



Dáil Éireann

An Coiste um Chuntais Phoiblí

**An Ceathrú Tuarascáil Eatramhach ar Thuarascáil 2002 ón
Ard-Reachtair Cuntas agus Ciste
(Éisteachtaí an Choiste le linn na tréimhse Deireadh Fómhair 2003
go dtí Iúil 2004)**

**An Roinn Cumarsáide, Mara agus Acmhainní Nádirtha; An
Roinn Comhshaoil, Oidhreacht agus Rialtais Áitiúil; An Roinn
Fiontar, Trádála agus Fostaíochta; Oifig na nOibreacha Poiblí;
An Ghníomhaireacht um Chaomhnú Comhshaoil; agus An
tÚdarás Iomaíochta**

Iúil 2005

Dáil Éireann

Committee of Public Accounts

**Fourth Interim Report on the
2002 Report of the Comptroller and Auditor General
(Hearings of the Committee during the period October 2003 to
July 2004)**

**Department of Communications, Marine and Natural Resources;
Department of Environment, Heritage and Local Government;
Department of Enterprise, Trade and Employment; Office of Public
Works; Environmental Protection Agency; and the Competition
Authority**

July 2005

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Chairman's Preface

This report, which includes details of activities of the Departments of Communications, Marine and Natural Resources; Enterprise, Trade and Employment; Environment, Heritage and Local Government; Office of Public Works and Environmental Protection Agency is the fourth in a series of interim reports of the Committee of Public Accounts which detail the Committee's consideration of the Report of the Comptroller and Auditor General, 2002.

This report, as the title suggests, is very wide ranging. The nine chapters within it relate to various diverse activities of the bodies listed above.

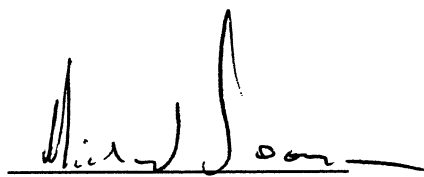
Within the last two months the Committee has published interim reports for 2002 on Transport; the Department of Finance, the Office of the Revenue Commissioners and the National Treasury Management Agency; and the Department of Justice, Equality and Law Reform and related issues. In the next few months it will consider further sectoral reports on:-

Departments of Education and Science; Health and Children; and Social and Family Affairs.

Department of Arts, Sport and Tourism; and sport.

As Chairman, I want to thank the Departments and various State agencies for their co-operation in making the compilation of this report possible. I also want to compliment the members of the Committee for their diligent work throughout the year

We recommend this report to the Houses of the Oireachtas.

A handwritten signature in black ink, appearing to read 'Michael Noonan', with a horizontal line underneath it.

Michael Noonan, T.D.,
Chairman.

July, 2005

Members of the Committee of Public Accounts

FIANNA FÁIL

Seán Ardagh T.D.	Dublin South-Central
John Curran T.D.	Dublin Mid-West
John Dennehy T.D.	Cork South-Central
Seán Fleming T.D.	Laois-Offaly
John McGuinness T.D. (<i>Vice-Chairman</i>)	Carlow-Kilkenny
Michael Smith T.D. ⁴	Tipperary North

FINE GAEL

John Deasy T.D. ²	Waterford
Tom Hayes T.D. ³	Tipperary South
Michael Noonan T.D. ¹ (<i>Chairman</i>)	Limerick East

LABOUR

Pat Rabbitte T.D.	Dublin South-West
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GREEN PARTY

Dan Boyle T.D.	Cork South-Central
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SOCIALIST PARTY

Joe Higgins T.D.	Dublin West
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1 Deputy Michael Noonan replaced Deputy Padraic McCormack by order of the House on 18th June, 2003.

2 Deputy John Deasy replaced Deputy Paul Connaughton by order of the House on 20th October, 2004.

3 Deputy Tom Hayes replaced Deputy John Perry by order of the House on 20th October, 2004

Deputy Michael Noonan elected as new Chairman on 21st October 2004

4 Deputy Michael Smith replaced Deputy Batt O’Keeffe by order of the House on 16th November, 2004.

Orders of Reference of the Committee of Public Accounts

156. (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;
 - (b) power to take oral and written evidence as defined in Standing Order 81(1);
 - (c) power to appoint sub-Committees as defined in Standing Order 81(3);
 - (d) power to engage consultants as defined in Standing Order 81(8); and
 - (e) power to travel as defined in Standing Order 81(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 twelve members, none of whom shall be a member of the Government or a Minister of State, and four 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.

The Report

1. Department of Communications, Marine and Natural Resources - Chapter 8.1

1. Proceedings of the Committee

1.1. The Committee heard evidence from Mr. Brendan Tuohy, Secretary General, Department of Communications, Marine and Natural Resources, and his officials; from officials of the Department of Finance; and from the Comptroller and Auditor General on 23 October 2003.

2. The Background

2.2. The strategy for the forestry sector, Growing for the Future, was published in 1996 and identified the need to develop a comprehensive inventory and planning system to provide forest resource, geographical and environmental data for management, control and planning purposes.

2.3. In 1997 work commenced on a computerised forest inventory and planning system (FIPS) that was intended to modernise the management of forestry resources and streamline grant payments. FIPS has three interlinked elements, an inventory element, a grants and premiums payment element and a planning element. It was originally envisaged that the five component subsystems would be implemented within three years, but only one of the five subsystems had been completed at the conclusion of the audit, another was ongoing, one had just started and two others were terminated before completion. The contract costs alone for the four subsystems that went ahead total €7.7 million for what was provided as against contract values of €5.3 million for the delivery of completed systems. When one adds in related equipment and software costs, total expenditure on the project up to end 2002 amounted to €9.2 million. That does not include departmental staff costs, which in the later stages were considerable. The project was not sufficiently well managed from the point of view of good planning, quantification of the required work, deployment of resources, monitoring of progress and taking effective action to deal with the emerging difficulties.

2.4. Certain events of 1997 and 1998 had an impact on the FIPS project. The forest service was transferred from the Department of Agriculture, Forestry and Food to the Department of the Marine and Natural Resources in 1997 and was moved to Wexford as part of the decentralisation programme in the following year. The departmental transfer resulted in the loss of the support of a well-resourced and experienced information technology division. The IT unit in the new Department had less than four full-time staff available and no experience of systems development. The decentralisation resulted in the loss of experienced staff with a turnover figure of 90% of administrative staff, as stated in the audit report.

2.5. It is reasonable to differentiate between the degree of these failures. In the forest classification project, all the principal objectives were delivered but the methodology failed to map and classify all the forests. Even though the forest service started from such a low information base prior to the classification project, a digital record of the national forest estate, although it was incomplete, was a huge step forward. The last inventory of private woodlands had taken place in 1973 and only mapped estates greater than 40 hectares in size, totalling approximately 10,000 hectares. The forest classification project, on the other hand, mapped forests down to 0.2 hectares and succeeded in mapping almost 200,000 hectares of

private woodland. A complete digital record of the national forest estate was due to have been achieved before the end of 2003. Some 85% of all new forests have been captured already as part of the new integrated forestry information systems, IFORIS.

2.6. In the forest soils project, more than 90% of the digital maps have been delivered and the outputs are already in use in the formulation of county afforestation plans within the forest service. While the time and cost overruns associated with these projects were incurred, the deliverables have proved to be of considerable value, in the case of forest soils, to a constituency beyond the forest sector, including ecologists, botanists, engineers and hydrologists. The main GPAS project has enabled the Department to pay forestry grants and premiums to customers each year since 2001.

2.7. A new system incorporating most of the original objectives of the subsystem has been initiated and it was expected to be completed by the end of 2004 at an estimated cost of €3.5 million.

2.8. An independent review of the GPAS project in 2000 found that the IT unit was not in a good position to offer any significant support to the GPAS team in the forest service. The independent review represented a turning point for the Department. There was a recognition, at the highest level, that the project had gone badly wrong and a determination to find out how that had happened. The outcome of that review was a painful lesson for the Department. There are now more than 60 people in the information systems division, including more than 40 specialists. There are many projects being done, not just in forestry. There is a project management framework in operation throughout the Department ensuring a consistent, professional approach to project management. Reporting and monitoring takes place from individual project boards through the programme board to the information systems steering committee. The Secretary General chairs the information systems steering committee which, in addition to monitoring progress of the Department's IT programme, also approves new strategic programmes and projects.

2.9. There were both project management weaknesses and deficiencies with the procurement process surrounding the pilot study that tested the feasibility of transferring data between remote locations. The task of integrating the forest service's system with forestry company systems and evaluating the results was given to one of the companies involved. Also, tendering in respect of additional tasks undertaken did not take place. The company that was assigned the task of managing the pilot study was paid nearly €0.25 million.

2.10. Tenders were sought from three suppliers for computer hardware, and related services. One for €54,700 was accepted. The contract was later modified without recourse to further tendering and the final cost totalled €303,000.

2.11. The Government decided to move the forest service back to the Department of Agriculture and Food with effect from 1 January 2004. The main reason for this is that there is a significant interrelationship between forestry and land use.

3 The Accountability Issues

3.1. The accountability questions examined by the Committee were:

- The full cost of the projects

- Project time delays
- Department of Finance Monitoring of Information Technology Projects
- The benefits obtained from the projects

4. Examination of the Issues

The full cost of the projects

4.1. The project commenced in 1997 and the Committee noted that the overall cost of €9.2 million up to 2002, excluding staff costs, represented an expensive way to learn lessons of systems development and the management information systems projects. Whilst the project commenced in 1997 the General Election of 1998 led to responsibility for the Forestry Service changing from the Department of Agriculture to the Department of the Marine. In addition, the loss of the majority of the administrative staff involved due to decentralisation, which occurred in October, 1998, resulted in a significant skills shortage among staff responsible for the project. Changes in technology also contributed to the costs. When staff costs and the cost of the IFORIS system are included the final cost is in the region of €15 million, a 300% increase on the original project estimate.

4.2. The management of the pilot contract was assigned to one of the original business operators who wanted to work with the Department. It was a research and development project. As opposed to the Department going out to tender, the arrangement was for grant-in-aid to the companies which had GIS-based systems and which wanted to interface with the Department because it did not have such systems.

4.3. The Department assisted the companies to provide the technology. The specifications kept moving as they started work to see what was possible. The problem was that it was not set-up at the start as a specific project. Between acceptance of the tender and the signing of the contract, the contract sum had increased to €113,000. Thereafter, additional modifications to the contract were made on four occasions – none of which was subjected to tendering procedures. The total paid for computer hardware, software and related services was €303,000.

Project Time Delays

4.4. The Committee noted the impact of project time delays on costs. The classification project was to be introduced over 11 months, but it took 53 months, i.e. five times longer than originally intended. The time allocated for the introduction of the soils analysis project was 36 months, but it has already taken 77 months and it is not yet complete. The GPAS pilot project was planned for 15 months, but was terminated at 37 months before it was completed. The GPAS main project was planned for 13 months, but was terminated after 19 months.

4.5. The Department accepted the Committee's criticism of project delays and agreed that some of the timescales had been unrealistic. There were not proper project management systems in place at the time. One of the reasons for this was that key people had been transferred and some 90% of the administrative people were new to the area.

Department of Finance Monitoring of Information Technology Projects

4.6. The management of IT projects has been delegated to Departments since the late 1990s. Under circular 16 of 1997, Departments make two returns to the Department of Finance. One return is due by the end of November in which Departments give a brief statement of what is expected to happen on new projects which they are about to start. The second return - a part 2 return – is due by the end of April and gives a more detailed picture.

4.7. In this case, the Department of Finance raised concerns, particularly about project management, in 1998 and again in 1999. In each case, it was given assurances that the projects were under control. A lot of experienced staff had been lost from the forest service and with the transfer, there were shortages of people with the right experience and knowledge for this work. Part of the assurance the Department of Finance was given was that the Department of Agriculture and Food, which had a much larger establishment in that area, was still involved in the management of, and assisting with, the project. Assurances were also given in respect of other problems mentioned but in hindsight these assurances were given without the required knowledge of the way in which the problems could be solved.

4.8. It became apparent that the transfer of the underlying data would be much more difficult than had originally been expected. That happens even with the best planning in the world.

4.9. The Committee felt that the expert group at CMOD should have thoroughly investigated the assurances given. As this did not happen, the Department of Finance should accept a portion of the blame for allowing the allocation of funds on a system which was totally inappropriate.

The benefits obtained from the projects

4.10. The Department outlined some of the results achieved from the projects. For the forest classification system, a digital data search was developed showing the precise location and type of forestry growing in Ireland. A software platform to query and view the data was also produced together with a method of updating the data and the deliverables which were compatible with the system in the Department of Agriculture and Food.

4.11. In the pilot GPAS project, the performance of the forest service database and its linkage with the private forestry companies was examined. A set of procedures was produced for the integration of the forest service database with the companies' GIS systems. Linkages were also established with several county councils. Although the original deliverables of the project were not achieved, a data capture tool was developed which was subsequently used in the main project. This is considered useful as data capture is often a major problem in technology projects.

4.12. The grants and premiums administration system produced a basic system for delivering grants and premiums. However an integrated database and premium service based on MAPS, which was supposed to be a key feature, was not delivered.

4.13. The soils project sought to deliver a national forest soils map, a forest productivity map and a stability indicators map. More than 90% of all the counties' soils maps have been delivered and the compilation of all maps, according to an agreed schedule, was on target for

the first quarter of 2004. This was a research and development project with an element of learning.

4.14. The Committee asked about the current status of the new project IFORIS, for €3.5 million. The project is on time. The contract has not been signed, although a vendor has been chosen. The new system is needed to provide cross compliance with the Department of Agriculture and Food.

5. Adoption of Reports

5.1 The Committee disposed of Chapter 8.1 of the 2002 Report.

Findings and recommendations

The Committee of Public Accounts

Finds specifically that:

1. The project was badly managed from the outset in terms of planning, quantification of work and deployment of resources.
2. The Department of the Marine and Natural Resources was slow to take effective action to deal with problems that emerged.
3. There was a failure to apply competitive tendering to a substantial services and supplies procurement.
4. The Department of Finance was not sufficiently robust in following through on its misgivings about the management of the project.

And recommends in general that:

1. Formal project management techniques should be applied to the development of all substantial I.T. systems.
2. Procedures should be put in place to minimise the risks associated with handing over responsibility for I.T. systems under development from one Department to another.
3. The importance of maintaining key resource and skill levels on decentralisation cannot be over emphasised. The lessons learnt in this case should be applied to the implementation of the current decentralisation programme.

2. Department of Communications Marine and Natural Resources - Chapter 8.2

1. Proceedings of the Committee

1.1. The Committee heard evidence from Mr. Brendan Tuohy, Secretary General, Department of Communications, Marine and Natural Resources, and his officials; from officials of the Department of Finance; and from the Comptroller and Auditor General on 27 November 2003.

2. The Background

2.1. In late 1998 the lack of competitively priced international connectivity was a barrier to retaining existing companies involved in the information and communication sector and to further develop the sector to inward ICT investment and a wider and inclusive information society. A high level advisory committee recommended that a competition be held to attract providers of high-speed international connectivities to the country.

2.2. In 1999 a contract was signed with Global Crossing Limited following a competitive process to improve greatly the levels of competitively priced international connectivity to Europe and to the US. The contract provided for 160 STM1s (an STM is 145 megabits per second) and that options on dark fibre should be made available to the State at a fixed cost of €77.48 million, the last instalment of which was paid in December 2002. A total of 48 of the STM1s were to New York and 112 STM1s were to 24 locations across Europe. To deliver this capacity the company constructed two submarine cables from Ireland to connect to its global network. The company was also obliged to construct two international points of interconnectivity in Ireland and these have since been constructed at City West and Kilcarbery in Park West, Dublin.

