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Joint Committee of Inquiry into the Banking Crisis

Section 25 Statement of

Alan Dukes

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Response by Alan Dukes to evidence given by Minister Michael Noonan TD to the Joint Committee of Inquiry into the Banking Crisis on 10 September 2015.

I have read the transcript of Minister Noonan’s evidence to the Joint Committee of Inquiry into the Banking Crisis on Thursday 10 September 2015. Certain parts of his evidence seem to me to be based on an inaccurate interpretation of events. I wish therefore to make the following observations for the record.

“Going concern” or wind-down.

At p.129-130 of the transcript, Minister Noonan is quoted as saying:

“So, the chairman and the chief executive of IBRC constantly talk as if IBRC were a going concern. IBRC was a bust bank and we were getting pressure from the European Central Bank and from the troika to start paying back some of the ELA.....”

At p.130, he is further quoted as follows:

“But I think the big misunderstanding was for some unknown reason, I think the chairman and the chief executive had an idea that they could trade Anglo Irish Bank into being a solvent bank and it was clear as crystal that that was Mission Impossible and we had to start getting market value for certain loans and paying down ELA...”

The Minister produced no evidence to justify these statements, which inexplicably overlooked a number of material points.

The term “going concern” has a very specific meaning in the context of discussion of the activities of the post-nationalisation entity of Anglo Irish Bank/IBRC. Up to the point of liquidation in February 2013, all of the Government’s policy decisions required the retention by Anglo Irish Bank/IBRC of a banking licence. That, in turn, required annual confirmation by the auditors that the entity continued to operate on a “going concern” basis. That of course required massive support in the form of ELA and Government guarantees. The essential point is that the maintenance of a “going concern” status was essential to the avoidance of major financial and legal difficulties. The Minister’s comments completely ignore that key factor.

The decision to wind down the bank was inherent in the restructuring plan approved by the European Commission in January 2011. One of the central features of that restructuring plan was a prohibition on new lending by the bank, except for strictly limited amounts to existing customers to assist in restructuring their businesses and/or in order to facilitate refinancing by another institution. The concept of Anglo Irish Bank as a continuing part of the Irish banking system had already been rejected by the European Commission before Minister Noonan took office as Minister for Finance. Thus, even before the formation of the current Government, Mike Aynsley and I (and the management and board of the bank generally) had abandoned that idea that we “...could trade Anglo Irish Bank into being a solvent bank...” in the sense which the Minister seemed to intend to convey. Some senior officials in the Department of Finance seem to have been unable or unwilling to understand that and it seems clear to me that they accordingly misinformed the Minister.

The Government formally decided in March 2011 that the bank should be wound down over a ten-year period. After careful consideration in the bank, I personally proposed a wind-down schedule for the ten-year period at a meeting on 12 May 2011 which was attended by senior officials of the Department of Finance, of NTMA and a consultant employed by McKinsey (engaged by the Department of Finance). The schedule which I proposed was agreed. For the sake of complete clarity, I informed the meeting that the bank was of the view that, with a slightly increased level of performance risk, a somewhat more rapid schedule could be put forward. The Department of Finance representative made it clear that he did not wish this to be done. When, some months later, I reminded him of this in Minister Noonan's presence, he claimed to have no knowledge or recollection of such a proposal.

The wind-down schedule proposed by the bank and accepted by the authorities here was accepted also by the European Commission. The progress of the wind-down process was regularly reviewed with the Department. While the 2012 Relationship Framework required the board to identify opportunities to accelerate the wind-down process in a manner which respected the need to maximise the return from the assets, the Department did not at any point convey any explicit instruction from Minister Noonan that the process should be accelerated. All major disposals, both before and after the wind-down decision, were flagged in advance to the Department. When disposal opportunities arose which brought the process past the relevant disposal schedule point, these were flagged to the Department and there was never any objection. As far as I am aware, the only public reference Minister Noonan has ever made to accelerating the wind-down of the bank was in his statement to the Joint Committee of Inquiry (p.78 of the transcript of the Minister's evidence) when he referred to:

"...the appointment of a special liquidator to IBRC to accelerate the winding down of its business operations...."

