

THE TRIBUNAL RESUMED ON THE 11TH NOVEMBER, 2005 AS FOLLOWS:

CONTINUATION OF EXAMINATION OF MR. BOYLE BY MR. McGONIGAL:

Q. MR. McGONIGAL: Mr. Boyle, there are just a couple of matters, other matters that I want to ask you about. First of all I the first matter I want to touch on to try and get an understanding of matters is if you would go to Tab 68, initially, and this is a letter which is written by Mr. Moloney in relation to financial capability, and this letter, I just want to draw your attention to two matters before going on to another document. On the second page of that letter in the section dealing with position in relation to Sigma Communications Group, in the second paragraph of 3 there, it says that "At our meeting on the 30th March, 2002 reference was made to the consultants report and the question of Sigma's financial position and we do not recall mention of this KPMG letter.

"Having regard to the various factors outlined here concerning Persona and Sigma's financial capability and in particular KGMG's clear opinion my clients are at a loss to understand how the consultant could have concluded that there was some financial 'frailty' or 'fragility' on Sigma's part."

Now, as I understand the letters that you are there referring to, the KPMG letter is, in fact, at Tab 13 on the first book. First of all, Mr. Boyle, the 2nd August letter, is that the letter that you are there referring to?

A. Yes, indeed.

Q. There is just one matter I want to get clarification on, and you'll see there in the middle of the letter it says

"Based upon.

the business plan underlining the Persona application.

discussions to date with potential investors;

no fundamental adverse change in the state of the.

capital markets.

"It is our opinion that the required finance will be

available in the time-frame required."

What I wanted you if you would help me with is, can you

explain to me what is meant by "discussions to date with

potential investors"?

A. I am just trying to recollect what that was in connection

with. I assume it was basically a standard letter from

KPMG which confirmed that "based upon all of the work that

they had done at that stage, discussing with various

financial institutions," etc.

Q. Do you have the letter in front of you?

A. I do, yeah.

Q. Do you see there it says, just above that it's Tab 13,

Mr. Boyle?

A. Yeah.

Q. Do you see there, halfway down, it says, "The business plan

underlying Persona's application shows a total requirement

for IRi₆ 1/240 million of equity. Sigma will be required to

subscribe of the order of i₆ 1/211 million in respect of its

26-and-two-thirds shareholding in Persona. Based on those

three things, it is our opinion that..."

So what I have understood this to be is KPMG saying that, in respect of your 26-and-two-thirds, that there are, effectively, provisions in hand which will enable that 26-and-two-thirds to be covered in whatever way it has to be covered?

A. That's exactly what it was.

Q. And therefore I just want to clarify, in relation to "discussions to date with potential investors," what that appears to me to mean is that there either have been or will be discussions with potential investors who may or may not put in money into this project in respect of the 26-and-two-thirds percent?

A. The situation was that they had spoken with a number of people and they were certain that there would be at least a number of people who were willing to place the necessary finance. Obviously, part of the finance was coming directly from our resources.

Q. First of all, the obviously, from your point of view the best scenario would be that if you were able, from your own resources, to raise the 11 million itself, in the absence of you being able to do that, KPMG were in the position of saying that there were other investors who would take up whatever shortfall there might be in respect of that 11 million which would go towards the 26-and-two-thirds?

A. That's correct.

Q. But at this stage, those potential investors and the size of the potential investment of the 11 million were both unstated?

A. What was clear was that the investment vehicle would be Sigma Wireless Networks Limited, which was the investment company we had established. The parties they had spoken to were would be taking a percentage potentially in that company with a view to and these were the principal party was actually AIB, so it was a bank, effectively it was bank finance in the investment vehicle which was the company which would be investing in the consortium.

Q. The other matter that I just wanted to ask you about in relation to Sigma that's all I want to ask you in relation to the equity.

The other matter I wanted to ask you about, if you could help me understanding, if you could go to Tab 2 for me, please.

A. Yes.

Q. If you go to the first of all, Tab 2 appears to be the report of a meeting in 1993 between Sigma and the then Minister for Transport, Energy and Communications, Brian Cowen, and it was proposals you were, at that time, I think Sigma was at that time campaigning to get cellular telephone services introduced into Ireland?

A. That's correct.

Q. And it was a proposal which you were putting to the then Government with the intention and motive of trying to get

them to get a move on?

A. That's correct.

Q. Now, just, if you go to the second page for me, and the last sentence on the second page is "That it would be Sigma's preference, if they should be licensed, to offer a royalty based on the number of subscribers rather than an up-front lump sum payment which would, he felt, be more appropriately invested in the development of the service."

A. That's correct.

Q. Now, as I understand that, and correct me if I am well, probably the better way to do it is: What does that mean?

A. What it meant was that, basically, that the royalty which the Government could take could be prorated as the success of the company. So, effectively, the more subscribers, the more the royalty, and therefore, the Government would not be short-selling the asset, so it was a unique proposition.

There were two alternatives. At the time there was no there was an auction, and the view was that, in an unlimited auction, that, potentially, the amount subscribed would be too high if it wasn't regulated. So what happened this was Cellnet, in fact, suggested it, it was Cellnet who were our partner at the time, felt that a business model whereby the Government take the same benefit but they actually take an ongoing royalty was much more advantageous to the Government and as opposed to taking a high upfront in fact, in the end, they took a low upfront, but it was an alternative to a very high upfront. It was to take an

annual franchise fee where the Government would share in the benefit.

Q. Well, whether it was high upfront or low upfront

A. It was in the context of a high upfront fee.

Q. But what you are there discussing and articulating, as I understand it in my language, is that instead of an auction fee, that what you were proposing was there should be a royalty payment which would be spread over a period of time in respect of based on the number of subscribers that you were able to get as customers, is that, broadly speaking, right?

A. No. What we were proposing was that the auction element, i.e. the pricing element of the bid, would be based upon an ongoing royalty as opposed to so effectively

Q. That's what I mean, an ongoing royalty?

A. It's very different to what you said. It is not an alternative to an upfront fee or to an auction. It is saying that the consideration elements to the Government, what the Government gets from it, if that was structured on an ongoing basis where the Government took an annual royalty fee which was consistent with the success of the company, it was the opinion expressed at the time by the director from Cellnet, who was also the Chairman of the GSM MOU group, Mr. Mike Short, who was present at that that that was a basis which would stimulate maximum competition in the sector while ensuring that the Government did not give away its asset at a very low cost. So it's very

different. It's an alternative.

Q. That's what I thought, I thought it was an alternative.

But perhaps I am not fully understanding it. Can I take it in the context of what actually happened.

The licence fee was 15 million the auction $\frac{1}{2}$ 15 million, which was subsequently capped. Am I right in understanding that the royalty suggested in which you were making there was to be in place in that 15 million?

A. The suggestion at the time was that the view was that the best practice to achieve maximum competition in the sector could have been achieved by taking an annual royalty fee in which which would equate to many multiples of 15 million, because it would be an indefinite fee, and that was the view.

