

THE TRIBUNAL RESUMED ON THE 20TH OF NOVEMBER, 2009,

AS FOLLOWS:

MS. O'BRIEN: Mr. Massimo Prelz, please.

MASSIMO PRELZ, PREVIOUSLY SWORN, CONTINUED TO BE EXAMINED

BY MS. O'BRIEN AS FOLLOWS:

CHAIRMAN: Thank you very much for coming back to conclude

your testimony, Mr. Prelz, and I understand that you may

have a 5.30 flight in mind, and I will ensure and make such

adjustments to the lunch break as might turn out to be

necessary, that you don't have so cliff-hang on

A. I appreciate that very much. Thank you.

MS. O'BRIEN: Morning, Mr. Prelz. Thank you very much for

returning. In fact, Mr. Prelz, we covered very

considerable material the last time that you attended to

give evidence on the 20th of July, and I don't anticipate

that my examination of you this morning will be lengthy.

Now, just moving on from where we were. We know that over

the last few days before the bid was submitted, there was a

degree of to-ing and fro-ing between you and Mr.

O'Donoghue?

A. Correct.

Q. Now, if you don't mind, I am going to come back to that,

but I just want to skip forward to something that followed

in September of 1995. If I could ask you to open the

document behind the Divider B.

A. I have not brought my

Q. We have a book for you.

A. Thank you very much.

Q. It's just behind Divider B8. And just to explain to you that this was a document that the Tribunal came across on the files that were produced by Advent at the end of July of 2004, and the Tribunal hadn't seen a copy of that fax at any time before that. And again, just to put it into context for you: You will recall that the competition deadline was on the 4th of August, the beginning of August of 1995, that the application was submitted at that date, and, after that, on the basis of the evidence we have heard, the focus of the Esat Digifone team, if you like, turned towards the oral presentations, and the Esat Digifone oral presentation proceeded on Tuesday the 12th of September. You recall that, Mr. Prelz, do you?

A. Sorry, this letter is the date

Q. I am going to take you through it in a minute; I just wanted to give you the background first. You remember there was an oral presentation in the middle of September?

A. Yes.

Q. And there was quite intensive preparation on the part of the Esat Digifone team

A. Sure.

Q. for that presentation. I am going to open it to you first. And then I think I can assist you on dating it from what's said in the contents of the fax and it's if we could just put the heading up first. It's a fax to you from Denis O'Brien, and it says:

"We have reviewed in detail today the shareholding structure of Esat Digifone Limited, in conjunction with the senior PA consultant who has experience of assessing bids.

"As you will see, AI" that's Advent "has confirmed to the Department of Communications that it has offered i£½30,000,000 to fund Communicorp's equity participation. As background information, I enclose a copy of your letter of the 10th of July, 1995."

That's the letter that we spoke about at length the last time.

A. Yes.

Q. And it goes on:

"PA are of the view that we will be asked to show terms relating to this i£½30 million funding during the course of our presentation to the Department and Andersen next Tuesday.

"In this regard, PA suggest that AI should show the investment terms relating to the i£½30 million funding.

"I would appreciate the opportunity of talking to you over the weekend to discuss the foregoing."

And he gives you his telephone numbers. And it's signed Denis O'Brien.

Now, looking at that, you will see, in the third paragraph, Mr. O'Brien referred to the presentation that was due "next Tuesday," that was Tuesday the 12th of September, and he suggested that he wanted to have an opportunity to talk to you over the weekend. So it looks as if the fax was

probably, although undated, was probably sent to you sometime around the end of the first week of September, maybe the 6th, I think, was a Wednesday, so maybe the 6th or the 7th or the 8th of September. You see that there?

A. Yeah.

Q. Now, the Tribunal can't see on as I said, there is no copy of this fax on the Communicorp documents that were given to the Tribunal, nor on Mr. O'Brien's personal documents which the Tribunal actually received after he gave evidence. But I am just wondering, do you recall responding to this fax?

A. No, I don't.

Q. Do you recall

A. Frankly, this is ten years ago, I don't recall

Q. Do you recall any conversation with Mr. O'Brien along the terms of him asking you to produce some document that he could show at the presentation to satisfy what he anticipated were inquiries that would be made by the Department and by Andersens?

A. I don't recall. I mean, in that period of time, after we committed to underwrite the $\text{C\$}1\frac{1}{2}$ 30 million requested by Communicorp for the licence, we had a number of discussions about how to strengthen the bid, because between the written presentation, the submission of the bid, and the oral presentation, Denis and I continued, while we were fighting each other's corner, I mean for each corner, we

continued to look at ways to strengthen our bid, and, in that sense, we came up with we discussed a number of issues about who should be the investors, and how to structure the shareholdings of Esat Digifone. There were, as you recall, the regional sorry, not the regional the last version before we submit the bid was 20 percent would be in the hands of financial institution.

Q. That's including the Advent 5 percent?

A. Including the Advent 5 percent, 4 or 5 percent. And in that period, we discussed whether there were other stronger possibility to change the structure, the shareholding structure, so it would become a stronger bid. Because at the end of the day, we were investing 35 percent in Esat and our main goal was for Esat to win the bid more than the 5 percent. So I don't recall details about these things, this fax, but I think, by that time, we had already moved to, you know, forego the 5 percent and invest directly in Esat.

Q. I don't actually think so, Mr. Prelz, because, in fact, you will see there was very lengthy negotiation by way of correspondence and very serious dispute between Baker McKenzie and William Fry on behalf of Communicorp and Baker McKenzie on behalf of Advent in relation to that dispute and there was no conclusion of that dispute until the following December. And I think, in fact, maybe you are confused in time, because I think, in fact, you didn't receive a formal letter from Mr. O'Brien indicating that,

as far as he was concerned, you had forfeited your entitlement to 5 percent under the agreement of the 12th of July until the 3rd of October. So you may just be slightly confused about that. This is much earlier on?

A. I mean, but the discussion about that forfeiting the 5 percent came around when speaking to Denis, and that was before October, it was

Q. It was before October. But as I said

A. It was definitely during the summer, probably before September.

Q. It was before September. I think there is a note there that you came to Dublin

A. Sorry, can I

Q. Of course.

A. Before October, before September, Denis brought in the idea of bringing in a local partner and we discussed about having Dermot Desmond investing in the company in lieu of the financial investors, which that would have given the bid a much more solid base, being an Irish, recognised Irish entrepreneur as opposed to a financial institution.

Q. When did you think those discussions were, Mr. Prelz?

A. They were over the summer. I don't remember when, but it was before the oral presentation.

Q. Right. You see, in this fax, what he was asking you for was to give him something that he could produce, some document he could produce at the presentation. You see that? He wanted been advised by PA Consulting. You

knew that PA had been retained?

A. Yeah.

Q. And they had said that it was likely that the departmental team and Andersens would look for something in the way of documentation, and he was asking you in that fax to discuss with you the possibility of him being in a position to show terms. And it's that conversation and discussion that I am just interested in at the moment, because we know from the transcript of the presentation, and in fact you have quoted from some of it in your Memorandum of Intended Evidence, that whilst Mr. O'Brien was in a position to say a lot about the Advent funding, he didn't actually have any document with him, or, if he did, he didn't produce it, and that's what I am trying to get at.

A. I think that the reason I mean, I think that the reason there was this letter trying to clarify the structure is exactly because between the July letter and agreement dated July 12th, I believe

Q. Yes.

A. and September/October, there was a shift in a shift in the structure of the shareholding.

Q. But, it's not, if I can just bring you back

A. But I don't have I cannot recall

Q. You can't recall it?

A. exactly how the discussion proceeded, frankly.

Q. You see, in the presentation, I think you know that because have you seen a full transcript of the

presentation?

A. No, I haven't.

Q. I see. Since you quote quite a lot of it in your

memorandum, so

A. I have seen the extract.

Q. You quote the extract, so I thought maybe you had seen all of it?

A. No, not all.

Q. Anyway, in the presentation - I think it could be in the extract you had quoted - Mr. O'Brien said you would go up to 47 percent shareholding and that there'd be a voting arrangement between the Irish shareholders and Advent and that there would be a 3:1 voting arrangement

A. That is correct.

Q. between the domestic shares and the Advent shares, and I am wondering how did that arise, Mr. Prelz?

A. That's probably what he is referring here. There was probably a document, but I don't have it.

Q. Because you know the preliminary term sheet that we referred to last time

A. Yes.

Q. you were saying it was the 8th of June and you were saying that that was a work in progress. In that, I think it was quite clear that your shareholding was to go up to 50 percent, and I don't think there is anything in that preliminary term sheet about a 3:1 voting arrangement, do you remember that?

A. I don't remember that.

Q. After the the presentation was on the 12th of September, and, as you said, you were involved quite closely in discussions with Mr. O'Brien over this period. Do you recall what feedback you got on how the presentation went?

A. I remember I mean, the mood was fairly positive all along.

Q. Yes.

A. Both after the written submission and after the presentation. But I don't recall the details of what happened on the 12th of September versus the earlier months later.

Q. Were you over and back to Dublin a fair bit around this time?

A. Yes.

Q. I take it that you would have expected Mr. O'Brien would have given you feedback on this?

A. Yes. And as I said, the feedback was generally positive.

The mood was we never felt that we were outdone by the other bids in terms of presentation, in term of stance, in term of technical. The weakest point, as mentioned in all the documents, was the fact that other people were other groups were had significantly more resources than us.

On the other side, we had, in a way, more of a local content, it was an Irish company bidding for an Irish licence, which we thought was the strength of our bid.

Q. It was an Irish company because of the Communicorp

involvement, the 40 percent?

A. Well, yeah, but that's why with Denis, as I said, we discussed about how to reinforce the Irish side over the summer before we submitted the before the presentation, the oral presentation, how to strengthen that.

Q. But there was nothing said in the oral presentation that suggested there had been any change or any strengthening from when the bid was submitted?

A. Well, I can't recall that. When we changed when we decided to have to introduce a third shareholder in the bid, which was an Irish institution.

Q. You mean Mr. Desmond?

A. Yeah.

Q. Yes. So that was

A. I remember that time in between I remember it was before it was during the summer, but I don't remember when it was exactly, before the interviews or after the interviews.

Q. Were you aware, Mr. Prelz, of the provisions of the RFP document that had been issued by the Department?

A. Which provisions?

Q. The RFP, the request for tenders document; the formal request that had been published by the Department on the 2nd of March that marked the launch of the competition?

A. Yes. I mean, I didn't read it in details, but I was aware of the terms.

Q. Yes. Did you know that, under the terms of that, that all

applicants were required to furnish details of the ownership of the proposed licensee?

A. Yes. And I think that we complied by we had, at a certain moment, our lawyers sending a schedule of who our limited partners were, to comply with that, even if the ownership was I mean, as a limited partnership, you know, it's questionable whether you can consider that ownership.

Q. I think maybe you are confused there slightly or perhaps I am confused. Are you talking about Advent being a limited partnership?

A. Advent, yes.

Q. No, no, I am talking about the actual rules of the competition, the RFP document. Because under the rules of the competition, and we have heard all of the evidence on this, applicants were required, it was a mandatory requirement on them to furnish details of the ownership structure of the proposed licensee company so that the Department team and Andersens assisting them would be able to evaluate that as part of the comparative competition?

A. Yeah.

Q. It's just that from what the evidence you are giving to me, you seem to be of the mind that it was at all times open to Esat Digifone to change that ownership structure?

A. No. There was sorry, there was the bid was done under the Communicorp and Telenor name plus four institutions.

Q. Yes.

A. In the meantime, we also discussed whether those, in the end, were the was the strongest bid, but the bid was done in those names.

Q. But from the evidence you are giving, you seem to have been under the impression that this was open to you to change the bid by strengthening it. I mean, was that your understanding at the time, because certainly that seems to be what you're saying in evidence?

A. I don't remember what, at the time, we were looking at I don't remember what I knew about the bid, the RFP at the time. But I know that the bid was I mean, we were underwriting the part for Communicorp and plus the 5 percent. But there were continued discussions.

Q. Now, can I just take you on a little further at this point to late September, the 26th of September. That was about ten days, I think, after the oral presentation. And a letter that Mr. O'Brien sent you in London; obviously you weren't here in Dublin at that time. It's at Divider A 27.

A. Sorry?

Q. A 27. It's further back in the book. The documents are divided into section A and section B. So if you go back to A and then to sub-divider 27, you will find it. And it's actually on the overhead projector, the screen beside you, Mr. Prelz, if you just want to check that you have the right document. And it's a letter to you from Mr. O'Brien dated 26th of September, 1995. And, again, I just want to

put this letter in context for you.

Now, the presentation proceeded on the 12th of September?

A. Yes.

Q. This is now, I think, probably, roughly, a fortnight after that, two weeks after that?

A. Mm-hmm.

Q. Now, we have heard all of the evidence on it. And in that time, Mr. O'Brien had agreed with Mr. Desmond that he would come in and take a 25 percent shareholding; you remember that?

A. If Denis had agreed for him to take a 25 percent shareholding, he had not communicated that to me.

Q. I see. Well, I am just putting it in context for you at the moment.

A. The issue of the discussion regarding, I mean Denis informed me about his idea of bringing Desmond before September, but there was no agreement and there was no final decision made.

Q. No.

A. And, after that, we he talked to me, and this is probably what he refers to me about, but 25 percent, I don't know where it comes from because Desmond ended up with 20 percent of Digifone, which was, you know, balancing 40:40:20, and it was never a matter of him coming to Esat, and it was never a matter of him, as far as I knew maybe Denis was talking, the same way Denis was talking to me without telling some of his people

Q. I think he must have been, Mr. Prelz, because on the 29th of September, Mr. O'Brien and Communicorp entered into very formal careful agreements with Mr. Desmond under which Mr. Desmond was entitled to 25 percent. In fact, he had been looking for 30 percent, and Mr. O'Brien had managed to whittle him down to 25 percent, and that's what was ultimately agreed on the 29th of September, and those 29th of September, and those agreements had, in fact, been in the pipeline from the 18th of December September which was the Monday after the oral presentations. And that was the agreement that was ultimately concluded, the 25 percent.

A. 25 percent of what?

Q. 25 percent of Esat Digifone.

A. Sorry, maybe I am mistaken. I thought it was 40:40:20, at the end of the day.

Q. It was, at the end of the day, because Esat Digifone was told by the Department of Transport, Energy and Communications, on the 7th of May, that it had to go back to 40:40:20.

A. Okay.

Q. And Telenor and Communicorp brought back, between them, the additional 5 percent from Mr. Desmond. Maybe you didn't know that, did you?

A. I didn't remember. You are right. Now, that you mention it, I remember that we brought back two-and-a-half percent each. That's correct.

Q. That's right.

A. That's right. But I thought it was 40:40:20 from the beginning. That was a misunderstanding, sorry.

Q. I just wanted to put this letter into context for you. So it's the 26th of September, 1995. And he says:

"Dear Massimo,

"I attach a letter for Telenor which is self-explanatory.

"Regardless of Telenor's position, it is now clear that we will not be awarded the GSM licence with the existing financing arrangement. We need something much stronger to have any chance of success. I am working on another avenue which could provide us with the answer and, at the same time, significantly strengthen our bid in other respects.

I will explain in further detail when we meet."

You must have been very surprised when you received that letter, were you, Mr. Prelz?

A. No, I wasn't, because, as I said, we well, with I was very surprised of the fact that he said we didn't, you know, we will not get the licence, because, as I said, the tone across the summer and September was fairly positive.

But I knew what he was referring to because we had already talked about the possibility of having IIU in the frame.

Q. That's Mr. Desmond in the frame?

A. Yeah.

Q. But, you see, he is not talking there about Mr. Desmond; he is talking about the financing arrangements. Surely that was quite a shock to you, that there was any trouble

surrounding the financing arrangements, because you had given an irrevocable binding

A. Yes.

Q. commitment and obligation, isn't that how you describe it?

A. Yes.

Q. So how could there possibly have been a problem with the financing arrangements?

A. I don't know.

Q. Now, you did actually have a telephone conversation with him at this time, and I think you did meet him, isn't that right, on the 2nd of October, which would have been the following Monday. And if you just go over to the next flag, it's Divider A 28, you will see that there is another letter to you or another fax to you, from Mr. O'Brien.

