

A P P E A R A N C E S

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I N D E X

Witness: Examination: Question No.:

Donal Buggy Mr. Coughlan 1 - 353

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 19TH  
JUNE, 2003 AT 11AM.

CONTINUATION OF EXAMINATION OF DONAL BUGGY BY

MR. COUGHLAN:

MR. COUGHLAN: Mr. Buggy, I just want to go back over one small matter from yesterday, and it's a note which you made on top of the minute of the meeting of the PTGSM on the 9th October, 1995. It's in book people needn't go to the book it's in Book 42, Tab 121.

Now, we have located a clearer copy. It's been illegible, the handwritten note at the top of the minute which is in the book, and we have just located what appears to be a clearer copy, and I think it's in your writing. I just wanted to ask you about it.

A. Yes, it is in my writing, yeah.

Q. And it says "Note at next meeting that Billy Riordan asked AMI if they were now happy with the financial tables" sorry, "were happy that the financial tables were correct. AMI replied that they were sufficiently satisfied that the tables were reasonably correct and that any error would not have a significant impact on any of the grades awarded".

Then I think there is an arrow "Agreed to be included."

A. That's correct, yeah.

Q. Now, if you go to the minute of the meeting of the 23rd October, you may have a hard copy of that just behind, for ease of reference.

A. I do.

Q. You see there is the corrigendum at the beginning?

A. I do.

Q. "Mr. Billy Riordan noted for the record that Mr. Jon Bruel of AMI had stated at the previous meeting that he was sufficiently satisfied that the financial tables as evaluated were adequate and true. Reference to this statement had been omitted from the minutes of the previous meet nothing error."

Do you see that?

A. Yes.

Q. Now, do you have a recollection of what tables we are talking about there I should just explain to you, I think Mr. Riordan felt that they may have been something to do with the mandatory tables or work being done on tables, because he was over in Copenhagen, I think, on the 20th and 21st September, and he wasn't able to participate in any financial sub-group meeting because work still hadn't been completed by Andersens on tables arising out of discussions which had occurred previously. Would that seem to be correct, that that related to

A. From memory, as I said yesterday I was on holidays at the period. But when I came back, I think well, definitely Mr. Riordan told me that he had gone to Copenhagen and basically hadn't been able to do any work at the time. He was pretty annoyed about it,

after travelling all the way, and I remember at this particular Project Group meeting he wanted to make a specific point that he had suggested changes to the tables. Andersens had undertook to go away and do those changes and to look at the tables themselves and make sure they were happy with them, and he was making the point that Andersens had taken responsibility for those tables at this stage and I think it is the mandatory tables, yes.

Q. Thanks very much; I just wanted to clarify that.

Now, we started yesterday by looking at the handwritten notes which you made, which are at Book 46, Tab 38. You may remember the this is the one which contains the handwritten note about "deep pockets" and the table where suggested alterations in grades may occur. Do you remember that particular document?

A. Yes.

Q. We'll get it for you now.

A. Sorry, Tab ... ?

Q. Yours is at Tab 39.

A. Okay.

Q. Now, you were unsure whether it was prepared before the meeting or at the meeting or a combination of both; do you remember, yesterday you had no clear recollection?

A. Yeah.

Q. Perhaps it might be of some assistance if you go over to the next tab, Tab 40, and these are Mr. Billy Riordan's notes.

A. Okay.

Q. And you can see that he has, up at the top right-hand corner there, "Meeting with D. Buggy."

A. Yes.

Q. And it's headed, or seems to be headed "Notes for meeting on 9/10."

A. Yes.

Q. So it would appear that perhaps and they seem to be similar to your own notes?

A. Yeah

Q. Dealing with the same issues

A. Given that he has "meeting with D. Buggy", it would appear that we may have had a meeting before.

Q. It's likely that the meeting took place before the meeting on the 9th; isn't that correct? You can just see there again on the tables, you can see there similar type suggested amendments, or suggested alterations in the grades to your own. In fact they are the same; I have just looked at them.

A. The only thing I would say is that he has a line drawn, you see up at the top quarter of the page, I just don't if he was doing the same as maybe I was doing, we had a meeting together and then we went to the Project Group meeting, I don't know.

Q. It seems likely, doesn't it, when you look at them now? In any event, you can see there that he was making the same or you, or he, or both of you, perhaps arising out of a discussion, might have been forming a view of certain alterations of grades, isn't that correct, there on the

A. Or noting down what others were saying, yes.

Q. Well, the only reason that I wonder about that is that Mr. Fintan Towey, who was the full-time man involved in this process, never saw these particular suggested amendments or alterations of the grades and never remembers anyone bringing these particular suggested amendments or changes to the grades to his attention. And he felt he would have remembered, and it would have been extremely significant, particularly if Mr. Billy Riordan, perhaps yourself, but because Mr. Riordan had been there through the sub-groups and that, that Mr. Billy Riordan was the financial man on the group as were you, of course and that it is something that he would have paid particular attention to.

A. As I said yesterday, I can't remember specifically whether it was discussed or wasn't or who raised it. But as I said, if it was an issue, and I think maybe like Mr. Towey was saying, if it was an issue, we would remember it today as being an issue.

Q. What I am just wondering is this: If this occurred

before you went to the meeting, yourself and Mr.

Riordan had your meeting, and you were working on the first draft evaluation report, forming your own views and throwing in your own tuppence ha'penny worth on the financial side of things, it doesn't appear to ever have arisen at a meeting, is what I am saying to you, if Mr. Towey's recollection of events is correct?

A. I have no recollection of whether it did or didn't arise at the meeting.

Q. Because he said it would have been extremely significant, as far as he was concerned, if it's Mr. Riordan we are talking about, but we can include you in the same category if the financial people from the Department had expressed such a view.

A. Yeah, and I would say I would have thought it was significant if I wasn't happy afterwards.

Q. Well, you see, what I am wondering here is this: that yourself and Mr. Riordan had a meeting and you had views which may or may not have been accepted, of course, in the course of debate at a meeting but that when you went to the meeting on the 9th, and the meeting was informed that the Minister knew of the shape of the evaluation and the rankings, that you didn't persist in expressing these views because of the fact that the Minister was aware of the shape of the evaluation and the rankings.

A. Sorry, just to clarify, I haven't said that these are

my views. I can't remember whether they are the views of somebody else at the Project Group meeting or our views.

Q. All right. Well, we can take it, I think, we could almost take it, on the basis of Mr. Towey's evidence, that these weren't views that were expressed at the Project Group meeting.

A. Well, as I said yesterday, I don't have any recollection, so...

Q. These notes appear to be and you say it seems more likely that these notes were prepared at the meeting which you had with Mr. Riordan prior to that meeting on the 9th October?

A. No, I wouldn't say more likely. The fact that Mr. Riordan has a line drawn on his page, at the top quarter, could mean that they were actually taken at the meeting. I don't remember. I don't have a similar note on mine.

Q. I must suggest to you, it would seem extraordinary, if you look at the two notes and the detail therein and the form that they're in, that they do not appear to be in the form of somebody jotting down notes at a meeting, but are more consistent with notes which were prepared at a meeting between the two of you prior to the PTGSM group meeting on the 9th October, as Mr. Riordan seems to note on his document.

A. As I said, I have no recollection. I don't know if



Mr. Riordan can enlighten us on that.

Q. And might I suggest to you that there is no note of the meeting of the Project Group on the 9th October whereby a discussion took place in this way, line by line, which would enable somebody to note it as it is noted both by you and by Mr. Riordan.

A. I haven't seen a note of that, no.

Q. And what I am suggesting to you is that once the meeting was informed about the Minister's state of knowledge, that you and Mr. Riordan did not then persist in expressing these views at the meeting.

A. No, I'd reject that.

Q. Why do you reject it? Do you recollect that?

A. No, but I know, as a person, I would not be influenced by whether a Minister had said he wanted the decision made at that stage or not. If we had a problem with him, we would have gone ahead with it.

Q. Well, can you then give any explanation to the Tribunal why there is no note anywhere in the Department's files or in any documents we have seen emanating from Andersens in the form of a report or a draft report which details any discussions or views expressed about this particular table?

A. As I said, I haven't seen any notes, as you haven't seen either. But if it was an issue that I wasn't happy with the answers that I was getting, that I would have pursued it.

Q. No, that's not the point. There is no note of a discussion even about it. Isn't that correct?

A. I certainly have no note.

Q. And there is no note that you have seen?

A. No note that I have seen.

Q. And I am just putting it to you that that would suggest that it wasn't discussed. Do you wish to comment on that?

A. I have no recollection of it being discussed, so I can't comment positively or negatively.

Q. Now, I think you were aware that Mr. Riordan had gone to Copenhagen and hadn't been able to participate in the financial sub-group, the concluding work of the financial sub-group, through no fault of his own; isn't that correct?

A. That's correct, yeah.

Q. Were you aware when the scoring of the grades in relation to the financial matters did occur?

A. At the time, I don't think so, no. I think I saw the scoring when it came through in the report.

Q. You didn't know that this had happened at Copenhagen on the 28th September?

A. I have no recollection of knowing that there was a meeting in Copenhagen on the 28th.

Q. All right. So did you have any knowledge as to how this particular table came into being at all?

A. Only from the narrative that's given in the report,

yes.

Q. But wouldn't it have been all the more significant, if Mr. Riordan had not been in a position to participate in the sub-group where judgements were being arrived at, that the view of Mr. Riordan and your view, as the only experts in finance, the accountants in the Department, on the Department side, should have expressed a view about these particular matters?

A. Well, it comes back to both our roles in our various departments, in that the civil servants request us to do things, and we would go and attend a meeting. So, you know, we weren't requested to attend any meeting in Copenhagen.

Q. On the 28th?

A. On the 28th.

Q. That's correct. But the point I am trying to tease out with you here is this: that if you and Mr. Riordan noted what we see in your document and in his document, that is a view which should have gone into the melting pot in a discussion on finances, on the financial position of the applicants; isn't that right?

A. If that is our view, I feel confident that it would have gone into the melting pot, and we were satisfied at the end of that with the answer.

Q. Well, Mr. Fintan Towey has told the Tribunal he never received this view.

A. I can't speak for Mr. Towey.

Q. Well, would you expect that Mr. Towey, as the person who was most intimately involved with the process on a day-to-day basis, was one who should have been informed of such a view?

A. Well, sorry, I would have thought this was, if it was expressed, it was a view as part of the Project Group meeting. If the answer is a simple answer from Andersens as to why it's that, then people would have moved on.

Q. But there is no note of any discussion.

A. I know, so that means it must have been actually a very simple answer.

Q. Why do you say that? Was there an answer? Did you bring it up?

A. I don't have a recollection of it. That's why I am saying that if

Q. Very good.

MR. O'DONNELL: Let him finish.

A. What I am saying is I don't have a recollection of what happened. What I am saying is that if I had an issue with it, I would have made sure I got the right answer, or else I would have continued to raise it.

Q. MR. COUGHLAN: You don't note what the answer is.

A. I can't remember what the answer was.

Q. I just want to be clear about this. You don't remember raising the issue. You don't remember any

discussion. And you don't remember any answer. Is

that correct?

