

Appeal No. VA90/3/069

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Telecom Eireann

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: "Right to install and operate pay phones" at Map Reference "R 1" at St. Stephen's Green Shopping Centre, Royal Exchange B2 Ward: County Borough of Dublin

B E F O R E

Henry Abbott

Barrister Chairman

Padraig Connellan

Solicitor

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF AUGUST, 1991

By notice of appeal dated 28 September, 1990, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £32.00 on the above.

In the Notice of Appeal form under the heading description of hereditament the appellant stated that "The appellant is not seized in law or in equity of any hereditament. The location of the apparatus (consisting of public telephone equipment) is at the St Stephen's Green Shopping

Centre which is not owned or occupied by the appellant and in which the appellant has no interest". The grounds of appeal as set out in the Notice of Appeal are as follows;-

- (1) The appellant does not have exclusive occupation of any site on which the apparatus may be situated.
- (2) That the apparatus is situated at the site exclusively at the will of and subject to the direction of the occupier of the site. This situation may be at any time determined in circumstances which give the appellant no right, either in law or in equity, to challenge that determination or to seek damages in respect of it or to seek relief against forfeiture.
- (3) That there is no occupation of any kind by the appellant of any portion of the St Stephen's Green Shopping Centre.
- (4) That there is no exclusive occupation of any kind over the St. Stephen's Green Shopping Centre.
- (5) That the St Stephen's Green Shopping Centre has already been assessed for rates on a basis which included the entirety of the Centre which is thus in the exclusive occupation of the appropriate rated party in that regard.
- (6) That any assessment for rates in respect of the apparatus would amount to a double assessment.
- (7) If the apparatus is to be assessed as machinery then same is not assessable for rates because it does not produce motor power.
- (8) The apparatus does not comprise a rateable entity.
- (9) If (which is denied) there is any occupation of the site of the apparatus on the wall of the said Centre which is not inclusive to the occupation of the Centre by the appropriate rated party then the said occupation is in the public using the Centre and the apparatus is installed for the convenience of the public and is thus exempt.
- (10) That the Commissioner of Valuation erred in law and in fact in including in the apparatus he was proposing to assess the fixtures and fittings surrounding the said apparatus.
- (11) That the Commissioner of Valuation erred in law and in fact in considering that the fixtures and fittings in the vicinity of the said apparatus was the property of Telecom Eireann or was installed by Telecom Eireann or were fixtures and fittings in respect of which Telecom Eireann had any right of any kind.

- (12) That the assessment is wrong in law in failing to comply with the provisions of Section 5 of the Valuation Act, 1986.

Valuation History

In 1989 the Rating Authority listed the St Stephen's Green Shopping Centre for revision to value Shopping Centre and ancillary developments known as Stephen's Green Centre.

The telephone kiosks were valued and entered in the valuation lists as follows;-

<u>Map Ref</u>	<u>Occupier</u>	<u>Imm Lessor</u>	<u>R.V.</u>	<u>R.V.</u>	<u>Buildings</u>	<u>Railways,</u>
					<u>etc.,</u>	<u>Fisheries</u>
						<u>Tolls & Co.</u>
216	Telecom Eireann	Firmount Ltd	£60	----		

The valuation was appealed to the Commissioner of Valuation. Having considered the report of the Appeal Valuer the Commissioner altered the entry in the valuation lists as follows;-

<u>Map Ref</u>	<u>Occupier</u>	<u>Imm Lessor</u>	<u>R.V.</u>	<u>R.V.</u>	<u>Buildings</u>	<u>Railway</u>
						<u>Fisheries</u>
						<u>Tolls & Co.</u>
R.1	Telecom Eireann	Firmount Ltd	----	£32		

It is against this rateable valuation that the appeal now lies with the Tribunal.

Written Submissions

A written submission was received on the 6th February, 1991 from Mr Patrick F Cooney, B. Agr. Sc., a District Valuer in the Valuation Office on behalf of the respondent. In this precis Mr Cooney outlines the hereditament and the valuation history of the subject. Mr Cooney divides his precis into two sections, the first of which deals with whether the hereditament is rateable and secondly if rateable, the amount of rateable valuation which should apply to the subject.

