

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, BL

Instructed by: John Davis

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES: Mr. Richard Law Nesbitt, SC

Mr. John O'Donnell, SC

Mr. Diarmuid Rossa Phelan, BL

Instructed by Matthew Shaw

Chief State Solicitors Office

FOR DENIS O'BRIEN: Mr. Eoin McGonigal, SC

Mr. Gerry Kelly, BL

Instructed by: Eoin O'Connell

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Kelly Noone & Co.,

Solicitors

OFFICIAL REPORTER: Mary McKeon. SCOPIST: Ralph Sproxton

I N D E X

Witness: Examination: Question No.:

Martin Brennan Mr. Healy 1 - 180

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 27TH JUNE,
2003 AT 11AM.

CONTINUATION OF EXAMINATION OF MARTIN BRENNAN BY

MR. HEALY:

MR. HEALY: Mr. Brennan, I just want to deal with something that I perhaps could have dealt with already. It was mentioned in the course of Ms. Nic Lochlainn's recent evidence, and I wonder, do you have or can you be provided with Book 58.

A. I think I may have the document; I don't have the book.

Q. All right. I can give you one part of the document, perhaps the only part I am going to refer you to; it might be even be quicker, if you want, rather than refer to the book.

A. This is manuscript notes by Maev?

Q. Correct.

A. I have them.

Q. They are at Tab 5.

Now, Ms. Nic Lochlainn, in her evidence, made clear that the documents the Tribunal got were not tabulated in any form. They were simply documents that she pulled together from her file, that were in her file, not in any particular order. So it was somewhat difficult, until she sorted out the position, to ascertain precisely the order in which the documents were to be viewed. But we now, with the benefit of

her evidence, we now have a little more information about them, and also with the benefit of information provided by the Attorney General's Office.

The first document in the book, in the form in which they are contained in the book, is a note dated 29th August, 1995. Have you got that document?

A. Yeah.

Q. The top left-hand, it says "AG's Denis McFadden, Fintan Towey, Ed O'Callaghan and Maev Nic Lochlainn."

And that's a meeting about, as you can see from the document itself, about issues such as renewal of the licence, transfer of shares in the licence, restrictions on assignment or resale of the licence and so on, dealing with issues arising after the licence would have been granted, if you like, down the road, if you want to put it that way. That's the first three pages.

A. Yeah.

Q. Then the next page, which referred to another refers in fact to another meeting, is again headed on the left-hand side "AG office J.G." which I think means "John Gormley" "D. McFadden", and my copy is not clear to me now, but we know from Maev's evidence that it's Fintan Towey, MB Martin Brennan and herself.

A. Yes.

Q. And when Ms. Nic Lochlainn was giving evidence, she

wasn't able to put a date on it. She didn't have a date on it, and if you look at it, the top of the document seems to refer to the Post and Telegraph or Post and Telecommunications Acts, and there seems to be a suggestion that there might be a constitutional challenge if the disposition of the licence was handled in one way rather than another way. There is no particular significance, because we know that ultimately it was decided that the Government effectively would hand out the licence, not the not Telecom under any of its exclusive privileges.

A. Yeah.

Q. Then underneath that, there is a heading "Legal advice to Government
" mad not to follow analysis/expert or expensive advice", Ms. Nic Lochlainn said that meant.

Underneath that

"Political pressure awesome.

"Question of renewability.

"Question of mobile is in Section 87.1 exclusive privilege.

"Minerals Development Act."

That again seems to deal with that issue I mentioned a moment ago of whether Telecom Eireann had the granting of these licences or not, and that was resolved, ultimately.

Because of the content of that page, when Ms. Nic

Lochlainn was giving evidence, I thought that dealt with issues that arose way back in March, or early in the year. I thought that sort of those sort of bigger issues, I recalled from your evidence, had been dealt with then, and I was trying to I was suggesting to her that that was roughly the date on which it arose, but she couldn't remember.

A. Mm-hmm.

Q. Now, since then the Tribunal has obtained a document from the Attorney General's Office from Mr. John Gormley from Mr. McFadden, I beg your pardon. And what the Tribunal got was a note referring to a meeting with you, Mr. Towey and Ms. Nic Lochlainn, with reference to a draft licence and renewal, and that seems to tally with the issues identified by Ms. Nic Lochlainn on her note. And the date of that note is the 25th August, 1995. Do you have that note?

A. I do.

Q. Do you have the hard text of that?

A. Yeah.

Q. So I was wrong in my thinking that this or my suggestion that this might have occurred much earlier in the year. It now seems to have occurred much later, on the 25th August of 1995. And I was speculating as to what "political pressure awesome" meant in the context of those issues arising well in advance of the final, if you like, crystallisation of

the licence terms; and I thought it referred to I think what I was describing as macro political pressure, the parties locking horns with one another about this issue in general as opposed to political pressure being brought to bear on a Minister to behave in a particular way. Obviously my speculation has to go out the window now, in one sense at least, because I am wrong on the date.

Can you tell me, firstly, what you recall, if anything, about the meeting?

A. I'm between recall and refreshed, if you like, in terms of the meeting, but the fact is that the meeting took place within three or four days of me coming back from my holidays. And I suspect what was I am fairly confident what was going on was Mr. Towey was using the slack period to do some preparatory work to get it out of the way, and he was experiencing difficulty getting progress with the Attorney General's Office, and I was wheeled out, from the clout of my extra grade, to try and accelerate the matter. And that at the start of the meeting, in its almost gossipy way, I was kind of asking, what advice would the AG give the Government if this final report goes to Government? And in that context, I was speculating that there could be awesome political pressure around the decision.

Q. Around which decision?

A. Around the decision to be made by the Government about the award of the licence.

Q. You mean the decision that we're talking about here in the Tribunal?

A. Yes.

Q. Right, okay. And what was the relevance of political pressure being awesome to the role, if you like, that you were asking the Attorney General or the Attorney General's advisers to play at this point? I don't quite understand the point you're making.

A. I think what I was saying to Mr. McFadden and Mr. Gormley is, at some stage down the line, this decision will be coming to the Government for making, and if it was contentious, what advice would the AG give the Government vis-a-vis the process? What flexibility would they have around the decision? That kind of speculative conversation. And I was also speculating that there could be pressure around the decision at the time.

Q. Maybe I am I think it's my fault that I am not completely following this. Correct me if I'm wrong. Do I understand you to be saying that you were impressing, would that be the correct word to use, on the Attorney General's Office that you wanted to get this done because when it came to making a decision on the licence, it was a decision in which a lot of political pressure would be brought to bear?

A. No, I am separating the real substance of the meeting was about renewability and about the section of the Act and so on.

Q. Right. I follow that.

A. And I think that before we got down to that discussion, I was engaging in a speculative way with the people concerned in the Attorney General's Office as to what would be the likely advice that the AG would give to the Government at a time when the final decision about the GSM licence came to be made. And I think I was speculating, or maybe they were speculating that there could be political pressure around the decision at the time as well.

Q. All right. Okay. It's not a description, is it, of a historical event? This may be just a small point: It doesn't say "awesome political pressure"; it says "political pressure awesome". Do you follow that? In other words, describing either the current state or the past state of affairs?

A. Well, I am fairly confident that what I am saying about it is accurate.

Q. I think, in any case, it wasn't the first time that in the course of this process you alluded to the extent to which there would be pressure brought to bear; isn't that right? Remember we discussed that?

