

THE TRIBUNAL RESUMED ON FRIDAY, 6TH DECEMBER,  
2002 AT 11AM.

CONTINUATION OF OPENING STATEMENT BY MR. COUGHLAN:

MR. COUGHLAN: Mr. Sean Fitzgerald, who was an Assistant Secretary in the Department at the time, has told the Tribunal that he was informed by Mr. Martin Brennan in early September, as he recollects, that the initial evaluation of the Project Group put three bids as qualifying for the licence and the other three as subject to reservations. There was clear water between the third-place bid and the first and second, who were close.

Mr. FitzGerald has informed the Tribunal that he was told that at that stage Esat Digifone were the likely front runners, but more work was needed. Mr. FitzGerald has informed the Tribunal that he said that such a result, if upheld, was going to be controversial, and the final decision of the Group had better be well founded as it would be open to attack.

Mr. FitzGerald has informed the Tribunal that he asked if the Minister was aware of the situation and was told that he was and had not expressed any views.

Once the possibility of the Esat Digifone bid becoming a possible winner emerged, Mr. FitzGerald has informed the Tribunal that he was concerned that its financial capability to implement the project should be clearly established before a recommendation was made. His

concern related to the Communicorp partner, which was also heavily involved in developing a wire-based service in competition with Telecom Eireann. This service was still unprofitable and was requiring ever-increasing amounts of capital resulting in increasing investment from venture capital funds and a dilution of Mr. O'Brien's shareholding. According to Mr. FitzGerald, even though the award of a licence would result in a bankable project for establishing the mobile service, the Telecom business would put a strain on Communicorp's ability to fund its large 50% stake. Mr. FitzGerald has informed the Tribunal that Mr. Brennan said that the Group had been aware of the financial weakness of Communicorp and also that of some other participants in other bids. They had required, according to Mr. Fitzgerald he was informed by Mr. Brennan that the Group had required all bidding Group Members to cross-guarantee all other bid partners. This insured that Telenor's financial strength would, if necessary, ensure the Esat Digifone financial viability. It would not necessarily stabilise the shareholding, but neither would any other financial underpinning. Mr. FitzGerald has informed the Tribunal that he discussed the situation with Mr. John Loughrey but not with the Minister or anybody else.

Mr. Martin Brennan has informed the Tribunal that he

was on annual leave at the time of the closing date for the receipt of applications. He recalls that a couple of weeks after he came back, the Minister asked if he was satisfied that they would get a good operator out of the applications. Mr. Brennan remembers telling him that he had read them all, even the bits he did not fully understand, and he was confident that the better of them would be a very good licensee and that his preliminary assessment was that some were weakish. At a later stage, which he cannot date, he remembers using the analogy to Minister Lowry that if you had six candidates for a job and only one job, then as you consider their merits they almost inevitably broke down into those for serious consideration and those not and sometimes some in between, and in this case he could see either a three:three split or a two:two:two split. He has informed the Tribunal that he doesn't think he named the names at that stage.

Mr. Brennan has also informed the Tribunal that his relationship with both Mr. FitzGerald and Mr. Loughrey was informal and more open. He kept them advised in a general way from time to time as to how the process was progressing. He does not know at this stage whether and at what stage he named names, but again it was clear that there was no interest on their part other than seeing the process finish on time.

The Tribunal has been informed by Mr. Fintan Towey that regarding the letter sent to the Department by Michael Walsh dated 29th September, 1995, it may have been that Martin Brennan was not in the office and for that reason it was received by Mr. Towey, or it may have simply been that Mr. Towey was passing the fax machine when the letter arrived. Mr. Towey has informed the Tribunal that he probably drafted the reply dated the 2nd October before he brought the matter to Mr. Martin Brennan's attention. I'll deal with that in a moment. Mr. Towey has informed the Tribunal that it was clear to him that this was new material. There had been sensitivity during the presentation on the financial capacity of Communicorp. In his view, the contents of the letter of the 29th September was additional material and was outside the terms of the competition unless it contained information in response to queries raised by DTEC, which was not the position here. The letter of the 2nd October made it clear that the information was material which was being rejected and would not be considered in the process.

The letter of the 2nd October, 1995, signed by Mr. Martin Brennan and addressed to Mr. Denis O'Brien, Chairman, Esat Digifone Limited, reads as follows:

"Mr. Denis O'Brien, Chairman, Esat Digifone Limited,  
South Block

The Malt House

Grand Canal Quay

Dublin 2.

"Re additional correspondence received.

"Dear Mr. O'Brien,

"I refer to the ground rules of the competition as outlined at our recent meeting with you on Tuesday 12th September. The Department has already made it clear that applicants shall not be permitted to provide any further material to supplement their applications, except where expressly requested to do so by the Department.

"Accordingly, the additional material received from you on Friday last is enclosed herewith. It shall not be taken into consideration in the evaluation process.

"Yours sincerely,

"Martin Brennan,

"Principal Officer,

"Telecommunications and Radio (Development)"

The letter of the 29th September, 1995, had been sent by Michael Walsh of IIU Limited. The Esat Digifone application for the licence had specified that should the Department require any additional information on Esat Digifone's application, that they should contact Mr. Seamus Lynch or Mr. Per Simonsen. Mr. Lynch's and Mr. Simonsen's addresses, telephone number, mobile number and fax number were included in the

application. The letter of the 29th September, 1995, was not sent to the Department by Mr. Denis O'Brien, Mr. Seamus Lynch or Mr. Per Simonsen. Nevertheless, the letter of the 2nd October, which had been sent by Professor Michael Walsh, was sent to Mr. Denis O'Brien.

No copy of the letter of the 29th September, 1995, was retained on the departmental files. Apart from Mr. Martin Brennan and Mr. Fintan Towey, it appears that no other member of the Project Group was aware of the sending of the letter of the 29th September, 1995, by Professor Michael Walsh. It would appear that the view may have been taken that as the content of the letter constituted additional material contrary to the ground rules of the competition and had for that reason been sent to Mr. Denis O'Brien, that the other members of the Project Group did not need to know about it.

On the 2nd October, 1995, Mr. Arve Johansen of Telenor International sent the following letter to Mr. Denis O'Brien.

"Dear Denis,

"Referring to our meeting on Friday last and our following phone conversations and my conversation with John Callaghan, I will take this opportunity to elaborate on Telenor's view on our equity participation in Esat Digifone Limited.

"Telenor was invited to participate on an equal term basis (as stated in our Joint Venture agreement), and all work has been carried out on this basis. Our drafted Shareholders' Agreement clearly lines out how a pro rata reduction of ownership will take place to 34% ownership each.

"Telenor has put substantial financial and human resources, including some of our best mobile expertise in preparing this bid as well as conducting the necessary follow-up work. Site work has explicitly been kept apart from our cooperation, as stated in the said JV agreement. All other bid costs will be split on an equal basis (including a possible trade-off between advertising costs and Telenor Mobil staff costs).

"At an early stage of our collaboration, we made our concern clear regarding Communicorp's ability to fund Esat Digifone. After considerable pressure, Advent's comfort letter and your acceptance letter was presented to us and the Ministry. Even though the content of these letters were not very satisfactory, we decided to submit the bid due to the time constraints.

"It was quite clear from our meeting with the Ministry that both the lack of commitment from the institutions, as well as the uncertainty in the Advent/Communicorp relationship, created a lack of

confidence in the Irish side of the consortium's

capacity to raise the necessary funding.

"In order to reassure the Ministry and give an even stronger signal to the Irish community in general, we are pleased with the plan to have another solid Irish underwriter.

"Apparently, this requires us to accept a dilution of about 5 percent in total. For Telenor, it is definitely very hard to give up ownership stake at all on the basis of supporting Communicorp's and the Irish institutions' capabilities to raise the necessary funding. But on basis of the joint venture agreement and draft Shareholders' Agreement, we feel obliged and accept a pro rata dilution to 37.5%. Any further dilution would be in conflict with the principles of our participation and the Board resolution of Telenor AS.

"Having said this, we still believe in the compatibility in our partnership. We also appreciate the efforts you put in both on actual ground work on sites, distributors and bid work, as well as your tremendous efforts in PR and lobbying. However, we believe Telenor's substantial efforts, mobile operating experience and reputation is equally vital both for winning the licence and establishing the network within the promised time-frame.

"You have indicated to me that bid costs are running



much higher than anticipated when entering into the JV agreement. We believe that Telenor, based on the agreement, will absorb its equitable share of these costs. If, however, you feel that Communicorp for some reason is not fully compensated, we are willing to discuss the problem in further detail.

"I once again want to thank you personally for the tremendous effort that you and your Communicorp team put in place to help Esat Digifone win the licence. I will also assure you that the whole Telenor team has enjoyed working with you all, and promise support in any way we can as the race moves into the finals.

"Looking forward to our common success, I remain

"Yours sincerely

"Arve Johansen for Telenor Invest AS."

Yesterday I referred to a draft letter dated the 19th September, 1995, which Mr. Knut Haga informed the Tribunal he did not draft and that had no hand, act or part in drafting. I may not have opened that issue as fully as I perhaps should have. That was the draft which we referred to yesterday. The draft is dated the 19th. I also made reference yesterday to a signed letter in the same form as that draft which was signed by Mr. Knut Haga, but was dated the 15th September, 1995, and perhaps I'll read that out.

It reads:

"Dear Mr. O'Brien

"We refer to the letter of comfort written by Advent International Corporation in respect of the funding by you of your proposed equity participation in Esat Digifone Limited.

"We regret to inform you that we are not satisfied with the above mentioned letter. Our concern was further strengthened by our meeting with the Department this week. On this basis, we consider the letter of having no significant value to Telenor or Esat Digifone.

"It is vital to our further co-operation that Communicorp Group immediately can provide another letter of agreement giving appropriate financial assurance in a form more acceptable to Telenor.

"We look forward to your instant response."

And that is signed by Mr. Knut Haga.

I said yesterday that the Tribunal was awaiting a response from Telenor's solicitors about queries raised in respect of this particular letter. In fact, Telenor solicitors had already provided the response, and I just want to deal with what they have informed the Tribunal.

"We have been instructed to draw the Tribunal's attention to Mr. Haga's letter of the 15th September 1995. Although Mr. Haga accepts that he signed the letter, he does not believe that the departmental officials communicated any doubts as is referred to.

Mr. Haga was not at the 'meeting' (oral presentation).

"The letter and the reference was 'doubt' made in order to accommodate Mr. O'Brien in his dealings with Advent. Mr. Haga was aware that this letter would be copied to Advent, but he cannot remember who told him or in what circumstances he was told this."

I now wish to return to the memorandum to which I have already made reference, made by Mr. Arve Johansen in Oslo on the 4th May, 1996, in relation to the meeting which he had with Mr. Denis O'Brien on the 22nd September, 1995. Mr. Johansen's memorandum notes:

"Some days later the nature of the agreement with IIU comes clearer into the light, as an underwriting agreement to guarantee for Communicorp's timely payment of its share of the capital into Digifone, and including the right to place the shares with up to four nominees. This was unwillingly accepted by Telenor (since we understood it to be the right steps to be taken from an "official Irish standpoint" to secure the licence).

"The agreement was drafted by Frys/OO'C and signed in a hurry (basically in draft form) by Denis O'Brien alone on behalf of Communicorp and Digifone (even though we in the joint venture agreement had made it clear that two authorised signatures are required one from each party).

"The agreement was never signed by Telenor, neither as

authorised Digifone signature nor as a shareholder and a party to the agreement. Some time shortly after this, the Advent commitment to invest US\$30 million into Communicorp disappears, and it was essentially not necessary any more, since the Communicorp liability to pay capital to Digifone was anyway underwritten by IIU.

"In hindsight, it is quite clear who benefited from this arrangement.

"I have good reasons to believe that the terms put forward by Advent for investing into Communicorp did not suit Denis O'Brien. With the above arrangement, that he orchestrated for all other sorts of reasons, he has actually achieved to bolster his communicorp's balance sheet and paid for it with Digifone shares at the cost of Telenor. He has done this in an atmosphere of trust, where Telenor even has agreed to bridge-finance Communicorp while he raises funds through a private placement in the US."

The Tribunal will inquire into all circumstances surrounding the letter of the 29th September, 1995, from Michael Walsh to Martin Brennan. Particularly, though not exclusively, the Tribunal will inquire:

- I. Was the process compromised and if so by whom.
- II. Should Fintan Towey and Martin Brennan have sent the letter to Denis O'Brien or anyone else and not retain a copy of it in the Department without

informing other members of the Project Group of the fact that such a letter had been received.

III. What consideration, if any, should the Project Group have given to this letter in the context of what was contained in Esat Digifone's application and what had been stated by Esat Digifone in their presentation of the 12th September, 1995, in relation to their financial position and the ownership of the consortium.

In October, 1995, there was a Westmeath constituency fundraising lunch to which Denis O'Brien/Esat Digifone subscribed i<sub>ç</sub>1/2200.

On the 2nd October, 1995, Andersen Management International produced a third draft quantitative report and the total weighted scores and arranging as of that date were:

A1: Score 2.73: Rank 6.