With regard to the rateability of the hereditament Mr Cooney said that there are two questions which have to be addressed viz

- (a) Is there a rateable hereditament, and
- (b) Is there rateable occupation.

With regard to the first question he said that the following statutory provisions apply; Section 63 of the Poor Relief (Ireland) Act, 1838, and Section 12 of the Valuation (Ireland) Act, 1852. He refers to "The Law of Local Government in Ireland" by Mr Justice Ronan Keane at pages 288 and 289. Mr Cooney said that there is no written lease or licence arranged between Firmount Ltd., and Telecom Eireann and no fee or payment or rent is paid by Telecom to Firmount Ltd. He said however, that there is an understanding whereby Telecom Eireann can install pay phones at certain sites in the Shopping Centre and collect the revenue generated by these pay phones and maintain these pay phones. Mr Cooney said that this understanding amounts to an easement over land and is therefore a rateable hereditament.

With regard to rateable occupation Mr Cooney refers to page 283 on "The Law of Local Government in Ireland" and said that Mr Justice Keane in this book deals with the question of rateable occupation and identified three essential ingredients of rateable occupation;-

1. The occupation must be exclusive;
2. The occupation must be of value or benefit to the occupier;
3. The occupation must not be for too transient a period.

Mr Cooney refers to a valuation textbook "Rating and Valuation in Northern Ireland" by James Kay and A.L. Jacobson, on the subject of exclusive occupation. He refers also to the twelfth edition of Ryde on Rating at page 47 wherein it states that "a person using land without an exclusive title to possession will be in rateable occupation of the land if the character of his

occupation is such that it does in fact exclude others from using the land in the same way". Mr Cooney says that in the subject case Telecom Eireann, and only Telecom Eireann have the right to install, operate and maintain pay phones in the St Stephen's Green Shopping Centre and are therefore, in his opinion, in "exclusive occupation".

Mr Cooney said that Telecom Eireann are in beneficial occupation of an incorporeal hereditament. He said that Telecom Eireann have the "exclusive right" to the revenue generated by pay phones and that this "right" is of some value. He said that the fact that they do not pay a fee or rent for the easement does not mean that there is no value or benefit from their occupation. Mr Cooney said that a purely transient or temporary holding of land is not rateable but provided it does not fall within this category, it is not material that the occupation may be for a fixed term which is due to expire shortly or may be terminable on notice at any time. He said that it is his contention that Telecom Eireann are the rateable occupiers of a rateable hereditament (incorporeal).

As regards the amount of rateable valuation which might be attributed to the hereditament Mr Cooney said that there is no direct comparable rental evidence of similar hereditaments. He said however, that evidence of valuable ground floor space in Telecom Eireann's office block on South King Street (Gaiety Centre), directly across the street from the St Stephen's Green Shopping Centre, being used as a public pay phone lobby, consists of 755 sq ft and accommodates fourteen pay phones. He said that the rental value of this pay phone lobby is derived from the following analysis of the agreed Current Market Rent at review of the entire office block for the 15th October, 1989.

Agreed Current Market Rent £626,950 p.a.

Analysis:

Ground Floor Offices 4,090 sq ft @ £ 17.00

Offices (floors 1 - 5) 50,452 sq ft @ £ 10.55
 Car Spaces 36 @ £700.00

N.A.V. of Pay Phone Lobby:

755 sq ft @ £17.00 per sq ft. = £12,835
 N.A.V./Pay Phone = £916

He then attributed this value on a proportion basis to the phones in the subject hereditament to arrive at a N.A.V. as follows;-

ESTIMATED N.A.V. of SUBJECT HEREDITAMENT (10/11/89)

Ground Floor 4 sites @ £916 = £3,664
 1st Floor 4 sites @ £333 = £1,332
 2nd Floor 4 sites @ £166 = £ 664

 £5,660

He then calculated the rateable valuation as follows;-

RATEABLE VALUATION:

N.A.V. = £5,660
 R.V. = 0.55% N.A.V.
 = £31.13

Mr Cooney provided the basis for the proportion between rateable valuation and N.A.V. as follows;-

BASIS FOR R.V./N.A.V. RATIO:

Standard pay phones on St. Stephen's Green have been valued at R.V. £5 per pay phone.

