

Chapter 11

**Department of Communications, Marine
and Natural Resources**

11.1 MediaLab Europe

Background

MediaLabEurope (MLE) was established in May 2000 as a University level research and education centre to specialise in telecommunications and information and multimedia technologies, including the Internet and digital commerce. Contractual arrangements were outlined in a series of collaborative agreements between the Government, Massachusetts Institute of Technology (MIT), and MLE. It was envisaged that MLE would become self-sustaining within the ten-year timeframe of the agreements. This was to be achieved with the initial provision of Exchequer funding and subsequently by raising sponsorship and other income. Payments totalling €24.9 million and €10.6 million were made from the Exchequer to MLE and MIT respectively between 2000 and 2003. In addition the State leased property that had cost €22.5 million to MLE at a nominal rent and undertook to pay €1.27 million per annum for seven years to the Higher Education Authority (HEA) in respect of collaborative research projects between MLE and Irish universities. Table 25 shows the flow of funds over the years 2000 to 2003.

Table 25

Year	MLE €m	MIT €m
2000	8.4	9.4
2001	10.2	1.2
2002	5.7	-
2003	0.6	-
Total	€24.9m	€10.6m

Project Evaluation

The Department of the Taoiseach assumed initial responsibility for the management of the project. Responsibility transferred to the Department of Public Enterprise in May 2001 and to the Department of Communications, Marine and Natural Resources in June 2002. A Task Force chaired by the Department of the Taoiseach and comprising representatives of the Departments of Finance, Enterprise, Trade and Employment, Education and Science, Public Enterprise, the Office of Public Works and the agencies IDA Ireland, Enterprise Ireland, Forfás and the HEA oversaw the process which led to the signing of a Memorandum of Understanding in December 1999.

Concerns expressed by Task Force members in their consideration of the MIT proposal included

- The high cost to be borne by the Exchequer
- The disproportionate risk being carried by the Exchequer
- The minimal exposure of MIT which would not provide any guarantee in the event of project under-performance or failure
- The uncertainty regarding the replication in Europe of the US model, particularly in the area of sponsorship income
- The perceived over-optimistic financial targets with MLE projected to be self-financing within a timescale not experienced elsewhere
- The lack of clarity regarding the exact work and output of MLE, leading to doubts over whether the project would meet Ireland's strategic needs or those of MIT

- The absence of any in-depth evaluation which would establish the credibility of, and justification for, the project
- The degree to which the success of the project relied on the personal commitment of key personnel and the corporate commitment of MIT.

In the course of the project evaluation the financial statements of MITML (MIT's research laboratory based in Boston) for a period of three years were sought. There was no evidence available in Departmental papers that these were ever received.

In 2000 the Department of the Taoiseach stated that, as regards the financial issues and balance of risk, the terms of the arrangements had been the subject of detailed negotiations and that MIT believed that its reputation would be enormously damaged if MLE failed. Key MIT personnel had indicated that between 30% and 50% of their time and energy would be given to MLE. The Department of the Taoiseach also stated that the objectives of MLE made clear what the overall areas of activity would be. There would be co-operation between MIT and MLE in selecting areas of work and a proposed Liaison Committee would provide a means for Government to have influence, if necessary. The multimedia village environment would further shape the overall character of MLE and its activities.

Following an approach from the Department of the Taoiseach, a respected international consultant reviewed the MIT proposal. While no written report appears to have been received, his views are recorded in Departmental papers by way of reports of meetings and telephone conversations in July and August 1999. These indicate that he considered that MIT, with its unrivalled international reputation, was uniquely placed to establish a facility on the lines proposed. He felt that the project would be an important anchor for a strategy to position Ireland as a location for this expanding industry. He did not consider the detail of the proposed financial arrangements to be very important. While representing a premium of about 80% on providing an equivalent number of places in a third level setting, resources sought from the State would, in his opinion, be money well spent, given the direct and indirect benefits that would arise. This was conditional upon

- MIT and MLE being equal partners
- MLE securing a clear brand identification with MIT
- The guaranteed ongoing substantial commitment of key MIT personnel
- Access to MIT for MLE staff and students
- Clear agreements covering fundraising from the private sector – fundamentally a shared MIT/MLE approach to raising funds from a common pool of sponsors
- Partnership arrangements between Irish universities and MLE.

Following negotiations, a series of collaborative agreements involving the Government, MIT and MLE was signed in May 2000. The core undertakings by the parties were:

Government

- provide funding of €24.9 million to MLE and €10.6 million to MIT
- provide suitable premises to MLE at a nominal rent

- pay €1.27 million per annum for seven years to the HEA in respect of collaborative research projects between MLE and Irish universities

MIT

- provide management expertise and technical support
- provide access to intellectual property rights
- grant right of use of the MIT brand
- guarantee exclusivity regarding the location of any similar venture in Europe
- secure corporate sponsorship and private contributions for MLE

MLE

- make further payments totalling €11.3 million to MIT in respect of MIT's involvement in joint research programmes
- pay MIT a percentage of sponsorship moneys which it received from year three onwards.

A Liaison Committee, consisting mainly of Task Force members, was set up under the agreements to deal with policy issues arising during their implementation.

Addressing the Risks

In light of the MLE going into voluntary liquidation in February 2005, I asked the Accounting Officer if he was satisfied that an ex-ante evaluation commensurate with the scale and nature of the MLE project was carried out and, in particular, how the specific concerns expressed by members of the Task Force, were addressed in the agreements concluded

He informed me that the MLE model represented a unique and innovative approach in the area of digital content R&D that played a key role in positioning Ireland in the global digital media industry, in line with the goal of Ireland's long-term economic development as a knowledge-based economy. He pointed out that, at the time the project was being considered, the ICT sector was expanding rapidly and digital media was seen as a key high-growth segment. The digital media market is still a strategically important market for Ireland in which to establish an enterprise presence.

Taking account of the significant potential benefits to Ireland, he stressed that the decision-making process, itself, which addressed the issue of whether to invest in MLE, should not have been excessively risk-averse and, at the same time, should have continued to emphasise the attractiveness of Ireland as a location for high-value, knowledge intensive economic activities. Public policy that is unduly conservative and reluctant to try innovative approaches to support economic progress nonetheless incurs an enormous, albeit unseen, opportunity cost in terms of economic development forgone.