Q. I'm not concerned about the amount at the moment, Mr. Boyle. I understand that, in your opinion, and probably and maybe correctly, that the royalty fee, because it's an ongoing payment, would, in fact, be a may be of more benefit to the Government. But what I'm trying to understand is, am I right in understanding that, in the actual case, that the 15 million, which was the licence fee, would have been, in your scenario, would have been replaced by this royalty payment, however big or small it was?

A. It would have been, yes.

Q. That's what I thought. The next matter that I just want to go to is a letter of the 11th November, 2002, which is

Tab 76. Now, perhaps it would be more appropriate, Mr.

Boyle, by way of introducing this letter, if we go first to

Tab 69. Now, on the date of this fax it seems to be somewhere around the 9th July of 2002 you made a phone call to the Tribunal?

A. I have never phoned the Tribunal in my life, sir.

Q. Sorry, I beg your pardon, Mr. Moloney communicated with the Tribunal I beg your pardon, I didn't mean that Mr.

Moloney made a contact with the Tribunal sorry about the quality, but "Here is the Commission letter faxed to me today. It is dated the 26th June."

Now, the letter of the 26th June which is faxed, was to deal with an issue of, effectively, discovery, which Mr. Moloney was seeking from the Commission, and so far as it is material, on the second page of that, which is page 4 of the fax, it says that "As you are aware, the Tribunal of Inquiry has been set up in Ireland which is looking into the circumstances surrounding the grant of the second GSM licence to Esat Digifone. The integrity and the effectiveness of the Tribunal's work depend upon the confidentiality of its investigative process. In particular, until such time as the tribunal completes its inquiries, any disclosure of relevant information by persons or entities assisting the tribunal has, according to the tribunal, the potential to damage the private interests of third parties as well as the greater public interest in inquiring into matters of public concern."

Now, you see that?

A. I'm not familiar I can't find where you are reading.

Q. Sorry, I am Tab 69.

A. Right, page 4?

Q. It's the last page?

A. The top of the page says 269...

Q. That's right. If you go down three lines of the next paragraph, you will see the sentence beginning "As you are aware ..." Do you see that?

A. I do.

Q. "The Tribunal of Inquiry has been set up..."

Now, what it says there, in fact, speaks for itself, okay?

Do you understand what it says there?

A. I understand what's here.

Q. Would you go to Tab 71, then. Do you have Tab 71?

A. I do.

Q. And this is a letter from the Tribunal to Mr. Mensching of the European Commission where he refers "to the letters of the 23rd and 30th July last respectively and to my telephone conversation of yesterday's date to Mr. Hocepied.

"I confirm that the Tribunal has not considered that disclosure to Mr. Moloney of the three documents referred to in the Commission's letter to him of 26th June last would undermine the proceedings of the Tribunal in accordance with article 4.2 of regulation 1049/2001"

So that was a letter from the Tribunal to the Commission, or a member of the Commission, authorising the release of

documents to the to Mr. Moloney, okay?

A. Okay.

Q. Now, if you go to Tab 76. In this letter, "I previously informed the Tribunal that we made a formal request under Regulation 1049/2001 for access to documents on the Commission's files in relation to the award of the second GSM licence.

"On the 9 July, 2002, we received a response from the Commission. I previously faxed you a copy of this letter and I enclose a fresh copy for your information.

"As you will see, the Commission refused Persona access to the documents in question on the basis of an exception in the regulation which permits such a refusal in certain circumstances. The Commission refused access to the documents, therefore, on the basis that it should do so in the light of the investigation of the Moriarty Tribunal.

"In mid-July 2002 we lodged an appeal against this decision on a whole range of grounds. In spite of a series of attempts by us to get a decision from the Commission on that appeal, none has been forthcoming. They are now deemed to have refused the appeal.

"Particularly in the light of the case law of the Court of Justice, we are satisfied that the Commission has now sustainable grounds to refuse Persona access to documents held by it. we have, therefore, been instructed to commence legal proceedings in the Court of First Instance in Luxembourg challenging the Commission's refusal. We

hope to commence those proceedings later this week.

"The purpose of this letter, however, is to request the Tribunal to indicate that it does not object to Persona having such access to documents held by the Commission as it would have under the regulation were it not for the objection of the Tribunal in the first place. We are not requesting the Tribunal to furnish copies of documents it may have acquired. Rather, we are requesting the Tribunal to withdraw its objection to Persona exercising its rights under the regulation.

"Obviously, Persona has a vested interest in this whole matter because of the separate legal proceedings that have been commenced against the State."

Now, if I could stop there for one second, Mr. Boyle. Do you understand what was going on here?

A. I think I should refer to my legal advice on it, but obviously we took legal advice, but I have got an understanding, but I'm not a lawyer.

Q. I see. I'm just puzzled as to why Persona, on the one hand, weren't in a position to accept copies of documents from the Tribunal, and are insisting, effectively, on original copies, but I am intrigued by the fact that the only reason put forward was for legal proceedings that may have been for legal proceedings which had been commenced against the State.

Can I ask you to read on with me down through the letter.

"Notwithstanding this, however, I believe that it would be

in the Tribunal's interest to withdraw its objection in

this particular case for two reasons:

"Firstly, Persona has invested a considerable effort in investigating the European aspect of the process. It has had extensive dealings with the Tribunal in relation to the matter. Persona was also one of the principal applicants for the licence in 1995. For these various reasons, Persona is therefore in a fairly unique position to comment in relation to relevant documents. The Tribunal may very well not accept Persona's point of view in relation to any particular document, but it must surely be of potential assistance to the Tribunal to give Persona the opportunity to present its point of view."

Do you understand that paragraph, Mr. Boyle?

A. I do.

Q. What do you take from that paragraph?

A. I take it what I said yesterday on many occasions. I am an Irish citizen, we are an interested party. We employ 400 people in Ireland. I am an Irish resident. I have the right and the obligation, which I will absolutely insist upon, to interface any information that I have available to the Tribunal.

Q. I have absolutely no difficulty with that, Mr. Boyle.

A. That's fine.

Q. Any person has a duty and an obligation to furnish the Tribunal with information, if it has it. What is happening in this letter, though, is, on the one hand, you are

seeking a concession from the Tribunal in relation to obtaining documents which you require, or may require, for your legal proceedings, and you are putting forward as a reason the fact that you have invested a considerable amount of time in investigating the European aspect and had extensive dealings with the Tribunal. In one sense, a person could look at that and say, "On the one hand I have done this, and on the other hand I am asking you to do this in return."

A. Well, I mean, obviously, as I say, I'm not a lawyer, but, to me, the substantive point of law, if I read this letter, is that the case the previous page said that, in the light of the case law, that we were entitled to it. The reason that the Commission had said that they weren't providing it was because of the existence of the Moriarty Tribunal. So because we believed we had the case law substantiated or right to gaining the documentation, and they were merely suggesting that the Commission had said that the existence of the Tribunal was what was preventing us getting it, we sought the permission from the Tribunal to give them a waiver to pass us that information, because we believed that we had the right to get the information under the case law. So to avoid the need for injunctive or taking this matter to the court of justice.