A. That's correct, yeah.

Q. And we know that there is no note of any discussion;

isn't that correct?

A. We haven't seen any, no.

Q. Well, are there

A. I haven't been through all the documents

Q. I can assure you the Department have assured us they

have given us all the documents.

A. Well, then, I accept the Department's view on it.

Q. Now, we have been through documents which are entitled

"Suggested Textual Amendments". These were documents

which came into being, or appear to have come into

being, around the period between the 23rd and the 25th

October of 1995, and were used in communications

between, I think, Mr. Towey, Mr. Brennan and Mr.

Andersen, giving rise to the final report.

A. Yes.

Q. You are aware of the

A. I remember them, yes.

Q. the general nature of those.

Now, I think there is a document which seems to have

your handwriting on it. I'd just ask you it's not

in a book; the other documents on textual amendments

appear to be in different books. This one does not

appear to be in a book, and I have some hard copies.

Can you just confirm that is your writing, is it?

A. It is my handwriting, yeah.

Q. And it seems to do you know whether you it looks, in any event, that you received a typed this typed document, doesn't it, and that you made various comments on it? That seems to be the way it worked?

A. Yeah, from memory, I think this was presented to the Project Group meeting on the 23rd, and I think we went through it as a Project Group. That's my recollection.

Q. I wonder, can you be correct about that? The only reason I ask you is that

A. I am not certain, but

Q. I am not trying to catch you out on it. I think, in fact, this took place after the meeting of the 23rd; on the 24th, perhaps. You don't have an actual recollection?

A. No, the timing of it, I don't have a recollection.

Q. Would I be correct in thinking that you would have received the typed document and that what you didn't prepare the typed document, in any event?

A. No, I didn't, no.

Q. You would have received the typed document and you would have made certain notes on it, certain suggestions, and ticked various paragraphs off; isn't that correct?

A. Yeah, just looking at my amendments, I am not

altogether just looking at it quickly, I am not altogether certain I would have been coming up with all these amendments, so I am just wondering if this was a discussion, that's why I thought it might have been at the Project Group where I am noting down what the final document would have looked like to go out to Andersens.

Q. Well, I know you don't have a recollection of the meeting of the 23rd coming to an end, and you don't have a recollection of any meeting on the 24th; but I think, from the evidence of other witnesses, there was a meeting on the 24th, which seems to have commenced around 5 o'clock in the afternoon, and people had been circulated with certain documents by Fintan Towey, I think, suggested textual amendments, and were asked whether they could make their own contribution. Do you think that it might have been at that meeting that it was the second meeting

A. If Fintan Towey is saying that this went out for a meeting on the 24th, then I don't disagree with that. I don't have a specific memory of which day.

Q. Right. I don't think anything specific turns on the notes that are made. I just was wondering if you could assist us or had any recollection of the second meeting on the 24th.

A. No. It would be useful if I had a date on the top corner, but I don't.

Q. Or as to how that meeting was convened or how you got to know about it?

A. No, I thought the last meeting was on the 23rd, but if Fintan is saying this went out I thought this was at the 23rd, yeah.

Q. Right. And I think as you said yesterday, you weren't aware of, firstly, that anyone had sought or obtained extra time; or secondly, that there was any rush about the work as of the 23rd?

A. No, I wasn't aware

Q. That there was any urgency to have it done within a day or two, or anything like that?

A. No.

Q. If you just look at there is just one portion if you go to the fifth page of that document, you see down at the bottom "Page 44: Insert new paragraph 2 and 3 along the following lines."

And then there is a whole paragraph typed up about what has been described as the bankability portion of this

A. I see that.

Q. section of the report.

You have a lot of notes made. Do you remember any discussion about it?

A. I seem to remember some general discussion about, as we said yesterday, the debt side of the capital structure of the bidding applicants. And while I



think the word "bankability" has been thrown around, I can't remember the specific word being used.

Everyone, I think, understands the meaning of it. I just remember a general discussion and you know, was the Project Group happy that this project was could be financed through debt in the proportions people were talking about.

Q. What you remember is a discussion about the debt side of matters, about the debt side of the business; that's what you remember?

A. Yeah, yeah.

Q. You can't remember whether the crossing-out of various sentences in this paragraph would have been as a result of your suggestion or would have been what somebody else was saying, can you?

A. I don't believe it was my suggestion I don't remember it being my specific suggestion, no.

CHAIRMAN: Just on the last page, Mr. Buggy, of that series of pages, insofar as we have heard the successive stages in which the Project Team had regard to marks and grades, it seems that on that last page, every typed reference to markings is corrected to gradings in about three or four occasions in that short passage.

A. Yes.

Q. MR. COUGHLAN: If I can just perhaps complete matters as regards the actual process itself. Remember

yesterday we spoke about the draft letters which were prepared in April of 1996 for the disappointed applicants?

A. Yes.

Q. And I think they were sent to you, or some of them were sent to you, in any event, for your comments by Fintan Towey; isn't that right?

A. That's right, yeah.

Q. And I think you sent a memo to Fintan Towey on the 3rd April, 1996, responding to and making suggested certain alterations

A. I have seen that.

Q. You have seen that. And you have also seen the table which is attached, and I think in your handwriting as regards the split, you ask the question, has the split been agreed that's the 10, 10, 10 in respect of the first criteria?

A. Yes. I don't have it here in front of me, but I remember seeing it yesterday.

Q. And we discussed it yesterday, I think, and I think you, in the first instance yesterday, before we went into the actual the drafts of the evaluation report and I brought it to your attention the changes which had taken place in the tables, you wondered, yesterday, whether you had raised this issue or raised this note, because you hadn't seen the final report. But I think you went on to tell us yesterday that you

never knew how the split 10, 10, 10 came into being;  
you were unaware that this had happened at Copenhagen  
on the 28th, and you don't remember anyone explaining  
it to you, do you?

A. That's correct; I don't remember anyone explaining it  
to me.

Q. Now, I am going to move on now to the other period of  
your involvement, which was from the 13th to the 15th  
May

A. Okay.

Q. of 1996.

But before I do, I just want to ask you about one  
thing, because it's a document I think which we  
brought to your attention yesterday in the context of  
where it was found in the files of the Department, and  
that is in the first instance, in the files was the  
copy of Mr. John McManus's article of the 28th  
February 1996. That was in the files. That's the  
article of that Mr. McGonigal brought to the attention  
of the Tribunal.

And then immediately behind it in the files is a  
handwritten table. And can I ask you, is that your  
handwriting?

A. That is my handwriting, yeah.

Q. And if we just look at that table, and it has "  
Esat Denis O'Brien 65%, Advent International 35,  
Communicorp Group. Then under that Esat Holdings and

then percentages. Radio invest I think other interests, percentage. Esat Telecom 37.5%. Telenor 35%, that's Esat Digifone. Institutional investment sorry, international investment and underwriting 25%.

I can't make out what's in the box on the left.

A. I think it's "outside investors, including", three individual names, in Esat Holdings.

Q. That's in Esat Holdings, yes. Now, I think you have told us that as far as you were concerned, and it was probably your understanding of Mr. Billy Riordan's role, having a similar role in the Department of Finance, that you were task-specific in the work you did; you were asked to do a specific piece of work. That would be the way things worked; isn't that right?

A. Very much so.

Q. You wouldn't have been following up on matters appearing in the newspaper yourself, or

A. No.

Q. anything like that.

If you did anything, you were asked to do it?

A. Yeah, it was a specific task requested by somebody and the answer given.

Q. Do you ever remember seeing this article on the 28th, or around the 28th February, 1996, or being asked to carry out any work on it?

A. No. I don't remember being asked to carry out any

work on all of this aspect between the end, that we just discussed, let's say the 25th October, and the 13th May. I don't remember anything in between.

Q. It's just that the table as prepared could, on one view, be considered to be an analysis of the newspaper article.

A. In one view it could, although you can't I looked at this yesterday; you can't get all the information on the diagram from the newspaper article. You can only get one or two small bits of it.

Q. But the reason I am asking you about the note and the newspaper article together is because that's where they were placed in the Department files, together.

A. Yeah, when I was I don't remember doing the chart, but when I was doing the chart. I may have asked I may have been looking up to see was there any background information on it around. I don't remember actually doing the chart. Whether it was done on the 13th May or before it, I don't have any specific memory.

Q. But you have already told us the specific documents you were given to conduct that work on the 13th May, 13th-15th May.

A. Yes, and one of those documents actually gives some more information about this chart

Q. That's Ms. Regina Finn's document, is it?

A. No, no, it's a letter from Communicorp outlining the

shareholding.

Q. Right, yes. I understand that, but do you ever remember seeing this newspaper article?

A. I don't, no. I don't have any recollection of it.

Q. Well, it just looks that was information contained in the chart is information which could be obtained from the newspaper article, and that there is additional information in correspondence. It seems you see, nobody in the Department ever seems to have averted to this article at all; on the evidence we have heard, anyway. And you say that you have no recollection of being asked to prepare the chart or to look at this article?

A. Not prepare the chart, no. The first time I was asked to do anything on this particular aspect was on the 13th May, as far as I can remember. And that wouldn't be unusual; you know, the Department would have got on with their own work in the meantime.

Q. Well, can that be correct? Because when you were doing I know you were given some information about the fact that the 25% interest of IIU, that the Department had asked for that to be changed when you were starting your work; but you were looking at this on the basis of a 40:40:20 split from the 13th May.

This chart specifically deals with the position of Esat Telecom and Telenor being 37.5 and IIU being 25.

A. Yes.

Q. I'm just wondering why the chart would

A. Maybe I'll just go to a few notes, if I can, for a second.

Just going back to my I presume you'll come to it in a few minutes the handwritten note of the 13th May, which in my mind is the starting point at which I came into this process, and I would have been informed it was a 40:40:20 split at that stage. As I say, I have no recollection that it was at any other stage anything else, but as you pointed out, the newspaper article suggests it and the chart suggests it.

Q. You see, the Tribunal is trying to understand whether you were asked you were asked to consider this particular article, and you prepared the chart, bearing in mind that they are together in the file. Not clipped together, but one after the other in the file.

A. I don't remember being asked by the Department to prepare the chart. I think I may have prepared it for myself, for my own purposes, but I don't remember a specific request.

Q. Well, I think you have indicated that you were always asked to do something. You wouldn't have set off to do things on your own bat?

A. Sorry, as part of the May 13th exercise, just as background.

Q. Well, if that was the case, I am just wondering, did

you bring it to anybody's attention? Because, you see, that would seem to indicate that what the Department was being told was occurring around April the 16th had in fact occurred a lot earlier, and nobody in the Department seems to be aware of that.

You see, this article was in February, and it deals with a split of 37.5:37.5:25. The Department, through all the witnesses, have said the first time the Department was made aware anything was happening was around the 16th April.

A. Sorry, I don't remember anything happening before the 13th May. So the Department are ahead of me on that one.

Q. But did you bring it to anybody's attention, if you worked on this around the 13th May, did you bring it to anybody's attention which would have let Mr. Loughrey know that this position was in existence a long time before the Department knew about it, and that perhaps he might want to look at it a little bit deeper?

