the new plant. It is also assumed that RTE will provide for the same level of

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transmission availability as the existing services. On this basis the additional maintenance costs arising from the new equipment will be modest, and should not exceed say, ú30,000."

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Now, that's all they say about maintenance, isn't that right?

A. Yes.

179 Q. And they are talking about additional or the, what was described in the previous document as the "marginal cost argument", isn't that so?

A. Yes.

180 Q. And isn't that in fact the figure which Mr. Burke provided for in his subsequent directive for maintenance?

A. I can't remember that, no, what he provided for.

181 Q. 30 visits at ú1,000 a visit?

A. Pardon me?

182 Q. 30 visits at ú1,000 a visit?

A. Oh, yes, yes.

183 Q. So I have to suggest to you, Mr. Barry, that it seems fairly clear from the documentation that IBACS neither produced a figure of ú375,000 nor stood over any such figure?

A. I don't see any documentation to say that they did stand over the figure, no.

184 Q. And the sum total of IBACS's involvement in relation to transmission charges is contained in this document?

A. Well, I understood that Ray Hills had a closer relationship than that with IBACS, but I could be wrong.

185 Q. You know that Mr. Hills subsequently apologised for what he

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perceived to be IBACS's rather weak effort?

A. I can't recall that, no.

186 Q. He apologised to Mr. Stafford, he said: "I was appalled to see the very poor response from IBACS on the issue of RTE costs." Do you not recall that?

A. No, I am not disputing it, no.

187 Q. Did Mr. Stafford not tell you that Mr. Hills apologised for IBACS's performance?

A. Mr. Hanratty, you are asking me about details of ten years ago, it is impossible for me to remember all of this, I couldn't possibly remember it. I don't think any human being could, by the way.

188 Q. One of the witnesses who gave evidence here, a witness from RTE called Mr. Curley, in fact himself went over to IBACS in February of 1989 to make inquiries as to the basis of, on which they made their charges. Do you remember Mr. Curley's evidence?

A. No I don't, no.

189 Q. If I can tell what you he says. He says he had a meeting with, in fact with the IBA, on the 9th and 10th of February of 1989 from which it became apparent that the IBA do not in fact use the marginal cost basis of assessment of maintenance charges. In fact, in his memorandum at paragraph 6 he says:

"The marginal costings approach is not regarded as being appropriate and all costings, including management and engineering overheads, are taken into account on arriving at a charge for other users. Overheads came to twice direct labour cost, and this was regarded as normal for the provision of a telecommunication service. Where total

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service is provided, facility rental is approximately 30 percent of total charge."

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So it is fairly clear that what Mr. Curley was told by the IBA, that they do not endorse or subscribe to the marginal cost or measures isn't that right?

A. I have no reason to disbelieve Mr. Curley did.

190 Q. Does that confirm that this is Mr. Stafford's argument and not an IBA argument?

A. I am - well, I wonder does it.

191 Q. And does it not also confirm that, sorry the IRTC were misled by being told that these arguments were in fact IBA arguments?

A. I don't know whether they were misled in anyway by --

192 Q. We will come to the letters in a moment, one of which was signed by yourself.

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If I can refer you to paragraph 3 of what Mr. Curley recorded, he says: "An approach rather similar to the RTE approach is adopted, with a facility rental charge and service charge and complex arrangement is adopted for facility rental which takes length of access, road position and space occupied on equipment."

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So in effect, Mr. Curley was also told that contrary to the suggestion, that IBACS stood over a proposal where Century would pay no fee for access, the IBA practice was that they did charge for access?

A. If you say so, yeah.

193 Q. And again, this is a matter in which I suggest the IRTC

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were misled by yourself and Mr. Stafford?

- A. No, I don't accept that. I have to just come back and say to you that we certainly never misled the IRTC about our transmission charges. We were totally up front with them, firstly on what we believed on the foot of Ray Hills/IBA; which is in the letters what you have shown to me here, and what I thought at the time, and that was our figure with the IRTC, Mr. Hanratty.

194 Q. Yes. You see on the 6th of February of 1989, page 176?

Mr. Connolly, the Secretary of the IRTC wrote to the Minister, Mr. Burke, and he says:

"I enclose copies of documentation in connection with the charges being sought by RTE for providing transmission services to Century Communications for the independent station.

.

The matter is now extremely urgent as contracts for the provision of the new transmission equipment must be signed in the next few days if the new station is to make the proposed start-up date of May 1st. In the circumstances would I appreciate your urgent decision on the charges being sought"

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This was, as you are aware, what started the ball rolling in relation to what ultimately transpired, namely the issue of a directive; isn't that right?

- A. I thought what started the ball rolling with the directive was what I have already told you about my meeting between Enda Marren and Seamus Henchy.

195 Q. Are you suggesting that that meeting happened before this

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letter, this is the 6th of February of 1989?

A. I am not sure of dates, but the first recollection that I have of the possibility of a directive was at the meeting between as I said, when - the date of the meeting, I can't tell you.

196 Q. Well, can we just look at one of the enclosures which went to the Minister with that letter? It is page 177 and this apparently is a document which was prepared in the IRTC, it says:

"RTE transmission charges.

Please see the attached copy of RTE quote for transmission of the new independent national radio station and the copy letter from Century Communications. There is substance in the Century argument about double payment for the transmission network. The network which was developed over a long number of years is State property, the control of which is vested in RTE. It has already been paid for and continues to be paid for by license fees of the citizens of the country. That RTE should have control it have seems an historical accident. It is likely that when RTE took it over the possibility of other users was not envisaged. For comparison see the situation of the airports which are managed by a separate company from the national airlines, because it was always evident that more than Aer Lingus would use the airports. To allow RTE to charge other users for the use of the transmitters in the way proposed provides them with unfair advantage."

That was precisely Century's argument at the time, is that right?

A. If you say so. We, and specially Mr. Stafford, had a view

that RTE were only the custodians of the transmission network.

197 Q. Well, did you not have a view as well?

A. That view suited me fine.

198 Q. I know it suited you, but was it an argument which you were both advancing?

A. Yes, yeah.

199 Q. "In the interests of the Oireachtas decision regarding an independent station, the transmission facility should be made available at a rate which will enable Century to run the station. The following points are also of note.

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Only 63 percent is truly commercial, the remainder is akin to public service broadcasting, although it requires the bulk of transmitter to achieve.

The RTE proposal is to charge ú364,000 for full maintenance of 14 transmitters transposers. Given modern equipment requires very little maintenance, say 2 visits per year, this works out at 13,000 per visit, or say an additional 12 to 14 heads of staff to carry out visits which RTE people would probably do in any event to service its own transmitters.

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Downtown Radio in Northern Ireland pays the BBC ú100,000 for the use of four mountain top sites. Pro rata this suggests a figure of about ú350,000 for RTE. Century suggests ú375,000."

Again that, I suggest to you, is an argument which came straight from Century?

A. I can't remember that.

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200 Q. And I also suggest to you that it is profoundly misleading?

A. Well, I don't know what the --

201 Q. Because the transmitter sites in the south were much more powerful and therefore much more expensive than the transmitters being used by Downtown Radio, by license from the IBA in Northern Ireland?

A. I suppose we were probably using numbers there to back that up maybe.

202 Q. Well, what I am suggesting was that there was a misuse of the numbers to mislead the IRTC, because you were not comparing like with like.

A. I am sure the IRTC made their own investigations about this.

203 Q. Sir, the IRTC had nothing to do with transmission charges and had no function in investigating transmission charges. Was it your understanding that they were making investigations?

A. Well, I would assume that they wouldn't take everything that we would say as being absolutely true, that they would surely check out our credentials.

204 Q. What appears to be contained in this document are arguments received by the IRTC from Century?

A. I can't say that. I would think that the IRTC would have made their own inquiries.

205 Q. If we could just look at a letter on page 2559? This is a letter which was written by Mr. Stafford to Mr. Connolly on the 17th of January of 1989, and if you look at paragraph 3, it says:

"I would also draw your attention to Sunday Tribune press report that the Downtown transmission charges for the whole

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of Northern Ireland was ú100,000. The IBA advises me this involves four transmitters. Our proposal of ú375,000 as a transmission charge is consistent with the Downtown transmission cost"

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That appears to be the source of this statement in this IRTC document, isn't that right?

A. Yeah but I - it certainly seems to be the source of it, but I - I am sure that the IRTC probably carried out some sort of investigation as to see whether it was correct or not.

206 Q. Mr. Barry, the IRTC have told the Tribunal that they carried out no investigations. The IRTC did not have a function in carrying out investigations. They took the information, they have told the Tribunal, in evidence, on good faith?

A. Okay.

207 Q. And in whatever way, that the information that they were given, was factually accurate.

A. If they say that, Mr. Hanratty, I have no reason at all to disagree with it.

208 Q. And that letter that I just referred you to, appears to have been enclosed with the documents enclosed by Mr. Connolly to the Minister.

A. Okay.

209 Q. And what I am suggesting to you is that by a combination of these documents and this statement, the IRTC were seriously misled as to the actual cost of transmission by comparison with Downtown Radio?

A. I can't comment on that. I wouldn't know enough about it, but if the Sunday Tribune said it --

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210 Q. But it means, in effect, that the Minister had before him a figure and a comparison with Downtown Radio which appeared to suggest that ú375,000, by comparison, was a reasonable figure?

A. As I keep reverting back to the fact that 375,000, as far as I am concerned, the source of that figure was Ray Hills/IBA, not Jim Stafford and not myself.

211 Q. It says:

"RTE is suggesting a capital investment of ú747,000, say one million, to include installation costs and project management for hardware which has a life span of over 20 years. They wish to amortise this over 5 years. Over 20 years the cost is about ú94,000 per annum if normal business criteria are used. In this context it is worth noting that the contract between IRTC and Century must offer their studio/transmission equipment to an incoming broadcaster at commercial rates in the event of the collapse of the Century station, the withdrawal of the franchise."

A. Sorry, I don't have the letter in front of me --

212 Q. Sorry, we are on the second page, 178.

A. Thank you.

213 Q. It is the second page of this document which was sent by the IRTC to the Minister?

A. Sorry, yeah. Yeah.

214 Q. "At commercial rates in the event of the collapse of Century Communications, the withdrawal of the franchise or its non renewal of the franchise period. This should guarantee the RTE position. In the circumstances, fees of, say, ú400,000 for transmission charges and ú100,000 for

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hardware and installation/project management seems appropriate."

.

And he appears to reach those conclusions on the basis of the information contained immediately before it in the document, virtually all of which was provided by Century, isn't that right?

A. If you say so, yes.

215 Q. So by this means I suggest, Century procured a situation where the Minister had before him a document from the IRTC appearing to suggest, based on information given by Century, that 375,000 was actually a reasonable figure?

A. Yes.

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CHAIRMAN: Well, do you think we might take up after lunch?

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MR. HANRATTY: Yes.

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CHAIRMAN: Right, shall we say a quarter past two or thereabouts?

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THE HEARING THEN ADJOURNED FOR LUNCH.

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THE HEARING RESUMED AFTER LUNCH AS FOLLOWS:
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MR. HANRATTY: Mr. Barry?