Estimated N.A.V. per pay phone £916

R.V./N.A.V. Ratio = £5/£916 = 0.55%

Using a direct comparison basis Mr Cooney calculated the rateable valuation as follows;-

RATEABLE VALUATION by DIRECT COMPARISON

Telephone kiosks on St. Stephen's Green have been valued in the period 1986 to 1990 Revisions at £5 per kiosk. (See schedule of Comparisons)

Ground Floor 4 sites @ £5/site = £20
 1st Floor 4 sites @ £2/site = £ 8
 2nd Floor 4 sites @ £1/site = £ 4

Total = £32

Mr Cooney then supplied six comparisons of telephone kiosks all of which have been revised since 1986 and each of which are valued at a rateable valuation of £5 per kiosk. The details of these comparables are attached at Appendix A.

A written submission was received on behalf of the appellants on the 7th February, 1991 from Ms Ann Donnelly, an Apprentice Solicitor employed by Telecom Eireann at 52 Harcourt Street, Dublin 2. In this submission Ms Donnelly said that she is satisfied that Telecom Eireann have no rights in respect of the pay phones in the St Stephen's Green Centre other than the fact that they are owned by Telecom Eireann. She said that under Section 87 of the Postal and Telecommunications Services Act, 1983, Telecom Eireann's monopoly extends only to the provision of Telecommunications Services. She said that this monopoly does not extend to telecommunications customer equipment. The provision of telecommunications customer equipment is regulated by the Minister for Communications under Section III of the Postal and Telecommunications Services Act 1983. Ms Donnelly said that to date the Minister for Communications has licensed in or about three hundred and forty one individuals or companies to provide telecommunications customer equipment, which would include customer payphones. Ms Donnelly attached the details of the licensees. She said that in the light of the foregoing Telecom Eireann has no "exclusive rights" in respect of the provision of pay phones in the St

Stephen's Green Centre or indeed at any location. She said that this was borne out by the fact that in a number of locations throughout Dublin including Nutgrove Shopping Centre, Northside Shopping Centre and Roches Stores, Telecom Eireann payphones were returned and replaced by privately rented models. Ms Donnelly said that Telecom Eireann has no lease or similar agreement or arrangement in respect of the provision of pay phones in the St Stephen's Green Centre and as such would be obliged to conform to any request of the Developers or their agents to remove the payphones. She said that this request can be made at any time and is subject to no contractual limitation such as notice. She said that Telecom Eireann therefore has its pay phones on the wall of the centre at the sufferance of the Centre owners.

A written submission was received on the 7th of February, 1991 from Mr Dan Curtin of Jones Lang Wootton, Surveyors and International Real Estate Consultants, and Management Agents for the St Stephen's Green Centre. Mr Curtin said he has been employed since January, 1988 as Property Manager of the St Stephen's Green Centre. He said that his duties include the day to day running of the Centre, hiring of security staff, appointment of local management, leasing arrangements and all other aspects of management of the Centre. Mr Curtin said that the Centre has in or about ninety five units leased to a variety of tenants most of whom have taken a thirty-five year lease from Firmount Limited. He attached a specimen of the lease. Mr Curtin confirmed that Telecom Eireann has no such lease or any similar agreement or arrangement with Firmount Limited or with their Management Agents and he said it has no easement, or license or any right to enter those premises. He said that entry to the Centre is always made with permission and this permission can be revoked at any time. Mr Curtin then outlined how the arrangement whereby Telecom Eireann have telephones installed in the Centre came about. He said that on the 20th July, 1988 Ms Ann Delaney, (the then Manager of the Centre and the employee of Jones Lang Wootton) requested Telecom Eireann to install twelve pay phones in the St Stephen's Green Centre at locations to be discussed with the Centre's Architects. He said that neither Firmount Limited nor its Management Agents nor any other person is in receipt of any

payment or fee in respect of what is in effect a permission to install these pay phones. He said the pay phones were provided for the convenience of the shopping public as one of the facilities of the Centre on the same basis as the lifts, elevators and the toilets. Mr Curtin said that at any stage his firm could ask Telecom Eireann to remove the pay phones and if they choose to have them replaced with instruments of a rival firm.