A. From recollection, on the 13th May, I was told by the Department that it had previously been 37.5:37.5:25, but they had insisted that it move back to 40:40:20. So the matter is resolved on that day.

Q. Of course it hadn't gone back to 40:40:20?

A. Well, I was told it was going back to 40:40:20.

Q. Were you told it was gone back, or going back?



A. I think on the 13th May I think I have seen some minutes to say going back.

Q. We'll come to it.

Could you be of any assistance as to what the relevance of this particular table was to your work on the 13th May 13th, 14th or 15th May, I mean?

A. It doesn't appear to have any direct relevance.

Because it actually shows the structure above Esat Telecom, which is not something that my exercise got involved in, in the end. Whether I did it in the first hour of my exercise, just trying to get an understanding, I don't know. I can't remember doing the chart.

Q. Doesn't it look that somebody asked you to analyse this article and to put it down in some form of an understandable or diagrammatical form?

A. No, I don't accept that.

Q. You don't accept it, but you don't remember?

A. Well, there is a lot more information on the diagram than there is in the article, so I don't know if both are linked in that way.

Q. Well, where is the extra information that isn't in the article?

A. It's the shareholding in sorry, my understanding, it's the shareholding in Esat Holdings and the radio and other interests; I don't think they are referred to in the article.

Q. "Esat Holdings will be 88% owned by Communicorp and 12% by outside investors on its board"

A. Sorry, I see that that.

Q. "including former Secretary to the Department of Taoiseach, Mr. Padraig O'hUiginn, the former senior partner KPMG/Stokes Kennedy Crowley, Mr. John Callaghan, and the management consultant, Mr. Leslie Buckley. Communicorp is 65% owned by Mr. O'Brien and 35% by US venture capital Advent

A. And they are the three names I have mentioned out on the side. When you read them out, I see the writing is clear now.

Q. All the information on the chart is contained in the article, isn't it?

A. I am just trying to see now. Certainly the vast proportion of it is, yes; you might point out, radio and other interests is the only one I just don't see, obviously, here, but...

Q. Doesn't it appear more likely that you were asked to analyse this article and put it in diagram form?

A. I have no recollection of being asked to analyse it.

Q. I know you have no recollection, but looking at it now, it has no relevance to the work you were asked to do on the 13th May; it is a diagram of what is contained in the article of the 28th February. I am saying, applying some form of reasoning to it, doesn't it appear likely that you were asked to analyse this

article and to put it into diagram form?

A. Just when you say it has no relevance to the May exercise, I until I had done the diagram, you wouldn't actually know that, because you had to work out who had the financial strength behind the backers. And I think what my note gets to is that I disregarded the whole Esat Telecom side of the consortium from a financial

Q. You were never asked I'll come to the notes in a moment.

A. Exactly. But I think you need to get an understanding of the structure.

Q. This had nothing to do with the 13th May?

A. I don't know when I did, so I have to assume I did it on the 13th May because it's the only time I can remember doing things on this.

Q. But I think you do concede it appears to have no relevance to the work you were asked to do on the May, this chart?

A. It has no relevance to what I actually ended up doing, yes.

Q. What you were asked to do?

A. I dispute that. I think if you are starting off, you'd want to understand what the shareholding structure was, and the diagram, before you get into what the financial backers, the strength of it is.

Q. Therefore are you saying that somebody must have given

you this article?

A. I can't remember that. Whether I had it on my file

Q. Ah, Mr. Buggy, come on, come on. Now

A. I don't remember somebody giving me an article eight years ago.

Q. You were asked to conduct a task. You have told us that your work was always task-specific; you were always asked to do something.

A. Exactly, yeah.

Q. You have told us already, in a number of places in your Memorandum of Evidence and in your evidence of the documents you were furnished with to carry out the work on the 13th May, and I'll be going through them soon to you; isn't that right?

A. Yes.

Q. This newspaper article is not included?

A. Yeah, because I have no recollection of it.

Q. It has no relevance to the work you were asked to do.

You say it may have; is that right?

A. It may have, yeah.

Q. All right. You would have to have been given that article. You don't remember ever reading the article or going looking for it yourself?

A. No, I don't.

Q. Somebody would have asked to you analyse that article, wouldn't they, in the Department?

A. At what time?

Q. Sorry, forget about the time at the moment, Mr. Buggy.

Somebody would have asked to you analyse the article?

A. If someone gave me the article, they would have said

"Here's an article that might prove useful in your"

Q. Listen to the question, Mr. Buggy.

A. I hear the question.

Q. Listen to the question. Somebody would have given you the article; isn't that right?

A. I have no recollection of somebody giving me the article.

Q. The way listen to the question.

A. I am.

Q. Your work was task-specific; isn't that right?

A. That is right.

Q. You would have been asked to perform a specific task; isn't that right?

A. That is right.

Q. To analyse this article, you would have been given the article by somebody; isn't that right? You wouldn't have set off about it of your own motion without being asked to do it?

A. That's correct.

Q. Who would have asked you to look at this article in the Department?

A. As far as I remember, the only people that asked me to do anything on this were the Secretary, John Loughrey, and Mr. Martin Brennan.

Q. Thank you.

CHAIRMAN: Not even necessarily taking matters from your present professional standpoint, Mr. Buggy, it's clear that the press and media comment was an important matter to be borne in mind in the ensuing process, both the competition and the licence award, wasn't it?

A. I believe so, yes, yeah.

CHAIRMAN: You remember Mr. Brennan getting so upset that he wanted to convene a press conference because he felt he'd been unfairly commented on?

A. It was a fairly high-profile issue at the time, yes.

CHAIRMAN: It's merely a concern that I have expressed to a number of previous witnesses, that given that there was that dynamic or that element, and given that there was a filing system of relevant articles being made available, it does seem incredible that this article did not overtly come to the attention of members of the Project Team.

A. Or the people dealing with the licence I think the Project Team probably had finished on the 20th October, yes, or people dealing with the licence issue, yes.

CHAIRMAN: Yes.

Q. MR. COUGHLAN: Now, I think on the 13th May, you were asked by Mr. Martin Brennan to carry out a certain task; isn't that right?

A. Yeah, my recollection is yes. I know there has been a bit of confusion as to whether it was Mr. Loughrey or Mr. Brennan, but I thought it was Mr. Brennan on the instructions of Mr. Loughrey.

Q. Right. But you also believe that you may have had some informal discussions with Mr. Loughrey as well?

A. I suspect I did, yeah.

Q. Now, if you go to I think Book 44, Tab 221, I think is where your documents are, isn't it, for this period?

A. Sorry, Tab

Q. Tab 221.

A. It appears to be missing out of this file.

Q. All right, I'll get you because we have a handwritten note which didn't come up very good I have a set here.

(Documents handed to witness.)

The first document should be your memorandum to the Secretary; is that right?

A. That's correct.

Q. The second one, then, is a verbatim typed transcript of your notes dated 13th May, 1996, relating to the financial strength of Esat Digifone consortium, and then behind that should be perhaps the handwritten notes, which don't come up well in the photocopying.

A. That's correct.

Q. Perhaps if we go to the typescript, and if you want to correct any of it

A. I seem to remember that there is a small correction.

I am just trying to find

Q. If you come across it at any time, you can do it.

A. Okay.

Q. The note commences "Esat Digifone 13/5/96.

"Telenor Invest

"Esat Telecommunications Holdings

"IIU Nominees Limited"

And you have 40:40:20, and you have the share capital of 20.8, 20.8, 10.4; is that correct?

A. That's correct.

Q. Then you have the total share capital, 52.

Is that information you would have received from Martin Brennan, do you believe, first?

A. From memory, I think the 52 million total share capital was part of their application. And then I would have the 40:40:20 split I would have received from Martin, and I would have worked the figures out myself.

Q. Then "Telenor very big financially successful", was that something that was said to you or just a note you made yourself, would you think?

A. I think it was something said to me, or else picked out of the

Q. You must have been given some information, because you have "1995 profits before tax, 210 million, turnover 2 billion.



no balance sheet.

very good credit rating from both Moody's and Standard & Poor.

Arthur Andersen will be able to fund the 20.8 million".

You must have been given some of the documents that came in?

A. I think that's it.

Q. Then "IIU, 100% owned by Dermot Desmond Farrell Grant Sparks invest and/or underwrite up to 40 million.

"Confirm the position to do this.

"Not stated what they are underwriting specifically Communicorp.

"Very little information on which to assess financial strength.

"Communicorp owned 65.2 by Denis O'Brien.

34.8 by Advent International

own 100% of Esat Telecom Holdings. Financing

commitments underwritten by or through IIU

appointed CS First Boston for private placement in ETH.

"Expected to raise at least 22 million, not yet completed.

Debt financing."

Then you deal with the debt financing.

Then "Possible solutions.

" due diligence of Dermot Desmond's personal wealth.

Escrow account interest bearing."

I think we now perhaps understand that to mean that perhaps there would have been the amount of money necessary to underwrite the position put into an account, and it would be interest bearing in escrow account; but that was never going to be a runner?

A. No, not really, no. I think the last two points aren't possible solutions. I think they are just further notes.

Q. Yes, "Cashflow required per business plan is 108 million by end year 3: Share capital of 52 million and loan of 72 million" yes.

Then that would be would it be fair to describe as your initial working notes from information you received from Martin Brennan and from various documents, the letters which had come in from Farrell Grant Sparks, the letters which had come in from Mr. Digerud on behalf of Esat Digifone, representing the position of Telenor?

A. I believe that to be the case, yeah.

Q. And I think documents you would have received, I think, Mr. Connolly, about Communicorp's position?

A. Yes.

Q. Would that be correct?

A. Yes.

Q. So you would have jotted down your various notes about

that, and you would have been looking at a possible solution?

A. Yes.

Q. Now, then you have 8.30am, Wednesday, 15th May, '96

" no dilution below 80%, stick to 40:40:20, note

DTEC satisfied cruising altitude is reached."

I think we now know what the cruising altitude is reference to; I think that may be after the licence is issued, that there may have been a dilution in those circumstances?

A. I believe so, yes.

Sorry, just to correct the word "Note" there, I think

I have it as "Until" as opposed to "Note".

Q. Where is that?

A. In that line you just read out. "No dilution below 80%, stick to 40:40:20"; I think it's "Until".

Q. All right. Then "IIU conform underwriting Esat.

"Cash balance of DD, but what about liabilities.

"Conditions under licence agreement.

"Roll-out targets will require capital to remain in the business.

"Could 5 financial institutions stand behind DD?

"Shouldn't be seen to be treating an individual different from a company therefore need to fall back on fact that we don't have a track record.

"Is there joint and several liability no use "big" brother.

"Escrow until money put into company by both parties

" can't withdraw

no dividends"

That's an argument about escrow, is it?

A. I think it is, yes.

Q. And the unsuitability of it from any businessman's point of view?

A. Exactly, yeah.

Q. "Monitoring conditions

" quarrel accounts (including cash flow) to

Regulator.

"Meeting with Michael Walsh.

