

**Opening Statement by
Mr. Frank Daly, Chairman of NAMA,
to the Public Accounts Committee
Thursday, 29 September 2016**

Chairman and Deputies,

I welcome this opportunity to respond to the C&AG's Special Report into the sale of Project Eagle. We look forward to an open, fair and constructive engagement with the Committee.

Ultimately the Oireachtas established NAMA as a commercial entity. And running a commercial entity is ultimately about making commercial decisions – all of them necessary, many of them complex and difficult, some of them palatable, some not. Project Eagle required us to make a number of decisions, some of which, as I will outline later, were difficult.

Our key decision was to set a minimum price of £1.3 billion for the portfolio. We are satisfied, as much now as we were in April 2014, that the £1.322 billion that we got was the best price achievable. If we were selling Eagle today, we would be very unlikely to match that price. It is by no means certain indeed that there would be any bidders.

Brendan McDonagh has already explained NAMA's position on the key issue of price and valuation. In my statement, I would like to focus on two other issues raised by the report. The first relates to the sales process. The second concerns the role of Frank Cushnahan.

Sales process

The sales process adopted in the case of Project Eagle was initially influenced by the stated preference of both governments, which is on the public record, that the sale be conducted in a

discreet and confidential manner. This was done in order to minimise the risks to the wider Northern Ireland economy and to avoid perceptions that an Irish State agency was ‘auctioning’ or ‘selling off’ Northern Ireland.

Northern Ireland could not have been, and was not, just another jurisdiction from our perspective. The heightened political sensitivity associated with it is evidenced by the fact that NAMA was a regular agenda item for North/South intergovernmental meetings.

There was a concern that a fully open sales process, which would by its nature take longer to conduct, would freeze activity in the Northern Ireland market for a period of nine/twelve months. As is clear from the Department of Finance minutes of a conference call between the Minister for Finance, Mr Noonan, and the Northern Ireland First Minister, Mr Robinson, and Deputy First Minister, Mr McGuinness, on 14 January 2014, there was very broad political consensus on the need for sensitive management of the sale. The minutes record that, during that call, Mr Noonan *“agreed that confidentiality was important and that both his department and NAMA would take appropriate steps”*.

It is understandable that senior Northern Ireland politicians would have been concerned about the risk of an ‘auction’ as they saw it and that they would have expressed those concerns. It is also understandable that the Minister for Finance would have sought, in the spirit of positive North-South engagement, to accommodate their concerns on this point. But it is clear also that from the beginning the Minister for Finance understood and supported NAMA’s policy in regard to open marketing.

NAMA was willing to consider the wishes of the two governments on the sales process because it was our view that, commercially, the appropriate sales process for Eagle was a targeted one that focused on key investors with the financial wherewithal and appetite to purchase this portfolio. We did not believe that a fully open sales process would yield any additional benefit in terms of identifying other credible bidders or of getting a higher price. And we were very cognisant of the potential damage that a fully open process could cause to the Northern Ireland property market and the wider Northern Ireland economy. We are a commercial state body but we do not operate in a bubble that ignores the bigger issues on the island of Ireland. That might apply to entities that are not affiliated to the State but it does not apply to us.

When news of the prospective sale became public in February 2014, it was our judgement that there would be no advantage to opening up the process to all-comers at that stage, as all the

main investors had already been approached or were about to be invited into the process. I believe that our judgement was right on this issue and that view is supported by a review of European loan sales activity over the period from 2013 to 2015.

The Board appointed Lazard to run a targeted sales process that engaged all potential credible bidders – bidders with the financial wherewithal to submit serious bids for a portfolio of this size and granularity. **Between them, the nine bidders that Lazard invited into the process accounted for 88% of all European and 92% of all UK and Irish commercial real estate (CRE) loan sales worth more than €1bn between 2013 and 2015.** The potential bidders who were refused access to the process accounted for a negligible share of the market during the same period. This objective evidence shows that no credible potential bidders were excluded from the process.

By contrast with that objective evidence, the report puts forward the hypothesis that there might have been other credible bidders but it gives no indication of who they might have been. Lazard advised that *“the process was open to the most qualified and credible potential counterparties. There were fewer participants in this process than in some other transactions because there were fewer investors that were sufficiently qualified and credible.”* No credible market-based evidence has been produced by the C&AG to counter the expert advice provided to NAMA by Lazard. Hypothesis is not evidence.

Critically, Lazard also categorically stands over its key recommendation to the NAMA Board in April 2014 that there was sufficient competitive tension in this sales process right until the end. Again no evidence is advanced to counter that of Lazard.

Some commentators have questioned how a process in which nine potential bids were reduced to two final bids could be described as a competitive process. The report did not compare Eagle with non-NAMA sales and with sales in other jurisdictions but if it had, it would have found that the vast majority of loan sales tend to result in two or three final bids. Even within the ambit of NAMA sales, Project Arrow involved 18 initial expressions of interest which culminated in two final bids. The Jewel/Dundrum Town Centre sale also involved two final bidders.