He says:

"Dear Massimo,

"As I explained to you at our meeting yesterday and telephone conversation last week, your letter to Telenor and the Irish Authorities did not satisfy them.

"You know of my commitment to secure the 2nd GSM licence and the crucial importance of meeting the condition in relation to our financial standing. This is why it was necessary to make alternative arrangements."

And I presume the "alternative arrangements" he is referring to there are Mr. Desmond, isn't that right?

A. That's correct.

Q. Now, can you tell me what it is that he told you or explained to you in relation to your letter not satisfying the Irish authorities?

A. What he told me in 1995, I don't remember.

Q. It's a very significant matter, Mr. Prelz. Advent was a very significant venture capitalist company. It had furnished a binding irrevocable obligation and commitment that it would fund $\text{€}120$ million and that you are now being told that not only did it not satisfy Telenor, which I think you were aware of, but you were now being told by Mr. O'Brien that it didn't satisfy the Irish authorities?

A. I didn't speak to the Irish authorities. I never had a feedback directly from the Irish authorities which never interviewed Advent. So, I don't know, you know, the basis for that. There was a piece of negotiation I don't know whether there was a real case or whether it was purely a piece of negotiation from Denis to bring in IIU for the 25 percent in terms which might have been more favourable to him than what we were proposing to him. I had no idea of that, but I, you know this is I am sure I received this letter. I don't recall the discussion around it. But I wouldn't, I wouldn't say that this is the I don't have such a letter from the Department, frankly.

Q. As you said, you had no interaction with the Department and they made no inquiries of you, isn't that right?

A. That's correct.

Q. Were you expecting them to make any inquiries of you?

A. Well, I mean, again, if they had any problem with us, with our support letter, they could have, or should have, but, you know, I was not going to rock the boat at that level, at that point, to go to the Department to ask for clarification when we were in the middle of a very delicate

Q. Of course not. Did anybody ever say to you that you might expect that the Department would make contact with you?

A. No, but I would, you know, before saying this letter your financial support is not valid. As a Department, and particularly with all the consultants they had, I would have expected them to talk to the provider of the guarantee.

Q. I understand that. It's just that Mr. O'Brien says in this fax, and we have no reason to think that he was dreaming it up or it was a figment of his imagination, he says he "explained to you at the meeting yesterday and the telephone conversation" why your letter didn't satisfy the Irish authorities. And it's just, I wonder can you recall at all what kind of explanation he gave you?

A. I don't know what explanation he gave me.

Q. Do you remember Mr. Per Simonsen at all?

A. Sorry?

Q. Do you remember Mr. Per Simonsen?

A. No.

Q. Mr. Per Simonsen of Telenor?

A. Sorry?

Q. Mr. Per Simonsen, do you remember Mr. Per Simonsen?

A. No, I don't remember him.

Q. You didn't ever meet him when you were over and back

A. Sorry, I think it's the guy I met afterwards. I mean, I didn't meet the people I met them afterwards

Q. I appreciate that.

A. at the exit, towards the exit

Q. Mr. Per Simonsen was a very senior person in Telenor.

A. Yes, yes, now

Q. You remember him?

A. Yeah.

Q. And he, in fact, spent quite a lot of time in Dublin, particularly, I think, during the period where the bid was being prepared, and I think his title was GSM Coordinator, but do you remember him now, do you?

A. Mm-hmm.

Q. The Tribunal heard evidence, Mr. Prelz, from Mr. Simonsen that in the latter part of September, the last two weeks of September, Mr. O'Brien told him that he had met the Minister in a public house and that the Minister had told him that Mr. Desmond should be involved in the bid. Were you aware of that evidence?

A. No, I was not aware of that because I was not aware of that. As I said you, at the discussion about Desmond came, you know the way Denis talked to me about him was well before that.

Q. Yes, but what I am just saying to you is that that was the

evidence that Mr. Simonsen gave, that that's what Mr. O'Brien said to him. And the Tribunal knows, and both Mr. Lowry, who was the Minister, and Mr. O'Brien have confirmed that they did, in fact, meet in a public house here in Dublin, in Leeson Street, on the 17th of September. And I wonder, if you just bear with me for a moment, did Mr. O'Brien ever say to you that he had met the Minister in a public house or anywhere else around this time?

A. No, he didn't I don't recall that. And I recall, you know, we were very careful on that subject, that very same subject, being a US-based company, about, you know there is a general distrust from the US, despite, you know - I don't think that the level of public morality is much better than ours - but there is a significant distrust towards Europe, and right at the time there was the passage of the Foreign Corrupt Act(sic) in the US, which requested I mean, as a consequence, we received a very strong request from Boston to be very careful on any public involvement, and we were extremely careful on all that kind of information, and, in fact, we made our own request to have to make sure to Denis and to the other people in the company, the financial officer and in the Board, to make sure there was no act that could have engendered any danger for us under the Foreign Corrupt Act(sic) in the US. And so that is something that I would have picked up because it was the, as you say, the flavour of the month in Advent to make sure that we were squeaky clean on any

political involvement. So that is definitely something I would have remembered if there had been any reference to any discussion with Ministers outside the normal course of business.

Q. So Mr. O'Brien didn't say to you the reason that it was clear that you wouldn't win the licence with the Advent letter was because the Minister had told him?

A. No. He said he believed that the line-up of the four institutions, two of which were Advent and one in fact, three out of four being controlled by foreign entities, would, in a way, be a weaker proposal that something were the third central shareholder I mean the balancing shareholder was an Irish institution.

Q. Tell me this; you knew this was very much towards the end of the evaluation process, didn't you?

A. Mm-hmm.

Q. How did you think this information was going to be brought to the attention of the Department?

A. Which one?

Q. That Mr. Desmond was coming in, the much stronger Irish investor?

A. I don't remember how we brought it to the Department.

Q. Did Mr. O'Brien not discuss that with you with all the discussions you were having?

A. How to present it to me?

Q. How you were going to notify the Department, how

A. No, I didn't know. I was not involved with the process of

the bid, as I said, as is shown by the fact that I was not involved with the discussion about the financing with the Department.

Q. I see. Tell me, you say you were saying there about the foreign corruption legislation that was being passed in the United States and how sensitive and concerned you were in Advent about it, and I think you said in your evidence that you also informed Mr. O'Brien about it, isn't that right?

A. Yes.

Q. And did you do that in writing or was that orally?

A. No, no, I don't believe I did it in writing, but I raised the point with him many times to make sure that, you know, he would confirm or discuss, at least discuss with me any potential conflict of interest sorry, conflict or situation which would put us in a difficult position.

Q. Do you remember that, on an earlier occasion, he told you that he'd spoken to the Minister?

A. He had I mean, frankly, I know that he had spoken to a number of Ministers a number of times. Going back to the first time, from the beginning of Esat Telecom when all the rules of the competition, Ireland was the last all sorts of deregulation had to be, of deregulation rules had to be put in place. I don't remember every single time he spoke to the Minister, frankly.

Q. You only became involved in October of 1994, isn't that right? Advent only came on board in October of 1994?

A. Yeah, the first investment, yes.

Q. About it's not even about 12 months before the period we're talking about?

A. But, I mean, we spoke about, with the ministry about the Telecom ministry, about a number of issues, closer-user group

Q. Of course, and make submissions to the Minister?

A. We make a number of submissions, a number of complaints, so, I mean, I didn't keep track of that.

Q. But do you remember him ever telling you that he spoke to the Minister directly, otherwise than in the course of a formal meeting in the Department?

A. No, I don't remember that.

Q. In relation to the possibility of forming a joint venture with other interested parties to bid for the licence, do you remember that?

A. I don't remember that.

Q. Let me just refer you to just this document that we came across, Mr. Prelz. I think Mr. Brady gave it to you this morning, and, again, just to tell you about this. This document was within some personal files of Mr. O'Brien that the Tribunal actually didn't receive until the end of July 2004 after Mr. O'Brien had given his evidence. You see it's a fax from Mr. O'Brien to you and it's about six months earlier, it's dated the 5th April of 1995. And he is giving you an update, he is giving you an update on the efforts that he has been making to form a consortium to make an application for the licence.

A. Yes.

Q. He says:

"Dear Massimo,

"Here is the up-to-date position regarding GSM partners:

"1. Bell South cannot move in the time-frame we want them to as they are bidding on the Belgian licence. There is a long-shot chance that they will come in at some stage.

"2. France Telecom the Minister spoke to me yesterday and suggested I contact France Telecom as they have no partner and I am meeting them tonight in Paris for dinner.

"3. Mannesmann still no reply. Decision with their Chairman.

"4. Airtouch they think operation is too small in Ireland.

"We expect to hear from Barbara Manfrey tomorrow re written proposal. I will be in Prague all day and can be contacted there." And he gives you his phone number. Do you remember that, Mr. Prezl.

A. Yes. I see this fax and I remember the list of yes.

Q. Do you remember him telling you that he had met the Minister, he had spoken to the Minister the previous day and that the Minister had told him suggested that he contact France Telecom, as they had no partner, and that he had decided to meet them that night in Paris for dinner?

A. I can see that he wrote it to me. I don't remember him telling me.

Q. You don't remember him telling you?

A. No, he wrote it to me, so I read it, yes. I don't remember whether it was a conversation about the subject. But I don't know which Minister he talks in here, whether it's the Minister of Telecom here or whether

Q. Well, it's Mr. Lowry, Mr. Prelz.

A. Okay.

Q. They met at a telecommunications conference the previous day.

A. Well... The Minister for Communications must have been informed about the interest in the GSM licence.

Q. Yes.

A. And we went to visit France Telecom, which we found was not the proper partner for us.

Q. Do you remember any other occasion that Mr. O'Brien told you that he met the Minister and that they discussed the competition process or the selection process?

A. No, frankly.

Q. Now, I just want to take you back to skip back to the end of June, the early days of August of 1995 when you had an interaction with Mr. O'Donoghue and also Mr. Knut Haga of Telenor, and if I can just ask you to turn up, firstly, the document at Divider A 13.

A. A?

Q. A 13.

A. 13?

Q. And again, this is really just some it's a background document. It's not addressed to you. It's a fax from

Mr. O'Donoghue to Mr. Haga, but I just

A. Sorry, which number, 13 or 30?

Q. A 13. I just want to put all of this in context for you, Mr. Prelz, in fairness. Mr. Haga gave evidence to the Tribunal, and, in fact, he testified that he had met you at the end of May of 1995 when Mr. O'Brien brought him to London to meet with you. He was the Telenor official who was responsible on the project finance side. Do you remember Mr. Haga?

A. I remember the name.

Q. You may not remember meeting him?

A. Yeah, I don't remember meeting him.

Q. You may not remember meeting him. Now, he had been away on holidays, on his evidence, in the month of July, and when he came back, he had an opportunity to look again at the letter of the 10th of July this is your letter, Advent letter and he wasn't satisfied with it, because, according to his evidence, it was his view that it didn't constitute a commitment, and, as he saw it, it was really a letter of interest. And he telephoned Mr. O'Donoghue and he recorded his concerns regarding it. And Mr. O'Donoghue, on his evidence, then sent this fax to Mr. Haga in order to kind of put his mind at rest, and I'll just open it for you, and just, again, to put the date in context; it was the 31st July of 1995, and that was the Monday before the Friday the 4th of August, when the bid was due to be submitted at midday. And he says, Mr. O'Donoghue said:

"Further to our conversation today, I confirm that Advent International Corporation and Communicorp Group Limited have formerly" I think it should be 'formally' "have entered an agreement whereby Advent have committed up to 1/230 million to the Communicorp Group in the event that Esat Digifone is successful in its bid for the second GSM licence in Ireland. In consideration of Advent making these funds available, Communicorp has agreed that Advent will be entitled to participate in up to 5 percent of the equity capital of Digifone Limited. Denis O'Brien is also a signatory to this agreement.

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

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

All right?

A. Yeah.

Q. And that's the letter that Mr. O'Donoghue sent to Mr. Haga, and, in fairness to Mr. O'Donoghue, when he gave his evidence, it was his evidence that he misunderstood what the position was and he accepted that there was no written agreement in existence in the terms that he had suggested in his fax.

Now, Mr. Haga received that letter, and he wasn't satisfied and he wanted the matter to be verified, that was his

evidence, directly, he wanted it verified directly by Advent, and he sent a fax to Ms. Helen Stroud of Baker McKenzie. And if I can just take you over the page to Divider 14, there is two documents there, and if you could go to the second document first, it's actually the first in time.

A. Mm-hmm.

Q. And it's dated the 1st of August. So this is now the Tuesday before the bid was due to be submitted, and it's to Ms. Helen Stroud of Baker McKenzie.

"Thank you for your letter of July 13th" I think she had sent him some financial information.

"Based on the received information, I would kindly ask you to provide Telenor with some statements from AIC confirming the following:"

If I could just take you directly to 3; the remaining matters really were kind of technical matters, but at 3 he was seeking confirmation "that an agreement between Advent and Communicorp has been signed and that the agreement is related to an equity increase in Communicorp due to an award of a GSM2 licence in Ireland to Digifone."

Then at the end of the letter he says: "The statements should be fax and mailed (address below) to Telenor International, cc Knut Haga," and he gives the fax number.

And he says: "Please note that the information must be available on Thursday 3rd of August and that the statements should be duly signed by you."

A. Yes.

Q. And he cc'ed that letter to Mr. Simonsen - that's the same Mr. Simonsen we referred to earlier on - also to Mr. O'Donoghue, the financial controller in Communicorp, and to you?

A. Yes.

Q. Now, Mr. Haga testified that, in response to that letter, he received a telephone call from Ms. Stroud the following day, which was Wednesday the 2nd of August, and she told him that there was no agreement of the type that he had sought confirmation of in his fax. And it was that which caused him to write the word "No" and the arrow on the copy of the fax. Do you see that?

A. Sorry?

Q. Do you see the word "No"?

A. Yes.

Q. It was following his conversation from Ms. Stroud that he made that entry on the marginal space there on the left-hand side of the letter to record what she had said to him.

Now, he then he was getting very confused at that stage because he had been told one thing by Mr. O'Donoghue and he had been told another thing by Ms. Stroud when she telephoned him. So he sent a fax directly to Mr. O'Brien, and if you just go to the first document in that Divider, you'll see that fax, and that was on the same day that Ms. Stroud spoke to him. And he says:

"Dear Denis,

"With reference to joint venture agreement dialogue with Peter O'Donoghue and facsimile letter from Peter, 31st July (enclosure)" that's the fax that Mr. O'Donoghue had sent him two days earlier "I would like to express my concern related to the issue financial guarantees.

"Based on the letter from Peter, I required a similar statement from Advent International through Baker McKenzie.

Ms. Helen L. Stroud called this afternoon and told me that there were not made any agreements between Advent and Communicorp related to the said $\frac{1}{2}$ 30 million.

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

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

So he wrote to Mr. O'Brien directly because of the concerns that he had surrounding, firstly, the level what was said in the letter of the 10th of July; secondly, the information that he had been given by Mr. O'Donoghue; and thirdly, the contrasting information that he had been given by Ms. Stroud. Do you see that?

A. I can see that.

Q. And, you then, in fact, wrote to him also on the Wednesday; it was a busy day. And if you go over the page to flag 15, you responded formally to the request that he had made in the fax of the previous day.

"Dear Mr. Haga,

Ref: Your letter dated August 1, 1995, re the Communicorp Group.

"Let me answer to the different points in your letter one by one."

