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Committee of Public Accounts

21 FEB 2019

Received

20th February 2019

Ms. Éilis Fallon
Committee Secretariat
Committee of Public Accounts
Leinster House
Dublin 2

Re: Information sought by the Committee of Public Accounts (the “PAC”) arising out of the Comptroller and Auditor General Special Report 104 (the “Report”)

Dear Ms Fallon

I refer to your letter of 31 January 2019, wherein you requested certain documents that were discussed at the meeting of the PAC on 24 January 2019. The requested documents included an internal WIT memorandum mentioned at paragraph 3.25 of the Report (the “**Memorandum**”).

The Institute is eager to facilitate the proceedings of the PAC. However, on 2 February 2019, we received legal correspondence on behalf of two individuals named in the Memorandum (the “**Letter**”). In this Letter, counsel for the individuals communicated their clients’ position that the Memorandum contains a number of false allegations and potentially defamatory statements, which could put their clients’ good names at risk and materially prejudice their commercial interests and professional reputations. The Letter suggested that any disclosure of the Memorandum would breach the individuals’ constitutional rights of privacy and their right to a good name and be actionable on that basis.

In light of the threat of legal proceedings issuing on foot of any disclosure of the Memorandum, it would not be appropriate for us to provide it to the PAC or comment further at this time. The Institute is clearly concerned that it should avoid prejudicing the legal rights and entitlements of any party in answering the questions of the PAC. However, it appears that the letter from the PAC dated 31 January 2019 comprises a request to provide the Memorandum, and as such, Institute officers would be afforded the provisions of section 78(1)(a) of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 in giving evidence to the PAC.

Notwithstanding the above, we are happy to provide the PAC, as requested, a copy of the email mentioned at paragraph 3.37 of the Comptroller and Auditor General Special Report 104 (Appendix 1 - Attached herewith). We would however request that the PAC do not publish this email as despite redactions individuals can be clearly identified. If it is deemed necessary that this document should be published we would ask that the PAC affords the Institute the time to notify said individuals.

In relation the third point in the letter received from the PAC, it can be confirmed that the equity negotiations were led, on behalf of the Institute, by the then Secretary Financial Controller. The Institute would like to highlight that this, according to the recent KTI report, Review of IP Management and Conflicts of Interest November 2017, is still deemed to be an appropriate approach as outlined in the following extract from said report - *“it is recommended that the decisions which attract higher risk levels should involve at least one senior executive of the HEI from outside the academic research*



hierarchy, either as a member of an approval committee or other ratification mechanism. This may be the TT Director (for larger more experienced offices), the relevant Vice President level individual in the TTO reporting line (typically the Vice President for Research & Innovation (VPRI), or equivalent), or by involving someone from an unrelated but relevant function, for example the Secretary or Financial Controller.” Additionally, as already highlighted by the Institute, this report recognises that in relation to equity stakes “every spin-out is unique, and there is no simple formula which can cover all the eventualities.”

An information note on the shareholders in Feedhenry was also requested in your letter dated 31st January however the Institute is not in a position to provide an accurate account of such; while certain information can be ascertained from publically available information on the CRO the Institute understands that in order to accurately provide full information on shareholdings access to private and confidential information from the company would be required e.g. example on share options awarded, share bonuses for the sale, vesting shares, shares held in Trust, the different classes of shares issued and their classes / rights (e.g. liquidation preference), nominee accounts and convertible loans issued by the company. Therefore, in conclusion, no accurate table of beneficiaries and their beneficial interests in the company can be created by the Institute, or anyone else, based solely on publicly available information. Our understanding is that an accurate table can only be created by the company and its legal counsel. With this in mind we would respectfully suggest that the PAC remove the previously published table(s) on this matter from the public record as it includes only the information published on the CRO and therefore maybe incorrect and misleading.

Yours sincerely

Elaine Sheridan

Elaine Sheridan,
Vice President Corporate Affairs & Finance.

Encl.

