

DÁIL ÉIREANN

AN COMHCHOISTE UM CHUMARSÁID, GNÍOMHÚ AR SON NA HAERÁIDE AGUS COMHSHAOL

JOINT COMMITTEE ON COMMUNICATIONS, CLIMATE ACTION AND EN- VIRONMENT

Déardaoín, 8 Feabhra 2018

Thursday, 8 February 2018

Tháinig an Comhchoiste le chéile ag 2.40 p.m.

The Joint Committee met at 2.40 p.m.

Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála/Deputies	Seanadóirí/Senators
Timmy Dooley,	Tim Lombard,
James Lawless,	Joe O'Reilly.
Michael Lowry,	
Eamon Ryan,	
Brian Stanley.	

I láthair/In attendance: Deputy Stephen Donnelly.

Teachta/Deputy Hildegard Naughton; Seanadóir/Senator Hildegard Naughton sa Chathaoir/
in the Chair.

Business of Joint Committee

Chairman: I remind members and witnesses to turn off their mobile telephones as they interfere with the sound system. I propose to go into private session to discuss a matter that has arisen. Is that agreed? Agreed.

The joint committee went into private session at 2.48 p.m. and resumed in public session at 2.50 p.m.

National Broadband Plan: Discussion

Chairman: I wish to draw attention to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if directed by the Chairman to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Any submission or opening statement they make to the committee will be published on the committee website after the meeting.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I am pleased to welcome the Minister for Communications, Climate Action and Environment, Deputy Denis Naughten, to the meeting. I invite him to make his opening remarks.

Minister for Communications, Climate Action and Environment (Deputy Denis Naughten): Thank you, a Chathaoirligh. I am joined by some of my senior officials who are working on the national broadband plan. Orla Ryan and Ciarán Ó hÓbáin are to my left and to my right are Fergal Mulligan and Pat Neary.

I thank committee members for giving me the opportunity to address them in a discussion of the decision of Eir to withdraw from the procurement process for the national broadband plan. This week I have contributed openly to two debates in the House on the matter as well. Informed debate and oversight on such a project is essential. I am pleased to speak to the committee again today to provide some assurance and certainty at a time when uncertainty has been introduced into the process.

On 30 January, Eir withdrew from the procurement process. Eir's decision to withdraw is regrettable but it was entirely a decision for Eir to make. Eir has reaffirmed its commitment to continue delivery of its 300,000 rural deployment of high-speed broadband connections by the end of this year. The commitment agreement signed with me in April 2017 binds Eir to that commitment.

Some media and other commentary in respect of the Eir 300,000 deployment is misinformed. State aid rules would not allow me to invest taxpayers' money in areas where com-

mercial companies have high-speed broadband infrastructure or are building this infrastructure. From a state aid rules perspective, the Eir 300,000 network must be treated in a manner similar to other high-speed broadband infrastructure in place at the outset of the procurement process.

I wish to make it clear that this commitment agreement was not a decision by Government as it was a private decision for Eir to decide where to invest. However, the procurement process and state aid rules allow for a commitment agreement to bind a commercial company to its private plans.

While state aid guidelines envisage clear milestones being set out in commercial plans, the commitment agreement considerably exceeds those guidelines as it includes not only milestones for delivery but robust monitoring and enforcement provisions as well. In fact, the Commission has been impressed by the extent of this agreement and believes it is a template for other countries to follow.

I hope it is clear from my statement to the House last night that it is not the case that the commitment agreement in some way determined where Eir's high-speed broadband infrastructure was to be built. It was always a matter for commercial companies. The commitment agreement provides strong assurance that planned infrastructure would be built. The commitment agreement set out clearly the quarterly milestones to be achieved.

Another narrative that has emerged is that the procurement process is overly onerous and complex. Of course this is an onerous and complex process as we will be spending hundreds of millions of euro of taxpayers' money to deliver a future-proofed high-speed broadband network.

I have endeavoured to ensure maximum openness and transparency for Members of Dáil Éireann, our national Parliament and the public in respect of the national broadband plan procurement process while respecting the need to protect the integrity of the process itself.

As committee members are aware, I have held three special information sessions for Deputies and Senators in respect of the NBP on three occasions in the past ten months, including an information session to provide an update following the withdrawal of Eir from the procurement process. This week I have supplied each Deputy and Senator with a copy of the letter I received from Richard Moat informing me of this decision. I also supplied a copy of my response. Yesterday evening, ahead of a statement to the House I circulated an updated comprehensive briefing document.

While I cannot and should not be involved in the day-to-day detail of the procurement process, I have been briefed at major milestones by the NBP procurement team. Additionally, at every important stage or point of decision the NBP procurement team could not proceed without my approval or Government approval.

In July 2015, the Government approved the publication of the draft intervention strategy. In December 2015, the Government approved the revised intervention strategy following public consultation and analysis of industry investment proposals. At that time, the Government also approved commencement of the procurement process. In July 2016, the Government approved adoption of a commercial stimulus ownership model. In April 2017, the Government noted my intention to sign a commitment agreement with Eir on the 300,000 deployment and to finalise the map for the intervention area for the remainder of the procurement process. Finally, last December, the Government approved my intention to bring forward heads of a Bill to provide

certainty with regard to conditions of access to existing infrastructure for the national broadband plan and noted my update on the procurement process.

These decision points included detailed rationale, risk analysis and background updates. Government decisions were made on an informed basis. In this way, strong State oversight of the project was maintained. The remaining bidder, Enet-SSE, has already identified its final issues for discussion with the procurement team. The list was submitted some weeks ago while competition remained in the process. I am confident the solutions identified will provide a future-proofed network that will deliver new technologies and speeds as they arise with the best possible value for the taxpayer.

The NBP procurement team are still in dialogue with Enet-SSE. They are confident that the process can continue to move through the final stages and deliver a solution for rural Ireland in a prompt and effective manner. There is no sense in stopping the clock now. We are all agreed on the policy and the initiative. I welcome the opportunity to work together in the final push to deliver for our communities and rural Ireland.

Chairman: Thank you, Minister. I will bring in several members of the committee together. People may wish to bank some of the questions. I will start with my questions.

What guarantee is there that the remaining consortium, Enet-SSE, will not at some stage withdraw from the process? Can you comment on that? What guarantee can you give, Minister, that the contract price will be fair and reasonable now that only one consortium remains? Previously, you allowed Eir to roll out high-speed broadband to an additional 300,000 homes at their own expense. Those households are widely regarded to be the easiest to connect to the network, with the remaining 540,000 being the most difficult. Do you think that contributed to Eir's decision to withdraw from the process? The Minister might comment on those three questions. I call Deputy Lowry.

Deputy Michael Lowry: I welcome the clarity the Minister has given us on a number of issues in the past two days, both in the Houses and here today. I do not see any merit in putting a roadblock in the way of this process at this late stage. I accept there is sufficient oversight and that each milestone has to be approved by the Department officials, the Minister and the Government on the recommendation of the project team. The concern of the members of the public is when they will get broadband. They hear about review groups or committees within committees. We are very familiar in this House with the multitude of groups, committees and taskforces, which are effectively talk shops galore. On this hugely significant venture it is essential that we have decisions, action, an implementation of the policy and that we get on with the job.

I have two questions. Regarding the process, it happens in business every other day that people put in quotations as part of a bidding process and, for whatever reason, they feel free to withdraw. That is the way business works. Obviously, the decision by Eir to withdraw was a calculated business decision. That is for it to make. Regarding the remaining contender, I get the sense that we are within roughly six months of decisions being made. Can the Minister clarify the timescale involved in the decision making process he has in place? In that process, are we near the stage where we will get into exclusive negotiations with one bidder? I presume, in a process like this, that a time will come when the Minister will indicate a preferred bidder and progress the process from that point. In this instance, we are left with one remaining bidder. Has the pricing structure been agreed already with that remaining bidder? What the Joe Soap on the street wants to know is if there is one bidder remaining and if the pricing structure is not

agreed, is it not the case that they can charge what they want? I would like to know where we are in that regard.

