

I N D E X

WITNESS: EXAMINATION:Q. NO:

MARTIN BRENNAN Mr. Healy 1 - 240

MORIARTY TRIBUNAL - DAY 165

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY,

19TH DECEMBER, 2002 AT 11AM:

CONTINUATION OF EXAMINATION OF MR. MARTIN BRENNAN BY

MR. HEALY:

Q. MR. HEALY: I just want to clarify one matter.

Yesterday you recall that when we were going through the questions, in answer to one question, or rather an amplification of one or two answers, you went on and covered an amount of ground which we didn't then need to address with reference to the specific questions, and I just want to come back to one question. You have already given me an answer to it, and in fact the answer you have given is slightly different to the answer in the question. I am not criticising you for that; I am simply trying to find out why you now feel differently about something.

If you look at Question 59, sorry, Question 74, page 59, do you remember yesterday we were trying to pin down when the final decision was made and what transpired between what I'll call the making of the final decision, as you saw it, and the ultimate completion or conclusion of the report and I was trying to establish whether there had been any further

meetings afterwards. And I think you say here that
apart from the drafting session I'll just clarify
the question you were asked for details of all
meetings of the Project Group or any of the members of
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the group on the 24, 25th October, the purpose of such
meetings, the matters under discussion and the outcome
of such meetings.

And you said "Apart from the drafting session just
referred to, I have no reason to believe that there
was any formal meeting of the Project Group on the
24th or the 25th."

Do you remember yesterday when we were discussing it
you said you had the impression that there might have
been a meeting, and I was asking why there hadn't been
any record of it, and you said "Well, that could have
happened". Are you being careful in your answer here
when you say you have no reason to believe there was
any formal meeting?

A. Not particularly, no. I mean, the reason that I have
in my mind now, the possibility of a meeting on the
24th is because I think I am aware that it's in Mr.
Towey's evidence.

Q. That's all I want to find out. In other words, it's
either from his evidence or from discussion with him
that you think there might have been one?

A. Yeah. It's becoming increasingly difficult to differentiate between what you actually are refreshed with from reading the file and what you became aware of from contact with you people and joint contact between Mr. Loughrey, Mr. Towey and I meeting

Q. There is nothing wrong with that as long as we separate the sources of information in their various

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different categories.

I think I am right in thinking we finished yesterday at page 63, question 83? Would that be right?

A. That's the page that's open here anyway.

Q. Question 84 is: "For your knowledge of the contents of the document dated 23rd October prepared by the Regulatory Division, the purpose for which document was prepared, whether the document was formally circulated and details of any discussion concerning or action taken on foot of the document."

You say "The document has come up early in the questions," and we discussed it yesterday. "The first I knew of that document was when it was drawn to my attention by lawyers for the Tribunal. I have no knowledge, direct or indirect, as to its contents or as to why it was prepared. I could speculate from its drafting, and from memory that its purpose was to be used to prevent adoption of a result based on the

report as it then stood and that the fact that the meeting agreed that the report needed to be tidied up, and would presumably deal with the concerns of the division, gave the authors sufficient comfort to go along with the recommendation. I have no doubt whatsoever that the meeting ended with consensus."

I think again what that refers to is a note prepared by the Regulatory Division to the effect that they weren't prepared to run with the report as it then

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stood. Would that be a fair way of putting it?

A. Yeah.

Q. And you feel that you are satisfied that subsequently a consensus was achieved?

A. Yes.

Q. I think yesterday you said unanimity was achieved?

A. Yes. I actually used both expressions; I am not so sure that I understand the difference between them.

There was definitely consensus within the group, and the Andersen report, at page 1 of the executive summary and elsewhere, records unanimity.

Q. I presume at that stage Mr. Andersen was depending to a significant degree on what he was being told by you or Mr. Towey or somebody in Dublin?

A. Yeah.

Q. He wasn't. So that we have to rely primarily on you

and the other people in Dublin than Mr. Andersen on that report?

A. The thing about Mr. Andersen's report is this is on the contemporaneous report.

Q. Yes, but the information I am saying inserted into the report in the last few days mainly came as a result of work carried out in Dublin and as activity carried on in Dublin where he was not involved?

A. Yes, but I think I was saying yesterday that the reference to unanimity in the report was in the 18th October draft and wasn't contested, as far as I know, although there might be some note on Mr.

O' Callaghan's copy of the report. But I mean, it's clear that the draft report was examined fairly

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minutely but that reference wasn't challenged.

Q. At Question 85 you were asked for your understanding of the composition of the Esat Digifone consortium which won the evaluation process and the respective shareholdings of the participant members of the consortium.

And you say: "This question arose in my informal discussions with the legal team for the Tribunal, and as a consequence of that somewhat polarised discussion, I have examined the application itself carefully. It is clear from the application itself,

and I instance Volume 4, pages 2 and 10, paragraph 2.1 of that volume, is very clear. 'The Shareholders' Agreement states that Communicorp Group and Telenor will each initially own 50% of the equity of Esat Digifone. In the period leading up to the award of the licence, 20 percent of the equity, 10 percent from each of the partners, will be formally placed by Davy Stockbrokers, Ireland's largest stockbroker. As of submission of this application, Davy Stockbrokers has received written investment commitments from' and that's the end of the quotation, and you say, "and there follows a list."

Then you refer to page 10 of Volume 4 at para 3.3, and again you quote. You say "These considerations led Esat Telecom and Telenor to invite extended participation in the ownership of Esat Digifone. Up to 20 percent of Esat Digifone's equity will be made

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available to institutional investors in the period prior to service launch. The initiative has already generated a considerable interest in the Dublin investment community'. It is also clear that the letters from the" well, I should say that that's the end of your quotation, what I just finished with when I said "The initiative has already generated considerable interest in the Dublin investment

community".

Then you go on to say "It is also clear that the letters from the institutional investors were more in the nature of underwriting these statements than actually being allocated or committing to accept particular shareholdings. It is clear that the executive summary of the application uses different language at 2.2, but my understanding was at the time, and still is, based on the detailed application. So the consortium which applied for and which won the exclusive negotiating right to the licence was 50% Communicorp and 50% Telenor with a declared intention underwritten by credible investors to place 20 percent, made up of 10 percent from each at a later date."

Now, I just want to clarify one or two aspects of what you are saying there, in particular the fact that you say there are differences between the executive summary and the body of the application of Esat Digifone. I am not sure I follow that.

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But before I come to that, you say that it is clear from the letters from the institutional investors that they were more in the nature of underwriting the statements of Esat Digifone than actually being allocated or committing to accept particular

shareholdings. Just so there will be no confusion about the use of language, what do you mean by "more in the nature of underwriting particular statements rather than committing to accept particular allocations"?

A. I suppose, to properly deal with that, it would be necessary to put the particular letters on the screen.

I don't know whether that's feasible or appropriate.

Q. You can do that eventually.

A. Or even appropriate today, but the letters talked about they were I think they were committing to invest particular amounts of money for particular purposes if and when the licence was won. So they weren't like in some cases there were financial investors who were named as financial investors who were then part of the consortium. That wasn't the case in this, and we were clear that wasn't the case.

Q. But was it clear that these people had committed themselves to become part of the consortium if it won the licence?

A. I think that's probably a shade further than the commitment that was in the letters.

Q. I see. But would I be right in thinking that there were there were no other investors mentioned as

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having committed themselves or having given a

commitment short of an absolute commitment to become investors other than the named ones?

A. No, there were just the four who were named.

Q. Just go back to the two documents to see if there is a difference between them. If I could just put the executive summary. If you just look at that on the monitor, and if you go to 2.2, I think is the paragraph that you have mentioned, Mr. Brennan.

Paragraph 2.1, sorry. Sorry, I should have

A. The executive summary is 2.2.

Q. Yes. In the executive summary at 2.2, "The company's ownership structure is described as:

"Esat Digifone is an Irish incorporated company.

Currently 50% of the shares are held by Communicorp and the other 50% by Telenor. On award of the licence, 20% of the equity in the company (10% each from Communicorp and Telenor) will be made available to third-party investors. This allocation has been placed by Davy Stockbrokers (Ireland's largest stockbroking firm) with:-

"Allied Irish Bank.

"Investment Bank of Ireland

"Standard Life Ireland

"Advent International.

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"Confirmation letters from all equity partners are

contained in the financial appendix.

"The shareholders plan to make a percentage of the company's shares publicly available on the Irish Stock Exchange some two or three years after the licence award."

A. I think the difference I was drawing attention to is in the executive summary, the expression is "has been placed". In the other two, it's "will be placed."

Q. So it's the after the word "allocation," "This allocation has been placed by Davy Stockbrokers with Allied Irish Banks"; that's a key difference, as you see it?

A. Yes. In the discussion that I had with you in private, I left that discussion with the idea that you had only seen those words and not what was in the more detailed application because the way the discussion went. And that caused me at the time I think we hadn't got fully into writing these, but it caused me to present my reply in the manner that I did.

Q. Right. And in the body of Volume 4, what the application says is "The Shareholders' Agreement states that Communicorp Group and Telenor will each own 50% of the equity of Esat Digifone. In the period leading up to the licence award, 20 percent of the equity will be formally placed."

Is that the distinction, as you see it?

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A. Yeah, it's "will be made available" and "will be formally placed" as distinct from "has been placed".

Q. What is the difference between the two statements?

They don't seem to be significantly different to me.

A. If the 20% had been placed and these people were part of the these people would then be part of the consortium, which they weren't. I mean, the consortium that won the right to negotiate was 50:50, with an intention to broaden the membership of the consortium at a later time.

Q. Were applications put together really as formally as that, where they were you satisfied, for instance, that shares had actually been issued in Esat Digifone at that point, 50% to Telenor and 50% to Communicorp?

In fact I notice that there is a reference to Esat Telecom at one place and I think Communicorp at the other, but that's probably not important.

A. I'd be reluctant to snatch at a question like that without having a look at the documentation.

Q. Was it important to you to know, at that stage, who the other investors were likely to be, if they were the four individuals or the four individual entities that had been mentioned coupled with the solidity or otherwise of the commitments they had given? Was it important to know that?

A. I think it was important that there be once the

intention was declared, it was important that there be some indication that there were parties there who would do it. I am not so sure that I am fairly sure that it wasn't important that it would be all of

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those parties or only those parties.

Q. Was it important that it would be, I think, to use an expression you may have used in your statement, that they be credible investors? You were hardly going to need to check whether Allied Irish Banks or Standard Life had the money to make this investment, or if you wanted to check, you could have checked it without ever asking any question of AIB or Standard Life; you could have gone to one of the international credit agencies, couldn't you?

A. We could, yes.

Q. Which I think is perhaps what you did in any case in relation to some of the other proposed investors. In relation to Telenor itself, I think, didn't you go to Standard & Poors?

A. I personally didn't.

Q. I appreciate that.

A. But that kind of investigation was done in the main by AMI.

Q. If the application had mentioned that 20 percent of the equity was going to be made available on the award

of the licence or running up to the award of the licence to four named individuals, whom you had never ever heard of, with addresses in different parts of Ireland or even different parts of the world, would you have wanted to know more about them and would you have in some way evaluated how credible they were as potential investors?

A. Yeah. It's a bit speculative, but I suppose we would hardly have taken at face value somebody committing to /RS

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8 1/2 million was the or 6 1/2 million.

Q. 11, was it?

A. Different figures for different ones. I think we would have had to do some kind of a check, yes; but to properly understand that, it would be necessary to visit all of the other applications and examine how they were made up and how they were treated. And I don't think certainly I haven't come prepared to do that today.

Q. But to summarise, then, I think what you are saying is if these people had given a commitment, and indeed had gone further, if they had actually received either an allocation of shares or had a contractual right to an allocation of shares, you would have seen them as not merely intended investors, however enthusiastic, even up to the point of something just falling short of a

contractual commitment; you would have seen them as actual members of the consortium?

A. That would depend on the words used.

Q. I mean

A. Put it like this: There is I can recall at least one other consortium which had named individual private investors, and I'd be reasonably confident that some check was done as to whether they had the wherewithal; put it like that.

Q. In other words, if the application had said this is 40% Telenor, 40% Esat Telecom/Communicorp and 20% four named investors, you would have regarded it as a six-man consortium?

A. Yeah, tentatively I'd say, yes.

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Q. If they had actually been named as holders of

A. I would like the opportunity to consider that in the context of all the consortia, because there were other issues that arose in the AMI evaluation of consortia than just the simple names. Like, for example and this I think is specified somewhere in the report whether there is an appropriate balance within the consortium and so on. So to sort of snatch at a question like this on a speculative basis is difficult without any notice, that's for sure.

Q. I am not really I think you may be we may be at

cross-purposes. I am not I seem to be taking up on something you said to me a moment ago when you were distinguishing between the commitment made by AIB, IBI, Standard Life, and Advent and a commitment which was equivalent to the commitment that Telenor and Communicorp had made. If they had made a commitment equivalent to their commitment, if they were described as actual holders of 20 percent of the equity, you'd have regarded them as members of the consortium. It didn't go that far, is what you were saying to me; isn't that right?

A. Well, yeah, the only reason I am hesitating is because those kinds of examples existed in other consortia, and it needs to be checked how they were treated in that case.

Q. I just draw your attention to one other aspect of the application, and it's the graphic that accompanied the summary, the graphic that was in Volume 4 that illustrated the ownership of Esat Digifone. You have

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to excuse the marking on it, but I don't think it makes it any more difficult or indeed any easier to read.

It's Figure 2.1, "Ownership of Esat Digifone".

And you see that it's made up of Telenor, Communicorp Communicorp Group, that is and institutional

investors up to 20% percent, up to 50% between 40 and 50 for between 40 and 50 for Telenor, and the institutional investors then are identified as the four banks or three banks, one venture capitalist, pension fund administrator and so on, Advent International.

Now, if I just ask you look at the executive summary, I think it's just exactly the same diagram; isn't that right?

A. Yeah.

Q. Now, the next question passes away from issues on that for a moment and deals with something that we have in part dealt with already. Your knowledge, direct or indirect, of or understanding of the role of the Cabinet or the Cabinet Sub-Committee in the ultimate decision on the outcome of the evaluation process.

I suppose it's a bit like the question I think we may have or may have asked you very early on: Whose decision was it? Or whose role was it to decide who should get the licence and

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A. It's not in this narrative, but snatching at it, I would say that formally the power to issue a licence is a statutory function of the Minister with the consent of the Minister for Finance; but for major decisions, they would nearly always be brought

almost invariably brought to the attention of the Cabinet, even though the individual Minister had statutory power.

Q. Well, the policy foundation for this came from the Government, didn't it, from the Cabinet?

A. It did, exactly.

Q. In the form of a decision?

A. Major decisions, even in most cases in public administration are decisions of the Minister. But in very many cases they would be taken to Cabinet, mostly for mention, sometimes for agreement. And I suppose a Minister would be within his rights not to go to Cabinet, but it would be a rare enough event.

Q. In this case I suppose it went beyond simply bringing somebody to Cabinet to notify the Cabinet of what had been done. The Cabinet in this case had set the ground rules, isn't that right, a long time before the decision was made and specified

A. And you are also talking about a multi-party Government with different interests within that Government and so on, yes.

Q. And what you say is "Anything I say in response to this question is by its nature speculative. The Cabinet Sub-Committee was set up at an early stage, presumably as a reference point for the Minister and

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to assist with key decisions. The committee contained the leaders of the three parties in Government at the time as well as the Minister for Finance and, I seem to recollect, the Minister for Enterprise, Trade and Employment. I would speculate that if these people could agree on a result, then Cabinet approval would be a mere formality. The role of the Cabinet seems, in the event, to have been a rubber-stamping one."