A. I think I talked about political intriguing in the preparatory phase of the licence where Telecom

Eireann, perhaps, were you know, using their political contacts and maybe using their trade unions to interact with the political system. We certainly discussed that before.

Q. Do you remember the note of the meeting that took place after the presentations in which I think you're recorded as having said that, you know, there should be no more contact with the applicants, but you couldn't stop access to the Minister; remember that?

A. I remember those words appearing, yeah.

Q. And you may be aware that, I think, Mr. Billy Riordan's notes of that meeting show that what was being referred to there was political pressure coming on-stream at that point, or lobbying occurring on or after that point. Do you remember that? Are you familiar with his evidence?

A. I am not, really, no.

Q. Well, do you recall at that meeting, when the question of access to the Minister was mentioned, was that am I right in thinking that was mentioned in the context of political pressure being brought to bear on the Minister, or lobbying coming into play?

A. I suppose it had to be in the context of lobbying, yeah.

CHAIRMAN: I think Mr. Buggy had also agreed with me that it may have related to his phone call from the Minister, when the Minister might have been looking

for you and had

A. Sorry, you said "Mr. Buggy"; Mr. Towey, I guess?

CHAIRMAN: I beg your pardon; Mr. Towey.

Q. MR. HEALY: That would be a similar type of thing, is that right?

A. Sorry, I don't understand the question.

Q. Is that another example of what was being discussed at the meeting after the presentations, i.e. the type of pressure that might be brought to bear at least the type of lobbying that may have prompted the telephone call to you, but which was taken by Mr. Towey?

A. I didn't actually recall that until I saw it in evidence, to be honest. I think it was kind of a general statement that you know, while we can all put walls around ourselves, we can't put walls around the Minister, you know.

Q. But I presume that the reference to the Minister must have been made in the context of some consciousness of the Minister having already made inquiries which would seem to be connected with political lobbying?

A. I wouldn't necessarily say that. I mean, it's clear, for example, that several of the State bodies were represented in consortia and would have other contacts with the Minister, and you couldn't you just couldn't stop those kind of contacts. And

Q. Why mention the Minister at all?

A. I don't know.

Q. We know from Ms. Nic Lochlainn that she only seemed to record what she regarded as or what was regarded as important at these meetings, and some importance seems to have been accorded to this reference, because it's mentioned by a number of people: by Ms. Nic Lochlainn, by Mr. Riordan, by Ms. Nic Lochlainn in the formal note.

A. Yeah.

Q. Was it an acknowledgment that when the Minister was going to have access to us whether we liked it or not, that we were going to have to respond to queries he addressed to us, whether they came as a result of lobbying or not, while we ourselves were not going to deal with applicants directly?

A. Without seeing the exact words, I'd be hesitant to comment on that; but I thought it was more in the context of we couldn't prevent outside parties from interacting with the Minister.

Q. Now, can I just refer you to another document that's come to light recently. I think it's in it's a document provided by Mr. Owen O'Connell. It consists of a fax cover sheet from Mr. O'Connell to Mr. Denis O'Brien on William Fry notepaper of the 17th November, 1995. I'm getting it put on the overhead projector, but I think you probably have a copy of it.

A. I have, yeah.

Q. That's what's contained on the front page. The next

page is a draft letter addressed to you, and the final page is simply the second page of the draft letter.

Now, one assumes from the cover sheet that what it is is Mr. O'Connell drafting a letter on behalf of Mr.

O'Brien. It seems to have been written on behalf of Esat Digifone. It doesn't seem that this letter was

ever sent. The reason I am drawing it to your

attention is that it refers to a conversation, and it

is as a record of a conversation that I am drawing it

to your attention.

Now, firstly, I'll just read it out.

On the top left-hand corner it says "Draft 17.11.95

3:58pm." Then it has Mr. O'Connell's reference.

Underneath that it says

"Dear Martin,

"I am writing to confirm our conversation of today

concerning shareholdings in Esat Digifone.

"Esat Digifone is, and will continue to be, owned and

controlled by Esat and Telenor. Esat is in turn owned

mainly by myself and Advent International; it is

likely that in the course of funding the GSM project

we will introduce new institutional finance, and

indeed we are already negotiating this with CS First

Boston. Telenor is, of course, the Norwegian national

telecom operator.

"Our bid made it clear that Esat Digifone would also

seek minority financing by public and institutional

investors. In preparing for this financing, we have been advised by International Investment and Underwriting Limited, who have also agreed to underwrite the finance, i.e. to locate investors on behalf of Esat Digifone and itself to take up any shortfall.

"(Given the fact that IIU is publicly identified with Dermot Desmond, some publicity may ensue. I thought it important that the facts of the matter should be made clear, of which the most important seem to me to be firstly that Esat Digifone comprises and is controlled by Esat and Telenor, and secondly that IIU are its advisers and underwriters.)

"If you would like any further details, please let me know; in any event, our ongoing licence discussions will, as you have made clear, cover the question of present and future control of Esat Digifone."

Now, as I say, I don't know whether the letter was sent; I presume you can confirm whether you got it or not, in any case.

A. I am assuming it was not on the Department's records, that it never arrived.

Q. Well, you can see that it purports in any case to refer to a conversation of some kind, and I think I drew this to your attention I didn't draw this letter, I drew the potential of such a conversation to your attention when you first gave evidence, I think

much earlier in the year, and maybe I'll just put that in context before I ask you anything else about the letter.

I would have drawn to your attention a document contained in Book 49, Leaf 90 you won't if you haven't got it, don't worry; I'll put it on the overhead projector.

This is a note, a memorandum on William Fry notepaper.

It's an attendance; in other words, a note to the file made by Mr. Gerry Halpenny, who was I think then solicitor for Communicorp, according to the document, in any case. You probably can't see it on the one on the overhead projector. It says "Client: Communicorp matter: Esat Digifone".

Then underneath that I think that what's on the overhead projector is the second page.

Now we have the first page. It does contain the things I was referring to. You can see the people at the meeting are Richard O'Toole, Peter O'Donoghue, I think that's Knut Haga, Per Simonsen and Arthur Moran, if the document is moved to the left, and Mr. Halpenny himself.

It says: "Position re the Department IIU not a problem for M. Brennan in the Department", then an arrow, "Main concern that DOB and Telenor involved on the operational side." Do you see that?

A. Yeah.

Q. And I think the last time I asked you about that, you said you may have had conversations around that time but that the only person you would have had conversations with was Denis O'Brien?

A. Okay.

Q. Now, it's not entirely clear what is meant by "Position re the Department IIU not a problem for M. Brennan in the Department".

Firstly, can you recall a conversation with Mr. O'Brien around this time about IIU?

A. I can't recall a conversation about IIU. I think what I said before, and what I think I recollect is that I got a call, and it may well have been from Denis O'Brien, would it be a problem for the Department if we were to change our brokers? That's the kind of context I put on that before.

Q. I follow, yes.

A. That's all I can help you with.

Q. That would simply mean Davys stepping out and somebody else coming in?

A. Yeah.

Q. Hardly a matter of huge concern?

A. Yeah, and even if IIU was named, it wouldn't necessarily have meant anything to me, and I don't know that they were named.

Q. Right.

A. I'm wondering about the word you said, "Position in

the Department". I am wondering, is it "position"?

It's not very clear.