A2: Score: 2.90: Rank 5.

A3: Score 3.19: Rank 2.

A4: Score, 3.09: Rank 3.

A5: Score 3.01: Rank 4.

A6: Score 3.41: Rank 1.

Andersen Management International has furnished a memorandum to the Tribunal concerning the quantitative analysis which was carried out in the course of the process. They have informed the Tribunal:

"The change in the separate quantitative evaluation

rating.

"The development in the scoring of the applicants over the time period of the three different versions of the separate quantitative evaluation document can be illustrated as follows:"

And then there is total weighted scores and ranking, and they provide three tables which cover the 30/8/1995, the 20/9/1995, and the 2/10/1995, and I have already opened those particular weighted score and ranking.

"AMI has so far not been able to find in its files narratives (i.e. discussions or correspondence) concerning the changes in the outcome of a separate quantitative evaluation.

"When comparing the differences in scoring and ranking between the three drafts of the document on a separate quantitative evaluation, it should be taken into consideration that the number of quantitative evaluation indicators forming the basis for each evaluation result are different for the first draft compared to the two subsequent drafts. Hence, 14 quantitative indicators are being scored in the draft of the 30 August, 1995, whereas the number of quantitative indicators are only 13 in the drafts of the 20 September 1995 and the 2 October 1995, respectively. This is due to the elimination of the indicator "Number of roaming agreements" which

indicator was found ill suited for quantification.

"Subsequent to the 2 October, 1995, draft, the three quantitative indicators OECD basket, blocking rate and dropout rate were also dismissed from the separate quantitative evaluation due to inconsistencies in the relevant data provided by the different applicants that made a separate quantitative comparison of these data impossible, (part 2.4 (p5) of the final Evaluation Report as well as the fact that the Evaluation Report does not contain any quantitative tables or figures concerning blocking or dropout rates). The fact that the quantitative indicators were left out of the separate quantitative evaluation did not mean that these aspects of the applications were not evaluated, since they were taken into consideration under the holistic evaluation.

"It should also be noted that the average score fluctuates during the evaluation period covered; the average score on the 30 August 1995 was 3.12; on the 20 September 1995 it was reduced to 2.84; whereas on the 2 October 1995 it jumps to 3.06. The reason for the fluctuations is that the separate quantitative evaluation was an ongoing process that was rerun over a considerable period of the total evaluation period, i.e. almost until the settlement of the final result of the holistic evaluation.

"The reasons for the recalculations of the separate

quantitative evaluation were due to not only the changes in the number of the predefined indicators applied, but also and in particular the modifications that were made over time to the quantitative data provided by the applicants in the mandatory tables of the applications. During the first separate quantitative evaluation attempt it was quickly recognised by the number-crunching team that the quantitative data provided by the applicants could often not be taken at face value. In addition, it was not possible to compare the data among the applications due to differences in the assumptions made by each applicant when filling in the mandatory tables in the application. Accordingly, written questions were posed to the applicants in order to ensure that the quantitative data provided was assessed on the correct basis and that the basis for one application was comparable to the basis of the data provided in the other applications (see for example Section C in the internal AMI memo of the 16 August 1995)."

Then there appears to be what is a reference to the internal AMI memo on the 16 August 1995. "The problems of lack of comparability of the data as stated by AMI in the minutes for the meeting of the PTGSM meeting on 4 September 1995 (the document inserted under Tab 11 in the document binder provided



by the Tribunal), and the document entitled "Financial conformance check" last modified on the 12 September 1995.)

"Thus the recalculations of the separate quantitative evaluation were, inter alia, as a result of the clarifications provided by the applicants in their answers to the written questions. Furthermore, a few obvious corrections were made to the applicant's data in the mandatory tables based solely on decisions by the PTSGM that's the project team. "As examples of the modifications made, see the enclosed documents.

"Note on recalculation on financial figures of applicants". (Last modified on the 8 September 1995 and corrections on the tables for A1 to A6, last modified on the 20 September, 1995).

"It is clear that over the period covered by the three different drafts of the separate quantitative evaluation, the ranking of the applicants fluctuates considerably. For example, A1 drops from 4 to number 6 and A4 improves its ranking from number 5 to number 3, higher than A5's drop to ranking of number 4.

"As stated above, AMI is not in possession of any narratives concerning the separate draft quantitative evaluation outcome. However, in AMI's opinion, the fluctuations are an illustration of the problems related to an entirely separate quantitative evaluation: An entirely separate quantitative

evaluation is very sensitive, and even seemingly small adjustments can make a big difference, see below under (C)."

(C) the "Withering away" of the separate quantitative evaluation.

"The reason for the "Withering away" of the separate quantitative evaluation, see part 2.4 (page 5) in the final evaluation report of the 25 October 1995, were (in chronological order) as follows:

"Not all of the evaluation criteria listed in paragraph 19 of the RFP of 2 March 1995 could be transformed into quantitative evaluation indicators, and for this reason the separate quantitative evaluation could not and did not cover all of the evaluation criteria listed in paragraph 19. For example, the evaluation criterion in paragraph 19 concerning the applicants' proposals with regard to performance guarantees could not be covered by any quantitative indicator.

"Some of the evaluation criteria listed in paragraph 19 of the RFP of the 2 March 1995 could only in part be transformed into quantitative evaluation indicators, and for this reason the separate quantitative evaluation could not and did not cover the full extent of the criteria listed in paragraph 19. For example, the evaluation criterion

"Credibility of business plan and applicant's approach

to market development" was not completely covered by the quantitative indicators in that, e.g., the issue of credibility could not be properly reflected via quantitative indicators.

"Some of the originally defined quantitative indicators were abandoned during the holistic evaluation phase due to the fact that they were not suited for quantification (i.e. the indicator "Number of roaming agreements" that did not properly cover the evaluation criterion, the extent of the applicant's international roaming plan under paragraph 19 of the RFP). Then it says "See also page 3 of the handwritten notes (Ms. Maev Nic Lochlainn? ? ) of the PTGSM meeting on the 4 September 1995 as provided by the Tribunal in their 9 May 2002 letter where in regard to "Roaming" the notes states that "Difficult to evaluate" and "Score qualitatively, not quantitatively".

"Some of the originally defined quantitative indicators were abandoned during the holistic evaluation phase due to the fact that the separate quantitative evaluation outcome was non-transparent due to the lack of comparability between the data provided by the applicants for the various indicators (i.e. "OECD basket," "Blocking rate" and "Dropout rate"), c/ the documentation provided under (b).

"Due to the exclusion (in the whole or in part) of

some of the evaluation criteria listed in paragraph 19 in the RFP and the consequential lack of the large proportion of the weighting ascribed to each evaluation criterion, the separate quantitative evaluation became very limited in scope and therefore sensitive and out of sync with the scope of the predefined evaluation criteria in paragraph 19 of the RFP. This is evidenced by the fact that around 50% of the weighting of the predefined quantitative indicators was lost (reference to the quote below from B. Riordan from the Department of Finance).

"The Steering Group took the decision that no separate quantitative evaluation should be recorded.

"From the minutes of the meeting for the PTGSM meeting as early as 4 September 1995, it can be seen that a separate draft quantitative evaluation outcome was presented followed by a discussion of each quantitative indicator in turn, and based upon the discussion the participants in the meeting came to the consensus "... that the quantitative analysis was not sufficient on its own and that it would be returned to after both the presentations and the qualitative assessment...". See the minutes of the meeting inserted under Tab 11 in the Tribunal's document binder.

"As stated above under (b) it was and still is the opinion of AMI that an entirely separate

quantitative evaluation is very sensitive, and even seemingly small adjustments can make a big and from time to time distorting difference. Also, applicants make incorrect calculatory assumptions for the data that they provide in the mandatory tables: At times this is due to the complexity of the subject matter, at other times it can be deliberate. This makes it close to impossible to ensure via subsequent clarifications and modifications that the data provided by one applicant under the mandatory tables is fully comparable with the data provided by other applicants, i.e. that the comparison of the quantitative data takes place on a "like for like" basis. Finally, a separate quantitative evaluation tends to provide only a very simplistic description of the qualities and disadvantages of an application measured against the predefined evaluation criteria, since the evaluation criteria most often are not 100 percent quantifiable but also contain a considerable amount of qualitative elements. (In this respect, see AMI's reservations concerning the draft outcome of a separate quantitative evaluation as presented at the PTGSM meeting on the 4 September 1995).

"The weakness of a separate quantitative evaluation is also evidenced by the fact that it is meaningless to score if half of the weighting is lost; the reliability of the totals will not be acceptable.

"AMI's concern on the weaknesses of an entirely separate quantitative evaluation was shared by the PTGSM, reference to the minute of the meeting for the PTGSM meeting on the 4 September 1995, according to which "The consensus was that the quantitative analysis was not sufficient on its own and that it would be returned to after both the presentations and the qualitative assessment."

"The following statements in the verbatim note of the handwritten notes with regard to PTGSM meeting of the 9 October 1995 (c/tab 13 in the Tribunal's document binder) also reflects the concern of different members of the PTGSM with regard to a separate quantitative evaluation and illustrate that "withering away" of the basis for a separate quantitative evaluation:

"View is quantitative evaluation should not be performed separately but are taken into account in main report.

"Quantitative evaluation too simplistic to give results and quantitative evaluation unfair and impossible. Figure impossible to compare. Results of quantitative evaluation not reliable. Quantitative analysis became less and less".

"Because of the uncertainty cannot trust quantitative and 50% of the weighting is lost due to scoring that cannot be used and quantitative analysis has been undermined. That was attributed to Billy Riordan; the

other was attributed to Fintan Towey.

"As stated above then these quotations from the PTGSM meeting on 9 October 1995, and the following should be remarked in this context:

"AMI's representatives (Mr. Andersen and Mr. Bruel) participated in a very limited part of this meeting, partly due to the flight schedules, partly due to the fact that the meeting was a bit disorganised with a change of meeting facilities of which AMI was not told, so that they had to find a new meeting place once they arrived at the place originally agreed.

"AMI generally do not receive or get to see the minutes of PTGSM meetings, and hence it proved difficult to obtain a normal/perfect audit trail.

"Consequently, the quotations above represent the views of the Irish representatives of the two departments independently of AMI's own view.

"However, the PTGSM had already at an earlier meeting concluded that "The consensus was that the quantitative analysis was not sufficient on its own and that it would be returned to after both the presentations and the qualitative assessment."

There is a reference to the meeting of the Group on the 4 September 1995.

Now, on the 3rd October 1995, Andersen Management

CHAIRMAN: Mr. Coughlan, it's reasonable to say, I suppose, it's not expected that everybody here will

have assimilated all the nuances of the qualitative and quantitative method from perhaps those rather turgid pages, and we will be returning in the course of hearing to more user-friendly terms to make

MR. COUGHLAN: Absolutely, and I just want to deal with something which happened on the 3rd October 1995, because on the 3rd October 1995, Andersen Management International furnished the first draft evaluation report to the Department. This arrived in the Department probably on the 4th October, 1995. This draft evaluation report assessed and ranked applicants by reference to four different models, all based on criteria set out in paragraph 19 of the initial RFP document. Overall, Esat Digifone was ranked highest. In the annexes to this first draft, Annex 3 described the evaluation model and at paragraph 3.2 set out the procedure for the quantitative evaluation process. It noted, at Item Number 5, that the result of the quantitative evaluation would be considered with due respect to the significance of differences in the total sum of the points assigned. It also stated that a memorandum comprising the salient issues of the quantitative evaluation will be annexed to the Evaluation Report. This will have some significance, Sir, in that in the Final Report there was no memorandum comprising the salient issues of the quantitative evaluation annexed



to it.

On the 3rd October, 1995, Mr. Sean McMahon of the Project Group attended a meeting with other divisions in the Department, and his note of that meeting, which also deals with different issues not connected with the GSM project, states at Point Number 4:

"GSM

- Minister wants to accelerate process.
- Legalities more complicated
- Draft report now imminent
- We need to discuss and digest
- Agreed one copy we let it stay here (44) and

discuss it in confidence."

On the 3rd October, Mr. Denis O'Brien sent a fax to Mr. Massimo Prelz of Advent International which stated:

"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 second 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."

"Regards

"Denis O'Brien"

He also sent a letter dated 3rd October 1995 to Advent International Corporation in Boston, but the letter which he enclosed from Telenor made it clear that Clause 4.2 of their agreement had not been fulfilled, and accordingly their rights pursuant to clause 2 and 3 had not arisen and would not arise. He asked them to take this letter as notice of termination of the agreement. That was the agreement of the 12th July, 1995.

On the 6th October 1995, Mr. Knut Haga wrote to Mr. Denis O'Brien requesting information on Bottin. This request appears to relate to the side letter signed by Mr. O'Brien and IIU on the 29th September, 1995.

On the 6th October, 1995, a cheque made payable to the Bank of Ireland in the sum of £4001.75 was drawn on the joint account of Esat Telecommunications Limited and Telenor Invest AS. This was a joint venture current account for the purpose of making payments for and on behalf of Esat Digifone project until Esat Digifone Limited became operational. The account was funded by equal contributions from Telenor and Esat Telecom.