Question 87 requested details of all information provided by you, directly or indirectly, to the Minister regarding the evaluation process during the course of the process together with details of all communications by you to the Minister and all communications by the Minister to you during the course of process.

As you say in your answer, you have already dealt with aspects of this query. But you go on to summarise it, saying "I am interpreting the words 'during the course of the process' in the question literally and not dealing at all at this point with the various dealings in relation to the Dail and elsewhere after the process.

"Obviously I had dealings with the Minister in the context of the preparation for the launch and the launch itself of the process. I don't believe there were any dealings with him in relation to the various information memoranda published in response to

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questions, etc., shortly after the launch. I had clearly dealings with the Minister about the intervention of the EU Commission and the resolution thereof. After the closing date and when I had returned from holidays and read the applications, I had a general conversation with the Minister wherein he was seeking reassurance that the general quality of the applications was such as to lead to a competent licensee, and I was able to give him such assurance. As we got closer to the finalisation of evaluation, he once or twice asked me general questions about how it was going and whether it will be on time, etc. I have a clear recollection of using the analogy of being an employer with one job to fill, and having six applicants and saying that in the normal course, based on the CVs one would already form impressions and that seemed to me at that particular stage, and I am not sure when it was, that the applications were breaking down into 3:3 and could ultimately, I thought, be broken down into 2:2:2.

"By this I mean two standing out from the pack, two middle of the road, and two making up the numbers. As we got closer to the end, and I dealt with this earlier, I believe I told the Minister that it was down to two, and the two were close, but that we would

continue working until we had a clear result. My belief is that I told him the names at that stage but did not rank them. Any further dealings were in the context of the approval process and announcement and

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these have been dealt with in answers to earlier questions in this document."

Just to clarify one aspect, most of which goes over ground we have already covered, and that is that I think earlier I think you said that you did in fact rank them when telling the Minister who had won, and you feel that you may have given him the names. That was the aspect that you weren't sure about; is that right?

A. I think what I said was that the records showed me as having told him the rankings, that my recollection was slightly different. And I just I can't shed any more light on it for now than I have done.

Q. I see.

You were then asked for your knowledge, direct or indirect, of all dealings, meetings or communications between the Minister and any member of any consortium or any person associated with any member of any consortium during the course of the evaluation process.

And you say "I have a vague recollection that I was

aware of courtesy visits to the Minister in the early stages by persons associated with the consortia. I have no direct or indirect knowledge of meetings, communications, or contacts, and I do not believe that the Minister ever spoke to me as a consequence of any dealings, meetings or communications that he may have

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had with any member of any consortium during the evaluation process."

Now, if I could just ask you about one aspect of this, and it concerns a series of Dail questions that the Minister was asked to respond to in, I think, 1996.

If you recall, there was some controversy during the latter part of 1995 and the middle part of 1996 concerning the granting of the licence, I think so much so that at one point you yourself and a number of other senior civil servants involved gave a press conference; do you remember that?

A. I do, yeah.

Q. And there were lively, I think, exchanges in the Dail concerning the matter on a number of occasions, and on one occasion the Minister was obliged to respond to a large number of parliamentary questions on the matter. And he took a lot of the questions together; I think he may have taken something like, I don't know, fifteen or twenty questions and responded to them in

the form of a speech. And that speech was broken down, if you like, into a number of headings and subheadings, all of which were to some extent related to aspects of or individual questions posed by TDs.

Do you remember that?

A. Yes, I carefully paid attention to the Opening Statement as well.

Q. Now, in the course of responding to those parliamentary questions, I assume that the Department would have been involved in researching and preparing

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answers?

A. Absolutely.

Q. And you mentioned to me, or I think you mentioned in your statement and I think you said it yesterday, that

the Minister I may be referring to a part of your statement that's in fact yet to be read out. In any

case, I'll anticipate it. I think you said the

Minister was the careful type of person who liked to

be well prepared on all public occasions and tried to

avoid all surprises, have what he was going to say

well and truly mapped out in advance, and anticipate

any supplementaries he was likely to be asked, whether

in the Dail or elsewhere?

A. The context in which that appears in my statement, I believe, is to do with the press conference for the

announcement of the result, not to do with the Dail.

But I am quite comfortable dealing with the issues that arose in the Opening Statement about the Dail.

Q. Would I be right in thinking the same applies to the Dail statements, that the Minister, like all Ministers I suppose, was anxious to be well prepared?

A. To deal with it properly, I'd have to spend a few minutes dealing with the whole concept of parliamentary questions and Ministers and the Dail, and I don't know whether you want to go into that.

Q. Certainly I'd like to hear.

A. Okay.

A Minister is given questions at predictable dates, but the questions come in, I think it's at four
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working days' notice for the main body of questions and supplementary questions at three working days' notice and written questions at three working days' notice. And the normal practice in the Civil Service would be first to see are there ones that can be disallowed, and then to start looking at whether there are ones that can be grouped together, but and there is always a lot of pressure, because invariably it's the case that you get a lot of questions when you are doing something important and when you are very busy. And in this case there were actually 18

questions.

You then have to wait until the Ceann Comnairle's Office has a lottery to determine which order the questions will be taken. A number of questions are identified for priority and are taken in the first 15 or 20 minutes. And I think that they are put in by particular maybe the Party spokesman, and then there is a generality of questions, and then there is the written questions. You need to know the order of the lottery, and the lottery is what determines the order in which oral questions are taken, before you can determine how you go about grouping questions if they fall to be grouped. And that's about two and a half days, or maybe three days. It's after the closing date for priority questions, I think.

The Civil Service would then say, when you have a lot of questions about the same topic, is there a coherent

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way of grouping these questions? And in doing so, you start with the first one that falls to be answered, say the first priority; are there questions that are related that are attacking the same topic as that particular question? And you try to group them with it, and the facility for taking questions together is a normal part of the formula.

Now, the importance of this is that in general, or on

average, only probably ten or less of the normal knowledge priority oral questions are actually answered orally in the Dail because the time is limited, and all of the rest go by written answer in any event.

Now, when we got this particular bunch of questions, my recollection is that and it's a fairly sound recollection that we did precisely that. And we started with the first priority and took the ones we would naturally group with that, then take the next one and take the ones we would naturally group with that. And we were proposing that the questions be taken in smaller blocks than 18 together.

Now, at some stage a decision was made to take the 18 together, which is the Minister's call, at the end of the day, what way he wants to do it. I don't know whether the Minister made that decision based on advice from the Secretary General. And the questions are treated with a lot of respect in the Civil

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Service, because you want to be careful not to give inaccurate information. So they go right through the hierarchy, step by step.

Now, I recall that we grouped them in smaller groups and that a decision came down to take them together.

Now, in grouping them in smaller groups, you would

plan for the possibility that somebody who had questions, they were later in the lottery and maybe not be reached in oral session, might attempt to use the supplementary opportunities in earlier questions to elicit their information orally to broaden the debate. So when we would have prepared four or five answers in groups of three, four, or five questions, whatever it was, we would have prepared the normal basis of possible supplementary questions and ways of dealing with them as part the Minister's brief.

And I was particularly conscious of, in the Opening Statement, a particular answer to a supplementary bearing on the question of ownership. And I am virtually certain that that was put in because the ownership question maybe was so late in the lottery as not to be reached, and shouldn't have survived when the 18 questions were grouped together; and that's the only explanation there is for that supplementary staying in the file.

There was a suggestion in the Opening Statement, I believe, that there was a deliberate attempt to be

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vague about the ownership question, possibly

Q. I think it's not clear that everybody will be following what you are saying, because I may have I am anticipating that you'll get to other aspects of

the parliamentary question procedure, but I think what you are referring to is a draft supplementary to the effect that a query concerning the ownership of Esat would be answered by saying "This question will be answered elsewhere in the lottery", or "Due to the lottery system, this question"

A. Yeah, I'd be very confident that that was put in as a supplementary to a question that was certain to be asked because the question to which it was directed may not have been asked.

Q. I follow.

A. And then when all the questions were grouped together, it should have been taken out.

Q. I follow. Would it be possible to identify the supplementary, if you like, at which it was aimed initially before the actual lottery that made it redundant?

A. There clearly was at least

Q. Would it be possible to find that out now?

A. It was clearly dealing with whichever of the 18 questions was bearing on ownership. I don't know whether there was one or more than one, and would it be possible to identify? It should be possible from the order paper to identify where that question would have no, I think when a decision is taken to group questions together, that's communicated to the Dail

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Office, and then they are grouped in the order paper in that manner, I think.

Q. Which would mean that you couldn't work

A. Which would mean

Q. work out their original order?

A. I think probably not. Now, I don't know whether the

IT systems in the Department could be interrogated, because I am not good on IT, as to find out which questions were at that time being grouped with which questions. I really don't know; it's a technical issue. But I was just interested in explaining that there was no conspiracy about that particular supplementary other than in the normal course of business.

Q. I follow.

Can I just come back to another aspect of the preparation of parliamentary questions. There was a question asked, I think it was by Deputy Willie O'Dea, an explicit request to the Minister to describe meetings he had with, I'll call it, applicants and their connections. I think the question went as follows: "To ask the Minister for Transport, Energy and Communications the number of applicants for Ireland's second GSM mobile phone licence, the dates on which submissions were received, the number of times he met the principals, directors, consultants or

representatives on behalf of any applicant companies,
the dates on which he met them, the locations where he
met them, and if he will make a statement on the

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matter."

Now, I think you are aware that that matter was asked
on the 22nd November, 1995. It was as part of the
maybe that long string of 18 questions you mentioned a
moment ago, and a comprehensive response was prepared
for the Minister dealing with, as far as I could see,
most of the questions under headings which grouped
topics alluded to in the questions.

A. Mm-hmm.

Q. And I think there was a heading, and we can put it on
the overhead projector, on one of the prepared
questions, "Meetings with Consortia". Do you see
that? That seems to that seems, on the basis of
what you have been telling the Tribunal, to conform
with the practice of preparing answers to questions in
the order in which ultimately the Ceann Comhairle
decides they should be answered or the order they
should be taken in the Dail.

Now, you said that the questions are treated with
considerable respect and care and that they go right
through the Civil Service system. Do I take it from
that that basic research would be done by civil

servants at a lower level, that that work would be checked, and it could go the whole way up to the Secretary?

A. Normally the first draft would be done by the person with the most immediate knowledge. In a case where you have 18 questions together and exceptionally tight /RS

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deadlines, which is always the case for parliamentary questions, there would tend to be a different degree of work-sharing, and I guess that in that particular case, probably Maeve Nic Lochlainn, Fintan Towey and I were the main people dealing with drafting answers to those questions. I actually suspect that I myself may have drafted the text that you now have on the screen, which was an attempt by me to propose to the Minister a coherent answer to the question, based on whatever I knew at the time.

Q. If we just go through it. "The question regarding meetings I held with principals or representatives of applicants is virtually impossible to answer precisely. The applicant consortia encompassed at least four State companies, two of whom are within my aegis; five companies with significant Irish content, as well as an additional number of individuals in their personal capacity, at least 11 foreign companies, and indeed there is some degree of overlap

with parties interested in the strategic alliance with

Telecom Eireann.

"I would however wish to make it clear that from the launch date in March, I was acutely aware of my duty not to interfere with the selection process. I had brief meetings with representatives of several consortia, but these were strictly in the nature of courtesy calls and opportunities to reinforce the message that this was an objective process designed to find the best applicant. I did not discuss the

/RS

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contents of applications, which I had not seen, or the evaluation process with any representative of applicants.

"I am quite sure I came in contact socially with promoters or business interests connected with the applications or indeed, prospective applications, on a small number of occasions."

Now, as you said, you prepared this answer on the basis of what you felt the Minister would want to say, having regard to what you believed to be the position regarding his conduct in relation to these matters.

A. Mm-hmm.

Q. Did you have any discussion with the Minister about this, or did you carry out any research or depute anyone else to carry out any research to enable you to

answer it?

A. There is a prospect that I may have asked the private secretary to know was there anything in the diary that I should know about in the context of answering a question of that kind. That's about the most research I would have done.

Q. Do you see where you say "I had brief meetings with representatives of several consortia, but these were strictly in the nature of courtesy calls"? Bearing in mind that you were able to say that, does that mean that you must have checked in the diary, either the business diary

A. I wouldn't have access to the Minister's diary myself.

/RS

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It's possible that my own diary, which no longer exists, that I mean, I can't tell how many number of years ago; that's hardly surprising. It's possible there were meetings in the very early stages of the process that I may have attended, even; I just don't know. I mean, certainly the

Q. Why was the answer given like that without actually checking the dates, seeing as that's what the question asked for?

A. Because the Minister the question would be passed from me to Mr. Fitzgerald to John Loughrey, who was the Secretary to the Minister. And it's up to the

Minister at the end of the day to be satisfied with the accuracy of the answer.

Q. Right.

A. And it's not unusual for Ministers to amend or tweak answers for whatever reason, for accuracy, for political presentation, or whatever.

Q. Well, I can see why a Minister might feel "like I want to put that slightly differently; otherwise I'll be a hostage to fortune", by using a certain expression that might be in the news, whatever. I can see why a Minister can "say I can remember something that's not in the statement", or "I'll remember that something in the statement is not accurately stated", and you'd get changes like that. But if the Minister didn't change anything, one assumes that he was happy with the statement; or would you?

A. I would tend to assume that, yeah.

Q. You know, from discussions with the Tribunal, that /RS

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this answer was never given; isn't that right?

A. That's right.

Q. In the Dail?

A. Correct.

Q. Is the Minister actually attended in or near the Dail when he is giving questioning, does he have any assistance at all, is he completely on his own, as it

were?

A. Completely on his own.

Q. After he has answered his questions, is there any post mortem, or does he have any discussion with his civil servants concerning the answers?

A. I have never had experience of Ministers having discussions, but civil servants would tend to check what are known as 'the blacks', the first printout of the Dail report, a couple of days afterwards. And what you will be mainly looking for is to see did the Minister promise any follow-up action in answers to supplementary questions. That would be the sole focus of what you would be checking.

Q. And do you remember noticing that the Minister hadn't answered this question or provided the prepared answer that you had arranged?

A. I think I noticed that I did notice that at some stage.

Q. And did you find it in any way strange that he didn't give what looks like a perfectly clear answer, admittedly it doesn't give chapter and verse, but it suggests that the Minister had nothing but the most proper meetings with courtesy callers to his

/RS

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Department or whatever?

A. Well, I mean, you are asking me to speculate as to

whether the Minister deliberately didn't answer it.

Q. I am just asking you, were you surprised?

A. I mean, it has been known in the Dail for Ministers to read out the same page of a speech twice, you know.

Accidents happen, and you'd have to allow at least for the possibility of that. It wasn't something that stuck in my mind, put it like that. I suppose I was more a bit more interested in the fact that the opposition didn't notice.

Q. I am sure they'd be grateful that you made that comment. I think actually there were a number of speakers in the Dail did draw attention to the fact that it hadn't been answered. Now Mr. Coughlan reminds me.

A. Okay.

Q. You say you noticed that, but I asked you, were you surprised by it?

A. That's a difficult question to answer. I mean, it wasn't that he didn't answer that question. It was that he stopped at a certain stage through the process of answering the 18 questions he was taking together. And at some stage I read to see what were the questions that didn't get answered. So clearly I noticed it. Surprise or not is a difficult thing to decide, were you surprised.

Q. If the Minister had in fact met with Mr. AJF O'Reilly and had the conversation with him that was mentioned

in the Opening Statement, and if he had met with Mr.

/RS

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Boyle and had the conversation with him, and if he had in fact or it's accepted that he had a discussion with Mr. Fitzgerald or Mr. Denis O'Brien, all of these would have had to be included in this answer, wouldn't they?