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OLIVER BARRY RETURNS TO THE WITNESS-BOX AND CONTINUES TO BE
EXAMINED BY MR. HANRATTY AS FOLLOWS:
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216 Q. MR. HANRATTY: Mr. Barry, before lunch we were discussing

this letter of the 6th of February of 1989, which was sent
by Mr. Connolly the Secretary of the IRTC to the Minister,
Mr. Burke, and we know that Mr. Burke's reply to though
this letter is dated the 17th of February. If I could have
page 406. Sorry - it is dated the 16th of February, in
fact. As you can see in the first line of that he says:

"I refer to our meeting and the documentation sent to me
by the Secretary of the Commission regarding some aspects
of the quote by RTE for the supply of transmission services
to Century Communications"

.
So it is quite clear he is making express reference to the
documentation which was sent to him by Mr. Connolly in this
letter of the 6th of February of 1989. He again says: "I
have had the matter examined by my department and discussed
the issues again with RTE. At my strong urging they have
now agreed to reduce their annual charge from ú692,000 to
ú614,000. Depending upon actual physical implementation of
the project they would expect a buildup to this final
figure in the following approximate manner" He then sets it
out.

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.
Then he says "I am satisfied that in Irish conditions the foregoing charges are not unreasonable."
.

Now, we know that that letter was given to you by Mr. Justice Henchy at a meeting on the 20th, isn't that right?

A. If you say so, Mr. Hanratty, yes.

217 Q. Both this letter and the letter from Mr. Connolly of the IRTC to which it is replying, neither of those documents appear on the Department file. Were you aware of that?

A. No.

218 Q. I take it you can't provide any explanation as to why those two particular documents don't appear on the Department's file?

A. I wouldn't know, no.

219 Q. But between those two letters there was, on the 14th of February of 1989, two meetings involving Century Communications Limited. If I could refer you firstly to page 2295. As you can see from the top left-hand corner this is a handwritten note of the meeting which was taken by Mr. Fanning and it records the attendance of Mr. Stafford, yourself, Mr. Wogan, Mr. Crowley and Eugene Fanning and Colm Duggan.

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And just for completeness, the essential contents of that handwritten document are distilled, as it were, into a formal typed minute of this company meeting on page 2364 where you see the attendance there again and various points that were discussed at this meeting. If we go back to the handwritten note at page 2295 it appears that this meeting

and another meeting attended by Mr. Mulhearn, and indeed Mary Finan, were held on this date in the offices of Arthur Cox. And in this particular document, moving on to page 2298 the question of transmission charges is dealt with.

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It says, well two-thirds of the way down the page:

"Could pay up to ú520,000. A steal at ú375,000." What do you think is meant by that entry?

A. Well, obviously Eugene Fanning felt that the company could afford to pay 520,000 and that 375,000 was a bargain.

220 Q. Yes. And he has told us that he wrote that down because somebody said it to him at the meeting?

A. If that is what he says, yes.

221 Q. Did you say that to him at the meeting?

A. I don't remember saying it to him, no. I would have no grounds to say that to him. I wouldn't be into that much detail on the whole transmission field.

222 Q. It is not all that detailed. All it says is that you could pay up to ú520,000?

A. There is no way I would have got - it could be a million and 20. I wouldn't put it as 520 up to 420. I wouldn't know what figure it would be, Mr. Hanratty.

223 Q. Well, all it says is that the company could pay 520,000.

A. That is what it says, yes.

224 Q. Yes. So somebody in the company had obviously come to the conclusion that it could pay ú520,000 and told Mr. Fanning that and that is why Mr. Fanning wrote it down?

A. If that is what you say, yes, yes.

225 Q. And the person who told him that appears to have been also of the view that it was a steal at, or it would be a steal,

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at €375,000.

A. I think we are assuming that maybe Mr. Fanning thought it was a steal.

226 Q. Mr. Fanning has told us that he wouldn't have written that down unless somebody it to him. He had no idea what the appropriate level of transmission charges were or he didn't --

A. -- I have no reason in the wide utterly world to disagree with Mr. Fanning on that, Mr. Hanratty.

227 Q. Mr. Fanning has confirmed to us that this is not the kind of thing he would dream up and write down for no reason unless somebody had said it to him?

A. I didn't.

228 Q. Do you remember saying it to him?

A. As I said, I don't remember saying it to him.

229 Q. Do you remember anybody saying it to him?

A. I don't. I don't even remember the meeting.

230 Q. Well then, if we can move on to the other meeting which was held on the same day, and particularly the note at page 2206. You see what it says there "The Minister will give a direction at €375,000. Downtown is charged €100,000. Major question is loss of face." What do you think that entry means?

A. My only explanation for that, because I had been reading in the press obviously, some of the evidence that has been given to the Tribunal to date, my best guess at that is that, especially when I see here in front of me "The Minister will give a direction at 375,000". This must have been as a result of the meeting that Enda Marren and I had with the Chairman of the IRTC.

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231 Q. But as far as we can determine, your meeting with the Chairman of the IRTC was on the 20th of February. This meeting we are discussing here was on the 14th of February?

A. I think we had a few meetings with the Chairman of the IRTC. I think it must have been before that. Otherwise a statement like that could not be put down in black-and-white.

232 Q. How would the Chairman of the IRTC know that the Minister would give a direction at €375,000 at a point in time before any direction was even applied for?

A. Because very simply, Mr. Hanratty, for the umpteenth time, I have told you that we put into our document, our original document what, quite up front cards on the table, 375,000 was what we felt was a reasonable charge for transmission fees. We went further and we said that it was an unresolved matter with RTE because they required a higher amount. And when we, when Enda and myself left his office that day, we assumed that the direction he would give would be based on what we submitted in our written application.

233 Q. Mr. Barry, you can put anything you like into your submission, it doesn't mean that it is right and it doesn't mean that is reasonable. The question I was asking you is, why --

A. This application.

234 Q. Why --

A. This application was put together by highly-skilled professionals. It cost a lot of money. Mr. Hills in the IBA got paid substantial fees for standing over the transmission network. I personally travelled all over the country practically with Mr. Hills, showing him various

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transmission sites of our RTE. If I wasn't with him I got somebody else to drive him. Are you saying for one minute, Mr. Hanratty, that this whole thing was an exercise and a sham?

235 Q. I am not saying any such thing, Mr. Barry. That is ultimately a matter for the Sole Member. What I am putting to you is that Mr. Fanning has given evidence here to this Tribunal that he wrote down that " The Minister will give a directive at ú375,000. " He wrote that on the 14th of February because somebody said it to him?

A. I am only suggesting to you that, I am only suggesting to you, I can't fully remember it, that that may have been, as a result of the meeting that we had with the Chairman of the IRTC, I can go no further than that.

236 Q. Well, there has been no evidence, as far as I am aware, yet of any meeting between yourself and the IRTC or anybody else in Century prior to the 20th in relation to transmission charges?

A. Well, that is the only reason that I can give you, that Enda Marren and myself had a meeting on, or maybe two meetings with Seamus Henchy, one regarding the seven year tenure and one regarding the directive. And indeed, it may happen that it is the same meeting. I am not one hundred percent sure.

237 Q. Are you in a position to point to any minute of that meeting either by Mr. Marren or by you or by anybody else in Century or indeed by anybody in the IRTC, of any such meeting?

A. I don't know, would the IRTC have a minute of it?

238 Q. Nobody has produced any minute of any such alleged meeting?

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A. It was a minute between Seamus Henchy and Enda Marren and myself. There were only three people present at the meeting.

239 Q. Are you saying that Seamus Henchy told you that the Minister would give a directive at €375,000?

A. No, I am not, Mr. Hanratty.

240 Q. What are you saying?

A. I am saying that it is the first time that I realised that it was in the power of the Chairman of the IRTC to seek a directive from the Minister. I complimented Enda Marren for pointing it out to him. I was a little surprised that the Chairman, being an ex- Supreme Court judge, wasn't aware of it. That is why I complimented Enda on the way out and we got the feeling that he would look at it and that the only directive he could give was a directive on the foot of the figure that we put into our written application much. Now, that is my recollection of it, it is a long time ago, but that is my recollection of it.

241 Q. Mr. Barry, the position is that there is not a shred of evidence anywhere of any meeting with either yourself or Mr. Marren or anybody else with the IRTC relating to transmission charge prior to the 20th of February?

A. If say so Mr. Hanratty, yes.

242 Q. Well, can you point to any such evidence?

A. I am sure --

243 Q. Can you point to any minute taken by anybody at the meeting or any letter --

A. I am telling you two other, substantial people that were at the meeting and maybe they might recollect it.

244 Q. Mr. Marren has not given any evidence about any meeting

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with the IRTC?

A. Okay, was he asked about it?

245 Q. Neither did the IRTC?

A. Was he asked about it?

246 Q. The IRTC were certainly asked about meetings and gave no evidence about a meeting prior to the 14th in which any discussion took place?

A. I am being very specific. I am not saying it was a meeting with the IRTC, I am saying it was a meeting between Judge Henchy, Enda Marren and myself and the reason why Enda was at the meeting is because he knew him personally prior to that and we thought that he would do the introduction and because of knowing each other. Jim Stafford was not at the meeting.

247 Q. So this was a sort of an informal meeting, was it?

A. It was a meeting between Enda Marren, Seamus Henchy and myself. I can't even tell you the location of it, I admit I can't remember the location, but the meeting did take place.

248 Q. And was Sean Connolly at it, the Secretary of the IRTC?

A. No, not to my knowledge, no.

249 Q. How did it come about that Mr. Justice Henchy would attend a meeting with a person from Century and his solicitor and nobody from the IRTC?

A. I can't, I don't remember how the meeting was set up. I don't remember who set up the meeting.

250 Q. Are you making this up, Mr. Barry?

A. No.

251 Q. This was never put to Mr. Justice Henchy when he was giving his evidence.

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A. I am not making it up.

252 Q. You are now asserting that a meeting, which we have never heard about before, took place?

A. I am not asserting, I am saying it did take place. The meeting took place.

253 Q. You are talking about a meeting now which has never been mentioned at any stage previously in this Tribunal. You have never told the Tribunal about it. You have never produced any document to the Tribunal about it. Your lawyers never made any reference to it when they were questioning the witnesses from the IRTC, and indeed Mr. Marren?

A. - well I am telling you about it now, Mr. Hanratty. I am under oath here. I know the serious position that I am in.

254 Q. When do you say this meeting happened?

A. I can't fully recall, some time after we being afforded, being awarded the franchise.

255 Q. Well, that is not very helpful, is it?

A. It is as helpful as I can be, I am afraid.

256 Q. That could be in 1995?

A. No, no, it was a short time after we receiving the franchise.

257 Q. What you are describing is somewhat unconventional meeting where Mr. Justice Henchy met you and your solicitor?

A. That is what happened, yes.

258 Q. And at whose request did this meeting take place?

A. As I said, for the second time, I said I can't remember who set up the meeting.

259 Q. Why was it set up and what was its purpose?

A. It was set up, I believe to, I know that there was one

meeting set up with Seamus Henchy because we believed that the seven year tenure, that the national franchise he had was not long enough for it to be viable and bankable and we sought for a 14 year tenure.