Then 1, you give him the information he was looking for; the same at 2. Then you come to 3. You say:

"As we wrote to you in our letter dated July 10th, 1995, we confirm that we have offered to finance the amount required to fund Communicorp Group 40% participation" presumably "in Digifone." There may be an "in" missing there. Then you went on at 4 also to deal with the technical matter that you required. And you close your letter by saying:

"I hope this satisfies your requirements. Please feel free to contact me directly if you need any further information.

Best regards."

That's signed by you and it's also cc'ed to Mr. O'Donoghue.

So you were keeping Mr. O'Donoghue and Communicorp in the loop and advised as to what was happening forward and back?

A. Sure.

Q. Now, what you did there was you effectively repeated what was said in the letter of the 10th of July, isn't that right?

A. That is correct.

Q. You didn't confirm to him that an agreement had been signed which provided for an increase in the capital of Communicorp consequent on an investment by Advent, isn't

that right?

A. Well, that's correct, because we would only do the capital increase even when we would win the licence.

Q. I accept that. I can understand that.

A. So this is yeah.

Q. So you couldn't make that statement. You couldn't tell him there was such an agreement in being, could you?

A. The agreement to put the money in has been reached.

Q. I am just referring to the

A. The terms of the agreement were not in this letter. Also, I don't recall exactly the discussion, but, as I said, it's

14 years ago, 15 very soon, but I don't think that we were particularly interested, given the complexity of our shareholding structure in Communicorp, to give everyone details about how we will structure the investments.

Q. I don't think, in fairness to Mr. Haga, he was asking you that. It's just, you see, he had received these contradictory signals from Ms. Stroud and from Mr. O'Donoghue, and all he was looking for was confirmation that there was an agreement in being?

A. That's the difference between a lawyer and a Chief Financial Officer. The lawyer didn't see the piece of paper signed as a given form. The Chief Financial Officer knew he could count on the money.

Q. I don't think Mr. Haga was a lawyer, though, Mr. Prelz?

A. But Mr. O'Donoghue was.

Q. Mr. O'Donoghue?

A. Sorry, Mr.

Q. Mr. O'Donoghue was Chief Financial Officer.

A. Yeah, and he knew he could count on the money.

Q. I am just surprised, Mr. Prelz, did you not think of saying in that letter, you could see that you could see the quandary that Mr. Haga was in - he was getting conflicting information from Mr. O'Donoghue and Ms. Stroud. I am just surprised, did it not occur to you that you might have said "we have made a binding irrevocable enforceable commitment to put in 30 million"?

A. No, I would not have wrote that. I had a commitment. I would not as I said, I am not a lawyer, either.

Q. But you had a commitment but you wouldn't have written it?

A. No. But what I wrote there was a commitment, was an indication of we had made a commitment to invest, and I would not have used the term 'irrevocable' - what do you say

Q. No, no, you see, I am just quoting back to you what your evidence to the Tribunal has been, that you had a binding enforceable irrevocable commitment and obligation. I am just quoting your words back to you.

A. That's fine. That's what I felt I had. I didn't feel the need to tell a bureaucrat in Oslo that

Q. Didn't you see that he was looking for clarification, Mr. Prelz? He was looking for clarification, he was looking for something more than what you had said on the 10th of July, and I am just bringing to your attention that

it's surprising that you didn't take an opportunity to

clarify that point for him?

A. I don't think it was necessary.

Q. I see. Now, if you just go over the page again to 16,

Mr. O'Donoghue, the following day. This is now 3.45 p.m.

on the 3rd of August, Thursday the 3rd of August, so it's

the day before the bid is due to be submitted. And he

writes, sends you a fax. You had, I think, cc'ed him your

letter, isn't that right? Yes, you had. And he now sends

you a fax. He says:

"Telenor have requested us to provide them with a slightly

reworded financial guarantee from yourselves. I attach the

requested wording. I do not believe the attached is any

more onerous than what you have previously provided us with

and I would be grateful if you could prepare a letter

addressed to Telenor along the lines of the attached.

"As you are aware, the bid is due for submission tomorrow,

the 4th of August, and we would require this letter today.

"I am not in the office but I am contactable on my mobile,"

and he gives you his number. "I would be grateful if you

could call me when you receive the attached."

Now, if you just go over the page, you will see the draft.

A. Yeah.

Q. "Dear Per,

"Advent International plc hereby guarantee Telenor AS that

it will offer $\text{€}1/230$ million to Communicorp Group Limited for

the necessary equity increase in Esat Digifone Limited to

establish and operate a GSM network in Ireland.

"This offer is true and valid until 60 days after the Ministry of Transport, Energy and Communications has awarded the licence to Esat Digifone Limited. Telenor AS can call this guarantee."

Do you see that?

A. Mm-hmm.

Q. Now, you contacted Mr. O'Donoghue by telephone, didn't you, when you received that?

A. I suppose.

Q. And Mr. O'Donoghue has given evidence to the Tribunal as to what was said during that conversation. Are you familiar with that evidence?

A. I am not familiar with his evidence. I think I recall what I told him.

Q. Well, with what he did was he recorded what you told him at the time in a handwritten note, and, in fact, the Tribunal managed to find that handwritten note in the last short time, and I think Mr. Brady gave you a copy of it this morning, and well, I can hand it up to you now and he also recorded it in a subsequent fax to Mr. O'Connell of the 3rd of November. I'll just open the fax first. It's from the next divider. It's Divider 17.

He says this is to Mr. O'Connell on the 3rd of November.

He says: "Further to our conversation this morning, I now attach some handwritten notes on my telephone conversation to Massimo Prelz on the 3rd of August, 1995. He accused me

of trying to mislead Telenor and stated that 'you guys' (reference to Denis and I) 'have a way with playing with words'. This would go back to our original discussions on the terms of the 3.2 million pounds facility and what was agreed in respect of the 5% of Esat Digifone. He stated that the word 'committed' was misleading and that the fact that there was no offer as no terms were agreed. I reminded him that he had put outline terms to Denis, and even though these were not acceptable to ourselves, they were, in themselves, terms. He stated that he would not be signing any letter. Letters require the approval of the Investment Committee, and no letter would be forthcoming. "I will leave it to yourself, Owen, as to how much of any of the above you may wish to incorporate into your reply to Baker McKenzie."

Now, if you just go to the document that Mr. Brady has handed up to you, that's the handwritten note that Mr. O'Donoghue had appended to his fax to Mr. O'Connell in which he had recorded contemporaneously what you had said to him, and I think in his notes I am not sure if the first line of his notes has anything to do, actually, with your conversation, but it's

"94 F/S were approved/related party and directors' transactions should be tidied up.

"He will not sign the letter. There will be no new letter.

Letter would require Investment Committee approval.

"DOB and POD misleading Telenor playing with words

there is 'no offer' no terms agreed/word committed was misleading". Do you see that

A. Yeah.

Q. So that seems to have been a fairly heated telephone conversation between you and Mr. O'Donoghue?

A. Yes, I remember that.

Q. And on Mr. O'Donoghue's evidence, what you said to him was that he and Mr. O'Brien were misleading Telenor, that they had a way of playing with words, that there was no commitment. The fact is that there was no offer as no terms were agreed?

A. I believe that this is the time when Denis was talking to me about IIU, which, on one way, with a cool head afterwards, I thought was strongly reinforcing the bid. That's why I said to you I remember that there was a conversation with Peter O'Donoghue afterwards, because I was actually upset that our 5 percent of the shares was now part of the 20 percent that was going to Dermot Desmond.

Q. I can understand that.

A. That being said, you know, this is all part of the show between shadow boxing between me and Denis; it never turned into real boxing. But at the end of the day, we knew, as Advent, that we wanted to win the licence. It would not in any way, shape or form, jeopardise the chance of winning the licence. Now, I also believe that, despite Haga and what's the name of the other guy?

Q. Peter O'Donoghue, is it?

A. of the guys up in Norway requiring a further piece of paper, our commitment was there. They knew it. They were just playing games, as everyone does in those cases, and they didn't need another letter, which, at the end of the day, they didn't need.

Q. I don't actually think, Mr. Prelz, this has anything to do whatsoever with Mr. Desmond, and I'll tell you why: Both Mr. O'Brien and Mr. Desmond's evidence is that the first time they ever discussed the possibility of Mr. Desmond coming in as a partner and joining the consortium was on the 8th or 9th of August when they were travelling back in a private plane of Mr. Desmond's from a Celtic Rovers match in Glasgow

A. This was before.

Q. So this was a good week before?

A. Denis, at the time, had made rumour about our 5 percent, and, I mean, there were a number of discussions at the time about how what we were going to get in exchange for our commitment, and it seems to me, and this was I don't know whether, maybe, the discussion with Dermot Desmond came, because we got, you know, fed up, to use a nice term, of the negotiation with Denis. It seems to me like we had made a commitment with the deal in our mind and the deal became less and less attractive because Denis was pushing, pushing, pushing, which is why he is much richer than I am. So that was a bit of a culmination of an exchange of a lot of conversation which happened between July, between the

time we sent the letter, and early August. You know, that doesn't mean that we were not standing behind our commitment to put the money in. But, you know, it's unfortunate, sometime you shadow box and you put it in writing.

Q. Well, now, the first thing is, Mr. Prelz, you weren't negotiating at that time with Mr. O'Brien at all about your 5 percent, because the 5 percent contract had been concluded on the 12th of July. What was going on here is that Mr. O'Donoghue was looking for something stronger from you to satisfy Telenor. That's the only thing that was going on here. Mr. Desmond hadn't even entered the stage, according to the evidence the Tribunal has heard, until a week after this. And you telephoned Mr. O'Donoghue, and, on his evidence, you said that he and Mr. O'Brien were misleading Telenor, which is a very serious thing to say. You said to him that the word 'committed' was misleading, that they were playing with words, that there was no offer as no terms were agreed.

Now, what would have caused you to say that, Mr. Prelz, if that was not the case, because that was a very serious thing to say?

A. As I said, I mean, Denis was pushing back on the 5 percent and I was pushing back on my guarantee. That's how you reach a deal by, you know...

Q. You see, Mr. Prelz, there was no deal at this stage. Isn't it the reality that all that had happened here is that you

and Mr. O'Brien had discussed some outline terms, and what you gave on the 10th of July, when you wrote that letter, was a letter of comfort, a letter saying "We will be interested in supporting this," and no doubt that you probably would have supported it, but that "We would be interested in supporting this if the licence isn't granted." And aren't the words there coming out of your own mouth?

A. I disagree with that. Sorry, in the word of institutional investor, like Advent International, a letter of comfort sent to a Foreign Ministry doesn't exist as a letter of comfort; it's a commitment or it is not sent.

Q. Can I just bring you over the page now to Divider 18, where Mr. O'Donoghue, after your conversation, very bravely had another attempt at 9.30 in the morning on the 4th of August.

He said "Dear Massimo,

"I attach a copy of a revised letter that Telenor have requested Advent to provide to Communicorp Group Limited.

They wish to establish the offer referred to in your letter to them on the 12th of July, 1995, will remain valid for a period of 60 days after the GSM licence is awarded.

"If you have any queries concerning the attached, please contact either Denis or myself."

And if you just go over the page to the draft letter:

"Dear Sirs,

"Advent International plc, on behalf of its funds under

management, confirms that it has offered €1230 million to Communicorp Group Limited for the necessary equity increase in Communicorp Group Limited to establish and operate a GSM network in Ireland."

Now, that first paragraph, Mr. Prelz, is just repeating what you had already said in the letter of the 10th of July.

A. Yes.

Q. So in addition to that, then, the letter says:

"This offer is true and valid until 60 days after the Ministry of Transport, Energy and Communication has awarded the licence to Esat Digifone Limited."

And that's the only additional feature of the draft letter that Mr. O'Donoghue was sending you, isn't it?

A. Yes.

Q. All he was asking you to do was to tell Telenor that the offer was true and valid and that it would be open for 60 days after the Department had awarded the licence, if the licence was awarded, isn't that right?

A. Yes.

Q. You didn't provide that, did you?

A. I don't know.

Q. Why wouldn't you have provided that, Mr. Prelz?

A. Sorry?

Q. Why wouldn't you have provided it?

A. I don't know why I don't know I don't know that he was not provided that.

Q. It wasn't provided, Mr. Prelz, it wasn't provided.

A. My feeling, and my recollection of the of this call with Peter, I remember vividly, was basically because of totally unrelated, you know not totally unrelated, but because of negotiation with Denis, which were very, you know, tense at the time. I don't remember the subject of those further negotiations with Denis, but I remember we had, you know, one of our periodical fell-offs(sic) just before the bid, and I sent this you know, and I said I gave you what I had committed to give you, which is a commitment to invest. Don't I am fed up, you know, to have to deal with bureaucrats in Oslo. My commitment is my commitment, and that's good enough. At the end of the day, Telenor didn't do anything.

Q. No, they didn't, they went ahead with the bid. I take your point there entirely.

A. So all they needed was another piece of paper to put in their files, and I am not in the business of signing pieces of paper for Telenor's financial officers.

Q. Now, Mr. Haga let's have some reality, Mr. Prelz, let's have some reality in all of this. You had your solicitor, Ms. Helen Stroud, had received a letter from Mr. Haga saying how concerned he was about the letter of the 10th of July. She had been asked for confirmation that there was an agreement in existence that provided that the capital of Communicorp would increase to allow for the investment by Advent of 30 million. She had telephoned him

in response to that letter and told him no, there wasn't.

You wrote to him, in response to that letter, and what you did was you repeated what you very carefully what you had said in the letter of the 10th July. You gave him no further comfort. You didn't say "It is binding, it is a commitment, it is an obligation, it is enforceable and it's irrevocable." You took no opportunity of any sort to clarify that. Mr. O'Donoghue wrote to you the following day and he said Advent are looking for a slightly firmer letter. You telephoned Telenor are looking for a firmer letter. You telephoned Mr. O'Donoghue in response to that and you told him that he and Mr. O'Brien were misleading Telenor. You said there was no commitment. There was no offer. There were no terms agreed. Mr. O'Donoghue, then, the following day, wrote to you again with a very mild additional letter. The only addition to that letter over and above what was in the letter of the 10th of July, was that the offer would remain, was true and valid and that the offer would remain open for 60 days after the licence was issued. And you didn't sign that letter, Mr. Prelz.

A. Yeah, that's correct. I also would like to point out that despite O'Donoghue saying writing down that he had no commitment, he still believed that he had enough of a commitment that to send me the following letter, to write, which, in part, I accepted, because it was what I have already said to Telenor, and, as I said, I was young and very aggressive at the time, and I said decided that

it was not up to me to sign the letter that Telenor wanted just for the sake of making them comfortable.

Q. Just finally, Mr. Prelz, I want to refer you to the correspondence. I think you did refer to it when you gave your evidence the last time in July, the correspondence the Tribunal had with Advent in July, because I know you were anxious that we refer to it, and I just want to go through that now, finally. I think we handed it out last July, but there is another copy of it here for you.

Now, it opens with a letter dated the 26th of June of 2009, and I should just say, by way of background, that the Tribunal had initially written to Advent, in fact, to Mr. Mitchell, on the 23rd of October 2003, just prior to commencing to hear evidence from witnesses, if you like, on the participant side; that's from the Esat Digifone witnesses. That was the 23rd of October, 2003, and on the 22nd of July, 2004. In fact, by then, the Tribunal had largely completed its evidence but the relevant documents were produced to the Tribunal by Advent and the Tribunal had not had further contact with Advent from July 2004 until it wrote on the 26th of June of this year. And it says:

"Dear Mr. Mitchell,

"I refer to correspondence between you and Mr. Michael Heneghan (former solicitor to the above Tribunal of Inquiry) dating from July 2004. I am instructed to write to you as follows"

A. Sorry, which letter?

Q. The 26th of June. It's the third-last letter in that bundle, Mr. Prelz. Have you been able to locate it?

A. Yes.

Q. Good.

"Dear Mr. Mitchell,

"I refer to correspondence between you and Mr. Michael Heneghan (former solicitor to the above Tribunal of Inquiry) dating from July 2004. I am instructed to write to you as follows:

"By letter dated 22nd of July, 2004, Advent International assisted the Tribunal by furnishing the Tribunal with copy documentation relating to:

"1. The letter of the 10th of July, 1996, from Advent International to Martin Brennan and

"2. The offer by Advent International to invest $\frac{1}{2}$ 30 million in Communicorp as evidenced by the letter of the 10th of July, 1995.