A. Yeah, I would say I mean, if the Minister had meetings that weren't encompassed by the answer that we proposed, the Minister would have had to suggest or should have or would have suggested that the reply needed some further work, and would have made suggestions as to what that further work is.

Q. And if you knew the Minister had had those meetings, I take it you couldn't have drafted this answer?

A. I wouldn't have written an untrue draft in response to a parliamentary question, not at all. That would be a very serious thing for a civil servant to do.

CHAIRMAN: Of course one thing that neither tribunals nor courts have any jurisdiction over, so we are not going to dwell unduly, but just out of interest, is your reference to the lottery system on the part of Ceann Comhairle an actual literal statement, is it, that he sets what he appears to be the most realistic questions

A. No, the questions are drawn out of a hat, as far as I

know.

CHAIRMAN: I see. Thank you.

Q. MR. HEALY: Question 89 is as follows: You were asked

/RS

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for the date on which and the circumstances in which

you first became aware of the involvement of IIU

Limited or Mr. Dermot Desmond in the Esat Digifone

consortium, your understanding as to the precise

nature of the involvement of IIU at that time, and the

source of such knowledge or understanding.

And you say "My involvement in the licence negotiation

which extended over a period after the selection

process was minimal. Mr. McMahon took over leadership

of the project and referred in the main to Mr. Towey

for any input required from my side of the Department.

That said, I believe that IIU, as a member of the

consortium, surfaced relatively close to the final

award of the licence. I recall this as it was the

subject of some discussion within the Department to

which I was a party. I believe that Mr. Loughrey took

a "hands on" position in considering how we might

react to the emergence of IIU Limited. I can

certainly remember a decision being made that the

financial standing of IIU would have to be put on the

record before they could be considered as a consortium

member and that appropriate evidence was reluctantly

provided by Mr. Michael Walsh on behalf of IIU. I believe that the involvement was that the 20 percent which was to have been placed by Davys was now being taken in total by IIU Limited. I believe that a conscious decision was made by the people directly concerned, including Messrs. Loughrey, Fitzgerald, McMahon, Towey, and myself, that no basis existed for

/RS

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not accepting the involvement of IIU. Please refer to my reply to Question Number 85 also. My knowledge came from, I am fairly certain, Messrs. Loughrey and McMahon, rather than directly from the consortium. It is relevant to say here that the conditions of the competition, as embodied in the memorandum of responses to questions raised by applicants well in advance of the closing date, included a clear indication that the ownership of the licence could be varied to a very significant extent short of voting control at the discretion of the licensees. This effectively meant that Telenor and Communicorp could have taken the licence on one day and assigned 20 percent the following day in any event."

"I was not made aware, rightly, that an indication of the involvement of IIU had been communicated to the Department in September of 1995."

You say that your first knowledge of the involvement

of IIU came, you are fairly certain, from within the Department, from Messrs. Loughrey and McMahon?

A. Yes. I am aware from the Opening Statement that there is a reference to whether or not that possibility was canvassed with me by somebody in William Frys. That may well have happened on a fairly casual basis; I don't know. I didn't have any recall of it, even at the time that they surfaced, I didn't have any recall of having a conversation about it previously.

Q. How did the question of IIU's involvement come up with

/RS

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you? How was it brought to you by Messrs. Loughrey and McMahon?

A. I can't say for certain, but it's more likely to have come from Mr. McMahon or Mr. Loughrey in the context of we better talk about this.

Q. Yes. And did that mean that you then got together a number of other people, Mr. Towey and Mr. Fitzgerald also to discuss it?

A. Yes, I think there was a discussion about it within the Department.

Q. When was it, do you think?

A. I think it was within days of the issue of the licence, but I couldn't say how many days.

Q. I see. The licence was issued on the 16th May 1996.

A. So it could have been going on earlier in May, for

example.

Q. Sometime in the first week or two of May?

A. I presume there is some documentary evidence of some of this, in the sense that Mr. McMahon, as you know, kept careful notebooks, and he was the leader of the licensing project at that time.

Q. I think that you may recall that in the Opening Statement, reference was made to a fax or other communication sent to you by Ms. Regina Finn, setting out her understanding of the ownership structure of Esat Digifone following on a meeting with Mr. Owen O'Connell, and that was followed, I think, by a letter from Mr. O'Connell setting out in written form a statement of the ownership of structure of Esat Digifone; do you recall that?

/RS

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A. I recall seeing it in the Opening Statement for sure.

I didn't go back to visit the documentation to see I mean, I don't recall, for example, what date was on it.

Q. I think that the fax to you was around the 16th April; I think the letter from Mr. O'Connell was the 17th April

A. Okay.

Q. 1996.

Would it have been around then that the matter was

brought by you to Mr. Loughrey?

A. Well, I am not sure whether it was brought by me to him or him to me, to be honest. For sure there was no knowledge of IIU in 1995 at all. My recollection of it emerging as an issue was very close to the issue of the licence, but whether "very close" is ten days or twenty days or thirty days, I just don't know right now. I am prepared to take whatever the record says on the subject of my knowledge of my involvement, but I just know that it was in the end game, not earlier.

Q. But what was the significance of it when it was brought to your attention? Or what did you see as the significance of it?

A. I suppose the question for me was, how does it fit with the application? I think there is evidence that there was legal consultation; there may have been consultation with the Department of Finance. I am assuming we'll get to documents on this in some future occasion.

/RS

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Q. I am just looking for your recollection. Was it a problem? Was it something that was going to have to be sorted out?

A. I couldn't given that my state of mind, as we discussed in the last hour, is that there was 20 percent to be placed with institutional investors, the

question for me was: Does this new participant match that description? And I believe I came to the conclusion that it did, that there was no particular reason to exclude that company or the person behind it.

Q. Did you therefore see the involvement of IIU as equivalent to the involvement of the institutions we saw on the graphics a moment ago?

A. I think once we made appropriate investigations, that they had the necessary wherewithal, I think that's the conclusion we came to. It certainly was my position, anyway.

Q. Sorry, isn't there a position between simply having the necessary wherewithal and having the institutional standing of one of the institutions that was mentioned in the graphic?

A. But at the end of the day the application was based on 50:50, with 20 percent to be placed.

Q. Not just placed; I think the impression created by the documents that I saw on the overhead projector a moment ago was that this was going to be a placing with institutional investors, very strong institutional investors, about whom you couldn't possibly have any question; and even if you did, you

/RS

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could find out the question objectively without resort

to questioning the institutions themselves. Isn't there a difference between that type of entity and anybody else who might or might not put themselves forward as a replacement but who didn't have an institutional character?

A. There is some degree of difference, but this gets back to you know, the position taken by the Project Group in relation to consortia in general, and there were in consortia wealthy individuals as investors. So and that wasn't seen as a disqualifying event, or even an event for bad marks, so I can't see how

Q. But you were aware of those the involvement of those investors in the course of the evaluation process, and you had an opportunity to evaluate them before you decided whether to award the competition to anybody?

A. Yeah, but

Q. Here is something that's coming along at, as you put it, at the end game; is that right?

A. But the question then is, are you giving the licence to are you still giving the licence to a group that can do the business and that is reasonably consistent with the application? Which was why, I believe, there was a discussion at some period about 25 percent or 20 percent for IIU. We did attach some importance to it mirroring the application, yes.

Q. Did you bring this to the attention of the Minister?

A. I think it's clear from everything I have said, both now and in writing, that I wasn't leading the project /RS

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at that stage. I believe that Mr. Loughrey was the one who pulled this together in terms of its analysis and decision making, but I was certainly consulted as having led the project at the selection stage.

Q. So therefore you don't recall bringing it to the attention of the Minister?

A. I don't particularly recall bringing it to the attention of the Minister, but I don't deny that it's possible that I was present at discussion where it was talked about with the Minister. I possibly was.

Q. Do you believe that somebody else, Mr. Loughrey or Mr. Fitzgerald, would have brought it to the attention of the Minister?

A. I have no doubt about that.

Q. It was therefore, am I right in thinking, sufficiently important to be brought to the attention of the Minister?

A. Yes.

Q. Because it involved, at least on the face of it, something quite new; would that be right?

A. Something slightly different. It was different names than the names in the application.

Q. Well, one of the names was Mr. Dermot Desmond, who had

been the subject of a report commissioned by your

Department; isn't that right?

A. Well, commissioned by a Department that subsequently

became part of my Department, but I can't myself see

what's the relevance of that. I have never read that

report; I wasn't party to it.

Q. I see. Did you think it had any relevance at all,

/RS

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that report, then, not even relevant to look at it?

A. I never looked at that report. I don't recall that

report making any negative findings, by the way, but

that's from conversations I have had with people about

it.

Q. But you don't know whether it made negative findings

or not; would that make a difference, if it had made

negative findings?

A. It would depend on the findings.

Q. It would depend on the findings. The obvious thing to

do is check if they had made negative findings to

affect the view you might have taken, or not even the

view you might have taken as to whether somebody

should join the consortium, but the view you might

have taken as to what investigations would have been

appropriate to evaluate somebody's ambition to join a

consortium.

A. I think I have been trying to make clear that Mr.

Loughrey pulled this thing together himself; he dealt with it directly, right. My involvement was, how did I think it stood up versus the application, the application that we had considered had won the negotiating right? And I believe there may have even been legal advice got about whether that was proper or not. I'll say very clearly that I was not the person making the call in terms of whether there was the way you are putting it, some kind of political objection to some individual or whatever. That wasn't my call.

Q. I am not making suggestions there was political
/RS

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objection, no.

A. Well, I don't know where this conversation is going so.

Q. Well, I am suggesting that the Department had commissioned a report concerning an individual who was in fact the sole principal behind IIU, Mr. Dermot Desmond, and I am suggesting that that Department at the very least, the Department which had commissioned the report, might have felt it appropriate to examine the report in the context of evaluating this person's ambition to become a member of the consortium.

A. And it may well be that any of Misters McMahon, Fitzgerald, or Loughrey, or indeed others, Ms Finn,

may well have done that. I didn't do it. I didn't see that as my role. I was not controlling that particular part of the reaction to this new information.

Q. Well, I won't press it at this stage, Mr. Brennan, because I think it's not fair unless we have all the documents. I think we will pass on, just to ask you one other matter concerning what you said in answer to this Question 89.

You say that the rules concerning ownership meant effectively that Telenor and Communicorp could have taken the licence on one day and assigned the 20 percent the following day. So that they could have taken its licence on the 16th May and given away 20 percent to a man of straw on the following day.

/RS

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Is that realistic, is it? There would have been no point in evaluating Telenor or Mr. Desmond or anyone else if that evaluation could have resulted in the licence being handed away the following day.

A. But, Mr. Healy, the question of future changes of ownership after the licence was issued was considered, at the information phase, before the closing date in response to questions raised by potential applicants. And at that stage, a formula of words was put into play which was actually taken from mining leases; it

wasn't a formula made up by the Project Group. It was a formula actually taken from mining leases in another branch of the Department, and that was the formula.

And what I am saying in my reply now is if you apply the formula, that could have happened.

Q. I see. But am I not right in thinking that you put in place an evaluation process which was designed to evaluate the applicants for a licence and their proposals for ownership of the licence, the fact that on the day after the licence, the licence could have been given away, or part of it, to somebody else, didn't excuse you from conducting a full evaluation the day before you granted the licence, isn't that right, because that's what you agreed to do with all the other competitors? The fact that you

A. The Department had a responsibility in issuing the licence to respond to the statements in the evaluation report about the financial strength of the consortium and so on. What I am now saying is that what I have said in the memorandum is that after the licence
/RS

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was issued, the regime about possible change of ownership was clear to all the parties concerned and had the effect that so long as voting control stayed with the people who won the licence, that other changes could be done without Ministerial consent. I

mean, that's what's there, black on white, and was there since April or May of '95.

Q. I appreciate that, but the fact that on the day after the licence, the ownership of that 20 percent we'll just take that 20 percent could have changed, didn't absolve you from your obligation in the course of the evaluation process to make sure that every element of the ownership was properly evaluated; isn't that right?

A. Every element of the ownership in the application that won the right to negotiate the licence was evaluated, and the evaluation drew attention to the need to be careful about certain matters in issuing the licence.

Q. The one thing you did say that you were anxious to do, coming up to the day the licence was granted, was to make sure that the share configuration was consistent with the bid application; that in other words, it was 40:40:20. Why was the share consideration considered so important, that it had to be 40:40:20, but that the actual identity of shareholders wasn't so important?

A. I am not saying that the identity of shareholders wasn't important. There was some investigation of the ability of the new shareholder to do what he was doing to fund what he was taking on as a member of the consortium.

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Q. But if the new shareholder was able to fund 25 percent, was there any reason not to give it to him in your mind or to take it?

A. At this time we were fully aware that there were parties watching carefully every move, and we wanted to make sure that we didn't increase any risks that that might give rise to. The application was 40:40:20, and if we changed it to 37.5:37.5:25, that would have been a different composition to what applied for the licence.

Q. Were you aware at that stage that the consortium was in fact 37.5:37.5:25?

A. There seems to have been a stage when the Department was aware, I am not sure precisely when I was or not, there seems to have been a stage when the Department was asked about 25:37.5:37.5 and the Department said 'prefer not, thank you very much'.

Q. Were you aware, leaving aside the timing for a moment, were you aware that this consortium, as seems to be the case from the documents mentioned in the opening case, this consortium was actually, long before the certainly for some time before the competition result was announced on the 25th October, a 37.5:37.5:25 consortium?

A. No.

Q. You weren't aware of that?

A. No.

Q. And were you aware that on the last day, as it were, or thereabouts, a share transfer had to be done for a substantial sum of money to convert the consortium

/RS

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from a 37.5:37.5:25 back to a 40:40:20?

A. I wasn't aware of that level of detail. The only thing I was aware of was that the Department expressed a very strong view that it had to be 40:40:20.

Q. When you were, as you said a moment ago, granting the licence, actually physically granting it on the issuing it on the 16th May of 1996, you had to be sure of the finances of the participants in the consortium to whom the licence was now going to be given, and I think you said in an answer to a question that I have read out that you were satisfied that the day to check that or the time to check that was when the licence was being issued, and that relevant or appropriate certification was provided at that time. Do you remember that answer?

A. When you are saying "You had to be aware", I am inferring that you mean the Department.

Q. I mean the Department.

A. I have said a number of times that Mr. McMahon was effectively the licensing authority, and Mr. Loughrey was took charge of this aspect at that time.

Q. Well, I am just asking you for your knowledge then.

Were you personally aware that, as of that day or thereabouts, Telenor and Communicorp had to contract to pay, I forget the precise sum now, I think 3 point odd million pounds to buy back from Mr. Dermot Desmond his 5 percent?

A. I don't recall being aware of that at that time.

Q. And that actually put an additional financial burden, didn't it, on Communicorp, which was the weak party in /RS

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the

A. I presume it did, from what you say, but I wasn't aware of that at that time.

Q. To come on to Question 90, to your knowledge, direct or indirect, of a letter dated 29th September from Mr. Michael Walsh of IIU addressed to you. If we just put it on the overhead projector, I'll get you a copy of it as well. It's Book 42, Tab 113, it's also in Book 48, Tab 64, but I am letting you have a hard copy now.

(Document handed to witness.)

If you just go to the top of the letter. This is a letter on the notepaper of IIU, addressed to the Department of Transport, Energy and Communications, at 44 Kildare Street, Dublin 2.

"Attention Martin J. Brennan, Telecommunications and Radio Development Division.

"29th September, 1995.

"Re, Esat Digifone Limited ('the consortium')

South Block, the Malt House, Grand Canal Quay, Dublin

2.