260 Q. That happened later?

A. -- well - .

261 Q. -- that happened much later?

A. I am not too sure --

262 Q. There were meetings at which this subject was discussed but that happened in, I think May?

A. No, no, it happened long before May, because I think that the three of us were only at that meeting at, well, it could be one of the same meetings, I am not sure.

263 Q. I am talking about February of 1989?

A. I am talking about --

264 Q. Are you saying to me that Mr. Justice Henchy, on his own, with nobody else from the IRTC, attended a meeting with you and Mr. Marren in February of 1989?

A. I am, yes.

265 Q. In February of 1989?

A. Well, end of January, February.

266 Q. Before any application had been made for a directive?

A. Before any application had been made for a directive, yes.

267 Q. And what was discussed at that meeting?

A. The fact that the IRTC had it within their realm to seek a directive and that Seamus Henchy was not aware of it.

268 Q. That a judge of the Supreme Court was not aware of an important section of the Act under which he was established?

A. That is what surprised me about it, Mr. Hanratty.

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269 Q. And the question I was asking you was; why did Eugene Fanning, why did somebody tell Eugene Fanning on the 14th of February that the Minister will give a directive at ú375,000?

A. I mean, you have asked me this question for the third time. I am only assuming that it was as a result of the meeting that both Enda Marren and myself had with Seamus Henchy, I am only assuming that.

270 Q. You have, I take it, no recollection of that whatsoever?

A. Oh, I have no recollection of it, no, I don't, but I have a recollection --

271 Q. Do you have any recollection of being told by Mr. Justice Henchy in the presence of your solicitor that the Minister would give a directive at ú375,000.

A. No, I don't. All I have a recollection of is that the Chairman, it was pointed out to the Chairman that he had this power and we certainly left the meeting with the belief that he was going to act on this directive and we assumed, maybe naively, that the only direction he can give, he has to refer back to our original written document and there is ú375,000 in black-and-white in that, and that is the directive that he will give, hopefully.

272 Q. Mr. Barry --.

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CHAIRMAN: You see, the fact of the matter is that the only thing you recall is the meeting and the rest is an assumption. Do I understand you are dividing your recollection into two parts, one that there was a meeting between yourself, your solicitor and Judge Henchy?

A. Yes.

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CHAIRMAN: Now, that's - you don't recall where it was, when it was or what was said at the meeting but you inferred from the fact that there was a meeting that the Minister would give a direction at 375. That is what I have heard you say and understood you to say. Let me be clear, that I am doing you justice?

A. Yes. No, what I am saying, Chairman, is that the meeting took place and to the best of my recollection there were only three people at the meeting

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CHAIRMAN: Yes, that is two facts?

A. Yes.

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CHAIRMAN: Now, the third fact.

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A. The third fact, the third fact that I could recall was that it was the first I ever heard of the possibility of a directive by the Minister.

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CHAIRMAN: Yes. Let's take that as the third fact. Now, let me hear what your recollection of what occurred at the meeting --

A. Enda Marren pointed out to Seamus Henchy this fact

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CHAIRMAN: All right. Let's take the next bit?

A. The next bit, Seamus Henchy was surprised, he was surprised that, as far as I remember, he wasn't aware of it, and I thought that was a bit unusual. And we, Enda and myself, the next is an assumption, left the meeting, having pointed

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out to the Chairman, about --.

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CHAIRMAN: -- the next is an assumption, is that what you are saying?

- A. The next is an assumption, that we knew he would probably, well, the next is an assumption that he would seek the directive from the Minister on behalf of Century. And we assumed that the directive would be the transmission figure of 375 --.

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CHAIRMAN: Why did you make that assumption?

- A. Because we had it in our written application to the IRTC, and Jim Stafford felt that the IRTC, as it were, were stuck with it. They granted us the franchise on that figure, we pointed out that it was an unresolved matter with RTE.

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CHAIRMAN: Wait now, you are starting with an assumption.

Who did you point out what to?

- A. Sorry, Chairman.

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CHAIRMAN: You have given me sequence of events, the presence of the Minister, the fact that Mr. Enda Marren brought to his attention the existence of Section 16. His, the Minister - the judge's surprise - and then you go on to say the remainder is "assumption"; that is your phrase?

- A. Yes, we --.

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CHAIRMAN: That is your phrase?

- A. Yes.

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CHAIRMAN: The meeting is now over, you have gone off for a pint or whatever it was, you are now assuming - I want to find out what you are assuming and why?

A. We were assuming that the Chairman of the IRTC will seek the Minister's directive.

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CHAIRMAN: Right, that is the first assumption you make, that he will seek a direction?

A. Yes

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CHAIRMAN: Because he now was apparently given the advice that he had that power?

A. Correct.

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CHAIRMAN: All right. Why do you think the Minister would grant the, would grant it, and particularly at what figure? First of all, had you - why did you assume the Minister would grant the direction?

A. Well, we assumed that the Chairman of the IRTC was writing to him officially, asking him to seek the directive, that the future may be - of the national station was at stake, and that the Minister would give, would give the Chairman of the IRTC --

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CHAIRMAN: All right, let's take it in stages. You assumed that he would write and presumably he would write in a purely request, that the Minister give consideration to giving a direction. But presumably an independent authority would not direct the Minister as to what, what was the terms of the directive, isn't that so?

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A. Yes, but I mean it was --.

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CHAIRMAN: Well, let's take the next bit?

A. Okay.

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CHAIRMAN: Why do you assume that the Minister would give a direction on 375 - sorry that he would select 375 as being the figure at which he would direct you to be given the license?

A. No, Chairman, what we assumed is that the Chairman of the IRTC would request the Minister.

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CHAIRMAN: Yes?

A. This figure.

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CHAIRMAN: At that figure?

A. At that figure.

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CHAIRMAN: Why should, why do you assume that the Chairman of the IRTC was going to side with you as against, with an independent opinion by the Minister?

A. Because --.

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CHAIRMAN: Why was he going to become your advocate?

A. Because we felt he granted us the franchise of the IRTC, granted us the franchise on the basis of 375,000 transmission.

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CHAIRMAN: Now, let's be clear about this; he didn't grant you the franchise, the Commission granted you the

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franchise?

A. Yes.

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CHAIRMAN: Now, there has been no meeting and never was a meeting of the Commission in relation to the giving of the direction, we know that, isn't that so?

A. Well, we, if you say so, Chairman, yes.

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CHAIRMAN: It isn't a question of I say so; there is no meeting?

A. Okay.

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CHAIRMAN: There is no record of the meeting of the IRTC in relation to the direction, which is a function of the Commission, not of the judge.

A. Yes.

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CHAIRMAN: Now, tell me why the judge - why the Minister was necessarily going to grant it to you at a particular figure. That is what I want to find out.

A. I am not saying that we took it for granted that the Minister would grant this, would grant the transmission fee at any figure. All I am saying is that we assumed, maybe naively, that if the Chairman accepted that he had the power to seek a directive, that it was certainly the consensus of the Chairman, and I believe members of the IRTC, that RTE's figure was extremely high and that we went up front with this in our written application and that he would, the IRTC, the Commission --.

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CHAIRMAN: In other words that he would plump for your figure?

A. He would plump for our figure, because we had put our cards on the table, as it were, on our own, at our oral hearing, and --.

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CHAIRMAN: So this was a piece of, well either very fine delusions on your own part, or very fine confidence in your own figure. It is one or the other. You are either very confident on the figure that you had presented as a valid and sustainable basis?

A. Yes, and we had highly skilled professional people to do it for us.

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CHAIRMAN: So you get back to the figure, you get back to the premises, where did the figure 375 come from?

A. Yes.

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CHAIRMAN: So far as we know, the only intellectual background for it is Mr. Stafford?

A. No, I don't accept that, Mr. Chairman.

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CHAIRMAN: Well, I see. You are entitled to your view?

A. Yes.

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CHAIRMAN: But that seems to be where the situation lies.

A. Well now --.

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CHAIRMAN: -- isn't the whole point about the directive, that it is a kind of arbitration between people who are in

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disagreement, isn't that what it really is?

A. Well, I don't know Chairman. I thought a directive was a pretty serious issue.

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CHAIRMAN: I would have thought that it was a direction that 'The two of you can't agree, the fair proposition is this and it is based on the following reasoning' or something of that kind. Perhaps I am wrong in that but perhaps you know, isn't that the reality of it? The Minister is a kind of, he has the final say and he presumably doesn't do it without having some logical basis for it?

A. Yes.

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CHAIRMAN: At least that is what one would assume. Any statutory function has to be carried out in a logical and thought-on manner?

A. I have to say, Chairman, I am out of my department at this level here. The IRTC were a government body. They were writing to the Minister seeking the directive and it was, as we say, new ground at the time, a green-field situation, and the independent broadcasting was important, both to the IRTC and to the Minister and, I think, the Department.

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CHAIRMAN: The sum total of what you have told me to date is that it is an assumption on your part, nothing more and nothing less?

A. I think I have outlined it as best I can, Chairman.

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CHAIRMAN: An assumption on your part based upon the

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premises which you are founding the assumption upon, based upon the premises you are advocating that the Chairman of the IRTC would ask for a direction, would indicate the figure that was appropriate and the Minister would react; is that the sequence which you thought would happen?

A. I didn't - the only thing that, I suppose a lesser assumption is how the Minister would react, but we did assume, rightly or wrongly, that the Chairman of the IRTC would seek the directive from the Minister and hopefully it would be the figure that we had in our written application.

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CHAIRMAN: Well, how would that figure get to the Minister?

A. I am sure that he would inform the Minister.

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CHAIRMAN: The Chairman of the IRTC?

A. Yes. .

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CHAIRMAN: Thank you.

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273 Q. MR. HANRATTY: Mr. Barry, you said in answer to a question put to you by the Sole Member that there were two things discussed at this meeting. One, as I understood it, was the transmission charges and the other was the 7 year renewal, is that right?

A. Mr. Hanratty, that is not perfectly correct. I am not sure whether there were, whether those two issues were discussed at one meeting or whether two separate meetings but I do know for a fact that we had a meeting as well with the

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Chairman and maybe at the same meeting, where I believe when we left the meeting we agreed to get, I think the legislation said the franchise was only for 7 years, we explained the financial difficulties, that in other words the company may not go into profit until year 5 or year 6 and it was very unacceptable from a banking point of view, and indeed from getting in investors, that the tenure of 7 years was too short. As far as I remember there was the question of maybe the Chairman giving us some side letter of comfort, that 14 years might be possible.

274 Q. Well, if we can go for a moment to page 290. This is another minute of a meeting attended by yourself, Mr. - sorry - attended by Mr. Stafford, Mr. Marren, and Mr. Fanning and Mr. Duggan of Arthur Cox.

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This is dated the 1st of March of 1989, and as you can see in the first line it says "Principles meeting. J Henchy" - something - "will try and get him along to discuss principles. Is meeting to go ahead at 10 a.m. tomorrow. Suspend." That seems to be envisaging that there is a possible meeting with Mr. Henchy the following day to discuss principles, isn't that right?

A. Yes.

275 Q. It is dated the 1st of March, which means that it occurred at a point of time prior to, after the application for a directive but prior to the grant of the directive, isn't that right, because we know the directive was issued on the 14th of March?

A. Yes.

276 Q. Is that the meeting that you have just been talking about,

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the one that is referred to in this memorandum?