"My purpose in writing to you on this occasion is twofold:

First, the Tribunal wishes to notify Advent International, as requested in paragraph 2 of your letter dated 22nd of July, 2004, that it is the intention of the Tribunal to pursue inquiries at public sittings in relation to the letter and offer referred to above with Mr. Massimo Prelz, former Managing Director for Europe of Advent International. The Tribunal anticipates that, in the course of Mr. Prelz's evidence, reference will be made to

documents comprised within the file of documentation

furnished by Advent.

Secondly, the Tribunal is anxious that Advent would assist the Tribunal in relation to a further matter. I enclose herewith a copy of the Memorandum of Intended Evidence of Mr. Prelz. I would refer you in particular to paragraph 29 of that Memorandum wherein Mr. Prelz has informed the Tribunal as follows:

'I signed this letter, the approval of the execution and issuing of same having been granted by the five-member Investment Committee of Advent. It was understood by me and all of my colleagues on the Investment Committee at all material times that this letter represented a binding irrevocable commitment for up to $\frac{1}{2}$ 30 million to Communicorp in order to fund Communicorp's share of the equity of Esat Digifone. There was simply no question or suggestion otherwise...'

"The Tribunal would welcome Advent International's comments on that matter and, in particular, whether Advent International do or do not agree with the information furnished by Mr. Prelz. The Tribunal would also welcome any other comment that Advent International might wish to make regarding the information provided to the Tribunal by Mr. Prelz as comprised in his Memorandum of Intended Evidence.

"As it is hoped that Mr. Prelz's evidence will be heard during the week commencing Tuesday 7th July, 2009, the

Tribunal would be obliged to hear from you at your earliest convenience."

Now, the next letter was dated the 8th of July, 2009, and it's, again, from the Tribunal to the same Mr. Desmond Mitchell.

"Dear Mr. Mitchell,

"I refer to my letter of 23rd of June, 2009, to which the Tribunal has not as yet received a response. I am instructed to write to you as follows:

"In the first instance, the Tribunal wishes to notify you that Mr. Prelz's attendance at a public sitting of the Tribunal has been rescheduled to Monday, 20th of July, 2009.

"Since writing to you, the Tribunal has had an opportunity of reviewing all of the documentation available to it relating to the issuing of the letter dated 10th of July, 1996, from Advent International to Mr. Martin Brennan of the Department of Transport, Energy and Communications (as it then was) and the agreement dated 12th of July, 1995, on foot of which that letter was issued by Advent. It seems to the Tribunal that there does not appear to be anything in that agreement, or any other agreement between Communicorp, Mr. O'Brien and Advent International, which could support Mr. Prelz's statement that:

'It was understood by me and all of my colleagues on the Investment Committee at all material times that this letter represented a binding irrevocable commitment for up

to 1/230 million to Communicorp in order to fund Communicorp's share of the equity of Esat Digifone. There was simply no question or suggestion otherwise..."

And the letter then continues:

"The Tribunal would be obliged if you would kindly indicate whether Advent has identified any documentation which is inconsistent with the Tribunal's view of the Advent documentation in its possession.

"The Tribunal would welcome a response to this letter and to its letter of the 26th of June, 2009, at your very earliest convenience."

And then the final item of correspondence in the exchange is a letter dated 14th of July, 2009, from Mr. Dodge, who is Vice-president of Advent International, to the Tribunal.

"Dear Mr. Brady,

"Thank you for your letters dated 26th of June, 2009, and 8th of July, 2009 (collectively the 'Letters') relating to the Tribunal's Inquiry noted above (the 'Inquiry'). In the letters, you note that Massimo Prelz is expected to present evidence at certain public sittings of the Tribunal. A Memorandum of Intended Evidence of Massimo Prelz (the 'Memorandum') is attached to one of the letters. Also in the letters, you, upon instruction, request (i) an indication of whether or not Advent International Corporation ('Advent') has identified any applicable documentation that Advent has not already sent to the Tribunal and (ii) comments from Advent on the information

provided by Mr. Prelz in the Memorandum, particularly with respect to Mr. Prelz's statements regarding a certain commitment to provide up to 30 million Irish punts to Communicorp Group Limited.

"In the letters, you note that Advent sent a number of materials to the Tribunal approximately five years ago (collectively the 'Materials') including a certain letter dated 10th of July, 1995, from Advent to Martin Brennan and a certain agreement dated 12th of July, 1995, among Advent, Communicorp and Denis O'Brien. As discussed during a phone conversation on the 13th of July, 2009, among Stuart Brady, Solicitor to the Tribunal, Andrew Dodge, Vice-president and legal counsel of Advent, and Jonathan Wood, corporate partner at Weil Gotshal & Manges LLP. Advent has not identified any documentation in its possession, other than the materials previously sent to the Tribunal that Advent has determined is relevant to the requests made by the Tribunal in the letters."

And then over the page:

"With respect to the Tribunal's request to comment on Mr. Prelz's statement in the memorandum, Advent is unable to be of much help for the reasons discussed in the phone conversation - namely, that the applicable events took place over 14 years ago and the investment professional responsible for, and that worked most closely on, the transaction in question (the most important of which is Mr. Prelz himself) are no longer with the Advent

organisation. Nonetheless, as already discussed during the phone conversation, it appears to Advent that the commitment was an obligation Advent intended at the time to stand behind. Please note that the foregoing statement is based solely on a plain reading of the materials and is not informed by any personal recollections or other ancillary information.

"Advent is pleased to have been able to provide assistance to the Tribunal over the past six years in connection with the Tribunal's efforts related to the Inquiry. At this point, however, Advent believes its knowledge of the matter has been fully explored and that it does not have anything more to add."

And that's the correspondence that the Tribunal has had with Advent in relation to this matter.

A. Yes.

Q. Can I just ask you this: Mr. Jonathan Wood of a corporate partner at Weil Gotshal & Manges LLP; I take it they are a firm of solicitors, are they?

A. Well, Gotshal is one of the most important law firms in the States and internationally, having offices in most of any major

Q. I see. I suppose

A. It is the law firm that has most of the legal work for Advent and their corporate structure.

Q. I see. And indeed, a very carefully framed and lawyerly letter it is, wouldn't you agree?

A. Sorry?

Q. It's a very carefully framed and lawyerly letter?

A. Well, it's a letter written by someone who was not there at the time, that has gone through the documents and but is also someone who is familiar with Advent procedure. So I think it should be considered as such.

Q. Absolutely. And that's why I have opened it to you, because I know that you were anxious that we would do so.

A. Thank you.

Q. Thank you, Mr. Prelz.

CHAIRMAN: Some further questions may be asked of you, Mr. Prelz. I don't think it will take an inordinately long time. Perhaps, Mr. Fitzsimons, if you have something to raise on behalf of Telenor, I might invite you first.

MR. FITZSIMONS: Nothing.

CHAIRMAN: Mr. Rossa Phelan on behalf of the Department?

THE WITNESS WAS EXAMINED BY MR. ROSSA PHELAN AS FOLLOWS:

Q. MR. ROSSA PHELAN: There is just one matter, Mr. Prelz. I represent the Departments. Just as you haven't been much involved in the Tribunal; to be clear, I don't represent the Minister, as such, just the Departments that were involved in the process. And there is one matter which may be tangential to what you have been focused on today but which was raised this morning, but which may be of interest to my clients, the Departments, which is this matter:

The consortium which applied for the licence, it is the contention of my clients, was a 50:50 consortium, which had

intimated the possibility that 20 percent would be placed at some point?

A. Yes.

Q. And that the placement of the 20 percent is not something which had been finally determined, as such, at the time of the original application?

A. That is correct, but it is correct, but we always envisaged to have a wider position than the 50:50.

Q. Yes, of course, of course. But that when one spoke, and there was a phrase used this morning in the terms of a third shareholder, that wasn't actually a shareholder in being at the time that the application was made?

A. That is correct, sorry, yeah.

Q. And as a consequence, you described the nature of the bid and that you were satisfied about the content of the bid and the various factors that you mentioned, and am I correct in understanding that that's your understanding of the content of the bid, it was factors

A. The contents in the sense of shareholdings or

Q. No, not in the sense of shareholdings.

A. The contents of the bid was prepared by Esat and Telenor. We were on the Board, and I was happy with the content, but one step removed because the bid was prepared with a lot of concern about security and limited information to anyone other than the main factor. I mean, you might remember the bid was delivered to the ministry with big sonic effect and a number of people carrying loads of papers. I didn't go

through that bid; I went through the principle of the bid

but not the details.

Q. It's natural that that should stand out in your memory, Mr. Prelz. My only point of concern is that it may have been intimated that, due to the possible change in intended destination of the 20 percent equity, there may have been some inappropriateness in the fact that the change in that 20 percent was not evaluated. That's the sole point of concern. And on that point, what I wish to ask you is this: You have mentioned that the communications that took place from Mr. O'Brien to you, which sometimes referred to the alleged position of the Irish authorities, are not matters, as I understand it, that you'd necessarily attribute to the Irish authorities but which you might attribute to the course of negotiations between yourself and Mr. O'Brien?

A. There were a number of times yeah, there were a lot of negotiations between us and Mr. O'Brien and the fact the bid was 50:50, with the idea of strengthening by giving taking in, for 20 percent, different investors which originally we lined up as a number of institutional investors. In fact, I just saw a document somewhere here with that names them, which reminds me of who they were: Standard, IBI, Allied and ourselves and Advent, and then there was that became what the stake was later sold to Dermot Desmond, but, yeah, that was part of the structure of deals, not but not at the core of the bid.

Q. Exactly, Mr. Prelz.

A. And those two operators were, clearly, Esat as the local operator, the alternative telecom provider, and Telenor as the one of the most advanced GSM companies in the world at the time.

Q. And, in your words, it was those two that were the core of the bid?

A. Sorry?

Q. It was those two that were at the core of the bid?

A. Yeah, yeah.

Q. And that whilst there may have been, and you gave evidence that there was ongoing negotiations about how the 20 percent may take

A. Yes, would be allocated.

Q. That was something that fluctuated over time?

A. Yes.

Q. And given you have given, I think, evidence, although it was some time ago, back in July, about your experience in this area; it's not unusual that this aspect of the 20 percent, an equity contribution might vary over time and be the subject of negotiation?

A. Absolutely. And, in fact, if you go back to one of the memos, probably our deal qualifying memo, there is a reference to the fact that we wanted to make sure that we were going in, as I define in the memo, at the ground floor, which means paying the same amount of money as Communicorp and as Esat and Telenor. While the other

institutional investors could have come in at the higher price once the bid was won, and I speak in the memo about promote, which is exactly a difference in price between what would pay as investing in the first round and the price that other institutions might have been asked to pay once the bid was won.

Q. And may I ask you, Mr. Prelz, from your experience - you are a venture capitalist, a financier - it's not unusual that there is, can I put it, constant jockeying about where

A. Absolutely, and that's what particularly in the case like this one.

Q. And perhaps it's not a question particularly for you, but such constant jockeying isn't something which can or ought to be the subject of an ongoing comparative evaluation by a licensing body? Perhaps it's not a matter for you.

A. I don't think that as I pointed out before, I mean, ours was a commitment to finance the deal. We were trying to do the best deal for the company and for ourselves, as shareholders, and all this thing continued to go forward, and it's very difficult to update all the participants or to keep track, all the documents, all the discussions that are being occurring, and definitely not a Department that is mostly as I recall, in the criteria of the bid, the investment, the financial position was not top of the list.

The Department should have been much more interested in the technical aspect, commercial aspect, employment aspect,

than who was the ultimate shareholders.

Q. Thank you, Mr. Prelz.

CHAIRMAN: Mr. Kelly, anything on behalf of Mr. Lowry?

MR. KELLY: No.

CHAIRMAN: Mr. O'Callaghan?

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

Q. MR. O'CALLAGHAN: Good afternoon, Mr. Prelz. I appear on behalf of Denis O'Brien. And can I start, Mr. Prelz, by, similar to the way the Chairman did, thanking you for coming to Dublin for the second time to give evidence to this Tribunal.

A. You are welcome.

Q. I want to put your evidence in context, to begin with, Mr. Prelz, if I may. And just so as you are aware, the Tribunal is inquiring into the second GSM phone licence. You are aware of that from the questions Ms. O'Brien asked you, Mr. Prelz, isn't that so?

A. Yes.

Q. And, in particular, what is of interest to the Tribunal is the financial capacity of Esat Digifone at the time the bid was put in and at the time the licence was granted. You are aware of that, also, Mr. Prelz?

A. Yes.

Q. And there were two specific areas which appeared to be of particular interest to the Tribunal, and I just want to take you briefly through both of them, to begin with, Mr. Prelz.

The first area which the Tribunal appears to be particularly interested in is the written bid that was put in by Esat Digifone on the 4th of August, 1995. And Ms. Magee will just hand up two pages of that bid to you and to the rest of the people in the hall, and I just wanted to ask you some brief questions on it.

You are aware, Mr. Prelz, that the written bid by Esat was submitted to the Project Group on the 4th of August, 1995?

A. Yes.

Q. And can I ask you to look at the first of the two pages I have handed up to you, and, in particular, section 2.5, which deals with financial strength. Do you see that?

A. Yes.

Q. Can I just open that to you. It says;

"Esat Digifone's partners have such financial capacity to meet and exceed all their financial commitment to the company.

"Telenor has considerable financial strength and, as a result of the company becoming a State-owned stock company in November 1994, also has considerable financial freedom in respect of international investments. In 1994, Telenor achieved revenues of IR 1.8 billion, profit after tax of IR 199 million, had total assets of IR 2.44 billion and made total investments of IR 300 million.

"Communicorp Group is a young, high-growth company in the broadcasting and telecommunications industries. Its operating revenues (excluding GSM Revenue) are forecast to

grow from 12 million Irish pounds in 1995 to over 260 million Irish pounds by 2000, at which time the net earnings before tax is forecast to be 19.1 million Irish pounds for the year. Communicorp has strong financial backing from Advent International, one of the leading international development capital investors in telecommunications, media and information technology industries. In addition to its current investment of 12 million Irish pounds in Communicorp, Advent has offered up to a further 30 million Irish pounds to fund Communicorp's equity participation in Esat Digifone. This sum exceeds Communicorp's share of the licence fee and equity commitment."

Can I ask you, Mr. Prelz, do you accept that the content of that paragraph was accurate as of August 1995?

A. Yes.

Q. If somebody was to suggest to you that, in fact, it is misleading and you were looking at it in August 1995, would you agree that it is misleading or would you disagree with that?

A. I would disagree.

Q. Could I now ask you to look at the next page I handed up, which is paragraph 6.5 of the bid document, which is entitled "Financing".

And it says:

"The peak funding required is approximately 124 million Irish pounds. The debt/equity ratio will be maintained at

60:40. Each partner, including institutional investors, has ample capacity to finance its equity share.

Communicorp's investment is backed by Advent International.

Debt financing will be entirely through a syndicated loans and/or vendor financing. Several international banks, including ABN-AMRO and NatWest markets, have confirmed their interest in leading the syndicate."

Again, Mr. Prelz, can I ask you, in respect of that paragraph, do you regard that paragraph as being accurate when it was presented to the Project Team in August 1995?

A. Yes, it is accurate. And I must say, at the time, also, Advent was managing around a billion dollars of funds coming from leading institutional investors, and at the time, also, I remember the talking to several banks for Esat Digifone project, and other projects, about the availability of financing for mobile phones, and that was the time where financing for mobile was very easy to come across because it was seen as a growing market, a growing opportunity and a very solid one.

