

A P P E A R A N C E S

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Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, SC

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I N D E X

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THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,  
14TH JANUARY, 2004 AT 11AM.:

MR. COUGHLAN: Mr. O'Donoghue.

PETER O'DONOGHUE, PREVIOUSLY SWORN, WAS EXAMINED AS  
FOLLOWS BY MR. COUGHLAN:

CHAIRMAN: Thanks for your attendance, Mr. O'Donoghue.

You are of course already sworn from an earlier phase.

Q. MR. COUGHLAN: Now, Mr. O'Donoghue, I think you  
furnished two memoranda of evidence in respect of the  
matters we are considering at present in the Tribunal;  
isn't that correct?

A. That's correct.

Q. I think the first of those was dated 14th February,  
2002, and the second was dated 25th June, 2002; isn't  
that right? I think

A. I have one dated the 26th July, 2002.

Q. Sorry, I beg your pardon, the 26th July in response to  
a query raised by the Tribunal on the 25th June. I  
beg your pardon.

So if I deal with the first one. I think in the first  
one, which was yours, dated 22nd February, in response  
to queries raised on the 14th February, 2002, you were  
asked at Query Number 1 for your knowledge, direct or

indirect, of the association of Allied Irish Bank, Investment Bank of Ireland, Standard Life of Ireland and Advent International with a bid and/or the consortium and the subsequent disassociation of them from the bid or the consortium.

And you inform the Tribunal that as part of the process of preparing the bid for the second mobile phone licence, Paul Connolly of Connolly Corporate Finance, working with Davy Stockbrokers, approached a number of financial institutions and arranged confirmation from them that they would invest in the mobile phone company if the bid was successful. Paul Connolly was mainly responsible for the equity funding of the bid, while you yourself were tasked with the range of bank funding by way of project financing. Is that correct?

A. That's correct.

Q. Communicorp Limited was raising additional funds from Advent International, who were an existing shareholding in Communicorp during the time that bid was being prepared. Part of the agreement covered the new funding for Communicorp was an entitlement by Advent to purchase 5% of the equity in the mobile phone company. Advent would also issue a letter to the Department of Communications offering to fund Communicorp's required equity investment in the mobile phone company. IIU were not part of the bid team.

However, they offered, you think, around September 1995, to underwrite the Communicorp equity requirement for the mobile phone company and also a right to purchase 25% of the mobile phone company displacing Allied Irish Investment Managers, Investment Bank of Ireland, Standard Life of Ireland and Advent International plc. You were not involved in negotiating this agreement with IIU, but you can recall providing them with certain information around the cost of the bid project and matters of that nature?

A. That's correct.

Q. I think you were then asked for your knowledge, direct or indirect, of the association of Mr. Desmond/IIU with the bid and/or consortium and their subsequent disassociation from the consortium.

And you have informed the Tribunal that apart from what is noted already about IIU, IIU was issued with 25% of the equity in Esat Digifone and sold 5% back to Communicorp, or one of its subsidiaries, and Telenor Invest. At the date the licence was issued, the shareholding in Esat Digifone was Communicorp 40, Telenor 40, IIU 20. The further disposal by IIU of its shares in Esat Digifone happened at a time when you no longer worked for Communicorp. You had moved over to Esat Digifone; isn't that correct?

A. Indeed, mm-hmm.

Q. Now, I think you were then asked for your knowledge, direct or indirect, of the negotiations with Mr. Desmond/IIU from August 1995 to May 1996.

And you have informed the Tribunal that you were not involved in the negotiations with Mr. Desmond/IIU.

You did meet Michael Walsh of IIU on a couple of occasions to provide information on the bid costs and the project plan. You recall meeting Michael Walsh and Denis O'Brien in IIU's office sometime around July or August 1995. You cannot recall what you discussed at the meeting, but it could well have been related to private investment by IIU in Communicorp, the flotation of the company, etc.; is that correct?

A. That's correct.

Q. I think you were then asked for your knowledge, direct or indirect, of each of the agreements or arrangements with Mr. Desmond/IIU, whether concluded or otherwise, between September 1995 and May 1996.

And you informed the Tribunal that you cannot recall seeing an outline agreement dating from August 1995 between Mr. O'Brien and Mr. Desmond whereby Communicorp would arrange for Mr. Desmond to have the right to take up at par 15% of the ordinary share in Esat Digifone Limited and that Mr. Desmond would pay his portion of the bid costs, would provide a bank guarantee for  $\text{€}1\frac{1}{2}$  million to enable Communicorp to draw down bank facilities and be paid a fee of  $\text{€}1\frac{1}{2}$ 300,000 in

relation to the 31st March 1996. But it would appear to fit in with what was going on at the time, i.e. 15% of the equity of the mobile phone company being taken by third-party investors, and Communicorp was in the middle of raising IR£3.2 million from Advent. It could well be that the £3 million mentioned in the draft agreement was to replace the Advent funds.

From what you can recall of the agreement of September 1995, that in the event that the consortium was awarded the second GSM licence, the consortium would place 25% of the equity with IIU and that IIU would arrange underwriting for the 37.5% of the equity for which Communicorp had agreed to subscribe was the agreement ultimately reached with IIU, as 25% shareholder in Esat Digifone as 25% shares in Esat Digifone were issued to IIU initially, and 5% was sold back to the other two parties prior to the issue of the licence.

You do not recall ever seeing or hearing of an agreement or arrangement of January 1996 whereby IIU agreed to place 12.6% of the equity in Esat Digifone with Esat Holdings, and in return, Esat Holdings would pay subscription amounts due on IIU's remaining 12.4 conditional upon Telenor's approval. You cannot imagine Telenor giving its approval, as this would have brought the Communicorp interest in Esat Digifone to 50.1%.

You believe that the agreement of May 1996 providing for the division of equity in Esat Digifone as to 40 each to Telenor and Esat Telecom Holdings and as to 20% to IIU was in accordance with the shareholders agreement. You recall Telenor objecting to the fact that IIU got 25% in the first place and then having to buy back 2.5% to re-establish the 40:40:20 position.

I think you were asked for details of your involvement in any aspect of the negotiation with IIU or Mr.

Desmond or with the agreements or arrangements reached with Mr. Desmond /IIU, whether concluded or otherwise, between September 1995 and May 1996. And you have informed the Tribunal that you believe that you have set out above, and was stated in evidence, your knowledge and involvement in the agreement referred to by the Tribunal. The only other involvement you had with IIU was discussions between IIU and Communicorp concerning them investing in Communicorp. These discussions took place around June/July of 1995 and did not come to anything.

That all predated the agreement whereby

IIU/Mr. Desmond came into the consortium?

A. Indeed.

Q. We move on to your next memorandum, now, Mr. O'Donoghue.

I think you say that in this memorandum you set out answers to the various questions contained in the

Tribunal's letter of the 25th June, 2002. You have reviewed the vast quantity of documents enclosed with the letter, which had been useful at times in helping you formulate replies. However, not all the documents were legible, and as you do not have access to any files, you have answered the questions to the best of your recollection of events, some of which date some seven years.

I think what you are indicating there is that if there is any error, it arises in those circumstances, or any lack of recollection?

A. Indeed, mm-hmm.

Q. Now, I think you were asked for your knowledge, direct or indirect, of all approaches made by Mr. O'Brien or Communicorp or any associated entity or any person on their behalf to any party to join or form a consortium to apply for the second GSM licence other than to Telenor, and in each instance, you were asked to indicate the identity of the party or parties to whom such approach was made; the approximate date; the proposal made to such party or parties; the steps taken, if any, on such foot of such proposals; the reason or reasons that such proposal did not proceed.

And you have informed the Tribunal that during your involvement with the preparation of the bid, the only parties other than Telenor that you can recall being asked to join the consortium to apply for the second

GSM licence were: Advent, Allied Irish Investment Bank, Bank of Ireland Investment Managers and Standard Life. As Advent were an existing investor in Communicorp, you cannot put a specific date as to when they were approached during the consortium. You cannot be specific about the other investment houses, but you would say that they were approached around May or June of 1995. You say that France Telecom may have been approached, but you cannot say for certain?

A. Mm-hmm.

Q. I think you were then asked for your knowledge, direct or indirect, of all approaches made to Mr. O'Brien or Communicorp or any entity associated with them or any person on their behalf to join or form a consortium to apply for the second GSM licence by any other party, and in each instance you were asked the same series of questions.

And you inform the Tribunal you do not recollect knowing of any approaches being made by any party to join the consortium to apply for the second GSM licence.

I think you were then asked for your knowledge of the circumstances surrounding the establishment of a consortium by Telenor and Communicorp to bid for the second GSM licence, including the manner in which the parties were introduced to each other; the approximate date of their introduction; the initial proposals for

the capital configuration of the bid company; the date on which agreement was concluded between Telenor and Communicorp to establish a consortium.

And you have informed the Tribunal that you believe that Communicorp made contact with Telenor on the advice of PA Consulting. Denis O'Brien and you travelled to Oslo to meet Telenor personnel in April/May 1995, you think, on two occasions, and Telenor got involved very quickly after these meetings. An original member of the consortium, Southwestern Bell, had withdrawn from the consortium earlier in 1995. Telenor and Communicorp were to be 50:50 partners. You do not recall the date the agreement was signed, or indeed the capital commitment of both parties.

I think you were then asked for your knowledge, direct or indirect, of the negotiations of the joint venture agreement dated 2nd June, 1995, including details of any professional advice provided to Communicorp or to Mr. O'Brien in connection with the negotiation and finalisation of the joint venture agreement.

And you have informed the Tribunal that you do not recall anything specific about the negotiation of the joint venture agreement and do not recall any specific professional advice received by Communicorp in respect of that agreement.

You were then asked the purpose for which the joint

venture agreement provided for a guarantee by Communicorp of  $\frac{1}{2}$  million; whether, and if so, when, such guarantee was actually provided; and the form of the guarantee.

And you have informed the Tribunal that you have no recollection of the guarantee referred to; is that correct?

A. That's correct.

Q. You were then asked for your involvement in or knowledge, direct or indirect, of the dealings between Communicorp or Esat Digifone or any other person on their behalf with J&E Davy for the purpose of securing the backing of institutional investors.

And you have informed the Tribunal that Mr. Paul Connolly of Connolly Corporate Finance took the lead role in organising the equity part of the funding and worked with J&E Davy in securing institutional investors.

I think you were then asked for your understanding of the commitments provided by Allied Irish Bank, Investment Bank of Ireland, and Standard Life to the funding of Esat Digifone.

And you have informed the Tribunal that from your recollection, these three institutions provided letters of intent to invest in Digifone should the licence application be successful. You note that the material provided to you by the Tribunal, that the

letter from Standard Life was qualified subject to being satisfied with the contents of the licence and their board approval.

You were then asked for details of the precise terms of all agreements concluded between Communicorp, Esat Digifone, Mr. O'Brien and any associated entity with Advent International Corporation and including, in particular, an agreement whereby Advent provided a facility of 3.5 million to Communicorp or RINV or any other entity associated with Mr. O'Brien and an agreement dated 12th July, 1995, between Advent International Corporation, Esat Digifone, Communicorp and Mr. O'Brien for the provision of letters of comfort by Advent in the Department of Transport, Energy and Communications and to Telenor.

And you have informed the Tribunal that from your recollection, this was a very complex and drawn-out affair with a lot of misunderstandings and differences between the parties. Originally Advent had agreed to provide Communicorp with additional funds by way of a second investment in the company. Woodchester Bank agreed to advance a temporary loan to Communicorp backed by a personal guarantee from Denis O'Brien to be repaid when Advent invested the additional funds in Communicorp. Advent then reneged on their original offer of equity and replaced their offer with an outright loan with an interest rate of 30%. There

were a number of meetings around this time, eight, including a conference call made to Advent from John Callaghan's home. There was a separate agreement that entitled Advent to purchase 5% in Digifone subject to Advent providing a satisfactory letter of comfort to the Department of Energy and Communication and Telenor offering Communicorp funds to support its capital commitment to the bid.

So there were two issues: there was the question of in the first instance, Advent had indicated that they'd subscribe for equity in Communicorp. There were a lot of negotiations. They changed their position on that, and you there arose an agreement whereby they lent 3 million at a fairly hefty premium; isn't that right?

A. Indeed, that's correct.

Q. And then there was the separate issue that for the provision of a letter of comfort, they would be entitled to subscribe directly for 5% in Digifone, isn't that right, or whatever the mobile company

A. There were two letters of comfort.

Q. Two letters. A letter of comfort to the Department sorry, to the Department and satisfactory to Telenor?

A. Indeed, mm-hmm.

Q. I think then you were asked for details of the precise terms of the offer made by Advent International to

Communicorp of 1/250 million to fund Communicorp's equity participation in Esat Digifone as referred to in a letter of the 10th July, 1995, from Advent International addressed to the Department. And you have informed the Tribunal that you do not recall the terms of the offer made by Advent in relation to the 30 million.

I think you were then asked for your knowledge, direct or indirect, of all dealings between Communicorp and Telenor in the period from 12th July 1995 to the 4th August 1995 in relation to the letter of comfort to be furnished by Advent to Telenor.

And you have informed the Tribunal that Telenor were not satisfied with the letter of comfort provided to them by Advent. They suggested alternative wording, and you approached Advent to revise the letter, but they refused to do so.

You were then asked for details of your involvement in or knowledge of all dealings between Communicorp, Esat Digifone, Mr. O'Brien, or any person on their behalf and Advent in the period from the 12th July, 1995, to the 4th August, 1995, regarding the provision by Advent of a letter of comfort acceptable to Telenor, and in particular a telephone conversation on the 3rd August 1995 between you and Mr. Massimo Prelz, as referred to in a fax transmission from you to Mr. Owen O'Connell on 3rd November of 1995.

And you have informed the Tribunal that as stated above, Telenor had requested a revised comfort letter from Advent, but Advent refused to amend their original letter. You can recall having a heated telephone conversation with Massimo Prelz, who accused Denis O'Brien and you of playing with words. As far as Communicorp was concerned, Advent had to satisfy Telenor's needs in order to be able to participate directly in the ownership of Digifone.

You were then asked for your understanding as of the 4th August, 1995, of the following:

1. The status of Telenor's involvement as a party to the bid, having regard to the failure of Advent to provide a letter of comfort acceptable to Telenor.
2. The funding available to Communicorp as of the 4th August, 1995, to finance its 40% equity participation in Esat Digifone.

And you have informed the Tribunal, in relation to the first query, up to the time the bid was submitted, Telenor were requesting a different form of the letter of comfort, but none was forthcoming prior to the submission of the bid document. Telenor personnel attended the handing over of the bid document to the Department.

As regards the second query, you inform the Tribunal, Advent had offered to fund Communicorp's equity participation in Digifone and had written to the

Department confirming this.

You were then asked for your knowledge, direct or indirect, of each and every respect in which it was considered that the terms offered by Advent to fund Communicorp's equity participation in Esat Digifone were unfavourable to Communicorp as asserted in a letter dated 4th August, 1995, from Communicorp to Telenor.

