



HOUSES OF THE OIREACHTAS

Joint Committee on Public Enterprise and Transport

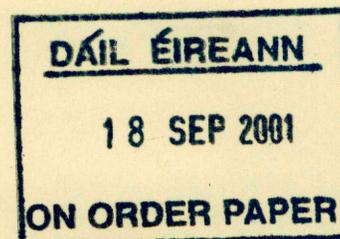
Report on discussions with:

(a) Department of Public Enterprise officials – 26 October 2000

and

(b) Officials from CIÉ/Iarnród Éireann – 7 November 2000

on the Iarnród Éireann Mini-CTC Signalling Project



July, 2001



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Introduction

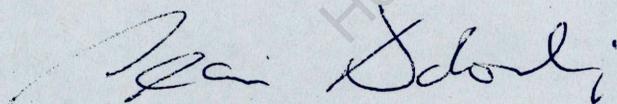
The Joint Committee on Public Enterprise and Transport was established following Orders of the Dáil and Seanad of 23 October 1997, as amended by Orders of the Dáil (28 April 1998 and 14 February 2001) and of the Seanad (30 April 1998). In addition, Standing Orders state that the following powers may be conferred on a Committee:

“(1) power to take oral and written evidence and to print and publish from time to time minutes of such evidence taken in public before the Select Committee together with such related documents as the Select Committee thinks fit;”.

On 24 May 2001, the Dáil and Seanad Ordered:-

“That the circumstances surrounding the entering into and performance of the Iarnród Éireann Mini-CTC and Knockcroghery signalling projects and the Esat/CIE cabling and telecommunications project and related matters be inquired into and reported on by the Joint Committee on Public Enterprise and Transport to both Houses of the Oireachtas, taking into account progress already made on the matter by the Joint Committee and any Sub-Committees thereof.”.

The Joint Committee on 29 May 2001 ordered the Sub-Committee on the Mini-CTC Signalling Project to inquire into the matter and to report back to the Joint Committee. To facilitate the Sub-Committee in its inquiry, the Joint Committee agreed at its meeting on 12 July 2001 to publish this report on its discussions with Department of Public Enterprise officials on 26 October 2000 and with officials from CIE/Iarnród Éireann on 7 November 2000 in relation to the mini-CTC Signalling Project.



Seán Doherty T.D.
Chairman

15 July 2001

JOINT COMMITTEE ON PUBLIC ENTERPRISE AND TRANSPORT

An Comhchoiste um Fhiontair Phoibli agus Iompar
Joint Committee on Public Enterprise and Transport

Déardaoin, 26 Deireadh Fomhair 2000.

Thursday, 26 October 2000.

The Joint Committee met at 3.04 p.m.

MEMBERS PRESENT:

Deputy Martin Brady	Senator Peter Callanan
Deputy Richard Bruton	Senator John Cregan
Deputy Austin Currie	Senator Liam Fitzgerald
Deputy Brendan Daly	Senator Fergus O'Dowd
Deputy Jim Higgins	Senator Shane Ross
(Mayo)	
Deputy Olivia Mitchell	
Deputy Dick Roche	
Deputy Emmet Stagg	

DEPUTY SEÁN DOHERTY IN THE CHAIR

The Joint Committee went into Private Session at 3.05 p.m. and resumed in Public Session at 3.22 p.m.

Chairman: Are the minutes of the last meeting agreed? Agreed. We will deal with the correspondence before we go into private session. Deputy Jim Higgins has asked me to withdraw the first letter.

Deputy Higgins (Mayo): That is right.

Chairman: The second item of correspondence is from the Irish Associated International Express Carriers, indicating its willingness to make a presentation to the committee. Is this letter to be noted for future consideration?

Deputy Higgins (Mayo): Yes, we should avail of it at some stage.

Chairman: The other items of correspondence relate to the special meeting which was arranged as a result of a request from members to consider matters specifically relating to Iarnród Éireann's signalling contract controversy. Before calling on the Deputies concerned, I want to remind members what our orders of reference allow us consider. Is it agreed we go into private session to discuss this?

Deputy Stagg: I am not sure what the purpose of our going into private session is. There is a great deal of public interest in what we are about to attempt to do and it is important for the public to be aware of how we arrive at the various positions we might adopt. I would like to say some things in public about how we might proceed.

Chairman: I thought we might go into private session at this stage to make reference to our standing orders in relation to this matter, as I have been advised. I felt members would be entitled to be informed of that and to give it due deliberation.

Deputy Stagg: Okay.

Presentation by Department of Public Enterprise Representatives on the Mini-CTC Signalling Project.

Chairman: I welcome the Secretary General and his colleagues. I point out that, while members of the committee have privilege, they do not. It is also as well to be mindful of the fact that, while some names have been mentioned in

public in the media recently, persons outside the House should not be mentioned by name or in such a way as to make them identifiable. Perhaps the Secretary General would make a short statement before we get into the business of questions and answers.

Mr. Tuohy: Thank you, Chairman. I propose to read a short statement and circulate it.

The National Development Plan 1994-1999 provided for £275 million in railway investment over the period. This included specific work referred to as the rail network track and signalling project to upgrade the track and signalling on the Dublin-Galway, Dublin-Waterford, Dublin-Sligo and Mallow-Tralee railway lines. The project, covering expenditure from 1 January 1996, was approved by the European Commission in July 1996. It envisaged total expenditure of £57 million, of which £43 million related to track work and £14 million to signalling. The track work involved the replacement of jointed track on timber sleepers with continuously welded rail on concrete sleepers over 124 miles of track. This was completed by June 2000 at a final cost of £43.9 million.

The project was approved for EU Cohesion Funding after a review and evaluation of the mainline rail investment programme by Goodbody economic consultants. In considering the signalling aspects, the report recognised that the introduction of a reduced version of centralised traffic control, CTC, or known here as mini-CTC, had become an attractive option with advances in solid state technology. The report concluded that, based on a combination of operating savings, greater reliability of operation and reduced delays, the upgrade of the signalling system should proceed.

However, significant problems have arisen with the signalling element of the project. Iarnród Éireann had initially intended to undertake the project itself with some external assistance. However, the company subsequently decided to seek tenders to have the full project implemented on a contract basis. This gave rise to an increase in the estimated cost of the project from £14 million to just over £16 million. These changes were notified to the Cohesion Fund Monitoring Committee on the basis that any cost increases would be funded from CIÉ's own resources and that neither additional EU nor Exchequer funding was envisaged.

Once the project was approved, the Department of Public Enterprise sought and

received quarterly reports on progress from CIÉ's in respect of the project. These provided a basis for reporting to the twice yearly EU Monitoring Committee meetings. Physical and financial progress was monitored and, at the Monitoring Committee meeting in April 1999, difficulties with the contractors and a possible cost increase to £17.7 million were reported. It was decided to review the position at the next Monitoring Committee meeting in November 1999.

Over the following months, officials from the Department of Public Enterprise and Iarnród Éireann were in regular contact on the mini-CTC contract. The extent of the difficulties between the company and its contractors were established. However, Iarnród Éireann considered that, if given time to renegotiate a new programme, the total project cost would be £20 million. In the event of having to re-tender the project, the company estimated that the cost would be in the range of £25 million to £30 million.

Against this background, the Department was concerned that pressure to meet Cohesion Fund deadlines would restrict Iarnród Éireann in its effort to resolve the issues. The Department, therefore, put the Commission on notice that the project was likely to be delayed and that this would require a change in the Commission's decision approving the project. It was anticipated that this would be raised at the November 1999 Monitoring Committee meeting.

At that meeting, the Department sought Commission approval effectively to remove the uncompleted signalling work from the rail network track and signalling project and to substitute alternative track work in its place. This was intended to isolate the signalling problem and allow it to be dealt with as a separate issue. The Commission was prepared to consider this option on the understanding that the signalling work would still be completed by Iarnród Éireann, even though it was not part of the project. It was also understood that no additional Cohesion Fund assistance would be available for the signalling project. No final decision has yet been taken on this issue but, while extensions to deadlines are possible, the Commission has recently indicated that it is now less willing to amend the signalling elements of the project.

When the extent of the contractual difficulties and the potential cost increases were established, the Department's concern was to ensure that no decision to proceed further with the project would be taken without a full

evaluation of the circumstances and a re-evaluation of the project by both the board of Iarnród Éireann and CIÉ's. The Department confirmed that a review was taking place within the companies and that Price Waterhouse Coopers had been commissioned by CIÉ's to undertake an independent evaluation of the project. It was decided to await the outcome of that evaluation before taking further action. This report was received in the Department on 13 September 2000 and the Minister received it on 21 September. Discussions are ongoing between the Department and CIÉ's on the issues it raises.

Two major aspects of this project must be resolved. One, it is necessary to be certain that adequate systems and procedures are in place to ensure that due process is followed and that the placing of contracts is done in a fully open and transparent manner. It is critically important that the necessary skills and expertise are available to and availed of by the CIÉ's companies to ensure that the development of specifications for major contracts is undertaken and that contracts are drafted to the highest standards. This is all the more critical given the level of investment at more than £2 billion to be undertaken in the public transport area in the period to 2006.

Two, there is an urgent need to ensure that an appropriate signalling system is put in place. This is an issue of concern to the European Commission as well as to the Department. The need to upgrade the signalling from a safety and operational perspective has been established. The CIÉ's board must now move quickly to evaluate how best to proceed with this project to ensure value for money is obtained from the work done to date and that the project is completed in a cost-effective manner.

Chairman: There is significant interest in this and many people are present. To give everyone an opportunity, Members may ask three questions and priority will be given to committee members. We can return to Members if they have additional questions.

Deputy Higgins (Mayo): I welcome the Secretary General and the other officials from the Department and thank them for their clear presentation on the background to what we agree is an unmitigated disaster.

What was the precise date on which the contract was signed? When was the Minister for Public Enterprise made aware of the problems and what was her reaction? What action did she

ask her officials to take? Given the serious cost overruns on the project and the consequent implications for the taxpayer, do the officials agree that the matter should have been brought to the attention of the Government at the time? Should a memo not have been prepared for Cabinet given that there was a substantial overrun of millions of pounds of taxpayers' money? Did the Department have the contract examined by a legal person to find out if it could have been neutralised or negated or if something could have been done to retrieve the taxpayers' interest in this?

Mr. Tuohy: The contract was signed in July 1999.

Deputy Higgins (Mayo): 1997?

Mr. Tuohy: Yes, my apologies. The Minister was made aware of possible difficulties in November 1999.

Deputy Higgins (Mayo): 1997?

Mr. Tuohy: 1999. The issue of the Government memo is that in the normal sense contracts like this would be dealt with by the semi-State companies in the normal way. The Department would not have been involved in a normal sense other than the fact that there was an EU Monitoring Committee and EU funding involved. Semi-State bodies and commercial ones, in particular, are autonomous in that regard. The Minister does not get involved in the day to day running of those companies. This matter was brought to our attention through the Monitoring Committee, as I said in my presentation, in a series of progress reports from that Committee and the realisation by our own people that there was something unusual. The Minister was informed in November 1999 and we then proceeded, as I said, to seek further information. We then suggested to the CIÉ's board that it have an independent evaluation carried out by Price Waterhouse Coopers, which it subsequently did. That report was received in the Department on 21 September 2000 and the Minister was given a copy on 25 September. That is up to date.

Deputy Higgins (Mayo): In relation to the fact that two paragraphs on page two refer to the fact that once the project was approved the Department sought and received quarterly reports on progress in CIÉ's in respect of the

project. So the Department was getting quarterly reports once this was approved.

Mr. Tuohy: Correct.

Deputy Higgins (Mayo): Further on the submission states that over the following months officials from the Department of Public Enterprise and Iarnród Éireann were in regular contact regarding the mini-CTC contract and that the extent of the difficulties between the company and the contractors was established. Is Mr. Tuohy saying that even though there were quarterly reports and regular dialogue that none of this was brought to the Minister's attention until November 1999?

Mr. Tuohy: The Minister was first made aware in November 1999. Part of what we were doing was to try to establish what the issues were. As I said, every Department deals with a wide range of issues, so not everything is brought to the Minister's attention until it is relevant and there is some information. In this case it was November 1999 before it was brought to the Minister's attention.

Deputy Higgins (Mayo): When did the Department first discover that four Iarnród Éireann employees who have gone to work for the contractors?

Mr. Tuohy: Between April and November 1999 we became aware that some people had moved out of Iarnród Éireann.

Deputy Stagg: I wish to put on the record again that I regret that the Minister, having sought a meeting of this committee to deal with this issue, is not here to answer questions rather than her officials. I welcome those officials and thank them for their assistance.

Who is on the Monitoring Committee and what do they monitor? Who do they report to? From the time when the extent of the difficulty between the company and its contractors was established - it is in the last paragraph on page two - did the management group in the Department, which is chaired by the Minister, not discuss this important matter? It was called MAC when I was in the Department and if it did not discuss this matter would Mr. Tuohy agree that that would be extraordinary if, once those difficulties were established, that that was not brought to the attention of the management committee? It does not say when the extent of the difficulties

between the company and the contractors was established. Does Mr. Tuohy agree that it was extraordinary that the nature and extent of those difficulties was established at an early stage in the regular contacts between the Department and CIE - it was determined that there would be an overrun of double the amount of the original contract - and yet the Minister was not informed of that? The Minister would have to use taxpayers' money to pay the overrun.

Mr. Tuohy: The Deputy may be aware that it is standard procedure regarding EU funding for the members of the Monitoring Committee to be the Department of Finance, the EU Commission, our Department and other Departments as relevant, such as the Department of the Environment and Local Government. The committee meets twice a year, in the first and second halves of the year.

I said in my initial presentation, once we first became aware of a physical overrun, in that there was going to be a delay, and then a financial overrun, i.e. from April to November, it was November before the details were established. That does not happen overnight. Regarding that matter being brought to the management committee's attention, I cannot remember now when that was done but I presume it was when the Minister was informed, as that was the time when the issue of finance became apparent. Until one has established something and has some detail, one is not going to raise every item until it becomes apparent. That is what happened.

Deputy Stagg: As Mr. Tuohy says, once the project was approved the Department sought and received quarterly reports from CIE's in respect of the progress of the project. Did the Department not get an early warning signal from those?

Mr. Tuohy: They did not highlight that.

Deputy Stagg: What were the quarterly reports about if they did not highlight that? This was obviously a problem that was developing apace. Why did the Department wait until it had the details of the problem before informing the Minister? Surely when it had a signal that there was even a potential problem the Minister should have been notified? If I were the Minister and Mr. Tuohy was aware of a potential problem and did not tell me I would be looking for his hide.

Mr. Tuohy: As I said, this evolved over time. When one looks at the progress reports the information discussed was not available there. We rely on the people submitting reports and do not micro-manage projects. That is not the business of the Department or the role of the Monitoring Committee. One evaluates the reports one has but it was not until the ongoing discussions between us and Iarród Éireann that there appeared to be something that needed further clarification. That information became available and was teased out.

Deputy Stagg: Was this contract not due to be completed in 1999? Was there anything coming back from the quarterly reports to indicate that there was no chance of that happening?

Mr. Tuohy: Throughout the whole project they were maintaining that it would be completed on time. Then subsequently in November it was clarified that it was not going to be done.

Chairman: These reports misrepresented the situation that developed.

Mr. Tuohy: "Misrepresented" would probably be too strong. They said that there would be an overrun but not to the significance that is now being talked about.

Deputy Stagg: Time as well as money.

Mr. Tuohy: Absolutely.

Deputy Stagg: The time-frame was doubled, as was the money.

Mr. Tuohy: The level of detail and precision was not available in the Monitoring Committee reports.

Deputy Stagg: It is extraordinary that the Minister was not warned that this was coming down the track, no pun intended.

Mr. Tuohy: But part of that related to establishing the detail. This only evolved over the summer; one came out of that and into the situation, when we had established what the issues were.

Deputy Stagg: We were dealing here with peripheral issues - with signalling lines being dug up and trains using mobile phones because

there were no signals available to them from these contractors. We did not know it but the contract should have been completed.

Deputy Roche: I want to take up the same points. It seems absolutely astonishing that in a contract of this complexity that there was not a full monitoring procedure in place. Would it be the responsibility of CIE and its CEO to put in place - and inform the board and the Department - a monitoring arrangement for a complex matter such as this?

Later this evening we will hear from the CEO of the company and he will say that his own board were not informed about this for two years. I find that astonishing. How could that possibly happen? One would not run a fish and chip shop like this.

When did the complications arising from the Esat contract become evident? When were they notified to the Department? Does the Secretary General or his officials know when they became apparent to the CIE group, Iarnród Éireann and to the company? When they did become obvious to Iarnród Éireann's CEO, did he bring it to the attention of the board? Were the problems associated with the Esat contract communicated clearly to the Department? It is my belief that this contract is the issue which contributes significantly to the cost over-runs. Is that a finding in the Price Waterhouse report?

Mr. Tuohy: As regards the monitoring role played by the Department and/or CIE, there are hundreds of contracts involving the semi-State bodies within the remit of the Department and the Minister. The Department does not get involved in the detailed contracts. These are commercial State companies with corporate governance arrangements whereby the board is responsible. Otherwise we would be involved in micro management and one might as well not establish State companies.

Deputy Roche: I appreciate that but does the Secretary General know whether the chairman or CEOs of CIE or Iarnród Éireann, or both, put in place any kind of monitoring arrangement to look at this issue? It seems astonishing that in his report he says he did not notify the board for two years.

Mr. Tuohy: In the normal sense, project management is a standard reporting mechanism of tracking projects. Any of the State companies - ESB, Bord Gáis, CIE - would have projects

underway all the time and, I presume, have procedures within their companies. However, that is part of the normal corporate governance of a company. The Deputy will appreciate that we do not get involved at that level.

The Deputy also asked when the board of CIE was informed. I do not know when it was informed. I would suggest it is a matter for the chief executive or the board as we do not get involved in that level of detail.

I am not sure of the issue concerning the Esat contract but it was possibly early 1999 when it was notified that there was an issue concerning Esat. This contract came before the Department as a possibility. CIE's came in and, from memory, we had to extend its powers by way of a statutory instrument to allow it to happen as it was not envisaged originally.

Deputy Roche: Roughly what was the date of that contract?

Mr. Tuohy: July 1998 and the Minister introduced a statutory instrument. We did not get involved in the detail of the contract. This is a State company deciding to enter a commercial contract. Our interest was to give it the powers to do so and, on the telecom side, we wished to make sure that what was being done would not be anti-competitive or anything like that. This issue subsequently went to the EU which gave a ruling. The role of the Department was to provide the powers, through the Minister, for it to happen and then to make sure that other issues outside CIE were being handled properly.

Deputy Roche: When CIE came to the Department with the Esat contract, which on the surface looks like a commercial winner, did CIE inform the Department, the Secretary General or his officials that there was a potential conflict in that the contract work which had to be carried out for the Esat installation could run directly counter to the safety installations going on?

Mr. Tuohy: I will ask my colleague, Mr. Fearon, to deal with that question.

Mr. Fearon: No, CIE did not anticipate any conflict between the two contracts. We sought to keep that issue separate in terms of the fact that there was also an EU project. Our understanding was that there would be separate cabling for each project and that they would be accounted for separately.

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Deputy Roche: So the Department's technical assurances from CIE were that there was no conflict between the two contracts?

Mr. Fearon: Yes.

Chairman: To your knowledge, was there a project manager in place at any time?

Mr. Fearon: I understand that a project management company was appointed in 1998 to the mini CTC contract.

Chairman: Twelve months after.

Mr. Fearon: Yes, I think I have that date correct.

Senator Ross: I am not clear of the Department's role in overseeing these types of contracts. Perhaps this could be explained.

Mr. Tuohy: The reason for our involvement in this specific contract is because of the EU Monitoring Committee in which we are involved. This was a part EU-funded project. In the normal sense, we would not be involved in the day-to-day capital projects undertaken by semi-State companies.

Senator Ross: That means the Department was involved in this project on a day-to-day basis or on a more hands-on basis.

Mr. Tuohy: It was very hands off in a sense. The Monitoring Committee deals with the Operational Programmes. It agrees, signs off on and gets approval from the Commission for certain funds and then makes sure the funds are spent in the correct way. It is not a detailed technical involvement. Project management is a job for people at the coal face - the companies themselves.

Senator Ross: However, the Department did get progress reports?

Mr. Tuohy: Absolutely - we got quarterly progress reports.

Senator Ross: Were the reports in writing?

Mr. Tuohy: Yes.

Senator Ross: Can we have copies of them?

Mr. Tuohy: I see no problem with that.

Senator Ross: I know the Department was not involved in the project on a day-to-day basis, but presumably it has seen the contracts.

Mr. Tuohy: No, we have not seen them because we do not get involved in the detailed contracts. We do not second-guess the companies. The corporate governance arrangement is that the companies and the boards are responsible. Otherwise, one might as well do away with the board.

Senator Ross: So the Director General has not seen the contracts and does not know what is in them or what the details are.

Mr. Tuohy: No. We have a copy of the Price WaterhouseCoopers report provided to us by CIE at the end of September. That includes an evaluation of what happened.

Senator Ross: Will the Secretary General answer some questions in light of that report? Were any standard provisions dropped from this standard contract? Did the engineers express any serious reservations about Sasib's competence?

Mr. Tuohy: From the report there were no reservations about Sasib.

Senator Ross: By the engineers?

Mr. Tuohy: No, in the Price WaterhouseCooper report. As regards the competence of the engineers, there is a question mark about their views not necessarily being taken on board in the final decisions.

Senator Ross: Does the Secretary General mean ignored or over-ridden?

Mr. Tuohy: That is an issue in the sense of how the decision was arrived at. It is clear that the engineers had views which were not taken on board in the end. It is not clear from the Price Waterhouse report whether they were over-ridden or dealt with. There is an issue here.

Senator Ross: So the Secretary General would raise the issue of whether the engineers were listened to.

Mr. Tuohy: Exactly.

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Senator Ross: What about standard provisions being removed from the contract?

Mr. Fearon: The Price Waterhouse Coopers report suggests that provisions were dropped but that is disputed within the company.

Mr. Tuohy: The report was commissioned by CIE and we received a copy on a confidential basis.

Deputy Roche: It seems extraordinary. If this report is available to the Department then the committee should have it as it represents the taxpayers who will ultimately have to pick up the extraordinary over-runs because an efficiently run contract by a State-owned company is out of control. I ask you, Chairman, to ensure that members get this report from whatever source.

Chairman: Who commissioned the Price Waterhouse Coopers report which is a confidential document?

Mr. Tuohy: CIE. We received a copy but we can approach the chairman of CIE.

Chairman: It would appear that the Price Waterhouse Coopers report is of central importance to the process in which we are engaged, and before concluding this evening we will discuss that aspect of it in terms of confidentiality. Are there legal obligations in this regard?

Mr. Tuohy: We were given a copy in confidence as a sensitive document. The commercial aspect is also important as there may well be court cases resulting in it. Before we release it I suggest we will have to get the approval of those who commissioned it, as it is not our report.

Deputy Roche: We can ask them when they come before us.

Chairman: We will put these questions to the representatives of Iarnród Éireann.

Senator Ross: What experience did Sasib have of UK and Irish railways?

Mr. Tuohy: They are an Italian group which had not been previously involved in Irish railways.

Senator Ross: Therefore, the answer is none.

Mr. Tuohy: Not to our knowledge.

Chairman: Were any concerns expressed about them?

Mr. Tuohy: Not to our knowledge. They were subsequently taken over by Alstom, which then raised some of the technical and financial issues.

Deputy Daly: Perhaps the delegation could give us some details of the contract. The CTC contract was initially for £14 million and increased to £15.7 million. How much has been spent in this regard and how much EU funding has been drawn down?

Mr. Tuohy: A total of approximately £12.2 million has been expended up to mid September this year, phased as follows: 1997, £4.77 million; 1998, £1.85 million; 1999, £4.37 million and 2000, £1.23 million. I will ask Mr. Fearon to talk about the associated Cohesion Funding.

Mr. Fearon: The Cohesion Funding was at a rate of 85 per cent. Because the signalling element of the project is part of a larger overall project it is difficult to indicate with great precision in terms of the money which has already been drawn down, what related precisely to the signalling and other elements, given the way the payments are structured. Since the claims made last October, no further EU funding has been paid to the company by the Department of Finance at the request of the Department of Public Enterprise. Therefore, there have not been ongoing payments of EU funding in respect of this contract.