[REDACTED] - RE: Wednesday's meeting

From: [REDACTED]
To: [REDACTED]
Date: 29/11/2010 19:40
Subject: RE: Wednesday's meeting
CC: [REDACTED]

[REDACTED] and myself today discussed the various options concerning WIT's equity in FeedHenry in return for transferring IP along the lines you proposed during our call of 11/25.

I will first respond along the major issues - and then make a proposal (or two) to continue. Please bear with me - or just skip ahead to the meat.

Having reviewed the equity stakes held by all parties under these scenarios, it is WIT's position that it should have 15%. We will accept the subsequent dilution as per the proposed employee pool. We believe that this is - in relation to the other shareholdings & contributions - a generous position.

While we appreciate the issue you have raised relative to equity shareholding held by non-investors non-employees, our position is that WIT has been a major investor and that there are ample shares in other hands to provide WIT with a fair stake while monetary investors are maintained whole.

With respect to the use of WIT staff in the operations/support of FeedHenry Limiter, [REDACTED] forwarded you the letter that was mentioned on our call of last Friday. We understand this may not have been given to you, it was however provided to the company in the persons of the [REDACTED] & [REDACTED] - at their request - when they signed the license agreement (representing FeedHenry). It is WIT's position that the costs - payroll costs along with a reasonable overhead rate - is due it for provision of these services in November and thereafter while these services are provided. We acknowledge that the company did not sign an agreement to this effect - as envisioned in the aforementioned letter - and so the provision can be terminated ; they cannot however be continued without some form of agreement. The inadvertent provision in the interim of these services is an internal WIT/TSSG issue.

In connection with the shareholders agreement, while we must retain the option to reconsider once we have received legal review (expected am 11/30) we have reviewed this internally. Aside from provisions allowing WIT to comply with its obligations wrt [REDACTED] (hopefully a 'Notwithstanding anything else in this agreement, WIT is allowed..' clause), the only other item identified is Clauses 11. In addition to being unusual in a shareholders agreement, we do not see this as being in the interests of 'The Company'. Should the company management wish to use services provided by shareholders it should be able to do so if in its judgement such is the best option for the company. While WIT is more than happy to provide incubator space and training as may be requested by the company, we believe such should be based on the company's interests only. Similarly for services as may be provided by other shareholders. If we are missing an underlying rationale please explain; otherwise we would request this clause be completely removed.

So to the point.

WIT is willing (subject to legal review as noted & shareholder comments) agree to 15% shareholding in return for assignment of IP (copyright) upon investment of 500,000 euro - using the form of assignment in

the license.

Subject to:

- the company agreeing to pay the costs for support provided during November substantially under the terms already provided.
- Similar services will be provided under the same terms in December & January should the company indicate its wish to do so in writing. Thereafter the provision of any such support would be as agreed in writing by both parties.
- closing on or about Nov 30th .

Under this scenario WIT will also agree to:

- transfer ownership of the trademarks owned by WIT (neither requested nor included in the IP license), and
- will forego royalties under the existing agreement (and any reporting pursuant thereto) between the signing of the agreement and the closing date.

Should the above be unacceptable - or simply unachievable given the timeline - then we see the options as.

On going provision of WIT staff to support FeedHenry:

- Only de minimus support, and managed in a way to avoid conflict of interest, will be provided unless a written agreement is entered into by the parties.
- WIT will in its sole discretion endeavour to ensure the transition is such that avoidable disruption is minimised.

On Dec 7th the WIT Commercialisation Committee will have its inaugural meeting. Should the IP assignment not have been completed the it will assume the oversight role. A learning curve should be planned for.

Dec 7th is also the date anticipated for the Irish budget. Given the current extraordinary economic conditions, it would be reasonable to assume that through at least the end of the year WIT management will have an exceptionally driven agenda.

The current agreement continues (subject to investment being 499,999 or less) including: royalty and reporting provisions and the employment targets.

Regards

[REDACTED]