2.3. The parent of the Irish subsidiary became subject to Chapter 11 proceedings in the US in January 2002. In the meantime the Irish company has been similarly enjoined. This process created a measure of uncertainty about the continuity of supply which will depend on the nature of the outcome of the Chapter 11 proceedings. In the event that the outcome is not benign, the degree of protection of the State's interests contained in the supply contract with Global Crossing will come under scrutiny.

2.4. The IDA and the Department initiated a sales process to transfer this capacity to the Irish communications sector and, consequently, to the greater economy. Initially, demand for the capacity exceeded availability but, arising from the economic downturn, two of the original bidders, Formus and Connect Intelligence, ceased to trade and contracts with communications companies for 73 STM1s are in place. The State managed to sell on only half of the available capacity. At September 2003, €12.9 million was overdue from three companies. In the first nine months of 2003, the debts outstanding were more than halved - approximately €13.7 million was collected leaving debts outstanding of approximately €11 million, excluding VAT. Overdue accounts are aggressively pursued through the IDA and proceedings have been initiated in all cases. Although there are disputes, the assets are still in State ownership.

2.5. The original contract may be looked on as a procurement of three complementary elements:

- two diverse and direct links to global Internet backbone networks;
- the construction of two world-class points of interconnection in Dublin; and,
- the procurement of a suite of broadband products on a high-speed global intercity network, at prices which in 1999 were orders of magnitude below prevailing market rates.

2.6. The project was also designed and pursued to promote investment in strategic and research related initiatives. Seven STM1s were assigned to the national education research network, HEAnet, for strategic and educational research purposes. A further nine STM1s have been reserved for HEAnet to draw down as required. This enables the organisation to co-operate with UKERNA, the UK research network, and also provides links to StarLight in Chicago and to Internet 2, the new research project for next generation Internet being driven by the US Government.

2.7. The international connectivity project remains an important factor for the IDA and Enterprise Ireland in retaining and developing the existing base of ICT companies and attracting high-profile international operators to Ireland. A number of major companies have invested in Ireland. There is increasing evidence that Ireland is becoming a location of choice for data management and outsourcing and for disaster recovery sites. This investment is enabled by the availability of competitive, high-speed international bandwidth.

2.8. The Department commissioned a value for money review of the project. The consultants concluded that the project had met its primary objective of providing sufficient levels of competitively priced international connectivity for the ICT sector in Ireland. It had one reservation, that it would have been preferable to have an arrangement whereby the risks could have been shared between the State and the participating telecommunications operators including a more thorough *ex ante* evaluation. The consultants were of the opinion that the project represented good value for money.

2.9. The impact and return must be viewed in broader economic development terms and a lifetime overview of the project must be taken. It has an expected useful life of 25 years or more and the original investment is expected to be repaid many times over that useful life. The manner in which the product set embedded in this project has kept pace with international developments and with current market pricing, ensures its continuing relevance going forward in maintaining Ireland's pre-eminent international position on interconnectivity. There is a view that projects of this scale could only be procured during the boom and the challenge right now is to leverage this project into helping the Irish ICT sector to weather the global market downturn.

3. The Accountability issues

3.1. The accountability issues considered by the Committee were:

- High speed connectivity suppliers
- Risk sharing
- Role of the State
- Impact of the downturn in the ICT industry

- Capacity Levels
- Amounts due to IDA
- Penetration of Broadband

4. Examination of the Issues

High speed connectivity suppliers

4.1. The OECD league table on competitively-priced interconnectivity places Ireland first or second. Ireland has one of the highest levels of interconnectivity and it is competitively priced. Ireland is a bridge between the US and Europe. More and more of the distribution is going digital. It is not only sufficient to have connectivity to the US as a country, Ireland must also connect to Europe and beyond. The Global Crossing deal allowed Ireland to extend the number of cities all the time. The problem at the time was that the economy had been built up and ICT had been a major contributor to growth in the 1990s but there was a serious risk that this could be lost as companies based here, both indigenous and multinational, wanted not only competitively-priced interconnectivity, but also choice.

4.2. In the discussions with the telecommunications companies at the time, they indicated that they could provide for any company that came to Ireland but that was not the issue. The issue was that whilst Ireland was viewed on the global stage, was it future proofed. The decision to spend £60 million at the time was a strategic one to get into this business for the future. Subsequent to the deal, a company called 360 Network did the purely transatlantic Hibernia link from Canada to Ireland and that is still there. No other sub-sea cables are being constructed nor will be for the foreseeable future. The value of the sub-sea cable sector has reduced from €200 billion to €2 billion in less than five years because of oversupply following the Internet boom. If Ireland had not invested at the time the country would not have the level of capacity that it has now.

Risk sharing

4.3. The indebtedness arising from this project was reflected in the Department of Enterprise, Trade and Employment appropriations-in-aid. The IDA was the principal participant. The Department of Communications Marine and Natural Resources set up a team and envisaged completing the deal itself. At the contract signing stage it was felt, on the basis of legal advice, that there could be a problem on the *vires* going forward for the Minister to enter into the contracts. During discussions with the Department of Enterprise, Trade and Employment and the IDA, it was considered safer for the IDA to do that.

4.4. Together with the IDA, the Department visited the US in the late 1990s to examine the next generation of industry that would come to Ireland. When it sought to locate the Internet industry, the companies said that they located where the data centres were and that they go where the connectivity is. If Ireland did not have connectivity, it would not have data centres. Within 18 months of getting the connectivity there were up to 500,000 sq. ft. of data centres in Ireland, all privately funded. The market turned, due to external factors, but the data centres remained. A number went into liquidation and were sold but they are still in use. Ireland is in position going forward to have this capability in the economy.

4.5. The Committee considered, from a business perspective, that it was unusual that the State took 100% of the risk and the private sector took none. At the time, speed was of the

essence. The companies had an arrangement in which they felt that they had sufficient capacity and none was prepared to take the bigger country perspective. This raised a fundamental issue about the role of the State in a modern economy. This was an occasion when the State took a strategic decision, rightly, to do it and then sell on to other companies.

Role of the State

4.6. It was necessary to have the State act as an intermediary in order to get the companies to collaborate together. One of the lessons learned over the last few years is that, even in liberalised markets worldwide, there is still a role for the State. The traditional paradigm, where the State opts out and lets the market decide what to do, is not absolutely correct. The markets themselves have limitations, and governments still want to take action to facilitate competition. The State is not a player, since it is not running the telecommunications system but it has a role. The State acted as a catalyst. It made the purchase. It did not predict the downturn before it happened, but no one else did either. This is a long-term, 25-year investment. If one considers the scale of the ICT sector here and weighs up the risk and reward, one will see that not to have taken that risk would have put the majority of that sector in doubt, with the consequence of a very serious situation.

Impact of the downturn in the ICT industry

4.7. The essence of the deal was that the State entered into a contract with Global Crossing for €77 million. Global Crossing provided the hardware, and then the State agency sold that on to private sector telecommunications companies. The initial offer was oversubscribed at the time, because the market here was growing dramatically, as were the prospects. It is correct that there were no legal contracts, but there was more interest at the time than the 160 STMs that were purchased. When the downturn came some of the companies went to the wall, but other customers were found. Their debts matured at the end of 2002 as connectivity was handed over to them and a number were not able to come up with the money. There was a tight balancing act in whether to pursue moneys owed from the companies when it was desirable for them to remain in Ireland into the future. Negotiations on the moneys owed took place. The bond on one company was called in and others are being pursued through legal channels. The final backstop was knowing that the Department would take legal action to recover the outstanding amounts.

Capacity Levels

4.8. There is a suggestion that the company designed and built to total overcapacity, and that even though the STMs have been purchased by telecommunications companies, they are not in use. In a 25-year deal of this type, it is expected that, the ICT sector will be critical to the Irish economy, and that bandwidth and demand for it will be critical for the future. It would be wrong to have limited capacity for the future. It was a conscious decision to go for a long-term plan. It was thought at the time that it could be sold on but that did not materialise because of the downturn. It is still there, and is a key selling point for the IDA and Enterprise Ireland.

Amounts due to IDA

4.9. On the STMs that were sold on to private sector companies, €11 million is owed to the State by the different companies. More than half of the original outstanding money was

collected in 2003 and the Department is confident of recovering the amount owed. The Committee noted that the IDA had written the value of unsold STMs down from about €23 million to €2 million. During the economic upswing at the end of 2003 companies are being attracted to Ireland, helped mainly by, the availability of this capacity. The 25-year perspective on this should be more positive. The Department believes that this is an asset that can be sold. The risk of not reacting in the manner outlined would result in an exit of companies from Ireland.

4.10. The Committee noted that the companies that owe €11 million are not paying because they are not using what they bought. It is quite clear that a lot of the capacity is now left with the IDA and cannot currently be disposed of. That is the reason that the IDA wrote down the value from €23 million to €2 million. On the other side is the fact that the companies which purchased and owe money, are not using the capacity. They did not predict the downturn either. They would prefer not to have bought it now.

4.11. The Committee considered, with the benefit of hindsight, that the view taken in 1999 in relation to the capacity needed was too high. The basis of this opinion was the amount of capacity left unsold and of the amount sold the small percentage actually in use. Demand for capacity was estimated following discussions with the companies which potentially would be involved, a broad analysis of future trends based on experience of the use of bandwidth and general discussions with the industry about its future plans. The Department had an interest in covering more than 160 STMs. The industry wanted to be part of the initiative. The Department had a mixture of the advisory committee's best guess at what the future was going to be, its experience of the industry and predicted potential usage. There were some of the top companies in the world on the IDA list and database. In talking to the telcos they believed there would be an uptake.

Penetration of Broadband

4.12. In terms of broadband penetration, the market was liberalised in 1998. It was believed that this would facilitate private sector development of the necessary infrastructure and services. Subsequently, there was a global downturn in the telecoms market and shareholders took a shorter three year perspective on rates of return. The demographics in Ireland are such that to get a return from the roll-out of broadband could take five to seven years. A lot of private sector shareholders took the view that they wanted a return in three years which meant they would only invest where they would get a return in that period. Therefore, there was a roll-out of DSL, digital subscriber line, the current introductory broadband technology, in higher density areas. The Department has sought to support competition in these areas and take away the barriers to entry by means of State intervention in the domestic market to drive the process through the metropolitan area networks in towns and cities. This goes back to the issue of a legitimate role for the State, even in liberalised markets, to facilitate and help competition where it can take a longer term perspective than the private sector on rates of return.

4.13. The Committee noted that set against the description of the IT industry in Ireland, the OECD, in a report published in June 2003, rated Ireland 25th out of 31 countries in terms of broadband penetration. The penetration rate in Ireland is 0.41 per 100 inhabitants, whereas our neighbours in the United Kingdom have a penetration rate of 0.63. The figure in the United States is 8.25 and in Korea, 23.17. The report casts doubt on the ambition to be the e-commerce centre of Europe. The World Economic Forum's Global Competitiveness Report of

October 2003, stated that in terms of competitiveness, Ireland has moved from fourth position in 2000 to 30th in 2003 principally due to the failure to roll out broadband.

4.14. The Department advised that as a result of the Global Crossing deal, technology companies in Ireland do not have a problem in getting the right price for connectivity. In the broader general economy for the roll-out to and use of broadband in ordinary homes and SMEs there is a perceived market failure. Private sector companies were not prepared to take the risk and accept a longer term rate of return. The Minister issued a policy direction to ComReg, the telecoms regulator, about the availability of broadband, particularly flat rate Internet access. It was strongly believed that unless there was flat rate Internet access, there would not be an uptake of broadband. The figures from the OECD and the WEF were historical. By the end of September ComReg figures indicated a dramatic uptake, mainly as a result of the introduction of a flat rate and more aggressive marketing of ADSL and broadband. Take up was growing at a rate of about 1,000 a week. Some 30,000 have signed up for the flat rate Internet access and there are 22,000 digital subscriber lines. There is a critical point in uptake - a few hundred thousand - when one begins to see the benefits. People are not prepared to commit unless they know the fixed cost and what they will be paying in the future. As subscribers use broadband or DSL, they look for higher and higher speeds.

5 Adoption of Reports

5.1. The Committee disposed of Chapter 8.2 of the 2002 Report and noted Vote 30 on 4 November, 2004.

Findings and recommendations

The Committee of Public Accounts

Finds specifically that:

1. The decision taken in 1999 to attempt to ensure that Ireland had adequate levels of connectivity was reasonable and far-seeing in view of the efforts that were being made to attract major international corporations to locate here.

And recommends in general that:

1. Where appropriate the State should endeavour to involve private companies in sharing the risks of investing in infrastructural projects in the sectors in which they operate.

3. Department of Enterprise, Trade and Employment - Vote 34; and Chapter 11.1

1. Proceedings of the Committee

1.1. The Committee heard evidence from Mr. Paul Haran, Secretary General, Department of Enterprise Trade and Employment and his officials; from officials of the Department of Finance; and from the Comptroller and Auditor General on 13 November 2003.

2. The Background

2.1. The Company Law Enforcement Act 2001 introduced a more stringent compliance regime for companies. The statutory provision relating to the annual return date came into effect on 1 March 2002 but under the Act a three month window from that date for making the first return was permitted before the 28 day rule came into play. Once the three month transition period had expired at the beginning of June, a statutory instrument covering the new late filing penalty provisions should have been made but the need for this was overlooked in the Department. As a result, the new penalties, applied as intended from June 2002, had no legislative standing. This oversight was not discovered until early December 2002 when the legal adviser of the Companies Registration Office (CRO) spotted it when examining a separate and unrelated matter. A covering statutory instrument was made immediately to regularise the position from a current date.

2.2. The effect was that from a legal point of view almost 10,000 companies had been overcharged late filing penalties (of €130 each), amounting to about €1.33 million, and arrangements for refunds had to be made. All of the companies which had been overcharged were notified and given a credit note for the relevant amount which could be used against future CRO charges, or, alternatively, support a cash refund. By November 2003, about €500,000 has been refunded in cash and credit notes to the value of €326,000 have been used by companies to offset fees and charges. The balance, roughly another €500,000, was yet to be claimed. The administrative cost of making the refunds was estimated at being in excess of €60,000 including interest at a penalty rate of 8%.

2.3. The Accounting Officer attributed the failure to make the appropriate fees order to the plethora of statutory instruments necessary to give effect to the various provisions of the Act. Arising from this oversight, new procedures were put in place to ensure there will be no repeat of this type of omission.

3. The Accountability Issues

3.1. The accountability issues examined by the Committee were:

- CRO Oversight
- National Authority for Occupational Health and Safety
- Grants to Industry
- Trade and Business Development Body
- Work Permit Fees
- Expenditure on Consultancies

- Closure of IFI/NET

4. Examination of the issues

CRO Oversight

4.1. The Committee considered the events that led to refunds of late filing penalties to 10,000 companies. The CRO, the implementer of policy, reasonably assumed that the Department had ensured the order was signed in time. The Department was not receiving the returns and levying the fee. Unlike the CRO, it was not in a position to see the flow of funds and the levying of penalties in line with the new rules. The failure lay within the core of the Department in not realising that, while a new fee regime was introduced in 2002, the impact of changing the due date for returns from one linked to a company's annual general meeting to a new concept of an annual return date required the making of a new fees order. The Department has a new procedure that when new legislation is drafted, a schedule is drawn up of statutory instruments that will need to be signed before the primary legislation is enacted.

4.2. The main value for money issue was that the State would have been richer by €1.3 million if the statutory instrument had been signed. The administrative cost of dealing with the error was €63,000. The Committee felt it would have been more efficient to make the refunds by cheque and that the remaining €500,000 should be settled by cheque. The Committee was concerned that the error was only found by chance.

4.3. The Committee noted that income from registration was estimated at €7.86 million but the actual figure was around €20 million. There was a hope that with the introduction of the new rules, the three month moratorium and the extensive public comment about the new Companies Law Act, that a significant improvement in compliance would follow. It was difficult to know what the level of compliance will be. Of the €20 million in revenue, about €12 million relates to late filing fees. This was not expected. The Committee noted that the penalties were severe in that sector for the offence committed. The Department indicated that if the penalties were small, they would not effect compliance rate improvement. If they are high, there is a higher rate of compliance.