Telenor has furnished the Tribunal with Telenor International's resolution relating to the opening of a joint account of Telenor Invest AS and Esat Telecommunications Limited in Bank of Ireland. They have also furnished the Tribunal with a copy letter

dated 8th June, 1995, from Communicorp Group Limited  
to the Bank of Ireland with samples of the authorised  
signatories for the account of Esat Digifone Telenor  
joint venture agreement. The letter is dated 8th  
June, 1995, and it is signed by Mr. Peter O'Donoghue.

And it states:

"The Manager

"Bank of Ireland

"Lower Baggot Street

"Dublin 2.

"Dear Sir/Madam,

"The following are samples of the authorised  
signatories for the new account being set up at  
present in the name of Esat Telenor JV:

"Denis O'Brien or Peter O'Donoghue and Per Simonsen or  
Hans Myre.

"There must be two authorised signatures, the first to  
be either Denis O'Brien or Peter O'Donoghue and the  
second authorised signature to be either Per Simonsen  
or Hans Myre.

"Yours sincerely

"Peter O'Donoghue,

"Chief Financial Officer."

Mr. Hans Myhre has informed the Tribunal that having  
been shown an electronically scanned image of a fiche  
copy of this cheque, that he accepts that based on  
visual inspection, the signature of Hans Myre on the

cheque looks like his signature. It would appear that the other signature on the cheque is that of Denis O'Brien.

A Ms. Sarah Carey has informed the Tribunal that she obtained this cheque and used it to purchase a bank draft payable to Fine Gael in the sum of  $\text{€}4,000$  on the 6th October, 1995, at the Bank of Ireland, Pembroke Branch, Dublin 4. It would appear that this was not the same branch of the Bank of Ireland which held the joint venture account.

By letter dated 9th October 1995, on Esat Telecom notepaper, Ms. Sarah Carey wrote to Mr. Phil Hogan TD, Leinster House, Dublin 2, as follows:

"Dear Phil,

"Please find enclosed a draft for the Golf on the 16th.

"I understand Denis has requested that there are no references made to his contribution at the event.

"Best of luck on the day.

"I'll give you a call soon.

"Yours sincerely

"Sarah Carey

"Marketing Co-ordinator."

A cheque analysis carried out on Esat Telenor's joint venture account for October 1995 records:

"06/10/95,  $\text{€}4001.75$  Fine Gael donation", and it appears to be analysed as a bid production. The cost

is attributed to that.

Mr. Hans Myre has informed the Tribunal, in a statement furnished by him to the Tribunal dated 19th November 2002, that in the last week and for the first time, he has been made aware that a party political donation of  $\text{€}1/4,000$  was paid by Esat Telecom/Denis O'Brien to the Fine Gael Party in October 1995. The donation was made by a bank draft. The draft was sent by the marketing coordinator of Esat Telecom to Mr. Phil Hogan TD of the Fine Gael Party. He has also informed the Tribunal that he has been informed that the funds for the donation were drawn on an account named "Esat Telecom JV Account". He has also informed the Tribunal that this is the first time he has heard that the drawings on the account were used for such a purpose. The use of the funds from the account for the purpose of political donations was done without any knowledge or consent.

To the best of Mr. Myhre's recollection, sometime in late May or early June, 1995, it was agreed between Telenor and Esat Telecom that a joint account be established in the name of both companies.

He understands that a resolution was signed on behalf of Telenor Invest for the establishment of an account with the Bank of Ireland, Baggot Street Branch.

He understands that the account was later established.

This was to be a joint venture current account for the

purpose of making payments for and on behalf of the Esat Digifone project until Esat Digifone Limited became operational. The account was funded by equal contributions from Telenor and Esat Telecom.

Mr. Myhre has informed the Tribunal that based on information he received from Per Simonsen and copy documentation received from Kilroy's, that is the current solicitors to Telenor, the account was to operate on the basis that all instructions to the bank would require two authorised signatories, at least one on behalf of Telenor and at least one on behalf of Esat Telecom. He and another Telenor executive named Per Simonsen were authorised signatories on behalf of Telenor. Peter O'Donoghue and Denis O'Brien were authorised signatories on behalf of Esat Telecom. It was not possible to make withdrawals or draw funds on the account without one authorised signature each from Esat Telecom and from Telenor.

Mr. Myhre has informed the Tribunal that in practice, Per Simonsen was the actual authorised signatory on behalf of Telenor in relation to most of the withdrawals from the account. He may have been asked to sign some cheques when Per Simonsen was not available in Dublin. He was engaged in the technical side of the Esat Digifone project, and he was not responsible for the commercial and business aspect of the project.

Mr. Myhre has informed the Tribunal that to the best of his knowledge, the initiative for drawings on the account primarily, if not exclusively, originated from Esat. Peter O'Donoghue (Chief Financial Officer of Esat) or Denis O'Brien proposed various items for payment which were accepted on their explanations. Generally speaking, Telenor were entirely dependent upon explanations received from Esat, who were dealing with the local day-to-day running of the project.

Mr. Myhre has informed the Tribunal that he has been shown a statement of the account for October 1995 with the Bank of Ireland Pembroke Branch. He has no recollection whatsoever of having authorised a withdrawal for the purpose of a political donation, whether to Fine Gael or anybody else. If he had been requested to authorise a withdrawal from the account for the purpose of a political donation, he would have refused. The purpose of the account was to deal with business expenses. A donation to a political party was not such an expense. He had no authority to permit or authorise a withdrawal for that purpose.

Mr. Myhre has informed the Tribunal that he has been shown an electronically scanned image of a fiche copy of a cheque dated 6 October 1995 signed by Denis O'Brien and himself. This was a cheque which authorised a withdrawal of a sum of  $\text{€}4001.75$ , which sum of money, based on the statement, was debited on

the account. He accepts that based on visual inspection, the signature of "Hans Myhre" on the cheque looks like his signature, even though he has no recollection of signing the cheque. Mr. Myhre has informed the Tribunal that the cheque is dated 6th October, 1995, and that this was a Friday. According to his travel invoices he was in Dublin on that date, and according to the presented cheque, he signed the cheque. Mr. Myhre categorically states that he did so without any knowledge whatsoever as to the true purpose of the withdrawal, and he certainly did not know that it was for the purpose of a political donation.

Mr. Myhre has informed the Tribunal that he is shocked and upset to find his name associated with the donation, about which he knew nothing at the time, and he has only been informed of it in the week prior to the 19th November, 2002.

Mr. Myhre's statement was received in the Tribunal's office at about 5:00pm on Friday 22nd November, 2002.

On Monday, 25th November, 2002, the Tribunal wrote to Mr. Denis O'Brien's solicitor and enclosed a copy of Mr. Hans Myre's statement. Mr. O'Brien's solicitor was informed that a conclusion that could be drawn from the statement of Mr. Hans Myre (if his evidence were to be accepted) is that the signature on the cheque was procured by misrepresentation. Telenor's



legal representatives have informed the Tribunal that they were instructed that the withdrawal was obtained as a result of false and misleading pretences. Mr. O'Brien's solicitor was informed that because this proposition, contended for by Telenor, had serious implications, it is only fair that it be brought to his client's attention at this stage and that the Tribunal would be much obliged if he could let the Tribunal have his client's response, assuming that he proposed making one, as a matter of urgency.

Mr. O'Brien, in response to a number of separate items, has responded to this particular matter and has informed the Tribunal:

"Re cheque for draft payable to Fine Gael.

"Denis O'Brien accepts that the signature on the cheque is his signature. However, he has no specific recollection of signing the cheque or why it was necessary to obtain a bank draft. However, he notes that the bank draft was payable to Fine Gael. He also notes that the amount was openly entered into the books of account and management accounts as paid to Fine Gael. He is aware that the books were openly made available to Telenor throughout the period up to and including the sale of Esat Digifone, and detailed particulars were the subject of Shareholders' Agreement negotiations. The 1.99 million amount in most drafts of the Shareholders' Agreement would have

included this payment."

The circumstances whereby the Tribunal became aware of the cheque dated 6th October 1995 drawn on the Esat Telecom JV account and the draft purchased with that cheque are

(A) in June, 2001, the Tribunal heard evidence about what came to be called the Esat/Telenor donation for the New York fundraising dinner arranged by Mr. David Austin. Witnesses from Fine Gael, Esat and Telenor gave evidence.

(B) Mr. Denis O'Brien gave evidence that it was not appropriate for Esat Telecom to go to the New York fundraising dinner or to make a donation. He gave evidence that one reason why it would not have been appropriate would be that it was in close proximity to the recent award of a licence to a consortium that Esat Telecom were involved in. That was just one reason. He also gave evidence that his personal opinion was that it was inappropriate for Esat Digifone to go to the fundraising dinner or make a donation.

(C) Mr. John Bruton gave evidence that sometime after the granting of the second mobile licence he spoke with the Party General Secretary, Jim Miley, advising against the acceptance of significant donations by the Party from Esat Digifone interests in circumstances where a linkage might be made with the award of the

licence. Mr. Bruton also gave evidence that he thought Mr. David Austin wasn't a major fundraiser of the Party and that to some extent his evidence was as a result of researches which he had been doing even since he had prepared his statement at that time for the Tribunal. He gave evidence that he thought the situation was that David Austin had assisted in one or two quite successful golf classics run by the Party, notably one in the K-Club, which is associated with his then employer, and that it was probably in the context of his involvement with that that he came up with the idea that a fundraiser in New York might be organised. Mr. Bruton gave evidence that his concern in relation to Fine Gael accepting significant donations from Esat Digifone interests was related to the proximity of the announcement to the award of the GSM licence. He gave evidence that his concern was simply with the possible misconstruction or misrepresentation of the existence of a donation. He gave evidence that he was of the view that the process whereby the licence had been granted was one which was entirely immune from political influence of any kind. That was and remains his view, but he felt, in the light of the fact that there had been some press comment about a donation in the context of the Wicklow by-election prior to the decision, that they should be exceptionally careful in the receipt of such

donations, lest such donation might be misconstrued or misrepresented, and that he conveyed that view to the then General Secretary, Mr. Jim Miley.

MR. MCGONIGAL: Mr. Chairman, there is one matter. I hesitate to interrupt My Friend again because I know he gets upset when I do, but in dealing with the matter of Hans Myre, he has in fact read only part of the letter which was sent by Frys to the Tribunal in response to their request to us.

MR. COUGHLAN: I'll read any portion of the letter Mr. McGonigal wants.

MR. MCGONIGAL: The portion of the letter which he omitted was dealing specifically with the allegation that Telenor's legal representatives had made that there had been false and misleading representations given to Mr. Myhre. And in response, we pointed out in the letter that Mr. Myhre was not making such an allegation and requested the Tribunal to find out from Telenor's legal representatives who specifically was making this allegation. And I think, if this is going to be read properly, it should be read completely.

MR. COUGHLAN: I will indeed.

CHAIRMAN: It's preferable to have the whole letter read.

MR. COUGHLAN: Of course I will. I'll read the whole letter at two o'clock, or if my friend wishes me to do it now, I have no difficulty.

(D) around the 29 November 2001, the Fine Gael solicitor was informed that the Tribunal wished to look at the Fine Gael finances in the Michael Lowry period as a fundraiser/trustee. A meeting was arranged for the 19th December 2001, and Fine Gael showed the records which they had then compiled for the consideration of the Tribunal. On the 1st February, 2002, the Tribunal wrote to the Fine Gael solicitor and informed him that the Tribunal wished to obtain details of all subscriptions to the Party for the years 1993 to 1997 inclusive. The letter stated that if it was convenient to Fine Gael, the subscriptions can be limited to those in excess of  $\text{€}500$ . On the 6th March 2002, the Fine Gael solicitor wrote to the Tribunal solicitor, and he enclosed a spreadsheet setting out a schedule of income received by the Party during the years 1991 to 1997, and he also sent a list of donors who contributed during that period. The Fine Gael solicitor informed the Tribunal that, if a further clarification was needed, that the Tribunal should not hesitate to contact him. On the 21st June, 2002, the Tribunal solicitor wrote to the Fine Gael solicitor and referred to his letter of the 27th March, 2001, in which he had confirmed that during the Wicklow by-election of June 1995, Fine Gael had received a political contribution of  $\text{€}5,000$  from the Esat organisation. The Tribunal solicitor

informed the Fine Gael solicitor that, through his solicitor, Mr. Denis O'Brien had informed the Tribunal that the donation followed a fundraising lunch at the Glenview Hotel, County Wicklow, at which Mr. O'Brien was approached by somebody in Fine Gael whose name he could not recall seeking to raise funds for the upcoming by-election. The Tribunal solicitor requested full details relating to the donation from the Fine Gael solicitor. By letter dated 6th September 2002, the Fine Gael solicitor wrote to the Tribunal solicitor and advised him that Fine Gael had now completed an extensive trawl of all available financial records over the relevant period, being 1991 to 1997, and they furnished the Tribunal with the result of that trawl. That letter pointed out where difficulties had arisen in relation to the exercise. On the 25th September, 2002, the Fine Gael solicitor wrote to the Tribunal solicitor and informed him that following the request of the Tribunal that they follow up on their inquiries concerning the fundraising lunch held during the course of the Wicklow by-election in June 1995, he indicated that a donation of  $\text{€}25,000$  was made by Denis O'Brien, as previously advised to the Tribunal. He advised that they had since obtained the bank statement showing the lodgment of the donation, amongst others, into the Wicklow Town branch of the Bank of Ireland and that Mr. Tommy Healy, the

treasurer, had advised that the O'Brien donation was part of a grouping of lodgements totalling  $\text{€}14,375.00$  made on the 23rd June, 1995.