Q. It's "Position re the Department"; that's what I am thinking, sorry.

A. It probably has no significance anyway.

Q. I certainly wouldn't stick you to it. It mightn't mean it's not clear whether it's POS or PO something else. Anyway, I agree with you, it doesn't seem to hugely affect the matter. And of course, I don't know Mr. O'Brien's side of this conversation.

A. Yeah.

MR. MCGONIGAL: Just in relation to that, Mr. Chairman, two letters, one to Mr. O'Connell and one one in respect to Mr. O'Connell and one to Denis O'Brien and they replied today, one indicating he was on holidays and the other that he was tied up and that they would respond when they had time.

MR. HEALY: I wasn't aware of that. I think the replies came in today.

A. I didn't catch

Q. MR. HEALY: We have I think what Mr. McGonigal was saying was that Mr. O'Brien is not he is obviously otherwise engaged at the moment, with the Special Olympics, and I think Mr. O'Connell is not available. We anticipate getting more information about them, but...

A. Okay.

Q. If you look at the letter, what it suggests is that it was written by Mr. O'Connell, on his client's instructions, as a formal letter then to be sent by his client in in this case by Mr. O'Brien, to you; and I just want to go through it just in case any aspects of it might stimulate your memory.

It says "Esat Digifone is, and will continue to be, owned and controlled by Esat and Telenor. Esat is in turn owned mainly by myself and Advent International".

That's a reference to Esat Telecom. You understand that distinction?

A. Yeah.

Q. "It is likely that in the course of funding the GSM project, we will introduce new institutional finance, and indeed we are already negotiating this with CS First Boston."

What that seems to suggest is that Esat Telecom, if you like, Mr. O'Brien's one of Mr. O'Brien's vehicles, is negotiating the introduction of new institutional finance, which would mean, presumably, that Advent, as its institutional financier, was going out and being replaced by CS First Boston.

A. Yeah. I mean, I don't want to be pedantic about it; again, it's one of these things, it could mean in addition to Advent or in replacement of Advent. It's a thing of no significance, but

Q. Yes, it could be, it could mean that, yes. If it

means that we are introducing new institutional finance in place of Advent, that would mean the situation was completely different to what had been represented at the presentations; isn't that right?

A. Yes.

Q. And on either interpretation, if that discussion had taken place, is it one that you would have probed a little?

A. It's hard to say. I mean...

Q. Well, let's put it this way: If the discussion that took place was along the lines of one of those two interpretations, the one I have just suggested, and if it was in clear terms, Advent are out, wouldn't that isn't that something that you'd have wanted to probe?

A. I don't know, I mean, we are talking now about a period after the

Q. We are talking about two months after the presentations, when you'd been told that Advent was a supplier of the $\frac{1}{2}$ 30 million that Communicorp were going to use to fund their end of the project.

A. Yeah, I suppose it would have been noted as something we'd have to ensure that what comes out at the end of this is as robust.

Q. It goes on: "Our bid made it clear that Esat Digifone would also seek minority financing by public and institutional investors." Now, aren't I right in

saying at the presentations, you were informed that the public or that the institutional investors were already in place?

A. From memory I would say that's correct in respect of 20%, but there was a declared intention to go a further 12% possibly two years down the line.

Q. That was away down the line, yes, of course.

A. But in the context of this letter, it could be encompassed by it.

Q. That's true. That's a possible interpretation. I'd have to accept that. Assuming for the moment it means that, or if you were told "We're not running with Standard Life, IBI or AIB", that would have been another deviation from what you'd been told at the presentation; isn't that right?

A. Yeah, we spent a lot of time on this when I was here before along the lines

Q. I'll just ask you that question: Would it deviate from what you had been told at the presentation?

A. I am not sure that it would, actually.

Q. All right; if necessary, we'll get out the transcript. You're suggesting that you weren't told at the presentation that IBI, Standard Life and AIB were in place?

A. I am trying to recall. I mean, you and I have had long exchanges about the question of what was the application, and the application

Q. I didn't ask you that. I said what were you told at the presentation?

A. Well, you see, I can't separate in my mind the various bits; but the application, I have always said, was 50/50 with 20% to be placed, and that 20%, an indication given of the kind of people who were prepared to take it. I don't think it was ever argued that they were locked in, or anything like that. So in that sense, if it was different institutional investors. And I mean, this clearly became part of the discussion six months, seven months later.

Q. I wonder, can that be right, Mr. Brennan? I thought I showed you the transcript of the presentation, and I don't think anyone else who was giving evidence formed the view that you formed. I'll get it I'll call it up. But I don't think Mr. Towey had that view.

My clear recollection, and I may be proved wrong, is that at the presentation, it was made clear both by Mr. O'Brien and by Mr. Johansen that the Irish institutions were on board, and they were mentioned on two fronts: not just a showing that they had substantial institutions supporting their application, but that they were Irish institutions, and this was emphasised to underline the Irish flavour. Maybe it wasn't making any impression on you but in terms of the facts was emphasised to underline the Irish flavour of the application. Do you not remember that?

A. I suppose I am struggling to separate what was said in the presentation, what was contained in the application, and all the discussions we have had about it since.

Q. Okay. Well, I'll get it, I'll get it brought up, and we'll look at it in a minute. We'll just go on a bit.

"In preparing for this financing, we have been advised by International Investment and Underwriting Limited, who have also agreed to underwrite the finance, i.e. to locate investors on behalf of Esat Digifone and itself to take up any shortfall."

Now, what that says in the first sentence is that IIU are coming in. It doesn't actually explicitly say in place of Davys; do you see that?

A. Yeah.

Q. But I suppose if you'd been told in a telephone conversation that it was in place of Davys, then you wouldn't be surprised to see it put in those terms here?

A. Yeah.

Q. But if what you had just been told in a telephone conversation was that IIU were coming in in place of Davys, and nothing else, you wouldn't have known that they were going to locate investors, and also themselves, or itself, take up any shortfall?

A. Yeah.

Q. Did the reference to IIU ring any bell with you, leave

aside what's in the letter now, when Mr. O'Brien spoke to you?

A. I can't even confirm that he named IIU.

Q. I see. He may have just said "I am going to change brokers"?

A. Yeah.

Q. All right.

A. I then said if he did name IIU, it would have meant nothing to me in terms of who owned it or anything like that.

Q. I see. But would the name itself have rung a bell with you, in light of the letter that you and Fintan Towey had discussed on the 29th September?

A. I don't believe it would, no.

Q. You had attached some importance, presumably, to that suggestion you had in September October, in fact, wasn't it, the 2nd October you had a discussion?

A. Yeah.

Q. I suppose that was a fairly important discussion, because you were deciding to exclude material. Do you think it wouldn't have do you not think that IIU would have rung a bell if you heard it again?

A. I don't know for sure that I heard it then or that I heard it at this stage.

Q. You don't know you can't recall that you heard it on the 29/9/95?

A. I can't, no.

Q. I see. If you were told simply by Mr. O'Brien, "We're changing brokers", and was that okay with you, and you said "Fine, that's no problem", if that's all that was said to you, then obviously of course IIU wouldn't have been mentioned. But if Mr. O'Brien is ringing you up to tell you that "We're changing brokers" and going to the trouble of informing you that this change was taking place, it was presumably on the basis that it had some materiality, even if only very, very limited materiality, changing one, if you like, mechanical part of the application; would that be a fair way of putting it?