Q. So, Mr. Prelz, you are satisfied that those sections of the bid document submitted by Esat Digifone on the 4th of August, 1995, which referred to the role of Advent, that they are accurate in every material respect?

A. Yes.

Q. The second area that the Tribunal is particularly interested in relates to the oral presentation that was made by Esat Digifone on the 12th of September, 1995. You

are aware of that oral presentation?

A. Yes.

Q. Can I now just hand up to you a copy of a transcript of that oral presentation. I am not going to open all of it, but there are sections that I wish to ask you questions on. Could I ask you, Mr. Prelz, and indeed the Chairman, to turn to page 101 of the transcript that I have handed up to you.

A. Page?

Q. 101. And this is a transcript of the oral presentation that took place between the team from Esat Digifone, which in fact was Denis O'Brien, Barry Maloney, Peter O'Donoghue, Per Simonsen and Arve Johansen, and the Project Team that was assessing the individual bids which had been submitted. And at page 101, Mr. Prelz, there is an interchange between Mr. Riordan, one of the Project Team and Mr. O'Brien. And if I could just open the middle of the page where Mr. Riordan says "Then, really a follow-on from that was that Advent have said they are providing up to 30 million to Communicorp.

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

Billy Riordan: Sorry, you are right, 30 million pounds.

I am wondering in what form will that funding be put into Communicorp? Will it be loans or will it be equity?

Denis O'Brien: It will be equity. That's what we have negotiated on. So, in other words, at the moment, Advent will probably go up to about 47, 48 percent if we win this

licence. So the business will be, remain

Irish-controlled."

Now, could I ask you to go to page 104 now, please,

Mr. Prelz. And there is a further exchange between

Mr. Andersen and Mr. O'Brien in respect of the funding of

Advent.

And you will see at the bottom of the page, or in the

middle of the page, rather, Mr. Andersen says:

"I'd just like you to repeat for me the Advent's interest

in Communicorp. You say that"

A. Sorry, which page?

Q. Page 104. And it's in the middle of that page, the first

entry for Mr. Michael Andersen. And he says:

"I'd just like you to repeat for me the Advent's interest

in Communicorp. You say that it is going to be up to, was

it 47 percent voting power wise or

Denis O'Brien: Equity. It's going to be up to 47 percent

equity, but, in terms of voting, the other 53 percent has

three times the votes of Advent. So we, you know, the

Irish shareholders in Communicorp will always have control

of Communicorp.

Michael Andersen: Okay. But that also means that if you

have what they have right now up to 46 and that escalates

up to $\frac{1}{2}$ 30 million, then you have to have some other capital

in from some other side, as far as I can see.

Denis O'Brien: No, no, because the full capital

requirement for the investment is initially 21.6, I think

it is, plus a line up to 30, so they have said, day one,
they are guaranteeing $\frac{1}{2}$ 30 million.

Billy Riordan: So you have a little bit of fat in that.

You have, in fact, from the point of view, you have about
8.5 million pounds of fat in that particular commitment.

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

Billy Riordan: I used the term first.

Speaker:" and we think this is Sean McMahon "sorry,
just one question on that, Denis: Do I understand there
was already an agreement in place between Communicorp and
Advent on that?

Denis O'Brien: Yes.

Speaker: That is not the same as the letter from the
commitment we have seen in the application?

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

Michael Andersen: Okay. I think that's all for the
financial part. Okay."

Now, in that presentation, Mr. Prelz, Esat Digifone,
through Mr. O'Brien, communicated to the Project Team that
there was an agreement between Communicorp and Advent to
the sum of $\frac{1}{2}$ 30 million, and that there was funding, in
effect, being provided by Advent of $\frac{1}{2}$ 30 million for
Communicorp. Was that correct?

A. Yes.

Q. If you were in at that meeting of the presentation on the 12th of September, 1995, would you have been surprised by what Denis O'Brien had said or would you have regarded that as in any way inaccurate?

A. No, not at all.

Q. And just to point out to you, there is no indication from anyone else at that presentation that reference was made to it being inaccurate.

What I wish to do now is to take you through, if I can, to your position in Advent, because what we want to do, Mr. Prelz, is to look, not simply at the statements made by Mr. O'Brien and also the bid put in by Esat Digifone, we want to look to see at the documents substantiating what was said in both of those documents and in the oral presentation.

And if I could ask you, first of all, back in 1995, when you were in Advent, what position did you occupy?

A. I was Managing Director of Advent International Europe, and there were two, basically two senior guys, John Walker and myself, running Advent in Europe. There were four offices and we basically split the responsibilities. I was in charge of the media telecom technology practice investments, and I was also responsible for the Paris and Milan office sorry, Milan, and then I opened the Paris office later on. And then John Walker was in charge of basic material, pharmaceutical chemicals and in charge of the London and Frankfurt office.

Q. In terms of quantity, what was the size of the funds that Advent was managing at that time back in 1995?

A. At the time, Advent International was managing over a billion dollars, which, at the time, was a big fund. I know that sounds ridiculous 15 years later.

Q. And you got involved - rather, Advent got involved in Communicorp for the first time in 1994, isn't that correct?

A. Correct, yes.

Q. What led Advent to get involved initially with Communicorp back in 1994?

A. Well, initially, at the time it was the big age of deregulation of telecom, and particularly it was also the early phase of GSM, of the mobile phones. A very high growth business, recurring revenues, solid buyer to entry, very interesting business investing, particularly in the early phase. We looked at those businesses in a number of countries and we came across Ireland, which was one of the least deregulated markets. So we could see that the model was working in a number of other countries. And when we had the opportunity through the investor banker, who introduced us to Denis O'Brien, we decided to invest in Communicorp.

Q. Would it be fair to say that, in 1994, when you invested, you regarded Communicorp as a promising company?

A. Very promising. And, in fact, it had an advantage in that Communicorp was the holding company of two different businesses, radio and a fledgling telecom business, but the

radio business was already quite well-established and cash was positive, so we structured our investment in a way that protected our downside on the thanks to the cash flow of the radio business, while we had the opportunity to grow, ride the growth of the telecom side.

Q. And I think your initial investment on behalf of Advent, Mr. Prelz, was a sum of 10 million US dollars, and in return for that you got a 34 percent stake in Communicorp, is that correct?

A. Yes. And by the going through the re-reading the transcript of the July, the position, there was a point where I wasn't able to answer the time about a further 4 million that we were going to eventually invest, and I recall it afterwards as re-reading those documents that we had, because there was a divergence in evaluation between us and Denis O'Brien on the value of Esat. We said okay, if you win the licence, the company is worth more, so we'll give you 4 more million into the company for the same ownership as a part of that possibility.

Q. As part of the deal pursuant to which Advent invested, you got a seat on the Board of Communicorp, isn't that correct?

A. Yeah, Advent got two seats on the Board.

Q. Could I just ask you from your own experience of Communicorp and your experience of other companies in which Advent had invested, did you regard Communicorp as a well-run responsible company?

A. We liked very much the internal speed of the company and we

help, I think, we participate in creating, you know, a more professional company by helping Denis hire people and creating more of a structure.

Q. In 1995, the GSM bid was operating in Ireland. What role did you play, Mr. Prelz, in the bid that was submitted by Esat Digifone?

A. Directly, none, as I said, because the bid was prepared between the team of Esat, the team of Telenor and with the advice of, I believe it was PA, which was a strategy consultant that helped us with the bid, I think it was PA. But, I mean so, on the front toward the institution, I played no role.

Q. In terms of your experience of other similar bids around the world, had you been involved in any other similar bids around the world?

A. I was involved once in Italy in a similar bid.

Q. Is it fair to say that financial strength of an applicant is an important part of any bid that is submitted by an applicant seeking such a licence?

A. Definitely. I mean, the Government don't want to find themselves with awarding a licence to someone that cannot fulfil their obligation.

Q. Can I ask you, as the Managing Director of Advent Europe, was Advent keen to be part of the bid submitted by Esat Digifone?

A. I think we always considered that, and you can probably find it in the original deal qualifying memo, the first

investment with East, the upside of this investment would be in the GSM licence, the fact that this market would develop. At a later stage, everyone else every other market in Europe, but would have the possibility to develop in that sector.

Q. And would it be fair to say, from your experience, that many venture capitalists would have been keen to get involved in that bid for the GSM second licence?

A. Yes. Most of the in that period, in Europe at least, most of the bids were made by industrial companies with the participation of financial investors.

Q. And the reason why you, and indeed other venture capitalists, would want to be part of this bid, is, presumably, because you saw it as having great potential?

A. The potential GSM at the time at the time the evaluation of GSM activities in Europe was sky-rocketing. It peaked in 2001 with the 3G licence bids, and, since then, has been coming down quite substantially, but at the time it was one of the few growth segments where there were significant various, significant various reentry(sic)ie tied to the licence. So it was clearly a very good segment to invest.

The question was how to get the value how to get the possibility to sit at the table. The way we proceeded was, rather than trying to bid to get into consortia for GSM licence, which were very difficult to come by, was to invest in a telecom company in Ireland, Esat, that itself was bidding, would be bidding for the GSM licence.

Q. And am I correct in stating, Mr. Prelz, that there was an advantage to a venture capitalist such as Advent getting involved with a young start-up company such as Communicorp, who was going to invest in Esat Digifone, as opposed to what might be regarded as some of the more financially established entities backing the other competitors?

A. Absolutely, because, I mean, frankly, the big Telecom company, who were the competition to Esat, would not have had the need for an investment from our side.

Q. You mentioned in your evidence the last day, on the 20th of July, 2009, that yourself and Mr. O'Brien reached an agreement that Advent would invest 30 million to fund Communicorp's cost of the bid, isn't that correct?

A. Correct.

Q. And you weren't able to specify a date as to when that occurred, but you are satisfied, and your evidence to the Chairman is that such an agreement was reached, isn't that correct?

A. That's correct.

Q. And from your understanding of Mr. O'Brien, was he keen to have Advent invest 30 million in the Communicorp?

A. As usual with Denis, he was keen to have the guarantee of the money. Whereas, you know, he needed to have the support of an institutional investor and he was keen and happy to have Advent committing to, he was still looking for a better deal, of course. So was I.

Q. And, of course, in order for you, even though you were the

Managing Director of Advent Europe, in order for you to commit what was a significant investment on behalf of Advent, you had to go through a procedure with Advent itself, isn't that correct? You had to recommend this deal and

A. Yes.

Q. put a proposal together, isn't that so?

A. Yes. I must say that Advent was, in a way, a very itself, a very entrepreneurial place where there was a certain procedure and certain authorisation, but there was a latitude afterwards for people to manage, particularly once the investment was made and particularly if you had already made some money for the firm, which I had at the time, to have some discretion on how to deal with the entrepreneur. We knew that the major, you know, the major differentiating factor in making money in a situation like this one is the entrepreneur himself and how he can manage the company, the growth of the company, and it's not the financial terms. And I think we proved right with Esat.

Q. Mr. Prelz, could I ask you to go to the book you have and tab B4 of it, and in that is the deal qualifying memorandum that you and Mr. Shanfield prepared on the 8th of June, 1995.

A. Sorry, which one?

Q. B4. The big book.

A. Yes.

Q. So this is a document that yourself and Mr. Shanfield

prepared. It's dated the 8th of June, 1995, isn't that

correct?

A. Correct.

Q. And the purpose of this document is to put forward the

proposal to the Advent Board, is that so, or the Advent

Investment Committee?

A. The Advent Investment Committee, yes.

Q. And I think it's fair to say that this is obviously an

internal Advent document which, at the time you were

drafting it, you presumed would never see the light of day

in some public forum such as this?

A. Absolutely.

Q. And because of that, would you agree with me that it's a

very honest appraisal of how you viewed the bid and

Communicorp as of the 8th of June 1995?

A. Yes. I would say, as I pointed out in some document, or in

the I don't remember whether it came up in the first

session, we had a piece of our remuneration directly tied

to the investment. So you would not, you know, write

things for the sake of writing things and having nice

models. It was our money running on this deal qualifying

memo, on our investment decision.

Q. It's apparent from the bottom of the page that this is

obviously a very confidential document, confidential to

Advent?

A. Yes.

Q. And can I just take you through parts of this document, if

I can, Mr. Prelz. First of all, can I ask you to go down the end of the first page where there is a reference to the total deal amount, do you see that?

A. Yes.

Q. It says "Total deal amount: i½120 million," which is translated into US dollars?

A. Yes.

Q. And then underneath that you have the "Advent portion: i½30 million," it gives a similar amount in dollars, and then it says the word "Commitment".

What did you mean, when you drafted, that the Advent portion for this proposed deal was to be a i½30 million commitment?

A. Well, what we meant was that 120 million was the total expected financing of the project. 50 percent that and the 50 percent equity was to be split between our between Communicorp and Telenor, and, so, we needed a commitment to have money to fund the project to the level of i½30 million.

I also wrote after that "expected investment," because it was clear to us that, at the time, there were already discussions about the fact that between that sort of moment there would be some further financial investors that would pick up some piece of potential, some piece of the shares of Digifone, and so we would probably not have to fund all our commitment.

Q. But the deal being proposed in this deal qualifying memorandum is a deal which involves a i½30 million

commitment, isn't that correct?

A. Yes.

Q. Could I ask you now to go beneath the second line in the middle of the page, and you'll see at the last section of that part there is a reference to "closing time," and it says "Commitment required 16 June, 1995".

And obviously, that's some eight days after this document has been written. Is that a short time period within which Advent is required to give its approval or is that standard for Advent?

A. No, it's standard, because the way it used to work is that we had several before the deal qualifying memo, there was what we call the "two-pagers" which was a document circulated and then there were a series of updates. The deal qualifying memorandum was prepared two days, 48 hours before the Investment Committee that would, you know, sign off, literally, on the investment. And so that tended to be done within, a week, sometimes three days before the investment was needed in order to have as much information as possible.

Q. And presumably, you may not know the answer to this, but presumably the reason why the commitment was required by the 16th June, 1995 was because at that time the closing date for the bid was the 23rd June, 1995, isn't that correct?

A. That's correct.

Q. And it was subsequently changed on the 16th June.

could I ask you to turn over it the next page, Mr. Prelz, and I am only going to open parts of this but there are relevant parts upon which I just want to ask you questions.

You set out on this page the background, isn't that correct?

A. Yes.

Q. Can I ask you to look at the third paragraph?

"During the time of the delay in the RFP, Communicorp, with limited resources, worked to lay the ground work for the potential future operations of the GSM network. This involved the mapping of the cell sites and the initiation of lease negotiations securing those sites. Additionally, work was done on identifying and fostering the potential relationships required to sell and distribute service to the customer. By having done so, Esat will be better positioned in the proposal/bid process by virtue of being better able to roll out the system in a timely fashion, a key consideration for the Government evaluators."

I suggest to you from that paragraph, Mr. Prelz, you were clearly impressed by the preparation that had been put out there by Esat Digifone in respect of the bid?

A. Yes. I was impressed, you know, in general by what had been done, by the way Esat work and by what Esat Digifone was doing in preparing the bid.

Q. Can I now take you down to the second-last paragraph on that page, where you say:

"While the preparation and the players are, of course,

critical to the establishment and execution of a viable business plan, their greatest value at this stage is in lending both their work product and their credibility to the proposal in order to accomplish the primary goal: winning the licence."

So I suggest from that, Mr. Prelz, you recognised that Esat Digifone was a good work product and that the people working there were credible people who had prepared well for this bid?

A. Yes.

Q. And just in terms of what Ms. O'Brien mentioned to you earlier today about Esat Digifone, as to whether it was an Irish company or not, but the people involved and the credibility of the people to which you refer, they are Irish people you are referring about, isn't it?

A. I referred to the Irish people, to the Esat team. I also refer to the way it was managed, and also the Telenor corporation. I mean it, on a technical basis it worked very well.

