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Tuarascáil ar Thionscadal Bytel

Iúil 2015

Public Accounts Committee

Report on the Bytel Project

July 2015

Foreword by the Chairman of the Public Accounts Committee, John McGuinness, T.D.

I welcome the report of the Committee on its examination of Bytel Project.

This project has resulted in a loss of €4.3 million because the expenditure was deemed ineligible for EU funding. The reasons for this, as the report shows, arose from a combination of factors which included:-

1. poor oversight at every stage of the project
2. pressure being put on the public authorities to identify suitable projects so as to attract EU funding
3. Payments being made against tight EU deadlines.

Opportunities which would have allowed some of this project to be grant aided or which would have enable other projects to be substituted for the Bytel project and thus ensure a full draw down of EU funds were also missed.

The examination of the C&AGs report into this project by the Committee dealt with the actions of our public authorities. Likewise the Committee of Public Accounts of the Northern Ireland Assembly has conducted its own examination of the Bytel project and I welcome publication of its report which will also issue today.

I commend the Report to Dáil Éireann.

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John McGuinness, T.D.,

Chairman

1st July, 2015

Public Accounts Committee

Report on Bytel Project

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Introduction

The Bytel project was a cross-Border broadband project which aimed to provide high-speed connectivity on a line between Belfast and Dublin. The project promoter was Bytel Networks Limited. The project was to attract grant-aid from the EU-funded INTERREG III programme under a measure designed to improve inter-regional economic infrastructure. The Department of Enterprise, Trade and Investment, (DETI) in Northern Ireland and our Department of Communications, Energy and Natural Resources (DCENR) were appointed as joint implementing agents for the measure. In October 2004, the two Departments offered grant funding of €4.3 million to Bytel, based on estimated total project costs of €12.4 million. That grant was paid in full between December 2004 and December 2005. Subsequently, it was found that almost all of the money spend on the project was ineligible for EU grant assistance, and that the actual project costs were significantly lower than the projected €12.4 million. It is now clear that there were major failings at each stage in the handling of this project. There were also weaknesses in the project appraisal, including weaknesses in the definition of what was to be delivered by Bytel. Finally, there was little evidence to support the projected project costs.

Because the project was withdrawn from INTERREG funding the project costs of €4.3 million were met by the two Departments. DCENR ended up paying €2.27 million for this project and DETI paid €2.03 million. The Committee is aware that a civil action has been initiated in Northern Ireland by DETI seeking a return of a sum equivalent to the grant of €4.3 million.

The Committee and the Committee of Public Accounts of the Northern Ireland Assembly have now separately examined the handling of the Bytel Project and their report will issue simultaneously with this report. This report is based on the hearing of the Committee of 16th April, 2015 with the Accounting Officer of DCENR and with the CEO of the Special EU Programmes Body (SEUPB) which had overall responsibility for the management and delivery of the INTERREG III programme. The accountability issues that arise and that are the subject matter of this report are as follows:

1. The analysis of the risks associated with the Bytel project
2. The oversight of the Bytel project
3. The loss of funding from the EU.

Chapter One

Analysis of risks associate with the Bytel project

Introduction

There were a number of risks to be managed in order to deliver the broadband project and to draw down EU funding. What is evident reading the Report of the C&AGs is that there was a lack of clarity about what was involved in the delivery of the project. There was also was pressure to make payments within tight deadlines and there was also a concern to ensure that EU funding would not be lost.

The INTERREG programme

Under INTERREG 111, EU funding was made available to assist in the delivery of cross border projects which would ultimately facilitate cross-border cooperation. Part of this EU funding was under a telecoms measure and a call was made to identify suitable projects. Projects were then assessed and contracts awarded. DCENR and DETI appointed a firm of consultants [Western Connect] to assess the applications. Unlike for instance where a Department identifies a particular project where there is a tender process, the EU INTERREG assessments were not project specific and to that end, each project was assessed in the overall context in terms of the benefits it would bring to the border communities.

Assessment of the Bytel Project.