"Dear Sirs,

"We refer to the recent oral presentation made by the consortium to the Department in relation to their proposal for the second GSM cellular mobile telephone licence. During the course of the presentation, there

/RS

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was a detailed discussion in relation to the availability of equity finance to the consortium from Communicorp and a number of institutions.

"We confirm that we have arranged underwriting on behalf of the consortium for all of the equity (i.e. circa 60%) not intended to be subscribed for by Telenor. In aggregate the consortium now has available equity finance in excess of $\text{€}1\frac{1}{2}$ 80 million.

"We do not foresee any additional need for equity. However, we are confident that if such equity is required, we will have no difficulty in arranging it."

It's signed "Yours faithfully, Professor Michael Walsh, Managing Director."

You say "At the presentation meeting with applicants, considerable emphasis was put by the Project Group on the weaker side of applications. The fact that the finances of the Digifone consortium were probed

obviously prompted a response by way of this letter.

I know from previous discussions with Mr. Towey that it is quite clear that he was the one who received the letter and recommended that it should be returned and not brought to the attention of the Project Group. My recollection is that he told me of the existence of the letter but not of its contents. I remember that additional material was also received from at least one other consortium, but that it was published

/RS

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material and therefore was simply ignored."

When do you recall being told of the letter having been sent to the Department?

A. I was told on the day of its arrival, but I don't know what the day of its arrival is, and it's around that time, that day or the next.

Q. Can you remember what you were told?

A. I think Fintan Towey telephoned me, which was unusual because our offices weren't far away. I think he told me that there were two items in the mail that day and that one of them had to do with the financial arrangements of Esat Digifone. I am not trying to paraphrase now, something in that area and that he would recommend that it be sent back. And I reflected on that, and I said I agreed.

Q. You say is that because you felt that I think on

an earlier response, in an earlier response, you said you felt it was appropriate that the contents were not drawn to your attention?

A. Yes.

Q. Why is that, seeing as he knew?

A. Well, I think the less people that knew, the better, because it was a clear it was a clear breach of what had been communicated to all consortia at the end of the presentation meetings. I think you will find from the transcripts or from listening to the tapes that at the end of each meeting, because the meetings were structured, that the consortia were told that we didn't want to get anything else from them, and if we

/RS

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did, we'd ask for it; we didn't want for them to send us anything.

Q. "Don't call us, we'll call you"?

A. Exactly. And when this and another piece of correspondence arrived, I thought there was serious questions would arise about prejudice to this applicant as well, by putting something like this into play in those circumstances. And just looking at the letter now, on its face, and I saw it for the first time in the context of this Tribunal, it clearly raises peculiar issues in the sense that it wasn't sent to the Department by the consortium, so it had

plausible deniability, let's say. But I mean, Mr.

Towey made a recommendation to me; on reflection, I agreed, and I still think that was the right decision today.

Q. And what were you reflecting on, just to be clear about it, in case it's something you haven't told us?

A. It's not something you should just say yes without saying that it's right or that it's wrong, I think he is right; that kind of reflection. I didn't say "I'll ring you back in an hour", or anything like that. I said "Yeah, send it back; I'll send the letter".

Q. But he did know the contents of it and he did continue to be a member of the evaluation team, isn't that right, if he is not indeed one of the major members of the team?

A. He was a major member of the team, yeah.

Q. Would you not think that every member of the team should have been aware of the fact that A, that the

/RS

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letter was sent, and B, of the content of the letter, and C, of the fact, you say, that it couldn't be taken into account in the process but that it might have been valuable to know, nevertheless, that it had been sent?

A. With the judgement I made at the time, based on the advice of Mr. Towey, who was a very bright and

dependable civil servant, the judgement I made at the time was to send it back. And even now, I still think that was the right advice and it was the right decision.

Q. You had no intimation before this letter was received that it was going to be coming to you?

A. Absolutely not.

Q. You had no previous contact from Professor Michael Walsh?

A. Definitely not.

Q. Telling you "I want to send you a letter; I won't tell you what it's about"?

A. Definitely not.

Q. Definitely not?

A. No contact.

Q. You are not aware he had any contact with the Department before he sent it?

A. I am not.

Q. The letter was sent; if we can just go to the top of it, please. It was marked for your attention, and did it go to your fax or the general Department fax? Do you know?

A. I don't even know what faxes we had at that time, but

/RS

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it could be checked.

Q. As you have already pointed out, it was not a letter

from the Esat Digifone consortium; it was a letter from somebody else altogether. And I agree that it was somewhat serious that somebody would be in a position to refer to what had happened at a confidential oral presentation some days beforehand, a week or two beforehand?

A. It was confidential to us. It's not necessary it was up to them to say what they liked about the presentation. We regarded the information we got and the contents of the presentation as confidential to us. But we didn't have any confidentiality lock on the other parties. Why would we?

Q. I see. You sent it back to Esat Digifone; isn't that right?

A. That came to my notice in the Opening Statement. I mean, I signed the letter; it's my signature. It was drafted by Mr. Towey. I don't remember being conscious of who I was sending it back to. And that raises the issue even that while the letter back to Esat Digifone says "Original attached" I still say I did not see the letter, so it's likely that I signed the letter going out without seeing the attachment.

Q. But it was sent back to Denis O'Brien?

A. Yes.

Q. Himself, addressed to him?

A. Mmm.

Q. Isn't that curious again that you, the Department,

were sending a letter back to Mr. Denis O'Brien that

/RS

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didn't come from him, and you had no basis for thinking, at least formally, that it had come from him and that he was the appropriate person to whom the letter should be returned?

A. It's a little curious that it went to him rather than to the person who originally sent it in. I presume Mr. Towey will be able to assist you. I mean, I haven't discussed this with him, but I presume he will be able to assist you, because I'd be certain that he was the one who drafted the letter. And I mean, I signed the letter, but it's the kind of thing I didn't look very closely at.

Q. Wasn't there in fact a protocol for communications with the Department, for communications between the Department and applicants?

A. There was a protocol which bore, I think, more on the subject of verbal communications.

Q. I didn't mean a self-denying ordinance on the part of the Civil Service that they wouldn't talk to people except, you know, at formal occasions; wasn't there as an individual, a sort of liaison person in the application of Digifone to whom communications from the Department should be addressed, and I suppose from whom the Department expected to receive

communications? I think it was a Mr. Kelly sorry,

Mr. Seamus Lynch.

A. I have certainly seen Mr. Lynch's name in lots of correspondence. I am not particularly conscious that there was a formal understanding about single lines of communications. There may well have been, but it was

/RS

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not something I was particularly conscious of.

Q. At that stage would you have known who IIU were?

A. I doubt it.

Q. You would have known who Michael Walsh was, I suppose, because I think he had previously worked

A. That comes up later, yeah, in my narrative. I knew Michael Walsh from the time he was on loan to the Department from some bank or other assisting the Department with the project management of one or other of the main gas projects. And we were a very small Department, more or less in a single building in Kildare Street. Everybody knew everybody.

Q. Was he on loan from NCB at that time, was it?

A. I have forgotten. Quite likely, in fact.

Q. And would you have known that he had a continuing association with Dermot Desmond?

A. I don't believe I did.

Q. You presumably knew he did at the time he came on loan to the Department during the gas project, because I

suppose NCB and Dermot Desmond were synonymous at that point, weren't they?

A. Well, you see, I had no direct official dealings with Michael Walsh in the Department. All I am saying is because it was a small Department, I knew him and I knew what he was doing in the Department and I knew, I think I knew that he had some kind of academic background, but that's about all I knew about him.

Q. If I pass on to Question 94, I think, you were asked for your knowledge of any dealings between Communicorp/Esat, Telenor and IIU Limited or Mr.

/RS

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Dermot Desmond regarding their respective liabilities to subscribe for the capital of Esat Digifone Limited, and you say you have no knowledge.

You were asked for details of your role and involvement, whether as Chairman of the Project Group or otherwise, in the licensing negotiations from 25 October to 16 May, 1996.

And you say: "I think I have said previously that my involvement in the negotiations was sporadic and shallow. Mr. McMahon led the negotiations and his consultation with my division, I believe, was largely through Mr. Towey. I am sure I was consulted from time to time on points of interpretation in the sense that bid content was expected to be reflected in the

licence. I have a vague recollection of being asked once or twice by Denis O'Brien or somebody on his behalf about the length of time being taken to finalise the licence, and I can remember being puzzled by the delay myself although the need for close attention to detail and the long-term nature of the licence was explained to me a couple of times by Mr. McMahon." And you refer also to Answer 90.

You were asked for details of all dealings which you had regarding the licence negotiations or the issuing of the licence, including all dealings which led to your statement in a memorandum dated 21 March, addressed to Ms. Regina Finn, that the Minister had

/RS

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directed that a licence should issue to Esat Digifone by the following Tuesday.

And you say "I have no specific recollections in relation to this matter. I know that I was myself quite frustrated at the delay, and I know that the Minister was too. To this day I believe it took an inordinate amount of time for the Department to issue the licence. My own concern was to have a competitor up and running in the market place as quickly as possible. I was aware of the significance of launching before the Christmas market in terms of quickly capturing market share, which was the whole

purpose of the licensing exercise. It would not surprise me if the Minister was in receipt of specific representations from Denis O'Brien or others about the delay, and the Minister may have brought the representations to my attention."

Can I just ask you something about those representations, or at least about that time, the 21st March 1996. I am trying to work out what day of the week the 21st March was. I don't suppose you can remember?

A. No.

Q. I think Ms. O'Brien tells me it was a Thursday.

At that stage, the Minister was insisting that a licence issue by the following Tuesday, sometime in the following week, in any case?

/RS

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A. Mm-hmm.

Q. And you say you can understand the pressure that would have been brought to bear, leaving aside the fact that there were in fact, as we know from the documentation, quite complex legal difficulties slowing things up at that point. But at that stage, according to your evidence, you were not aware of IIU's involvement, and you were not aware of the involvement of Dermot Desmond; isn't that right?

A. No.

Q. You were not aware of the fact that there was a 37.5:37.5:25 share configuration?

A. I wasn't.

Q. And in fact, as I understand your evidence and the documentation, there is certainly no documentation in the Department from the consortium explaining the share configuration as at that date; isn't that right?

There is no formal letter explaining the share configuration; it didn't come until much later?

A. I am not qualified to answer that. I mean, it's reasonably clear from all the documentation and all we have been saying that the licence negotiations were being done by on Sean McMahon's side of the Department, which was the Regulatory Division. I think Regina Finn by at that stage, I am not sure exactly when she started, she wasn't long there, but she had taken over that function was delegated through Sean McMahon to Regina. Fintan was clearly involved.

/RS

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I had moved on to a different priority by then. My priority was preparing for the Presidency of the telecommunications part in Brussels for the second half of the year. And in fact I checked this recently; I was actually out of the country on official business on 22 occasions in the first half of

the year, which itself shows that I couldn't have been running a licence negotiation.

Q. Just that Ms. Regina Finn didn't have her meeting with Mr. O'Connell or her contact with Mr. O'Connell until the 16th April 1996, so the Department wouldn't have known within one week of the 21st March 1996, as things currently stand, of the precise nature of the share configuration.

And I just ask you to clarify one other thing, if you can, from your memory. I think issues arose in the Dail in April of 1996 concerning the share configuration and the share ownership. Were you aware of that? Mr. Molloy raised an issue concerning the proposition that 25% of the company was to be available to people other than the original consortia members.

A. I am certainly aware of it now. I am not sure what my role was in relation to it, without checking the records. For example, I don't know whether the Minister was advised by my side or by Regina Finn and Sean McMahon, but I am sure the records can be checked for that.

/RS

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CHAIRMAN: Well, we are getting quite close to lunchtime; could I just raise one matter while it's in my mind.

Going back to the letter of the 29th September, 1995, Mr. Brennan, and you had, and indeed can be readily heard in all the tapes of the various presentations, you had made it abundantly clear to each of the consortia that you didn't want any more information after the finishing date. And obviously the last thing you'd have wanted would be further letters of support or information about people having further sites or the like. It would have made the competition unwieldy, but could there be a distinction between new or additional information and perhaps substituted or perhaps changed information? I mean, was it not the case that a particular basis of investment on foot of an agreement had been held out to you in the Esat presentation?

A. I need to check the presentation for that. I just the only recollection I have is the letter came in. I was told about it. And we agreed it should be sent back.

CHAIRMAN: Yes, but I take it in an extreme situation, for example, if Mr. O'Brien had written in and said "Telenor have pulled out; we'd like to substitute Deutsche Telecom", you wouldn't just have taken that on board. It would have required major consideration.

A. No, we would not have allowed that, no.

/RS

CHAIRMAN: Well, very good. I just raise the possible distinction, and it may be reverted to at a later stage.

We will adjourn till five to two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

/RS

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THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF MR. BRENNAN BY

MR. HEALY:

Q. MR. HEALY: I think I was on to Question 98, Mr.

Brennan, page 72. The question requests details of

all dealings you had with the Minister, with the

Taoiseach, with the Tanaiste, with any other member of

the Government, politician, official, or person which

led to the reference in the notes of a meeting dated

12th April, 1996, that pressure towards a final

licence to Esat Digifone was then very strong from a

number of quarters, including political pressure from

the Taoiseach, Tanaiste, and the Minister.

Your response is "My recollection is that the

Department had little if any contact with the

potential licensees over a period of several months

while we worked unilaterally on the licence, and they

must have caused frustration".

Question 99, the precise pressure to which you or to

your knowledge, direct or indirect, any other

Department official was subject in April of 1996.

You say "I can only assume that we were all feeling the heat of pressure exerted on the system by Denis O'Brien, which did I not find in the least bit surprising in the circumstances.

/RS

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Question 100, you were asked for details of your knowledge, direct or indirect, of the date on which or the manner in which the Minister or the Department was informed by Mr. O'Brien, Communicorp, Esat Telecom, or Esat Digifone or any other person on their behalf that Communicorp/Esat Telecom did not intend to fund its equity participation in Esat Digifone by drawing on finance to be provided by Advent International, but intended to fund its participation by placements through CS First Boston, including details of the precise information provided to the Minister or the Department, and kindly identify where such information was recorded.

You say "This clearly occurred during the licence negotiations and probably fairly late in that phase.

As I have said previously, my recollections from this phase are not strong and my direct involvement was sporadic. It appears to be possible to form some general conclusions about this from the records, but I will leave that to others more closely involved".

Next you were asked for the date on which and circumstances in which and person by whom you were first informed or made aware that 25% of the shares in Esat Digifone had been issued to IIU Nominees.

You have already in part answered that question, and your specific answer here is "My recollection is that

/RS

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at the time of the licensing it was 40:40:20 as between Communicorp, Telenor and IIU. I cannot recollect when or where 25% came into the picture except that I read references to it in the media a long time after. A little earlier in this narrative I refer to the conditions of the competition which allowed variations of the shareholdings without specific consent of the licensor"

we have been over that part of ground and no doubt will come back to it.

You are next asked for your understanding of the contents of a letter of the 17th April 1996 from Mr. Owen O'Connell of William Fry Solicitors for Esat Digifone to Ms. Regina Finn, and in particular your understanding at that time as to the identity of the beneficial owners of the shares held by IIU Nominees Limited and the extent, if any, to which the then proposed configuration of the capital of Esat Digifone Limited differed to the intended capital configuration

as disclosed to the Department in the Esat Digifone application.

You say: "I should clarify that I did not prepare these answers in numerical order, and I am coming to this one last. It is clearly to be seen in the context of my other answers, where I have set out the degree of my involvement in the licensing process in the financial analysis by Donal Buggy, the background /RS

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context of ownership, including the memorandum in response to questions posed by the applicants, etc. I cannot think of anything I can usefully add to the explanations offered therein at this stage."