Q. I understand all of that, Mr. Boyle. My simple concern is this: that if the documents which you required from the Commission were simply necessary to assist you in the

investigation of the Commission point which you were carrying out with the intention of furnishing that information back to the Tribunal, then it seems to me that had the Tribunal furnished you with copies of the documents, the situation would have been met. It's because of the fact that the letter seems to indicate that the documents were required for a purpose not connected with the Tribunal's work that I simply draw the letter to the attention of you and the Tribunal.

The second reason, Mr. Boyle, that I just want to draw your attention to, is the letter says "Secondly, the regulation provides the basis for a comprehensive and strict legal obligation on the Commission to give access to all documents. This is an obligation that is supervised by the courts in Luxembourg. Unless the Tribunal is satisfied that it has received full, frank, prompt comprehensive closure of all relevant information from the Commission, the Tribunal might feel that there is something to be gained by Persona being in a position to force the Commission to comply with the strict legal obligation of disclosure."

Do you understand that paragraph, Mr. Boyle?

A. I don't understand the significance of it, no. You are open to take advice from my counsel if you wish.

Q. I think it speaks for itself, but I won't ask you any questions on it if you don't understand it.

CHAIRMAN: Mr. O'Neill will have an opportunity to take

matters up with you a little later.

A. Okay.

Q. MR. MCGONIGAL: Just to complete that sequence. What actually appears to have happened, Mr. Boyle, and the reason why I went back to the letters of 69 and 71 was because when the Tribunal sent its letter to Mr. Mensching in the first place, it doesn't appear to have copied that to you, but it then copied that to you, and you'll see that in Tab 77. And that was that followed a conversation which a telephone conversation from the 1st November, which is at Tab 76, the last page, but there is no need to open that. I just draw that to your attention.

The next matter, Mr. Boyle, I just want to draw your attention to is Tab 62. Now, this appears to be this is, again, a letter from Mr. Moloney to Mr. Davis dealing specifically with Mr. Hoceped of the European Commission, and what he is dealing with on these first in these three pages is a number of meetings which he had and which are, presumably, a reflection on the investigation that he talked about in the earlier correspondence that I referred to, and meetings on the 14th May, an off-the-record conversation on the 14th May and the 15th May and a request for documents under 1049/2001.

Now, just the two things I want to draw your attention to.

First of all to try and set the discussions, the first is the meeting with Christian Hoceped on the 14th May, 2002. "I telephoned Mr. Hoceped in Brussels on Monday

13th May and asked if he would meet with me to discuss the matter of the award of the licence. I enclose a note of my telephone conversation of the 13th May.

"On Tuesday, the 14th, I spent almost two hours with Mr. Hocepić in his office in Brussels. I enclose a typed note which contains a summary of what was discussed at that meeting. I also enclose my handwritten notes which I took at the meeting. Please note that my handwritten notes are very summary in nature. This is primarily because there were only two of us at the meeting."

Now, if you skip on a few pages, you will see the attendance which is dated the 15th May, and that's an attendance of the phone call which you made on the 13th May, and the only paragraph there that I want to draw your attention to is "That I explained that my clients and possibly myself would be called before the Tribunal in relation to the events of 1995/1996 and that I wanted to make sure that I got my facts right, and therefore, I would like to discuss with him aspects relating to that period, and, in particular, surrounding our complaint. He agreed to meet with me and we set a time for 3:00pm on the 14th in Brussels."

Now, it's interesting in itself, that paragraph, Mr. Boyle, because, at that stage, so far as official public documentation is concerned, the Tribunal had not then taken a decision to go into the GSM publicly, but it sets the background for the meeting that then took place. Do you

understand that?

A. I'm not aware what date the Tribunal decided to go into public session.

Q. Well, we were notified by a letter of the 16th June, 2002, let me put it that way. I think you may have been notified, from recollection, from something that somebody said, you may have been notified before that, but certainly we were notified on the 26th June, 2002.

A. Fine.

Q. Now, the next page after that is the attendance of the meeting on the 14th May, and there was a few small things that I just want to draw your attention to. First of all, at the bottom of that page, it says "Referring to a chronology on its file ... 28th June, 1993, when the issue of the GSM monopoly was first raised. When there was no subsequent satisfactory response from the Department on the 25th October, 1993, there was a formal letter threatening infringement proceedings against Ireland." That's the beginning of a short history of the events, and it speaks for itself.

The next page then, the bottom of the page, the paragraph, "CH said that on the 15th June ... hard to recollect the exact detail, but he recalls having got the impression that there were two problems. Firstly, there was a fear about the ability to impose an equivalent fee on Telecom Eireann or Eircell. Secondly, there was a concern about the level of the fee ... roll-out of the second operator. In this

context, he referred to the fact that, in Italy, the reasons the fee had been so enormous was that there was a serious disincentive on the second operator to operate in the less profitable areas of Italy." (Quoted.)

That, again, speaks for itself. It's Mr. Hoceped referring to things that he had discussed with Mr. Brennan.

The next page in the third paragraph he refers to the fact that "CH also confirmed that the ... from the fact that Andersen consulting was involved ... had nothing to do with the evaluation ..." (Quoted.)

That, again, speaks for itself, as to what it says.

The end of that paragraph, "I asked him whether MB had been aware of the full extent of the Commission's concerns concerning the situation in Italy. He then looked at a copy of decision 95/489 concerning Italy, which is dated October 1995. The recitals appeared to confirm that the format procedure against Italy had opened in January 1995.

CH then commented that once it had become formal in January 1995, he would have felt free to discuss it with MB ... sophisticated understanding of the Commission's concerns in relation to this whole area."

A. I think there is a much more important paragraph, two paragraphs up from that, if you are referring to the licensing.

Q. Certainly, off you go. Which one had you in mind?

A. It says "CH then volunteered that while no one could have anticipated the enormous value of the licence, even back in

1995, he would have thought a fee of 30 to 40 million would have been reasonable ... investment."

If that's what you are asking, I don't know.

Q. It speaks for itself. The next one, Mr. Boyle, I just want to draw your attention to, is 15th May, a few pages on. Do you have that?

A. The handwritten note?

Q. No, it's beyond the handwritten note. The first document after the handwritten note probably the same one, 15th May it's, again, back in Ireland on the 15th May. Do you have that?

A. I do, yes.

Q. The paragraph I want to draw your attention to is the last paragraph on that page, "CH seemed to be concerned now that he had been used at the time. He then said that he had queries from John Davis of Moriarty Tribunal and if he replied to them they would point the finger at MB. He said he felt certain solidarity with a fellow civil servant in Ireland, especially one that he had got on quite well with.