Deputy Daly: However, there have been some payments.

Mr. Fearon: Yes, there have been.

Deputy Daly: I would like those before us to comment on suggestions that this has cost £50 million.

Mr. Tuohy: The cost of completing it could be up to £50 million, but there is a cap of £15 million on EU funding. Earlier I said the EU wants the project completed. We looked at the idea of isolating what was spent up to now and tried to

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deal with that as a separate issue. One way or another, the EU funding is capped. Even in the original contract, anything over the original estimate was to be borne by CIE from its own resources. The Exchequer is not paying anything in this regard - funding is by CIE and the EU.

Chairman: So the work has in effect stopped.

Mr. Tuohy: Yes, from January.

Chairman: Which January?

Mr. Tuohy: January 2000.

Chairman: When did it stop?

Mr. Tuohy: To our knowledge, work on the cabling stopped in January this year.

Deputy R. Bruton: You say you do not monitor these projects and that you only became involved in this instance because of EU involvement. Does the Department issue any guidelines to State companies under its remit in relation to the types of contracts into which they enter, the way in which they manage investment projects from the point of view of overruns, or the systems of project management which are expected as a minimum to be in place?

Mr. Tuohy: These were covered by the general EU procurement guidelines which apply to State companies. There are also general corporate governance guidelines for boards of State companies.

Deputy R. Bruton: Have these been issued by the Department of Finance?

Mr. Tuohy: Yes, they are issued through our Department but are guidelines of the Department of Finance.

Deputy R. Bruton: In this instance has the operation complied in every respect with the guidelines of the Department of Finance?

Mr. Tuohy: The normal guidelines are about the corporate governance of the company. Within the company, the board's responsibility is to manage the company. Within that, the board will have various committees to deal with capital expenditure, etc.

Deputy R. Bruton: Do I take it the Department has no guidelines in relation, for example, to the formal tendering which should take place and the types of terms which might be expected in a contract where the State is potentially exposed to the extent of hundreds of millions of pounds?

Mr. Tuohy: There are normal public procurement guidelines and general guidelines of the Department of Finance for public procurement - not just EU procurement. These are brought together in the corporate governance guidelines which are given to semi-State companies and a copy of which we can provide. These companies have their own legal services and access to lawyers, etc. Many contracts are commercial in nature and some are quite new types.

Deputy R. Bruton: According to the accounts £123 million of taxpayers' money was paid to Iarnród Éireann last year. Is it not the case that at the end of the day, if anything goes wrong the taxpayer and not the company picks up the tab and that the Department is standing in the gap between the taxpayer and the company in terms of how business is done? Does the Department see itself as having no responsibilities in ensuring certain approaches to the contracts are observed?

Mr. Tuohy: We do and the way that is done is through the corporate governance arrangements whereby the chairman reports in the annual report and in a confidential report to the Minister-

Deputy R. Bruton: Were the arrangements fully complied with?

Mr. Tuohy: Part of the report from the chairman of each State company concerns compliance with the various guidelines. A number of years ago we changed the requirements on asset disposal and part of this was introduced into each chairman's annual report. The normal corporate governance guidelines must apply. The Department or the Minister can never be involved in the detailed, micro-management of projects.

Deputy R. Bruton: We are not talking about that. It would appear in this case that some performance elements in the contract were dropped in the course of negotiations, which

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obviously exposed the taxpayer, not the company, to considerable costs which now appear to be materialising. Other than a vague statement that companies are supposed to have certain committees, am I correct in saying the Department has no interest in whether projects are running way over cost, whether performance clauses are being dropped, that that is not of interest to the Department and that the Department does not feel an obligation to require companies under its remit to do certain things according to certain-----

Mr. Tuohy: It is not true to say that there is no interest. Of course there is an interest, but the company has a board of directors and a chairperson which is appointed by the Government or the Minister. They, in the first instance-----

Deputy R. Bruton: Yes, but does the Department see any responsibility for monitoring any of these things, such as overruns, terms of contract, project management procedures, etc.?

Mr. Tuohy: In the broad sense, yes, because we have an ongoing relationship with the company where we are tracking both business planning and capital expenditure. In the case of CIE, it is the largest element in our budget and whether it is on target in terms of spending the money they are drawing down is an issue. However, the detailed project management and corporate governance must be at board level. That is why a board and directors are appointed and why subcommittees of the board deal with such issues. If we were to deal with all State companies on a day to day basis and got involved in every-----

Deputy R. Bruton: Does the Department, which has a monitoring role, not think it is somewhat ironic that it is asking a committee of the Oireachtas to investigate a failure of the process within companies under the Department's remit? The Department's role seems to be that it was happy once the rules of Government were out there.

Mr. Tuohy: I did not say we were happy-----

Deputy R. Bruton: The Department does not have any process in place to do anything other than-----

Mr. Tuohy: We have an ongoing monitoring system and relationship with the companies. People within the

division deal with the companies on a daily basis.

Deputy R. Bruton: We have learned that the reports you received did not give any indication of the extent of overruns, rather they contained vague statements that overruns might occur. Do you feel an obligation to ensure a greater level of reporting as there is already a considerable overrun and any residual loss will accrue to your account?

Mr. Tuohy: The Price WaterhouseCoopers report developed from the relationship between the Department and the company. When we became aware that a problem existed, we asked the company to examine it. It commissioned this independent report which was presented to the Minister at the end of September. We have a keen interest in the manner in which taxpayers' money is spent and the manner in which companies operate. We do not get involved in micro-management but we do have a check-up system. Had the report not been commissioned and subsequently presented to the Minister, this matter might not have been brought to the committee's attention.

Deputy R. Bruton: Is the Department represented on the board of CIE or any of its subsidiaries?

Mr. Tuohy: No.

Deputy R. Bruton: Is that the type of corporate governance favoured by the Department or is it merely an oversight?

Mr. Tuohy: The issue of corporate governance with regard to State companies goes back a long time. Questions have been asked as to whether civil servants should or should not be on the boards and what a civil servant's role should be if represented on the boards. Boards are composed of independent directors who are appointed either by Government or the relevant Minister. They have a fiduciary responsibility to the boards. In the past, there have been cases of civil servants being on boards and being faced with a dichotomy between their confidential responsibility to the board and what they could tell the Minister. The Minister is the shareholder and all directors have a fiduciary responsibility in that regard. The question of whether civil servants should be appointed to boards has been debated for many years. The Minister has indicated her intention to appoint a civil servant to the board of CIE at the next available opportunity. All directors, not just civil servants, have responsibilities in this area.

Deputy R. Bruton: Are there any other cost overruns aside from this contract in the companies under the Department's remit?

Mr. Tuohy: We look at all of our big capital projects such as the light rail project. Construction costs have increased dramatically - by up to 17% in some cases - over the past 12 months. We monitor all of our investments on an ongoing basis. I could not say whether the ESB, for example, has cost overruns in some of its projects but procedures are in place for these issues to be flagged. The specific issues here were brought to our attention by the monitoring committee because the project was EU-funded. One would normally expect matters such as this to come to one's attention through the board.

Deputy Roche: That did not happen in this case.

Mr. Tuohy: No, not to my knowledge. This case came to light through the monitoring committee.

Deputy M. Brady: The report states that difficulties were being experienced with the contractor. Were those difficulties specified? It may not be the Department's responsibility but, to my mind, a contract should contain standard performance and penalty clauses. That is the practice in window cleaning outfits, some of which would run a better show than CIE.

A chief signalling and electrical engineer who worked with CIE for almost 30 years left CIE shortly after the ESAT contract was signed. Is that significant? I believe the person in question should be called before this committee. I am very concerned that the ESAT contract, a commercial venture, was given priority over something which was detrimental to the safety of passengers.

Mr. Tuohy: The position of the chief signalling and electrical engineer is a matter between him and the company and I cannot really comment on that.

Deputy M. Brady: Were you advised that he had resigned?

Mr. Tuohy: I stated earlier that the Department was made aware of that but it would not be for us to get involved in the details of people coming or going from companies. People constantly move throughout the industry. I would not imply that any such moves were significant in any way although the Deputy may do so if he wishes.

The ESAT contract commenced before the mini-CTC and the contractors used for the former were subsequently used for the mini-CTC. That is where the issue begins to get complicated. The Price WaterhouseCoopers report indicated that the breakdown of costs between the two proved difficult.

Mr. Fearon: The difficulties with the contractors were initially signalled to us in October 1998 in terms of delays in the project. However, the company was confident at that

time that it could resolve this issue quite speedily and that the project would be back on track within a reasonable time. They also indicated that there could be some cost increases. It took us some time to determine the exact nature of the contracting difficulties. In November, we ascertained that the difficulties with the contractors ran much deeper than we had previously thought.

Deputy M. Brady: So the Department was drip fed on a "need to know" basis?

Mr. Tuohy: It took some time to get the full picture.

Senator O'Dowd: It was originally thought that the work would cost in the region of £14 million. I understand £12 million of the original tender price has been paid. How much work does that actually represent?

Mr. Fearon: There were approximately five elements involved in the overall project and reasonable progress was made on many of those. There are clearly difficulties with the cabling work and the connection of the cable to the equipment.

Senator O'Dowd: What amount of work remains to be done?

Mr. Fearon: Much of the cabling work remains to be done, including the connection from the cables to the hardware at the individual stations and to the signals.

Senator O'Dowd: What value for money was there?

Chairman: How many stations are there?

Mr. Fearon: There are 27 stations, none of which is completed.

Senator O'Dowd: When will they be completed?

Mr. Fearon: That is impossible to say at this stage because the issue of the contract must be sorted out.

Senator Ross: If that causes delays, work will stop?

Mr. Fearon: It will.

Senator O'Dowd: What value have we got for the £12 million spent?

Mr. Fearon: Progress has been made in a number of areas. There is a large proportion of cable laid. Equipment has been purchased for the telecommunications and radio systems. Progress has been made also in relation to systems design and specification. It seems there has been

reasonable value for money in relation to the work done to date. Clearly this is an issue which we must examine in detail. That is why we asked to separate this work from the remainder of the EU contract and that Iarród Éireann and CIE review the whole signalling project in its entirety and come back to us with proposals as to how they would use the work that has been done to date in an effective manner to deliver a signalling project.

Senator O'Dowd: In view of the serious overruns in relation to the project, what approach, if any, should be made in the future to the Comptroller and Auditor General or the Department of Finance to consider this whole issue?

Mr. Tuohy: We have just received the report and we have been in discussions with the board of CIE since the end of September. On the value for money aspect, potentially there is the Esat cable, side by side with the fibre optic cable. I believe there are potentially six strands available throughout the country to many remote rural areas. That is a very valuable asset. If this system is up and running properly, together with the CIE fibre optic cable, it means capability is being brought to some of the rural towns throughout the country. This means great opportunities, given the value on the fixed line for Eircom. This is a very valuable asset. There is the value for what has been done up to now in the sense that the work has been done. Mr. Fearon made the point that we are trying to separate the two contracts to get a handle on the difference between the two of them. In the longer term, value for the fibre optic cable which is available is quite phenomenal because this will be in place throughout the country. In today's environment, that is a very, very valuable asset.

Senator O'Dowd: Have you discussed the matter with the Comptroller and Auditor General or the Department of Finance?

Mr. Tuohy: We have passed on some of the material to the Department of Finance which is on the monitoring committee. I have not been in discussion with the Comptroller and Auditor General. We are still in the process of establishing the details. The first responsibility of the board of the company is to the Minister, then to the Government and then to the Comptroller and Auditor General.

Deputy Currie: What has been the time overrun on this job?

Mr. Tuohy: It should have been completed by the end of 1999.

Deputy Currie: It has overrun by almost a year. Has there been an assessment of the increased danger which

must have resulted from a failure to complete the project on time?

Mr. Tuohy: The existing danger exists. This was meant to improve safety on the line. The question is hypothetical in the sense that you are asking, "If you did a cost benefit analysis, why are you doing this in the first place?". There is cost saving involved in increasing safety and efficiency, therefore, there are two sides to the issue. It is more of a theoretical exercise to say, "If you put this in, you will increase safety on the line" as opposed to asking, "Has it got worse because it is not in place?"

Deputy Currie: The reason this work was being done was to increase safety on the line. The fact that the work has overrun by 12 months means there has not been increased safety on the line over that period. Some people would consider safety on the line more important than the money which apparently has been wasted. I recall the Minister saying in the House on many occasions that safety on the line would be the first priority.

Mr. Tuohy: It is the first priority given the amount of investment in the safety programme and the independent audit of the safety programme. The auditors raised some of the issues we are now discussing such as using the non-manual method of digging to put in the cable. These issues arose from our safety programme. Safety is not just about the infrastructure, it is also about management.

Deputy Currie: Yes, but safety was a problem. We are now a year on and God only knows how long it will take to complete the project, therefore, the safety aspect must be a continuing concern.

Mr. Tuohy: Safety on the railways is always a concern. This is why so much is being invested in the project.

Deputy Currie: If it were possible to get the work started again tomorrow, how long would it take to finalise it?

Mr. Fearon: I do not know how long it would take to finalise the work.

Deputy Currie: One year or two years?

Mr. Fearon: I expect it would be finalised within a year if it started immediately.

Deputy Currie: Despite the fact that the work started initially because of concern about safety, we are now being told it will be two years down the road before something is done about the initial worry of safety.

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Mr. Fearon: Safety is an element in the overall project with which there are delays. We faced difficulty in November when the size of the cost overrun arose. Delays arose also because of contract difficulties and how to move the project forward in the best possible way. The question of the cost increasing to £40 million has not been accepted in the Department. Even last October and November, when we were dealing with this issue, the cost suggested to us was less than £20 million. When we understood the cost could be significantly more, we sought a re-evaluation of the entire project to see if other issues could be addressed in terms of safety and other benefits that might accrue from that level of investment.

Deputy Currie: When did officials first become concerned about the difficulty?

Mr. Fearon: We began to get concerned in April that we had not got the full picture in terms of the difficulties involved.

Deputy Stagg: I thought you said October, 1998, earlier in answer to the same question.

Mr. Fearon: No, I said we were informed of delays in October. However, they were not intolerable delays at that stage. As the picture continued to emerge, and certainly by April, we were concerned that there were very serious difficulties and we continued to question and probe the project from the point on.

Deputy Currie: So you became aware of difficulties in October, 1998, and by April, 1998, you were very concerned about the situation. Why did you not inform the Minister until November, 1999?

Mr. Fearon: It was April 1999.

Deputy Currie: Let us get this right. In October 1998 Mr. Tuohy first became aware of the problem. By April 1999 he was very concerned, to use his own words. The time which elapsed between April 1999 and November 1999 was eight months. Eight months elapsed before a difficulty about which he was very concerned was transmitted to his Minister.

Mr. Fearon: That is correct. We were concerned that the difficulty might be greater than we understood from Iarnród Éireann at that stage. The company continued to be confident that the problem could be solved within a short time and with a relatively small increase in cost.

Deputy Roche: The company was misleading the Department.

Mr. Fearon: It was a question of establishing with a

greater degree of certainty what the level of difficulty was. It took until later in the year for the full picture to emerge. We were assured that ongoing discussions were taking place between Iarnród Éireann and the contractors and that they hoped to solve the difficulty they faced.

Chairman: Did the difficulty concern money or technical matters?

Mr. Fearon: It concerned technical matters which had cost implications.

Chairman: So it concerned money.

Senator Ross: Were they misleading the Department? Were they concealing anything?

Mr. Tuohy: It took some time to discover the full facts.

Senator Ross: Were they obscuring the truth?

Mr. Tuohy: It would not be for us to ascribe motives.

Senator J. Cregan: On page five of the corporate governance document sent to us by CIE I read, "The board of CIE represents the shareholder's interest and is responsible for ensuring the shareholder's mandate is fulfilled". Do Mr. Tuohy and Mr. Fearon think the shareholder's mandate was fulfilled in this case? Information was given on a drip-feed need to know basis and the shareholder's mandate was ignored.

Mr. Tuohy: Not fulfilling and ignoring the shareholder's mandate are two separate issues. We were not happy with the level of information we were getting. A shareholder in any company is entitled to information. It is important, particularly in a State company, that the Minister receives the information he or she requires. The team dealing with the project sought information. They were given certain assurances, they did not feel happy with what they got and began to probe. We deal with many State companies and there must be an element of trust in any relationship. We trust people when they give us information unless we find out to the contrary. As matters evolved and we got more information we found the situation was not what we were told originally. This puts things in a time context. Hindsight is a great art. One can look back and ask why one did not know something six or 12 months previously. As soon as we became aware of how seriously we believed the problem to be we asked for a report to be done independently and sent to the Minister. That is standard procedure with issues such as this. Members who have been in Government will appreciate that is the normal way of doing business.

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Senator J. Cregan: Was the mandate fulfilled in this case? Reference was made to the Minister giving consideration to appointing civil servants to the board. If that had been done might the mandate have been fulfilled?

Mr. Tuohy: Every board member, and not just the civil servant, represents the shareholder. Every board member has a fiduciary responsibility and a responsibility to the shareholder. A corporate governance structure is put in place for tracking and monitoring. The Minister can not be involved in every detail but when the Minister requires information it is expected that the information will be given as openly and forthrightly as possible.

Senator J. Cregan: Which it was not in this case.

Mr. Tuohy: It does not appear so but I do not know. The information took time to come. I am not saying there was an effort at concealing information but maybe there was an uncertainty among the people dealing with it. There was a confidence that the project would be a little over target and over time and this changed. It is probably a matter for the people who gave that information. It is very difficult for me to say what they were trying to think or do.

Deputy O. Mitchell: I am annoyed that we have not been furnished with a copy of the PricewaterhouseCoopers report. I assumed we would be. I contacted the Department when the report did not arrive on my desk and was refused access to it. If the Minister has asked us to consider this matter and it has already been considered at public expense by PricewaterhouseCoopers, the information should be available to us. To discover what happened and what went wrong in this case we are dependent on newspaper reports. The timing and sequence of events are critical. We should have this information if we are to ask any sort of intelligent questions or to get close to the truth.

Chairman: That question will have to be put to CIE or Iarrród Éireann when they come to the committee. It was they who commissioned the report.

Deputy O. Mitchell: I appreciate that. I would have thought the Department whose Minister requested our investigation of the matter would have ensured that the information was available to the committee.

Chairman: I understand that was not within the remit of the Minister.

Deputy O. Mitchell: I see. At what point did the Department become aware of CIE's intention to award a further contract for a telecommunications company to the

company which was already involved in the signalling project? Was that company already involved in the signalling project at that stage or did it only come in when the telecommunications project began? Was the Department aware at that stage that the project management of the signalling project was already running over budget and over time? Was anyone in the Department aware that this might have implications for the efficient execution of the project for whose funding they were responsible? Did it occur to anyone in the Department that the higher levels of performance required of a private sector client might impact on the performance when the same company was involved in both projects? For instance, did anyone know that the method normally used for cabling is mechanical ploughing and that this, by destabilising the soil, prevents further cabling in the area for quite some time?

Mr. Tuohy: I think I am correct in saying the Esat contract was before the Mini-CTC contract.

Deputy O. Mitchell: No.

Mr. Tuohy: The Mini-CTC contract was first and then the Esat contract cut in. Esat was using the company Deputy Mitchell is talking about and they were subsequently taken on to do the other work, the Mini-CTC.

Deputy O. Mitchell: I understand from newspaper reports that the reverse is the case.

Mr. Tuohy: I apologise. They were doing the mini-CTC and they then took on to do the Esat.

Chairman: I want to get this clear. I understood from your earlier evidence that Esat had commenced its work first, and subsequently there was a contract regarding Mini-CTC.

Mr. Fearon: The contract for the Mini-CTC project was placed in July 1997.

Deputy O. Mitchell: That is the public contract.

Mr. Fearon: Yes, the mini CTC public contract.

Deputy O. Mitchell: When did that begin exactly?

Mr. Fearon: July 1997. The agreement with Esat was completed in July 1998.

Deputy O. Mitchell: It came late.

Mr. Fearon: It came later.

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Chairman: Was Esat at work prior to that?

Mr. Fearon: At its own risk, Esat was at work.

Chairman: Prior to the signing of the contract.

Mr. Fearon: That is correct.

Mr. Tuohy: It was using the company about which we are talking, Murray Telecom.

Deputy O. Mitchell: It was using that company prior to that company getting involved in the public contract.

Mr. Tuohy: That is correct. Let me take up the other issues raised by the Deputy - project management and the systems used. The decision to award the contract was made by Iamrod Éireann which had available to it both technical and engineering experts, signalling and track. This expertise is not available to the Department. As I have explained from the beginning, we were not involved in the contract. It was a function of the company which had available to it the necessary expertise. While the mechanical ploughing system is much easier than the hand or manual one, on foot of the safety studies conducted, it was not suitable because it was causing safety problems. This contributed to the cost overrun.

Deputy O. Mitchell: Was the mechanical ploughing system used by the telecommunications company in the case of Esat?

Mr. Tuohy: It was.

Deputy O. Mitchell: That would have had an effect on safety in the case of the public project in terms of destabilising the soil and track, not to mention maintenance.

Mr. Tuohy: It led to the cost overrun; in other words, to our knowledge, the Esat contract was based on the use of the mechanical system. This made it imperative for the other project to be done by hand, which is much more expensive.

Deputy Stagg: I seek clarification on that point. The contract with Esat was signed in July 1998. Is that correct?

Mr. Tuohy: That is correct.

Deputy Stagg: The other-----

Deputy O. Mitchell: That is the contract with CIE, rather than with the company.

Mr. Tuohy: Exactly. The agreement with CIE was

signed in July 1998, but Esat started work before that at its own risk.

Deputy Stagg: At its own-----

Mr. Tuohy: We were told that it had started work and if it did not get the contract with CIE, it would have been unable to proceed.

Deputy Higgins (Mayo): But you allowed it onto the property.

Mr. Tuohy: We did not.

Deputy Higgins (Mayo): That is what I am saying, it was allowed onto the property without an agreement.

Mr. Tuohy: That is our understanding.

Chairman: And probably without planning specifications.

Senator Callanan: Was it trespassing?

Mr. Tuohy: I do not know; I am giving the facts.

Deputy Stagg: This is a very important matter. We are talking about a company which moved in without a contract and gazumped the best form of cable laying in advance of the mini CTC contract, which then had to dig by hand giving rising to a huge overrun for the taxpayer to the benefit of Esat which, so far as we know, was trespassing.

Mr. Tuohy: The facts-----

Deputy Stagg: I cannot believe what I am hearing.

Deputy Higgins (Mayo): Was the matter of Esat, the company and the mini CTC contract brought to the attention of the Department at any stage? We are talking about the value of the fibre optic cable and the lack of a conflict of interest. Was the fact that the company, MNL, ruptured an Esat cable, which has resulted in a compensation claim in excess of £1 million, ever brought to your attention?

Mr. Tuohy: It was not brought to my attention.

Deputy Higgins (Mayo): But you are aware of it.

Mr. Tuohy: No.

Deputy Higgins (Mayo): But you are aware of it now.

Mr. Tuohy: Only now.

Deputy Roche: This indicates something quite extraordinary. I commend Mr. Tuohy on how evenhanded he has been with the company. We have just heard from Deputy Higgins that there was a rupture of a cable which will, ultimately, cost the taxpayer £1 million. We have heard in response to Deputy Mitchell that the company was allowed to trespass on property, upsetting infrastructure, which will cause major problems. We have heard that the Department was not in the full picture and not dealt with in a candid or forthright way by the CIE Group. It seems that there is an extraordinary secrecy culture in the CIE Group, that it does not inform the Department of anything. I am aware that earlier this year the chief executive officer of the group had a very substantial increase in salary which was not notified to the Department. Am I being wrong, therefore, in characterising the attitude of the group to the Department as being one of absolute secrecy, only allowing you information, in the final analysis, when you bully it out of it, that it is like drawing dragon's teeth? It is astonishing, for example, that the chief executive officer of CIE should receive a salary increase which has not been notified to you or the Department of Finance and which flagrantly breaches every pay guideline in the State-sponsored sector.

Chairman: These are matters which we can put to CIE and Iarnrod Éireann.