A written submission was received on the 7th February, 1991 from Mr Paddy O'Neill, employed by Telecom Eireann in the Contracts Section. Mr O'Neill's submission concerns the communications between the Shopping Centre and Telecom Eireann on the installation of the telephones. He said that on the 21st July, 1988 he received a telephone call from a Mr Brian O'Looney, Telephone Officer, Telecom Eireann, who was at that time engaged in the provision of telephone services in the St Stephen's Green Centre and who had been in conversation with the Maintenance Manager of the St Stephen's Green Centre about the provision of public pay phones in the Centre. Mr O'Neill made an appointment to meet Mr Nestor on the following day. Mr O'Neill said that at or about the same day he received a written request from Ms Ann Delaney, the then Manager of the Centre to provide twelve pay phones at locations to be discussed with the Architects of the Centre. Mr O'Neill said that he met Mr Nestor and discussed the location of the phones, he said that Mr Nestor told him that the centre would provide wooden booths for the pay phones in accordance with drawings prepared by the Centre's Architects. Mr O'Neill described how he, having consulted with Telecom Eireann's Engineering staff and been given the precise location details from Mr Nestor, prepared the relevant Advice Notes for the Engineering Depot. He said that on 30th September, 1988 Mr Christy Brennan of Telecom Eireann, Contracts Manager, wrote to Ms Ann Delaney to confirm that Telecom Eireann would provide the pay phones requested by her in her letter of 20 July, 1988. He said that the installation of the pay phones was completed in November 1988 before the Centre was opened to the public. Mr O'Neill attached copies of the relevant correspondence.

A further written submission was received on 7th February, 1991 from Mr Eugene O'Neill a telecommunications Technician employed by Telecom Eireann as a fitter. He said that in or about August 1988 he received twelve Advice Notes from Telecom Eireann Contracts Section to provide the twelve public pay phones in the St Stephen's Green Centre. He said that he was instructed to install the pay phones at the locations indicated in the drawings. He said that he had no discretion as to the location of the said pay phones and that each pay phone was to be installed in the middle of the pre-existing wooden booth which was supplied and put in place by the Developers of the Centre. He said that each telephone instrument hangs on the wall and there is no portion of ground reserved or marked out for people using the pay phones. He said that the pay phones are located in a pedestrian passageway over which Telecom Eireann does not have any exclusive occupation. Mr Eugene O'Neill attached photographs to illustrate the nature of the installation in question and the absence of any reserved enclosure or exclusive occupation of floor space. Mr O'Neill said that each telephone instrument occupies no more than three square feet of wall space and protrudes no more than six inches from the wall at any point.

Oral Hearing

At the oral hearing which took place on the 13th of February, 1991, Mr Peter Charleton, Barrister represented the appellants instructed by Mr Eamon G Hall, Telecom Eireann Solicitor, and

Mr Aindrias O'Caoimh instructed by the Chief State Solicitor represented the respondent. Also present were Ms. Ann Donnelly, Mr. Dan Curtin, Mr. Paddy O'Neill and Mr. Eugene O'Neill on behalf of the appellant and Mr. Patrick Cooney on behalf of the respondent.

Mr Charleton said that this appeal concerned a piece of telephone equipment which was mounted on the walls in common areas in St Stephen's Green Shopping Centre. He said that Telecom Eireann were requested and installed a number of pay phones in the centre and that no rent was passing between the two parties in respect of these. He said that there is no occupation by

Telecom Eireann which could in any terms be regarded as occupation under the 1838 Act. He said that in order to be liable for rates one must be in occupation of a hereditament. He said that a hereditament is described in Stroud, 4th Edition at page 1231 as something that is capable of being inherited. He said that under no circumstances could this be considered a profit a prendre under the relevant Section of the 1838 Poor Relief, Ireland Act.

Mr Charleton said that evidence would be supplied that the owners of shopping centres could ask Telecom Eireann to take away their equipment and bring in a private company and charge, if they like, up to £1 per call paying Telecom Eireann only the relevant 11.5p. He said that this could not be considered to be an easement but a piece of personalty. He said that such an entity could not be rated within the valuation code. He said that certain amendments had been made to the valuation code over the years but no specific amendment applied to cases such as this.

Mr Charleton said that the only thing owned by Telecom Eireann is the actual telephone itself.

Mr Paddy O'Neill gave evidence that the phones were not in a recessed location and that the decision on the location of the phones were that of the architects of the centre rather than that of Telecom Eireann.