On the 4th October, 2002, the Tribunal solicitor wrote to the Fine Gael solicitor as follows:

"Dear Mr. O'Higgins

"I refer to the above matter and acknowledge receipt by fax of your letter of the 25 September last with enclosures. I have not yet received the original letter.

"It appears to the Tribunal from documents furnished to it by McCann Fitzgerald, solicitors to Esat Group Limited" that is the solicitors, of course, to BT, who purchased the interest "that in addition to the  $\text{€}5,000$  received during the course of the Wicklow by-election in June 1995, your client may also have received the sum of  $\text{€}600$  and  $\text{€}4001.75$  from Esat or Esat/Telenor in October 1995.

"The documents would indicate that the sum of  $\text{€}600$  was paid to Fine Gael by cheque dated 2nd October, 1995, in respect of a luncheon, which it appears may refer to a lunch at the Berkeley Court on that date. The sum of  $\text{€}4001.75$  would appear to have been made as a donation to your client by way of a cheque dated 6th October, 1995, and would appear to have been made from Esat Telenor JV account.

"Given the dates in question, it would appear that

these sums were in addition to the cheque for i£1/25,000 which formed part of the lodgement of i£1/214,375 to your client's account and referred to in Mr. Tommy Healy's statement on the 24th September last.

"In view of the above, and to enable the Tribunal to complete its inquiries, I would be obliged if you would kindly let me have details regarding the receipt by your client of these additional sums together with all relevant records.

"In addition, the Tribunal will be obliged to receive a breakdown of the instruments which made up the lodgment of i£1/214,375 to your client's account on the 23rd June, 1995. The Tribunal understands that your client should be able to obtain this information from Bank of Ireland through its microfiche records.

"I would be obliged to hear from you herein as soon as possible.

"Yours sincerely

"John Davis."

On the 14th October, 2002, Fine Gael's solicitor wrote to the Tribunal solicitor.

"Dear Mr. Davis

"I refer to your letter of the 4 October, and my clients have since carried out further inquiries. I am pleased to advise being in a position to clarify matters.

"The General Secretary advises that the local



organisation have requested the bank to produce copies of the cheques, if any, making up the lodgment of €14,375. From our inquiries with the treasurer at the time (Tommy Healy) and with the then chairman (Annette Hynes) the records relating to the fundraiser no longer exist, but they advise that the lodgment comprised both cash and cheques received on the day.

"As to the donation of €4001.75, we understand the position to be that this related to sponsorship given by the Esat organisation to Fine Gael in connection with the Golf Classic run in 1995. At Appendix 1 hereto, we attached a copy of the bank draft, and at Appendix 2 the correspondence which our client believes ties it with the bank draft dated 6 October 1995, which was actually the date of the fundraising event."

In fact that should be the 16th, and I think that is a reference to the bank draft itself and a letter from Ms. Sarah Carey which included it, and to which I have referred to, addressed to Mr. Phil Hogan.

"You referred to the donation of €600 received in October 1995, and this related to the Dublin South East annual fundraiser, which occurred on the 2nd October of that year.

"It is fair to ask why a donation such as this would not have been picked up in the recent analysis carried out by the Party and submitted to you last month.

This was because of the fact that such an examination covered only subscriptions received. Monies raised as a result of fundraising activities were classified in the accounts as sundry income, so that in 1994-6, the amounts raised were £17,604, £89,502 and £85,464 respectively. As a consequence of our realisation that the figures as furnished to you do not give the full picture, we directed the General Secretary to carry out a further review of the sundry income for the same years from the O'Brien/Esat source, and the position is as follows:

- 1994 we have ascertained no distribution
- 1995, £4,000.
- 1996, £3,000.
- 1997, £3,000.
- 1998, £1,500.
- 1999, £500.
- 2000, £500.
- 2001 no event held."

On the 5th November, 2002, Mr. Davis, the Tribunal solicitor, wrote

CHAIRMAN: We have a couple of letters remaining, Mr. Coughlan, and I think it's appropriate that we conclude, as we are coming up to lunch, with the Frys letter alluded to by Mr. McGonigal.

MR. COUGHLAN: I should emphasise, Sir, that I will be opening the full correspondence that Mr. McGonigal

asked me to open after lunch. So...

CHAIRMAN: Well, Mr. McGonigal, are you prepared to abide that? If you are particularly anxious that the full content of your solicitor's letter be opened prior to lunch, I am happy to ask Mr. Coughlan to do it now.

MR. MCGONIGAL: I am quite happy I have drawn the Tribunal's attention to it, and I think the Tribunal should deal with it in whatever way they think it's appropriate, and I am quite happy to discuss it with Mr. Coughlan.

CHAIRMAN: Very good.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

MR. COUGHLAN: I am now going to read that portion of the letter received from Messrs. William Fry, dated 29th November, 2002, dealing with the €124,000 sponsorship of the Golf Classic, and particularly that which pertains to Mr. Myre and Mr. O'Brien, Sir.

Perhaps it would be best if I just read the whole letter.

I already dealt with the first portion of it in opening, and Mr. McGonigal has requested that I continue on. And the letter reads:

"We have looked at the statement of Hans Myre and note that in relation to this cheque, he states the following:

"1. He signed the cheque.

"2. He has no recollection of signing the cheque.

"3. The cheque is dated 6th October 1995.

"4. 6th October 1995 was a Friday.

"5. He was in Dublin on that day.

"6. He signed the cheque on that day. He did so without any knowledge whatsoever as to the true purpose of the withdrawal, and he did not know it was for the purpose of a political donation.

Nowhere in his statement does Hans Myre make any allegations against anyone, let alone our client, that the withdrawal was obtained as a result of false and misleading pretences. We would suggest that since Hans Myre has no recollection of signing the cheque and cannot remember anything about the cheque, it would have been both incorrect and improper for him to make such a suggestion. He could not, should not, and critically did not allege any falsity, any pretences or that he was misled by anyone.

"However, we note that Telenor's legal representatives were instructed by someone to make this allegation.

We would invite the Tribunal to invite Telenor's legal representatives forthwith:

"1. To identify the person making the allegation that the withdrawal was obtained as a result of false and misleading pretences.

"2. To identify the person or persons whom they say or have been instructed made "the false and misleading pretences".

"3. To specify the date, time and place the false and misleading pretences are alleged to have been made.

"Upon receipt of the replies to the foregoing from Telenor's legal representatives, we respectfully suggest that the Tribunal obtain full statements from those making the allegations and from those against whom the allegations are made, thereby putting our client in a position to respond thereto.

"Failing your obtaining such statements, we would further respectfully suggest that Telenor's lawyers are clearly instructed not to cast aspersions in our client's general direction without either clarity or substance and that no reference should be made nor credence given thereto by the Tribunal."

Now, if I return to the correspondence which was taking place between the Tribunal solicitor and Fine Gael solicitor.

On the 16th October 2002, the Tribunal solicitor wrote to the Fine Gael solicitor.

"Thank you for your letter dated 14th October last with enclosures.

"It appears from the contents of your letter that in addition to the contribution of  $\text{€}1\frac{1}{2}$ 5,000 made by Denis O'Brien to the Wicklow by-election fund in June 1995,

that the following further contributions were made by him to Fine Gael in that year:

"1. A contribution of  $\text{€}4,000$  was provided on the 2nd October, 1995, by Mr. O'Brien as sponsorship of a Fine Gael Golf Classic. You have enclosed copies of correspondence between Mr. Phil Hogan TD and Esat Telecom in relation to the sponsorship and a copy of the bank draft provided by Esat Telecom and dated 4th October, 1995.

"2. A contribution of  $\text{€}600$  received in October 1995 which related to the Dublin South East annual fundraiser which took place on the 2nd October 1995.

"The Tribunal wishes to obtain your client's further assistance regarding these matters as follows:

"A. The Tribunal wishes to obtain the date on which the Golf Classic was held and the location at which it was held.

"B. The Tribunal wishes to obtain the identity of all organisers of the event.

"C. The Tribunal wishes to obtain details of the role, if any, of the late Mr. David Austin in the organisation or funding of the event or in relation to any other aspect of the event.

"D. The Tribunal wishes to obtain details of any other sponsors or contributors who requested or required that sponsorship or contribution should remain anonymous or confidential.

"E. The Tribunal wishes to obtain copies of all documents relating to the organisation of the event, the level of contribution or sponsorship provided by all other sponsors or subscribers and the requests or requirements of any other sponsors or subscribers that their contribution should remain anonymous or confidential.

"F. The Tribunal also wishes to obtain all records in your client's possession regarding the contribution of €12600 made by or on behalf of Mr. O'Brien in relation to the Dublin South East annual fundraiser together with all details of all dealings with Mr. O'Brien regarding his donation or regarding the event.

"G. The Tribunal further wishes to arrange a private meeting with Mr. Hogan regarding his role in relation to the donation and the Wicklow by-election donation. In order that such meeting might be productive, the Tribunal will be anxious to receive the above information and documents in advance of such meeting.

"As the Tribunal intends to resume its public sittings in the very early course and is most anxious to conclude all aspects of investigative work, I would be obliged if you would treat this request for assistance as a matter of utmost urgency. In the first instance, I would be obliged if you would telephone me on receipt of this letter to indicate when you expect to be able to respond and to arrange a mutually

convenient time for a private meeting with Mr. Hogan in Dublin Castle, preferably during the course of next week, subject of course to Mr. Hogan's agreement to attending such a meeting.

"Yours sincerely, John Davis,

"Solicitor to the Tribunal."

The Fine Gael solicitor replied to Mr. Davis as

follows on the 21st October 2002:

"Dear Mr. Davis,

"I refer to your letter of the 16th October last. I confirm our meeting with you on Tuesday next at 4.30pm, along with Mr. Phil Hogan TD and the General Secretary, Tom Curran.

"Dealing then with the specific matters raised in your letter, I have met with the General Secretary and have been through the file of correspondence in headquarters relating to it. We have put together what we have considered to be of relevance regarding the event. It occurs to me, however, that you may wish also to review in its entirety the file as there may be other material which we may not consider of importance but in your inquiries you may think otherwise. Accordingly, I have requested that the General Secretary would be in a position to provide you with the complete file when we meet tomorrow.

"Specific matters raised in yours of the 16th October last.



"A, the 1995 Fine Gael National Golf Classic was held on Monday 16th October in the K-Club, Straffan, County Kildare.

"D. The organising committee for the Golf Classic were.

Enda Marren,

David Austin

Frank Conroy

Mark FitzGerald

Pat Heneghan

Phil Hogan TD

John Quirke

Pat Dineen

Sean Murray

Owen Killian not listed as a committee member but attended meetings of committee

Jim Miley General Secretary, not listed as committee member but attended meetings.

"Minutes of organising committee meetings for the 29th May, 28th June, 21st July, 6th September and the 9th October enclosed. Meeting held on the 24th October no minutes available. (See Appendix 2)

"C. Mr. David Austin was a member of the organising committee. He attended all of the meetings listed above. Mr. David Austin was assigned at the meeting of May 29th responsibility for contacting the following to see if they were interested in

participating in the Golf Classic

- Irish Glass Bottle Company.
- Brian O'Halloran
- John Magnier
- Ben Dunne
- Stephen Murphy
- Mercury Engineer Friedhelm Danz
- Peter Webster.

"Meeting on the 28th June 1995.

"Mr. David Austin reported that he had secured 7 teams.

- Frank O'Kane
- Friedhelm Danz
- Peter Webster
- Stephen Murphy
- Brian O'Halloran
- Tim Kilroe
- David Austin.

"Along with Mark FitzGerald, he was given responsibility for securing sponsorship for the 18 holes. Along with Enda Marren he was given responsibility for securing sponsorship for food and wine.

"Meeting 21st July.

"At the meeting on the 21st July, D. Austin was given the following responsibilities:

- To contact Pdraig O'Connor/Dermot Desmond NCB,

regarding sponsorship

- To ensure that the captain and president of the club would be invited to attend the dinner
- To negotiate green fees
- To secure sponsorship of the gift pack and of the snack lunch
- He also had responsibility for deciding the menu
- With other members was asked to secure prizes for the raffle.

"D. There is no evidence from the file that any sponsor or contributor sought to remain anonymous apart from the request from Mr. Denis O'Brien (see Appendix 2).