With this in mind, he felt it was clear that the decision to invest in the MLE concept was made in the light of identified risks, which were set out by the Task Force. The innovative nature of the MLE approach meant that existing benchmarks were of limited value when considering the proposal. The advice received was positively supportive of the initiative subject to particular approaches being taken.

However, the unprecedented global downturn in the ICT industry since 2000 undermined the MediaLab concept at an early stage of development. This dramatic reduction in research by industry had a severe impact on MLE's ability to reach a critical mass of sponsorship. It subsequently came to light that the MIT MediaLab, the role model for MLE, is not self-financing in this new industry climate. Despite the downturn in the ICT sector worldwide, he considered that Ireland fared better than most and the sector has improved since. He stated that the Digital Hub itself has been hugely successful in attracting companies and MLE has been a contributor to that.

In acknowledging that the Task Force chaired by the Department of the Taoiseach did raise some concerns, he informed me that it was considered that, conditional on MIT's full commitment, the project had significant potential. A number of these concerns, such as costs, financial projections and project risks, impacted on the making of a decision by the Government on whether to proceed or not. The agreements, themselves, did not set out to address the management of the project *per se*. The concerns of the State relating to the management and implementation of the project were therefore addressed through the Liaison Committee on an on-going basis.

Project Monitoring

The Liaison Committee met for the first time in September 2000 and regularly thereafter.

The Department of the Taoiseach, in November and December 2000, outlined a reporting framework for MLE. This comprised annual budget and accounts, together with a quarterly report of outturns, both financial and non-financial, as measured against projected figures.

In general, MLE submitted the required information up to the end of 2003, though it was often late and regularly led to Liaison Committee demands for further information. However audited accounts for 2003 and quarterly reports for quarters two, three and four of 2004 do not appear to have been received.

MLE itself commissioned two external reviews in late 2001 and early 2002. These were forwarded to the Department and reviewed prior to being returned to the company. As copies were not retained these were not available for audit inspection. MLE also informed the Department in April 2003 that it was conducting a review of its relationship with MIT. This was not available either.

Liaison Committee Sub-Group Activity

As a result of concerns over MLE projections for years 2001 to 2005, a financial sub-group of the Liaison Committee was formed in November 2001 to review MLE performance and to establish an early warning system for the Liaison Committee regarding potential financial problems. The sub-group immediately questioned the basis of MLE projections, including those relating to sponsorship and other income, on which the success of the project greatly depended. Subsequent reviews highlighted MLE's failure to raise the required level of sponsorship and other income and the effects of the consequent cutbacks in expenditure. As early as December 2001, the sub-group posted warnings regarding the potential fallout in the event of shortfalls in sponsorship and other income, who would underwrite such deficits, and indeed, the viability of the project if downsized. In January 2002 the sub-group reported difficulty in accepting that MLE revenue targets of €49.3 million for 2002 to 2005 were attainable, and predicted a shortfall of between €10.1 million and €15.2 million for the period. These misgivings were repeatedly expressed throughout 2002 and were borne out by MLE results for that year - €2.7 million sponsorship and other income received as against an amount of €6.9 million projected in December 2001. The sub-group concluded that the level of shortfall in such a narrow forecasting period, fifteen months, undermined confidence in MLE submissions. In October 2003 and April 2004 it repeated concerns about the

accuracy of financial information emanating from MLE, all the while highlighting the seriousness of MLE's situation.

The Department wrote to MLE in October 2003 requesting its views on whether MIT was discharging its obligations and questioning the financial sustainability of MLE. No reply appears to have been received.

On foot of December 2003 returns showing sponsorship and other income received of €1.9 million against a projected €3.8 million, the sub-group carried out a Status of Business review in April 2004. The review

- noted MLE's failure to achieve any of the income projections contained in its budgets from its establishment to 2004
- predicted that MLE cash reserves would run out in early 2005
- concluded that the time lag between initial start-up and the successful generation of sponsorship and other income to a level necessary to create a viable entity was far greater than originally imagined
- stated that, while the Exchequer was the main funding source for MLE, the Board was under effective MIT control and decisions were taken without reference to the Exchequer
- noted that substantial severance payments had been made to executives at a time of serious cash constraints
- concluded that the existing MLE model was patently not viable.

Review of MLE's Strategic Plan 2004

In response to a request in February 2004 from the Liaison Committee, MLE prepared a Strategic Plan.

The plan, which was received in May 2004, acknowledged the shortfall in corporate revenue and sought additional Exchequer funding of €9 million. The Department's initial assessment of the plan was that it appeared to be predicated on a level of performance not yet seen from MLE. An action timetable was drawn up pending a review of the plan and MLE performance to date by consultants engaged by the Department.

The review carried out in June 2004, concluded that

- MLE would run out of cash in 2005 without further funding
- MLE had failed to meet any of the income forecasts contained in the original ten year indicative projections and in the budgets set out at the start of 2002 and 2003.
- The plan envisaged a further funding requirement of €9m for MLE to reach long-term sustainability. Failure to achieve any of the assumptions underlying the plan could result in a funding requirement significantly greater than this.
- No operating surplus was forecast until 2009
- The forecast growth in operating cash inflows appeared unrealistically high

- The plan provided limited information on cost assumptions and how they incorporated many of the future activities identified
- Before providing any new funding to MLE the Department should give very careful consideration to the likely benefits, and the value for money, of such new funding and the sustainability of MLE in its current form..

Performance Review — September 2004

The Department commissioned an assessment of MLE's performance towards achieving its founding mission and objectives. This exercise was carried out in September 2004 by a consultant and was based on performance indicators supplied by MLE and high-level interviews.

MLE was considered to be a unique establishment, being different to the mainstream research and innovation infrastructure existing in Ireland. To best address the performance of MLE in relation to the creation of new knowledge, and the economic and social impact of the investment, indicators derived from its founding objectives were used. The study found that the evidence available suggested that the MIT approach to fundraising and sponsorship could not be replicated in the Irish environment. It concluded that MLE was not sustainable in its current form without significant and continued Exchequer funding.

