



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

**Commission of Investigation
(National Asset
Management Agency)**

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

**Fifth Interim Report
4th December 2019**

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Fifth 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 Fifth 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. 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. The Third Interim Report was submitted on 30th November 2018 following which the timeframe was extended to 30th June 2019.
3. A Fourth Interim Report was submitted on 10th June 2019 on foot of which the timeframe was extended to 31st December 2019.
4. Since the submission of that last Interim Report, the investigative or evidence gathering phase of the Commission's mandate has been concluded and it has made substantial progress in completing the further steps required by the Act of 2004 and the Terms of Reference.
5. As of 30th October 2019, the Commission had taken sworn testimony from a total of 35 witnesses. Following the final hearings of witnesses the Commission carried out a review of the statements it had received and the transcripts of testimony in order to identify any material discrepancies in relevant evidence and any points requiring further clarification. This led to the need to re-approach a number of witnesses with queries and to address to the Agency for its corporate response a number of matters which individual witnesses had been unable to confirm or explain. That response was received on 25th October 2019.
6. As described in the earlier Interim Reports, 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 processes, including the valuation of the portfolio, the marketing arrangements and the completion of the sale between 2013 and 2014. This has involved the need for careful appraisal of the testimonies of the relevant witnesses in the light of the contemporaneous documentary evidence.
7. During the investigation of those issues, detailed technical evidence was received from witnesses who had been directly involved in the making of the assumptions and detailed calculations upon which asset valuations and pricing

decisions had been based. In order to comply with the obligation imposed by paragraph 6 of the Terms of Reference that the Commission's investigation and report be informed by appropriate independent expertise, it became apparent that particular specialist advice would be needed from an expert with knowledge and experience of large-scale sales of distressed loan assets and especially those involving public or semi-public bodies.

8. As mentioned in previous Interim Reports, the relevant area of expertise for the issues covered by paragraph 2 a)-c) is small and specialised and many experts otherwise suitably qualified found themselves possibly conflicted by previous connections either to NAMA, to NAMA debtors or to past or prospective bidders/funds involved in other transactions. It has also been necessary to wait until all evidence relevant to the commercial and financial issues has been taken and assessed in order to settle instructions for such formal expert advices.
9. The Commission did eventually locate an expert who was prepared to assist and who had no such conflict. The Commission was also fortunate to engage the assistance of an eminent expert in corporate governance.
10. The Commission applied for and received sanction to engage the advices of those experts and once all evidence in respect of the issues had been taken and appraised, detailed briefs for their reports were provided to them. The expert report on head 2(d) has recently been received by the Commission. In the interest of fair procedures, the Commission considered it prudent to furnish this expert report to NAMA before proceeding to make any decisions as to its conclusions on the issues raised by the Terms of Reference.
11. The report of the corporate governance expert under head 2 (d) was provided to NAMA on 19th November 2019. In response NAMA informed the Commission of its wish to avail of the opportunity to comment on the expert report and requested an extension to the 20th December 2019 in order to produce a reply. The Commission considered that this request was not unreasonable having regard to the detail and substance of the expert report and has accordingly granted it.
12. The expert report on the financial aspects of the loan sale (paragraphs 2 a)-c)) is expected shortly and this will similarly be provided to the Agency. It is expected that the Agency will also require time to consider and comment on this report.
13. While the work of drafting the substantive content of a final report including the formulation of its conclusions or findings could not proceed until the hearing of evidence had been concluded and the expert reports received and sent for possible comment by the Agency as mentioned above, the work of summarising evidence and sketching out the structure and headings of a first draft report has been put in hand and is well advanced.
14. As adverted to in the Third Interim Report, 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 sections 35-36 of the

2004 Act. Based on the extent of the evidence and analysis that will have to be addressed in the Commission's final Report, it is anticipated that the draft Report or relevant parts of it will have to be circulated to at least 60 individuals as well as to the Board of NAMA and to a number of individuals, firms and companies located outside the State.

15. It is accordingly clear that in order to accommodate the comments to be provided by NAMA as indicated above; to complete a first draft of the final report and allow for its circulation and to provide sufficient time to those concerned to have an adequate opportunity to consider their entitlements under sections 34 – 36 of the 2004 Act, an extension of the time frame beyond the current date of 31st December 2019 will be necessary.
16. The Commission considers that it would also be prudent, in calculating the length of the necessary extension, to have regard to the intervention of the Christmas/New Year holiday period.
17. For all of these reasons, the Commission requests an extension of the timeframe until 31st March 2020.

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 4th day of December 2019



Susan Gilvarry for and on behalf of
John D. Cooke
Sole Member of the Commission