I made the point that while of course we should give the benefit of the doubt to Martin Brennan that he had not done anything untoward because we did not yet have any such evidence. At the same time, neither he (CH) nor I could be 100% sure that MB was 'clean' and, therefore, CH be extremely careful not to risk being seen to try to protect him because then the spotlight would turn on the Commission itself. CH said that he was well aware of this. However,

the implication of this part of the conversation seemed to be that the questions asked by the Moriarty Tribunal carried the implication that Martin Brennan had said things to them that CH was not going to confirm but deny."

That seems to speak for itself as well, Mr. Boyle. Would you agree?

A. It would seem to, yes.

Q. You see, the interesting thing, from my point of view, is that we have only got hold of this recently, so we weren't aware that this correspondence was in existence, and it certainly wasn't available to us at the time that Mr.

Hoceped was giving evidence. That's the only point.

And the last bit that I just want to draw your attention to in relation to this aspect of the matter is at Tab 89.

A. It's my understanding that the Tribunal didn't take cognisance of any input on this matter.

Q. Sorry?

A. It's my understanding that Mr. Davis said yesterday that the Tribunal

Q. Coughlan?

A. Sorry, Mr. Coughlan, didn't take any cognisance of our input on this matter, anyway.

Q. I remember that being said, Mr. Boyle. But that wasn't made clear at the time that Mr. Hoceped was giving evidence and we weren't aware of the existence of this correspondence we now understands exists, and I heard Mr. Coughlan yesterday. Unless the Tribunal Chairman, in

effect, is saying that none of this correspondence is impacting in any way, good, bad or indifferent, on the way in which the Tribunal is being conducted, then it may shorten the matter

MR. COUGHLAN: I didn't hear that comment. Could you repeat that, please, so that I could hear it.

MR. MCGONIGAL: What I said was that "I remember that being said, Mr. Boyle. But that wasn't made clear at the time that Mr. Hoceped was giving evidence and we weren't aware of the existence of this correspondence we now understands exists, and I heard Mr. Coughlan yesterday. Unless the Tribunal Chairman, in effect, is saying that none of this correspondence is impacting in any way, good, bad or indifferent, on the way in which the Tribunal is being conducted, then it may shorten the matter "

What I said is it may be shortening the matter.

The next tab, Mr. Boyle, is Tab 89. I just want to draw your attention to a letter of the 11th July, 2003 from Mr. Moloney to Mr. Davis, and this letter was also referred to by Mr. O'Donnell, so there is no need to refer to it again, but it simply brings together these matters which I was drawing attention to. And that is a letter written following Mr. Hoceped's evidence, and bringing to the attention of the Tribunal something that he thought was relevant, that it should have been brought. It speaks for itself.

The other letter that I just want to draw your attention

to, Mr. Boyle, is Tab 82. This is a response this is a response by Mr. Moloney to Mr. Davis in respect of the Opening Statement of the Tribunal where he says that "It appears from the Opening Statement, so far as the Tribunal at this stage at least, may not intend to investigate in a public phase of its investigation, whether a postponement of the original date for the submission of bids and/or the capping of the licence fee at 15 million was influenced in some way by or for the benefit of the Esat consortium."

And then he continues, "I am confident that you are already aware from your dealings with myself and my clients that we fully respect the Tribunal's decision in this regard.

"However, in the light of some of the many matters that have come out over the course of the very comprehensive and detailed Opening Statement, I hope you'll permit us to make a number of very preliminary observations relating to the postponement and capping."

What he then sets out is a series of paragraphs, 14 15 in all, which I don't think it's necessary to read, but what I want to do is go to the last page, where it says "That the above are only very brief and preliminary observations as we had not any opportunity to study in detail the matters that had been raised in the Opening Statement.

"My clients and I respectfully suggest it might indicate that there are indeed grounds to investigate this matter

further."

So that, in fact, is an example, Mr. Boyle, of a point that you were making yesterday, and you have made again today, in exercising your rights, that an Opening Statement was, in the course of being given by Mr. Coughlan, there was an issue which you felt that you wished to readdress to the Tribunal. It was readdressed in the correspondence, and you were seeking the Tribunal to reconsider the points which were being made by your solicitor in that letter and to investigate matters which appeared at that time weren't going to be investigated?

A. I think, as I explained yesterday, we requested and weren't granted representation. So this was our opportunity to input to the Tribunal.

Q. I don't really want to go back into that discussion you had yesterday about representation. But as I understand it from the documents that I have perused, the only time that you sought representation was at a private meeting with Tribunal counsel on the 26th March, 2002, I think?

A. We were informed it would not be granted.

Q. No, I understand that. But can I put it differently: At no stage did you ever make an application to the Tribunal Chairman, that I am aware of?

A. I am not aware of it.

Q. Now, the last matter just one very small matter, Mr. Boyle. I wonder if you'd go back to Tab 58 for a second. The paragraph I know you have already dealt with this,

but I just want to try and understand something, Mr. Boyle.

It's paragraph 7 again. That's the meeting of the 1st May, and you see there you say "As far as Tony Boyle is concerned, the reality is that strings were pulled by Loughrey, Lowry and Brennan. They constructed the criteria in weighting and effectively had Andersens rubber-stamp them. Whoever had access to the weighting of the criteria won the competition."

Just in relation to that, just when I was looking at the report of the meeting of Persona on Wednesday, 15th May of 1996, which is at tab one of the documents that

Mr. O'Donnell handed in to you yesterday, I haven't the tab. Maybe we don't have it, at least we don't have it in our books. I'm not saying we don't have it; I'm saying we don't have it in our book. Do you have that? This is one of the ones Mr. O'Donnell gave yesterday. Do you have it?

MR. O'DONNELL: I'll see if we can find a copy.

Q. MR. MCGONIGAL: Just two small matters. The rest of paragraph 7, you understand that? Do you understand paragraph 7?

A. Yes.

Q. Now, the bit that I just want you to look at for a second is the second page of that document when they were talking about performance guarantees, No. 11, do you see that?

A. I do.

Q. Do you see where they say there that "The Project Team explained that paragraph 19 had been written by the

Department with the advice of London-based consultants and subsequently approved by Government . Weightings were not defined at this stage." Do you see that?

A. I do. I did make the point yesterday that our contemporaneous minutes, in my view, are much more relevant to the day, but

Q. I was interested in that, Mr. Boyle, because you make you made a point about contemporaneous minutes, but, in actual fact, I think in fairness to everyone, that at Tab 41, there are contemporaneous minutes, I think, from the Department?

A. Can we refer to them then, would that be more appropriate?

Q. I don't need to refer to them; I just want to draw your attention to the fact

A. I think they are different.

Q. They may well be different

A. Is that not the key, that they are actually different?

Q. That's okay. Mr. O'Neill will take you through all of that if he considers it relevant. I just want to bring one point well, two small points: One, that there were contemporaneous minutes of the Department, but the more important point which I just wanted to ask you about was that sentence which I read out to you "The Project Team explained that paragraph 19 had been written by the Department with advice from a London-based consultants and subsequently approved by the Government."