The study assessed MLE performance against the following founding objectives

- Establishing Scientific and Technological Leadership
- Stimulating Increased Research and Development Investment
- Attracting High Quality Inward Investment and Human Capital
- Supporting Enterprise Development
- Supporting High Quality Human Capital Formation
- Collaborating with Institutions and Development Agencies
- Providing a Forum for International Exchange and Discussion.

Consultant's Findings

Working closely with its MIT connections, it was expected that MLE would fast track the build up of internet and digital media research and innovation capabilities and quickly establish an international scientific reputation for Ireland in this sector. However the consultant found that the scientific output of the laboratory could only be described as dismal with just 24 publications in international scientific literature since establishment. Productivity appeared to be very low – 15 refereed papers from 172 person years of research. Assuming MLE was not motivated towards publication of its work, it was difficult to see what alternative path towards international recognition in the world of science and technology was available or was being pursued by MLE.

It was intended that MLE would act as a stimulus for investment in R&D, attracting high levels of commercial sponsorship and winning research grants and contracts, nationally and internationally. Only 12 sponsorship agreements valued at €7 million were signed. For a laboratory of its size, and with its prestigious brand backing, this appeared to be a relatively poor outcome. There was virtually no research

grant or contract income and it appeared none was being sought. Given the weakness of the sponsorship model in Ireland, it was difficult to understand why alternative sources of funding were not being more vigorously pursued.

It was expected that the MLE presence would help win additional high quality foreign investment and high skill enterprise for Ireland as well as attracting mobile, high quality human capital. However the impact of MLE under this objective appeared to be quite marginal. The company appeared to be of only peripheral value in the drive for foreign investment.

It was expected that MLE would strengthen the prospects for emerging indigenous companies in digital media as well as providing a source for spin-offs and new start-ups emanating from the laboratory and its faculty. It was also hoped that MLE would engage Irish small and medium sized enterprise in its work. The study found that MLE's activities appeared to be having little or no impact on the development of existing indigenous enterprise or on the stimulation of new technology based start-ups or spin-offs from its research. There appeared to have been no collaborative projects of any kind or technology transfer agreements with either indigenous or multinational companies. There was little evidence of engagement with small firms in the Digital Hub with no migration of any MLE project into the Digital Hub and no immediate prospect of that happening.

MLE was expected to help in the training of Irish and European graduates and post graduates by providing research experience and formal academic qualifications with the MIT imprimatur. The laboratory was also expected to contribute to the teaching capabilities of Irish higher education institutions. However MLE appeared to be making little more than a token contribution to this objective with no appreciable engagement in education and training programmes of Irish third level institutions. Of serious concern was the lack of a formal degree-granting arrangement with MIT. An MIT based Masters programme was due to be introduced for the first time in 2004. It had been anticipated that the attraction of the MIT connection would bring in top students, nationally and internationally, to the laboratory.

It was expected that MLE would work co-operatively with development agencies and universities and other educational institutions in Ireland. Apart from collaboration under the HEA-funded research scheme with individual researchers in the universities, there was little evidence that MLE engaged in any significant way with either educational institutions or development agencies.

The ambition was that MLE would provide an attractive conference site that would help to bring together creative thinkers and innovators from around the world. Only eleven MLE international conferences (non-research) were held in the period under review.

Consultant's Conclusions

The consultant found that, after significant investment and more than four years of operation, the potential of this project seemed to be very far from realisation. The aggregate picture suggested that MLE was making very poor progress. The contribution of MLE in relation to its founding objectives appeared to be zero or very close to it, with little hope that it would meet its commitments in respect of these, even in the long term. The quantitative indicators pointed, in the consultant's opinion, to a flawed and largely failed entity in urgent need of remedial attention. Possible reasons underlying the laboratory's difficulties were the inappropriateness of the business model, management and governance failures and staff morale and motivation. It was possible that the founding objectives were too ambitious and unrealistic in scope. It was expecting too much to have a self-funding operation at MLE in three years. As far as the Digital Hub was concerned, MLE's presence was felt to have a crucial role to play in driving ambitions for development of the Liberties area and the creation of Dublin's media zone. As indicated, MLE's

contribution to these objectives had been marginal. The study also noted a negative perception regarding the quality of Board governance at MLE, including the frequency of, and attendance at, Board meetings.

Having regard to the findings of these reviews I asked the Accounting Officer if he was satisfied that the structures and arrangements put in place to oversee and monitor MLE were effective.

He replied that, in the first instance, the Chairman and the Board have responsibility for the effective and proper management of a company. The corporate governance model of MLE was unique in that the Board comprised three MIT nominations, three Government nominations and three joint nominations with the Chair being held by MIT. He pointed out that MLE was a unique arrangement based on a not-for-profit company with no shareholders and, as such, the more common governance arrangements of a semi-state commercial body would not have been appropriate and, therefore, did not apply. Oversight of MLE by the Government was the function of the Liaison Committee. The oversight role of the Liaison Committee was circumscribed by the agreements in place between the Government and MLE. In this context, there were limited actions that could be taken under the agreement but the Liaison Committee did monitor the financial performance of MLE effectively and, on foot of this, it communicated its views and sought further information and clarification from MLE. As a result of this oversight role, the Liaison Committee requested a Strategic Plan from MLE in February 2004 when it became clear that it was not performing adequately. This on-going monitoring by the Liaison Committee led in turn to a review of the business status of MLE and ultimately to the decision not to provide further funding.

Given that a key contribution from MIT related to securing corporate sponsorship and private contributions for MLE I also asked the Accounting Officer if any consideration was given to linking payments to MIT to the achievement of sponsorship targets as set out in the Memorandum of Understanding and specific deliverables.

He informed me that there is no evidence that consideration was given to linking payments to MIT to achievement of sponsorship targets. He stated that linkage to performance must be carefully considered in the early stage set-up of an entity in order to facilitate it reaching sustainability. Furthermore, the selection of performance criteria, which are based on the performance of an on-going, established entity, could be damaging in this start-up context. However, in the review that the Department undertook, and subsequent negotiations with MIT in the latter half of 2004, the linking of payments to specific deliverables was a key condition of a revised agreement.