And you say that you cannot recall the terms offered by Advent.

You then were asked for your knowledge of all steps taken by or on behalf of Mr. O'Brien, Communicorp, Esat Digifone or any person on their behalf to secure funding for Communicorp's equity participation in Esat Digifone from any source other than Advent, including, in particular, the identity of the parties to whom approaches were made; the person by whom such approaches were made; the date of such approach or approaches; the outcome of such approach or approaches; the precise terms of all offers of funding made available to Communicorp, including the date of such offers; each and every matter of consideration which caused or prompted Communicorp to refuse such offers, if any.

And you have informed the Tribunal that during the summer of 1995, a number of fundraising trips were made to the States to meet investment houses. You can

recall meeting CSFB and who you eventually handled a fundraising for Esat, but this was post the award of the GSM licence. IIU took the place of the institutional investors. You do not recall when IIU got involved. You were not involved in the negotiation of their investment. You do recall providing certain financial information to them but cannot be sure as to its timing or content. Paul Connolly and you had met IIU at one stage, possibly in June 1995, to discuss possible loan/equity investment, but this was to do with the radio and fixed-line business. To the best of your knowledge, nothing came of these discussions. As far as you can recall, IIU was looking for charge over the shareholding in 98FM. You can also recall that there was a possibility that Telenor would fund Communicorp's capital commitment to Digifone. From the material the Tribunal provided you with, you note that Telenor and IIU issued a joint letter of support with regard to Communicorp's equity commitment to Digifone.

I think you were then asked for your knowledge, direct or indirect, of all dealings between Communicorp, Esat Digifone, Mr. O'Brien, RINV or any associated entities or any person on their behalf and Advent subsequent to the 4th August, 1995, in relation to the facility of 3.25 million provided by Advent. Advent write on foot of the agreement of 12th July 1995 to 5% of the equity

in Esat Digifone, including the manner in which the issues between the parties were ultimately resolved.

You have informed the Tribunal that as noted above, Communicorp had had discussions with Advent concerning Advent injecting  $\text{€}1/25$  million of new capital into the company. This was agreed with Massimo Prelz, who confirmed this at a meeting in Woodchester Bank. The bank agreed to extend a short-term loan to the company, subject to a personal guarantee from Denis O'Brien, and the loan to be repaid from the new equity. Advent then decided to offer the company a loan of  $\text{€}1/23.25$  million in place of the \$5 million.

Under a separate agreement being negotiated at the same time, Advent would have a right to purchase 5% of Digifone if they provided satisfactory letters to Telenor and the Department confirming that they were willing to fund Communicorp's capital commitment to Digifone. You know that the terms of this agreement were later disputed between the parties, and you see from a copy of a letter the Tribunal provided to you, you provided William Fry's with information to support the Communicorp case that the Telenor letter was unsatisfactory.

You were not involved in the negotiations that resulted in Advent drafting their claim to have a right to invest directly in Digifone.

I think you were then asked for your knowledge, direct

or indirect, of all dealings between Communicorp, Mr. O'Brien, Esat Digifone, RINV or any person on their behalf and Telenor subsequent to the 4th August, 1995, in relation to the funding of Communicorp's equity participation in Esat Digifone by Advent and in relation to the provision of a letter of comfort by Advent to Telenor.

And you have informed the Tribunal, as noted above, it was raised at some stage that Telenor would fund Communicorp's capital commitment to Digifone in the short term. You do not recall any discussions concerning Advent's letter to Telenor post the 4th August 1995.

I think you were asked for your understanding of the RFP document issued by the Department in March 1995, and in particular paragraphs 3, 9 and 19, which provided paragraph 3 was full ownership of the proposed licensee; paragraph 9, applicants must demonstrate their financial capacity and technical experience and capability to implement the system if successful; and paragraph 19, that the Minister intends to compare the application on an equitable basis subject to being satisfied as to the financial and technical capability of the applicants in accordance with the information required, and specifically with regard to a list of evaluation criteria.

And then in the question, the criteria are set out.

These have been opened hundreds of times. I don't intend opening them here again, Mr. O'Donoghue.

A. Okay.

Q. And you have informed the Tribunal that from a review of the extracts provided, they appear to be self-explanatory. Without having a copy of the bid document, you would make the following comments:

A. Digifone was owned 50:50 by Communicorp and Telenor at the date the bid was submitted. In the bid document it was made clear that 20% of the equity would be made available to institutional investors and an additional 12% at a later date.

B. The bid provided financial information by both parties. It also included a letter from Advent confirming to the Department that it had offered  $\text{€}1230$  million to Communicorp to fund its part of the capital commitment. Telenor had committed to make available the technical expertise to support the roll-out of the network.

C. From your recollection, the Digifone bid clearly addressed each of the criteria set out in the paragraph that's paragraph 19. Prior to the announcement of a cap of  $\text{€}15$  million on the licence fee, the business plan had assumed a higher amount, which you cannot recall.

A. Mm-hmm.

Q. I think you were then asked for your specific understanding for the requirement that the Minister be satisfied as to the financial capability of the applicant as provided by paragraph 19 and in particular, in light of the information memorandum issued by the Department to applicants on the 28th April, 1995 and specifically that portion of the memorandum which responded in the following terms to a question posed by Esat Digifone as to how financial capability would be assessed and whether there were any specific criteria.

And I think the answer was in the query. Financial capability would be assessed by reference to the proposed financial structure of the company to which the licence would be awarded if successful, the financial strength of the consortia members, and the robustness of the projected business plan for the second GSM operation.

And you inform the Tribunal that you believe that there were three elements to this:

A. The number of members of the consortium. More members means less concentrated risk and possibly a wider range of expertise.

B. The financial ability of each of the members to meet the capital commitment contained in the business plan.

C. The reasonableness of the assumptions underpinning

the business plan, such as the level of gearing, market penetration, and growth, tariffs, rates, fixed assets, expenditure, etc.

I think you were then asked for your knowledge of all dealings with or submission made to the European Commission by or on behalf of Communicorp, Esat Digifone or Mr. O'Brien, and you say that you do not recall having any involvement or knowledge of these matters. That's any involvement with Europe?

A. Mm-hmm.

Q. I think you were then asked for your knowledge, direct or indirect, of the progress which had been made in the preparation of the Esat Digifone bid as of the 16th June 1995, including details of all aspects of the bid which had yet to be finalised.

And you informed the Tribunal there was a bid ready for submission on the 16th June, 1995. You can recall being in Jenkinson House and arrangements being made with printers, etc., to have the final document printed. You do not recall any aspect of the bid that had yet to be finalised.

I think you were then asked for your knowledge of the precise level of licence fee which the consortium intended to nominate in its application prior to the deferral of the evaluation process on the 16th June 1995.

You have informed the Tribunal that you do not recall

the proposed licence fee amount contained in the business plan of the 16th June 1995. One of the documents provided to you by the Tribunal, cellular mobile licence applications, executive summary, discloses a licence fee of around  $\text{€}1\frac{1}{2}$ 20 million. The licence fee would have been funded through Digifone through a combination of equity and bank finance. You have set out above your understanding of Communicorp's proposed funding of its capital commitment to Digifone.

I think you were then asked for your knowledge of a meeting between Mr. O'Brien and Mr. Ed Kelly on behalf of Esat Digifone and Mr. Martin Brennan and Mr. Fintan Towey on behalf of the Department of the 19th June, 1995, and including the purpose for which the meeting was held, the precise matters under discussion, details of all information provided by Mr. Brennan and Mr. Towey with regard to the manner in which the Department hoped to resolve the Commission's objection to the auction element of the competition, the manner in which the Department hoped to resolve the Commission's concern regarding the transparency of the evaluation process, the date to which it was likely that the process would be deferred, and any other matter relevant to or touching on the evaluation process. And you were asked to indicate the sources of any such knowledge you might have.

And you have informed the Tribunal that you have no knowledge of this meeting other than the information the Tribunal supplied you with in respect of it.

I think you were then asked about a letter from Mr. Owen O'Connell dated 20th June, 1995, to Baker McKenzie, which we have discussed with Mr. O'Connell and Mr. O'Brien and some other witnesses. And you have no knowledge about the source or any information which Mr. O'Connell may have had at that time?

A. That's correct.

Q. Now, I think the next question then deals with the question of the oral presentation; isn't that right?

A. Mm-hmm.

Q. You were asked for your understanding as to the purpose for which oral presentations by applicants were conducted by the Department; the name of all persons present at the oral presentation on behalf of the Esat Digifone consortium on the 12th September, 1995; precise details of all queries raised by the Department in the course of the presentation regarding the financing of the Esat Digifone consortium, including any queries specifically addressed to Communicorp's funding of its equity participation in Esat Digifone, and in particular, any queries regarding the letter of comfort provided by Advent or the terms governing the offer of funds by Advent; precise details of all queries raised by the

Department regarding the commitments provided by the institutional investors in the Esat Digifone bid; and your view as to the overall impression made by the Esat Digifone consortium in the course of the presentation, and in particular, any matters which appeared to you to be problematic or areas of perceived weakness.

And you have informed the Tribunal that your understanding was that the presentations were to allow the Department to hear a final pitch from consortiums and also an opportunity for the Department to ask questions about the bids and assess the calibre of the consortium team. As best as you recollect, the people present on behalf of Esat Digifone were: Denis O'Brien, Arve Johansen, Jan Edward Thygesen, Barry Maloney, Hans Myhre, and yourself. You do not recall any specific questions raised by the Department concerning the funding of Communicorp's equity participation in Esat Digifone or queries concerning the Advent letter. You do not recall any specific queries raised you do recall the discussion concerning a possible flotation of Digifone at a future date. Your opinion was that you had made a good impression. There was a technical glitch in the business plan, where the accumulated losses in the future year were greater than the shareholders funds. You explained to the Department that you believed you

would achieve a debt-to-equity ratio of 60:40 and thought this was sufficient to meet the funding requirements of the business plan. It could have resulted in the shareholders needing to inject some additional capital on a temporary basis at a future date.

I think you were then asked for your involvement in or knowledge, direct or indirect, of all dealings, discussions or meetings between Mr. O'Brien, Communicorp, Esat Digifone or any person on his behalf with Mr. Desmond or IIU Limited in relation to Mr. Desmond or IIU joining the Esat Digifone consortium or providing funding for the consortium or any members of the consortium including, in particular, Communicorp or any related or associated entity at any time prior to the closing date of the competition on the 4th August, 1995.

And you have informed the Tribunal that apart from what you have noted above concerning Communicorp raising a loan from IIU, you have no knowledge of such discussions or meetings other than that you can recall attending a meeting with Michael Walsh and Denis O'Brien in IIU's office. You do not recall what was discussed nor the date of the meeting.

I think you were then asked for your involvement in or knowledge of all dealings, discussions or meetings between Mr. O'Brien, Communicorp, Esat Digifone or any

person on their behalf with Mr. Desmond or IIU or any person on their behalf in relation to Mr. Desmond or IIU joining the Esat Digifone consortium or providing funding for the consortium or any member of the consortium including, in particular, Communicorp or any related or associated entity at any time after the closing date of the competition on the 4th August, 1995.

And you have informed the Tribunal that you have no knowledge of such dealings, discussions or meetings. You do recall at some stage providing some financial information to Michael Walsh. As to its content or timing, you cannot recall.

I think you were asked for your involvement in or knowledge of negotiations between Mr. O'Brien, Communicorp, Esat Digifone, or any entity on their behalf with Mr. Desmond, IIU or any person on their behalf between the 10th August 1995 and the 29th September 1995, and including details of the meeting on the 10th August, 1995, the 15th September, 1995, and the 17th September, 1995, and in particular, the persons who attended such meetings, the purpose of such meetings and the matters under discussion.

And you have informed the Tribunal that you have no knowledge of such meetings, dealings or discussions or meetings.

You were then asked for your understanding of the

precise obligations and entitlements of Esat Digifone and of Communicorp on foot of the agreement of the 29th September, 1995, between Esat Digifone and IIU and between Communicorp and IIU.

And you say that you had no involvement in negotiating these agreements and cannot add anything to what is in the agreement as provided to you by the Tribunal.

You were asked for your understanding of the precise obligations and entitlement of IIU on foot of the agreement of the 29th September, 1995, between Communicorp and IIU and between Esat Digifone and IIU.

And you have informed the Tribunal that you had no involvement in negotiating these agreements and cannot add anything to what is in the agreement as provided to you by the Tribunal.

I think you were then asked about the letter sent by Professor Michael Walsh to Martin Brennan on the 29th September, 1995, and you have informed the Tribunal that you were not privy to the fact that such a letter had been sent. You do not know what prompted its sending.

You knew nothing about this?

A. Absolutely nothing.

Q. I think you were then asked for your knowledge of all dealings or contacts of whatsoever nature between Mr. O'Brien, Communicorp, Esat Digifone or any associated entity or any person on their behalf had with the

Minister or the Department or any person in relation to the letter of the 29th September, and the Department's refusal to consider its contents or the Department's letter of the 2nd October, whether in advance or subsequent to the forwarding of the letter of the 29th September.

And you say that you have no knowledge of any such dealings or contacts.

Now, I think you were then asked about a meeting which Mr. O'Brien had in Oslo on the 22nd September, 1995, with Mr. Arve Johansen.

A. Mm-hmm.

Q. And I think you have informed the Tribunal that you have no knowledge of such a meeting?

A. That's correct, mm-hmm.

Q. Can I take it that you didn't know about a meeting, or if you did, you weren't told anything about it?

A. I just didn't know that a meeting was taking place.

Q. You didn't know that a meeting was taking place?

A. Mm-hmm.

Q. I think you were then asked for your knowledge of all further contacts between Mr. O'Brien, Mr. John Callaghan or any person whatsoever with Mr. Johansen or any other Telenor official subsequent to the meeting in Oslo on the 22nd October 1995 sorry, 22nd that should be the 22nd September 1995, and Mr. Johansen's letter to Mr. O'Brien dated 2nd October

1995, together with the source of your knowledge.

And you say that you had no knowledge of such dealings or contacts, and you correct the typographical error in the question.

You were then asked about your knowledge of the source of the information available to Telenor as of the 10th October, 1995, that the Minister intended to announce the winner of the competition process in the following two or three weeks as relayed by Telenor to the solicitor to their solicitor on the 10th October 1995, and you have no knowledge of the source of the information.

A. That's correct.

Q. Could I take it you have no knowledge about it at all, about this?

A. Indeed.

Q. You were then asked for the date and circumstances on which you first became aware that Esat Digifone had won the licence competition.

And you say you received a phone call from Leslie Buckley in the Killarney Park Hotel on the afternoon of the 25th October, 1995?

A. That's correct.

Q. I think you were then asked for your knowledge of the circumstances in which, and terms in which J&E Davy, Investment Bank of Ireland, Allied Irish Banks and Standard Life agreed to withdraw from their

involvement in the consortium. And you say you have no knowledge of these terms?