Deputy Roche: I want to find out before I put them to CIE how in the name of God the Department can be continuously kept in the dark by the board of a company and its chief executive officer when, as Senator Cregan said, the board represents the shareholders' interests and is responsible for ensuring the shareholders' mandate is fulfilled. If the board was a dog, it did not bark and I want to know why. Am I correct, for example, on the issue of salary?

Mr. Tuohy: I did not think we would discuss the salary today.

Deputy Roche: It is an issue of information.

Mr. Tuohy: We do not normally discuss individual salaries and contracts, but we are in discussion and correspondence with the chairman about the salary of the chief executive officer.

Deputy Roche: I do not want to badger the Secretary General, Mr. Tuohy, but it seems that virtually everything going on in CIE is shrouded with a masonic secrecy so far as the Department is concerned. You cannot penetrate the dome of secrecy. I will be asking the chief executive officer if it is not the case that the previous chairman agreed with him in secret an increase in salary, which was notified to you. You are the Accounting Officer for the Department

which will, ultimately, pick up the tab.

Mr. Tuohy: The Department is in correspondence with the current chairman with whom we have a very open relationship and who has been more than forthright and helpful.

Deputy Roche: How would you characterise the relationship with the chief executive officer?

Mr. Tuohy: We have an ongoing relationship with all chief executive officers.

Deputy Roche: I take your point.

Senator L. Fitzgerald: I was very interested in the last comment of the Secretary General.

Mr. Tuohy: What last comment? I did not make a comment.

Senator L. Fitzgerald: You said that you have an ongoing relationship with all chief executive officers.

Mr. Tuohy: Professional relationships with all chief executive officers.

Senator L. Fitzgerald: That is the comment to which I was responding. In your opening statement you said that Iarnrod Éireann had initially intended to undertake the project with some external assistance, but it subsequently decided to seek tenders to have the full project implemented on a contract basis. Would that be commonplace? Would the Department have any reason for querying why the company should seek to employ external contractors?

Mr. Tuohy: Because of safety and other issues, there is a realisation within many State companies, not just CIE, that there is a need for outsourcing many contracts. Many do not have the resources inhouse to move things quickly. One would not question this in any way as a decision of the company concerned.

Senator L. Fitzgerald: There is another matter more appropriate to Iarnrod Éireann on which I seek your observations as Secretary General of the appropriate Department. In its annual report and financial statement for 1999 Iarnrod Éireann refers to European Union grants. I am not clear on what is involved. Under the heading "Total EU Grants" a figure of £109.684 million is included under the subheading "Received". It is also stated, however, that an additional State grant of £76 million was received in 1999 to augment internal funding for the railway safety investment programme, 1999-2003. Huge sums of money are being thrown around in this

annual report. I do not understand them. It goes on to say that £29 million was credited to profit and loss account and the balance of £47 million was credited to deferred income and will be amortised to the profit and loss on the same basis as the related assets are depreciated. Is it commonplace for Departments to deal with such matters in this way in their annual accounts? For example, the additional State grant of £76 million was, according to the statement here, intended to augment internal funding for the railway safety investment.

Mr. Tuohy: The year 1999 was the first year in which we gave money for the safety programme. That is why it is flagged up specifically there. The committee has dealt with the safety issue on a number of occasions, so it is familiar with it. The Minister got a commitment from Government to upgrade the railways and to bring them to an acceptable level of safety. There is also EU funding under the former Cohesion Funding and now under the current National Development Plan for rail infrastructure, buses and so on. I do not have the accounts in front of me, but 1999 was the first year in which we funded the rail safety programme. Part of that was that we wanted to identify that as rail safety upgrading.

Senator L. Fitzgerald: Would you front-load in that way, if that is the correct term? You are giving £76 million up-front, which it appears was not used.

Mr. Tuohy: It was used. Otherwise it would not be in the account. I do not have the accounts in front of me so I cannot comment on them.

Senator L. Fitzgerald: It says here that £29 million was credited to the profit and loss account in 1999 and that the balance of £7 million was credited to deferred income. What does that mean to a layman like me, if the £76 million grant was to augment internal funding for the railway safety investment programme?

Mr. Tuohy: I do not have the figures, but I can come back to the committee on them.

Senator Fitzgerald: Did any of the money, for example, go on the contracts about which we are talking? That is what we are here to tease out the details of.

Mr. Tuohy: Not to our knowledge, but I can come back to the committee. I do not have the figures in front of me.

Chairman: I realise that. You will be in again any way. You need have no doubt about that. I will take Deputies Stagg, Richard Bruton, Dick Roche and Gay Mitchell for concluding questions at this stage.

Deputy Stagg: We are dealing with a contract that

grew, very strangely, from £14 million to a possible £50 million. I am very anxious to know what is being proposed now to provide the necessary rail safety that this was intended to provide. Has the contract been terminated? If it has not, why has work stopped for nearly a year? Why is it not ongoing, as bad as it was? Can you explain why you never asked for a copy of the contract, given that you had to monitor it to see whether it was working, that various reports were sent to you and to other people, and that you had to report to the Minister? Did you ever ask for a copy of the contract? It is very strange that you were trying to monitor a contract and its implementation without knowing what was in it.

On the PricewaterhouseCoopers report, if we cannot get it from sources other than yourselves, the committee will be seeking to compel whoever has it to give it to us. I agree with Deputy Mitchell that it is an essential document for us to have.

I want to go back again to the management committee. I find it absolutely extraordinary that you became aware of some difficulties in October 1998, by April 1999 you were seriously concerned, in your own terminology, and that you did not tell the Minister until November 1999. There is a section in the MAC agenda, unless it has been changed since my time there, for flagging banana skins, something coming down the line that is not normally predictable. This was a very clear one - overruns on the primary issue of rail safety that the Minister has flagged as her big thing that she was going to do during her term of office. I find it absolutely extraordinary that senior officials in the Department had that information to one degree or another from October 1998 until November 1999 without the Minister finding out about it. I am amazed that within the Department system it did not even leak to the Minister if she was not told officially by either the Secretary General or the Assistant Secretary dealing with it.

The next point arises from that. The Minister was fully informed, and I accept what you are telling me, one full year ago about this matter. These are matters we will have to address with the Minister. It is absolutely extraordinary that we have had a number of debates in the House about safety since the Minister was fully informed, and this never surfaced in any of the conversations we have had with the Minister. She never gave any indication to the House that she was aware of this until last week. That was the first time we became aware through the Minister that there was an issue, and the only reason we became aware of it was that it was that the papers published it.

The last question I want to put to you is about the issue of contracts of employment. Do you find it extraordinary that people at senior level in CIE, which is under the Department's remit, could have contracts of employment that allow them to be sat across the table from contractors negotiating very large contracts of £14-£50 million, depending on where one looks in the contract and, within days, months or weeks, they are entitled by their contract of employment to switch to the side of the contractor they

were previously negotiating with? Do you find that extraordinary? Certainly the public does. Would you agree that in the governance of the company there should be stipulations for employees who are engaged at that level to ensure that would not be possible and that there would be a freezing period or a cold bin period before they could switch to what could generally be described as the other side?

I have a technical question which I am not sure I should put to you. It is again about what has loosely been described as trespassing by ESAT prior to it having any contract from Iarnród Éireann or CIE to lay cables and proceeding with work with no contract. That is my understanding of what you said to me. They eventually got a contract in 1998. At that stage the best and cheapest method of laying cables for CIE had been excluded from use by the previous unofficial entry into the CIE property and the laying of cables by ESAT. Why was it not possible to lay the two cables together?

Mr. Tuohy: Can I quickly take some of the questions, Chairman? On the question of informing the Minister, the Deputy will be aware, that when one has information that is valuable, one then makes the Minister aware. We did not have that information, as I made clear, until November 1999 when the Minister was informed. Up to then we knew there would be a small overrun, or what we were led to believe would be a small overrun and a short delay. As I said earlier, we deal with hundreds of projects. You will know from your time in the Department that there are numerous projects going on in all the Semi-State companies, so there was nothing unusual in the possibility of a short delay or a small overrun.

Deputy Stagg: That was not the case in April 1999.

Mr. Tuohy: There was a concern that we were not getting the right information. That is when this digging down started. I made that clear a number of times.

Deputy Stagg: Mr. Fearon described it as serious concern.

Deputy Currie: About the situation, you did not say you were seriously concerned you were not getting the right information. You said you were seriously concerned.

Mr. Fearon: That I was not getting the right information.

Mr. Tuohy: He just said he was seriously concerned. However, he made it clear during the discussion, during the debate with yourselves that we drilled down and got the information and as soon as that was available we took the action, in November, and subsequently we made it clear that the money stopped and so on from that.

Mr. Currie: When I asked the question in relation to your becoming aware in October 1998, becoming seriously concerned in April 1999, and why it was that the Minister was not informed until November 1999, you did not say in relation to April 1999 that you were seriously concerned that you were not getting the right information? You said you were seriously concerned about the project.

Mr. Fearon: I was seriously concerned at that stage but it had to do with finding out precisely what was happening and whether the level of confidence within Iarnród Éireann that the issues could be solved for relatively small amounts of money and within a relatively short timescale was reasonable. I worked on trying to get to the bottom of that over the following couple of months.

Deputy Currie: The following eight months.

Mr. Fearon: Seven months.

Deputy Stagg: Is it not unusual if you were seriously concerned not to inform the Minister? How seriously concerned would you have to be before the Minister would be informed?

Mr. Fearon: The level of delay and the level of cost overrun mentioned at that stage in the context of all the programmes we were dealing with was not of such an order that I felt it was necessary to inform the Minister.

Deputy Stagg: You are a senior official and not a clerk that would be concerned about small amounts.

Mr. Fearon: No.

Deputy Stagg: You are a senior official in the Department. You have direct access to the Minister all the time and you had cause for serious concern. I cannot understand in a situation where you were meeting the Minister on a regular basis that you did not say you were seriously concerned about this contract with the signalling system in CIE given that the Minister's primary concern was safety. She was boasting about this contract--

Mr. Tuohy: At that stage we did not know then what we know now.

Deputy Stagg: You knew enough for the assistant secretary of the Department to be seriously concerned.

Mr. Tuohy: No, he was principal officer at the time.

Deputy Stagg: That is a fairly high ranking officer

Mr. Fearon: We were monitoring not only this project which was part of a bigger project, the vast bulk of which

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did come in on time and pretty much on budget, but all the railway investment programme and the rest of the public transport investment programme. Within all of that range of projects there were constant changes in costings or timings. There were always issues that had to be sorted out on an ongoing basis. Some resolved themselves fairly quickly, others were of a more detailed nature. The full nature of the problem in this case did not become apparent to me until November. At that stage when I realised the confidence that Iarnród Éireann had in solving the problem quickly or within a reasonable budget seemed to me unreasonable I informed the Minister.

Deputy Roche: In November 1999 you finally concluded after 13 months of concerns, which were growing and mounting in your mind, that CIE had not the capacity to deliver this contract. Is that a fair summary of how you felt at that time?

Mr. Fearon: Yes.

Deputy Roche: Between October 1998 and November 1999 obviously your personal concerns and doubts were beginning to grow. With whom were you liaising in CIE at that time?

Mr. Fearon: I was dealing with programmes and projects in CIE and with Iarnród Éireann directly.

Deputy Roche: One final point on it —

Chairman: Deputy Richard Bruton wants to come in.

Deputy Roche: Just by way of clarification on the time, the CEO of the company who happens also

to be the chairman of Iarnród Éireann makes the point that the board of his own company was not told until November 1999. It seems to me that the board was only told by the CEO that there was a problem on this when you concluded and informed the company that you would inform the Minister there was a problem. Is that an unreasonable read to take of the coincidence of times?

Mr. Fearon: I am afraid that is unreasonable. I have no reason to believe — I did not inform anybody in CIE that I was on the point of notifying the Minister.

Deputy Roche: You must be making the odd 'phone call to CIE.

Mr. Fearon: Certainly I do but to the best of my knowledge I did not deliberately indicate to the company that I was going to report to the Minister.

Deputy Roche: It is a remarkable coincidence that it was only at the same time as you decided that this was gone of the rails - pardon the pun - that the board was also informed that it was off the rails.

Mr. Fearon: We were also dealing with it in the Cohesion Fund monitoring committee process as well. That date was coming up in November as well.

Chairman: I must come back to Deputy Stagg and Deputy Bruton.

Deputy Stagg: Before leaving that point, I am not satisfied with your answer in which you say you were seriously concerned in April and that your concern increased steadily to November to a point where you were absolutely clear that the matter had to be reported to the Minister. If you were seriously concerned in April and you became more concerned it is amazing the Minister was not informed in the interim before you had a final disaster story. I am not satisfied with that.

Deputy Currie: Would it have been Mr. Fearon's responsibility at the time to have told the Minister if he had reckoned that that was necessary?

Deputy Stagg: Did he tell his assistant secretary at the time?

Mr. Fearon: I would have informed the Minister directly at the time.

Deputy Stagg: Directly.

Deputy Currie: It would have been Mr. Fearon's direct responsibility to do that.

Mr. Fearon: I believe it would.

Deputy Stagg: In that interim, between April and November, did you inform the assistant secretary?

Mr. Fearon: I am not sure whether there was a formal communication to the assistant secretary at that stage.

Deputy Stagg: One does not need to have a formal communication. Did you discuss it or tell him of your concern?

Mr. Fearon: I think it would have been unusual if I had not mentioned at some point that this problem existed.

Mr. Tuohy: This must be put in context. There were many projects running in parallel. There was still the presumption up to then that this was on target or a little over it. It was until it became clear that the information that

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was being supplied was not turning out to be the way it was--

Deputy Roche: Were any of these assurances from CIE in writing?

Chairman: I will not allow this. We have two other Deputies. I am going to stick rigidly to what was arranged.

Deputy Roche: Sorry.

Deputy Stagg: I have asked a number of questions.

Mr. Tuohy: I will take them quickly if that is OK. The issue of the contracts of employment and the potential conflicts of interest were raised. In the normal sense contracts have a cooling off period when people leave although Denis O'Brien has left ESAT and is about to take over Eircom.

Deputy Stagg: The rules do not apply to carpet-baggers.

Mr. Tuohy: I am not going to comment.

Deputy Stagg: I am sure you cannot.

Mr. Tuohy: Contracts are different in different organisations and companies. In the public service tradition people tend to have a cooling off period. Generally in the private sector people tend to cool off before moving into an area they had been dealing with. Every operation is different.

Deputy Stagg: What is the norm in CIE?

Mr. Tuohy: I do not know, I did not ask the Minister. It is a matter for CIE. On the issue of trespassing, it was with the agreement of CIE that ESAT entered the lands.

Deputy Stagg: Without the contract.

Mr. Tuohy: I think it was agreed without the contract. The word trespassing is probably incorrect in that sense. The other issue is about the contract not being signed.

Deputy Stagg: Did you at any time ask for a copy of the contract you were trying to monitor?

Mr. Tuohy: No. There are two things: one is the outcome or the outputs and the other is the detailed legal contract. We agree the overall contracts and say we will do the following. We do not get into the detailed specifications of the legal contract because that is micro managing the project. We take the overall contract and expect those who are managing it to pass on the

information.

Deputy R. Bruton: In relation to Esat moving ahead and then necessitating hand digging, am I right in saying that the necessity for the hand digging came as a consequence of a report into safety? When that safety report indicated, some time in 1998, that hand digging would be necessary, what happened to the arrangement with Esat? Did that safety report require that the Esat activity would stop because of this obligation? When did the safety report signal that hand digging was necessary, or was CIE legitimate in its belief that it could plough it in again as it had ploughed in the first one? The question of who might be to blame in all of this is important.

Mr. Tuohy: From memory, the IRMS report flagged the issue of the cables and the need for hand digging, and at that stage the Esat contract was completed. I think that is the case.

Deputy R. Bruton: It is important to get the date of that because it sounded like Esat had moved in---

Mr. Tuohy: Very quickly.

Deputy R. Bruton: ---in a very high-handed way whereas if the safety report came out after it had completed the work, it might be different.

Mr. Tuohy: I do not have the details; the CIE people involved would be aware of the specifics. From memory the position was that the IRMS report flagged the difficulties, and the contract was done at that stage.

Deputy R. Bruton: I want to ask about the emergence of the over-run. I was amazed to hear the Minister say she was made aware of that by outside sources, that that is the way it came to her attention. Were there not some shamed faces in the Department that the Minister became aware of this from outside sources? Can the emergence of the cost over-run be traced? We know that in April it was only a 10% over-run and that some of the executives left in January, even before the initial 10% cost over-run, but by 28 September, at the Iarnród Éireann board meeting, we hear that it would cost considerably more, and then in November the conclusion was reached that the PricewaterhouseCoopers report had to be put in. How did a 10% over-run, which appears to have been accepted in good faith in April, suddenly escalate? What were the reasons offered as to what had happened from the time of the April report to the September report?

Mr. Tuohy: Mr. Fearon was on the monitoring group.

Mr. Fearon: The information coming to us continued to be that Iarnród Éireann was confident of sorting out this

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issue, possibly for something of the order of £20 million, or, if the matter went completely against it, it would be £25 million to £30 million. The fact that the price could be perhaps double that, which has been mentioned in the media, is something that has never been formally conceded by Iarnród Éireann or CIE. When they were dealing with us there was a prospect that this project could be sorted out at a total cost in the order of £20 million and that it could be done—

Deputy Roche: It is almost £6 million of an over-run.

Mr. Fearon: —within a reasonably short period of time.

Deputy Higgins (Mayo): Even though Mr. Fearon knew that the cost over-run would be substantial, he still allowed EU moneys to be spent on the project and the project to continue.

Mr. Fearon: No, I did not do that. We reported the anticipated costs at the earlier stage to the monitoring committee by November, the figures we were being given were of the order of £17 million. There was a claim for payments up to October and even though that was drawn down, it was not paid out to the company and EU funding has not been paid out to the company since then until we resolve this issue.

Deputy Higgins (Mayo): So you stopped the payments at that time?

Mr. Fearon: Yes.

Deputy R. Bruton: Mr. Tuohy indicated that it was decided to await the outcome of the PricewaterhouseCoopers review before taking further action. Can he indicate the action the Department now intends to take in relation to this matter?

Mr. Tuohy: In the first instance it was CIE who commissioned the report.

Deputy R. Bruton: I am just quoting Mr. Tuohy when he said that the Department was concerned to ensure that no decision would be made to proceed further without the study. He then indicated that it was decided to await the outcome of the PWC review before taking further action. That is the Department speaking. I am trying to clarify what further action is planned or envisaged?

Mr. Tuohy: The first issue is to put it back to the board of the company, which has the primary responsibility. That is where the initial action has to be taken. We will get feed back from them and discuss it further to see what we will do but the Deputy will have gathered that the Minister

and the Department are particularly concerned about this matter but we want to give the board the opportunity to come back to us in the first instance. They are primarily the people who are project managing this, not the Department. The primary responsibility rests with the company first and we have been clear on that from day one.

Deputy O. Mitchell: My question is to Mr. Fearon who I understand liaises mostly with CIE. We do not know a whole lot about this issue other than the fact that there has been monumental mismanagement but in view of that, is Mr. Fearon concerned about the competence, resources and expertise available in CIE to carry out what was really quite a minor contract in the context of the kind of investment that is planned in the railway network as a whole? I was struck by a newspaper report that the contractor doing this work had to turn to CIE to boost its expertise while, at the same time, the PricewaterhouseCoopers report found that CIE did not have the expertise or the necessary project management resources, and that this was partly the cause of the failure of this project. Is that a matter of concern for future investment in the railway network that is critical for this country?

Mr. Fearon: It is critically important that CIE and its companies would have project management capacity and the other technical skills to deliver the new programme that has been put in place. We have suggested to the companies that augmentation of their current skills appears to us to be necessary to achieve that.

Deputy O. Mitchell: Are those skills available here? Are the skills necessary to monitor and control the ongoing management of projects available in this country or is there any thought as to how that kind of expertise is to be put in place?

Mr. Tuohy: On a general basis the Deputy will appreciate that with the amount of contracting that is currently going on, it is becoming more difficult to get the type of skills she is talking about. They are in tremendous demand, not just in CIE but in the roads programme and the building programme generally. In a time when there is a growth in the demand for these people, the supply is very tight. There is an issue there; there is no question about that. That is in the economy generally, not just in CIE. The specific expertise on some of the CIE type contracts is specific to the railway and in this case to the signalling systems. Some of those skills can be found in the country but some of them may have come in from outside, which may be the case in the future. We are seeing that across the economy generally. It is not as easy now to get the type of people the Deputy is talking about. They are very valuable people.

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Deputy O. Mitchell: Clearly that is the case.

Chairman: I call Senator O'Dowd. This discussion is revealing some extraordinary developments and omissions. We have two groups waiting outside and we will go into private session to discuss some matters after we hear Senator O'Dowd's questions. We will have to take some decisions as to where we go from here. This is a most extraordinary, bizarre and disastrous development that is unfolding here this evening. Nobody seems to know much about anything.

Senator O'Dowd: The original IRMS report was published in October 1998. It draws attention to the fact that the cutting of drainage in the Phoenix Park to install cables presented a serious risk of slippage. That is the first reference about the cabling and problems associated with it.

The Department employs IRMS as its consultants on rail safety. The executive summary of its implementation report of March 2000 draws attention specifically to the fact that the funding allocated to signalling and telecommunications does not allow for some essential signal renewals or the increased expenditure associated with the details to the implementation of the mini CPC system. What is the Department's view on that? Has IRMS commented to Mr. Tuohy since then? It has flagged the danger and the safety issues, but the work is not proceeding. What is the IRMS's view on this issue? Has it expressed it to Mr. Tuohy?

Mr. Tuohy: The Senator will be aware that the IRMS report is one of a series of reports. We continually monitor the safety programme. As part of the ongoing discussion on that and the implementation of it, we continue to monitor the position to ascertain how we can pick up on what is missing.

Senator O'Dowd: What view has IRMS expressed to Mr. Tuohy since then regarding safety? Its report refers to the Galway line. While there is a serious financial problem, there is also a serious safety issue. What has Mr. Tuohy's safety consultants said to him about that? Has he taken their views on board?

Mr. Tuohy: Can I come back to the Senator on that, as the personnel dealing with that side are not with me.

Senator O'Dowd: With respect, this is the Department's role. I accept the personnel dealing with that side are not present, but this is a function of the Department.

Mr. Tuohy: I will come back to the Senator on that within the next 24 hours.

Chairman: We have finished this part of business, but that does not imply this business is completed as far as the Secretary General is concerned. I thank him for attending and he is now discharged.

The Joint Committee went into private session at 5.09 p.m. and adjourned at 5.33 p.m.

Houses of the Oireachtas

JOINT COMMITTEE ON PUBLIC ENTERPRISE AND TRANSPORT

AN COMHCHOISTE UM FHIONTAIR PHOIBLÍ AGUS IOMPAR
JOINT COMMITTEE ON PUBLIC ENTERPRISE AND TRANSPORT

Dé Máirt, 7 Samhain 2000

Tuesday, 7 November 2000

The Joint Committee met at 2.37 p.m.

MEMBERS PRESENT:

Deputy L. Aylward	Senator P. Callanan
" M. Brady	" J. Cregan
" R. Bruton	" L. Fitzgerald
" A. Currie	" S. Ross
" J. Higgins (Mayo)	
" M. Kitt*	
" L. Lawlor	
" O. Mitchell	
" N. O'Flynn	
" D. Roche	
" T. Sargent	
" E. Stagg	

* in the absence of Deputy B. Daly

DEPUTY S. DOHERTY in the chair

Chairman: I welcome the officers of CIE and Iarnród Éireann. I apologise for not being able to call you on the previous occasion, but the other examination went on for a considerable time. I apologise for the inconvenience caused to you and hope you understand that it could not be avoided.

I ask Mr. McDonnell, chief executive officer of CIE and chairman of Iarnród Éireann to introduce his colleagues to us.

Mr. McDonnell: Thank you chairman. On my left is Jim Cullen, group chief financial officer, beside him is Joe Meagher, managing director, Iarnród Éireann; Richard O'Farrell, finance and administration manager, Iarnród Éireann; Gerry Dalton, manager, infrastructure, Iarnród Éireann; and Tom Finn, manager, strategic planning, Iarnród Éireann.

Chairman: I want to draw your attention to the fact that members of the Committee have absolute privilege, but that this does not apply to you or your colleagues. Members of the Committee are equally reminded of a long standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside of the House or an official by name or in such way as to make him or her identifiable.