Now, whether that was said or not, that's a sentence that

was in this document purporting to have been discussed at that meeting. What I'm curious about it, have you seen the advice from the London-based consultants which may have been subsequently approved, and if you haven't, have you sought it?

A. Absolutely not. We haven't sought it or seen it.

Q. Because that would help to understand how documents may have come into existence, isn't that right, if that is true or untrue?

A. What documents might have come into existence?

Q. "The Project Team explained that paragraph 19 had been written by the Department with advice from a London-based consultants and subsequently approved by the Government."

That's the only sentence I am interested in. They seemed to have got assistance and not done it on a wing and a prayer, so to speak?

A. Your question to me was have I seen it or asked to see it?

My answer is I have neither seen it nor asked to see it.

Q. That's all I wanted to know. Thank you very much,

Mr. Boyle.

CHAIRMAN: I understood Mr. Shipsey has already examined the witness, Mr. Barron.

MR. BARRON: There is a few things arising out of questions and answers.

CHAIRMAN: All right, but within certain constraints.

THE WITNESS WAS EXAMINED BY MR. BARRON AS FOLLOWS:

Q. MR. BARRON: Mr. Boyle, it emerged yesterday that I think

that Sigma now is the sole owner of Persona; is that

correct?

A. It merged. That's a matter of public record for many

years.

Q. Is that correct, is it?

A. Absolutely. No, it's Michael and myself are the owners of

Sigma Wireless Networks, which are the owners of Persona.

That's a matter, as I say, of public record in the

Companies Office for many years.

Q. And are you equal owners or are you in different

proportions?

A. We are beneficial equal owners. The shares are not

necessarily equal right now, but we are beneficial by

agreement between us.

Q. And, just listening yesterday, it appeared that did you

have concerns about this process before the award to Esat

Digifone or only subsequent?

A. What do you dictate as "the award"?

Q. Well, the announcement of the the announcement made in

October 1995, as opposed to the subsequent. When did you

first have concerns about the process?

A. When we heard of the result and when we asked for an answer

and weren't afforded the opportunity of an answer or

explanation.

Q. Thank you.

THE WITNESS WAS EXAMINED BY MR. O'HANLON AS FOLLOWS:

Q. MR. O'HANLON: You were aware of the protocols concerning

approaching the Minister when the competition was ongoing,

I think; isn't that right?

A. I am not aware of any protocol. What I am aware of is the conversation with Mr. Brennan, if you recollect, on the handwritten note in the file, where I informed him that we would continue to seek meetings with the Minister and the Secretary, and he confirmed that that seemed okay to him.

Q. In the competition process for the GSM licence, you were aware of how it was organised and the details concerning the presentation in relation to it?

A. If you are suggesting that that was I am aware of that, but there is nothing in my mind restricting.

Q. Because you arranged for the meeting in Killiney, or it was arranged on your behalf, in Fitzpatrick Castle Hotel with the Minister ; is that right?

A. Yes, I did.

Q. And you didn't see anything wrong about that meeting taking place or what actually transpired at the meeting?

A. I have no problems with that.

Q. And subsequent to the award of the licence, I think you don't suggest that Mr. Lowry did anything improper at all in relation to that meeting?

A. That was a

Q. Having the meeting or what transpired at the meeting?

A. Well, in my judgement, it was a totally proper meeting. I wrote to him and I said that I was happy to meet, but also, I understood that if he had a concern, that I would accept

that, and I presented to him information that was in the public domain at the time, which was a brochure which identified the details of our bid, and that is all.

Q. And you indicated to My Friend that your concerns are all result-based concerns in relation to the competition from the time of the announcement of the winner, that's when you first had concerns; is that correct?

A. My concerns arose when, as I say, when the results we heard of the result through the media, and then when we asked for a proper debrief, a proper explanation, we were not afforded same.

Q. Yes, I think you received a letter from the Minister in November 1995 in response to your query as to the exact reasons why you had not won the competition; isn't that correct?

A. It was a standard letter. It certainly didn't give any detailed explanations or reasons which were satisfactory in terms of being able to understand it.

Q. The letter I'm referring to is at Tab 25 in the book prepared by Fry's, and it's a letter to Mr. Moloney who was it was on your behalf from Mr. Lowry. And it's clear from that letter that, in relation to providing explanations, that the Minister was referring you back to the conditions under which the competition had been run and the guarantee of confidentiality; isn't that correct?

A. I'm not sure what guarantee of confidentiality was referred to, but, yes, there was a suggestion there.

Q. And he indicated, at the last paragraph on the page, for those reasons that he had set out above "It's not possible to respond in a meaningful way to your request" "In providing the details of a comparative process, the decision could only be explained by providing details of the Esat Digifone application and drawing attention to the areas where it was judged superior to that of Persona."

Isn't that right?

A. That's what they said, but we had pointed out to them that there were many different ways and there were many precedents in other countries where a detailed explanation could have been granted without prejudicing the winning applicant.

Q. And isn't it clear that what was subsequently arranged for Persona was to provide, by the Department, a response in relation to Persona's bid and to clarify where it had where, in their opinion, its bid had not been, I don't know, the best?

A. I mean, it is correct that there was an information meeting offered eventually in April/May '96, which we found, as I said, totally unacceptable, where we did not get any proper explanations.

Q. But you are aware of the reference in the letter that was written to you or to Mr. Moloney, on the 20th November, to the fact that the confidentiality commitments was given to all the applicants for the licence during the course of the competition. That, presumably, is not something that

came as news to you?

A. It was our opinion, and we made it quite clear to the Department, that there was it was totally possible to give explanations without breaching that confidentiality. As I say, we cited precedents in other countries where it had been done, and, furthermore, at the end of the process, all of the unsuccessful bidders actually confirmed their willingness to waive their, whatever confidentiality rights there were.

Q. At that time, a month after the competition, I don't think that had occurred; isn't that correct?

A. That's correct.

Q. And in relation to Mr. Lowry's participation, I think when you contacted Mr. Loughrey, the note indicates that you had no quarrel with the Minister at that time as such?

A. Which note are you referring to?

Q. It's at Tab 19 of the last book, the last paragraph?

A. My reading "I now call upon you to furnish..."

Q. Sorry, Tab 18?

A. That doesn't indicate

Q. The Tab 18 I have is the "Note of the conversation with Tony Boyle, Chief Executive of Sigma and Pivotal Promotion of the Persona GSM bid," and the last paragraph on that page.

A. What it says in mine is "I thank" this is John Loughrey "I thank Tony Boyle for letting me know directly"

Q. Sorry, that's on the second page of the tab. Sorry, the

last paragraph of the first page.