A. It could be one of the meetings, Mr. Hanratty, yes.

277 Q. One of them?

A. Yes, I said we could have had two or maybe one.

278 Q. It says in this, for example "Transmission very important.

Points for meeting: Transmission very important. Won't go ahead."

A. Yes.

279 Q. And is that an indication of a decision which Century had

made that if they didn't get their way with 375 that they would threaten not to go ahead?

A. That would be, yes, that would be so, our bargaining ploy maybe, or our position that we held strongly. I know Jim Stafford was very adamant that once we were granted the franchise on the foot of the 375, the IRTC and everybody was stuck with it.

280 Q. That is the second time you have used that phrase. You said it first of all in relation to Mr. Stafford. First of all, was it, in fact, Mr. Stafford's view that because they granted the franchise the IRTC were stuck with 375,000?

A. As far as I remember, yes.

281 Q. Was that your view?

A. Yes. It was my view.

282 Q. And why were they stuck with it?

A. Because we had put it down in black an white before them and they granted us the franchise on the foot of it.

283 Q. What you put down in black an white was a figure that you were arguing for, it was not a figure which had been agreed?

A. Well, I mean it was on that basis that they granted us the

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franchise. We had researched this figure, we had professional back-up to prove this figure.

284 Q. They granted you the franchise on the basis that it was a matter for you and RTE as to whether you would get 375 or not. They had no function in it and they had no guarantee?

A. Do we have the sheet of that. Do we have the reference to what I am talking about? We have been going around in circles all morning.

285 Q. Sorry, what circles have we been going around in all morning?

A. I keep referring back to what was written in our written document. It might be helpful to everybody to see it.

286 Q. It is well established in the evidence that ú375,000 was in the Century submission, ú375,000 was Century's figure at the start, in the middle and at the end. It never changed. We all know that?

A. Yes.

287 Q. And it was in your submission, we know that each time it was pointed out that RTE didn't agree to it?

A. Yes.

288 Q. In what sense was the IRTC stuck with 375, just because they granted you the franchise?

A. Because, I mean if they felt, if they felt, if the figure was unrealistic they would have granted the franchise to somebody else who had a more realistic figure.

289 Q. Wasn't it your plan and Mr. Stafford's that once you got the franchise you were going to adopt the position that if you didn't get transmission charges at 375 you wouldn't go ahead?

A. We were going to use that, certainly, to our advantage in

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bargaining for transmission costs.

290 Q. And didn't you, in fact, dishonestly use that figure to bring pressure on the IRTC to bring pressure on the Minister to give you a directive at 375?

A. I reject the word "dishonestly", Mr. Hanratty.

291 Q. Dishonestly in the sense that you pretended to the IRTC - let me ask the question - that you pretended to the IRTC that this was a figure that emanated from the IBA?

A. You also said that we mislead the IRTC. We were now embarking on a relationship with the IRTC as a matter, as the holder of the national franchise. Wouldn't it be very stupid commercially of us to run foul of the IRTC by misleading them so early in our relationship?

292 Q. Well, the IRTC witnesses themselves have pointed out to the Tribunal that their dealings with Century were the most difficult they had with anybody when they were trying to negotiate their own contract?

A. Yes, they were, but that is a different issue and we can --

293 Q. Could we go back to page 2290 for a moment and the reference to the meeting. If I can refer you to the bottom of the page. It says, it makes reference to the right of renewal. So this is obviously something else that was discussed at this meeting as well?

A. Yes, the right of renewal was definitely discussed with Seamus Henchy, yes.

294 Q. There was a meeting that the question of transmission charge and the right of renewal was discussed with Mr. Henchy?

A. It looks now like it was the same meeting. I did say to you earlier on it could have been one meeting or two

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meetings.

295 Q. But this meeting could only have been on the second of March or some date after the 2nd of March?

A. My memory was that there was a meeting beforehand but that piece of paper says something different.

296 Q. I suggest to you that there was no meeting at which Mr. Henchy attended with yourself and Mr. Marren unaccompanied by anybody from the IRTC?

A. That is not my recollection, Mr. Hanratty.

297 Q. I have already pointed out to you that nobody on your behalf has ever suggested either to Mr. Marren or to Mr. Henchy - Mr. Justice Henchy - that such a meeting had ever taken place?

A. Well, it is my memory that it did.

298 Q. Well now, going back, going back - sorry - subsequent to that meeting there was a letter written on the 13th of March, 1989, by Eugene Fanning of Arthur Cox to Michael O'Connor of John S. O'Connor and Co. on behalf of the IRTC.

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It says: "Dear Michael, I refer to our meeting on Thursday the 23rd of March, 1989, at the offices of the IRTC at which we discussed the first draft of the broadcasting agreement between our respective clients."

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Then it goes on to deal with a variety of matters which were discussed, and at paragraph 3 it says: "Clause 5 (1) of the agreement should be amended to provide renewal of the agreement or insertion of a roll-over...runs until the 30th of April, 1996, without any provision for renewal or

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roll-over. We suggest that the clause be included providing our clients with the option to renew the agreement for an additional seven year term on the same terms and conditions at any time from the end of the fifth year, provided that the agreement is still in existence at the end of that fifth year." (Document not available for cross-reference.)

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So it would appear that that meeting took place on the 30th of March 1989. I suggest to you that is the second meeting to which you were referring because it took place after the grant of the, or after the issue of the directive, wouldn't that seem to be the logical sequence?

A. Whether it was the second or the third meeting, I am not one hundred percent sure, Mr. Hanratty.

299 Q. Was there a third meeting?

A. Well, all I am saying to you is that there may have been two meetings with Enda Marren, Seamus Henchy and myself, there may have been, I am not saying there was.

300 Q. You are now saying there may have been a second meeting at which Mr. Justice Henchy attended with yourself and your solicitor unaccompanied by anybody from the IRTC?

A. I have already said to you I am not one hundred percent sure. My memory is hazy on it. I remember having a meeting with Justice Henchy and Enda regarding the transmission, the directive and the renewal. It may have happened at one meeting or it may have been at two meetings.

301 Q. Do you recall there having been a second meeting attended by, where Mr. Justice Henchy attended, yourself and your

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solicitor on your own?

A. No, I don't fully recall it, no.

302 Q. Now, going back to the document at page 2306, which is where we started, Mr. Fanning has told us that at this meeting somebody said to him that the Minister was going to give a directive for €375,000?

A. Yes.

303 Q. Did you tell Mr. Fanning that?

A. I have no recollection of telling Mr. Fanning that, no.

304 Q. Do you have any recollection of anybody else telling Mr. Fanning that?

A. No, I don't even remember the meeting, Mr. Hanratty.

305 Q. Well, what appears to be an objective fact is that somebody told Mr. Fanning that the Minister will give a directive for €375,000?

A. That seems - it seems like that, yes.

306 Q. And I suggest to you that the only reason that somebody could have told Mr. Fanning that is that the Minister himself told whoever said that that he would give a directive at €375,000?

A. As I say, I thought that that might have come from the meeting that we had with Seamus Henchy but I could be wrong about that.

307 Q. And that would provide an explanation, would it not, for why Century never bothered its head to enter into negotiations with RTE, because it knew for certain that it was going to get a directive in any event?

A. I think we had some negotiations with RTE that I think we referred to again --

308 Q. -- all right, Mr. Barry, just stop it right there; you tell

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us about the negotiations that you were involved in with

RTE?

A. I can't remember.

309 Q. Start by saying what meetings took place, where they took place and who attended at these meetings and what the nature of the negotiations were?

A. I can't remember, Mr. Hanratty, but I know that it was referred to again in our document that, again the page that I am referring to, that the following discussions, that following discussions with RTE --

310 Q. Are you talking about the submission?

A. Yes

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MR. O'CONNOR: Sir, I believe it is page 5720.

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311 Q. MR. HANRATTY: What does your submission say about negotiations?

A. I think that it says that the figure was unresolved despite discussion with RTE.

312 Q. I have already put to you that the only discussion that had taken place with RTE are the discussions with Mr. Hills where there was no negotiations?

A. That could be the case, Mr. Hanratty, yes.

313 Q. Up to the 16th of December. These were the discussions that we had in November?

A. Yes.

314 Q. We have been told by all of the witnesses in RTE that were involved that at no stage were there ever negotiations with Century Communications Limited. Are you saying there were such negotiations, and if you are, would you please

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identify it?

A. I am not saying it for the moment. I am saying, obviously there was discussion, whether there was negotiation or not, but there was discussions with RTE.

315 Q. I am talking now about negotiations, you can have discussions, and Mr. Hills has told us that he had discussions and RTE have confirmed that he had discussions, I am now talking about negotiations?

A. I can't remember being, negotiating with RTE about transmission charges.

316 Q. Well, in the absence of any recollection on your part and in circumstances where Mr. Stafford is unable to identify any particular meeting where any alleged negotiations took place, and given that RTE witnesses have positively asserted to the Tribunal in evidence under oath that there were no such negotiations, doesn't it look very likely at that there weren't any?

A. It certainly does, yes.

317 Q. I am suggesting to you that the reason that there were no negotiations with RTE is because, as is clearly indicated by this minute of the Century meeting, that somebody in Century already knew, even before a directive was applied for, that the Minister was going to give a directive for ú375,000?

A. I have no memory whatsoever of that, Mr. Hanratty.

318 Q. We know that the next thing that happened after, after this particular meeting was that a letter was written by yourself and Mr. Stafford on the 17th of February of 1989, to the IRTC?

A. Which meeting are we referring to? To which meeting are we

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referring?

319 Q. There were two meetings within Century itself on the 14th of February?

A. Yes, yes.

320 Q. At one of these meetings it was said "We can go to ú520,000. A steal at 375."

A. Yes.

321 Q. And at another meeting it was recorded that "The Minister will give a directive at 375. Downtown is charged ú100,000." In the formal meeting, the first meeting, it is recorded that Century would stick to their figure of 375.

A. Yes.

322 Q. Now, that was on the 14th. On the 17th then, a letter was written, signed by yourself and Mr. Stafford, informing the IRTC of this meeting. The first paragraph informs the IRTC that Mr. Crowley had been appointed the Chairman of the company and that Mr. De Burgh and Mr. Wogan were made directors. It then goes on to say, this is page 302: "The board meeting reviewed the question of transmission charges. They were of the unanimous opinion that the ú375,000 offered to RTE for a full transmission service was, given the advice that they had from the IBA, fair and reasonable."

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Now, here we have you and Mr. Stafford jointly saying that the ú375,000 was effectively based on advice from the IBA?

A. Yes.

323 Q. Isn't that right?

A. Yes.

324 Q. Now, what advice are you talking about. I want you to

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identify what advice from the IBA you had that you based that statement --

A. I am sure that we were talking about the advice that Ray Hills had received from the IBA.

325 Q. We have already had that document this morning, Mr. Barry, where you can see there is no reference made to any figure of 375?

A. There is a document here - I mean, is there a file within the IBA about this?

326 Q. No, there isn't. There is no document from the IBA in anybody's file, including the IBA's file, in which a figure of \$375,000 is discussed?

A. Okay, I accept that, Mr. Hanratty.

327 Q. So can you explain to the Tribunal on what basis you signed off on that statement?

A. On the basis that Ray Hills stood over the figure and I believe that Ray Hills had a relationship with the IBA. He was an ex-member of the IBA and that he had it done with their blessing.

