



**An Coimisiún Imscrúdúcháin
(Gníomhaireacht Náisiúnta
um Bhainistíocht Sócmhainní)**

**Commission of Investigation
National Asset
Management Agency**

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

**Third Interim Report
30th November, 2018**

1st Floor, St Stephen's Green House, Earlsfort Terrace, Dublin 2, D02 PH42

Tel. No. +353 (01) - 662 9151

e-mail: info@cookecommission.ie

Third Interim Report of the Commission of Investigation (National Asset Management Agency)

Request for the revision of the timeframe for submitting the final report under section 6 (6) of the Commissions of Investigation Act 2004

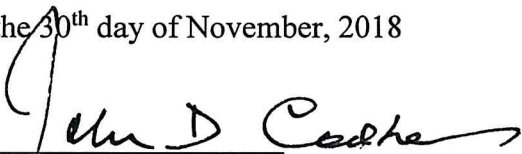
1. The Commission submits this Third Interim Report, pursuant to Sections 6 (6) and 33 of the Commissions of Investigation Act 2004, with a request for revision of the timeframe for submission of its final report for the reasons set out below. So far as concerns the outline of the Commission's approach 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 Second Interim Report 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.
3. A Second Interim Report was submitted on 17th May 2018, on foot of which the timeframe for the submission of a final report was revised to 31st December 2018.
4. Since the submission of the Second Interim Report, the investigation has made considerable progress. The Commission has sought and has received, on the basis of voluntary cooperation, statements from 27 individuals on issues considered relevant to its Terms of Reference.
5. As of 30th November 2018, the Commission has taken sworn testimony from 17 witnesses and anticipates hearing a number of further witnesses shortly. Some of these witness hearings are of extended duration and each transcript of testimony is then submitted to the witness concerned. It is possible that some witnesses may have to be recalled, in order to give them an opportunity of commenting upon possible discrepancies of testimony which may be found to have arisen in the evidence to date when that has been fully reviewed.
6. As described at paragraphs 3.6 to 3.10 of the Second Interim Report, the issues required to be investigated by the Commission and particularly those under paragraphs 2 a), b) and c) of the Terms of Reference require a detailed examination and understanding of the day-to-day evolution of the Project Eagle disposal process, including the valuation of the portfolio, between September 2013 and the conclusion of the transaction in 2014.
7. The Commission has sought and has been provided with a total of 605,000 documents including extensive chains of e-mail exchanges. As many of the steps taken in the disposal process are evidenced primarily by the working papers of the relevant Finance and Asset Recovery divisions of the Agency and by the large volumes of emails exchanged within the Agency by the individual managers and executives involved, it has been necessary to request, collate and examine the papers and communications concerned, in order to take sworn testimony in an efficient and focused manner.
8. Furthermore, as the taking of evidence has proceeded, the testimonies have occasionally pointed to the existence, or to the possible existence, of related, relevant documents or email exchanges which have then had to be requested for production.

9. The Commission would like to emphasise that its requests to the Agency for the production of documentation have been regularly met but such has been the volume of the material concerned and the fact that much of it may have been archived following the departure of staff concerned from the Agency, that retrieval and production has sometimes been difficult and time-consuming.
10. At this point, the Commission anticipates that its investigation into the primary evidence from witnesses who cooperate voluntarily will be concluded in the near future.
11. In outlining the progress which the investigation has made and which it hopes shortly to conclude, it is important to draw attention to one factor which may influence the extent to which it may be able to provide comprehensive conclusions on all of issues raised in the heads of paragraph 2 of its Terms of Reference, as matters stand. That factor is the following.
12. The majority of the assets in the Project Eagle portfolio were located outside the jurisdiction of the State. Some individuals who may be best placed to provide assistance in relation to the crucial controversies which have been highlighted in the reports of the C&AG and in the Report and proceedings of the Public Accounts Committee, are resident outside the State and may ultimately decline voluntary assistance to the Commission upon the ground that there exist ongoing criminal or regulatory investigations in other jurisdictions.
13. The Commission will endeavour to work around this difficulty with a view to providing, as fully as possible, substantive conclusions to the issues in the Terms of Reference. In so doing, the Commission may be constrained in its final report to avoid jeopardising any such extra territorial investigations. That is why it appears to the Commission to be especially important to respect the obligations of fair procedures as outlined in the paragraphs 14-17 below, including those which concern the individuals who may decline to cooperate voluntarily but may be identifiable in the Commission's final report.
14. Two further considerations impinge upon the timing of the delivery of a final report.
15. First, under section 34 of the Act, the Commission is required to send the draft Report or relevant parts of it to any person identified or identifiable in it for the purposes of section 35 of the Act.
16. The Commission anticipates that, in view of the complexity of the issues to be addressed, especially those arising under paragraphs 2 a) – c) of the Terms of Reference, and the large number of individuals who were involved in the disposal process, sufficient time will have to be allowed to those concerned, in order to permit them adequate opportunity to consider their entitlements under sections 34 – 36 of the Act.
17. Secondly, it is possible that applications may be made by those who have assisted the Commission for legal costs and expenses under section 24 of the Act. Any such applications will fall to be dealt with by the Commission by considering whether a direction to the specified Minister should be made on the basis of the criteria set out in section 24 (2) and (3). The Commission should also allow for the possibility that one or more requests might be made by the specified Minister for a review of its decisions on costs in accordance with subsections (6) and (7) of section 24.

18. Because, by virtue of section 43, the Commission will stand dissolved immediately upon the submission of its final report, the steps and obligations described in paragraphs 15-17 above will have to be completed before that dissolution.
19. The Commission has endeavoured to pursue the investigation in an efficient and focussed manner with a relatively small but highly skilled and hardworking support team. The Commission is advised that the costs of the exercise of its functions to date has been approximately €1.1m. The Commission does not envisage any enlargement of the personnel of the investigation team prior to the delivery of the final report.
20. While the Commission will make every endeavour to complete all of the above steps and to submit its final report in the early part of 2019, in order to allow for possible delays occasioned by the requests for changes to its report under section 35 or requests for costs and reviews under section 24; and in order to avoid the necessity of a further interim report and revision request, it respectfully requests a revision of the timeframe under section 6 (6) until 30th June 2019.

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 30th day of November, 2018



John D. Cooke
Sole Member of the Commission