Mr. McDonnell: I acknowledge, with the benefit of hindsight and today's resources environment, that mistakes were made, particularly in relation to specification and project management of the mini-CTC project. While acknowledging that mistakes were made, I assure the Committee that lessons have been learned and action taken, where necessary, to address the issues raised in the Price Waterhouse Coopers report. The Iarnród Éireann team will explain in detail the circumstances in which this project was conceived and how it developed. Before they do so, there are a few key points I would like to make.

First, this project is safety related, so it will have to be done. Second, the differences in cost between that approved by the boards of Iarnród Éireann and CIE and Iarnród Éireann's latest best estimate of approximately £40 million, which it would cost to finish this project, are attributable to the following factors - new safety standards arising from the IRMS and Carl Bro Rail report have added £8 million to the project; there is a higher specification for the project, which has added another £8 million; there have been additions to the project, which have added £3 million; inflation, which has added approximately £2 million; and the Esat contract within stations, which has added approximately £2 million. There are other benefits flowing from the Esat contract which Gerry Dalton will explain. I emphasise that all these figures are rounded, so they add up to £23 million rather than £24 million.

The project now envisaged is much superior to the one originally envisaged at a time when resources were very

scarce within the CIE group and Iarnród Éireann. The problems relating to mini-CTC are unique to the project and do not have implications for other projects within the CIE group. They do not reflect any looseness on the part of Iarnród Éireann in managing capital projects. To illustrate this point, a recent review of 103 projects costing £255 million showed a total cost overrun of only £3.4 million or 1.3 per cent. By any standard, this is very good management of capital projects.

I now ask Mr. Joe Meagher to fully brief the Committee on the mini-CTC project following which the team will be pleased to answer any questions members may have.

Mr. Meagher: I will deal with the main issues concerning the mini-CTC project. I will begin by filling in the background. The Dublin suburban network and the intercity lines to Cork, Limerick and Belfast have a very modern full colour light central traffic control, CTC, signalling system. The remaining single track lines have old semaphore mechanical systems. In March 1996 the CIE board approved proposals to replace the old mechanical systems on four lines, the lines to Sligo, Galway, Waterford and Tralee, with a centrally controlled system, which is less complex than that used on the busier double track routes and which has been termed mini-CTC. The mini-CTC system will improve safety standards on the network and yield ongoing financial savings due to the replacement of existing manned signal cabins. It will also enable the provision of a robust telecommunications network.

The CIE board approved expenditure of £14 million on the mini-CTC project in March 1996 subject to the availability of European Union funding. In July 1996 European Union Cohesion Funding was approved for the project as part of a larger package of infrastructural investment. The Cohesion Fund agreed to allocate grant aid of £11.9 million or 85 per cent towards the resignalling project.

Previously, signalling projects were installed by Iarnród Éireann with materials purchased externally from a major signalling equipment supplier. We used to do it ourselves. The suppliers were principally Westinghouse and Ansaldo. In this case it was decided to invite tenders for the resignalling project on a turn key basis because of internal resource shortages at the time and the necessity to complete the project by the end of 1999 to qualify for European Union funding. Following a qualification notice in the official journal of the European Union, expressions of interest were received from 13 companies, which were screened on the basis of their experience of similar projects and their ability to install signalling and telecommunications equipment. Tenders were invited from nine of them and received from five. Following consideration of the tenders, three were short-listed for further negotiation, namely, Sasib, Ansaldo and Westinghouse. A proposal was put to the board of Iarnród Éireann in April 1997 to award the contract to Sasib for £15.7 million if technical issues were resolved, or otherwise

to Westinghouse for £16.3 million. Following reassurances given by Sasib to address issues raised by them, it was considered by the engineers that any residual concerns could be resolved following contract award. In these circumstances European Union procurement regulations required that the lowest compliant bid be accepted.

Sasib was a major Italian signalling company and, as the lead contractor for the project, formed an association with Modern Networks Limited, MNL, formerly Murray Communications Limited, an Irish based company specialising in cable laying. The total value of the contract with the association was £14 million, of which £8 million approximately related to Sasib for the design and supply of signalling and telecommunications equipment and £6 million to MNL for cable laying, civil works and installation of equipment. A further cost of £1.7 million approximately was to be incurred by Iarnród Éireann for its input to the project.

Design work commenced in autumn 1997, but progressed slowly. At first it was considered that this was due to Sasib's unfamiliarity with Iarnród Éireann's signalling system. In May 1998 Alstom purchased Sasib and Alstom personnel who are familiar with signalling practices in Ireland became involved through the summer of 1998. Throughout the second half of 1998 and the early months of 1999 Iarnród Éireann continued to pressurise Alstom towards resolving technical issues. A number of high level meetings were held with it. Alstom continued to give assurances that the project could still be completed within the agreed timescale. However, the work programmes continued to drift and, apart from cable laying, no ground installation was taking place. At the time fibre optic cable was being laid for Esat as part of a separate agreement and cable was also being laid for the mini-CTC system at the same time to achieve economies. It has not been possible to install signalling cable at the station areas because the signalling design is not complete and additional costs will be incurred in laying this cable.

During the summer-autumn of 1998 IRMS conducted a safety audit of Iarnród Éireann at the request of the Minister for Public Enterprise. This resulted in new standards and procedures for the management of safety. For example, there was a revised approach to cable laying, which resulted in increased hand digging and, therefore, increased costs. This new approach to cable laying was adopted without delay. There was also a significant requirement for additional attention to be given to the maintenance of the existing signalling system and internal management and technical resources were diverted in 1998 to the projects area, including mini-CTC, for this essential work as safety considerations override all other requirements. In order to expedite the project Iarnród Éireann decided to supplement its scarce resources by appointing Michael Hamlyn and Associates to project manage the mini-CTC project on its behalf in December 1998.

As a result of the experience in laying some Esat cables

and the initial experience with mini-CTC cable laying, a cost increase for the project was recognised in early 1999. The best estimate at that time was that an additional cable laying cost of £2 million approximately would be incurred for the project, but this could not be definitive as there was little practical experience of complying with the IRMS guidelines.

During the spring of 1999 there were difficulties in getting the association to agree to a definitive timetable for installing the system. Alstom was contending that there were commercial issues to be dealt with while Iarnród Éireann was insisting that the project be delivered for the contract price, apart from the cable ploughing and certain other variations. In June 1999 a revised installation programme was agreed with the association, which indicated that it would be seeking cost increases resulting from the delivery of the programme.

In September 1999 Alstom and MNL produced two separate revaluation documents, which indicated a possible outturn cost of £40 million approximately. The basis for this increase in costs was deemed by the association to be due to enhancement of the original specification, agreed technical variations, higher cable laying costs and increased cost of equipment with higher project management and systems engineering costs.

Iarnród Éireann was very surprised at the scale of the cost claims. There was a strong professional desire to deliver a safe service, but it was considered prudent to explore the range of options open to the company. Iarnród Éireann had involved the CIE legal department since March 1999, which in the autumn of 1999 engaged Mr. Paul Gallagher, senior counsel, and Mr. Denis McDonald, junior counsel, to advise Iarnród Éireann on its future course of action.

After the cost claims from Alstom and MNL were submitted in September 1999, a contract review group was established to determine the options open to the company and make a recommendation. Independent expertise were recruited to advise on the project. All possible options were considered at that stage and while arbitration-litigation is still possible, it was considered that the best course of action at that time was to seek to achieve a commercial renegotiation. This would be the quickest way of getting the new system in place.

It was established that commercial renegotiation could not be finalised until detailed specifications for the signalling and telecommunications systems were agreed and finalised between the parties; the association confirmed full compliance with safety standards; an agreed integrated work programme was established; the association took responsibility for the rectification of cable damaged during installation, and Knockcroghery signalling was completed.

Discussions have taken place with the association in an effort to reach a commercial agreement, which would ensure value for money. These discussions have not been finalised and the recent publicity is unhelpful in this regard. It is possible that a satisfactory commercial agreement will

not be achieved and the CIE group solicitor is monitoring the situation.

The PWC report was commissioned by the group's solicitor in contemplation of litigation. Iarnród Éireann accepts that there is validity in many of the points made in the report. However, it should be recognised that there is a different view held by professionals and the company on certain issues. Also, some staff involved in the development and management of the contract were not interviewed by PWC as they had left the company to join Modern Networks Limited. The following are the people who left:

(a) Mr. Brian Powell - in late January 1999 he informed the managing director of Iarnród Éireann that MNL had approached him and he was considering its offer. He undertook to remove himself from all contact with the ongoing mini-CTC project. He handed in his notice during the first week of February 1999 and left Iarnród Éireann on 12 March 1999. I understand the managing director of MNL had died in November 1998.

(b) Mr. Kernan - in late April 1999 he informed his direct supervisor, the assistant chief civil engineer infrastructure, for signalling electrical and telecommunications, of an approach by MNL and of his decision. He undertook to take no further part in any projects involving MNL while serving out his one-month period of notice.

(c) Ms Hand - she advised the CIE group solicitor of her intention to resign and take a career break on 12 May 1999. She formally resigned on 20 May, with effect from 14 August 1999 - she finished work on 12 June. On 23 March she sent her file on the mini-CTC project to the CIE group solicitor and handed the case over to him.

(d) Mr. Judge - on 28 April 2000 he disclosed that he was made an offer of employment by MNL following his response to an advertisement placed by MNL in the *Railway Signalling Gazette*. He gave one month's notice to Iarnród Éireann.

I want to make some points on the involvement of Esat. Heads of agreement were signed by CIE with Esat on 16 June 1997 with the purpose of entering into detailed discussions to develop a fibre optic network over CIE property. During the intensive discussion period between CIE and Esat, which followed the signing of the heads of agreement, a satisfactory basis on which to build a commercial agreement was established. However, there were many detailed and complex matters to be resolved. CIE entered into an interim legal agreement with Esat to allow the Esat cables to be laid, starting in October 1997, in advance of a formal licensing agreement being signed. The basis of the interim agreement was such that Esat would supply its fibre optic cable free of charge and would share Iarnród Éireann's costs in installing its own mini-CTC cables which are separate from the Esat cables on a 50/50 basis. Esat was to bear the full costs on lines where its cable only was being laid. It was clearly communicated that if CIE did not receive the necessary statutory powers the work carried out for Esat would effectively be redundant and it would have to accept that it would have incurred a

cost which it could not recover from CIE. As Iarnród Éireann had by that time, that is October 1997, engaged Sasib-MNL to install its mini-CTC system, Esat agreed that the only practical arrangement to laying both parties' cables was to extend the contracted rates that had been tendered by the contractor to include for the installation of the Esat cable alongside the mini-CTC cables. Iarnród Éireann was engaged to project manage this aspect for Esat.

The necessary statutory instruments were obtained in March 1998 and the final formal licensing agreement was signed on 31 July 1998 by Esat and CIE. Between October 1997 and July 1998 cable installation proceeded on the basis of the interim legal agreement. Apart from station areas, Esat and mini-CTC cable has been laid simultaneously on the mini-CTC lines. It is estimated that there will be a net contribution from Esat to Iarnród Éireann's costs of constructing the mini-CTC network of in excess of £1 million.

The mini-CTC project has experienced many difficulties and critical issues have yet to be resolved. Approximately 700 kilometres of cable has been laid out of a total of 830 kilometres for mini-CTC. The telecommunications system has been designed and equipment has been purchased and is ready for installation. However, no signalling ground installations have been achieved except for Knockcroghery.

Mini-CTC was developed in the mid-1990s and is a project which has spanned two very different eras in Iarnród Éireann. During the mid-1990s the investment was very restricted on the lines concerned, that is to Sligo, Galway, Tralee and Waterford. When this signalling project was developed the approach taken was to minimise costs, as was the case at that time in the other aspects of maintaining and renewing infrastructure. Both the A.D. Little report commissioned by the CIE board and the IRMS report commissioned by the Minister for Public Enterprise highlighted the inadequacy of funding and the urgent need to address the issue. The Minister for Public Enterprise set up a high level task force in late 1998 to recommend a safety investment programme. He subsequently announced a £430 million programme over the period 1999-2003. This very welcome safety investment programme has radically altered the situation with an enhanced programme of maintenance, renewal, training and the putting in place of new safety standards and procedures.

To deal with the very steep increase in investment in the railway at present, extensive additional financial control and engineering resources have been put in place. A significant ongoing investment in management information systems is being implemented and external consulting support is widely employed. We are developing a signalling project to enhance signalling in the central area of Dublin and specialists are being employed to ensure that the project is fully scoped and specified to current standards at the pre-tender stage. In the mid-1990s the resources were not available to adopt a similar approach and this contributed to the difficulties now being

experienced with the very significant cost increases.

Deputy Higgins (Mayo): I welcome Mr. McDonnell and the executives from CIE and Iarnród Éireann. I wish to explore further with Mr. Meagher the reason Iarnród Éireann did not undertake this work. We know that the company installed a very elaborate signalling system on a double track rail system to Belfast, Cork and Limerick. He acknowledged that the company was unable to undertake work on the four single track lines due to internal resource shortages. How did this resource shortage occur?

Mr. Meagher: It is well known that there was very limited investment in the railway system during most of the 1980s and 1990s when adequate resources were not available for renewal or maintenance of the infrastructure. There were reductions in both the capital investment and current finances available to maintain and run the railway during that time. The number of personnel in the railway were reduced from seven thousand in 1987 to less than five thousand approximately ten years later.

Deputy Higgins (Mayo): Does that figure include key engineering personnel who left the company?

Mr. Meagher: I am talking about reductions across the board. A.D. Little, the independent consultants, came into the company at the end of 1997 and reported at the end of 1998, while IRMS, the safety consultants, were employed by the Minister in 1998. The common thread in their reports was that the resources available for renewal of track and signalling, maintenance of the infrastructure, training, standards and development of procedures were totally inadequate and that this would have to change. We had to take a number of measures immediately in 1998 when those reports were made. These included diverting people from the projects area into the day-to-day operations area to ensure that the railway system was safe for the trains. Subsequently there was the rail safety investment programme of £430 million, £50 million of which relates to the development of systems, procedures and training over five years. This shows that there is a sea change in the situation.

Deputy Higgins (Mayo): I draw your attention to the PWC report which states that: "Procurement did not give sufficient weight to the serious reservations expressed by the engineers about the competence and suitability of Sasib".

Page one of the report states that procurement did not give sufficient weight to the serious reservations expressed by the engineers about the competence and suitability of Sasib. Page five states that, from receipt of tenders, the Iarnród Éireann engineers stated their reservations as to whether Sasib was technically competent to deliver a mini CTC signalling system. The engineers discussed their

concerns with Sasib through correspondence and at meetings with Sasib. This process did not alleviate the engineers' reservations. The negotiation process became protracted.

It appears that ultimately Procurement did not appreciate sufficiently the engineering viewpoint and considered that such concerns were not sufficient to dismiss Sasib and, accordingly, sought to have the bid accepted. It then starkly states, "We have been unable to find evidence of the engineers' sign off". Did the engineers sign off?

The company's engineers expressed reservations over equipment offered in the Sasib tender. They were also concerned about the technical knowledge and skill needed by Sasib to deliver a signalling system. In other words, Sasib had no knowledge or experience of the Irish or United Kingdom railway system. There was also a problem because of the cost of new spares, as against the bid by Westinghouse and Ansaldo.

Do Mr. McDonnell or Mr. Meagher not accept that accepting the Sasib tender in those circumstances, where major reservations were expressed by their own engineers in relation to the technical competence of Sasib to carry out the project, was irresponsible and indicative of the fact that a flawed tender had been accepted?

Mr. Meagher: Those concerns were never brought to the attention of the Iarnród Éireann board. It states that in the report. After we got the report, Iarnród Éireann brought this matter up with the engineers within the company. I think there would be a divergence of views on that. Perhaps Gerry Dalton, who is the engineer most directly concerned with this question, might like to answer that point.

Mr. Dalton: When the initial tenders were submitted, we expressed reservations and concerns. It was not necessarily with the equipment itself, but with the configuration of the equipment, and also the fact that they did not have knowledge of signalling principles.

We expressed those concerns in a letter which formed part of the contract documentation. We got certain reassurances from Sasib that we need not have such concerns. We also raised those concerns subsequently at a joint meeting with them and they assured us they were getting in British signalling people, who would have practice in United Kingdom signalling practices. We reconfigured the equipment, using some equipment that we already had.

During the period from when we expressed our initial concerns to the point of tender, we had ironed out a lot of the problems we had with them. When we eventually put the paper to the board, it would be fair to say the engineering concerns had been taken on board. There were a few residual technical matters to be dealt with, but by and large, we had accepted the assurances given to us by Sasib.

Deputy Higgins (Mayo): It has already been put

on the record today in the presentation that the initial 13 companies were screened on the basis of their experience of similar projects and their ability to install signalling. Yet, the contract was given to a company that was manifestly incompetent and, as it turns out, the views of the company's engineers were totally vindicated.

The report states that Procurement did not appreciate sufficiently the reservations of the engineers. Who exactly in Procurement are we talking about? Who in Procurement made the key decision in relation to accepting what was quite obviously a very flawed and inadequate tender?

Mr. McDonnell: Gerry Dalton is the chief engineer of infrastructure. He has made it quite clear that, as far as the engineering experts in Iarnród Éireann are concerned, that, while there were initial concerns about Sasib, this is not the problem that Price WaterhouseCoopers make it out to be. There is a disagreement on—

Chairman: Is there a distinction between procurement and engineering?

Mr. McDonnell: Yes.

Chairman: Who is the head of procurement?

Mr. McDonnell: The head of procurement at the time was Mr. Brian Powell.

Deputy Higgins (Mayo): Is that the Mr. Powell who has subsequently gone to MNL, the company which got the contract?

Mr. McDonnell: Yes.

Deputy Stagg: We are dealing with a contract of in the region of £15 million, which has escalated to £40 million. We have heard today statements from the representatives of CIE who are here, seeking to justify that and to indicate it is somehow normal and that it is all right for a contract to go from £15 million to £40 million when it is not completed. We are dealing with a fiasco and a disaster for the company, the travelling public and the taxpayer, who will have to pick up the bill. Mr. Dalton said that he initially had some reservations about the contract, but it was then all right. It is unbelievable for him to say that he found it okay at any stage, given what we are dealing with.

The Price Waterhouse Coopers report states on page six:

"As a result, in our opinion, the contract was very far removed from a fixed price contract and any price quoted by the contractor was, in fact, indicative. In our opinion, this format failed to meet any of the Iarnród Éireann procurement objectives, which were to fix the price, address the engineers' concerns and ensure the delivery of a suitable signalling system.

The contract is so unspecific in the context of Iarnród Éireann's needs as to be no more than a general statement of intent between the parties."

It further states:

"As part of a further attempt to cut costs and meet the target price of £40 million, the need for a performance bond was waived and replaced by a parent company guarantee from Sasib's parent. In our view this decision was unwise. The contract was further undermined by the attempt to link the mini CTC contract and the Esat contract without any proper evaluation of the issues."

I have not established who is responsible for this. I do not know what the chain of command is. I got the company's book on governance, which I read, but I still do not know who is responsible.

I thought Mr. McDonnell was in charge. He is the chief executive officer of the holding company, CIE, which I thought was very important. He is the chairman of the Iarnród Éireann board. He is paid a decent salary to carry out his functions. From reading his statement, it seems he has no functions at all. The statement he gave the Committee the last day was a straightforward, Pontius Pilate, washing of hands and saying that somebody or everybody else was responsible, but he was not. If that is the case, what is his job? Where do his responsibilities lie?

This is a huge issue of public importance involving huge amounts of money. The chief executive officer of the parent company and chairman of the operating company is saying, effectively, that he is not responsible and, if he is the saviour, that we are getting a good bargain now. What is the chain of command and responsibility within the system? Who is responsible for this fiasco, which is what the consultants the company hired have indicated it is?

Mr. McDonnell: I have two roles. I am group chief executive officer and my responsibilities in that regard are spelled out quite clearly in the corporate governance booklet. However, I think the Deputy is homing in on my role as chairman of Iarnród Éireann and what role boards have in monitoring projects.

Good corporate governance tells one that boards decide policy and budgets. Do I micro-manage every individual project myself? The answer is no.

Deputy Stagg: We are not talking about micro-management, we are talking about tens of millions of pounds.

Mr. McDonnell: Okay. The board decided to award a contract on the basis of recommendations made to it by our executives, the professional people we employ for that purpose. Once the board took that decision, as Mr. Meagher has pointed out, it was for us or was presented to us as a turnkey project costing £16 million. We got reports from management within Iarnród Éireann on the progress of the project, but basically the reports which were coming

to us were that there were problems with the contractor in getting him to complete the project by 1999. It was only in September 1999 that we as a Board became aware of a cost overrun on that project. Again, up to that stage nobody was aware of cost overruns, but as soon as we became aware of it—

Deputy Stagg: What date was it?

Mr. McDonnell: It was September 1999. Mr. Meagher will explain when they became aware of it as a management and they brought it to the attention of the board. You asked what was my responsibility. As group chief executive officer I immediately asked the chief financial officer to conduct an investigation into the reasons for it. My main concern there was, again looking across the group, the systems which we had in place and which had worked well up to then. We had very little cost overruns, only 1.5 per cent on projects, but this was a bigger cost overrun. Given the fact we are heading into a heavy capital intensive programme under the national development plan, I wanted to ensure our systems were okay. I was determined to find out the causes of these overruns and to ensure we would not be taken for a ride by contractors putting in excessive claims.

As soon as I found out about it, I took remedial action. Again, that is where my responsibility ends.

Deputy Stagg: That does not answer my question. I wanted to know about the chain of command, but we will come back to that another time. I wish to ask a supplementary arising from the statement given by Mr. McDonnell. He said that, as chairman of the board of Iarnród Éireann, he became aware of cost overruns in September 1999. We have documentary evidence that John Fearon, who was then a principal officer in the Department of Public Enterprise, prepared a memo with the assistance of your company and it was cleared by your company before it was presented to the Minister on 7 February 1999. It showed that the company was aware of a cost overrun of up to £40 million. I am not quoting the document because I would need a wheelbarrow to bring all the documents to the Committee. That was on 7 February 1999.

Mr. Meagher: 2000.

Deputy Stagg: Maybe 2000. At what stage would the chairman, who has a direct relationship with the Minister, bring it to the Minister's attention?

Mr. McDonnell: Again, coming back to corporate governance - I think the Deputy was a Minister in the Department concerned - it is the chairman of CIE who has a direct relationship with the Minister. As chairman of a subsidiary company, I feed into the main board of CIE. I do

not, as chairman of Iarnród Éireann, have a relationship with the Minister. It is the chairman of CIE who has a reporting relationship to the Minister. When did I become aware? I did not become aware until September 1999 and even at that stage, it was the first I had heard about the cost. What I was told at that stage was that the cost could be up to £40 million. I think management in Iarnród Éireann themselves did not know what the cost would be and, as Mr. Meagher pointed out in his submission, they were shocked when they first got the bill for £40 million. They employed experts to go through the bill and to see what was the basis for it.

As far as I was concerned, as chairman of Iarnród Éireann, this was a turnkey project and nothing came to us, from the time the project was commenced until that date, to show that there were any cost increases at all.

Deputy R. Bruton: On a point of information, the PWC report indicates that on 31 August 1998 Iarnród Éireann had already paid £1 million in cost overruns beyond the contract's price. Is that not correct?

Chairman: A question was put by Deputy Stagg about your responsibilities, Mr. McDonnell, and you referred to corporate governance. On pages nine and ten there are seven primary duties. The seventh primary duty is to ensure that the group's goals and objectives are understood and that each subsidiary company has the necessary leadership and management skills to achieve agreed business targets. That is a primary responsibility of yours. Are you satisfied that responsibility was properly carried out?

Mr. McDonnell: Yes, in so far as I was aware at that time. The goals are clearly understood.

Chairman: You were supposed to know, however. That is the point Deputy Stagg wants to establish. You have responsibility for knowing that each subsidiary company has the necessary leadership and management skills to achieve the agreed business targets. If you did not know for a year and a half afterwards, there is something seriously defective. Do you not subscribe to that view?

Mr. McDonnell: With the benefit of hindsight, yes, but up to that period we had no indication whatsoever. The statistics I have given you show that we managed all our projects very well up to that period.