Deputy Denis Naughten: To clarify, I believe members were circulated with a note in advance. We have bizarre and archaic rules in this House but they are put in place for good reason. I can answer some of these questions but I cannot answer some of the others because I am not directly involved in this process. The people sitting beside me can answer those but, bizarrely, they cannot answer them in public session because of the rules of the House. How do we intend to deal with that? Does the Chairman want me to try to deal with the ones I can deal with-----

Chairman: Yes.

Deputy Denis Naughten: -----and then the committee might go into private session?

Chairman: Yes.

Deputy Denis Naughten: I just want to clarify that that is the intention.

Chairman: Yes, if the members are in agreement that the Minister will answer the questions he can answer and then, if the committee so decides, we can go into private session.

Deputy Timmy Dooley: Can we get clarity on the rules of the House concerning that? Standing Orders can be set aside by the Chairman, if necessary. I hope we are all responsible. We do not want the Minister to give information that might compromise the work under way. It is clear that we have just one bidder but I do not believe the notion of commercial sensitivity, which is normally one of the greatest concerns he would have, exists in this instance. Some clarity would be helpful.

Deputy Eamon Ryan: I agree that this is a huge concern publicly. It would be far preferable for us to stay in public session. Deputy Dooley is right. If there is a question that cannot be answered because of certain sensitivity, whether the officials direct that through the Minister or whatever way, we are far better off continuing in public session. In terms of the officials not being able to say anything, I find it hard to believe that that rule could or would apply. Obviously, we would be sensible around commercial issues or anything that might be a risk to a tendering process, but I would far prefer us to do our business in public.

Chairman: My advice is that if the officials were invited in on their own, they could speak in public session; it is the fact that the Minister is here. Unfortunately, those are the rules.

Deputy James Lawless: This is ridiculous. We seem to be saying that the officials could speak if they were here on their own and the Minister could speak if he was here on his own, but as a collective they cannot. Perhaps the Minister could absent himself for 20 minutes while we talk to the officials and then come back in.

Chairman: We are-----

Deputy James Lawless: This is ridiculous.

Deputy Timmy Dooley: Can I get clarity, Chairman? I am a Member of this House since 2002. I have sat on various committees and this is the first time I have heard such claptrap. The notion that somehow if the Minister leaves the officials can say something is bonkers.

Deputy Denis Naughten: I think it is bonkers, but those are the rules of the House. It has nothing to do with me.

Deputy Timmy Dooley: I know of no Minister who has ever asserted that as an issue.

Deputy Denis Naughten: As the Deputy knows, I am quite happy to answer as many questions as I can.

Deputy Timmy Dooley: Where did this clarity come from?

Deputy Denis Naughten: The Deputy is asking the wrong desk. The Deputy needs to clarify that with the other desk.

Chairman: Those are the rules on which I have been advised. I suggest to members that we allow the Minister to answer the questions he can answer. At that point we could go into private session or invite the officials to a separate meeting that would be held in public session. I call Senator Joe O'Reilly, and we will then hear from the Minister.

Senator Joe O'Reilly: I want to make two generalities before I ask a couple of questions. First, I thank the Minister for his briefings and the painstaking effort he is making to clarify this issue. That merits acknowledgement. Second, there is not a more important infrastructural project in the country. Nobody here needs to be reminded that for many people it is of extraordinary seriousness.

There are three fundamental questions about which people are concerned. They want to know if they will get broadband, when they will get it, and if it will break the taxpayers because of what happened. Those are the fundamental questions, and everything else is a subset of those questions. I ask those three questions of the Minister but also by what process is he confident that SSE-Enet are tied into a pricing structure? They have stated a pricing structure, and I sincerely hope it is correct. The Minister says they will be tied in because of what they put in at procurement stage and that that must hold. How does he propose to secure that? How does he propose to ensure that SSE-Enet maintain their social mandate and go out immediately to the less commercially profitable areas? Will we have a control over that process? Will the Minister go through his projected timeframe again because that is the one aspect people want to know about, as well as the running cost? If we were to have a hierarchy of concern the first concern is that people get broadband. Will the Minister deal again with the timeframe? Is he confident about it, and why?

Chairman: In respect of what he said, the Minister might answer the questions he believes he can answer.

Deputy Denis Naughten: There are three questions I cannot answer. They relate to the value for money question the Chairman asked and the questions from Deputy Lowry and Senator O'Reilly on the pricing structure and so on.

On the question as to whether Enet will withdraw from the process, I have spoken with one of the key investors in this, David McCourt, who I believe is from Deputy Dooley's part of the country. He is the chair of Enet. He is also the chief executive of Granahan McCourt, which is a major capital investor in this area. Both SSE and Enet believe that, for them, this particular project is very much a role model project so they can secure similar types of project across Europe and the globe. As members know, the Scottish Government has announced it will replicate what we are doing here in terms of bringing high-speed broadband to the islands and highlands.

The state of New York is looking at doing something similar to what we are doing here. The German programme for government, agreed yesterday, is also looking at bringing high-speed broadband to rural communities. The company feels it has an opportunity there as well. It is committed not just to bringing in high-speed broadband but to use it as a test bed to deliver high-speed broadband to other parts of the world.

I was in Limerick yesterday where we opened a new facility for a company called 4site, which has increased the number of people it employs by 20. It has been working with SIRO for the past number of years on its fibre build-out. It has developed a map of the infrastructure build-out for fibre networks in the towns around Ireland. It has secured a major contract in the UK and is in negotiations to secure other contracts in the United States. 4site has done this and Enet-SSE intends to do it on a bigger scale. The decision of Eir to pull out - regardless of whether it was associated with the build of 300,000 - is a commercial decision for the company. Eir is the only body that can comment in that regard. There has been speculation but I have given members the letter I received from the company, as well as my response.

Senator O'Reilly asked if people will get broadband. Yes, they will. Every single home, farm and business will get access to high-speed broadband. There is unanimity across the House, as well as in this committee, on the need to do this regardless of who is in Government. The question is when people will get broadband. When this Government was formed, five out of ten premises in Ireland had access to high-speed broadband. Today, it is seven out of ten and by the end of the year it will be eight out of ten. By 2020 it will be at least nine out of ten and it may be higher. Soon after that, I expect we will complete the work.

Based on the Eir build we are expecting a build-out of 40,000 premises in this quarter. I expect that the consortium, once it has got up and running and addressed some of the teething difficulties, will get up to a similar momentum quite quickly, taking approximately three years. In Cavan, Monaghan, Roscommon and Clare there are some very isolated locations that may take a bit longer to deliver but we expect the vast bulk of the country to be covered in the three-year build-out.

I was asked how we maintained the social mandate to get broadband to rural areas quickly. This is about bringing high-speed broadband to 542,000 homes, the last homes to get it and the most isolated homes in Ireland. There is a State subsidy to make sure it happens. The build-out will be defined in two ways. One way is based on the commercial plan of the company itself, which has stated that it is easier to build from a location outwards. The Department of Rural and Community Development is also engaging with local authorities across the country and with regional action groups. I am determined that this will happen in every county together. Roscommon will not be first, just because it has the highest percentage of people who need the service, and Monaghan will not be second just because it is second on the list. Every county will start together, as has happened with the Eir deployment.