Ms Anne Donnelly gave evidence as outlined in her precis of evidence and gave details of correspondence contained therein between the owners of the centre and Telecom Eireann. Ms Donnelly said that Telecom Eireann put these phones in at the request of the agents of the owners of the centre and they could be required to remove them at any time. She said that the only rights that Telecom Eireann had is that they own the phones. She said that the only thing that Telecom Eireann owns is the instrument and the cash box at the end of it. She said that if requested Telecom Eireann would have to proceed immediately to remove the boxes. She said that with regard to collection that Telecom Eireann enter the centre with the permission of the management and empty the coin boxes three to four times a week. She said that Telecom Eireann has lost its monopoly to provide customer telephone equipment. She said that up to 350 people

have been licensed to sell communications equipment and that Telecom Eireann has now to compete with these people for the provision of such equipment. She said that in a number of other shopping centres the management has installed their own phones and pay Telecom Eireann the 11.7p in respect of each call but take the profit in respect of the amount charged per call. Mr Charleton said that this is not a rateable entity. He said that under section 61 of the Poor Relief (Ireland) Act, 1838 that every person in the immediate use or in enjoyment of any hereditament rateable under this Act whether corporal or incorporeal is liable to rates. He said that the Courts in this country have taken the phrase in the immediate use or enjoyment of to mean "occupation". He said he relied on the Dublin Port and Docks Board case 1978 IR p. 267 and on Carroll v. Mayo County Council 1967 IR p. 364 and Roadstone v. Commissioner of Valuation 1961 IR p. 253. He drew a distinction between what the law considered to be personalty and realty. He said that real property is something which is fixed and referred to McGarry and Wade pp 10 and 11, fifth edition 1984 where he said the example given is that if you lost some property in terms of real property it is returned to you, in terms of personalty you get damages. He said that the remedy in Telecom Eireann's case, if these phones were removed by the owner and dumped, would be damages not repossession. He said that the definition in the Acts cannot extend to personalty. With regard to the phrase "and all other profits" in section 63 he said that profit in law means profits a prendre. He quoted Kingsmill's Moore J. in the Roadstone Ltd v. Commissioner of Valuation case in the Supreme Court 1956 where he said "In Armstrong's case both Lord Ashbourne at page 499 and Madden J at page 463 seem to have regarded this clause as referring only to profits a prendre and that seems to me its most natural meaning. To include profits a prendre was a necessary modification of the English code to make a separate hereditament out of the profits taken from the land by the occupier or owner seems an unnecessary complication at a time when the valuation of all hereditaments was based on the hypothetical rent. An identical valuation could be fixed whether the hypothetical rent was based on what would be paid for the occupation of the land or on what would be paid for the right to take the profits out of the land."

In defining profit a prendre he quoted a definition from Wiley's Land Law at page 333 paragraph 6.034 "A profit a prendre as the name implies is the right to take something from another person's land. The general rule is that the something must be part of the land itself eg. minerals or turf or creatures living naturally on the land which when taken are capable of being owned eg. wild game or fish." He said the definition in McGarry and Wade at page 850 is "a right to take something off another person's land. This is it but not all such rights are profit. If the right is to be a profit the thing taken must be either part of the land eg. minerals or crops or the wild animals existing on it and the thing taken must at the time of taking it be susceptible to ownership. The right to hawk, hunt, fish and fowl may thus exist as a profit for this gives the right to take creatures living on the soil which when killed are capable of being owned, but the right to take water from a spring or a pump or a right to water cattle at a pond may be an easement but cannot be a profit".

As regards the question of occupation he said that Telecom Eireann do not have occupation of the property. He referred to Keane's book at page 283 and the four tests involved. These are: 1. there must be actual occupation; 2. the occupation must be exclusive; 3. the occupation must be of value or benefit to the occupier and 4. the occupation must not be for too transient a period. He said he was concerned with the argument of actual occupation and its being exclusive. He said actual occupation is the right to exclude other persons from the use of the hereditament in question. He said that in these circumstances the instrument is there for the use of everybody and everybody is using it. Secondly he said that one cannot occupy a telephone instrument. He quoted from Carroll v. Mayo County Council at p. 364 IR 1967 and said as a result of that, that the only person that could be said to be occupying the hereditament is the public or the owner of the shopping centre. As a final submission he said rates apply to land and that income tax applies to situations such as this. He said if Telecom Eireann is making a profit as a result of having these telephones it is subject to the taxation system not the rating system.