National Authority for Occupational Health and Safety

4.4. The Committee noted that there was an allocation in the Vote of €13 million for the National Authority for Occupational Health and Safety (HSA) - grant for administration and affairs. About 57% of the figure - €7.3 million - is for pay costs and the remainder - €5.7 million - for non-pay costs. Between 1997 and 2002 the number of staff increased from 130 to about 160, an increase of 23%. It was a function of the evolution of the authority over a period of time as staffing requirements, in particular, changed. It also reflected changes in the size of the workplace and a political response to various issues. The HSA is a trilateral body which has delegated responsibility for both the development and execution of policy in this area. A review of the work of the HSA in 2001/02 looked at its overall management. Changes were made in its senior management layers to develop a new structure and to attempt to improve its effectiveness. As part of the Estimates mechanism, there is a bidding and response process.

4.5. Trade unions representing construction workers are concerned at the number of inspections being carried out on construction sites. Only 6,118 inspections out of 8,000

planned, were carried out in 2002 on construction sites, while in that year 22 building workers lost their lives. The number of construction site inspections earmarked for 2003 was reduced to 4,500. The Department indicated that the fatality rate per 100,000 workers has been halved since 1998 when the staff involved in inspections started to increase. The staff in the dedicated inspectorate in 2003 was not as high as 2002 when a particular initiative was taken to increase the number of inspections. Other initiatives were that FÁS has trained more than 260,000 people in the safe pass scheme, 1,700 enforcement actions took place and there were 199 on-the-spot fines. There were 78 convictions from 95 prosecutions taken by the HSA.

Grants to Industry

4.6. The Committee considered a range of detailed issues in the Vote concerning grants to industry. There was a significant shortfall in respect of both the IDA and Enterprise Ireland - €17.5 million in the case of the IDA and the best part of €10 million in the case of Enterprise Ireland. There was no particular heading in the Vote for research and development although Technology Foresight is the main heading in that category. There was a shortfall of €3 million for community enterprise development which had implications for regional development and the national spatial strategy. Less money was spent on active labour force measures.

4.7. Overall IDA expenditure increased, even though the Estimate appears to have reduced. In 2001 and 2002 there was a net decrease in the overall number of jobs created by the IDA but expenditure generally does not refer to what is happening currently because usually approval is given in a particular year and expenditure arises a number of years later. In 2002 the IDA spent €116 million, even though the Exchequer element was a lot less because it used money from the national training fund, (NTF), and money that it had received in capital grant refunds - €41 million.

4.8. About €18 million less was spent in FÁS, although most of this applies to administration and general expenses, but €5 million is being spent on employment programmes. There is also a shortfall in the community initiative development partnerships on the basis of matching funding, being a European Programme. The Cabinet sub-Committee on Social Inclusion stated that for every 6,000 fewer places on community employment schemes there was a net saving to the Exchequer of €8 million. This does not take into account the additional costs other Departments will have in providing social services in the areas of health and education, not to mention programmes under the Department of Community, Rural and Gaeltacht Affairs. The Committee felt that there should be an inter-departmental cost benefit analysis to support this type of spending.

4.9. There was no major change in the expenditure of Enterprise Ireland. The saving of €9 million arose because a number of planned activities did not happen. There was an allocation for web works, a policy where Enterprise Ireland is trying to put in place infrastructure to help companies which are e-oriented. This project took a lot longer than expected, which resulted in a €5 million saving. On the Community Enterprise Incentive Programme, there was a saving of €2.4 million. There are lead-in times on some of these projects, some of which are built projects, which means there can be a delay in having them done. Because of the global downturn, there was also a reduction in the draw-down by individual companies for their expansion plans.

Trade and Business Development Body

4.10. The Committee expressed concerns that in Vote B.2 the Trade and Business Development Body, the original Vote was approximately €10 million and a total of €6 million was underspent. This is a jointly funded body located, outside Newry, in Northern Ireland. It took over many of the island of Ireland activities and award events including the trade, design and innovation awards. It ran an equity network programme and did some work on competitiveness, North-South. It worked on a policy on digitalisation coming originally from the Belfast-Dublin corridor and expanding to a digital island. It introduced a number of schemes, including FUSION and FOCUS. FOCUS was aimed at marketing expertise on a cross-island basis, locating graduates in a company North or South. FUSION looked at the area of technology. It also ran a number of forums and road shows throughout the country. The reason for the under-spend was that the political situation changed dramatically. There were periods of suspension and the body never got up to its full level of activity. The ministerial body was not meeting in the same way. From a Northern perspective there was a lacuna at the political level which would have restricted the capacity of the organisation to expand its activity base.

4.11. The Body is not only dependent on the presence of an Executive at Stormont but also on the North-South Ministerial Council. The suspensions of the Executive in Belfast led to a conservative development of the body's activities. Its budget was approved at meetings of the North-South Ministerial Council. New programmes it wished to initiate would be raised and approved at those meetings. The absence of that political structure inhibits the capacity of this organisation to develop. The outturn for 2003 is about €4.9 million but there has been no significant development of new initiatives in this area.

Work Permit Fees

4.12. The Estimate for work permit fees was €6.3 million but the outturn was €14.5 million. The explanatory note suggested that 40,000 permits were issued to non-EU nationals to come to work in Ireland. In 2002 there was a decline in certain areas of the economy and a clear decline in international cross-border investment. Overall, trade was under pressure and many companies were suffering. Despite this, skills shortages remained in certain fields both at regional and national level. There is a client population of people on work permits. Many of the permits issued in 2002 - 41% - were renewals for people already here. There was a policy generally that despite labour market difficulties, a positive attitude would be taken towards individuals who are already here and looking to have their permit renewed. The live register and unemployment levels reflect the fact that regardless of the difficulties, the labour market remains relatively tight. Long-term unemployment in 2003 was at 1.4% and unemployment is at 4.4%.

4.13. Over the past few years more controls were introduced to ensure that Irish or EU and EEA people are given first option, but despite those controls, there was a robust demand from companies for work permits. The overall price of the work permits was increased in both 2002 and 2003 from €150 to €400. Despite this, many companies say that if the work permit regime is closed off entirely, they will find it difficult to meet the cost pressures under which they operate. They usually find that the work permit people they secure are highly productive and valuable members of the labour market. As regards the Estimate, an extraordinary high and robust level of demand was not anticipated. The system for getting permits was tightened,

but that did not stop the demand. The Department does not fully understand how this element of the labour market has been transformed in the space of two years. The trend was to move from issuing about 6,000 work permits in 1999 to 36,000 permits in 2001 and to almost 40,000 in 2003.

Expenditure on Consultancies

4.14. The Committee inquired about expenditure of €700,000 on consultancies. One of the largest expenditures was for actuarial advice for the regulation of insurance. There was consultancy expenditure of €136,000 to Bear Stearns for the disposal and sale of Irish Fertiliser Industries, which subsequently went into liquidation. This consultancy took place on a jointly funded basis with the other owner of the company, IFI. Other consultancy fees in excess of €50,000 included €62,000 paid to BearingPoint to examine a sheltered employment scheme for the disabled; and €97,000 was paid for a review carried out by Mercers on the Labour Relations Commission. There has been a restructuring of the LRC. A consultancy fee of €74,000 was paid to an individual consultant for work in regard to the Health and Safety Authority; and another consultancy fee of €57,000 was paid to Indecon which carried out work on reviewing the active labour market programmes.

Closure of IFI/NET

4.15. The Committee inquired about the total cost of the closure of NET. In 2002 a Supplementary Estimate was passed for nearly €12.5 million. The State and IFI created a pension fund under a trust arrangement of about €24.5 million and the Department made a contribution to it. The trust fund is under the liquidator. The liquidation was ongoing at November 2003 and property disposals were awaited. It was anticipated that not everybody who is owed money will be paid fully. There is a hierarchy of creditors and there are also pensioners. Over many years a significant amount of expenditure took place and the State lost more than €100 million.

5 Adoption of Reports

5.1. The Committee disposed of Chapter 11.1 of the 2002 Report and noted Vote 34 for 2002.

Findings and recommendations

The Committee of Public Accounts

Finds specifically that:

1. An avoidable oversight in the Department of Enterprise Trade and Employment led to a situation where the State become liable to refund fees totalling €1.33 million to 10,000 companies.
2. The administrative cost of the issuance of the refunds was €63,000. It would have been more efficient to issue the refunds by cheque.

3. Revenue from late filing fees at the CRO increased sharply by about €12 million in 2002. This is a direct consequence of the work of the Director of Corporate Enforcement.
4. The number of inspections made by the Health and Safety Authority in 2002 was 6,118 out of 8,000 planned inspections. Construction site inspections for 2003 were planned to reduce further to 4,500.
5. There was a significant underspending of €6 million for the Trade and Business Development Body, a north-south body. This was due to the political situation which led to periods of suspension of activity. The planned activity levels were not reached.
6. The demand for work permits for non-EU nationals continued to rise and reached 40,000 in 2003 generating revenue of €14.5 million.

And recommends in general that:

1. Departments should have a procedure to ensure that all required Statutory Instruments are put in place at the appropriate time.
2. The availability of modern financial information systems in Departments should lead to more efficient administration of receipts and payments. Meaningful performance indicators should be introduced to monitor this in all Departments.
3. The inspections of the Health and Safety Authority should primarily be organised on a risk basis but have a random element similar to the approach adopted for Revenue audits. Particular emphasis should be given to certain more dangerous work places such as construction sites and farms.

4. Competition Authority Accounts 2002 and 2003

1. Proceedings of the Committee

1.1. The Committee heard evidence from Dr. John Fingleton, Chairperson of the Competition Authority; from officials of the Department of Enterprise, Trade and Employment; and from the Comptroller and Auditor General on 22 July 2004.

2. The Background

2.1. The present Competition Authority was established on 1 July 2002 through a commencement order made under the Competition Act 2002. The accounts cover a six months period in 2002 and the full year 2003. During this time, the parent Department, (Enterprise Trade and Employment) discharged the payment functions of the authority on the instructions of the Authority but that was changed in 2004. The Authority now has its own bank account and draws down its grant from the Vote in instalments as required. For practical reasons the Department still operates the payroll on behalf of the authority.

2.2. The accounts indicate that there was no surplus or deficit at the end of the accounting period. This is a natural consequence of the standard way adopted for public bodies funded by way of grant rather than grant-in-aid. The grant is matched to the outturn for the accounting period. Merger fees and other receipts are transferred to the Vote as appropriations-in-aid by direction of the Department of Finance rather than accruing to the authority itself. These amounted to €308,000 in 2003. A clear audit report was issued for both accounting periods.

2.3. The authority was fully staffed following decisions in 2001 and 2002 to increase resources. Staff turnover is at 10% - a much lower figure than the 50% experienced in 1999 and 2000. The Competition Act 2002 strengthened the powers and functions across all enforcement areas, most importantly in the area of mergers where it transferred the function from the Minister to the Authority. The only power not yet used is the power of arrest. There were an unprecedented number of cases in court, both civil and criminal but these cases are the tip of the iceberg in terms of the Authority's investigative work. They constitute 1% to 2% of the matters under investigation that eventually go to court.

2.4. Competition cases are unusually complex. There is an impending Circuit Court case in the west of Ireland that involves 24 co-defendants. The United States and EU cases against Microsoft each took at least five years to investigate and bring to court. It took hundreds of person-years to carry out the investigations. This is the nature of the complexity of the economic and legal analysis required in such cases.

2.5. The Authority has implemented a new system of merger review. There has been a sharp increase in merger activity in the economy that is reflected in the 80% increase in notifications in 2004. Three cases from 2003 went to full (Phase 2) investigation and these were dealt with satisfactorily. Approximately 70 reasoned decisions in merger cases within the past 18 months were issued. Recommendations for changes in a wide variety of markets were made where there were public restrictions on competition and these have been supported by detailed analysis.

2.6. Recent convictions in mid 2004 in Drogheda were the first of their kind and the 2005 home heating oil cartel trial before a jury is expected to be a first in Europe. The benefits of some cases tend to be ten to 25 times the annual budget of the Authority in terms of benefits to the economy. These benefits are long-term and have a wider implication outside the market in which the enforcement action takes place. The number of cases brought to court is not a reliable measure of the Authority's output. The Authority is conscious that there is a considerable shortfall in what the Irish economy needs in terms of competition. It must change decades and, in the case of professions, centuries of practices and behaviour. This is an enormous task for the entire economy.

3. The Accountability Issues

3.1. The accountability issues considered by the Committee were:

- The Work of the Competition Authority
- Cartels
- Staffing
- The Banking Sector
- Assessment of the performance of the Authority
- Irish League of Credit Unions
- Drinks Industry
- Quantification of benefit to consumers
- Adequacy of Funding
- Inadequacies of the 2002 Act

4. Examination of the Issues

The Work of the Competition Authority

4.1. Some 50% of the resources of the Authority is allocated to enforcement and 25% to advocacy, of which 18% is involved in studies. The remaining 25% of resources is allocated to mergers. This is consistent with the fact that the statute gives powers in all of these areas. The statutory function is the primary focus. Private restrictions are not the only restrictions on competition. An agency that only tackled private restrictions, cartels and monopolies and completely ignores barriers to entry created by the State would encounter problems. It would be viewed as a biased agency, attacking private restrictions and never investigating public restrictions. It would also become ineffective. When competition is introduced into a sector, those with vested interests now exposed to more competition seek regulatory protection. A competition agency that does not guard the back door where regulatory barriers to entry can be introduced risks undermining much of its enforcement activity.

4.2. Following inquiries from the Committee, the Authority justified its expenditure on consultancies and reports commissioned on the basis that it had carried out a number of worthwhile studies across a range of markets and that these had led directly to valuable contributions from the Authority to the pharmacy market and the Groceries Order. Whilst recognising the value of this work the Committee noted the low level of prosecutions in the 2003 report and the Authority's need to tackle the problem caused by regulatory restrictions.

Cartels

4.3. The Committee inquired as to the reason that the Authority had not uncovered any major cartel in the service sector. In reply the Authority explained that a number of factors contribute to adding to the complexity of such a task. In the first instance the level of proof needed is similar to that required in a criminal prosecution. Also, investigations into cartels are made more difficult by the very nature of cartels, that is, cartels are a conspiracy and the secrecy involved in such operations makes their uncovering all the more difficult. A further practical impediment is the need for individual prosecutions to be made against a number of accused and these proceedings are often taken in different District Courts. A final complication is the fact that when the Authority has examined what, at the outset, would appear to be the existence of a cartel - work that is both time consuming and resource sapping - it results in findings, which only become apparent after thorough investigation, that show that a cartel was not in fact in operation.

Staffing

4.4. The Committee inquired about staffing arrangements at the Authority. Staff numbers seconded from the Department of Enterprise, Trade and Employment were reduced, and the authority's staff increased. It has five members. The Minister appoints members of the authority under section 35 of the Act for a term not exceeding five years. The chairperson is a member, although there are separate provisions for that position. The members are the decision-making body within the authority and there are certain decisions the authority cannot delegate, which the members must make collectively, such as mergers, decisions to bring proceedings and decisions related to the accounts. At the end of 2003 the Authority had 41 sanctioned posts and the five members, making a total of 46. To date 39 of the 41 positions are filled. Out of the total of 46 there are 44 people in place.

The Banking Sector

4.5. The Committee noted that the conclusions of the report contained different categories, highlighting various areas where Ireland had become less competitive. The report stated that in addition to the insurance industry, large studies were under way in the banking sector. Competition in banking is not always to do with the best or cheapest rates but also access, transfer, entry and so forth. If the authority finds restrictive practices, it would prefer to seek a statutory solution from the Oireachtas rather than attempt to battle through the courts system. The fundamental source of the restrictions may not only be private restrictions. The whole regulatory structure and system of operation are part of the problem. In these cases, recommendations are taken to Government.