Under the INTERREG proposals Bytel submitted a project which aimed to provide high-speed broadband connectivity linking Dublin, Dundalk, Armagh, Craigavon and Belfast. In June 2004, the proposal from Bytel was rejected by Western Connect. The reasons for this included the fact that the project was deemed too expensive and there was also a concern that Bytel did not have the financial capacity to deliver the project. In July 2004, Bytel submitted a revised project which narrowly passed the assessment for entry to EU programmes. There is a question mark over the adequacy of this second assessment as subsequent investigations of the project have found that the project was not properly scoped in 2004 because of the inadequacy of technical documentation provided in relation to the definition of the project. The Committee can only conclude that the project should never have got approval and it is clear that there was conflicting pressures on the public authorities which necessitated finding a suitable project. In hindsight, this proved to be a big mistake.

Risk that EU funding would be lost

It is clear arising from the evidence given to the Committee, and based on the reports of the C&AG that there was a risk if projects were not identified that EU funding would be lost. Six other projects were considered under the INTERREG funding and were rejected. This appears to be a key factor in the Bytel project coming back into play in July 2004. Efforts, which involved the two Departments and Western Connect, were made to address the concerns that led to the rejection of the proposal in June 2004. The revised project was estimated to cost €12.4 million and it qualified for a maximum grant (35%) of €4.3 million. All but €500,000 of this was to come from the EU. Bytel was offered the funding for the project in October 2004.

Conclusion

It is clear that while there were concerns about this Bytel project, these were counterbalanced by the fact that there was pressure to identify projects that would attract EU funding. Those concerns should have ensured better oversight of the project, yet as outlined in Chapter two, this did not happen.

Chapter Two

The oversight of the project

Introduction

A letter of offer from both Departments was issues to Bytel in October 2004. That letter of offer was to provide the basis on which INTERREG funding would be drawn down. The letter of offer related to an infrastructure project whereby Bytel would add capacity to the infrastructure of Aurora Telecom which had a fibre optic cable running from Dublin to Belfast. The project that was ultimately delivered was completely different and related to a service provided on Eircom lines. Notwithstanding this key fact, four payments totalling €4.3 million were made and a revised letter of offer, which would have enabled the drawn down of EU funding did not issue. This ultimately led to the loss of EU funding. At critical stages in the project, opportunities to challenge payments or to change the terms of reference for the project were missed.

Letter of Offer

The letter of offer was the contractual agreement between the two Departments and Bytel. This agreement was to provide additional infrastructure on the Aurora Telecom lines. The letter of offer also stipulated that equipment that was to be used in the project, namely racks (Nortel Racks) that would be used on the lines to light up the Aurora fibre, was to be purchased by Bytel. As outlined below, payments for infrastructure should not have been made and as the nature of the project changed in 2005, a revised letter of offer should have issued which dealt with the revised project. It is clear that this non-adherence to the original contract and the fact that a revised contract did not issue resulted in the project becoming ineligible for EU Funding.

The involvement of Aurora Telecom

The involvement of Aurora Telecom as a partner with Bytel was seen as critical in getting this project approved in the first instance. Aurora Telecom is a subsidiary of Bord Gáis which also fell under the aegis of DCENR. It was to contribute €7.8 million of value to the project. However in December 2004, Aurora withdrew from the project. Critically there was no contract between Aurora and Bytel and DCENR never sought to establish the strength of the relationship between the partners. That was a missed opportunity to test the strength and capacity of the project. Aurora withdrew from the project and yet the implications of this withdrawal were not realised by the Department. The withdrawal of Aurora changed the nature of the project and should have been a warning sign that the project now had a significantly increased risk profile. Instead of an entire review of the project, it appears that the efforts of both DCENR and DETI were focussed on keeping the project on track by identifying another partner. This was not completed until September 2005 and by then pressure to meet EU payment deadlines had become a big issue.