" Telenor undoubted ability to bankroll the project

" need to ascertain ability of other parties to bankroll their share

" share capital going in as follows:"

Then it has

".75 million, 3 million subscribed so far.

Today 5 million, 15 million licence fee.

10 million in August, could be 6.3 million

A. Sorry, I think the "could" is actually one-third would be.

Q. I see, one-third would be.

"9 million in November. 10 million 1997/98.

"37 million in 1996 compared to 52 million per business plan."

Then over "8.30 meeting with Michael Walsh, 15/5/96.

Letter from Telenor.

Underwriting up to 66 2/3 and up to 100%. (Clause 14). Letter from IIU underwriting up to 33 and a third. Bank confirmation on behalf of IIU stating  $\text{€}10$  million available all of 1996."

This is in relation to Mr. Dermot Desmond, of course; isn't that right?

A. That's correct, yes.

Q. "Includes 5 million to be paid over today. What about when DOB comes up with the funds? Letter outlining in general the assets supporting DD's financial position.

"Also confirmation of revised capital requirements from Esat Digifone no.

"Shareholders agreement"?

A. I think there is one point missing between the third-last and second-last point. I think, in my handwritten notes, it's "a letter from Farrell Grant Sparks confirming all of the above."

Q. Right.

A. I think that's just missing out of the typed version.

Q. Then we go over to the final page of the notes.

"GSM2 meeting with Pearse Farrell", this was on the 14/5/96 at 10.30.

"Resident abroad.

Assets spread out worldwide.

Logistically difficult before you get to

confidentiality.

Track record over the years NCB, etc.

"i;½20 million in bank at present but leaving it there

for up to 12 months is costly.

"Imagine that IIU is highly capitalised but can't

comment on it definitively.

"Need to clarify that IIU are underwriting Communicorp

as per agreement of the 29/9/95."

Now, those were all your notes of your initial

working notes and your notes of the meetings, one with

Michael Walsh and one with Pearse Farrell; is that

right?

A. Of those three days, yes.

Q. And you then sent a memorandum to the Secretary; isn't that right?

A. That's correct, yes.

Q. Now, could I just ask you, if we go to your initial working notes.

A. Okay.

Q. Just to try and understand what you were asked to do.

You were asked to look at Telenor; isn't that right?

It didn't require much looking at?

A. No.

Q. You were asked to look at Communicorp, isn't that right, in general terms; again, it didn't require much looking at. There wasn't anything there. You could arrive at that conclusion fairly quickly; isn't that

right?

A. Just to clarify: I can't remember whether I was specifically asked just to look at IIU and Dermot Desmond or to look at all the financial backers. But it was pretty obvious to everyone, as you have already outlined the first two

Q. I don't think even if you weren't, it's fairly easy, from your working notes. Telenor, you had no difficulty at all with them?

A. Exactly, no.

Q. You had difficulty looking at Communicorp; isn't that right? They didn't have any funds. They expected to raise at least 22 million, but this wasn't completed yet; isn't that right?

A. Yeah, I think I looked at the downside scenario assuming they have nothing, therefore you move on to someone else backing them. So I took the worst-case scenario on it.

Q. At that moment, they had nothing?

A. That's right.

Q. They had nothing.

Now, you then had to look at IIU, and you were told that Dermot Desmond owned IIU 100%; isn't that right?

A. Yes, and I think I was asked, actually, in looking at IIU, was to look at him as one party, IIU/Dermot Desmond.

Q. Can you understand that, why you were asked to look at

IIU/Dermot Desmond? IIU were the people who were subscribing, isn't that right, and underwriting, as the case may be?

A. That's correct, yeah.

Q. I know Mr. Dermot Desmond owned IIU 100%, but you were never presented with any binding agreement whereby Mr. Desmond undertook or agreed to back IIU in the event of IIU not being in a position to either subscribe or to underwrite its element of the Communicorp position?

A. That's correct, yes.

Q. But you were only doing what you were asked to do?

A. Exactly, yeah.

Q. Now, to look at IIU, you had a meeting with Michael Walsh; isn't that right?

A. That's correct.

Q. Was your meeting with Mr. Pearse Farrell also related to looking at IIU as well as Mr. Dermot Desmond?

A. I think it was more to do with looking at Mr. Desmond.

Q. Right. Now, I think IIU had no track record; isn't that right?

A. I believe it's somewhere in my notes they had only been actually formed less than a year beforehand.

Q. There wasn't even a first set of accounts?

A. There wasn't, no.

Q. So it was impossible to look at IIU in the normal way that an accountant might look at the accounts of the company, in the first instance?



A. Exactly, yeah.

Q. And whatever IIU was, it wasn't a financial institution; it was a vehicle for Mr. Desmond, you were effectively being told, it was a hundred percent owned by Mr. Desmond. Isn't that right?

A. Well, I don't think it ever came up, it was a question of whether it was a financial institution or not, I wouldn't like to say what the definition of "financial institution" is, but it was in my mind it was always a vehicle for Mr. Desmond.

Q. It was always a vehicle for Mr. Desmond?

A. Yeah.

Q. So what you were asked, then, was to look at Mr. Desmond, in effect; isn't that right?

A. In effect, yes.

Q. And you spoke to Mr. Pearse Farrell, who was a partner in the firm of Farrell Grant Sparks and Mr. Desmond's accountants; isn't that correct?

A. That's correct. Just to clarify, I attended all these meetings with Mr. Brennan as well.

Q. Yes, absolutely. You didn't attend any meeting unaccompanied?

A. Part of my role in the Department is there would always be a civil servant with me.

Q. And you note here and is this something Mr. Farrell would have been telling you that Mr. Desmond was resident abroad? Because you had two ways of

approaching Mr. Desmond in your arising out of your original working notes. If you were being asked to look at Mr. Desmond, and people were going to say that in the Department, this wasn't a call for you, that it was all right to look at Mr. Desmond when IIU were the people who were supposed to be putting up the equity and underwriting, but if the Department were going to run with that, that they were going to trust that Mr. Desmond were going to back IIU in this situation. You had two views. You could do a due diligence on Mr. Desmond; that was the first one. Isn't that right?

A. These were two possible, yeah.

Q. The two noted views?

A. Yeah.

Q. The two noted views?

A. That I noted on the 13th, yeah.

Q. A due diligence on his personal wealth?

A. Yes.

Q. Or an escrow account?

A. Yes.

Q. And could I suggest to you that of course you were carrying out this work in the public interest; it was the Department that were going to licence this company, bestow a licence on this particular company, a State asset. Isn't that right?

A. That's correct, yes.

Q. You then had a meeting with Mr. Pearse Farrell on the 14th, and can I take it that what you're noting here is something Mr. Farrell would have told you; you might have known, but that you would have received this information from Mr. Farrell: Mr. Desmond was resident abroad?

A. I think all these points are I think the first four points, anyway, are from Mr. Farrell, yeah, directly.

Q. And you are told that his assets are spread out worldwide. And then it says "Logistically difficult before you get to confidentiality."

A. Yes.

Q. What is that a note of?

A. From memory, it's he was saying that because they are spread out worldwide, you know, logistically it was going to be difficult to track them all; and second of all, he says that's even before you get to what confidentiality agreements would have to be signed or whether there was an issue over confidentiality in disclosing those.

Q. I beg your pardon? Say that again?

A. He said it was logistically difficult before you even start to consider whether there is a confidentiality aspect in divulging the information.

Q. Right. Mr. Farrell was Mr. Desmond's accountant; isn't that right?

A. He was, yes.

Q. He didn't appear to be in the position, so, to give you, in broad terms even, what the position was; is that right?

A. He did later on, yeah, in broad terms, yes.

Q. At this time, he wasn't in a position, was he?

A. He didn't give it at that meeting, no, other than the 20 million that's mentioned down further, yeah.

Q. What confidentiality was being spoken about here?

A. From memory, it wasn't a detailed conversation on confidentiality. It was a statement he made that you know, he was actually making the point that it's logistically difficult, and if you want, then we have to start talking about confidentiality as well. But we never discussed it any further than that.

Q. And then he asked you to take into account Mr. Desmond's track record over the years; is that right?

A. I don't know if I'd use the words "take into account". I think what he did was he mentioned Mr. Desmond's track record over the years.

Q. What did he mention?

A. He mentioned that he had been

Q. What?

A. Well, I think he mentioned that he had been a successful businessman in Ireland.

Q. What did he mention? He mentioned, you say NCB, etc.; what did he mention about Mr. Desmond's track record?

A. I don't have any detailed memory of what specifically

he mentioned, only what's in the note here.

Q. What was Mr. Desmond's track record, as you understood it, at that time?

A. Pretty good.

Q. Tell me about what you knew.

A. I was aware of his involvement through NCB.

Q. Yeah, in what?

A. In that he owned it and sold it.

Q. Were you aware of anything else?

A. Not really, no, at that stage, I wouldn't have been.

Q. You were a qualified accountant at that time, were you?

A. I was qualified, yeah, four or five years at that stage, yes.

Q. You weren't aware of anything else about Mr. Desmond's track record?

A. Not specifically, no.

Q. Were you aware that there had been an inquiry conducted in relation to the Telecom site at Johnston Mooney & O'Brien in Ballsbridge?

A. I am now. At the time, I don't I presume I would have been aware that the Glackin Report and the inquiry I never read the Glackin Report and didn't know any of the detail behind it.

Q. But Mr. Farrell, as Mr. Desmond's agent, was asking you to bear in mind Mr. Desmond's track record; isn't that right?

A. Yes.

Q. You were then told that there was  $\frac{1}{2}$  million in a bank at present, but leaving it there for up to two months is costly. Did he tell you where that money was?

A. I can't remember if he said a specific bank, no, I don't remember. I think the reference to the "costly" is the reference to the idea of an escrow account.

Q. And then can I take it that the note "Imagine that IIU is highly capitalised but can't comment on it", that's not your comment; that's Mr. Farrell's comment?

A. I believe that to be Mr. Farrell's comment, yes.

Q. You didn't know anything about the capitalisation of IIU, did you?

A. No, no.

Q. And then you note "Need to clarify that IIU are underwriting Communicorp as per agreement 29/9/95." What's that a note of?

A. I can't remember if that was a note of the meeting between Mr. Farrell, Mr. Brennan and myself, and that obviously Mr. Brennan would have had interaction regarding underwriting and agreements going into the past, and I don't know whether Mr. Farrell was saying he needed to clarify or whether we were saying on the Department side, we needed to clarify. I don't have any further detail on that particular comment.

Q. Well, I just want to pause there for a moment. Did you have any document in front of you which was an agreement of the 29/9/95?

A. I don't believe I did. I don't believe I have ever seen a document of the 29/9.

Q. Can you remember who brought this up?

A. As I said, I can't remember whether it was Mr. Farrell raising it or whether it was the Department side. It wouldn't have been myself, really; it would have been Mr. Brennan.

Q. I beg your pardon?

A. I don't believe I would have brought up the point. It was either of the other two parties at the meeting, Mr. Farrell or Mr. Brennan. I don't remember whether it was Mr. Farrell saying that he needed to go off and check that or whether Mr. Brennan was saying it, that the Department needed to check it.