A. It was very clear, I think that was actually recorded in RTE at the time, what I was simply saying

Q. Sorry, go on?

A. that I was not indicating, because we did not know at that point in time, what the issue was. We were simply calling for openness and transparency in the decision-making process. Now, this is the first time I have seen these minutes, and they are obviously Mr. Loughrey's minutes, but I don't think they necessarily significantly misrepresent it, so I do believe what I would have said is, and that's what my kernel at that point in time was, was simply saying we are requesting openness and transparency on the decision-making process.

Q. And at that time, you didn't have any problems or claims against the Minister, per se; you had no quarrel with the Minister of the Department as such?

A. It was very clear that our request, which was obviously made through the Minister, that our request was for openness and transparency.

Q. And isn't it also absolutely clear, at this stage, from your correspondence on your behalf with Mr. Moloney, that the main concern that you appear to have had related to the delay in the competition resulting from the Commission's intervention in relation to the fee and the subsequent capping of the fee?

A. Are you talking about now or then?

Q. Up until the Tribunal commenced.

A. There were many irregularities, and a lot of it is covered here in press clippings, but I think it started on the first day after the announcement where the newspaper reports had the 20% of the company was being reserved for undisclosed financial investors. So, I mean, that was I am just quoting that as one example, and there were many, many examples such as that which were we had requested. There was a report in the next in the paper that weekend, also, that the losing bidder had paid for an advertisement which was criticising the ESB's involvement.

Q. Yes, wasn't it clear and wasn't it made absolutely clear to you that that advertisement had no impact, good, bad or indifferent, on the decision in relation to the competition?

A. Mr. Loughrey pointed that out, yes, that's what he said.

Q. In relation

A. They are just two small examples. I mean, there were many.

Q. In relation to the media coverage, weren't you involved in discussing these matters with the media?

A. There were certain reports which did have me quoted, yes.

Q. A lot of the objections to the results were being generated by you or on your behalf?

A. Certainly not. There were lots of I mean, all of the losing bidders were asking questions. There were questions asked in the Dail. There was a lot of public questions raised. It is certainly incorrect to say that they were

all coming from me.

Q. And wasn't it clear, and hadn't it been made clear to you, exactly how the competition was organised and run in the sense that when you, on the 1st May, in your meeting with the Tribunal, suggest that strings were pulled by Loughrey, Lowry and Brennan. One, I have to suggest to you is that statement is simply untrue, it's not relevant to the way the competition was started. You say they constructed criteria and weighting, effectively had Andersens rubber-stamp them. When you started the competition, weren't the criteria set out; you were provided with an information pack and everybody who participated in the competition all knew what the criteria were?

A. I mean, I'm not going to discuss the basis of our legal case, because it's very clear, on evidence here, that the criteria were very much a moving target throughout the entire process.

Q. Weren't you furnished with the information pack, the same as every other person in the competition?

A. It's clear the criteria were a moving target throughout the entire process.

Q. And isn't it clear that you have no evidence whatsoever to support that suggestion? It's simply an opinion you have had that you have I am not sure what your source of the opinion is, but it doesn't bear in reality, in fact, or to any of the evidence that's been presented in relation to it?

A. The evidence presented here by Mr. Brennan was that the original criteria withered away or was replaced with a set of new criteria in the Copenhagen

MR. O'DONNELL: That is simply not so.

CHAIRMAN: Well, you'll have an opportunity to draw my attention to anything. If you could just continue with the evidence for the time being.

Q. MR. O'HANLON: There has been no evidence given whatsoever by Mr. Brennan or anybody else that Mr. Lowry was involved in pulling strings; isn't that correct?

A. That is an opinion I expressed.

Q. That's all it was, an opinion you had. It's not meant to be a statement of fact; it's a statement of opinion, isn't that right?

A. That was an opinion I had.

Q. And it's not based on evidence or fact, isn't that also correct?

A. I'm not going to comment on the basis of our legal case.

Q. Or your opinion. Thank you.

CHAIRMAN: Mr. O'Neill.

THE WITNESS WAS EXAMINED BY MR. O'NEILL AS FOLLOWS:

MR. O'NEILL: Thank you, Mr. Chairman.

Q. Mr. Boyle, I want to ask you first in relation to your meeting with Mr. Desmond at the Grand National. In cross-examination by Mr. Shipsey, on behalf of Mr. Desmond, he has suggested that you weren't present at the Grand National at Aintree on that particular occasion. Were

you present?

A. Absolutely.

Q. Did you have the conversation that you have recorded or recited to the Tribunal with Mr. Desmond?

A. Absolutely.

Q. And did he say to you what you have told the Tribunal in your direct evidence or in your evidence to Mr. Coughlan?

A. Without question.

Q. Now, Mr. McGonigal has referred to the fact that in your initial statement, or interview by the Tribunal, you referred to the fact that Mr. Lowry and Mr. Barrett were subsequently in the same box?

A. That's correct.

Q. And that you didn't refer that to that in the statement, the formal statement that you made to the Tribunal. Can I ask you to look at the Book No. 2, Tab 72, that Mr. McGonigal furnished you with. Tab 72. This is a letter of the 23rd August, 2002 from the Tribunal to your solicitor asking for statements, and statements on two matters: One, the discussions between Mr. Boyle and Mr. Dermot Desmond at the Aintree racecourse in April 1995, and 2002; meetings between Mr. Boyle and Mr. Lowry on the 16th August, 1995. Were you ever asked to make a statement in relation to whether or not Mr. Lowry or Mr. Barrett were present at Aintree

A. Absolutely not.

Q. on that particular date. Now, did you disclose to the

Persona board the fact that you had and I'm turning to your meeting with Mr. Lowry now did you disclose to the Persona board the fact that you had met Mr. Lowry in August of 1995?

A. I did, and it's in our board minutes and it's in the minutes of our steering group.

Q. And I think that document is, in fact, in the booklets.

Perhaps I might refer you to it. I think there is an extract from the minutes of meeting, Persona steering committee of the 30th August, 1995, which says: "T. Boyle summarises last meeting with Mr. Lowry" perhaps I could ask you to have a look at that and identify that as being an extract from, and it is simply an extract from the particular meeting?

A. That's correct.

Q. What was the purpose of seeking a meeting with Mr. Lowry in August of 1995?

A. It was a sales presentation, to be able to explain to Mr. Lowry directly what was in the brochure which we had presented, so we could, on a face-to-face basis, so I could explain to him what the benefits of our bid were.

Q. Was there any attempt by you to gain an advantage over the other competitors, or potential competitors, for the licence?

A. It certainly was an attempt for me to present to him so he could see me and he could understand the merits of our bid so I could directly convey that to him. I believe it was a

proper meeting for myself and properly conducted.

Q. And I think you had brought up the issue of a potential meeting with the Minister earlier in a conversation with Mr. Brennan, if I could refer you to the there is a letter of the 2nd March of 1995 at Tab No. 7 of the booklet you have, or one of the booklets you have?

