



An Coimisiún Imscrúdúcháin

**(Gníomhaireacht Náisiúnta
um Bhainistíocht Sócmhainní)**

**Commission of
Investigation**

**(National Asset
Management Agency)**

**The Honorable John D. Cooke
Sole Member**

Ninth Interim Report

23rd November 2020

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Ninth Interim Report of the Commission of Investigation (National Asset Management Agency) and Request for the revision of the timeframe for submitting the Final Report under section 6 (6) of the Commissions of Investigation Act 2004

1. The Commission submits this Ninth Interim Report pursuant to sections 6(6) and 33 of the Commissions of Investigation Act 2004 with, for the reasons set out below, a request for revision of the timeframe for submission of its Final Report. So far as concerns the outline of the Commission's approach to the issues identified in paragraph 2 of the Terms of Reference and the production and analysis of documentation, this Report should be read in conjunction with the previous Interim Reports referred to below.
2. The Commission's First Interim Report, as required by paragraph 8 of its Terms of Reference, was submitted on 12th September 2017. Further Interim Reports were submitted on 17th May 2018, 30th November 2018, 10th June 2019, 4th December 2019, 24th February 2020, 8th June 2020 and 28th August 2020, following which, the timeframe for completion was successively extended until the current date of 31st December 2020.
3. A number of developments since the position described in the Eighth Interim Report have led to a situation in which the Commission finds it necessary to request a further extension of the timeframe for submission of the Final Report.
4. Firstly, the effects of the enhanced pandemic restrictions under Level Three and then Level Five have been far greater than had been anticipated in the Eighth Interim Report. The need for remote working has had the effect of slowing the collaborative drafting work.
5. Secondly, an important new development has recently occurred which may require new evidence to be taken and earlier evidence may have to be re-assessed in light of that new evidence.
6. As indicated in the previous Interim Reports, and as foreseen in paragraph 2 of the Commission's Terms of Reference, the extra-territorial aspects of the

Project Eagle transaction presented particular complications for the investigation given that a number of individuals who would be obvious witnesses as persons directly involved in the sale process, were and remain outside the jurisdiction of the State. When first approached by the Commission for assistance in the investigation, a number of individuals either declined to assist or gave only limited assistance upon various grounds, but particularly, by reference to the existence of ongoing criminal or regulatory investigations in other jurisdictions.

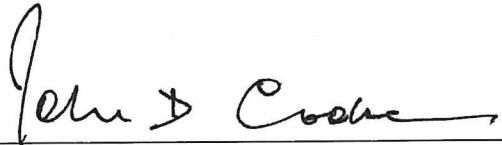
7. Throughout its investigation, the Commission has endeavoured to work around this complication. Following the completion of the available witness hearings and the collation and cross-checking of the testimonies received, the Commission reviewed the earlier refusals in case the circumstances of those individual refusals might have changed.
8. As a result, one individual, who had previously declined, agreed to provide evidence to assist the investigation. This represented an important development because of the central involvement of the individual concerned in some of the matters subject to investigation.
9. The Commission was in the process of making arrangements for the purpose of taking that evidence outside the State when the Level Three and subsequent Level Five Covid-19 restrictions came into effect. At the same time, equivalent restrictions were imposed at the witness's location. In continuing to work around these difficulties, the Commission has recently made arrangements with the legal representative of the individual concerned to obtain from the witness a statement as provided for under the Commission Rules and Procedures adopted under section 15 of the Act of 2004, and for that purpose, the Commission has furnished a detailed list of the issues and questions which it would wish the statement to cover.
10. The witness's legal representative has agreed to adopt this approach, but in view of the extent matters to be covered, has indicated that his client is unlikely to be able to furnish the statement until early December 2020. In view of the

detail of the matters the Commission has asked to be covered, that period does not appear to the Commission to be unreasonable in the circumstances.

11. The Commission cannot know in advance what new evidence the witness may provide or what its implications may be for evidence already given by earlier witnesses. The Commission cannot therefore exclude the possibility that it may be necessary, if and when the current restrictions are lifted or relaxed, to take sworn oral testimony from the witness, or, having regard to section 12(1) of the 2004 Act, to make other witnesses aware of the new evidence.
12. The effect of this development arising since the Eighth Interim Report combined with the impact of the enhanced Covid-19 restrictions on the offices of the Commission and the work of its personnel, is such that the existing mandate of 31st December 2020 has become unrealistic especially when account is taken of the intervention of the Christmas/New Year holiday period.
13. The Commission nevertheless confirms that the work of finalising a first draft of the Final Report, with a view to commencing the exercise of circulating it to the persons entitled to receive it under section 34 of the 2004 Act, has continued and is well advanced. The Commission expects to be in a position to begin that process shortly after the above statement has been received and its contents and implications have been addressed as described above.
14. As mentioned in the Eighth Interim Report, it is anticipated that under section 34 of the 2004 Act, the Commission will be obliged to send the draft Final Report or relevant parts of it to at least 60 individuals, as well as to the Board of NAMA and to a number of individuals and entities located outside the State.
15. Having regard to all of the above matters, the Commission considers that it would be prudent to allow for a further three-month period to bring its work to a conclusion.
16. In the light of these developments and for the above reasons, the Commission requests an extension of the timeframe until 31st March 2021.

Delivered to the Taoiseach as the specified Minister and in accordance with the provisions of Section 32 of the Commissions of Investigation Act 2004.

On the 23rd day of November 2020.

A handwritten signature in black ink, reading "John D. Cooke". The signature is written in a cursive style with a long horizontal stroke at the end.

John D. Cooke
Sole Member of the Commission