Q. The last paragraph on that page, Mr. Prelz, deals with the deal, and you describe it as follows:

"A preliminary term sheet which outlines the basic terms of the deal is attached as exhibit 1. The details of the shareholders agreement including governance, share sale rights, restrictions and the like are being negotiated."

Effectively what you are saying there is turn to exhibit 1 and you'll see the deal, isn't that so?

A. Yes.

Q. Can I ask you now to go to exhibit 1, which is, it's effectively page 10 of the tab there, except it's not numbered. It's two pages after the numbered page 8. I don't know if you have that. Do you have that, Mr. Prelz?

A. Yes.

Q. And can I just open the first couple of lines of this deal, the deal that's proposed.

It's entitled: "Term Sheet For the Guarantee and Funding of Communicorp Group Portion of Esat GSM Financing"

"1. Advent International will guarantee that Esat/Communicorp is in a position to fund their 50% share of Esat GSM up to $\text{€}1/230$ million.

"2. In exchange for guaranteeing the full amount of the Esat portion of the funding requirements of Esat GSM, AI will fund 50% of the required investment and will receive a 50% equity interest in the Esat holding of Esat GSM shares."

So that's the deal that's being proposed at that time, isn't that correct?

A. That was the first, yeah.

Q. And obviously the language that people in Advent are using about this initial deal is that it's going to be a guarantee and a funding of up to $\text{€}1/230$ million?

A. Correct.

Q. Can I now ask you to go back to page 3 of the deal qualifying memorandum, and at the first paragraph, top of

the page you say.

"In brief, the proposed deal involves Advent committing to fund up to IR£30 million of the required equity for the build-out and operation of the GSM network. This commitment, combined with the funding provided directly by Communicorp (funds emanating from our existing deal), constitutes a 50% underwriting of the entire equity need. Telenor will commit to providing the other 50%."

If you go down to the fourth paragraph on that page you state:

"While committing 30 million initially, if the private placement and other fundraising efforts go as planned, Advent will ultimately be investing £12 million in the GSM business."

So, again, you are emphasising there that the proposal being put forward by you to Advent is that it involves a commitment of IR£30 million, isn't that correct?

A. Correct.

Q. And if I could just open the next paragraph after the fourth paragraph, and it says:

"While the economic rationals and trade-offs in the above-described outlines are obvious, there are other advantages in the structure implied above. First, by virtue of establishing a private market with Irish institutional investors, there is created a broader base of purely financial investors to whom management and the Board will have to be accountable. These investors will want

assurances as to future liquidity and will, either as a precondition to, or soon after funding, demand a public flotation, thus providing greater liquidity potential for Advent when we decide to exit. Second, by virtue of Telenor's 40% ownership interest in addition to the other more widely-held institutional positions, Denis will not be in nearly as strong a position when it comes to making unreasonable demands on or being unreasonably inflexible with his partners (subject to final governance terms in shareholders agreement.)"

So what you are outlining there, Mr. Prelz, is that there are clear advantages to Advent in going forward with this proposed investment, isn't that so?

A. Yes.

Q. And one of the advantages is that it will give Advent greater control, isn't that so?

A. Yes.

Q. And it's apparent also from that paragraph that there was not an enduring love affair between yourself and Denis O'Brien, at the time, but that your primary concern was to protect the interests of Advent

A. It was a very good relationship between me and Denis and has continued to be afterwards. But it was not without conflict and everyone was standing in their corner and trying to make the best for his own interest.

Q. Yes. So you had your rows, you were there representing Advent and he was doing his best for his company?

A. Yeah. Both of us were trying to make the best for the whole.

Q. Chairman, I have another hour, I would have thought. So I don't know

CHAIRMAN: Well, I think it is rather oppressive for Mr. Prelz to face that, but equally, I don't want to expose him to any risk of missing a 5.30 flight, and I suppose the realistic compromise is that perhaps one has a sizably abridged lunch. Perhaps we cut it to 40 minutes and resume at, let us say, at a quarter to two, with a view to ensuring that there is no more than marginally over an hour. Very good. Thank you, Mr. Prelz.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

Q. MR. O'CALLAGHAN: Mr. Prelz, could I ask you to go to page 4 of the deal qualifying memorandum that we were looking at before lunch. There is a section dealing with the Irish market.

"The circumstances of the Irish market are consistent with the themes identified on a pan-European basis in exhibit 1. The market consists today of only one operator, the State-owned Telephone Eireann. Having introduced analogue in the mid-1980s, only very modest penetration has been realised. Their strategy, in addition to being coloured by an entrenched monopolistic non-competitive mentality, has been one of skimming the cream of the potential cellular customer universe at the expense of building a broad

customer base.

"Applying what has occurred in our European countries, the results of competition can only grow the market. As to the extent of this potential growth, initial indications from GSM results being achieved in the lower GDP per capita countries of Greece and Portugal, though less than conclusive, are encouraging. Furthermore, based on industry projections, the long-term outlook for the Irish market, while less than today's current leading markets, is quite strong on its own merits."

So there were strong reasons, Mr. Prelz, why Advent wanted to get into the Irish market, isn't that so?

A. Yes. I mean, we saw it as a very attractive potential market.

Q. And that attraction would have been

A. That attraction was the fact that, as I said, at the time there was only one licence. In 1995/'96, most of the other countries already had two licences, not really highly competitive but still more competitive than Ireland. And the Irish market being led by a quite unstructured, unreconstructed, at the time, incumbent, had very little level of competition and penetration.

Q. And that's an attraction that would have been known to all applicants for the competition, isn't that so?

A. Yes.

Q. Could I ask you to go to the next page then, Mr. Prelz, page 5, and the last full paragraph on that page. I just

want to open up, because this appears to be what you record as being sort of an independent assessment of Esat at that time, and it says: "To this end, Esat appears to have some unique attributes. It is unique in that it is the clear number 2 fixed line telephony provider in Ireland and is, thus, differentiated as a uniquely Irish industry operator among the bidders. Esat has also made significant strides in planning and beginning to execute its plan for securing cell sites and service distribution, lending to the important credibility, viability and coverage tests.

Furthermore, with Telenor as a partner, tremendous credibility is brought by their international experience and particularly their long history in one of the world's most advanced mobile telephony markets."

Now, as I mentioned before lunch to you, Mr. Prelz, this was an independent internal Advent assessment, isn't that correct?

A. Yes.

Q. But it's readily apparent that you obviously had very strong positive views about Esat Digifone, isn't that so?

A. Yeah, that's correct, definitely.

Q. And from your experience of the telecommunications industry, did you believe that Esat was well-placed to win this bid?

A. I thought there were very strong chances that they could win the bid. I mean, that was the reason we invested in the first place. As I said, the first, the key point was

it was in the market, it was a local player and had a good team of people, had a high profile, you know, had delivered, Denis both on the radio and on the Telecom business, and had found a partner which was, at the time, one of the leading one of two leading providers of mobile telephony in Europe in term of penetration and technology.

Q. And did it have, would it be fair to say, sort of a first-mover advantage in terms of where it had positioned itself?

A. You mean Esat Digifone?

Q. Esat Digifone.

A. Well, I think that, yes well, first mover was it has sort of jumped the clock by securing a number of sites, and in terms of making sure that the we could deliver a service rapidly and effectively, it was very well positioned. It turned out that Esat Digifone was the fastest company to become profitable in all markets in Europe in the mobile world I mean in the mobile market. Between the time the licence was delivered and the time Esat became profitable, is the shortest period of any provider of mobile telephony in Europe.

Q. That's an interesting point you raised there, Mr. Prelz, because what we look at in this Tribunal is we look at the grant of the licence before it was granted and leading up to the grant of the licence. But what you are saying now, with the benefit of hindsight, looking back at the grant of

the licence, that it was a remarkably successful grant?

A. The licence is granted, all licences are granted on a number of criteria: one is financial, one is economic, but mostly, generally, at least in the past, was quality of service and deliverability of commercial opportunity for the country, the people. And I think that sense the assessment was right in the sense that Digifone was very well positioned to deliver a good service in a relatively short period of time and created competition that was in existence. We opened the market, not Eircom.

Q. Can I ask you to look at the top of page 6, Mr. Prelz, and in this paragraph you are referring to what was perceived as the potential disadvantage of Esat Digifone, because, I suppose, of the financial status of the other bidders. And if I can just open the first sentence on the top of page 6.

You say:

"Esat has taken the point of view that it will try to advantage its proposal as strongly as possible in the other areas and be competitive but not foolhardy in its financial bid. It should be noted that as compared to the strong resources of the competitors, Esat is potentially disadvantaged with respect to its financial credibility.

Thus, the importance of the equity commitments prior to the bid.

"The other interested consortia include Tony O'Reilly and AT&T, Vodafone and Smurfit, and Unisource and Motorola, all of whom have credibility, significant financial resources

and can be expected to present reasonably compelling stories."

Can I ask you, Mr. Prelz, would it be fair to say that that was publicly known, that there was this potential disadvantage that Esat faced because of the financial status of the other applicants?

A. Yes. I mean, it was very clear that if you look at the name of the other Irish players in the they were substantially stronger. Smurfit, Tony O'Reilly, had much stronger financial backing. On the other side, they did not have an organisation in place, they did not have an understanding of this market that we had.

Q. And Ms. O'Brien, in her questioning of you today, identified, I suppose, part of the reason the Tribunal is looking at this in light of the evidence that was given by Mr. Per Simonsen, that he alleges that Mr. O'Brien said to him that the Minister said "you need to get Dermot Desmond involved". But is it fair to say that you recognise, and it was generally recognised, that Esat was known to be financially weak in comparison to the other bidders?

A. Yes.

Q. So there was nothing secretive or

A. I don't think we won the bid on the consortium or the financing; I think we won the bid on the quality of work done by the team, and having the best Irish telecom operator, you know, tie in with the best GSM provider.

Q. And, of course, this potential disadvantage is what made

Advent so necessary and attractive

A. Yes.

Q. to Communicorp and Esat Digifone, isn't that so?

A. Yes.

Q. And I suppose that weakness gave you a great opportunity, isn't that correct?

A. That weakness of Communicorp, from a financial standpoint, is what allowed us to make the investment, yes.

Q. And if you look at the third-last paragraph on that page, Mr. Prelz, you'll see you elaborate upon that point. You say:

"In the case of Esat-GSM, Advent is positioned with a unique opportunity to invest in just such an asset. This derives both from the fact that there is a preexisting relationship with Esat and from the fact that Esat, though we believe well-positioned as the second Irish fixed-line operator, is a young company with limited capital resources as compared to its more mature industry brethren."

And so that was part of the attraction to Advent in getting involved?

A. Yes. In fact, that was why we invested in Esat in the first place, in Communicorp, is to have a chance to ride the upside of the GSM licence.

Q. Could I ask you now to move to the last page of this deal qualifying memorandum, page 8, and I just want to open the middle part of that page and down as far as the end, where you say:

"In proposing and strongly supporting the deal, there are two key considerations taken into account: One, we are getting into a GSM syndicate at the ground floor, retaining for ourselves the value increase that the market has historically recognised for the oligopoly position, i.e. value per pop.

"2. The entrance fee is in the form of a guarantee. Given the opportunity, the financing of the Esat portion should not be a problem."

Then you conclude by stating:

"In addition, this is not an additional investment in Communicorp with all the concerns related to Denis O'Brien.

We are co-investing with Telenor and Irish financial institutions, which reduces the management risk issue.

"While it's difficult to establish a return analysis, there is a clear opportunity on the downside to make at least 3 times our money in 3 to 4 years with more upside potential. Therefore, it is strongly recommended that we proceed with the investment."

So the investment that's outlined there, Mr. Prelz, you are strongly recommending it, as the Managing Director of Advent Europe, isn't that correct?

A. Yes.

Q. And you think it is a very beneficial deal to Advent, isn't that correct?

A. It was a beneficial, yeah, deal to Advent, yes.

Q. And the terms it was, and we'll look at the specific terms

of the agreement subsequently, but the deal qualifying memorandum includes in it a commitment for the payment of 30 million by Advent to Communicorp?

A. That is correct.

Q. Now, the Tribunal makes three criticisms, I suppose, of the argument, or the evidence that's been put forward by you here today, Mr. Prelz. If I could just outline what the three of them are and then I'll come back and look at them individually.

First, they say that this deal qualifying memorandum was never subsequently approved by the Advent Investment Committee, or, rather, there is no documentary evidence indicating it was so approved. And I'll come back to that.

Secondly, they say that this deal outlined in the deal qualifying memorandum is never translated into an agreement, and they say the agreement of July 12th is not a replica of this deal.

And thirdly, they say the offer of IRi₆½30 million, which is subsequently referred to in your letter, they say that's simply an offer and is not translated into an agreement.

But I want to look at the first of them, first of all,

Mr. Prelz, and that's the suggestion that there is no documentary evidence that this deal was approved by the Advent Investment Committee. And in order to ask you questions on that, can I ask you to go back in the booklet to tab B2. And you'll see in tab B2, Mr. Prelz, that this is an earlier deal qualifying memorandum, isn't that so?

A. Yeah.

Q. And if I could ask you to go forward in that to what is seven pages from the back of the tab, and there is a document entitled "Advent Investment Approval Sheet".

A. Right.

Q. I don't know if you have that?

A. Yes.

Q. And if you go to the second page of that, you'll see at the bottom of the page it says: "Investment Committee, advisory committee, approval by," and it lists the individuals who have signed their approval to the deal memorandum. And then underneath that there is "approval to release funds," which appears not to be signed. But can I ask you, are you aware why there isn't a written Advent investment approval sheet for the deal qualifying memorandum of the 8th of June, 1995?

A. I don't know why, in that one; probably because it's a different copy. It's a different it's a preliminary.

This is what was distributed to the Committee to be approved for the approval. However, can I make there is, on July 12th of that year, Janet Hennessy, Senior Vice-President of Advent International Corporation, signed an agreement with Denis O'Brien and Communicorp which reflects the amount of money that we're talking to in the Investment Committee.

Q. Yes.

A. She would not have signed that without the support of an

Investment Committee.

Q. And we'll look at that presently. Can I take it, therefore, Mr. Prelz, that your evidence to the Chairman is that, notwithstanding the fact that the Tribunal doesn't have access to a written Advent investment approval sheet, but that the dealing qualifying memorandum, which I have opened to the Tribunal, dated 8th June, 1995, was, in fact, approved by the Advent Investment Committee?

A. Yes. Even if, as you can see from the term of the deal in this memorandum, they were very different from any further discussion, any even the agreement which was signed on the 12th is different from this deal, from what was proposed in the investment summary. But that is part of business life.

Q. Now, can I deal with, I suppose, the second issue of concern that's raised by the Tribunal. They say that the deal qualifying memorandum of the 8th of June, 1995, hasn't been exactly replicated in an agreement?

A. Correct.

Q. Can I ask you to look at tab B7, and this is the agreement to which you referred just a moment ago. This is the tripartite agreement between Advent, Communicorp and Mr. O'Brien, isn't that correct?

A. That's correct.

Q. And the detail contained in this agreement does not correlate exactly with the detail in the deal qualifying memorandum, isn't that so?

A. Yeah, that's what I was referring to.

Q. Although, if you look at paragraph C, there are references to the 30 million offer, commitment, guarantee, funding, whatever we wish to call it. And it says at paragraph C of the recitals:

"In connection with the application, AIC, on behalf of the Advent funds (as hereinafter defined), has written to the Minister and to Telenor confirming its offer to provide financing of up to IRi;½30 million to enable Communicorp to fund its equity participation in Digifone which will be required should the GSM licence be granted to Digifone."

So the 30 million that's referred to in the recital of that agreement, Mr. Prelz, is that a 30 million commitment that had been approved by the Advent Investment Committee?

A. Yes, it's the same commitment, even if in the four weeks between the Investment Committee and the signing of the agreement we had different discussions, several iteration, and we came up with a different structure.

Q. And what was required, an integral part of that agreement, are the letters referred to in recital C, and can I ask you to go forward in tab B7 to the last four pages, which contains the letters of the 10th of July, 1995, isn't that correct?