Chairman: This was a big project too, now approaching £40 million.

Deputy Stagg: In one of the reports, as was pointed out by my colleague, Deputy Roche, in June 1998 there was an overrun recognised at that stage of £3 million. There were early stage overruns in the report, the quarterly

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report on progress, you furnished to the Committee. You, as chairman, would surely be responsible for being aware of that report and bringing it to the attention of the board.

Mr. McDonnell: I was never aware of the report; I was never informed of the report; I was never informed of any cost overrun until September 1999.

Deputy Stagg: Were you aware of these reports, the quarterly progress reports?

Mr. McDonnell: No.

Deputy Stagg: What were you doing as chairman?

Deputy M. Brady: Did they never come before the board?

Mr. McDonnell: They were not quarterly reports to the board on finances.

Chairman: You have brought the situation this far, Deputy Stagg, so I will move to Deputy Martin Brady.

Deputy Roche: We need some clarification on that. This is a quarterly Cohesion and Structural Fund report. It is a significant report, as Deputy Stagg pointed out. The report, which was transmitted on 1 July 1999, clearly indicates that the cost of the project is running at £17.7 million. Is there not some inconsistency there? There was internal material flying around within your organisation. Within the Iarnród Éireann side of the organisation it was £17.7 million. These quarterly reports had to be produced for the cohesion report. You became aware and you were alarmed because it becomes obvious when one looks at the next quarterly report that there is a degree of alarm. Mind you, if one looks at all the reports there is a degree of complacency. How could the senior management not be aware? Deputy Stagg is right.

Chairman: I accept that point.

Mr. Meagher: The project was approved in summer 1997. In 1998, IRMS was hired by the Minister. They looked at safety in the railways in totality. One of the things they said immediately was that we should review the method of laying cable in the ground. Previously the vast majority of cable of any length was laid by mechanical means. They recommended that there were certain situations in which the cable should be laid by hand digging rather than mechanical means for safety reasons. Safety standards were rising all the time and in accordance with new safety standards that should be the case. Rather than compromise safety, the decision taken by Iarnród Éireann was to adopt that approach.

By the time we reached the end of 1998, there was a

review of the situation. Even though most of the cable laying had to be done in 1999, an estimate was made of the effect of that new approach.

It was estimated that there would be an increased cost of £2 million. That was reported to the Department, the European Union and the Cohesion Fund. The contractor, now Alston, had been saying throughout 1998 after taking over that the project would be delivered by the end of 1999, although we doubted it. By the end of 1998 Alston was saying it would not be possible to deliver the project by the end of 1999 and there would be a time overrun. Early 1999 there were two issues - there would be time overrun on the delivery of the project, and that there would be an increase in the cost which was estimated at £2 million, from an estimated £15.7 million to £17.7 million. That was reported to the Department.

Several reports were made to the board of Iarnród Éireann about the delays. We also went back to the board on three occasions on matters where there was variation in the terms of the specification and additional equipment. In relation to the reporting of that, it was an estimate. There was no element of certainty, and we were trying to establish with more certainty what the case was. We alerted the Department and the European Union of the situation. As 1999 progressed and we gained experience from the process of laying the cable - and this was quite new to Iarnród Éireann - a revised view was taken on the cost of the cabling. Alston had the signalling contract at that stage and we were really getting to the meat of the development, the design etc. There were arguments from Alston that our specification was outside the terms of the contract. We held to the argument that that should be delivered as per the contract, because the contract was a performance specification-----

Deputy Stagg: That is the last one.

Mr. Meagher: I was giving the story on it.

Deputy Stagg: What I want to establish is that there was a 17 per cent overrun in that period on Iarnród Éireann's budget and up to 24 per cent, or between 17 per cent and 24 per cent, depending on how it is examined. You reported regularly to the board about various other things, about cable specifications and so on, and you did not tell it about the overrun.

Mr. Meagher: There was no level of certainty about what the overrun was at that stage.

Deputy Stagg: You had calculated it. Why did you not put it in your report?

Mr. Meagher: It was reported through the group, to the Department, to the Cohesion Fund.

Deputy Stagg: But not to the board.

Deputy Higgins (Mayo): Why did you not tell the chairman?

Mr. Meagher: It was reported to the programmes and projects department and to the Department.

Deputy Higgins (Mayo): It is extraordinary. Mr. McDonnell is chief executive officer of CIE and he is chairman of your board, and your a managing director of Iarnród Éireann. The biggest project you have on your books is going drastically off the rails, turning into a financial débâcle, and you did not tell the chairman.

Mr. Meagher: We invested over £200 million in 1999. The investment in the mini-CTC—

Deputy Higgins (Mayo): It was a single project.

Mr. Meagher: Not really.

Deputy Higgins (Mayo): You are talking about an overrun of approximately £25 million on a projected initial cost of £15.7 million. You knew things were going drastically awry. You knew there was a major overrun in terms of time as well as finance. Why did you not think it worth your while to tell the chairman? I presume you would have been meeting with the chairman on a regular basis. Is it not quite extraordinary that you, as managing director, did not tell the chairman of the company that there was a huge problem?

Chairman: Deputy, I want to move on. This opens up a whole new vista. This is just an exploratory and preliminary exercise here today. I want to give everybody a fair opportunity.

Deputy Stagg: Mr. McDonnell complained about publicity and said that perhaps it would do damage. Mr. Meagher said something similar. There was much publicity at the weekend. Let me ask - because it has been said to me and that is why I am asking the question directly here - whether you have hired a firm of PR consultants to work on your behalf? If so, who is paying for them?

Mr. McDonnell: The answer to that is "no", but----

Deputy Stagg: If the answer is "no", that is all I need to know.

Mr. McDonnell: There is a lot more to it than that. There is a personal vendetta going on against me in the media, particularly in one particular paper. Serious allegations have been made to the effect that I am not fit to be group chief executive officer of CIE and that the board

did not want me there. Despite the fact that I have supplied that newspaper with a letter from the consultants which confirms that they head-hunted me to be group chief executive officer of CIE, that they recommended me to be group chief executive officer of CIE, that the minutes of the board of CIE show that the board appointed me unanimously, that newspaper still continues a personal vendetta against me. I do not know why. I have been a public servant for 40 years. I do not get involved in spinning, or in leaking stuff to the media. I know the Deputy is a man of fairness and that the chairman is also a man of great fairness. What that paper is doing - and it is the *Sunday Business Post* to which I refer - is not fair coverage by the media.

Chairman: With respect, you must seek your own remedies in that matter. It is a personal matter. We are dealing with a matter of public importance, and we must stick to that.

Deputy M. Brady: Many of the questions I wanted to ask have already been asked. One in particular, asked by Deputy Jim Higgins, has not been adequately replied to. Let me go back over it again. Why were reservations expressed by your own engineers about Sasib ignored? That has not been answered adequately. Was Mr. Leahy, the SET engineer who I believe resigned and is not included on your list of people who resigned, one of the people who expressed reservations about Sasib? In what circumstances did he resign from the company?

I agree with Deputy Stagg when he says it is very necessary for us to establish clearly what the chain of command is within your organisation. In your last opening statement to us here last week, you seemed to be jumping off the ship at one stage and saying that another layer of management now takes over and that you have no further responsibility. I find it extraordinary that the chief executive officer of any company would issue such a statement. That was my perception. I do not know what the other members of the Committee thought. However, I would like you to clearly outline the chain of command and tell us who reports to whom. You say that nobody told you there was an overrun for about a year and a half. When you were told, what did you do about it and about the person that was supposed to tell you? Who is supposed to tell whom? In other words, were there communications problems within the company?

Mr. McDonnell: The Deputy raised a number of question, one of which will have to be answered in more detail by the Iarnród Éireann team. As to why the expressed reservations of the engineers were not taken account of, they were never expressed to me, or the board, to me as group chief executive officer or to me as chairman of the board of Iarnród Éireann. Mr. Dalton has explained these supposed reservations. Again, he could explain that

that was at an early stage and that by the time it came to the board there were no such reservations expressed. As to the chain of command, that is set out quite clearly in the corporate governance structures which I have given to the Committee. Boards decide policy and budgets, and management manages companies. That is well accepted corporate governance in any company. The complication in my case is that I am also chairman of the subsidiary boards. That was decided by the Department. CIE was originally one company with divisions. It is now a holding company, and there are four separate independent companies below it that are public limited companies, and the purpose of my chairing those is to ensure consistency of performance and policy across those and to feed in to the main CIE board where the major policy decisions are taken.

Chairman: That relates not only to policy decisions, but decisions taken and their implementation. That is a significant issue. Members are seeking to establish who has responsibility for that. Implementation and good governance provides for that.

Mr. McDonnell: That is correct.

Chairman: Implementation, as effected.

Mr. McDonnell: That is a very good point. As to the question of implementation, that is to ensure the necessary systems are in place to enable board policies to be implemented and to ensure they are implemented as determined by the board. Before the mini-CTC project, we were quite satisfied that the necessary systems were in place. Our record up to that date showed that the systems in place were good. The mini-CTC was the first time a turnkey project was introduced. While we thought we had reasonable skills within the organisation to deal with it, speaking from the benefit of hindsight, it transpired that our project management skills are not what they should be. We will have to hire project management personnel. Mr. Meagher referred to this point earlier. This project was conceived in a time of severe resource shortages within the organisation. We are now out in the market and have considerably strengthened our project management expertise within the group, but that does not come cheaply. Recruiting a good project manager would cost £100,000 *per annum* to £150,000 *per annum*, which is way in excess of salaries we pay any other personnel in the group, but we will have to do that, given our investment programmes.

The chairman referred to the question of implementation. We thought we had the necessary systems in place and that they were excellent. Our track record was such as to confirm that was the case, but we found flaws in our systems and in our project management expertise in dealing with the first major turnkey project we introduced.

On the specification front, we operated in a certain way when we did work in-house. We have learned by hard experience that the specification was not as tight as it should be. We have learned from some of the experts we brought in who worked on similar projects in the United Kingdom that they have had similar experience where a specification was not sufficiently tight which enabled contractors to milk them for the extras. I am sure many of us have had a similar experience in taking on builders to do work in our homes. Everything is not perfect and was not perfect in CIE, although where we found gaps in our systems we plugged them. We have taken remedial action.

Chairman: Deputy Brady, does that deal with your question?

Deputy M. Brady: Yes. Can Mr. McDonnell deal with the matter of the chief SET engineer and any other engineers that resigned around that time?

Mr. Dalton: I will deal with that. Mr. Leahy was manager of our engineering services section at that time. That section examines design work and so forth. Mr. Leahy has not resigned. He is seconded to CIE consultancy and is working in Bulgaria at present.

Deputy Roche: Was he the person who should have signed off on the Sasib arrangement?

Mr. Dalton: No. Mr. Leahy had left by the time that tender came to the board.

Deputy Roche: Was he concerned about that company's capacity?

Mr. Dalton: Mr. Leahy?

Deputy Roche: Yes.

Mr. Dalton: There is no connection between Mr. Leahy going to Bulgaria as part of CIE consultancy and the mini-CTC contract.

Deputy O. Mitchell: I am not sure to whom I should address my questions. I wish to ask about the contract and the invoicing. The objective of my questions is to track how everything concerned with this contract seemed to go so badly wrong and was not discovered. With regard to the contract, as the Price Waterhouse Coopers report states, a normal condition was removed, which would have allowed for additional claims where there were unforeseen ground circumstances. The report criticises the removal of that clause, which removed the necessity for reporting ground difficulty claims resulting from unforeseen

circumstances. Normally, removing a clause such as that would favour the client, in this case Iarnród Éireann and the taxpayer, and it would have if the specification for the tendering had not specifically included a direction to assume there would be a 100 per cent mole ploughing. In order words, one move cancelled the other. It immediately let the contractor off the hook in terms of overruns as a result of not being able to do mole ploughing and it left the company and the taxpayer vulnerable with no come back. In drawing up the contract, why was an assumption required that there would be 100 per cent mole ploughing? Was it an assumption made by Iarnród Éireann in deciding on its initial budget estimate of £14 million? Surely if anybody knew ground conditions along the railway track, it was Iarnród Éireann. It certainly would know them better than Sasib. Iarnród Éireann was aware of a lucrative Esat contract hanging in the wings, although I am not sure of what was the nature of the contract between Esat and Iarnród Éireann. If it was a normal contract providing that if the ground conditions were not what were assumed, in this case Iarnród Éireann would be vulnerable because it was Iarnród Éireann's client. It could come back to Iarnród Éireann for assuming something it could not fulfill.

Mr. Dalton: While there may be many concerns about the project, the Deputy need not be concerned about this issue. We deleted a clause in the contract, which allowed the contractor to look for money, if there were unforeseen ground conditions. We are talking about 700 kilometres to 800 kilometres of track. Given the time involved in preparing the contract, all the surveys were not completed. To ensure uniformity in pricing, we asked all the tenderers to price on the basis that they could plough except in station areas. We also asked them to put a price into the contract for non-standard ploughing work, that is, hand digging or whatever. The idea behind deleting the clause on unforeseen ground conditions was to prevent the contractor from varying the price he put into his contract for hand ploughing. We kept to the price stated throughout the period of the contract. When unforeseen ground conditions arose, we had a single price for dealing with them and the contractor could not vary his price by virtue of the clause. We had certainty in the sense that we knew what the price would be in the case of unforeseen ground conditions.

Deputy O. Mitchell: Iarnród Éireann did not know where and how that might be affected by the Esat contract.

Mr. Dalton: Considering the Price Waterhouse Coopers report detached from the management of the contract, one of the points raised in it is that one of the advantages of having the clause in the agreement requires the contractor to advise the client when he meets unforeseen ground conditions. In these circumstances, there were no such reservations. We had no such reservations because in all circumstances, we dictated when there was a variation from ploughing. In other words,

it was on the basis of our safety imperative that we decided where we would not plough. I am very familiar with the contract and I do not know of an incident where the contractor raised the issue of an unforeseen circumstance in respect of which we did not dictate the method of working he would use. I can give an assurance on the basis of the safety imperative that we dictated when there should not be ploughing or where hand digging should take place. We had the advantage of not having to vary the price in that the contractor could not refer to that clause. The absence of the clause was in our favour.

Deputy O. Mitchell: Was the price for ploughing, where the mole ploughing method could not be used, the same in the three tenders received or was Sasib's the lowest? As the report states, was it a question of trying to shoehorn a project that could not be done for £14 million, into the budget. That is what happened.

Mr. Dalton: As it turned out, as I said, the hand work arose because of the safety issues. At the time of tendering there were a lot of issues involved: there was signalling supply and telecommunications supply and ploughing and cable was just one element of the totality of delivery of the project. All the tenders were looked at holistically in terms of the bottom line price for delivering a turn-key project.

Deputy O. Mitchell: Surely if Mr. Dalton was assuming 100 per cent ploughing and is saying now that he knew there were certain circumstances where there would not be 100 per cent ploughing, that could be a significant addition to the contract. That would receive particular attention in the three separate tenders received.

Mr. Dalton: I understand the Deputy's point. Our experience of ploughing up to that time, having regard to safety issues, was that areas where we could not plough were less than five per cent of the totality - perhaps as low as three per cent. In other words, in previous times we would have ploughed 97 per cent of the areas. In these circumstances, due to the safety issues and concerns with embankments, we would probably have ploughed only 70 per cent and 30 per cent would have been hand dug. We have gone from a situation where we would have forecasted possibly ploughing 97 per cent to a situation where only 70 per cent was ploughed.

Deputy O. Mitchell: It is implied in the Price WaterhouseCoopers report that a great deal of the hand ploughing that had to be done as part of this contract was because the soil had already been destabilised by ploughing for the Esat contract. Is that true?

Mr. Dalton: No. That is a misreading or misunderstanding of the situation.

Deputy O. Mitchell: By PriceWaterhouse Coopers?

Mr. Dalton: Yes. With ploughing, because of the nature of ploughing one is ploughing a six kilometre cable, as we were doing at night, which meant that trying to get six kilometres of cable into the ground one had to prepare certain areas in advance. That would mean opening up some ground that might be difficult to plough through in advance so that one got the advantage of ploughing predominantly six kilometres of cable. One of the concerns the IRMS and others had was obviously the opening up in advance of ploughing. When we ploughed, whether we were ploughing one cable for ourselves or two cables for us and Esat, it did not affect the process. The plough still went into the ground and pulled with it up to 14 cables.

Deputy O. Mitchell: I understood that the mini-CTC cable was not available when required to be done simultaneously with the Esat contract.

Mr. Dalton: There is a separate issue being raised which we defined as the "Esat legacy", which was a situation where over some of the areas, when we came to plough for Esat the cable plans were not prepared or available from Alstom at the time. Cable plans would be just like a wiring plan for a house. One needs to know where the various cables are going for signals and so forth. In every station there would be a plan of where cables need to be laid and how many would run to a particular signal, how many would drop off at certain points and so on.

Deputy Stagg: Were these not available at the contract stage?

Mr. Dalton: They were part of the delivery from the contractor, but he had not delivered them at that particular point in time. He was late with delivery.

Deputy Stagg: And for a long time afterwards.

Mr. Dalton: Yes.

Deputy O. Mitchell: Regarding the invoice system used it seems quite extraordinary in that Sasib and MNL invoiced separately despite the fact that they tendered and signed the contract together. It was a joint contract yet they were invoicing separately, albeit for separate types of works - they had different expertise - but nevertheless it was a joint venture in effect. Yet MNL did not invoice separately for the two contracts it had with Iarnród Éireann: one for the Esat contract and one for the mini-CTC. This must have played an enormous part in failing to get a signal that the job was going way over budget, whatever about the time element. It was impossible to tell what costs were being attributed to either job, whether it was the Esat

job or the cable for the taxpayer.

Did nobody say at any stage that this was a very unusual way to do business? The 30 per cent payment up front to Sasib was a very unusual amount of money to get at the beginning of a contract and removed all leverage from Iarnród Éireann when they saw the contract was going adrift. They had already paid 30 per cent up front. That was an unusual amount unless there was an enormous amount of design work carried out by the contractor. In this case it clearly was not, as we do not have specifications yet, four years later.

Mr. Dalton: To deal with the latter question first, with very large procurement projects there is about nine months to a year with design, procurement and work in progress before anything is on the ground. That is true of even the best run contracts for rolling stock or whatever. During that period of time the contractor has to make commitments to other sub-contractors for the delivery of materials. It is not unusual in a project. Looking back retrospectively one might say we should not have done that, but it is not unusual to make a large up front payment of ten to 30 per cent.

Also, we would have got guarantees against it and we would have had the financial benefit of paying money in advance. Usually when we do something like this we normalise all tenders so that if some tenderer wants 20 or 30 per cent up front, we normalise the financing costs so as to normalise the contract, this is not terribly unusual.

Deputy O. Mitchell: My information is that insofar as it is normal at all an upfront payment of approximately five per cent is normal and in this case there were no benefits whatsoever that we can see.

Mr. O'Farrell: The Price Waterhouse Coopers comment is a little misleading. The invoicing arrangements were that MNL invoiced separately for work on Esat-only lines, but for work carried out on lines common to both mini-CTC and Esat, there was a separate invoicing. It was our task to separate out the cost relating to Esat and invoice that on to Esat.

Deputy O. Mitchell: So there was separate invoicing for Esat-only work.

Mr. O'Farrell: There was.

Deputy O'Flynn: I know we are to ask only two questions, but I have 74. Will I get an opportunity to do so?

Chairman: Over the next 12 months.

Deputy O'Flynn: Where does the buck stop in this débâcle? The PriceWaterhouseCoopers report is a damning indictment of senior management in Iarnród

Éireann. Is Mr. McDonnell carrying out any investigation or has he decided that senior members of that organisation should resign? Has he confidence still in his senior management team regarding this issue? I ask because Deputy Brady was not answered correctly in relation to management and chain of command. Did Mr. McDonnell read the summary report of 10 July? Did he read the PriceWaterhouseCoopers report? Does he accept its contents in total? There are no misleading facts in it as suggested by Mr. O'Farrell, are there?

Mr. McDonnell: There are differences of opinion between Price Waterhouse Coopers and Iarnród Éireann management.

Deputy O'Flynn: Is the final report out yet? I note from the letter to your chief solicitor that there is a final report, the initial report having been circularised to officials within his organisation? Has that been finalised?

Mr. Cullen: This is the final report.

Chairman: Were there any interventions?

Deputy O'Flynn: If one looks at the letter, chairman—

Deputy Currie: There is a summary which states that the conclusions will "be contained solely in our full report".

Deputy O'Flynn: That is in the letter dated 10 July. That is why I am inquiring if this is the final report. As Deputy Currie pointed out, it does not seem to be finalised because there are comments from Michael Carroll, the group's solicitor, and Ronan Finlayson which have not yet been included.

Mr. Cullen: This is the final report. When we finished this report, we left some time, as there were no more submissions made by anybody within the organisation we stopped all work and there is no work ongoing on this project at this time.

Deputy O'Flynn: Will the entire report be read into the record or is it already on the record of the Committee? Is there a need to read it formally into the record?

Chairman: The document will be dealt with in the context of the way we propose to deal with matters today. If certain things happen subsequently, it may very well be read into the record.

Deputy O'Flynn: So it will be attached to our final report. Am I obliged to read paragraphs one and two of the report into the record or should I just make my comments?

Chairman: The document is before the Committee, there is no need to read paragraphs into the record.

Deputy O'Flynn: I want Mr. McDonnell or Mr. Meagher to comment on the unbelievable statement contained in paragraph 1 about a body which has responsibility for the millions of pounds used to purchase rolling stock, etc., through a tendering process. Should all previous contracts entered into by CIE be examined to ensure that taxpayers got value for money in light of the way the tendering process was used in respect of this project?

A number of members already referred to Procurement staff. Were staff brought in from outside the organisation to help with this project in view of earlier statements that the company did not have access to a great deal of expertise in this area? From where did the procurement manager obtain his qualifications and experience? Where did he rank in relation to the chief executive officer and to Mr. Meagher, the managing director of Iarnród Éireann?

Will our guests explain the situation *vis-à-vis* the key standard provisions that were dropped from the contract? Who was responsible for dropping those provisions? Was a unilateral decision taken, was it a joint decision or was someone else involved in dropping these key provisions which has led to some of the problems with which we are now faced?

On page two of the PriceWaterhouseCoopers report on the contract it states that somebody in Iarnród Éireann must have been responsible for the financial side of this contract and surely he or she was aware of both the cost overruns and the delay. It also states that this information must have been available. Who decided not to inform the board of Iarnród Éireann or that of CIE at their meetings in February, March, June, September and October 1998?

With regard to paragraphs two and three on that page, were the same criteria applied to other major contracts? Were proper accounting procedures applied in respect of those contracts? It was stated earlier that these contracts involved hundreds of millions of pounds, but we are only aware of this particular one, which has gone terribly wrong. I raised this matter several months ago when members of the board came before us with the company's annual report. In fairness, the chairman stated that we would return to the matter at a later date and the Minister for Public Enterprise, who also appeared before the Committee at that stage, indicated her concern and initiated an investigation.

What procedures were used in respect of maintaining and managing other contracts? If we delve into the past, will we discover a similar débâcle involving the squandering of taxpayers' money by this body?

Mr. McDonnell: Should senior management resign over this increase in the cost of a project and do I have confidence in senior management? The answer to the

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second question is yes, I do have confidence in my senior management. Should senior management resign? I do not think so, no. I said - and let he who is without sin cast the first stone - there were mistakes made. We hold up our hands and recognise there were mistakes made. I am sure that in every walk of life in which the Deputy has been involved people have made mistakes. Do you stone them? Do you sack them?

I want to emphasise that our track record is exceptionally good by any standards. This was the first outside "turnkey" project in which we got involved. We got involved in it during a period when resources were low and inadequate. We had cut back continually on staff and resources. With the benefit of hindsight, our project management of this project left a great deal to be desired. We have learned from the specification of the project and, as Mr. Dalton has pointed out, we have totally new procedures for specification. Before we go in for projects of this size we carry out feasibility studies and we spend about a year drawing up the specification. We did not do that in the past.

What it comes down to - the Deputy asked this question and they can answer him within Iarnród Éireann regarding who is responsible for accounting systems, etc., in that company - is that if the person managing a project does not tell people above him about cost overruns or difficulties that have been encountered, there is no system which can overcome that.