If the C&AG had sought market advice on loan sales, he would have discovered that loan sales, like many other types of auction, tend to attract a fair number of what might be called ‘tyre kickers’. In other words, those who want to have a look but have no serious interest or capacity to buy. **The key to a competitive sales process is not the number of people who wish to**

get into the auction room but the financial capacity of the much smaller number who are in a position to write the cheque. Our concern in the case of Eagle was to ensure that all those who could have written the cheque were offered the opportunity to review the portfolio and to bid for it, if they were interested.

Mr Cushnahan

I wish now to address the suggestion that the NAMA Board should have halted the sale when it became aware in March 2014 of PIMCO's proposed fee arrangement with Frank Cushnahan.

Let me say first that this wasn't a straightforward or easy decision.

On the one hand, we had discovered that an individual, who had served on NAMA's Northern Ireland Advisory Committee (NIAC), who had been strongly endorsed by the Northern Ireland Government and who appeared to have been a respected figure in the NI business community, was also involved with PIMCO's bid.

On the other hand, we had to weigh up the potentially serious costs and consequences for NAMA, for other State-owned banks and for the sovereign of halting a major loan sale, particularly at such a late stage in the process when investors were fully engaged and committed. We had to consider whether major international investors which had spent large sums of money on due diligence would come back to the table if the portfolio were put on the market again at a later stage? Was the market likely to ignore a collapsed Project Eagle when forming its view on subsequent loan sales in Ireland, sales by NAMA and by other sellers?

What about the risks to the sovereign? Would Ireland's reputation suffer if the first major loan sale by Ireland's asset management agency were pulled? Would a halted Eagle sale create new uncertainty over the State's contingent liabilities just as Ireland was exiting the Troika programme?

There was also the fact, which has been confirmed by this report, that the external members of the NIAC had no access to confidential NAMA information.

The net issue for us was whether we were going to allow Mr Cushnahan's alleged manoeuvrings in Belfast to seriously damage the interests of Irish taxpayers. Our judgement then, and one that

we stand over, was that the interests of Irish taxpayers took precedence. Commercially, we considered that there was a compelling case for selling this portfolio.

All of this was predicated on an outcome where we would achieve our £1.3 billion minimum price.

Northern Ireland Advisory Committee

The issue has also been raised as to whether we should have removed Mr Cushnahan from the NIAC given his declared involvement with six of the 56 NI debtors.

There has been an attempt over recent months to inflate the significance of the NIAC and its influence on NAMA strategy. The facts are as follows. The terms of reference of the NIAC were written so as to ensure that it had no role whatsoever in relation to NAMA debtors or to the assets securing their loans. No discussion of debtors or particular assets was ever permitted at NIAC meetings. No information relating to debtors or assets was ever provided to external members of the NIAC – this has been confirmed by the report. The NIAC had no decision-making powers.

There had been a determined and concerted attempt in 2011 by the external members of the NIAC to change that. They proposed that the terms of reference be changed to allow NIAC members to be provided with “relevant confidential information”. The NAMA Board flatly rejected that proposal. There were other later attempts to discuss particular debtors and assets but they were always resisted.

A lot more has recently come to light about Mr Cushnahan’s various alleged activities but I would ask the Committee, in the interests of fairness, to consider NAMA’s decision by reference to what we knew in 2012 and 2013. Based on allegations that have emerged more recently, we have made two separate complaints to SIPO and have made a report to the Gardaí but we could not have done this on the basis of what we knew in March 2014.

It would appear that Mr Cushnahan, who was peripheral in the context of NAMA’s NI strategy, may have presented himself in Belfast as a key player who was in a position to influence NAMA. This was nonsense. He was an external member of the NIAC which was, in effect, a cross-border diplomatic conduit set up at the behest of the two governments in order to channel the general

views of Northern Ireland strategic and economic interests to NAMA. Clearly we listened to the views of the two external members but they were never under any illusion as to the fact that NAMA's strategy for Northern Ireland was determined by the NAMA Board. The two external NIAC members often complained to me as Chairman that they got no specific information and that they were kept in the dark. That was exactly the intention of the NAMA Board. In fact I cannot recall a single strategic or other decision by the NAMA Board that was directly influenced by the views of the NIAC.

For that reason, and despite NIAC's very limited role, removing Mr Cushnahan from the committee before his resignation in November 2013 would have been seen as a very significant and controversial move and one that would have caused tensions in the positive cross-border political engagement that has served the island of Ireland so well over recent decades. Given that the removal of Mr Cushnahan would have been presented as a slight to Northern Ireland interests, we could not have done so without being satisfied that such an action was justified and proportionate. From 2010 to 2013 we had no reason to take such action and we are satisfied that we managed Mr Cushnahan's conflicts of interests appropriately. In any event NIAC did not discuss debtors or assets, so in effect the committee was of little consequence.