A. Yes.

Q. And you mentioned or, sorry, it was highlighted earlier on in your evidence this afternoon, when Ms. O'Brien was asking you, well, why didn't you just write another letter,

do you remember this, in August 1995?

A. Yes.

Q. And you are recorded as stating "Well, letters require the approval of the Investment Committee." Isn't that so?

A. Yes.

Q. And these letters that were written on the 10th of July, 1995, is the Chairman to take it that these letters could not be written without the approval of the Advent Investment Committee?

A. Absolutely.

Q. And could I ask you, in respect of the letter to Ms. Brennan in the Department of the 10th of July, to look at the second page and the penultimate paragraph, which says:

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

Now, can I ask you to explain to the Chairman, Mr. Prelz, the seriousness with which you and Advent would take the writing of a letter to a Government official in respect of a bid which had been submitted and which you were supporting?

A. Well, I think Advent was a manager, is a manager of institutional funds. At the time, we were raising we

had just raised around a billion dollars from sources such as GE Capital, PGGM, which is the largest pension fund of Europe, Dutch pension fund, the largest in Europe. We had established all those programmes. We could not conceivably commit ourselves in a letter to Government official for a bid without proper approval and proper commitment, because that would have been totally disastrous for our business credibility.

Q. And Advent, as an international corporation, I presume, take its reputation very seriously, is that correct?

A. I think, yeah, in doing in being in part of this environment where you need to make commitment and to stand by your commitment, it is inconceivable to send a letter in public, stating that you have a commitment and then renege on it.

Q. In terms of the penultimate paragraph where you say "We can confirm that we have offered that amount to Communicorp to enable it to fund its obligations," that can be interpreted by lawyers in different ways as stating that, well, there is an offer, there is no acceptance. It's merely, as Mr. Haga said, a letter of interest. What is your evidence to the Chairman about the extent of the commitment you are providing in this letter to the Department?

A. I don't think that a letter in my view, a letter to a public entity or, you know, a political situation like this one, a letter in which you state that "We have offered an amount to enable it to fund its obligation," means that

that, to me, is a commitment to fund the obligation when it's due. Full stop.

Q. Would it be fair to say that, on foot of this letter, no matter what you call it, commitment, funding, offer, guarantee, Advent was on the hook for 30 million, should Esat be granted the licence?

A. On the basis of this letter, Communicorp had the money available to fund its own shares of the project.

Q. Could I ask you to just go back to the agreement itself at Tab 7, and the signature page which is on page 12, and you'll see there this is signed by Ms. Janet Hennessy, who is Vice-President of Advent International Corporation. What status did Ms. Hennessy have or what was the function of her role in Advent in 1995?

A. In 1995, Janet Hennessy was the Vice-President and Treasurer. Her position was to manage the she was responsible for disbursing the funds from the monies from the different funds for any investment we were making. She was busy controlling the purse of Advent International, and Advent International Corporation acted as the general partners to a number of funds, limited partnerships fund, which are mentioned just above that.

Q. Could I just take you through them, because somebody has put, in handwriting, the following: "AIC is signing on behalf of the following entities: Advent Crown Fund CV, European Special Situations Fund LP, Global Private Equity II LP, Global Private Equity II (Europe) LP, Global Private

Equity II P66M(sic)LP"

A. PGGM, sorry.

Q. Sorry. "Advent International Investors II LP, Advent International Investors III LP and Advent Global GECC LP."

Can you explain to the Chairman, and indeed, I suspect, everyone else in the room, what are all those entities that are being referred to in this agreement?

A. Yes, those were the different funds that were managed by Advent International Corporation at the time. Advent Crown Fund CV was a single-purpose fund whose sole investor was KPM, which is the Dutch incumbent telecom operator.

European Specialist Situation Fund was a dedicated fund, a fund dedicated to European investments raised by a different investor, pension funds such as IBM pension fund or different institutions, Welcome Trust, Harvard

University. Global Private Equity II LP and Global Private Equity II (Europe) LP were the successor fund to ESSI

which they would invest on a worldwide basis but

sorry, GPE II was the investment global based GP II Europe

only on a European base. Again, Institutional Investor,

major pension fund, major trust. Global Private Equity

PGGM; as I mentioned, PGGM being the largest European

pension fund from Holland had a dedicated fund because they

had a dedicated programme of investing private equity

through Advent. Advent International Investor 2 and Advent

International Investor 3 were funds raised by were

commitments by employees of Advent, management of Advent

Corporation, so it was our own money. And Advent Global GECC is the fund and it was a single-sponsored fund funded by General Electric Capital Corporation, part of GE in the US, the USG. So those were very significant investors, some of which had ties to the industry or, in a case, political ties. I mean, KPM was the incumbent telecom operator which deals regularly with governmental entities. Very unlikely that we would like to play games with them. General Electrical Corporation had major interest, industrial interests worldwide. Again, someone you would not put at risk of committing and then withdrawing a commitment from to Government.

Q. And in terms of the agreement that was signed by Ms. Hennessy, this agreement was being signed on behalf of all of those funds, isn't that so?

A. All of those funds, yes.

Q. And to what extent would these funds have been apprised of the full content of this agreement?

A. Only General Electric had prior information. But most of those funds were already investor through the first investment in Communicorp, so they would know the content I mean, the substance of Esat, the interest we had in Esat, both on the fixed line and on the GSM. But we had discretion on the management of those funds.

Q. And an integral part of this agreement are the appended letters to it of the 10th of July, 1995, isn't that correct?

A. Yes.

Q. And anyone looking at this agreement and who looked at those letters would see the - as we say, we can call it the offer, the commitment, the guarantee, the funding of $i_{\frac{1}{2}}^{1/230}$ million in respect of Esat's bid, isn't that correct?

A. Yes.

Q. The third issue raised by the Tribunal is that they could contend on a strict interpretation of your letter of the 10th of July, Mr. Prelz, that, in fact, all it is is that it constitutes an offer, and that in order for there to be an effective agreement, we need to have acceptance from Communicorp in order to translate it into a legally binding agreement. Are you aware of that?

A. I am understand the objection. I don't share it. Particularly in the situation where we were already a very significant investor, a 35% investor in Communicorp, which means that we were funding, basically, the growth of our own companies, a little bit like more industrial. In this case, we acted more as a holding company funding the growing business that we had in our portfolio.

Q. Can I ask you in respect of that to go back and have a look at Tab A12 of the booklet in front of you, and this is a letter from Denis O'Brien to you, Mr. Prelz, dated the 14th of July, 1995, and I open it simply in the context of if somebody was seeking to apply a restrictive legal analysis to the letter and stating, well, there is no acceptance there. But in the letter of the 14th of July, '95,

Mr. O'Brien states as follows:

"Dear Massimo,

"I refer to our agreement dated the 12th July in regard to the GSM bid to be made by Esat Digifone Limited.

"As you are aware, you have written to the Minister of Transport, Energy and Communications and to Telenor Invest AS stating that you have offered Communicorp Group Limited $\frac{1}{2}$ 30 million Irish in respect of their equity participation in the bid.

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

"Yours sincerely,
Denis O'Brien."

Do you recall getting that letter, Mr. Prelz?

A. Frankly, no. But clearly, that was one of the days that Denis and I were on good terms, but...

Q. Can I ask you to go forward to Tab 14, and these were some of the letters that were opened by Ms. O'Brien to you early on. And the first of them at Tab 14, Mr. Prelz, is a letter from Telenor to Denis O'Brien on the 2nd of August, 1995, in which they refer to a conversation between Ms. Helen Stroud, your lawyer, and Mr. Knut Haga of Telenor. And I just want to open the middle paragraph to you and then ask you a question. And Mr. Haga says to Denis O'Brien:

"Based on the letter from Peter, I required a similar statement from Advent International through Baker and

McKenzie. Ms. Helen Stroud called this afternoon and told me that there were not made any agreements between Advent and Communicorp related to the said IRÿ½30 million."

Now, what Ms. O'Brien and the Tribunal were suggesting to you was that, well, that was in conflict with what evidence you are giving here. But this, of course, is a note of Mr. Haga, recording what was told to him by Ms. Stroud, who was communicating what was said to her by you. So, since we have the benefit of you in the box, Mr. Prelz, can you tell the Chairman whether or not what is recorded as being Ms. Stroud's statement is, in fact, correct?

A. No, I think that Helen Stroud, which unfortunately passed away a long time ago, took, you know, a position of defending us, as a client, by saying "we don't have a detailed written contract about that, but that doesn't mean that we didn't have a commitment," as the exchange of letter between me, the Tribunal and then the response from Denis in July clearly mentioned.

Q. And that fax arose, Mr. Prelz, because of the letter on the subsequent page, in Tab 14, if you look at that. It's a letter or fax dated the 1st of August, 1995, which was copied to you and others, and it's from Mr. Knut Haga to Ms. Stroud, and in the third paragraph he is looking for confirmation that an agreement between AIC and the Communicorp Group has been signed and that the agreement is related to an equity increase in Communicorp due to an award of a GSM2 licence in Ireland to Digifone."

And he says in the last paragraph that he wants a letter back from you to that effect.

And in that context, could I ask you to look at Tab 15.

This is your response to that letter we have just opened, isn't that correct?

A. Yes.

Q. And if I take you to Number 3, you say:

"As we wrote to you in our letter dated 10 July, 1995, we confirm that we have offered to finance the amount required to fund Communicorp Group's 40% participation in Esat Digifone."

And you also mention "The investment within the Communicorp Group falls within the charter of the funds."

So, in effect, you were being asked by Telenor for some reassurance, isn't that correct?

A. Correct.

Q. And you provided Telenor with reassurance in your letter of the 2nd of August, 1995?

A. That is correct.

Q. But for some reason

A. In fact, sorry, when Helen Stroud said no I mean, said whatever she said on the phone to Knut Haga, where Knut marked "No" next to the agreement, that is in contradiction to the fact that an agreement was signed on July 12th, and Helen should have been aware of that because she did prepare that agreement.

Q. In terms of what Telenor were looking for, they continued

to write, isn't that correct, and they were looking for

A. Yeah.

Q. something stronger, is probably a better way to describe it, or something different, put it that way?

A. Yes.

Q. Would it be unfair on Telenor, and I say this with the greatest of respect to the Telenor representative here this afternoon, would it be unfair on Telenor to suggest that they were trying to create a bit of mischievous trouble at the time between themselves and Advent?

A. No, I don't think so. I think more than you know, there is a difference between an entrepreneur and a financial investor which had, you know, the habit to deal with entrepreneurial situation and an organisation such as Telenor. I respect Telenor. They have done extremely well in a number of ventures and I followed them in a number of things that they have done, but they have a certain mentality. We work on a different timescale and on a different methodology.

Q. If I could then ask you to look at Tab 16, Mr. Prelz, and this is a fax to you from Peter O'Donoghue in which he says "Telenor have requested us to provide them with a slightly reworded financial guarantee from yourselves," and he attaches the proposed wording.

And subsequent to that, on Tab 18, he sends a further letter to you saying, "oh, we're looking for different wording". And you refused to provide this further letter,

isn't that correct?

A. Correct.

Q. And part of the reason, which is recorded at Tab 17 of the book, is that you said, in order to get another letter, you would have to go back to your Investment Committee, isn't that correct?

A. Yeah. Well, I mean, frankly, it was a tense time where we were asked to sign letters, and I don't see, frankly, the need, once you make the commitment, vis-a-vis Telenor, what the change in wording at that level meant or whether that was simply just, you know, a matter of I didn't believe that it was critical to change the wording of the letter, and it proved not to be.

Q. And, in effect, as Ms. O'Brien pointed out, the proposed letter at Tab 18, the first paragraph of it essentially just replicates the commitment that's in the letter to the Department?

A. Yes.

Q. So there is no real reason why you would be opposed to signing such a letter, would that be fair to say?

A. No.

Q. Could I ask you to look at Tab 17, and the typed version of the note prepared by Peter O'Donoghue. And just to remind you, this is a note, a typed fax prepared by Mr. O'Donoghue three months after he has the telephone conversation with you, the notes of which we saw earlier this morning.

At the end of the second paragraph, Peter O'Donoghue

records about you:

"He stated he would not be signing any letter. Letters require the approval of the Investment Committee, and no letter would be forthcoming."

And can I just turn that slightly to say, does that mean, and to confirm what you said earlier, that the letters you wrote on the 10th of July had been approved by the Investment Committee?

A. The letter that we signed on the 10th of July was approved by the Investment Committee. The letter that and it was attached, as we saw, to our to the form signed, to the agreement of July 12th. It's difficult when you sign a letter, then you are asked to have a second one. Everyone asks questions and they say why should we send a new letter which says exactly the same thing as the prior one? On top of that, as I said, probably the same way, very nicely, Denis sent me a nice letter on the 14th of July. Three weeks later, we might have had some discussion, I don't remember in which respect. As I mentioned before, I do remember the telephone call with Peter, because it was particularly hairy. It might have had to do with other things and I didn't want to give in. That said, I didn't think it was appropriate and I didn't think it was needed. It was not needed.

Q. Could I ask you to go forward to Tab 22, please, Mr. Prelz, and this is a handwritten record of a memo of a meeting between yourself and Denis O'Brien on the 11th of August.

It says: "On the 11th of August DOB met Massimo Prelz in Dublin. DOB told MP that Telenor were unhappy and want a better letter. DOB told MP that the agreement between GGL and AI had been breached by AI as Telenor had not been satisfied by their letter."

You were aware at this stage, obviously, Mr. Prelz, that there was a problem with Telenor's acceptance of the letters, isn't that so?

A. Yes.

Q. And is it fair to say that that was the motivating factor behind Esat Digifone's attempts to secure a different letter from you?

A. Yes, yes.

Q. Could I ask you to go to Tab 25, please? And this is a further complaint from Telenor on the 11th of September, 1995, which, of course, is the day before the oral presentation, which I referred you to earlier on. And just in part of it I'll refer you to the middle of it; he says:

"Based on the content in section 3 of this letter, I have drawn the following conclusions," and the third bullet point, this is a reference to your letter of the 10th of July, 1995:

"There has not been made any formal or legal binding agreements between Digifone and AIC. Correct me if I am wrong. On this basis, I would like to stress that Digifone must not enter into a position where it's obliged to bring

in AIC as an equity partner."

So there seems to be a concern being expressed by Telenor there about you being brought in as an equity partner, would that be fair to say?

A. I think that you know, when you look at this date, 11/09, there was the day I mean, whether this was letter was written at because of real serious concern from Knut Haga or whether it was written because at the time they were talking about changing the potential structure and not giving us the 5% because of the involvement by Dermot Desmond, I don't know. I mean, I think, at point 1, AIC has not committed itself to participate as an equity partner, is basically wrong. Point 2 is right, which is probably why there were all these discussions. And point 3 is, in a way - formal is right; legal binding is wrong.

Q. You believed you were legally bound to the 30 million commitment?

A. Yeah.

Q. Although it hadn't been formalised, so to speak?

A. Yes.

Q. Could I now ask you to turn to Tab 27. This is a letter that was opened earlier on, as well, and it's from Mr. O'Brien to you on the 26th of September, 1995. It says:

"Dear Massimo,

"I attach a letter for Telenor which is self-explanatory.

"Regardless of Telenor's position, it is now clear that we

will not be awarded the GSM licence with the existing financing arrangement. We need something much stronger to have any chance of success. I am working on another avenue which could provide us with the answer and, at the same time, significantly strengthen our bid in other respects.

I will explain in further detail when we meet."

You said earlier in your evidence to Ms. O'Brien, Mr. Prelz, that you were aware of talks or an involvement by Dermot Desmond and IIU at some stage. When did you become aware of that?

A. As I said before, I think it was in early during the summer, early during the month of August before the oral presentation, so it was before that.