4.6. The recommendations that can be made in a study vary from sending something to the Authority and enforcing it through section 4 and 5 of the Act through the courts. A formal investigation must be started because a study is not an investigative process and due process issues are involved. The Authority may make a recommendation to the Government, or a regulator such as IFSRA, and particular groups such as consumers or trade associations. It is not decisive and cannot force people to do anything when a study is made.

4.7. At the end of 2002 the Authority conducted a general study and analysis of all the banking markets in Ireland. In August 2003 two areas for focus were identified in the banking sector - personal current accounts and unsecured loan finance to SMEs. In December, a large

number of financial institutions, including banks were required to provide information. Up to 136 boxes of documentation was received from the banks. In contrast the insurance federation did not respond to the Authority's consultation method. Three people in the Authority have spent six months sifting through the information received from the banks. Hearings with the banks were arranged for late August and early September with a view to having draft recommendations for consultation towards the end of 2004.

4.8. The Authority is concerned with the performance of the market for banking services. It is considering the private methods of banks, the way the payment system operates which acts as a barrier to entry into personal and current accounts or the way the system is regulated that is not friendly to entrants but still facilitates the banks in claiming they are acting within their rights. When the report is issued, the Authority aims to be seen to be very attentive to its implementation. If enforcement issues arise, it will be diligent in following up recommendations over time. Regarding resource allocation, the banking study has had between one and three people working on it for a year and a half. Relative to the scale of that sector, it might be noted that IFSRA has about 400 people just regulating financial services. The Authority average of about one and a half persons could not deal with the entire banking sector much more quickly than has been done.

Assessment of the performance of the Authority

4.9. The trade-off in allocating its resources means the studies are perhaps slower than is desired. There has been an upsurge in merger activity in 2004 and resources were redeployed from enforcement to mergers over the past six months. That is the difficult trade-off that is faced. Given due process, if the number of staff on the banking study was doubled, it may not have been done a great deal faster. Given the requirement for due process and for root and branch examination, two years is about the appropriate length of time.

4.10. The Committee noted three criticisms that are made of the Authority. The first is that the Competition Authority is primarily an enforcement agency but is failing to enforce. The second is that the Authority's emphasis is too academic in nature and that it is involved more in studies and assessments than in action. The third criticism is that the Authority's sense of priorities is not in line with major public concerns and that where there are major consumer concerns it does not seem to act, though it acts in areas where there is rather limited consumer concern. In the Authority's 2003 annual report it states that fewer than 5% of public complaints become fully-fledged investigations. A figure of 5% of public complaints being pursued by the Authority to investigation stage is very small.

4.11. The Authority indicated that people may approach it with matters that do not indicate any breach of the Act, or reveal any evidence to show any such breach. The figures are not out of line compared to such figures in the UK or other countries. In the UK the Office of Fair Trading has noted that 1% of all complaints from consumers and 10% of all complaints from business lead to or suggest a breach of the legislation.

4.12. The Committee felt that there is a widespread belief that there are vast areas of the economy where there is competition on the level of service and other issues but not on price, since such competition does not exist, for example, in the pub trade or the medical and legal fields. The Authority accepted that there are wide sectors of the economy where there are serious competition problems. It had drawn attention to sectors of the economy that are monopolised, such as was historically the case with telecommunications, post, energy,

transport, health insurance, television, sugar, forestry and cement. There are other cases where a leading firm has more than 50% of the market, as is the case with newspapers, beer, whiskey, other spirits, ice cream, cement, liquid milk, liquid petroleum gas, industrial cleaning, and industrial gases generally. There is also another list of markets which are highly concentrated, with four firms dominating - supermarkets, distribution of food, newsprint distribution, banking, soft drinks, outdoor advertising, and insurance.

4.13. The Committee felt that the number and frequency of prosecutions was too small and was open to criticism for being an enforcement agency that was not prepared to use its powers to enforce in court. While the Authority has powers regarding criminal proceedings and impeachment it only took one case in 2003. The case was unusual for a District Court case in that the judge three times reserved his judgment and finally delivered his judgment in March 2004. Apart from the complexity of the cases, the Authority argued that in some areas of the economy people know it is there and is prepared to act. There is a big gap between statements of position and the standard of evidence needed to bring a case before a jury in the criminal courts. The current capacity is one case per year given what is required in bringing a criminal prosecution. Criminal prosecutions in this area are novel. Ireland is the first country in the EU to do this. Others who tried it in the EU have failed. Ireland relies on criminal fines, whereas almost every other country in the EU uses civil fines, which have a much lower standard of proof. The Authority would like to see civil fines introduced, since it believes they would be a more effective deterrent. However, that did not happen under the 2002 Act. Deterrents could be stronger, but the Authority is fully committed to enforcement, and relative to what is required of it regarding a criminal standard, it is putting great effort into bringing cases. A large number of cases settle without going to court, and that is also a good outcome, since the objectives are met.

4.14. The Authority has a large number of investigations, both criminal and civil, ongoing at any one time. It would be in double figures. The outputs for 2003 ranged across a large number of economic sectors. It believes it is not putting enough resources into enforcing competition relative to the historical legacy. Private enforcement under the 1991 Act resulted in only one case in the High Court, against the ESB, in 13 years of abuse of a dominant position or breach of the Act. The case was trivial and private enforcement is considered a failure. Public enforcement started in 1996 with weak powers and an under-resourced Authority, with the result that very little happened. It is only since 2003 that it has started. The fact that there is such a large number of cases in court relative to other agencies of a similar size is a great achievement. In other countries, competition authorities make decisions on infringement. In Ireland the cases must go to court. That is an important difference when making international comparisons.

Irish League of Credit Unions

4.15. The Committee noted that despite public concern about competition in the banking sector the Authority spent 11 days in the High Court on a case involving the Irish League of Credit Unions. The issue was that some credit unions believed there should be a second league of credit unions to represent them. There was a view that the Authority had a skewed sense of priority. The complaint brought by 17 credit unions against the Irish League of Credit Unions revealed a breach of the Act and it was incumbent on the Authority to take action. The credit union movement is important to the economy. If a representative body has a monopoly it is important that it is open to somebody else to set up an alternative. This is the norm in many other sectors such as accountancy, or in medicine, for example, where the IHCA and

the IMO are two competing representative bodies. The particular case had implications beyond credit unions. What the High Court decides in terms of monopolisation of representative services will be relevant to a wide range of other markets, including legal services where monopoly representation exists at the moment. It is seen as a really important case and the Authority's co-operation with the courts and the parties concerned got the whole case heard in 11 days in the High Court. That was a substantial improvement.

Drinks Industry

4.16. In December 2003 the Licensed Vintners' Association gave an undertaking in the High Court regarding allegations concerning the price fixing of alcoholic drinks. There was an investigation into the pub trade following newspaper reports of increases in drink prices in October 1997 in the wake of the lifting of a price freeze order by the then Minister of State at the Department of Enterprise and Employment with responsibility for consumer affairs. Following certain inquiries authorised officers conducted a search of the office of the Vintners Federation of Ireland in late November 1997. Subsequent searches of the office of the LVA and the Limerick city branch of the VFI were carried out in January and February 1998. As a result of the investigation the Authority instituted separate civil proceedings against the VFI, LVA and a number of individual publicans alleging that they had engaged in agreements, decisions and/or concerted practices to increase drink prices by a set amount in the summer of 1996 and in October and November 1997 and to fix margins in respect of certain alcoholic beverages on an ongoing basis.

4.17. The effect of the undertakings given was that the Authority achieved most of what it could have achieved if the case had gone to a full and complete hearing without the costs and time associated with same. There are no fines available for this type of proceeding in Irish law and a full hearing of the court case would have been the result. In terms of the future, the High Court settlement represents the achievement of the Authority's objectives in this case. The Authority's resources were also freed up.

Quantification of benefit to consumers

4.18. The Committee noted that the British Office of Fair Trading includes in its annual plan a quantification of the benefit to UK consumers of its work and it is then benchmarked against that. The Authority does not do this and advised that the UK Office of Fair Trading has enormous difficulty with that provision because it is extremely difficult to assess the benefits to consumers of a particular action. The Authority has included in its work plan for 2004 the intention to do more to evaluate the benefits of cases. It is important for the Authority to assess the benefits in this type of post-evaluation. However, examining activities over a single year in order to state the benefits in that year may not be the correct approach. A better approach is to select particular cases and show what has resulted from them. The Authority has begun the process.

Adequacy of Funding

4.19. The Committee felt that the work of the Authority was not hugely relevant in the minds of the public. While it is an active and in some respects, effective, hard working and competent organisation, it appears to be engaged in projects which it considers very important but those matters which consumers consider important are generally not being addressed. The Authority stated that relative to the needs of the economy there is a very serious funding

problem. The budget of the Dutch competition authority was €36 million and that of the UK Office of Fair Trading was more than €60 million. The amount that can be achieved by the Authority is very much determined by its funding of €3.5 million.

Inadequacies of the 2002 Act

4.20. The Authority recognises that the Act of 2002 was very substantial. The Act dealt with many problems and transferred the merger function to the Authority. By the standards of 2001-02, the Act was very courageous and showed a great commitment to competition policy. The Authority is aware of measures in other jurisdictions that should be looked at, in particular matters that were not examined by the competition and merger review group. The Authority is of the view that change should proceed on an incremental basis. It highlighted three features in other jurisdictions that are useful, namely, the ability to impose civil fines in the system; the correct allocation of responsibility in terms of decision making between the courts and the Authority; and the complex monopoly-type revisions in the UK. The Committee noted that the Authority is discussing with the Department and the Minister the ways in which the Act can be improved. It is acknowledged that the legislation is still relatively recent and that some issues precede July 2002.

5. Adoption of Reports

5.1. The Committee disposed of the Competition Authority accounts for 2002 and 2003.

Findings and recommendations

The Committee of Public Accounts

Finds specifically that:

1. The number of competition cases brought by the Competition Authority is very low. These cases are very complex and the burden of proof is higher in Ireland because they are brought through the criminal courts system.

And recommends in general that:

1. The Competition Authority should undertake a programme of work that reflects public concerns about the extent of price-fixing in the economy.
2. The balance between advocacy and enforcement of the work of the Authority needs to be kept under review.
3. Consideration should be given to possible changes in the competition legislation to improve the operating environment of the Authority.

5. Department of the Environment, Heritage and Local Government - Vote 25; and Chapter 6.1

1 Proceedings of the Committee

1.1. The Committee heard evidence from Mr. Niall Callan, Secretary General, Department of the Environment, Heritage and Local Government and his officials; from officials of the Department of Finance; and from the Comptroller and Auditor General on 29 January 2004.

2 The Background

Urban Regeneration

2.1. The scheme for urban regeneration was introduced as a black spot initiative to provide grant aid to areas of cities, towns and villages that were in need of assistance in an attempt to minimise poverty. It was paid by the Department of the Environment and Local Government through individual local authorities. The level of take up of the scheme varied from one local authority area to another. In the same period the Revenue Commissioners operated a tax relief system in respect of a different scheme for urban renewal.

2.2. In the period 1999 to 2002, there was a wide divergence between the amounts originally provided in the annual Estimates for funding the urban regeneration programmes and the amounts ultimately expended. In aggregate, only €72 million out of original provisions totalling €138 million was spent. The underspend on the subhead was not limited to the EU co-financed capital grants scheme, although this gave rise to the greater part of it. The factors that gave rise to the underspend included delays in securing EU approvals, the protracted nature of public consultation and a pattern of slow drawdown of grants for the civic and community centres also - in part because of the voluntary nature of the projects. In addition the economy was in a buoyant phase, and local authorities encountered difficulties in sourcing contractors to undertake works, some of which were relatively small in scale and specialised in nature.

2.3. There was also a loss of momentum between the end of the 1994-1999 operational programme and the start up of the current seven-year programme under the NDP. Negotiation of the new funding arrangements with the European Commission was not completed until November 2000 - considerably later than expected. This, and the introduction of more extensive requirements for public consultation for the new funding round, led to a hiatus between the old and new funding arrangements.

2.4. The Department had long experience in administering EU assisted programmes, most of which are considerably larger in scale than the scheme for urban regeneration. It sought funding for the urban regeneration programme in the expectation that the spending environment would improve and that the total aid complement would be earned. This meant that where spending had been under-achieved in a given year, the following year's estimate was determined, not simply from earlier programmed amounts for that year, but also by the need to accelerate the programme if possible in order to make good the underspend from a previous year or years. In that sense, and combined with the factors which depressed the potential level of spend, the Department's estimations in this instance were overly ambitious. Virtually all of the €78 million aid available to the urban regeneration programme over the

1994-99 period was earned. While the under-spend over the early years of the 2000-06 funding period is now a matter of record, the 2003 spend on the corresponding sub-head represented more than 99% of the intended provision of some €24.6 million. Of this amount, the budgeted amount for the EU component was exceeded.

2.5. The persistent underspends had the effect of making funds available within the Vote to meet excess expenditure incurred in other areas of the Vote. The provisions included in the Department's estimates for the EU co-financed urban regeneration programme were sought having regard to the best expectations as to what would be expended in the years in question. It was never the Department's intention to use the programme or any other programme as a type of reserve fund. The fact that much of the programme expenditure took place much later than intended could have caused problems in meeting EU deadlines for incurring eligible expenditure. In only one of the years was money surrendered to the Exchequer.

2.6. The negotiating mandate approved by the Government for the mid-term review of the NDP and community support framework is relevant to the urban regeneration programme. The mandate envisages a reduction of the funding available to the urban regeneration programme and the transfer of this money to the non-national roads measure which is in a position to earn the aid available. Earlier discretionary transfers of aid to the non-national roads programme have already ensured that no loss of EU aid has arisen on the local infrastructure priority to date. This, taken together with the negotiating mandate decided by the Government, should ensure that there will be no loss of aid incurred on the priority over the entire period to 2006.

3 The Accountability Issues

3.1. The accountability issues considered by the Committee were:

- The Underspending
- Irish ISPAT Ltd.
- Drinking Water
- Reorganisation of Heritage functions

4 Examination of the Questions

The Underspending

4.1. The Committee was concerned that the fact that this money was not spent might indicate poor financial management by the State. Around the country, the need for the regeneration of villages and to correct the infrastructure deficit is evident. The concept of this regeneration scheme was to give a sense of lift and it is disappointing that an operational programme was not properly developed to deal with the type of deficit which exists in every county. The Department advised that it is now spending on this programme at a healthier rate. Direct grant assisted measures are only one smaller component of the total urban renewal effort. The bigger picture is better seen in terms of the range of tax incentive schemes driving development in cities and towns around the country. The amount of development being leveraged by such measures is greater than the schemes under consideration.

4.2. The Committee considered if the scale of the underspending indicated that the basis for the estimates was wrong. In 1999, the original estimate was €27.45 million and €14.65

million was spent. In 2000, the original estimate was approximately €28 million but less than half of that amount - only €13 million - was spent. In 2001, the estimate was €25 million with just €15 million being spent. Despite this emerging pattern, the 2002 estimate was €56 million but only just less than €30 million was actually spent. The Department explained that it was hopeful of ramping up the programme in 2002 so that it would pick up past under-spends and also discharge the spend expected for 2002. It knew it was an ambitious undertaking, but felt it was right to seek to drive the programme with the local authorities to draw in eligible proposals, so that fuller spend-out of the programme could be achieved. However, in mid-2002 the Government introduced a reduction in spending and the Department was asked to hand back money in the middle of that year. It was instructed to look more critically at programmes which might not reach full spend and decide how to make up the portfolio of cuts to be handed back to the Department of Finance. That accounts for the major gap arising in 2002 rather than the other years.