A. I am familiar with the letter.

Q. And the letter itself I don't want to go into the letter itself. It's simply the note of the correspondence that he had with Mr. Brennan where he said, "I spoke to T. Boyle. He will make fresh contact with me next week when they have fully studied the document. I told him that I and you are the conduits for clarification and not the Secretary. He will separately seek a meeting for his principals with Sec/Min. Let's infer the clarification phase is over.

That seems okay to me."

Did you have that conversation with Mr. Brennan that you indicated that you would be seeking on behalf of the principals; in other words, Persona, a possible meeting with the Minister or the Secretary?

A. Absolutely.

Q. Now, can I ask you I want to turn now to the so-called explanation meeting that took place on the 15th May of 1995, and in relation to your views as to the adequacy of the so-called explanations that you received. I think that a contemporaneous note was prepared by your team of that meeting; is that correct?

A. That's correct.

Q. And I think do you have a copy of that note in front of you?

A. I do, yes.

Q. I'm not sure where it appears in the Tribunal's books of documentation, but if I can go through it, in any event.

Can I just ask you to turn to the bottom of the first page of that document. "Mr. Brennan indicated that the Department would be pointing out some of the weaknesses in Persona's application. He indicated that silence in respect of a particular aspect of the application should be interpreted to mean that Persona's application in that respect was average or better. He went on to say, however, that he would not be giving 'reasons for the decision'.

And Mr. Moloney immediately challenged this stating that Persona was entitled to be given reasons for the decision.

"Mr. Brennan then stated that Esat Digifone was 'exceptionally strong from both a technical and marketing point of view'. Mr. Moloney then put it to Mr. Brennan that, in view of Mr. Brennan's reference to Esat, presumably he will be giving comparative information in respect of the Persona and Esat applications. Mr. Brennan denied this, stating that there would be no discussion of the Esat application."

Is that an accurate record of that element of the meeting?

A. It is.

Q. And can I ask you then to move down to the heading

"Scoring": "Mr. McSweeney then asked what Persona's scoring was in relation to the selection criteria.

Mr. Brennan stated that scoring would not be disclosed. It was pointed out to Mr. Brennan there could be no meaningful disclosure without disclosure of scoring.

Mr. Brennan was asked for an explanation as to why the scoring would not be disclosed and he refused to give one.

"It was pointed out that the Department and/or the Minister had previously stated that Esat was 'head and shoulders above' any other applicant; 'ahead on all fronts' etc. Mr. Brennan was asked whether this meant that Esat had scored higher than Persona under all of the selection criteria.

Mr. Brennan refused to answer."

Again, is that an accurate record of what transpired?

A. It is.

Q. Down at the bottom of that page under "Selection Criteria and Weighting": "Persona believe that 18% was the disproportionately low weighting attached to the tariffs criterion and Mr. Andersen was asked what he thought of this. He refused to answer."

Again, is that correct?

A. That's correct.

Q. And then, over the page, "Mr. Andersen was asked whether he thought Esat was the most effective competitor for Eircell, and Mr. Brennan prohibited him from answering."

Is that correct?

A. That's correct.

Q. "Mr. Brennan was pressed to give a comparison between Persona and Esat and refused to do so. When pressed for a reason for his refusal he again refused to give one."

Then under the heading "Contents Page of Consultants Report": "Mr. Moloney made reference to the contents pages of Mr. Andersen's report which had been disclosed to the press conference on the 19th April. Mr. Moloney referred to the fact that 30% of the weighting was attached to the first criterion which dealt with both credibility of the business plan and approach to market development.

Mr. Moloney asked what the subdivision of points between the business plan and market development was. Mr. Brennan refused to answer. Mr. Brennan was asked whether he knew what the division was. He replied that he did know what the division was but he would not disclose it."

Is that correct?

A. That's correct.

Q. Over the page then, page 4, on the third paragraph down the page, "Mr. Moloney asked how many points were awarded for this question of 'experience'. Mr. Andersen refused to disclose this."

A. Correct.

Q. At the bottom of the page, second-last paragraph.

"Mr. Moloney asked what the weighting attaching to this criterion was prior to the capping of the licence fee, and Mr. Brennan refused to answer."

Again, is that correct?

A. That's correct.

Q. "Mr. Moloney asked whether the weighting attached to this criterion would have been reduced further if the descending order of priority allowed this, for example, if this reasoning allowed the criterion to say 6%, would it indeed have been reduced to 6%? Mr. Brennan answered that this was 'speculation' and he would not respond.

"Mr. Moloney asked whether the weighting on this criterion above 11% was transferred too. Mr. Brennan refused to answer, but, when pressed, eventually said 'it went up the line and not down'.

"Mr. Brennan was asked whether he agreed that the licence fee weighting should not have been transferred to the tariff weighting. He refused to answer. He was asked whether, in fact, the excess weighting from the licence fee criterion was transferred to the weighting in respect of the business plan. He refused to answer."

Again, if I can ask you to turn over the page to the heading "Roll-Out": Mr. Andersen made some general comments in relation to the strengths of the Persona application but Mr. Brennan stopped him, indicating that there was 'no need' to refer to strengths."

Then under the heading "Financial and Technical Capability": "Mr. Boyle pressed the Department on the question of ownership. Mr. Brennan responded that he did not intend to answer any questions on this matter.

Mr. Boyle asked what the Department understood by the

expression 'ownership'. The response was 'it meant what the Oxford English Dictionary says it means'."

Down at the bottom of that page, "Post-Scoring Phase":

"Mr. Andersen was asked about the final two chapters of his report entitled 'The Final Evaluation' and 'Conclusions and Recommendations'. "He was asked, firstly, how the marks were converted to points in Section 6.2. Mr. Brennan answered that this was too technical and would not benefit anyone to go into."

Under the heading "Selection Criteria": "Mr. Andersen was pressed again on the question of the selection criteria.

He was asked whether he would himself have designed the criteria and weighting in the way that it had been done.

He refused to answer. He was asked whether the criteria and weighting, as designed by the Department, would, in his view, bring about the most effective competitor for Eircell. He refused to answer." Is that correct?

A. That's correct.

Q. Then, finally, last page, "Mr. Brennan moved to close the meeting. However at this point Mr. Moloney stated to Mr Brennan that he had not explained why Persona had failed in its application. Mr. Brennan retorted 'because it was not the best'. Mr. Andersen immediately interjected 'not the best according to the criteria set down by the Department'. Mr. Andersen was immediately pressed on this point but eventually simply said that he was saying the same thing as Mr. Brennan." Is that correct?

A. That's correct.

Q. Now, I think on the 30th May of 1996 you wrote expressing your concerns and disappointment about the manner in which the meeting was taking place, and I think we have gone through that letter with Mr. McGinley, and I presume it's a letter which you stand over?

A. Yes.

Q. Can I now turn to the issue of the waiver of confidentiality and the correspondence of the 26th March of 2001. The inference I may have picked it up incorrectly, but the inference I drew from the examination by Mr. McGonigal was that there was undue haste in replying to the request to waive the confidentiality. The letter was sent on the 26th March and a reply was sent on the same day. Was there any reason why there was such a quick response to the request?