328 Q. Can you point to any document in which Ray Hills stood over that figure?

A. No, I can't. The only thing I can say to you is that he, we brought him in for our presentation, he did our dress rehearsal with us. He stood full square behind us in front of the IRTC during our presentation. He stood over the transmission figure.

329 Q. Mr. Hills has told this Tribunal, again under oath, that he did not.

A. Well, what was he doing at our presentation then? Why was he over --

330 Q. -- Mr. Barry you know very well that no question was raised at the presentation in relation to transmission charges, and you know very well that you knew in advance that it wouldn't be.

A. Well, I mean, we must have been very generous then to fly Mr. Hills in for two or three days to give us his input into the transmission aspect of our document and get him to come in and attend the oral hearing with us.

331 Q. Mr. Hills was also there to deal with the technical aspect of your proposals, including studios, was he not?

A. I think we had a different person.

332 Q. Wasn't he dealing with technically aspects apart from transmission charges?

A. He was a transmission expert, I think we had a different studio man, I think it was Ray Hills who also recruited him, from memory.

333 Q. Mr. Barry, was Mr. Hills your technical expert with regard to transmission?

A. Yes, coupled with the IBA, I believed.

334 Q. Yes. Mr. Hills' evidence is essentially to the effect that he never actually got down into the nitty-gritty of costing out the transmission charges himself, although he did provide all the technical advice that you had?

A. I wonder then, Mr. Hanratty, why did I drive him --

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MR. GAVIGAN: I don't think that is correct for Mr. Hanratty to make that assertion. There is certain documentary evidence that shows that Mr. Hills has an input into the creation of these figures.

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MR. HANRATTY: Then I invite My Friend to point that out.

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CHAIRMAN: Would you point out to this Commission - this Tribunal - where Mr. Hills adopts and stands over 375?

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MR. GAVIGAN: There are two documents.

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CHAIRMAN: I do accept that he was a party to going around the premises inspecting the kit and equipment, if I may use the phrase, but I certainly am unaware, and I would be delighted to be directed to a specific statement by Mr. Hills that 375 was an acceptable figure and was based on a make up that he could stand over.

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MR. GAVIGAN: There is a document, Chairman, --

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MR. HANRATTY: -- before My Friend continues, I know this is the same point again that Mr. Walsh was intending to make submissions on. I don't know if we should deal with it at this point or pass over until Mr. Walsh is here. We can deal with it now but we are going to have to deal with it again when Mr. Walsh comes back. I think my Friend is probably going to refer to this averaging exercise that Mr. Hills did and if and when that arises then I am going to go through all of Mr. Hills' evidence. So it seems to me more sensible to do it, assuming it is still Mr. Walsh's intention - perhaps his junior could indicate whether it is intended for him to make a submission on this point?

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MR. FOX: It is Mr. Walsh's intention to make a submission

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and deal with this point.

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MR. HANRATTY: It doesn't seem sensible to deal with this point.

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CHAIRMAN: That is second-guessing.

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MR. GAVIGAN: I don't have a difficulty with that.

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CHAIRMAN: Is that the same document you are talking about?

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MR. GAVIGAN: That is one document upon which we will rely. There is another document. It is the back of Tab 43 in the folder that was used when Mr. Hills was giving his evidence. It is the document, I think Mr. Hanratty is familiar with it as well, it was the document that was generated on Mr. Hills dot matrix printer that says \$375,000 was a reasonable figure. That document would also go contrary to the evidence.

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MR. HANRATTY: Unfortunately I think we are going to have to go through Mr. Hills evidence in its entirety yet again because there seems to be an attempt to reconstruct his evidence, if I may so say. I think we should perhaps leave it over until Mr. Walsh makes his submission.

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CHAIRMAN: We will do it in one operation, not two.

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MR. GAVIGAN: I don't have any difficulty with that. While this witness is giving evidence perhaps he could be given

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the benefit of those documents and give his evidence in the context of the evidence that was given in relation to this Chairman.

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MR. HANRATTY: I was proposing to leave over this particular aspect of the transmission evidence until Mr. Walsh is here. Perhaps Mr. Fox could indicate if he will be here in the morning and we can deal with it in the morning?

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MR. FOX: Yes, Mr. Walsh could be here in the morning. I think it could be dealt with in the morning, Chairman.

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MR. HANRATTY: Then with your permission I will leave over the point until everybody is here. We will go through Mr. Hills' evidence point by point in relation to the 375 and, as it were, the signing off point.

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335 Q. Now, Mr. Barry, the letter which was the start of this sequence of correspondence in February of, the 6th of February of 1989, in which Mr. Connolly of the IRTC sent these various documents to the Minister. You had a dinner engagement with the Minister in the Le Coq Hardi the following day, on the 7th of February?

A. I can't recall that but if you say I had it, I had it, yes.

336 Q. Now, this was a fairly important event in the sequence of events leading up to the grant of the directive, isn't that right, the fact that the IRTC were sending these documents with this particular viewpoint to the Minister?

A. Oh, yes.

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337 Q. We know that it appears that there wasn't any actual meeting of the IRTC at which any resolution was passed that this would be done but we know that Mr. Connolly did, in fact, send these documents. He has confirmed that he sent the enclosure which I sent to you this morning?

A. Yes.

338 Q. He also sent a copy of the previous letter from Century, which contained information about Downtown Radio, isn't that right?

A. Yes.

339 Q. You then had dinner with the Minister in Le Coq Hardi the following day, on the 7th of February 1989?

A. I can't remember the date but if you say so.

340 Q. Did you discuss this letter from the IRTC with the Minister?

A. I haven't a notion. Who was at the dinner, I wonder?

341 Q. Yourself and the Minister, as far as I am aware?

A. Just - I haven't a notion whether I discussed it or not.

342 Q. Well, do you think it is likely that you discussed it?

A. I can't remember, Mr. Hanratty, I can't remember what I discussed at a dinner 12 years ago.

343 Q. It would have been a fairly important dinner, given that it was the day after the IRTC wrote to the Minister, effectively making Century's pitch?

A. I had a number of dinners or lunches with the Minister and other people, so I can't remember what happened or what was discussed at the dinner. We could be talking about many things at the dinner.

344 Q. You would have been curious, I take it, to find out did he get the letter?

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A. I don't think so. I think it was a different matter altogether. This was a matter between the IRTC and the Minister.

345 Q. Did the Minister mention to you that he got the letter from the IRTC?

A. As I said to you, I don't even remember the dinner, never mind what was discussed at the dinner.

346 Q. You were a close personal friend of the Minister at the time, you have told us already?

A. I was a friend of the Minister's and a supporter of the Minister's, yes.

347 Q. You met him on a relatively regular basis?

A. I met him probably, yeah, over a period of time, yes.

348 Q. And you were in the habit of occasionally having lunch with him and occasionally having dinner with him?

A. I would say lunch more than dinner, Mr. Hanratty.

349 Q. Yes. And on this occasion you were having a dinner engagement with him the day after an important letter at the behest of the, of Century, went down from the IRTC to the Minister?

A. If you have evidence of that. I am not disputing it at all.

350 Q. It is on the screen there. It is in the Minister's diary.

A. -- I am not disputing.

351 Q. -- originally arranged for Whites on the Green, subsequently changed to Le Coq Hardi. Do you see that there?

A. Yes.

352 Q. Wouldn't it seem very likely that this topic came up at some stage during the evening?

A. I would say that the fact that we had got the franchise

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must have come up. Whether a technical thing like transmission would come up or not, I have no recollection.

353 Q. Well, it is more than a technical thing, it is a financial thing. It is a question of whether you get a directive for €375,000 or not, isn't it?

A. Mr. Hanratty, you are making inferences that I am not at all going to accept. I had, if I, if I had a dinner with the Minister, who else was present? We don't know who else was present. Was I alone with him? We could have been discussing anything.

354 Q. It is not an inference on my part that Mr. Connolly wrote to him the day before saying that, effectively, €375,000 was an appropriate figure?

A. Yes, sure, the €375,000, that was mentioned, as I said, at our early January, that was nothing new.

355 Q. It wasn't mentioned in public, it was mentioned in your submission to the IRTC?

A. Yes, there was nothing new about it.

356 Q. That is a matter between Century and the IRTC?

A. Yes, okay.

357 Q. So here was the IRTC now specifically mentioning a figure to the Minister which they had got from Century?

A. Yes.

358 Q. All I am asking you is; do you not think it is very likely that the matter was discussed with you and the Minister the day that he got this letter?

A. I am not going to assume anything or say anything is likely or unlikely.

359 Q. You were perfectly happy about making assumptions about Mr. Justice Henchy attending meetings here?

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A. You are trying to walk me into saying something here that I am not prepared to do, Mr. Hanratty.

360 Q. I am asking you to inform us that, do you think it is likely that that matter was discussed with the Minister, that is all I am asking you?

A. That the matter of ú375,000 --

361 Q. The question of transmission charges, and in particular the question of this letter that the Minister had received was discussed between you at your dinner appointment at Le Coq Hardi restaurant?

A. I don't know. I wasn't even sure of the date of the letter until now. If you say the letter, that he had received that he had received the letter before then, before the dinner or after the dinner, I don't know, Mr. Hanratty.

362 Q. Is it possible that that is the occasion on which the minister told you that he would give a directive at 375,000, and that it was therefore the, that was the information that you then conveyed to Mr. Fanning at the subsequent meeting on the 14th?

A. I see here that there was a private suite, is that what - am I reading that correctly?

363 Q. What document are you referring to?

A. What is on the screen here.

364 Q. Which entry are you referring to? The entry I am referring you to is on Tuesday the 7th of February. "Private suite" is under Wednesday?

A. Oh, sorry.

365 Q. It may or may not be that you had a private suite on that evening, I don't know. I would have thought that the private suite --

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A. -- I don't have any recollection of having a dinner with the Minister in a private suite.

366 Q. But it does appear that the private suite entry is on the following day. Let's just stay with the entry for 7:30/eight o'clock on, the meeting of the 7th of February, 1989, at Le Coq Hardi restaurant?

A. Under "Private suite", under 7:30 to 8?

367 Q. The words "private suite", I think the words "private suite" says "Private suite - Touhey's" and is a separate entry altogether for the following day?

A. Yes.

368 Q. Right. We are looking for the entry on Tuesday?

A. Yes.

369 Q. Indicating a dinner appointment between yourself and the Minister at Le Coq Hardi that evening?

A. As I say, Mr. Hanratty, I don't even remember the dinner.

370 Q. We do know, Mr. Barry, that at a meeting subsequent to that on the 14th, in fact one week later, somebody told Eugene Fanning in Arthur Cox that the Minister was going to give a directive at ú375,000.

A. Yes.

371 Q. One week after you had dinner with the Minister in Le Coq Hardi and one day after Sean Connolly of the IRTC wrote a letter to the Minister mentioning a figure of ú375,000. Doesn't that look very much like the Minister told you at a dinner in Le Coq Hardi on the 7th of February that he would give a directive for ú375,000 and that you then, the following Tuesday the 14th, told Eugene Fanning that and that is why he wrote that down?

A. I don't remember anything at all about that whole

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situation, Mr. Hanratty.