A. Correct.

Q. You had no knowledge

A. No knowledge.

Q. they were asked to withdraw at the time either, at the time?

A. No, absolutely not.

Q. I think you were then asked for details of all dealings or discussions to which you were a party or which you had knowledge of in relation to the queries raised by Kyran McLaughlin in a letter dated 22nd November, 1995, from Mr. McLaughlin to Mr. O'Brien, together with the sources of your knowledge. And you say that you had no involvement or knowledge of these dealings or of the letter referred to?

A. That's right, mm-hmm.

Q. Now, I think you were asked about whether you knew how Mr. O'Brien dealt with the queries raised by Mr. McLaughlin, and you had no knowledge of that either.

A. That's right.

Q. I think you were then asked for your involvement in or knowledge of all contacts between Esat Digifone consortium or any member of the consortium or any person on their behalf and the Department regarding the involvement of IIU Limited as a member of the consortium, and in particular, the Department's

attitude to such membership as recorded in an attendance dated 21st November, 1995, of Mr. Gerry Halpenny of William Fry Solicitors of a meeting attended by you. And you were asked to indicate the sources of your knowledge.

And you inform the Tribunal that you do not remember attending this meeting, and from what you can make out of Gerry Halpenny's note, the debt financing of Digifone was discussed at the meeting, and perhaps that's why you were there.

A. That's correct.

Q. I think you were then asked for your understanding of the following: the composition of the Esat Digifone consortium as of the 4th August 1995, being the date on which the application was lodged with the Department; the composition of the Esat Digifone consortium as of the 25th October, being the date 1995, being the date on which the announcement of the licence competition was made; the capital configuration and beneficial ownership of the shares of Esat Digifone as of the 12th April 1996, being the date of the board meeting on which the full complementary shares in Esat Digifone was issued; and the capital configuration of the issued capital of the beneficial ownership of Esat Digifone as of the 16th May 1996, being the date of issue of the GSM licence to Esat Digifone.

And you have informed the Tribunal that your recollection of the composition of the Digifone consortium as of the 4th August 1995 was:

40% Communicorp, 40% Telenor and 20% institutions.

Those were: AIIB, BIAM, Standard Life and Advent at

5% each. Your recollection of the Digifone consortium

as of the 25th October, 1995, was: 37.5% Communicorp,

37.5% Telenor and 25% IIU. This may have been the

intention at the time; as to whether it had been

agreed at the time, you cannot say.

3. As with your response to the position as of the

25th October, 1995, except from what you recall, this

formalised by way of a share issue of 37.5:37.5:25%

split this was in April of 1996 and at the 16th

May 1996, the shares in Digifone were held 40% by Esat

Holdings, 40% Telenor and 20% IIU.

I think you were then asked for your understanding of

the Department's state of knowledge of the composition

of the Esat Digifone consortium as of the 4th August,

1995; the composition of the Esat Digifone consortium

as of the 25th October, 1995; the capital

configuration and beneficial ownership of the shares

as of the 12th April 1996; and the capital

configuration of the issued capital and the beneficial

ownership of the shares as of the 16th May 1996.

And you have informed the Tribunal that your

understanding of the Department's state of the

knowledge of the makeup of the consortium at the 4th August 1995 would have been 40% Communicorp, 40% Telenor and 20% for institutions, as per the bid document.

You cannot say if IIU's right to purchase 25% of Digifone had been disclosed to the Department as of the 25th October, 1995. You do not know, as at the 12th April 1996, what the Department's state of knowledge was. And you say that as of the 16th May, 1996, the state of knowledge of the Department was: 40% Esat Holdings, 40% Telenor and 20% IIU. From the material the Tribunal provided to you, it is clear that the Department was aware of the shareholding at the 16th May, 1996.

A. Mm-hmm.

Q. You were then asked for your knowledge of the queries and issues raised by the Department concerning the ownership of the Esat consortium and the information provided to the Department by or on behalf of Esat Digifone regarding such issues and queries, including a letter dated 17th April 1996 from Owen O'Connell, solicitor, addressed to Ms. Regina Finn of the Department, and you were asked to indicate the sources of your knowledge.

And you say that you do not recall having any involvement or knowledge of these matters.

A. That's correct.

Q. Again, you were asked about any dealings or discussions which Mr. O'Brien had with IIU, sorry, which Mr. O'Brien had with IIU, any servant or agent of IIU, Mr. Arve Johansen, Mr. Knut Digerud, any servant or agent of Telenor, or any adviser of Esat Digifone Limited, Communicorp, Telenor or IIU in relation to the issue and queries raised by the Department regarding the capital configuration of Esat Digifone and the beneficial ownership of the issued shares, and you were asked to indicate the source of your knowledge.

And you say you do not recall having any involvement or knowledge of these matters?

A. That's correct.

Q. You were then asked for details of all dealings or discussions or contacts between you and the Department or any officials of the Department in relation to the issues raised by the Department regarding the capital configuration of Esat Digifone and beneficial ownership of the issued shares, and in particular, the beneficial ownership of the shares issued or to be issued to IIU Limited.

And you say that you do not recall having any involvement or knowledge of these matters.

You were then asked the date on which and manner to which you sorry, I beg your pardon you were asked the date on which and manner in which, to your

knowledge, direct or indirect, the Minister or the Department was informed by Mr. O'Brien, Communicorp, Esat Telecom, Esat Digifone, or any person on their behalf that Communicorp, Esat Telecom did not intend to fund its equity participation in Esat Digifone by drawing off finance to be provided by Advent, but intended to fund its participation by placement through CS First Boston, including details of the precise information provided to the Minister or the Department, and you were asked to indicate the source or sources of your knowledge.

You say you do not recall having any involvement or knowledge of these matters.

I think you were then asked about a meeting which took place in the Department on the 3rd May 1996 and which was attended by you, Mr. Digerud, Mr. Johansen, Mr. Michael Walsh, Mr. Paul Connolly and Mr. Owen O'Connell, and in particular, you were asked for your understanding of the purpose for which the meeting was held, the matters discussed, the queries or issues raised by the Department, the requirements of the Department, the request made by the Department to Telenor to underwrite the entire of the equity and operational expenses of Esat Digifone and Mr. O'Brien's understanding of the reasons for such request.

And you have informed the Tribunal you do not recall

this meeting. At the 3rd May 1996, you were fully seconded to Digifone and were principally preoccupied with the negotiation of bridge and project finance for Digifone. Your attendance may well have been to update the Department on the progress made. You do not recall the Department requesting Telenor to underwrite the equity and operational expenses of Digifone.

I think you were then asked the date on which and circumstances in which you became aware that the Department had requested that the configuration of the issued share capital of Esat Digifone be restored to the capital configuration of the consortium which had applied for the licence; that is, restored to 40:40:20. And you have informed the Tribunal you do not recall the date on which you became aware of the Department's request to have the shareholding structure back to the proposed 40:40:20, nor the circumstances around this.

I think you were then asked for your knowledge of any contact between any person associated or connected, directly or indirectly, with Esat Digifone Limited and the Department or the Minister regarding the Department's request that the issued share capital of Esat Digifone should be restored to 40:40:20, and you were asked to indicate the source or sources of your knowledge.

And you have informed the Tribunal that apart from what you have gleaned from the material provided to you by the Tribunal, and in particular, Owen O'Connell's file note of a phone conversation with Fintan Towey, you do not have any knowledge of this matter.

I think you were asked for your knowledge of all dealings, discussions and negotiations between Communicorp, Esat Telecom, Telenor and IIU regarding the request made by the Department that the capital configuration should be restored to 40:40:20, and including all matters that prompted the agreement of IIU to transfer 5% of the share of Esat Digifone to Communicorp, Esat Telecom and Telenor; all negotiations regarding the evaluation of a 5% shareholding of IIU at IRi½2.75 million, and the agreement of IIU, Telenor and Communicorp/Esat Telecom to accept such valuation, and the manner in which the valuation of the 5% shareholding of IIU was fixed at IRi½2.75 million.

You say that you cannot recall a specific request from the Department requesting that a 40:40:20 shareholding be reinstated, nor what exactly prompted IIU to sell 5% back to the other members of the consortium. To the best of your recollection, the business plan had been updated during the period from the announcement to award the licence and the final grant to take

account of supplier equipment quotes and possibly some other revised assumptions. The latest business plan may have shown an equity requirement of  $\frac{1}{2}$ 55 million, 5% of which amounted to 2.75 million. You do not recall being involved in any negotiations regarding the evaluation of the 5 percent.

And then, that is your dealing with the question.

You were then asked for your knowledge of a meeting which took place at the Department on the 13th of May 1996 attended by Knut Digerud, Owen O'Connell, Martin Brennan and Fintan Towey. And you have no knowledge of that meeting.

A. That's correct.

Q. I think you were then asked what steps were taken by Esat Digifone on foot of the Department's request that key questions be identified and draft answers prepared; in other words, the rehearsal for a press conference. And you have no knowledge or involvement in that matter; is that correct?

A. That's correct.

Q. I think we can go on to question 54, I think.

A. Mm-hmm.

Q. You were asked for your knowledge of all matters which prompted the renegotiation of the underwriting agreement between the members of the consortium, and in particular,

1. The release of IIU from its obligation on foot of

the agreement of the 29th September 1995 to underwrite the entire of Communicorp/Esat Telecom's equity participation in Esat Digifone Limited.

2. The assumption by Telenor of an obligation to share with IIU in the underwriting of Communicorp/Esat Telecom's equity participation in Esat Digifone on a 2:1 ratio.

3. Details of the precise terms on which IIU and/or Telenor provided funding to Esat Telecom to finance its obligation to contribute to the licence fee of  $\text{€}15$  million paid by Esat Digifone to the Department on the issue of the GSM licence to Esat Digifone on the 16th May, 1996.

4. Precise details of the funding arrangements between IIU, Esat Telecom and Telenor regarding all aspects of the funding of Esat Digifone Limited.

And in each instance, you were asked to indicate the source of your knowledge.

And you have informed the Tribunal that you had no involvement with the renegotiation of the underwriting agreement between the members of the consortium.

And in reply to the first query, you had no knowledge of this matter.

In reply to the second one, you had no recollection of this matter.

In relation to the third one, you cannot recall the details.

And you say that at the date the licence was granted, you had no day-to-day involvement with the affairs of Esat Telecom.

And you say that in relation to the fourth query, from the best of your recollection, Esat Holdings was involved in a fundraising around the time the licence was granted. Telenor and IIU funded Esat Telecom's initial share of the licence cost, net of any amount due in respect of the bid costs.

I think you were then asked about a letter dated 7th May 1996, or a number of documents of that period. These were enclosures that went to the Department.

A. Mm-hmm.

Q. And you say that you do not recall having any knowledge of these letters, but they would appear to be confirmation of each shareholder's financial standing.

A. Mm-hmm.

Q. I think you were then asked for details of the underwriting arranged by IIU of Communicorp/Esat Telecom's obligation to participate in the equity of Esat Digifone on foot of the agreement of 29th September 1995 and referred to in letter of the 9th May 1996 from KPMG addressed to the Department, and you were asked to indicate the source of your knowledge.

And you say that you can recall seeing a copy of the

agreements as provided by the Tribunal to you. You cannot recall paying any great attention to them, and you were not involved in the negotiation.

When you mention an agreement there, do you mean the agreement of the 29th September?

A. I need to check that out.

Q. All right, all right, we can come back to it. Very good.

I think you were then asked for your knowledge of all documents furnished to the Department in connection with the rights and obligations of the shareholders of Esat Digifone inter se, in advance of the issue of the licence to Esat Digifone on the 16th May, 1996, and all documents furnished to the Department in connection with the project financing of Esat Digifone in advance of the issue of the licence on the 16th May, 1996.

And you have informed the Tribunal that you can only assume that a copy of the Digifone shareholders agreement was made available to the Department, though you do not recall specifically anyone providing them with it. You attended a meeting with the Department where the status of the project finance was discussed.

Personnel from ABN-AMRO and AIB attended one of these meetings, and from what you can recall, you discussed possible amendments to the draft licence to make the project more bankable. You do not recall making any

documents available to the Department in relation to the project finance.

I'll come back to that again, but I think was that a situation where the banks were anxious that they could have a charge over the licence and not just over the company or the assets of the company?

A. From what I can recall, they were looking to put a charge over the licence. That wasn't permitted in the licence, so they were looking to be put on notice if the licence was going to be withdrawn at any stage.

Mm-hmm.

Q. I think it was being explained to us in terms that without the licence, there wasn't the view of the banks was there wasn't

A. A business.

Q. There was no business?

A. Indeed.

Q. No matter what

A. Exactly.

Q. structure was there.

I think you were then asked for your knowledge these were all about there was a series of side letters. You knew nothing about them. You weren't involved in them.

And then you were asked about meetings with or dealings or contact with various people; isn't that right?

A. Mm-hmm.

Q. There was, firstly, Mr. Michael Lowry; secondly, Mr. John Loughrey; thirdly, Mr. Martin Brennan; fourthly, Mr. Fintan Towey; fifthly, Mr. Michael Andersen, or any member of the Andersen Management International; sixthly, any official of any government department; and then seventhly, any member of the Government; and eighth, any public official.

And you have informed the Tribunal that you do not recall ever meeting or having direct contact with Mr. Michael Lowry. You do not recall that Mr. John Loughrey was present at the oral presentation other than that you do not recall ever having contact with him. He wasn't at it.

3. From what you can recall, you would have met Mr. Martin Brennan at the oral hearing and a number of subsequent meetings to discuss the project finance. You cannot recall any other contact with him.

4. From what you can recall, you could possibly have met Mr. Fintan Towey at the oral hearing you would have?

A. Mm-hmm.

Q. And a number of subsequent meetings to discuss the project finance. You cannot recall any other contact with him.

5. You do not recall if Mr. Michael Andersen was present at the oral presentation he was. Other than

that, you do not recall ever having contact with him.

And as regards to civil servants, public officials, and matters of that nature, you say that the scope of these questions is so wide that you'd have difficulty in replying to them.

Then you were asked whether you had any knowledge of Mr. Denis O'Brien or any person on his behalf sorry, of all meetings, discussions, dealings or contact of whatsoever nature between Mr. Denis O'Brien or any person on his behalf and the Minister or the Department at any time prior to the date of the issue of the licence on the 16th May 1996.

And you say you do not recall having any knowledge of such meetings, discussions, dealings or contacts?

A. That's correct.

Q. When had you gone over to Digifone, more or less, full-time?

A. I think it was February, '96.

Q. February, '96. I wonder, do you have Book 48?

A. I don't have a copy of it.

Q. Would you just go to the Tab 7 for a moment, please.

This is the joint venture agreement.

Now, I think you didn't know, or you have told us in your statement you didn't know anything about the guarantee in the joint venture agreement?

A. No. When I was answering that question, I didn't have a copy of this agreement. I didn't have a copy

Q. I see.

A. If I had, I hadn't come across it.

Q. All right. That's fair enough.

Do you remember the joint venture agreement? Do you remember seeing it at the time?

A. I can remember seeing it at the time, because what I can recall when I did see a copy of it, I think we were in the States when it was actually signed.