Q. I see. So you can't remember, so, whether it was Mr. Farrell or Mr. Brennan referred to an agreement of the 29/9/95?

A. No.

Q. Did you ever receive clarification that IIU were underwriting Communicorp as per the agreement of the 29/9/95?

A. I think what happened the following day, or later on that day, was that we got confirmation that that agreement of the 29/9 was being replaced by the new

shareholders agreement and an underwriting agreement between Telenor and IIU.

Q. Where did you receive that confirmation?

A. It came from it actually probably was the 15th, because I think when you go to the minutes of the Michael Walsh meeting on the 15th, it's the first two points there, and then documents came in subsequent to that meeting.

Q. It says that "Letter from Telenor underwriting at the 66 2/3 and up to 100%. Letter from IIU underwriting up to 33 1/3".

A. I think the 100% one is a question mark. I don't think they ever underwrote 100%.

Q. Where did you receive confirmation or were informed that Communicorp were not being underwritten by IIU as per the agreement of the 29/9/1995?

A. Sorry, I am just looking back through my notes here. I thought there was something in writing, but it must have been at that meeting with Michael Walsh where he said this new agreement was going to replace the 29/9 agreement. I am just looking through here, but...

Q. And Mr. Brennan was at the meeting with Mr. Walsh as well?

A. He was, yeah.

Q. You see, you are the only person in the whole Department who has ever made a note of an agreement of the 29/9/1995. A letter did arrive into the



Department; it was seen by Mr. Towey and/or Mr.

Brennan and sent back to and sent to Denis O'Brien.

But no agreement was ever seen, and this is the only note in all of the Department's files which makes reference to a meeting of the 29/9 or an agreement of the 29/9/95.

And it says "Need to clarify" there must have been some discussion about it at the meeting. I know you are only noting what was said; you weren't the primary mover in this. Mr. Brennan was present, and Mr. Pearse Farrell was present at this meeting; isn't that right?

A. On the the one on the 14th, yes, that's correct.

Q. The "need to clarify" looks as if it had to be on the Department's side. Mr. Farrell wouldn't have been raising it, perhaps?

A. Well, Mr. Farrell yeah, he wouldn't have been

Q. Raising it?

A. Yeah.

Q. "Need to clarify"; it looks as if it was the Department's need to clarify.

Now, I am just wondering, can you help us as to how that discussion could have arisen? Because all of the evidence which we have heard has been to the effect that the Department was totally unaware of this agreement.

A. Just bringing you back to a KPMG letter received by

Mr. Brennan on the 9th May 1996.

Q. Can you just give me the tab for this?

A. Sorry, I can't, because it's off my own file but...

Q. All right, I'll find it. It's the KPMG document, is it?

A. It's a one-page letter.

Q. It's the second-last document in that document. 9th May, KPMG

A. Point 4 of that, sorry, that's what I was searching for when I thought I remembered it being written somewhere.

Q. That's a fair point. That's a good point, yes.

"The company has in addition entered into an agreement with Internation Investment and Underwriting Limited dated 29th September 1995 under which IIU has undertaken to arrange underwriting for the company's proposed interest through its subsidiary Esat Telecommunications Holdings in Esat Digifone Limited. I have confirmed that they have arranged the underwriting."

A. I have got a handwritten note then as well.

Q. What's that?

A. It says "Appears to cease when shareholders agreement is signed clause 17.11 but superseded by underwriting agreement in shareholders agreement and letter from Telenor and IIU".

And in Section 17.11 of the shareholders agreement, it

actually does mention this 29th September.

Q. And of course that was for the attention of Mr. Brennan?

A. Yeah, so I presume he knew about it at that stage.

Q. Well, that's a matter we can take up with Mr. Brennan. You then sent a memo, I think, to the Secretary; isn't that right?

A. That's correct

Q. Sorry, perhaps before I do that, I should go to the letter from Messrs. Farrell Grant Sparks which is dated 15th May also. It's at Tab 220.

And it reads: "Dear Sirs, we act as financial advisers and auditors to Dermot F. Desmond. We confirm that Mr. Desmond is the beneficial owner of 100% of International Investment and Underwriting Limited.

"We are informed that Mr. Desmond/IIU have undertaken to invest and/or underwrite an equity investment of up to 40 million in Esat Digifone Limited. We confirm that Mr. Desmond/IIU is in a position to make this investment and to make the underwriting commitment.

"We are also authorised to confirm that Mr. Desmond is the beneficial owner of the following principal assets:

Various marketable securities 10 million.

"Principal unquoted investment at cost,

International Investment and Underwriting Limited IIU

at 13 million".

So you were now in a position to know that IIU was capitalised to the extent at least of or was capitalised to the extent of a maximum of 13 million; is that right?

A. You don't know what liabilities are on the other side.

Q. You don't know what liabilities at all, but it's capitalised to a maximum?

A. Yes.

Q. "London City Airport and associated companies, 25 million.

44% of Pembroke Capital Limited, 9 million.

Cash at bank 15 million.

William Fry client account reinvestment in Esat

Digifone Limited 5 million.

20 million in all.

A. That's the 20 million I presume Mr. Farrell was talking about.

Q. Total 77 million.

Then he says he trusts this information is now, you got no information from Messrs. Farrell Grant Sparks about any liabilities; isn't that correct? You didn't see the other side, if any, of Mr. Desmond's position?

A. No, not on that letter, it's not outlined, no.

Q. It's not there at all?

A. No.

Q. Now, I think you prepared a memorandum for the

Secretary, isn't that right, then?

A. That's correct, yes.

Q. That's at Tab 221, and you can see that the Secretary notes it and thanks you and dates it the next day, the 16th May?

A. Yes.

Q. Now, you were told that you only had what, two days to get this work done initially, is that right, two or three days?

A. From recollection, on the 13th, I was told that they wanted it completed I think by Wednesday, I think it was said, and that I think, just to clarify, I don't think anyone was expecting it to be a full due diligence in three days, either, so everyone was actually aware of what I was going to do.

Q. And all you had to go on, really, was Mr. Pearse Farrell's letter, wasn't it?

A. That is the main one, yes. There is a lot of other information

Q. But in real terms?

A. It comes down to that, yes.

Q. And Mr. Farrell's letter wasn't supported in any documentation, was it?

A. It wasn't, no.

Q. And it didn't even outline any liabilities which Mr. Dermot Desmond or IIU might have had?

A. It didn't, but and I presume you'll come to it, but

I have used the word "unencumbered" in the memo. It's not a word I'd use lightly. I have been looking through the files to find evidence of where I was told that. I can't find written evidence. I must have heard it verbally, because as an accountant, you wouldn't use the word "unencumbered"

Q. That's precisely the point.

A. unless you knew it.

Q. Can I suggest to you well, I'll come to it in due course.

"Mr. Martin Brennan and I have been involved in various discussions in respect of the financial strength of the members backing the Esat Digifone consortium over the last two days, and detailed below is my understanding of the current position and an assessment of the consortium's financial strength.

"These discussions have been with a number of parties, but principally Mr. Michael Walsh, a director of International Investment and Underwriting Limited.

"The business plan of Esat Digifone, as submitted with their application in August 1995, states that the share capital will be 52 million, all of which will be raised in Year 1. We now understand that after further analysis on the cost of providing the infrastructure, Esat Digifone are satisfied that an amount slightly less than 52 million is required, and this will be phased in as follows.

"To date, 3 million  
upon signing the licence, 15 million  
August 1996, 10 million  
November 1996, 8 million.

That's a total of 36 million.

Sometime in 1997-98 10 million.

46 million in total.

"Under the shareholders agreement, each of the parties  
have 4 months after the date of each call on the share  
capital in which to come up with the funds or else  
they are in default, and they are only allowed 3 days  
in total before they are also considered to be in  
default and excluded from increasing their investment  
any further.

"The underwriting agreements have been revised in the  
shareholders agreement to that, so that in the event  
that in any one" sorry, "in the event that any one  
party defaults, the other two parties will underwrite  
the defaulting investment in their agreed share  
proportions. This means that if Esat  
Telecommunications Holdings defaults, Telenor and IIU  
will provide funds in the ratio of 66.6 to 33.3. In  
the event that both ETH and IIU default, then the  
shareholders agreement provides that Telenor takes up  
100% of the financial commitment."

I think that may be erroneous?

A. I think there is definitely that Telenor didn't

underwrite 100%. I think what I was referring to is the previous point, whereby if it's in the default, if both parties are in default, there is a mechanism where

Q. It inevitably happens rather than

A. Exactly.

Q. All right, that's a fair point.

"Under the underwriting agreement, maximum exposure based on the"

A. "Original estimated"

Q. "original estimated share capital is 52 million";

is that right?

A. That's right.

Q. "in each consortia member is as follows". Then you set out I can't make it out.

A. I have a better copy of it.

"Telenor 100% or Ir£½52 million.

ETH 40% or Ir£½20.7 million (assuming other parties are strong)

"IIU 33% or Ir£½17.3 million".

Q. Then it goes on: "Telenor is a very strong company, based on their 1994 annual report, which shows net assets of Norwegian kroner 10.97 million approximately", is it?

A. It's 10 billion, actually.

Q. It's 1 billion Irish; is that right?

A. That's right.



Q. "Therefore they appear financially strong enough to carry 100% of the capital, 52 million, if necessary.

"Esat Telecom Holdings are currently in the process of arranging a private placement in the US. This is expected to raise at least 22 million. The process is at an advanced stage but not yet finalised. Therefore we cannot rely on it at this particular time."

So you were ruling them out in the consideration in terms of the financial strength?

A. That's correct, yeah.

Q. "As a result, we must ensure that the parties underwriting Esat Telecom Holdings shares are financially strong enough to support their portion of ETH's share along with their own investment.

"We have already seen above that Telenor are strong enough and IIU as discussed below.

"IIU are 100% owned by Mr. Dermot Desmond, and therefore, in looking at IIU's financial strength, we are essentially looking at DD."

Of course that isn't so. You were asked to look at DD?

A. I was asked to look at it, yeah.

Q. Because you could never look at the financial strength of IIU by looking at DD?

A. As with any company.

Q. IIU was a company?

A. And any company is the same case, yeah.

Q. "According to Mr. Walsh, IIU are only in existence since August 1995, and therefore no financial statements have been produced for the company to date.

"In order to finance its own investment and underwrite its portion of Esat Telecom Holdings investment, IIU/DD must have finances of 17.3 million (being 33% of 52 million). While DD is known to be a very wealthy person, this alone is not considered to be enough information on which to proceed.

"We discussed the matter with Mr. Michael Walsh. He informed us that DD has already put .75 million into the company and has also put up another 5 million this evening in advance of signing the licence.

"In order to satisfy us on the remaining 11.5 million, we received the following:

" a letter from Anglo Irish Bank confirming that DD has 10 million available to invest in Esat Digifone (including the 5 million put in this evening) and that this will remain available for the whole of 1996.

" an updated letter from Farrell Grant Sparks which confirms that DD is worth at least 40 million and which outlines in general terms some of the unencumbered assets totalling some 77 million which DD owns and which support their opinion that he is capable of financing up to 40 million of this project.