372 Q. Well, doesn't that appear to be a very likely looking at the sequence of events, given the facts as we know them?

A. I don't -

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MR. FOX: Chairman, Mr. Hanratty is putting conclusions to the witness. These are matters for your findings, Mr. Chairman, in your final report.

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373 Q. MR. HANRATTY: I am simply asking does the witness agree with the proposition I am putting?

A. No, I don't. I mean I don't, I don't remember the dinner, I am not going to start assuming anything or agreeing anything that I don't remember.

374 Q. Your own evidence this afternoon relating to this proposed meeting that you told us about with Mr. Justice Henchy where the question was raised, I think by Mr. Marren, of the Minister's powers to give a directive?

A. That's right.

375 Q. So that if that meeting took place, and I am not for a moment suggesting that it did because we don't know when it took place, because we only heard about it today, but if it took place prior to your meeting with the Minister, then it is something that presumably you would have raised with the Minister?

A. As I say, I don't even remember having dinner with the Minister. I don't know what I raised with him at the dinner, Mr. Hanratty. I mean is it --

376 Q. In the absence of any other explanation as to why or who told Mr. Fanning that the Minister would give a directive

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at ú375,000 --

A. I don't know, I mean did we actually have the dinner?

377 Q. Well, you have just told us you can't remember it?

A. Yes, well I am just asking the question.

378 Q. Well, do you remember that you didn't have a dinner or do you remember anything about it?

A. I don't remember anything about it.

379 Q. Why do you suggest then that you didn't have it?

A. I am just saying did we have the dinner at all? If this is the evidence at the dinner table, I can't remember --

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CHAIRMAN: Mr. Barry, how can you ask me to act on assumptions by you when you can't remember, where, when and with whom you were having meetings? How can I act on assumption that is derived when you can't recall the basis of the assumption. Now, I am just trying to find this, trying to find a basis. I have every desire to take into account everything you have said but in terms, I cannot act on assumption if you say you can't remember the occasion on which it could or could not have arisen. I can't do that?

A. Well, Chairman, with respect I thank you for your intervention. I can't remember the dinner.

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CHAIRMAN: That is fair enough. I can understand that. But promoting assumptions without having a factual record or recollection - I beg your pardon - of the occasion and on the, from which you base, on which you derive the assumption, leaves me with no great help. I am not being anything less than courteous and fair to you?

A. You are being very courteous. I am trying to assist as

best I possibly can. If I can't remember, I can't remember.

CHAIRMAN: If you can't remember that is fair enough.

380 Q. MR. HANRATTY: Then in the absence of your recollection all we can deal with is the documentary evidence, the entry in the Minister's diary. And can I just draw your attention to that for a moment. You see what it says under the heading "Evening", it says "Oliver Barry 7:30/8 - Whites." That is, I take it, a reference to Whites on the Green?

A. I never remember having dinner with the Minister at Whites of the Green.

381 Q. It does appear that the original appointment or original entry was in respect of Whites and that the appointment was then changed because 'Whites' is crossed out and in a different pen 'Coq Hardi' is written in, isn't that right?

A. Yes.

382 Q. Indicating that there was an appointment made and at the time it was made it was in respect of Whites and for some reason the venue was changed to Le Coq Hardi?

A. Yes, a most unusual venue for me to have dinner with the Minister.

383 Q. If it is or it is not, if it didn't happen it is an awful lot of trouble for somebody to go to not to have a dinner?

A. Yes.

384 Q. And what I was suggesting to you is that, that in the absence of any other explanation as to how Mr. Fanning came to be told that the Minister would give a directive for

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ú375,000, I am suggesting to you that it seems very likely that that information came from you and that you got it from the Minister and that you got it from him on the evening of the 7th of February, 1989, at your dinner appointment at Le Coq Hardi?

A. I don't remember anything about it, as I said, Mr. Hanratty.

385 Q. Can we go back to page 302 then. And that is the letter which was written by yourself and Mr. Stafford. I think we have already established that there appears to be no document from the IBA referring to any figure of ú375,000. We have left over the argument about Mr. Hills and we will deal with that in the morning. Then it goes on to say, "Furthermore they", that is the Board of Century, "were of the unanimous view that they were not prepared to negotiate or increase that offer as it would affect the viability of the service."

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Now, would you agree with me that that is not in fact what the Board agreed on that date?

A. I can't remember what the Board agreed.

386 Q. It is recorded that the company could go up to ú520,000, and that in the view of whoever said that, it was "a steal" at 375?

A. Well, that was --

387 Q. Do you think it is reasonable then to say to the IRTC that the Board were of the unanimous view that they were not prepared to negotiate or increase that offer, that is 375?

A. Well, Eugene Fanning was the source of the 520, is that right?

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388 Q. No he wasn't, he wrote it down because somebody else told him. The source was whoever told him.

A. Well, I don't know who told him, then I can't comment on whether it was a Board member or --

389 Q. All I am putting to you, Mr. Barry, is that given that that was what was said at the meeting, it was to say the least of it, disingenuous for you to be writing to the IRTC saying that they were not prepared to negotiate or increase that offer?

A. If the majority of the Board felt that was the case, I think we were perfectly in order to write to the IRTC.

390 Q. It goes further than that, it says that the reason that they were not prepared to negotiate was because it would affect the viability of the service?

A. Yes, at the time I mean - obviously this was much more Mr. Stafford's area than my area. I am not trying to pass the buck for one moment here, but we were, we were trying obviously to put this new venture on as sound a financial situation as possible.

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Transmission charges were one of the key factors in the whole thing. Mr. Stafford had intended to bring in institutional investors and maybe go public within a year or two, and we were fighting tooth and nail, as any business person would, to get the best deal we possibly could for transmission.

391 Q. But here you were making, you were making a false statement, I suggest, that it would affect the viability of the service. What is actually recorded in the minutes of the meeting is that the company could go to 520?

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A. Well I mean that's, that is what Eugene Fanning wrote down. Of course it would affect the viability, it would be less viable, Mr. Hanratty, if there was 520, if it was 520 rather than 375.

392 Q. So, are you standing over that as an accurate statement to the IRTC of the company's position?

A. I am standing over that we were, as I say we were trying to negotiate the minimum figure that we possibly could for transmission charges, and that was a business proposition.

393 Q. But the point, Mr. Barry, is that there was no attempt to negotiate with the people providing the service, namely RTE. You were trying, I suggest, to use the IRTC to enlist them, because in your own words they were "stuck with 375"?

A. Well, the IRTC were the statutory body in charge of independent broadcasting, and of course we had to involve and rely on them to help us.

394 Q. In the second last paragraph of that letter you say:
"At this stage we must advise you that unless the matter is resolved within the next seven days, there is no way in which we can be expected to meet the original date envisaged and furthermore, we will have to reconsider our entire position."

A. Yes.

395 Q. There is a clear threat to the IRTC that if we don't get our way with ú375,000 we will pull out?

A. Yes, yes.

396 Q. And that was in circumstances where you had earlier stated in the same letter that beyond ú375,000 effectively the project would not be viable?

A. Yes.

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397 Q. I suggest to you that that was a profoundly dishonest position for the company to adopt?

A. I would think that is the normal cut and thrust of bargaining and trying to make the best deal possible. It was a green field situation. We were looking for the best possible financial arrangements we could arrange with all bodies.

398 Q. So you think this is an honest letter, do you?

A. I think --

399 Q. You think it is reasonable to inform the IRTC that the project is not viable beyond 375,000 when the view within the company appears to be that they could go to 520?

A. It was certainly a commercial situation, where if we had to pay 520 instead of 375 the company would be less viable.

400 Q. And does the fact that it is a commercial situation make dishonesty acceptable?

A. I don't think it is dishonest, I think it is normal cut and thrust of negotiating the best deal we could get. As I said, I am not trying to push the responsibility for this over to Mr. Stafford. He would have been riding and that I would respect his judgement and view on this. He was the man who was financially going to sell this project financially to institutional investors and hopefully we would be going public. We wanted to negotiate the best deal we possibly could and I went along with it.

401 Q. You signed this letter?

A. I went along with it Mr. Hanratty.

402 Q. You signed this letter and were at this meeting?

A. Yes.

403 Q. When it was stated by whoever it was stated by, it could

00120

have been stated by you because you don't remember that.

The company could go as far as 520?

A. I doubt if it was stated by myself because I wouldn't have that knowledge.

404 Q. Whether it was or not, you were at the meeting?

A. Yes, I was at the meeting.

405 Q. Presumably at the time you wrote this letter you were aware or would have been aware of what was said at the meeting?

A. I wasn't, I mean this was a note that was said. I can't remember 520 being mentioned at the meeting. I don't even remember the meeting happening. If you tell me that Eugene Fanning had a written note there, I wouldn't think he wrote it down unless it was said by somebody. I agree with that, but I don't remember it.

406 Q. If we go to page 303, we know that enclosed with that letter to the IRTC was a computation of the figure of \$375,000. Do you see that?

A. Yes.

407 Q. Did Mr. Stafford produce this?

A. I don't know who produced this.

408 Q. Well, did you produce it?

A. No, I wouldn't have produced it. I am sure that Ray Hills or Mr. Stafford produced it.

409 Q. Mr. Ray Hills told us specifically that he did not produce it?

A. I mean, he would have been the source of it, because Jim Stafford wouldn't have a clue --

410 Q. No, Mr. Hills has told us that he was not the source of it?

A. I mean who, how would - Jim Stafford wouldn't know the price of a transmitter, he wouldn't even know what a

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combiner was, no more than myself.

411 Q. Would you just address yourself as to what the document says. You see at A, B, C and D it gives certain specific charges, 215 and the 180 are based on quotations given from RTE. That comes up to a total of 295,218?

A. Yes.

412 Q. Ray Hills never produced any figure of 295,218, nor did the IBA?

A. Well, are they RTE quotes you said?

413 Q. Items C and D are based on elements in the RTE quotation which were not disputed?

A. Right. And B, "Maintenance", "IBA Assessment", did they say that --

414 Q. No, it is not an IBA assessment. You remember the document you saw this morning where reference was based on --

A. I misunderstood your question. Would you start again please?

415 Q. Yes, A and B - A was a figure that was effectively produced by Mr. Stafford?

A. I wouldn't accept that. I mean Jim Stafford couldn't --

416 Q. Whether you accept it or not, Mr. Barry, the evidence to the Tribunal has been that in the early discussions, that is in November of 1988, between RTE and Mr. Hills, a figure of ú747,000 was referred to as an estimate by RTE for the cost of equipment?

A. Okay.

417 Q. Reference was also made in the course of that meeting to leasing charges at seven and a half percent?

A. Yes, that would certainly be Mr. Stafford's expertise, he would certainly - yes, okay.

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418 Q. But RTE witnesses say that this is effectively a distortion of what they said because at seven and a half percent the leasing charges were in the context of a normal commercial lease over five years in circumstances where the lessor has the benefit of capital allowances. What Mr. Stafford is suggesting here is that the seven and a half percent should be, should be applied by way of loan and amortised over 20 years, and the RTE witnesses, particularly Mr. O'Brien said that is absolutely utterly inconceivable and a complete distortion of their figures?