Deputy Michael Lowry: Is it possible for one of the officials to tell us if the remaining bidder is tied into a pricing structure? Is there a danger that, with a sole bidder, the price will escalate?

Chairman: We can go into private session if members agree.

Deputy Michael Lowry: Are the officials in a position to give an answer to the questions?

Mr. Fergal Mulligan: We could provide details.

Chairman: It would have to be in private session. Those are the rules, although I am as frustrated as members with this process. We will ask questions of the Minister now but any questions on pricing or value for money will have to be put in private session.

Deputy Timmy Dooley: I want my questions to be answered in public session and I am not prepared to go into private session. I do not care what kind of musical chairs the Minister and his team have to play to get the answers for me. If the music has to stop, the lights have to go off and somebody has to leave, let us do that.

Deputy Denis Naughten: Let me correct the record. I am quite willing to answer questions and the team is willing to answer any questions. The difficulty is the rules of the House, which I indicated at the start. These are not my rules but the committee rules and we were instructed about them. We are willing to answer as many questions in public as possible. I think it is bizarre that officials cannot answer questions in my presence.

Deputy Timmy Dooley: The Minister can determine whether he stays in the room.

Chairman: The Minister will answer the questions he is capable of answering. I will ask the officials to take note of the more sensitive questions to be answered in private session.

Deputy Timmy Dooley: No.

Chairman: I take the Deputy's point but I am trying to help him and all members. I think we should have a separate meeting with the officials, alone and in public session, and this should happen as soon as possible in the future. We can set that date today and perhaps we could wait until then for the answers. Alternatively, we could go into private session with the officials today.

Deputy Timmy Dooley: Can I get clarity from the Chair? If we remain in public session while the Minister excuses himself from the committee, can we get answers from officials today?

Chairman: No. We would have to invite the officials on their own in order to go into public session.

Deputy Timmy Dooley: I ask that the secretariat provide the legal advice behind this to the various spokespersons on the committee. It seems absolutely bizarre that the Minister and his officials can go to a hotel room close to here and hold a public press conference to share information with the national and international media but cannot discuss this in public in the Houses of Parliament to which the Minister has a responsibility, as do I.

Deputy Denis Naughten: It seems bizarre to me too.

Deputy Timmy Dooley: I will ask the questions and I ask the Minister to do the best he can.

Chairman: I ask the officials to take note of the questions, so that they do not have to be repeated in private session.

Deputy Eamon Ryan: If we go into private session, will the Minister have to leave?

Chairman: No, he can stay.

Deputy Timmy Dooley: Does the documentation to date have a price and a technical solu-

tion? Has the remaining bidder provided a technical solution and a price to roll out high-speed broadband to 542,000 homes across the State? On 30 January, Eir pulled out of the process. I think this is a game-changer, following the decision of Vodafone and ESB to pull out last September. Mr. Richard Moat, the chief executive of Eir, wrote to the Minister and the Minister has provided an awful lot of information to the committee in the past number of days. Despite the fact that there is a lot of information, however, we do not have many answers. In the second paragraph of his letter, Mr. Moat said the decision to exit the NBP process was driven by a range of commercial, regulatory and governance issues that had been repeatedly highlighted over the past 18 months and that this had been consistently noted in discussions on 30 August 2017 and in his correspondence of 17 July 2017. Is the Minister prepared to publish the notes of the meeting of 30 August 2017 and correspondence between himself and Eir on 17 July? This would be helpful for us in understanding more clearly the decisions of Eir.

In the past 18 months, I have repeatedly asked the Minister to publish a timeline, a notional date, Gantt chart or project time to which he is working that sets out the best estimate for signing the contract? Following from that, will he indicate when the work to roll out the infrastructure will begin and when all 542,000 homes will have broadband? While I accept that delays will occur from time to time, thus far, we have had 19 months of delays in the process. The Minister regularly informs me that it is better to get this right than stick to a specific deadline. Now that I and others are seeking to assist him at this juncture, he has suddenly expressed deep concern about the potential for delays. Against what notional timeline is he measuring these delays because he has not yet published anything about it?

On the issue of whether he has confidence in the process, at a press conference after the withdrawal of Eir from the process, the Minister stated, when pressed by a journalist on the potential for the process to fail, that there was contingency planning and a plan B in place. It would be helpful if he were to publish this plan B. Does he accept that the purpose of the intervention of Opposition parties is to achieve the same result as the Minister seeks to achieve, namely, the roll-out of high-speed broadband to 542,000 homes? He must also have doubts as otherwise he would not have a plan B. The Minister and I share the same doubts. I want to call time on the process if there is a fatal flaw that will lead to its collapse. If so, it would be better if we identified now rather than trundling headlong into a roadblock in 12, 18 or 24 months' time and being forced to revert to plan B.

I do not want to get into a discussion about Enet but I will raise a couple of points with the Minister. Rather than refusing to answer questions on this matter, the Minister stated the company is well funded and capitalised, has significant experience and is rolling out broadband to beat the band up and down the highways and byways of the United States. On other occasions, he juxtaposed these claims with a comment Enet needs this project as a test bed and means of improving its credentials to win contracts all over the world. This somehow indicates that he has the company over a barrel because it needs the project more than he does. What is the position? Does Enet have considerable experience which it can bring to the table or does the company view this project as a test bed and some kind of loss leader which will allow it to develop its credentials and move to the next stage? As I stated, it would be helpful if the Minister could answer some or all of those questions.

Chairman: I will ask the Minister to respond after Deputy Stanley makes his contribution. The Deputy should also put any questions he may have for the officials.

Deputy Brian Stanley: I have been patiently waiting to contribute since 1.50 p.m. and I have a good number of questions. If the Chairman bears with me, I will go through them

quickly. Deputy Lowry stated he did not wish to put a roadblock in the way of the process at this point. While I agree with him to some extent, sometimes when one is on a journey, it does no harm to check the map to ensure one does not wind up in the wrong destination or in a cul-de-sac. This is the scenario we must avoid.

The nearest the Minister has come to outlining a timeline was his statement that he expected the project to take approximately three years. In 2016 and 2017, the Minister outlined dates by which he hoped to have the procurement process completed. The 542,000 households and premises in the State, including 25,000 in Laois-Offaly, which do not have access to broadband are anxious to know when the procurement process will conclude. The Minister has 80 officials and experts working with him. He must have a date in his mind. Surely Members of the Oireachtas, who have been elected to represent their constituents and parties, are entitled to know when the Minister believes the procurement process will be completed. At that point, will it take three years to bring the project to completion or, as the Minister stated, to bring broadband to almost every house?

While I do not wish to discuss in detail the history of the process, the Minister and I both know that Enet did not have the necessary firepower. According to the information available to me, the company has only secured significant financial backers in the past year and is relatively small. I do not want to detract from Enet which is probably an excellent company and I wish it well, nor am I having a go at the Minister. I have thought about this issue in private moments. When buying or selling I have never bargained with anybody where only one option was available, especially if the other party believed he held all the cards. I have never been able to adopt that position. If the Department can do so in this case, well and good. Does the Minister have a plan B in the event that Enet withdraws from the process at this point? If so, will he outline it briefly?

On State involvement, which some of the bidders strongly favoured at one stage, we already have the metropolitan area networks and what is known as backhaul fibre. The map I have with me shows an extensive network of fibre that was installed across the country, some of it under public private partnerships. It runs in straight lines to Bantry, Galway and radiates throughout the State similar to the spokes of a wheel. We also have an extensive ESB network with electricity poles in every laneway. As a former employee of the ESB, my view is that the company's decision to pull out of the game impaired the process. The metropolitan area networks are in place in 91 towns throughout the State. The ESB network, the backhaul network and the metropolitan areas network together amount to an extensive infrastructure network in which the State invested heavily. Does this not lend itself to having the State control the main infrastructure?