The recent BBC TV programme which featured Mr Cushnahan included references to a document which purportedly included NAMA's confidential valuations of properties owned by a NAMA debtor. It is clear to us that the allegedly confidential NAMA valuations were not our valuations at all – they were, in fact, significantly lower than NAMA's actual valuations (by up to 80% in one case). Therefore, whatever services Mr Cushnahan may allegedly have been offering to debtors and investors in Belfast, he certainly wasn't in a position to offer them confidential NAMA information or any influence over NAMA.

For the avoidance of any doubt, we had no knowledge in March 2014 of the allegations that have subsequently emerged surrounding Mr Cushnahan. And if we had known in 2013 what we now know about these allegations, we would have terminated Mr Cushnahan's involvement with the NIAC, regardless of the inter-governmental difficulties that might have arisen. Mr Cushnahan may well have been an influential figure in Belfast. He may have sought to represent himself as a key pivot between debtors, investors and politicians. But he had no influence with NAMA. And if he managed to persuade some people that he had an influence on NAMA, they were blatantly misled. To some in Northern Ireland and perhaps to himself, Mr Cushnahan was a NAMA insider; as far as NAMA was concerned, he was peripheral.

Clearly, given the NCA's investigation in Northern Ireland, I cannot comment on any alleged wrongdoing that may have taken place there. If there has been wrongdoing, the relevant Northern Ireland authorities will no doubt take appropriate action. Nobody wants to see that more than I do. But whatever went on in Northern Ireland, I cannot see how it can be conflated with the outcome of the Project Eagle sales process which saw sales proceeds of £1.322 billion ultimately realised by NAMA.

We are aware that allegations have been made concerning NAMA's former Head of Asset Recovery, Ronnie Hanna, by at least two sources, Deputy Wallace and Mr Cushnahan. So far as we can see, neither party has produced evidence to substantiate these allegations. As there are investigations ongoing by the NCA in Northern Ireland concerning Project Eagle, investigations with which NAMA is fully assisting, we will not comment in any detail on these allegations. What we can say is that NAMA has no evidence or knowledge that would go any way towards substantiating the allegations.

Conclusion

For the avoidance of any doubt whatsoever on the matter, let me say unequivocally that the price for Eagle was set by the NAMA Board and the decision to accept the winning bid was made by the NAMA Board and not by anyone else. Nobody else influenced the NAMA Board in this – no Ministers, South or North, and certainly not the two external members of the NIAC.

I reiterate the Board's belief that any informed analysis of Project Eagle or, indeed, any of NAMA's loan sales, will find that NAMA acted commercially and that our decisions were, at all times, guided by the best interests of Irish taxpayers. In this instance, the C&AG has come to a different view but, for reasons which have been outlined by Brendan McDonagh, the rationale for the C&AG's position is not one that could reasonably be accepted by anyone with knowledge and expertise in loan sales.

We very much respect the competence and expertise of the C&AG's Office in the normal audit work that they carry out in relation to our financial statements. Our engagement with them on the Eagle examination, however, has been difficult and our decision to challenge their key conclusions has not been taken lightly. This is a serious professional disagreement and we feel strongly that their conclusions would have been much different if they had engaged the

specialist expertise in property and loan sales that they themselves recognised as being necessary at the start of their examination.

I also believe that the C&AG review relied too heavily on the narrow range of evidence provided by Board papers and minutes. Ultimately, the papers presented to the Board were no more than the starting point for the extensive and wide-ranging discussions that followed. It should be borne in mind that the Board was comprised of people who were very experienced in a range of commercial disciplines, including business, property, capital markets, accounting, insolvency, public administration and governance. The decisions made in relation to Project Eagle, as with any other decision, were informed by their individual and collective experience and expertise in those different disciplines.

As regards Board minutes, they are, by their nature, no more than a summary of what was ultimately agreed. The Office of the Director of Corporate Enforcement quotes one of the leading texts on the role of company secretaries as stating that minutes “***are meant to record decisions, rather than discussions***”. They are not intended to act as a transcript of Board discussions and they can never capture all the complexity and nuances of the deliberations that ultimately lead to a Board decision.

In terms of the key decision to sell the portfolio at a minimum price of £1.3 billion, the Board decision was unanimous but that does not mean that all members arrived at the decision for the same reasons. That is why it would have been useful for the C&AG to have discussed this directly with Board members as part of his evidence-gathering process – our offer, unfortunately, was declined by the C&AG.

In that context, I very much welcome the decision of this committee to meet with the individual NAMA Board members and to provide them with an opportunity to put forward their individual perspectives, an opportunity which was denied to them during the C&AG’s Section 9 examination. If there is a common theme between my remarks and those of Brendan, **it is that a desktop review of papers with no input from commercial experts is totally inadequate as a means of reviewing the complexities associated with a major commercial transaction such as Eagle.**

I also welcome the fact that the inquiry to be established by the Oireachtas provides an opportunity to bring an informed market perspective to bear on the financial outcome of the Project Eagle transaction. NAMA does not believe that the price achieved on the Project Eagle

sale represented a 'probable loss' to Irish taxpayers and we look forward to making our case to an inquiry which should have the resources to evaluate the commercial issue with appropriate expertise and market knowledge.

Thank you.