A. What do you want --

419 Q. You just sought to suggest that this was an IBA figure?

A. No, no, the only point I made to you, Mr. Hanratty - I apologise for misunderstanding you. All I said is that as far as, when I read, when it comes down to the financing of the thing, I would accept that it could be Jim Stafford but I didn't read about the financing. When I saw the words "combiners and transmitters" I thought it was to do with that because Jim Stafford wouldn't know anything about the cost of or value of those.

420 Q. It is quite clear that the figure at A is constructed, shall we say, to use a neutral phrase, by Mr. Stafford based on certain information that had been given to him in November by RTE?

A. Unless he sought outside advice on this thing, I don't know. You would have to ask Mr. Stafford about that I wouldn't --.

421 Q. We do know as an objective fact that RTE did mention an estimate of €747,000 in November, and they did mention a figure of seven and a half percent in the context of a

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lease?

A. Okay.

422 Q. We also know that Mr. Stafford also adopted the position that whatever the charges were they should be amortised over 20 years because that was the expected life of the equipment?

A. Yes.

423 Q. So it seems fairly clear that that is, that A is Mr. Stafford's construction, whatever it is?

A. Yes.

424 Q. B is described as the IBA assessment, and I will draw your attention to the fact in a moment that the words "IBA assessment" were removed from a subsequent draft of this document.

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But, in any event, it is, the figure of ú30,000 is lifted out of the letter of the 17th of February from the IBA, isn't that right?

A. I don't know, Mr. Hanratty, if you say so.

425 Q. Can you suggest any other source?

A. No, no, Ray Hills I presume or the IBA.

426 Q. Mr. Hills never produced any figure of ú30,000?

A. Okay.

427 Q. Power and spares and linkage are figures which are taken from the RTE quotation which were never disputed?

A. Yes.

428 Q. That comes to that figure of ú295,218?

A. Yes.

429 Q. And that is rounded up then by Mr. Stafford to ú300,000?

A. Yes.

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430 Q. And then what he does is he just adds €75,000, which is on his own evidence 25 percent of the €300,000?

A. Yes.

431 Q. And by that means and by that calculation comes to a figure of €375,000?

A. Yes.

432 Q. So it is Mr. Stafford's figure?

A. Well, I always understood that Ray Hills stood over this figure, Mr. Hanratty.

433 Q. Why?

A. Why? Because as I said, he was - do I have to repeat it again? I must be like a worn out record at this stage. Do you want me to repeat it again?

434 Q. I want to know why you always understood? Did Mr. Stafford tell you this?

A. It was in our document.

435 Q. What document?

A. The document that we sent to RTE.

436 Q. The fact that it is in your document doesn't mean it came from Mr. Hills. What reason did you have for thinking it came from Mr. Hills?

A. I will tell you the reasons, Mr. Hanratty; because we paid him substantial fees, we paid the IBA substantial fees. I drove Mr. Hills myself personally around many of the RTE sites around the country, and when I wasn't driving him there was another driver that I got to drive him around. He spent several days here, at very, very high costs. Are you saying to me that the whole thing was only an exercise or bluff on the behalf of Ray Hills, and that it was only all of a kind of a, what would I call it, another sham?

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437 Q. Well, you can see from the document how the figure of \$375,000 is calculated. It includes an element of 70,218, which on the evidence of Mr. O'Brien is completely unreal.

A. I can't go any further with you.

438 Q. And includes a calculation of, the rounding up of the odd figure of 295,000 to 3, and then adding 25 percent to that to get 375.

A. Yes.

439 Q. Didn't you know at the time that you sent this letter to the IRTC that that figure did not in fact come from the IBA, that this was, that that figure of 375 was based on this calculation that you see in front of you?

A. I can't remember seeing this calculation before that I see in front of me now, all I am saying to you is that --

440 Q. Mr. Barry, it is included in your letter to the IRTC of the 17th of February?

A. Yes, okay, but I am saying I can't remember it until I seen it now.

441 Q. I take it you knew about it at the time?

A. I am sure I did, if I signed the letter I did.

442 Q. Yes. And at the time it would have been plain to you, if you looked at the document that you sent in with your letter, that the 375 was based on a calculation which involved among other things, rounding up a figure of 295,000 to 3 and adding 25 percent to the 3?

A. I would have been pretty sure that Ray Hills would have been across this, these figures.

443 Q. What do you mean he would have been "across them"?

A. He would have known about these figures.

444 Q. So, what do you say he would have known about them? Were

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they ever sent to him?

A. I don't know, but I always assumed that --

445 Q. Let's just take it from the start. Did you ever send them to him?

A. As I say, I don't remember the figures.

446 Q. Can you point to any document indicating that these figures were run over by Mr. Hills or even shown to Mr. Hills?

A. No, I can't, but all the time Ray Hills was the man in charge of our transmission fees, and he was the source of these figures.

447 Q. You see whatever else we can say about Mr. Hills during this little averaging calculation which he did for his meeting with the IRTC, and we will debate in the morning, whatever else you can say about that, Mr. Hills never produced and never saw and never approved and never endorsed and never stood over any figure of \$295,000 which was rounded up to 3 and then 25 percent added on?

A. If you say so, yes.

448 Q. But yet that is the figure that was sent into the IRTC?

A. Yes, but - yeah, that was the figure. If you say that went in under that, yes it did.

449 Q. The next thing that happened was on the 20th of February of 1989 Mr. Crowley, the Chairman of the company, sent in this long letter setting out Century's case to the IRTC, and effectively making an application or a request for a directive under Section 16. Isn't that right? This is at page 34.

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Now, we know that from the first line of that letter it says: "Thank you for seeing us at such short notice today,

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when you were kind enough to give us a copy of the Minister's letter dated the 16th of February."

Now, the Minister's letter of the 16th of February is the one that we have had this morning, where the Minister has expressed the view that he was satisfied that in "Irish conditions ú614,000 was not unreasonable."

Now, do you remember attending this meeting with the Chairman of the IRTC at which he first of all gave over this letter that he had received from the Minister of the 16th?

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

450 Q. Well, do you remember the letter, it must have come as quite a shock to you?

A. No, I don't remember the letter, no.

451 Q. Do you not remember being told that the Minister had expressed himself of the view that ú614,000 was, in Irish conditions, not unreasonable?

A. I don't remember that at all, no.

452 Q. Is it not something that impinged on your consciousness at the time?

A. As I say I don't remember it.

453 Q. It would have been fairly shocking from your point of view, because it was even more than the maximum figure of ú520,000, which according to the note of the meeting of the 14th of February, Century was prepared to pay?

A. I don't remember it, Mr. Hanratty.

454 Q. You don't remember it?

A. No, I don't remember it.

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455 Q. Well, do you remember anything about these events around the 20th of February of 1989?

A. I don't remember events about the 20th of February, 1999, never mind --

456 Q. Mr. Barry, do you not remember anything about the events leading to Century deciding to make an application to the IRTC for a directive under Section 16?

A. I told you what my memory of it was already.

457 Q. This was the actual letter written under the hand of the Chairman of the company, albeit drafted by Mr. Stafford, in which the application for a directive is actually made?

A. I don't remember it Mr. Hanratty.

458 Q. Do you remember the fact that such a letter was written?

A. I don't remember, but if it is here in front of me it was written, obviously.

459 Q. Well, don't you remember the fact that Century decided at some stage that they were going to apply for a directive?

A. Yes.

460 Q. Isn't it obvious that this is the letter in which they made their application?

A. Yes.

461 Q. If I could refer you to the second page of the letter, you can see that the calculation which we have just been discussing is set out, isn't that right?

A. Yes.

462 Q. Except that there are some minor differences in the text, but included at paragraph B it says "Maintenance." Do you see that?

A. Yes.

463 Q. But the words "IBA Assessment" which were contained in the

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previous document enclosed with your letter of the 17th of February are removed?

A. Yes.

464 Q. Can you say why they were removed?

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

465 Q. Is it possible that the reason that they were removed is that the writer did not want to convey to the IRTC something that he knew to be incorrect?

A. I don't know what happened between the two documents, to say that it was taken out.

466 Q. In that letter at paragraph 3 on the third page there is a statement to the affect that "The IBA have assessed the additional costs involved for maintaining the Century equipment and concluded that it should not be more ú30,000 per annum."

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That is not an accurate statement of fact, is it?

A. Where are we now, Mr. Hanratty?

467 Q. The last sentence at paragraph 3 on the third page.

A. "The IBA have assessed the additional costs involved for maintaining the Century equipment and concluded that it should not be more than ú30,000 per annum."

468 Q. That is not quite what they said, is it?

A. I can't remember what they said, Mr. Hanratty.

469 Q. The passage that I put to you this morning in their letter of, their fax of the 17th of January, where based on certain assumptions. They made reference to a figure of ú30,000 which had already been given to them.

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One thing I want to ask you about in relation to this

letter is that, going back to the second page of the letter, that is page 35, if we just scroll up the page a little bit, no, up. You see the words at the top of the page there: "Having had the IBA assess our transmission requirements, we calculated on the advice of the IBA the cost of providing the same national FM coverage and including AM transmission in Dublin and Cork to be as follows:"

Now, it says: "Having had the IBA assess our transmission requirements." Again, I have to put to you that that is another false statement. The IBA never actually assessed your transmission requirements, it was Mr. Hills that assessed your transmission requirements?

A. Well, I always associated Mr. Hills and the IBA very closely.

470 Q. Mr. Hills left the IBA in October or before and wrote to you in October to say that he was acting independently?

A. But it was my assumption, rightly or wrongly, that he still relied on them for some information.

471 Q. It says: "We calculated on the advice of the IBA the cost of providing the same national FM coverage, including AM transmission." So now what you are doing is throwing in AM transmission charges with FM?

A. Yes.

472 Q. What was the basis for that? You know that RTE had given two separate quotations for FM and AM, and you know that two separate figures were agreed between the Department and RTE for FM and AM?

A. Yes, I remember that, that AM was important to us for

00131

Dublin and Cork. Yes, I remember that, yes.

473 Q. But they were always separate?

A. They were always separate, yes.

474 Q. They were two different signals, and the analysis or breakdown of the figure in the enclosure with your letter of the 17th of February to the IRTC is an analysis only of the AM, sorry of the FM figures?

A. Yes.

475 Q. Just going back to that document, page 303 it says: "Eight transmitters and six boosters to be phased-in over four years to provide national 98.5 percent coverage for a total cost at full coverage made up as follows:"

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So, the reference to "eight transmitters and "six boosters" and "98.5 percent of the population" is a clear indication that what is there referred to is FM, isn't that right?

A. I would assume so, yes.

476 Q. This is the 14 FM transmission stations that you were getting access to?

A. I can't remember the number of stations.

477 Q. There were 16 in total, two AM and 14 FM. The AM being in Dublin and in Cork, isn't that right?

A. Yes.

478 Q. What is referred to at the start is eight transmitters and six boosters, that is 14, that is 14 transmitters effectively, and they, I suggest to you, are the 14 FM transmitters?

A. Yes, if you say so, yes.

479 Q. Well, what I want to know is how did that, those figures and those calculations transform themselves between the,

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between the 17th of February and the 20th of February to include two AM transmitters as well?