A. You see, to some extent this letter I mean, I am not a lawyer

Q. I am not asking you about this letter.

A. The letter amounts almost to hearsay at this stage

Q. I am not asking you about the letter at all for the moment. I am asking you about your own recollection of, if you had a discussion, it would have been simply to the effect that brokers were being changed we'll forget about we'll assume for the moment the conversation was as simple as that. No mention of IIU, no mention of Davys or anything.

A. Yeah.

Q. I am saying that in informing you of that, you were being informed of something which was of limited materiality, but of some materiality.

A. Yeah.

Q. And you were being asked would that be okay, is that a problem?

A. Yeah.

Q. It's a purely virtually an almost purely mechanical change?

A. Yeah.

Q. Of very limited materiality. The notion of IIU or Mr. Desmond being a member of the consortium would be of undoubtedly critical materiality; isn't that right?

A. It would be of a different order, yes.

Q. The fact that the banks or the institutions were definitely out would have been of an order of materiality higher than merely a change in broker?

A. Yeah, I think that's true, too.

Q. And likewise, if, on one interpretation, Advent were out, that again would have been a higher order of materiality to a change in brokers?

A. Yeah, they are all things we would have had to look at.

Q. We know that when some of this information was formally brought to the attention of the Department, you started working on it right away. I think you said it went up to Mr. Loughrey?

A. Yeah.

Q. So are you telling me that if this letter records a conversation and it might not record a conversation

containing this content; do you follow me?

A. I do, yeah.

Q. You don't remember any sort of conversation?

A. I don't remember a conversation of that detail.

Q. And it's a conversation that you would have remembered?

A. I think it probably is, yeah. And I mean, you'd have to wonder was I being asked about the change of broker so that I could tell the other people that we weren't concerned. You know, that could well be the context of the conversation.

Q. Yeah. And if what was being relayed to the meeting in William Fry's, that IIU wasn't a problem for you, that would have been, you think, on the basis of a conversation in which you were simply told brokers were being changed, maybe not even IIU's name even mentioned?

A. Yeah, I think so.

Q. Just one thing you said a minute ago prompts me just to go back to the letter of the 29th, when you say that you can't recall if the name IIU was mentioned then. That letter was addressed to you personally; isn't that right?

A. That's correct.

Q. And I think was it not sent to your personal fax, or is there a personal fax for you or was there a personal fax?

A. No, there wasn't.

Q. And it was signed by Michael Walsh?

A. Yeah.

Q. And I suppose if a letter came in for you, apart from discussing the issue of principle, whether you would consider it or not as part of the project or whether you would do anything on foot of it, whether you would make further inquiries or not, surely it stands to reason that if a letter comes in for you and somebody is telling you about it on the phone, you'd ask, like anybody would ask, "Who sent me the letter?"

A. I can't confirm that I asked the question.

Q. Well, let's assume for the moment that in the ordinary way, isn't it the kind of question you'd ask I have got a letter from somebody

A. It probably is, yeah.

Q. If the letter had come from some completely unknown third party, you might have had to say "This is nonsense; who are these people? I don't know what they are; I don't know what this is about".

A. Yeah.

Q. This letter came from a person who was at least his name was known to you: Michael Walsh. Isn't that right?

A. Yes.

Q. And if Michael Walsh's name was mentioned to you, isn't it likely, again, as a matter of common sense,

that you'd have said "Why is he writing to me? What's this about?" It seems hard, doesn't it, to credit that you wouldn't have said, "Look, who is he? He is with some outfit called IIU."

A. I don't know. I mean, I have no more recall about the conversation.

Q. Oh, I appreciate that. I am just staggered that I suppose you isn't it reasonable to assume that you'd have found out who he is, what company or what organisation he is with, on what basis is he writing to us? They seem like ordinary things you'd ask, especially if you were involved in such a serious process as this and you were going to reject this letter. Isn't it unlikely that you wouldn't have checked out who wrote it? Where he was from? Would it be unreasonable of me to think that you did all of that?

A. As I said several times, I don't believe I saw the letter, and I don't believe that the conversation I had with Fintan Towey was as detailed as you seem to think it must have been. I don't think it was that detailed.

Q. All right. Now I just want to ask you about another document. It's a letter that came in from KPMG that was mentioned in the course of Mr. Buggy's evidence yesterday, and there is one other thing I want to ask you about Mr. Buggy's evidence.

Do you remember I was asking you yesterday about how Mr. Buggy came to use the word "unencumbered" in that document?

A. Mmm.

Q. In particular in the context of what we agreed was the significance of the use of that word. And I mentioned to you that he thought it had come from you or Mr. Loughrey, and we were speculating about that?

A. Yeah.

Q. And I had a look at his evidence, and what he said was if "unencumbered" had been raised at any of the meetings that he had at which you were present, i.e. "We want a statement that your assets are unencumbered", he thinks that he would have noted it like he noted the other major things that happened, and that if it had been raised at a meeting, it would have been contained in the letter; do you follow me?

A. Yeah.

Q. And I think he also said that he had no further contact with Mr. Farrell or Mr. Walsh other than the contacts he had in your presence, and that any other information he had got, he got from you or Mr. Loughrey?

A. Yeah.

Q. Now, if, in other words, if we exclude Mr. Buggy as the source of that proposition, can we exclude you as the source of it?

A. I think you can.

Q. Okay. I want to refer you to another part of Mr. Buggy's notes. This is Book 44, Leaf 221. Now, there is no subdivision of the documents in this leaf, so I'll just have to go through them to bring you to where I want you to look at something.

The first document is a typed memorandum, three pages?

A. Yeah.

Q. The next document is the transcript of the note of Wednesday, 8.30am, 15/5. The next is the transcript of 8.30am meeting with Michael Walsh, 15/5. The next is a meeting with Pearse Farrell, 14/5; do you see that, or is that the way they are in yours?

A. They are the other way around, but it's okay.

Q. All right. Just so that we are ad idem, it's headed "GSM2 meeting with Pearse Farrell 14/5/96, 10.30am." You have that one?

A. Yeah.

Q. There are five bullet points. Do you see the fifth bullet point?

A. Yeah.

Q. "Need to clarify that IIU are underwriting Communicorp as per agreement of the 29/9/95."

A. Yeah.

Q. Now, I think when Mr. Buggy was being asked about that, I think he agreed that it was the Department's need to clarify seems to follow?

A. Yeah, okay.

Q. Do you recall at that point seeing an agreement of the 29/9/95?

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

Q. I want to refer you to another document which arrived in around the same time, and which in fact, helpfully, Mr. Buggy also remembered in the witness-box. This is at Leaf 214 of the same book.

Do you see this is a letter from KPMG of the 9th May, 1996?

A. Sorry, did you say 214?

Q. 214, yes.

A. I have a 214 is

Q. I beg your pardon. I can refer you to it very easily; it's the second-last document. It forms part of a series of documents covered by a covering letter sent to you following a meeting, I think, on the 3rd May, when you were looking for a whole load of supporting documentation.

A. Okay.

Q. And the first document is the covering document. And this is one of the documents sent to you.

It's the first document is addressed to you, but this document is also specifically addressed for your attention.

It says "Dear Sirs

"Communicorp Group Limited (the company)

"We act as auditors to KPMG Group Limited. We have been requested by the directors of the company to write to you to confirm the following matters in connection with their joint application through Esat Digifone Limited for the second GSM cellular mobile licence.

