

**Opening Statement by
Mr. Willie Soffe, NAMA Board Member
to the Public Accounts Committee
Tuesday, 18th October 2016**

Chairman,

I welcome the opportunity on my own behalf and on behalf of my Board colleagues, Brian McEnery and Oliver Ellingham, to respond to the C&AG's special report into the sale of Project Eagle. You have asked us to focus on four main aspects of the sale:

- The financial outcome
- The basis for the decision to sell the loans and to set the minimum price
- The competitiveness of the loan sales process
- The management of conflicts of interest associated with the disposal and with the Northern Ireland Advisory Committee

You will appreciate that it is difficult to address the questions you have put to us without repeating points made by the NAMA Chairman and CEO when they appeared before the Committee on 29 September.

That is because my colleagues here today and I concur fully with the Chairman and CEO's views.

While I am conscious of the time constraints facing the Committee, I feel it is essential that we put on the record our perspective on the issues that you have asked us to focus on.

Financial outcome and basis for the decision to sell the loans and set the minimum price

I am acutely conscious that some people are of the view that NAMA should not have sold Project Eagle in 2014. Let me explain, as a Board member, the reasons why we did.

When we became aware of a potential opportunity to sell Project Eagle in one lot, it was one of four possible courses of action open to us:

- Sell in one lot.
- Sell in more than one lot.
- Defer a sale in favour of selling at some point in the future.
- Retain all the loans and work them out over a 5-7 year period.

We chose to sell in one lot in 2014. The NAMA Board formed the view that this was the best strategy. That is still our view. We have seen no credible analysis that would prove that another strategy would have delivered a better outcome.

- Selling in more than one lot would, in our view, have delivered an inferior commercial outcome. The portfolio had a lot of secondary assets and we simply could not have achieved an acceptable price if those assets had not been bundled with better quality assets.
- Deferring a sale would have delivered an inferior outcome. Northern Ireland commercial property prices have failed to improve since we sold Project Eagle and all the signs are that the NI market may struggle for the foreseeable future until the full implications of Brexit have been absorbed.
- Retaining the loans for 5 to 7 years would also have delivered an inferior outcome. No credible observer would suggest that working out these loans in a post-Brexit world would generate more money than we got.

We were acutely conscious then, as we are now, of our obligation under Section 10 of the NAMA Act – an obligation placed on us by the Oireachtas - to do our business commercially and expeditiously. That means taking advantage of opportunities to sell loans and assets when and where it makes commercial sense to do so – we have never had the luxury with any loans or assets of awaiting some indefinable optimum price level at some indeterminate point in the future.

We were also acutely conscious throughout this period from our engagement with the Troika, the capital markets and international credit rating agencies, that major progress by NAMA in terms of debt redemption was seen as an important element in Ireland's path to recovery. NAMA has never acted in a vacuum.

For all of these reasons, I have no doubt that if we had turned down the opportunity to sell Project Eagle for stg£1.322bn in 2014, the PAC would now be asking us a different set of questions.

In making the decision to sell, we took account of the potential risks associated with other courses of action and concluded they were not worth it. I cannot see how anyone, even operating with the benefit of hindsight, could now take the view that these risks were, in fact, worth taking.

If NAMA had turned down the newly-presented opportunity to sell the Eagle portfolio in 2014 for stg£1.322bn, I believe that it would have been acting in contravention of Section 10 of the NAMA Act. I believe that because the stg£1.322bn achieved in 2014 was the best price available in the market at that time and because we did not expect that working out the assets over a longer timeframe would yield a better result.

The Board's decision in setting a minimum price of stg£1.3bn for the Eagle portfolio was based on the portfolio's carrying value and the market reality that an NPL (non-performing loan) discount of at least 10% would apply if the loan sale were to proceed.

If the reserve price had been too low, as the C&AG has implied, it was likely that several bidders would have matched the reserve price with a view to acquiring the portfolio and realising the surplus value that was allegedly mispriced by NAMA. Nobody has offered a credible explanation as to why some very sharp investors somehow failed to identify this alleged mispricing opportunity.

In contrast, an email from Fortress, the underbidder, to the NAMA CEO in April 2014 showed that whilst Fortress was “eager” to acquire the portfolio, it was “***unwilling to pay NAMA’s minimum price***”. In the email, Fortress added: “If you don’t hit your reserve we’d like to continue discussions with you either for the whole thing or some subset of it”. I have circulated a copy of that email to the Committee. As it happened, this offer was moot as the bid from Cerberus did exceed the minimum price set by the NAMA Board.

It strikes me that no recognition is given in the C&AG’s report to the commercial reality of an upfront discount associated with a bulk sale of loans versus working out loans individually over an extended timeframe. The C&AG acknowledged at the end of the PAC meeting of 29 September 2016 that the 5.5% discount rate was not a market discount rate. In other words, no buyer would value the portfolio at a 5.5% discount rate.