A. I don't know, I don't know, Mr. Hanratty.

480 Q. It seems odd, doesn't it, because what the IBA - sorry, what the IRTC are now being told in this letter is that these figures were not only endorsed by the IBA, but they were endorsed by the IBA as a reasonable cost not only for the FM transmitters but for the AM transmitters as well?

A. We didn't cut back on the FM coverage?

481 Q. No.

A. Okay.

482 Q. Do you accept, even today, that on no view of the figures could the AM transmitters have been included?

A. I don't understand how the AM, unless we cut back, as I said, on the FM coverage, maybe.

483 Q. And do you accept in any event that in no circumstances did the IBA ever come up with a figure of 375,000 or any other figure to include two AM transmitters?

A. I can't be definite about that, Mr. Hanratty, no.

484 Q. Well, I take it that you are not in a position to point to any document suggesting that they did?

A. No, no.

485 Q. This is the first time in fact in any of the documentation that the Tribunal has seen that AM and FM were amalgamated, and in fact I think it is the only instance in which they were amalgamated, isn't that right?

A. I don't know, Mr. Hanratty. I know that AM was important to us in Dublin and Cork because taxis at that stage had no FM coverage, a lot of them had AM coverage, that is my memory, that is - or receivers I mean, that is why.

00133

486 Q. We know that whatever the reasoning of the directive, and we will have to wait and see what it was, but the directive then went on to effectively throw in the cost of AM in the figures that were effectively calculated on the basis of FM, isn't that right?

A. I don't know, Mr. Hanratty, I don't know - I mean, I am only guessing here, I wouldn't know an awful lot about it.

487 Q. You see what I want to put to you is the fact that this exercise was done and that this information was given in this form to the IRTC and consequently transmitted in this form by the IRTC in good faith, to the Minister, and it might well provide the Minister with a basis for saying "Well, I amalgamated it because I had a document before me which said that the IBA stood over it."

A. But I thought the Minister gave us a figure of 614?

488 Q. No, the Minister agreed a figure of 614 with RTE but he gave a directive for an entirely different figure a very short time later.

A. Yes, that's right.

489 Q. What I am drawing your attention to is the fact that between the 14th of February and the 20th of February, in this calculation which was produced by Mr. Stafford, somewhere along the way the two AM transmitters got thrown in and lumped into the same figure of ú375,000 when they were not previously included in that figure?

A. Okay, but are we certain that our FM coverage wasn't cut back as a result of that?

490 Q. We are.

A. We are.

491 Q. Unless you can direct me to some indication that it was?

00134

A. Yes, I accept that then, yes.

492 Q. Did you have any discussions between yourself and the Minister after the writing of that letter and before the 14th of March?

A. I don't remember having any discussions with the Minister about transmission, Mr. Hanratty.

493 Q. Well, do you remember having any discussions with him after you made your application for a directive?

A. No, I don't.

494 Q. Is it possible that you did?

A. Is it possible that I - would you ask me that question, that I discussed the directive with him.

495 Q. No, that you had discussions or meetings with Mr. Burke between the 20th of February and the 14th of March of 1989?

A. Between - it is possible, yes, it is possible. The only discussions I would have had with Mr. Burke about it would be general. I would not get into technical discussions with Mr. Burke. He would have known that I was involved in the national franchise and he would have wished me well and that would be the type of discussions we would have.

496 Q. Well, I am not suggesting that you were discussing, that you would have any technical discussions with him, I am simply asking is it possible that you had meetings or discussions with him about anything, first of all, between the 20th of February and the 14th of March of 1989?

A. I can't remember, but it is a possibility.

497 Q. And I would have thought it is highly likely that in the event that you did have meetings with him, you would not be discussing technical matters but you might be discussing perhaps, financial matters?

00135

A. No, I wouldn't think so. We might be discussing the RTE situation, that maybe they were looking for a lot of money, and obviously we were trying to negotiate them down. Maybe those discussions might have taken place, but they would be of a general nature, if they happened at all.

498 Q. Do you remember receiving the directive?

A. No, I don't, no.

499 Q. Sorry?

A. Do I remember --

500 Q. Receiving the directive?

A. Well, we didn't receive the directive.

501 Q. You did, it was sent out to yourselves and, I think the IRTC, and indeed RTE?

A. No, I have no recollection. I thought that went directly to the IRTC.

502 Q. Presumably you heard about it?

A. Of course I did.

503 Q. Were you surprised?

A. I can't remember my reaction at the time.

504 Q. Well, do you not remember being pleased at the fact that not only did it accede to your request for 375,000 but actually came in much lower than that?

A. I don't know, did it come in lower, Mr. Hanratty?

505 Q. Comparing like-with-like it came in substantially lower?

A. Well, that is not my recollection of it.

506 Q. Is it not? What is your recollection of it then?

A. That it was in excess of 375.

507 Q. That it was in excess of 375?

A. Yes.

508 Q. Well, I think we might just leave that over until the

00136

morning because we have a comparative analysis on a schedule comparing the various headings in the make-up of the 375 with what was actually allowed in the directive, which seems to demonstrate, unless you can show that it is incorrect, that the directive came in at substantially lower than the figure that Century was offering?

A. Well, that is certainly not my recollection. I think in the Century accounts --

509 Q. Could you just tell us what your recollection was and what your reaction was when you found out what was in the Ministerial directive?

A. I can't remember fully. I thought it was in excess of 375, but we were relieved because there was a lot of to-ing and fro-ing at the time and at least it gave us certainty to move forward and get the station up and running.

510 Q. Can I refer you to a document which was produced as a result of a meeting between persons from Century and the IRTC in September of 1989, that is some time after the station went on air.

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Would it be true to say first of all that you had a number of meetings with the Minister during the period between March of 1989 and say, the signing of the contract with the IRTC at the end of July?

A. We certainly had meetings with his Secretary, Bernard McDonagh.

511 Q. No, I am talking about meetings with the Minister.

A. I may have met him a few times, I don't know how many times, but that is possible, yes.

512 Q. Isn't it true to say that any time that you had a

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difficulty either with the IRTC or with RTE, that you went off to the Minister about it?

A. No, that wouldn't - I wouldn't accept that at all, no.

513 Q. It appears from his diary, for example, of the 20th of June, that you had a meeting with the Minister in his office at 3 o'clock on that date?

A. That is possible, yes.

514 Q. That was around the time when you were having difficulties with the IRTC in relation to certain terms of the contract, isn't that right?

A. Yes, it could be, yes.

515 Q. Well, there were significant difficulties, weren't there, between Century and the IRTC at that time?

A. There was a lot of difficulties between Century and the IRTC and Century and RTE.

516 Q. Yes. And it seems that these difficulties were the subject matter of the discussions between yourself and the Minister?

A. I don't recall that, but certainly Bernard McDonagh was more or less the Arbitrator at these meetings, as far as I remember.

517 Q. Pardon?

A. As far as I remember.

518 Q. Bernard McDonagh?

A. Yes.

519 Q. Well, I am just talking about the Minister at the moment.

A. I don't - if you say I met the Minister on the 20th of June, I have no difficulty with that.

520 Q. Well, can I refer you to page 2993, perhaps if we go to 2989 first. This is a meeting between Mr. Sean Connolly

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and Mr. Paul Appleby of the IRTC, and Mr. Laffan and Mr. Story from Century. And on page 2993 at the second paragraph Mr. Connolly recorded: "At this stage, Mr. Connolly stated that the promoters of Century Radio were too highly politicised. He stated that there was a high degree of suspicion with regard to the motives behind the actions of the promoters of Century Radio. He stated specifically that this was evident in respect of the manner in which the negotiations with RTE were handled and subsequently was very obvious in the way in which 'Century attempted to hijack the signing of the broadcast contract on the day of signing."

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Here is a view coming from Mr. Connolly, which incidently he has stood over and endorsed in his evidence to this Tribunal, that you were highly politicised?

A. If that was his view, that was his view, Mr. Hanratty.

521 Q. He was the Secretary of the IRTC and he was involved in dealings with Century --

A. Where did this take place?

522 Q. This is the second paragraph.

A. Where did this, where did he say this?

523 Q. These are minutes of a meeting held on the 15th of September, 1989. It was a lunch meeting in the Grey Door Restaurant. The object of the meeting was to try and repair relations, which were perceived at that time to have been frayed pursuant to the negotiations for the signing of the contract. It was attended by Mr. Connolly and Mr. Appleby from the IRTC, and Mr. Laffan and Mr. Story on behalf of Century. It is a long detailed memorandum of a

range of items that were obviously discussed at this meeting.

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At this particular section at 2293 he makes this statement, that you were "too highly politicised". He instanced that there was a high degree of suspicion with regard to the motives of Century Radio. "He stated specifically that this was evident in respect of the manner in which negotiations with RTE were handled and subsequently was very obvious in the way in which Century attempted to hijack the signing of the broadcast contract on the day of signing."

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If you go down the page on the second paragraph it is stated: "He", that is Mr. Connolly, "stated that he felt Century felt empowered to enlist the support of Ministers wherever and whenever they chose. As evidence, he pointed to the issue of the Ministerial directive and the almost daily consultation with the Minister on matters which rightly belonged to discussions and negotiations with Century, the IRTC and RTE."

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So he says as evidence of his view that "Century felt empowered to enlist the support of Ministers wherever and whenever they chose." He instanced the issue of the Ministerial Directive?

- A. To be honest with you, Mr. Hanratty, if that was Mr. Connolly's view, of course he is entitled to it. It was over a lunch. I don't know at what stage in the lunch it took place. Certainly when the IRTC people were in here I didn't hear any of them saying that we were highly

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politicised. If it was a Sean Connolly's view he was entitled to it, I suppose.

524 Q. He was Secretary of the IRTC?

A. Yes, but none of the IRTC --

525 Q. These were points he was making to persons of Century at this meeting.

A. I don't want to be unfair to Mr. Connolly. If he had that view on things he was perfectly entitled to have them. It took place over a long lunch in the Grey Door with some of the radio people it might be said, at what stage - I am not, I am not - it is his opinion, he is entitled to it.

526 Q. It is more than an opinion, he just doesn't give a view or an opinion, he instances the basis of his opinion and gives reasons for it?

A. I mean I don't - "hijacking", I don't know, I don't know what he means by "hijacking the signing".

527 Q. He specifically instances the question of the Ministerial Directive and the dealings between Century and RTE as an instance of highly politicised people from Century --

A. As I said, personally I reject the matter of the Ministerial Directive because I have outlined to you very clearly today, and before today, how the Ministerial Directive came into being as far as my recollection is concerned.

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MR. HANRATTY: I wonder Sir, if that is --

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CHAIRMAN: I think that is an appropriate point in time to break. 10:30 tomorrow morning --

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MR. HANRATTY: Yes.

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CHAIRMAN: -- for this witness or is there one --

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MR. HANRATTY: Well, I understand that it is not anticipated that the summonses will take an exorbitant amount of time, so I would say the safest thing would be to say 10:30.

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CHAIRMAN: Yes. 10:30.

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MR. HANRATTY: I assume in saying so, Sir, that the summonses are returnable for 10:30, but I believe that they are.

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CHAIRMAN: Yes. Very good.

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THE HEARING THEN ADJOURNED UNTIL THE FOLLOWING DAY, TUESDAY

THE 19TH OF DECEMBER, 2000, AT 10:30 AM.

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