I asked the Minister a question last night in the Dáil Chamber but the procedure for questions in the House does not lend itself to an exchange of views. Can the Minister impose a legal obligation on companies to maintain current minimum speeds for households which already have a service?

Deputy Denis Naughten: I do not understand the Deputy's question.

Deputy Brian Stanley: Let us say, for example, that I have a broadband service. The download and upload speeds vary in terms of gigabits and megabits. Can the State impose a legal obligation on all the providers to maintain these speeds? Some people have a very poor service.

The Minister indicated he had to allow Eir to cherry-pick. I raised that issue at the first press conference and the Minister and I had an exchange of views on it.

Deputy Denis Naughten: I recall that.

Deputy Brian Stanley: There will be rich pickings in any scheme. If one is picking fruit in a field, some fruit will be ripe and some will be unripe. Companies will naturally pick out the best parts of any scheme. As the Minister will be aware from what has happened in his home county, the companies have picked the easy to reach areas. This impairs the rest of the process and I contend that it was not necessary to allow them to do this. The issue did not arise until Eir informed the Minister and his officials that it was willing to wire up certain areas because these were easy to reach and the process could be completed commercially. While I welcome any house or business that gets it, the problem is it impairs the process for the other 540 premises that are not getting it. Based on the figures, the Minister has stated that by the end of the year, one fifth of households and premises will be without a service but four fifths will be wired up. If that statement is true, that means there are almost 3 million premises and households in the State. There are not. Within the intervention area, 542,000 households and premises remain to be done. That process will not be started by the end of the year. One would have to be well into that process to have 80% completed.

Deputy Denis Naughten: We will have 77% completed by the end of the year.

Chairman: I want to allow the Minister in to deal with those questions.

Deputy Brian Stanley: It will be 70% at best.

Deputy Denis Naughten: We have more than 70% at present.

Deputy Brian Stanley: The figure is 540,000.

Chairman: I thank the Deputy. There are a great many questions.

Deputy Timmy Dooley: May I qualify my previous comment? While I stated I would only take answers in public session, I am happy for the Minister to request that we go into private session for those questions he cannot answer in public.

Chairman: When does the Deputy wish to go into private session?

Deputy Timmy Dooley: When the Minister reaches a point that he cannot answer the question in public session.

Chairman: We will compile all the questions from members and then go into private session at the end of the questions. I think that would be more efficient if members are in agreement.

We have many questions from Deputies Dooley and Stanley.

Deputy Denis Naughten: I will respond to Deputy Dooley now. I agree with Deputy Dooley and do not think the present structure is satisfactory. I refer to the idea of musical chairs or going into private session. There is good reason for standard procedures such as those in the House but it does not really address the issues that Deputy Dooley and I have. I want to try to provide as much information as possible but I would like to provide as much information as possible in public. That is why I have used the mechanism I have used up to now to brief

Members of the Oireachtas on the issue.

The Deputy asked questions on pricing but I cannot answer them. I will ask my officials to deal with them in private session.

Deputy Timmy Dooley: Can the Minister answer my questions on the technical plan?

Deputy Denis Naughten: The officials will also answer that.

The letter of 30 January refers to a discussion I had with Richard Moat on 30 August. During my discussion with Mr. Moat on 30 August, he provided me with an update on the Eir build-out to the 300,000 premises and I can provide the Deputy with a copy of that presentation. Two other issues came up at that meeting. Mr. Moat raised the issue of the ComReg pricing structure for fibre-to-the-cabinet. He pointed out to me that if this pricing structure remained in place, it would jeopardise future investment that would take place in the country because companies, including Eir, but not exclusive to Eir, would not get the opportunity to get a return on the investment they put in. I pointed out to Mr. Moat that this was a regulatory matter, that it was an issue for ComReg and, as I have said before, the appropriate mechanism to deal with that is through the committee because ComReg is answerable to the committee and not answerable to me.

The other issue I raised with Richard Moat was one raised in the House in the past few days, namely, the gap in the build-out in respect of the 300,000 premises. Deputy Sean Sherlock mentioned a location where the fibre was very close to some houses with 12 poles on one side and 12 poles on the other side and asked whether those houses would be part of the final 542,000 premises. The answer is they will. During the discussion I had with Richard Moat on 30 August, I raised a number of issues and gave the example of my own primary school, Ardkeen national school just outside Athlone in County Roscommon, where the Eir fibre roll-out turned at the cross roads about 1 km from the school. I pointed out that there were a number of community buildings and clusters of homes in the vicinity. At another location in Kiltoom, with the exception of five houses, every house along the road was left out.

I made the point that Eir should review this process, particularly where it had not already built out and had only started the build-out at that stage. He agreed that would make sense and that it would make sense at the design stage to try to deal with those issues. I gave a commitment to him, with his agreement, that I would ask the broadband officers across the country to identify these particular anomalies, compile a list and submit them to his office. He agreed that he would ask his team to have a look at that list. This information was submitted towards the end of last year - I am not sure of the date - but Eir is working on that issue at present. Let me double check the figures in this regard. Eir has passed 121,000 of the 300,000 to which it committed, but it has also passed another 11,000 homes that were not part of that number. These are the types of anomalies that had been raised.

Deputy Dooley raised the letter of 17 July, and subject to any redaction needed, I am happy to have that letter released.

Both Deputies Dooley and Stanley asked for my best estimate on timing. The reason I have been very hesitant about putting dates out in the public arena is that everyone present has been embarrassed and frustrated by company press releases promising they would bring broadband to A, B, and C by a certain date but not mentioning the year. We are still waiting in some of those locations for the broadband. I did not want a situation where members of the public

would be told they would get broadband by one date only then to be given a different date, thereby making a joke out of the system. It is a complex procurement process.

The timeline we were looking at, up to 30 January, was that we expected to have the preferred bidder by September and that I would be in a position to go to the Cabinet in that month and name the preferred bidder in that process. As for whether we can truncate that, I think we can truncate it a little and it is my intention to try to ensure we can. There would be a time lag from naming the bidder to actual construction because the preferred bidder would have to negotiate with the banks. I know the European Investment Bank, whose representative I met in Dublin within the past fortnight, is anxious to engage and has been engaging with both Eir and Enet-SSE. Some other investors are looking at bankrolling this project as well and they can now engage at a much earlier stage. That is the reason I have made the point that it will mean shovels in the ground more quickly because we can definitely truncate the second part of the process. I do not know the best estimate on time because the team accompanying me today were to be talking with the consortium this week, but they have been tied up with me on Tuesday, Wednesday and today and will be dealing with me and with broadband next Tuesday and Wednesday. Subject to that work, they will be engaging with Enet-SSE quite soon.

Deputy Dooley has raised the issue of a 19-month delay. As the procurement process has been under way for 25 months, there was never any intention that this procurement process could be done in six months. That was never envisaged.

Deputy Timmy Dooley: For clarity, the programme for Government refers to June 2017 for the signature of a contract with a bidder. The Minister participated in the negotiation and he signed up to it. Now he is saying, and I am using the numbers from last week's presentation, that at best, he is looking at September 2018, for a signature.

Deputy Denis Naughten: No, for a preferred bidder.

Chairman: I will allow the Minister to come in.

Deputy Denis Naughten: To clarify, as far as I can recollect - I do not have the programme for Government to hand - it said we would have a preferred bidder by June 2017 and I acknowledge we did not achieve that date. The timeline now to have a preferred bidder, although it may change, is September 2018.

Deputy Timmy Dooley: It was contract signature, so the mathematics are fairly straightforward in that regard.

