

THE TRIBUNAL RESUMED ON THE 12TH DECEMBER, 2005,

AS FOLLOWS:

THE WITNESS WAS EXAMINED BY MR COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Now, Mr. Lowry, I think what we did was we attempted to extract what looked like the more relevant documents relating to your evidence, and we put them into two leverarch files for you, so I'll try and deal with them that way recollect, and then I'll refer the other legal teams to the actual books that we are out on.

I also have and I'm not going to ask it to take it into your hand now. We have gone through an exercise of trying to extract portions of the transcript relating to the evidence of different people, which, again, may be more relevant to your evidence. I'll give it to you in due course, but if at any time in relation to either the documents or the transcripts, if you want further time to consider anything, just say so, and you won't be pushed in relation to it, okay?

Now, I think the Government of which you were a member came into office I think in December of 1994; isn't that correct?

A. Correct.

Q. And I think that there had been a policy decision taken in relation to what is described as liberalisation of the telecoms market at the time; in other words, that there would be a second mobile phone operator, and that somewhere or other, a licence would be granted to enable competition

to take place in that area. Isn't that right? That had generally been the way policy had been developing?

A. Yes, the process and the intent had been addressed by the outgoing Government, and then the incoming Government took that up.

Q. And it was an evolving well, I think there was no political dispute between any of the parties but that this was something that would happen. The outgoing Government and the incoming Government were pursuing a similar policy; in other words, competition for Telecom or Eircom, or whatever their name was at the time?

A. Absolutely. The idea was, and the need existed, to bring competition to that sector, and this was a way of doing it.

Q. Now, I think that when you came into office you would have, I suppose, received briefings from your civil servants, a Mr. Loughrey in particular, or anyone Mr. Loughrey thought was a particular expert or had a special interest in an area of bringing you up to speed as the new Minister in relation to various areas of responsibility in the Department?

A. Yes. I would say in my first two days that exercise commenced, and there were a huge number of issues that were brought before me, and the express wish of the officials in the Department was that they would be dealt with. And one of those issues, just one of many issues, was the licence issue.

Q. The licence was one of the issues; isn't that right?

A. Yes.

Q. And we see from the earlier documents how this matter was evolving, and we have been through all of these documents before with other witnesses, but there was debate going on, as there always would be, with the Department of Finance over how matters like this might be handled. We have heard evidence, and I just wonder would it have been your recollection was this how things were evolving, that there was a very keen interest in your Department, you know, sort of to bring this competition on fast, and that there wasn't so much a concern in relation to, say, the cost of a licence fee as there might be in the Department of Finance, who would always be trying to maximise benefit to the State as they saw it? That type of debate was taking place, I think; isn't that right?

A. Yes, there was a clear understanding that we were lagging behind our European counterparts, that we needed to do something with it, and you know, all of those type of negotiations, the Department any Department, when you have two departments involved, they'll come at it from their own perspective. And the Department of Finance would have had a different attitude and outlook to that particular matter also.

Q. And we have heard evidence, and we see it in the documents. It was a debate, and it was going on, and positions were being taken and position papers were being prepared, and this was all so that the matter could ultimately come to

Government; isn't that right?

A. That's correct.

Q. Now, the one thing about this question of the competition and the second mobile phone licence was that whilst under any statute you, as the Minister, would be the licensing authority; isn't that correct you can take from me that that is correct.

A. Yes.

Q. And that there would be an input initially it was thought there would be the necessity of consent from the Department of Finance, but in fact when one looked at the section of the Act under which the licence was ultimately granted, that wasn't necessary. Nevertheless, the Department of Finance were involved in it from the legal point of view as well.

But the real question that I want to ask you here is that this was a Government decision; isn't that right?

A. Well, as you said yourself, the it was a Government decision to put in place the formula that was put in place.

All decisions in relation to the licence, yes, had Government clearance at one stage or another.

Q. That's what I mean. A policy decision was taken that there would be competition, and the policy decision was taken, and a Government decision setting up the parameters for a competition to enable the matter to come back to Government so that the Government could give its say-so to whoever would be the person who would receive the licence at the

end; isn't that right? That was what was envisaged?

A. Yes, my understanding of the process was that my Department was the lead Department

Q. Oh, yes.

A. Everything we did was done in consultation with the Department of Finance, who were a key player in it. They would have cleared the general parameters with the Government, and then when the Project Team had concluded its work, I would convey the decision that they made, not a decision of my Department, not a personal decision, but I would convey the decision that the Project Team made, I would convey that to Government. That is precisely what happened.

Q. To enable Government to make the decision; isn't that right?

A. I followed the advices that I was that I received, which was that when the Project Team had completed their work, that they would make a recommendation; that then the Department of Finance would ask for their approval. And, as you know, we then went to the Party leaders, which was very normal in those circumstances.

Q. Yes

A. It happened on a regular basis.

Q. I accept that.

A. And ultimately, then, I think it was the day after, the Government made a clearance decision as well.

Q. Yes, and I'm not raising an issue at all about the Party

leaders in the coalition Government. The only point I'm really trying to ascertain here is that it's your understanding of what appears to be the situation that the Government decided that there would be a competition. You brought an aide-memoire to Government setting out what effectively the guidelines in relation to that competition would be. They were approved by Government, and the matter was to come back to Government, and I'm not questioning the route it came back to Government, for the Government ultimately to make the decision. And that seems to be the way things evolved anyway?

A. I don't think I disagree with that.

Q. Now, I just want you to and I'm going to run through these documents fairly quickly, because it really is just the history and telling the story.

In the Book of Documents that we prepared for you, Book 1, you can see that some of the early documents are just dealing with what had transpired in 1994, I think. We needn't deal with that. But there was just one document I would just ask you about now, at the moment, and it's a document which doesn't have a tab number. It's after 41/25, and I'll just explain it's probably got a pink folder or a pink divider for you. What it is is a handwritten note of Mr. Jim Mitchell, the late Mr. Jim Mitchell, TD.

Do you have that particular document? I'll put it up.

It's the third well, sorry, we are working off different

books at the moment. But I don't think I think

everybody knows this document anyway.

A. I have it.

Q. Now, you can see there that he just notes that he saw you

at 3.30 today and informed you of his involvement with

Esat. "Tenders to be sought by" you'd think I'd

remember this; we have read these things so often but

the important note is?

"Tenders to be sought by advertisement in next week or two.

"A) DOB" I think everybody accepts that's Denis

O'Brien

A. Yes.

Q. "not favoured by Department.

"B) Denis O'Brien, Fianna Fail!! He is available to meet

principals of all contestants in February including DOB

not for lunch.

"Check in 3 weeks to see if this has happened."

Now, I think you do remember, perhaps not the full details,

but you do remember the late Mr. Mitchell saying something

to you, don't you?

A. Yes, I do.

Q. Can you just help us about that? Because we are trying to

put some understanding on the note here.

A. Well the note, as you can see, was dated the 5/1/95, which

was almost eleven years ago. My recollection of it was

that Jim Mitchell approached me, as I said in my statement

to the Tribunal, asked me to told me that he was

employed by the Esat Telecom as a consultant, and he felt that he should put that on the record with me and let me know that because of the fact that he was a member of the Fine Gael party at that particular time.

"The DOB not favoured by the Department," that was a comment, in my view, that Jim Mitchell had made to me because he was very conscious of the fact that there was, how would I put it, a level of tension within the regulatory Department and O'Brien before I went into the Department. And I have to say that when I went into the Department, that was confirmed for me, and

Q. That related to the fixed-line business; isn't that right?

A. Yes, it was a clash between the regulatory decision in relation to the fixed-line business, and I suppose, to put it in simple terms, O'Brien was young, he was pushy, he was anxious to move forward, he was anxious to open up the case of liberalisation. Sean McMahon, I would consider him to be a very capable, very stern and very cautious public servant, and I think that's where the clash between them came, in that McMahon was doing his best to hold the policy line.

Q. I think that emerged in evidence as well, and that was your understanding also, I think?

A. Yes.

Q. Or came to be your understanding on seeing what was happening in the Department?

A. It was

Q. I think it probably puts it fairly well also.

A. It was very evident, yes.

Q. I suppose the way it seemed to emerge here was that Mr. O'Brien, as you say, was young and eager and was prepared to push out the edges, and Mr. McMahon was holding the line, as you saw it; isn't that right?

A. Yes, and as a result of that there was a clash.

Q. Now, the question of or that little note "DOB Fine Gael exclamation mark exclamation mark." Do you remember him saying something or did he say something to the effect that there may have been a view that Mr. O'Brien was perceived as being Fianna Fail?

A. I don't know how that topic came up, but yes, I do recall Jim Mitchell saying to me that his background was Fianna Fail and that he was a subscriber to Fianna Fail. I have no specifics in relation to that; it was just a general comment that he made.

Q. And obviously what he seems to be recording there is that I think you are saying, "Look, I am prepared to formally meet the principals of all the people who are competing, but I won't meet him for lunch". That seems to be what the note is conveying. Do you remember that, or

A. Well, that would be certainly in line with my view. I dislike the idea of meeting people for lunch. I have never practiced it, because I feel it takes up too much time.

And it's likely that I said that to him. I don't actually recall saying it, but it was likely that I would have said

that to him. I also my recollection is that he mainly wanted me to meet O'Brien with a view, which was understandable, that I was a new Minister; he was heavily involved in the telecoms ministries. I was Minister for Communications, and he simply wanted me to meet O'Brien with a view to him putting his point of view and where he saw the industry going.

Q. Now, I think, unless you want to need to deal with some of these, I think I'll skip over, because we have discussed them in general terms it's correspondence between your department, or you and the Minister for Finance, and it's all the development of the debate around whether there would be a high upfront charge or whether there would be a low licence fee, and all the arguments that were taking place around that.

And I think I could almost I'll just ask you again, it's just do you see 41/40 at all?

A. Yes.

Q. When I say "41/40", it refers to the actual main book it comes from. And if you go to the second tab, there is a blue tab, a kind of a blue tab as a second tab. I just want to ask you, it's a diary entry. This is from I think your diary?

A. 41/41?

Q. Just in front of that. Do you see that?

A. Yes.

Q. It's for the well, to do this week, but it's that week,

the 6/7 February of 1995, and just "18.30 Jim Mitchell Fine Gael headquarters". That's just an entry in your diary.

Do you remember any recollection of whether you did or didn't meet Jim Mitchell?

A. I did meet Jim Mitchell.

Q. In Fine Gael headquarters?

A. Yes.

Q. Do you remember what you discussed at the time?

A. I think it was to do with the overall telecommunications, but particularly fixed-line business.

Q. Right.

May I just ask you, when you say you met him in Fine Gael headquarters, was that just for convenience, or

A. For convenience, I would have been involved as obviously I was still a trustee of the Party as well as Minister, and I was over in headquarters about some business, and obviously it was convenient.

Q. Now, there was an aide-memoire prepared in your Department.

It's 41/41; I am not going to we have read these in

detail. This was to be brought to Government, and at the

Government meeting, if you go over the next tab then, that

the Government decided on the 7th February that a Cabinet

Committee would look at matters. Do you remember that?

Again, nothing turns on this in any great sense. Do you

see the note of the Cabinet Committee which agreed to

proceed with the proposed GSM tender competition as

outlined in the Minister for Transport, Energy and

Communications aide-memoire for the Cabinet Committee.

A. Yes.

Q. So this was the it went to Government first. They wanted a Cabinet Committee just to look at it. There were a few matters to be ironed out. That Cabinet Committee then said "Proceed with the matter"; isn't that right?

That was the way things unfolded?

A. That was the sequence, yes.

Q. And if we just then if we go back to 41/41, just look at the aide-memoire and that was going to Cabinet, you can see the various headings, the normal form, the kind of history as set out of the evolution of policy to date, matters proceed, questions like the impact on Telecom Eireann

8. The duration of licence.

9. Tender competition.

10. The fee question at that time, and then,

11. The selection process?

And that's really the one, I think and that sets out what was being sought here was "Consultants would be engaged to assist in the process of final selection and will also be on board in time to assist in the final stages of preparation of the Department's information memorandum mentioned in paragraph 10. The selection of the successful tender will be determined by reference to the following:

" the quality and credibility of the business plans of applicants with particular emphasis on a progressive approach to market development, a commitment to high

quality nationwide service and innovative approach to tariffs with a view to reducing costs to consumers.

" the proposed fee for the licence.

"The highest bidder will not necessarily be successful, and this is clearly stated and emphasised in the tender documentation. The documentation indicates that the Minister intends to compare the applications on an equitable basis, subject to being satisfied as to the financial and technical capability of the applicant, in accordance with the information required therein and specifically with regard to the list of evaluation criteria set out below in descending order of priority."

And we have recited these hundreds of times here, so I'm not going to do it now. But you remember that?

A. Yes.

Q. And then if you go to 41/43, you can see the decision that was sought. And then if you go to 41/44, you will see that the Secretary of the Government is then informing him your secretary, Mr. Sean Fitzgerald, Mr. Martin Brennan and Mr. Colin McCrea of the decision, isn't that right, of the Government decision. And that the bidding process will be promoted and controlled by the Department of Transport, Energy and Communications.

"A recommendation would be put by the Minister to Government in time for a final decision on the granting of the licence to be made by the 31 October, 1995, and

"The general terms and conditions attaching to the licence

would be set out in the appendix to the aide-memoire".

So we now have the decision; isn't that right?

I think the next document then is 41/45, and that's the ad, isn't that right, that was being placed to invite tenders effectively.

And then 41/46, this is the actual, the RFP, or the tender document which you got if you paid I think it was  $\frac{1}{2}$ 5,000 pounds for, or something like that.

Now, I'll just draw your attention that's at 41/46, just to a few paragraphs, if I may, in the tender document.

If you just go to paragraph No. 3: "Applicants must give full ownership details for proposed licensee and will be expected to deal with the matters referred to in the following paragraphs in their submissions."

It sets out a lot of it is technical information. If you go over the page to paragraph Number 9, you can see there is: "Applicants must demonstrate their financial capacity and technical experience and capability to implement the system if successful", and so on.

And then, if you go over the page, or two pages, to paragraph number 19, you have the actual competition matters there, that the "Minister intends to compare the applications on an equitable basis" it's taken from the aide-memoire that went to Government, and it shows the descending order of priority in relation to the various matters.

Now, I know this is a document that would have been

prepared by the civil servants and with other advice, and is it something you necessarily would have yourself at the time? I wouldn't expect you necessarily to have to get involved in all matters of detail.

A. No. Once the Government decision was made, I then left it to the officials. And obviously this document is reflects what the Government attitude was and what the policy objectives were, and this is what was communicated to the applicants. But no, I wouldn't have been involved in its preparation.

Q. No, or would you it wouldn't surprise me if it hadn't come across your desk.

A. I don't believe it did.

Q. Right.

A. That document was, just for my own information, that document was dated in March, was it?

Q. It was dated in March, I think, yes.

A. And this was the document that went to all bidders, or prospective bidders?

Q. It went to prospective people who paid you had to pay, I think, £25,000 to get hold of it, and that was yes. The ad, you know, the advertisement signed by Mr. Loughrey, and then people purchased it.

Now, if you go to Tab 41/47 I think you would have been aware that there was a Project Team set up, wouldn't you, that there was to deal with the GSM?

A. Yes, I was aware that there was a Project Team to be

established. I had no involvement in the selection of it.

Q. No, I appreciate that. And you knew that also, I suppose, that it was to be interdepartmental?

A. Yes.

Q. To the extent that Finance were going to have members on the team as well; isn't that right?

A. Yes, I knew that.

Q. And I think also you would have been aware that because you brought the matter to Government, that consultants were going to be retained also; isn't that right?

A. Correct. My awareness of that would be that I was asked to there was an international competition to appoint consultants, which was handled by Department officials.

They came with me to sign off on a recommendation, and that recommendation was for the consultants that were appointed.

Q. Yes. I think initially, in the early days, when Mr. Brennan had been working on this project, he had retained consultancy services of KPMG in London, which assisted him in understanding matters, but when it came to the appointment of consultants for the competition, you had to go through the normal procurement policies, and there had to be an international competition so that people could tender; isn't that right?

