

## Chapter 3

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**Office of Public Works and An Garda  
Síochána**

## 3.1 Agreement on the Use of Garda Radio Masts

### Background

The Government decided, in February 1997, to approve a proposal to permit a mobile telephone company (the company) to install, erect and maintain mobile telephone antennae and ancillary equipment on and adjacent to the radio masts maintained by the Garda Síochána in specified locations subject to certain terms and conditions. A non-exclusive agreement was entered into between the Commissioners of Public Works, the Minister for Justice, the Minister for Finance, the Garda Commissioner and the company in June 1997 to this effect. The agreement was for a period of five years and contained a provision for the company to renew it for a further five years, subject to certain terms and conditions. The company exercised this right in August 2001.

While 459 sites were originally identified, the number of masts utilised since the commencement of the agreement to May 2005 is 185.

### Licence Fees

In the agreement sites were categorised as: premises located in the County of Dublin, premises located in other urban areas, and other premises. Different tariffs applied to each category. Provisional rents were specified in the agreement and were payable from February 1997, where applicable. The agreement made provision for the definitive determination of licence fees by an independent arbitrator reporting within 3 months of referral to him. The company was required, within 14 days of the date of execution of the agreement to select an independent arbitrator from a panel nominated by the Office of Public Works (OPW). An arbitrator was appointed in March 1999. The arbitrator, in a report dated July 2002, determined revised rates payable from the agreed valuation date in June 1997.

Arrears of licence fees of €3.6 million, due to the arbitration findings, were received by OPW in February 2003.

I asked the Accounting Officer of OPW what caused the five year delay in finalising the licence fees and if the question of claiming interest on the arrears due to the delay had arisen. In reply he informed me that, in order to prepare the State's case for arbitration, it was necessary to gather comparable evidence and one of the main sources of such evidence was licence agreements that the company had entered into with other landlords. Discovery was agreed in principle in April 1999 but this process was a very long drawn out affair. Due to prolonged negotiations on confidentiality considerations, the need to issue formal Orders of Discovery and the necessity to instruct Counsel, an Oral Hearing did not take place until December 2001. The Arbitrator issued his findings in July 2002. He pointed out that the time scale required by the Arbitrator to consider the evidence and issue his award was a matter entirely for the Arbitrator. He also informed me that the award was effective from the commencement of the Agreement and that there was no provision for the payment of interest on the arrears of licence fees.

## Equipment

The agreement required that the company provide the Garda authorities with 300 mobile phone handsets free of charge together with free connection to the company's GSM<sup>7</sup> network. It also provided for connection for a further 150 other GSM handsets already in use by the Gardaí as well as connection of a further 100 handsets for use by the Gardaí.

I asked the Accounting Officer for the Garda Vote how was the need for the quantity of mobile phones acquired, initially and subsequently, assessed - particularly *vis-à-vis* the availability of the Garda radio network. He informed me that there are recognised security issues with the existing Garda analogue radio systems. While the GSM network is not considered to be a replacement for an Emergency Services Network, it does provide an important element of security. This is considered very beneficial to the Garda organisation and is, to some degree, a stop gap measure until the new digital radio system is introduced. Plans for a new radio system were progressing as quickly as possible. The new system would have the requisite level of security and is expected to lead to a considerable reduction in the number of mobile phones required by the Gardaí.

He stated that the telephone services included in the original deal were negotiated as part of the overall agreement. It would appear that, although the Gardaí had a requirement for mobile telephony prior to the agreement, the Gardaí did not pursue it because they had concerns about the means to control the costs of calls. The company's proposal, with the use of a closed user-group and free air time, reduced this risk to a degree.

## Call charges

The agreement specifies a detailed scheme of charges that provides a mix of:

- calls totally free of charge
- calls free of charge at certain times
- free SMS<sup>8</sup> communications and
- calls and SMS communications at cost and without profit to the company.

The number of mobile phones in use by the Gardaí has risen substantially due to operational reasons since the agreement was signed. The number of connections has increased from 550 to approximately 1,000. This has allowed the Gardaí to migrate phones on a separate agreement to a more favourable tariff regime.

An internal circular was issued by the Garda authorities in September 1998 on the distribution, care and use of official issue Garda cellular phones. This states, *inter alia*, that phones must be used for official purposes only, that daily usage in excess of €40 is flagged for examination and that Chief Superintendents will be responsible for monitoring and certifying usage. I asked the Accounting Officer if he was satisfied that the level of checking employed by the Garda authorities was commensurate with the risk of use other than for official purposes. He replied that he was satisfied that the control procedures employed by the Garda authorities were in line with the potential risk of usage that fell outside the scope of the official circular. To minimise the risk of unofficial usage, the Garda authorities reviewed the monthly electronic

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<sup>7</sup> Global System for Mobile communications

<sup>8</sup> Short Message Service, more commonly known as a text message.

and paper bills. The Gardaí had reviewed the operation of this monitoring system and an official had been assigned the task of reviewing the bills for usage. A monthly report was now sent to each Assistant Commissioner requesting that he satisfy himself that the usage was reasonable. Separately, all calls to premium numbers were blocked.

## Net Income

Mobile charges incurred by the Gardaí under the agreement are deducted from the licence fees payable by the company. The licence fees received and the amounts offset in respect of mobile phone charges incurred by An Garda Síochána are set out in Table 17.

Table 17

Year	Licence Fees Received	Offset in respect of Charges <sup>9</sup>	Net Receipts <sup>10</sup>
1997	282,625	-	282,625
1998	579,299	195,683	383,616
1999	1,342,371	422,567	919,804
2000	639,085	567,040	72,045
2001	1,152,350	524,042	628,308
2002	860,746	766,921	93,825
2003	5,855,706 <sup>11</sup>	1,374,516	4,481,190
2004	2,040,955	1,119,924	921,031

## Certification of costs and inspection of books of account

The company is obliged to supply to OPW, within three months of the end of the calendar year, a statement signed by its auditors certifying that the amounts invoiced for call and other charges have been calculated in accordance with the provisions of the agreement. However, the company failed to submit audit certificates in respect of 2000, 2001 and 2002 until April 2003 following requests from OPW.

The OPW also has the right, upon written notice being supplied to the company, to appoint a representative to examine the books and records of the company for the purposes of verifying that the amounts invoiced to the Garda Síochána have been properly calculated in accordance with the provisions of the agreement. This right was exercised for the first time by OPW in January 2005. I enquired what the results were of the examination of the books and records of the company. I was informed that the results of the inspection were generally satisfactory but that clarification on some discrepancies had been requested and was still awaited.

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<sup>9</sup> As certified by the Company's Auditors.

<sup>10</sup> As recorded in the Appropriation Accounts.

<sup>11</sup> Includes arrears of €3.6 million received on foot of the arbitrator's findings.