Q. Right. And now that you see it, you see this question of a guarantee?

A. Mm-hmm.

Q. And it was to be a guarantee for  $\frac{1}{2}$  million, isn't that right, plus

A. That's correct.

Q. 50% of the licence fee?

A. Mm-hmm.

Q. Do you remember having any discussion with Mr. O'Brien about that?

A. No. Not about the guarantee. It would have been my understanding, at the time, that Advent were going to provide funding to Communicorp to fund its involvement in the consortium.

Q. But you were the finance man; isn't that right?

A. That's correct.

Q. On the Communicorp side. I suppose when you say, where are we going to get a guarantee for  $\frac{1}{2}$  million plus 50% of the whatever the licence was going to

be, that's the first thing that would jump up at you, because you knew you didn't have it yourself, or you didn't have the money yourself, and you were trying to raise money?

A. We were trying to raise money in the States, and also, obviously, we had discussions with Advent. They were due to put in some additional monies at the time. And also there was negotiations as to how they would put in future monies if the licence had been successful the bid.

Q. But it didn't cause you, or you can't recollect whether it caused you any concern?

A. No, I don't have any recollection of being concerned about it.

Q. You don't have any recollection of concern?

A. No.

Q. And you can't recollect having any discussion it was fairly onerous, wasn't it, from Communicorp's point of view, the guarantee?

A. It would have been onerous, but what was happening at the time was that there was fundraisings going on, and in the event of winning the licence, there would have been several investors willing to invest money or provide us with money so. This was the kind of the way I would look at this, looking back on it now, nearly nine years later, that this was you only had to put this money up, really, if you had been

successful in winning the bid.

Q. Well, I wonder is that so, Mr. O'Donoghue, because this was to be a guarantee provided by the 16th June, 1995; isn't that right?

A. That's correct.

Q. So it was really, it was only when you were commencing the bid; isn't that right?

A. Exactly no, you are right in that. You are correct in that.

Q. I was just wondering, you say you don't have any recollection of it, but I was just wondering, surely there must have been discussion, because this was a significant matter

A. Mm-hmm.

Q. it would appear. And you can't remember any discussion with Mr. O'Brien or any advice you might have given like, it would strike me that one might say, "Shouldn't we go back to Telenor and say, 'Look, the guarantee is fairly onerous now in these circumstances, and could we deal with something, you know, something less onerous?'"?

A. No, no, I can't recall having that conversation.

Q. You can't remember any conversation.

Do you remember Mr. O'Brien making any approaches to Anglo Irish Bank seeking a guarantee?

A. No. We had had some discussions on the other side of the business with Anglo, we had some relationships

with small loans, but I can't remember him approaching Anglo.

Q. For a guarantee of this nature?

A. No, no.

Q. What were you doing in the States at this time, 16th June? Was this when you were discussing with CSFB?

A. It would have been one of the fundraising visits to the States. I don't know who we met that weekend.

Q. Right. Now, if you go to Divider No. 13. This is kind of the beginning of the Advent story, if I refer it like that.

Advent were a shareholder, an existing shareholder in Communicorp; isn't that right?

A. Indeed.

Q. And now this situation arose, and this is a note of dated 29th June, 1995, isn't that right, to Massimo Prelz; and it's I think signed by you on behalf of Denis O'Brien. Isn't that right?

A. Mm-hmm.

Q. And you say that "On the 19th May 1995, Advent agreed to give Communicorp Group a loan of \$5 million convertible after five years into 20% of the radio division. This agreement was reached at a meeting in Esat's boardroom attended by Bob Shenfield, yourself and myself.

"On the following Saturday, 20th May, 1995, the terms

of the agreement were confirmed with John Callaghan when John and I spoke to you on the phone from his house. Subsequent to this agreement you attended with me at Woodchester Bank and confirmed to them that the loan was being made available.

"On Tuesday, 30th May, 1995, you spoke to me in Norway and informed me that your Board had not approved our agreement and that you were now offering a straight a five year loan and with an annual coupon of 30% and specific terms relating to early repayment.

Communicorp never accepted this offer. On the 15th June, John Loughrey (sic), Peter O'Donoghue, yourself and myself met in our GSM office in Jenkinson House.

We reached agreement on the terms of the bridging finance, and these were documented by John Callaghan, an independent director, a copy of which is attached.

"Can you please confirm to me whether Advent are going to adhere to the agreement reached on bridging finance at our meeting of the 15th June? If Advent are not going to do so, I need to inform the directors at the board meeting scheduled for tomorrow. In addition we would also need to hold a board meeting of Communicorp Group Limited immediately to discuss the financing needs of the group."

Then there was attached a John Callaghan note.

A. Indeed.

CHAIRMAN: I'd better mention one typing correction.

I think the record records Mr. Loughrey rather than Mr. Callaghan as being at that particular meeting.

We'd better rectify that.

Q. MR. COUGHLAN: Now, so there was discussion about more equity; that came unstuck, and it took the form of a loan with

A. A very high coupon.

Q. a very high coupon?

A. Mm-hmm.

Q. And that's all recorded at the handwritten note, at the top of the handwritten note of John Callaghan's?

A. That's correct.

Q. That was one issue?

A. Mm-hmm.

Q. Now, there was also, as noted by Mr. Callaghan, an agreement or heads of an agreement here to be given in relation to Advent's entitlement to 5% equity in the GSM company; isn't that right?

A. That's correct.

Q. And that was that they were to invest 5% of the in the block, the 20% institutional investors' block?

A. Exactly.

Q. At par, it's noted here. They were to give a letter to satisfy Telenor and requirements of the GSM bid?

A. Mm-hmm.

Q. It's noted "it would be a strong letter but couldn't be a commitment to invest"; isn't that right?

A. Mm-hmm.

Q. "Advent were to have an opportunity to participate in the financing arrangement for the group and/or GSM company if money is passed directly from GSM company. If GSM licence is secured, the contingent payment is deemed to be 3.6 million originally 4 million for 50%."

So those were the two

A. Separate agreements.

Q. separate agreements; isn't that right?

A. Mm-hmm.

Q. Now, I think now, if you go over to the next divider, you will see there, yourself and Mr. O'Brien were being kept informed by Mr. Paul Connolly of the CS First Boston position; isn't that right?

A. Mm-hmm, indeed.

CHAIRMAN: Could I just ask you, Mr. O'Donoghue, the 30% at the time, since it would have been part of your stewardship, was it an untoward amount to pay, or did it just reflect that you were in a comparatively high-risk venture and having to deal with a venture capital house rather than an ordinary lending bank?

A. The way I would have viewed it at the time was that we needed funding, and this was the only funding available because of the original shareholders agreement. Advent, it's typical of any venture capital house, it blocks off other sources of funding.

And they had us in a very difficult situation.

CHAIRMAN: Yes. Well, Mr. O'Brien, I think, in evidence said if you were going to win, it would be good value even at those high rates; you'd subscribe to that?

A. Indeed.

Q. MR. COUGHLAN: Can you remember, this agreement was being entered into with Advent

A. Mm-hmm.

Q. that related to their 5% equity participation in the GSM company.

A. Mm-hmm.

Q. And also their entitlement, I presume, under their original agreement, to subscribe through their shareholding in Communicorp or whatever entity that would be; isn't that right?

A. Mm-hmm.

Q. But at the same time, there was discussions going on to raise, or there were inquiries being made at least, to raise funding through, for example, CSFB; isn't that right?

A. Indeed.

Q. By Communicorp?

A. Mm-hmm.

Q. And were Advent aware of that at that time?

A. Oh, they would have been.

Q. They would have been aware of that at that time as

well; right.

And this was funding, I take it, being raised to cover Communicorp's or Esat Telecom's equity participation in the GSM company?

A. That would be one of the items.

Q. And equity money for themselves as well?

A. There would have been additional radio interests, the roll-out of the fixed-line business, mm-hmm.

Q. So this discussion was taking place with CSFB, perhaps with others, but CSFB we know about?

A. In particular.

Q. And it was to raise money for the fixed-line business and to fund the fixed-line business's equity participation in the GSM company?

A. Or to fund Communicorp's

Q. Sorry, I beg your pardon, to fund Communicorp's equity participation in the GSM company?

A. Indeed.

Q. Now, if you just go to the next tab, Tab 15, I just want to ask you about one thing there. And it's just this is a letter from Baker McKenzie to Owen O'Connell, and it's about this whole question of Advent and Communicorp Group.

And you see it's just the second point in the letter there where the question is asked: "Is the comfort letter to Telenor to be in exactly the same form as that to the Minister?"

Do you remember having any discussions about the comfort letter at that stage?

A. No, not at this stage.

Q. I know you came into the

A. Exactly. Not at this stage.

Q. But when the letter was being prepared, do you remember being asked about it at all?

A. No. I can remember later on, when the letter was prepared, there was drafts of it.

Q. I know. We'll come to that. But at this stage you weren't asked for a view or you weren't asked to contact anybody in Telenor

A. I can't recall.

Q. to say, "What form would satisfy what form of letter would satisfy you", or anything like that?

A. No.

Q. Would you be the, do you think, the person that Owen O'Connell might have gone to about something like that, or

A. No. Typically shareholder issues was kind of Denis and Owen together, yeah.

Q. I see. I think we can then go to Tab Number 16. And this is a memo from you to Massimo Prelz, which you copied to Baker McKenzie and to Fry's. It's dated 21 June 1995, and it's regarding the participation in the GSM.

"Further to our conversation this morning, I now have

had an opportunity to review the notes taken at our meeting of the 15 June last. It was agreed that Advent has the right to invest up to 5% in the GSM company at par. This allegation is to be made from the 20% being allocated to the institutional investors. I have advised Helen Stroud that this should be reflected in the agreement."

You are just confirming what was contained in John Callaghan's note as well?

A. Exactly, mm-hmm.

Q. And now I think if you go to Tab Number 20, and this is from Denis O'Brien to Massimo Prelz, dated 29th June, 1995, regarding the Esat loan facility agreements.

"I have received a facsimile from Helen Stroud responding to my memos of the 28th June 1995. I have set out below Communicorp's response to the points raised.

"1. Advent's view that the Esat deal and the RINV are one package is wrong. This was not agreed at our meeting of the 15th June 1995, and John Callaghan has also confirmed this. By interlinking the two agreements, Advent have introduced a new condition to the loan agreement which is now preventing the Communicorp Group from drawing down the bridging facility, and consequently Advent are putting the group's development in jeopardy.

"It was agreed that Advent is being given the right to participate directly in 5% of the equity of Digifone in exchange for a letter satisfying Telenor in relation to Communicorp's credit standing in respect of the GSM project. We will not accept any change to this provision. In addition, we would point out that we have already agreed with Telenor on Advent's right to participate directly in 5% of Digifone's equity.

"2. As has been explained to Helen Stroud, it was always the intention that Esat Telecom would invest in Digifone. However, as we are currently in litigation with one of the minorities in the Esat Telecom" that's a reason why there was a different company being dealt with there?

A. Indeed.

Q. So what was, to your recollection, what was happening at this time?

A. I have reviewed the documentation. It's very confusing, but I think what the Advent were trying to do was interlink the two agreements. And I think they were trying to there was something about shortening the term of the loan; I think the loan became repayable in two years if Telenor weren't happy with the letter.

Q. I see.

A. That's my recollection now, but I have reviewed the documentation, and I am still confused at the end of

it.

Q. All right.

Now, it is asserted by Helen Stroud that she had, in the documents, that she had a discussion with you.

A. Mm-hmm.

Q. Do you remember having discussions with her? Just to explain, and I think what she asserts in the

documentation and correct me if I am wrong is to

this effect, that she had a discussion with you and

that you had agreed with her that Telenor's lack of

satisfaction with the comfort letter would not be a

bar to their entitlement, that is Advent's

entitlement, to invest in 5% of the GSM company.

Would you agree that's what she appears to be

asserting in the documentation?

A. Exactly.

Q. Do you remember having such a discussion?

A. I don't remember the conversation, and I wouldn't have

been in a position to give that commitment on behalf

of Communicorp.

Q. That's fair. Why would you have been having discussions with Helen Stroud, I am just wondering? I

know you mightn't be able to bind Communicorp

necessarily, but would you report to anybody and get

back to her, or

A. I think the I was principally involved in getting

the 3.2 million loan, getting the cash in the bank,

really. And that was my principal involvement in it. Then I think it just kind of overflowed into the other agreement, and then the two agreements got all muddled up. And we could have ended up talking about both agreements, but I was only interested in one agreement. And at the time, I think Owen O'Connell was on holidays, and Helen usually dealt

Q. She spoke to you directly?

A. Yes. And Owen took exception to that later on. So it was I'd say my involvement was that they were so anxious to get the money, how soon could we get this agreement?

Q. And I accept that. You were anxious to get the money. It was your job to get the money. Could you have said to Helen Stroud, do you think, that

A. No

Q. I know you weren't in a position necessarily to bind them, but could you have said to her that

A. No, no, I wouldn't have had that authority. It wouldn't have been no, I don't think so.

Q. Do you remember having any discussions with Denis O'Brien about it?

A. No, I don't.

Q. Now, the letter at the next tab is the letter to the Department. It's in similar terms, with just a slight change of the wording just to reflect in the Telenor letter. Do you remember seeing the letter?

A. Oh, yes.

Q. You saw the letter?

A. Mm-hmm.

Q. And I think we have read this letter on numerous occasions. The first one is an introduction to Advent; isn't that right?

A. Mm-hmm.

Q. The second one deals with the history of Advent's the second heading deals with Advent's investment in the Communicorp Group?

A. Mm-hmm.

Q. And then the third one, Advent's commitment to the GSM licensing application; isn't that right?

A. Mm-hmm, that's correct.

Q. And it says, "We have reviewed the business plan prepared by Digifone in connection with its application for the second GSM licence and consider its operation of the second GSM cellular system in Ireland to be an attractive and viable project. The application to you by Communicorp sets out how it is intended to inject new equity into Digifone on the licence being granted to it and shows the Advent Fund as 5% shareholders, participating in the 20% holding which has been allocated to the institutional investors. We are delighted to have the opportunity of investing directly in Digifone as well as our indirect investment in the company through Communicorp

and Esat Telecom.

"The said application also shows Communicorp Group remaining as a 40% shareholder in Digifone and being required to provide up to 30 million Irish Punts to fund that 40% equity participation. We can confirm that we have offered the amount to Communicorp to enable it to fund its obligations".

Then "Please do not hesitate", etc., "Massimo Prelz".

And that was the comfort letter which arose out of the agreement you originally discussed and noted by Mr. John Callaghan, and was a strong letter but not a commitment; isn't that right?

A. Indeed.

Q. And that's the one that went with the bid; isn't that right?

A. Indeed.

Q. Now, the actual agreement is at the next divider.

A. It's at 22, is it?

Q. That's at 22.

A. It's actually marked up as missing here.

Q. Is it? All right. I'll give you a my copy, because I don't intend reading through the agreement.

Do you remember the agreement?