This is more than a little disingenuous: the acceleration was an inevitable consequence of the liquidation rather than an aim.

Minister Noonan appears to have overlooked the fact that I personally assured him during the course of several conversations in his office that the board and management of the bank were completely committed to the wind-down process.

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Deputy Pearse Doherty put a question to the Minister about remarks made by Mike Aynsley to the effect that an official of the Department of Finance claimed that the Minister would prefer that the bank realise €100 million less for an asset rather than sell it to a named individual (p. 100-101 of the transcript of the Minister's evidence). In reply, the Minister stated:

"Yes, I read the comments made by Mr. Aynsley in the newspapers. I didn't know what he was talking about. It sounded like dúirt bean liom go ndúirt bean léi to me."

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Sale of US loan book.

Minister Noonan's remarks about the sale of the US loan book were rather dismissive. At p.130 of the transcript of his evidence to the Joint Committee of Inquiry he is quoted as saying:

Now, I also saw in some of the documents that Mr. Aynsley said: "Ah, we might have got 100 million more". I don't know whether he is talking dollars or euros, but we might have got 100 million less as well. The American market wasn't...was bouncing around a bit at that stage, but it was recognised internationally as a huge successful sale..."

The background to the sale of the bank's US book is important. It had become abundantly clear by the summer of 2010 that the bank's US operations should be disposed of. The bank had been advised of the prospect of some movement in the US market and so had begun the process of evaluation for the sale of the US assets in October 2010. I believe that the Department of Finance was made aware of this. The results of this evaluation were received in March 2011 and were reported to the Department. The analysis showed that the market was positive and capable of taking the assets, with the best return likely to be realised by a disaggregated process. During the course of the preparations for the sale of the assets, the bank was informed that the Minister wished the sale to be conducted in a series of portfolios in order to accelerate the process with a view to producing cash to reduce reliance on ELA. While we took the view that a better return would be achieved by a disaggregated process, we accepted the logic related to ELA and acted accordingly. A Ministerial Order signed by Minister Noonan was required to avoid the possibility of a breach of the provisions of the restructuring plan agreed by the European Commission. In passing, I should say that we had a disagreement with the Department of Finance about the governance procedures we put in place for the process. The Department wanted a lighter system but we insisted on an additional layer of oversight to protect the bank against possible conflicts of interest. I believe that the results vindicated our views. As the Minister himself observed to the Joint Committee of Inquiry, the process "*.....was recognised internationally as a huge successful sale....*"

As we came to the final stages of the bid process, we informed the Department of the range of outcomes we expected. There was no reaction, other than that the information was noted. The Department declined our invitation to participate in observing the final decision-making stage of the process. When we conveyed the outcome of the process to an official of the Department with our recommendation to the Minister for acceptance, I was wryly amused to receive a reply to the effect that the recommendation was approved on the basis that it was in line with "the target set by the Minister".

Loans to the value of approximately €1 billion fell out of the process for various contractual reasons. Subsequent realisations from the individual sales of those loans were superior in terms of their ratio to the original face values to those from the portfolio sales.

Conclusion.

With the sole exception of his remarks in the Dáil when proposing the bill to liquidate the bank in February 2013, the Minister's public references to the bank have tended to be negative. At one point, indeed, he used the words "criminality" and "wrongdoing". I believe that this is largely due to unjustified hostility or a plain lack of comprehension on the part of current and former senior officials of the Department of Finance who lacked the understanding and the capacity to use constructively the abilities of a group of people who took on a difficult and challenging task and who served the State well. The evident hostility of those same officials, revealed in FOI responses without any context-setting, has led to a succession of serious allegations by Deputies acting on unsubstantiated claims made by anonymous sources. These, in turn, have led to the constitution of a Commission of Investigation which looks set to produce not a little procedural embarrassment for the Government even before it can get down to its real work, with which the board members will fully co-operate.

Alan Dukes.
12 October, 2015.