4.3. While the Department started with a good shelf of projects in planning for some of the longer and better established programmes it was trying to manage a scarcity rather than a surplus of funds. In this case it tried to develop relatively quickly and within a compressed timescale a new set of projects which were generally smaller in scale than in some of the bigger programmes. That posed problems in terms of mobilising and ramping up the programme to the required degree. The Committee felt that there was something wrong with the systems in the Department and the connections with the groups and local authorities throughout the country. More could and should have been done. In the years 1999 and 2000 the vast bulk of the funds not spent on the scheme were transferred, following supplementary estimates, to other subheads within the Department. The Department advised that virement moneys were transferred to the benefit of other services in the Department in 2001. The amount "vired" from the urban regeneration programme was €10 million and it went mainly on social housing, water services and the national vehicle and driver file as part of a bigger readjustment of the finances. In 2002, the Department of Finance took back €27 million.

4.4. The learning for the Department was that smaller programmes are more difficult to mobilise and that, against the pressure of trying to fulfil expectations at European and national level, there can be a temptation to be ambitious and not to surrender the ambition to ramp up a programme and spend money.

4.5. The Committee considered if value for money was obtained in the schemes that were delivered. They were delivered in a hurried fashion based on a one size fits all theory. The planning of the programme underlined that local government is not seamless. The Department made no effort to encourage local authorities to address black spots in their areas in the context of the scheme and no value for money was achieved. The consistent overestimation was unacceptable. The Committee disagreed with the Department's thinking regarding the formulation of the schemes. They were not encouraged or driven by the Department at a senior level. Such small schemes make a significant difference in local communities. They are the most tangible in the context of the effect of local government on community life and can be the most successful.

4.6. The Department advised that in 2003 it achieved almost a perfect match between the allocated amount in the Vote and the outturn, following a review of the programme. It fine-tuned the estimation process. It accepted the frustration of public representatives about the handing back of moneys for such worthy purposes as were available under the urban regeneration scheme but did not accept that there was a serious disconnect in terms of

programme management and projects management between the Department and local authorities. There were some difficulties in regard to the small size of the programme. It has a reasonably successful relationship with local authorities on all of these issues. Spending generally goes reasonably well and outturn matches estimates pretty faithfully.

4.7. There were two parameters used in developing the Estimate. Through contacts with local authorities, various spread sheets were developed indicating their bids, proposals and aspirations. The other parameter was the overall target for the initiative. The bid made for the following year to the Department of Finance is finalised by July of that year before all outturns are available. A view was taken at a certain stage in the programme by the EU Commission and Department of Finance paymasters that they would like to transfer aid to another project because it was obvious the money in this programme would not be spent. The non-national roads programme had spare capacity to take up the slack.

4.8. The schemes were financed for 50% of the finally agreed amount in the south-east region and 75% in the BMW region. It is possible that the 50% level was a reason for the slow take-up in many local authorities. It was felt that, as the scheme was of local benefit and did not represent strategic national infrastructure, local authorities should be encouraged to prioritise and identify worthwhile schemes by having to invest some of their resources in the overall mix. The Department confirmed that under the new negotiating mandate, this programme will benefit to a lesser extent than was originally intended from EU aid.

Irish ISPAT Ltd.

4.9. In 1996 Irish Steel Ltd. was sold to Ispat Mexicana Ltd. and henceforth it traded as Irish ISPAT Ltd. until 2001 when it went into liquidation. The liquidator made an application to the High Court to legally disclaim the lease entered into, with various State agencies, in 1996. This was challenged by the State in order that the likely remediation costs of the site, estimated to amount to about €30 million, could be re-couped. Two separate proceedings were instituted, one under the Waste Management Act and another at common law. The State was unsuccessful in its proceedings under the Waste Management Act and following legal advice it was decided to drop the common law action. Remediation work on the site is currently ongoing.

Drinking Water

4.10. The Committee inquired about the standard of drinking water in the State. Ireland has a rigorous system of monitoring drinking water standards and is one of only three EU member States that produce periodic compilations of water quality reporting. The EPA carries this out. The main feature of the 2001 report was that the compliance rate for all supplies remained unchanged from 2000. It was 94% based on 14 parameters. The compliance rate for public schemes was 96%, the same as in 2000. The compliance rate for group schemes was 89.5%, down from 91.2% in the previous year. The main problems relate to chloriforms. The compliance rate for faecal chloriforms was 97.2% for public supplies, and 74.1% for group schemes, both of which were improvements. The compliance rate for total chloriforms was 92.6% in public supplies, again an improvement, and 56.8% in group water schemes, a drop of 1.8%.

4.11. Since 1997 the Department has dedicated more resources to group water schemes with the aim of professionalising them. To achieve these sophisticated environmental and public

health standards, more technology is needed. Reliance cannot be solely on natural purification processes any more; technology and management are both necessary. It is trying to gain acceptance for these requirements in the communities that use group water schemes with some success. A national rural water monitoring committee and other initiatives and model plans have been developed. A design and operate procurement approach is being used, and the bundling of schemes is expected to bring greater manageability and economies of scale to the provision of group water schemes. There is still valuable self-help provided in many rural areas and it is more valuable to work with that on a partnership basis than to seek to replace it.

4.12. The Committee noted that a contractor could manage small group schemes of between 20 and 100 participants that could be looped together but was concerned that the Department is also bringing into the loop much larger schemes of 6,000 households that work extremely well. They must join if they are to obtain 100% funding for filtration. It considered that those efficient group water schemes should be funded directly without having to be attached to other schemes.

Reorganisation of Heritage functions

4.13. The Committee asked whether an analysis had been carried out of the costs of the unit within the Department formerly known as Dúchas. Until recently Dúchas had no cost centres and could never answer a parliamentary question about its costs. It had a loose way of accounting and performing procurement procedures but one could not get specific information. Following a major research exercise and a report entitled Reorganisation of the Heritage Function within the Department of the Environment, Heritage and Local Government, certain changes were approved in April 2003. Responsibility for the operational management of built heritage in State ownership - the built heritage portfolio of the former Dúchas - was transferred to the OPW. The Department retained responsibility for all heritage policy and operations of the national parks and wildlife service. Following the Government's approval, changes in the divisional structure of the Department were made that led to the planning division taking over the remaining built heritage functions of Dúchas. There is now a planning and heritage division, dealing with physical planning, urban regeneration and built heritage and a new division comprising responsibility for environmental infrastructure and nature conservation, the national parks and wildlife side of Dúchas. The former Dúchas no longer operates within the Department as a stand-alone division. It has been split and apportioned to other divisions, mainstreamed with the physical planning side of the Department on the one hand, and the environmental protection side on the other.

5 Adoption of Reports

5.1. The Committee disposed of Chapter 6.1 of the 2002 Report.

Findings and recommendations

The Committee of Public Accounts

Finds specifically that:

1. €72 million was spent in the four years 1999 to 2002 out of original estimates of €138 million in respect of the scheme for urban regeneration. The level of scale of the underspending was due to a combination of factors including the small size of the

schemes, a difficulty with obtaining local funding, the delay in securing EU sanction for schemes and delays caused by the level of public consultation involved.

2. In each of the years 1999 and 2000 funds were re-distributed to other subheads following supplementary estimates. In 2001 money was "vired" from the urban regeneration programme. The main areas to benefit from these funds were social housing, water services and the national vehicle and driver file as part of a bigger readjustment of the finances. In 2002, €27 million was returned to the Exchequer.
3. Over a four year period, the Department consistently over-estimated the allocation to the urban regeneration scheme.

And recommends in general that:

1. The Department of the Environment, Heritage and Local Government should exercise greater care in framing annual estimates of expenditure under EU – aided grant programmes.
2. The Department of the Environment, Heritage and Local Government should conduct an expenditure review of the scheme to determine the extent to which the scheme objectives are being met and the justification for the continued allocation of public moneys in this area.

6. Department of the Environment, Heritage and Local Government - Vote 25; and Chapter 6.2

1 Proceedings of the Committee

1.1. The Committee heard evidence from Mr. Niall Callan, Secretary General, Department of the Environment, Heritage and Local Government and his officials; from officials of the Department of Finance; and from the Comptroller and Auditor General on 29 January 2004.

2 The Background

2.1. Since 1986, local authorities have sourced their capital requirements for housing loans from the Housing Finance Agency (HFA), before lending on to individual borrowers. Unlike other borrowing undertaken by local authorities, the Department does not exercise prudential control of individual loan drawdowns by local authorities from the HFA. Housing loans differ from other local authority borrowing in that there is an income stream available to the local authority provided by the mortgagee enabling it to service its debt. Consequently, the Department's role in borrowing for housing is to ensure that individual draws do not exceed annual capital allocations for that purpose and that the overall provision for borrowing as set out within the PCP is respected. The Department liaises with the HFA on these programme level issues but does not monitor individual borrowing transactions against ability to repay.

2.2. In the late 1980s a combination of factors, including falls in interest rates, the introduction of variable interest rates and the ready availability of mortgage finance, led to the redemption of many mortgages by holders of fixed rate housing loans from Kilkenny County Council. Traditionally, redemptions were used by local authorities to fund new housing loans but, with the changed scenario in 1989, the redemption moneys should have been used by the Council to redeem the corresponding amount of fixed rate debt to the local loans fund or the Housing Finance Agency which had taken over responsibility for that function and which had provided funds for the housing loans in the first instance.

2.3. Some of the redemption moneys were used to finance current services or to bridge a revenue deficit in the council's accounts. The adverse financial implications inherent in this practice were compounded by advancing housing loans to borrowers at lower rates than applied to the borrowings which the council had first entered into. The new loans also tended to be for shorter periods than pertained to the borrowings. The effect of these factors was that the local authority had secured a short-term gain in the early years of the loan mismatches, but that this was now starting to reverse itself. In 1994, the Department had made known to the Council its concerns about the practice. At that time, the serious problem arising from the mismatch of tenure of loans was not evident. The local government auditor, in the course of his reports on the council accounts for 1998 and 1999, drew attention to the scale of the problem and its causes.

2.4. Following correspondence and several meetings between the Department and the council over a period, it was agreed to tackle the deficit by taking advantage of lower interest rates to re-finance the council's general borrowings and to address the loans mismatch by making an annual provision in the council's budget for repaying a new loan over 15 years. At intervals, starting from 1994, elements of the councils' loan exposure were restructured until

the Department approved a final restructuring of the housing loans in 2000 with a 15 year loan to the amount of almost €4.5 million. Non-housing borrowing was beneficially restructured in 2002. At all times, loan repayments have been properly made by the council to the HFA.

2.5. The Committee was concerned to know if this was an isolated case. There were indications of similar problems but nothing on the scale of that experienced by Kilkenny County Council. One of the difficulties in establishing the true position was that the accounting system used by local authorities up to 2001 did not facilitate the identification of material mismatches between the repayments due to local authorities and those, in turn, due to the lending institutions.

2.6. The Department wrote to all local authorities requesting them to ensure, as far as possible, that their loan books were balanced in terms of interest rates and tenure of housing loans. Arising from this, it is concluded that the practice of resorting to imbalanced loan books for short-term revenue gain does not appear to be widespread among local authorities. In the course of the examination of on the Kilkenny case, one other county council (Donegal) has come to light with a significant imbalance (€6 million) in its housing loan book, although this is less in absolute terms (€10 million) than that experienced in Kilkenny. In co-operation with the Department, the council concerned is taking steps to eliminate this imbalance.

2.7. The factor which contributed most to the Kilkenny situation was that the financial management system then in use did not provide information on the imbalance in the loan book which arose through oversight or expediency or both. This information would have been useful from the perspectives of financial management by the executive, the exercise of accountability by the elected members, and general oversight by the Department. Arising from the introduction of the new financial management system in local authorities and guidelines issued by the Department, the annual financial statements of local authorities, starting from the financial year 2003, show a comparison between the principal outstanding on loans receivable and loans payable at the end of the year. This new policy will highlight instances where there is a potential mismatch between repayments due by a local authority to financial institutions on foot of borrowings for housing loan purposes and the amounts collectable by the authority from its own borrowings.

3. The Accountability Issues

3.1. The accountability issues examined were:

- Impact of the problem on service delivery
- Local Government Audit

4. Examination of the Issues

Impact of the problem on service delivery

4.1. The restructuring of the loan to service what is now a hard core debt has created serious difficulties in the delivery of services. The scheme worked in such a way that the Council was a conduit for the money provided by the HFA. This money, which was repaid by the client, was meant to be returned to the HFA but was used for the day-to-day affairs of the council. In turn, the Council kept the rate artificially low and must now pay the penalty through having

to service this hard core debt. It is a general concern of the Department that local authority estimates and finances be balanced as far as possible, or that deficits should not be such as to strain the current and future resources of the council in question. The issue of transferring burdens to future generations of administrators and politicians in a local authority is also highly relevant. Various departmental circulars were issued on housing loan operations of local authorities over the years which encouraged the notion that local authority loan repayments must be treated as such. The operation should have been managed on a self-financing basis and receipts should have been generally managed in such a way as to be able to pay back the ultimate lender, be it the local loans fund or the HFA.

4.2. The Committee felt that the large-scale movement of loans from the HFA to commercial institutions should have been the trigger that helped reveal this imbalance. It was not a satisfactory endorsement of the local audit carried out in each local authority. The problem in the past was that these matters could be difficult to pick up, even by auditors. The Department detected this issue, not by probing the HFA or the housing loan book as such, but because it became obvious that the local authority in question was suffering from more general financial strain. When it analysed the situation, it uncovered the underlying problem. The Department exercises macro-controls in all kinds of ways but it would involve excessive micro-management to set up systems that would absolutely prohibit any mismatch in the loan book. The solution lies in the more transparent system of accounting which is now in place which will allow these matters to surface. They will surface very clearly in the annual financial statements to be made by local authorities and therefore both elected members and the Department can question them.

Local Government Audit

4.3. The Committee noted that the local government auditor had failed to uncover this problem in the 1980s. It was not uncovered until 1994. Therefore, the matter did not come to light in the interim and would never have arisen were it not for the amount of money involved, €10 million. The Committee expressed concern at the fact that the audit system in place had failed, on this occasion, to detect the problem. In defence of the local government audit system, the Department stated that the best response to the problem is to make the accounting so transparent that this problem would surface for all readers of the financial statements.

4.4. The Committee inquired about the current status, at January 2004, of local government audits of local authorities. At that time, the local government audit service had completed audits of 80 local authorities for 2001. Audits of eight urban authorities were still outstanding for that year. The audit was dealing with 82 of the 88 major local authorities for 2002. The audits of 62 of these have already been completed or are well under way. Twenty-six audits for 2002 had not yet commenced. The Agresso accounting system, operating in most local authorities and comparable systems operating in the remaining local authorities, facilitate quicker and more effective audits. The audit process will be significantly speeded up and its quality will be enhanced.

4.5. The Committee considered that local authority audited accounts should be produced in a shorter time period than is currently the case. The Department is confident the new financial management systems now being implemented in local authorities will allow the much quicker production of annual financial statements. Some teething problems with the introduction of the new system have slowed up the production of these statements and have created a

backlog. There is greater automation within the system now operating in the local authorities by adding a component that will bring much greater facility to the production of annual financial statements. The Department is hopeful that the range of statements to be provided by major local authorities for the financial year 2003 will come forward more quickly than was the case in 2001 and 2002.

5. Adoption of Reports

5.1. The Committee disposed of Chapter 6.2 of the 2002 Report and noted Vote 25 for 2002.

Findings and recommendations

The Committee of Public Accounts

Finds specifically that:

1. From the late 1980s up to 1994 financial management failings at Kilkenny County Council led to an imbalance in its housing loan book of €10 million. The repayment of this sum affected the quality of services of the Council in the 1990s and up to the present. A similar problem in Donegal County Council caused a €6 million imbalance there.
2. The shortcomings were not detected by the Local Government Audit Service.
3. Poor financial reporting systems in the period led to a lack of transparency in accounting for housing loan balances.

And recommends in general that:

1. The Department of the Environment, Heritage and Local Government should take advantage of the new accounting systems in local authorities to improve its oversight of local finances.
2. The Local Government Audit Service should ensure that its skills base and audit approach are constantly updated by reference to best practice in the sector.