The Deputy asked if previous contracts should be looked at. No. The emotive words he used e.g. debacle I would not subscribe to at all. Our track record is there.

Chairman: Where is the project manager in question now?

Mr. Dalton: As things stand now----

Chairman: Where is the project manager to whom Mr. McDonnell referred as the person who did not communicate with senior management about the difficulties involved and the cost overruns and who is he or she?

Mr. Dalton: I am not sure to whom Mr. McDonnell is referring.

Chairman: Will Mr. McDonnell indicate to whom he is referring?

Mr. McDonnell: Again, I have not his name.

Chairman: You do not know the identity of the project manager.

Mr. McDonnell: Again, at my level you do not go down into micro-management. I have 11 thousand staff, I do not know the names of each one.

Chairman: Quite honestly, this Committee is not going to accept statements of failure to know. Mr. McDonnell and Mr. Dalton are supposed to know this information and they came here to answer questions. The Committee, and I, as its chairman, will not accept that they do not know the identity of the person in question. Who was the project manager?

Mr. Dalton: I can explain. The project manager-----

Chairman: I have asked who was the project manager.

Mr. Dalton: The project manager on the project for part of the time was Bernard Kernan. In December-----

Chairman: Where is he now?

Mr. McDonnell: He is working with MNL.

Chairman: That is all I need to know at present.

Deputy O'Flynn: Did Mr. McDonnell indicate in answer to one of my questions that somebody was withholding information from him within his organisation? Reports of delays were made to the board at its meetings in February, March, June, September and October, but there were no reports of overruns on costs, etc. Was an individual or a group of people in Mr. McDonnell's organisation withholding information from the board? Does he still have confidence in those people?

Mr. McDonnell referred to the management of resources and the lack thereof. I am a businessman and a general manager runs my company. He is responsible to me for every expenditure and profit and loss relating to my company. That is the basis on which any business is run. Mr. McDonnell, please do not tell us that Iarnród Éireann has scarce resources. The company did not appoint people who were professionally competent to draw up contracts or manage the contract that was awarded. The engineering staff within the organisation expressed grave reservations about the ability of Sasib to take on this contract. They were ignored by the Procurement department. I hope we are afforded an opportunity to discuss this issue in detail. I ask Mr. McDonnell to show respect to the members of this Committee and our intelligence in regard to these matters. Will he reply to the questions on withholding information and not having resources?

Mr. McDonnell: I have the utmost respect for this Committee, Dáil Éireann and its institutions. As a public servant for 40 years I always have had. The Deputy asked me whether people withheld information. There were reports to the board but there was not information on financial overruns. That is a fact. Did people withhold that

information? I will leave that to the management of Iarnród Éireann to ask did they deliberately withhold information.

On procurement the Deputy asked me what was the professional capacity of people within Procurement, what training they have, etc. The Procurement department reports to the chief financial officer and he can give the Deputy the details of the professionalism within that office. Who was involved in drafting the contract? Again, I think the contract would have been drafted by our solicitor's department in conjunction with the people involved with the project and people in procurement. Gerry Dalton was the one most intimately involved in that and he can give the Deputy the full details.

Deputy O'Flynn: Before he answers that, can we speak to the solicitor who drew up the contract?

Deputy Stagg: Mr. Meagher should be given an opportunity to state whether he withheld information deliberately from the board about the financial overrun.

Mr. Meagher: The first indication we had of a cost demand for £40 million, which is the order we are talking about, was in the second or third week of September 1999. There was a board meeting on 26 September 1999 and the board was informed. The board was told immediately of that situation.

A Deputy: So then Mr. Meagher knew.

Mr. Meagher: A cost demand came through from Alstom and Modern Networks Limited combined for £40 million to the infrastructure division in mid-September 1999. It was communicated to me and I communicated it to the board. That was all done within a matter of days.

Deputy Roche: Yet if that is the case on 25 February 2000 there was a fourth quarterly report from 1999 which is transmitted from programmes and projects and it still states that the figure is £17.7 million. The figure does not increase to £30 million, plus or minus five per cent until the quarterly report up to 31 March 2000. It is extraordinary withholding of information. I do not say that the company did it deliberately, but there is no reporting relationship in the organisation on which it can rely.

Mr. Meagher: I can deal with that monitoring committee report and I will ask Mr. Flynn to deal with that in a moment. Let us be clear. The cost demand was issued to Iarnród Éireann in mid-September 1999 and it was communicated to the September Iarnród Éireann board meeting in 1999. That was the position.

Deputy Higgins (Mayo): In the Iarnród Éireann quarterly report to the Department, year ended 31 December 1997 there is a profile of reasons for differences

or delays. It states:

"Iarnród Éireann initially forecast that it would execute the mini-CTC project itself with some external assistance in the light of the timescale involved. It has been decided to now tender for the execution of external contractors. The estimate cost profile has increased from £14 million to £16.2 million. The reason for same:

- (1) changes to specification which arose
- (2) profit margins built in to the contractor's prices
- (3) inflationary costs."

At that stage the cost was gone off the rails.

Mr. Meagher: The board approval was for £14 million plus £1.7 million, £15.7 million.

Chairman: Was the £1.7 million company money?

Mr. Meagher: Yes, that is right. The figure was £15.7 million approved by the board in spring 1997. That was the figure for the project.

Chairman: Concerns were expressed in letters and faxes for a number of months following that report.

Mr. Meagher: Subsequent to the board approval I think on three occasions we went back to the Iarnród Éireann board for money for small projects in relation to the mini-CTC. That happened mainly in 1998 and that would have increased the cost of it. It is certainly true in terms of the estimate of the cable laying—

I will just go back to the amount of capital work involved at the time. In 1999 we had over 100 projects. We spent in excess of £200 million. There was a process in place for reporting on that capital expenditure through to programme and projects and also as a follow-on through to the Department. That was the process to which we worked and it was communicated to the Department that there was an estimate of a cost increase for cable laying at that time, but all the time as we worked through to summer 1999 there was no advice coming forward that the cost of the mini-CTC project would escalate to anything like £40 million.

Chairman: There is something radically wrong here. Did the company ever obtain a secure indication of the final cost?

Mr. Meagher: Yes.

Chairman: Was the company absolutely satisfied that was the final cost?

Mr. Meagher: If one looks at the difference for the costs, if one takes the project as it stands the difference relates - Mr. McDonnell gave it briefly in his submission

where he talked about £8 million in relation to safety items and also £8 million in relation to specification----

Deputy Stagg: When was the safety report undertaken?

Mr. Meagher: The safety report was 1998.

Deputy Stagg: As soon as that was conducted, surely the company's engineers could outline the consequences. Why could they not do so? The engineers are now saying they are quite satisfied with the increases. Therefore, they knew about them and how they occurred. Why could they not tell Mr. Meagher at the time that the knock-on effect from the signalling work would involve a great deal of money?

Senator L. Fitzgerald: Will Mr. Meagher reply to the allegation in page six of the report? The consultants state: "As a result in our opinion this contract was very far removed from a fixed price contract and any price quoted by the contractor was in fact indicative".

Mr. Meagher: In relation to the cost increases as a result of safety, IRMS recommended basically a different approach. We talked about it in relation to cable laying. Certainly there was no prediction that the increase in cost for cable laying at that time, after IRMS made its recommendation, would be anything of the order it turned out to be as the cable was laid through 1999.

In relation to the specification issues there was, as we said, a general specification issued in the tendering process for this project back in 1996. The project management as the project was developed through the first half of 1999 was arguing very strongly with the contractors that the specification we were requiring should be delivered in accordance with the contract price. That was the line that was being held very strongly by the project management team which was dealing with the contractors.

Deputy Stagg: Did it hold that line?

Mr. Meagher: It held that line when the cost demand came through in September 1999. Very quickly after that a contract review group was set up and advice was taken from senior and junior counsel----

Deputy Stagg: Was it that one could drive a coach and four through the original contract?

Mr. Meagher: The advice given by independent experts in the autumn and winter of 1999 and into 2000, following the demand, was that one had two options - one could either fight the demand by going to arbitration or perhaps through litigation and that one may win or one could try to reach a commercial agreement. The advice

was that we should take that line of action.

Senator Ross: I thank you for coming back and suspect that we will see you again at this Committee very shortly. If one strips away the euphemistic language in the PWC report about yourselves and your activities and in your own euphemistic report, do you agree that it is an appalling indictment of how CIE operates? In the first paragraph PWC states that, in relation to the contract, you were setting quite an unrealistic basis for costing. It is blatantly obvious that what it is saying is that you are either knaves or fools. I am not suggesting that you are knaves, but you had your eye wiped on this one. It goes on to state that you went for a figure of £14 million and, as Deputy Mitchell said, in your eagerness to have the contract completed decided to shoehorn a lot of costs which would not fit into this figure.

You have come to us today and said that you were wrong, that this is, in effect, a shambles, that you made mistakes, but have learned from them. You have given us a list, what you call an overrun. It is the first time I have heard of an overrun being three times the original cost. That is not an overrun, it is a farce. The list includes £8 million for new safety standards; £8 million for higher specification; £3 million for additions, and £2 million for inflation. Did you not anticipate any of these when you negotiated the original contract? It seems that you were taken totally and utterly for a ride.

Mr. McDonnell has replied to Deputy O'Flynn on the following subject. How much money do you have to waste before anybody is blamed for anything in CIE? We have six of the senior executives in CIE in front of us and it seems no one is to blame for anything. You are all blameless. It is a most extraordinary situation. Mr. Meagher is the chief executive officer and Mr. McDonnell the chairman of Iarnród Éireann. How often do you communicate with each other?

Mr. McDonnell: We communicate with each other, probably, twice or three times weekly depending on----

Senator Ross: What do you talk about, if you do not talk about issues such as this, which you did not for months? Mr. Meagher knew about it.

Mr. Meagher: We talk about the business.

Senator Ross: In how much detail?

Mr. Meagher: We have a very complex business. There was a process in place for reporting on the contract--

Senator Ross: So it is the fault of the system. It is nobody's fault.

Mr. Meagher: It is not the fault of the system. I am saying that there was a process in place for communicating on this issue. When the cost demand for £40 million came through, it was communicated very quickly and action was taken to decide on where we should go from there. It would be wrong to suggest, therefore, that there is no communication. There is a lot of communication. There was capital investment in excess of 100 projects as well as all other aspects of the business—

Senator Ross: They were not as big as this.

Mr. Meagher: Annual expenditure on this project represented about 2.5 per cent of total capital expenditure—

Senator Ross: That is a very substantial amount of money.

Chairman: Is that in respect of the sum of £14 million or £40 million?

Mr. Meagher: We invest about £200 million per annum and spent about £5 million per year on the mini-CTC project. On the scale of things, of course it is a very important project, but one has to understand the circumstances in which it was developed in 1995-96, which was a totally different era. We are developing a project to enhance signalling in the central area. Of course, the Senator is correct in terms of making provision for the risk of additional costs, inflation etc. All that is being done, but in the mid-1990s the infrastructural environment was absolutely different. It depends on the perspective, but we can all look back and say that what was done was incorrect and what we are doing now is totally different. To quote briefly from the original IRMS report:

"It was clear from interviews with management that there was a strong belief that financial constraints and overall transport policy since the mid-1980s have created the climate for staff reductions. Coupled with productivity improvements, this has led to the situation where scarce expertise has been permitted to leave. Managers, who indicated concern for the safety of the railway, may have been undermined by these factors. In the short term, those responsible for the safety of signalling, electrical and telecommunications infrastructure have a very difficult task to address."

A D Little and IRMS identified that there were inadequate resources for the renewal and maintenance of track and signalling. This was a situation which should not have been allowed to develop, but it had to be dealt with. It was during this period when resources were scarce that this project was developed and in respect of which £14 million was available, of which the European Union was to provide 85 per cent. Efforts were made at the time to spread it as widely as possible. Of course, it was spread too thinly in

the same way as the resources for renewal and maintenance. Price Waterhouse Coopers is commenting on a scenario which was the result of resources being stripped on a continual basis from the infrastructural division.

Senator Ross: The only conclusion I can draw from this is that you went in with the £14 million knowing that it would be more. That is what you are saying because it was spread too thinly. You knew perfectly well that it would cost more.

Mr. Meagher: Not at the time, but in retrospect it certainly was.

Senator Ross: How long did you know about what you call the overrun before you told Mr. McDonnell?

Mr. Meagher: We knew about the overrun—

Senator Ross: No, you, personally.

Mr. Meagher: The communication to the infrastructural division was in the middle of September 1999—

Senator Ross: Was that about the figure of £40 million or about any overrun?

Mr. Meagher: The figure of £40 million.

Senator Ross: When did you know that the project was overrunning? It did not just jump from £14 million to £40 million.

Mr. Meagher: No. It was a £15.7 million project. We went back to the board with three separate items which would have increased the cost to perhaps £17 million or £18 million. The estimate in the spring of 1999 was that the outturn for the project would be something less than £20 million. This was reported to the department and programmes and projects. The figure of £40 million came through in the middle of September. There was a meeting, I think, around 22 September and it was communicated on 26 September.

Senator Ross: I wish to ask a final question. Mr. Powell left in January 1999—

Mr. Meagher: March, I think.

Senator Ross: Mr. Kernan in April 1999 and Ms Hand in May 1999. Were Mr. Meagher's suspicions aroused that something untoward was happening at that time or did he think it was perfectly coincidental that three

key people, two of whom were responsible for awarding the contract, were leaving to join MNL?

Mr. Meagher: Two of them left to join MNL.

Senator Ross: I apologise, the third one to leave and join MNL was Mr. Judge, but that was later.

Mr. Meagher: As I understand it, it is stated in the report, in November 1998, the MD of MNL died, there was a vacancy, Mr. Powell was offered the position and he took it. That would not be abnormal. We have had people who have left our organisation before to work with various other organisations in senior positions.

Senator Ross: To whom they have given contracts?

Mr. Meagher: It is a commercial world. He was offered the position and he identified the need to bring some expertise into MNL and he went and he sourced Mr. Kernan. We were not happy about it, but there was nothing we could do.

Senator Ross: You were not suspicious about it, you did not think there was anything untoward going on?

Mr. Meagher: In what way?

Senator Ross: You did not think that there was some sort of mass movement or conspiracy of any sort?

Mr. Meagher: I did not think there was a conspiracy. We were losing good people and I was not happy about it.

Senator Ross: You did not think there was anything improper about it?

Mr. Meagher: I thought it was movement in the commercial world.

Chairman: That question has been answered and we must accept the position, particularly in so far as another interpretation might be put forward.

Senator Ross: I am only asking questions.

Chairman: Yes, but they relate to people who are not here. Those people will be given an opportunity to be present later. I want to protect the interests of all parties.

Senator Ross: Does any manager at CIE ever lose their job for doing wrong? By how much do they have to overspend or agree to overspend and what sort of mistakes must they make in order to lose their jobs or to have any penalties or discipline imposed on them?

Mr. McDonnell: I am not aware of any manager in Iarnród Éireann who has lost his job, but I reject suggestions of myriad mistakes being made in Iarnród Éireann. I think we have a very professional staff in Iarnród Éireann; we have very professional people within Iarnród Éireann and CIE. Do I know of anybody who has been sacked? No. Again, I think the implication of your question is that we are a bunch of lúdramáns. I do not think the track record shows that we are. Sure, there are problems with this project. I totally accept that, but if you look at our overall track record it is very good.

Senator Ross: But no action has been taken to put the blame on anybody, to move them or transfer them for mistakes made in this project?

Mr. Meagher: In terms of the cost and increase I suppose the question arises: should the steps have been taken that resulted in this cost and increase? There are a number of examples. For example, the method of laying the cable. A decision could have been taken that the recommendation of IRMS, which was to lay the cable to a new standard, not be adopted. Certainly money would have been saved and you would not have the cost increase with which we are now faced in relation to that aspect. However, one would have been laying the cable to a lower standard and on the basis of the recommendation from IRMS, one would have been leaving our customers more open to an accident happening. Therefore, the decision was taken that we should adopt the higher standard.

That argument works through in terms of the additional costs that relate to the proof of safety process that was put in place following the IRMS recommendation, which led to higher specification. The fact is that there was a major change in the development of standards, the specifying of standards and the process by which we did our business. One could have taken the view of doing it the old way and had a much reduced cost. However, that would have been the wrong decision. We are getting a different system now and it is a fact that independent advisers have informed us that if you were to go out to tender for this system it would cost a much higher price. Those are the options with which we were faced in the new situation: do we adopt the new processes or do we not?

Senator Ross: I would sum that up by saying that mistakes were made. In terms of finding a solution, the policy seems to be that the buck stops nowhere and the only answer is to throw more public money at the problem.

Mr. Meagher: In terms of cable laying, there was a process that was adopted for years by the company. Cable was laid to a particular standard, but independent consultants came in and recommended a change in between the granting of the contract. The question was: do we adopt it or not? The decision was taken that we should.

We could have taken the other decision, but it would have been the wrong decision in my view.

Deputy Stagg: A number of members have referred to the "thunderbolt" theory which infers that this matter came out of the blue at our guests in September 1999. However, everything that has just been said indicates that Mr. Meagher was aware that matters were building up to this and that there was no flash of lightning involved. We will have to return to this matter because it is not acceptable to state that this happened out of the blue.

Chairman: The point is well made.

Deputy Roche: I do not believe Deputy Higgins received an answer to the first question he asked. Who made the decision to allow procurement to effectively overrule infrastructure and the advice received by the company? If, as they state they do, our guests accept the Price WaterhouseCoopers report as a valid document, they stand condemned by a firm which acts as the company's auditors. These people did not parachute in out of thin air, they are aware of the details of the company's operations.

At the outset, the company's engineering staff did not believe Sasib had the capacity to deliver. They were overruled, for whatever reason. Hopefully we can speak with one of them later. We are informed that there is a difference between procurement and infrastructure as if those employed in those areas live on another planet. On each occasion questions about responsibility have been addressed to the gentlemen opposite, they have looked from side to side in an attempt to pass the buck. That is not acceptable.

Somebody must monitor what is going on in that particular company. Another member reasonably inquired as to who was responsible, but nobody could provide an answer. If somebody on the political side was responsible for an overshoot of £25 million, we would know all about it and we know what would happen to the individual in question.

In my opinion the representatives of the company - perhaps wittingly or unwittingly - have misled the Committee on a number of points. I am not satisfied that there has been the level of candour I would have expected from the senior executive and management team of a State enterprise.

Did anybody in Iarnród Éireann or in the CIE group as a whole put in place a process to monitor this contract? Given that the company was entering a complex area - particularly one it was entering for the first time against the advice offered by its own professionals - and becoming involved in its first turnkey project, surely it would have been fundamental to include monitoring mechanisms? However, we have been informed that the company did not become aware of this until September. Incidentally, after that date its quarterly reports continued to ignore the facts. The company did not inform the Department or the monitoring group until the spring of the following year that

the costs had risen to between £25 million and £35 million.

Will the chief executive officer indicate if there was a monitoring process? If not, why. We were informed that it would cost of the order of £150,000 per year for project management, a figure way beyond the salaries paid to anybody employed by the company. That is not quite true, is it? At least three people in the company are paid in excess of £100,000. Two of them are paid salaries which fall a short distance on either side of £150,000. I am at a loss to understand how this could happen.

I do not believe this is the first time CIE has screwed up a major contract. I live in Greystones. CIE has invested millions of pounds extending the DART to Greystones, but it cannot run it. The first train that came to Greystones was towed into the town. We are actually getting a lesser service from CIE now than we did in the 19th century. That does not sound like a group of companies that is doing its job well.

Was there a monitoring process put in? This was a novel contract and a new process. If a monitoring process was not put in, why not?

Deputy Higgins' first question has not been answered. Who made the decision to override the technical advice the company got from its own personnel that Sasib was not capable of taking this on?

Mr. McDonnell: It has come up three times that Procurement overruled the engineers. That never came up at executive or board level and Mr. Dalton has said it was not an issue when it came to placing the contract.

Deputy Roche: PriceWaterhouseCoopers make it very clear on page five of their report that there is a significant issue.

Mr. McDonnell: Mr. Dalton has disagreed with that, and he was the man involved.

Deputy Roche: Are they inventing this Mr. Dalton?

Deputy O'Flynn: He said he accepted the report. I asked him that half an hour ago.

Mr. McDonnell: I do not accept everything in the report.

Deputy O'Flynn: But he said he did.

Mr. McDonnell: We had debates on this from the very beginning. The very first question related to this and Mr. Dalton explained he did not agree with it.

Deputy Roche: This is PriceWaterhouse Coopers - not some young final commerce student who has just wandered into CIE to do a project. These are CIE's auditors. This is their final report. Mr. McDonnell said, in

reply to an earlier question, that this report was final and that there was a process during which the report could be finalised and further observations were to be made. Do I take it he made observations to PriceWaterhouseCoopers, saying this particular view that they have expressed so trenchantly on page five of their report was inaccurate, yet they persisted in leaving it stand and do not accept CIE's responses to the report? Is that a reasonable reading of it?

Mr. Dalton: I raised that issue. There is a number of points in the report with which I disagree.

Deputy Roche: Did Mr. Dalton raise the issue on page five, in regard to reservations about Sasib?

Mr. Dalton: I raised that issue with them. I thought I explained it, but maybe it is worth explaining again. There is no doubt that when we shortlisted the tenders, because we had familiarity with them and a new company was coming in - we had done some business, maybe £50,000 worth of work, with Sasib----

Deputy Roche: Peanuts.

Mr. Dalton: Sasib has done a lot of work in Italy and America. It produced a reasonably good quality specification and initial information about the company. It was shortlisted on the basis of its experience. We could not, under procurement procedures, disregard a company just because it did not have experience in Ireland. It had a lot of experience in Italy. When it was shortlisted, we looked at the proposal it put forward.

If members look at the correspondence, they will see it was suggesting a certain configuration. We said we had no particular difficulty with the equipment, but while I do not want to get into technicalities, we had difficulties with the way it was proposing to configure the system. We also said we did not think that, as the company was Italian, it would have experience of signalling practices in the United Kingdom with which we are aligned. We wrote to it on that basis, which I think is point eleven in the contract.

We got a response from it. First, it reconfigured the system. It used some of the Westinghouse points machines and the Vaughan Harmon central office system. We reconfigured some of the equipment to harmonise with what we used in Ireland. It also told us it was recruiting some United Kingdom engineers. Perhaps, it knew more than we did at that time, because a United Kingdom company subsequently took it over.

There were a number of issues. However, every signalling contract is a new contract. It is not like buying a car. The system has to be reconfigured. There is a process after tendering and selection when design and systems engineering goes into place.

Our concerns were, first, that it did not know the principles and, second, the configuration of the equipment. It

satisfied us on the configuration and that it was going to introduce English engineers onto the system. It was reasonable to assume that, in the intervening period post tender acceptance, we would develop a system that would be acceptable to ourselves.

If members read the contract document, they will see quite clearly that we asked these people to design, supply, install and commission. It was a turnkey project. They gave us to understand that they were quite capable of doing that. We did a certain amount of due diligence in that regard. We went to Holland and Denmark and they showed us equipment they had used there. It was on that basis that we finally dovetailed the commercial considerations with the engineering considerations and selected them.

Deputy Roche: Did the engineering personnel have difficulties? Were they happy that all their questions were answered at that stage? Did they sign off on the contract? Price Waterhouse Coopers suggest that the engineering staff never signed off on the contract.

Mr. Dalton: There was not a formal sign off procedure. However, our engineers would have been aware at that time that we were selecting Sasib and that Sasib was going to the board as the selected tender.

Deputy Roche: Does that mean they just shrugged their shoulders and said somebody had decided to do it, or that they were satisfied Sasib had the capacity? It is fine if they were. However, it is astonishing that PriceWaterhouse Coopers, which are very familiar with the company and its operations, should make that observation. It is very extraordinary that if Mr. Dalton raised it with them that they did not amend it if they were convinced he had operated on a due diligence basis and had met his engineering staff's difficulties.

Mr. Dalton: The point I am making is that we got a lot of clarification from Sasib and----

Deputy Roche: But not enough to satisfy Price WaterhouseCoopers.

Mr. Dalton: PriceWaterhouseCoopers were not around at that time.

