

A P P E A R A N C E S

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FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, SC

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I N D E X

Witness: Examination: Question No.:

Denis O'Brien Mr. Coughlan 1 - 430

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 11TH  
DECEMBER, 2003, AT 2 P.M.:

CONTINUATION OF EXAMINATION OF MR. DENIS O'BRIEN BY  
MR. COUGHLAN:

CHAIRMAN: Thanks very much, Mr. O'Brien. In ease of  
everybody and to facilitate change of stenographers, I  
would propose that we take a brief 15-minute break at  
approximately twenty to four and then proceed.

Q. MR. COUGHLAN: Now, Mr. O'Brien, I think we were on  
Book 50 yesterday.

And just now, I think if we proceed in that book to  
Tab 145. And this is a note which Mr. O'Connell made  
of a, at least a telephone conversation he must have  
had with you, and he recorded "DOB/Lowry call  
yesterday." I think he was noting that there had been  
some conversation between yourself and Mr. Lowry the  
previous day, obviously?

A. He is probably right, yes.

Q. "Getting there slowly but surely." Do you know what  
that was about, can you remember?

A. I think this is two, three days before we signed the  
licence, so it was a matter of tidying up the loose  
ends.

Q. Right. All right. And then it looks as if Mr. Lowry  
and yourself must have had a conversation he seems to

be recording "called last right re auto dialers"?

A. That's right.

Q. It seems that there must be another conversation or another communication, and then you were informing Mr. O'Connell that you were "meeting today Loughrey plus Lowry re this"?

A. Re the auto dialers.

Q. Re auto dialers. That is on the 14th May, 1996?

A. That's right. We had capacity issues at that time.

Q. Right. Sorry, perhaps I could clarify because Ms. O'Brien has just informed me when Mr. O'Connell gave his evidence, do you see the matters in quotation marks there "getting there slowly but surely," he wasn't sure whether it was something that you were telling him that you had said to Mr. Lowry or Mr. Lowry had said to you. Can you help us on that?

A. I actually don't remember that now. I don't know whether he said it or I said it or I might have said it to Mr. O'Connell.

Q. Obviously he is recording something that you are telling him about the conversation with Mr. Lowry; you can't remember whether it was something Mr. Lowry said to you, or whether it was something you said to Mr. Lowry? It was just that Mr. O'Connell was unsure about?

A. I don't remember.

Q. All right. Now, I know it was frenetic, you say, in

terms of meetings. Can I take it there were also telephone contacts being made between the shareholders, their advisers, perhaps the Department, and perhaps the Minister?

A. Yes.

Q. Now, I don't think we need to concern ourselves with 146. This is Mr. O'Connell's Mr. O'Connell explains all of this; it is all about the licence and Clause 8 in the licence.

The next document at 147, this is a note, I think it is Mr. O'Connell's note of you reporting back to him about the meeting with Mr. Lowry and Mr. Loughrey.

And it is noted as follows:

"DOB re meeting Lowry/John Loughrey.

"Minister haven't got information. Wants.

"Financial info IIU (Michael Walsh to go to the Department private meeting.)

"Letter that finance is in place from the underwriters.

"DOB underwriters are Telenor + IIU will satisfy tomorrow.

"Lot of frustration/pressure.

"All by 11 tomorrow.

Lowry will check with Sec but hold DOB/LB responsible.

Has to be 40:40:20 on day.

DOB - Article 8 very tough but can do nothing.

Share amongst parties. Will not allow Telecom parties

to reduce shareholding.

"Loughrey to meet Owen O'Connell/Martin Brennan tomorrow a.m..

"Minister informed 45:45:10 very quickly. Lowry - let ink dry.

"Public announcement Lowry wanted last week.

"Do everything in one go. Deflect attention away from ownership. Discuss business infrastructure.

Contracts, roll-out plan, employment, new contracts, hold off buying phones to public, etc..

"Must be phenomenally well briefed on bid document and tender. Owen O'Connell to be present and to answer questions.

"Legal ownership issue extremely important. All reporters focused on this. All three shareholders to agree.

Owen O'Connell answers questions in rehearsal...."

"Just one person with one signal."

Now, I think that is Mr. O'Connell's note of you reporting back to him of obviously a discussion that you had with Mr. Lowry and Mr. Loughrey or Mr. Lowry on his own and Mr. Loughrey at some other stage or Mr. Loughrey on his own and Mr. Lowry at some other stage, I am just not sure?

A. I think it was the Secretary General and the Minister.

Q. And the Minister, right.

A. There was also my recollection was that there was

also a discussion on auto dialers as well, maybe later

on.

Q. Yes, it is. That is what I am going to ask you about.

This is a document that there is another document, which is at Tab 115, which was in your handwriting, but I think it relates to the 16th May.