" letters from Telenor and IIU stating that they are underwriting ETH's investment in the project in the ratio of 66 to 33.

" the final version of the shareholders agreement.

" on the basis that I consider that the financial strength of DD has been confirmed to the extent that it can be relied upon to finance its own investment in Esat Digifone and underwrite its agreed portion of Esat Telecom Holdings investment.

" we also received a debt financing"

Then you deal with the debt aspects of it.

"Conclusion.

"Based on the discussions documented above and the letters received from the various parties as outlined above, the shareholders in Esat Digifone appear to have sufficient financial strength to ensure that Esat Digifone is financed in line with expectations under the business plan, and the required debt financing appears to be available to the company."

Now, did you have any discussions with Mr. Loughrey before you prepared this?

A. I believe I had informal discussions over the three days, not specifically in relation to the preparation of the memorandum, but on the issues that were coming up as part of the memorandum, yes.

Q. What were the issues that were coming up that you had

discussions about?

A. I think in the first case, I think it was probably on the 14th that we hadn't got any individual list of assets of Mr. Desmond, which we went back, Mr. Brennan and myself went back and asked Pearse Farrell for, and he provided the list, that letter that we went through earlier, of the 15th May. I think that was probably the main one.

The other conversations would have been just keeping up to date as to what I was actually doing, what information we were getting, so that he was fully aware that I was actually you know, I wasn't doing nothing, and yet at the same time I wasn't doing a full due diligence. He would have been aware of the scope that we were actually undertaking in the few days.

Q. As far as you were concerned, you were working under the time constraint that this had to be done before the 16th; the licence was going to be issued on the 16th. Is that right?

A. I was under a constraint. I can't remember whether the 16th was mentioned, but I knew I had to have a response back within a few days.

Q. Because the licence was going to be issued?

A. Well, that was the ultimate outcome, yes. I don't know whether they said the licence would be issued

Q. That's what you were working towards?

A. Exactly, yeah.

Q. The issue of the licence.

You didn't hear anything about it before the 13th?

A. Not that I recall, no.

Q. You don't remember being asked to conduct this work in mid-April, 16, 17, 18th April, anything like that?

A. No, I don't.

Q. If you had been given a full month, can I take it that you would have pursued matters in greater detail?

A. I would have pursued matters in as much detail as the Department wanted me to.

Q. In as much detail as the Department wanted?

A. In other words, under instruction.

Q. Only under instruction. And you always acted just under instruction?

A. Yes.

Q. You didn't there is no record of you seeking a list of Mr. Desmond's liabilities, is there?

A. I don't have a record of that, no.

Q. No letter was written to Mr. Farrell?

A. I don't remember written to Mr. Farrell?

Q. Yeah.

A. I don't remember any letter being written to Mr. Farrell. I think any requests from us probably went over the phone, and they came back by way of letter.

CHAIRMAN: Brennan would have made all requests.

Q. MR. COUGHLAN: Mr. Brennan made all the requests?

A. Yeah.

Q. You didn't handle that end of things at all?

A. No. And that would be par for the course, again, within my assignment within the Department.

Q. The reason I am asking you whether you had any discussions with either Mr. Loughrey before the memorandum or with Brennan would you have shown the memorandum to Mr. Brennan before you sent it to Mr. Loughrey?

A. That would normally be the case, so therefore I would assume I did, but I have no specific recollection of showing it.

CHAIRMAN: I think you might have said yesterday that you probably gave a copy before

A. I would normally, if I was doing it with someone, I would normally pass a memorandum by them before issuing it.

Q. MR. COUGHLAN: Would you have shown it to him in a draft form and perhaps discussed it?

A. That would be the that would be the reason for showing it to him, yes, yes. I don't remember any changes to it, if that's the follow-up.

Q. As you say yourself, the word "unencumbered" jumps out of the whole memorandum, doesn't it?

A. It does, yes.

Q. And is it a term that tends to be used by accountants?

It's used by lawyers a lot, is "net" not more a term

that's used by accountants?

A. Well, I think in this instance, it's probably more appropriate to look at "unencumbered" as opposed to "net assets".

Q. Why?

A. Because you'd want to make sure that the assets weren't tied up in some way, even though you might not necessarily have a liability on your balance sheet, but you could have them secured on something; so I think it's more important to have the "unencumbered" in this particular scenario.

That's why I am saying, like, I see the word, and I wouldn't use the word lightly.

Q. That's what I am wondering about, because you have no note of any discussion with anybody. And as you say, all requests for information went from Martin Brennan to either Pearse Farrell or to Michael Walsh; is that correct?

A. That's correct, yeah.

Q. That was the way you had no other than the meeting you have are recorded on the 14th with Pearse Farrell, you had no other discussions with Pearse Farrell?

A. Not that I remember, no. I don't think so.

Q. You received the letter, and on the basis of that letter, and you having no further discussions with Pearse Farrell, you have recorded Mr. Desmond's

position as being one of being unencumbered. Where could that have come from, Mr. Buggy?

A. I can only like, because I don't have any written knowledge written evidence of it, it can only have come from a couple of sources. Either Mr. Loughrey, Mr. Brennan, or as part of the discussion with Mr. Farrell, in that he said he'd provide a list of the unencumbered assets. But he doesn't say it in his letter.

Q. He certainly doesn't.

A. No.

Q. Let's look at that. You get Mr. Farrell, as you say Mr. Farrell, you had the meeting with Mr. Farrell. He is going to provide you with information, a list of the assets. It may well be that at that meeting, that you failed to note that he said he'd provide a list of unencumbered, but the letter certainly doesn't do that; isn't that right?

A. That's correct.

Q. And the only other two potential sources for the introduction of that word, "unencumbered", into this memorandum is a suggestion being made by Mr. Brennan or Mr. Loughrey; isn't that right?

A. That's my understanding.

Just to go back to Mr. Farrell's letter, it doesn't use the word "unencumbered", but what he does say is he confirms that Mr. Desmond is in a position to make



the investment and make the underwriting commitment,  
just to point that out.

Q. Yes, I understand that.

CHAIRMAN: It's probably time to pause till two.

Two o'clock. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2 P.M.

CONTINUATION OF EXAMINATION OF DONAL BUGGY BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Buggy, I wonder if you mind just  
going back to the note, your note of the meeting with  
Michael Walsh at 8:30 on the 15th May, 1996. I just  
want to ask you about something

A. Yes, on the 15th, is it?

Q. Yes, on the 15th, the Michael Walsh one.

Now, if you go to the third bullet point there, "Bank  
confirmation on behalf of IIU stating 10 million,  
available for all of 1996. Includes 5 million to be  
paid over today." Then there is a note: "What about  
when DOB comes up with the funds".

Could I just ask you about that, and what your state  
of knowledge was. The money to be paid at this stage,  
in terms of the first capital call, related to the 15  
million to be paid for the licence, I think; isn't  
that right?

A. I think there was 15 million to be paid on signing of  
the licence, yes, I think so, yeah.

Q. That was to be on the basis of the share configuration you were dealing with to be 6 million Telenor, 6 million Mr. O'Brien's side, and 3 million IIU/DD?

A. On the 40:40:20 split.

Q. On the 40:40:20 split; isn't that right?

A. Yeah.

Q. And you can see that the IIU, or Dermot Desmond side, have paid in 5 million that day?

A. Yes.

Q. And then there is the note "What about when DOB comes up with the funds". I think you were aware that the Denis O'Brien side had no funds at that time; isn't that right? You stated in your memorandum to Mr. Loughrey that they are doing a private placement to raise 22 million, but it hasn't been done yet; it hasn't been raised yet?

A. Yes. Just to clarify, I didn't say it had no funds, but it didn't have enough to carry out its financial commitments as such.

Q. What funds did you know that they had?

A. I don't know. I don't think I say that they have actually no funds, but just...

Q. You had no knowledge of any funds from them?

A. No knowledge, no.

Q. You knew that they were raising money, or in the process of raising money?

A. Yeah.

Q. "What about when DOB comes up with the funds" I am just wondering whether you were aware that on that day that is, the day before the licence or the day of the signing of the licence that IIU were putting up 5 million?

A. I was aware that IIU were putting 5 million into the company, yeah, from the line above it, yeah.

Q. Now, we know that in fact what was happening here is that Esat Holdings had no money to pay for the licence on the 16th; were you aware of that? And the way it was raised was that IIU lent another 2 million to Esat Digifone, and Telenor lent 3 million; I think that was sorry, lent 4 million?

A. That would be the split, yeah.

Q. To Esat Digifone, and that's how the 15 million came about to pay for the licence. Were you aware that there was no money on the Denis O'Brien side to pay for the licence?

A. I think, from recollection, I think I was aware that IIU were putting in 5 million, which, if you take it at a third, is a third of the 15 million that's required; and that would imply that they were immediately underwriting yeah.

Q. Leave aside how it was being done, because it was just a loan to Digifone or

A. Yeah.

Q. And can I take it that and you seem to be raising a

question "What about when DOB comes up with the funds?"

A. Well, the question was raised, obviously, at the meeting. Again, I don't know whether I actually raised it or not, but looking at it now, I presume that's a question as to when DOB puts in the funds, one would imagine it repays IIU the extra amount that they put in.

Q. It seems to be a discussion about that, doesn't it?

A. It does, yeah.

Q. And of course what you were doing was noting things at this particular meeting, in effect, wasn't it?

A. Yes.

Q. Mr. Brennan and Mr. Walsh were there discussing matters?

A. And I would have been discussing with them as well, yeah.

Q. Now, as you say, you only ever performed tasks you were asked to do; you were never asked to tie anything down in the licence as regards the funding or the financial side of any of the participants in the consortium?

A. Not that I remember, no.

Q. You didn't do it, anyway?

A. No.

Q. If you had been asked, you would have, I take it?

A. I would have, yeah.

Q. And it would appear you weren't asked.

A. No.

Q. Now, I just want to ask you, if you go to Divider 223, please.

A. In which file? Sorry.

Q. It's in the same 44.

Now, do you have Divider 223?

A. I have, yes.

Q. This is an attendance of Mr. Owen O'Connell's, and he records those present on behalf of the Department as Martin Brennan, Fintan Towey and you. This is on the 15th May, 1996.

A. I see that, yeah.

Q. And if you we have it in typed form as well. It says "Department of Communications M. Brennan, F. Towey, Donal Buggy.

"Friday if necessary: 3:30 Thursday

"TE big price decreases tomorrow that's Telecom Eireann.

"World Communications Day 17 May

Bill O'Herlihy per Minister

Martin Brennan: When did Telenor" this seems to be a reference to when did Telenor and Denis O'Brien get together, I think. It says

"Late April/early May

KD phone call late April, meeting Oslo early May.

"Parties talking 2nd half of April. Double dealing re

Southwestern Bell."

"Just pain in the ass comment. Company owned  
50/50 intention to place .... 20%, strong  
supporting letters were available from a lot of  
blue-chip investors.

"In normal course when project became real, negotiated  
but deal available, which we now have. IIU not in  
original.

"Comfort Minister, favourably disposed re letter

"ref: P1 shareholders agreement recital D

"ref: 4, shareholders.