The approval of payments

Four payments totalling €4.3 million were made to Bytel between 2nd December 2004 and 8th December 2005. Two of these payments in particular show poor oversight on the part of those managing this project. The first payment was for €1.6 million and included a payment to cover the cost of infrastructure purchased by Bytel. This infrastructure was the Nortel Racks. The other significant payment was for €2 million and was a final payment based on a high level valuation of benefit in kind for the project. As outlined earlier, both payments were made under pressure to meet tight EU funding guidelines.

The Nortel Racks

The first claim for €1.6 million was submitted by Bytel within three weeks of the letter of offer and included a claim for €1.3 million for Nortel Racks. This payment was verified by Western Connect and signed off by DETI. DCENR did not have a direct role in this payment, although it did receive payment details. It is highly questionable as to why this payment was made given that:

1. The letter of offer was specific in that this equipment was excluded from payment
2. The racks were not used in the project given that Aurora had withdrawn
3. The racks were purchased from a sister company of Bytel which did not trade with other entities
4. The racks were obsolete and, through whisteblowers allegations, it subsequently emerged that Bytel's sister company may have obtained these racks for as little as €30,000.

The payment for the Nortel Racks, which became the subject of a number of investigations since 2005, was one of the reasons that SEUPB considered expenditure on the Bytel project was not eligible for EU funding in 2012.

The Benefit in Kind

The final claim by Bytel was made on 11th November 2004 and was for a sum of €2.075 million. This was the balance of the drawdown agreed under the letter of offer. This claim related to a benefit in kind [BIK] for ducting, fibre connections and internet points of presence on the 120 km line between Dublin and Belfast. Bytel valued the project at €17.8 million and submitted a one page statement containing only a high level valuation of €2.07 in respect of BIK. Despite the lack of supporting documentation, DCENR signed off on the paperwork which enabled the grant to be paid. The problem with this payment is that it was for civil engineering works and as outlined earlier, this project ceased to be an infrastructure project when Aurora left the project in December 2004.

Compliance with EU deadlines

All EU funding programmes are subject to an annual spending target known as N + 2. There was a substantial danger that grant funding would be lost if the Bytel payments were not made by the target dates set. The two key payments (1st & 4th) as outlined above were made under pressure of EU deadlines. This is likely to have created a tension between the need to ensure the grant was paid and the primary responsibility of the two Departments which was to ensure that expenditure was eligible for grant funding. It is clear that the Nortel racks were not to be funded: the problem was that Bytel had not incurred any considerable expenditure at this stage and so a decision was taken to pay a grant on the basis of this expenditure with a view to deducting this amount from subsequent payments. The final payment was made without a detailed check being undertaken as to the regularity of the payment. The supporting documentation and certification as to the value of the benefit in kind was not made available to support the payment. At the end of the day, while DCENR was under a degree of pressure because of EU deadline, it exhibited significant shortcomings in the way it handled the claims and made the payments.

Conclusion

It appears that the requirement of both Departments to keep the Bytel project on track in order to ensure that INTERREG funding was not lost and the tight deadlines for payments in order to comply with EU rules resulted in the risks inherent in the project not being foreseen and thus managed. Payments were not subjected to appropriate scrutiny and huge concerns remain as to the regularity of those payments.

Chapter Three

The loss of EU funding.

Introduction

In 2004 Bytel was approved grant funding of €4.3 million and SEUPB paid over this sum between December 2004 and December 2005. Of this total sum, € 0.5million was paid by DCENR by way of matching funds and the balance (€3.8 million)was paid by SEUPB from the INTERREG funding allocation - €1.8 million from DCENR's allocation and €2.0 million from DETI's. Arising from the fact that the Bytel expenditure was deemed ineligible for EU funding, the non-matching funding of the grant had to be met by the two Departments. A number of opportunities were available to the public authorities which would have avoided this loss which are outlined hereunder.