Deputy Denis Naughten: I want to try to answer the questions as comprehensively as I can. If I miss one please let me know. Several questions have been asked about plan B. In all procurement processes, particularly where there are services to be rolled out over a prolonged period, all viable options for delivery are considered. The current procurement process for the roll-out of the national broadband plan, NBP, in the State intervention area has been a very robust process with strong risk management throughout, with all scenarios and eventualities having been considered. The process is entering its final stages, with the remaining bidding consortium having reaffirmed its commitment to a successful conclusion of that process. It would be imprudent to pre-empt the outcome of the current discussions and potentially prejudice it by publicly deliberating on other options for alternative delivery mechanisms at this time. That was a note given to me on that subject for obvious reasons.

Deputy Dooley asked me whether Enet has the experience. As I have said consistently

throughout this process, what we are doing to bring high-speed broadband to isolated rural communities has never been done anywhere in the world. Vint Cerf, one of the founders of the Internet came to this city last July and said we were the global leaders in this respect and that were we to succeed, we would be setting the global benchmark for delivering high-speed broadband in rural areas. Since we have started this process, the state of New York in the United States of America, has decided to go down a similar road. Recently, the Scottish Parliament and Government decided to do the same and yesterday there was public coverage of the German Government's decision to go down this road. That is why this is a test bed. We are the first to do it. I gave the example of 4site, which has used the challenges it faced with SIRO in building out the fibre network. No one else has built out a fibre network to the home. We are the first to do this on a large scale. It has been done in some cities, in patches of areas. That is why 4site is expanding and winning contracts on a global scale and that is why Enet believes there is a huge opportunity here. It has experience. SSE owns 15,000 km of fibre and manages 16 data centres in the United Kingdom. Granahan McCourt is involved in several electricity companies and has used electricity infrastructure to provide fibre in certain parts of the United States as well. Enet manages much of the publicly-owned fibre in this country.

That brings me to Deputy Stanley's question about the backhaul map because this is something about which I know an awful lot. I was very much involved in having that map developed in the first place. There had been a bizarre situation in this country whereby the ESB, Bord Gáis at the time, the metropolitan area networks, MANs, and the Irish Rail network each had fibre networks, independently controlled by semi-State companies, but all ultimately owned by the taxpayer. I have definitely been raising this issue for at least 15 years on the floor of the House if not longer - including during Deputy Eamon Ryan's time in the Department - and have been stating that we should bring all those State-owned fibre networks under the control of one semi-State agency. It did not happen. Enet has done that, except for the ESB network. It is my intention to have an overall holding company to have all that fibre and to manage the day-to-day running of the NBP once the contracts are signed. Legislation is promised in this area.

Deputy Stanley spoke about an auction. It is not an auction. It is a competitive dialogue procurement process.

Deputy Brian Stanley: I understand that of course it cannot be an auction.

Deputy Denis Naughten: The Deputy does not. He was there last night when Deputy Canney spoke.

Deputy Brian Stanley: The price is agreed.

Deputy Denis Naughten: Deputy Canney put it very well last night and he is probably one of the few Members who has direct experience of a procurement process. People should read what he said because he articulated it quite well. We did not know at the start of this process what the solution was and the competitive dialogue procurement process is the way to do that. David McCourt has said publicly in interviews that Enet cannot revisit what has been agreed. I will ask the officials to come back with the detail of that.

Deputy Stanley is right that minimum speeds have been a concern for me. There are people in this city, quite close to where we sit, who have very poor or no broadband. There are pockets like this throughout the country. My commitment is to bring high-speed broadband to every single home and premises across Ireland, not just rural but urban as well. We feel the most effective way to deal with that is to have a universal service obligation so that the incumbent,

or whoever is providing the network, would be legally obliged if there are one or two homes or premises that do not have access to it, to ensure they are provided with it. Over the past 12 months, the team and I have been negotiating in Brussels a provision to allow each member state to introduce a universal service obligation for a minimum standard on high-speed broadband. That was agreed in December. Initially, that will probably be at 30 Mbps, 365 days a year, 24 hours a day. Quite quickly, that will increase to 100 Mbps and as demand changes it will go up.

Deputy Brian Stanley: What about the companies and the services that are already there?

Deputy Denis Naughten: That will oblige existing operators to improve their offering to meet that minimum standard as and when it is required. That will be provided for in legislation just as one is guaranteed a telephone line and to have post delivered five days a week. Under the universal service obligation, a minimum standard of broadband will be brought in and will have to be provided.

Deputy Stanley said there was no mention of Eir and the 300,000 premises until the company came to me. That is not the case. I distinctly remember Deputy Ó Cuív on numerous occasions tabled oral and written parliamentary questions on this. The Irish Farmers Association had publicly endorsed Eir in this regard in advance of its formal approach to me on it and I made it crystal clear to Eir that I was not prepared to alter the map on a promise. I needed a detailed commitment agreement because we had all got promises from Eir and Eircom in the past about fibre-to-the-cabinet that did not happen and if we were going to alter the map, I said I needed a binding commitment on that and that is how the commitment agreement came about.

Chairman: I call Deputy Lawless and then I will call Deputy Ryan.

Deputy James Lawless: I will group a number of questions together but I hope to get answers to each one. People are listening to this and they are following the tender and procurement processes, as well as the chronological and regulatory issues. What they want to know, however, is what will happen next and when they will get broadband. I recently spoke about some of my constituents in Kildare North, which is on the Dublin border and is 30 km from Leinster House, who cannot get it. The western parts of Dublin cannot get it, never mind the west coast of Ireland. Therefore, what is the best-case scenario? I mean if everything goes smoothly, everyone is singing and dancing, everything is up to scratch and we hit the ground running in a way that, as the Minister said himself, is even better than had Eir not pulled out, that is, if we hit the ground with the shovels in hand. Will it be in two, three or five years' time that those people can expect to get connections? What is the worst case? We hope that we do not lose our final remaining bidder but, if things go wrong, what is the worst-case scenario? What is the mitigation planning around that?

My second point relates to the legislative framework. I mentioned the EU cost reduction framework in the House the other night. This was transposed into Irish law in July 2016. Has that been used yet? Was it considered? Does it form part of the tender? I hope it does. If he can, will the Minister clarify whether it is part of the tender? It should make it easier and allow legal access to many infrastructure assets that are required to roll it out. It is EU law that is now Irish law.

Deputy Denis Naughten: It is already in law.

Deputy James Lawless: Yes. It was transposed into Irish law in July 2016. I am not sure

if it was utilised or forms part of the framework being used for the tender.

Chairman: I will let the Minister come in after Deputy Ryan speaks.

Deputy James Lawless: I have one more question-----

Deputy Denis Naughten: It is part of that framework.

Deputy James Lawless: Good. The Minister might revert on the first question. My third question relates to who owns the infrastructure. Is it retail or wholesale? Let us say it is Enet, which it appears to be, barring some uncertain and unknown development. If it is Enet, good luck to it. On the infrastructure that is built out and the kit provided to the homes in the intervention areas, will Enet be the only option for broadband in those areas or will there be a wholesale package that Vodafone, Imagine or Eir could plug into to sell it on to the customer?

I also mentioned my fourth question in the House the other day. We are all examining the possibility of having fibre to the home and realise that it is the gold standard, as it delivers up to 1,000 Mbps. Is there now an argument for a phased approach? Have technologies such as fixed wireless been considered at any point? We can already get 70 Mbps with fixed wireless already. I have worked with it in Kildare. We have done this through the private sector in many places in Kildare where they could not get alternatives. The minimum standard in the national broadband plan is 30 Mbps. If I was living in a home in an intervention area and, depending on the answer to the first question, waiting five or ten years to get it, I might be very happy to get fixed wireless as an interim solution. It might be possible to roll that out relatively cost efficiently and quickly. Might that be considered as an interim measure in some of those areas which are at the end of the queue? Even if things go swimmingly well, they might otherwise be waiting several years to get it.

