

## **Vote 3 - Department of the Taoiseach**

### **8 Multi Media Developments**

#### **Background**

In May 2000 the Department of the Taoiseach on behalf of the Government signed a ten-year agreement with the Massachusetts Institute of Technology (MIT) to establish MediaLab Europe (MLE) as a University level research and education centre. MLE is to specialise in telecommunications, information and multimedia technologies, including the Internet and digital commerce. The centre is to be modelled on the existing Media Laboratory located in MIT and is intended to be an interdisciplinary and innovative facility which will offer industry a new model of access to research and intellectual property. The centre is expected to grow to a community of up to 20 full time faculty members, 35 research staff and 200 post-graduate and undergraduate students. It plans to develop a co-operative programme for conferring degrees with other Irish and European universities, with a long-term goal of implementing its own degree programme.

The agreement provides for the payment by the State of £28m (£19.6m to MLE and £8.4m to MIT) and the provision by the State of suitable premises to MLE at a nominal rent. In return MIT undertakes to provide management expertise and technical support, access to accumulated intellectual property rights, right of use of the MIT brand and exclusivity regarding the location of any similar venture in Europe. MIT also undertakes to secure corporate sponsorship and private contributions for MLE. MLE will make further payments totalling £8.9m to MIT in respect of MIT's involvement in joint research programmes and is also required to pay MIT a percentage of sponsorship moneys which it receives from year 3 onwards.

The Government also agreed to pay a further £1m per annum for 7 years to the Higher Education Authority in respect of collaborative research projects between MLE and Irish universities. It was further agreed to create a network of internationally respected leaders from the IT and communications industries to assist in promoting MLE but this has not yet been established.

MLE commenced operations in July 2000 based in the former Guinness Hopstore. At 31 March 2001, it employed seven executive and administrative staff, together with twelve research staff including two senior MIT researchers on a half-time basis.

It is envisaged that MLE will be at the centre of a multimedia village, to be known as the Digital Hub. The concept is based on New York's Silicon Alley and is intended to combine traditional arts such as film, graphic design, music and advertising with new computer based technologies. It is expected that post graduate students conducting research under leading international scientists will produce ideas which can be developed by start-up companies, leading to the creation of high technology creative jobs in the district. It is intended that the village will provide a catalyst for the development of accommodation and activities such as museums, art galleries, restaurants and other visitor attractions where science and business will interact creatively.

#### **Audit Objectives and Scope**

The objectives of the audit were to

- evaluate the management and accountability structures in place to oversee the development of MLE and the Multimedia Village and compliance with agreements concluded between the different participants in the project
- review the level of State funding and the measures and agreements in place to protect the State's

interest

- review the procedures employed in the acquisition and management of property
- establish whether adequate procedures were in place, and were complied with to ensure that payments were correct and were properly authorised.

The audit consisted of a review of the administrative procedures and structures put in place to manage the project. The files of the Department of the Taoiseach and the Department of Finance were examined, including Government Decisions and Memoranda, legal agreements, minutes of Liaison Committee meetings, and correspondence between and with relevant Departments, MIT, MLE and Digital Media Developments Ltd. (DMDL), the company set up to oversee the project. Discussions were held with officials from the Departments of the Taoiseach and Finance and a site visit to MLE was made. A selection of payments was also examined for authority and correctness.

## **Audit Findings**

### ***Evaluation of Project***

The decision of the Government to invest in the project in May 1999 followed an approach by, and discussions with, MIT. At that time MIT was seeking a European partner to create a centre for research and development in multimedia, information and communications technology and digital commerce. An interdepartmental group considered the proposal and clarified certain elements of it with MIT. The proposal was seen as a major opportunity for the development of the digital economy. It was envisaged that MLE would, as an anchor tenant, attract technology companies and entrepreneurs from around the world to establish operations in the Digital Hub.

The Information Society Commission had recommended the establishment of such a facility. Independent advice received from international sources had acknowledged MIT as a world leading facility with an unrivalled reputation. It was noted that much of MIT Media Lab's reputation and fund-raising success derives from its Director's performance and input. Thus, it was considered essential to reflect in legal agreements, specific conditions relating to his involvement and commitment.

It was also acknowledged that the proposal was not without risk, that moneys paid would represent inducements and would not be performance related. It was accepted that a proposal of this kind did not readily lend itself to assessment by any tried and tested traditional means, and that to an extent MLE would be in competition with MIT in attracting sponsorship.

### ***Location of Project***

The Government decided to base the Digital Hub in the old Guinness Hopstore and surrounding properties in The Liberties, Coombe and Thomas Street area. The area is close to Dublin's city centre, has a good telecommunications infrastructure and is close to universities and third level education institutions. The area was also seen as having suitable property available at reasonable cost. It was also expected that the project would bring much-needed physical, social and economic regeneration to the area. While two other sites were considered for MLE the advantages of locating the project in this area were seen as overwhelming. A greenfield site was not considered.