7. Environmental Protection Agency Accounts 2002

1 Proceedings of the Committee

1.1. The Committee heard evidence from Dr. Mary Kelly, Director General, Environmental Protection Agency and her officials; from officials of the Department of the Environment, Heritage and Local Government; and from the Comptroller and Auditor General on 22 January 2004.

2 The Background

2.1. The Environmental Protection Agency (EPA) was established in 1993 under the Environmental Protection Agency Act 1992. The agency is an independent public body and its sponsor in Government is the Department of the Environment, Heritage and Local Government. It was assigned a wide range of powers under the 1992 Act. These powers have been widened and strengthened under other statutory instruments and legislation, including the Waste Management Act 1996 and the Protection of the Environment Act 2003.

2.2. The audit of the 2002 accounts of the Environmental Protection Agency was undertaken with satisfactory results and the audit report reflects this. The accounts themselves are straightforward. At the end of 2002, the Agency was in a break-even position having used its accumulated surplus to meet the deficit arising in 2002. There is a technical qualification in the report arising from the Agency not obtaining an actuarial valuation of its superannuation liabilities as required by Financial Reporting Standard (FRS) 17. That is a transitional measure to ultimately recognise the cost of providing superannuation benefits in the accounting periods in which they are earned by employees. The position is set out in Note 19 to the accounts. Meeting the requirements of FRS17 has caused difficulties for a number of State sponsored bodies because of the pay-as-you-go nature of the superannuation schemes which are funded by the State as part of the annual provisions. The EPA noted the FRS17 statement from the C&AG and is seeking guidance on this matter from the sponsoring Department as to how it should proceed.

2.3. During 2002, work continued on the established programmes in the EPA. On the regulatory front, integrated pollution control licences continued to be processed, with 39 licences issued in 2002 bringing to 561 the number of industrial sites licensed by the end of the year. That had increased to 603 by the end of 2003. EPA staff carried out 1,096 monitoring visits and 597 inspections during 2002 as well as completing 126 full audits, representing a twofold increase on the preceding year. Eight companies were successfully prosecuted through the courts in 2002 for non-compliance with various licence conditions.

2.4. The EPA issued 30 waste management licences and 28 draft licences in 2002, bringing to 129 the number of waste facilities licensed at the end of that year. Although there have been very noticeable improvements in the management of waste facilities, much progress is needed for some problematic sites. While 61 sites registered no complaints in 2002, seven sites accounted for 62% of all complaints received. These sites are the focus of the agency's attention. In line with Government policy, the number of landfill sites in operation has fallen from 126 in 1998 to 92 in 2002. A more balanced waste management infrastructure is beginning to take shape with more transfer stations and composting facilities coming on stream. Data collected for the national waste database indicates that waste generation

continues to rise in line with gross domestic product and that recycling rates, while also on the increase, cannot keep pace. Significant prevention measures along with increased recycling capacity will be required in the future. Work is ongoing on a national waste prevention plan, including a core prevention team to be based in the agency.

2.5. During 2002 work was completed on the development of a management system for the identification and assessment of local authorities' performance in their statutory environmental protection functions. The system is to be rolled out to all local authorities and will form one part of the new activities of the Office of Environmental Enforcement. A range of reports based on monitoring programmes was produced in 2002, putting accurate data about the quality of Ireland's environment into the public domain. Such data is used to assess trends and identify pressures on the environment. It is essential to policy makers, both in developing policy and in assessing policies already in place. The EPA places a high priority on the collection, assessment and publication of this data.

2.6. The EPA published a second environmental indicators report in 2002. The report uses 50 key indicators to evaluate Ireland's progress in meeting the environmental challenges identified in the state of the environment millennium report and international environmental obligations. The indicators also help to assess the effects of the main strategic economic sectors on the environment. While the Irish environment remains generally of a high standard, there are many pressures on it as a result of rapid economic growth, in particular in the transport and energy sectors. Increased urbanisation, increases in population, rural housing developments, changing agricultural practices and increased waste generation also add significantly to the pressures on the environment.

2.7. The EPA continued its work in 2002 on the annual reporting of greenhouse gas emissions to the European Commission and to the United Nations Framework Convention on Climate Change. Ireland faces a severe challenge in meeting the significant reductions in emissions required, as the commitment period for the Kyoto Protocol gets nearer. Ireland's greenhouse gas emissions in 2001 were running at 31% above 1990 levels compared to a 13% increase allowed under the terms of the Kyoto Protocol. Energy production and transport are the areas where emissions growth is highest. Since then, the EU has adopted a directive on emissions trading as one part of its response to climate change, and the EPA has been designated by Government as the competent authority for implementation of this directive, with responsibility for drawing up a national allocation plan for allocation of carbon dioxide allowances to installations required to participate in a trading scheme.

2.8. The environmental research, technological development and innovation programme, ERTDI has a budget of €32 million over seven years to co-ordinate environmental research in Ireland. It is funded under the National Development Plan 2000-2006 and is administered by the EPA. Total grant commitments to the end of 2002 were €23.97 million. Reports from the research projects are beginning to come through and valuable information is being obtained in areas as diverse as markets for recyclables to the impacts of climate change.

2.9. A strategic review of the EPA was undertaken in September 2002 and four main pillars of a new strategy had been identified at year-end. Those were a restatement of the mission, vision and values of the agency; a management and communications process map designed to improve communications and management processes; a strategic framework document to act as a blueprint for action; and a revised structure for the organisation. Consultation with staff throughout the organisation had commenced in 2002 and changes were implemented in 2003.

The changes reflect a greater focus on enforcement, with the establishment of an Office of Environmental Enforcement within the agency dedicated to enforcement activities. Both EPA licences and public authorities' performance on environmental issues are targeted.

3 The Accountability Issues

3.1. The accountability questions examined by the Committee were:

- Funding Sources
- Expenditure on Buildings
- Licences
- Waste licensing enforcement
- Waste Management - Recycling
- Repak Ltd

4 Examination of the Questions

Funding Sources

4.1. The Committee noted that licence fees only fund a maximum of one third of the EPA's activities with the remainder subvented by the Exchequer. The EPA has a wider brief than licensing and control and does not envisage a time when the industrial and waste sectors will completely fund its work. Much of the work is monitoring, reporting and testing the ambient environment and giving advice to local authorities and others. The EPA also deals with complaints from members of the public in the public interest. The Committee asked if a greater proportion of costs might be funded directly by the people for whom the agency carries out its activities. It noted that fines for non-compliance with the conditions of their waste licences totalling €150,000 were awarded to the EPA as a result of prosecutions taken in the District Court. However fines from criminal cases do not come to the EPA.

4.2. The Committee noted the level of fees imposed by the EPA on people making an objection.

4.3. The EPA's funding in 2002 was reduced to €16.9 million from €18.1 million in 2001. The Estimate for 2004 is lower again. The 2004 Estimate does not represent day-to-day expenses of the EPA. Cost-of-living increases are allocated. The current funding is an increase on 2003. The apparent reduction is due to the fund for research and development which is now being financed from elsewhere. EPA have been promised funding from the environment fund.

Expenditure on Buildings

4.4. The Committee inquired about €500,000 advanced in 2001 to the OPW for the purchase of a new site for the regional inspectors in Kilkenny. The EPA will need funding in its capital grant. In the previous purchase of fixed assets the OPW financed and built the construction and the EPA took over the repayments on the loan. The EPA may do that for the premises in Kilkenny too. The Committee noted that it was taking a long time for the buildings in Kilkenny to be made available.

Licences

4.5. The Committee expressed concern at the perceived lack of co-ordination between the issuing of waste licences and the granting of planning permission for projects.

4.6. The cost of enforcement of integrated pollution licences is listed as slightly more than €3 million in the 2002 accounts. This figure includes monitoring visits, inspections of sites, analysis of samples, licences, audits, notifications of non-compliance, section notices and legal prosecutions. In 2002, eight companies were prosecuted in respect of IPC licensing. This does not include five local authorities which were also prosecuted. The maximum fine that can be imposed for each charge, of which there could be several, is €1,500 in the District Court. The courts do not always impose the maximum fine.

4.7. The Committee noted that EPA secured prosecutions against eight companies (just over 1%) and received 694 complaints from the public. EPA was successful in all of its prosecutions in 2002. Of the 694 complaints, some can be dealt with over the telephone, for example, alerting somebody of an activity that should cease. Others require the EPA to write to people to explain what action is necessary and they come back and say they have corrected it. Sometimes a matter is not serious enough for prosecution. Some of the complaints received are not valid.

4.8. The Committee raised the incident at Glaxo SmithKline Beecham in Ringaskiddy, Co. Cork in 2002 when the public was not aware of any breach or incident until the EPA took an action 12 months later. As soon as a complaint is received, it is placed on the public file and available to the public. If EPA felt there was an issue following a breach by a company of which the public should be informed it would take action, for example, by informing a local authority. Similarly, if there was a public health issue, action would be taken.

Waste licensing enforcement

4.9. Income from waste licensing enforcement was more than €2 million while the cost was €3.5 million resulting in a deficit of €1.5 million. There was 89% recoupment of costs on the waste side. All of the local authority operated landfills are licensed as are all the private sector ones. There are elements outside the actual licensing where advice is given to local authorities at a cost. Some of the activities carried out are not directly recoupable from licences. The levels of fines imposed in regard to waste licences and the breaches that occur, are a matter for the courts. The maximum fine is the same as for IPC licensing and is set in the legislation. The courts can fine up to €1,500 but do not always fine the maximum. A fine can be imposed on each charge brought, so sometimes seven or eight fines are imposed.

4.10. Where there have been persistent breaches, and if a company or local authority, has not shown willingness to comply, EPA has taken out injunctions and closed down the facilities. Local authorities are not treated differently from private companies. A waste facility must be managed according to the licence. The enforcement procedure for a licence would be the same whether for a local authority or a private company. One must build up a lot of evidence before one will get an injunction.

4.11. The 2002 EPA Annual Report pointed out that there were 200 notifications of non-compliance but only three licensees were prosecuted. The notifications for non-compliance can range from not keeping records to not fulfilling other conditions of EPA licences. The

Agency's enforcement powers are on a sliding scale. If serious or significant environmental pollution is happening, EPA always prosecutes. There is a scale of activities that a company could be doing for which a notice of non-compliance would be issued. The majority of those instances of non-compliance are in areas where the Agency does not consider it appropriate to prosecute.

4.12. The Committee noted that after ten years in existence, Ireland still has high and increasing amounts of waste and greenhouse emissions, and unacceptably high levels of intensive agricultural practices, and that there are significant environmental problems with planning. On the positive side, the Irish environment is of very high quality but it continues to come under increasing pressure. On the IPC side, which has been subject to licensing since 1994, a UCD study on the cost benefit of IPC licensing concluded that there is a net benefit to the economy from having licensing in place. The quality of water in rivers, after many years of decline, is also beginning to improve.

Waste Management - Recycling

4.13. The Committee noted that in 2001, 279,000 tonnes of paper, 92% of the total produced by households went to landfill. From commercial sources, which include businesses and shops but not industry, 358,000 tonnes (71%) of paper went to landfill. Organic waste going to landfill was just over half a million tonnes and plastic waste from both sectors was just over 220,000 tonnes. The agency's study found that in 2001, just under 2 million tonnes of waste went from households and commercial sources to landfill. Paper and glass accounted for 37% of that waste. Plastic accounted for 11% and organic material that can be composted accounted for 28%. That is a total of 76% of items that are eminently recyclable. While local authorities are empowered by law to implement by-laws which can require that no recyclable or organic material goes into the landfill bin, some alternative infrastructure would have to be provided to deal with it. Lack of infrastructure is a main reason for the low level of recycling. There are two factors - the education of people and the provision of infrastructure for those kind of capacities. The EPA would like to see all 76% removed from landfill. Part of the purpose of producing the national waste database is so that policy makers will have access to those figures and can see precisely the direction in which policies need to be pointed. The agency recognises this in the conclusions and recommendations. A national waste prevention plan is needed. The EPA has a commitment from Government to have funding for this over the next number of years.

4.14. The local authorities all have waste management plans that come out at around 50% recycling of the waste for which they are responsible. The main culprit for the slowness of recycling rates is the lack of infrastructure rolled out by the local authorities. There have been studies done on the collection of recyclables where no market exists. It results in the production of a stockpile of an unmarketable commodity.

4.15. A survey published in 2002 showed that 37% of households admitted to burning waste. A senior official in a local authority related this to the increasing cost of domestic waste charges. The EPA felt that the bin charge system will in the long term make people more aware of the amount and type of rubbish that they dispose of. Putting an economic indicator at household level is considered a good mechanism for changing the behaviour of the public.

4.16. The Committee argued that the application of the 1996 Act to packaging contradicts the policy of prevention. In 1996, consumers could return recyclable packaging to the outlets

where it was purchased, but the Minister's Repak scheme has given manufacturers a way out; they pay a charge and they do not have to accept responsibility for packaging. They then litter the shelves with packaging that the householder must get rid of. The EPA noted that this kind of scheme exists almost everywhere in Europe. In the Irish scheme a producer or packager pays per item and per type of packaging. They pay more if the packaging is hard to recycle. Repak collects a substantial amount from manufacturers, in the millions of euros, and it is put into the provision of recycling infrastructure. The money also helps local authorities with infrastructure. A number of companies have taken the option of not paying into Repak and they take the packaging back themselves. Other companies pay Repak and do not have to return their packaging.

Repak Ltd

4.17. Repak is a producer responsibility initiative under the Packaging Waste Directive. The packaging waste directive was adopted at European Community level in 1994. It provided options for compliance with targets set under the Directive. Ireland was required to recycle or recover 25% of packaging waste by 2001. The Directive provided options for compliance arrangements to be put in place through regulation directly applied to individual producers of packaging, or through a self-compliant scheme designed by packaging waste producers. The Directive was transposed into Irish legislation. IBEC, on behalf of packaging waste producers, entered into an agreement with the Department of the Environment, Heritage and Local Government to develop and provide for a self-compliant scheme on behalf of packaging waste producers. It is a producer responsibility initiative, recognised in regulations which, in turn, transposes into national law community legislation. In 2002, Repak confirmed on the basis of figures it collects, and which are corroborated in the 2001 waste database report, that the packaging waste target required under community legislation was met by the scheme. The Packaging Waste Directive requires higher targets, 50%, to be achieved in 2005. Further targets will apply to specific material levels later in the decade.

4.18. Repak, in receiving a high rate of fees from the business sector, has an obligation to reinvest in recycling schemes. It also has an obligation to produce authenticated accounts of income and expenditure.

5. Adoption of Reports

5.1. The Committee disposed of the EPA accounts for 2002.

Findings and recommendations

The Committee of Public Accounts

Finds specifically that:

1. Exchequer funding for the EPA fell from €18.1million in 2001 to €16.9 million in 2002.
2. The cost of enforcement of integrated pollution licences was €3 million in 2002. Eight companies and five local authorities were prosecuted. The maximum fine for each charge is €1,500 in the District Court.

3. In 2002, there were 200 notifications of waste licences non-compliance but only three prosecutions.
4. The level of recycling of packaging in Ireland is low, principally due to a lack of appropriate infrastructure.

And recommends in general that:

1. The Department of the Environment, Heritage and Local Government should consider the widest possible application of the polluter pays principle in arranging for the funding of the EPA.
2. The EPA should ensure that the charge levied on persons making an objection does not act as an impediment to those who have genuine concerns in relation to the environment.
3. Penalties for serious infringements of environmental legislation should be set at a level that will act as a meaningful deterrent.
4. The level of prosecutions and the methods of enforcement available need to be kept under review.
5. Better co-ordination is needed between the EPA and local authorities in the matter of waste / pollution licensing and the granting of planning permission.
6. The Department should develop an action plan to work with local authorities to swiftly increase the infrastructure to support household recycling.