Deputy Roche: I do not mean that. They are writing with the benefit of 20:20 vision. They have actually discussed this with----

Mr. Dalton: And they would have been reading the correspondence from the engineers which expressed reservations about the system. Therefore, they were commenting on the fact that the engineers had reservations, which I said they did.

However, one selects a tender on a number of issues, such as technical issues and price. The managing director pointed out quite clearly that in 1996 £14 million was a lot of money. There was very little investment in the railways at that time and, therefore, price, in addition to technical and other matters, was an important consideration. One cannot dismiss that. One might think at this point in the economy-----

Chairman: Was it an issue that they progressed the project rapidly?

Mr. Dalton: It was an issue for all tenderers that, because of the European Union funding, we had to have this project in by the end of December 1999.

Chairman: There were 11 very serious points of concern raised in the contract documents. They were raised on 30 April and it was signed in July. This is the aspect on which Deputy Roche is trying to establish some common sense. That was a very short period of time for major technical issues of difference to be resolved and a contract signed, which was not worked on until much later in the year, in the autumn. Time constraints meant that insufficient time was used to plan the whole project.

Mr. Dalton: Time was of the essence from the very start.

Chairman: Because of the European Union funding?

Mr. Dalton: Yes, it was 85 per cent funded by the European Union.

Chairman: But not from a sound contract point of view.

Mr. Dalton: Some people have criticised the development of the contract. However, this must be thought about in the context of the particular time. We had a deadline of December 1999. We decided in-house that we, as a management team, could not handle the project in that timescale. We had to make a decision within a short period to do the project. We went through a fairly detailed process.

Invariably, because these projects are turnkey and have an element of design, one does not get the full design solution on one's doorstep when one signs the contract. There is no signalling contract where everything is tied up with ribbons, no matter who one deals with. You have everything tied up with ribbons, no matter who you are dealing with. It is nine months, 12 months-----

Deputy Roche: Given that you could not tie it all up and that this was important - I understand the difficulties under which you were working; they were considerable

because there was a time-frame during which the European Union funding, the 85 per cent grant drawdown, would run out - is it not extraordinary that there was not closer monitoring of this contract? Is it not extraordinary that the £40 million figure should come to your attention in September 1999, within a quarter of when the contract should have been completed? The other time issue was that this project was to be completed by the end of 1999, but it was not. At the end of 1999 these people said: "We need an extra £25 million". It is astonishing that you did not have a monitoring system there. Nobody would run a business like that.

Mr. Dalton: The project was being managed-----

Deputy Roche: The project was being managed, but the project was not being monitored.

Mr. O'Farrell: On the issue of monitoring the project, I assume you are referring to the monitoring of the cost that would be incurred as the project was developing. The systems we have in place would pick up the expenditure as it was being incurred. You will see from the reports you have that we would report accurately on the expenditure being incurred on a monthly basis. We had capital expenditure reports and picked up all the capital expenditure relating to particular projects.

Deputy Roche: Why was it that your chief executive officer did not know until September 1999 that you were in difficulty? Would you not think of ringing him? You are not living a million miles away; you are in the same office. Would you not lift the phone to tell him?

Mr. O'Farrell: But, Deputy, there is a distinction. I am referring to the costs that would be reported or the costs that would be incurred on the project. You are referring to the ultimate project outturn which is a slightly different issue. The overall costs that we had picked up and reported earlier, going back to February 1999, related to the cabling costs and those costs-----

Deputy Stagg: Would the costs to date not indicate what the costs of the outcome or completed project would be?

Mr. O'Farrell: In relation to the cabling costs, we made an estimate in late 1998 on the best information available to us at that stage as to what the additional cable costs would be. That estimate was in the region of £2 million. Later, as the project developed during 1999, in the late spring of 1999 we revised that upwards to £4 million on the cabling side.

Deputy Stagg: It was still wrong.

Deputy Roche: When did you become aware of the difficulties the Esat arrangement was going to cause?

Mr. Dalton: You have the information in the managing director's report. The Esat heads of agreement were signed in June 1997, around the time the contract was let with Sasib MNL. There was a programme set out in the Sasib MNL programme—

Deputy Roche: I have that. I am grateful for the extraordinarily copious documentation, but when did you become aware that this was causing you the type of difficulties which Price WaterhouseCoopers mentioned in their report? They specifically link your difficulties to this contract.

Mr. Dalton: When the two projects became aligned, when mini-CTC started slipping in terms of its deliverables, the Esat contract caught up on it. When both of them started from the blocks there was six to eight months of a comfort factor between the two of them. In other words, we did not box ourselves into a corner in agreeing the timetable for the Esat contract. There were a number of areas which were not associated with the mini-CTC project on which we were ploughing cable for Esat. For example, we ploughed on the Belfast and Wexford lines which were not mini-CTC. We had a factor of comfort, if you like, where we could work on lines which were not associated with mini-CTC. The issue came to a head around November/December 1998 when we had ploughed on most of the non mini-CTC lines and we wanted to start ploughing between Connolly and Mullingar and between Athlone and Galway which were mini-CTC lines.

Deputy Roche: Was that when the Esat cable got severed?

Mr. Dalton: I am not sure what that is a reference to.

Deputy Roche: We have been told that there is an Esat problem, that a cable was damaged and that the ultimate cost to CIE could be £1 million.

Mr. Dalton: I have no information on that; neither does Esat, for that matter. I do not know where that information is coming from. I could answer it if I knew—

Deputy Roche: It was the Department that suggested it.

Mr. Dalton: I am very close to the project and I accept responsibility in that regard, but I do not know of any £1 million. I do not know where the story is coming from.

Deputy Stagg: The secretary general of the

Department.

Deputy Roche: Are you suggesting that the Department of Public Enterprise and your auditors are inventing the story?

Mr. Dalton: I do not see where the reference is to the £1 million in the Price Waterhouse Coopers report.

Deputy Roche: It is in the minutes of our last meeting.

Chairman: We can deal with that again. I call Deputy Currie.

Deputy Currie: The gentlemen are having a rough ride today and, frankly, they deserve it. This is an appalling performance. I am most concerned about it. Part of the reason we are questioning you today is to establish whether there is a case for having a more intensive look at this contract and the circumstances surrounding it.

I believe we have established that there is not only a case, but a necessity to see what has been going on. We are dealing with a substantial amount of public money. The attitude coming across appears to be rather cavalier towards the spending of public money and the overrun of that spending. It is our job to pin this down. We are responsible for finding out what happens to money we vote in the House and we must pin responsibility for it. If responsibility is not among the six of you, we must find out where it lies. There is an element of buck passing, even between the people here today. It is not blatant, but it is going on and we must establish why this is happening. If the six of you are not responsible for this, who should we call to the Committee to accept responsibility for it?

Mr. Meagher: You are talking about the increased cost of the project from £15 million to £40 million—

Deputy Currie: In addition to you, who else should we call before the Committee?

Mr. Meagher: We have set out the reasons the project was developed. There is no cavalier attitude in Iarnród Éireann to spending money.

Deputy Currie: There is certainly no proper monitoring of it.

Mr. Meagher: Money was so scarce for so long that the investment we have now is very welcome. There are major monitoring systems in place and I can assure the Committee of that. I pointed out in my submission that this project has spanned two very different eras in Iarnród Éireann. It is difficult to convey the contrast between the two eras. In one there was not a penny for anything and

everything was cut back. There were inadequate resources for all aspects of infrastructure. There is investment now, but the project was developed earlier. There was an effort to spread it and to do it at minimum cost and get maximum value for it.

That was the approach with every other aspect of expenditure on infrastructure at that time. When IRMS looked at the situation in infrastructure in 1998 they would say that if there were to be expenditure cutbacks in future - that can always happen; there can be good reason the expenditure available for railways reduces in tight situations - the process for dealing with it should change. Rather than trying to maintain the entire network and spreading the smaller cake over it, the aim should be to properly maintain and renew a smaller network. That was the clear message that came through. The company was trying to spread inadequate resources to keep a general network going. That has been recognised not just by Iarnród Éireann. Independent consultants have recognised it. The project was developed at that time.

IRMS came along. Standards changed. Specifications changed. We are spending £50 million, which would have been unheard of, over a five year period on what we call the soft issues, not renewal of hardware, but development of standards, enhancement of training and so on. There has been a sea change in Iarnród Éireann. The standards to which we are operating have increased dramatically, and the costs associated with those standards have increased.

The project we are delivering now is a different project to different standards from what was put forward in 1996-97. One of the independent experts who examined the project said that the project as specified by the contractors in 1996 was analogous to the basic model car when compared with the current project which is analogous to a more up-market car.

Deputy Currie: You are trying to suggest to the Committee that this was deliberate, intentional, planned, that you knew what you were doing at all stages of the operation. That is what you are trying to put across to me now. That is not what is coming across from your evidence today. The number of times you said "we did not know", "the information was not passed on", "we were not aware of that" —

Mr. Meagher: When the demand for £40 million came, everybody knew, and independent advice was sought. In the interim period as the specification was developed, the view that the project management took was that the contractors should deliver the project as per the original price. We wanted it delivered for the lowest possible price. The contractors said in September of 1999 that if we wanted a project of that specification delivered they wanted £40 million. We immediately took on board the best advice we could get to decide on the best way forward from there.

Deputy Currie: When was the Department informed of these difficulties?

Mr. Meagher: About the £40 million?

Deputy Currie: Yes.

Mr. Meagher: My understanding is that the group chief executive officer informed the Department very soon after the board meeting in September 1999.

Deputy Currie: Therefore, the Department was informed in September 1999 or shortly after that.

Mr. Meagher: October.

Deputy Currie: Who in the Department was informed?

Mr. McDonnell: I rang the assistant secretary of the Department after the Iarnród Éireann board meeting on 28 September 1999.

Chairman: Who was the assistant secretary at that time?

Mr. McDonnell: Pat Mangan. I rang him to say that a matter had come to the attention of the board. At that stage I was told for the first time that the contractors had submitted a bill for £40 million. You can imagine the shock I got when I heard that, for what I took to be a turnkey project. I rang the assistant secretary either that afternoon or the following morning - the meeting of the Iarnród Éireann board had taken place in the afternoon. I said that, given that Cohesion Fund money was involved, I wanted to bring it to his attention. I told him that I had initiated an investigation into it and that I would get back to him. At that stage Joe said the indications were that £40 million had been tabled by the contractors, but that management thought this was a try-on.

Chairman: Was that based on the IRMS report, or did they have the gift of telepathy in knowing what was required of IRMS, which ultimately came to be costed at £40 million?

Mr. McDonnell: IRMS was with us in 1998 and its report was issued in about November of 1998. The recommendations would have followed subsequent to that.

Chairman: Was there communication between the contractors and IRMS?

Mr. McDonnell: No.

Chairman: Was it coincidental?

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Mr. McDonnell: They would not have had direct contact. The Iarnród Éireann project manager would have been reflecting the IRMS standard.

Chairman: Who was the project manager at that time?

Mr. Meagher: We had recruited Michael Hanlon. Because we had to divert in 1998, we were project managing ourselves initially. A.D. Little came in and highlighted the fact that we were trying to spread resources too thinly in terms of project management and maintenance of the signalling system, and recommended diverting resources to maintenance of signalling. We did that and went through the process of hiring outside consultants to come in on project management.

Chairman: Should the project not have been stopped at that stage, in 1998?

Mr. Meagher: There was little happening in 1998.

Chairman: There is less happening now.

Mr. Meagher: Michael Hanlon was appointed in December 1998.

Deputy Currie: Could I come back to my question? Mr. McDonnell, you informed the assistant secretary in the Department of this shocking situation. You said you were shocked by it. What was the response from the Department, from Mr. Mangan?

Mr. McDonnell: What I was shocked by was the amount of money the contractors were lobbying on the table - £40 million. Again I asked my management in Iarnród Éireann what the figure would be. They said they did not know, that it could be as low as £20 million or as high as £40 million.

Deputy Currie: Were you shocked that they could not be more specific?

Mr. McDonnell: Again, I am not an engineer or a contract expert, but I am aware, from having worked in the public sector, particularly on road projects where exceptionally tight contracts were drawn up, that the cost overruns were phenomenal. In my own area, public transport, I know from dealing with people from other jurisdictions that despite what they considered to be very tight contracts there are overruns by contractors. I have been informed - we have a specialist on the main CIE board from ESB International - that this is par for the course, that what contractors normally do is throw in everything, including the kitchen sink, so to speak, if there are cost overruns, and then there is negotiation.

Deputy Currie: What was the reaction of the assistant secretary in the Department?

Mr. McDonnell: The assistant secretary said that he was aware that the principal officer dealing with it was aware that there were some cost overruns.

Deputy Currie: They were already aware that there were cost overruns?

Mr. McDonnell: Yes.

Deputy Currie: You were not aware----

Mr. McDonnell: No.

Deputy Currie: ----but the assistant secretary was aware?

Mr. McDonnell: No. The assistant secretary----

Deputy Currie: The principal officer was----

Mr. McDonnell: ----had been aware, but I am sure he was not aware of that and, again, the Committee has had evidence that it was reported to the European Union monitoring committee. It was not reported to the board of Iarnród Éireann, but there were overruns of £2 million to £5 million.

Deputy Currie: Did you inform your chairman?

Mr. McDonnell: I made a report to the next meeting of the CIE board, yes.

Deputy Currie: The chairman was there on that occasion, presumably.

Mr. McDonnell: I made a submission to the main CIE board.

Deputy Currie: Your chairman would have responsibility for passing information of this nature on to the Minister. Are you aware that that happened?

Mr. McDonnell: No. Again, having listened to the evidence of the civil servants, civil servants are not responsible for micro-managing projects or for informing. We have hundreds of contracts. We do not expect the Minister to monitor every contract.

Deputy Currie: Yes, but in relation to something of this nature which shocked you, to use your phrase, which you rightly thought it necessary to pass on to the Department and then it was raised at the next board meeting, presumably the chairman would have been as

shocked as you were and would have sought the first opportunity to pass this on to the Minister.

Mr. McDonnell: I do not know. I asked for an investigation to be held into it. My reason for doing so was twofold. The systems we had in place had served us very well on all contracts up to then. This was the first contract in respect of which our systems were not as perfect as we thought they were.

Deputy Roche: Does Mr. McDonnell know whether the chairman sought a meeting with the Minister to inform her about this?

Mr. McDonnell: No, I do not.

Deputy Roche: We will have to ask the chairman that question at some stage.

Chairman: Who is the chairman?

Mr. McDonnell: Mr. Joyce.

Deputy Currie: I will not persevere with this as there are questions to which answers can be only obtained properly in a different format from this.

Regarding the summary report from Price WaterhouseCoopers, in a letter from William G. O'Riordan to Michael Carroll, group solicitor, dated 10 July 2000, he states, this is the summary report and does not necessarily constitute our definitive opinions and conclusions which will be contained solely in our full report. He also states that unless we receive instructions to the contrary, we expect to issue our report following receipt of comments from Mr. Carroll and Ronan Finlayson. We were told this report was the final report. Why was that? When William G. O'Riordan of PriceWaterhouse Coopers wrote to the group's solicitor, he did not consider it to be the final report. Does that mean he received instructions that he was not to proceed further and, if so, why did he receive such instructions?

Mr. Cullen: I will take that point. We had this report prepared. Some people were asked in June of that year did they want to make any comments regarding the report. There was a period of three weeks at that stage before the report was finalised and any comments made were included in submissions by Price WaterhouseCoopers. When two or three weeks had elapsed after the report was presented during which time information was not forthcoming from anyone else, I said, "We have got what we got and we will finalise it." There was no reason to go further, as no one else had made any further submissions.

Deputy Currie: Does Mr. Cullen not consider there were enough items in the Price WaterhouseCoopers

summary report that should have sufficiently concerned him to have received from PriceWaterhouseCoopers the fullest possible report on these matters?

Mr. Cullen: This report was prepared to give a document to the CIE solicitor to help him in his assessment as to whether we should take this to the courts or go for a settlement. Our reading of the situation at the time was that we did not think any more useful information would have come out of any more investigation.

Deputy Roche: Is it fair to say this did not arm the company for going to court? If I were a plaintiff bringing that to court, my back would not be fully straight in this regard.

Mr. Cullen: I agree. It was an internal document not intended for circulation outside the office of CIE's solicitor. As such it was privileged information, but we have moved on from that point.

Deputy Roche: Is it the case that prudence would have suggested that Mr. Cullen should not have dug further into this, as he had already been into this heap and found something untoward?

Deputy R. Bruton: PriceWaterhouseCooper's report states the contract is so unspecified in the context of Iarnród Éireann as to be no more than a general statement of intent. The impression is clearly given that the dropping of the performance clause rendered its position impossible. The fatal flaw in this was the legal contract. It had signed a contract that gave it no redress. Who vetted that contract? Surely in a group of this size, it was not left to a junior solicitor to sign off on contracts? There was a process, the legal department examined to what the group was committing. This was the first time the group went outside and, by Mr. Cullen's admission, it was breaking new ground, but the group does not seem to have taken a precaution to make sure the contract was robust. It seems the responsibility for this cannot be shoved down the line to the legal person of the day who is no longer there. There were major flaws at company level in the way the legal service operated in this instance. I would like Mr. Cullen to comment on that. I also wish to ask two further questions.

Mr. Cullen: At the time we had a senior solicitor working full-time for Irish rail regarding the signing of contracts. That person had been there for some years and was very skilled. We also had a professional procurement manager who had a good deal of experience in that area. They made a decision at that time that if they sought a letter guaranteed from the parent company rather than a performance bond they would save £49,000 on the contract. That was a decision they made at the time. That matter was not referred up. They felt they had sufficient

security from the parent company guarantee they had secured in the project going forward. I would prefer a bond rather than a guarantee, as in the case of a bond one can take the money and get those concerned to take it back rather than perhaps having to sue someone in the other situation. Since this has happened we would opt for a bond rather than a parent company guarantee.

Deputy R. Bruton: It was more than just that decision, it was also due to a fact quoted in the report, that the contract was so unspecific as to be only a general statement of intent. The group threw away the two cards it had, the specificity in the contract and the performance bond. I find it extraordinary difficult to accept that responsibility for that was left to those people down the line. The two items that gave senior management comfort regarding the commitments being entered into seem to have been thrown out the window. What was the system at high level in the group for vetting these contracts that could contain such fatal flaws?

Mr. Cullen: We have a procurement department and a legal department. We have quite a large legal department whose personnel would examine and sign off on contracts. In 1995 a parent company guarantee was a security and a bond was another type of security. Some people would feel comfortable with either of those securities. That is a fact of life.

Deputy R. Bruton: It is clear from a reading of PriceWaterhouseCoopers' report that the group did not have matters pinned down to enable it to exercise the parent guarantee. It was worthless, as the group did not have any specifics to which it could seek to insist on performance. This was more than just a cock up down the line; there was a failure in terms of supervision.

Mr. Cullen: The engineering personnel considered they had a turnkey operation and that they could deal with it.

Deputy R. Bruton: I find it impossible to accept the system was so flawed that it was left to those people to make a decision on a turnkey project.

Deputy M. Brady: Will we examine the contract in detail? Do we have a copy of it?

Chairman: We will deal with such matters later.

Deputy R. Bruton: Regarding the other two questions on which I seek clarification, £24 million has been explained away by the implementation of new safety standards, higher specifications and additions. As presented, that gives one the sense that they were implemented and that we are getting value for the £24

million extra expenditure, but the PriceWaterhouse Coopers report states that the company is disputing £17 million of the extra cost. There are two different interpretations of the view of Iarnród Éireann regarding this overrun.

One is that £17 million is unjustified and the other, presented here by the chairman, is that there is some value for money. This goes to the heart of the matter. Is it the view that there you got the value in relation to this and that the £40 million represents good value or is it that we have at least £17 million gone down the drain and which, for legal reasons, we may never get back? Is it agreed that that much is lost?

Mr. O'Farrell: In relation to the £40 million claim we got from the Association, which broke down roughly as £20 million from Alstom and £20 million from MNL, many elements of that had to be examined by us because we were not happy with them at the time. Also, in relation to that £40 million, that is not the same £40 million that is spoken about today in terms of what may be the possible ultimate cost of the project. There are two different figures involved. The figure submitted by the Association in September 1999 did not include non-recoverable VAT or internal project management or supervision costs. There were elements within that £40 million queried by Iarnród Éireann. The Association made the point many times that that £40 million was their view of the contract up to July 1999.

At that stage, as Mr. Meagher said, the contract review group was formed and one of the issues considered was whether we should enter commercial negotiations with the Association or not. It was considered that several events had to occur first, including the completion of specifications, the proof of safety and the commissioning of Knockcroghery. Commercial renegotiations did not commence until spring this year. At that stage a lot more design work had been done and the commissioning of Knockcroghery had been done, so other costs had been incurred which had not been contemplated at the time the Association had put in a submission for cost claim in September 1999.

Deputy R. Bruton: I am still not clear. My question is whether there is £17 million which Mr. O'Farrell regards as having been unjustifiably billed to Iarnród Éireann? Is that still the organisation's view or are we now in a situation where Sasib has conceded that £17 million or is that still in dispute? In Mr. O'Farrell's view how much money of this contract has been an unjustifiable overrun as opposed to extra safety or hand digging that is now a feature of the way work is done?

Mr. O'Farrell: Regarding how much we have been invoiced to date, to date we have not been invoiced £40 million by the Association. What they did was they put in a statement of claim in September 1999. Negotiation has

occurred for part of the year 2000 about that claim and about further work done on the contract. We have not been invoiced for that amount. The amount invoiced and paid on the mini-CTC contract to date is of the order of £15 million.

Deputy R. Bruton: I am still not clear as to what can still be legitimately disputed. There used to be a television advertisement which featured a shopkeeper who had been burgled and who said: "I do not understand why Rufus did not bark". It was as if it had nothing to do with his capacity for security. It seems to me that alarm bells did not ring when they should have. It is evident that in August 1998 that £1.1 million had been paid over and above the basic contract price on what I presume at that stage was very little work. There seemed to be a substantial overrun very early on.

It then transpired that MHA going in during December 1999 and reporting that Sasib had no structures in place to perform the contract, that no overall design system had been designed for the scheme, that Sasib had not supplied the work programme and that there were no ties between Sasib and MNL on civil engineering activities. This project was massively off-target at that stage. Later again Iarród Éireann knew the cost of hand digging against plough digging and knew that a substantial part of the 700 kilometres would have to be hand dug instead of plough dug as well as having a safety report.

There were three signals in 1998 of problems that suggested the contract was massively off-beam and I do not understand how nobody picked that up until this bill was presented a year afterwards. Who was MHA reporting to that this did not sound a major alarm bell?

Mr. O'Farrell: Deputy Bruton mentioned the £1 million charge in mid-1998 for cable laying. That would have related to both cable laying in relation to Esat and mini-CTC projects and it raised concerns. The cost was picked up and we did make a best estimate on the basis of the information available to us. We revised the cost upwards by £2 million in late 1998 or early 1999. When more information became available to us following the evaluation of the IRMS report in spring 1999 we revised the figure up towards £20 million. That related purely to the cost of cable laying. Regarding other matters such as the performance of Sasib and so forth, we were very concerned by what we perceived as that company's poor performance and we reported that to the board because we were concerned about delays with the project and the possible effect on European Union funds. We had many meetings with both the Association, internal meetings and we got legal advice. We considered our options throughout early 1999 and it was by mid-1999 when matters got to the stage where we were advised by the Association that the likely cost would be in excess of 15 per cent of the contracted price. At that stage, in July 1999, the Association stated it would put a formal claim on the table

to us. There had been ongoing negotiations for much of 1999 in which we maintained strongly that the project should be delivered within the scope of the initial contract.

Deputy Stagg: In October 1998 the chairman was concerned about the project, in March 1999 he was seriously concerned and in November 1999 he brought it to the attention of the Minister - how serious it was, when it was a matter of a £40 million overrun. What the chairman has told us has enlightened me more than any of the answers we have heard all day because there was a process. Up to now we were told that things suddenly went wrong and this was suddenly £40 million. It was not like that. That there was a process.

Senator L. Fitzgerald: Deputy Stagg has summed up my belief. There was a definite process. My only conclusion is that there is a culture of disclosing as little as possible. I am sorry if anybody takes personal offence at that, but any sensible logical person would have to say that in a management system that has been established, reviewed and updated over the years projects should have been monitored on an individual basis. If such monitoring was absent, the entire board should resign *en masse* immediately. If it was in place progress would be in evidence month by month, if not week by week.