A. That would be an accurate reflection, yes.

Q. Now, if you just go to Tab 41/47, please, and this is a minute of the second meeting of the GSM Project Team, which took place on the 6th March, 1995. And you can see the

various members. They are all officials. They are either from your Department or they are from Finance at it. And you can see that the team is being updated. Mr. Brennan is informing them of where things now stood. At paragraph Number 3, he deals with the critical path. And documents detailing critical path were circulated, and it was agreed that "The consultants will be required to advise on the successful application by approximately mid-September in order to give ample time to put the matter to Government for decision. Tender document commitments to announcement of successful applicant by 31 October 1995. Crucial from a credibility point of view to maintain political commitment and to comply to this deadline." So that was dealing with that.

And then if you go over the page, he again gives a brief rundown of the six short-listed candidates. This is to be consultants, and he then deals with the information round.

And then at paragraph Number 6, he deals with the procedures for dealing with potential bidders during the tender process, and that this was agreed amongst members of the group.

" there would be no one-to-one meetings.

No social outings.

A record to be kept of any meeting/conversation between DTEC people and any of the bidders

DTEC should stress at any such meeting that it is an informal exploratory contact

And where any issue of import does arise, the matter will be referred to the formal written procedures."

Now, I think we have had evidence from the officials about adopting that, which seems like a very sensible procedure to adopt, and perhaps there is no need to formally adopt them; they were all matters that one might think the appropriate thing to do in relation to a competition.

Would you agree?

A. I would agree that this was necessary, yes.

Q. And Mr. Loughrey Mr. Brennan has given evidence and Mr. Loughrey has given evidence that Mr. Brennan brought this, what has become to be described as the protocol, to the attention of Mr. Loughrey, which he readily approved of and thought it was the correct thing to do; and Mr. Loughrey has given evidence that he brought it to your attention and that you accepted and understood what was involved. Do you remember any of that?

A. I remember my understanding of it was, first of all, as you will see from the documentation, this document was not circulated to me as Minister.

Q. No. I appreciate that.

A. And secondly, I was never given this document. I had never seen sight of this document until the Tribunal started, and it was included in correspondence with me. What happened, from my recollection, was that John Loughrey went through in very general terms the format for the competition. He advised me in relation to because I am sure it's the

protocol you are interested in he advised me in relation to the protocol that the team had established a protocol. There was never any question, never I want to make this very clear there was never any question of this protocol applying to me as Minister, but in the context of mentioning the protocol, John Loughrey did say to me that "Look, Minister, in relation to yourself" he accepted that I was outside of the Project Team; I had no involvement with the Project Team; I was on the outside. And I could understand the need for the protocol from people within the Project Team.

In relation to my own position, we discussed it, and when I say we discussed it, there was nothing contentious about it. John Loughrey said to me, "Look, Minister, it would be preferable if you hadn't to meet any of the applicants", and we discussed that a bit, and I couldn't see the practicality in that, and I came to the conclusion, as Minister which I was entitled to do; you are entitled to take the advice of your Department, and it's up for you then as Minister to decide and I said to John Loughrey that I didn't think it was practical; that this community is a small community, both from the point of view of telecommunications and the political, and I said "It's inevitable that I'm going to meet some of these people", and I thought that the fairest way was that while I wouldn't seek to meet anybody, that if I was requested to meet people, that I will oblige them.

And we came to a conclusion that there was nothing my understanding is that we came to a conclusion that when I didn't have information to give anybody, when I was outside the Project Team, well, all I was doing was meeting people from there on, and I felt as a politician that it was absolutely essential that I met them. We had internal companies in Ireland very important to us in terms of the employment they gave, in terms of the service they gave. We had people from outside, international companies who were interested in making an investment in the future of Ireland. And my attitude was very simple: I felt that I should meet them, that I should meet them out of courtesy, that I should explain to them that the competition would be ran fairly, that they would have equal opportunity, and simply thank them for participating in it and thank them for the level of commitment that they were going to give to the competition, wish them well, and that was simply that was my understanding of what I was going to do, and that's precisely what I did do at a later stage.

Q. I understand the point you make, that you weren't part of the Project Team; that's the first point. The second point, that you were a Minister and you were in politics, as well. And thirdly, you are bound to run into people at around the town, around the country at functions. And as we know, there were participants in this competition who you would have come across officially who were in other walks of life. For example the ESB, for example, in the

competition?

A. Bord na Mona.

Q. Bord na Mona. And all that was perfectly understandable.

And I think Mr. Loughrey spoke about that as well, and I think there was an understanding that it would not be it would have been impossible for you not to bump into people. But I think would you agree, as I understood Mr. Loughrey's evidence and I take it there wouldn't be any difference in your view about this that it would be important not to give the impression, if one didn't have information, to give the impression that one was imparting information or some benefit to somebody or giving them the inside track, as it were; and likewise, that if one did, however one might have come across some information, to ensure that you didn't convey that to somebody. It almost goes without saying.

A. Absolutely essential. Let me say that I, as Minister, would have been anxious, and certainly did, I made public statements distancing myself from the decision and saying quite clearly and openly, both in public and in private, that I had absolutely nothing to do with the process. And the most important message I wanted to get across was that it wasn't the Minister who was making the decision; it was the Project Team who would convey a decision to me.

Q. They'd convey a recommendation?

A. A recommendation.

Q. And you'd bring that recommendation to Government for a

decision?

A. Yes.

Q. And I think, if I remember Mr. Loughrey's, or some of the other officials' evidence, that there were courtesy calls on you in the Department; isn't that right?

A. That's correct.

Q. From people from various businesses, internationally, I think, would have called on you as courtesy calls; isn't that right?

A. Yes, that's correct. As I said at the outset, anybody who requested a meeting with me, I granted them I granted them that request.

Q. And there were some, I don't know exactly how many, but there were some meetings in the Department?

A. Well, we are aware of the meeting we were aware that I met Tony Boyle.

Q. I'm going to deal with that in due course. I just want to first of all establish that, of course, you met people, and most people you met were in the Department, in that category of courtesy callers or just good manners or keeping the flag flying for Ireland or something of that nature. They nearly all took place in the Department; isn't that right?

A. It was wherever was convenient. If it was the Department that was convenient, otherwise it was others, so...

Q. And you know there are two meetings I'm going to ask you about in due course: There is the meeting with Tony Boyle,

and there is the meeting with Denis O'Brien. So I'm not trying to set you up for anything; you know where I am coming from.

A. I know exactly where you are going, and what I'm saying to you is that you must look at any meeting that I had or any contact that I had with anyone, you must look at it in the context that I had an open-door policy. I wasn't going to close the door on anybody. I refused nobody access to me during that time, and I was doing it on the basis, as I said, of courtesy.

I met, as you said, with Denis O'Brien, Tony Boyle. You are going to ask me about those two. I also met with Pat Dineen. I also met with Ralph Roberts of Comcast. I also met with Mr. Tukev from Motorola, and I also met with Gary Joyce, as he was representing one of the American interests involved in it.

So I was consistent in my attitude to everybody, so I didn't favour anybody over and above the others. Whoever requested a meeting, I met them. And I have to say the meetings were usually short and brief, and I didn't have any information to give to them. I simply gave them an assurance that we were delighted to have them involved and that the process would take its course. We'd try and bring it in on time, and wished them well.

Q. Now, when I do come to ask you about the meeting with Tony Boyle, we know, and it's both you and Mr. Boyle have informed the Tribunal how that meeting came about, and it

was arranged by the late Mr. Frank Conroy; isn't that correct?

A. That's correct.

Q. There is no dispute about that.

A. No.

Q. And we know that the meeting that we are going to talk about with Mr. Denis O'Brien I'm talking about the meeting at the All Ireland Final and afterwards that that came about there is no dispute between you and Mr. O'Brien that you met each other at Croke Park and the meeting arranged for later to have a drink, isn't that right, that was the way that matter unfolded?

A. Yes, and the first statement I made to the Tribunal was in 1988, and I included that in my first statement, that such a

Q. I want to be clear about that, that when the Tribunal asked you about contacts you had with people involved in the process, you said that you did have, and that was the first statement, that you had a meeting after an All Ireland Final, or a drink or a meeting with Mr. Denis O'Brien; isn't that correct?

A. Yes.

Q. And I think you informed the Tribunal also that you had a meeting with Tony Boyle; isn't that correct?

A. Yes.

Q. And you told the Tribunal again, Mr. Tukey, and the other, I suppose, more, perhaps shorter and

A. The reason I hadn't when I made the first when I examined my diary, I obviously refreshed my mind, and it became clear to me that I had met the others as well.

Q. Yes. And I'm saying you did, you did; in your first statement you did, absolutely. And you also told us about a meeting with Mr. O'Reilly, Mr. Anthony J F O'Reilly; isn't that right?

A. Yes.

Q. I'll have to come to that at some stage as well, and you know there is a dispute about that. But the other meetings with Mr. Tookey, I think from Motorola, and some of the other people you have mentioned, they were people called into the Department, I suppose, weren't they, all the other meetings?

A. Well, obviously you know, these meetings would have been arranged at short notice, and obviously it would depend on my availability and what was convenient for me. And if it suited me to have it in the Department, I would have had it in the Department.

Q. Well, I'll put it to you this way so, and I'll have to ask you about the Tony Boyle meeting and the Denis O'Brien meeting, that both of those meetings were unknown to any official in the Department, whereas all the other meetings were. Doesn't that seem to be the situation?

A. I don't necessarily say that the other meetings all the other meetings. All the meetings I don't know about the Tony Boyle meeting; I don't know about the Denis O'Brien

meeting. The meetings in the Department would have been arranged by my own Private Secretary. So it's not necessary that everybody in the Department would have known about those meetings.

Q. I appreciate that, and I'm not suggesting that everybody would know. As you say this could happen. Somebody is in town on business, they make a phone call to the Department, would the Minister possibly sort of see somebody for a few minutes to say hello as a courtesy call; I can understand that sort of thing happened, and that's how most of these other meetings took place. But the meeting with Tony Boyle and the meeting with Denis O'Brien, I have to suggest to you, were different, in that no official, not even your Private Secretary, was aware of them; would you agree?

A. My Private Secretary wasn't at any of those meetings, but all the meetings that I had were on a one-to-one. There was no officials with me at any of the meetings, even within the Department.

Q. No, I'm not and I'm not even asking whether there would be an official with you, an official might be aware that you were having a meeting. What I'm saying to you about these two meetings, and perhaps more particularly the Tony Boyle meeting, that your Private Secretary wouldn't have been aware that you were having that meeting?

A. In my statement, Mr. Coughlan, I have given you the background to that statement, and I have already used the word what was convenient for me. The reason Tony Boyle 's

meeting took place in Fitzpatrick's Killiney Castle Hotel was, when I was Minister for a good period of time, I stayed with the late Frank Conroy in his apartment, which is beside the hotel. So the only reason I met Tony Boyle there was because it was convenient for me. We simply came down from the apartment into the hotel, met with Tony Boyle, and that's the reason that was held there.

Q. I know the reason why it was held there, and I know that you were staying with the late Mr. Frank Conroy at the time. I'll come to that in due course anyway. I want to continue, if I may at the moment, with the process and how it began to unfold.

A. Yes.

Q. Now, I think, again, behind Divider 41/48, if you go three leaves or four leafs in, you'll find again it's just a diary entry in your diary. I'll just read it out.

"Jim Mitchell, 12.30, annual lunch, Incorporated Law Society". It probably doesn't amount to anything much.

A. I have no recollection of that. What is it?

Q. Annual lunch it may well have been the annual lunch for Jim Mitchell's constituency. It may have been a fundraiser; I don't know.

A. Jim Mitchell used to have an annual lunch in Kilmainham. Maybe it's that one. I don't know.

Q. Right. And then if you go to 41/53, there is the press statement: "Lowry announced GSM consultant". And that's on the 11th April of 1995.

A. Yes.

Q. Now, the next thing, as far as you were concerned, things were proceeding along, and the next thing was you got a letter from Commissioner van Miert, isn't that right, and Commissioner van Miert was unhappy about a number of matters, but most particularly concerned about the licence fee, the uncapped nature of the competition in respect of licence fee; isn't that right?

A. Correct.

Q. And I think your officials began some intensive negotiations with Commissioner van Miert's officials, isn't that right, in respect of this matter?

A. Yes.

Q. And it culminated well, first of all, of course, what happened was that the competition had to be postponed, isn't that right, in the first instance?

A. Yes. What happened was John Loughrey, as Secretary of the Department, came to me, and he said "Minister, we have a problem." He told me what the problem was, and the problem was that the Commission had taken a particular interest in the terms under which we were going to have a competition for the licence.

And I can recall very clearly what John Loughrey said to me. He said, "We can ignore the concerns they have and plough ahead and run the risk of having the competition at a later stage declared null and void, or we can delay the process now, stop, take account of what they are saying,

I'll send people out to negotiate with them to find some kind of a compromise in relation to it. We defer the competition, and then we come back".

Now, for me, it was Hobson's choice, on the basis that I was politically embarrassed to have to stop the competition at that point. And as I was annoyed that I had to stop the competition on the basis that it looked as if this was something we should have known before we started, and I said that to Mr. Loughrey; but on balance, I knew that the potential downside was enormous if I ignored the advice that I was given and if we ignored the Commission.

So the Department I went back and informed Government of what had happened. We suspended the competition. The officials in the Department went to negotiate with the Commission officials. They came to a solution. John Loughrey informed me that they had come to an agreement on it, and he said "The best thing to do is for us to copperfasten it by you going out, meeting van Miert".

I went out, met van Miert, went through the detail which was already agreed, and before we left that evening, John Loughrey asked me him to put it formally in writing to us. And that was the sequence of events in relation to that.

Q. And we know that matters were hammered out to the satisfaction of both sides.

A. Yes.

Q. And a letter, which had been a letter issued from Commissioner van Miert. And that particular letter, as you

know, or you may know from matters here, that a photocopy of the first page of that letter was discovered on the in the papers of a Mr. Jarlath Burke, who was a regulatory counsel with Esat Telecom at the time.

Now, we heard evidence from Mr. Hocepić from the Commission; we have heard evidence from officials here.

I'm not going to go into the whole saga of the various copies of the particular letter that we have gone through here, because I doubt if you would have received any of those particular ones. But I wonder, do you remember whether your office would have received a copy of Commissioner van Miert's letter? I mean, your private office.

A. I have no the first time I became I knew that that letter had been requested the evening that we were with van Miert, and my recollection of it was John Loughrey telling me that we had formally received confirmation. As to whether or not I actually got the letter, to be honest with you, I don't know. But I do recall John Loughrey saying to me, "The way is clear. Van Miert has confirmed in writing the agreement that was negotiated between Commission officials and Department officials." As to whether I got that letter or not, I honestly can't say. I don't know. I have no recollection of that particular letter, but I do know that such a letter did exist.

Q. Could I ask you, if you received such a letter from Commissioner van Miert this was dealing with important

and confidential matters between the Government and the Commission; isn't that right?

A. I would expect that as Minister, the letter was addressed to me, so I'm sure the letter, at least a copy of it was given to my office. And as I said, remember John Loughrey saying to me that the way was cleared in relation to it.

Q. But could I ask you this: Could you assist the Tribunal at all as to how a page of that letter a copy of a page of that letter appeared on the files of Esat Telecom, or Mr. Jarlath Burke in particular?

A. I can only speak for myself.

Q. That's all I am asking you.

A. And in respect of Michael Lowry, then Minister, I certainly would not have forwarded that letter to anybody, and I am absolutely certain in relation to that. As to how it came on his file, I really don't know; I have no idea.

Q. Well, I'd take it you'd agree with your officials, this was confidential correspondence between you and the Commission?

A. Well, it certainly wouldn't be my practice to give letters addressed to me to anybody else.

MR. FANNING: I think, just for the record, sir,

Mr. Hocepied wasn't entirely clear that the letter was confidential, and it shouldn't be put as a proposition to the witness that the letter was confidential, because he gave different evidence on the point.

MR. COUGHLAN: I didn't put what Mr. Hocepied said. I asked the Minister would he agree with his officials that

they would have considered it confidential. I never put anything that Mr. Hocepić said.

CHAIRMAN: Proceed.

Q. MR. COUGHLAN: Can I take it you would have considered it confidential?

A. Pardon?

Q. You would have no difficulty in considering that a confidential letter?

A. I would say that the contents of the letter at that stage were pretty widely known on the basis that we had negotiated it. There was nothing in the letter that was new to anybody in my Department who was involved in that process.