8. Value for Money Report on Television Licence Fee Collection

1 Proceedings of the Committee

1.1. The Committee heard evidence from Mr. Brendan Tuohy, Secretary General, Department of Communications, Marine and Natural Resources, and his officials; from Mr. T. Waters, Director, Post Office Operations, An Post and his officials; from Mr. C. Goan, Director General, RTE and his officials; and from the Comptroller and Auditor General on 20 May 2004.

2 The Background

2.1. Under the Postal and Telecommunications Act 1983, An Post was appointed as agent of the Minister to issue television licences on his behalf and collect the fee. The Value for Money report focuses on the period 1998 to 2002, in which period An Post and RTE agreed a contract which contained a target figure for licence sales each year which was approved by the Minister of the day.

2.2. The Forum on Broadcasting had been appointed to consider the future of public service broadcasting with regard to various issues, including its funding, regulation, structure and role. The forum's report, published in August 2002 contained recommendations on the licence fee system.

2.3. The report examines the efficiency and effectiveness of the arrangements for the collection of the television licence fee. The Department of Communications, Marine and Natural Resources (DCMNR) has statutory responsibility for the management of the licence fee collection process. This responsibility extends to maintaining adequate systems, procedures and practices to ensure that the return from licensing is maximised. An Post acts as agent of the Minister, issues licences and collects the fee. Although An Post is outside the audit and value for money remit of the C&AG, it was most co-operative in the conduct of the examination.

2.4. After deduction of collection expenses, licence fee revenue funds public service broadcasting. Up to 2003 all revenue went to RTE. This was reduced to 95%. In 2003 licence fee revenue totalled €176 million, reflecting significant rises in the cost of a licence in recent years and increased sales of licences. Under the agreed formula, An Post received €10.5 million of this amount to meet collection costs. This represents a 21%-22% reduction in real terms in the average payment to An Post per licence sold in the last six years.

2.5. The performance of An Post in its role as collection agent can be considered in terms of the rate of evasion which the Value for Money report estimated at 12.5% at the end of 2002. Using the same methodology, the corresponding figure at the end of 2003 was 11.5%. The rate of evasion in 1998 was 16%. While this represents an improvement, it falls short of the estimated evasion rate in the United Kingdom of just under 8%. The report noted the company has not adopted specific or measurable targets to be achieved and has not routinely produced estimates of the licence fee evasion rate. It recommended that a coherent set of performance targets for sales should be established, the database and prosecution of evaders should be maintained and improved. An Post should endeavour to acquire information from

television dealers and cable and satellite television suppliers; and payment structures should include incentives.

2.6. The report found that only 70% of evaders detected as a result of an inspection subsequently purchased a licence. This suggests that the ultimate sanction of a court imposed fine may not be as effective a deterrent as previously thought. Part of the reason for this may be the fact that up to mid-2002 An Post operated a policy of limiting the number of summons applications. While all prosecutable cases result in the issue of a summons, unless the occupier purchases a licence in the interim, the examination found that over half of the summonses issued in the Dublin area were returned unserved. Those cases that reach court fall into two categories: some buy a licence before appearing in court and, on average, receive a lower fine as a result; while others turn up without a licence, only 4% of whom bought a licence in the three months after conviction.

2.7. The report concludes that the lack of enthusiasm in pursuing evaders to the bitter end was influenced by the structure of the agency payment agreement with An Post which provided little incentive to incur the extra cost involved in the pursuit of evaders. That changed in 2003 when a progressive payment structure on sales above a target level was agreed which mirrored the situation in the early 1990s. The performance based scheme improves compliance, although separate arrangements for the pursuit of evaders will have to be made if further significant inroads are to be made into evasion rates. The alternative is to examine the feasibility of introducing a totally different collection system based on tried and tested arrangements in other countries.

2.8. There have been several initiatives launched that coincided with the conduct of the value for money examination. The forum on broadcasting recommended that the dual funding mechanism, comprising the public licence fee and commercial advertising revenue, should be maintained and that the television licence fee system should continue as the basis for the public funding of RTE. It also recommended that the contract for licence fee collection should remain with An Post and that the Minister should set targets for the number of licence fees collected, introduce a scheme of penalties for An Post relating to the rate of collection and adjust the regulations governing the licence fee to enhance the collection rate. The Minister acted immediately and the recommendations of the forum were accepted and adopted.

2.9. Other initiatives were introduced. The Government approved a significant licence fee increase in December 2002 for implementation on 1 January 2003, linked to measures announced by the Minister to improve the efficiency of collection. A detailed contract was agreed with An Post for 2003 that included special incentive arrangements to enable An Post to earn increased collection revenue for the achievement of targets in excess of its baseline target. A liaison group was established to oversee collection performance. More flexible and efficient licence fee payment systems were introduced, including, monthly direct debits, credit card payments, Bill Pay, etc. The television licence fee regulations were amended to extend the period in which a licence must be renewed from six to 12 months and to abolish the black and white television licence.

2.10. The Value for Money report refers to all of these measures which were in train before the examination commenced. Much of what is highlighted in the report has been or is being implemented. The initiatives are working, the impact of which is becoming evident. The report states that the evasion rate fell by 4% in the years from 1998 to 2002 and, with

continued effort, the Department expects the rate to be reduced further this year and in future years. The number of licences sold in the period 1998 to 2003 increased by 160,643, or almost 16%, and the proposed target for 2004, if reached, will reduce the rate further.

2.11. Proposals for further improvement are in the pipeline. DCMNR recognises the importance of the An Post database and ongoing work is being done to enhance and improve the systems operated and the information contained therein. Further changes to legislation are being explored to require operators of cable, satellite and other platforms to provide customer lists for An Post to enable collection authorities to verify payments in respect of these customers and to introduce penalties for the non-payment and late payment of licence fees.

2.12. Agreement has been reached and regulations prepared to introduce a lifetime television licence for those clients of the Department of Social and Family Affairs who qualify for the household benefits package. A working paper has been prepared on the television licence fee payment processes which the Department operates with a view to introducing further efficiencies while an annual service level agreement will be drawn up with An Post.

2.13. An Post is unhappy with the level of recovery of costs and at one stage signalled that it did not wish to continue as the Minister's agent for licence fee collection. There was no agreement in place between DCMNR and An Post covering 2004 and uncertainty about future arrangements. Any changeover to another agent would need to be carefully managed to protect the flow of revenue from the licence fee if the UK experience is taken into account. This has changed the Department's focus as to how the licence fee should be managed in the medium to long term. The option of putting collection out to tender has not been pursued or finalised, although it is under active consideration by the Minister.

2.14. The television licence fee collection contract has always represented an important and significant activity for An Post. Some 88 staff are employed by the company in providing the full turnkey solution that involves managing all aspects of the process, beginning with the issuing of reminder notices, selling licences through the countrywide post office network, maintaining a database of compliant and non-compliant addresses, carrying out house to house inspections, issuing warning notices to non-compliant holders of televisions and initiating and managing the prosecution process.

2.15. In 2003, while the company was paid a fee of €10.5 million, it claims that its costs amounted to €11 million which is not commercially sustainable. The management of the database, the issuing of reminders and the sale of television licences through the post office network are regarded as core business activities for An Post, but the detection of television licence evaders and their prosecution are not core activities. This has generated a great deal of criticism of the company, much of which has been damaging for the An Post brand.

2.16. At times there has been a degree of media attention generated regarding the efficiency of the collection system. The value for money report shows that revenues from the system virtually doubled between 1998 and 2003. It is fair to conclude that this was the result of both intensified licence fee collection activity and an increase in the cost of a television licence. At the same time An Post has continued every year to meet higher annual sale targets.

2.17. The report estimates that the evasion rate fell from 16% in 1998 to 12% in 2002. The final figures for 2003 show that it has been further reduced below the 12% level to 11.5%. This level of evasion presents An Post with a serious challenge. It is important to remember

that it has been working against a background of enormous social and demographic change. Since January 2002, it has sold an additional 120,000 first-time television licences. In the same period the average payment to it per licence sold fell from just over €11 to €9. Sales of 1.176 million licences in 2003 earned An Post €10.6 million in payments - an average of €9 per licence. This implies a further reduction of 3.7% in real terms in the average payment per licence sold. The level of award for An Post from its television licence contract has been falling in real terms since 1998. While the payment increased from €9.4 million in 1998 to €10.5 million in 2003, inflation in the period totalled 17.7%, resulting in a drop of 6% in real terms in the total annual amount paid to An Post. In addition, licence sales in the same period went up by 15%. This means that the fee paid to An Post per licence sold fell in real terms by almost 22% in the period 1998-2003.

2.18. Management of the database is critical to the successful operation of the licence fee collection business and one of An Post's core business activities. The deficiencies, gaps and omissions highlighted in the report are being studied and, where necessary, adjustments will be made. The development of the database has been inhibited by the fact that the contract for television licence fee collection has been subject to annual award. The uncertainty inherent in the annual award of a contract of this size is a serious disadvantage in the management of the business and militates against longer-term investment.

2.19. In the early part of 2004 the television licence business was reviewed by An Post which is anxious to continue to provide the service, if appropriately compensated. An Post has recently made a proposal to the DCMNR on the future operation of the television licence contract. This proposal can provide a basis for discussion of the issues of compensation and contract duration. The company is hopeful that in dealing with these issues it will provide a firm foundation for future planning for the television licence business, eliminate losses and facilitate necessary investment to further enhance the cost effectiveness of evasion detection activities.

3 The Accountability Issues

3.1. The accountability questions examined by the Committee were:

- Licence Fee Evasion
- Maintenance of the Database
- Contract for licence fee collection
- Prosecution rates and the level of fines
- Revenue lost through evasion
- Social Welfare Licence Holders
- Legislative Requirements

4 Examination of the Questions

Licence Fee Evasion

4.1. The Committee asked for details of the methodology used in DCMNR to deal with television licence fee evasion and to ascertain the number of evaders. Before publication of the C&AG's report, DCMNR had considered the issues raised in the Forum on Broadcasting report. There was an ongoing relationship between An Post and RTE which determined the target figures for licence fee payment. A liaison committee was set up to establish target

figures and a model for incentivisation. There was an ongoing debate about the annual figures for new households and a difficulty in determining the correct number. Previously, the determination of evasion figures was undertaken bilaterally by the Department and RTE but now it is the task of the liaison committee, for which the 2003 contract was set out in 2002. The committee's work involves setting a target for licence fee payment rates and establishing incentives to facilitate over-achievement of this target. The report was helpful in standardising this procedure by way of measures such as international comparisons on evasion rates.

4.2. Between 1998 and 2002 a passive approach was adopted by the Department in its arrangements with An Post for the collection of the licence fee. Prior to 1998, there had been an incentive scheme in force but for five years after that a flat rate arrangement was in place. In 1991 the C&AG drew up a report on the collection of licence fee income. Some of the comments made at the time are still relevant.

4.3. The Committee considered the adequacy of maintenance of the information system - the database and the data available from other service providers. Central Statistics Office figures indicate the creation of approximately 180,000 new households during the period under review, yet the C&AG's report indicates failings in tracking the number of households coming onstream and the number of prosecutions. This points to a disparity between the figures for the 14 regions. A problem was identified in 2002 on getting agreement on precise usage figures. Predictions on household numbers for the coming year were imprecise as the CSO, ESRI, DKM and Davy Stockbrokers, among others, all offered different projections. A second issue was the difference between the number of households being constructed and the number of new household formations. This is an important issue as some new houses are intended as second homes or may, for a number of reasons, remain unoccupied. The third factor identified was the need to establish data for business users and to find ways to incentivise them.

4.4. The Committee considered that there was insufficient liaison between DCMNR and An Post on the issue of licence defaulters. The Department indicated that it had only assumed responsibility for this issue in the summer of 2002. The forum report came out a few months later. After the forum report, a set of targets for 2003 was agreed, which included a performance incentive. The Department agreed that the evasion gap was very wide in 2002 but that since then they have been trying to reduce it. Because of the decision taken by An Post, all alternative options, including the idea of going to tender on a new system, are being considered. The aim is to reduce the rate of evasion and increase revenue streams. There were inefficiencies. The fact that there has been a decline in real terms of 22% in the cost per licence sold is not significant. The An Post team diligently pursue the evasion gap with the tools and resources at their disposal.

4.5. Reinvestment in the database would add to the overall efficiency of the collection process and allow better targeting which would give a better overall return. As regards the comparison with the United Kingdom, it was noted that there are regional variations. For example, the evasion rate in Scotland is 10%-11%, more than 20% in Northern Ireland and approximately 6%-7% in England. There are social and demographic changes which make the actual detection of evasion more difficult. Given that many more live in apartments, access is an issue. In this respect, security has become an issue for licence inspectors.

4.6. The RTE perspective is that they are concerned about the amount of money available to invest in programming. There has been a positive engagement with both DCMNR and An

Post. While there is frustration with the level of evasion it is recognised that significant progress has been made.

4.7. If licence fee collection goes to tender, that, of itself, would establish the market level of cost associated with it. The key concern of RTE would be that the transition period should be carefully managed to minimise the potential loss of revenue. RTE would like to see a more efficient collection of the licence fee and expand the volume of licence sales. The focus on the licence fee evasion rate is an interesting diversion but a more significant issue is the growth in the volume of licences issued.

4.8. Different methodologies are used to estimate the evasion rate. RTE believes the level of reduction in the evasion rate is overstated for two reasons - there is a higher level of non-domestic licensable entities and, the methodology used where approximately 50,000 licence records have not yet renewed. In the calculation of the evasion rate the C&AG considered them to be people who will renew and, therefore, it did not amount to evasion. While the census of population can be referred to there are no easy figures on growth rates between census intervals. Also, approximately 300,000 domestic licences are paid for directly by the Department of Social and Family Affairs. It is important that an agreed basis for computing the evasion rate should be found. Discussions have been held with various economists, the ESRI, the CSO and the Department of the Environment, Heritage and Local Government.

4.9. The Committee asked whether the evasion rate figure for 2002 was 16% or 12%. RTE were of the opinion that the figure in respect of 2003 was for the full year. The C&AG made his estimate from the middle of the year. For the full year the estimate was almost 15%, including both domestic and non-domestic evasion. No other country in Europe measures non-domestic evasion. The figures for Britain relate exclusively to domestic evasion.

Maintenance of the Database

4.10. The Committee felt that negotiating a contract with An Post on an annual basis, with so much money involved, is not the best way forward in having an efficient collection system. The database is absolutely crucial and it was clear from the audit report that the inefficiency and ineffectiveness of the database raised massive queries in respect of the total operation of the system. Duplication was discovered. If a name was deleted from the database, the record was obliterated, even though the person concerned may have transferred elsewhere. Penetration levels also left a lot to be desired, although there is movement on every other issue. The Committee asked about the prospects for bringing the database up to date to ensure that information on the level of evasion, the registration of new licences and the transfer of licences would be available.

4.11. The database currently in use in the TV licence services area has been in place for some years. The system needs redevelopment to put in place the features and facilities required to reduce the evasion rate. The issue of evasion is characterised by diminishing returns. Records have to be preserved in the database and a number of issues make it more complicated than it might seem at first glance. For example, the system of addresses in Ireland means that there is a significant number of non-unique addresses. This contributes to duplication and difficulty in identification. The An Post team has specified the requirements of the database and is working on a tripartite basis with the Department to identify how this might best be done to move to another level on the issue of evasion. A better database is required, with more

appropriate processing procedures, better centralised control from the 14 distributive locations and better targeting of regional variation levels.

4.12. On second homes, there is a huge difference between the statistics of the Department of the Environment, Heritage and Local Government for house completions and those of the CSO on households. Much of this may be due to second homes such as holiday homes and so on. The difficulty with having a holiday home is that if one brings a television set from one's main residence to the holiday home while spending a weekend or holiday there, a separate licence fee does not have to be paid. If one leaves the television set in the holiday home, a fee must be paid. It is difficult for inspectors visiting holiday homes to determine the true position.

