



An Roinn Post, Fiontar agus Nuálaíochta
Department of Jobs, Enterprise and Innovation

Oifig an Árd Rúnaí
Office of the Secretary General

PAC-R-1577 Correspondence 3A.3
Meeting 140 06/11/14

Ms Margaret Falsey
Secretariat
Committee of Public Accounts
Leinster House
Dublin 2

24 October 2014

Dear Ms Falsey,

I refer to the recent hearing by the Committee on the Shannon Development annual accounts for 2013 and the request of the Committee dated 14 October 2014 for follow-up information on a property matter, specifically:

A comprehensive note on the issues raised regarding the sales of the units to Munster Packaging Limited.

I enclose a note conveying the Department's understanding of the issues for the Committee's attention. In addition, I am enclosing copies of correspondence from August 2013 between officials of my Department and the then Chairperson of the Board of Shannon Development.

I understand that the Chief Executive Officer of Shannon Group plc Mr Neil Pakey is providing information on this issue separately to the Committee.

Yours sincerely

John Murphy
Secretary General

Submission to the Public Accounts Committee
Property transaction at Hospital, Co. Limerick

Companies involved in issue of property sale

Property HL Commodity Food Ltd.- cheese and functional dairy food manufacturer

Munster Packaging Ltd.- manufacturers and suppliers of corrugated packaging boxes, point of sales units , also supply bubble wrap and packaging accessories.

Background

In 2011, Shannon Development was the registered owner of an amount of land and some building units in the Hospital Enterprise Centre. At that time, the units (6 and 7) were rented to HL Commodity Foods Ltd. whose primary premises were located at a nearby building on the Enterprise Centre.

Munster Packaging Ltd. is the registered owner of another substantial building and land at the Centre. In 2011, the owner/director of Munster Packaging Ltd., Mr. Robert Ryan, approached Shannon Development with a request to purchase Shannon Development's property holdings at the Centre. Shannon Development understood that Munster Packaging Ltd. required the site adjoining their existing facility for immediate expansion of the business and the two enterprise units, occupied at that time by HL Commodity Foods Ltd., for longer term expansion plans. Munster Packaging Ltd. offered to continue to lease the units to HL Commodity Foods Ltd.

HL Commodity Foods Ltd. had expressed interest on a number of occasions in purchasing the units from Shannon Development, between 2006 and 2009. However, the asking price quoted by Shannon Development on each occasion was not accepted.

Communication between parties about the sale of units 6 and 7

In late 2011, Shannon Development notified HL Commodity Foods Ltd. by telephone that they were having a valuation completed on the units for the purpose of facilitating a sale. This independent valuation informed the sale price agreed with Munster Packaging Ltd. Shannon Development contends that there was no expression of interest in purchasing the units by HL Commodity Foods Ltd. on foot of that notification. The Department understands that HL Commodity Foods Ltd. contends that they were not notified that the valuation was being carried out for sale, only that a valuation was being carried out and that this is why there was no fresh expression of interest made to Shannon Development for consideration.

The valuation price was discussed with Munster Packaging Ltd. and agreement was reached in principle subject to approval by the Shannon Development Executive Committee. In April 2012, Shannon Development informed HL Commodity Foods Ltd. of the proposed sale. HL

Commodity Foods Ltd. expressed concerns to Shannon Development over the sale, including a) the contention that they had not been informed that the earlier valuation was been undertaken for a sale and b) concerns that the sale of the units to a non-Food producer could have implications in terms of managing emissions and contaminants.

In May of 2012, a tripartite meeting took place between Shannon Development and the two companies. Assurances were provided by Munster Packaging Ltd. that they would offer, post-acquisition, to continue to lease the buildings on the same terms as with Shannon Development.

Communications with the Department

HL Commodity Foods Ltd. wrote to both the Minister and the Department on a number of occasions, commencing in June 2012, outlining its concerns and requesting intervention to prevent the sale to Munster Packaging Ltd. from taking place. Responses were issued explaining that the sale and lease of property was a day to day matter for Shannon Development and that it would be inappropriate to intervene in a proposed sale of a property to a legitimate purchaser for value, given that the tenancy rights of HL Commodity Foods Ltd. were being recognised by the would be purchaser. Reference was also made to the Shannon Development complaints procedure and the option of referring the matter to the Office of the Ombudsman.