"1. The company has appointed CS First Boston as exclusive agent for the purpose of a private placement in its subsidiary, Esat Telecommunications Holdings Limited. The placement is being offered in the USA to a limited number of institutional investors.

"2. The amount of funds expected to be raised in the placement is at least 22 million.

"3. The placement process is at an advanced stage and is expected to complete shortly.

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

Now, one assumes that that is the document which prompted Mr. Buggy to say that he needed to clarify that IIU were underwriting Communicorp.

A. Yeah, it looks like it, yeah.

Q. Now, he also has a note which says "Appears to cease once shareholders agreement signed (clause 2) but superseded by underwriting agreement in shareholders agreement", and I can't read the rest of it.

Sorry, I am told that this means "A signed letter from Telenor and IIU", I think.

Now, presumably, that was the clarification he got; do you understand me?

A. Yeah.

Q. And he made a note of it, but this also seems to be, to some extent, something that touches on the introduction of IIU into the picture and puts it right back to the date of the letter of the 29th September, 1995. But it doesn't seem to have been followed up on; do you notice that?

A. I do, yeah.

Q. And that issue that we discussed yesterday, hammering down the paper trail, does that seem to have been sidelined completely, or what, at this point? This would have been part of the paper trail, wouldn't it?

A. This would have, yeah.

Q. And the letter the document of the 29/9 would have been part of the paper trail, wouldn't it?

A. Yeah.

Q. But is it possible that because of the time pressure, that whole issue was demoted to the point where it disappeared off the radar screen, if you like, because

you were trying to check out IIU's finances?

A. I guess we were trying to check out IIU's finances and the strength of the consortium.

Q. But the paper trail that Mr. Towey indicated had to be nailed or hammered down seems to have been sidelined as a priority, doesn't it?

A. I don't know the extent. I mean, the extent to which you go down every avenue when you're

Q. Sure isn't there a contradiction between what's contained in the KPMG letter and what you'd been told earlier?

A. I just don't remember being conscious of such a contradiction at the time.

Q. Do you remember the letter we were discussing yesterday, the one to AMI which followed, if you like, the contract negotiations you had on the 14th September?

A. Yeah.

Q. Those contract negotiations don't seem to have been brought to the Project Group meetings in a specific way; is that right?

A. Yes.

Q. And that letter wouldn't have been circulated at a meeting, but the content of it was nevertheless discussed at the meeting, wasn't it?

A. Yes.

Q. In a sense that at the meeting, everybody knew that

you were still on track for the end of October. They mightn't have had the 25th, but they knew it was the end of October, and they knew you were on track for the 3rd October and the 17th October; didn't we discuss that yesterday?

A. Yeah.

Q. The Minister, presumably I think you said yesterday wouldn't have got that letter, but he would have been aware of what your general time line was, presumably?

A. I think I was drawing attention yesterday in a note that you had on the screen over Mr. Towey's hand of the timetable, at least up to the 16th or 17th October, that that was specifically sent to the Minister.

Q. Yes. Now, I just want to clarify, as I said to you yesterday, your contacts with the Minister. Just before I do that, I might mention one other thing that arose out of Mr. Towey's evidence.

Mr. Towey, in his evidence, said that he didn't regard the extent to which the process was insulated as preventing the Minister from asking him any questions to which he would have been entitled an answer or any information. And Mr. Loughrey didn't take that view.

What was your view?

A. Insofar as I had a view at the time, it's hard to recall it now, but I mean, I think you asked me a long, long time ago whether a civil servant would a

civil servant the relationship with the Minister of the day would be based on a presumption of integrity, and I think I said yes. We are talking about the Minister who appointed us to do the job. So I think I would have known if I was getting improper signals from the Minister; let's put it like that.

Q. You feel that you would have provided him with responses to his questions, but that if you felt that do I take it that if you felt that you were getting a signal that the Minister was looking for information which for which he wouldn't have any good reason to ask you? Would that be right?

A. If I thought he was looking for information to pass on to somebody else, or something like that, I would have had to consider the matter and probably acted on my instincts, if you like.

Q. I think the first set of contacts you had with him were soon after the applications came in, and you I think you said you told him that you had six applications and that you either told him it was three and three on one occasion and two, two, two on the other, or else you told him on one occasion, I think they break down to three, three or two, two, two. Would that be right?

A. No, I think the first conversation and it probably was within about a fortnight of me coming back off my holidays the first conversation was along the

lines, "Have you read the applications?" "Yes, I have". "Are you satisfied that we will get a good licencee out of them?" And my answer was "Yes". That was the first conversation I recall.

The next conversation, then, was the one where I said three, three or two, two, two, or whatever. I can't date that.

Q. Well, the first conversation you had seems like a perfectly understandable one: Is this process going to work?

A. Yeah.

Q. Right. The second one, he wanted to know how it was going, and you told him you gave him a breakdown to some extent, but you didn't give any more information?

A. Yeah.

Q. You didn't identify any of the people who were in any of the categories you mentioned?

A. I don't believe I did, no.

Q. Do you remember that, or do you recall in Mr. Towey's evidence where Mr. Towey mentioned that in your absence, a phone call from the Minister in which the Minister was looking for you was relayed to him?

A. Yeah.

Q. And the Minister, he believed, indicated that he was under some pressure to ensure that a genuine evaluation process was underway and that the result was not a foregone conclusion; do you remember that?

A. I read that evidence, yeah.

Q. And Mr. Towey thought that the he had the impression that the telephone call was coming from some kind of public place because there was a lot of background noise; he thought it might have been a race meeting or whatever. And he said the Minister didn't mention any applicant by name, but that he said that he was under pressure in the sense that one of the consortia had the view that the competition was sown up, and that the media favourite for the competition had the licence in the bag, so to speak. You are familiar with that evidence?

A. I am familiar with that evidence, yeah.

Q. And I think Mr. Towey said that meant that the Motorola consortium was the one that was the media favourite. That's what he assumed that to be, I think.

A. I am aware that he said that.

Q. The Motorola consortium. And Mr. Towey says that in response, he made it clear that the competition hadn't reached that stage of finality at all, that there were a number of players in the game; and he says that he can't say for certain whether or not he mentioned the top two or three at that point, but that the Minister seemed to be satisfied with the information he got. And he says he believed that the Minister said he would speak subsequently to Martin Brennan.

Let's just take the two stages of that. Firstly, do you recall having a subsequent conversation with the Minister along similar lines?

A. I have the recall that I have talked about before; at some stage after the Copenhagen meeting, and I don't know how many days after the Copenhagen meeting, that I had some conversation with the Minister. I had thought that I hadn't given him the rankings, and the evidence suggests that I did. That probably had to be in the early days of October.

Q. Yes, I realise that. But Fintan Towey says that this conversation took place when, presumably, that degree of finality hadn't been reached, and I think time to put a time on it, it was sometime in September, which was probably before or after it must have been presumably just before, during, or after the presentations, but before Copenhagen?

A. Yeah.

Q. Can you recall in that time span the Minister having a conversation with you which alluded in any way to the conversation he had had with Fintan Towey?