"E. The list of sponsorship and payments received are enclosed (see Appendix 3). Also enclosed are details of teams, sponsorship of holes, golf tee times, list of sponsors, list of prizes, raffle prizes, estimated income, Ministers attending. (Appendix 4).

Also enclosed are samples of copies of letter sent to sponsors, contributions, along with some specific references to David Austin (see Appendix 5).

"F. The information requested by you regarding the contribution of  $\text{€}600$  from Denis O'Brien for the Dublin South East fundraiser has been sought and is presently awaited.

"G. We confirm the availability of Mr. Hogan to meet with you tomorrow at 4.30pm."

Mr. O'Higgins, the Fine Gael solicitor, wrote to Mr.

Davis again on the 5th November, 2002:

"Our client Fine Gael.

"Dear Mr. Davis,

"We refer to the O'Brien/Esat donation to the Wicklow fundraising event in late May of 1995 in the amount of i;½5,000. You have asked that in addition to the production of the bank statement, that we might also be able to source the copy cheque from the bank. We regret the delay in providing you with the information. The General Secretary has been onto the bank on a number of occasions and has yesterday received the attached explanations indicating the information might not be at hand for a number of days for the reasons stated. We shall pass the information as soon as it's to hand."

Enclosed with that was a letter from the Bank of Ireland, Wicklow, which was addressed to Mr. Tom Curran, the General Secretary of Fine Gael, which read:

"Re Wicklow Fine Gael by-election.

"Dear Tom

"I refer to your query in connection with the lodgment of i;½14,375 made on the above account on the 23rd June 1995. The breakdown of the lodgment was i;½1,840 in cash and cheques of i;½12,535. Copies of the cheque are held on microfilm and we are still endeavouring to get

you details of each cheque. Due to the volume of the cheques on that day, this is taking longer than expected, as we have to individually inspect each cheque. We hope to have same within the next week. I'll be in further contact with you as soon as details are to hand."

It's signed by the assistant manager.

On the 12th November, 2002, Mr. O'Higgins again wrote to Mr. Davis and he enclosed further narrative statements as requested from Mr. Jim Miley and Deirdre Fennell.

"We enclose communication received from the Bank of Ireland in connection with the matter of the Denis O'Brien contribution of  $\text{€}1\frac{1}{2}$ 5,000 to the Wicklow constituency at the time of the by-election in June of 1995. We also enclose copies of all cheques recovered by the bank and relating to the account and the lodgment in question.

"As you see, Bank of Ireland have not been able to locate from their batch the particular lodgment from Denis O'Brien, and nor does it seem from their letter that this will be possible. If there is anything further that you think we might be usefully doing in the unearthing of this information, then perhaps you might please advise.

"Finally, we hope to revert to you with the statement of Phil Hogan as supplemented by the matters alluded

to by you in the letter of the 5th November last.

"We shall also be reverting to you with alacrity and as soon as the information is to hand as regards the local fundraising activities to which Denis O'Brien/Esat may have been contributors."

Enclosed with that letter was a letter from the assistant manager of the Bank of Ireland in Wicklow addressed to the General Secretary of Fine Gael, Mr. Tom Curran.

And it was "Re Wicklow Fine Gael by-election".

"Dear Tom

"I refer to my letter of the 4th inst in connection with the lodgment of  $\text{€}14,375$  made to the above account on the 23/6/1995.

I enclose here photocopies of 53 cheques which total  $\text{€}7,110$ . We are unable to provide copies of the remainder of the cheques totalling  $\text{€}5,425$ . An official has spent two days examining the microfilm but has been unable to identify the remaining items.

It may be that the said cheques were not filmed on the day due to an oversight on our part. I very much regret that we are unable to provide the information required.

"Yours sincerely", the assistant manager.

On the 13th November, 2002, the Bank of Ireland faxed a copy of the cheque dated 6th October, 1995, made payable to the Bank of Ireland for the sum of  $\text{€}4001.75$

and drawn on Esat/Telenor Joint Venture account and informed the Tribunal that this was the cheque which was used in the purchase of a draft for  $\text{€}4,000$  as discussed.

This was the first occasion on which the Tribunal was able to ascertain that the  $\text{€}4,000$  contribution to the Fine Gael Golf Classic had indeed been purchased by a cheque drawn on the Esat/Telenor Joint Venture account in the sum of  $\text{€}4,001.75$ .

Documents relating to the Golf Classic furnished to the Tribunal by Fine Gael noted that Hole 17 was to be sponsored by Esat Telecom Telecom, and this was marked via Mark FitzGerald.

The Tribunal made inquiry of Mark FitzGerald, and I have already referred to what he informed the Tribunal in respect of what he says occurred in late August 1995 between himself and Mr. Denis O'Brien and his subsequent conversation with Mr. Jim Miley. Mr. FitzGerald has also informed the Tribunal that he received a further telephone call from Mr. Denis O'Brien around the middle of October 1995. His recollection is that this was after the Golf Classic which was held on Monday, 16th October, 1995, but that it must have been before the end of that week because during much of the following week, he was away in the United Kingdom. Mr. FitzGerald has informed the Tribunal that Mr. O'Brien asked to meet with him for

coffee at a restaurant close to Mr. FitzGerald's office. Mr. FitzGerald assumed that this might relate to a business matter about which he had shortly before spoken to Mr. O'Brien. Mr. FitzGerald has informed the Tribunal that he was surprised when he arrived to find Mr. O'Brien sitting at a table with Mr. Phil Hogan and the late Mr. Jim Mitchell. As he sat down, Mr. FitzGerald has informed the Tribunal that Mr. O'Brien asked him if he had heard any news on the licence. Mr. O'Brien had never previously asked him anything about the licence. Mr. FitzGerald has informed the Tribunal that he told Mr. O'Brien that he had bumped into Mr. Michael Lowry at the Golf Classic at the K-Club and that Mr. Lowry had said to him that Denis O'Brien had made a good impression on the Department and that he had good sites and good marketing. Mr. FitzGerald also said that Mr. Lowry had said that there would be a third licence anyway because he recalls Mr. Lowry said this to him. Mr. FitzGerald does not recall any other significant matters arising in the brief conversation with Mr. Lowry. Mr. FitzGerald has informed the Tribunal that he was annoyed with himself for having passed on the comments made to him by Mr. Lowry even though they had been gratuitous and he believed them unimportant. Mr. FitzGerald has informed the Tribunal that he understood that Andersen Consulting were responsible



for evaluating the bids in the competition, and shortly after the coffee meeting he has informed the Tribunal that he checked with Mr. Colin McCrea and Mr. Sean Donlon (respectively Mr. Lowry's and the Taoiseach's programme managers), and they confirmed that the award itself would be a decision for the Government rather than for the Minister alone.

Mr. FitzGerald has informed the Tribunal that when the outcome of the licence was announced on what he now understands to be the 25th October, 1995, he was in the UK on business. On the Thursday after, the 26th October, 1995, he was coming back to Dublin, and he received a phone call from his secretary on his mobile in the UK to say that someone on behalf of Mr. O'Brien had phoned to say that he had won the mobile phone licence and asked Mr. FitzGerald to drop into a celebration party that evening. Mr. FitzGerald has informed the Tribunal that on his way from the airport he called in to the Party at about 11 p.m. for a short while before going home.

Mr. Phil Hogan has informed the Tribunal that he is satisfied that the meeting referred to by Mr. Mark FitzGerald which is said to have taken place on or around the 17th October, 1995, did in fact not take place, or certainly if it did, he has no recollection whatsoever of being present.

Mr. Michael Lowry has informed the Tribunal that Mr.

Mark FitzGerald had raised at the Golf Classic, in a general way, the issue of the competition for the second GSM licence and the prospects of Esat Digifone.

Mr. Lowry has informed the Tribunal that he provided him with a minimal noncommittal information which was effectively already in the public domain. He mentioned that the Department were impressed with the commitment to the process which was underlined in their public declaration that they had already identified numerous sites for masts and equipment.

Secondly, he suggested that even if they were unsuccessful, there would be a subsequent opportunity to apply for the third GSM licence.

Arising from the information furnished to the Tribunal by Mr. Mark FitzGerald, the Tribunal made inquiries of Mr. Colin McCrea, Mr. Lowry's then programme manager.

As I said, as a result of receiving this information, Mr. McCrea informed the Tribunal that during the period that he was programme manager to Mr. Michael Lowry, that is from February 1995 to July 1996, Mr.

Mark FitzGerald attended a number of meetings with Mr. Lowry at the Department.

As a result of receiving this information from Mr. McCrea, the Tribunal wrote to Mr. FitzGerald's solicitor on the 20th November, 2002, in the following terms:

"Dear Mr. O' Mahony

"I refer to previous correspondence in relation to your above-named client. I am writing to you once again to seek the assistance of your client in the course of the investigative phase of the Tribunal's work. Following receipt of your client's statement, the Tribunal raised queries with Mr. Colin McCrea. The Tribunal understands from Mr. McCrea that during the period that he was programme manager to Mr. Michael Lowry, that is from February 1995 to July 1996, your client attended a number of meetings with Mr. Lowry at the Department.

"Mr. McCrea would have met with your client on these occasions but did not attend the meetings between your client and Mr. Lowry.

"The Tribunal wishes to obtain details of all of your client's dealings, contacts and meetings with Mr. Michael Lowry in the period from December 1994 to June 1996, together with the purpose of all such dealings, contacts and meetings and the matters under discussion.

"In particular, the Tribunal wishes to know whether your client had any discussion, conversation or dealing with Mr. Michael Lowry of whatever nature which touched upon or concerned the GSM competition evaluation process or licensing process or the application of any entrant or potential entrant on any occasion other than on the 16th October 1995 at the

Fine Gael Golf Classic at the K-Club.

"The Tribunal also wishes to obtain all of your client's diaries for the years 1995 and 1996, including all personal, professional and electronic diaries. As the Tribunal is anxious to conclude the investigative phase of its work and wishes to proceed to public sittings during the course of next week, I would be obliged if you would treat this request for assistance as a matter of utmost urgency, and if possible to let me hear from you by the end of this week."

Mr. FitzGerald's solicitors replied to the Tribunal's solicitor by letter dated 26th November, 2002, and enclosed a statement which he indicated was intended to address the request made in the third paragraph of Mr. Davis's letter setting out details of all his client's dealings, contacts and meetings with Mr. Michael Lowry in the period December 1994 to June 1996 together with the purpose of all such dealings, contacts and meetings and the matters under discussion.

Mr. Mark FitzGerald's statement of the 26th November 2002 was sent to Mr. Michael Lowry on the 27th November, 2002, and Mr. Davis made the following inquiries of Mr. Lowry through his solicitor. The inquiries of Mr. Lowry were:

"1. Please let me know whether your client agrees

with the contents of each of the 15 numbered paragraphs of Mr. FitzGerald's statement.

"2. To the extent to which your client disagrees with the contents of any of the paragraphs, please let me have details of the extent of your client's disagreement.

"3. To the extent to which your client has any further information concerning any matters set out in any of those paragraphs or in any way connected with or related, however remotely, to any other matters set out in the paragraph, please let me have full and detailed particulars.

"4. In the event that your client agrees with the contents or the thrust of the contents of paragraphs 9, 11 or 12 of Mr. FitzGerald's statement, please let me have details of any other approaches either from Mr. Ben Dunne or any other persons involving a request in any way similar to that set out by Mr. FitzGerald in his statement."

Mr. Davis concluded "I will be much obliged to hear from you with your client's response as a matter of urgency."

On the 27th November, 2002, Mr. Davis, the Tribunal solicitor, also wrote to Mr. Noel Smyth of Noel Smyth & Partners, solicitors for Mr. Ben Dunne. Mr. Davis's letter set out paragraphs 1, 2, 3, 4, 5 and 6 of Mr. Mark FitzGerald's statement. Mr. Davis requested Mr.

Dunne's solicitor to respond to the following queries:

"1. Please let me know whether your client agrees with the contents of each of the numbered paragraphs of Mr. FitzGerald's statement as set out above.

"2. To the extent which your client disagrees with the contents of any of the paragraphs, please let me have details of the extent of his disagreement, if any.

"3. To the extent to which your client has any further information concerning any of the matters set out in any of those paragraphs or in any way connected with or related, however remotely, to any of those matters, please let me have full and detailed particulars of the same."

The information in Mr. Mark FitzGerald's statement given to Mr. Lowry and Mr. Dunne through their solicitors was given under a seal of confidence. The Tribunal did not furnish the information contained in Mr. FitzGerald's statement to anyone else.

An article appeared on pages 1 and 4 of the Sunday Independent on the 1st December, 2002. That article stated:

"Former Taoiseach Garret FitzGerald's son, the businessman Mark FitzGerald, has provided potentially devastating information to the Moriarty Tribunal which Fine Gael fear could cause serious damage to the Party his father once led. The Sunday Independent can

reveal that Mr. FitzGerald will be a star new witness when the Tribunal resumes this week. Fine Gael sources yesterday claimed that Mr. FitzGerald was "engaged in war" with the party after he was removed from the Board of Trustees by new leader Enda Kenny. "Mr. FitzGerald refused to comment yesterday, but he denied that he had resigned from Fine Gael, with which he had been centrally involved. It is understood that Mr. FitzGerald is questioning a number of controversial fundraising events which were organised by Fine Gael in the 1990s. He is also claiming that Michael Lowry made political representations on behalf of Ben Dunne which financially benefited the former supermarket tycoon.