### ***Management and Administration of Project***

The Department of the Taoiseach assumed overall responsibility for managing the project in the context of its lead responsibility for the co-ordination of information society issues. A Task Force was established in November 1999 chaired by the Department of the Taoiseach. It comprised representatives of the

Departments of Finance, Education and Science, Enterprise Trade and Employment, and Public Enterprise as well as IDA Ireland, Enterprise Ireland and the Higher Education Authority. The Task Force was charged with responsibility for setting up the multimedia village and implementing the agreement with MIT. It also advised the Government regarding the corporate structures considered necessary to put the Digital Hub in place.

The agreement with MIT provided for a Liaison Committee to deal with any policy issues arising during implementation of the agreement. In practice the Liaison Committee consisted of the members of the Task Force, and in time subsumed the Task Force.

In April 2000 the Government, decided to establish a company, DMDL, to oversee the development of both the Digital Hub and MLE. Its tasks were to manage the contractual arrangements with MIT and MLE on behalf of the Government. In particular DMDL was to

- channel funding to MLE
- receive and review MLE budgets, reports and accounts
- provide premises for MLE
- develop links between MLE and the enterprise and third level educational sectors in Ireland with a view to establishing suitable degree conferring programmes and joint research projects
- consult with the Department of the Taoiseach and other Government Departments and agencies as necessary.

The audit findings indicated that there was a certain overlap of functions between the Department of the Taoiseach, the Liaison Committee and DMDL. The Liaison Committee focused most of its attention on MLE. DMDL did not carry out the functions assigned to it in relation to the development of MLE. The contractual arrangements with MIT and MLE were implemented mostly by the Department of the Taoiseach and the Liaison Committee, with the involvement in certain areas of OPW, Enterprise Ireland and the HEA. This arose from DMDL's initial focus on developing its proposals for the scope and funding of the Digital Hub.

Responsibility for the management of the project transferred to the Department of Public Enterprise in May 2001.

### ***DMDL***

DMDL was incorporated as a limited liability company in May 2000. The incorporation of a company was seen as an interim measure pending the preparation of legislation to put the company on a statutory basis. The legislation has not yet been introduced. The powers, functions and role of the company were set out in the Government Decision of April 2000, but were not incorporated in its Memorandum or Articles of Association.

The adequacy of the governance and accountability structures in place in relation to the company were reviewed by the Taoiseach and the Minister for Finance and their Departments in February 2001. In a subsequent letter to the Taoiseach in March 2001, the Minister for Finance stressed the need to draw up appropriate Memorandum and Articles of Association for the company and to enact legislation to establish it on a statutory basis. The letter also recommended that DMDL adopt the code of practice that applies to State bodies, and that the Attorney General's Office should be asked to clarify the legal powers of Ministers to set up limited companies.

In response, the Taoiseach pointed out that an accountability structure was provided by the Liaison Committee, which had approved information and reporting arrangements for the Board of DMDL, that the Board had been formally instructed that normal corporate governance procedures applicable to State Bodies would operate in its case, and that finalisation of arrangements, including preparation of legislation had been affected by the need for a full examination of the proposals submitted by the Board of DMDL.

In November 2000, following a tendering process, DMDL appointed a company to provide Executive Services by way of a team comprising people of diverse backgrounds and disciplines from the private and public sectors. Retrospective approval for these arrangements was sought from the Government Contracts Committee in December 2000. Approval was given in February 2001 subject to legal advice being obtained that the selection process complied with EU law.

In December 2000 DMDL entered into a written agreement with the company. The agreement provided for the payment of a fixed fee of £505,000 in respect of the period 15 November 2000 to 31 March 2001. The agreement included an undertaking that DMDL would negotiate a fee, on a percentage basis in respect of the period April 2001 to December 2003, and would do so when the total development value of the Digital Hub project had been established.

The Department of Finance in a letter to the Department of the Taoiseach in January 2001 expressed concerns, which I would share, that the proposal made by the Team in November 2000 that its fee after March 2001 should be a percentage of the development cost was unacceptable because it would not give the team any incentive to minimise the cost and timeframe of the development.

DMDL is in the course of finalising a fixed fee arrangement for the period June 2001 to December 2003.

### ***Property***

OPW acts as agent/adviser for the Department of the Taoiseach in relation to property acquisition and also worked closely with DMDL. MLE commenced operations in the Guinness Hopstore in July 2000. Negotiations on the acquisition of the property were completed in June 2001. Prior to that the store was being leased at a cost of £56,000 per month. In late 2000 and early 2001, DMDL submitted proposals to Government for the acquisition of additional properties costing an estimated £150m.

The Department of Finance questioned the necessity to purchase property on such a scale. It also queried whether the properties proposed would be suited to digital media industries and the extent to which adaptation costs would arise.

The arrangements for ownership and development of property once purchased are also unclear. The Department of Finance questioned whether DMDL had set out the terms under which property acquired would be made available to users whether by lease, rental or otherwise. Such information would be essential to determine the ability of DMDL to finance its programme in the absence of Exchequer funding. The information would also establish whether the terms proposed amounted to State aid, something that would require EU Commission approval.

In January 2001, OPW confirmed that deals amounting to £61m had been agreed subject to satisfactory title, tax clearance and related matters being established. The Government subsequently allocated £58m to DMDL to fund property acquisition and other capital requirements for the years 2001 and 2002.