Q. I'm not talking about in your Department. I'm talking about it was confidential, it was confidential information, the confidence belonged to the Department and to the Irish Government; isn't that right?

A. And to the Commission.

Q. And to the Commission.

A. And I would place

Q. You had no difficulty in accepting that?

A. I have no difficulty in saying it was confidential to my Department and to me, but

Q. And as far as you were concerned, and to the Commission as well, as far as you are concerned?

A. I would expect that it would have been.

Q. Well, the outcome of it was, anyway, that €15 million was

specified as being the cap on the licence fee; isn't that right?

A. That's correct.

Q. And I think Telecom Eireann had to pay  $\frac{1}{2}$ 10 million to show some sort of equivalence, and the difference was explained by the cost of running the competition amounting to about 5 million, so you had justifiable extra charge in relation to it. That was the reasoning, and that worked, and that was what was decided on, and that's what you went forward with, isn't that right, on the advice of your officials, that's how the competition proceeded?

A. Absolutely, yes. And I am glad that that became clear, because for ten years this has been one of the subjects of public comment, and the inference was that I had deliberately stopped the competition to favour O'Brien, which of course is total nonsense.

Q. Now, the competition recommenced, but all dates were pushed back by one month, I think. That was the way things evolved?

A. Yes. I recall John Loughrey advising me that once the competition was delayed, that it was important that people would have sufficient time to understand what the change was, to allow the Department communicate with the applicants and then to give time for the applicants to raise any queries, if there was outstanding queries in relation to it. And that's the reason why it was deferred for a month.

Q. Now, the closing date for the receipt of applications I think was the new closing date was the 4th August, 1995?

A. 1995, yes.

Q. And I think, if you go to Tab 57/3; it's a press release, it's "Lowry announces receipt of second mobile telephone applications."

And "Mr. Michael Lowry, TD, Minister for Transport, Energy and Communications, today announced that the bidding process for a competition for a licence to provide mobile telephony (GSM) in Ireland closed at noon today.

"The Minister is pleased to note a high level of interest in developing the Irish mobile market. Six tenders were submitted before the noon deadline for receipt of applications. Details of the applications are as follows:"

There is a big ink mark over the first one, but "It is a consortium consisting of Comast Corporation, RTE, Bord na Mona and" you can see that.

"Esat Digifone, a consortium consisting of Communicorp Group Limited and Telenor together with some institutional investors".

"Eurofone," and it goes on with the various consortia the whole way down.

It says: "The Minister stated his intention to promote the development of the Irish mobile market by the introduction of competition and the selection of a candidate who will provide a quality mobile service at reasonable costs. The Minister re-emphasised the priority of securing the best

possible deal for the Irish telephone consumer."

Then it goes on "The Department of Transport, Energy and Communications, assisted by another national consultant, Andersen Management International, Copenhagen, will be scrutinising the applications with the intention of submitting a recommendation to the Minister by the end of November."

Can I take it in general terms, that you were informed that you had received the six applications and the makeup of the six?

A. Yes.

Q. And can I take it that this particular statement, whilst I appreciate it would have been prepared by an official in the Department for you, would have contained the information which would have been made available to you?

A. The information

Q. The six receiving applications, the makeup of them, that information would have been brought to your attention, there doesn't seem to be any

A. I presume it was, yeah.

Q. Now, I think we can now, just, in dealing with things chronologically, I think the matter the next matter which arises from your point of view is the meeting with Mr. Tony Boyle, I think, which was I understand sometime in August, mid-August of 1995. You agree that that's when it happened?

A. Yes.

Q. And I think from the information you provided the Tribunal with and from the evidence given by Mr. Boyle himself, the meeting arose as a result of Mr. Boyle requesting a partner a business partner, I think, of Mr. Frank Conroy, Mr. Conroy's firm being the insurance brokers, I think, for Mr. Boyle's business to arrange a meeting, if possible, with you. That's how it came about?

A. That's correct, yes.

Q. And the meeting took place, I think everyone is in agreement, in Fitzpatrick's Castle Hotel. The late Mr. Conroy lived in the apartments adjacent to that hotel. You stayed with him on occasions. It was during the summer holidays. You were up in town you came up to town, I think, and you stayed with Mr. Conroy, and the meeting took place the next day in the hotel.

I think there is only one area, and I don't think anything turns on it, as of difference between yourself and Mr. Boyle about the meeting and how it took place, and it is whether Mr. Conroy stayed with you while the conversation took place or went off and had a cup of coffee somewhere else himself. I don't think anything turns on it.

A. I actually don't know what the difference is, but I recall that that meeting, literally we sat at the bar; we had two I had coffee; I think Tony Boyle had coffee. It was a very innocuous type of meeting. It was simply courtesy, and I was effectively obliging Tony Boyle. And I think the

main reason Tony Boyle met me that day, or requested a meeting, was he wanted to be able to say to his partners that he had access to the Minister in terms of letting them know that they were a big player; in other words, he wanted to put the point of view of his partners, and I suppose it was helpful for him to go back and say, "Look, I met the Minister, and I have told him that we are going to be competing." And he was grateful for it, and I suppose

Q. They were competing at this stage. It was mid-August; closing date had been the 4th August.

A. Yes.

Q. And I don't think that and, Mr. Boyle, in listening to his evidence

A. I don't think there is any contention between myself and Mr. Boyle in relation to his statement and mine.

Q. Oh no about what happened and what you spoke about, but I think he did say in his evidence he was trying to influence you, to whatever extent that might be.

A. That he was trying to influence me?

Q. In terms of pushing the interest of his business or his

A. I didn't feel at any stage, to be quite honest with you, and in fairness to Mr. Boyle, I don't think he at any stage tried to influence me. He simply outlined the background to what they proposed to do. And the one thing I do recall hearing from him, because you earlier went through the Government memorandum, and all I was concerned about was that the objectives within that, which was to bring

competition, to lower tariffs, to lower handset charges, to get a nationwide service and to increase the penetration levels. That really was all I was interested in, and I think the discussion, as I said, was innocuous. He was simply happy to be able to say he met me.

Q. I think what he said himself, he tried to make a good pitch and get it across to you that they were very good on tariffs. I think that was

A. I don't recall the detail of it and whatever.

Q. Did it occur to you at all and I know and I can understand that the late Frank Conroy had been around the political and business world of Dublin all his life. I understand that, and that he was a very close personal friend of yours. He was a big, I suppose, backer or supporter of you when you came into politics, wasn't that right, in terms of I suppose being able to give you a bit of advice or be the older man around the place that you might talk to about things. He knew his way around the Fine Gael party over the years.

And when he asked you would you have a meeting with Tony Boyle, did it ever occur to you to say, "Look, could you not put him off? I shouldn't really be seeing these people"?

A. Absolutely not.

Q. We were now in the closed phase of the competition, weren't we?

A. Pardon?

Q. We were now in the closed phase of the competition. You see, wasn't there the danger of either the view being taken that some form of influence was being or may have been used, or the perception of influence in the closed section; wasn't there that danger, Mr. Lowry?

A. Well, I was dealing with the reality, and the reality was that I was outside the process. I had already known quite clearly everybody in the Department knew that I was adopting a hands-off approach. I could meet anyone I liked whenever I liked wherever I liked, because I simply didn't have any information to convey to them. I had no malintent. I was simply doing it, meeting people as a politician, which I had an entitlement to do.

And even Tony Boyle, in his evidence, hasn't inferred that I did or said anything improper or made any suggestions, and I have to say likewise, in respect of him. So the meeting of the kind of meetings that politicians have every other day, and you know, if we were to say that that type of contact couldn't take place, well, then, I think social events or meetings such as this would have to be cancelled every other day in every walk of life.

Q. And I take your point that this type of meeting, and one couldn't be critical of such a meeting taking place every other day, and a businessman may wish to meet a Minister, even to convey to other people that he is involved in business with, "Look", you know, sort of "I can talk to the Minister, and maybe, maybe it will be of some benefit".

But this was, I suggest to you, a slightly different situation, in that you were the head of the Department where this competition was taking place. And the appearance was as important as the reality or the actuality of the situation; did that ever occur to you?

A. Well, I'll bring you back in answer to that, I'll bring you back to the statement that you just put on the screen. And I made it quite clear in that statement at the outset that as Minister, I didn't have a role or a function in making the decision. I outlined quite clearly, and all the applicants were very much aware of it. And I never came under pressure at any stage in the competition, simply because we had stated our position, I had stated my position as Minister, at an early stage, that it was going to be adjudicated on by a Project Team comprised of representatives of the Department of Finance, my own Department, with outside professional consultants. And if I remember correctly, the consultants at the time, I was informed in the Department that they had assisted in respect of the applications of something like 120 licences in 48 countries.

So I was quite confident that the process would be done correctly. And I want to make it abundantly clear, abundantly clear, because this obviously is the core issue. I, as Minister, had no involvement whatsoever in relation to the evaluation process. I never got involved, I never sought to get involved, I never sought information. I was

simply following

Q. Did you ever receive information, Mr. Lowry?

A. Pardon?

Q. You say you never sought information. Did you ever receive information?

A. Absolutely not.

Q. None at all?

A. No. The only information that I got from anybody in the Department was information which it was of a general nature in relation to the timescale involved. That was the only information that I would have received.

And I'll remind you, Mr. Coughlan, as well, in relation to this I think it's important I wasn't in my office sitting around waiting for something to fall off the branches in relation to this particular process. I was extremely busy in the Department. There were numerous other issues. For instance, at this particular time, I was involved with the Horgan's Quay controversy in Cork. I was involved I was after getting a message from the Aer Lingus board to say unless I did something with Team Aer Lingus that the Aer Lingus company would have collapsed. I was involved with CIE; I had difficulties with the management of CIE. I ended up having to change the management in CIE, which led to controversy.

I was, at that stage in the Department, involved in a huge number of very, very important issues, some of which were controversial. So I wasn't taking a hands-on approach, or

I wasn't keenly interested in the competition. All I was interested in was that it would come to a conclusion when they said it would come to a conclusion.

Q. I think nobody disputes you were involved in a lot of issues, and there was a lot of controversy arising in respect of many of those issues, and I think that is well accepted.

But this meeting with Mr. Boyle wasn't, I suggest to you, in the normal way of social interaction; it was a planned meeting that you came up to Dublin for, that you stayed overnight with Mr. Frank Conroy and I accept you may have had an evening with Mr. Conroy; I accept that.

A. Sorry, there is a distinction in what you are saying is not correct. I didn't travel from Tipperary specifically to stay with Mr. Conroy to meet Tony Boyle. It was simply it was convenient for me to fulfil the request that I received to meet him on that particular date. It wasn't as if I went out of my way to meet him.

And as I said, we sat at the bar counter. We had two cups of coffee. The meeting lasted for, I'd say, 15 to 20 minutes. He was happy, and I certainly and to this day, I will always hold it was never my intention to do anything other than to be courteous. And that, as a politician, the reason I'm still in politics and the reason I have the confidence of the public is that I am always approachable; I meet people when it's even inconvenient for myself to do so. And I believe that as head of that Department, I had a

responsibility to acknowledge the involvement of the likes of Motorola, who were a huge employer in Ireland. And I don't think it would have reflected well on me as a member of a Government, a member of a party which was pro-enterprise, if the message was going out that the Minister was unavailable to meet people. It was never my intention to have the meeting for anything other than courtesy. And as I said, no information of any description of any significance or importance passed between us at that meeting.

Q. I'm not suggesting that it did. Because there is no suggestion of that, Mr. Lowry. That isn't the point that I was asking you about, I think.

You say it arose the meeting arose, from your standpoint, out of courtesy. The competition closing date had passed. Everyone had submitted their application. Everyone knew, because there had been a public statement to that effect, that there was a Project Group or Team, and that it would be that group which would bring forward the recommendation. You would not be involved in the evaluation.

What value do you think, or was it conveyed to you, did Mr. Boyle place on a meeting such as this, when you were not going to be the evaluator?

A. I would say he looked upon it as a public relations opportunity within his own consortium.

Q. It didn't occur to you I know you weren't going into the

office the next day or anything like that but did it ever occur to you that it might have been wise to mention it, even to your Private Secretary, "Would you ever take a note there that I had a cup of coffee with Tony Boyle from Persona or from Motorola", whatever they describe him.

A. The meeting was of such importance, it didn't merit that type of response.

Q. I know what you're saying about what happened at the meeting, but it's the perception. You see, Mr. Loughrey has given evidence here, and he has informed me that in a competition of this nature, it has to be like Caesar's wife, beyond reproach, and that it's in that context, that that type of thinking did that type of thinking ever occur?

A. Well, the difference is that that type of thinking was coming from a civil servant. I am a politician. I don't know in every walk of life, in every profession, we have a different outlook to particular matters; and as a politician, I had absolutely no difficulty whatsoever in meeting anybody who requested a meeting on the basis that I had no information available to me, and I wasn't worried about perception. I was worried about, the only thing I can refer to is, the reality. If you were to follow that through, Mr. Coughlan, as a politician, and I can only speak as a practicing politician, like well, I'll put it to you this way: every day of the week there are tendering and contractual matters dealt with by Government ministers.

Does that mean that none of us should go to Ballybritt and involve ourselves in any type of social event, if there was to be that week or the week after or the week before that you'd make that connection?

In politics, the most important thing in a politician, you have to be approachable; you have to be acceptable, and after that, I would hope that people would say that you are dependable.

Now, in my situation, meeting anybody, I had no difficulty whatsoever, on the basis that I was outside the process. I didn't know what was happening. I had no information. And even if I had information, I certainly wasn't going to be conveying it to anybody. So the bottom line is I had no information.

Q. So, as far as you are concerned, there was nothing untoward in your meeting with Tony Boyle?

A. Absolutely not. And I have to say, and I am going to say it publicly, I make no apologies to anybody for taking the course of action I did and for meeting all of the contestants that I met. And none of them, none of them that I have met, have passed any comment in respect of my demeanour or my approach to them. I was simply there, as I said, and I'll repeat it, to acknowledge that they were participants, to thank them for their interest in it, to ensure them that the competition would be ran by an independent committee and it would come in on time. That was my only purpose, and I felt I felt that I had

an obligation and a responsibility to do that as Minister.

I think we'd have we'd be getting a different letter, for instance, if Mr. Tukev, who was the head of the Motorola Corporation, who has a big number of people employed in this country, I think he would have formed a different view if I hadn't met him. He would be saying that it was discourteous.

Q. Hadn't met who, Mr. Tukev?

A. Hadn't met Tukev.

Q. But you met Mr. Tukev in the very formal surroundings of your Department. That was an arranged meeting, and I understand, and you are absolutely correct, it would be discourteous not to have perhaps said hello and shook his hand. But what I'm talking about here, having met Mr. Tukev, who really was Mr. Boyle multiplied by a million in terms of interest in the consortium that was bidding here, why was there the necessity for the second show of courtesy?

A. Why was?

Q. Why was there this need for this second show of courtesy towards, which was in effect the same body, Motorola?

A. Simply acceding to a request from them.

Q. I take it that Mr. Tukev's meeting was not arranged through anyone in the political world, and I use with a small P, like Mr. Conroy, it was done by coming to the Department and arranging it with the officials?

A. I suppose the reality is Mr. Tukev wouldn't be around as

much as Frank Conroy was. And you as you know yourself, and you have outlined it in your Opening Statement, that's the way of the world in Ireland, and there is a huge intermix between the political and the business sector. And I wouldn't be Mr. Conroy wouldn't be the, first nor is he the last, to have arranged such a meeting.

Q. I accept that entirely, and I accept that entirely.

Now, the next matter I wanted to ask you about was and I'll wait until after lunch to deal with the whole question of Mr. Anthony J F O'Reilly, because that's going to take a little bit of time. It's been perhaps I should explain, sir, here, that it has been I have been prompted here that I should refer to Mr. Anthony J F O'Reilly as Sir Anthony. And in case anyone thinks there is any discourtesy taking place here, that is how Mr. O'Reilly asked to be addressed in the Tribunal.

CHAIRMAN: I am well aware of that.