You are asked for the date in which and circumstances in which you first became aware that the shareholdings in Esat Digifone Limited held by IIU was to be held beneficially for Mr. Dermot Desmond.

And you say your knowledge of this arose close to the issue of the licence.

You were asked for details of all previous dealings which you had, both in your personal capacity and professional capacity, with Mr. Michael Walsh and with Dermot Desmond, and you say "To this day I have never met with Mr. Desmond. I knew Mr. Michael Walsh because he was on loan to or consulting full-time with the Department of Energy at some time in the 1980s. I

did not deal directly with him in relation to whatever business that was, but it was a small department and everybody knew everybody. I think the particular project was either the Cork/Dublin gas pipeline or the first interconnector to Scotland. I am fairly certain that that is the extent of my dealings or knowledge". You were asked for full details, full and precise details of the meeting of the 3rd May attended by members of the Esat Digifone consortium, including the /RS

IARTY TRIBUNAL - DAY 165

identities of all persons present, the purpose of the meeting, the matters discussed, and the outcome of the meeting, including in particular the consideration of issues arising from the involvement of Mr. Dermot Desmond as beneficial owner of the shares held by IIIU, and any request made by Mr. Brennan to Telenor to underwrite the entirety of the obligations to subscribe for the capital of Esat Digifone.

You say "I cannot find any contemporaneous record of the meeting of the 3rd May 1996. In the context of the documents on file, it seems clear that it was part of our checking the financial status of the potential licensee in the lead-up to the issue of the licence. I have very little recollection of the detail of this investigation and the meeting itself, which suggests to me that I probably chaired the meeting in an 'ex

officio' capacity, having been Chairman of the Project Group. I was in Bologna at an informal ministerial meeting on the 23rd, 24th, 25th April, and I was in Brussels on the 1st and 2nd May dealing inter alia with the Persona complaint regarding the selection process, and indeed again on the 5th, 6th, 7th May.

This alone would seem to confirm that my involvement in the immediate issue surrounding the issue of the licence had to be fairly peripheral."

Now, I think these questions, although they are set out here in numerical order, were in fact asked at different times and answers provided at different

/RS

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times, and the question I have just read out, Question 105, which requested you to provide details of your knowledge of a meeting of the 3rd May, was asked at a time when the Tribunal did not have Mr. Owen O'Connell's memorandum of that meeting of the 3rd May.

And the next question is then asked after, I think, the documentation became available from Mr. Owen O'Connell and after that documentation was made available to you.

So I'll read out that question first: "Mr. Brennan's knowledge, direct or indirect, of a meeting which took place at the Department on the 3rd May 1996 attended by Mr. Knut Digerud, Mr. Arve Johansen, Mr. Peter

O'Donoghue, Mr. Michael Walsh, Mr. Paul Connolly and Mr. Owen O'Connell and including the following: The identity of all officials who attended the meeting, the purpose for which the meeting was held, the matters disclosed, the queries or issues raised by the Department, the requirements of the Department, the request made by the Department to Telenor to underwrite the entire of the equity and operational expenses of Esat Digifone and the reason or reasons for such request. In each instance please also indicate the source or sources of the official's knowledge of such a meeting."

Your answer is "See answer to Question 105. I obviously attended the meeting. The unreadable word probably refers to Eanna O'Conghaile, and we'll put it /RS

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on the overhead projector. I think by this time we can refer to the typed version.

"I have no particular recollection of details of the discussion which would enable me to shed more light on it. To the extent that the exchanges between the Department and the winning consortium bore on precise ownership details, I believe this to be normal in the closing stages of our process."

I'll just quickly go through the note.

It gives the attendance. The meeting is held at the

Department of Communications. The note is as follows:

"Clear a political football.

"Identity of each shareholders legal and beneficial ownership. Esat Digifone changes relative to bid.

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

"Need detailed information/quality/about IIU.

"Confirmation that Telenor is same as at bid date.

"Differences in detail as to expertise and asset strength between Communicorp and Esat Telecom

/RS

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Holdings.

"Numbers re IIU.

"Telenor "backdrop" statement as operator as last resort.

"Arve Johansen that's the way we see it anyway we'll never abandon this one.

"Not requesting a statement but would be helpful per MB.

"Project finance POD, bank 60/equity 40.

"ABN plus AIB appointed co-providers.

"25 million bridging committed.

"Thought to presentation. More the better provided agreed in advance.

"Donal Buggy Billy O'Riordan, maybe Andersen."

Seems to refer to perhaps an evaluation process.

"Better than 50% chance that Commission will send us

Persona complaint: Department would already have replied and would like us to coordinate response."

Then a question "When Telenor and Esat began to talk?

Ref: complaint."

/RS

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Do you remember the confidentiality protocol that we discussed on Tuesday, when you set out the ground rules, as it were, that would the rules of exchange or whatever, that would engagement, rather, that would determine how officials should conduct themselves in the course of the process?

A. I do.

Q. And one of the things that was mentioned was the need to ensure that meetings were documented, if possible, and that they were followed up by written formulation of what transpired at those meetings.

I am right, aren't I, in stating that there is no record of this meeting in the Department?

A. You are indeed.

Q. Is that because no record was kept, or do you think it's because no record was kept or because the record was mislaid?

A. I really don't know. I mean, the chances of a record being mislaid in the context of a ongoing activity would be slim enough. I wouldn't necessarily have

seen the protocol that I laid down for the conduct of the selection process as continuing to be as formally in existence at that stage, because I mean, the selection process was over and so on.

Q. Well, was it over? Didn't you have an obligation to either bring the negotiations with this consortium to a close and to test, if you like, the representations made in the bid subject to on obligation you had to go /RS

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on to Persona and Mobicall? So it wasn't over; isn't that right?

A. There was always had to always be a possibility that you would go on to the second applicant. But I mean, what I am trying to get across is the protocol, as I saw it, was to govern the running of the selection process. This is the running of the licensing process. I personally wouldn't have seen the protocol as having the same application, but as I have said a number of times, I wasn't directing that project in any event. I don't know why I particularly was involved in this meeting. I think I made it clear when I was writing the answer to 105 that it must have been an ex officio, the clout of the fact that I had been Chairman of the Group must have been seen as important.

Q. Well

CHAIRMAN: Well, it was the case that you were actually leading the other aspect in Brussels, of defending the outcome of the competition; isn't that the case?

A. That's correct.

CHAIRMAN: That the disappointed runner-up had applied for interim measures which, if it had succeeded, would effectively almost have injuncted the result, and there would have been no licence to hand out.

A. That's true.

/RS

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CHAIRMAN: But you are saying that your primary commitment at this stage, relative to the whole project, was defending the initial competition result rather than directing the licence award?

A. Yes, indeed. In fact, I think right when we shifted from a selection process to a licensing process, Mr. McMahon was very conscious that he, as the de facto Regulator, was leading that project.

Q. MR. HEALY: That's what you have told us, I think, on a number of occasions, and I can understand that. But this was a fairly important meeting concerning, if you like, both the selection and the negotiation process, and Mr. McMahon was not at it?

A. That's correct.

Q. You were in fact leading it; isn't that right?

A. I chaired the meeting.

Q. Yes.

A. But it's clear from things we discussed earlier today that Regina Finn was effectively the representative of the Regulatory Division in the negotiations of the licence, and it seems from the generality of documentation I have seen recently that she was leading the interaction with the various players and so on.

Q. Wouldn't I be right in thinking that this meeting had nothing to do with regulation; this was to do with a much more serious issue, a fairly major macro issue, is this the same consortium as won the competition?

This was a big issue and really, the details of the
/RS

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regulatory involvement in the negotiation weren't at issue here at all. This was a much more in fact this was a pure selection issue.

A. If you are asking me would it be preferable if there was a record, I would have to say yes. But the reality is that there isn't a record.

Q. I accept that. There isn't well, we haven't found a record. I don't think you know whether there is a record or not. I am suggesting the meeting was important enough for a record to have been kept.

A. I couldn't disagree with that.

Q. And in fact what the meeting was about at this stage was dealing with the clear political football, i.e. making sure that the ownership issue was consistent in terms of the bid, that the ownership of the licence was going to be the same as the ownership of the bid or, if you like, the use the word "consistent", because in the bid there was, as you point out, a declaration, if you like, that there was going to be a 20 percent holding by an institution; so that holding, on your understanding of it, had not been fixed at the time of the bid. Is that a fair way of the putting it?

A. Yeah.

Q. That was the issue that was being dealt with, that's one issue, the political issue. And secondly there was the purely, if you like, concrete issue of what do you do about IIU? This is the 3rd May.

A. Mm-hmm.

Q. This entity, as far as you were concerned, was now

/RS

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emerging for the first time, and you were going to have to evaluate it in some way in the same way the other entities had been evaluated during the process?

A. Yes.

Q. I'd suggest that that's why you were involved here, because it straddled all aspects of the process from

the very beginning up to the end.

A. Yes, but right now I don't know whether the meeting took place at their request or at ours, even. And since there is no record of the meeting, I am happy enough that the other people present will at some time come here and give their evidence. And it's then up to the Tribunal to decide what weight to attach to their evidence. There is no record. As I said, it would be preferable if there were. I can't say beyond one hasn't been found; I can't account for it.

Q. You were next asked, in Question 107, for your understanding of the extent to which the composition of Esat Digifone Limited diverged from the composition of Esat Digifone consortium, and in particular, by reason of the substitution of Mr. Dermot Desmond as the holder of 20% of the shares in Esat Digifone for the institutional investors who it was intended and/or proposed would subscribe for those shares.

You were also asked whether, and if so to what extent, consideration was given to the change in the composition of the consortium and the outcome of the consideration, if any.

/RS

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You say "It also follows from my response to Question 85 that there was no divergence from the application in the manner in which the consortium was composed at

the date of issue of the licence, in the sense that the commitment to formally place 20% had by then resulted in a placement. This question was considered in the days leading up to the licence award, I think, by Messrs. Loughrey, McMahon and I, plus or minus Mr. Towey, and we concluded that the composition of the consortium as then presented was in compliance with the application, and there was thus no obstacle to issuing the licence to that consortium. I cannot speak for others, but I was conscious at the time that in the memorandum of information for applicants prepared in response to questions posed by prospective applicants for the licence, and issued well before the closing date, that at page 24, under the heading "Miscellaneous", bullet number 7 asked "Whether a change of ownership be allowed without Ministerial approval to a denoted extent and whether approval will be granted for changes in ownership on reasonable grounds."

That was a question I think applied to changes of ownership after the licence was issued; isn't that right?

A. That's correct.

Q. The response thereon, on the following page, "The second GSM operator shall obtain the written consent of the Minister prior to any major change in the

/RS

shareholding or control of the licensee transferring the whole or any part of the beneficial interest in this licence to a third party where such change would substantially alter the identity of the licensee or could materially impair the ability of the licensee to comply with the provisions of this licence. The terms 'major change' and/or 'substantially alter' shall be taken to mean a change in more than 45 percent of the voting control of the licensee. This would require the prior written consent of the Minister, such consent not to be unreasonably withheld."

"The plain reading of this would suggest that it would have been open to us to grant a licence to a consortium composed of Communicorp and Telenor in the knowledge that that same day, or the following day, they could, in any event, vary the composition of the consortium. We did, I emphasise, satisfy ourselves properly that IIU had the financial standing to take up their shareholding."

Could you have granted the licence to Communicorp and Telenor at that stage, in the sense that were you happy enough that Communicorp had the financial wherewithal?

A. I don't know, in the sense that what we were then dealing with was Communicorp, Telenor, and IIU, and it was that combination that we examined at that point.

Q. I think what you were examining was Communicorp,
Telenor, a commitment to place 20 percent with AIB,
/RS

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IBI, Standard Life, and Advent, which was now
changing, and you were told that is not happening; in
fact it's Dermot Desmond who is taking that 20
percent. That is a slight difference, isn't it?

A. You use the word a "commitment" by the others. We had
this discussion this morning as to the various
interpretations not various various statements
in the application, and what I am conscious of is 20
percent to be placed, and now it's being placed.

Q. 20 percent to be placed with institutions?

A. With institutions, yes.

Q. You see, would you not agree with me that
institutional involvement in a commercial enterprise
is usually fairly passive, isn't it? Very strong but
very passive?

A. I don't in general I'd say yes, but I am not

Q. In general?

A. I am not a financial analyst.

Q. Neither am I, but that's my impression from simply
what one hears in the radio and the newspapers every
day. Institutional involvement usually means an
involvement by one of the major financial
institutions?

A. I am not in a position to argue what role institutional shareholders play in businesses; I just don't know enough. I think I do know that they do exercise shareholder influence in private.

Q. Would I be right in thinking that what was suggested in the application was 20 percent to be taken up by institutional ownership, financial institutions now,

/RS

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is what we are talking about?

A. I am not sure whether the word "financial" is used or not.

Q. I think the word "financial" is used.

A. Certainly there is a question of placing 20 percent, and institutions were certainly identified as being ones who were prepared to commit.

Q. Looking at the documents that you referred to earlier, the passages from the application, I think what that intimated was that the application was going to involve definitively Communicorp, definitively Telenor, and definitively three Irish institutions and one foreign institution. All I am suggesting is that would you agree with me that it doesn't look like, as at that time, Mr. Dermot Desmond was an institutional investor? That's the only question I am asking.

A. Well, I think for the moment we had this discussion

this morning about whether these three institutions plus an international investor, or there is another word for it, were actually in the consortium or not, and I was arguing strongly from the evidence that they were not. Now the 20 percent is being placed, and the question arose as to whether that being placed with IIU was consistent with the application.

Now, that question was teased out within the Department among a number of people. I have a feeling that legal advice may have been got, but I couldn't verify that, and the conclusion arrived at at the time

/RS

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was that it was okay so long as the person, the company concerned, IIU, had the financial standing for the job they were taking on, for the commitment they were taking on.

Q. When you were conducting the original evaluation prior to October 25th, you presumably had to satisfy yourself as well that the institutions named at that point had the capacity to take on the investment that they were promising, if I can put it that way, or committing themselves, in whatever way you want to use that term, to take on at that time; isn't that right?

A. Yes, and I think the people doing that analysis did some checking in relation to the unknown one. I don't know what checking they did in relation to the Irish

financial institutions concerned. On the face of it, not a lot of checking would have been needed to see that AIB

Q. If IIU/Dermot Desmond had been part of the consortium on the 4th August, they would have had to be checked out as part the evaluation process; isn't that right?

A. Yes.

Q. If they had been a part of the consortium, as opposed to merely a proposed investor, they would have had the same rigorous evaluation as the other members of the consortium?

A. I assume they would have had some degree of evaluation. I don't know, sitting here in this chair at this time, for example, how much evaluation was done of similar investors in other consortia. I don't know right now what percentage they had, because that

/RS

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might be significant in any such evaluation, but I am prepared to discuss that at a later time when we have all the facts.

Q. Just one final point, again just to clarify this. You may be simply canvassing a proposition for the purpose of explaining your point of view, but again you say "The plain reading of the RFP documentation would read that it would have been open to us to grant a licence to a consortium composed of Communicorp and Telenor in

the knowledge that that same day or the following day they could in any event vary the composition of the consortium."

I take it that what you are saying is that you could have issued the consortium to anybody you felt like, leaving it open to them the following day to transfer their interest to anyone else. You are not saying, I take it, that you could have issued the licence to Communicorp and Telenor, because don't we know from other documentation that that you yourself had some trepidation about Communicorp and Telenor running this on their own?

A. I am not so sure I fully followed you. You said something about could have given it to anybody.

CHAIRMAN: I think the realtime record has made it a little bit of a cryptic record. Maybe you'd start it again.