"Mr. Dunne owns Marlborough House, where the then State-owned Telecom Eireann was located. Mr. Lowry is accused of pushing Mr. Dunne's request for a rent increase.

"Mr. FitzGerald has also told the Tribunal of how he lobbied Mr. Lowry and other senior Fine Gael figures on behalf of Denis O'Brien in relation to the second mobile telephone licence competition.

"One of those other figures is Sean Donlon. Mr. Donlon is a former Secretary General in the Department of Foreign Affairs, a former Irish Ambassador to the US, and a former adviser to John Bruton when Mr. Bruton led Fine Gael. Yesterday Mr. Donlon did not

return the telephone call from the Sunday Independent.

"Mr. FitzGerald has given three statements to the Tribunal in the last two weeks detailing his allegations.

"Fine Gael sources claim that Mr. FitzGerald, Chief Executive of Sherry FitzGerald group, has resigned from the party.

"Yesterday, however, Mr. FitzGerald denied that he had resigned but refused to comment further. "I'm a businessman", he said. "If you want to talk about Sherry FitzGerald, I will talk about that. I will not talk about anything else.

"The Moriarty Tribunal sat in public for less than three minutes on Friday afternoon. It was adjourned after the Chairman ruled that evidence to be heard should proceed in closed session.

"Counsel said that this was in order to protect the privacy of those mentioned but who may ultimately have no involvement with the Tribunal's investigations.

"It is understood that the Tribunal then issued an order on Eircom (formerly Telecom Eireann) for the provision of documents relating to the rent review secured by Mr. Dunne.

"For several months, the Tribunal has been examining Fine Gael fundraising records at the party's Mount Street headquarters.

"Its exhaustive investigation is understood to relate



at least in part to the allegations made by Mr.

FitzGerald in relation to the Fine Gael fundraising activities.

"The Tribunal has already heard details of transactions between 1995 and 1999 involving hundreds of thousands of pounds.

"This relates to stg 147,000 which was given to Mr. Lowry in late 1996 by the late David Austin, a businessman from the Jefferson Smurfit Group and the former Fine Gael fundraiser."

I have progressed the matter in this way because it is only on very infrequent occasions that information is conveyed to a small number of people when received by the Tribunal.

The portion of the article which reads:

"He is also claiming that Michael Lowry made political representations on behalf of Ben Dunne which financially benefited the former supermarket tycoon.

Mr. Dunne owns Marlborough House, where the then State-owned Telecom Eireann was located. Mr. Lowry is accused of pushing Mr. Dunne's request for a rent increase."

The Tribunal took the view that this information in the article could only have come from somebody who had knowledge of the content or portions of the content of Mr. Mark FitzGerald's statement to the Tribunal of the 26th November, 2002. The publication of this

information could represent an attempt to undermine the integrity of the private investigative work of the Tribunal. Whether it was calculated to do so is a matter which the Tribunal may have to inquire into. Because there is a risk that the integrity of the private investigative work of the Tribunal could be undermined, the Tribunal considers it necessary to make public at this stage the information which Mr. FitzGerald has made available to the Tribunal in a statement of the 26th November, 2002.

It is to be stressed that anything I say does not amount to evidence, and it would be improper to speculate or to draw any conclusions at this stage.

It must also be stressed that anyone mentioned in Mr. FitzGerald's statement other than Mr. Lowry and Mr. Dunne has not yet had inquiry made of them by the Tribunal. The Tribunal wrote to Mr. Mark FitzGerald's solicitor and inquired of him as follows.

The letter reads:

"Dear Mr. O'Mahony

"I refer to recent correspondence in relation to your above-named client.

"As you may be aware, yesterday's edition of the Sunday Independent carried an article by Mr. Jody Corcoran concerning information provided to the Tribunal by your client.

"The Chairman of the Tribunal is concerned that Mr.

Corcoran appears to have access to confidential documents and/or information concerning the confidential working of the Tribunal in the course of the investigative phase of its work.

"You will be aware that the Tribunal has a duty in the course of the investigative phase of its business to ensure, so far as is reasonably practicable, that the good name of a person dealing with it is protected, and in particular to ensure that information concerning persons with whom it is dealing on a confidential basis is not subject to public scrutiny otherwise than in the course of the Tribunal's public sittings.

"I would be obliged in the circumstances if you would kindly indicate whether your client has any knowledge, direct or indirect, as to how Mr. Corcoran obtained access to the information in this article.

"I would be obliged to hear from you as a matter of urgency."

On the 3rd December, 2002, Mr. FitzGerald's solicitors wrote to the Tribunal.

"Dear Mr. Davis.

"We acknowledge receipt of your letter dated 2nd December 2002 referable to the article, by e-lined Jody Corcoran, on the front page (carried over to page 4) of the Sunday Independent newspaper headed "Garett's son to tell FG secrets to Moriarty". Our

client agrees that the writer of this article appears to have had access to confidential documents and/or information concerning the confidential workings of the Tribunal in the course of the investigative phase of its work.

"Our client is also pleased to note the recitation of the Tribunal's own duty, in the course of the investigative phase of its business, to ensure (as far as is reasonably practicable) that the good name of a person dealing with it is protected. And in particular to ensure that information concerning persons with whom it was dealing on a confidential basis is not subject to public scrutiny otherwise than in the course of Tribunal's public sittings.

"Our client has instructed us to state categorically that he has no knowledge, direct or indirect, as to how the journalist or journalists concerned (Jody Corcoran and Liam Collins, see below) obtained access to the information in the article.

"We wish to state that at about 12.00 noon on Saturday last, 30th November, 2002 (while our client was attending a school fair with his wife and children) his mobile telephone rang and the caller identified himself as Liam Collins of the Sunday Independent, whom our client knew from previous unrelated interactions. Mr. Collins' call was a very short one (conducted with a noisy background at our client's

end) which, as best as our client recalls, proceeded

as follows:

COLLINS: Is it true that you have resigned from

Fine Gael?

FITZGERALD: No, it isn't.

COLLINS: Well, can I talk to you about Fine

Gael?

FITZGERALD: No. If you want to talk about Fine

Gael, call Fine Gael. I am a businessman and

Chief Executive of Sherry FitzGerald. If you

want to talk about Sherry FitzGerald, I'll talk

about Sherry FitzGerald.

COLLINS: Okay, bye.

"In that brief conversation there was no mention of the Tribunal or what our client might have stated to the Tribunal.

"Our client is clearly concerned about this publicity and its intended purpose in relation to his standing and credibility. Your letter indicates an intention to investigate the matter, which our client welcomes and will cooperate in whatever way he can.

"Yours sincerely

"McCann Fitzgerald."

The Tribunal is in the process of making contact with the recipients of the information in Mr. FitzGerald's statement, and the Tribunal has received a response from Mr. Michael Lowry, who has informed the Tribunal

that neither he nor his solicitor had any part in imparting the information and knowledge which appeared in that particular article.

I should, in fairness, say that as far as the Tribunal understands, Mr. Ben Dunne has not yet been contacted and may be away in the United States. He certainly was away in the United States when initial contact was made in respect of the portion of the statement being sent to him. But I wouldn't want it to go abroad that there is necessarily anything sinister or improper by a query not having been made or received as yet from Mr. Dunne.

CHAIRMAN: I think the response of his solicitor was prompt.

MR. COUGHLAN: Yes, indeed, Sir.

In his statement of the 26th November, 2002, Mr.

FitzGerald stated:

"1. This statement is a second statement by me to the Tribunal, my first statement being dated 11th November, 2002.

"2. I was appointed a trustee of the Fine Gael Party in 1991 and remained a trustee continually up to June, 2002. Mr. Michael Lowry was appointed Chairman of the Trustees in, I think, 1993. I do not recall having any individual contact with Mr. Lowry before he became a trustee. Prior to the Fine Gael/Labour Government taking office in December 1994, I recall only two

individual meetings with him.

"3. In 1993 or 1994, while I was walking on Upper Mount Street, Mr. Lowry stopped his car and got out and greeted me. He told me he had an apartment near the KCR in Kimmage which he wished to have valued. I said I would arrange for someone from the Sherry FitzGerald Terenure office to contact him, and took his telephone number. I did arrange that, but Sherry FitzGerald were never subsequently instructed to sell the apartment.

"4. In the autumn of 1994, I attended a dinner at Luttrellstown Golf Club following a Fine Gael golf outing there. While at the bar, I joined in a brief casual conversation with Mr. Michael Lowry and Mr. Phil Hogan.

"5. After the Fine Gael/Labour Government took office in December 1994, the first meeting I recollect with Mr. Lowry was at a meeting of Trustees in February 1995. In a brief one-to-one conversation before the meeting began, Mr. Lowry said to me that the Chairmanship of the ESB was coming up and asked me did I know of any businessman who might make a good chairman and would be acceptable to Dick Spring and the Labour party. I suggested two names to him in that context, including Mr. William McCann of PriceWaterhouse, who was at the time already a member of the ESB board. Much later, in or about January

1996, Mr. McCann was appointed as ESB Chairman.

"6. In late March or early April 1995, Mr. Lowry telephoned me on my mobile phone. It was the first occasion I ever recall him telephoning me, and I do not recall him ever asking for my mobile phone number, but that number would have been known by a number of my co-Trustees. Mr. Lowry asked me whether there was "a man called Gill" working in Sherry FitzGerald who was involved with a building off O'Connell Street where Telecom Eireann was the tenant. I confirmed that Gordon Gill was a member of our firm but that I did not know anything about what he was referring to but that I would inquire. Mr. Lowry said he would be in touch again.

"7. I then telephoned Gordon Gill at home about this call from Mr. Lowry, and he informed me that the property in question was 'Marlborough House' (which I now know was also called 'Telephone House') in Marlborough Street, and that he had just been appointed arbitrator in relation to a rent review. In the circumstances of he being an arbitrator, I did not consider it appropriate to discuss the matter any further with Mr. Gill during the arbitration process.

"8. Some very short time later, Mr. Lowry telephoned me again (this time to my office) and asked me to meet him at what was formerly Powers Hotel, Kildare Street. I agreed to do so within an hour or two of his call,



and we had coffee together. Mr. Lowry then told me that Marlborough House (of which Telecom Eireann was the tenant) had recently been bought by Mr. Ben Dunne, that Mr. Ben Dunne had been in touch with him (Mr. Lowry) and wanted to get the rent up from  $\text{€}125$  per square foot to  $\text{€}170$  per square foot, that "your man Gill" was involved, and could I organise it. I told Mr. Lowry emphatically that I could not and would not, and I referred to Mr. Gill's independent role as an arbitrator. Mr. Lowry then asked what "we" were going to do, as Ben Dunne had contributed  $\text{€}170,000$  to Fine Gael. I told Mr. Lowry that was the first I had heard of this contribution and that he should not pursue this matter further.

"9. A very short time after the Powers Hotel meeting, Mr. Lowry telephoned me at my office and said he wished to buy a house but wanted to keep a low profile. He referred to a news house for sale by Sherry FitzGerald in Palmerstown Close, off Palmerstown Road, and asked could he view it the following day. I said I would arrange this and get back to his office with a suggested time and the identity of the member of staff who would show him the property. He said he did not want anyone to show him the property but me as he did not want anyone to know his business. I indicated that this was not the way we operated, but I agreed to turn up myself with the

person who was actually handling the sale of that property, who I said was likely to be Ms. Geralyn Byrne. Either then or in a short subsequent call, Mr. Lowry asked me to pick him up in advance at the Orwell Lodge Hotel, Rathgar. I arrived first at the Orwell Lodge Hotel at the agreed time, and Mr. Lowry arrived a short time later in a State car and got out and walked over to where I was parked and we drove together the short distance to meet Ms. Byrne at the Palmerstown Close property.

"10. We arrived at the property before Ms. Byrne, and while waiting, Mr. Lowry mentioned in the course of casual conversation that the granting of a new mobile licence was likely to generate strong interest. I recall responding that I imagined that a company like Motorola, given their presence in Ireland, was likely to be a strong contender. Mr. Lowry did not comment further on the subject, and Ms. Byrne then arrived.

"11. According to Ms. Byrne's diary, this inspection of the mews at Palmerstown Close took place on the 6th April 1995. Mr. Lowry looked at the property but neither at the time nor subsequently expressed further interest in it. At his request, I then drove Mr.

Lowry back to his Department. As we drove back, Mr. Lowry again mentioned Marlborough House and I was again emphatic in my response that I could not and would not intervene with Mr. Gill in his function as

arbitrator.

"12. A month or so later, in May or June 1995, I was informed by a colleague in the Sherry FitzGerald Commercial Property Department that Mr. Gill had fixed a rent at about  $\frac{1}{26}$  per square foot for Marlborough House.