Q. MR. COUGHLAN: Now, Mr. Fintan Towey has given evidence of receiving a phone call from you. We can't put an exact date on it, but just trying to work it out, it was perhaps early to mid-September of 1995, he thinks, just trying to work it out, but he certainly recalls receiving a phone call from you. And you know his evidence on this.

A. Pardon?

Q. You know his evidence?

A. Yes.

Q. First of all, do you have any recollection of ever speaking

to Mr. Towey?

A. Yes, I do.

Q. And can you tell us what your recollection of that telephone conversation is? First of all, how did you come to talk to Mr. Towey?

A. My recollection of it is that I was during the course of I don't know would you call it a briefing, but a review of where we were in the Department. My programme manager, Colin McCrea, mentioned in passing or as part of our briefing or review of the position in relation to several matters, that he had heard or someone had brought to his attention, I can't remember precisely, but I certainly know that he passed some comment to the effect that there was rumours doing the rounds that this that the competition was almost completed and that there was a winner. And my instant reaction to him was that couldn't be the case, and I didn't deal with it. We went on and we dealt with other matters. And later that evening, I recall that I went to Tricot Marine, which is a shop on the top of Grafton Street. And on my way back from there, I rang the Department, my memory clicked in relation to what he had, and while I didn't take much cognisance of it, I said, "I better check it".

And I rang the Department. I looked for Mr. Martin Brennan, and my recollection is that the phone was answered by Fintan Towey. I don't know how he came I didn't look for him; he simply answered the phone. And I said to him

that I had been speaking to my programme manager and that there was a rumour doing the rounds that the competition was done and dusted.

And his immediate reaction was to me, "No Minister, it's very, very much alive, we have at least three very active contenders". And in other words, there was no truth in that. And that's the only that is, I think, the same phone call.

Q. You actually remember making a phone call?

A. I do, yes.

Q. And I think you would be aware that Mr. Towey has, in his evidence, described that there was background noise, and you can actually remember coming being in the Grafton Street or Stephen's Green area

A. I was going back from that area, yes.

Q. And you say that this was prompted by something Mr. Colin McCrea said to you that the competition was over?

A. Yeah

Q. Or

A. Something to that effect.

Q. Something to that effect?

A. I can't be precise, and it was something to that effect and it simply didn't ring with what I considered to be the critical path, and for that reason, I was simply checking to know what you know, had something happened that I wasn't aware of?

Q. Could Mr. McCrea have said to you that it was a foregone

conclusion as to who the winner would be?

A. No.

Q. Could you have said anything to Mr. Towey because I will deal with the evidence he gave which could have conveyed to him the impression that your inquiry related to coming under pressure from somebody involved in the competition, that it was a foregone conclusion, and that it was a foregone conclusion in respect of what was described by Mr. Towey as the media favourite and the bookmakers' favourite at the time, namely the Persona consortium? Could you have said anything to Mr. Towey that could have conveyed that impression to him?

A. I don't recall the specifics, I remember the detail is like anything, how many years ago that was, but that conversation, the general gist of that conversation with Mr. Towey, I can't you know, you can understand I can't remember exactly the wording of it, but the general gist of it was, "Look, I was looking for Martin Brennan, because I have been talking to my programme manager, and he has said that this competition is done and dusted and that there was a rumour doing the round to that effect; in other words, that it was a non-event."

And I simply said to him, "What is the position in relation to that? Has something happened that I'm not aware of?"

And I think he acknowledged that these rumours were doing the round anyway, and he said to me, "I can assure you that the competition is very much alive, that there are three

very strong contenders".

And in relation to the pressure, I noted his comment in relation to the pressure. I probably said to him in relation to the pressure, I think that's probably misrepresented what I was saying. Let me assure you I knew what pressure was in that Department, and I looked upon the licence, and it's important to understand this and put it in context, I had a lot of bad days in the Department in terms of handling different crises, and I was eagerly looking forward to the day when I could have a good news story, and I saw as it turned out, mistakenly this as an opportunity of a good news story, and I felt it would have a positive impact on my political career, effectively. And that was the only interest that I had in relation to the licence.

Q. I was just wondering, and I take your point, and I think anyone who looks at what was happening around that time would agree with what you say, that you were looking for a good news story; that there were a lot of bad days. But if the message which was conveyed to you was that the competition is done, you know, sort of might I suggest to you that what you would have been ringing Fintan Towey or Martin Brennan, whoever you might have made contact with, was to say, "Hallelujah, this is done", you know, sort of "well within time, great news story, we're way ahead of everything."

Wouldn't that be the type of statement you might have made?

A. It wouldn't have been logical for it to be completed within that time-frame, not from my understanding of the way it was going to work. As I said, I still had in the back of my mind that closing that date in November for the closure it was, or for the finalisation of it, so it wasn't logical to me to have a decision as early as that.

And I have to say, Mr. Coughlan, and I am sure the Tribunal is well aware it was, and I'm not going to go into the detail of it, but it was certainly a very strong rumour circulating everywhere, both in the telecommunications industry and political circles, that you know, this licence that there was something, how will I put it to you understanding in relation to what would happen the licence and who would get it.

Q. Because I dealt with this with Mr. Towey, and we might as well deal with it head on now.

What you are talking about is rumour, you say, which was doing the rounds that Motorola had this in the bag.

A. Yes.

Q. And that they had been given certain type of nod or assurance by a previous Government. That's what you are talking about; isn't that right?

A. Yes. And my understanding is that's what Colin McCrea was telling me, that's what he had heard.

Q. Now and that's precisely, I think, what if I am correct in understanding the evidence, in reviewing of evidence of Mr. Towey what he was talking about as well,

and that's what you spoke that is what you were speaking to him about; that "Look, you know, it's a foregone conclusion, it's done and dusted".

Whatever his understanding of you saying words to the effect that you were under pressure from another consortium, or something like that

A. I would never have said that I was under pressure from another consortium, because I never was. I felt no pressure from anybody during the process, simply because I had removed myself from it. And all of the people that were involved in the process, they were all well advised, very intelligent people. They knew well that it wasn't my decision, so therefore, I didn't come under any pressure.

Q. But coming to the point about any discussion and the rumour that was doing the rounds and something that was in your mind, and you think perhaps in Colin McCrea's mind, and you think it was doing the rounds in the telecommunications world and perhaps in the civil service, for all you know?

A. Yes.

Q. And it was that it was done and dusted, and Motorola were going to get it; and rightly or wrongly, the view was that Motorola were associated with Fianna Fail, isn't that right, that was the way the rumour was?

A. That was the substance of the rumour, yes.

Q. That was the way the rumour went. So that would it be fair to say that any civil servant who might have been aware of the rumour, or any civil servant who might have received an

inquiry as to whether the matter was done and dusted or a foregone conclusion or whatever, would be aware that, notwithstanding the necessity to preserve the integrity of the competition, that Motorola might not necessarily have been the flavour of the month with the current Minister, he not being a Fianna Fail Party member?

A. What's the question?

Q. Do you think that that would have been known to civil servants, that Fianna Fail were associated, rightly or wrongly, with Motorola, and that it mightn't be something which would necessarily please a Fine Gael Minister?

A. Well

MR. FANNING: Sorry, Chairman, before the witness I beg your pardon before the witness answers that question, Chairman, I'm not sure if we have heard any evidence to suggest that in some way Motorola were allied to Fianna Fail to an extent that they would not have been favoured by Fine Gael. I'm not sure which witness has given that evidence, and to suggest it, even in the tentative way that Mr. Coughlan is appropriately conducting his examination, is, in my respectful view, inappropriate. It's not a matter which the witness should be asked to comment upon unless specific evidence to that effect is going to be put to him.

MR. COUGHLAN: I take My Friend's point at this stage, and in fact I'll deal with it in greater detail when we come to the meeting when we come to the meeting with the leaders

of the political parties, which is a matter you brought to the attention of the then Taoiseach, Mr. Bruton.

A. Let me say, rather than let this hang, that intimation never came to me from any of the public servants or any of the civil servants.

Q. I am not saying that intimation came to you. I am saying it's something sorry, first of all, did you convey that information?

A. Did I convey what information?

Q. About Motorola and Fianna Fail to the then Taoiseach, Mr. Bruton, when you met to the meeting of the Party leaders? Maybe you didn't.

A. Let me make it quite clear, I never gave that rumour. Me, as Minister, I never gave it any credence. I never saw anything anywhere to substantiate it, and I was never informed in any shape or form at any given time by anybody within the Department that they gave it any credence either. It was one of those rumours that was circulating, doing the rounds. As I said, I am the last person that is going to impugn the integrity of any individual of any Government, because I have suffered from that type of innuendo and gossip myself.

Q. I'll deal with it perhaps perhaps I'll deal with Mr. McCrea's evidence in relation to it as well, because and I don't want to put you on the spot. I don't have the actual portion of it here, so I don't want to actually put you on the spot just out of my memory at the moment in

relation to that.

But I just want to ask you, and I'm not going to deal with it fully today, but when you took the matter to the this is the recommendation to the four, or to the three Party leaders and the Minister for Finance, you did have a conversation with the Taoiseach, did you?

A. I had a telephone conversation with the Taoiseach, yes, in advance, and then I had a meeting with the Taoiseach.

Q. You've seen the notes which were made by the then Taoiseach?

A. I have, yes.

Q. And you accept that you said the things that he noted?

A. No, I don't accept that.

Q. We'll deal with that that's fine.

A. I'll finalise it for you. I'll finalise it for you. I accept that Mr. Bruton, the then Taoiseach, raised it with me, in how would I put it in an offhanded way, he said to me, "What was that rumour that was doing the rounds?"

And I put him clear on it and said that I hadn't come across anything to suggest that anything such as the rumour, as was intimated within the rumour, had ever taken place.

He raised it. John Bruton's notes are a combination of what I said to him and what he was saying to me.

Q. Oh, you are saying that it's your understanding of that note that it's something that he raised with you?

A. Yes.

Q. I see. When you say it's something that you never gave any credence to, it is a matter you did refer to in the Dail at one stage; isn't that right?

A. In the Dail? I am sure I did. The Dail, again, is a chamber where you avail of every political opportunity to put your opposition on the back foot. I was actually you circulated with me some Dail manuscripts, and I was actually when I read them and I studied them and I looked at them, I can say that I could clearly see that both Seamus Brennan and myself participated in some political opportunism.

Q. But you did make that point in a coded way in the Dail, didn't you?

A. I probably did, yeah. You do those things in politics to unnerve the opposition and put them thinking.

Q. So, apart from giving it any credence, and you say you didn't give any credence, you certainly made use of it in that forum on that occasion?

A. In the Dail?

Q. Yes.

A. It's very possible that I did that.

Q. Sure you know you did that?

A. We do that all the time.

Q. I

A. We do that all the time in politics.

Q. I asked about it, and you said then you weren't paying any

attention to it, but you did say it in the Dail, didn't

you, you did say that?

A. I don't know, I can't recall. You have the script

yourself, so I accept if you say it's there, it's there.

Q. Now, why would you have been concerned sorry, why would

you be concerned if the competition had reached a

conclusion, whenever the date was you spoke to Mr. Towey,

we think around mid-September?

A. I can't be sure of the date, but I'd say it was end of

August, early September.

Q. Yes. Why would you have been concerned?

A. Well, from the critical path that I was given, it would

have been a big deviation from it. And I couldn't see how

they could have concluded the process in that period of

time. I would say that was the only concern that I would

have. That, in other words, they didn't there wasn't a

ring of it wasn't factual, I didn't think it was

factual, and I was wondering had something happened that I

didn't know about. Simple as that.

Q. And when Mr. McCrea said whatever he said to you, was that

in your office at Leinster House, or your office in the

Department?

A. I don't recall, to be honest with you. It could have been

even a telephone call. All we were doing was we were

like we would normally do, he would be on the phone to me

and I would be on the phone to him, and in a casual way,

during the course of a discussion on many other topics, he

said that he had heard this.

Now, in fairness to Colin McCrea, Colin McCrea was an excellent programme manager, a very bright individual. He came from the public service to me. So maybe he was hearing the rumour, and it wouldn't surprise me, much later than any of the rest of us had heard it. And for that reason he would have said it to me. He wouldn't be as politically tuned in, and I say that with respect, as maybe others.

Q. So it was either in your office in Leinster House, it was either in your office in the Department, or he spoke to you on the telephone?

A. Yeah.

Q. Can you remember whether you were in the your office when he spoke to you if he spoke to you on the phone or in Leinster House?

A. I have no idea. You know, I would have had a lot of interaction with Colin McCrea. I could speak to him maybe three times, four times a day, what have you. So really I can't at this far remove be any way specific on that. I don't know.

Q. But you do specifically recollect being in a shop on Grafton Street which was called Tricot Marine, and you do remember this occurring to you again, and you do remember ringing the Department, and that that was late in the afternoon or early evening? You remember all of that?

A. I remember that I was certainly in Grafton Street, and I

think it was the same day that I was in Tricot Marine. I used to go from my office, I'd walk from the Dail or what have you, I'd go down to Grafton Street if I needed a shirt or if I needed something, that was generally where I would do my shopping. And my recollection is that I was coming through Grafton Street, that I made the phone call, and I can't be a hundred percent certain, but I'm almost certain that it was coming back from that shop that I was.

Q. Would it be usual for you to be going along the street to ring the Department to check on something?

A. Well, if you were as busy as I was, you'd avail of every opportunity you had. And I suppose I had phinitis at that stage; if I was in the car, I was on the phone, no matter where I was, there was so many issues, I would have availed of every opportunity. Yes, it would be quite normal for me to make phone calls irrespective of where the location was.

Q. But you were going back to the office?

A. No, I didn't say I was going back to the office.

Q. I see. Where do you think you were going?

A. I think I was going back to my car in Leinster House. The reason I think I rang was, it was moving on in the evening; I had other work to do, and I felt that I wouldn't be back in the Department. So I made the phone call while it was fresh in my mind.

Q. But it was fresh in your mind when you spoke to Colin McCrea earlier that day, and you didn't take any steps to inform yourself at that stage?

A. It was for the very reason that it wasn't as if it was I said to you it was in a passing commentary, in the middle of a discussion on several other issues, and it simply, when I walking along, it came back into my head again. And I said, "Well" like most people do, the second time around, you probably say to yourself, "Well, I'll check it". Nothing more, nothing less.

Q. And nobody nobody other than Mr. McCrea had said anything to you?

A. About? About what?

Q. About the competition.

A. At any stage?

Q. No, at this stage.

A. No, I have no recollection of anybody else saying anything to me about the competition at that stage.

Q. Can you remember who you looked for when you rang the Department?

A. Can I remember who I looked for?

Q. Yes.

A. It was probably I think it was Martin Brennan I looked for. And I don't know does Towey and himself today have the same office, but all I know is that it was Towey that I spoke to, not Martin Brennan. So I think it was Martin Brennan that I looked for.

Q. Had you had meetings with Martin Brennan?

A. Pardon?

Q. Had you ever had any meetings with Martin Brennan before

that?

A. Had I any meetings with him? I'm not so sure. You know, you would have the list of the meetings.

Q. I'm not trying to catch you out. I want to know how did you know to ring and look for Martin Brennan, if I can put it to you that way.

A. How did I know because Martin Brennan was the he was the Principal Officer in the Department, and if you had a query, that's who you'd go to.

Q. That is in relation to the GSM; he was the Principal Officer dealing with that?

A. Yes.

Q. With the competition?

A. Yes.

Q. How did you anticipate that things would unfold once the PTGSM were in a position to give a recommendation? What would you have expected to have happened? Might I suggest that you'd receive some communication from Mr. Loughrey or something; that would be the normal way, wouldn't it?

A. In relation to?

Q. In relation to the outcome of the competition.

A. I would have anticipated, at that stage, that it would be it would pan out the same as it actually did.

Q. Yes, but I'm still trying to understand how you can recollect detail of which shop you were in, where you were when you made a phone call, and you cannot recollect where you were or how Colin McCrea communicated what you say he

communicated to you?

A. I think I have given you a very good understanding of how it developed. The reason

Q. I am not saying how it developed: How you can recollect, Mr. Lowry, is what I am asking you. How you can recollect that much detail. Because we know Fintan Towey has given evidence of background noise, and you saw his speculation as to whether you were at a race meeting at the time.