MLE Closure

At meetings with MLE and MIT during June and July 2004 the Department conveyed its views that the business plan was low on substance and high on expectation and that MLE had produced no evidence as to how expected growth would translate into greatly increased sponsorship. MLE confirmed that cash would be exhausted by February 2005, that it had introduced pay freezes and had corrected ineffective expenditure, and cited, *inter alia*, recent changes in MLE management and overall improvements in the economy as the basis for strategic plan figures.

The Department

- expressed the view that Ireland had not received what it had originally expected from the contracts entered into
- asserted that MIT had not delivered on all its obligations under the contracts

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- stated that there was a consistent feedback regarding a lack of engagement by MLE with the university sector
- argued that the lack of educational qualifications such as Masters and PhDs meant that MLE had become a paid work experience for students
- pointed out that MIT had continued to draw down payments from MLE despite the latter's serious financial situation
- stated that questions had been raised about the management and organisational ability at MLE.

Departmental papers indicate that MIT

- accepted that the original model for MLE was deeply flawed
- accepted that the initial business plan had failed
- accepted that MLE in its current form was unsustainable
- stated that as a freestanding activity, pure non-directed research was not viable
- would not defend the structures, the management or the way of doing business at MLE
- explained that MIT paid its faculty staff working at MITML.

However MIT re-emphasised its commitment to MLE.

The Department expressed concern at the revelation that MIT had paid its faculty staff working at MITML as the model that was sold to the Government was one that purported to be self-financing and it was the uniqueness of the model that helped get the third level institutions in Ireland reluctantly on board. The Department also asserted that it was now clear that, at the time of the agreements, MIT did not have the agreement of staff to offer their services to MLE and that, consequently, MLE had to pay for many of these fellowships on a consultancy basis.

With agreement on both sides that MLE could not continue in its current format, negotiations commenced regarding a restructured entity as a university-based research and innovation laboratory. MIT would not consider the repayment of any portion of the moneys advanced to it under the original agreements. The Department suggested a structure that altered unsatisfactory elements of the existing MLE. These centred on the areas of governance and the need for more specific commitment to academic awards and finance. The proposal did envisage further Exchequer funding.

Ultimately, negotiations failed with MIT unwilling to accept the Government terms. The Department informed MLE that it was unwilling to advance further funding and, in January 2005, it was announced that MLE would go into voluntary liquidation. I have been informed that the liquidation will be ongoing until January or February 2006. It is considered likely that, in addition to equipment, there will be a cash surplus of approximately €300,000 after liquidation. Under the terms of the agreements, this will be used for charitable, scientific or educational purposes and could be made available to the proposed National Digital Research Centre.

Compliance with Collaborative Agreements

In March 2004, a review of compliance with the agreements was carried out at the request of the Secretary General. It found that the Government had complied in the areas of finance, property and the Liaison

Committee. It concluded in regard to degree-granting programmes that, aside from collaborative projects, progress on formal academic linkages with Irish universities had been slow. In respect of project review mechanisms, which allowed for changes in MLE funding arrangements in certain circumstances, it concluded that, while MLE had experienced a significant shortfall in revenue, it appeared to have adjusted its operating and capital budgets to take account of this, thus complying with the agreement.

The review found that, aside from the slow progress regarding degree-granting programmes, MLE had complied with the agreements with the exception of the late submission to the Department of required reports and documentation.

In respect of MIT's agreements obligations, MLE had confirmed that gifts of €4.4 million, secured by MIT, had been received by it. No share of variable sponsorship, as set out in the agreements, had been received from MIT. MLE also confirmed that MIT had complied with personnel commitments, including the attendance of key personnel for the requisite number of days set down in the agreement.

A legal report, commissioned by the Department in November 2004, concluded that, in the event of a liquidation

- The Government had met its obligations under the agreements and no further obligations to MLE, MIT or any other body could be identified
- State exposure could arise if the Government had issued any letters of comfort or guarantees to banks, employees or third parties who had contracted with MLE. However the Department has confirmed that no such arrangements exist
- The Government was not a member of the company and was not, therefore, exposed to any potential liquidation liabilities.

I asked the Accounting Officer if he was satisfied that MIT had complied with all its obligations under the agreements concluded.

He replied that, in a legal sense, MIT had complied. A key role for MIT was to assist in getting sponsorship and this was not successful. It was disappointing that it was not possible to say that MIT took a more holistic perspective of the project. MIT's unwillingness to help fund the continuation of the project (although not required in the agreements) and its failure to participate financially with the Department in efforts to review and restructure MLE were disappointing since MIT itself supported the Strategic Plan submitted in May 2004.

Other Issues

Governance

A Departmental review of the MLE 2001 accounts highlighted an average salary cost, before PRSI, of €76,000. This was considered quite significant as, while high cost executive directors were included, so too were lower cost research scholars. During its short existence MLE employed four different Chief Executive Officers/ Managing Directors. It is understood that severance packages were agreed for those who left MLE before contract completion.

I asked for details of

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- staff numbers employed by MLE by year
- average salary cost per staff member by year
- annual remuneration of each Chief Executive Officer/ Managing Director and
- severance packages agreed in respect of each departing Chief Executive Officer/Managing Director.

The Accounting Officer informed me that the Department has requested this information on a number of occasions but, to date, the Company Secretary has refused to release this information.

Exclusivity

The Spanish Government contacted the Department in 2001 stating that MIT had approached it with a view to setting up a MediaLab in Spain. Following protests from the Department, the proposal appears to have been dropped. MIT denied that they had made any approach and stated that any discussions it had related to a Latin American based laboratory.

A joint MIT/Cambridge University project, partly funded by the UK Government, was not considered to be in breach of MIT/Government agreement in terms of exclusivity of operation.

Positive Outcomes

The Accounting Officer stated that there were some positive aspects to the MLE project. The interdisciplinary and demonstration ethos of MLE attracted significant international interest and the presence of MLE facilitated the growth of the Digital Hub in attracting enterprises to the area. There are approximately 50 companies located in the Digital Hub, employing over 400 people. He stated that at this stage of the Digital Hub's development, it is believed that the termination of MLE will have a negligible impact on the immediate performance of the project. However, the Government remains convinced that a high quality research and development centre, with a clearer commercial focus and educational remit, is necessary for the long-term development of a digital media industry in Ireland and particularly for the cluster based in the Digital Hub.