A. There was nothing to consider. At best, we had a very limited discussion with Mr. Healy in 1995, and Mr. Hogan, regarding, purely, the process of were we entitled to an explanation under reasons? And they gave an answer, and that's all the consultation was restricted to, so there was nothing there was nothing to be concerned about, so effectively, there was a fax received Mr. Moloney sent me a draft letter to see is this correct, and then we communicated on the phone, and I approved it and he released it.

Q. As far as you're concerned, Mr. Healy didn't have any

confidential information that would impact on you or indeed any of the other parties?

A. Absolutely not.

Q. I ask you to turn, on a different matter, to Tab 71 of the folder that you have in front of you.

A. Yes.

Q. In fact, I have covered that point. Can you turn to Tab 62, and I want you to look at the fourth page; that's the attendance to which Mr. McGonigal referred to, of the 15th May of 2002.

A. Yes.

Q. And in the second paragraph of that attendance it's stated by Mr. Moloney, "I explained that my clients, and possibly myself, would be called before the Tribunal in relation to events in 1995/1996." At that stage, you had, in fact, been called before the Tribunal on two occasions?

A. That's correct.

Q. Were you given any advance notification, in advance of other parties in other words, that the Tribunal was going to go into public session in respect of the grant of the GSM licence?

A. Absolutely not.

Q. Mr. O'Hanlon asked you in relation to concerns that you might have, or you might have had, in respect of the process. Did you have concerns in June of 1995 when, approximately a week before the deadline for applications, the process was postponed or the application date pushed

out?

A. I would certainly say that our international investors found it quite strange and they did register that at the time, and it is registered. As to the basis for the delay, they found that was I think their description was the antennae was raised when they first discovered that matter.

Q. Now, I want to ask you in relation to the application that you made to the Commission for the disclosure of certain documentation and the request that you made to the Tribunal to indicate its attitude towards that disclosure. You wrote to the Tribunal in July of 2002, and, as

Mr. McGonigal has brought you through, it appears that the Tribunal itself wrote to the Commission on the 31st July, 2002, indicating that it had no objection to the disclosure of the documents in question. You, again or Mr.

Moloney, on your behalf, then wrote to the Tribunal again in November 2002, and this is at Tab 76.

At that stage, in November 11th November, 2002, you wrote to the Tribunal asking them to indicate whether or not, and preferably not, did they have an objection to the disclosure of this particular documentation. At that stage, presumably you did not know that, in fact, the Tribunal had written directly to the Commission saying it had no objection?

A. Definitely not.

Q. And it appears that some days after your letter on the 11th November, you were so informed by the Tribunal.

Now, is it correct that, at that stage, the advice you were being given was that you had an entitlement to this particular documentation, but that the only bar the only bar that was being put up by the Commission was that this may interfere with the proper functioning of the Moriarty Tribunal?

A. That's correct.

Q. And that you did not believe that that was or the advice you were receiving was that you did not Persona did not believe that that was a proper basis for objecting to the production of the documentation?

A. That was the advice.

Q. Instead of going through the courts, the European courts, it would be a lot easier to simply have a letter from the Tribunal, if they were so minded to give that letter, saying that they had no objection and that they wouldn't interfere with the production.

A. That's correct.

Q. I want you to look at a document in Tab 57, and this appears to be the questions for the Department of Public Enterprise in relation to the second GSM licence.

If you look at the index of the books, it appears to be it's described as a list of questions anonymously forwarded to the Department of Public Enterprise in relation to GSM in December 2000, forwarded to Moriarty Tribunal. Have you ever seen that document before?

A. Not till yesterday.

Q. That document didn't emanate from you or anyone on your behalf?

A. Absolutely not. Absolutely not.

Q. Thank you, Mr. Boyle.

CHAIRMAN: Mr. Coughlan?

MR. COUGHLAN: Nothing, sir.

MR. BARRON: Chairman, there is one matter that I didn't raise, and I wasn't going to raise, but arising out of Mr. O'Neill's questions, I want to just clarify.

CHAIRMAN: All right.

THE WITNESS WAS EXAMINED FURTHER BY MR. BARRON AS FOLLOWS:

Q. MR. BARRON: You made a very detailed complaint to the Commission in 1996?

A. Yes. In the areas of openness, transparency and competition.

Q. And who advised on that?

A. Mr. G.J. Moloney.

Q. Did you have a counsel involved in that process?

A. No.

Q. None, not on in a matter of detailed European law?

A. Not to my knowledge. There would have been Mr. Tom Titan, I think, was the counsel with Unisource, so I think he may have in other words, there were internal lawyers.

Potentially ESB's company secretary may have been involved, so I would say it was internal legal from the various parties. I'd say the Motorola legal team were also

Q. Do you know the answer?

A. In what respect, sir?

Q. Did Mr. Moloney engage counsel to advise you how to put together this complaint to the Commission?

A. Absolutely not to my knowledge, but unless there is something you know differently there was an internal lawyers of the various consortia members were involved in the preparation. It was led by Mr. Moloney and inputted and advised by the counsel from Unisource and from Motorola and ESB.

Q. Thank you.

CHAIRMAN: Thanks very much for your assistance, Mr. Boyle.

MR. COUGHLAN: 11 o'clock on Tuesday, sir. Mr. Brennan.

CHAIRMAN: The matters will now be adjourned until Tuesday.

In the context of the issue that perhaps raised the most temperature yesterday, I would remind persons present that I have ruled on this matter on the, I think the 3rd March of last year at the conclusion of evidence that was given by Mr. Walsh. In the context of what has been heard today and yesterday, including, in particular, the extremely limited stage to which the involvement of Mr. Healy with Mr. Hogan went with Mr. Boyle and his colleagues, and in the context of what I believe has emerged as to the Tribunal having been predominantly disinclined to adopt very many of the matters forwarded to it by Mr. Moloney on Mr. Boyle's behalf, I see nothing to change the ruling that I made on that occasion, which was to the effect that Mr. Healy behaved utterly ethically, informed me of the

involvement that he had at an early and suitable stage, and that contact was made with the two legal teams who it was appropriate to indicate this matter to, and a response to the effect that no problem arose was indicated.

I have seen nothing to revise that view and I consider it regrettable and unfortunate that, in my view, an unwarranted effort has been made to damage a respected and honourable barrister. I am not going to raise the temperature further or needlessly by indicating any matters pertaining to personalities or otherwise, but I do reserve the right to address this matter, if necessary, at a later stage, including in my report. Next Tuesday.

MR. McGONIGAL: Mr. Chairman

CHAIRMAN: No, thanks, Mr. McGonigal. I have heard the matter.

MR. McGONIGAL: I reserve my position.

THE TRIBUNAL THEN ADJOURNED UNTIL THE 15TH NOVEMBER, 2005

AT 11AM.