A. I haven't I haven't seen where there was I wasn't I'm telling you what happened. I wasn't at a race meeting.

Q. But does it not strike you as being a little bit unusual that you have that level of detail about when you made the phone call, because it does account for background noise, and you do not have any recollection of what occurred earlier in that day when this information, which caused you surprise, was conveyed to you?

A. I have given you my recollection of it to the best of my ability.

Q. All right. Mr. McCrea was your programme manager; isn't that right?

A. That's correct.

Q. Did it occur to you to say to Mr. McCrea that it might not be an unusual thing for him to make the inquiry is the competition over?

A. For Mr. McCrea to do it?

Q. For Mr. McCrea to do it for you.

A. I would think that Mr. McCrea probably felt that it wasn't

his position to make an inquiry.

Q. No, if he heard a rumour and he was conveying it to you, that it would not be unusual for to you suggest, "Colm, would you ring them over on the other side of the House there and see is it over?" Or words to that effect?

A. I don't see anything unusual with I doing it myself, nor more than him.

Q. Now, the next thing I want to ask you about for the moment is you went to the opening of the Galmoy mine in Kilkenny on the 14th I think it was Friday, 14th September, 1995; isn't that correct?

A. That's correct.

Q. And you knew that you would be meeting Mr. O'Reilly at that, I think?

A. I wouldn't say that I knew I was going to be meeting him.

Q. Well, you wouldn't be surprised if you met him there?

A. I wouldn't be surprised if he was there. His son was involved in it, and obviously he had an interest in the company. Nobody told me he was going to be there, but I wouldn't be surprised if he was there.

Q. And because mining also was one of your responsibilities, isn't that right, in the Department?

A. Correct.

Q. That's why you were going there; it was a formal opening, and there was to be a bit of a lunch, and something like that?

A. Yes.

Q. And I take it when you are going to attend one of these functions, you'll get some form of little formal briefing document so you can say a few words and perhaps, you know, engage in a bit of conversation when you are briefed, to some extent?

A. Well, I was very well briefed on that subject, because it was when I went into the Department, that particular mining licence was the subject of huge controversy. There was a lot of local agitation. I lived close by it. And I needed very little briefing on it. I would have had it myself in my head.

Q. It was a neighbouring constituency; isn't that right?

A. Yes.

Q. You were quite familiar with

A. Yes, and there had been a controversy before I went into the Department in relation to the then Minister, Brian Cowen, and shares, I don't know what it was about, but that was a controversy. So that was, how will I put it to you, the locals, a lot of whom I would have known, were concerned about water, road networks and what have you. So it was contentious. Unnecessarily, actually.

Q. Now, you say that the first sorry, I should just you say that you never said anything to Mr. O'Reilly on that day that could have conveyed any impression about what had happened at the oral presentations in respect of any of the consortia; isn't that right?

A. Absolutely. I most certainly and most definitely said

nothing to him in relation to the GSM. And I couldn't have said what I am supposed to have said, because I simply didn't know. So how could I convey a message to him in that format when I didn't have access to the information myself?

Q. And I first of all want to deal with, because you were the one who informed the Tribunal, the sequence of events. You informed the Tribunal of a contact with Mr. O'Reilly

A. Sorry, just on a point of clarification, Chairman. I notified the Tribunal of my contact with him in response to a detailed letter that you, the Tribunal, wrote to me asking me for the names, dates, places, the content of conversation that I had with anybody in relation to any consortia, and that included Mr. O'Reilly. So let's make it quite clear, I wasn't making any statement in relation to Mr. O'Reilly that I wasn't making in connection with any other consortia.

Q. I didn't suggest that you were, Mr. Lowry.

But, in that, you informed the Tribunal that the contact with Mr. O'Reilly arose at a race meeting; isn't that correct?

A. My first meeting with Mr. O'Reilly was most certainly at the Curragh in 1995, yes.

Q. And you say that during the course of the afternoon you were invited to his box, and you went there, and you discussed he discussed the consortium, his consortium's application for the GSM, his own commitment to invest in

Ireland, and I think you probably sort of said, a little bit more importantly at that stage, the whole question of the MMDS, the TV deflectors in the Cork region; that was a big bone of contention at the time, I think?

A. Yes, it was.

Q. And then you have informed the Tribunal you just clarified in relation to that meeting. You said that that meeting definitely took place or sorry and that you wanted to clarify that when you stated that Mr. O'Reilly expected his consortium would be successful, that you didn't wish to convey a wrong impression by this; he was simply expressing his opinion in relation to his consortium's application rather than making a specific demand of you.

A. Mm-hmm.

Q. Now, I think you were furnished with Mr. O'Reilly's statement or memorandum of proposed evidence; isn't that correct?

A. Correct, yes.

Q. And you specifically deny, and you have done it here again, that you ever said anything about the GSM?

A. I am absolutely certain that the comment that's attributed to me was never made by me. And I want to repeat, I didn't make it; I couldn't have made it; I didn't even know that information; I didn't even know that those presentations were taking place.

Q. So there is a total conflict between you and Mr. O'Reilly

on that particular issue?

A. Well

Q. No you were all at Galmoy, and you met each other; you may have chit-chatted about many other things?

A. We chatted about my memory and recollection of that day is pretty clear. And I have to say, with the assistance of diaries and particular events and what have you, and I have done my best to assist the Tribunal by reading what was appropriate and piecing together precisely what happened.

And the first point I want to make, because this, I think it's important to me, anyway is that

Mr. O'Reilly said he met me for the first time in Galmoy.

Mr. O'Reilly's recollection is faulty in relation to that, because I most definitely met Mr. O'Reilly in 1995.

Q. At the Curragh, you say?

A. Yes. And the reason I know that is because of the content of the conversation that we had. The conversation that I had with Mr. O'Reilly could not have taken place in 1996. It took place in 1995. And there were a couple of points within that conversation that particularly stand out in my mind and put the timescale into perspective.

Q. Right.

A. And I know that I was there, that I was a guest of the IAWS. I know that I went across to the main stand after their marquee was at one side of the course. I crossed the course, went over to the main stand. I was invited. And let me say I was invited. It was never my practice to walk

into places where I wasn't welcome or where I wasn't invited. I was invited to his box. I wasn't a racing enthusiast. I go to the National Hunt almost to the exclusion of flat. I rarely go to a flat meeting. And the reason it stands out in my mind it that was the first Derby weekend that I was ever at. 1995 was the first one I was ever at. And for that reason, I know clearly and specifically that it was in 1995.

I went to the IAWS. I enjoyed their hospitality. I went across to the main stand. I was invited up to his box.

Mr. O'Reilly was he welcomed me, thanked me for taking the time to come up to him, and we had a general conversation. Now, part of that conversation like,

Mr. O'Reilly clearly stated to me we discussed a lot of things. I was there for a considerable period of time. We discussed a lot of things. And one of the issues that came up was, he was, in a helpful way we had a discourse on the political situation of the day, and you will recall we had previously just changed Government, and that change involved a breakup between Fianna Fail and the Labour Party, and that had only happened a number of months previous to that.

And I recall quite clearly Mr. O'Reilly saying to me that Fine Gael had made a bad decision. He said, "You should have forced an election". He was highly critical of Dick Spring for the manner in which he felt he had treated Albert Reynolds. He said, "You should have went to the

country; you'd have come back stronger". And it was his political overview that Fianna Fail could control labour in Government, but that Fine Gael would be too weak to do it. Now, that conversation couldn't have taken place a year and a half later. That was the context I am saying that because that was the context of the day.

Now, in relation to the MMDS, we discussed the MMDS at Galmoy. And my recollection of it was that, first of all, I arrived at Galmoy. Mr. O'Reilly, for his reasons, was late, and everything was held until he arrived. We eventually started the formalities of the day, and as Mr. O'Reilly states, and I agree with him, he arrived; he came over to me; he was delighted to see me again. He gave me a warm welcome. We walked down towards the mine shaft, and as we walked back from there, he mentioned he complimented me, he thanked me, and he was very gracious about my role in resolving the licence application within my Department in respect of the mine. It had been stuck there for a considerable period of time. I took a particular interest in it because it was one of the things that he had previously said to me that, you know, he was getting the in fairness, I would think that they were delayed unnecessarily. I asked my officials to get involved, and they worked morning, noon and night, and I mean literally morning, noon and night to bring it to a conclusion.

Mr. O'Reilly acknowledged that, and he appreciated that,

and he then said to me that if I was as decisive and efficient in relation to the MMDS as I was in relation to that, that he'd be very happy.

And I recall saying to him, telling him exactly said, "Look, I can understand your position, but the Government position was that" I was Director of Elections in 1994 down in Cork for the late Hugh Coveney's by-election and I said to him at that particular by-election, John Bruton, as leader of Fine Gael, gave a commitment that defectors would be allowed to be remain on air.

So I said, "We have a political problem with it". And I also said to him on that day, I think I don't know; I don't wish to put anything other than all I can say to you is that I also said to him that I had a political problem with it in my own constituency, in that we had defectors in Tipperary; one of them had been put off the air, and there was it was a very touchy subject; I'll put it to you that way.

And I said to him I also said to him, "Apart from John Bruton having a problem with it, some of my boys in Tipperary are not impressed with you and not impressed with me, because they are asking me to be allowed go back on air".

Whether there was a mix of conversations which led to his recollection of putting down what he put down, I can't say.

But the only thing I can do is speak for myself, and I am absolutely certain that I, at any stage, ever made the

comment that is attributed to me.

And I need, further, to go further and say no member of my Department Project Team or anybody else ever came to me and said to me whatever that somebody was

Q. "Your fellas didn't do too well", or words to that effect?

A. I couldn't have said it, because nobody in the Department ever said to me that he hadn't done well. And I don't know where they even to this day, and I actually asked one of my advisers recently, where did they finish? I don't even know where they finished.

Q. I understand that you'd discuss and I know, and we have all seen how heated he has always been about the MMDS issue; that was a big issue, wasn't it? There was no doubt about it?

A. It was a big issue, and because let's put it clearly.

The reason it was a big issue is, as he said to me, what he was asking me to do. And you can understand him asking me to do it; he was asking me as Minister. And I can remember exactly the phrase he used. He asked me he said,

"Minister as Minister, we have one request of you, and that is to uphold the law."

And the law was on his side, but we had a practical political difficulty, and we worked very hard to see could we reach a compromise. And eventually we did.

Q. I understand that, and I can understand there was the question of the licence for the mine and the speeding that up in the Department. But from all the discussions that

you have described to me and that you recollect, and I take your point about various matters which you say fixes your recollection as being good in respect of some matters, there doesn't seem to be any area in there for confusion or the words arising that "Your fellas didn't do too well", or words to that effect. Today, would you agree, it's hard to see where they fit in to that?

A. Look, all I can say to you is, I got on very well with Mr. O'Reilly that day, and I know that in making the statement that he has made, he is furnishing that statement with the best of intentions from the best of his recollection. I am doing likewise, and somewhere along the way there must be confusion. And maybe it's possible that there is confusion between the conversation we had in relation to the MMDS and my reaction to the people in Tipperary. I don't know; I can't say.

But as I said I have to say, Mr. Coughlan, I was there. It was a day of celebration. I knew how important the licence was to Mr. O'Reilly from my meeting with him at the racecourse in 1995, and I don't think it would have been very tactful for me to walk into Galmoy on a big day for him and say to him, "By the way, that project you have, you didn't do too well in it". I just didn't do it, and I didn't do it, and I know I didn't do it.

Q. So, I just want to be clear about this, because I asked Mr. O'Reilly about various matters, as to whether he was motivated by he is adamant you did say it, and you

understand that. And then I asked him, "Well, look, could you be making this up, being motivated by malice? Are you motivated by, you know, annoyance over the Government and the lack of action", as he saw it, on the MMDS. The famous front page editorial on the eve of the election; isn't that right? We have gone through all of that, but you think that it's just confusion?

A. I would have to say I would totally accept, totally accept, from the friendliness, the demeanour, everything of Mr. O'Reilly at that particular time, I would not attribute in any way to him malice in relation to that comment. I think that it has to be there has to be come confusion, but I don't put it down as intentional; that's for definite.

CHAIRMAN: It might be

MR. COUGHLAN: It might be a natural place to break now because Mr. Lowry has been in the witness box

CHAIRMAN: If we are be splitting the day, Mr. Lowry, so as not to make individual shifts too long, it's convenient we take an hour and a little bit more for lunch, and we'll resume sharp at two o'clock. Thank you.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:

Q. MR. COUGHLAN: I think you may know what I'm going to ask you about immediately. I informed Mr. Fanning and asked him to bring it to your attention. It was just I had a quick look at Mr. McCrea's evidence over lunch and I'm

not going to open tracks of the transcript, don't be concerned about that, unless you want me to but it's Day 208, and it's Question 43, on or thereabouts, for anyone what wants to check it in due course.

And Mr. McCrea was describing I suppose we should just explain, because Mr. McCrea gave this evidence, and Mr. Loughrey. Mr. McCrea was your project manager, but he was recommended to you by Mr. Loughrey; isn't that correct? He didn't come out of the pure political side of things, if I could put it that way.

A. True.

Q. And he informed the Tribunal that he remembers a meeting between yourself, himself and John Loughrey sometime early he thinks around the 2nd, sometime around the 2nd March, or after the Government decision and the adoption of the protocol by the PTGSM, that John Loughrey spoke to yourself and himself, brought the protocol to your attention, and I think perhaps you don't disagree with this, impressed upon everybody the sealed nature of the process. Would you generally agree that that type of discussion did take place?

A. Yes, at some stage or other, yes, it did.

Q. You can't be sure as to when, but you would accept what Mr. McCrea has said?

A. Yes.

Q. Now, he said that it was at that time, and he believes that Mr. Loughrey may have been there, but he may not have been

there, that this whole question, I'll call it the Motorola rumour, that it was mentioned to him by you, not in a very serious way, if you understand me, but that it was you who mentioned it to him, and it was around that time.

A. That's a possible explanation for him bringing it back to me again when he had heard it subsequently himself.

Q. He doesn't maybe you are correct he doesn't seem to have thought that it occurred subsequently, but that's his evidence, and you have given your evidence. I just want to bring to your attention that he said it was you brought to his attention and when.

A. It's possible I did in the first instance. What I'm saying is, he being conscious of the fact that I had said it to him previously, heard it in the meantime and brought it back to me, I don't know.

Q. Doesn't that make it more likely that it was in the context of it's over, and the rumour has legs, or something like that, which would tie in perhaps with more Mr. Towey's understanding of his conversation with you?

A. Well, I remember my conversation with Mr. Towey, and it was you know, there was nothing there was no suggestions on my behalf. I simply asked the question, and I think Mr. Towey has confirmed that, that at no time did I make any suggestions in relation to preferment for any individual or hindering anyone else. So I don't know what swings on the point, but that's my understanding of it, and that's my evidence.

Q. All right. Now, just, again, in relation to Mr. McCrea's evidence, and again it's Day 208, and it's on page 37 of the transcript, and he informed the Tribunal that sometime around the presentations, the oral presentations by the various competitors, that it was conveyed to him and I hasten to add, not by you; it's not being suggested by you at all that some one of the bidders hadn't done well.

Now, he can't be sure, but he thinks it may well have been the bid which included Bord na Mona in its makeup. He may have had some previous involvement with Bord na Mona or in the semi-State sector or something like that.

Now, that's the evidence of Mr. McCrea. So that being the case, it looks likely that some information was getting out from somewhere in the process, doesn't it?

A. I wouldn't accept that.

Q. I see. Well, if Mr. McCrea was told that a certain bidder hadn't done well in a presentation in a sealed process, do you not accept that that is some evidence of some information getting out?

A. Mr. McCrea, as programme manager, would also have had you mentioned Bord na Mona, for instance; it could have been ESB, what have you. He would have had a lot of contact with the semi-state companies in his capacity as programme manager. And I would imagine, as in the case of Mr. O'Reilly's consortium or any other consortium, if anybody did badly, I don't think they'd need to be told; they would know themselves. So it's possible that some of

the consortia themselves knew that they had done badly.

Maybe somebody said it to Mr. McCrea in that respect.

Q. No, I don't think that was the evidence of Mr. McCrea. And

I'm not suggesting that Mr. McCrea conveyed that to anybody

or made use of it in any way, but that in the process, if

Mr. McCrea was informed by somebody in the Department that

a bidder hadn't done well, doesn't that seem to indicate,

Mr. Lowry, that information was getting out from the PTGSM?