We have spoken about procedures already today and what can and cannot be done. I am a big fan of Bunreacht na hÉireann and a big believer in democracy and sovereignty. I always thought that was a given in the House but I query it now. I believe in the separation of powers and, in particular, I believe in Article 28.4, which provides that the Government is accountable to Dáil Éireann in all its actions. I was a little bit taken aback when I came out of a vote this afternoon to see as a headline on the website of *The Irish Times* that the Government will ignore the vote of the Dáil. Is that correct? Will the Government ignore the vote of the sovereign Parliament? Why? How? Will the Bunreacht be thrown out the window with that decision? Will the Minister clarify the situation?

Chairman: I call Deputy Eamon Ryan.

Deputy Eamon Ryan: I thank the Minister for attending. Earlier the Minister said that one part of the discussions he had with the chief executive of Eir at the end of August related to this critical issue for investment in broadband infrastructure of the county and the regulatory process and how fibre-to-the-cabinet is done. The Minister said that this was a matter for the Oireachtas committee. Did the Minister or his officials contact the committee at the time and suggest that we would consider the issue given it was of real significance for the roll-out of broadband in the country? Did we get correspondence in that regard?

I am glad that the Minister is agreeing to the sharing of one of the earlier correspondence letters regarding Eir's discussions with the Department. I do not want anything to be done that would interrupt the bidding process but will the Minister make available all the correspondence he has had with Eir on the scheme? The Minister has already shared the letter that he wrote

last week and has willingly agreed to further correspondence being shared, but we need all the correspondence between Eir and the Minister or his officials to enable us to get a proper picture. The Minister said that the approach in terms of the commitment project in respect of 300,000 houses was agreed last summer.

Deputy Denis Naughten: April.

Deputy Eamon Ryan: It was not a new approach. Eir had made the approach on previous occasions. As the Minister said, it was public in terms of Deputy Ó Cuív and others. In the correspondence, the Minister says that it was not a political decision but a commercial decision. He said that he could not interfere under state aid rules and had to just accept it. The state aid rules argument falls apart because he is saying that he cannot subsidise what would be a commercial venture but by taking out those 300,000 we have now clearly seen, with the loss of the two bidders, that it is not a commercial proposition. It could not be argued under state aid rules that including those was an unwarranted subsidy because the commercial case for this is now clear. I do not know if it said it publicly but it is common knowledge that the reason the ESB pulled out is that once those 300,000 premises went, the commercial case vanished. Therefore, it was not a European Union state aid rules reason and it was not a commercial reason but a political decision to take out those 300,000 houses. Previously it had been refused and the Minister changed the political response by saying it would be allowed. To say to us that it was great because we got a promise that they would be delivered or that there would be commitments around it is not really the issue because it appears as though withdrawing those 300,000 houses from the scheme has undermined it. Therefore, when did Eir first approach the Department looking to take out the 300,000? What was the Department's response and what changed last April to allow it happen?

The scheme was designed so that we would have two awards with two different contract areas. What was the reasoning for that? While this would mean there would be competitive tenders and difficult technologies and solutions might be tried, I presume one of the main reasons is that it would allow performance to be tested. It would be a useful way of testing performance. How will we now test performance? Eir will still be providing all the poles on which Enet's fibre will hang. How will we know whether the delivery is up to speed? We cannot look at upstate New York or Germany or wherever else the Minister mentioned because the Irish countryside is different from New York's. How are we to know? How will we have a control on Eir? It might say that the poles are fine and no investment is needed in new poles. How is anyone to know? What performance test do we have if we do not have two separate roll-outs as originally designed?

Will the Minister explain the agreement where Eir gets €20 a pole? Is that for 25 years? Is it index linked? Did that influence its decision to pull out? It got its money, a guaranteed cheque of €40 million or €50 million per year. When was that agreed?

Chairman: We might get the Minister's reply before moving on to Senator Lombard and Deputy Donnelly.

Deputy Denis Naughten: Perhaps Deputy Lawless was not here when I mentioned timelines. We expected to have a preferred bidder by September and we expect that the vast majority of the build-out will be completed within three years. That is the timeline we are looking at. The Deputy asked about Enet and whether it is a retail or wholesale operation. Enet is a wholesale operation and this contract is for a wholesale operator. The entity that wins this cannot retail the product. The intention, and I do not see why it could not become the reality, is for

the range of existing commercial operators retailing to the public providing an offering on that. That is the most likely outcome. From my discussions with people in the industry, I know they are anxiously awaiting this because they believe there are major opportunities for them.

The Deputy asked about a phased approach in the build-out of fibre versus fibre to the home. This was a technology-neutral competition and there was a competitive tender dialogue process to formulate the best long-term solution. It was the right way to go. The national broadband scheme brought 3G mobile services to rural areas but the day it went live, it was obsolete because technology had moved on. In this process we are bidding to get a solution that meets the requirements for the next 25 years and beyond. It is a question I asked of Mr. Vint Cerf when I invited him to Dublin during the summer. I was concerned that in five years there could be some fabulous solution that is even better than fibre but Mr. Cerf made it quite clear to me there is nothing faster than light. At that stage there was commercial roll-out of 10,000 Mbps using fibre. I understand from some of the experts in the field now that one can even get up to 40,000 Mbps. The box at either end of the cable may have to change but the cable itself will not. It is the only future-proofed solution.

Deputy James Lawless: There was the key question of sovereignty. Why would the Government ignore a vote of the Dáil?

Deputy Denis Naughten: Yes. It was put quite well by the Deputy's party leader yesterday when he said that when Dáil Éireann votes in a majority on a substantive matter like this, there is a responsibility on the Government to consider it. I did not speak with a reporter from *The Irish Times* and I have not ignored any decision made by Dáil Éireann to date. I will absolutely consider the decision made today. It is not my intention to ignore the Dáil in this regard.

Deputy James Lawless: The Government has not made a decision on the Dáil motion today. I presume the Government will meet next week and make decisions based on that.

Deputy Denis Naughten: The Government meets every week. This only happened this afternoon and I have been here at the committee meeting since.

Deputy James Lawless: It is good news that it is to be considered by the Government.

Chairman: We can come back to the Minister about it.

Deputy Denis Naughten: Deputy Eamon Ryan asked about correspondence. I am quite happy to release any public correspondence but I do not have a role in releasing any correspondence on the procurement process so I cannot do that. I cannot recall any correspondence from Eir regarding matters of commerciality. I have absolutely no difficulty in releasing any of the correspondence or notes arising on foot of meetings I have had. Whatever is there, I have no issue with it being released.

What was the Deputy's first question?

Deputy Eamon Ryan: It was about regulatory control to the boxes.

Deputy Denis Naughten: It would be inappropriate for me to raise that with the committee. It would be a matter for Eir and I advised Mr. Richard Moat of the point that he should write to the committee about his concerns. He wrote to me but the matter is outside my remit. The Deputy might correct me as he was in the same role but I do not see it as appropriate for the Minister to write to the committee about something outside his remit. I advised Mr. Moat at the

time that he should make direct contact and pass correspondence to the committee.

There has been some insinuation that there is a political decision being taken in respect of the figure of 300,000. I can categorically say there was no political decision taken on the matter. To put it very mildly, I was very hesitant about altering the map without clear black and white commitments from Eir, purely because I am a Deputy from a rural constituency and I have been for a number of years. I have had plenty of promises regarding broadband coming, as have all my rural colleagues, and I made my views quite clear to Eir. I will ask the procurement team to come back and speak about the procurement engagement and the areas mentioned by the Deputy. There was detailed engagement with the European Commission on this. The officials beside me engaged with the Commission and I will ask them to speak on that as well.