The collaborative research projects with students from Irish third-level institutions were also very successful. These had been independently reviewed by the HEA on behalf of the Department. The reviews had been positive and the scheme was seen as one of the successful aspects of the MLE project.

There was a very positive social benefit to the local community. There was also an on-going initiative providing children from disadvantaged areas with the opportunity to experience and to learn from digital technology.

He stated that presently it is not possible to ascribe a monetary value to the research work that was being undertaken in MLE at the date of closure. However, this was not to say that the relevant intellectual properties arising from MLE do not have value. At present, Enterprise Ireland is assessing approximately twelve items of intellectual property.

Lessons Learned

The Accounting Officer stated that it is important that the termination of the MLE project should not suggest a public policy that is adverse to innovation and measured risk-taking. Instead, Ireland must continue to work towards a public policy framework that is conducive to innovation and risk-taking in order to ensure that Ireland continues to be an attractive location of new enterprise development, foreign investment, and value-creating industries.

In the context of a project such as MLE, which is fundamentally a concept to promote multi-disciplinary research, development and innovation in this case in the digital media sector, it is clear that appropriate project evaluation is critical. The evaluation process needs to be rigorous. However, an evaluation process must be flexible and relevant where unique and ground-breaking proposals are being considered. In this light, a clear business strategy for the project is necessary in order to test its robustness. All parties should be expected to have some financial commitments in a project and the rewards should be linked to the risks taken.

At a broader level, governance, in terms of accountability, reporting, and strategic decision-taking, is critical. These governance structures should be appropriate to the type of project and while not necessarily a semi-state company governance structure, they should ensure that there is clear accountability and good governance. Finally, performance is central to the delivery of these publicly funded projects and, as such, payments should be linked to particular performance milestones or metrics.

11.2 Fishery Harbour Centres

Failure to prepare Annual Accounts

There are five designated Fishery Harbour Centres in the State – Killybegs, Castletownbere, Rossaveal, Howth and Dunmore East.

Section 4(1) of the Fishery Harbour Centres Act 1968 (the Act) states that the Minister for Communications, Marine and Natural Resources (the Minister) shall manage, control, operate and develop each Fishery Harbour Centre.

Section 8(1) of the Act states that the Minister shall, as respects a Fishery Harbour Centre, cause to be kept, in an approved form, all proper and usual accounts of all moneys received or expended in relation to the Centre. The accounts of the Fishery Harbour Centres are audited by me in accordance with Section 8 of the Act.

The 1999 Income and Expenditure Accounts and Balance Sheets for the five centres were certified by me in January 2003.

My Office raised the question of the lack of accounts for the years 2000 to 2003 with the Department in November 2004 and a schedule was agreed for the production of the outstanding accounts for audit. The Accounting Officer informed me that the principal reason for the delay in the provision of accounts was exceptional pressure on the Department's accounts branch due to changes in the Department's functions during the period. External accountants had been engaged in January 2005 to bring the accounts up to date and draft accounts for the period 2000-2004 were eventually submitted for audit at the end of May 2005.

He was of the view that the installation and roll out of the new financial management package to the Fishery Harbour Centres was providing timely and accurate financial information on the payments side and when fully applied would underpin regular reporting as well as completion of the annual accounts to deadline in the future.

Previous Audit Concerns

Paragraph 28 of my 1999 Annual Report expressed concerns regarding the increase in the level of debtors in the Fishery Harbour Centres over the period 1996 – 1999 and the poor and varying performance of the different Centres in relation to debt collection.

In response to my concerns at the time the Accounting Officer stated that the then current standard procedures for collection were being reviewed with a view to effecting improvements in efficiency. He also stated that steps to improve collection would ensure that available income was maximised and would be accompanied by continued rigorous control of expenditure to ensure the viability of Centres going forward. The position in relation to debt collection was under review and any further action, identified to effect the necessary improvements in the position, would be taken.

Current Audit Concerns

Bearing in mind financial control and governance requirements I sought the views of the Accounting Officer regarding the Department's oversight of the Fishery Harbour Centres in the period 2000 – 2004 and the effectiveness of the collection of Harbour Centre debts.

Accounting Officer's Response

General

The Accounting Officer informed me that the fishing industry had, over the period in question, been going through a very difficult time economically due to declining stocks and, as a consequence, ever more stringent conservation measures. In recent times sharply increasing fuel prices are having a major impact on costs for fishermen. The effect of these factors has been to reduce the volume of landings, the number of active vessels, the volume of in-harbour processing activity and a reduced ability to pay with a consequent increase in bad debts.

He observed that harbours are funded through rents and charges and that charges had not been increased since 1990 and revenues in the early part of the period in question had not kept pace with costs. A significantly increased rate of charge, coupled with the introduction of new charges for services that were previously free, was introduced in 2003. There was strong resistance from the fishing industry to the new and increased charges and the real benefits of the new and increased charges were only really being felt towards the end of the period.

He stated that there was a substantial programme of change and modernisation taking place in relation to structures, roles and responsibilities and work practices and procedures in relation to the management of the harbours generally. It was intended to move at harbour level to a situation where the local Departmental engineer has a much greater and closely defined role in the local management of each individual Harbour Centre as part of his/her responsibility for a geographical area. It was also envisaged that further changes would be implemented as a new integrated fisheries information system and a new financial management package became fully operational.

Response to Specific Queries

- *How did the Department perform its oversight duties for the period 2000 to 2004?*

The Accounting Officer stated that during the period in question there had been considerable difficulties in relation to the filling of Harbour Master vacancies. This had resulted in a more direct hands on approach by the Fishery Harbours Division of the Department. There was day to day interaction relating to routine administration and a programme of regular visits was supplemented by additional specific issue visits. During 2004 the Fishery Harbours Division was restructured to enhance management and oversight of the Fishery Harbour Centres not least because of the continuing vacancies among Harbour Masters. As regards financial oversight the Department's accounts branch exercised some direct functions in relation to the financial processing of payments. On the receipts side the installation of a new accounting system in 2002 enabled receipts/debtors to be better monitored.