Change in the nature of the project

As outlined in Chapter One, the withdrawal of Aurora Telecom in December 2004 changed the fundamental nature of the project. The new project, which was agreed in September 2005 was now a service project on the Eircom broadband infrastructure between Dublin and Belfast. There was also an agreement between Bytel and Eircom which completed fibre laying cable which had the benefit of improving internet connectivity on a north- west line between Belfast and Donegal. The Committee was informed by the Accounting Officer that an opportunity was missed in 2005 which would have allowed EU funding to be drawn down. Had a new letter of offer issued in 2005 which reflected the new partnership between Bytel and Eircom, there was a strong likelihood that it would have qualified under the terms of INTERREG funding.

Earlier notification of concerns to SEUPB.

In 2006, a whistle-blower, who had been a director of Bytel, made a number of allegations which were examined by the telecommunications division of DETI. The outcome of that examination was that assurances were given to SEUPB and DCENR that the project was sound, that the paperwork was in order and payments were backed up with appropriate documentation. DCENR, even though aware of the examination, did not participate in which in hindsight was a mistake. Subsequently in June 2008 a further series of concerns were raised about the Bytel project and these became the subject of an extensive investigation by DETI which brought in consultants to review the project. The key issue here is that the SEUPB was not aware of the substantive nature of the allegations and the outcome of the consultant's report until February 2011. The CEO of SEUPB, in his evidence to the Committee, outlined that had SEUPB known earlier than June 2009 it would have been able to find a replacement project that could have absorbed an amount equal to the payments to Bytel and there would not have been any loss of EU funding. An opportunity was therefore missed in the context of drawing down the maximum amount of INTERREG funding.

Accounting for the loss of EU Funding

As outlined in the C&AGs Report, the arrangements for the funding projects and the recoupment of associated grant funding are complex and can be spread over many years. When a problem arises as in this case and public money is spent but cannot be recouped from the EU, the loss is not evident in the accounts of the public body. The Committee will recommend that the appropriate account of all Departments contain a note on EU funding which should highlight outline the amount of expenditure incurred that is subject to recoupment, the value of claims withdrawn or disallowed and any balance that is due at the end of the accounting year.

Conclusion.

A number of opportunities which would have allowed EU funding to be drawn down were missed. The letter of offer should have changed when Eircom came on board in 2005 and once concerns were raised from 2006 onwards, SEUPB should have been informed and this would have given it the opportunity to find a replacement project.

Findings of the Committee

1. The Bytel project, which has resulted in the withdrawal of EU funding to the value of €4.3 million, was not subjected to an appropriate level of scrutiny at all stages of the project.
2. The need to ensure that the EU funding was drawn down placed a degree of pressure on the two Departments to identify an appropriate project and the Bytel project, having failed to meet the criteria, was reassessed and was given the go ahead.
3. A number of opportunities to maximise the drawdown of EU funding were missed from 2005 to 2009.
4. The loss of EU funds is not accounted for in the Appropriation Account of the Department.

Recommendations of the Committee

1. All projects which are either financed or co-financed with public funds should be fully scoped so that there is full clarity on costs, outputs and outcomes. Details of the lines of responsibility and levels of scrutiny should be in place prior to any contracts being signed.
2. The need to maximise the drawdown of EU grants should never impinge on the overarching desire to get value for money and public bodies should have appropriate procedures to ensure that both requirements are not in conflict.
3. While the oversight systems have change for INTERREG funding, it should always be the case that concerns raised about projects are highlighted with the SEUPB as this can enable a review of the project and its substitution by other projects in the context of EU funding.
4. The Appropriation Account of Departments should contain a detailed note on EU funding which should highlight the value of claims that are withdrawn or disallowed.

APPENDIX 1

Orders of Reference of the Committee of Public Accounts

(1) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a Standing Committee, to be known as the Committee of Public Accounts, to examine and report to the Dáil upon—

(*a*) the accounts showing the appropriation of the sums granted by the Dáil to meet the public expenditure and such other accounts as they see fit (not being accounts of persons included in the Second Schedule of the Comptroller and Auditor General (Amendment) Act, 1993) which are audited by the Comptroller and Auditor General and presented to the Dáil, together with any reports by the Comptroller and Auditor General thereon:

Provided that in relation to accounts other than Appropriation Accounts, only accounts for a financial year beginning not earlier than 1 January, 1994, shall be examined by the Committee;

(*b*) the Comptroller and Auditor General's reports on his or her examinations of economy, efficiency, effectiveness evaluation systems, procedures and practices; and

(*c*) other reports carried out by the Comptroller and Auditor General under the Act.