On access to infrastructure, the €20 per pole is the current regulated price for access to infrastructure. Normally, it is a three-year to five-year contract. The price is set for three to five years. We are entering into a contract over 25 years and we need to have guaranteed access over that time to the infrastructure and clarity on the pricing over 25 years. That has not been set but I proposed and got approval from the Government to bring forward infrastructure access legislation. It will come before the committee and the intention is that it will provide clarity on access.

Senator Tim Lombard: This debacle has been ongoing since 2012. Announcements were made at that time and since. I thank the Minister for his comprehensive report to date, particularly to this committee. We have seen vast numbers being quoted, particularly in the 300,000 bracket, in the past few months. The figure issued by the Minister is 121,000, with an extra 11,000 that have not been included to date. Will the Minister give dates as to when the 180,000 locations in the 300,000 bracket are proposed to be connected? The cohort of people affected would be concerned by the announcement and these people need to know where the clarity will come from.

The matter of a 25-year contract and negotiations are exceptionally complex in a legal sense. Does the Minister have a view that there are more roadblocks ahead in this process? Is he fearful that more matters may materialise? When all of this is finished, will there be a need for European approval or sanction to ensure the contract comes about?

Chairman: I thank the Senator for his brevity. Deputy Donnelly is welcome.

Deputy Stephen S. Donnelly: I may be less brief. I am sure the Minister is aware that the Irish people pay the third highest prices for broadband in the European Union. Only Luxembourg and Malta pay more than we do. We rank 22nd in terms of the quality of connection so we have one of the highest costs to the public and a really poor service. I believe this is largely due to the monopoly activity of private sector operators in the market coupled with a history of weak regulation by the Irish State. The national broadband plan was an admirable and visionary plan but the State has been led a merry dance by private sector operators. I hope I am wrong but my prediction is that based on what has happened, what is happening and the direction the Minister seems intent on taking this, for the next 25 years the Irish people will continue to be fleeced on broadband prices.

With regard to the process, originally, there was a map of the country with blue and orange areas. We were told that the blue areas, which were generally the urban areas, were already covered by private operators and would be completely filled in by private operators by the end of 2016. That is what it said on the Department's web page. That then changed. I looked it up

the other day when I heard that Eir had pulled out. It no longer says that urban areas will be covered by commercial operators by 2016. It talks about where commercial operators are delivering or have indicated plans to deliver high-speed broadband services so there are no dates anymore. So now the test for urban areas is that some private operator must have stated that it has a plan to deliver to that area. I will read out a response from Eir to a Fianna Fáil councillor in Greystones about an estate in Greystones in a blue area. Eir stated there were no plans at that stage of which it was aware to deliver enhanced broadband to this area. We have gone from the private operators getting this finished by 2016 to the private operators at least being obliged to have a plan to do this at some point in the future to the private operators, or at least Eir in this case, writing to a public representative saying it has no plans to do this. That is what is happening on the ground today.

We then got the news last year that what Eir had actually done was go through the country on a house-by-house level so anyone who pulls up the national broadband plan will see all of these light blue areas, the 300,000 premises that Eir will do. They are not big geographic chunks. Eir has gone up roads. It has gone up this road and that road. Interestingly, we will have to connect a lot of the bit that is left through Eir. My understanding is there is now a big fight happening because Eir wants to charge a heap of money for the bit that is left, that is, for those data to go over the bit Eir said it is going to do. My understanding of reports at the time was that Eir running away with these profitable bits increases by several hundred million euro the cost to the State because we are left with the least profitable and most expensive pieces. I do not know whether Eir will do it but it appears it can now sit like a troll on a bridge and demand rent from every consumer who must pass over its network and indeed demand rent for the poles, which it has been doing for many years.

The result of all of this is that, obviously, we have one bidder left so by definition, this is no longer a competitive tender process. There is no competitive tension left in this at all. Eir has taken a big chunk of it - the profitable piece - and it appears Enet will do the other piece so what is essentially happening is that we are moving from a monopoly network, which means the Irish people have been screwed for years on price and we all know this, to several localised monopolies, one of which is owned by Eir. I will read from an article in the *Irish Examiner* on this matter. I would be interested in getting the Minister's thoughts. The article stated that Eircom had racked up €4.1 billion of gross debt through five ownership changes in 13 years - and, of course, we have just had another ownership change - before it was forced into the State's largest ever examinership filing in 2012 resulting in €1.8 billion of its borrowings being written off and a band of its most senior lenders led by US investment giant Blackstone seizing control of the business. The article states:

In the interim, the company, or what was left of it, has had many owners who, as short-term investors do, asset stripped with abandon. The company was entangled in almost insurmountable debt. Its broadband service, especially in rural areas but in many suburban areas too, was - and often still is - hopelessly inadequate despite being among the most expensive in Europe.

In an article in *Silicon Republic*, John Kennedy states that “needless to say, it came to naught, and what followed was a decade of asset-stripping by various owners of post-IPO Eircom; failed and dashed investments in a promised brave new age of deregulation.” So that company has just taken ownership of these 300,000, and in my opinion, has been allowed to do so by the Government. That is very worrying. The Minister's response has been that this is great news because it is accelerating the connection to houses but he never talks about price. That is Eir.

The second monopoly provider is Enet. I am not alleging that Enet has done anything wrong but I am alleging that the Government is doing something wrong because in the past hour, I received a response from the Department to a parliamentary question I tabled. It specifically concerned the FOI request that Gavin Sheridan submitted. What Gavin Sheridan sought was the concession agreement between Enet and the Government. In other words, the Irish people already pay Enet to operate a fibre network that was put in the ground with European money many years ago specifically to deal with rural areas that the market would not get to - in other words, a small version of what the Minister is about give Enet now. I submitted a parliamentary question to say I was very perplexed by this because Gavin Sheridan put in his FOI request asking to see the concession agreement and the Department refused. Mr. Sheridan then appealed the decision to the Office of the Data Protection Commissioner and the commissioner told the Department it needed to release the information because it is public interest and does not violate commercial sensitivity. The Department, or the Government, took the extraordinary step of appealing that to the High Court, which ruled in Gavin Sheridan's favour and said there is public interest to be served and commercial sensitivity does not cover this. The High Court ordered the Department to release the concession agreement - Enet's agreement with the State - to Gavin Sheridan. The Department then took the extraordinary step of appealing the High Court's decision to the Court of Appeal, which, coincidentally, is not scheduled until February next year - long after Enet will have signed up to its new contract.

I submitted a parliamentary question to the Department a few days ago in which I asked how many FOI requests had been received by the Department since 2010 and of those, how many it had brought to the High Court or Court of Appeal. How often in the past eight years has the Department gone to court to stop anyone finding anything out? The Minister probably will not be surprised to find out that the answer is that of the 799 FOI requests submitted to his Department over the past eight years, the Department has gone to court once and that was to protect the Enet concession agreement. Does the Minister think there is a case to answer here where he and this Government have gone to court once after receiving over nearly 800 FOI requests over eight years to protect an existing agreement between the State and Enet, which the court has ruled the Department needs to release? Yet the Minister is asking Parliament and the Irish people to trust him in signing up to an even bigger version of the same contract with Enet. Does the Minister think that is reasonable? In the context of asking Parliament and the Irish people to trust that the Minister will do a great deal with Enet, will he now obey the order of the High Court and release that information to Gavin Sheridan so that we can see what is happening? Does he accept that creating these monopolies constitutes a serious risk to the future pricing for Irish business and domestic consumers over the coming years?