- *Was the level of control during the period satisfactory and what specific controls were in place in each Fishery Harbour Centre to ensure*
 - *the correctness of all payments and*

- o *the prompt and efficient recovery of all due receipts?*

Based on the information available to him the Accounting Officer said he was satisfied that payments were subject to satisfactory authorisation, control and oversight. He went on to say that Expenditure at the five harbours is broken down into three main categories: Labour, Current Operational Expenditure and Engineering Expenditure both Current and Capital. As regards Labour Expenditure timesheets for industrial workers are certified for payment by supervisors and processed weekly by the Department's Accounts Branch. All Current Expenditure payments arising from the operation of the Fishery Harbour Centres are handled and authorised centrally in Fishery Harbours Division. No major payments are authorised locally. Invoices received are certified at the Fishery Harbour Centre and forwarded to the division for scrutiny, authorisation and processing. Additional staff are being deployed to check invoices and streamline processes. Engineering expenditure, current and capital, is handled by Engineering Division which oversees the execution of necessary works both by the Department's own staff and by contractors. Invoices are approved within the Engineering Division. The Accounting Officer further stated that he was satisfied that controls were adequate to ensure the correctness of all payments but a process of continuous improvement needs to be sustained.

As regards receipts the Accounting Officer stated that Harbour Dues are now calculated locally at 3 Fishery Harbour Centres (Killybegs, Rossaveel and Castletownbere). Harbour dues are calculated in Fishery Harbours Division for 2 Fishery Harbour Centres (Howth and Dunmore East) pending the filling of Harbour Master vacancies. There had been a review of financial procedures and invoices were now being generated on a more timely basis and collection of dues was being more vigorously pursued. However the fully effective operation of these procedures was critically dependent on two factors. Firstly the appointment of Harbour Masters to existing vacancies — offers of appointment have recently been made by the Public Appointments Service. Secondly the timely provision of fish landing statistics is critical to ensuring the calculation and invoicing of harbour dues. The recently installed Integrated Fisheries Information System is designed to underpin the generation of such data.

- *What progress had been made as regards debt collection?*

The Accounting Officer informed me that external services were engaged in 2001 to assist with collection of accumulated arrears and to design and operate effective debt management procedures. He also said that various campaigns of non-payment had impacted on collection rates over the years.

The Accounting Officer further stated that since 2001 there had been a number of initiatives to enhance recovery. In particular the automation of the systems for issuing invoices and statements in 2002 had been accompanied by telephone follow-up of all outstanding debts. In tandem with this the following debt control procedures had been put in place

- o Charges to be paid within 30 days of the date of invoice
- o Queries regarding charges to be directed in the first instance to the relevant Harbour Master with direct payment to the Department's Accounts Branch in Castlebar
- o Pursuit of outstanding charges and referrals to the Chief State Solicitor for early recovery through the Courts
- o The Department reserved the right to withhold services to Fishery Harbour users where there were dues outstanding.

Revised procedures were introduced to report outstanding harbour dues on a six monthly basis and to pursue collection of arrears. In September 2004 all arrears in excess of €10,000 were targeted. The incidence of such arrears had arisen due to a campaign of non-payment by users dissatisfied with the

increased level of charges introduced in 2003. In excess of 90% of targeted arrears was collected in a two month period. The Accounting Officer added that a second exercise is currently underway in relation to arrears in excess of €1,000.

- *What were the actual and relative levels of debt in each harbour centre over the period?*

The Accounting Officer informed me that collection rates show progress on reducing debt levels. For the five centres the collection rate improved from 47% in 1998 to 65% in 2002. There was a dip in the collection rate in 2003 due to the reaction among harbour users to an increase in charges in 2003. However he was confident that the collection rate would improve as the once-off problem that occurred in 2003 passed through the system.

He also provided the detailed information set out in Table 26.

Table 26 Debt Outstanding at Year End in € and Collection as % of Amount Collectable

Year ¹⁴	Killybegs		C'bere		Rossaveal		Howth		Dunmore East		Total	
	€	%	€	%	€	%	€	%	€	%	€	%
1998	457,442	29	164,242	50	28,672	80	118,717	70	111,429	32	880,502	47
1999	227,131	73	175,978	54	32,675	68	106,119	82	117,137	36	659,040	68
2000 ¹⁵	182,234	52	89,466	43	38,105	68	151,658	56	106,028	19	567,491	49
2001	207,716	68	89,288	62	68,533	52	276,450	54	95,427	48	737,414	59
2002	191,574	68	102,785	70	86,396	51	184,813	70	116,082	41	681,650	65
2003	435,708	53	152,312	58	111,132	46	324,469	51	134,070	42	1,157,691	51
2004	586,415	62	217,315	62	368,768	21	405,037	55	225,715	32	1,803,250	53

In relation to the foregoing, the Accounting Officer pointed out that

- In the case of 2003, the increased charges took effect in October. However, the amount of increased charges actually collected would be very small resulting in an apparent dip in collection efficiency. Current year collections always lag billings due to delays in assembling landings data.
- Rossaveal income is very dependent on ferry traffic. Increased charges are being resisted and legal action may be necessary to effect collection.
- The poor collection rate in Dunmore East reflects the absence of a Harbour Master.

¹⁴ Figures for 2000-2004 are unaudited

¹⁵ The figures for 2000 are stated after the write off of bad debts of about €250,000.

11.3 Foreshore Leases/Licences

Background

Foreshore is currently regarded as the land and seabed between the line of high water of ordinary or medium tides and the twelve-mile territorial sea limit. It also includes tidal rivers and estuaries. The main governing legislation in this area is the Foreshore Act, 1933. The bulk of the foreshore is State property within the meaning of the State Property Act and ownership lies with the Minister for Finance although there are some parts of the foreshore in private ownership. The Minister for Communications, Marine and Natural Resources (the Minister) administers the State-owned foreshore and the legislative provisions through the foreshore section of the Coastal Zone Management Division.

The Minister may, if it is in the public interest, grant a lease or licence for the use of a section of foreshore. A lease, which is typically for 35 years, generally refers to the erection of a structure on, or the right to the virtually exclusive use of, a section of foreshore. While licences are granted for short term uses of the foreshore, such as horseracing, they are also granted for significant developments such as, for example, pipelines, interconnectors and waste water treatment plant outfalls. Restrictions are placed on the use of foreshore by way of conditions attaching to each lease/licence which address matters such as term, rent payable, reviews and environmental issues.