Q. So it was certainly before the 12th of September, 1995?

A. Yes.

Q. You were aware of it?

A. Yes.

Q. Then, if I could ask you to go to Tab 29. On the 3rd of October, 1995, Mr. O'Brien writes a letter to Advent in the United States, dated 3rd of October, 1995, in which, effectively, he says that because the letters weren't acceptable to Telenor, that the agreement reached between Communicorp and Advent has to be terminated.

Were you aware of that letter, and, if so, what was your response to it?

A. I was aware of the letter because obviously it was sent to me right away, since it was received in Boston. I don't

know, I don't remember, frankly, what happened at that specific point. In the meantime and I don't remember what happened at the time, frankly.

Q. Okay. But

A. But at the time, we were already discussing the fact that Dermot Desmond would come in with this 20 percent and so we were in constant flux. I mean, I can't put, 15 years later, in context, what happened at any given day.

Q. Of course. But subsequently, there was issues between Communicorp, Esat, Denis O'Brien and Advent which ultimately were resolved by an agreement dated the 24th December, 1995. And if I could ask you to look at Tab 37, Mr. Prelz, I think you'll see that agreement recorded there?

A. Yes.

Q. And that ultimately resolved any disputes that existed between Communicorp, Denis O'Brien and Advent, isn't that so?

A. Yes. I haven't reviewed these. I haven't seen it in a long time.

Q. I don't propose to open it at all. I just wanted your acceptance that that concluded the issues that existed between Communicorp and Advent and involves a resolution recorded in this memorandum of understanding.

A. Yes.

Q. Mr. Prelz, they are the main documents from 1995 that I wish to refer you to. But I just want to try and see if we

can agree, for the benefit of the Chairman, some issues which are not in dispute. And the first one I'd ask you to tell me whether you agree with it or not, is that you, clearly, as the Managing Director of Advent Europe, wanted to invest IR£1/230 million in Communicorp in order to fund its equity participation in Esat Digifone?

A. Yes, that is correct.

Q. There is no doubt about that?

A. There is no doubt.

Q. Secondly, you, as the Managing Director of Advent Europe, recommended to the Advent Investment Committee that the sum of 30 million should be so invested?

A. Correct.

Q. Isn't that correct? Thirdly, and you are in a unique position here because you are the only witness from Advent that the Chairman has had the benefit of hearing from, but you are telling the Chairman that the Investment Committee of Advent approved an agreement to invest IR£1/230 million into Communicorp, isn't that so?

A. That is correct.

Q. And you give that evidence notwithstanding the fact that we don't have a written document similar to the one that exists for the earlier deal qualifying memorandum?

A. Yeah.

Q. You I suppose the fourth point is that you, as the Managing Director of Advent Europe, you regarded that IR£1/230 million as a commitment by Advent to Communicorp, isn't

that correct?

A. That is correct.

Q. And the decision to invest 30 million is recorded in your letters to the Minister and Telenor dated 10th of July, 1995, although

A. Correct.

Q. it's the words "offered" are used?

A. Correct.

Q. But your evidence to the Tribunal is that the intention of the writer and the clear commercial meaning of those letters was that you were funding Communicorp to IRi½30 million?

A. That we were underwriting the shares of Communicorp investment.

Q. And as far as you were concerned, you believe Advent had an irrevocable commitment?

A. Correct

Q. to come up with that 30 million?

A. Yes.

Q. And although you are the I suppose they are the issues which I say are not in dispute and on which you gave uniquely qualified evidence. But fortunately, we have the benefit not just of your evidence, Mr. Prelz, but we also have some correspondence from Advent, isn't that so?

A. Yes, and I think that the meaningful since the deal qualifying memo is missing, the final page, it is important that we look at the signature of Janet Hennessy as a

procedural step which does not come before the approval of the Investment Committee.

Q. And your evidence to the Chairman is that signature could not have been put there by Ms. Hennessy unless she had approval from the Investment Committee?

A. Yes, correct.

Q. And as we saw, the signature within the agreement is the letter which you say commits 30 million, isn't that so?

A. Yes.

Q. Could I ask you to go to the little booklet of letters which Ms. O'Brien gave you earlier today, the correspondence between Advent and the Tribunal, and if I could ask you to go to the letter of the 14th of July, 2009. That's the letter which is signed by Mr. Dodge, do you see that?

A. Yes.

Q. And as Ms. O'Brien pointed out, obviously, Advent is very careful when it comes to writing letters, isn't that so

A. Yes. I mean...

Q. whether, indeed, the letters of the 10th of July, 1995, or, indeed, the letter of the 14th of July, 2009?

A. Yes.

Q. And clearly it is a letter that was written with the benefit of a lawyer. If I ask you to look at the second page, this is what Advent are saying in July 2009. They state:

"With respect to the Tribunal's request to comment on

Mr. Prelz's statement in the memorandum, Advent is unable to be of much help for the reasons discussed in the telephone conversation, namely that the applicable events took place over 14 years ago and the investment professionals responsible for and that worked most closely on the transaction in question, the most important of which is Mr. Prelz himself, are no longer with Advent organisation. Nonetheless, as also discussed during the phone conversation, it appears to Advent that the commitment was an obligation that Advent intended at the time to stand behind. Please note that the foregoing statement is based solely on a plain reading of the materials and is not informed by any personal recollections or other ancillary information."

And just in respect of the last part of that paragraph, Mr. Prelz, are you in agreement with it, that a plain reading of the documents indicates that Advent had an obligation for 30 million?

A. Yes.

Q. And I know sometimes lawyers get caught up in is it a guarantee? Is it a commitment? Is it funding?

As a commercial investor, you accept you were on the hook for it?

A. I was on the hook for it. Advent was on the hook for it.

Q. You may be wondering about the, I suppose the relevance of looking at this part of the licence bid deal in such detail in this Tribunal, but the reason is, as Ms. O'Brien pointed

out, is that there was a suggestion, in evidence given by Mr. Per Simonsen, that Mr. O'Brien had said to him that the Minister had said to Mr. O'Brien "we need to get Dermot Desmond in as an investor".

Did Mr. O'Brien ever say anything to you which indicated that the Minister had told him that Esat needed a stronger financial bid?

A. No.

Q. Did he ever indicate to you that he had spoken to the Minister about the financial capacity of the bid?

A. No.

Q. Did he ever indicate to you that the financial, or the perceived financial weakness of Esat was a problem that the Minister had identified for Denis O'Brien?

A. He didn't mention I mean, it was known to be a weakness but it would not depend on the Minister.

Q. Of course, in competitions such as this, you can't decide a competition based on who is the richest, can you?

A. No, definitely not, otherwise we would never have won.

Q. In that case, we would have a monopoly throughout the world of one company endlessly running every mobile phone network.

Finally, and this may be slightly unfair to Ms. O'Brien, and I hope it's not, but you were asked questions on the previous occasion about whether or not you had benefitted from share options from being on the Board of Esat, and you said you had made a financial benefit?

A. Yes.

Q. Can I take it that you are not here to repay any favour to Denis O'Brien or because you feel bound to him? The reason you are here is because we have asked he has asked you to come and you have some relevant evidence to give, isn't that so?

A. I think it's appropriate in this case to be here because I was asked to come and, if anything, I am surprised that no one else asked me to come in the eight years of this Tribunal. Advent has been approached in 2003, from the letter I have seen. Advent responded that I was the person in charge, but no one, despite the fact that this seems to be the availability of this money seems to be a very significant point, has made any attempt to hear my side of the story.

Q. And if you were contacted by the Tribunal in 2003, would you have come to give evidence to this Tribunal?

A. Of course, and probably would have remembered a few more things than I do now.

Q. And, in substance, would your evidence have been any different to the evidence you have given here today?

A. Sorry?

Q. Would your evidence have been any different had you given it in 2003, to the evidence you have given to the Chairman today?

A. As I said, possibly I would have remembered more things as things were fresher. In 2003, we were just closing up on

the sale of Esat. I had more documentation with me, I had more facts which, today, I might not be able to recall.

Q. But the substance of your evidence, and it nets down to the point: Was there a commitment by Advent to fund Communicorp to 30 million? That would have remained the same?

A. Yes, because that is something that is very clear, a very clear fact, and was one of the biggest commitments that I made at the time; despite Advent being a billion-dollar fund, it was one of our largest investments. It was also one of the very successful at the time and so I have a very good recollection of that aspect of it.

Q. And from your experience in telecommunications, what can you say to the Chairman generally about the quality of the bid that was put in by Esat Digifone and the service it provided after it was granted the licence?

A. As I said before, earlier this morning, this was an exceptional well-run process. We put together a dedicated local team with deep knowledge of the market with the best operator at the time in the mobile. We were able to secure the development, the launch of the service in a very short time and we were the fastest-ever profitable company in the mobile space in Europe. So, I was very, very happy of the outcome, so were my partners and so was the market.

Everyone who has invested in Esat, other than BT, made a bundle.

Q. And in terms of the quality of the service for the users of

the network, what would you say to the Chairman about that?

A. Sorry?

Q. The quality of the network provided to its users, the Irish public

A. Well, I mean, you are in a much better position to judge that because I don't roam that often in Ireland, but, yes, I think it was we delivered what we promised. The quality of service was higher than Eircom at the time when we were an investor. I mean, we run a continuous test and it was always very satisfactory.

Q. Thanks, Mr. Prelz.

CHAIRMAN: Anything in conclusion, Ms. O'Brien?

MS. O'BRIEN: Just a few things, sir. I won't detain Mr. Prelz too long.

THE WITNESS WAS EXAMINED FURTHER BY MS. O'BRIEN AS FOLLOWS:

Q. MS. O'BRIEN: Mr. Prelz, I went through your comfort letter of the 10th of July, as it's referred to and described in the agreement of the 12th July, very carefully with you in July last. I also went through that agreement of the 12th of July paragraph by paragraph with you, also very carefully. I am not going to revisit it now. As I did the draft deal qualifying memorandum of the 8th of June, which is unsigned. And I think I opened that very extensively to you, isn't that right?

A. You?

Q. I think I read it out fairly extensively to you?

A. Yes.

Q. In fact, I think I read out quite a lot of it that Mr. O'Callaghan didn't refer to in opening it to you this time. But just one thing I want to bring to your attention and see if we can clarify matters.

You knew that Mr. O'Brien intended to fund his equity participation in Esat Digifone if it won the licence through a private placement with CS First Boston, didn't you?

A. Yes.

Q. You knew that was his intention, didn't you?

A. Not well, I don't remember which point the private placement and the CSFB was decided and agreed, but, from my memo, it was obvious that we expected to raise some money from third parties, yes.

Q. His intention was to fund it with a placement with CS First Boston, and CS First Boston, through an introduction effected by Mr. Peter Muldowney, had been engaged at the end of June of 1995, isn't that right?

A. I don't remember it was the end of June, but it could be.

Q. It's all there in your document dated the 8th of June, so we'll have to take it that you knew that, isn't that right?

A. Mm-hmm. Yes.

Q. Now, when it came to it in 1996, when the private placement proceeded, as had been his intention from June of 1995, Advent did take up a portion of that private placement, isn't that right?

A. Correct.

Q. I think it was 4.5 million dollars, there or thereabouts.

Now, you said in your evidence that Advent would have been very interested in investing the 30 million in Esat, isn't that right, in Communicorp to fund Esat?

A. Yes.

Q. But Mr. O'Brien wasn't interested in taking up that funding, isn't that so?

A. That let's put things in context: In June '96 we had the licence. The business had been restructured because in June '95 we were talking about an investment in Communicorp. December of 1995, as the document here shows in A27 37, we switched that to restructure our ownership into Esat.

Q. That's right.

A. So a lot of things changed. And the price at which people came in into the financing in June '96, June, were very different. Now, the price, the valuation of the company had increased substantially.

Q. Of course it had, because they had secured the licence?

A. Because they had secured the licence. Well, we were owner of 35 percent of that increase, basically, without risking our capital other than on our commitment. So it was a very good deal for us not to participate. The fact that we were interested in participating for 30 million at the ground floor didn't mean that they would have taken the same position a year later.

Q. Oh, I can understand that entirely. That's not the point I

am making. In fact, the point I am making to you is that in June 1995 and in July 1995, it was Mr. O'Brien's plan and intention that he would fund this through a private placement with CS First Boston, isn't that the position?

A. Yes. That's why we committed 30 million, and I gave an indication to our Board, to our Investment Committee, that we would invest maybe 12.

Q. You'd be a fallback position, isn't that right?

A. We were underwriting the commitment.

Q. Well, there is

A. But we had a commitment, an agreement to fund, which Denis didn't have the obligation to take.

Q. But his intention - and I want to come back to this again, Mr. Prelz, I want us to be clear on it - his intention was that he was going to fund this through a private placement with CS First Boston, isn't that right? That was his plan?

A. Sorry?

Q. That was his plan?

A. His intention and our intention was to do the best possible deal for Esat.

Q. No, Mr. Prelz, it's very simple and it's in your deal qualifying memorandum: CS First Boston had been appointed as exclusive placement agents in June of 1995 and in your deal qualifying memorandum you make it perfectly clear that you knew that that's what he intended to do, that's what his plan was?

A. That was the plan.

Q. Yes. Now, that was never disclosed to the Department, was it?

A. I haven't seen it in any document.

Q. No, it wasn't.

A. But

Q. And, Mr. Prelz, just bear with me for a moment. It couldn't have been disclosed to the Department as a funding arrangement, could it?

A. No, because it was not a funding arrangement.

Q. Because the Department would never have regarded that as demonstrating financial capability, isn't that right?

A. Correct.

Q. So, in fact, what was necessary for Mr. O'Brien was to have your letter of comfort, which is your description of it, so as to qualify and to pass the Department's requirement of demonstrable financial capability, isn't that the position?

A. No. In order to pass that, he didn't need a letter of comfort; he needed to make sure that he had the money.

Q. What he needed to do, Mr. Prelz, was to have something to show to the Department and something to put forward to the Department that would satisfy him that there was sufficient financial capability, isn't that right?

A. Sorry, it's not the way you do business.

Q. It wasn't business that he was doing, Mr. Prelz; he was participating and competing in an evaluation process. This wasn't business; this was a very serious evaluation process being conducted by a department of Government?

A. Yes. And Denis O'Brien needed to make sure that, if he won, he would have the funding. Let's assume that between 1995, when he committed and hired First Boston, and 1996, when he needed the money, that something had gone wrong in the financial market. He might have been in a position not to raise the money, in which case he had to count on a commitment, an irrevocable commitment.

Q. And that was your letter of comfort?

A. That was my commitment.

Q. Thank you, Mr. Prelz.

CHAIRMAN: Thank you very much for your attendance, Mr. Prelz. Again, I think you will confidently catch your flight.

A. Yes. Thank you very much.

THE WITNESS THEN WITHDREW.

CHAIRMAN: I propose to say very little in conclusion.

Obviously, my priority at this stage of events is to bring the balance of my work up here to the earliest possible termination that is consistent with fair procedures.

Two matters have been adverted to to some limited extent in correspondence in recent times. The first is whether or not this is the final public sitting of the Tribunal. In this regard, I have not yet finally determined whether some further or recalled evidence of a limited nature may be recalled. The investigative functions of the Tribunal continue right until delivery of Part 2 of the final report. And constantly, information is coming in. Even

today, a potentially significant document was received that has to be evaluated and assessed.

The other matter that has been explored is to the possible delivery of further provisional findings. In this regard, I will require, as I have set about already, to make a very careful evaluation of all the further evidence that has been heard since the delivery of the initial such findings in November of last year and I will also have regard to recent jurisprudence, including the judgement of Mr. Justice O'Neill in the comparatively recent case of O'Callaghan and Others -v- Mahon and Others.

In regard to these matters and to any others that arise, I will see that appropriate communications are had at the earliest feasible stage with interested persons, and consistent, as I have said, with ongoing fair procedures, I will be seeking to bring a long-running process to the earliest feasible and justice conclusion.

Thank you very much.

THE TRIBUNAL THEN ADJOURNED.