A. That would be book binder 49.

Q. Binder 50, the one we are at. Go further on.

A. Okay, sorry. 155, 155A or?

Q. Just 155. This is the only other note I see in it is a note in your handwriting, I think, isn't that correct?

A. That's correct. It talks about DDI/DDO on the second page.

Q. It does.

A. "Justify requests..."

Q. Yes. Do you see that?

A. Yes.

Q. That all seems to relate to "Michael Walsh talk to John Loughrey, seen enough to satisfy." It is because he's seen enough to satisfy. It seems to relate to the 16th because it was the Thursday, you see Thursday up on the top of it. So that is the only other note, the only note we have of a report of your meeting with Mr. Loughrey and Mr. Lowry, the one on the 14th, is Mr. O'Connell's note of you talking to him?

A. I seem to think, though, that the second page relates

to my meeting with the Minister and Mr. Loughrey.

Q. That is at 155?

A. Yeah.

Q. I see that document, and the second page certainly does relate to DDO and DDI and the licence and matters of that nature?

A. Okay.

Q. The first page of that seems to be on the Thursday, which was two days after this meeting, and I will ask you about that in due course. I just wanted to ask you in the first instance, the meeting of the 14th appears to have involved a lot of discussion about the licence?

A. Well I think I was pointing out to them I mean they had points to raise with me and I had points to raise with them.

Q. Yes.

A. And mainly the points were tying up loose ends, although it seems from this note that I told them that Article 8, which is the, I think it is the article on ownership, was a pretty tough one for us to take.

Q. Yes.

A. But they were digging in and saying no, they won't change it, and this is two days before we were supposed to sign the licence, so...

Q. Yes. But there was, and we have no reason that the note isn't correctly reflecting what you informed

Mr. O'Connell occurred at the meeting. You see if you go below that portion there, "Minister informed of the 40:45:10 (sic)." That one?

A. Yes, the 45, yeah.

Q. The 45:45:10, I beg your pardon. That that is going to happen quickly after the licence is awarded?

A. And Article 8 wouldn't have precluded us from doing that.

Q. No, the Minister is saying just 'let the ink dry', I think there was another expression used, 'cruising altitude' or something of that nature?

A. Yeah.

Q. Then it went over, you are informing Mr. O'Connell:

"Public announcement. Lowry wanted last week." I think that may be Mr. Lowry wanted it earlier.

"Do everything in one go."

Then, "Deflect attention away from ownership. Discuss business, infrastructure, contracts, roll-out, etc.."

Then it says: "Everyone must be phenomenally well briefed on bid document and tender. Owen O'Connell to be present and answer questions. Legal ownership issue extremely important. All reporters focused on this. All three shareholders to agree. Owen O'Connell to answer question. Just one person with one signal."

Now, there must have been a discussion about the bid document and what had been disclosed in the bid

document and the position that pertained at this time?

A. I am not so sure about that because if you are going into a press conference, you would have made certain commitments in the bid.

Q. Yeah?

A. And it was a natural thing for those questions to be raised at the press conference. For example, coverage: what shall we promise? How many customers do we think we would have? And in particular then, price reductions which seem to be the hottest topic at that time. So, you know, everybody had to focus on a document that was now, you know, ten months old and make sure they understood it.

Q. But the question of ownership was one that was addressing the mind if you are reporting it to Mr.

O'Connell?

A. Yeah.

Q. Everybody was to agree, but only Mr. O'Connell would answer this particular question, and that seemed to be the view that that that seems to be expressed by the Minister and Mr. Loughrey?

A. In hindsight maybe we were too sensitive about this issue, but at that time it was a free-for-all in the Dail, where members of the Opposition, particularly Dessie O'Malley, and also a TD, I can't remember, from Galway, basically had

Q. It was particularly Mr. Molloy, I think?

A. And Molloy, that's right, basically had been got at by people who didn't win the licence and put forward their view of the world, that it was unfair that they didn't win the licence. And some totally disgraceful things were said under the protection of the Dail and I, in fact, invited Mr. O'Malley and Mr. Molloy to say them outside the gates of Leinster House because then they wouldn't have the protection of the Dail. But, I suppose, in hindsight you have got, you know, an opposition always opposes and the Government at that time were under pressure because they had given, or granted a licence to a company that was probably not seen as one of the favorites.

Q. Yes. I take that point. But there was sensitivity about the licence, the proposed licensee being in conformity with the bid. First of all, insofar as the bid had declared it to be 40 that the licensee at the time of the licence would be 40:40:20, isn't that right?

A. We said I have to be very clear about this we said 50:50, it was a joint venture, and in fact it remained a 50:50 until we issued shares later on.