Q. MR. HEALY: I think you are saying that the plain /RS

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reading of this would suggest that it would have been open to us to grant a licence to a consortium composed of Communicorp and Telenor in the knowledge that that same day or the following day they could in any event vary the composition of the consortium?

A. But clearly, if they were considering that option, we would have to consider it in the context of the

statements made in the final evaluation report. I mean, I am not saying they would have done it willy-nilly, we would have had to have been satisfied that what was said about the A5 application was satisfied. The question didn't arise because there was somebody else there.

Q. I simply want to clarify that: As the facts stood at that time, on the 16th May or on the 5th May, you couldn't have issued it to Communicorp and Telenor?

A. In relation to the facts as I now know them, I think it's unlikely they would have passed the scrutiny required by the evaluation report.

Q. "Details of all dealings and discussions you had with the Minister and with Mr. John Loughrey or with any other person arising from the involvement of Mr. Dermot Desmond and Esat Digifone".

"I certainly had some discussion with Mr. Loughrey, Mr. McMahon, probably Mr. Fitzgerald and probably the Minister in the days coming up to the issue of the licence about the involvement of Mr. Dermot Desmond.

I believe, and I believe I have said earlier, we could not see either that it presented any problems in terms

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of the competitive process itself or that there was any basis to exclude Mr. Desmond. There was also some discussion about the public presentation of this

angle".

And we have discussed that this morning.

"Mr. Brennan's knowledge, direct or indirect, of the request/requirement of the Minister or the Department that the configuration of the issue share capital of Esat Digifone should be restored to the capital configuration of the consortium which applied for the licence, i.e. restored to 40:40:20, in particular:- all matters or considerations which prompted or contributed to such request" and so on.

And you say "We in general, and Mr. Loughrey in particular, considered it very important that the licensor should have the same composition as the application to avoid any issues arising about that in the future. In taking this position we were aware and conscious of the supplementary information memorandum about Ministerial consent to changes of ownership after the event. I think that Messrs. Loughrey, Fitzgerald, Buggy, McMahon and myself were party to discussion about this. Mr. Towey probably was, and it is possible that Mr. Colin McCrea was. I do not recollect or know whether the Minister was involved directly or indirectly in this discussion. I have no reason to think that he was, since the request

/RS

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requirement was natural and reasonable."

A. Could I say in relation to that, it's a point you raised yourself already that earlier in the narrative my state of knowledge was based on 20 percent, and here it's based on the 25 formula. And that again arises from the fact that two separate memoranda of evidence were joined together fairly recently, and you know, it's just necessary to clarify that for the record, the amalgamation wasn't done by me or people on my behalf. I only became aware of it quite recently, and I think if I was reading it through in that knowledge, I may have drawn attention to it and got it fixed.

Q. I think that what happened was documentation came available to the Tribunal which showed that the Minister in fact had, I think or at least somebody had said in the Department, an official, I can't quite remember at this moment, I think it was Mr. Towey recorded or noted or is noted as having conveyed information to a meeting, noted by Mr. Owen O'Connell that the Minister wanted the configuration of the shares to go back to 40:40:20. And so, as we discussed earlier, that must have meant the Minister had been involved to some degree in a discussion about the change in share configuration?

A. I am not making any particular point about the circumstances. It's just the coherence of the documentation and of the transcript.

Q. Well, I just want to clarify one thing. You are

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recorded as having said here "I have no reason to think that the Minister was involved directly or indirectly, since the request requirement was natural and reasonable."

I think you presumably agree with me now that you did have a reason to think that the Minister was involved, in light of the note which mentions Mr. Towey as having referred to the Minister's preference?

A. Yeah.

Q. And that must mean, presumably, that the matter had been brought to the Minister's attention?

A. Yes.

Q. And that it was therefore regarded as of such significance that it warranted being brought to his attention?

A. I think it's a reasonable proposition that the question of 25 or 20 was in active discussion in the Department, and I think it's likely that it was brought to the Minister's attention.

Q. You were asked for your knowledge, direct or indirect, of a meeting which took place at the Department on the 13th May attended by Mr. Knut Digerud, Mr. Owen O'Connell, and including in particular their knowledge of the following:

The identity of the officials who attended such meeting, the purpose for which the meeting was held, the matters under discussion, the request made by the Department that Esat Digifone identify key questions likely to be raised at the press conference to

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announce the issue of the licence, to draft answer to such questions and to explain to the Department the reasons for such answers; the requests made by the Department that a meeting be arranged between the Minister and Mr. Digerud together with 'one or two others' at which the press conference would be discussed/rehearsed."

In each instance you were asked to identify the source or sources of officials' knowledge.

This is a meeting held on the 13th May, 1996, three days before the licence was issued. It was held in your office, according to the note, at the Department of Transport, Energy and Communications, 44 Kildare Street. What you say is "Regarding the meeting of the Department on the 13th May, 2002, I accept that in general Owen O'Connell's contemporaneous record appears reasonable, though it is clear that in some respects he is recording his impressions. I do not have a record to contrast with it. The identity of the officials is recorded in the record. The purpose

of meeting is recorded on that record, to advance issues pertinent to finalisation of the licence and to prepare for a public announcement. The matters under discussion appear to have been recorded in that record.

"Regarding the identification of questions likely to be raised at the press conference, which was done by

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collective brainstorming, Mr. Lowry always prepared thoroughly for 'public appearances', and we knew well what he expected. In particular he wanted to avoid surprises. For example, while he was Minister, a practice was established whereby the Department attempted to anticipate possible supplementary questions at question time in the Dail and would ghost-write replies. We were conscious too that while the arrival of IUU on the scene met the conditions of the competition, it would be new information and needed to be carefully presented.

"In summary, the fact that we pressed these issues does not mean that we had been asked in advance to do so. I seem to recall that Denis O'Brien was rehearsed by his team in much the same way as Mr. Lowry. My immediate source of information is the Owen O'Connell document, but some is based on recollection.

To judge from Mr. O'Connell's note, this seems to have

been a fairly extensive meeting.

A. The fact that it was held at 12.30 suggests that it may not have been planned to have been a very long meeting, but I don't know how long it was, in fact.

Q. If you look at Mr. O'Connell's minute, and from the documentation you will know that most of Mr. O'Connell's minutes are handwritten. And they are the usual solicitors attendance, in Mr. O'Connell's case, I might add usually fairly accurate attendances of what transpired at the meetings he was noting.

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This meeting this note is typed up and is formally recorded as a minute, so Mr. O'Connell seems to have thought that the matter was sufficiently important to merit being transformed from a simple handwritten note into a document which he formally described as a minute. Do you see that?

A. I do, yeah.

Q. And he goes so far as to put in a sort of a dramatis personae at the beginning where he identifies Knut Digerud, himself, Owen O'Connell, yourself, and Mr. Fintan Towey.

As quickly as I can, I'll go through the document. I don't want to go into every detail of it, but I'll just go through it so we can deal with one or two aspects.

The meeting was held in Martin Brennan's office at the Department.

"The subject under discussion was the imminent grant to Esat Digifone Limited of the second GSM II licence.

"After an exchange of courtesies, the meeting began with KD handing a number of letters to MB with copies thereof to FT. Copies of the letters in question are enclosed with the minute".

Now those letters are I think the various

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certifications that you ultimately relied on in relation to the financing of the individual members of the consortium; I think in particular what they entailed was certification by Telenor and IIU, that they would step in to shore up Communicorp. Wouldn't that be right?

A. It sounds right, yeah.

Q. "Martin Brennan and FT scanned the letter, with MB noticeably pausing to read closely the letters concerning IIU. He noted that Farrell, Grant, Sparks were IIU's auditors and commented that he would like to have known this fact earlier (this was generally taken to be a reference to Greg Sparks' position as programme manager to An Tanaiste, Dick Spring)."

Would you agree with that comment?

A. It sounds reasonable enough, yeah.

Q. "Martin Brennan then said that he would send the documents to the Department's in-house accountant, and also to an accountant in the Department of Finance who was awaiting them." I take it that that's a reference to Mr. Billy Riordan and Mr. Donal Buggy.

A. Yes, I imagine so. Well, I don't know I presume Mr. Riordan was still in the Department of Finance at that stage. You see, there is a succession of such people in the Department for a long time. I assume it was he.

Q. "He said there may well be requests for further information and/or clarification of the letters, but
/RS

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it was quite likely that more information would be required in relation to IIU, specifically 'more than a statement that they have money i.e. what money?'"

So would you agree that at that particular time, which was three days before the licence, you didn't in fact know what money IIU had?

A. I don't know whether it was before that or after it, but I intervened with Michael Walsh, and I said I wanted hard evidence.

Q. I appreciate that, but three days before that, you didn't know?

A. That's what's coming out in the face of this, yeah.

Q. "There was some general discussion about the purpose

and manner of the presentation of the letters, all of which was acknowledged by MB and FT."

"FT made the point that the bid had referred to 20% of the company being placed with the 'blue chip institutions' and then I think this is note by Mr.

O'Connell "(Acknowledging that the institutions in question were not identified.) He queried IIU's intentions in regard to placing of its holding. OO'C replied that IIU was a financial institution and qualified under the bid description, so the placing question should not arise, and that while it might place its shares in future, if queried now on the point by journalists, might reply that recent turmoil over the licence made such placing unlikely, for market reasons, for some time (stressing that this was

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not OO'C's view but was based on comment made by Michael Walsh.)

"FT said that a new draft of the licence was imminent and especially that Article 8 thereof would be amended. He said that a new draft of Article 8 had been received late on Friday last, 10th May, from counsel and was now with the parliamentary draftsman who wished to shorten it. Mr. Brennan added that the counsel involved was Mr. Nesbitt. He said that the thrust of the new Clause 8 was that all changes of

ownership would be subject to Ministerial approval, but that the grounds for objection by the Minister were specified in the clause and had been taken largely from the recent EU directive on mobile personal telecommunications. After a brief discussion between MB, FT, FT left the room to obtain a copy of the latest draft.

"KD and OO'C were permitted to review the draft, which extended to two pages, but not do so at length or in detail or to take copies. After this review OO'C raised the point that one of the paragraphs referring to Ministerial consent being required for a private placement of shares could be interpreted as requiring such consent for a routine issue of shares consequent on a financing round. The point was also made that the clause should distinguish between existing shareholders (who were presumably acceptable to the Minister, and thus not require comment on acquisitions

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of shares by them) and new third-party shareholders. After some discussion these points were acknowledged by MB and FT, who said they would look at the matter further. Apart from this, KD and OO'C indicated that as a very preliminary view, and subject obviously to both detailed examination of the clause and discussion with shareholders and colleagues, there did not seem

to be any fundamental difficulty.

"MB asked whether the banks named in one of the letters given to him (ABN-AMRO & AIB) would consent to their names being used in an announcement of the granting of the licence. Having checked the matter with one of his colleagues, OO'C indicated that the banks would so agree, subject to no statement concerning them being made which was inconsistent with the letter of 2 May given by them to MB, and that any written press release or similar statements which referred to them should be subject to prior clearance with them".

The role of these banks was financing the loan side of the Esat Digifone project, not financing any equity involvement on the part of Communicorp or themselves becoming involved in the equity; isn't that right?

This was pure loan finance to fund the project as a whole?

A. I think you are right.

Q. "The meeting moved on to a discussion of events in the immediate future. It was indicated by MB and FT that

/RS

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they were about to engage in feedback meetings, these being meetings with unsuccessful applicants for the second GSM licence for the purpose of giving them reasons for their failure to obtain the licence. It

was felt that it might be somewhat insensitive to grant the licence while these meetings were underway, and that accordingly the proposed date for grant of the licence of Thursday next, 16 May. MB also said that the Department had written to solicitors for the Persona consortium informing them of their intention to grant the licence, and if Persona consortium wished to challenge, then they should do through the courts of the however, no response had been received.

"MB added the Department's view that the licence had expired as a live issue for the press, and the Minister and the Department were very anxious not to revive it by injudicious statements being made by anyone at the press conference.

"MB said it was the Minister's wish to announce the grant of the licence at a press conference co-attended by Esat Digifone. Great stress was repeatedly laid on the need to prepare extensively exhaustively for this press conference and stressed that the journalists present would have been briefed in a hostile way by "others."

Then Mr. O'Connell seems to add "(This clearly being a reference to unsuccessful consortia). MB said he

/RS

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wished to have Esat Digifone identify key questions likely to be asked at a press conference, to draft

answers to them, and to explain to the Department the reasons for those answers. We also then wish to arrange a meeting between the Minister for Transport, Energy and Communications and KD, together with one or two others, at which the progress of the press conference would be discussed/rehearsed.

"MB indicated that there had been discussions with the Department as to whether shareholders should participate in the press conference, and if so, to what extent and in what way. At this point KD made a strong point to the effect that Digifone saw itself as an entity independent of its shareholders, that it had premises, employees, funds, and a viable business in its own right, and that these were issues likely to be raised at a press conference which would not necessarily be a matter for the company but rather matters for its shareholders. FT conceded this as "a fair point" and acknowledged that the company would be at liberty during a press conference to refer questions concerning its ownership to its shareholders. MB interjected to say that in such a case the Minister would wish to know what response the shareholders would make when the questions were put to them. MB stressed the need to have a number of "definite, clear and acceptable statements for use at the press conference", and he outlined a number of "obvious questions" as follows:

/RS

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A. "Is this the same consortium as that which applied?"

B. "Can the Denis O'Brien side of the consortium stand up? (Adding that either Denis O'Brien or KD should answer this question.)

C. " Will Telenor support the project to the end?"

(To this query MB added that it was sensitive in nature, as it would have to be answered in such a way as not to imply any doubt in the Department as to Communicorp's financial strength).

"OO'C made the point that within reason (and certainly short of telling any lies) Esat Digifone was willing to be guided by the Department as to the conduct of the press conference and would follow policy lines laid down by the Department. Esat Digifone also expected the Department to have some input as to the answers to questions to be given by it, i.e. would coordinate such answers with the Department. This was acknowledged by MB and FT.

"The meeting ended with MB reiterating that it was 'virtually certain that we would have to get more information on IIU, some numbers'.

"The meeting concluded at 1.10pm. Its tone throughout was cordial, and it concluded amicably."

/RS

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Now, there is no record of that meeting in the Department files that the Tribunal has seen. Isn't that right?

A. I take it it's right.

Q. Again

A. There isn't a record that I have seen.

Q. Again, would you agree with me that it's the kind of meeting that you would have expected to be recorded?

A. Like the one that morning, it would be preferable if there were a record, but there isn't, as far as I know.

Q. Well, you are saying as far as you know there isn't, but the question I am asking is, is it the kind of meeting that would have been recorded?

A. As I think I said the first day, the practice of routinely minuting everything that happens in a government department has kind of gradually disappeared over the last 20 or 25 years. The extent to which people still write notes if I am the only person present at a meeting, home or abroad, I would almost instinctively make some record, whether it's one line or one page, whatever, almost instinctively. If I am not the only person, I would tend to assume that somebody else would do it, because usually the highest-ranking person at the meeting doesn't do so. That's not a way of casting aspersions on anybody;

it's just a statement of the way practice has changed
down the years.

/RS

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In general, I will respond as I did this morning:

It's the kind of meeting I'd be happier if there were
a record, but I don't see it as a major issue that
there isn't.

Q. Do you remember

A. For the Department.

Q. Do you remember the meeting?

A. The meeting did take place, and I am accepting

Q. Do you remember?

A. Do I remember having discussions about handling the
press conference and so on? Yes, I do.

Q. And do you remember having discussions in which, if
you like, you identified what you felt were the issues
that might be focused on at the press conference?