An internal audit report dated June 2004 prepared for the Department of Communications, Marine and Natural Resources (the Department) indicated that a total of 1,334 leases/licences had been issued as at the end of August 2003. This number had increased marginally by the end of 2004 to 1,384 although the Department states that this would also include a comparatively small number of matters other than leases and licences, such as agreements for the sale of foreshore, and exclude a number of licences that were not assigned reference numbers in earlier years.

Annual receipts in respect of foreshore leases/licences can be substantial. While they amounted to €1.3 million in 2004, amounts in some previous years were higher — in 2002 almost €6 million was collected, primarily due to new major infrastructure projects.

Processing of Applications

Applications received by the Department are initially considered by the engineering, marine survey and sea fisheries control divisions of the Department prior to consultation with a broad range of external bodies including the Department of the Environment, Heritage and Local Government, the Marine Institute and the Central/Regional Fisheries Boards. Public consultation also takes place in virtually all cases. Most cases, including all complex applications are submitted for vetting to the Marine Licence Vetting Committee. A recommendation is made to the Minister in all cases. Under Department of Finance guidelines, issued in 1987, in fixing the rent payable the advice of the Valuation Office should be obtained. For certain developments, standard charges apply. Once the applicant notifies acceptance of the proposed terms, a lease/licence is issued. It is recorded in a database under a unique reference number. However full details of conditions attaching to the lease/licence are not entered. A sealed copy of the lease/licence is held by the Department. Lease/licence holders are obliged to comply with the conditions imposed by the Department. Upon the expiry or surrender of a lease/licence, restoration of the foreshore by the lessee/licensee is mandatory.

Department Records

Electronic foreshore lease/licence records maintained by the Department are not fully comprehensive, resulting in weaknesses that hamper effective management. Leases/licences are recorded on a database but this lacks data such as exact location, specific conditions, review dates etc. that would be contained in a Geographical Inventory System (GIS). However such a system is not currently maintained. The June 2004 internal audit report described the database as inadequate, noted that it did not lend itself to electronic interrogation and recommended that it be replaced. In the absence of a proper database, local office staff, who are best placed to assess compliance, have to request copies of the leases/licences from the Department's headquarters in Dublin where the originals are kept. This works against the systematic review of compliance.

This lack of a comprehensive electronic database, or related systems, is currently being addressed by the Department through a major project being undertaken by its Information Systems Division. Phase 1 of the project will be completed by October 2005 and it is envisaged that the entire system will be fully functional by early 2006. The intention is that the system resulting from this project will give a fully comprehensive database, replacing the existing electronic databases, such as the listing of leases and licences and rent records, that have been developed on an ad-hoc basis over the years. The new system will encompass functions including application processing and financial management and a GIS component.

Review of Cases

Leases issued since 1987 should, in accordance with Department of Finance guidelines, be for a maximum term of 35 years with provision for five yearly or seven yearly reviews unless the prior sanction of the Department of Finance has been obtained. Previously leases were generally issued for a 99 year term¹⁶, some being subject to periodic review. Department records do not automatically trigger cases due for review. Instead, review dates have to be identified and collated manually.

A Departmental report of October 2004 concluded that

- Where cases had been reviewed by the Valuation Office for the period 2001 to 2003 the total value of rent collectable increased from €150,000 to €593,000 — an increase of almost 300%
- Current reviews were substantially in arrears
- The Valuation Office refused to handle review cases between May 2003 and November 2003 and ceased handling review cases between August 2004 and December 2004
- The legal implications of backdating rent reviews were unclear
- Review cases for 2001 were recalled unprocessed from the Valuation Office in March 2004 by the Department due to the passage of time.

Because of delays in the Valuation Office, the Department, in May 2004, sent only the 20 highest rent cases to that office for review. By April 2005 not all of these cases had been processed but of those returned the average increase was of the order of 400%. No cases were referred to the Valuation Office in the first half of 2005.

¹⁶ The Foreshore Acts provide for the issue of leases and licences for periods of up to 99 years.

The Department furnished me with the following information on the extent of rent reviews in recent years.

Table 27

Year	Reviews Due	Reviews Finalised
1998	47	12
1999	66	2
2000	51	-
2001	53	5
2002	65	7
2003	68	6
2004	69	4
2005 ¹⁷	38	-

As the failure to review rents in a timely way can lead to a loss of income to the Exchequer I asked the Accounting Officer what remedial action was being taken.

The Accounting Officer acknowledged that there have been delays in the carrying out of rent reviews provided for in foreshore leases. He cited a number of factors that have contributed to this situation, including, in particular, the pressures of other work in the Section and difficulties in obtaining advice on proposed revised rents from the Valuation Office. He stated that the Department recognised the need to address the position as a matter of priority and accordingly is making arrangements for a detailed examination of the situation to be undertaken. The aim will be to address any cases in which a due rent review has not been initiated, or finalised, to date, and to ensure that all reviews are carried out in a timely manner. He further stated that the Department is taking immediate steps to go to tender for an independent body to carry out valuations for all foreshore matters. All outstanding cases will be withdrawn from the Valuation Office and referred to the successful company for immediate appraisal.

Post-Review

If a client does not accept a revised valuation there is a provision for referral to arbitration. I have been informed that, in practice, no cases have been referred to arbitration in the period since 1998. Three requests for arbitration are on hands from lessees at present. Many clients simply continue to pay at the old rate or refuse to pay at all. It appears that the Department does not pursue an enforcement policy in the case of clients who do not accept revised valuations. According to the Department, no leases have ever been suspended or withdrawn as a result.

Valuation Office — Level of Service

The Department has been dissatisfied with the level of service provided by the Valuation Office for some time. Long delays in the provision of valuation advice are common. At a meeting in September 2004, the Valuation Office conceded to the Department that the service provided was not satisfactory, citing the need to concentrate resources on its core statutory function of rateable valuations. It also stated that it could not see any way in which the service could be improved in the foreseeable future.