A. No, I have no such recall.

Q. Am I right in thinking that you did discuss that conversation with Fintan Towey, or he discussed it with you?

A. Well, Fintan Towey said that, and I take his word for it. I don't have a recall of it.

Q. Now, during the presentations, or just after them, it would appear from a statement the Tribunal has received and which has yet to be given in evidence that Mr. Lowry had access to some information concerning how one of the consortia had fared at the presentations and that he relayed this information to Mr. Tony O'Reilly at the opening of the Galmoy mine?

A. Galmoy, yeah.

Q. And I think we have been over that ground, I am not going to go over it again, as to how he got that information and whether he got it from a conversation with you or not. I think you had no such conversation with the Minister.

I am drawing it to your attention because of evidence given by Mr. Colin McCrea about another matter, where Mr. Colin McCrea says that he recalls having a conversation that he thinks that he had with you, in which you were discussing one of the presentations with him and in which you said to him that some of the bidders didn't perform terribly well at the presentations, and in particular that the Bord na Mona consortium hadn't acquitted themselves very well. I think he said that he had that conversation with you when you were going to see the Minister.

A. I am not familiar with that evidence at all.

Q. I'll just read it out to you. 4th April, Day 208.

I'll read it out. It's Day 208, page 36. I'll put it

on the projector as well. I'll read it slowly.

Question 204, at the bottom of page 47.

The bottom of that page:

Question: I appreciate that. Mr. McCrea, you can only do your best.

Answer: So I do recall it being said that some of the bidders didn't perform well.

Question: I see, yes. Who do you recall indicated that to you?

Answer: Well, I don't recall, but I would assume it was, it was either Martin Brennan, or, probably Martin Brennan.

Question: Right. Do you recall relaying that to anybody else?

Answer: Oh certainly not.

Question: You wouldn't have relayed it to Mr. Lowry?

Answer: No, there would have been no need.

Question: You see, Mr. McCrea, now I just want to be clear in relation to the presentations.

You say that Mr. Brennan told you that the presentations were being organised, he told you about the equipment that was being installed for security purposes, is that right?

Answer: I think the sequence is slightly different. I think I knew the presentations were taking place and that I think afterwards

there was this, there was this comment about the sophistication of the monitoring equipment.

Question: And where did that comment to start with, I think your evidence is that the comment was made to you by Mr. Brennan, is that right?

Answer: I believe so, I believe so.

Question: And do you recall when and where it occurred?

Answer: Well, I it can only have occurred during the time of these meetings or immediately after these meetings. It could have been that day or it could have been the next week. So I don't that's the when. I don't know the dates. I don't know the where. But it was, it wasn't a meeting; it was an encounter.

Question: Tell me, was your office near Mr. Brennan's office?

Answer: No, my office was near Michael Lowry's office. I don't recall where Martin Brennan's office is.

Question: Was that on the same floor as the room in which the presentations were being held?

Answer: No, it wasn't.

Question: It was on another floor?

Answer: I think I was on the fourth floor, I think that these meetings took place on the

second floor.

Question: I see. You say that there was an encounter at some stage after the presentations?

Answer: Yes, because I became aware of this. I didn't have a formal meeting about it, so it must have been a casual encounter.

Question: And in relation to the impressions that the participants made on the Project Group, can you tell me exactly what was said to you by Mr. Brennan?

Answer: In relation to the quality of the presentations, the impression?

Question: Yes.

Answer: No, I can't. Because I have a general recollection of one of the consortium, one of the bidders and hearing that they didn't do well.

Question: And which of those bidders was it that you were told didn't do well?

Answer: I don't know the name of it, it was one that involved Bord na Mona.

Question: I just want to back to the encounter again, Mr. McCrea, I am going to have to press you on it further. I need to know exactly where that encounter occurred?

Answer: Well, I am afraid I can't, I can't help you. It wasn't was it the

encounter I can't remember where either of the encounters took place, whether in relation to the technical equipment or in relation to this comment.

Question: Well, where were you likely to encounter Mr. Brennan in the ordinary course?

Answer: I would say that it was either on, on the floor, floor 2 or floor 4, in other words, when I was going to the Secretary's office or that Martin Brennan was going to the Minister's office.

Question: I see. Well, we know that Mr. Loughrey wasn't there in September, so it can't have been you going to the Secretary's office where you encountered Mr. Brennan?

Answer: Okay.

Question: And you said that the other alternative was that it would be when you were going to the Minister's office, when Martin Brennan was going to the Minister's office, isn't that right?

Answer: I am sorry, you are looking for a degree of precision which I can't give you.

Question: Mr. McCrea, we have to look at this degree of precision, I have to say to you that what you have just described now is a breach of the sealed process and we need to know exactly

what the details are.

"MR. O'DONNELL: I don't know if that is a correct summary of this witness's evidence on this point. It is a suggestion that there was a comment made to him. I don't know the nature of the comment, it seems to be it is a matter for him to decide. It is ultimately going to be a matter for you. But it certainly isn't an appropriate thing for this, for it to be put to him that he has been a participant in a breach of the process. There is no breach of the process. He has said that there was a comment made to him about one of the consortia.

I don't know even the nature of the comment, the detail of the comment, but what is now unfair to this witness in my respectful submission is that he is being asked to give precision as to a meeting, an encounter, a chance random encounter which occurred eight years ago in circumstances where he has said that he cannot give details of that kind of precision, and he is now being told, "notwithstanding the fact that you can't give that kind of detail, I am going to press you for it anyway." what is he supposed to do in a situation where he comes in eight years later and says "I can't remember the details of it" and he is being told that you have to remember.

That seems to me, with respect, to be unfair to this witness.

"Chairman: It's not particularly apposite at this stage to declare the circumstance to be either right or wrong. I think it is appropriate that Ms. O'Brien seek to elicit, as far as possible, what the witness can recall.

There certainly will be no question of it proceeding to an oppressive degree. And again, Mr. McCrea, all that is asked of you, this is a matter of some potential importance. It is not suggested that there was anything wrong on your part. As best you can recall, see if you can assist us as to the circumstances in which this encounter may have come about?

Answer: Well, Chairman, if I could say then two things. One is that I am not sure when I became aware of this, if it was subsequent to the issuing of the licence or very late on in the process, and so I am only, so I am assuming and I can go no further than that, that somebody said something to me. If I knew that prior to the

"Chairman: I thought you had said that it was in the immediate time of the presentation or interviews or

Answer: No. I said to Ms. O'Brien that I can't

remember, you know, when I received this information, and she said "that is perfectly understandable" or words to that effect.

"Ms. O'Brien: I think you indicated, Mr.

McCrea, that it was either after the presentations or possibly the week after the?

Answer: No, I am sorry, there is a misunderstanding here, that was in relation to the technical aspects.

Question: I see.

Answer: What I thought we were discussing was when I knew that this consortium didn't perform very well.

Question: Well, would you be told long after the fact that a consortium didn't present themselves very well

Answer: It might

Question: in a chance encounter as you have described it?

Answer: The reason why I said it was a chance encounter because I know that I didn't have a meeting with Mr. Brennan. I didn't meet him in his office, he didn't meet me in mine. I know that I was aware of that at some time, and I don't know when I was aware of it.

Question: But can you assist me as to why Mr. Brennan would be mentioning this to you long

after the fact? Can you shed any light on that?

Answer: I could have got it at the time of the, for example, I am not saying this is the case, I am just giving you a for example, at the time when I read the draft report.

Question: I see. Well, we will come to discuss that then.

Answer: Yes.

Question: You had just said in evidence that you know you didn't have a meeting in Mr. Brennan's office and you know that you didn't have a meeting in your office, so you recall that?