A. Yes, I recall the agreement, yeah, mm-hmm.

Q. And I'll give you this one, because this other copy here is marked.

We have been through this with Mr. Owen O'Connell, and

I think the his interpretation of the agreement was, the effect of which was that in consideration of providing the letter of comfort, there was the entitlement to invest 5% in the GSM company; isn't that right?

A. Letters of comfort, isn't it?

Q. Letters sorry, I beg your pardon, letters of comfort.

That is the letter to the Department and the letter to Telenor; isn't that right?

A. Indeed.

Q. And that's primarily what we are concerned about in relation to the agreement. Would you agree with that?

A. I would agree. That was the agreement, exactly.

Q. Is that what it is?

A. Mm-hmm.

Q. Now, and would you agree with Mr. O'Connell that that agreement doesn't cover a facility of  $i_{\zeta}^{1/2}$ 30 million?

It's not an agreement in relation to a loan or 30 million

A. I would agree with him, yeah.

Q. Now, at the time when the letter of the letters, I beg your pardon, the letters of comfort arrived, had you actually seen the agreement yourself, do you know?

A. Had I seen this agreement?

Q. Yes.

A. Yes, I would have seen drafts of it.

Q. Drafts of it?

A. Mm-hmm.

Q. Now, if you go to Tab if you want me to take back the you can slot it into your own file.

At 23, then there is a letter dated 14th June, 1995, and it's signed by Denis O'Brien.

A. Sorry, July.

Q. 14th July, I beg your pardon, 14th July, 1995.

And it's addressed to Massimo Prelz. Now, you notice the agreement dated the 12th is signed by Denis O'Brien.

A. Mm-hmm.

Q. Now, this letter then reads: "I refer to our agreement dated the 12th July in regard to the GSM bid to be made by Esat Digifone Limited.

"As you are aware, you have written to the Minister for Transport, Energy and Communications and to Telenor Invest AS stating that you have offered Communicorp Group Limited 30 million in respect of their equity participation in the bid.

"We would like to confirm acceptance of our agreement dated 12th July.

"Yours sincerely, Denis O'Brien."

Did you ever see that letter, do you recollect? It went in with the bid?

A. It went in with the bid. I remember seeing it in private session.

Q. I know, but at the time, yeah?

A. I can't recall. I can't recall seeing the this letter, because

Q. Do you know why that letter or did anyone did anyone ever have any discussions as to why that letter was sent?

A. No, I have read the letter, and I can't put it in context.

Q. It's hard, isn't it?

A. Mm-hmm.

Q. Because the agreement is the agreement. That's a signed agreement, isn't it?

A. Mm-hmm.

Q. It refers to that. It refers to what has happened, in other words, that the letter that the letters of comfort state that. Everyone knew that they were letters of comfort sorry, you knew, or your state of knowledge and Owen O'Connell's state of knowledge that what they were, and John Callaghan's is that they were strong letters but not commitments; isn't that right?

A. Indeed.

Q. And did you ever hear from Mr. O'Brien at that time that he had any agreement with Massimo Prelz for a 1/230 million facility?

A. I know from the notes that were provided that when I had a conversation with Massimo, I think on the 3rd

August, I mentioned in that that Massimo had put terms

to Denis. But that's all I knew. I never knew

Q. But these had not been acceptable; isn't that right?

They had been rejected?

A. That was my understanding, mm-hmm.

Q. Yes. Would you have had an overview of because you

were dealing with the financial aspects of the bid,

with this particular letter? Because it seems to

convey it's hard to put it in context. It's hard

to know why it would be written at all; isn't that

right? It doesn't add anything.

A. Mm-hmm.

Q. Other than it does seem to create an impression that

there is an agreement for 30 million, I'd suggest.

A. It's hard for me to make a rational comment on it.

Q. All right. Do you remember it going in with the bid?

A. I can't recall.

Q. All right.

Now, the next page is your memo. This relates in

fact, the memo was made later sorry, I beg your

pardon, no. This was the one dated 31st July, 1995.

Financial commitment to Digifone.

You say: "Further to our conversation today, I

confirm that Advent International Corporation and

Communicorp Group have formally entered an agreement

whereby Advent have committed up to 30 million to the

Communicorp Group in the event that Esat Digifone is

successful in the bid for the second GSM licence."

This is written to Telenor.

"In consideration of Advent making these funds available, Communicorp has agreed that Advent would be entitled to participate in up to 5% of the equity capital of Digifone Limited. Denis O'Brien is also a signatory to this agreement.

"Accordingly, as the above parties represent 100% of the shareholders of the Communicorp Group, they have given their consent to the increase of capital required in Communicorp to facilitate the investment in Esat Digifone.

"I hope the above will assist you in finalising your outstanding issues."

A. Mm-hmm.

Q. Now, of course that was not the position.

A. As I have discussed previously, that was my, I suppose, my understanding at the time, but no, it wasn't an agreement; it was actually an offer that hadn't been accepted, and I subsequently went on to pass on a draft of a letter that was suitable to Telenor on to Massimo, and I even, in that, referred to it as a financial guarantee. It's just that I had a misunderstanding at the time.

Q. Fair enough. So you accept that that is incorrect, and it's as a result of a misunderstanding on your part?

A. Indeed, mmm.

Q. Can you remember how this arose? This is at you see there, there is something handwritten there; do you see the fax number, that "3pm"?

A. It's "3pm", and it would be by Jackie O'Brien, who was a PA.

Q. Can you remember, had Knut Haga been on to you, or what was happening that gave rise to

A. I can't remember him being on to me, but from the letter, it refers to "our conversation today". But I had a lot of conversations with Knut Haga.

Q. Right. Can you remember at this time I know when we come to the evening of the 3rd August, into the morning of the 4th, there was a fair amount of discussion going on; but can you remember, prior to that, whether Knut Haga or Telenor were looking for something strong or stronger than the letter of comfort that had been given to them?

A. No, I can't recall.

Q. You can't recall.

Now, if you go to the next divider, you can see this is an Owen O'Connell note. It's an attendance on you, I think, on the 31st July. And then there is:

"Telenor agreement? Initially 50:50. Then 40:40:20.

Ultimately 33 with 33 in public domain (per quote)"

I think that has been indicated in the bid?

A. Indeed.

Q. Within three years, it was hoped to do that.

"Not keen to be obliged to pay up large amounts of money too early. Only required dependent on First Boston funding".

What's that about? I can understand why you wouldn't want to be paying up too much money too early.

Doesn't it appear there that in fact the view was being taken, or at least being conveyed to you by somebody, that the funding was going to be dependent on the CSFB?

A. I am just trying to make out Owen's handwriting.

Q. It's in typed just behind it. It's in typed copy just behind it, if you go is it in yours?

A. No.

Q. I'll give you this one.

A. I am just trying to make sense of this. The only thing I can think of is, one of the discussions we had at the time around the project finance was that the equity would have to go in first, or the bank debt secondly, or would they go into together at the start?

I don't know.

Q. It seems to indicate that the view was taken that the equity financing would be coming from CSFB, just reading the note and the way it seems to be conveyed there. Would you agree?

A. I would agree that there were definitely discussions going on with First Boston at the moment, and they

were probably seen as a source of funding.

Q. They seem to be the primary source; would you agree?

"Dependent on First Boston funding" well, maybe

not.

A. Mm-hmm.

Q. Would you agree that that's what one might read the

note that way?

A. One could read the note that way, mm-hmm.

Q. Do you recall what was happening at the time? Because

you were, I suppose, the financial director, or

controller at that time, isn't that right, or officer?

A. Yeah.

Q. Can you remember?

A. No, I can't specifically remember.

Q. All right. Then you go you are obviously informing

Owen O'Connell about the joint venture agreement, and

we know Mr. O'Connell wasn't involved in the

preparation of that joint venture agreement; it came

from Telenor, I think.

A. Okay.

Q. And then "Agreement will be reviewed by Department

communications.

"Agree Telenor appoint CEO."

Now, I don't know what agreement that is referring to

there. It could be a shareholders agreement. It

could be the reference there, "Agree Telenor

appoint CEO."

A. That Telenor would have the CEO, and I think Denis was going to be Chairman. That was to be included in the

Q. But the agreement being referred to be seen by the Department, may well either a shareholders or a draft or a draft shareholders agreement, or something of that nature. That's the way I would read that note; would you agree?

A. Yeah, I would agree.

Q. There was a specimen shareholders agreement, I think, went in with the bid?

A. There was. There was a draft of the shareholders agreement, yeah.

Q. A draft.

A. Mm-hmm.

Q. And then you are informing Owen O'Connell that "You will not provide a 1/25 million guarantee. Only have letter of comfort (from Advent)."

Isn't that right?

A. Mmm.

Q. You are saying that there is a joint venture bank account?

A. That's correct.

Q. And then what money has been put up by both sides, I think.

A. Okay.

Q. Isn't that right?

A. Mm-hmm.

Q. Now, it seems to be that you are informing Mr. O'Connell here that you won't or sorry, not you personally, of course, but that Communicorp/Esat will not provide a guarantee, isn't that right, to Telenor, because you only have a letter of comfort or strong letter of comfort?

A. Indeed, mm-hmm.

Q. Can you remember what discussions were going on about that?

A. I can't remember specific discussions, but we wouldn't have been in a position to provide that guarantee. The way I would look at it is that Advent, we'd be looking to Advent to satisfy our partners in relation to whatever financial commitments they were looking for.

Q. If you go over to the next tab, Tab 26. It's a fax from Knut Haga to Denis O'Brien.

And it reads: "Dear Denis,

"With reference to joint venture agreement dialogue with Peter O'Donoghue and facsimile letter from Peter 31 July (enclosure), I would like to express my concern related to the issue of financial guarantees.

"Based on the letter from Peter, I required a similar statement from Advent International through Baker McKenzie. Ms. Helen Stroud called this afternoon and told me she had not made any agreement between Advent

and Communicorp related to the said IR  $\frac{1}{2}$ 30 million.

"If this information is correct, I believe we may have serious problems related to establishing an acceptable level of financial comfort.

"Please be aware of the fact that this situation may jeopardise the whole project."

Do you remember Denis O'Brien talking to you about this on the 2nd August?

A. I can remember seeing this.

Q. You remember seeing it?

A. Mm-hmm.

Q. Did Mr. O'Brien send it to you, or

A. I can't remember how I got it.

Q. Right. Well

A. I see at the very top it's written "Urgent", so...

Q. The position, certainly when this arrived, was that

I think if you go over the page, there is nothing on it; it's a letter to Helen Stroud from Knut Haga, and you can see Item Number 3 is the handwritten "no" relates to whether an agreement has been signed in relation to the 30 million. I think that's the now, at this time I suppose you became aware that your understanding was incorrect; isn't that right?

A. Yeah

Q. Ms. Stroud was right. There was no agreement in relation to the 30 million?

A. There was no agreement to provide the 30 million. The way my understanding at the time, or the way I would have looked at it, is that Advent were in a position, as their offer was really kind of a backstop offer, to demonstrate that we had the financial capability should we win the licence going forward, we had this offer of 30 million.

Q. So that's as you understood and as you, as the financial officer of the company, understood the situation to be, that you viewed this as a backstop offer to demonstrate a financial capability should you obtain the licence?

A. Mm-hmm.

Q. And may well tie in with what you had informed Owen O'Connell, that the funding, as you understood it, perhaps, was dependent on the money being raised on the CSFB side? Would that be a fair way of putting it?

A. Indeed, mm-hmm.

Q. And then if you go

CHAIRMAN: It's probably the right time to rise until two o'clock, Mr. O'Donoghue. We'll resume your evidence then. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF PETER O'DONOGHUE BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Now, I think sorry, Mr. O'Donoghue, we are still on Book 48. If we go to Tab 27.

I think on the 3rd August, you faxed Massimo Prelz, and you attached a draft of a letter; isn't that correct?

A. That's correct.

Q. And that was a letter that you were trying to get him to sign that would satisfy Telenor; isn't that right?

A. Telenor, indeed.

Q. Can I take it you must have had some discussions with Telenor people to get a wording or a type of wording, would that be fair to say, around this time, the 3rd?

A. It would be fair to say. I can't remember exactly, but I probably had a telephone conversation with Knut Haga.

Q. And I think you'll find first of all we'll deal with this fax. "Telenor requested us to provide them with a slightly reworded financial guarantee from yourselves. I attach the requested wording. I do not believe the attached is any more onerous than you have previously provided us and I would be grateful if you would prepare a letter along the lines as attached.

"As you are aware, the bid is due for submission tomorrow the 4th August, and we would require this letter today."

And I think the draft of that, I think, is if you go to Tab 29, isn't that correct, or

A. I have it's part of the same

Q. Sorry, it's just behind it.

A. Yeah, exactly.

Q. And it's just to be addressed to Per Simonsen.

"Advent hereby guarantee Telenor AS that it will offer 30 million to Communicorp. This offer is true and valid for 60 days after the Ministry of Transport, Energy and Communications has awarded the licence to Esat Digifone." I think that resulted in a telephone conversation between yourself and Massimo Prelz, I think; isn't that correct?

A. Indeed.

Q. If you go over the tab.

Now, you made this particular or you sent this fax to Owen O'Connell on the 3rd November, 1995. But in it you record or recount your recollection of events on that day, the 3rd August?

A. Indeed.

Q. And you go on, and you say to Owen: "I now attach some handwritten notes of my telephone conversation with Massimo Prelz on the 3rd August 1995.

"He accused me of trying to mislead Telenor and said that you guys (reference to Denis and I) have a way of playing with words. This would go back to our original discussions on the terms of the IRi;½3.2 million facility and what was agreed in respect of the 5% of Esat Digifone."

I suppose that must have referred back to

A. The two previous agreements.

Q. the two previous agreements and whether they were linking those agreements, and you were keeping them separate, all right.

A. Mm-hmm.

Q. "He stated that the word "committed" was misleading, and the fact that no offer as to "there was no offer, as no terms were agreed."

You accept, I think, that the word "committed", you would be erroneous in the use of the word "committed", of course. You have told us that there were terms which were not acceptable, isn't that correct, were not accepted; isn't that right?

You go on: "I remind him that he had put outline terms to Denis even though these were not acceptable to ourselves".

You were explaining to Owen O'Connell the full situation as you understand it?

A. Indeed.

Q. You were recording this in November of 1995, and you're recounting to Owen the, I suppose, the heated telephone conversation you might have had with Massimo Prelz?

A. Indeed. This is part of, I suppose, making invalid the original agreement about the 5%.

Q. Yes.

A. That's why it was recorded in November, mm-hmm.

Q. And he stated that he would not be signing any letter.

"Letters require the approval of the investment committee, and no letter would be forthcoming."

I think you probably knew that letters would probably would require the approval of his investment committee. We know from the other agreement, he said sorry, or from the agreement that you understood, first of all, was going to be by way of equity, that that wasn't approved by his investment committee, isn't that right? Or that's what you were told, at least?

A. No, that was the explanation he gave why he withdrew his original

Q. Sorry, that's what you were told, anyway. Whether it happened or not, you don't know, but that's what you were told?

A. But he hadn't said that when he had offered the original investment of \$5 million, that it was subject to the investment committee. Mm-hmm, okay.