Chairman: There are a number of questions there from Senator Lombard and Deputy Donnelly.

Deputy Denis Naughten: As Deputy Donnelly knows, I cannot comment on stuff that is before the courts. There are probably questions over whether it should be discussed here but I will come back to that in a minute.

I can inform Senator Lombard that in the commitment agreement it signed with me, Eir gave a commitment to deliver broadband to approximately 179,000 premises before the end of this year. It has said in the correspondence that is in the possession of the joint committee that it will fulfil that commitment agreement and will deliver on the 300,000 homes and premises by the end of the year.

The Senator also asked about the roadblocks that are ahead. I have been trying to pre-empt many of these roadblocks through the mobile phone and broadband task force. Many of the roadblocks will arise during the physical roll-out of the infrastructure. We have done a great deal. We have appointed a broadband officer in each local authority. We are currently considering whether to ramp that up to a broadband office in each local authority. We have streamlined the licensing process. We have a uniform standard for road reopening and reinstatement. We have completed ducting across the country on the Transport Infrastructure Ireland national road network. I do not know whether there will be other roadblocks. I hope not. I am very engaged with the industry. We are trying to deal with these issues in a proactive manner.

Deputy Lawless, who has proposed legislation in this area, also raised a number of issues. I am quite happy to try to facilitate any proposals that deal with the roadblocks as we draw up the infrastructure access legislation and bring it through the House.

I was asked whether EU approval is needed. Approval is required from the perspective of State aid. We have been very engaged with the European Commission throughout this process. As I said in my opening remarks, the Commission believes the commitment agreement we have with Eir could and should be replicated by other member states. The Commission is quite impressed by the standard we have achieved in this respect. Maybe I will ask my officials to come back to the committee on this in further detail because they deal with the Commission on a regular basis. The reason for the detailed level of engagement with the Commission is to ensure this can quickly go through the formal process of state aid approval. Our objective is to get moving on it quite quickly.

Deputy Donnelly raised the issue of cost versus service in the context of weak regulation. It is absolutely the case that cost versus service is an issue. The Deputy is aware that these issues are regulated. I am quite happy to look at any recommendations that will come from the committee regarding regulation in this area. I think there is legislation coming forward on ComReg and on regulation in general. We are quite happy to look at any constructive suggestions that may be made in this regard. As I said earlier, I advise and encourage the committee to invite representatives of ComReg to come before it so that these questions can be put to them.

Deputy Donnelly spoke about the blue, amber and light blue areas. As he knows, I have encouraged colleagues formally, informally and on the floor of the House to raise anomalies within the blue area. I emailed the offices of all Deputies to ask them to highlight anomalies within the blue area. A number of colleagues did so and I thank them for their input. The individual who is responsible for the map is Mr. Pat Neary, who is sitting beside me. Maybe he can go into further detail when he gets an opportunity to do so in a few minutes. We have changed from dark blue to amber any area or house that was not getting or would not get a minimum of 30 Mbps. As I said earlier, our intention is to bring high-speed broadband to every home and business in Ireland, both urban and rural. The gaps will have to be addressed. We have made provision within the contract to allow for that. We also believe the universal service obligation will deal with many of these areas.

Deputy Donnelly suggested that the light blue area has been compiled on a house by house basis. I can inform him that it has been done on a postcode by postcode basis. I refused to sign the commitment agreement until I got a list of postcodes across the country to which Eir was committing to provide high-speed broadband. I did not want to say we were going to do 300,000 because people would have wanted to know whether we were going to do 150,000 in Laois while other places were left high and dry. We have a list that has been compiled on the basis of postcodes. Just over 300,000 postcodes were presented to us.

It will not be the case that people will have to pay for the data over that fibre. It will be part of the whole procurement process. I will ask the officials who are with me to deal with that in a few minutes.

Deputy Stephen S. Donnelly: I want to make sure I understand the Minister correctly regarding the light blue areas that Eir will now own. Is he saying there will be no revenue stream to Eir from the orange areas, where data has to cross over the light blue areas?

Deputy Denis Naughten: I will ask the officials to deal with that in a few minutes.

Deputy Stephen S. Donnelly: Okay. I thank the Minister.

Deputy Denis Naughten: It is part of the overall procurement process.

The question of access to the physical infrastructure, such as poles and ducts, will be covered in the infrastructure access legislation that we intend to introduce and about which I spoke a few minutes ago. That legislation will provide clarity for the next 25 years in relation to this issue.

As members are aware, I have no role whatsoever with regard to freedom of information requests. I am sure everyone here will verify that when I was appointed as Minister, I told all the senior staff within the Department that I wanted as much information as possible to be released to colleagues, either through direct requests or parliamentary questions. I did not want to see people having to wait for responses to freedom of information requests to get information. I know that a number of colleagues have had individual briefings on this issue and other issues within my Department. That is my approach. That is why, when Deputy Eamon Ryan asked me earlier to release information regarding the engagements with Eir, I said I was very happy to do so. That is why I released the correspondence between me and Mr. Richard Moat. That is why I gave Deputy Dooley a commitment on the two dates for the release of the available documentation regarding the correspondence of 17 July and the note of 30 August that I received from Mr. Moat.

Deputy Stephen S. Donnelly: I would like to ask a final question.

Chairman: Very briefly. I am very conscious of the time.

Deputy Stephen S. Donnelly: I am asking this specific question in the context of Enet being the only bidder left. Why is the Minister appealing the High Court decision to release the concession agreement?

Chairman: That is a legal matter.

Deputy Denis Naughten: As I said to the Deputy at the outset, this matter is before the courts.

Chairman: It is a legal matter.

Deputy Denis Naughten: I ask for direction from the Chair in this regard.

Chairman: Absolutely.

Deputy Denis Naughten: Deputy Donnelly got a free run-----

Chairman: Definitely. I agree.

Deputy Denis Naughten: -----on a matter that is currently before the courts.

Chairman: We cannot discuss any legal matters.

Deputy Denis Naughten: The Deputy knows that under the Constitution, I cannot get involved in that.

Deputy Stephen S. Donnelly: Sorry, Chair-----

Chairman: Sorry, Deputy, you are completely out-----

Deputy Stephen S. Donnelly: That is not true.

Deputy Denis Naughten: It is true.

Deputy Stephen S. Donnelly: It is not.

Chairman: We cannot discuss these legal matters.

Deputy Denis Naughten: I cannot interfere in matters that are before the court.

Deputy Stephen S. Donnelly: Of course the Minister can discuss legal matters.

Chairman: I thank the Minister. I think he has clarified his position on answering these questions. I put it to the committee that we have the option of going into private session to get answers to certain questions from officials. Another option is to reconvene at 10 a.m. next Thursday to have the same meeting in public session. This would allow members to get answers from officials in public session. Would members be agreeable to that, rather than doing it in private session now and having to ask the same questions again in public session next week? I presume members want to have the answers recorded in public session. Would members be agreeable to having an additional meeting at 10 a.m. next Thursday to get answers from the officials?

Senator Joe O'Reilly: Yes.

Deputy Eamon Ryan: The only difference would be that the Minister would not be in attendance.

Chairman: Yes. Members will get answers to questions they have asked that the Minister has been unable to answer today. I think it would be important to have that on the public record, rather than doing it in private session. Would members be agreeable to that?

Senator Joe O'Reilly: Yes.

Chairman: Agreed. Okay, we will have an additional meeting in public session on Thursday at 10 a.m. On behalf of the committee, I thank the Minister and his officials for attending this afternoon's meeting. I propose that the committee publish the opening statement received on our website. Is that agreed? Agreed.

The joint committee adjourned at 4.30 p.m. until 5 p.m. on Tuesday, 13 February 2018.