A. I'm absolutely as far as I am concerned, no information

came out from the Project Team, and it is up to Mr. McCrea

to answer for himself.

Q. He did.

A. I don't think it's as clear-cut as that.

Q. Two days after the opening of Galmoy, it was the All

Ireland football final. Now, I think it's probably well

known, Mr. Lowry, that you attend all All Ireland finals

you possibly can. You have a keen interest in the GAA, not

just in hurling, either.

A. Correct.

Q. And even leaving aside your role as a Government Minister,

you'd have been at Croke Park that day anyway; there is no

doubt about that?

A. Yes.

Q. Now, I think it's correct to say that at Croke Park, around

half time in the senior game, that Mr. Denis O'Brien and

yourself met. What's your recollection of what happened at

that time?

A. I think it was you know, we were both in the same area.

I forget who was in his company. There was some people with him, at least one.

Q. I think he informed us that Mr. O'hUiginn, he may have been Mr. O'hUiginn's guest.

A. I think it was, actually. And we happened to there is we were in the I was there on a Ministerial invitation. We were in the VIP area. And the VIP area in Croke Park leads up to the toilets to the back, and anybody who is in the VIP area is usually invited in for coffee or whatever after it, and I think it was at that point that I met them.

Q. Can you remember what sort of chat took place, or

A. Just the usual, hail fellow well met, and "Are you going for a pint afterwards?"

And I said I was, and he asked me where I was going, and I said I was going to a pub in Lower Leeson Street, which was Hourican's, where I would normally go. And I can't say for definite, but I got the impression that he was to go there himself. I don't know; maybe he didn't. But he said, "I'll see you there".

And needless to say, we weren't you know, it was the half time of a match and there was no great there was no discussion as such, no discussion at all, actually.

Q. I think after the match you went to Leeson Street, didn't you? You had arranged, I think, to meet Mr. Denis O'Connor and his wife, who were friends of yours, Tipperary people;

I think Mr. Sean Murray, who would have been an old-time

Fine Gael stalwart?

A. Yes.

Q. And Mr. Barrett, I think, was it?

A. Sean Barrett, yeah.

Q. I think you had actually had an arrangement to meet them for a drink after the match?

A. I had, yes.

Q. And do you remember getting to Leeson Street?

A. Not really, to be honest with you. In the interim I would have gone to after All Irelands, there is, again by invitation only, there is a big reception hall, and I would have gone there after the match, to that reception hall, which is on the grounds of Croke Park. So, I don't know how long I stayed there, but I was there on my own because the rest wouldn't have been invited. So I would have mingled, met people there, so I don't actually know what time or

Q. I'm not so interested in that. But you were driven by a Ministerial car, were you?

A. Yes.

Q. And you were dropped off somewhere in the vicinity of the pub, Hourican's?

A. I was dropped outside the door.

Q. And can you remember what happened then?

A. What happened then was I went into the pub, and I went into the pub, and the pub was actually, at that stage was

jammers. And I literally got inside the door, and I remember meeting a very strong Fine Gael guy who I had met there a couple of times previously; he is a dentist some place up the country. I was chatting to him, I was chatting to him for a good while. As I said, the place was very busy, so I hadn't made a whole lot of progress. I hadn't made any progress at all; I was barely inside the door. And I was talking a couple of people introduced themselves to me, and I suppose at that time I was recognisable on the basis that I was a Minister.

Q. And again, to be fair, Hourican's would be perceived as being a pub where people might go after Gaelic matches, particularly after All Ireland Final?

A. Dublin had won the All Ireland that day and I had met, on a number of occasions in Hourican's; for instance, Pat O'Neill goes there, and there was a good few members of the management team, and actually I recall being surprised that they were there on the evening of the winning of an All Ireland. Like, in Dublin they break up, go to their own locals and meet up later on for the formal occasion. Pat O'Neill was there. There was a couple of former Dublin players there. There was a some of the group members there, and actually, funny enough, my own solicitor I mean my solicitor now, Michael Kelly, he was in the pub that evening, and I knew him, do you know, to see him. So the pub, as I said drinking orange, I might add

Q. Michael had a great playing career himself. What happened

then?

A. I can't recall, you know, in specific detail. But all I know is I didn't progress into the pub as such. When you go into Hourican's, to get to the bar, as I said, the place was packed, so I was literally, I would think, inside the door, and I was talking to a number of people, and then Denis O'Brien arrived. And at that stage I think I don't know who suggested it or what, but it was by mutual consent we went across to Hartigan's, which is right across the road, roughly 20 feet across, do you know, the width of a road. And while that was very busy, you certainly had room, and we proceeded to have a drink there. I would say I don't know whether I had one or two, but certainly no more than that.

Q. Do you remember were you able to sit down, or were you standing up, or

A. It was standing only, standing only.

Q. And you can't remember from whom the initiative came to go to Hartigan's, but can you remember why you'd go to Hartigan's with Denis O'Brien?

A. Because the place was so packed, the other place, Hourican's was so packed, and they were still coming in, so I don't know it would be unfair of me to suggest whether I who suggested we go to Hartigan's. I don't know, to be quite honest with you.

Q. No disrespect to Hartigan's; it wouldn't be noted as being a Gaelic establishment?

A. I'd say it was more a case of getting a drink at that stage, that the place was so busy.

Q. And do you know why you went with Denis O'Brien and didn't proceed to meet, you know, people like Sean Murray and Sean Barrett and Denis O'Connor and his wife?

A. Well my attitude was, I suppose, at that stage it just happened by chance that I was there. If you know Hourican's, when you get to the bar, if you want to go back to the back of it, that's a struggle in itself on a busy day. And while I knew they were there, I might have waved at them, what have you; as I said, I didn't and I didn't intend to stay in Hartigan's, so I was going to come back to it anyway.

Q. So was the purpose of going to Hartigan's to talk to Denis O'Brien?

A. Pardon?

Q. I take it so that the purpose of going to Hartigan's was to talk to Denis O'Brien, if your intention was to come back to your friends anyway?

A. I'd say the purpose of it was to have a drink, in the first instance. And what transpired then, we went across to Hartigan's. As I said, I don't know whether we had one or two drinks. And I remember we chatted about the match. We chatted about general stuff, and at one stage Denis raised the issue of the fixed-line routes.

And I said to him, I said, "Look, Jaysus, Denis, it's Sunday; I'm after being at the match. I'm not interested

in getting into it."

He wanted to moan about it, moan about the Department Regulatory Division; he was being hard done by. And to be honest with you, I didn't chat about it; I dismissed it. I said "We'll have a drink". It's a social occasion, and I don't think we were there any longer I'd say maximum we were there was 15 minutes. I told him I had friends over across the way. I didn't want to be how will I put it I didn't want to be seen to walk out on him, but there was nothing of significance in it. It was simply a social drink.

Q. So as far as you were concerned, it was a social drink, and he probably did, in a general way, raise some complaint about the fixed line

A. He attempted to raise it, or said something about it, and I asked him to park it up, to be honest with you. I was probably like I just didn't want to hear about it, be honest with you. It was a Sunday; we were after being at a game. I was happy to have a chat with him and talk to him about general things or what have you, but I didn't get into any deep discussion with him.

Q. You didn't inform anyone in the Department that you had met Denis O'Brien, I take it, because you viewed this just as a social occurrence?

A. I would have met hundreds of people in the course of that day. It wasn't my business to go back and tell the Department who I met or who I didn't meet. And I don't

think they expected me to tell them who I met.

Q. You didn't ask the Department to take any steps in relation to the fixed line as a result of anything that was communicated to you?

A. No, I did not because

Q. We have been through this, the records are clear, you didn't do that. And you didn't have any conversation with Denis O'Brien whereby he said anything about Mr. Dermot Desmond or IIU?

A. Definitely not.

Q. Could I ask you this, Mr. Lowry: When is the first time you became aware of IIU or Dermot Desmond's involvement?

A. When did I what?

Q. When did you first become aware?

A. I presume sometime around the same time as the Department became aware. I can't put a date on it. I have no idea, to be quite honest with you.

Q. When do you think?

A. Pardon?

Q. Even in terms of rumour, speculation, anything like that, when did you first become aware? You were in the political world now.

A. When the All Ireland was when?

Q. The All Ireland was on the 17th September.

I'll just run you very quickly through things. The famous letter, which you now know about, which came in from Professor Walsh into Martin Brennan in the Department and

was sent back, that came in on the 29th September, went back to Denis O'Brien on the 2nd October, and the competition result was announced 24, 25 October. So that's the kind of time-frame. Can you remember when you first became aware of Dermot Desmond/IIU, if I can put it that way, involvement in this process?

A. I have no idea. Whenever I became aware of it, I was told of his involvement by the Department and by John Loughrey. That's where I learned of Dermot Desmond's involvement in it.

Q. Because, you see, the day after sorry, the presentations had taken place in the week prior to the All Ireland Final. The day after the All Ireland final, after Mr. O'Brien had spoken to Mr. Desmond and had this, as you have given evidence of, a social meeting, he went to a solicitor, Mr. Owen O'Connell, accompanied by Mr. Leslie Buckley, who was the man who might have been more appropriate in relation to fixed-line matters, but that's another day's work. And the steps that were taken were to put together a letter of undertaking involving IIU/Mr. Dermot Desmond, for the Department to involve him in the process. You are aware of that?

A. Yes.

Q. Now, from the 4th August you were aware of the various bidders who had come in for the competition, weren't you? You had been informed by your officials?

A. Of?

Q. Of the various bids.

A. Yes. We had six contenders.

Q. And you set out in your press release the makeup of those?

A. Yes.

Q. And the makeup related to that information which had to be provided; that is, it was mandatory, every bidder must disclose full ownership details of the proposed licensee; isn't that right? The Government had to know who we were going to licence down the road.

A. Before the licence would be signed, yes.

Q. No. In the competition, Mr. Lowry. Do you remember paragraph 3 of the competition, which said that full ownership details must be disclosed of the proposed licensee? That was the terms in which everyone entered the competition; isn't that right?

A. My understanding of O'Brien's consortium is that it was 40:40:20 to an institutional investor, whoever that might be, that's my understanding of it, and was my understanding of it.

Q. Well, could I take you back, so, to your press release. We have it on the screen in fact.

"Mr. Michael Lowry, TD, Minister for Transport, Energy and Communications, today announced that the bidding process for the competition for a licence to provide mobile telephony (GSM) in Ireland closed at noon today.

"The Minister is pleased to note a high level of interest in developing the Irish mobile market. Six tenders were

submitted before the noon deadline for receipt of applications. Details of the applicants are as follows".

We saw the one with the splurge consisting of Comcast, RTE and Bord na Mona, and I can't make out the other one.

"Esat Digifone, a consortium consisting of Communicorp Group Limited and Telenor, together with some institutional investors."

A. Correct.

Q. You knew there was some institutional investors?

A. I wouldn't have given it any thought, but I knew in that consortium that there would be a financial investor, yes.

Q. No, "some institutional investors"; it's in the plural.

A. Means what?

Q. "Some institutional investors". It is in the plural, isn't it?

A. I see it, yeah.

Q. And you would have known that. That would have been explained to you by your officials?

A. No, we never went into any discussion on it in relation to we certainly didn't get into, how would I put it to you, a definition of what an institutional investor was.

Q. No, that's only arisen here, in fact, Mr. Lowry; I know you didn't. But you knew you knew, didn't you, that what had been disclosed as the proposed licensee here was the two Telenor and Communicorp, and whilst you mightn't have known the exact names of the institutional investors, that there were institutional investors as nominated as the

proposed licensee; isn't that right?

A. I wouldn't have got into any level of detail in terms of the makeup of the consortia, either O'Brien's or any other.

That only came up at a stage when he was selected as the selected as the exclusive right to negotiate. That's when it came up with me. It had never come up previous to that.

Q. What came up with you at that stage?

A. The composition of the group, the 40:40:20. And later there was some argument or dispute about whether it was 25 or 20.

Q. I'll take it slowly, because and I am genuinely not trying to confuse you. You say that only came up when they were granted the exclusive right to negotiate. They were granted the exclusive right to negotiate on the 25th October, there or thereabouts, of 1995. Are you saying that it's your recollection that it came up then?

A. It certainly came up then, at that point, because I was asked by John Loughrey in my capacity as Minister to attend the meeting, and it was the first time I had ever met the individual, but Dr. Michael Walsh was representing IIU, and Telenor were at the meeting. And there was obviously an argument between them, and John Loughrey looked for my assistance in putting down a marker that it had to be 40:40:20. I think at that stage there was some question that IIU, or whoever, was seeking 25%. That's the it was in around that was one of the issues of contention.

Q. Yes. I understand that there is an issue that was an

issue of contention, but I don't think and it's very helpful getting your evidence, because I don't believe maybe I am incorrect in my recollection that I ever heard that you attended any meeting involving these individuals, so it's very helpful.

A. I certainly did, yes, I was invited in for, I would say, a couple of minutes. John Loughrey sought my assistance, and effectively what he was asking me to do was put my Ministerial hat on and say to them, "Look, guys, whatever arguments you had between you, this licence will be on a 40:40:20 basis, and there will be no licence signed until such time as that is achieved". That happened.

Q. I see. Thank you for that.

Now, I want just to be clear about this, and I want you to be fair to yourself about this. You have said that you believe that this happened when they were granted the exclusive negotiating right. Now, I want you again to be careful; that was in the end of October of 1995. We know that certain things happened in April and May of 1996 as well, leading up to the actual signing of the licence. Is it your evidence that it was as early as the end of October of 1995 that you were involved in some way at the invitation of Mr. Loughery.

A. No, it wouldn't have been early. It would have been am I correct in saying that those negotiations started it went on for a number of months.

Q. They did.

A. Well, I think what happened was I can't be sure; I am working from memory.

Q. All I want is to try and establish the facts. So I wonder if you could be right that it was as early as that, but I don't know.

A. I am not saying it's as early as that. I am saying that I would think that probably what happened was that John Loughrey was exacerbated with whatever he was being held up, you know, and he probably wanted to conclude it. So I don't know I suppose the question you are asking me is when did I become aware that IIU were involved?

Q. Yes.

A. My answer to that is I can't say; I do not know. But whenever I was made aware, it was it was by the Department, and maybe there is a record in the Department of when they informed me that IIU were involved.

Q. Can I try and fix something in your own mind, if it helps your recollection. Was it do you think you first became aware at the time that the 40:40:20 row was going on, as opposed to the 37.5:37.5:25. Was it around the time that a row was going on about that?

A. I don't know. I really can't place it.

Just to put this in context, Mr. Coughlan, this period I have a difficulty with in terms of what happened was, when the decision was made to grant them exclusive rights to negotiate, I asked John Loughrey, as Secretary General of the Department, to take control of it and to take

personal charge of it, and he agreed to do it.

And effectively I was totally out of the loop. I didn't know what was going on in relation to you know, the negotiations. Personally I didn't even know what was involved in the negotiating of it. The only instruction that I would have given to John Loughrey was, I would have said to him, "Look, just make sure that if we are going to grant the licence, that they can deliver, and that they can achieve the objectives that we want, and that I don't end up with egg on my face as a politician."

Q. Yes, I can understand that.

A. Like, the negotiations took place. I wasn't involved in the negotiations. But at some stage or other I was called into the negotiations. It was a very brief in-the-door and out again. I left them to it, but

Q. Who was there when you went? You say you believe

A. I believe

Q. that Mr. Walsh was there?

A. I believe that Dr. Walsh was there. I don't know who was there from Telenor, but it was effectively Dr. Walsh, Telenor and the Department.

Q. I see.

MR. FANNING: Chairman, if it's of any assistance to Mr. Coughlan, I think Professor Walsh dates that meeting as the 14th May, 1996.

MR. COUGHLAN: Thank you.

Q. We'll be coming to that period anyway, because there was a

lot of to-ing and fro-ing. But coming back to what happened after the day of the All Ireland Final, a whole series of events occurred involving IIU/Mr. Dermot Desmond in the process, or in the project. Are you saying that you were completely unaware of that at that time?