4.13. There is also a considerable problem to estimate the television penetration rate in businesses. The audit estimate was 29%, calculated on the basis of work carried out by An Post.

Contract for licence fee collection

4.14. The Committee was informed that the estimated level of investment required for improving the database is in the region of €750,000. In these circumstances a long-term contract might be considered as it will be necessary for whoever takes on the job to have a proper database in place. Legislation would be required to alter the deal with An Post with whom there is a rolling annual contract. It would take approximately five to seven years with checkpoints in between to oversee efficiencies and certain deliverables. There was an agreement in 2002 between RTE, the Department and An Post to co-fund IT systems development and that offer still stands irrespective of who takes on the licence collection service.

Prosecution rates and the level of fines

4.15. The Committee was surprised that 50% of those prosecuted and fined still did not purchase a licence and sought the Department's views on the issue. The Department noted that the fines are not much more than the licence fee and is examining the legislation. The issue of fines will be dealt with by legislative changes. There is a cost associated with prosecutions in terms of time and money. The revenue goes to the Exchequer, not to An Post. However prosecutions, may serve as an exemplar to change behaviour.

4.16. In prosecution cases, costs of €15 are awarded to An Post by the courts whereas the real cost of a prosecution is in the region of €65 to €70, a loss of €50 on each case it takes. Effectively, there is little or no incentive to go to court. An Post noted that their objective is to sell licences and that some people have to be brought to court in order for the licence to be sold. They do not set out to prosecute people. It can be difficult, therefore, to remain within the law while gaining access and detecting evaders before proceeding to prosecute them. Inspectors have a variety of ways in which to operate. It is not a simple process. In many cases, people are sent a number of letters requesting that they purchase a licence. If they do not pay for a licence, it is necessary to physically meet them before they can be prosecuted.

Revenue lost through evasion

4.17. The Committee noted that it is estimated that there are 150,000 people who do not have a television licence and the potential revenue loss was in the region of €25 million.

4.18. As a result of the economic boom in recent years, there has been a massive increase in the number of new premises coming on stream. In terms of technology, it is only in recent years that we have seen the greater development of effective databases. The linking of such databases to locations has always been a major issue.

4.19. The cost of collecting the additional licences sold increases every year. In some respects, the better one gets at collecting licence fees, the more difficult it becomes to get the next few. An Post is anxious to continue to provide the service because it is valuable. The elements of the business close to its core are the management of the database, the lists, the reminders and the payment services available throughout the country through the network of post offices.

4.20. The Committee was surprised that retailers are not obliged to inform RTE, An Post or the Department when they sell televisions to individuals. The legislation currently provides for this. However, there are issues relating to the bureaucracy involved and the accuracy of the information provided. DCMNR considers that inaccurate information is worse than a lack of information. As a result, one is left with information that could be totally spurious. DCMNR is more concerned with the records of service providers. This is not provided for in legislation currently but will be included in the Telecommunications (Miscellaneous Provisions) Bill. There are approximately 300,000 using satellite services, 600,000 using cable services and 100,000 using MMDS services. This is another verification method for which the provision is in place.

4.21. A further issue in respect of databases is that under the Data Protection Act, information cannot be exchanged between organisations and data can only be collected and used for a specific purpose. These issues will be examined as part of the legislation which will come before the Oireachtas when there will be an opportunity to debate them. There are three important players and the Department has been unable to negotiate an incentive led deal. There is a database with one million entries. In this context, data protection is very important as there are vested interests in the trade such as retailers and service providers. With unprecedented growth in the economy in both the business and domestic worlds, there has been a slippage in communication. The number of prosecutions has not been a deterrent.

4.22. The Department will be making proposals to be included in the legislation on the issue of service providers. While the correlation of databases is important, it is an issue that goes beyond the Department's remit into the area of data protection and one to be debated and discussed across the system. This will be a critical part on any future contract. The Department is setting the goal posts on the empowerment to be offered to whoever will be awarded the contract. It should incorporate the critical mass of RTE's involvement with regard to promotion, the empowerment to be offered to the appointed agents and the data to which they will have access.

4.23. The Committee felt that a contract which covers nearly 1.4 million subscribers, even with a default rate of 10% offers the prospect of a very profitable service for An Post if it was structured in such a way that it knew exactly where it stood. It agrees that the top level of

collection must be incentivised. There are marginal levels above the targets and stretching of targets. At that level there is an incentive, on average, of more than €50. The first target is to reach that level, then once brought into the system, they must be in a position to maintain it. Fines represent the other side and will require examination but that is a decision for the Oireachtas. This would have to be included in any contract.

Social Welfare Licence Holders

4.24. The Committee noted the inefficiency for 300,000 licences issued under through social welfare. If these licences were issued to cover a five year licensing period An Post would then only need to deliver to those paying for a licence. This would not require legislation and would free up post offices to focus on commercial premises and private houses. The Department is now working on a system where social welfare television licences will be given a lifelong licence. The Department must collate the databases with the Department of Social and Family Affairs and ensure they are updated as people die or move house.

4.25. The advent of greater computerisation has lent a great deal of support to the sort of approach that will be taken. It is important that PPS numbers are recorded and so on but one of the benefits of the current system is that since the television licence must be renewed annually, it proves one is alive and that licences are not being issued to dead people. Under the medical card system, we have had ghost medical card holders. Assuming data protection arrangements can be complied with the computerisation of the Government register of births, deaths, marriages and so on, the development of such a system will be very beneficial.

Legislative Requirements

4.26. The Committee considered the need for legislative support to improve the arrangements for the collection of licence fees. DCMNR clarified that it does not require legislative powers other than to move away from An Post, as stipulated in the regulations. It would be a normal procurement process and the emphasis would be on designing the contract. The balance between incentive and enforcement would ultimately be a political decision, even though the Department will implement it.

5 Adoption of Reports

5.1. The Committee disposed of the Value for Money Report 46.

Findings and recommendations

The Committee of Public Accounts

Finds specifically that:

1. TV licence fee revenue almost doubled between 1998 and 2003. Most of the fee goes to the State broadcaster, RTE.
2. The rate of evasion has fallen from 16% in 1998 to 11.5% in 2003. While this is a positive collection performance, it falls short of the estimated evasion rate in the UK of 8%.

3. The ultimate sanction of a fine may not be an effective deterrent. Up to mid 2002 An Post limited the number of summons applications. The enforcement practices were historically influenced by the agency agreement with An Post which provided little incentive to incur the extra cost to pursue licence fee evaders.
4. The collection fees received by An Post have fallen in real terms since 1998.
5. The development of the licence fee database has been inhibited by the use of annual agency contracts with An Post. The annual contract does not encourage efficiencies.

And recommends in general that:

1. Alternative licence collection systems based on tried and tested arrangements in other countries should be given serious consideration.
2. If it is decided to renew the arrangement with An Post, it should be governed by a multi-year framework agreement that would encourage An Post to invest in the licence collection business.
3. Any new agreement should make separate provision for pursuing evaders.
4. Determined action needs to be taken against persistent evaders to ensure compliance.

9. Office of Public Works - Chapter 3.2

1. Proceedings of the Committee

1.1. The Committee heard evidence from Mr. Seán Benton, Chairman of the Commissioners of Public Works, and his officials; from officials of the Department of Finance; and from the Comptroller and Auditor General on 27 May 2004.

2. The Background

2.1. In August 2000, the acquisition by OPW of land which is thought to include a significant part of the lands on which the Battle of the Boyne was fought, was effected through the purchase for €9.4m of the share capital of a company, Deepriver Limited, which owned most of the site and the direct purchase of the rest from another company for €570,000. The shareholders of Deepriver Limited insisted that the sale of the main portion of the site should be through the purchase of the company for tax purposes.

2.2. The Department of Finance strongly advised OPW that the company should be liquidated as soon as possible. However, by June 2003 the company was still in existence under another name and incurring expenses associated with its status as a company. Since acquisition, company related expenses of €55,000 were paid to cover tax advice, audit services, legal advice and insurance. During that period, the activities of the company were confined to matters such as grazing and fishery rights and the provision of security at the site - matters that are typically dealt with directly by OPW.

2.3. In considering the liquidation of the company, the Commissioners for Public Works were conscious of their strategic responsibility to develop innovative and commercially minded approaches for the provision and development of State property. Concepts such as public private partnerships and collaborations were being actively considered. At the time there was no clear structure, legal or otherwise, or precedents in place to allow Government Departments undertake such activities. In that context it was thought that the coincidence of the availability of a limited company - Deepriver Limited - might perhaps provide an opportunity or vehicle to pursue non-traditional approaches. It was decided to take no immediate steps to liquidate the company. The name of the company was changed to Public Property Development Limited to demonstrate a clear break with its previous private sector existence and because it was considered desirable to reflect in its title the fact that the company and its assets were now publicly owned.

2.4. By June 2003 precedents had been established and the National Development Finance Agency had been created to deal with non-public funding of State capital projects. The Commissioners were therefore satisfied that the intended use for which the company was retained was no longer relevant and they as directors resolved to wind up the company. The necessary steps have been put in place and the estimated timescale is six months. As regards the property itself, preliminary plans had been drawn up by OPW to deal with how the site and buildings could be developed. The indicative cost of development was €40m but at this stage funding is not available to undertake the work. To date, only minor work such as surveys of the house and grounds have been carried out to the value of €212,000.

2.5. The acquisition of a limited company was also used to purchase an office building in Dublin in September 2000. This company, Colmstock Properties Limited, was also still in existence at the date of audit to no apparent purpose and €59,000 had been paid out in the period since then to cover company related expenses. The Accounting Officer indicated that the process of winding up Colmstock Properties Limited was underway and it was expected to be concluded by the end of 2003. The estimated cost of the winding up is €36,000.

3. The Accountability Issues

3.1. The accountability issues considered by the Committee were:

- Battle of the Boyne site
- Colmstock Properties Limited
- The OPW Votes
- Rent and Rates
- Media Lab and the Digital Hub

4. Examination of the Issues

Battle of the Boyne site

4.1. The Government made the decision to purchase the lands involved, but the principal client was the then Department of Arts, Heritage, Gaeltacht and the Islands. The site is mostly land. Oldbridge House on the land is in a very poor state of repair. It is zoned as agricultural land. Planning permission was granted for a hotel and a golf course, but it lapsed because it was not activated. Approximately 450 acres were acquired for €9.4 million in August 2000 and there was an additional 50 acres involved which cost approximately £570,000.

4.2. The normal procedure would have been to purchase the land from the company. Instead of doing that, the OPW purchased the company as this was what was offered for sale. This approach was adopted to avoid double taxation as they perceived it. As per normal commercial practice, it benefited the vendors who incurred capital gains tax only on the profit from the sale of shares in the company as opposed to selling the assets first which would attract capital gains tax and liquidating the company later which would incur capital gains tax again on any profits on the proceeds of the sale of the assets. The approach was a way of avoiding double taxation. Usually, capital gains tax would be incurred on the sale of a company's assets and subsequently on the sale of its shares. The OPW obtained the permission of the Department of Finance to proceed in this way. The Office of the Attorney General and the budget and economic division of the Department of Finance were of the opinion that there was nothing inappropriate about the terms of the sale which were in line with commercial practice. The Department of Finance consulted the Revenue Commissioners. The Department was conscious that the procedure was the only one available as the company had to be bought to acquire the lands. It was not in any way improper or inappropriate.

4.3. The issue was previously examined by the C&AG in 2000 and thereafter by the Committee. At that time the Committee was informed that the price of the company, or by extension the price of the land was increased by two separate premia. This was to reflect, firstly, the particular circumstances underpinning the State's wish to purchase the site and secondly the status of the State as a special purchaser. The total additional cost that accrued due to these circumstances was approximately €2 million.

4.4. In 1996 OPW published its first strategy statement according to which it sought to maximise the value to the State of the property portfolio. It was considered that there would be opportunities where engaging in development projects with private parties might be to the State's advantage. It was not obvious that there was any vehicle to accomplish that. The articles of this company were suitable to service as such a vehicle. OPW decided to fold the company because the National Development Finance Agency was established in the meantime. The vehicle needed to exploit any partnership opportunities was created in the NDFA with the result that the company was of no particular value to OPW.

4.5. OPW receives a small income from fishing licences and grazing rights on the lands acquired which cover the operational costs of the company. A letting agent is used to organise this and the licences and rights are let competitively.

4.6. The OPW has a development plan for the site at a projected investment cost of €40 million. The OPW Vote covered the planning costs and the examination process involved in developing a project. Government approval or funding has not been obtained but there are general funds to carry out preliminary feasibility studies. The Committee concluded that the OPW is left with 450 acres of land it does not need on the site of the Battle of the Boyne. It is not in a position to develop the site in the way the heritage services anticipated. The land was acquired on foot of a Government decision. The speed at which it can be developed to provide the kind of facilities envisaged will depend on funding.

Colmstock Properties Limited

4.7. The OPW was in occupation of the accommodation at 72 to 76 St. Stephen's Green. It was paying significant rent and the building was well past the point at which significant refurbishment was required. A commercial view was taken that if an investment was planned in the range of €15 million and €20 million in a major refurbishment while paying an annual rent of €1.15 million, it would make sense to purchase the property. The only deal on offer at that stage involved the purchase of the company. It made commercial sense, given the rental figures involved, to take advantage of any opportunity to acquire the property before embarking on a major refurbishment. OPW proceeded on that basis with the sanction of the Department of Finance.

4.8. OPW was embarking on a major refurbishment of the building at the time of the announcement on decentralisation. The refurbishment was put on hold. OPW is conducting a major exercise on the overall property scene in Dublin and the rationalisation that will have to take place in the context of decentralisation. The property will have to be examined in the context of the properties to be retained in Dublin post-decentralisation.

The OPW Votes

Rent and Rates

4.9. A sum of €81 million was budgeted for rent and rates but €98 million was spent, 20% above the original estimate. The excess arose from increases following rent reviews and also the requirement to acquire additional accommodation for specific clients. In an ideal world, if OPW could anticipate through forward planning what might come out of rent reviews and that sum was allocated to the Vote there would not be the same discrepancy. In the real world

rents are negotiated from year to year on the basis of the existing rent bill rather than the one that is anticipated.

Media Lab and the Digital Hub

4.10. The Committee noted that Media Lab and the Digital Hub have cost €73 million. An additional €21 million was spent. This expenditure was for the properties bought in the Thomas Street area for both Media Lab and Digital Hub. Since Digital Hub has turned into the Digital Media Development Agency, approximately €44 million worth of property, has been transferred to it by statute. The remaining property is held by OPW as Government property with Media Lab as the tenant.

4.11. The property transferred to Digital Hub was transferred without payment to OPW. The Digital Media Development Agency was to make a submission to the Department of Communications, Marine and Natural Resources on how it proposes to use the property to develop a digital hub. The Committee asked if the Department of Finance had inquired into the reason it has taken so long to produce the action plan, given that it signed off on the large amount of money involved. The Department has been in contact with the Department of Communications, Marine and Natural Resources on a continuous basis but to date it has not obtained the plan.

5. Adoption of Reports

5.1. The Committee disposed of Chapter 3.2 of the 2002 Report and noted Votes 10 and 44 of 2002.

Findings and recommendations

The Committee of Public Accounts

Finds specifically that:

1. Acting on the instructions of the Government, the OPW acquired the lands at the site of the battle of the Boyne by purchasing the company that owned these lands. A second property in Dublin was acquired in a similar manner.
2. The acquisition of property through the purchase of the owning company resulted in avoidance of double taxation. The necessary consultations and approvals were obtained prior to the acquisitions.
3. Two separate circumstances led to the State paying more for the site than might otherwise have been the case. The total additional cost amounted to approximately €2 million.

And recommends in general that:

1. Companies acquired by public bodies in the course of property dealings should be wound up once their purpose has been served in order to avoid incurring nugatory expenditure in complying with legislative requirements.