"13. My next contact with Mr. Lowry, as I recall, was later in April or early May 1995 when he once more telephoned me to my office. He said he wanted to talk to me about CIE. I recollect that at that time, CIE was having its problems at board and senior executive level. Mr. Lowry said that his Department was keen to get the then Assistant Secretary in the Department, Michael McDonnell, on the short list for the position of CIE Chief Executive. Even though I recalled meeting Mr. McDonnell only once previously, I told Mr. Lowry that I was aware that Mr. McDonnell had worked with my brother (John FitzGerald) in the Department of Finance, and that both John and my father (Garret FitzGerald) shortly before that in the context of a discussion between the three of us about Aer Lingus, had spoken highly of the job Mr. McDonnell had been doing there as a State director and what a fine public servant he was. Mr. Lowry's own perception of Mr. McDonnell as expressed in that telephone call seemed very clearly to be the same as mine. He said he was calling me because the CIE board would be making an

appointment from the short list that would be presented by PriceWaterhouse and was being handled there by Mr. Tom O'Higgins, whom Mr. Lowry knew I knew. In fact, Mr. O'Higgins is a relative of my wife, and at that time I was myself directly involved with him in my capacity as a Trustee in relation to the possible recruitment of a Fine Gael General Secretary. Mr. Lowry asked me would I mind having a word with Mr. O'Higgins about the qualities of Mr. McDonnell and tell him that the Department was keen to see him short-listed.

"14. I did speak to Mr. O'Higgins in those terms. My recollection is that Mr. O'Higgins did not say whether or not Mr. McDonnell would be short-listed but did acknowledge that his perception of him as a public servant of high repute was the same as I had conveyed as being that of my brother, my father and myself. In fact, Mr. McDonnell was short-listed and was the short-listed candidate subsequently selected by the CIE board as Chief Executive.

"15. The only other contacts I recollect having with Mr. Lowry were in October 1995 at the Fine Gael golf outing at the K-Club (as already referred to in my first statement to the Tribunal) and in what I think were during January and February 1996 in relation to Mr. Lowry's decision to hold a fundraising dinner in Dublin for his Tipperary North constituency.

The fact that Mr. Lowry had decided to hold such a dinner in Dublin had given rise to some angst among the Dublin constituency Fine Gael TDs, who saw it as an intrusion into their 'patch'. The then Fine Gael General Secretary, Mr. Jim Miley, and the Taoiseach's special adviser, Mr. Roy Dooney, asked me to sit in on the organising committee for that event to monitor what was going on and to seek to dissipate that angst. I attended at least two meetings held at Mr. Lowry's Department, at which I successfully proposed that a significant proportion of the funds raised by the dinner would go to Dublin constituencies that were in need of funds. The meetings at Mr. Lowry's Department in relation to this Tipperary North constituency dinner were the only meetings I ever had there with Mr. Lowry. That dinner I think took place on Monday, 26th February, 1996.

"Mark FitzGerald, 26th November, 2002."

Regarding paragraph 1 of Mr. FitzGerald's statement, Mr. Lowry has informed the Tribunal that he does not recall how many times he would have met with Mr. Mark FitzGerald during the time that he refers to in his statement.

As regards paragraph 2 of Mr. FitzGerald's statement, he has informed the Tribunal that he has no recall, no precise recall of this, but that he is prepared to accept what is stated in the paragraph.

As regards paragraph 3 of Mr. Mark FitzGerald's statement, Mr. Lowry has informed the Tribunal that he recalls being at the function at Luttrellstown Golf Club, but he has no recall of the conversation referred to.

As regards paragraph 5 of Mr. Mark FitzGerald's statement, Mr. Lowry has informed the Tribunal that he has some recall of a chat with Mr. Mark FitzGerald in respect of the vacancy of chairman for the ESB. It is Mr. Lowry's recollection that he intimated to Mr. FitzGerald that Mr. Dick Spring, Tanaiste, had suggested at an earlier date that William McCann would be a suitable choice for the position. He believes that he simply asked Mark FitzGerald as to his knowledge of Mr. McCann and his ability. He does not recall any other name being offered for consideration by Mr. FitzGerald.

Mr. Lowry has informed the Tribunal that his recall is that Mr. Dunne did inform him as to the level of rent which he was seeking and that this was being arbitrated. He has informed the Tribunal that Mr. Dunne's request was that Mr. Lowry might ask Mark FitzGerald if the matter could be hurried up as a member of his staff was acting as arbitrator. Mr. Lowry has informed the Tribunal that his recall is that he followed up on the matter and had a fairly brief general discussion with Mark FitzGerald. He

accepts that he related to Mark FitzGerald the information which had been given to him. He has informed the Tribunal that he would have had a general understanding of the process, but for Mr. FitzGerald to suggest that Mr. Lowry was in any way attempting to influence the level of rent review is neither fair nor correct, and Mr. Lowry rejects this suggestion absolutely.

As to the content of Mr. FitzGerald's statement as to the contribution by Ben Dunne to Fine Gael, Mr. Lowry's view is that Mark FitzGerald would have been well aware that Mr. Dunne was a contributor to Fine Gael, and the statement which Mr. FitzGerald attributes to Mr. Lowry was not made.

Mr. Lowry has informed the Tribunal that in relation to paragraph 13 of Mr. FitzGerald's statement, he has some recall of a conversation with Mark FitzGerald about Michael McDonnell, deceased. He cannot recall the conversation precisely, but it is his recall that in general terms, they were both in agreement that Michael McDonnell was a capable, efficient public servant who deserved to be on the short list of candidates for the position of Chief Executive. Mr. Lowry's understanding is that Mr. McDonnell had expressed interest in the position and was placed on a short list on his own merits. He believes that it is totally incorrect for Mr. FitzGerald to infer that he

was responsible for short-listing Mr. McDonnell.

Mr. Lowry has informed the Tribunal that the Burlington event was initiated and run within a very short space of time. The event had the approval of Fine Gael headquarters. At the outset, Mr. Lowry's concept was that the event was primarily for funding the weaker Dublin constituencies. Mr. Lowry organised the groupings who ran the event. There was never any requirement for Mr. FitzGerald to propose anything, as it was known from the outset that the function had a dual purpose, supporting Dublin constituencies and the Tipperary North constituency.

The Tribunal has not yet received a response from Mr. Dunne, whom the Tribunal understands may be away, but his solicitors have indicated that there will be a response in relation to these matters.

Sir, I'll just leave that there.

From inquiries made of Eircom, it would appear that Marlborough House is a property of approximately 90,000 square feet. This information furnished to the Tribunal warrants serious investigation and inquiry.

The information provided by Mr. FitzGerald is relevant to the Tribunal's Terms of Reference, and warrants investigation and inquiry on the following basis:

1. Firstly, evidence in connection with these matters, if accepted, may be relevant as showing a modus operandi on two fronts: (A), on a political



front, linking Mr. Lowry's conduct as a Minister with the making of political contributions to Fine Gael; (B), as suggesting a link between Mr. Lowry's conduct as a Minister with the making of personal payments to him or for his own benefit.

2. The information itself is of direct relevance to the Tribunal's Terms of Reference as Telecom Eireann, the owner of the property, was within the remit of Mr. Lowry during his time as a Minister.

3. The information and evidence in accordance with this information warrants the revisiting of evidence already given to this Tribunal and to the McCracken Tribunal concerning payments made by Mr. Bernard Dunne to or connected with Mr. Michael Lowry.

4. It may also be relevant to other investigations and inquiries the Tribunal has to make in relation to other portions of its Terms of Reference involving Mr. Bernard Dunne.

Returning to the Fine Gael Golf Classic, I have already made reference to the minutes relating to the commencement of the Fine Gael Golf Classic, information which was furnished to the Tribunal by Fine Gael through their solicitors. In the information furnished to the Tribunal and the documents furnished to the Tribunal by the Fine Gael Party, through their solicitor, it appears that Mr. Phil Hogan TD sent a letter to Mr. Denis O'Brien dated

30th August, 1995, and it reads:

"Dear Denis,

"I am delighted to hear of your response in becoming a sponsor of the Fine Gael Golf Classic. I gather this arose through discussions with Mark FitzGerald. Your very generous sponsorship of  $\text{€}4,000$  will be used twofold, with  $\text{€}1,000$  sponsoring a hole and the remaining balance sponsoring the wine for the gala dinner. As I am sure Mark already discussed with you, appropriate advertising will be utilised.

"I look forward to you attending the dinner on the night, which I think will be an excellent evening.

"Again, many thanks for your kind support.

"Yours sincerely"

I think Ms. Deirdre Fennell informed the Tribunal that she believes this particular letter would have been drafted by Mr. David Austin and signed by Mr. Hogan.

On the 8th September, 1995, there is a letter addressed to Mr. Denis O'Brien, Esat Digifone, from Fine Gael, dealing with the National Golf Classic 1995, and it reads:

"Dear Denis,

"Following my earlier correspondence last week regarding our upcoming Golf Classic, I would be very grateful if you would forward to me at Fine Gael headquarters by Friday 16th September, for the attention of Ms. Eileen Kelly, a disk with your

company's logo, etc., or alternatively a bromide listing the colours use in your logo. This would greatly enhance the advertisements at each hole which is being made available to our sponsors.

"I look forward to seeing you at the gala dinner that evening.

"With kind regards

"Yours sincerely"

Now, there is notation on that "17th hole, no signage."

Then an asterisk with reference to the disk and the company logo which says "Received 13/9/95, returned 15/9/95 to Sarah Carey".

Ms. Rita O'Regan, a then employee of Fine Gael, has informed the Tribunal that that is her writing, and she has informed the Tribunal that she received a telephone call from Ms. Sarah Carey, of Esat, requesting the return of the material which had been received on the 13/9/95, and had been informed that whilst there was sponsorship of the 17th hole, there was no signage to be applied or to be displayed. And she proceeded to return the material supplied.

I should perhaps state here that three other sponsors who had no involvement in the GSM licensing process also requested that there be no signage in respect of the holes which they were sponsoring.

Then on the 9th October, 1995, Sarah Carey, marketing

coordinator, wrote to Mr. Phil Hogan TD, at Leinster House.

"Dear Phil,

"Please find enclosed a draft for the golf on the 16th.

"I understand Denis has requested that there are no references made to his contribution at the event.

"Best of luck on the day.

"I'll give you a call soon.

"Yours sincerely

"Sarah Carey"

And that letter enclosed the draft for €1/4,000 made payable to Fine Gael and drawn on the Pembroke Branch of Bank of Ireland, Dublin 4.

Fine Gael have furnished the Tribunal with a list of supporters of the Fine Gael Golf Classic. And there is no reference made on that list to Esat, though there is a reference to Cellstar, one of the other competitors in the competition. It's the third on the screen at the moment.

There is then a list prepared by Fine Gael in which they have furnished to the Tribunal the list of sponsors with the amounts opposite. Now, the Tribunal has removed the names apart from Esat Telecom, and this is a document which would have been produced at or around the time of the Golf Classic.

Now, going through the list, the first list, there are

levels, there are contributions there, and they effectively relate to the corresponding sponsors. And if we go through them, it shows the level of sponsorship. And then we move to the next list, and we come to the sponsorship by Esat, €1/24,000. And if we continue it just right through to the end, from a perusal of these documents, it appears that there were only three larger donations or three larger sponsorships.

CHAIRMAN: Roughly three of about the same from a

MR. COUGHLAN: Yes.

MR. McGONIGAL: I may be wrong Mr. Chairman, but I think there are four; just an observation I would make at this hour of the evening.

MR. COUGHLAN: I accept that.

Mr. Phil Hogan TD has informed the Tribunal that he is a Fine Gael TD for the constituency Carlow/Kilkenny, having been first elected in 1989. He has informed the Tribunal that in Mr. John Bruton's Rainbow Government, he was appointed a Junior Minister in the Department of Finance but resigned his position following the Budget of early 1995. He has informed the Tribunal that he is satisfied that the meeting referred to by Mr. Mark FitzGerald, which is said to have taken place on or around the 17th October, did in fact not take place, or certainly if it did, he has no recollection whatsoever of being present. Mr. Hogan

has informed the Tribunal that Mr. O'Brien/Esat were contributors to a fundraising event in his constituency which took place in March 1995, and to the best of his recollection, a table of ten was reserved and a contribution of  $\text{€}1,000$  made. Again, he cannot recollect whether or not Mr. O'Brien was in attendance at the event. Mr. Hogan would have written to Denis O'Brien/Esat from a list of possible attendees which would have accumulated from his time as Chairman of the golf fundraising committee. He would not at that stage have known Denis O'Brien personally and does not believe he ever met him. The matter of pursuing sponsorship for the National Fine Gael Golf Classic which was held on the 16th October 1995 was delegated to committee members. Sponsorship from Mr. Denis O'Brien/Esat was secured by Mr. Mark FitzGerald. In his capacity as Chairman of that organising committee, he would have written to sponsors. Such correspondence would have been prepared by the Fine Gael Secretariat and signed by him. Apart from such correspondence, he made no contact with Mr. Denis O'Brien/Esat. Such contact in his view was not necessary as the sponsorship had already been secured. He would have attended the meetings of the Golf Committee from the 21st July and noted that the Tribunal have all the records of these meetings. Other than writing to Mr. O'Brien/Esat as a

matter of course in late August and early September of 1995, as he would have had to any other sponsor who had indicated his willingness to get involved in the event, he had no other dealings whatsoever either with him or his organisation in that connection.