"Dress rehearsal with Minister sometime after 1, some  
our side

"45: 45:45:10 "cruising altitude"

"In normal trading circumstances, debt/equity around  
50%; in start-up phase, more fluctuation because of  
capital spend, will tend a little more towards equity,  
especially in early phase.

"Martin Brennan: Save Minister, needs our help.

"Whether same project as won competition.

"Martin Brennan not keen on Denis as speaker (not  
attribution)

"1st conference DOB we'll be lowering prices 25%  
in three years.

Focus of attack couldn't have won competition on this  
basis Application was stronger than that.

"Prepare better answer, get correction in launch

commitment per bid. Good presentation in price area.

Consider although not in application. Attempt to correct complaint innuendo. 25% in three years. He couldn't have won competition on that basis. Not enough another consortia reducing 30-33% within a year of launch.

"Why only signed now? Was licence delayed to put money in place? Leslie as speaker.

Department delay all on our side. What is impact of delay on launch? Will there be delay especially if different?

"Geographical and quality coverage, stress 24.

"Everyone knows Christmas market critical and intend to demonstrate seriousness for that.

"Question 16 June deferment: 23 June original closing if no deferment, could we have bid.

"Comfort now as to how Minister will act in given circumstances in the future".

Now, that's his note of the meeting. Do you remember this meeting?

A. I don't remember the meeting at all. I see my name at the top of it in his attendance note, but I have no recollection. But having read through it, it's a lot of stuff I wouldn't have been interested in or involved in it.

Q. That's what I was wondering about

A. Whether I left the meeting or whether I was just tuned

out, I don't know, but I don't remember the meeting.

Q. A lot of it seems to be to do with a presentation and preparing the Minister and dealing with the Minister's requirements.

A. It appears to me to be a question-and-answer session for the presentation, yeah.

Q. It doesn't appear to be the sort of stuff that you might be involved in?

A. No.

Q. Do you know if you were there, or

A. I have no recollection of being there, no.

Q. As you say, you may have been there at the beginning, or

A. I don't actually remember being there at the beginning, but I don't doubt Mr. O'Connell's attendance note; you don't write a name down without...

Q. Because if you go to Divider 226 on the this is another attendance of Mr. O'Connell's; it's a short one. It's an attendance on Martin Brennan, Fintan Towey, and you at 11.55am on the 16th May 1996.

"Knut has to be there. Michael Walsh 'ought' to be there.

Have told you a lot about the company more loves answer re 500,000."

We know what that means; you may not. It's to do with the delay, because of the intervention of the European



Union, I think that Mr. O'Brien was able to say cost them another 500,000 or something.

"Seamus Brennan Dail minutes to guarantee re coverage geographically and quality. Dail tonight.

Wants formal press release. Still looking at letter.

Very urgent re shareholders agreement.

"Still on for 3:30.

Printing stage.

Minister's press release. Needs now.

Accounts Department of Finance 15 million."

That was a reference to the cheque, that was the cheque to the Department of Finance. I think the question was, who was it to be made out to and they wanted same day value. That's really what it was. Again, just looking at that, hardly the contents the contents hardly seems to be in your line of country, does it?

A. No, and none of it rings a bell with me either. Even, like, you'd imagine the last comment about who is the cheque to be made payable for? It's something that might stick in your mind. But I don't remember that.

Q. Thanks, Mr. Buggy.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

Q. MR. NESBITT: Mr. Buggy, I just wanted to deal with a number of general matters to start with, and it is in respect of the competition that was being run and the

way it was going to analyse any applications for the right to exclusive negotiation. And I think you were appraised of the Andersen draft evaluation reports.

You have heard of the one of May and the one of June, I think, earlier in your evidence?

A. Yes.

Q. And in the evaluation report of June, as in the May one, it was clear that there was an approach being adopted to attempt to take the information that came in from applicants and analyse it in a quantitative way; in other words, try and use the information and using numbers, come up with a an amount that would indicate the value of their application.

When did it become clear to you that that method was not going to work for the purposes of arriving at a satisfactory result?

A. Well, as I said yesterday in the evidence, I was away on holidays for the first three weeks of September; and from recollection, I heard that the quantitative wasn't wouldn't work when I came back from those holidays, and that they'd moved onto the qualitative. And that was due to, as we mentioned yesterday, inconsistencies between the tables and the business plans.

Q. Now, did it surprise you that the quantitative analysis was in trouble, when you heard about it?

A. I don't think it did surprise me, no. I think, as I

said yesterday, I had done some initial cursory review of the applications before I left to go on holidays, and there was we had identified inconsistencies at that stage.

Q. Now, when you came back and you learned that this was the case, the analysis is then changed, effectively, to one of examining matters in a qualitative way; is that right?

A. That's correct, yes.

Q. And did you have any difficulty with that? Did you find that was an appropriate way to be attempting to mark the applications that had come in?

A. Yes. I was happy with that method.

Q. And when that change occurred, did you have a view as to whether or not it would be possible to go back to a quantitative evaluation, or were you now fixed with the qualitative as the route to find out the answer?

A. I think when I came back it had moved onto the qualitative, and I don't think I at any stage reassessed you know, whether I thought we should go back to the quantitative or not. I took it as a decision of the Project Group while I was away to move on.

Q. Were you happy to continue on in that basis from your own point of view?

A. I had no problem continuing on in that way.

Q. Now, I want to turn to a different issue now, and it's

the question of Annex 10 that appears in some of the evaluation reports. Do you have Book 46?

A. Yes.

Q. I am not certain, but if you have Divider 47 in Book 46, you should see the appendices to the October 18th report, draft evaluation report; do you have that there?

A. I have this here, yes.

Q. And if you can turn on to Appendix 10, which is near the end, obviously.

A. Yes.

Q. Now, Appendix 10 has seven pages in it, and it's the seventh page I want to draw your attention to. And on page 7 you'll see the final part of an assessment of A5, the Esat application, the Esat Digifone application. And as I understand it I just want to make sure that I have understood this appropriately the issue that had arisen at that point in time was looking at the constituent parts to the Esat Digifone bid; you had a 50/50 partnership with 20% of equity coming in. And if you turn to page 5, I think you'll see assessment of A5. And you see, "The consortia members of A5 and their share distribution, the existing corporation, Esat Digifone, is as follows: 50% Telenor Invest and 50% Communicorp Group". And they go on to say that "At present Telenor has the current assets IRġ 1/2550 million, the financial strength

to provide the necessary financial backing of its

wholly-owned subsidiary Telenor Invest."

Now the first thing I want to ask you about that is,

as I understand the evidence of earlier witnesses, and

I'll ask for your view on this, if you had a

participant of that size in a consortium, was that

seen as something that gave it the financial

wherewithal to be a player in the competition?

A. My understanding was that the Project Group wanted at

least one strong financial backer in each consortium

in order to go forward into the evaluation, and then

it would be marked accordingly then.

Q. So that meant that this A5, within that understanding,

was going to be able to move forward with the

competition process, because it had at least one

strong backer; is that right?

A. That's right, yes.

Q. Okay. Now, I think the issue that then arose was that

for the purposes of stress testing what might happen

to anybody who was awarded the licence, various issues

were considered, and one appears to be the effect of a

delay on being able to roll out your offer; that would

stop the revenues coming in and stress the amount of

borrowing that was needed. Was that one of the things

you did?

A. It wasn't one of the things I did, because I was away

when they were doing all the detailed work, but and

I am not certain of this; it might have been one of the requirements of the bid to say what would happen if you were delayed by X amount.

Q. Perhaps if you turn to page 7, and we can see what the workings are here, just to allow you understand it.

If we see on page 7, it says "The letter of commitment does not clearly state what the price would be if the commitment should be brought into life, and according to the presentation, the price would be close to 75% stake in Communicorp. Furthermore, according to the information given in the presentation, the control will still be in the hands of the Irish investor (Denis O'Brien) as his shares bear a three times higher voting power."

Then they make a point: "The legal basis of the commitment had not been included in the applicant's supporting material.

The next paragraph: "This may result in a situation of instability or a situation where the control of Communicorp is transferred to Advent. It could also lead to a situation where the commitment Advent cannot be fulfilled.

"The size of the commitment by Advent does not cover our worst case estimate of the equity requirements at a constant 50% ownership of Communicorp. In a worst-case scenario, the requirement for further funding is expected to arise two to three years into

the project. At this stage Advent will already have invested a committed figure, and it is judged to be very unlikely that Advent will retreat, as this could lead to a 100% loss of the invested funds. Therefore it can be concluded that the major risk is related to possible instability of Communicorp and the transfer of power to a non-telecommunications investor.

"This uncertainty can be limited by an appropriate set of licence conditions. As examples, the following types of conditions are suggested:

" requirements regarding the share of the ownership and voting power in Communicorp or  
" requirements regarding the equity of Communicorp."

Now, as I understand it, what they're saying there is if you are concerned that there will be difficulties because of one of the persons concerned in the consortium not having the means to put in additional equity later on or in trouble in equity, you can deal with that at the time you're negotiating the terms of the licence; is that right?

A. That's right, yes.

Q. And perhaps could I ask you now to turn to Divider 50 of Book 46. What you have just been looking at now was the draft of the evaluation report of the 18th October, and I'll ask you to look at the final report. Again, if sorry, it's the Divider 51; that's where the appendices are. And again, I am asking to you

look at Appendix 10 and page 7 of that.

And I think, for all intents and purposes, that page is effectively the same as the one I just read. And we can see at the end: "This uncertainty can be limited by an appropriate set of licence conditions.

As examples, the following types of conditions are suggested."

And the same two examples are given: "Requirements regarding the share of the ownership in the voting power of Communicorp and requirements regarding the equity of Communicorp."

Now, is it fair to say that at that point in time, and following the methodology set out in the appendix, the Esat Digifone consortium, with one strong member, and the view being taken that issues arising in relation to funding into the project can be covered by appropriate conditions in the licence, was that the position you understood to have been reached by the Project Group?

A. That is the position, yes. I think the Project Group was happy with that.

Q. Now, you have been answering questions in relation to the meetings that you had and the examination you did concerning Dermot Desmond and IIU. There is one letter that we were looking at which I wanted to ask you about. It's Book 44, Divider 220, if you have that.



A. Divider 220 is missing out of this one, but I think the

Q. It's a Farrell Grant Sparks letter of the 15th May.

(Document handed to witness.)

A. Okay.

Q. MR. NESBITT: I am just puzzled by one thing that was said in exchange between you and Mr. Coughlan. As I understand the letter of the 15th May of 1996, it's written by Farrell Grant Sparks, and it says they are acting as financial advisers and auditors to Dermot F. Desmond.

"We confirm that Mr. Desmond is the beneficial owner of 100 percent of the International Investment Underwriting limited (IIU).

"We are informed that Mr. Desmond/IIU have undertaken to invest and/or underwrite an equity investment of up to 40 million in Esat Digifone. We confirm that Mr. Desmond/IIU is in a position to make this investment and to make the underwriting commitment."

Now, just looking at the wording of that letter, can I make the following suggestion to you: Given that the author is a well-known accountancy firm, and they are describing the person they are writing for as Mr.