Q. Yes. So in November, you were when an issue arose between Advent and Communicorp, you were providing Owen O'Connell with information which you had which may or may not have been relevant to his needs?

A. Indeed.

Q. But you were clear that on the 3rd August, he was correct as far as you were concerned, at least,

anyway that the word "committed" was well, he used the word "misleading", but you used it erroneously, would be the way you describe it, and whilst outline terms had been indicated or put to Denis O'Brien, these had not been accepted; isn't that right?

A. Indeed.

Q. Now, again, on the 4th August, if you go over the tab, you are again, I think, trying to get a letter to satisfy Telenor, isn't that right, from Advent?

A. Indeed.

Q. And you sent him a letter, Massimo Prelz, a letter on the 4th August attaching a revised letter. And if you just go over, we'll just look at that revised letter.

"Advent plc on behalf of its fund under managements confirm that it has offered 30 million to Communicorp Limited for the necessary equity increase in Communicorp Limited to establish and operate a GSM network in Ireland. This offer is true and valid until 60 days after the Ministry of Transport, Energy and Communications has awarded the licence to Esat Digifone."

They wouldn't sign that one either?

A. I didn't hear anything back from that one.

Q. Now, I think on the 4th August, also, if you just go over the tab, there is a letter from Denis O'Brien to Mr. Amund Bugge, who was a young lawyer, I think, in

Telenor

A. Indeed.

Q. or probably just an apprentice, but he was a young legal person from Telenor; isn't that right?

A. Mm-hmm.

CHAIRMAN: I think in ease of him, he had qualified

Q. MR. COUGHLAN: In fact, I now understand that that he may not have been qualified at that time. I think that is correct, from new information which has been he may not he may have been, I suppose, in the category of an apprentice, but I'll leave that for the moment.

"Dear sirs,

"We wish to confirm that we have received an offer from Advent Corporation Limited of funds sufficient to perform our obligations in respect of the bid. We wish, however, to seek alternative sources of funds because the terms of the Advent offer are unfavourable to us. We are aware of your concern to ensure that Communicorp has access to sufficient funds to perform its bid obligations and accordingly agree that if we fail to raise sufficient third-party funding in time to provide Esat Digifone with funds as anticipated by the bid we would accept and conclude Advent's offer of funding."

Did you know that letter was sent, or did you see that letter at the time, do you know?

A. I possibly saw it afterwards. I can't remember seeing it on the day.

Q. Now, the bid went in on the 4th; isn't that right?

You didn't hear back you were dealing with Telenor and Advent, trying to get a letter that was

A. Satisfactory

Q. To both, if possible, but satisfactory to Telenor anyway?

A. Indeed.

Q. And you made a number of attempts to do that. You were involved in the telephone conversation from Massimo Prelz as well, and then the bid went in. You didn't hear back when you sent the second draft

A. No, no.

Q. that you were seeking?

A. That was the morning the bid the bid went in, I think, at 12 o'clock.

Q. And Telenor went along with the bid; isn't that right?

A. They did, mm-hmm.

Q. And as far as you were concerned, that was it, in terms of letters for Telenor, or

A. Well, the most important thing from the consortium's point of view was the bid was submitted. You know.

Whether the satisfaction of either party was up to themselves, really.

Q. I just want to understand your thinking in relation to it.

A. Exactly.

Q. Did you hear any further discussion at that time about a Telenor letter or anything?

A. No, it was we were working with some Telenor personnel at the time right up to the deadline.

Q. Right up to the deadline?

A. Mm-hmm. And we couldn't give them what we didn't have.

Q. You couldn't give them and they went it appears they went along with what you had

A. And submitted the bid.

Q. and the bid went in?

A. Indeed.

Q. From your point of view, did you feel that your efforts to get the letter, whilst they hadn't been successful, they hadn't stopped the bid going in; isn't that correct?

A. That's correct.

Q. And you weren't asked to continue getting any further letter

A. No, the bid was submitted at that stage, so it was kind of dropped then.

Q. Now, if you go there is a letter to you it's the next tab, Tab 32. You see it's from Gerry Halpenny in William Fry's, and it's on the 4th August also. And he said to you that "I enclose for your attention a copy of a letter handed over to Amund Bugge today in

connection with the financing of the GSM bid."

Obviously this is the Denis O'Brien letter, I presume, he is talking about?

A. Indeed.

Q. "We also discussed at our meeting this morning what steps should be taken with Advent regarding the funding of the GSM company. As you will recall, Owen O'Connell is strongly of the view that the condition in Clause 4.2 of the agreement dated 12 July 1995 has not in fact been satisfied and that you should very strongly consider sending a letter along those lines to Advent stating that that agreement was not satisfied, the agreement of the 12th July 1995 was of no further effect."

Do you remember receiving that from Gerry Halpenny?

A. Not specifically.

Q. Do you remember being involved in any discussions about invoking Clause 4.2 of the agreement to exclude Advent, or anything like that, at that time?

A. Not at this particular point in time. Later on, I think

Q. It's later on?

A. Later. October, November, mm-hmm.

Q. Now, if you go to tab 34, you'll see there is a note.

It's a handwritten note of Denis O'Brien's. He met Massimo Prelz on the 11th August, in Dublin, and Denis O'Brien told Massimo Prelz that Telenor were unhappy

and want a better letter. Denis O'Brien told Massimo Prelz that the agreement between Communicorp and Advent had been breached by Advent as Telenor had not been satisfied by their letter.

Did you know that after the bid went in, that Telenor, as seems to be recorded here, were looking for a better letter after the bid had gone in?

A. I can't recall. I can't recall specifically.

Obviously Telenor would have been concerned about the state of Communicorp's funding.

Q. I understand that.

A. And that concern would continue.

Q. I understand that, I understand; but did you know that they continued, as it records here, that they continued to look for a letter from Advent?

A. I don't recall.

Q. You don't recall. Do you remember that Telenor were looking for an opinion from Mr. Owen O'Connell about the enforceability of the Advent agreement, which they had not seen, I think?

A. Yeah, I have read that in the

Q. I know you have read it. Did you know at that time that they were seeking an opinion, a legal opinion?

A. No, I didn't.

Q. Right. There had been no discussion with you about that, in any event, that you can recall?

A. That I can recall, no.

Q. And is it the sort of thing that you would have expected to have been kept up to speed with?

A. Well, my involvement to a large degree was day-to-day operations. You must remember we were running another four businesses as well.

Q. I know that.

A. We were always strapped for cash. A lot of the shareholder issues were handled directly by Denis between the shareholders.

Q. Right, right. And when you say shareholder, you mean Telenor, Mr. O'Brien/Communicorp, Advent?

A. Exactly. And I could be patched in on things and looking for certain information or whatever.

Q. All right. Well, you may or may not you have, I suppose, seen in the documents Mr. Owen O'Connell's letter to Mr. Bugge on the 17th August 1995, which is at tab 37. Did you have any knowledge of that letter at the time it was written or around the time it was written? It's a long letter where he sets out the whole position. He doesn't give an opinion.

A. No, I can't recall having any knowledge of it.

Q. All right.

Now, I think the next document is from you to Michael Walsh, and it's dated the 7th September first of all, did you know that Denis O'Brien was in communication with Mr. Dermot Desmond as and from the 10th August of that year about participation in the

GSM

A. I didn't.

Q. You didn't.

Now, I think the next document, then

A. Could I just make a comment on this document here?

Q. Yes.

A. Because it refers to the group's funding requirement of 5 million. And that would obviously exclude the GSM bid.

Q. I'll just open I see your point, yes.

You were writing to Michael Walsh on the 7th

September, and you say: "Michael,

"Further to our conversation this morning, the cash requirement for the Communicorp Group to the 31 March 1996 would be in the order of 5 million. This does not take into consideration the scale-back of investment or asset disposals that may be required in the event that the First Boston money is not forthcoming."

That relates to radio and fixed line; is that the point you are making?

A. Exactly.

Q. That's what you are discussing?

A. There is no involvement of Digifone in that.

Q. Well, the figure would seem to indicate

A. Indeed, mm-hmm.

Q. So you were having some sort of discussion with

Michael Walsh about fixed line and radio

A. Exactly, which I think had started back in April/May previously. They were going to get involved, then they were out, and then they were back in again for a while.

Q. Right. So you were having, on and off, some discussions with

A. Michael Walsh.

Q. with Michael Walsh about your financial requirements for the fixed-line and radio business?

A. Indeed, mm-hmm.

Q. That perhaps helps us to make some sense, so, of perhaps I'll get it in a moment.

Now, if you go to Tab 39, please. This is from Knut Haga to Denis O'Brien on the 11th September, 1995, and he is writing he says: "As a financial adviser to Digifone, I would like to raise some of my concerns related to the content of a letter from Advent International Corporation to Mr. Martin Brennan, dated 10 July 1995.

"Based on the contents in Section 3 in that letter I have drawn the following conclusions:

"1. Advent has not committed itself to participate as an equity partner.

"2. Advent underlying statements in that they regard their position as having an option to participate up to 5% equity stake without any premium or obligation.

"3. That there has not been made any formal or legal binding agreement between Digifone and Advent (correct me if I am wrong.)

"On this basis I would like to stress that Digifone must not enter into a position where it is obliged to bring in Advent and an equity partner.

"In any case the terms and conditions for any other equity partners must, based on commercial issues, be determined between Esat and Telenor.

"Based on this fact I would like to stress that Advent's letter to Martin Brennan does not add any value to Digifone. Please take this fact into consideration when you are discussing alternative equity partners.

"Yours sincerely, Knut Haga."

Do you remember that letter? Was it brought to your attention?

A. No.

Q. All right.

Mr. O'Brien made the point that Mr. Haga wasn't financial adviser to Digifone and Telenor. Do you make any point about that? I suppose in fairness to Mr. O'Brien and to Mr. Haga.

A. Mr. Haga was an employee of Telenor Invest and worked with me subsequently on the project finance. But I don't think he was an adviser to the company.

Q. Now, if you go to Tab Number 42, you see there that

that is a note of Owen O'Connell's where Denis O'Brien and Leslie Buckley called him on the 18th September, 1995, and said Dermot Desmond was going ahead with financing the transaction. "Need underwriting letter for the Department because finances as seen as weakness".

Did you know anything about these negotiations which were going on between Mr. O'Brien and Dermot Desmond/IIU?

A. Absolutely not.

Q. And can I take it that you didn't know anything up to the 29th September of 1995 about these negotiations, and on the 29th September, an agreement was consummated between did you know anything?

A. That's correct; I didn't know up to the 29th. At least to the 29th.

Q. Did you know that a letter had gone to the Department on the 29th?

A. No, I didn't.

Q. Right. So you knew nothing about that side of things, if I can

A. No. I would see these as really kind of shareholders issues to a large degree, mm-hmm.

Q. But you weren't kept in the picture about those?

A. No.

Q. And I just want to bring just a few other matters, and I'll come back to the presentation. I just want to

bring a few if you just go to Tab 54, please.

You can see there that's a draft letter to be received from Telenor. Really, the letter is about being dissatisfied with the Advent letter of the 12th July. Did you know anything or see those letters at the time, or did you know that anything of this nature was going on at that time?

A. No, not at that time. I provided them earlier on some information to Owen in November to support this. But I wasn't aware of this.

Q. You were unaware. So can I take it that up to the 29th September, when the agreement was entered into with Mr. Desmond/IIU, you were unaware of that? You were unaware of the negotiations?

A. Exactly.

Q. And you had no knowledge that there was any communication between Telenor and Mr. O'Brien/Communicorp in relation to Advent's letter of comfort or seeking a stronger one?

A. I definitely had no knowledge of any connections with IIU or any negotiations going on with them. And I can't recollect any kind of conversation between Telenor and O'Brien.

Q. And you were working with Telenor people as well?

A. Indeed. Oh, absolutely, on a day-to-day basis.

Q. And did you ever hear anyone say, at this time, that we needed to get IIU/Dermot Desmond, I use it in those

terms, in to provide a guarantee to satisfy Telenor?

A. Never heard it.

Q. Never heard it.

Could I just go to the presentation, which was on the

12th September. It's Book 51. I'll just get you a

copy. And if you go to I wonder if you just go to

page 98. I wonder, do you have there, on page 98,

yes, Mr. Michael Andersen commences:

"Mr. Michael Andersen: "Okay. I think given the time

we have allocated to the remaining questions, I will

leave out some questions concerning value added

services and distribution, etc. and then move to

financial, some financial questions we have."

He goes on to say "financial questions"; do you see

that?

A. Mm-hmm.

Q. Then you can see the question, which is a technical question?

A. Indeed.

Q. "So now you will have a financial question if that's

okay. And it is on solvency and we have remarked that

in your business case or in your application, you are

presenting yourself as having a solvency degree less

than zero percent for three years, and we would like

to you elaborate on that.

"Mr. O'Brien: You mean to say we are going to be

making losses in the first three years?"

Then you intervene. You say, "You see, you look at the business plan, you see that we have actually negative capital for a period of about three years and so what we have looked at, this is an operation and how it can be funded and it's funded through equity and through debt finance and that's from a business-plan point of view and we are quite confident that this type of business can carry the ratio of debt to equity. Now that's on the business plan point of view.

"On the other hand, if you look at it from a statutory point of view, because it's illegal to have an insolvent company trading, so we would see this as a technical issue. What we would technically, from a statutory point of view, in complying with Irish Company Law, that we would do in this situation, we would receive parent-company guarantees to support the Esat Digifone over this period of time which would satisfy the legal requirements here in Ireland so that the, any liabilities undertaken by Esat Digifone would be underwritten by Telenor and Communicorp. So if that required a quasi-injection of capital or a capital to be put in a separate account, we'd be willing to do that."

So what you are explaining is that the parent companies would support it during this period when it's technically insolvent, but the guarantees would

be in position, so therefore it won't be breaking the law. Isn't that what you are just explaining?

A. Indeed.

Q. You go to page 100, then, and you see Mr. Billy Riordan, he deals with you.

"You are saying that operationally you can actually get over this hurdle, but technically you are going to have to take steps to redress the balance so it will never be that way."

And you say "Exactly".

Michael Andersen goes on: "So, okay, you have assurances that you will not go bankrupt. Thank you for that. We will now move on to the next question, which is a combined financial and management question, and it will be posed by Billy Riordan from the Department of Finance."

Then Mr. Billy Riordan: "Sorry, this question relates really to the letters of financial support and particularly the ones from Advent. Advent, in that letter, say that they have invested  $\text{\$}10$  million for 25 percent of the company, and then at some stage in the proposal it says that they have  $\text{\$}19.5$  million invested for 34 percent. I just want to clarify, have they, in the interim, invested an extra 9.5 million for the extra 9 percent equity?"

Then Mr. O'Brien answers: "They have invested a total of  $\text{\$}19.5$  million since last October, which is

completely apart from this new investment which will come and is guaranteed if we receive this licence".