Under cross-examination from Mr O'Caoimh, Ms Donnelly agreed that the landlord had accorded Telecom Eireann the right to put the phones in St Stephen's Green Shopping Centre. She confirmed that the landlord was not paying any rental on the lines in the subject premises and that the landlord in the Nutgrove Shopping Centre was paying rental on the lines. Mr O'Caoimh said that part of the argument in the Roadstone case turned on whether the hereditament in question was subject to annual revision at all. As land is not subject to annual assessment or variation which gave rise to the Supreme Court judgment in the Brennan case, he said that the Supreme Court decided that the Roadstone case was rateable under provisions of section 4 of the 1854 Act, which he said relates to property, the valuation of which is subject to frequent alteration. He said that what had been valued in this case by the Commissioner is a right over land. He said that it is not the case that it is the apparatus that is valued as set out in the grounds of appeal. He said that it is the right over land, the right to place one's apparatus here which is being valued. Mr O'Caoimh said that one has to first decide whether there is a rateable hereditament and secondly, if there is such a rateable hereditament, the nature of the occupier. He said that whatever about the rights of the landlord to come and tell Telecom Eireann to remove their equipment from the centre that Telecom Eireann had been in occupation for two years now and Judge Henchy in the Carroll case said that there was such a withdrawal from occupation that the court held that there was occupation. He referred to the reference of the Westminster case at page 366 in Carroll v. Mayo County Council where it refers to the fact of occupation. He said that although there was no formal licence or contract when one looks at the facts and the period of occupation that one sees that there has been a licence exercised here for a period of time. Mr O'Caoimh referred to a former judgment of the Tribunal on Ashfield Holdings concerning a car park. In referring to the four points in Mr Justice Keane's book he said that the first point relates only to English law and that the final point was conceded by the appellants. Mr. O'Caoimh said that it has not ever been suggested that these phones are not of benefit to Telecom Eireann. He said that the only point outstanding was whether occupation is

exclusive. Mr. O'Caoimh said that exclusive in this sense means that a person using the hereditament can prevent any other person from using it in the same way. He said that the occupation by Telecom Eireann in this instance is wholly different than the use by the general public. He said that the prevention of any other person using it in the same way depends entirely on the relationship between Telecom Eireann and the landlord in this case. He said that it is the "de facto" occupation rather than the right to occupy that is relevant. He said there had been withdrawal of the owner of the occupation from the portion of the wall in question. As regards Telecom Eireann not having the right to put the phones anywhere he said that if the landlord suggested points with which Telecom Eireann disagreed, they had the right to reject putting the phones there. He said that Telecom Eireann had been accorded a right to place the instruments on specific points on the walls and that that right constituted a rateable hereditament. He said that the occupation fulfils all the criteria set out in Mr. Justice Keane's book and that there is therefore rateable occupation of the hereditament.

DETERMINATION

The Tribunal has been impressed by the detailed research on this issue carried out by both counsels. It has considered in full all of the legal submissions as set out above and taking this, all the evidence given and written submissions into account it finds that while the Bord Telecom licence is one which does not confirm many or extensive rights such as those conferred by the Landlord and Tenant (Amendment) Act 1980 or other rights applicable to tenancies, nevertheless it is one which would entitle Bord Telecom to apply to Court for an injunction restraining persons from unlawfully interfering with the apparatus, and to apply for the necessary Court Relief in respect of any unlawful taking or appropriation of the income of the apparatus. By saying that Telecom had no rights, one can only conclude that they are licensees at will in relation to their occupation, and thus have sufficiently exclusive occupation of their licensee's right exercised by the installation of equipment and taking of proceeds. The Tribunal is of the opinion that the occupation of An Bord Telecom is sufficiently exclusive to satisfy the criteria of

Rateability. The occupation is without doubt of considerable benefit to An Bord Telecom and the Tribunal finds that the occupation is not for a transitory period, as to hold otherwise would make a nonsense out of the considerable financial technical and logistical investment of An Bord Telecom in the project. The Tribunal therefore finds the subject rights Rateable.