Desmond/IIU, did it not occur to you that they were actually presenting the position of Mr. Desmond and IIU insofar as they're involved in the 20% equity investment?

A. I suppose, in my view, they were presenting more the Mr. Desmond side of it than the IIU side. My understanding is Farrell Grant Sparks aren't auditors to IIU, but they are advisers and auditors to Mr. Desmond.

Q. Well, that's quite a technical approach, and I understand that. But in simple English terms, they seem to be careful to identify Mr. Desmond/IIU throughout the letter as the element that they're wishing to describe as being able to invest.

A. They certainly link them, yes.

Q. They use the words that "We confirm that Mr. Desmond/IIU is in a position to make this investment." Now, you're an accountant; is it usual for accountants to make such a balanced statement unless they intend that that should be a statement that gives some comfort to the people reading it?

A. No, it's not usual. It is professional standards in writing things like that.

Q. So that would have been a letter of some substance and meaning when you read it?

A. Most definitely, yes.

Q. Now, in relation to the meeting of the 23rd which led eventually to directions being given to wordsmith the report in a particular way and the final report flowing, Ms. Nic Lochlainn was at that meeting, I was wondering if something she said might be of assistance

in asking a question of you. She said, on the last day the Tribunal sat before the most recent break, when talking about what was happening at the meeting, she said "I have a feeling that there was certain members of the group, I have a memory that the meeting was suspended at some point, and I have a memory of standing in the corner of the room with one or two of the three other members of other group. I can't say for certain who they were, but I have a feeling it might have been Jimmy McMeel and Fintan Towey. But in any case, my memory is that there was a clear sense of frustration, in that everybody was agreed that this was the result, and that the to-ing and fro-ing and the back and forth and the arguments were really in relation to presentation".

Now, given that's what she has put on the record for the Tribunal, when you were considering where things had reached, what did you think had happened at that point in time in relation to the outcome of the competition?

A. In my view, the opinion of the Project Group on the 23rd was that the result was as stated at that meeting, but that what was left outstanding was that the report, some people felt, was not in the standard of, let's say, the English language/formatting that they would expect to see from a report. And I think I said in my written evidence that that's possibly

because the people that wrote the report, Danish was their first language and English was only their second language.

Q. So far as you were concerned, is it fair to say that you believe that the result was now available, and subject to making the report presentable, that was really the job done?

A. Yes, I don't think anyone at the Project Group was unhappy with the result. I think everyone was happy with that result.

Q. Some people say the consensus was that you had the winner, and it was just getting the wording right.

A. Yes.

Q. I should have just at the end of the last question I asked you, I had shown you a document. I'll hand in a copy of the document now. I am not sure where this is. This is a document of the copy of a document of 5th May 1996 to the Department of Transport, Energy and Communications, and it's concerning Esat Digifone Limited.

And it reads as follows: "Dear Sirs

"Telenor Invest AS"

MR. COUGHLAN: I think it's the 15th May.

MR. NESBITT: 15th May.

Q. "Telenor Invest AS and International Investment and Underwriting Limited hereby confirm that in accordance with the terms of the shareholders agreement governing

the company, they have agreed to make good or procure that there is made good directly to the company pro rata to that shareholding in the company any shortfall which may arise in respect of the financing commitment of Communicorp Group Limited through its wholly-owned subsidiary Esat Telecom Holdings Limited to the equity requirements of the Company Limited to the amount specified in the business plan lodged with the tender.

"We believe that you have been already been provided with satisfactory assurances concerning the ability of the undersigned to meet their foregoing commitments".

That's signed "Telenor Invest and International Investment and Underwriting Limited".

Is that the sort of condition that you would have had in mind when the licence was being negotiated to assist with any fears about the ability to put additional equity investment in as the project rolled out?

A. Yes, it is, yes.

MR. COUGHLAN: Sorry, just if we could keep some order in this. There was no conditions in any licence. It's just the way the question was put. There were no conditions in any licence.

Q. MR. NESBITT: Now, if I could bring you back to the report. And I think, for ease of just illustrating the point I wish to make, if I can ask you to look at the draft report of the 18th October, and that is in

Book 46, Divider 46.

A. Yes.

Q. Now, much has been made of the fact that in the appendices to the first draft evaluation report and the the first draft evaluation report, there was an extract in relation to, or a table that described the weightings given to the criteria and the subdivision, and we have been through the debate that it didn't say 10, 10, 10 in relation to the first criteria and weighting of 30. And that is indeed true.

But if I could ask you just to look at the report proper, I think it's the case that in relation to the tables 16, 17 and 18

A. I don't have Table 17 here.

Q. Table 17 is on page 49.

A. I seem to be missing page 49.

(Document handed to witness.)

Q. MR. NESBITT: I just hope you are looking at the same page. I am looking for Table 17; do you have that?

It should be 49, but it may be a different page.

A. I have it on page 49, yes.

Q. At the bottom you see under the criteria market development, etc., you see market development 10, financial key figures 10, experience of applicant 10.

That makes up the 30 of the first criteria; isn't that right?

A. That's right, yes.

Q. And it must have been self-apparent to you, when you read that report, and it's the same table in the earlier report, that there had been this division of 10, 10, 10 of the 30 marks or the 30% for the first criteria?

A. As I said yesterday, I don't recall any conversation or any discussion over the split of the 10, 10, 10, but I do know that the first criteria was 30 in total.

Q. And you knew the second criteria was 20; isn't that right?

A. That's right, yes.

Q. You see there it's divided 10, 10?

A. Yes.

Q. So anybody reading this was not being left in any doubt as to how the weightings were being divided?

A. They are certainly not hidden, no.

Q. And you have no recollection of anybody making an issue of that, that meant leaving it the way it was was the wrong thing to do, or against the will of the group; is that right?

A. I have no recollection of that, no.

Q. I mean, I don't want to overlabour this point, but just listening to your evidence, you appear to be of the view that had there been difficulty, you'd remember it; and where issues are raised and everybody is happy, that that's right, you know, you let them pass by because they are not causing a problem?

A. Well, I would suggest it's a natural reaction for most people that if there was an issue on something, you'd remember it longer than if it was just straightforward.

Q. Very good.

There is a couple of final questions I want to deal with, but one flows from a matter you dealt with this morning, and I just want to make sure there is no ambiguity.

It was suggested to you, and maybe it was unintentional, that at a point in time, the Minister was aware of the ranking of the top two participants or the top two applicants. And that in some way meant everybody just back-pedaled and seemed to lose interest in doing their job in concluding analysing the result. Do you think that's a fair analysis of what you saw happening at the progress group?

A. No, it's a very unfair analysis. I don't know if that was said, but it wouldn't be the way I would describe it. There was a significant amount of work put in by the Project Group, even after that point in time.

Q. Insofar as you were there, and we have heard your evidence that although you were appearing as a sort of quasi part of the Department of Finance, you'd always wish a civil servant to be with you making the decisions, did you ever see any indication of somebody's will being suborned in the course of the



job they were doing in the grouping?

A. Absolutely not.

Q. Did you ever see anything that suggested the Minister was attempting to influence how the group was treating its task in trying to achieve an equitable result?

A. Not on this issue, and not on any other issue while I was there.

Q. Now, did anybody attempt to influence you or cause you to conduct yourself in a way that would have gone against the terms of the competition and the rules of the competition?

A. No, they didn't, no.

Q. Now, the final thing I want to ask you about is the extract from the Irish Times, and this is the extract of the 28th February that we had a little bit of time on this morning. And it's the one headed it's the John McManus report headed "Esat Seeks 30 Million in Debt to Fund Mobile Phone Network Launch", and it's in the discovery with a handwritten table behind it.

Now, I don't know if you feel able to answer this, but trying to examine the probabilities of when and why those two documents appear in your file at all, you were asked to do some work on IIU/Dermot Desmond towards the end of the licence negotiation; isn't that right?

A. On the 13th May, yes.

Q. Quite late. And I think you have described it, or

maybe you haven't, could it be fairly described as a sort of a desktop analysis or whatever you could get on to your desk in the time you had to do the job?

A. I think a desktop analysis is probably a fair summary of it, yes.

Q. And sometimes in the language of these things it's sometimes called a quick and dirty analysis; have you ever heard that?

A. Yes, I have heard it, yes.

Q. But the purpose of doing all these things is to take such information as you have and to try and come to an informed view as to what it means so a decision can be made; is that right?

A. That's right, yeah. I suppose in this instance to get additional information so that the Department could decide.

Q. So is it possible or probable that in the search for information, you might have asked for any press cuttings that were available that might give you some insight or knowledge of something that could be looked into to allow you complete your desktop analysis?

A. It's possible, but I have no recollection of actually requesting, let's say, press clippings.

Q. Would there be any sense in anybody having asked you around February, when this article was published, to do the diagram we see at the back?

A. To do it in May, or

Q. No, to do it in February.

A. I have no recollection of anyone asking me to do it before I don't have any recollection of anyone asking me to do it at all, but I have no recollection of working on this until the 13th May.

Q. So on the 13th May, somebody asked to you do something, and you did it. Up till then, you hadn't done any work like that?

A. No.

Q. So do you not are you willing to accept that then the probabilities must be that whenever this diagram came into existence, it is most unlikely to have come into existence at a date that the publication first took place?

A. Well, my view is I didn't do it before the 13th May. I can't remember doing it before

CHAIRMAN: Well, I did understand, nonetheless, Mr. Nesbitt to respond to me this morning that it seemed somewhat unlikely that a major article in a major paper would have escaped the notice of the entire Project Team, including himself and Mr. Riordan, the particular currency of it in February.

Q. MR. NESBITT: Well, in relation to your own knowledge of that, do you remember seeing that article at the time?

A. I don't remember seeing the article at the time, no.

Q. So if we talk about one member of the Project Team,

you put your hand up and say "I don't remember seeing that"?

A. I don't remember seeing it, no.

Q. So again, the probabilities are or the possibilities are that other people didn't see it?

A. I can't talk for what other people see.

CHAIRMAN: Maybe not your best point.

MR. NESBITT: I don't think it's anybody's best point on this article.

Thank you very much.

CHAIRMAN: Anything on behalf of Mr. Lowry?

MR. COUGHLAN: That's it, Sir.

CHAIRMAN: Very good.

Thanks for your attendance and assistance, Mr. Buggy.

That's what's available today, Mr. Coughlan. And obviously I am anxious that we don't lose momentum.

The intended next witness is Mr. Brennan, to deal with further aspects that have come up since his extensive evidence earlier in the year.

The two matters that arise is that Mr. Shaw, and as I accept fully, has made the Tribunal aware, is that there is some genuine difficulty over his absolutely immediate availability. In addition, the Tribunal has certain matters litigious that may be immediate that it has to address, and whilst I certainly don't contemplate any deferral beyond reasonably early next week. To give the exact day we'll be starting

we'll be taking Mr. Brennan next week; I think it's probably preferable to leave that and try and notify interested persons tomorrow.

MR. COUGHLAN: Yes, Sir.

CHAIRMAN: Very good. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL FURTHER NOTICE.