### ***Payment Procedures***

In the course of the audit one payment was noted where Government financial procedures did not appear to have been strictly complied with. OPW sought and received £15m from the Department of the Taoiseach in December 2000 to fund property acquisitions. The money was paid to solicitors nominated by OPW pending completion of a purchase agreement. This process was not completed and the Department of Finance directed that the money be refunded. In May 2001 an amount of £15m plus interest of £214,987 was repaid to the Exchequer. The moneys were reallocated to the project in 2001.

### ***Exchequer Funding***

The Exchequer funding provided for and expended on the project is shown in Table 4.

**Table 4 Exchequer funding for Multi-Media Developments**

|              | Committed   | Paid        |                         |
|--------------|-------------|-------------|-------------------------|
|              | £m          | 2000<br>£m  | 2001 <sup>1</sup><br>£m |
| MLE          | 19.6        | 6.6         | -                       |
| MIT          | 8.4         | 7.4         | 1.0                     |
| DMDL         | 64.0        | 0.2         | 16.2 <sup>2</sup>       |
| HEA          | 7.0         | -           | 1.0                     |
| <b>Total</b> | <b>99.0</b> | <b>14.2</b> | <b>18.2</b>             |

### **Conclusions**

The groups and organisations having an input into the management and execution of the project (Department of the Taoiseach, Liaison Committee and DMDL) would appear to have had overlapping functions, at least in the earlier stages of the project, which could have given rise to some dilution of responsibility and lack of focus. It is important that the powers, functions and role of each group or organisation should be clearly defined and adhered to, so that there are clear lines of authority and responsibility and no overlapping functions.

In relation to DMDL, while there may be circumstances, such as this, when it is opportune for Government Departments to set up private companies to administer Exchequer moneys, it is unsatisfactory that this would continue in the long term without statutory authority being obtained for the arrangement. It is also desirable that the powers of Departments to set up private companies be clarified, that the function role and powers of such companies be set out in their Memorandum and Articles of Association, and that they comply with codes of practice and financial procedures which apply to State bodies generally.

It is desirable that fixed price contracts be used for the supply of executive services in order to avoid the risk of excessive fees.

The audit findings indicated that generally satisfactory control procedures existed in relation to payments except for the one instance involving the issue of £15m to OPW before it was needed.

In making decisions in relation to the acquisition of property, due consideration should be given to the risk of

<sup>1</sup> expenditure to 10 July 2001

<sup>2</sup> includes £15m channelled through OPW

the project failing or not growing to the degree envisaged, so that no avoidable costs accrue to the Exchequer.

Care should be taken in relation to any aid or subventions given to occupants in the Digital Hub that it does not breach EU competition laws.

***Observations of the Department of the Taoiseach***

- The audit was a timely exercise and will provide useful directions for the future development of the project. It also highlighted important accountability issues for the conduct of special tasks by the Department in the future.
- In relation to evaluation, the project represented a relatively small part of the overall effort to place Ireland in the vanguard of those countries developing the next generation of information and communications technology, (ICT) and by undertaking it the Government was signalling very visibly its commitment to the future development and deepening of Ireland's ICT industries. It was a flagship project and so traditional cost benefit analysis of the project on a standalone basis could not be decisive as to its real value to Ireland.
- In relation to location, the Department's experience in the development of the IFSC and Temple Bar projects showed the potential of initiatives such as this to regenerate urban areas. There was a clear correspondence between the opportunity offered by the Digital Hub and the needs identified by Dublin Corporation in the Liberties area, together with the availability of a comparatively large amount of property suitable for development.
- In relation to management and administration, the Department accepted that there was little formal demarcation of responsibilities between the various parties responsible for implementing the project. There was, however, constant communication between them. It was and remains the intention of the Department that DMDL would be put on a statutory footing, and in advance of this it had made it clear that DMDL would be bound by all the relevant government accounting procedures and had taken all steps possible to compensate for any deficiencies in formal accountability requirements.
- As regards property, the Department's policy was that OPW should acquire and hold property until such time as DMDL was placed on a statutory footing but the Department accepted that there may have been some misunderstanding on the part of DMDL as to its relationship with OPW. However, the fundamental point was that OPW had been successful in gaining options to acquire property at what were regarded as advantageous prices from the State's perspective, but which were time bound. Also the State would have faced greater competition in acquiring a critical land bank in the area as awareness of the State's plans for the area grew, and so it was important to proceed with the acquisition of property quickly. This was not seen as high-risk given the Government's stated determination to proceed with the project, and the likelihood that the costs of the properties would be recovered even if it was later decided to abandon it.
- In relation to the premature payment of £15m to OPW, the Department had acted in good faith in the belief that the funds were required to secure properties by way of deposits. It transpired that the funds were not required until some time later.
- The potential State aid issue which might arise in relation to the project had been considered by the Department and the Departments of Finance and Enterprise, Trade and Employment, and these considerations were raised with DMDL so that its development strategy would take them into account.
- No loss has accrued to the State and no unplanned expenses or liabilities have arisen.