"Billy Riordan: Okay. The reason that was throwing me off was the letter said something different. This was a letter that was addressed to Martin on the 10th July. And it says that certainly the funds managed by Advent invested a total approximately  $\text{€}10$  million in Communicorp and it leaves it at that. They are committed to investing an extra  $\text{€}9.5$  million".

"Mr. O'Brien: They have actually done it.

"Billy Riordan: That's the clarification I was looking for really."

Now, is that, to your recollection, the position?

A. I am trying to get the 19.5 million in my mind.

Q. We know the 10 million. Mr. O'Brien has explained.

We know the 10 million. We know

A. There was a loan of 3.2.

Q. The 3.5 in. And

A. Then there was a further commitment.

Q. There was a further commitment, to 4 or something?

A. Indeed.

Q. This was on the Communicorp side, I think; isn't that

A. That's correct.

Q. That's as Mr. O'Brien has explained that. So...

Now, Mr. Billy Riordan: "That's the clarification I was looking for, really.

"Then really a follow-on from that was that Advent have said they are providing up to  $\frac{1}{2}$ 30 million to Communicorp".

"Mr. O'Brien: "30 million, I think it's pounds.

"Mr. Billy Riordan: "Sorry, you are right,  $\frac{1}{2}$ 30 million. I am wondering in what form will that funding be put into Communicorp? Will it be loans or will it be equity?"

"Mr. O'Brien: "It will be equity. That's what we have negotiated on. So in other words, at the moment, Advent will probably go up to about 47, 48 percent if we win the licence so. The business will be, remain Irish controlled.

"There is also a second thing and that is that there is a 3:1 voting ratio to the Irish investors".

"Mr. Billy Riordan: So every one of their shares is worth three of yours

"Mr. Denis O'Brien: No. In fact the Irish content, we have three times their votes. It's a three to one and that really protects the Irish content and that has been there from the very, very beginning of the relationship with Advent".

"Mr. Martin Brennan: I'd just like to ask, in the sense of Advent having 47 percent of Communicorp, and if I remember correctly, also one of the institutional investors for the 20 percent. That still doesn't give them anything like leverage".

"Mr. O'Brien: No, absolutely not. Because that's one of the things that we have raised the finance on. In other words, like as in Irish indigenous companies, you cannot raise that kind of capital in this country. It's extremely difficult unless you go to the public markets. So we have raised it privately, and indeed all the money has come from European pension funds. So what we have tried to do all along, and it's been our goal, is that the company would remain Irish and that's the reason why, you know, we have insisted on these voting requirements for the Irish investors, that they have three times the number of votes Advent have. It's also likely that the Irish institutions will probably go into a vehicle together just for simplicity, that there would be that 20 percent block, so that the Irish institutions again would control that block effectively in terms of equity terms."

Do you remember a discussion, any discussion about the Irish investors going into a block?

A. No.

Q. "I don't know whether we mentioned this in the presentation, but it is our aim to drop down to 32 percent" this is the portion of the bid "in other words, to share the ownership through a capital markets entry here in the country now. We are not saying that we are going to do that immediately because it's totally infeasible to believe we'd do it

immediately, but we have an agreement with the institutions whereby they would assist in marketing, taking in the shares in Dublin and I think there is tremendous advantage to our proposal".

"Mr. Billy Riordan: When you say dropping to 32 percent, who is dropping?"

"Denis O'Brien: In other words, Telenor AS would be dropping down to 32, so they would lose 8 percent. Communicorp would lose 8 percent as well. That would mean that the Irish investors, institutional investors and the public would go up, I think it's to 31. So, you know, you have even a greater Irish content going forward. Sorry, it's 6 percent".

"Mr. Billy Riordan: You will drop each of your interests by 6 percent, to 34 percent? Very magnanimous of you. So basically Advent essentially ends up with roughly 20 percent of the licence if you take the 5 ballpark percent that they have through their

"Denis O'Brien: Yeah, 20 will be right".

"Mr. Billy Riordan: "Plus the 47 percent".

"Mr. O'Brien: As I stress, the main thing from our point of view is that the company maintains is an Irish company. Okay.

"Mr. Michael Andersen: I'd just like you to repeat for me the Advent's interest in Communicorp. You say that it's going up to was it 47 percent voting

power wise, or "

"Mr. Denis O'Brien: Equity. It's going to be up to 47 percent equity, but in terms of voting, the other 53 percent has three times the votes of Advent. So we, you know, the Irish shareholders in Communicorp will always have control of Communicorp.

"Mr. Michael Andersen: Okay. But that also means that if you have what they have right now up to 46, and that escalates up to  $\frac{1}{2}$ 30 million, then you have some other capital in from some other side as far as I can see.

"Mr. Denis O'Brien: "No, no, because the full capital requirement for the investment is initially 21.6, I think it is, plus a line up to 30, so they have said day one, they are guaranteeing  $\frac{1}{2}$ 30 million".

"Mr. Billy Riordan: So you have a little bit of fat in that. You have, in fact, from the point of view, you have about  $\frac{1}{2}$ 8.5 million of fat in that particular commitment".

"Mr. Denis O'Brien: Yes, but it's been irrevocable commitment of fat, if you know what I mean."

"Mr. Billy Riordan: I used the term first.

"SPEAKER: Sorry, just one question on that, Denis, do I understand there is already an agreement in place between Communicorp and Advent on that?

"Mr. Denis O'Brien: "Yes."

The next one is Mr. Martin Brennan this is, I

think "that is not the same as the letter of  
commitment we have seen in the application?"

"Mr. Denis O'Brien: Well, we thought that you'd want  
to hear that directly from Advent, hence they wrote  
you a letter to say that."

Now, do you remember Denis O'Brien saying that at the  
presentation or did you remember at the time? Because  
as far as you were concerned, there was no irrevocable  
commitment; isn't that right?

A. I can't remember specifically he saying that there  
was at the presentation, it was very fast-flowing,  
lots of questions over and back; people had their own  
areas to it was like getting ready for an exam.

People had their own areas to do. So I can't remember  
him specifically saying those words, but he did answer  
any questions on funding, on shareholder funding.

Q. Right. So you, as you say, you don't remember, but it  
certainly wasn't what's recorded here is not your  
understanding of what the situation was?

A. It's not my understanding that

Q. There was an irrevocable commitment?

A. there was an irrevocable commitment, indeed.

Q. What was the structure in Communicorp in terms of  
Advent's participation shareholding? Was there a  
3-to-1 weighted voting?

A. I am trying to remember, but there was definitely  
their shareholding didn't represent their voting

rights. There was a dilution of some sort.

Q. Mr. O'Brien had

A. Day-to-day control, mm-hmm.

Q. Now, I think you have informed us, and you said to us

that as you understood it, you felt happy with the

presentation; isn't that right? You didn't see

anything particularly difficult?

A. No, because we just focusing on a certain specific

aspect here, but the technical presentation was super.

Q. We played the whole thing. You were happy with it;

isn't that right?

A. Mm-hmm.

Q. And you didn't see any difficulty being indicated by

the assessment team, as far as you were concerned?

A. No. My view leaving the presentation was that we had

done a good job.

Q. Now, Mr. O'Brien has told us about a post mortem. I

think you weren't present at any post mortem; is that

right?

A. No.

Q. You had other business to attend to?

A. That's right. I had a meeting with ICC directly after

the presentation.

Q. And you weren't privy to any discussions with any

advisers whereby Mr. O'Brien was advised or took the

view that they needed to you needed to strengthen

the financial side of things?

A. No.

Q. You didn't know about that at all?

A. No.

Q. Now, when did you, or do you remember, how did you first come to hear about IIU/Mr. Desmond's involvement in the GSM company? I know you were in discussions on the fixed line with Michael Walsh.

A. I can't recall specifically, but there was a lot of issues around the funding, the actual bid costs and how much the bid costs were going. At some stage I was asked to provide that information to IIU, and I'd say it was after that date that I realised then that they were going to be a shareholder.

Q. You didn't see any agreements when you were asked to provide information, did you, the agreement of the 29th September

A. No.

Q. All you were was asked to provide information to Michael Walsh about the bid costs?

A. The bid costs and future bid costs.

Q. Now, I think I don't see you involved in any other of the documents in this book. You didn't know a letter had been sent to the Department, isn't that right, on the 29th?

A. No, I had no knowledge of that.

Q. And you didn't know that the letter had been sent back by the Department?

A. No.

Q. I think we can leave Book 48, so, and go on to Book 49. There is just a few meetings that you attended.

If you go to Tab 86, Mr. O'Donoghue; this is a Matheson Ormsby Prentice note. And I just want to the first part, do you have it in typed form in yours?

A. I have, mm-hmm.

Q. The first part, you weren't you see the first part of the note, then you see "Davenport 126"; do you see that? It seems to be now there is a meeting taking place, "Peter O'Donoghue, Richard O'Toole, Gerry Halpenny". That's what I am asking you about, because you are just noted there. You do not seem to be noted at the beginning. And "Communicorp or Esat Telecom requested not conceded". Do you know what that's about?

A. This is the first time I have seen the typed version of this note.

Q. All right. "Funding how secured, 88% Communicorp to represent executives. See plus Esat. Are Department aware? Yes, 29/9/95 letter by Department. Department replied. That letter not taken into account copy to be supplied to us."

Now, do you know who was providing that information?

Was it you, Mr. Halpenny, or Mr. O'Toole? Do you know?

A. It definitely wasn't myself.

Q. It wasn't you?

A. No.

Q. All right. And then "Business plan: Is it that submitted to Department or the next one to be adopted?

Budget to be adopted at directors meeting."

Might that be the type of information you might have been supplying?

A. Yeah, we would have been revising the business plan on a continuous basis.

Q. All right. Then "Chief Executive Officer will after two years there be a Deputy CEO? Board existing debt incurred by Esat or joint venture account. Use of capital contribution, licence fee."

Then discussions about the

A. Financing, yeah.

Q. financing.

A. Mm-hmm.

Q. But you certainly you believe that you did not, or you would not have been in a position to inform anybody about the Department knowing about IIU or the Department

A. Absolutely, absolutely.

Q. Do you remember a concern at this time about that?

A. No.

Q. At that time?

A. No. As far as I was concerned, we had submitted the

bid. We had made the presentation, and we were waiting for the result.

Q. Right. This was just after the result, now, I think the result would have been this would have been after the result. Can you remember or were you informed that there was anyone talking about it, or

A. I can't remember.

Q. All right. If you then go to Tab 90, and again behind, you'll see the typed version of the handwritten note. It's of William Fry. It's a Gerry Halpenny note. And it records Richard O'Toole, Peter O'Donoghue, Knut Haga, Per Simonsen, Arthur Moran, Gerry Halpenny, position re the Department, IIU".

And then: "Not a problem for Martin Brennan and the Department. The main concern that Denis O'Brien and Telenor mainly involved on the operational side.

"Present the agreement to IIU as soon as possible."

Do you remember any discussion, or were you in a position to impart any information at that meeting about the position of the Department to Martin Brennan concerning IIU?

A. No, I wasn't.

Q. It wasn't something that you were

A. No.

Q. keenly aware of at all?

A. A lot of these meetings I would have been providing financial updates as to where the project was.

Q. All right.

Just looking at the personnel present at that meeting, could you and I see the note, there is a lot of discussion about finances, and there are figures and that, but you see, Richard O'Toole; what role was Richard O'Toole playing at that particular time?

A. Richard again was involved as a consultant to Denis, as a financial consultant.

Q. Right. And you were the finance officer?

A. Exactly.

Q. Knut Haga?

A. Would have been representing Telenor's Knut would have been on the financial side, and Per Simonsen on the shareholding side.

Q. Right. All right.

If you go to Tab 105, again the same personnel, you can see, present at this meeting on the 10th January of 1996. Can you remember what, or does the note help you, as to what was being discussed there?

A. A lot of these look like the discussions around the draft shareholders agreement or amendments to the we had about 15 or 20 meetings about the shareholders agreement, and I would have been representing Digifone there.

Q. Do you see, just at the bottom there, do you see that there, "Recital E, on whose behalf are IIU acting? IIU Nominees listed need to talk to Department."

Did that come from you?

A. No, no. I wouldn't have had any interest for making such a query.

Q. Now, Document 107; this is from you to Gerry Halpenny, and it's about the bridging finance, I think, isn't it?

A. Yeah, indeed.

Q. Can you just deal with it? Well, first of all, it's between Telenor and the Communicorp Group; isn't that correct?

A. Yeah.

Q. And I think what they are agreeing is Telenor will bridge to the tune of 9 million?

A. That's right. It's terms from Telenor to Communicorp to provide

Q. And there were terms then.

A. Mm-hmm.

Q. And just looking at the terms, do they seem like normal reasonable commercial terms of the time?

A. It would seem to be the interest rate is 2.5% DIBOR, which is attractive, yeah.

Q. In other words, what I am trying to just understand here, would you have understood this particular proposal by Telenor as being acting in any sort of unfriendly or difficult way towards the Communicorp side?

A. No.

Q. Was it anticipated at this time or was it hoped that the CSFB funding would be there in time?

A. My recollection, the CSFB funding took a lot longer to put in place than originally

Q. Than it was hoped for?

A. Indeed.

Q. 120A, I think again there is a reference to you, Mr. O'Donoghue. This was on the 12th April of 1996. Knut Digerud and Peter O'Donoghue Department apparently under pressure re licence. Bank apparently willing to go along with no mortgage over licence.

Confidentiality of licence terms.

Department: Regina Finn, Fintan. They have letter 3 April. Will respond before close of business" that was a letter that was sent along to the Department expressing, I think, Mr. Digerud's displeasure at the licence not coming through?

A. Indeed.

Q. "Meeting scheduled for next Wednesday to go through licence on article-by-article basis. Will give explicit provision allowing mortgage over asset of company. Eircell will be granted a licence by Department on level-playing-field terms. Don't accept duress as a result of Department act or omission.

Notes concerning significant problem with negotiations after signing licence. Confirm acceptance of licence.

Representation subsequently to be made ... Reject.

They have big problem with duress, principles

contained in licence."

Now, a lot of that discussion seemed to relate to

Mr. Digerud's letter; isn't that correct? And there

was an issue there about the banks?

A. Exactly, giving the charge.

Q. Which was your point and the point you made this

morning in your statement?

A. Indeed.

Q. The question whether there'd be a mortgage over the

licence

A. Exactly, whether the project was bankable.

Q. Yes.

A. Mm-hmm.

Q. When you use the term "bankable", I suppose it was

coming the banks were coming at you this way:

"We'd like this". In fact they were pressurising you

to get it, I suppose, in their own interest?

A. Exactly, indeed.

Q. Now, if you go to Tab 128, and this is a meeting which

was held in the Department on the 3rd May of 1996. Do

you remember that meeting?

A. Not specifically.

Q. Now, this is Mr. O'Connell's note of that meeting, and

he records you as being present. Knut Digerud, Peter

O'Donoghue, Arve Johansen, Michael Walsh, Paul

Connolly, Owen O'Connell at Department with Martin

Brennan, Fintan Towey, Regina Finn, and I think Eanna

O'Conghaile was also there.