Answer: I think I would have recalled if I had, if I had asked for a meeting or if he had asked for a meeting to discuss something like this.

Question: And just to recap again, you said it would have been a chance encounter, either when you were going to Mr. Loughrey's office or when Mr. Brennan was going to the Minister's office, and we have already, I think, excluded that as you going to Mr. Loughrey's office as Mr. Loughrey was away in September, if the exchange occurred in September?

Answer: I think that's a possibility, but I am not saying that is when it took place.

Question: I see."

I just want to ask you two things about that evidence.

Firstly, leave the when and the where out of it. Do you recall any conversation with Mr. McCrea in which you discussed how the bidders had done at the presentation, specifically the Bord na Mona or the consortium that contained Bord na Mona?

A. I can't specifically recall a conversation of that type. But that's not to say that it didn't take place.

Q. I suppose, if you were having a conversation like that with Mr. McCrea, you were, in a sense, having it with the Minister, weren't you?

A. I wouldn't see it quite like that.

Q. He wasn't a member of the Project Team?

A. He wasn't a member of the Project Team. But he wasn't kind of I suppose he wasn't a political adviser in the accepted sense, if you know what I mean.

Q. He was the Minister's political adviser, but what I think you mean is he didn't come through the political parties; is that it?

A. I think that's the sense of it, yeah. I mean, he was I think he was a career public servant that we had, we grew to have a reasonably good relationship with, so and in terms of the evidence you have just read out, assuming a conversation like that happened, it could have happened at any time, really, and

Q. Well, let's put it this way, then: If it happened in

the course of the presentations, it happened in the course of the part of the process which was supposed to have been sealed; is that right?

A. That's a very big "if". It could have happened much later. It could be a context like, "You would have expected a consortium containing X and Y to have done better, wouldn't you?" And a response could be, "Well, even at the presentation, they were awful". You know, a conversation like that could have happened at any time.

Q. Yes, it could have. From the evidence of Mr. O'Reilly, it would appear that somebody must have had some sort of conversation like that with respect to Mr. O'Reilly's consortium around the time of the presentations; isn't that right?

A. That seems to be the case, yeah.

Q. And you're not saying that you wouldn't have had a conversation like that with Mr. McCrea around the time of the presentation, because you saw him in a different light to an ordinary political adviser?

A. I can't really be specific about it at all.

Q. We then had either one or two contacts that we have mentioned earlier, where you relayed to the meeting of the 3rd October the Minister's desire to accelerate the process. Do you remember that?

A. Yeah.

Q. And then what you relayed to the meeting of the 9th

October I am not going to go into the detail and I was asking you yesterday whether that was two contacts or one contact. You think it was one; is that right?

A. I do, yeah.

Q. Can I just ask you this much about it: Mr. McMahon seems to note most important things in his journal about the process

A. Yeah.

Q. as it developed from project meeting to project meeting, and at the meeting of the 3rd October, all he noted was the Minister's desire to accelerate the process; right?

A. Yeah.

Q. Is it likely that if you had had a discussion with the Minister at that stage, in which you had recounted as much as was recorded in the meeting of the 9th October, that you'd have told Mr. McMahon and whoever else was there, Mr. Towey, I think?

A. It's hard to say, I mean...

Q. I suppose in fairness, Mr. Fitzgerald might have been there too; you didn't want to go into too much detail I am sorry, he wasn't there, I am not going to push you too much on it

A. I don't have a recall of it, no.

Q. Maybe Ms. O'Brien just reminds me of something that might assist you: You didn't have the report until

the 4th, the first version of the report?

A. Yeah.

Q. The conversation that is recorded on the meeting of the 9th refers to the report

A. Yeah.

Q. and seems to suggest that you had a more than casual conversation with the Minister. Your meeting with the Minister I beg your pardon, your communications to the meeting of the 3rd simply relayed the fact that the Minister wanted to accelerate the process. You didn't you had an idea who the top people were at that stage, because you'd been you'd sorted it out in Copenhagen, but you didn't have a report. Is it possible that you had two conversations: one about the result with the Minister and a second one about the shape of the report?

A. I have no recall of having an extra conversation over and above those that I talked about before.

Q. Okay.

A. And I am just wondering now, as I sit here, could the idea of accelerating the process have come in directly, say, via Mr. Loughrey or something; I just don't know.

Q. Mr. Loughrey says not, I think

A. In fact I think somewhere you say he wasn't in Department he was back in October.

Q. He was back in October.

A. I don't know.

Q. That Mr. Loughrey may have relayed it to you that the Minister wanted to accelerate the process?

A. I mean, I don't want to put anybody else into a corner about this, but the idea that I was aware that the Minister was interested in accelerating the process could have come to me via a number of channels.

That's what I am saying.

Q. I understand.

A. And I don't have a recall of a fourth meeting with the Minister.

Q. I follow: that you may have had one meeting in which he relayed that to you and in which the other information we have discussed was relayed to you, or that information may have been relayed to you independently of a specific contact with the Minister?

A. Yeah, it could for example, it could be that at a weekly management meeting, a stock-taking exercise, he may have said to Mr. Fitzgerald, to Mr. Loughrey, "is there any way we can accelerate that?"

Q. That was the way it was relayed to you?

A. It could have been like that. I just don't know.

Q. Mr. Towey says that he had a contact with the Minister around the 17th October, I think, in which the Minister indicated to him that he wanted to go to Government on the 24th. Sorry, I beg your pardon, he had a contact with Mr. O'Callaghan in which he

informed Mr. O'Callaghan, and we know from other documentation that the Minister certainly wanted to go to Government on the 24th.

A. Mm-hmm.

Q. Were you aware, in the week of the the week that you were getting the final report, the final version of the report I better be careful about this the final draft version of the report; I think that's what Mr. Andersen called it. Isn't that right?

A. Yeah.

Q. The 18th October version; were you aware in that week, as that report was coming through, that the Minister wanted to go to Government on the following Tuesday?

A. I don't remember specifically being so aware, but I think if I was made aware, I would say "That's impossible".

Q. It's possible, sorry

A. I probably would have said "That's impossible, or very difficult".

Q. I see.

A. That would probably have been my response.

Q. I see. By the time of the 23rd, you knew that the Minister wanted a result that day but hadn't been promised one; isn't that right?

A. The 23rd, probably, yes.

Q. Which would again reflect you saying to him, "Well, I can't deliver this for you today"?

A. Yeah.

Q. I think Mr. Towey believed that I hope I am right in this that the information he had must have come from you?

A. Yeah.

Q. And if you had such a conversation with the Minister, and if you said it was impossible, you must have had a further conversation with the Minister in or about the 23rd?

A. Again, you see, I don't know whether these conversations were with the Minister or with people between me and the Minister.

Q. I follow. They mightn't have been directly

A. They could have been either way.

Q. They could have been between you and Mr. Loughrey or you and the Minister?

A. Or me and Mr. Fitzgerald. I just don't have a clear recall of the discussions at all.

Q. I think I have already discussed with you yesterday what may have prompted the wrapping everything up on the 25th?

A. Yeah.

Q. And whether you'd had any contact with the Minister that prompted you to well, whether you were prompted yourself or whether Mr. Loughrey I think you said you were the person who wrapped it up that day?