A similar view was expressed by Department of Finance officials at the PAC meeting on 6 October. Yet, the key finding in the C&AG report - that NAMA made a “probable loss” on this sale - is derived from the mistaken assumption that a 5.5% discount rate, not the market discount of at least 10%, should have applied. This is like comparing apples and oranges and is not a fair or reasonable comparison. It is certainly a very fragile and hollow basis on which to ground one of the major findings of the report.

It should be borne in mind that NAMA had in-house Board and senior management expertise that would have guided the Board as regards market discounts for portfolios of this type.

I share the concern of the NAMA Chairman that the C&AG ignored the independent market expert advice received by NAMA on this point, whilst failing to put forward any independent market advice which would support his own position.

This is the key point. The C&AG's statement that NAMA made a "probable" loss of stg£190 million on the Eagle sale is based on an assumption and a comparison that is simply wrong.

The word "probable", which carries very specific connotations, was an amendment to the finding of a "potential" loss which appeared in the final draft submitted to the Minister for Finance and to NAMA. NAMA was not provided an opportunity to respond to this amended wording. We find the reference entirely incongruous with the C&AG's evidence before this Committee that *"it is incorrect for my report to be characterised as stating that the discount rate of 5.5% was to be used in arriving at a likely market value ... This is not what the report says"*. The "probable loss" only arises if you consider that a discount rate of 5.5% was appropriate for the Eagle portfolio. If you take the market view of the appropriate discount rate, there is no loss - probable, potential or otherwise.

Moreover, the C&AG has said he has not received sufficient assurance that a different course of action would not have delivered a better outcome. Yet no one – not the C&AG, nor any market participant – has offered any convincing evidence that a better outcome was available, either then or later.

Competitiveness of the loan sale process

Questions have also been raised about the extent to which the sales process was competitive.

The fact is that nine of the largest loan purchasers in the world were approached on Project Eagle, five of whom proceeded with due diligence and two of whom ultimately submitted bids based on their view as to what the portfolio was worth. The fact that there were two final bidders is a common outcome for many loan sales and to describe the process as uncompetitive is simply wrong.

As any loan sales specialist will attest, a competition that is time bound and focused on the most credible bidders is not unusual in the loan sales market. As was explained by the Chairman on 29 September, there were very good reasons for opting for a time bound and focused competition in the case of Project Eagle.

Let me be clear: the NAMA Board would not have continued with this sale if the sales process was not competitive - Lazard was categorical in advising the Board that the sales process was competitive throughout, and ultimately delivered the best outcome. To believe otherwise is to believe that my colleagues and I deliberately and consciously chose a course of action that would harm the interests of the State. Nothing could be further from the truth – we have always taken our obligations very seriously and it not credible to suggest that, on this one occasion, the Board was collectively derelict in its duty to taxpayers. Section 18 (3) of the NAMA Act requires the Board to “act in utmost good faith with care, skill and diligence” in making its decisions. I can assure you that we fully discharged this statutory duty.

I and other Board members were satisfied, based on Lazard’s unequivocal expert advice to the Board, that all major credible investors with the capacity to submit bids for a portfolio of this scale and granularity were approached during the process; and that all investors that had a serious interest in acquiring the portfolio had adequate time and information to enable them to prepare and submit firm offers. There was no qualified recommendation from Lazard as has been suggested. On that basis, I and my colleagues were satisfied that the best price achievable for the portfolio was achieved.

The Board rejects the C&AG’s unsubstantiated suggestion that serious credible bidders were excluded from the process.

On the sales process itself, we believe that the C&AG also failed to take account of the wider political and economic and financial implications in Northern Ireland of NAMA’s decision to sell the Eagle portfolio and the obligations on NAMA as a State agency in Dublin to be cognisant of the concerns of the Northern Ireland Executive and of the Irish Government.

Northern Ireland could never have been viewed by NAMA in the same way as it would have viewed other jurisdictions to which it also had significant exposure. NAMA's exposure in those jurisdictions was miniscule by reference to the size of their property markets; this was not the case in Northern Ireland. I believe that NAMA's perspective on this would be widely shared in the Oireachtas: given the recent history of this island, it would have been unthinkable for NAMA to have ignored the impact of its actions on the Northern Ireland economy and on North-South relations.

The management of conflicts of interest associated with the disposal and with the Northern Ireland Advisory Committee

I will conclude by dealing with concerns over Mr Cushnahan's alleged conflict of interest. We take strong exception to the suggestion that the process was corrupted by Mr Cushnahan's alleged activities. As the NAMA Chairman pointed out to this committee on 29 September, Mr Cushnahan may have sought to represent himself as a key pivot between debtors, investors and politicians but he had no influence with NAMA and his alleged activities had no impact on the price ultimately achieved.

Following my appointment to the committee in mid-2011, I attended every meeting of the Northern Ireland Advisory Committee (NIAC). I can attest at first hand that there was no discussion of individual debtors or individual debtor assets at those meetings.

Nothing said at those meetings would have been of any benefit to any NAMA Northern Ireland debtor or to anybody looking to buy assets from a NAMA Northern Ireland debtor.