"Clear a political football.

"Identify of each shareholder legal and beneficial ownership. Esat Digifone changes relative to bid.

"Change in institutional investment replacement of Advent and Davys by IIU.

"Need detailed information/quality/about IIU.

"Confirmation that Telenor is same as at bid date."

Do you remember an issue arising about the view that the Department were taking or explanations they were seeking as to whether there was a change between the time of the bid and what they were being presented with at the time that they were coming up to sign off on the licence?

A. From my recollection, I think the only issue they had was that instead of 20%, 25% had gone to the institutional investors.

Q. But do you remember that as an issue?

A. I can remember that as an issue, that the shareholding had to be in line with the original submission, mm-hmm.

Q. And do you remember any discussion at all taking place about the identity of IIU and as to whether the fact that they were now in and weren't in the original bid might be the subject matter of consideration?

A. No, I can't remember anything.

Q. Do you remember at that meeting anything being said about IIU other than the question of the

A. No.

Q. You don't remember?

A. I see the note goes on to talk about the bridge finance later on, mm-hmm.

Q. If you just go over the tab, 130 sorry, yeah, 130, this is a memorandum which was made by Mr. Johansen?

A. Mm-hmm.

Q. And if you go over to the second page of that, it says at paragraph number 6 do you see that?

A. Mm-hmm.

Q. "In the meeting with the Department of Communications Friday 3rd May, it became evidently clear that IIU was not a favourable name from an Irish public point of view. On the contrary, the Ministry basically asked for help on how to explain why we had substituted Advent, Davy and other recognised institutional investors in the bid." And he names them.

"Eventually the project coordinator from the Ministry, Mr. Martin Brennan actually appealed off the record to Telenor to write a letter of comfort that we would serve as last resort for the Digifone company for funds and operational support."

Do you remember or did you overhear any discussions along those lines?

A. I can't recall. I can't recall it being an issue.

Q. All right. What was your main concern at this time?

You were on the Digifone side exclusively?

A. I was on the Digifone side. It was a new company being set up. It was being rolled out. There was a huge amount of funding to be put in place. We had to raise something like IR£12 million from various banks. We were meeting lots of banks. We had to make sure we had got money from shareholders. There was people being employed every second day. There was getting premises, putting in new systems. It was quite chaotic at the time.

Q. Right. Then I think the final note on which there is reference made to you is, if you go to 134; this is the 9th May, 1996, and it's Owen O'Connell's note of and he records,

"Knut Digerud and you at Esat Digifone.

"Sequence information for Fintan Towey as soon as possible. Tomorrow. Meet shareholders agreement joint statement. Possibly new draft tomorrow."

I think what was being did you gather together some documents for submitting to the Department, I am just wondering, the various certificates which were submitted and matters of that nature?

A. No.

Q. You didn't?

A. As far as

Q. Do you remember getting any information

A. We would have been working on a draft of the licence at the time.

Q. I see.

A. And there was certain information, I think, required around that draft, mm-hmm.

Q. That's what you were concerned with?

A. Yeah.

Q. I just want to ask you now, because you weren't the signatory to any cheques that we were looking at in relation to donations made, particularly to the Fine Gael Golf Classic in 1995, but the joint venture agreement provided for a joint venture account; isn't that correct?

A. Indeed.

Q. And there were to be there were two signatories on your side; you were one, and Mr. Denis O'Brien was the other?

A. Mm-hmm.

Q. And on the Telenor side, there was Mr. Myhre

A. And Mr. Simonsen.

Q. and Mr. Simonsen; isn't that correct?

A. Mm-hmm.

Q. And for the mandate required there'd be one from either side; isn't that right?

A. Mm-hmm.

Q. Am I correct in understanding that Mr. Myhre was

primarily a technical on the technical side of

A. Indeed. He was an engineer.

Q. He was an engineer?

A. Mm-hmm.

Q. And can I take it that on in the main, anything that he might be saying might relate to that side:

purchase of materials

A. I don't think that would be correct. He still was representing Telenor in terms of the

Q. I understand he was representing Telenor. But how did it work? When a cheque came for came up for signature, did it come up with an invoice attached, or a note attached, or how did the system work?

A. Typically how it worked was a cheque would come up, it would be approved by whoever was purchasing the item, be it a car or hiring someone or whatever, and then the cheques would either arrive on my desk or Per Simonsen's desk or Hans Myhre. He would make sure it was properly authorised, and then he would sign the cheque.

Q. There would be an explanation of some sort with a cheque?

A. That was the procedure.

Q. That was the procedure, yes. Because it would be a bit dangerous to

A. Exactly, signing blind.

Q. Now, in your experience, did you have to ever purchase

drafts from the bank?

A. In Communicorp?

Q. This is in the joint venture account.

A. Not that I can specifically remember, but I don't know why we'd actually purchase a draft, unless it was a foreign currency draft.

Q. That's what I am just thinking; if you were doing a foreign exchange or something like that. But in the normal course of doing your business here, was the usual practice that

A. It was an Irish pound cheque.

Q. Made out to whoever

A. The party was.

Q. the payee was; isn't that right?

A. Mm-hmm.

Q. Now, you may be aware from the evidence given here that there was a cheque drawn on the joint venture account for  $\text{€}24,001.75$ . It was signed by Mr. O'Brien and Mr. Myhre, and it was made payable to Bank of Ireland. And it was used by Ms. Sarah Carey to purchase a draft for  $\text{€}24,000$  at a different branch of the Bank of Ireland than the branch in which the account, the joint venture account was held. And that draft was made payable to Fine Gael, and it was used at the subscription or the donation to the Fine Gael Golf Classic in October of 1995. Did you know that at the time?

A. No, I wasn't aware of it.

Q. You were not aware of it.

A. But I would expect that if you looked at the cheque register, the correct payee should have been or the recipient should have been recorded in the books of the account.

Q. I want to ask you this because, did you ever have need to make a cheque payable to a political party on the joint venture account yourself?

A. No, never.

Q. Would you have seen a need to do it on the joint venture account, unless you were purchasing something, I suppose, or purchasing a car or something like that from somebody, or

A. I don't understand the question.

Q. The joint venture account was for

A. For the bid and the operating costs of Digifone.

Q. Until the company was up and running, to get things off the ground, isn't that right, after you were told of the result of the competition; that's what the joint venture account was?

A. Indeed.

Q. So it was concerned with, I suppose, paying wages, purchasing materials

A. Rent, that type of thing.

Q. Rent?

A. Operating expenses.

Q. Paying bills. That's what it was about?

A. That's the standard, mm-hmm.

Q. Did you know that there were any payments, or that that account was used to make any payments to a political party?

A. No, I wasn't aware.

Q. As one of the signatories to the account, can I ask you: What might your reaction have been if you were asked to sign the cheque for that purpose?

A. If it was something as simple as outright sponsorship or something like that, and Denis had approved it as Chairman, to sponsor a lunch, if the Chairman has signed off on it, it would be okay.

Q. But you'd want

A. Exactly

Q. someone else to do the signing off on it?

A. Mm-hmm.

Q. Now, in the period from the end of April, beginning of May 1995 up to the 4th August of 1995 that's when the consortium involving Telenor and Communicorp came together did you experience any difficulty from the Telenor side?

A. No.

Q. Did you ever understand them to be behaving in a predatory or an unfriendly fashion?

A. No, I wasn't aware of any such activities.

Q. And from the 4th August up to, say, we'll take the

25th October, when the competition result was announced, how did you find Telenor? You were working a fair deal with them. Did you

A. I think we had an open working relationship. I think if there was ever issues, it was the sometimes the availability of their staff in terms of they used to return back to Norway quite frequently when there was a lot of work to be done.

Q. Did you as a financial officer ever experience them behaving in an unfriendly or a predatory matter in relation to the consortium?

A. No.

Q. You moved over to the Digifone after Christmas. Again, did you ever experience or did you witness Telenor behaving in any predatory or unfriendly

A. No, I can't recall anything like that or any activities like that.

Q. And can I take it that you do not know why IIU/Mr. Dermot Desmond became involved in the consortium; nobody ever told you?

A. That's correct. I don't know why they got involved.

Q. Thanks, Mr. O'Donoghue.

CHAIRMAN: Mr. Fitzsimons?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Just a couple of questions.

Mr. O'Donoghue, you have given evidence in relation to the involvement of you with regard to the guarantee;

you recall Mr. Coughlan asking you those questions?

A. Mm-hmm.

Q. And you had some contact with Telenor representatives on that topic?

A. Mm-hmm.

Q. Do I gather from your evidence that you didn't have similar involvement in relation to the Advent agreement, the agreement between Communicorp and Advent?

A. What specific agreement between Communicorp and Advent?

Q. This is the agreement of the 12th July, 1995. Maybe you are not familiar with that.

A. No, I would be familiar with that. Mm-hmm.

Q. Can I take it that in relation to that agreement, you were not involved in negotiations with Telenor representatives?

A. In relation to that one, I wasn't, no.

Q. The Telenor people say they never had sight of that agreement, the document constituting the agreement. And can you confirm, since you are here, you, in any event, never, for example, brought the document to Telenor people and showed it to them?

A. I can confirm that.

Q. You can confirm that; thank you.

You referred to the cheques register. Who made the entries in the cheques register?

A. I can't recall. It's one of the accounts payable people. It would have varied, probably.

Q. Now, I think you mentioned that you had never yourself signed a cheque for a political contribution, a company cheque?

A. Not that I could recall.

Q. Just, do you recall making a third statement to the Tribunal?

A. Mm-hmm.

Q. A statement in writing. I'll just read it out to you. It's undated.

"Statement by Peter O'Donoghue to the Moriarty Tribunal of Inquiry concerning two payments for IR£½5,000 each to the Progressive Democrats.

"I refer to John Davis's letter to me of 22nd January 2003 together with enclosed photocopies of two cheques payable to the Progressive Democrats, each for IR£½5,000 Irish punts and of equal date, 5th December, 1995.

One of the cheques appears to be signed by me. I have no recollection of the background circumstances of either of these two cheques."

A. I stand corrected. But I have no recollection of signing that cheque.

Q. Obviously

A. But I wouldn't have done it in my own capacity. It would have been it would have been requested by someone else.

Q. You mention that the procedure was that normally cheques, presumably, requests for cheques would be approved by the person responsible for the expenditure?

A. Indeed.

Q. And then the cheques would simply be issued once the persons authorised to sign were satisfied that there existed an authorisation?

A. Mm-hmm, indeed.

Q. Did you, as a signatory, need any more than the word "authorised"?

A. It would typically be some supporting documentation with initials on it of the authorised signatory.

Q. Typically. Did that happen all of the time?

A. It would be typical. It wouldn't have happened all of the time.

Q. It wouldn't have happened all of the time?

A. No, mm-hmm.

Q. So some of the time would you get a piece of paper with "authorised", for example?

A. You could have a situation where there was someone waiting in reception has just delivered something, or they haven't been paid, and we needed a cheque within the next five minutes, or they are taking something away because someone had lost an invoice, or you'd just have to sign a cheque. That would be a typical explanation when a cheque was put in front of you

without any support.

Q. So you might get a verbal request from someone you trusted?

A. Mm-hmm.

Q. "I need a cheque; could you sign this?"

A. Mm-hmm.

Q. And you would sign it?

A. Indeed.

Q. You would accept

A. Exactly. That's day-to-day business.

Q. the bona fides of the person?

A. Yes.

Q. Thank you very much, Mr. O'Donoghue.

MR. McGONIGAL: No questions, Mr. Chairman.

There is just one thing. I wonder if it would be possible for us at this very late stage to have a copy of that third statement, which appears to be undated.

I am surprised that we don't have it already. I am even more surprised that Telenor has it.

MR. FITZSIMONS: We were circulated with the statement.

CHAIRMAN: Certainly

MR. McGONIGAL: I am not disputing Mr. Fitzsimons' bona fides, or indeed anyone else's. I am saying we don't have it or don't seem to be circulated with it.

And it isn't a major

CHAIRMAN: I'll certainly see that's looked to, if

there was an oversight, Mr. McGonigal.

Mr. Fanning?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FANNING:

Q. MR. FANNING: Mr. O'Donoghue, I appear for Mr. Lowry,

the former Minister in the relevant Department. I

might say to you at the outset, just by way of

introduction, that the Tribunal isn't in fact in the

business of investigating the Esat bid, per se. The

terms of reference of the Tribunal mean that the

present module is really predicated on the behaviour

of Mr. Lowry in office at the time, insofar as that's

relevant.

Now, in that context, may I refer to your answer to

Question 60, part 1, of 61 different queries put to

you by the Tribunal in queries raised of you on the

25th June, 2002. You were asked for details of all

meetings, discussions, dealings or contacts of

whatsoever nature between yourself and, (1), Mr.

Michael Lowry.

And the answer you provided in your second memorandum

of intended evidence of the 26th July, 2002, was that

"I do not recall ever meeting or having direct contact

with Mr. Michael Lowry."

And I think I am correct in saying that you

effectively confirmed that answer in oral evidence to

Mr. Coughlan this morning?

A. Indeed.

Q. And I can take it that that is the position, therefore?

A. Mm-hmm.

Q. I can also take it, then, that you are not really in a position to offer any evidence to the Tribunal of any wrongdoing or impropriety on the part of my client, Mr. Lowry, whatsoever?

A. I am not aware of any.

Q. Very good. Thank you.

CHAIRMAN: It's already emerged I think pretty clearly in your evidence today, Mr. O'Donoghue, that whilst your role was an important financial one, as was reflected in your attendance and involvement in the oral presentation, it was, in all respects, financial; and essentially your brief was to control expenditure, raise, perhaps, bridging or project finances may be required and supervise generally the housekeeping of the considerable expenditure that was thrust upon the consortium?

A. That is correct.

CHAIRMAN: It would have excluded both matters of an external nature of the input into the bid strategy before the licence competition result was announced, and similarly, into negotiations preparatory to the issue of the licence the following year?

A. Mm-hmm.

CHAIRMAN: And at an internal level, it would have

excluded matters generally relating to shareholder relations, but because the matter of seeking to strengthen the letter of comfort/guarantee for Telenor assumed importance, you were requested to have certain dealings both with Mr. Prelz of Advent and with Telenor representatives in that context?

A. Indeed.

CHAIRMAN: Yes. And that will conclude your evidence, Mr. O'Donoghue. It only remains for me to acknowledge that you have been particularly helpful and cooperative, and although not engaging legal assistance, you have attended a number of meetings with the Tribunal lawyers. You have had to read and prepare a considerable amount of material in preparing your statement, and deal with matters today, and as I think may have emerged, you have very belatedly at the request of the Tribunal changed your days this week to facilitate another witness.

So I would like to acknowledge your very considerable cooperation and assistance. Thank you very much.

A. Thank you, Chairman.

CHAIRMAN: Mr. Coughlan?

MR. COUGHLAN: Those are the available witnesses for this week. Tuesday morning.

CHAIRMAN: Tuesday morning; very good. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 20TH JANUARY, 2004 AT 11AM.