A. Absolutely totally unaware of it. And further I wish to say about this letter, this famous letter, and obviously the efforts over the last ten years to somehow implicate me in relation to this letter. I think when you back back, I think you need to also back back to the date from because I have read the evidence in relation to this you need to back back to the date of the presentation, or whatever day my understanding is that O'Brien's people were in with the Project Team, and that at that meeting, which was a couple of days before the All Ireland, and my meeting with him, that it was brought to his attention or their attention or whatever was at their meeting something about as with other applicants, I think, as well in relation to funding and finances. Now, that's what I read in evidence given by others.

Let me state my position in relation to this letter that you refer to.

I knew absolutely nothing about this letter. This letter was never brought to my attention. I didn't know of the existence of the letter. And the first time that I became aware that this letter was floating around was when I picked up one of the Sunday newspapers, I am almost certain

it was the Sunday Tribune, and this letter was referred to in great detail, and the inference throughout the article was that somehow or other I had initiated the letter which is something similar to what we are discussing now.

Q. That's not at all similar to what we are discussing now.

A. Okay. Except that what happened was I read it off the Sunday Tribune, and I had no recall of it; I really couldn't figure out what it was about. I suppose my first inclination was where did the letter come from, or who had given this particular letter to the Sunday columnist?

About three or four weeks later, I would say and I can't put a time-frame on it, but you may be able to get the article; it was either the Sunday Tribune or the Sunday Business Post but I can tell you it was years later from Hartigan's, years later.

I was after reading this article. I left the Dail sorry, I was going into the Dail. I was crossing the plinth of the Dail, and I met Martin Brennan and John Loughrey coming out of the Dail. And I hadn't seen them for I suppose years at that stage, whatever, months; it was a long time since I had seen them. And we stopped and we exchanged pleasantries, and I then asked them about this letter.

And I got a very clear response from Martin Brennan and John Loughrey. Martin Brennan said "Minister, you couldn't have known, or when you were Minister you couldn't have known about the letter". And he proceeded to tell me that

this letter arrived in the Department; that it was returned, and it wasn't brought to his attention I shouldn't say brought to his attention it certainly wasn't brought to my attention, and I am nearly sure he said it wasn't brought to the Project Team. And that the one big message he had was that it had absolutely no bearing whatsoever to the licence. And he went on further to say, "and the same thing happened with other submissions that came in at a late stage."

And to be quite honest with you, I was relieved, because I had thought from reading the article that something had happened that I should have known about, or that I was, you know what I mean, I was going to be held responsible for.

So that is the factual position in relation to that letter.

I knew absolutely nothing about it until I read about it, and then sometime later, by chance, I met them on the plinth of the Dail, and they explained it.

Q. Well, the letter was sent by, I think you now know, Professor Walsh, isn't that right, on behalf of IIU, and I think we now know that it was returned to Mr. Denis O'Brien, not to Professor Walsh; you are aware of that now, aren't you?

A. No.

Q. I see.

Now, I am going to just proceed for a moment to another few documents, but at any time that you feel that you haven't prepared sufficiently for it, just let me know, and I'll

stop; I won't go any further.

Do you remember having any discussion with Martin Brennan on the last weekend in September of 1995? That is the weekend I think it was Saturday the 30th up into Sunday the 1st or Monday the 2nd October. Do you have any recollection of any discussion with Martin Brennan?

A. No.

Q. Were you being kept apprised of the critical path in relation to the process?

A. I wouldn't say I was kept apprised, but at one stage and you might be able to put it in the time-frame; I am not able to do it at this far remove but I certainly had one meeting with Martin Brennan. When it was, I can't say. When I say "a meeting", he came to my office, and at that stage, whatever stage we were in the competition, he said to me that "We're down to two", I think he said well, he definitely said we were down to two, but that there was still considerable work to be done before they would have a winner. Now, I can't that conversation took place.

When it took place, I don't know.

Q. Did Martin Brennan let you know, in general terms or in specific terms, that himself and Fintan Towey had been in Copenhagen on the Thursday and the Friday, the final Thursday and Friday of September of 1995?

A. No.

Q. Did he appraise you of the likely running order at that stage?

A. No.

Q. Did you say anything to him about the process at any stage?

A. No. You mean what do you mean, did I say anything to him, or

Q. Did you discuss matters because we are going to come to some notes of meetings made by civil servants where certain views are attributed to you. I think you are aware of those, aren't you?

A. Again, in relation to what you mentioned about Copenhagen, the only time I became aware of Copenhagen coming into the equation was when the documentation was distributed by the Tribunal to those involved in the Tribunal.

Q. You mean the preliminary reports and matters of that draft reports and

A. I didn't know what they were doing what I am saying to you is you asked me the question did I know whether or not they had gone to Copenhagen. I didn't. The first time I knew about that was when it became part of the evidence at the Tribunal.

Q. Did Martin Brennan ever convey to you, as he thinks he probably must have, bearing in mind the documentation, of what the likely running order might be after Copenhagen?

A. I don't I have looked at this my recollection of it is that Martin Brennan told me that they were down to two, and that he wasn't specific with me in terms of who was one and two. What he actually told me was they were down to two, and there was still work to be done on the evaluation,

and he'd be back to me with a result.

Q. I wonder if you'd go just to I'll put it up on the screen if it's easier for you it's 42/116. It's a handwritten note. It's Sean McMahon's handwritten note. It's of a meeting, I think, of heads of division. It's discussing many issues within that section of the Department.

If you go to the second page there, the note "GSM" there is a short note made. "Minister wants to accelerate process but the legality is more complicated". And he has given evidence that that is information which was conveyed to him, I think by Martin Brennan.

A. By who?

Q. Martin Brennan.

Now, did you ever have a discussion with Martin Brennan whereby the question of accelerating the process was discussed?

A. Absolutely not.

Q. So if that information was conveyed to Mr. McMahon and he noted it, somebody conveyed completely erroneous information?

A. Yes, well, if it was attributed to me, I can only speak for myself. I asked nobody to accelerate the process, and nobody discussed accelerating the process with me, and obviously I can't comment on why somebody would write down a note. My understanding of that note is that McMahon hasn't attributed it that note to me.

Q. He has attributed it, I think this was a meeting, Martin Brennan conveyed this information to him?

A. But it was only last night I looked at that note, and I think if you look at it I haven't got it here at the moment but if you look at it, in every other comment, what I was interested to see was that in every other comment, he had initials after it; in other words, he could identify who said it, who made the comment to him. And I notice on the GSM, he has no initials. For instance, he hasn't 'MB' on it.

Q. Yes, but I think just, if my recollection of the evidence is correct, Martin Brennan was the only one there who would have known about the GSM. Do you understand me?

A. I can't comment on that. I don't know what was happening within the Project Team.

Q. No, this wasn't a meeting of the Project Team.

A. This was a departmental meeting, yes.

Q. A departmental, I think that was the reason there, but anyway, I take your point.

Now

A. Could I, Mr. Coughlan, just in the interests of clarity. There is a lot after being written and said, and I appreciate that the Tribunal has to get to a conclusion in all of these matters. But I have had shipped a huge amount of criticism in relation to this comment that was passed that I had somehow or other accelerated the process. I had absolutely nothing to do or never at any stage asked

anybody to accelerate the process. And I would have thought that the letter of, was it the 15th September, which was a letter between which is not in my folder it was a letter between Andersen and Brennan, I think the letter was written by Brennan, where he clearly set out a position of the Department in relation to finalising it. And it is abundantly clear from that letter that they had agreed on the dates, that I had nothing to do with establishing the dates. It was a matter between Andersen and Brennan. So I don't see what I don't understand is why is acceleration an issue, when nobody has said that I had anything to do with it other than this note that what's his name has, Sean McMahon has down. And I want to just state clearly that I had nothing to do with the acceleration of the process.

Q. I suppose its status is that it's a note made by an official and a member of the Project Team of information he says was conveyed to him by the Chairman of that team, who would have had contact with you.

A. I fully understand why you have to I do I fully understand why you have to put the question to me. I want just to be clear and unequivocal. I had absolutely nothing to do with the acceleration of the process. But I think, when you put that comment beside the letter that I am referring to between Andersen and Brennan, then it makes a nonsense of that comment.

Q. I see.

Now, if you go to the next divider so. This is Margaret O'Keeffe's note; it's the report of the meeting of the GSM, or the Project Team. And the note records who is present. And the opening is recorded as "The Chairman opened the meeting by stressing the confidentiality of the evaluation report and the discussions re same. He also informed the group that the Minister had been informed of the progress of the evaluation procedure and of the ranking of the top two applicants. The Minister is disposed towards announcing the result of the competition quickly after the finalisation of the evaluation report."

Then there follows a discussion of the evaluation report. And it sets out future work programmes and matters of this nature. I think you know this document. I'll ask you to come back to both of them, because you then go over to her actual notes, and you see her note:

"Confidentiality. Minister knows. Shape of evaluation and order of top 2.

Minister State does not know.

Quick announcement.

Agenda. Draft report future work programme producing draft number two."

You then go down along.

"Report too brisk. Critically needs more elaboration and reasoning more significantly. Few lay readers but they will be critical terminology needs to be explained.

"MA brought appendix on supply on tariffs and inter

connections.

Description of methodology still missing.

"Different groups examined dealing with commissions etc.

Relevance of annex dealing with conflict.

Full discussion needed on Annex 10.

Minister does not want the report to undermine itself e.g.

either a project is bankable." I think "or not" would

perhaps be

"Should be balancing arguments.

CHAIRMAN: Just for the record, Mr. Coughlan, it was the

9th October

Q. MR. COUGHLAN: It's a meeting of the 9th October of the PTGSM.

A. Mm-hmm.

Q. Before it had completed its evaluation. And I think you had been informed of the ranking of the top two at that stage, isn't that right, according to this note? Or maybe you hadn't.

A. My understanding of it is my recollection of it is the only information that was available to me was that they had brought it precisely I can remember the conversation, I don't know what date it was, but Martin Brennan certainly told me that they were down to two. I never recall Martin Brennan actually ranking them for me, because my understanding is that there was still work to be done in relation to the evaluation process.

Q. Well, this is the note of the note taker for the meeting,

and she eventually made the minute, and it was signed off on. But it does seem to indicate that the information being conveyed by Martin Brennan, at least, to the rest of the group is that he had informed you of the order of the top two at that stage.

A. I would have to say I have no doubt that I was told about the top two, but I can't

Q. And the order?

A. No, I don't think I was. My understanding was that I was told that it was down to two and that there was still some work to be done before they would have a winner. And I'm not I have to say that I don't ever recall being told actually what the order of it was. I subsequently read that subsequently read in your documentation that there was a number of reports, and in those reports there was an order on it. And if I'm correct in stating, the order never changed from one report to the other, or am I that whatever way they were placed, obviously if we had known it was Esat Digifone and Persona, and that that was the 1, 2, and it remained the 1, 2 from one draft to the next draft until we got a final result.

Now, I am absolutely certain that I was told that it was down to two, that there was some evaluation work still to be completed, and the next I knew about a winner was when John Loughrey rang me, wanted to meet me and arrived in my office with a note.

Q. So is it your evidence that what you believe, or your

recollection of what you were told was it's down to two.

There is still work to be done. That's what you believe you were told?

A. Yes.

Q. And that you were not told of any order or how it might turn out?

A. No. That is my understanding of it.

CHAIRMAN: The two were indicated, Mr. Lowry; it was Esat and Persona.

A. Yes.

Q. MR. COUGHLAN: And the remark here that's attributed to you, that the Minister does not want the report to undermine itself.

A. I have to say that's not the kind of language I would use. I actually even looking at it there now, I don't know what that means. I don't

Q. Well, I think what it probably means, if things were being explained to you, or if things were explained to you, that they were caveats being entered into in respect of the financial capability in respect of the two that you just mentioned there.

A. I certainly yes, I certainly would have raised with them the desirability of whoever was going to get the rights to have exclusive negotiations for a licence. Politically, at that stage, I would have been conscious that we were coming near a winner, and my concern at that stage was that whoever we were going to put forward for the exclusive

negotiating rights, that their application would stand the test.

In other words, it would have been a disaster for me politically if somebody was allowed in to the inner sanctum to negotiate the licence and then that they hadn't the capability to do it, or that they hadn't the capability to roll out the network, give us the nationwide coverage, which was obviously a concern, particularly in rural areas where they didn't have a service, and obviously to reduce the cost of handsets. I recall at that stage handsets were you could pay up to \$1,000 for a piece of hardware. And also to reduce tariff charges.

So in that context, I would have said to them, you know, "Now you are coming to a conclusion, you know, make sure it works".

Q. Yes, but are you saying that you would have had a discussion that the people they were considering, themselves, would have had a financial capability? In other words, outside of this process?

A. No, what I'm saying is in the overall context, whenever you give us a winner, make sure that they have the ability to deliver. Simple as that.

Q. Well, you see, the next expression that goes along, and it's kind of reflected in how the reports evolved, is this concept of bankability. And that's being attributed to you here, you see, Mr. Lowry.

And I'll just explain to you: This project, having the

second GSM licence, was bankable to the extent that the project itself, once you had the licence, would be funded. That's a different concept to the matter, because anyone who got the licence could fall into that category, obviously.

A. Yes.

Q. The question of capability was something that one had to demonstrate beforehand; it wasn't dependent, as far as you understood it, of getting the licence?

A. I would have left all that to the Project Team.

Q. I just want your understanding, because we have been through this with members of the Project Team. Even with foresight, and the benefit of hindsight has proved that getting the licence was an important thing in terms of it was going to work, there was always going to be a perceived, or at the time it was perceived there would be success in relation to anyone who got the licence; isn't that right? They were all after it.

A. Again, to assist you, the only time that I got involved in relation to anything to do with it was when we had a winner. Nobody ever discussed bankability or the nitty-gritty or the detail with me in advance of that decision.

Q. I just want to tease it out with you, because not just your position as the then Minister, but you were a businessman also that to enter this competition, what the Government required was that you establish your

financial capability and your technical capability. They were the they were two essential things to do; isn't that right? That's what the Government required, if we go back to the decision?

A. I'd have to repeat that all of the technical detail, all of the examination and evaluation in relation to one's application and their ability to fund it and effectively service what they were saying they were going to do, that was all a matter for the Project Team. I had no involvement in it at all. The only time that I had an involvement when I say "an involvement", was I got a response for instance, I said to John Loughrey the day that he told me that they had a winner, and it was only at that stage that I started worrying: Now we have a winner; we now have to negotiate the terms of the licence.

And it was at that stage I would have said to John Loughrey, you know, "Make sure that this crowd can deliver". Because it would have been, as I said, political disaster for me if they had belied up or failed to live up to the promises that were made in relation to their application.

I suppose, now, in hindsight, it is fair to say, whatever is written and whatever has been said and whatever misunderstanding has arisen over that ten-year period, the fact and the reality is it was a good choice; they did a splendid job; it was a massive success. So from the point of view of a policy decision, it certainly has worked.

Q. Well, if I could just go back and take it stage by stage with you, and I'll use your terminology rather than the technical terminology of the tender document.

To enter the competition, you had to disclose to whoever was carrying out the evaluation that you had the technical capacity to deliver on what you were saying you were going to deliver, isn't that right, and that you had the financial wherewithal to deliver it as well. That's what you needed to go that's what you had to show when you went into the competition; isn't that right?

A. Yes.

Q. For the very reason that you stated there: The Government couldn't find themselves, at the end of a situation, awarding a negotiating right to somebody to find they had neither, or they didn't have one, or they were lacking in some way in one or the other, because that would have defeated the whole purpose of having had the competition at all; isn't that right? Would you agree?

A. I have never got into that aspect of it

Q. Just listen to me: Do you agree or disagree with that?

A. In relation to?

Q. That to enter the competition, what the Government required you to do was to do this: Show us what you say you can do technically, and show us that you can deliver the financial resources or wherewithal to do that. That's what you were required to do?

A. And that task to

Q. First of all, would you agree with me that was what was required?

A. Yes, and the task of determination and the task of making a decision in relation to that capability and what you are after outlining rested solely and totally with the Project Team. And obviously the Project Team, with the assistance of Andersens, came to the conclusion that it could be done by Esat Digifone.

Q. All right. Can I just go back and take it again slowly. I appreciate your answer, and I note it. But I now want to take it step by step.