A. Yes.

Q. And do you remember the meeting of the 3rd May, the
one that we discussed earlier, of which there is also
no record?

A. I gave back the copy I had. You know, there is always
a question about what you remember and how your memory
is refreshed by documentation. Maybe if I saw it
again I'd have a better idea.

Q. This is the meeting of the 3rd May in which clearly

the issue of IIIU was identified as one that would be a clear political football and one in respect of which some information, detailed information, would be required.

A. My recollection of it wouldn't be as clear as my recollection of the 13th May meeting, but I don't have any problem with the idea that the meeting happened

/RS

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and I was at it.

Q. What I am asking you about, Mr. Brennan, is why nobody told the Tribunal about this meeting. The Tribunal never knew about these meetings until they got the documents. Nobody seems to have seen fit to tell the Tribunal, "Look, we had these meetings, and we identified these issues at them", three issues that I mentioned a moment ago: Is that the same consortium as that which applied? Can the Denis O'Brien side of the consortium stand up? Will Telenor support the project to the end?"

Those are fairly, if I can put it they are issues that consistently crop up in the course of the controversy surrounding the process from, could I suggest, November of 1995 onwards.

A. But

Q. Maybe December.

A. If you are suggesting that the failure to tell the

Tribunal was a deliberate strategy or a conscious decision, I would have to give a resounding no. Our position in relation to this Tribunal has always been full co-operation. So it's a failure of memory in the absence of record and given the passage of time since the event, that can't be all that surprising.

Q. When you identified three issues which you thought might be focused on, including the issue as to whether this was the same consortium as that which applied, can the Denis O'Brien side of the consortium stand up, and will Telenor support the project to the end? And

/RS

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then Mr. O'Connell records you as having added that it was a sensitive proposition, and it would have to be a sensitive question and have to be answered in such a way as not to imply any doubt in the Department as to Communicorp's financial strength.

You had in fact asked Telenor, hadn't you, at a meeting, to indicate that they would stand by the project till the very end?

A. Yes.

Q. Is that because you did have doubts about the financial strength of Communicorp? You personally, now, I mean.

A. I am not so sure whether we are talking about my personal doubts or the doubts

Q. Let's deal with your personal doubts first.

A. I don't know. I mean, the doubts I would have been aware of as a result of what was going on at the time, perhaps.

Q. Yes.

A. I mean, the records show clearly that others were involved in this part of the analysis in this time-frame. Did I have personal doubts? I certainly had whatever knowledge was going around in the Department at the time.

Q. Well, the Department went to the trouble of asking Telenor to give an undertaking that they would stand by this project. That request can only have been prompted by some apprehension on the part of the Department, or you personally, that Telenor's

/RS

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financial strength, or Communicorp's financial strength, was still a problem, or lack of financial strength was still a problem?

A. I think we are getting into a level of detail again where the record of what was our state of knowledge in relation to IIU and what they were doing in the consortium, the debt financing of the consortium, where I mean, it's clear that it was going to be something like 60:40 debt:equity, so the obligation of the partners was their proportion only of the equity

injection. It would certainly need I would prefer to be in possession of the documentation about all of this in the context of getting into a deeper discussion now about it.

Q. Did you have any further meetings with a view to preparing for the press conference that you can recall?

A. I don't recall any right now.

Q. Did you remember from that note made by Mr. O'Connell, Mr. O'Connell referred to the preparation of or I think noted that you had referred to the preparation of draft answers and the sending of those draft answers to the Department. Do you remember if that

A. That conversation certainly went on, and I am sure there was some exchange of drafts. Sorry, I am not saying I am sure; I presume there was some exchange of drafts. I don't know whether you have got copies or whether there are copies now.

Q. There are copies but once again, there are no copies in the Department file. Nothing in the Department

/RS

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file at all concerning the matters that were being addressed in the documents concerning the question and the prepared questions and answers, the meeting of the 13th or the meeting of the third .

A. I don't know the extent I presume the Department

made a thorough search of its files in preparing documentation for the Tribunal. I don't know, for example, whether that included the press office.

There may be other documents. I have no idea.

Q. Would the press office have been involved?

A. I think, as we were getting close to the press conference, they probably were.

Q. They weren't involved in those two meetings, obviously?

A. No, no.

Q. This was a fairly significant hurdle to be got over in the final stages of the licensing process, wasn't it?

A. It was very important that we were giving a licence to a consortium that respected the, if you like, warning flag in the consultants' report, so it was quite important that the appropriate checking was done as to the construction of the consortium, the financing of the consortium, the compliance of the consortium with the application and so on. All of that was important.

And my recollection is it was done. What I am saying is it wasn't all done by me.

Q. I am just trying to ask you about or form some impression of how significant the changes that occurred in the consortium or in your knowledge as to what the consortium consisted of from the middle of

/RS

April up to the middle of May. Here you were engaged in a licence negotiation process; you yourself say you had very little involvement in the technical licence negotiation process itself, but you were brought in at the end, and your involvement at the end was limited to what I would suggest, but please correct me if I am wrong, is a very critical issue that had developed at the last minute.

You have IIU coming in at the last minute; you didn't know who IIU were. You are told that Dermot Desmond is involved. You are trying to get information out of them. It's being provided reluctantly. You are having meetings with the solicitor for the consortium to deal with this issue which, to your mind, was a clear political football. There are no documents in relation to any of these matters, and I am just wondering, did you remember them all clearly yourself?

A. The "clear political football" words are not mine.

Q. They are not yours?

A. They are not my words. I don't know whether Owen O'Connell is recording that as his impression or it was something somebody said at the meeting. It's not something that would trip lightly off the lips of a civil servant.

Q. You don't remember using an expression like that, in any case?

A. No, I don't.

Q. What way would you have described the issue of the involvement of IIU at that time?

/RS

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A. I mean, my position, as I have been saying a number of times today, is that an application was made and judged on a certain basis, 40:40:20, and in my view, did the group getting the licence match that? And when we came to issuing the licence, yes, it did.

Other people, with my assistance, considered the financial fundamentals of the consortium as it then stood and clearly formed the impression that this consortium was going to do the business, as indeed it did subsequently. Beyond that, I really don't know where you are trying to lead me.

Q. I am not trying to lead you anywhere. I am trying to find out what happened, and I am trying to find out why it is I am trying to find out, did you have a clear recollection of those fairly high-tension events that were happening at the end of May?

A. They weren't high-tension events for me. I wasn't involved in this meeting in making sure the Minister was adequately prepared when he went into a press conference.

Q. Wasn't it high-tension enough that you had to go to was it Mr. Knut Digerud or Mr. Arve Johansen; I have forgotten now Mr. Arve Johansen, and actually say

to him, "Mr. Johansen, you will have to stand or

Telenor will have to stand behind this; can you

undertake to me that you will stand behind this"?

Wasn't that a fairly high-tension request to be making

in a process that had been going on for the bones of a

year?

A. It was a significant request, yeah.

/RS

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Q. Didn't it mean

A. Right now I don't know whether I made that request on

my own or prompted by other people doing an analysis.

Q. Who would have prompted you to make it, do you think?

A. Well, it's clear that a number of people in the

Department, including Mr. Loughrey, Mr. Buggy, myself,

Mr. Towey, Regina Finn, I suspect that, as I have said

a number of times, Mr. Loughrey was directly involved.

He was Secretary of the Department, and he may well

have been calling those shots, making those

suggestions.

Q. Could I suggest that if you or anyone or you on

somebody else's suggestion made that request to Mr.

Johansen, it can only have been made because, firstly,

you had an apprehension about the financial strength

of Communicorp, and secondly, you had an apprehension

that the information you had about IIU wasn't enough

to satisfy you that they could, or that they had the

wherewithal to play their role in the consortium, and that that's why you went to the biggest fish in the consortium, if you like?

A. I am becoming a little bit concerned that you are asking me to buy into hypothesis on the hoof without seeing the documentation. I mean, there clearly are documents in your possession

Q. Well, there aren't

A. and in ours about what was the financial standing, what was the financing requirement, etc. Snatching at major issues like this without perusing those documents is it's a little bit difficult after

/RS

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three days of this, you know.

Q. I think from the Opening Statement you should be aware that the only documents available to the Tribunal are the ones that were made available by Mr. O'Connell, and Mr. Johansen's document, in which he described how this approach had been made to him by the Department.

A. I am sure, but I can't drag up the contents, I am virtually certain that there is an analysis by Donal Buggy prepared for Mr. Loughrey which bears on those issues, now you are asking me to give my reaction on the hoof when you have all the knowledge.

Q. Well, you are certainly correct about that. There is an analysis prepared by Mr. Buggy I think it was

mentioned by Mr. Coughlan in his opening and it does provide purports to provide, in any case, comfort for Mr. Loughrey that IIU had the financial wherewithal to perform its role in the roll-out of this, or in the operation of this company. The question I am asking you is a different one

A. Isn't there also

Q. If you went to just bear with me for a minute; I don't mind if you tell me that the question can't be answered. If you went to Mr. Johansen and said to him that you hoped you could rely on his undertaking that his company would stand behind the whole thing, it must have been because you, or anybody that you had been speaking to in the Department, was apprehensive, firstly, that Communicorp didn't have the requisite financial strength or that you couldn't be as certain that they had the requisite financial strength; and

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secondly, that IIU either didn't have it or that your investigations in the short time-frame were not sufficient to convince you they had it.

A. No, I insist that it's unfair to follow this line without the documentation, and I would further say that it is possible or even likely that what I was looking for was an additional layer of comfort for the Minister.

CHAIRMAN: All right, Mr. Brennan, I'll see that you are given a chance to look at the position more fully. Perhaps just on the one comment you did make, though, you said that a public servant wouldn't have made some remark such as a political football or the like, but it's fair to say nonetheless, isn't it, that you were taking a fairly active role in flagging the potential pitfalls and saying "We have got to be up to speed, both in the Department and the consortium in the matters of ownership, finance, willingness of Telenor to backstop things if a crisis emerges"; and I suppose, in a sense, that wouldn't have been the way a quintessential senior public servant of the 1950s would have carried on.

Now, you might be quite right in that but you do see yourself as having a more pugnacious and a more pro-active role than perhaps a previous generation of public servant.

A. Yeah, that's fair comment.

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Q. MR. HEALY: I'd skipped over a few questions, now, Mr. Brennan, because I think in your answers on a number of matters in between, you have probably covered them. And unless you want to draw my attention to them, I'll go on to page 83, Question 117.

"All steps taken by the Department, whether alone or

in conjunction with the Department of Finance, to satisfy itself as to the financial capability of Esat Digifone Limited prior to the issue of the licence, in particular, details of the specific conditions incorporated into the licence to meet the qualifications and reservations by Andersen Consulting in the evaluation report.

You say "As I think I have said elsewhere, Mr. McMahon was effectively the licensing authority. I do not recall being involved in detail in the aspect referred to in this question."

That will involve going over some of the documents again, and I don't think I'll press it beyond

A. And it again suffers from the disadvantage of two documents being put together at some stage.

Q. Yes.

You were next asked as to "your involvement, direct or indirect, or the involvement of any other person in analysis conducted by Mr. Donal Buggy as recorded and

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comprised in a memorandum of the 15th May 1996 from Mr. Buggy to Mr. John Loughrey."

You hinted at that a moment ago, Mr. Buggy prepared a memorandum for Mr. Loughrey. Mr. Coughlan referred to it in his opening, and that was on the 15th May 1996.

The answer you have given is "It is clear that as", I

suppose that should read, "at the date of issue of the licence" I am sorry I have misunderstood the answer.

"It is clear that as the date of issue of the licence approached, there was a close review of the financial standing of the licensee. Clearly some problems had been signalled in the evaluation process, but they were not regarded at that time as disabling. I have no doubt that Mr. Loughrey took a hands-on role at this stage and that it was he who instigated that analysis by Donal Buggy. My recollection of being involved was in the interface with Michael Walsh, who was reluctant to provide any written evidence in support of the financial strength of Dermot Desmond and IIU Limited. I certainly remember speaking to Mr. Walsh and telling him that the absence of such evidence would jeopardise our ability to issue the licence, and I was instrumental in procuring his efforts to secure the letter from Anglo-Irish Bank and the letter from Farrell, Grant, Sparks."

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Next you were asked for your knowledge, direct or indirect, of the person by whom Mr. Buggy was requested to carry out the financial analysis.

And you say "I would be confident in suggesting that Mr. Buggy requested the financial analysis."

I am sorry, "I would be confident in suggesting that Mr. Loughrey requested the financial analysis."

I think what you said was "the bit that stands out in my mind is the absence on or files then of any significant information about the financial standing of IIU and Mr. Desmond."

You were asked whether to your knowledge, direct or indirect, the consent of the Department of Finance was obtained in the issue of the licence, and if so, when and how and from where such consent was obtained.

You say "The issue of the licence was a matter for Mr. McMahon as head of the Regulatory Division of the Department. There was never any doubt about this. I do not know whether he obtained the formal written consent of the Department of Finance, and I have never seen a copy of any such consent. That said, the Department of Finance was directly involved in the selection process, and I am sure Mr. McMeel reported to his superiors in that Department. Furthermore, the Minister for Finance was involved in the final

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decision making. It is arguable that the participation of the Department of Finance in the consensus in the Project Group and the Minister in the eventual Cabinet Sub-Committee decision could be seen as amounting to consent."

Next question is Question 122, and you were asked for your knowledge, direct or indirect, of and your role or the role of any other person in advising the Minister regarding the contents of a letter dated 27th March from the Minister to the Chairman of the ESB.

This is a letter that was referred to by Mr. Coughlan in the opening. I think you will recall, it was a letter, I suppose, to use a neutral expression, encouraging the ESB encouraging the ESB to make facilities available to Esat Digifone in the roll-out of their network. Would that be a fair way of putting it?

A. Yeah.

Q. And you say "I can see from the file that Pádraig O'Uiginn seems to have been the one to make representations to the Department about mast-sharing issues. That being the case, it is more likely that he made the representations in the first instance to Mr. Fitzgerald, but it could possibly be Mr. Loughrey.

As a former Secretary of the Department of the Taoiseach, I knew Mr. O'Uiginn peripherally, and I think I would recall if he had made approaches directly to me. It seems to me the letter from Mr.

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McCann was probably drafted a consultative process and since Mr. McMahon as Regulator, and his team were

responsible for the whole infrastructure area, they may well have led the drafting. I could detect my own hand or that of Mr. Towey in the second paragraph, which refers to the ESB arrangement with Persona. I would regard this correspondence as 'normal course of business', and I was conscious that the Department was supportive of the principle of mast-sharing for a variety of reasons."

A. I mean, if you want me to speak about the variety of reasons, the reality was that under the telecommunications legislation, Telecom Eireann, and through them Eircell, had the right for many years to build infrastructure without planning permission, and by then they had poured foundations on every piece of ground they owned that was of any relevance so as to be able to claim exemption of planning in respect of those commenced projects, as they knew that the regulations were about to be amended, because you couldn't have them having statutory powers that others didn't have. And the Department, and not the Minister, was very conscious that it would have been extremely difficult for anybody to catch up with them in situations where they had that head start. So the Department was very firmly in favour of infrastructure sharing, not just in the case of ESB, but anybody else who had relevant infrastructure. And I think right back to the start of this licensing process, the

Department's position on infrastructure sharing was

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robust and was on the record.

Q. I suppose the complicating factor where the ESB was concerned was that they were being asked to assist Esat Digifone to get its network rolled out, when if Esat Digifone failed to get the licence, the ESB might have been second in line; isn't that right?

A. Yeah, and I suspect that that was the very point of Mr. O'hUiginn's representations, was that he was managing his company was probably managing to make progress with everybody else's infrastructure but not with the ESB, and he probably felt that that was unfair.