A. I don't remember having that conversation yesterday at all with you.

Q. Maybe I am getting confused.

On the 25th, we know that you had had a meeting on the 23rd. There was a break in that meeting at which extra time was to be given. Mr. Towey, on the 23rd, didn't feel that he was going to under a deadline of the following day, on the 24th. On the 24th there was a deadline on the following day that Mr. Towey was working all day, all night, and as far as we can see, all the following morning as well. Do you remember him posing a deadline like that?

A. I don't know how that deadline came into play, but I was obviously aware of it at the time.

Q. Was it as a result of any contact between you and the Minister, or between you and Mr. Loughrey, relaying the Minister's desire to impose a deadline?

A. I don't know. I'm sorry.

Q. Would you have would it have been in your nature to impose a deadline like that when you were trying to cobble the report together in bits and pieces over the fax?

A. Well, I certainly would be driven to wrap the thing up, that's for sure.

Q. Yes, I can see that.

A. Whether I would make unreasonable demands of somebody to work through the night, I don't believe I would.

But having said that, it would be Mr. Towey's nature, if he thought it needed to be done, to go and do it, you know.

Q. That's true. But I suppose well, you have indicated, and I think it's clear that, as the Sole Member said, you are a doer; you want to get something done?

A. Yeah.

Q. It also seems reasonable that you'd like to get it done in some sort of reasonably tidy form; that you'd physically want a report in your hand you'd physically want a report for the Secretary, anyway, and he didn't have one?

A. We have been up and down this question of whether there was a report or not. I don't know what evidence Mr. Towey gave on the subject. Some people believe that there was a report; I am not sure whether there was or not.

Q. I suppose even that in itself is somewhat unsatisfactory that it's not clear from the evidence that there was a report

A. It's not clear to me. It probably requires a fresh search of the documents to see, in fact, whether it's one that was faxed on that date. Mr. Towey always said to me that he was confident that there was. Now, whether he said that in evidence or not, I don't know.

Q. Well, you're not familiar with the faxed documentation

I went through in the course of Ms. Nic Lochlainn's evidence. I can go through it with you, but I don't want to, because I don't think you had any familiarity with it.

A. That's okay.

Q. Lastly, I just want to ask you one or two final questions, Mr. Brennan, about the exchanges in the Dail in November of 1995. Now, the letter that we went through a moment ago, the draft letter that we went through doesn't reflect conversations containing any sort of detail along the lines of that draft; isn't that right?

A. Yeah.

Q. And therefore, following that letter, the state of knowledge within the Department would have been that the winning consortium consisted of Esat Telecom, or Communicorp rather, and Telenor.

Now, we have had a debate about the extent to which the institutions were or were not on board. But if you recall the initial one of the initial letters immediately following the closing date which was sent to, I presume, all of the participants, was to ask them who was involved; and in the response from Esat Digifone, you were told you could say that the you could name Communicorp, you could name Telenor, but you couldn't name the institutions?

A. Mm-hmm.

Q. So the institutions were unnamed, but nevertheless, according to that document, clearly in the frame?

A. Yeah.

Q. They were not named in the public announcement immediately after the completion of the competition process?

A. Yeah.

Q. Was there any reason why they couldn't have been named at that point?

A. I don't know. I have forgotten how they came not to be named.

Q. I am just going to read out a passage from the presentations. This is the Esat Digifone tape, page 9. I think you would have been given a copy of this tape on the 18th November.

Mr. Arve Johansen was speaking, and it says in the second paragraph: "Esat Digifone is an Irish company.

It's evidenced first of all by the Communicorp Group holding 40 percent as we get going and we have institutional investors holding 20 percent, and they are: AIB, IBI, Standard Life and Advent

International. In addition we have Telenor, through its subsidiary Telenor Invest, and Telenor is the major telecommunications operating company in Norway, having last year an operating revenue of 1.8 billion and a profit of 190 million."

Now, was there some sensitivity that persisted, right

up until I think the 30th April, to naming these institutions, or even to identifying them in a way which made it clear that they were on board?

A. I don't remember there being a particular sensitivity of that nature, and what I'd say about the presentations is: We didn't transcribe the tapes at the time, and we didn't listen back to them at the level of detail that's implicit that you are now proposing. The people at the meetings heard what they heard. So I mean, to say that they said there and then, these are the people that's not what the applications actually said. The applications were slightly different nuanced different, at least.

Q. You see, I want you just to look at a number of things and offer you an opportunity to comment on them.

The Department received a letter, as we know, on the 29th September, which you decided should not be taken account of. In all subsequent public statements in the Dail, and your civil servants' own public statements, all references to the evolving ownership of the 20% or as it then was, 25% were avoided.

There seemed to be either a fudging of it or a sensitivity to it, even when you had a lot of information on the 16th April.

And when you come right up to the 16th May, there seems to have been, if Mr. O'Connell's notes are right, and I think you haven't doubted them, an

extreme degree of sensitivity to mentioning the evolution of the ownership in the company. Do you remember that in the preparations for the

A. I remember you canvassing all those issues with me in the past as well, and I am sure you have done so with other witnesses. I'd say there was some sensitivity around the Dermot Desmond issue, but the sensitivity wasn't on my part, particularly.

Q. Thanks, Mr. Brennan.

CHAIRMAN: Well, it's just a quarter to two, so we'll leave the resumption until two o'clock.

MR. MCGONIGAL: Mr. Chairman, if it's of any assistance, it would be my intention to maintain my position in relation to deferral, if it's convenient to the Tribunal.

CHAIRMAN: Well, having considered it, Mr. McGonigal, I had indicated, I think through Mr. Coughlan, that I would accede to that.

MR. MCGONIGAL: That is if it's of assistance at this stage.

MR. NESBITT: I think in the circumstances, Mr. Chairman, we'd be anxious to take our usual place in the end of the queue to avoid having to bring Mr. Brennan back again, lest something occur. And in those circumstances, I am not sure who else would be wishing to examine him today.

MR. HEALY: Mr. Fitzsimons, I think, presumably

proposes to reserve his position or ask no questions

MR. FITZSIMONS: I have no questions for this witness.

CHAIRMAN: Very good, Mr. Fitzsimons.

Well, I am certainly having held with Mr.

McGonigal, Mr. Nesbitt, I am certainly not going to force you on. If it is the feeling of yourself that you would prefer to defer that entitlement

MR. NESBITT: Yes, I would. I did speak to Mr.

McGonigal, and I was attempting to find out what he might be doing. And given he is not in a position to indicate that, it leaves us in a difficult situation.

And we'd be anxious to take our place at the end, if the Tribunal consider that appropriate.

CHAIRMAN: Well, I am sorry, Mr. Brennan, but this does mean a third and last visit to these shores for you.

But I think, trying to appraise the global position, it's probably preferable, as there may be some other information that may come to light with forthcoming witnesses, that the final examination of Mr. Brennan be deferred until that last stage.

So in the circumstances, obviously, Mr. Healy, whilst I think we had another witness in the pipeline, we certainly won't be in a position to take it up this afternoon.

MR. HEALY: There are some logistical difficulties

have developed with some witnesses for next week, so I think it will have to go on the Internet. We'd hope to resume fairly soon.

CHAIRMAN: At the earliest possible stage next week.

There have been, as I am aware, difficulties over witnesses, but we will do all that we can to overcome them because it's essential that we make the maximum progress in the remaining month of the legal term.

Very good. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL FURTHER NOTICE.