We agree that what you were required to do in the competition was show what you could do technically and show that you could do this financially. That was essential; isn't that right?

A. If it was essential, I presume

Q. Do you agree or disagree, Mr. Lowry?

A. It's not for me to

Q. You were the Minister conducting this competition.

A. I was the Minister, and we took a decision at Government level to entrust the task of examining exactly what you are asking me about to the civil servants, and they did that. And I'm sure you put the same question to the civil servants, and they have given their answer. I can't speak for them.

Q. I'm not asking you to. I'm asking you questions, Mr. Lowry. Do you understand?

A. I do.

Q. I'll take it slowly, and I will take it slowly.

Once you did this in the competition and you arrive at a stage now, I think you agreed with me earlier that once you had got the licence, that it was going to be a bankable proposition; once you had the licence, the business that business was a bankable business. You'd agree with that?

A. Yes.

Q. But that wasn't the consideration that anybody had to take into account in awarding the exclusive negotiating rights, because anyone who got the licence might have been able to go off and raise finances based on that, on that bankable proposition or project. Something else was required, wasn't it, to get the exclusive negotiating rights, that you had to know not just your openers, your full deck of cards in relation to your technical capability and your financial ability to deliver on that. Isn't that what the competition was all about?

A. I presume that the Project Team took all that into consideration. I don't know what

Q. Do you agree that that's what the Government wanted; that's what the Government policy was; and you, as Minister, having the lead in relation to that you know, let's get down to just ordinary language about this: That's what was required?

A. The ordinary language by the Government and myself was that we wanted to introduce a second operator into what was a

monopoly situation. We decided that there would be no political involvement. We set up the Project Team, which was a combination of the Department of Finance and my Department, at that time, Transport, Energy and Communications, all obviously experienced, competent and reliable public officials. I don't know how they went about their task or what was the minute detail of what they were doing or what they were taking into account or what they were not taking into account. All we asked them to do was come back to us with a recommendation. They came back with the recommendation, and we sanctioned that recommendation as soon as we got it.

So, I can't comment in relation to what they I don't know, to be honest with you; I wasn't involved in the detail of it.

Q. Well, you see, the reason I am asking you these questions here, Mr. Lowry, is that there is a note made by Margaret O'Keefe of a statement made by the Chairman, who did have a discussion with you, you now accept?

A. I accept, but I don't know when.

Q. You don't know when, but you accept he had a discussion with you.

A. Yes.

Q. And he is informing the Project Team, who have not arrived at a decision at this stage, he is informing the Project Team that the Minister doesn't want the report to undermine itself. "Either a project is bankable." The project being

the GSM licence itself. That is self-evident to everybody, that the project is bankable. But I must suggest to you Mr. Lowry that if that note is an accurate account of what you said to Martin Brennan, that it is political interference in the just listen to the question, please political interference in the deliberations of the PTGSM.

A. Absolutely, I totally and utterly refute that suggestion. I never even contemplated political interference. None of my colleagues in Government or outside of Government ever asked me to, how would I put it, to show favouritism to one or to hinder another. It never arose.

Q. And also might I suggest to you, Mr. Lowry, that again, if that note is an accurate account of and it's accepted it's an accurate account of what was said at this meeting and if it's an accurate account of what Martin Brennan was informing the PTGSM, that not only did you know the names of the top two, but you knew the order of the top two at that stage.

A. I am absolutely satisfied that I knew the names of the top two. I never knew the order.

Q. Would you accept that this note and the people have given evidence of attending this meeting and what was said at the meeting is clear evidence that this process was not, by this stage at least, not a sealed process any more?

A. What do you

Q. In that you were being kept informed of certain aspects of

it, and if this note is correct and I know you disagree with it that you were making suggestions or contributions which were in the exclusive domain of the PTGSM at that stage?

A. I certainly did not do that. I am absolutely satisfied that I did not do that, and I find it difficult to see how it could be misconstrued in that way.

Q. Where do you say it's been misconstrued, Mr. Lowry?

A. Because it was never my intention, never my intention at any stage first of all, I didn't I don't know what the comments are; I can only speak for what I said myself at any particular stage, and I can't be responsible for comments that may be attributed to me, accurately or otherwise. But what I can clearly state is that at no stage in any discussion did I ever show preference for any candidate above another. And certainly in relation to what I am confirming what Martin Brennan told me, that there were two left in the competition, that there was still work to be done, and that when they had the result, they would be back to me.

Q. Now

MR. FANNING: Sorry, Chairman, before Mr. Coughlan goes any further, I just want to say that for the record, I do object to him putting the proposition to Mr. Lowry that Ms. O'Keeffe's note that is currently up on the screen represents evidence of a breach of the sealed process. In the first instance, I think it's a matter for you,

Chairman, to adjudicate on whether there is a breach of any sealed process.

But secondly, I don't think that document speaks for itself and constitutes evidence in the manner that Mr. Coughlan is perhaps unintentionally suggest to go Mr. Lowry, and I don't think he should be required to answer a question as to whether that document is indicative of a breach of a sealed process. I don't think that's a matter for him to comment on at all.

CHAIRMAN: It's proper, Mr. Fanning, that Mr. Coughlan, as Tribunal counsel, appear, that he put matters that appear reasonably to arise from Ms. O'Keeffe's note. You will then, in due course, have an opportunity to examine the witness on it, and I will, in due course, decide as to what conclusions I come to.

Proceed.

MR. COUGHLAN: I should just it would be a fair point for My Friend to take if I was just relying on the note. I am also relying on all the evidence that was given about this note and what happened at these various meetings, all that body of evidence is there.

Q. Again, perhaps I should clarify. When I put something like that to you, I am not making a case. I am affording you an opportunity of dealing with it there and then.

A. I appreciate that.

Q. I just want to look for a document sorry, yes, I think I have found it. It's just on this whole question because

of the intervention of Commissioner van Miert, matters had been put back by a month, I think?

A. Yes.

Q. All dates on the critical path had been put back by a month. So we were now heading and of course if one can bring it in quicker, all the better; but I think the end of November would have been the new date that the Government had committed themselves in making an announcement in relation to matters.

I appreciate that the original date was the end of October, and I just wanted to ask you about a note, because this was one that Mr. Loughrey couldn't throw any light on; he doesn't know how it could possibly have come about. It's at Divider 43/135. This is a note in the Department of Finance I'll get it up for you now.

You may have seen this before. It's to the Minister for Finance from Jimmy McMeel, an official in the Department. And it's the subject "Competition for the award of the second mobile phone licence.

"David Doyle mentioned to you last week that the result of this was imminent." Mr. Doyle, of course, was a significant official in the Department of Finance.

"MTEC", which would be a reference to you rather than DTEC, I suppose, "had intended to bring the matter to Government today but will not now do so. The reason is that the Project Team (of which I am a member) has not finalised its work with respect to the consultant's report."

CHAIRMAN: Just the date of that, for the record?

MR. COUGHLAN: The date of that is the the date of this note is the 24th October.

Q. But it seems to be indicating that a week previously it was emerging, something the result was imminent. But there was a suggestion there that this matter, that you intended, according to this note anyway, to bring the matter to Government on that day, which was the 24th October, which was before, of course, the final notification at that time.

A. I would say that obviously this is discussions that had taken place between probably John Loughrey I never had any discussions or

Q. No, I can perhaps assist you there. Mr. Loughrey knows nothing about this, and he said he couldn't have had any input of this nature, because as far as he was concerned, the Project Team had not delivered a final recommendation.

Mr. McMeel was a member of the Project Team. He was from the Department of Finance; he was on the Project Team. And he seems to be indicating that from somewhere, because I presume if the Minister for Finance has been informed about something, that the civil servant must have some basis for the belief of the information that he is making available to his Minister, "that you had intended to bring the matter to Government today but will not now do so. The reason is that the Project Team (of which I am a member) has not finalised its work with respect to the consultant's report."

Do you have any recollection of talking to any civil servant other than Mr. John Loughrey?

A. Absolutely not. Whatever arrangements for the transition from a decision to a Government decision, in other words, a decision from the Project Team conveyed to my Department, what have you, that would have been in the remit of John Loughrey and his officials, and I have no recollection whatever of I certainly had no discussions. I didn't even know Jimmy McMeel was a member of the Project Team.

Q. I suppose I should say that Mr. Loughrey's evidence in relation to this whole process, that as far as he was concerned, it was sealed, and "sealed" meant sealed within the PTGSM, apart from perhaps the critical path being in some way indicated that we're on track, or in general terms like that, but that the notes and evidence we have had of statements attributed to you and information being given to you, and if you made a comment in response, that as far as he was concerned, that that was not keeping the project a sealed project, if you understand me. Do you have any view yourself about it?

A. All I can tell you is that this famous seal certainly wasn't broken by me, and I'm not so sure what impact anything that has been said in relation to this has on the seal; that's what you are putting forward. All I can tell you is that I dealt with the information as I was getting it, and the information that I had was when it came down to two, I was told it was down to two. I was told there was

further work to be done with it. And then I got a result, and the result was given to me by the Secretary General of the Department. And from there on, effectively, he took over in terms of the organisation of the communication of that decision to the Department of Finance, with my assistance as Minister, and then to the Party leaders.

Other than that, I had no knowledge of it.

Q. Well, you see, if you look at the evolution of the draft reports, that concept of bankability is imported into the report to deal with a perceived frailty on the part of the person or the consortium that was ranked Number 1 at the time. That's how the report evolved. I know you can look at the rankings the whole time, but the narrative of the report evolved also; it was amended. And that concept of bankability was one which was imported into the report to explain how you'd cope with the frailty in respect of Esat Digifone?

A. I am afraid, Mr. Coughlan, I can't assist you in relation to that. I don't understand the concept of the bankability, and it is for others to answer how they dealt with that within the Project Team. All I did was waited for the result. When I got the result, I did what was expected of me as a Minister.

Q. Right.

Now, there was a meeting of the Project Team which took place I think on the I'll get the date now

CHAIRMAN: I think, Mr. Lowry, you mentioned you don't

understand the concept of the bankability. You did refer to it a couple of times in the property evidence about Cheadle. Now, I am not changing so is it something of a concept that you might have used in a general sense.

A. Bankability, obviously I understand the meaning of bankability. But it's to put it in the context of how the Project Team saw it. I understood it, from my perspective as Minister, I understood it clearly to mean what Mr. Coughlan referred to was that when the licence would be granted, irrespective of irrespective of what the background of the winning applicant and irrespective of who the winning applicant was, that it was, at that stage, bankable. And that's what the Secretary General in the Department consistently said to me when I queried the ability of whoever was going to win it to deliver. In other words, what commitment and guarantee would we have? And I recall John Loughrey saying to me on a number of occasions that there'd be no difficulty in relation to investors; that you'd have, I think the phraseology he used the phrase he used to use was the blue chip industry would be tripping over themselves at that stage to offer to get in on the act.

Q. MR. COUGHLAN: That's interesting, and perhaps you could just elaborate. That was once you had negotiating rights to the licence, once you were going to get the project?

A. Yes, and I had no involvement up to you know, in terms of making a determination on one's bankability before a

decision was announced, I certainly had no input into that.

Q. When do you think you may have had that type of discussion with Mr. Loughrey?

A. When the decision was made that

Q. In October of 1995?

A. I would say, yeah, probably at the time that when was the decision made the end of October.

Q. The end of October.

A. Yeah.

Q. You think you had that type of discussion with Mr. Loughrey?

A. Yes, I did.

Q. And that you yourself, without knowing any specifics, that you yourself were politically concerned?

A. Yes. When I say "politically concerned"

Q. Sorry, concerned that if this went belly-up, it was not going to be good for you politically; isn't that that would be a fair way of putting it, that was your concern?

A. Irrespective of who won it, my first consideration was that the winner would deliver on the commitments that they had made; and more to the point, would meet the objectives as set down by us as a Government and as a Minister.

Q. And you think it was around that time and I suppose anyone involved in any big decision will perhaps sound somebody out or look for some sort of reassurance, but anyway, you had some sort of discussion with Mr. Loughrey, and he assured you about bankability in relation to the

project at that stage?

A. Yes, in relation to the project, yes.

Q. And there was a discussion about bankability between yourself and himself at that stage?

A. I wouldn't say it was a discussion, but I was asking you know, I was saying to Mr. Loughrey, "Right, I presume when we grant this licence" this was when I was if there is a note of it in the Department, I would think it would probably coincide with I asking Mr. Loughrey to take direct responsibility for the negotiation of the licence. And what I was saying to Mr. Loughrey is, "Look, there can be no deviation from the roll-out, the national network".

In other words, if somebody, whoever is after winning the project, at that stage it was Esat Digifone, that there can be no excuses in relation to somebody coming back to us at a later stage and saying "Well, we can't cover Ballydehob, because we don't have the resources to roll out the network there."

And I was effectively putting down markers for John Loughrey for his negotiation with Esat Digifone at that stage, and it was in that context that I was saying, "Look, just" because I was always conscious of the fact that when they got the right to negotiate, that didn't mean they were going to get a licence. In my head, my view was that that's when the work started to tie down the detail, and I was always conscious of the fact that if John Loughrey came back to me and said "Look", after the type of analysis and

negotiation that was involved, if he came back to me and said "I don't think they have the capability", we wouldn't have been able to sign the licence.

So, I have to say, in layman's terms, I made very little distinction on the course that you are the theory that you are putting forward. I wasn't involved in that, but I certainly had a keen interest to make sure that it was tied down after the negotiation. That's my

Q. I see. Did you ever have any similar conversation with Mr. Loughrey at an earlier stage?

A. No.

Q. Or with any other official?

A. No.

Q. Now, I think there was a meeting of the Project Team on the 23rd October of 1995. I'm not going to go into the details. But this is the meeting where there was a lot of discussion taking place. We have heard evidence from Mr. McMahon and Mr. Brennan and Mr. one other official whose name escapes me at the moment that I think it was Mr. McQuaid, in fact that Mr. McMahon wanted more time, the regulatory side wanted more time, and that a number of them, the Principal Officers, went to see John Loughrey, and he left with the understanding that he'd have a further week or there or thereabouts. Do you have any recollection of anything like that happening?

A. That was certainly never brought to my attention. Again, that came out in evidence to the Tribunal. I was never

asked or consulted in relation to that request, if that request was made.

Q. Well, I don't think there is any dispute that the request was made. I think it's accepted that the request was made.

A. I don't think there is any suggestion that the request was made of me as Minister.

Q. Well, I take it that if Mr. Loughrey had indicated if the Secretary indicated to senior officials that they had time, there'd have to be some huge overriding reason why the Minister wouldn't say what the Secretary had effectively decided stood.

A. John Loughrey didn't come to me with such a request.

Q. Now, we now know that things moved very fast then?

A. Yes.

Q. So do you remember having any discussion with Mr. Loughrey or with Mr. Brennan whereby what appeared to have been a period of time which was allowed was now not being allowed, and things had to move?

A. No.

Q. Now, I think you had or you received information from Mr. Loughrey and Mr. Brennan then regarding a recommendation; isn't that right?

A. Yes.

Q. And you received a formal note, then. They discussed it with you, and then Mr. Loughrey prepared a formal note; is that right?

A. I think actually how that happened, he brought the note

with him, as he told me.

Q. I see. But there was a formal note and a discussion?

A. Yes.

Q. And it was recommended to you that you seek to gain access to the meeting of the political the leaders of political parties, who were meeting to discuss other matters at that stage as well; isn't that right?

A. Correct.

Q. And I think everyone would accept that once there was the agreement of the three leaders, the matter will go through Government fairly readily; that that wasn't an issue. The issue was once the three leaders agreed in that coalition Government, that was fine?

A. Yes.

Q. And I'll tell you now, because I am going to come up now to Mr. Bruton's note and I think I'd like you to be fresh when you come to deal with it because I think you just looked at your watch and you are feeling a little bit tired yourself. Would you prefer if we just left that over and started in the morning in relation to that?

A. Whatever. I am at your disposal. Whatever you think. If you are entering into a new phase of it

CHAIRMAN: It's a long enough shift for you, Mr. Lowry. We have made reasonably good progress. I think it's probably preferable that we go sticking to the 10.30 tomorrow.

Thank you very much.

THE TRIBUNAL ADJOURNED UNTIL THE 13TH DECEMBER, 2005.