In view of the comments made on the unsatisfactory nature of the service provided by the Valuation Office I sought the views of that Office's Accounting Officer. In reply he stated that the core business of his Office was the provision of accurate, up-to-date valuations of commercial and industrial properties to

¹⁷ To end June 2005.

ratepayers and rating authorities as laid down by statute. Consequently resources had to be focussed as a priority on the rating valuation service and his Office could not guarantee a satisfactory consultancy service to Government Departments on market value work. For this reason it was agreed with the Department of Finance in September 2001 that the procurement guidelines should be revised to allow freedom of choice to Departments in sourcing market valuation services. All customers were advised by the Valuation Office of its priorities and resource constraints and of the proposed revision of the guidelines.

His Office met with the Department of the Communications, Marine and Natural Resources in September 2004 and again advised of the ongoing problems with service delivery. He concluded by stating that the situation had not changed and his Office will not be in a position to provide a satisfactory consultancy service in the short term.

Monitoring of Compliance with Lease/Licence Conditions

The audit found that the Department does not adopt a proactive role in the monitoring and enforcement of lease/licence conditions. Monitoring, where it does exist, seems to depend on the local knowledge of the Department's officials. In the Offices visited, the existence of copies of leases/licences issued by foreshore section was the exception rather than the rule. Together with the absence of a comprehensive database this makes effective monitoring virtually impossible. When I asked the Accounting Officer if he was satisfied that local offices of the Department were in possession of sufficient information to allow adequate monitoring of conditions attaching to leases/licences he informed me that the foreshore section can make any documentation in relation to a particular lease or licence not held by a local office available immediately to that office on request. The new information systems currently under development will allow local offices electronic access to all relevant records.

The Accounting Officer has informed me that the Department is not in a position at present to undertake comprehensive post-authorisation monitoring of compliance with the terms and conditions of foreshore leases and licences as it is constrained by the limited resources available for work of this nature. Specifically, the Department's Engineering Division, to which it would fall to carry out the inspections essential for monitoring compliance, is multi-tasked and is not, therefore, in a position to undertake systematic post-authorisation compliance inspections on foreshore developments. Consequently, inspections would normally be carried out where specific issues have come to attention, or if a complaint is received. If a report of an inspection by the Engineering Division were to indicate a failure by a lessee or licensee to comply with the terms or conditions of the authorisation, the matter would be referred to the foreshore section for appropriate follow-up action. This might involve correspondence with the lessee/licensee in the first instance, or legal action if there was a failure by the lessee/licensee to address the position. In this connection, the Department is currently engaged with the legal services with a view to instituting legal action for breach of the terms and conditions of a particular lease.

The Department will consider how it might be possible to move towards more structured monitoring of compliance with the terms and conditions of leases and licences, and will consider the role that the new information systems under development at present can play in that regard. However, the nature and extent of any developments in this regard will of necessity be determined by the resources available for the inspectorial work that provides the essential basis for compliance monitoring.

Pursuit for Non-Payment

While the payment of the first year's rent is made in advance, rent due in respect of later years is identified by staff, who then issue the relevant invoice. Reminders are issued approximately every 2 months. Up to four reminders may be issued. My audit indicated that the Department does not initiate legal proceedings

or impose any sanctions in the event of non-payment. The Accounting Officer has informed me that a policy has now been adopted of referring cases to the legal services for appropriate action where rent is not paid. A number of cases have already been sent to the Chief State Solicitor's Office, and a similar approach will be adopted in any other case in which, despite reminders, amounts owed are not paid.

Unauthorised Developments

With very few exceptions, the creation/erection of any structure or the use of or reclamation of any part of the foreshore requires the consent of the Minister by way of a lease or licence issued by him. Audit evidence suggests, however, that unauthorised developments are quite common and an audit of certain local office files noted that 6 such cases had been identified and reported to foreshore section. An audit review, using the results of a coastline helicopter survey undertaken in September 2003, revealed a further 11 unauthorised developments in the same area for which no lease/licence exists. A further audit review of a section of the coastline surveyed indicated many more examples including a significant number of swing moorings.¹⁸

Unauthorised developments represent a loss of revenue to the State. While the rate to be paid in each case is site specific, the large numbers involved, particularly of swing moorings, means that this loss is potentially significant. It is not clear to what extent the scale of unauthorised development, as identified in the course of the audit, is reflected nationally — it is however, suspected that the number of unauthorised swing moorings alone is in the thousands. The Department has no accurate information on the specific numbers involved. As the Department already has the September 2003 helicopter survey results available to it as well as certain satellite and aerial photographic records of the coastline that clearly show all foreshore developments, a geographical inventory system would enable it to easily identify those for which a lease/licence has and has not been issued.

The Accounting Officer, while accepting that there are many unauthorised swing moorings, pointed to the difficulty of distinguishing between permanent moorings which need a licence and temporary ones which don't. Close physical inspection would normally be required. However, he stated that the Department is currently considering the possibility of having electronic tagging and/or colour coding of authorised moorings to help identify those which are licenced, particularly from aerial surveys. He added that the harbour masters, who charge fees to those using moorings within harbours, were made aware that there was also a requirement to hold a foreshore licence. The feasibility of having both fees collected by harbour masters and the foreshore fees remitted to the Department by them is being examined.

I was informed that the Department is not, as matters stand, in a position to carry out systematic on the ground policing of the foreshore for unauthorised developments in pursuit of its clear policy that only properly authorised developments should take place. In these circumstances, inspections in respect of alleged unauthorised developments are normally carried out when matters come to attention in the context of other work, or in response to complaints and appropriate administrative action taken. If, however, what had been done were considered to be unacceptable, Court proceedings would be instituted seeking to have the development removed. I have been informed that 2 cases are before the Courts at present.

The Accounting Officer also stated that the Department recognises the need for a more structured approach to addressing unauthorised development on the foreshore and believes that the GIS component of the new information systems under development has the potential to offer considerable assistance in this regard if associated with aerial survey and on the ground inspections. It will in the meantime consider

¹⁸ A swing mooring is a single point mooring which is anchored to the seabed and allows a boat to swing around with the tide.

how it might be possible to advance an exercise to correlate the results of the aerial survey referred to with the details of leases and licences that have been granted, and to follow up in respect of any developments undertaken on State foreshore without appropriate authorisation.