Following communications between HL Commodity Foods Ltd., Shannon Development and Public Accounts Committee in 2013, the Department sought confirmation from Shannon Development that all appropriate steps were taken in the disposal of the property. In response, the Chairman of the Shannon Development Board, Mr John Brasil, provided assurances that Shannon Development had in place a comprehensive set of property procedures governing the management of its property dealings and that all steps as prescribed in the procedures were complied with in respect of the property at Hospital, Co Limerick.

The property procedures reflected the guidelines on the Disposal of State Assets as set out in the Code of Practice for the Governance of State Bodies and the waiver that the agency had from certain provisions of the Code. As a non-commercial agency with an industrial development remit, the Agency was permitted to dispose of property to its industrial client base on a direct negotiating basis subject to sale being transacted at the independent valuation amount. This waiver, approved by both the Department of Jobs, Enterprise and Innovation and the Department of Finance, takes into account the commercial sensitivity of the transactions involved and the important role that agency property has in attracting FDI to Ireland and in supporting indigenous undertakings to build or expand plants, which would be hampered if every sale was subjected to public auction.

Following further correspondence in September and November 2013, the Secretary General of the Department, Mr. John Murphy wrote to HL Commodity Foods Ltd. outlining the assurances provided by Shannon Development and informing him that the Department was aware that the Comptroller and Auditor General was engaging with Shannon Development on

the matter. A follow up letter was sent by the Department to HL Commodity Foods Ltd. in March 2014 outlining that the Department understood that the C&AG had audited the property transaction and would be reporting back to the Public Accounts Committee. In those circumstances, the Department considered it appropriate to await the outcome of that process.

The Department is not aware if the C&AG has written to Shannon Development yet in respect of any findings from their review of the property transaction.

Concerns raised about the future use of the units

The Department understands that HL Commodity Foods Ltd. has a concern about the Units in question being used in future by a non-food company. The company asserts that the Enterprise Centre was originally designed to be a food park. The correspondence from HL Commodity Foods Ltd. sets out an assertion that it previously had issues with contamination when the units were leased by Shannon Development to an engineering company. They assert that in order to prevent a similar situation arising, they then rented the units when the opportunity arose and explored on a number of occasions the option of purchasing the units.

The extent to which the use of the business park was limited to food companies is not fully clear to the Department. However, the Department was aware that the purchasers of units 6 and 7 were willing to offer a long-term lease to HL Commodity Foods Ltd. which would have provided some certainty as to usage.

The Department understands that the contract for sale included a condition that the property was sold on the condition that it was to be used solely for the purposes of the Purchasers business activity and the Purchaser undertook that it would not utilise any of the sale property for speculative purposes. It is the Department's view that the proposed leasing of the units to an existing enterprise at the Enterprise Centre is consistent with the intentions of the condition.

Current ownership of the units

The sale for the land and units between Shannon Development and Munster Packaging Limited completed on September 11th 2013. The Department understands that the units and area surrounding the units are now registered in the name of Robert Ryan on Folio LK66425F. The remaining lands are registered on Folio LK11521F in the name of Munster Packaging Limited

2 August, 2013

Mr John Brassil,
Chairman,
Shannon Free Airport Development Company Limited,
Shannon,
Co Clare.

Dear Mr Brassil,

I refer to the enclosed correspondence regarding the disposal by Shannon Development of its lands in Hospital, Co Limerick which has been received by the Secretary General of this Department from the Secretariat to the Committee of Public Accounts.

You will see from the letter of 25 July from the Secretariat to the Committee that the correspondence was noted by the Committee at its meetings on 20 June and 18 July. At its meeting on 18 July, the Committee directed that the correspondence be forwarded to this Department for review to ensure that all appropriate steps were taken by Shannon Development in the disposal of its property.

I would be very grateful if you could confirm that all appropriate steps were taken by Shannon Development in the disposal of its properties as requested by the Committee.