Mr. Hogan has informed the Tribunal that the first occasion on which he can recollect having met Mr. O'Brien was at the fundraising event at the Wicklow by-election in June 1995. As has been recounted in the legal correspondence, contact was made between him and Ms. Sarah Carey on behalf of Mr. Denis O'Brien in his capacity as a Director of Elections during that by-election. He can't be sure who contacted whom, and it may have been a combination of both. He has known Sarah Carey for many years, and she was at that stage working with Mr. Denis O'Brien. The nature of the inquiry from her, as he recollected, was as to whether or not there was any assistance which O'Brien/Esat might be in a position to give the Party, and he would have mentioned the forthcoming fundraising lunch which took place in late May in the Glenview Hotel. Mr. O'Brien attended the lunch, and as has been recounted elsewhere, a contribution of  $\text{€}25,000$  was made and paid over to the local organisation.

Mr. Hogan has informed the Tribunal that he was Chairman of the golf fundraising committee which organised the event in October 1995. In that context,

having written to Mr. O'Brien on a couple of occasions arising out of his agreement to become a sponsor, he wasn't particularly aware of his subsequent wish for no publicity. His agreement to become a sponsor appears to have come from a contact he made through Mark FitzGerald, and this would seem to be so from the references he made in his correspondence. Mr. Hogan has informed the Tribunal that with regard to any representations which may have been made by him on behalf of Esat in connection with the award of the second GSM licence, he can categorically state never having made any representations to any Minister, civil servant, or otherwise, and he can categorically state that he never discussed the award of the second mobile licence with Mr. Denis O'Brien. He quite frankly was not engaged in the licence process and knew very little about it apart from what he might have read in the newspapers.

Mr. Hogan has informed the Tribunal that sometime during the spring of 1996 he did meet Mr. O'Brien for a prearranged lunch in the Unicorn restaurant to discuss the possibility of him favouring a constituent of his for an employment position within Esat. He understands that the applicant was unsuccessful.

The Fine Gael solicitor wrote to the Tribunal on the 22nd November, 2002. And the letter reads:

"Dear Mr. Davis,



"You wrote to us on the 4th October last and drew our attention to payment of i¼4,001.75 received from Esat by Fine Gael. This information had come to light from a communication which you had from McCann Fitzgerald on behalf of Esat. In these circumstances we are concerned that any suggestion might be made that either our client or ourselves had withheld any information from the Tribunal. We are very mindful of our duty and obligation to assist the Tribunal in its investigations, and withholding any information would be unthinkable to both our clients and ourselves, and believe that our record in dealing with the Tribunal over the last number of years bears this out.

"Both our client and ourselves are obviously concerned as to how this situation came about. Over the last number of months we have spent a considerable period of time endeavouring to respond comprehensively to your request for information relating to the donors of Fine Gael. On the 6th September last, we gave a detailed report on this information by reference to various appendices, including financial information covering a seven or eight year period. We then met with you to go through this information, and subsequently you requested that we investigate further the contribution made by Denis O'Brien to Fine Gael during the Wicklow by-election of 1995.

"At that stage, it had been our understanding that

fundraising activities like golf classics were undertaken only by local organisations throughout the country, and particular details of these would not be available in headquarters. It was only in late September that we became aware that in 1995, a Golf Classic event had been organised by the Party at a national level. This situation arose as the present General Secretary of the Party was not there in 1995, and he was similarly not aware of the details.

"Your letter of the 6th October therefore was the first indication that both the General Secretary, Tom Curran, and I had of this matter, and he immediately set about carrying out a detailed examination of all fundraising activity carried out by the Party at national level in 1995 and 1996.

"On the 9th October we furnished what I believe is a comprehensive reply, including the Party's complete and extensive file on the 1995 Golf Classic.

"We are writing this letter, as I have said, because of our concern that any suggestion might be made that either our client or ourselves withheld information.

We would hope that it would be self-evident, both from the manner in which we have dealt with this particular payment and our dealings with the Tribunal over the last number of years, that the withholding of any information would be abhorrent to both our client and ourselves. Another point we would wish to address is

the contention expressed to us in our private meetings with you that this payment was a 'covert' payment. We would not accept this description and feel that it is not fair to our client. The description 'covert' implies a payment that was to be kept secret or concealed. Although we accept for the reasons stated above that the payment was not initially disclosed in the documentation furnished, this does not make it a covert payment.

"When you brought the matter to our attention, we investigated fully. Our investigations revealed that there was in fact a complete written record of this payment. The payment was accompanied by a letter on Esat-headed notepaper which was sent to the Houses of the Oireachtas for the attention of the Chairman of the Golf Committee. This record was maintained on the files of Fine Gael. In these circumstances, we do not believe it was correct to describe the payment then as being covert. The involvement of Esat as a sponsor of the event was treated in the same way as anyone else. They were asked for their promotional material, which was subsequently supplied. The fact that Esat changed their minds on this aspect is not an unusual occurrence. It is often the case that a person who makes contributions to events does not wish to be publicly acknowledged. We make these comments as I am sure you can understand our clients would be concerned

at any suggestion that they may be involved covert payments. We hope this clarifies the situation. And we will continue to give you every possible assistance in your ongoing work.

"Yours faithfully,

"Kevin O'Higgins,

"Solicitor."

Fine Gael, at the request of the Tribunal, have carried out extensive inquiries of all TDs and all constituency organisations and Senators, and this work is continuing, and they are involved in providing assistance to the Tribunal in that regard.

CHAIRMAN: I think I have already commented, Mr. Coughlan, on an earlier occasion that the co-operation with the Tribunal of Mr. Frank Ward, solicitor for Fianna Fail, was extremely good, and I think it's proper to say that a similar attitude of co-operation has been manifest on the part of Mr. O'Higgins on behalf of his clients.

MR. COUGHLAN: Mr. Denis O'Brien has informed the Tribunal as regards the donation of  $\text{€}5,000$  in connection with the Wicklow by-election in 1995 and the donation of  $\text{€}4,000$  by way of sponsorship of a Fine Gael Golf Classic held at the K-Club on the 16th October 1995 and donation of  $\text{€}600$  in relation to the Dublin South East constituency annual fundraiser held on the 2nd October 1995 as follows:

"As regards your queries concerning a donation of  
€5,000 in support of the Fine Gael Wicklow by-election  
campaign, we have previously furnished you with an  
account of Mr. O'Brien's recollection of this matter  
(see our letter 15th June 2002). However, for your  
convenience, we set his account of the event out again  
as follows:

"A. According to entries in his diaries for 1995, Mr.  
O'Brien attended a fundraising lunch at the Glenview  
Hotel, County Wicklow, on Thursday, 22nd June 1995.  
He recalls at that lunch he was approached by someone  
in Fine Gael seeking to raise funds for the upcoming  
by-election.

"B. The donation was made on a corporate basis by  
Esat or a subsidiary of Esat to the Fine Gael Party by  
way of a cheque or draft sent to the Party.

"As regards the donation of €4,000 by way of  
sponsorship to a Fine Gael Golf Classic held at the  
K-Club on the 6th October 1995, our client's  
recollections are as follows: Esat was asked to  
become one of the sponsors of the Fine Gael Golf  
Classic. Mr. O'Brien recalls that he sponsored the  
event in the sum of €4,000; €1,000 for a hole and  
€3,000 for wine. While he was anxious that at some  
point Esat Digifone should be regarded as being a  
supporter of the event, he was also conscious of the  
then ongoing bid process and did not want the

sponsorship misinterpreted at that point in time. It was for this reason that he requested that the fact of the sponsorship should not be publicised at the event. He believes other sponsors may have done likewise."

Now, I should say that Mr. O'Brien, through his solicitors, has also furnished the Tribunal with a list of donations or contributions to various political parties other than Fine Gael. I will come back to them. It would perhaps be inappropriate at this stage because contact hasn't been made with the parties or individuals referred to as of yet, Sir.

CHAIRMAN: But it is the case that a number of other political parties were beneficiaries of donations.

MR. COUGHLAN: Yes.

CHAIRMAN: Around about the same time.

MR. COUGHLAN: Yes. I'll come back to that in due course.

CHAIRMAN: Yes. Well, we haven't inordinately long to go. I thought if you were getting back to the process.

MR. COUGHLAN: Sorry, Sir. I should perhaps refer to other matters in that particular letter as well.

Mr. O'Brien has informed the Tribunal that he has no documentation relating to the 1/2600 Dublin South East constituency donation, but it is believed that a table may have been purchased.

Mr. O'Brien has informed the Tribunal that he would

like to point out that he has a number of friends, acquaintances, and associates in various of the main political parties and would have attended and/or sponsored a number of functions arranged by each of these parties during 1995 and 1996, and indeed in the years to date.

For the information of the Tribunal, he attached a schedule with all available supporting documents setting out donations to and sponsorship of political party events from 1995 to 2000. The information contained in this schedule is drawn from Mr. O'Brien's recollection following an exhaustive review of his files and diaries. However, the Tribunal will appreciate that it is difficult to piece together all such events at this remove, and thus this schedule may lack some details.

Regarding a meeting or conversation that allegedly took place with Mr. Mark FitzGerald, Mr. O'Brien acknowledges that Mr. FitzGerald is an acquaintance of his, and indeed that his firm would have acted for Esat and Mr. O'Brien on a number of occasions in connection with property transactions.

I have already made reference to the meeting which occurred between Mr. O'Brien and Mr. FitzGerald or which Mr. FitzGerald said occurred in August of 1995 in the Shelbourne Hotel. Mr. O'Brien has informed the Tribunal that the meeting which I have already

referred to with Mr. FitzGerald took place after the Fine Gael Golf Classic where he informed the Tribunal that Mr. Phil Hogan and Mr. Jim Mitchell were present with Mr. O'Brien. Mr. O'Brien has informed the Tribunal that he has no recollection of ever meeting Mr. FitzGerald in the company of Mr. Jim Mitchell and Mr. Phil Hogan, and having reviewed his diaries has found nothing to dispute this. In any event, Mr. O'Brien has informed the Tribunal he is at a loss as to the reason why any such meeting would have taken place.

Just in relation to this sequence of documents, Sir, I wish to refer to a document which I indicated that I would refer to later, and it is a handwritten note of the late Mr. Jim Mitchell TD, which is dated 5th January, 1995, and which was furnished to the Tribunal by Mr. Kevin O'Higgins, solicitor, some time ago on behalf of Mr. Mitchell.

It appears to record a meeting between Mr. Mitchell and Mr. Lowry, and it is Mr. Mitchell's note. It says "I saw M. Lowry at 3.30 today, 5th January, 1995, and informed him of my involvement with Esat Telenor. Tenders to be sought by advertisement in next week or two.

"A. DOB not favoured by Department.

"B, DOB FF!!

"He is available to meet principals of all contestants



in February including DOB- not for lunch.

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

I think evidence has already been given to the

Tribunal, I think by Mr. O'Brien himself, that Mr.

Mitchell had been retained as a consultant in fact by

Esat sometime previously.

Carrying out a calculation, from information supplied

to the Tribunal, of donations or subscriptions made by

Esat/Denis O'Brien for the year 1995 appears to amount

to some  $\frac{1}{2}$ 15,600, and that is apart from what has been

described in this Tribunal, the Esat/Telenor donation

of \$50,000 for the New York fundraising event.

The Tribunal will inquire into the circumstances

surrounding the donation of  $\frac{1}{2}$ 4,000, and this may

involve revisiting evidence already given to the

Tribunal concerning donations to Fine Gael.

CHAIRMAN: Well, I think you have gone up to returning

to what in fact will probably be the 12th meeting of

the GSM Project Group. There is not a lot of point in

starting that now. I had at one stage contemplated

sitting on Monday, but the weight of additional

business, apart from these sittings with the Tribunal,

I think makes that not feasible, so I'll nominate

twelve o'clock on Tuesday next for the further remarks

by way of Opening Statement.

MR. McGONIGAL: Just one matter, Mr. Chairman, before

you rise. I notice Mr. Coughlan has calculated the

total sum donated by Esat/Mr. O'Brien to Fine Gael in 1995. Since we were earlier dealing with scales, may I inquire as to whether it is the intention of the Tribunal to indicate at some stage, to give a balance, the amount of donations by other companies to Fine Gael in the same year, so that we can get a fair picture of what might or might not have been happening?

CHAIRMAN: I'll see that that aspect is explored sufficiently to see that matters have been fairly heard in full.

Very good. Next week. Thank you very much.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 10TH DECEMBER, 2002 AT 12PM.