Q. Which company was Mr. O'hUiginn with, by the way, as far as you were concerned?

A. Mr. O'hUiginn was associated with Denis O'Brien's group. I don't know, I mean, I heard Mr. Coughlan make a point about signing himself director of a company he wasn't. I haven't looked at the headed papers in the same scrutiny as the Tribunal has. I just associated him as he was maybe a small shareholder in Esat Telecom or Communicorp; I don't know whether he was a director or not. I can't answer the question.

Q. I suppose that wasn't what you thought when you got

the letter in it wasn't from a small shareholder;
it was from a former Secretary of the Department of
the Taoiseach. That was presumably the purpose in
sending the letter in. It carried additional weight,
didn't it?

A. Not for me.

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Q. I suppose, as I said, the complicating factor was that
Mr. McCann wasn't informed by anyone; he wasn't
informed, as I understand it, by Mr. Lowry, in any
case, who was encouraging him to make his
infrastructure available Mr. McCann wasn't informed
by Mr. Lowry that he, Mr. McCann's company, ESB, was
second in line for the licence?

A. I don't think we ever gave out that information.

Q. I am sure it wasn't given out, but if you were
encouraging somebody to assist Digifone at this time,
do you not think that it was a somewhat insensitive
thing to do, bearing in mind that if Digifone failed,
ESB would have been next in line for the licence? You
were asking one competitor to help another without
telling the first one that he was second in line for
the job?

A. I can't see that it was going to make a significant
difference.

Q. You had no legal right to ask the ESB to do

anything at this time?

A. Not at all, and I mean, there were other things we did in support of infrastructure, like facilitating contact between Esat Digifone and the Office of Public Works and the Garda authorities about Garda masts and so on. This was a consistent position of ours.

Q. Of course. I accept that, but the Garda authorities and the Office of Public Works weren't second in line for the licence.

Details of all Mr. Brennan's dealings or his knowledge
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of the dealings of any other person with any official of the European Commission, the Minister, or any other person on behalf of the Minister, Esat Digifone, or any other person whatsoever regarding the complaint lodged with the European Commission by the Persona consortium."

And you were asked another question concerning the same matter, and you responded to both questions as follows:

"It is clear that Persona made a complaint to the European Commission on the 26th April 1996. We received this informally about a week later, and it was circulated within the Department to the Secretary, Mr. Fitzgerald, Mr. McMahon, Mr. McQuaid, Mr. Towey, and to Mr. McMeel in Finance and Mr. McFadden in the

Attorney General's Office, the latter with a suitable covering note. It was sent to us more formally at the end of May with a request for our comments. The contemporaneous records show that I, accompanied by Mr. Hodson, whom I recollect had recently joined the division, Mr. Towey, and Ms Nic Lochlainn met with the DG competition on the 2nd May. The meeting had previously been arranged for another purpose, but I availed myself of the opportunity for having a preliminary exchange about the GSM process. It is clear that the Commission officials recommended that there be contact between the Minister and Commissioner van Miert. We were also engaged in legal consultation

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about how we might ourselves respond to complaints received from Persona. The briefing note given to the Minister and the bullet point attachment following this meeting and dated 3rd May has all the hallmarks of something I wrote personally. This formed the basis of the Minister's meeting with the Commissioner on the 8th May. The outcome of that meeting and the press release which issued thereafter represent the merger of our dealings with the Commission and our response to the solicitors for Persona. I can see no record of the meeting with the Commissioner but I assume I attended as I took a strong personal interest

in defending the selection process.

"The records also show that we were advised by the Attorney General's Office and by senior counsel in relation to our responses both direct to Persona and to the European Commission.

"As is clear from the contemporaneous documents, we took the view that the complaint was unsubstantial and was an attempt to find a low-cost low-risk way of frustrating the issue of the licence. I think it became clear that the European Commission were not in a position to dispute that view.

"I do not recall any contact between us and Esat Digifone in relation to the matter; which is not the same as saying that they did not interact with the European Commission itself, which we would not know

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about."

I don't want to go into that in detail here; we'll wait till we examine the documents.

Details of which, Mr. Brennan, you had with the Minister in connection with the affairs of Esat Telecom Limited, or of any associated company or of any other entity with which Mr. O'Brien was connected.

And you said "I was not involved in the relationship between the Department of Transport, Energy and Communications, as it then was, and Esat Telecom

Limited. This was a regulatory matter led by Mr. McMahon and dealt with by his division. Clearly I was aware that there were difficulties in that relationship, and I had a sense that the company was always pushing at the edges of what was possible within the law and within particular licences. My awareness was of a general nature arising from informal contacts within the Department and the occasional management meeting of the telecoms heads of division. I have no specific recollection of any dealings between the Minister and I over these matters, although it is quite possible that I was in attendance at meetings with the Minister where a number of different telecommunications policy issues were discussed, including this one."

You were then asked to furnish details of your

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contacts with a number of persons, and you say "Regarding contacts with persons about which the Tribunal has inquired, to this day I have never met with Mr. Dermot Desmond. I knew Michael Walsh because he was on loan to or consulting full-time with the Department of Energy at some time in the 1980s". I think you repeat what you said earlier about Mr. Walsh.

You go on to say "I had a number of informal social

contacts with Esat Digifone and some of its senior people, as follows:

"Firstly, a day or two after the result was announced, Mr. Lowry had a joint press conference in the Department with Denis O'Brien and someone from Telenor, probably Arve Johansen. Afterwards a small group adjourned to a neighbouring hostelry for about an hour. I think that was the only time I met Denis O'Brien Senior.

"Secondly, within a few days of the announcement of the result of the selection process, there arrived in the Department by taxi at least six bottles of Midleton Very Rare, value perhaps 75 punts per bottle, addressed to named individuals from the project team, including myself. I made contact with Denis O'Brien to ensure they were returned to him. He protested that they were no more than a private token of

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appreciation, but I reminded him that we still had months of licence negotiations to complete. They were sent back with the full support of the named recipients.

"Thirdly, on the 21st March 1997, I attended the formal launch party of Esat Digifone at The Point.

"Fourthly, on the 13th October, 1997, I attended as a sponsor's guest at the Esat Digifone-sponsored race

meeting at Leopardstown. I have no recollection of which Esat Digifone personnel I met on that occasion, but I am reasonably sure Barry Maloney was in attendance.

"Fifthly, I attended a rather large party at the RDS given by Denis O'Brien to mark completion of the BT take-over and had brief social contact with all the main players in the company.

"Sixthly, I was involved in discussion with Esat Digifone where they sought unsuccessfully to be absolved of the licence penalty of $\text{€}1$ million for late launch, but unless documented in the schedule, I have no details - it had to be in March 1997.

Michael Lowry was Minister in charge of the Department. In that capacity I had frequent contact with him concerning the licensing process and various other business items. These contacts would not be

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diaried events for me; whatever about his official diaries, and would not be subject of a formal record.

We had routine contacts about parliamentary questions, speeches, general briefing, preparation for Cabinet, etc.

"We had specific contact at several points about the GSM competition before, during, and after, and generally speaking there would be several people

present, notably John Loughrey, Sean Fitzgerald, Colin McCrea, (advisor to Minister) and possibly others.

"Oral contacts certainly took place about the design of the competition, the review of the early drafts by Roger Pye. Submission of a plan for Government approval, formal approval of the selection of Andersen Management International, the intervention by the Commission of the European Union and related events, the result and its approval by the Government, announcement and follow-up including public justification in Dail Eireann's speeches, press conferences, etc.

"My constant memory is of a Minister who was at pains to emphasise the need for a thorough and robust process, clear outcome and a fair result. In fact, he was furious at me for bringing about the suspension of the competition to complete the dialogue with the CEU because he could see the potential for speculation.

It was always clear to me that he understood

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completely that the process would determine the result and approval should be mere formality."

Just one or two small matters arising out of that.

In relation to the Esat Digifone request to be absolved of the licence penalty, their application contained a performance guarantee provision; is that

right?

A. Yes.

Q. And if they didn't meet a roll-out target, they were obliged to pay a million pounds; is that correct?

A. Yes, there may have been further steps, but that was the first one.

Q. We were talking about I think we were talking about a million in 1997, in any case.

A. Yeah.

Q. And I think the argument by Esat Digifone was that you shouldn't calculate the time by which you shouldn't calculate the date from which the time for roll-out was to be measured from the date they got the licence, but from some date when they were up and running; would that be right?

A. I have forgotten the details. It's not surprising that a business would make representations before handing over a cheque for a million. I mean, I don't have any particular recall of that.

Q. They had made a commitment to hand it over in their licence, I suppose?

A. And they handed it over.

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Q. Now, what I had envisage doing now, Mr. Brennan, is this: The Tribunal has furnished the State Solicitor acting for the Department with a number of books of

documents divided into participant documents and Department documents, and I think you are familiar in general with the way the documents are organised; they are organised essentially chronologically.

Mr. Coughlan, in his opening, referred to all of the documents, both departmental and participant documents, in one, as it were, long chronological string. What I would propose doing, when hopefully after Christmas you are in a position to come back to the witness-box, is going through the participant documents or going through the Department documents, I'm sorry with references to relevant participant documents. And at that point, you should be in a position, I would hope, to familiarise yourself with the documents, because we'll be dealing with them in a chronological way, and we won't be dealing with you know, discrete questions like we were over the last few days.

So I take it you'll be in a position when we resume after Christmas to prepare yourself to deal with those documents, and if there are any further documents you need, you shouldn't be backwards in coming forward to the Tribunal in case we have documents that you don't have, because what the Tribunal has done is made a selection of what the Tribunal believes are the

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relevant documents. I think you will be aware that there are a lot more documents behind the books the Tribunal has provided.

A. I am not sure what exactly it is you are asking me to do.

Q. I am asking you to familiarise yourself with the documents.

A. I mean, we are talking about thousands of documents.

Q. No, no; just three books.

A. Okay.

Q. I think you know the three books I am talking about?

A. You are talking about the first three volumes of series of whatever it is.

Q. Yes. Those are the Department documents.

A. Yeah, okay.

Q. They comprise a selection from, as you have indicated, many, many thousands of pages of documents. The Tribunal believes that they are the relevant documents to enable the Tribunal to chronologically survey all of the documentation in the period of the licence; that is, from the licence design period through the evaluation, right up to the negotiations and the issue of the licence.

A. I am not trying to be in any way obstructive; I am just trying to understand the size of the task and to get some understanding when you say they are selected documents from a lot more documents. I need to have

some means of checking it that a fair selection and not a selection to support any particular hypothesis and so on. I don't know how I am going to manage

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that, but I am going to have to do my best.

Q. I think you may not be aware of this, but the Tribunal has made available to your solicitors, some weeks ago now, all of the relevant documents. And what I am suggesting is that you if you familiarise yourself with those documents and you think there are other documents, background documents which might be of relevance or assistance to you in dealing with any of the issues, then don't feel free, rather, to look for those documents. I wouldn't want anyone to feel, in answering a request, that there was paper available that would assist them to answer that they didn't have.

A. I will do my very best to cooperate as much as I can with the Tribunal, but I think you also have to understand that I find four hours sitting here a very tiring exercise. And if it's being suggested that I should then go and do another four hours' homework, I think that would be a lot to expect.

Q. I am hoping you might use some of the Christmas break to do it.

MR. NESBITT: Just in relation to preparation for

further examination of this witness and other witnesses, I think it only reasonable to ask the Tribunal legal team, if they propose referring to particular documents in their forthcoming examination, they should give us a list of those, and we'll certainly prepare our witnesses to deal with those; and if our witnesses think there are other documents

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that underpin what's being said in the identified documents, of course they'll do their best to find those. I think it rather unfair to ask this particular witness to try and look at a series of leverarch files and guess where things are going to go. I'll try to be as constructive as possible, because I realise it's a big task for everybody. I think it's reasonable to ask Mr. Healy if he has a list of core documents that he is going to refer to after Christmas, if he could give them to us, and Mr. Brennan will certainly have looked at them, and will have done the best to assist him to find other documents he wants to refer to.

CHAIRMAN: That seems eminently sensible, Mr. Nesbitt.

MR. HEALY: In case there is some confusion, I have personally informed both the witness and counsel for the State and the State team that what the Tribunal will be doing will be going through the documents

chronologically. There can be no doubt about that.

They were informed of that, and I can't see how there can be any question or doubt but that the Tribunal has given fair warning that that is what they intend to do, to go through the documents chronologically, and we made it clear we would not be doing it before Christmas because clearly somebody would require some time to examine the documents. But there can be no doubt about what task the witnesses have been asked to undertake, and this they have already been informed

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of.

MR. NESBITT: I wasn't in any doubt, Mr. Chairman; I was trying to be helpful. My Friend obviously has documents he is going to refer to; maybe others will occur to him. But if he has a list and if he could give it to us, that would greatly help. If he is not in a position and doesn't wish to give us the list, so be it.

CHAIRMAN: I can see no difficulty about it, Mr. Nesbitt. I think the documents have been very substantially reduced. I am sure Mr. Brennan didn't really mean to suggest or infer that the Tribunal was in some sense cherry-picking documents from an initial number of roughly 70,000 with a view to trying to formulate any particular hypothesis. Our sole and

paramount duty is to inquire into the facts, and we have sought, over a most extensive and painstaking process, to truncate those to what appear to be the realistic minimum. And obviously it may well be that Mr. Brennan or other Department witnesses may feel that some other matters are desirable to deal with in examination, but I think there has been that reduction, there has been a process of liaison between the respective legal teams, and I would certainly encourage that to be ongoing, to give some indication of the scope of what may be concentrated on in each session of evidence.

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And I think on that basis, it should be feasible and realistic to keep Mr. Brennan's remaining days of evidence within realistic proportions.

MR. NESBITT: That's very helpful, Mr. Chairman; thank you. Just while I am on my feet, there is one matter of housekeeping, I think it might be appropriate to deal with now, given we are breaking for the Christmas holiday.

There is a number of witnesses who are appearing as witnesses on behalf of the Department who have given substantial statements of evidence and references to documentation to the Tribunal, and it just occurred to me yesterday that in relation to one issue, the

question of financial analysis, one particular witness's name appeared inadvertently to have sort of come centre stage, and his role was slightly unfairly put upon.

I don't want to suggest Mr. Healy did anything intentionally, but at page 36 of yesterday's transcript, when characterising what the witness had said in certain responses, he used one witness's name, a Mr. Billy Riordan, as the person who was primarily representing issues of financial aspects.

Mr. Riordan was simply on secondment to the Department of Finance at a point in time. He did certainly discrete pieces of work when asked to do it, and I

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just felt it was only fair to him that he shouldn't enjoy any particular position centre stage. What he did is all described in his statements, and I am just concerned that inadvertently his name may have been used as a shorthand way of talking about people who are concerned with financial aspects. And I thought it fair to mention it.

CHAIRMAN: Mr. Brennan did say he had a certain realistic amount of responsibility as the financial expert seconded from the private sector.

MR. NESBITT: I don't back down from that. There is just one answer that suggested he was the only person

doing it, and that wasn't the case.

CHAIRMAN: I think the record is relatively clear.

Very good.

Mr. Brennan, I will ensure that your solicitor notifies you as to our starting date, almost certainly at some stage in the week commencing the 13th January, and I hope that permits of not too assiduous a Christmas, with your other duties, and look forward to your co-operation next term. Thank you very much.

I think what we have projected, then, is

MR. COUGHLAN: The Tribunal will be sitting tomorrow.

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CHAIRMAN: There will be a sitting testimony day tomorrow, but it will relate to some part-heard evidence from the last phase. And will I say eleven o'clock?

MR. COUGHLAN: 10:30, perhaps.

CHAIRMAN: All right, 10.30.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
FRIDAY, 20TH DECEMBER, 2002 AT 10.30AM.

/RS