The C&AG's view on the management of conflict of interests reflects a subjective opinion exercised with hindsight by the C&AG. The Board by contrast had to rely on its judgement and knowledge in March 2014, and prior to that, and within the legal parameters applicable.

What was, in fact, regularly discussed at the NIAC was the state of the Northern Ireland property market and of the wider Northern Ireland economy. We heard from various Northern Ireland economists and property market experts and the message was far from positive or confident about the future.

In 2012, we were given a presentation by a leading Northern Ireland economist. The title of that presentation says a lot: *'An Overview of the Regional Economy at a time of Balance Sheet Recession & Austerity'*. At another meeting in 2013, we received a follow-up presentation from that economist and another economist. The title of the presentation was: *"Recession, Recovery or Stagnation? Short and Medium Term Prospects"*.

There were very few cheerleaders for the Northern Ireland property market and economy over the period from 2010 to 2014. Indeed, I recall that Mr Brian Rowntree, another external member of the NIAC, gave a very downbeat assessment of the NI economy to the NAMA Board and Executive in February 2014.

The NAMA Board took note of the perspective of the two external members of the NIAC as it provided a useful local insight into Northern Ireland dynamics. However, strategy towards Northern Ireland debtors and assets was entirely a matter for the Board and there was never any doubt about this. This was confirmed by Mr Rowntree in his evidence to this Committee last week.

During that evidence, Mr Rowntree also referred to a University of Ulster report on residential land in Northern Ireland. That report relates solely to residential development land, which comprised less than 8% of NAMA's Project Eagle portfolio. It contains no valuations or NAMA debtor- or asset-specific information. It is in fact a high-level overview of residential land holdings, held as security by NAMA and by other financial institutions in Northern Ireland. I understand that a total of five financial institutions contributed data to this research. NAMA referred to this report in its 2013 Annual Report (page 68) and in its 2014 Annual Report (page 61). It was available to the C&AG office as part of its review of Project Eagle, or indeed at any time before that

review. Subsequent to Mr Rowntree's evidence we made a copy of this report available to the PAC and we have published it on our website.

Mr Rowntree suggested that the information in this report could potentially have been of commercial value if combined with NI Housing Executive data on housing requirements. This aggregated analysis was not available to NAMA during 2012 and 2013 and only became available to NAMA when two UUJ staff members made a presentation to the NIAC on 8 September 2014. This was three months after the sale of Project Eagle concluded in June 2014. The Committee might note that this September 2014 UUJ information was not provided to Mr Cushnahan as he had resigned from the NIAC in November 2013 – some 10 months before.

There has been some comment on the fact that Brown Rudnick and Tughans were employed as strategic advisers by Cerberus after the withdrawal of PIMCO. They were not legal advisors. It is our understanding that it is not unusual for advisors of all types to transfer to other bidders in these circumstances. This was confirmed to us by Lazard who stated that, in their experience, it is not uncommon for advisors acting for an investor who withdraws from a process to work subsequently for a different investor who remains in the process. I gather that this point was also affirmed by the Department of Finance at your meeting on 6 October,

Conclusion

Let me conclude by making the following points:

- If anyone doubts whether the financial outcome of this sale was in fact the best achievable, I would respond that no one – including the C&AG - has demonstrated any other course of action that would have resulted in a better price for the taxpayer.
- If anyone doubts that we were right to sell the loans for more than our minimum price, I would respond that we would get far less if we tried to work them out over time or if we tried to sell them today.

- If anyone doubts that the sales process was competitive, I would respond that it is clear to any objective observer that the underbidder, Fortress, was very disappointed not to acquire Project Eagle. Notwithstanding its serious interest, it was simply not in a position to match the Board's minimum price. The existence of a highly credible but disappointed underbidder is the single defining characteristic of a competitive sale process.
- And if anyone believes that Mr Cushnahan's conflict of interest in some way harmed the Irish taxpayer, I would respond that his alleged actions had no bearing whatsoever on the price paid by the winning bidder or on NAMA's decision to sell.

Commercial decision-making involves deciding on the merits of one course of action over another. The Board accepted that an NPL discount of at least 10% would arise in the sale of the Eagle portfolio but it was also very much aware of a number of balancing considerations. The Board was satisfied then and now that the minimum reserve price of £1.3 billion was appropriate.

The proceeds realised from Eagle made a significant contribution to the major senior debt redemption of €9.1 billion achieved by NAMA in 2014. This was significant statement about Ireland in its first year after exiting the Troika Programme.

We have also saved on costs arising from the management of the Northern Ireland debtor loan portfolio. And, crucially, we reduced the exposure of Irish taxpayers to the impact of Brexit on property values in Northern Ireland, the north of England and Scotland.

We fully stand over the decision to sell the Eagle portfolio for the £1.322bn price achieved in April 2014 and nothing has occurred in the interim to undermine the sound, strategic and commercial rationale for that sale decision.

Thank you.