(2) The Committee may suggest alterations and improvements in the form of the Estimates submitted to the Dáil.

(3) The Committee may proceed with its examination of an account or a report of the Comptroller and Auditor General at any time after that account or report is presented to Dáil Éireann.

(4) The Committee shall have the following powers:

(a) power to send for persons, papers and records as defined in Standing Order 83(2A) and Standing Order 85;

(*b)* power to take oral and written evidence as defined in Standing Order 83(1);

(*c*) power to appoint sub-Committees as defined in Standing Order 83(3);

(*d*) power to engage consultants as defined in Standing Order 83(8); and (*e*) power to travel as defined in Standing Order 83(9).

(5) Every report which the Committee proposes to make shall, on adoption by the Committee, be laid before the Dáil forthwith whereupon the Committee shall be empowered to print and publish such report together with such related documents as it thinks fit.

(6) The Committee shall present an annual progress report to Dáil Éireann on its activities and plans.

(7) The Committee shall refrain from—

(*a*) enquiring into in public session, or publishing, confidential information regarding the activities and plans of a Government Department or office, or of a body which is subject to audit, examination or inspection by the Comptroller and Auditor General, if so requested either by a member of the Government, or the body concerned; and

(*b*) enquiring into the merits of a policy or policies of the Government or a member of the Government or the merits of the objectives of such policies.

(8) The Committee may, without prejudice to the independence of the Comptroller and Auditor General in determining the work to be carried out by his or her Office or the manner in which it is carried out, in private communication, make such suggestions to the Comptroller and Auditor General regarding that work as it sees fit.

(9) The Committee shall consist of thirteen members, none of whom shall be a member of the Government or a Minister of State, and five of whom shall constitute a quorum. The Committee and any sub-Committee which it may appoint shall be constituted so as to be impartially representative of the Dáil.

APPENDIX 2

MEMBERS OF COMMITTEE

Áine Collins TD[1]	(Fine Gael)	
Paul J Connaughton TD	(Fine Gael)	
Joe Costello TD[2]	(Labour)	
John Deasy TD	(Fine Gael)	Vice Chairman
Robert Dowds TD[3]	(Labour)	
Seán Fleming[4]	(Fianna Fáil)	
Mary Lou McDonald TD	(Sinn Féin)	
Gabrielle McFadden TD[5]	(Fine Gael)	
John McGuinness TD	(Fianna Fáil)	Chairman
Derek Nolan TD	(Labour)	
Patrick O'Donovan[5]	(Fine Gael)	
John Perry[5]	(Fine Gael)	
Shane Ross TD	(Independent)	

NOTES

1. Deputy Áine Collins appointed to the Committee by order of Dáil Éireann on 18 July 2013 in place of Deputy Pascal Donohoe who was discharged on his appointment as Minister of State 12 July 2013.
2. Deputy Joe Costello appointed to the Committee by order of Dáil Éireann on 17 July 2014 in place of Deputy Gerald Nash who was discharged on his appointment as Minister of State 17 July 2014 having replaced Deputy Anne Ferris on 8 May 2012.
3. Deputy Robert Dowds appointed to the Committee by order of Dáil Éireann on 17 January 2013 in place of Deputy Colm Keaveney who was appointed on 28 November 2012 in place of Deputy Michael McCarthy.
4. Deputy Seán Fleming appointed to the Committee by order of Dáil Éireann on 21 June 2011in place of Deputy Michael McGrath.
5. Deputies Gabrielle McFadden, Patrick O'Donovan and John Perry appointed to the Committee by order of Dáil Éireann on 2 December 2014 in place of Deputies Simon Harris, Eoghan Murphy and Kieran O'Donnell.