I am totally dissatisfied with Mr. O'Farrell's response to Deputy Bruton's question and to my first question. I took copious notes, but I will not go over it because Deputy Bruton has done so in detail. However, I am not convinced by Mr. O'Farrell's responses. I refer him to the procurement department which he did not address, but to which Mr. Cullen made a brief reference. According to the consultants employed by the company, who are also its auditors, "many of the difficulties stemmed from the process of selecting a contractor. This was the first case where Procurement had heavy involvement with placing a contract for infrastructure".

Why does Mr. Cullen think PriceWaterhouse Coopers made such a profound opening statement? He said the company had a professional procurement section with a great deal of expertise and experience. If that is the case, why did the consultants make such a strong opening statement?

Mr. Cullen: All major procurement projects were handled by the group up to 1995. In 1996 we decided to change the situation and put a very strong procurement group into Irish Rail. Brian Powell was employed initially by the group. He went into Irish Rail during 1996 as head of procurement. Around the same time we were trying to achieve significant cost savings in Irish Rail. We felt there was a possibility of achieving savings in the region of a ten per cent or 15 per cent on all materials purchased, which would have been very important to the group.

At the time we took on three very senior project managers who had a lot of experience outside CIE and had brought a lot of experience with them. It is the first time we had what I would classify as a very experienced procurement group within Iarnród Éireann who took the responsibility of going through the tendering document, the European Union procurement regulations and managing projects in a professional way at that particular time. I am not saying that we had managed differently in the past, this was their first major project. Maybe to a certain extent they were new to the situation and probably showing their teeth a little bit and they wanted to be important, but they had a lot of experience going forward and they were very professional. They achieved significant savings.

Senator L. Fitzgerald: I take it Mr. Cullen does not agree with PriceWaterhouseCoopers. In page five of its report regarding reservations about Sasib it is stated: "With the benefit of hindsight the engineers' experiences and concerns were not given due regard in the drive to bring the project in on budget".

Mr. Cullen: I think again Mr. Dalton has answered that question. My understanding----

Senator L. Fitzgerald: Not to my satisfaction. Mr. Dalton is one of a team of engineers. Price WaterhouseCoopers is clearly at issue with Mr. Dalton in my literal interpretation of its report. I am not a technical expert.

Mr. Cullen: I was responsible for putting the board paper to the main CIE board and at that stage I had no reservation from anybody in engineering that they had any problem with the contract.

Senator L. Fitzgerald: Why did the company's consultants pick up on it?

Mr. Cullen: They have done their investigation, that is their outcome.

Deputy O'Flynn: Mr. McDonnell has accepted the report, but we will get the answers in due course.

Deputy Lawlor: It is quite understandable throughout the lifetime of a contract as complex as this that there can be additional technical advancement and changes and the company is giving us to believe there is a value to the overspend and it should not be classified as such. Perhaps the company's representatives could do more work to improve their case.

Has the £3 million referred to in page three been charged to Esat and paid? It states: "Expenditure to the end March 2000 amounted to £13. million, of which there is an estimated £3 million to be recharged to Esat". Has that

been recovered from Esat?

Mr. O'Farrell: It has, yes.

Deputy Lawlor: Good. I cannot get a handle on the contractor's exposure to the customer by running up such a cost without approval for payment. Was there internal approval while the extras accrued? Schofields estimated the cost might be £25 million while the contractor has estimated the cost at £40 million. We have moved on in time and Mr. Meagher mentioned earlier that the company paid £15 million in September 1999. Has a resolution been reached with the contractor regarding what Iarnród Éireann believes it must pay? Will there be major litigation?

Mr. Meagher: We have paid of the order of £15 million to date on the contract and we are in commercial discussions to try and reach agreement with the contractor for the delivery of the project. That has not been finalised as yet. We have independent expertise helping us and certainly their view is that if we conclude discussions for the delivery of the project for £40 million that will be value for money. That is absolutely clear.

Deputy Lawlor: The report states: "However difficulties arose in executing the contract resulting in an estimated final cost of £25 million to £40 million and has pushed the completion date to March 2002". The best estimate in September 1999 was £40 million. Will that estimate increase?

Mr. Meagher: When that cost demand was put in place and we got advice the decision was taken that the best course of action was to enter commercial negotiation to try and reach an agreement. I think I said in my submission there were a number of things that had to be in place first. Some of those items related to absolute clarity in so far as one possibly can on the specification of the contract both the telecommunications specification, the signalling specification and also the proof of safety procedure. A lot of work has been done on that through the first half of the year 2000, so that there is clarity between Iarnród Éireann to remove the scope for ambiguity as much as possible before we enter the discussions.

If agreement is reached it will be based on the detailed telecommunications and signalling specifications that have been discussed between the contractor and ourselves. Certainly the intention would be that the contract would be delivered for that price----

Deputy Lawlor: Will this company continue to work through to March 2002 when in November there is a dispute over £25 million? It is funding CIE to the tune of £25 million which is outstanding on a contract which Mr. Meagher suggests will conclude in March 2002 costing £40 million according to the best estimate available. A year

has gone by and today's circumstances should be much more specific, as Deputy Bruton said.

If the company gets to March 2002 and is still talking about a figure between Schofields' estimate of £25 million and the contractor's estimate of £40 million. Is it time to bring this issue to finality and have a clear understanding going forward?

Mr. O'Farrell: The £17 million in dispute, that is mentioned in the Price Waterhouse Coopers report, refers to the association's claim in September 1999. The £40 million that is talked about now, as I said earlier, in relation to the possible outcome of this project - and we are still in discussion on that - we are indicating that there would be substantial agreement between ourselves and the association as to the possibility of achieving an outcome in relation to that £40 million, that there is not £17 million that would be at dispute between the association and ourselves at the moment if it is possible to conclude the-----

Deputy Lawlor: If it is an overspend. A sum of £17 million is an acceptable, identifiable figure. It can be attributed to technological advances and extra digging for cables. Does Mr. O'Farrell accept that £17 million is credible under the terms of the original contract?

Mr. O'Farrell: We are saying, as the managing director just said, that we have sought independent advice in terms of what would represent value for money in relation to an outcome cost for this project and we are advised that a figure in the region of £40 million would represent a project delivered at value for money in today's terms.

Deputy Lawlor: Is that Michael Hanlon and Associates' assertion or somebody else's?

Mr. O'Farrell: It is somebody else's.

Deputy Lawlor: How many more parties will have an input into this to try to bring it to a conclusion?

Mr. O'Farrell: Again, an important point that was made is that in order to arrive at that figure one expresses concern whether that would be a final figure or not, whether with a project with perhaps some 18 months still to run there could be further costs during that period and we also share that concern. We were very concerned to ensure that if the project was to continue that it would be for a price in which we could have some confidence. As stated in the managing director's paper, there are a number of items which had to be in place before we could proceed to engage in commercial discussions.

These related to the finalisation of specifications, the proof of safety, the commissioning of Knockcroghery and so forth. We sought to put those items in place over the

first half of this year and are now very close to being completed. Therefore, it gives us now the opportunity to engage in meaningful commercial discussions. Any discussions in relation to that would be subject to board approval.

Deputy Lawlor: My concern is-----

A Deputy: Which board?

Mr. O'Farrell: Initially the Iarnród Éireann board and subsequently the CIE board

Deputy Stagg: The Minister?

Mr. O'Farrell: Ultimately.

Deputy Lawlor: If such fundamental issues have been at stake since the chief executive officer was informed in September 1999, my concern is that the contractor consortium feels, even though it must be screaming for money because it has expended according to itself millions of pounds which Iarnród Éireann has not yet paid-----

Mr. O'Farrell: That is not the case.

Deputy Lawlor: Mr. O'Farrell said the Iarnród Éireann had paid £15 million to date.

Mr. O'Farrell: That is correct.

Deputy Lawlor: Has the balance of the work yet to be undertaken?

Mr. O'Farrell: That is correct.

Deputy Lawlor: Westinghouse, one of the world leaders, made the second lowest bid at £560,000. There were serious technical concerns about this company not having carried out work on the Irish or United Kingdom railway systems. For the sake of £500,000 Iarnród Éireann could have contracted one of the best in the business by bridging the financial gap through articulate negotiation. Iarnród Éireann's technical people were supposed to have been concerned. I trust they would have given Westinghouse a glowing technical report. I cannot understand in regard to the analysis of the three bids which have been mentioned that the conclusion of the evaluation in terms of experience and expertise would lead to a decision on whether to spend an extra £500,000 for good reason.

We all have the wisdom of hindsight. I was involved commercially in this area many years ago and have experience of overruns, overspends, losses and contracts. I empathise with some of the problems the company may

have encountered, which can be explained. I am concerned that because the contract is ongoing there seems to be potential for further expense. If one of the stations is still not operating the company will have to get to March 2002.

People in-house, with a company that hadn't the experience, was going to need management if it got the contract, ends up getting that management, ends up getting them from the company that's winning the contract. If technical people had left Iarnród Éireann, with the company having recommended them the minds of those in management could be put a little at ease. Given that those who moved were administrators and the company forewent Westinghouse, one must be concerned and begin to question the decision.

There should be some recourse from the company's technical people on the evaluation of the contract. The company should respond in greater detail to the PriceWaterhouseCoopers report because it probably has many explanations and answers. The Committee does not appear to have been given them. We do not want to appear to be unreasonable, but fundamental issues have been raised which should be comprehensively addressed in a written response to the Committee.

Is it agreed, chairman, that the Committee should seek a written response to the issues raised?

Chairman: Yes, we will ask for that.

Deputy Stagg: In July 1997 a mini-CTC contract was signed to be concluded in 1999. A strange occurrence took place. In the midst of cut-throat competition for space for optic fibre cables one company, Esat, was selected strangely by Iarnród Éireann. Esat was preferred over all the other cabling companies and given a licence to trespass on property managed by Iarnród Éireann on behalf of the fact. Despite the fact it was *ultra vires* for the company to award Esat a contract without ministerial approval, you let them in laying cables, subsequent to the appointment of your contractor to do the job for yourselves, and let them start digging and laying in front of the contractor and, amazingly giving your contractor over to Esat as well. Who had the authority to do that? It may not have been any of the company representatives before us. The authority lay with the Minister.

One year after it had begun laying cables Esat was suddenly awarded the contract.

Mr. McDonnell: With regard to the Esat contract I am partly responsible-----

Deputy Stagg: What about the licence?

Mr. McDonnell: We can cover the policy issue and then the-----

Deputy Stagg: Do not mind the policy issue. I am asking about the licence. Esat was given a licence to trespass on public property and to lay cables. Was there a competition for licences? Did other companies want to lay cables?

Mr. McDonnell: We were in here before and I was talking about under-funding in the company. I accept Deputy O'Flynn's point that the responsibility of management is to increase resources. We looked at what was happening in continental Europe where they were laying cables down mainline track.

A large number of railway companies in Europe were also developing into telecommunications companies. In any joint ventures we enter into we are risk averse so we let other people in to take the commercial risk. We had discussions with British Telecom which was interested in entering the Irish market in relation to laying cable between Dublin and Belfast.

Deputy Stagg: Who, traditionally, would have cables laid along the company's lines?

Mr. McDonnell: We do.

Deputy Stagg: Eircom also has cables laid along the company's lines.

Mr. McDonnell: Yes.

Deputy Stagg: Did the company inquire if Eircom wanted to lay further cables?

Mr. McDonnell: Yes. We do business with Eircom on a consistent basis.

Deputy Stagg: I know that. A great deal of the work they do for the company was damaged by the-----

Mr. McDonnell: Again, we were in discussions with British Telecom which, in turn, began discussions with the ESB and approached us to invest £20 million equity in a joint venture which became Ocean. We were then approached, as members are aware by other players, in the telecommunications market. Our property manager was approached by Esat to know if we would do a deal in respect of cable it wanted to lay. We carried out an assessment, sought expert advice and, following long negotiations, concluded a contract.

Deputy Stagg: Who were the experts?

Mr. McDonnell: It was done with our finance department, in-house, in the first instance.

Mr. Cullen: We needed consultants who specialised

in telecommunications so we brought in a company in England to advise us on that. I cannot recall the name of that company.

Deputy Stagg: Mr. Cullen cannot remember the company's name?

Mr. Cullen: No. We employed that company three or four years ago.

Chairman: Will our guests supply the name of the company at a later date?

Mr. Cullen: It was Norcontel.

Deputy Stagg: Is it correct that the company in question told CIE it should invite Esat to become involved before approval had been received from the Minister to do so?

Mr. Cullen: The company actually advised us in relation to the Esat contract.

Deputy Stagg: There was no contract for a year. The railways were being dug up for 12 months before any contract was put in place or any controls were put in place. As a result, serious damage was done to CIE's contract for the Mini CTC system. That damage has been referred to previously as the "Esat legacy".

Mr. Dalton: I wish to reply to a few of the comments that have been made. I am the head of the infrastructure division and the buck stops with me in terms of infrastructure. Members need not look for anyone below me in that regard. In the period since 1996 we have transformed the whole area. We have moved from a budget of £60 million to a budget of £240 million. We are laying more track than ever before. We laid 90 miles of track last year.

Deputy Stagg: With all due respect—

Mr. Dalton: If I could just deal with the particular point—

Deputy Stagg: I did not ask for that information.

Mr. Dalton: I am going to answer the Deputy's question. However, there were a lot of unfair remarks made about—

Chairman: I call on Deputy Stagg to put his question again.

Deputy Stagg: The question is straightforward, it is not a remark. By what authority was Esat allowed, under

some form of licence of which I have never heard, to lay cables in advance of the contractor chosen by CIE for doing so? Why was that contractor allowed to do the work for Esat?

Mr. Dalton: I was just going to preface that by stating that everything that we do in the infrastructure department is safety related. We do not allow anybody to trespass on the line without having a formal system in place. When the Sasib-MNL contract was under discussion we indicated to both contractors that we would be laying a telecommunications network. I did not indicate the identity of the company for whom that network was being laid. However, in No. 25 or 26 in the contract, there is a reference in the letter of intent to Sasib that we were going to lay this telecommunications cable and it would want to take that programming on board.

That gets us to July 1997. Around that period, as the group chief executive officer stated, discussions were ongoing with a number of different telecommunications contractors, one of which was Esat. Heads of agreement—a standard form of confidentiality agreement was signed in June 1997. At that stage, the basis of a commercial agreement that called for the laying of a fairly extensive fibre-optic network throughout the country, possibly running to two thousand kilometres of which we would have six fibre pairs.

Deputy Stagg: Between which parties was the agreement reached?

Mr. Dalton: The heads of agreement we signed between CIE and Esat Telecom.

Deputy Stagg: Who else got an opportunity to sign? Why or how was Esat selected?

Mr. Dalton: Obviously, this was an issue that was driven by—

Chairman: Who were the signatories, Mr. Dalton?

Mr. Dalton: On the heads of agreement?

Chairman: Yes.

Mr. Dalton: From memory I believe Esat was represented by Denis O'Brien and Leslie Buckley and the group chief executive officer—

Deputy Stagg: Was anybody other than Denis O'Brien given the opportunity to bid for this gold-mine, namely, a fibre optic network to serve the entire country? Was anyone else given the opportunity to bid for the contract or was a tendering system used?

Mr. Dalton: This was a CIE Group initiative of which I, as manager of the infrastructure division, was on the steering group to protect the interests of the infrastructure.

Deputy Stagg: So I am talking to the wrong person.

Mr. Dalton: I can give you information and perhaps the group chief executive officer can provide some more. We were aware that we were letting out a network associated with the Mini CTC which was going to be laid in late 1997. There were opportunities associated with that with laying a parallel network. So there was a particular time-span in which decisions had to be made. During the period from January 1997 to July 1997 we spoke with a number of different companies - the ESB, British Telecom, Alcatel, Worldcom - as part of a CIE steering group. My position on it, at all times, was to ensure that anything that was done was done properly from the point of view of the infrastructure division and that I protected the railway.

At the end of those discussions Esat Telecom had made the most comprehensive proposal at that point, particularly in light of the fact that we were going to plough cable for ourselves in October 1997. The heads of agreement were signed in June 1997 at which time we explored whether we could form the basis of a commercial agreement with Esat. The heads of agreement provided for much detailed discussion. It also provided for going to the Minister in order to obtain a ministerial order to allow us to enter the telecommunications area. It provided, obviously, for us becoming involved in the telecommunications area.

Deputy Stagg: Am I correct in saying that in July 1997 CIE signed these heads of agreement with Esat and gave that company some form of licence to enter CIE property without the authority required from the Minister? Is it also correct that Esat was allowed to operate for a year before that authority was granted?

Mr. Dalton: For anyone who becomes involved in discussions, the heads of agreement provide a period of---

Chairman: I wish to clarify the situation in the context of the question put by Deputy Stagg. Was CIE aware that the Minister's approval was needed?

Mr. Dalton: The heads of agreement----

Chairman: I did not ask about the heads of agreement. Was CIE aware that the Minister's approval was needed before the property could be entered on to?

Mr. Dalton: I, personally, was involved in protecting the infrastructure----

Chairman: No, I did not ask about that. Mr. Dalton

has informed us on three occasions about the nature of his responsibilities. Was CIE aware that the Minister's approval was necessary before a party could move on to its property?

Deputy Stagg: And also before it could become involved in the telecommunications industry.

Mr. Dalton: I was aware that a ministerial order----

Chairman: Mr. Dalton was aware that a ministerial order was necessary. Did he subsequently become aware that that was the case?

Mr. Dalton: I was never---

Chairman: Is he aware of that fact now?

Mr. Dalton: To be truthful, I was never aware that anything we were doing, in terms of the laying of the cable----

Chairman: Okay.

Mr. Dalton: The cable was already being laid, even if the ministerial approval did not come. It was purely a licence to a company to plough cable in----

Deputy Lawlor: Surely within the heads of agreement there should have been a clause saying that those heads of agreement were subject to the appropriate approval, be that ministerial approval, departmental approval or whatever.

Chairman: We will have to deal with this matter on another occasion. It is a complex matter and we have merely broached it at this meeting. I call Deputy Jim Higgins to put a short final question.

Deputy Higgins (Mayo): It seems that one of the primary reasons for this mess relates to the submission made to the board. According to PriceWaterhouseCoopers, the submission did not articulate the technical reservations concerning Sasib, did not mention MNL's proposal, did not inform the board of Iarnród Éireann's intention to delay commencement of the Mini CTC contract to facilitate Esat and did not mention the intention to integrate the Esat works into the Mini CTC works. Who drafted that submission?

Mr. Cullen: Will the Deputy clarify what information he requires?

Deputy Higgins (Mayo): I will quote directly from the PriceWaterhouseCoopers submission:

"In our view, subject to the major qualification below, the submission to the Iarnród board seeking the decision on the awarding of the Mini CTC contract was inadequate for the following reasons: [It proceeds to list out four] it did not articulate the technical reservations concerning Sasib, it did not mention MNL's proposed role, it did not inform the board of Iarnród Éireann of its intention to delay commencement of the Mini CTC contract to facilitate the Esat contract and, finally, it did not mention the intention to integrate the Esat works into the Mini CTC works."

Who made that submission?

Mr. Cullen: I think I will just take the points now, Mr. chairman. The first one deals with who made it to the Iarnród Éireann board.

Deputy Higgins (Mayo): Yes. Who made that submission?

Mr. Meagher: It was made to the Iarnród Éireann board in April 1997 or thereabouts.

Deputy Higgins (Mayo): The date is not really important.

Mr. Meagher: There would have been co-ordination between the procurement division and the infrastructure division in terms of putting the submission together. In relation to the data – I do not have it in front of me – it did talk about technical reservations about Sasib. As I recall, it requested approval for £15.7 million for the award of the contract to Sasib if technical issues were resolved or £16.3 million to Westinghouse in the absence of those technical issues being resolved. So that was mentioned. It did not mention MNL and I would be very clear in saying it should have mentioned MNL. There is no doubt about that. I do not believe there was anything ulterior involved but the fact is that Sasib was the signalling company and it mentioned the signalling company, even though the contract was----

Deputy Higgins (Mayo): But it did not articulate the technical reservations the engineers harboured in respect of Sasib.

Mr. Meagher: It stated that there were technical issues to be resolved which----

Deputy Higgins (Mayo): It says here it did not articulate the technical reservations concerning Sasib; it did not mention MNL; it did not inform the board of the delay of the commencement in the Mini CTC

contract with Esat; and it did not mention the intention to integrate the Esat works. Is that not a half-baked, inadequate and less than factual presentation to make to the board of a State company?

Deputy Stagg: This document was not produced by the Opposition or by the enemy, it was commissioned by Mr. Meagher's company to describe its situation in accurate terms.

Chairman: We have already indicated that we will be asking for a response to that document.

Deputy Higgins (Mayo): May we have the document?

Mr. Meagher: The submission to the board?

Chairman: Yes.

Deputy Higgins (Mayo): With regard to the contract – the other primary reason that everything went wrong – who was the senior experienced solicitor who recommended that the company should buy into a contract that was nothing more than a statement of intent?

Mr. Meagher: The procurement manager involved in the development of the contract was Brian Powell. The solicitor involved in the procurement at that time was Mary Hand who was working in the procurement department on the development of the contract.

Deputy O'Flynn: Did she draw up the contract?

Mr. Meagher: Yes, it was a standard form of contract.

Deputy Higgins (Mayo): With many deletions.

Mr. Meagher: There were a number of----

Chairman: Let us not lose the run of ourselves.

JOINT COMMITTEE ON PUBLIC ENTERPRISE AND TRANSPORT

There is a great deal more to this matter than meets the eye and we need to tease it out further. I call on Deputy Roche to pose a final question.

Deputy Roche: What proportion of the overall Mini CTC work has been completed at this stage?

Mr. Dalton: Approximately 700 kilometres of cable in the ground out of at least 830 kilometres. There is one yard that was a prototype for the Mini CTC, Knockcrockery, installed. There is another 26 or 27 yards to do and some equipment has been delivered.

Deputy Roche: What proportion of the work has been completed? For example, has 50 per cent or 75 per cent of it been completed?

Mr. Dalton: In terms of physical installation we are a good way back. In terms of progress with specifications—

Deputy Roche: Roughly speaking, has 30 per cent or 50 per cent of the work been completed?

Mr. Dalton: It is a difficult one to quantify. We have finished in terms of specification but we are only starting in terms of physical yard alterations. We still have, perhaps, 18 months work to complete.

Deputy O. Mitchell: Is Mr. Dalton in a position to state—

Deputy Roche: I wish to finish my point. Is it not correct to state that the payment of £15 million to date is likely to be a small proportion of the end cost? Am I correct in assuming that the final cost will be in excess of £40 million? Mr. Dalton is not in a position to indicate the proportion of the work that has been completed. I take it from this that we have not reached the three quarter way mark. Are we one-third of the way there?

Mr. Dalton: We have paid for materials which we have in our possession.

Deputy Roche: And I know that a certain number of kilometres of cable have been laid.

Mr. Dalton: Yes. However, the physical works are not yet installed on the ground.

Deputy Roche: Is it not correct that a huge number of installations are still to proceed?

Mr. Dalton: There is a sizeable amount of yard installation work.

Deputy Roche: It is a huge amount. In addition, an enormous amount of testing, debugging and programme remains to be done. If the company has already paid £15 million and a number of contracts remain outstanding, is it not correct that the final ball-park figure may well be £40 million.

Chairman: That concludes our business for this evening. On behalf of the Committee I thank Mr. McDonnell and his colleagues.

The Joint Committee went into Private Session at 2.40 p.m., resumed in Public Session at 3.08 p.m. and adjourned at 6.27 p.m.

JOINT COMMITTEE ON PUBLIC ENTERPRISE AND TRANSPORT

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Richard Bruton (FG)
Donal Carey (FG)
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✓
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Ms [REDACTED]
Librarian

Please find enclosed 6 copies of the "Report of the Joint Committee on Public Enterprise and Transport on discussions with Department of Public Enterprise officials -26 October 2000 and Officials from CIÉ/Iarnród Éireann - 7 November 2000, on the Iarnród Éireann Mini-CTC Signalling Project" to be laid before both Houses of the Oireachtas.

[REDACTED]

Principal Committee Clerk
16 July, 2001

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