Yours sincerely



Ronnie Breen
Assistant Principal
Inward Investment Unit

23rd August 2013

Mr Ronnie Breen
Assistant Principal
Inward Investment Unit
Department of Jobs, Enterprise & Innovation
Kildare St
Dublin 2

Dear Mr Breen,


I refer to your correspondence dated 2nd August 2013 regarding the disposal of Shannon Development owned property assets.

Shannon Development has a comprehensive set of Property Procedures which govern the management of all its property dealings. These procedures reflect the guidelines on the Disposal of State Assets as set out in the Code of Practice for the Governance of State Bodies. As stated in recent correspondence to the Chairman of the Committee of Public Accounts Shannon Development has a waiver from the provisions of the Code permitting the Agency to dispose of property to its industrial client base on a direct negotiating basis subject to sale being transacted at the independent valuation amount.

I confirm that all the steps as prescribed in the Procedure for the Disposal of Assets (copy attached) are compiled with in the disposal of Shannon Development owned properties.

Yours sincerely,

John Brasil
Chairman



| Responsibility | Process | Related Information |
|--|---|--|
| Taskforce Property Executives Development Advisors/Manager | Opportunity / Request / Decision to dispose of land / building / 3rd party connection | Document: Valuations & Sales Policy Document (13202) |
| Co-ordinated and Supported by: Capital Sales Executive Supported by: Property Facilities Executive, Property Development Manager, Service & Maintenance Manager, Relevant Development Advisor | Written cross functional Internal support for proposed disposal & Impact Asset Disposal Third Party Connections Is a consulting engineer required? | Operational Guidelines for Disposal / Approvals Matrix (13203) |
| Cross functional Internal Team (as above) | Is the Proposed Sale > 25% of remaining Strategic landbank? | Board Document Recommended Minimum Land Sale Prices (13204) |
| Capital Sales Executive/ Service & Maintenance Manager Capital Sales Executive/ Service & Maintenance Manager | Selection & Appointment of Consultant (10700, 10900) Consulting Engineer report submitted Is a Letter of agreement in principle required? Executive Committee Approval in principle | Letter re agreement in principle (13210) |
| Capital Sales Executive/ Service & Maintenance Manager Corporate Finance Executive | Preliminary Board Approval re Strategic Sites Valuation Process (13300) VAT on property Transactions (1) | (1) Complete VAT checklist & contact Finance re VAT on sale (13211) Letter re Heads of Terms - Sale of Land (13205) |
| Prepared by Capital Sales Executive/ Service & Maintenance Manager Approved by: Property Development Manager Signed by: Client Prepared by: Capital Sales Executive/ Service & Maintenance Manager Approved by: Property Development Manager | Heads of Terms issued to purchaser & written receipt of purchaser agreement received Is the proposed Sale Price > Asset Cost & Board approved prices or > €1m? Board Approval / Executive Committee Approval / Board Approval | Letter re Heads of Terms - Sale of Building (13206) Letter re Heads of Terms - Third Party Connection (13209) |
| Prepared by: Capital Sales Manager/ Service & Maintenance Manager Approved by: Property Development Manager Corporate Finance Executive Company Secretary's Office | Finance to Provide VAT Clause Issue Letter of Offer Appointment of Solicitor | Template Headings for Executive Committee Document re Capital Sales (13207) Letter of Offer (13208) |
| Company Secretary's Office/ Corporate Finance Executive | Legal Documentation Management (2) Is it a Land Sale / Third Party Connection? | (2) Service charge Policy included in contract. Finance to review VAT/ taxation clauses before signing of contracts |
| Client Capital Sales Executive Property Development Manager | Submission & approval of plans Building Sale | Includes payment of all outstanding obligations by purchaser and termination of lease charges if applicable |
| Lodged by Client Approved by Local Authority | Planning Application approved Complete Requisitions on Title | |
| Capital Sales Executive | Invoice Instruction - Finance (3) | (3) Signoff by Corporate Tax Executive required |
| Capital Sales Executive | Closure of Sale / 3rd Party Connection & Receipt of Proceeds (4) | (4) Property to contact Finance |
| Capital Sales Executive | Forward Asset Register information to Finance Dept | |
| Capital Sales Executive | Forward Service Charge Information to Prop. Facilities Exec. | Debtors Charge Sheet (13212) |
| Capital Sales Executive | | |