Q. I know that. I know that.

A. Just let me answer, sorry. So we never disclosed who the 20% was. We also

Q. You never disclosed to whom, to the public?

A. To the public.

Q. I know that.

A. And when we did announce the make-up of the consortium, not that much coverage was related to the 20%. In fact

Q. The public didn't know

A. They did know on the 16th May.

Q. The public didn't know what had been in the bid?

A. It is not that relevant because they always wanted to know who owned, who was the third party institution.

Q. Yes?

A. And basically that came out on the day.

Q. Oh, yes.

A. That was IIU.

Q. It came out on the day as it was on that day, that's correct. It never came out on that day, or subsequently, who the 20% was as declared in the bid, isn't that right?

A. Well, if you look at you have got to look at the text of the bid document, and there is a very important point, where we describe that we perhaps, and we weren't fully unequivocal about this, that we would we were talking to Davys about placing shares with four institutions.

Q. Yes?

A. But in the bid document, and we can open it, you will see the wording and basically we were quite explicit in the wording, and when we announced it on the 16th

May, we delivered what we said in the document.

Q. Well, can I ask you this: I think it is fairly plain on the face of it to see that Dermot Desmond wasn't part of the bid, isn't that right?

A. That's correct.

Q. On this day, Dermot Desmond, through IIU Nominees, was 20%, isn't that right, and that was declared on this day?

A. Yes.

Q. But that was not what was in the bid?

A. Well, you see, we were you have got to look at the RFP; you have got to look at what we said in the bid; you have got to say, look what we put in the oral presentation, and that was that we were going to bring in third party institutional investment. We ultimately did that. So it could have been George Sorras, it could have been Rupert Murdoch and it wouldn't have mattered.

Q. I just want to ask you: Dermot Desmond wasn't in the bid?

A. No.

Q. And he wasn't mentioned on the 25th October when the competition result was announced, is that right?

A. But there was a letter from the 29th September.

Q. We know that. But it wasn't announced that Dermot Desmond was part of the bid or the consortium, isn't that right?

A. No, because we never disclosed who the third parties were.

Q. In fact, he was a partner, as far as you were concerned, as of the 29th October?

A. Correct.

Q. The 29th September, I beg your pardon.

A. September, yeah. That has been my evidence.

Q. Consistently, and I am going to yes. And that wasn't disclosed. And when you say and it is neither here nor there, as far as I am concerned, what view you took of what any member of the Dail said in the House and what you might have asked them to repeat outside the House to enable you to, in your view

A. You would have seen some of the press coverage in your research so...

Q. The one thing that was fairly clear was that Mr. Molloy at one stage in the Dail when there were exchanges going on, the Minister consistently refused to disclose, there were questions asked the whole time in the Dail, sorry, as to who these, this 20%, isn't that right, that question occurred in the Dail on a number of occasions?

A. It is a long time now since I would have read it.

Q. You can take it from me

A. If you tell me...

Q. The Minister said he was bound by confidentiality and he couldn't disclose that?

A. True.

Q. On occasions there was toing and froing between the Minister and other deputies. And I think it was Deputy Seamus Brennan at the time or somebody from Fianna Fail asked the question who owns the 20%? And there is an interjection from Mr. Molloy when he says 25%. Now, it wasn't really dealt with, it wasn't answered on that occasion, but there seemed to be some information that the 25 that there was 25% and of course that was correct, Mr. Desmond was a 25% partner as far as you were concerned, from the 29th September?

A. And I explained in my evidence, you know, how that came about, how we always believed it was always going to be 20.

Q. Yes. But that wasn't dealt with. So there was a situation which existed whereby you hadn't disclosed to the public what was contained in the bid, the name of the 20%, isn't that correct?

A. But who said we had to? I didn't break any rules, okay.

Q. I am saying you didn't disclose it. The Minister refused to do it on a number of occasions.

A. Because he was precluded for confidentiality reasons.

Q. Yes. What confidentiality attached to Mr. Dermot Desmond at this stage? Whatever about the 20% as disclosed in the bid document, what confidentiality attached to Mr. Dermot Desmond?

A. Well, I think you need address that to the civil servants, but I know in the bid I think we said that these letters were confidential to the assessors, I believe we said that. I couldn't be entirely sure.

Q. That's correct?

A. But there could have been an assumption that that travelled; in other words that it was for any third party investor.

Q. Did you know that or are you just surmising?

A. Well, I am surmising.

Q. But on the day of the we know Mr. O'Connell has given evidence about a meeting which was, he held with Mr. Towey and Mr. Brennan on the 13th May, this was the day before this, where he, again, made that very point to Mr. Towey, he believes he must have made this point to Mr. Towey, that the name of the people in the bid document had not been disclosed to the public. I think he was correct in that and this is what made it easy on the day just to declare that Mr. Desmond was, Mr. Desmond, through IIU Nominees Limited, was the 20%?

A. And what was wrong with that?

Q. You see, I am just asking you this, Mr. O'Brien, because it seems to be that the Department were very concerned that whoever was to get the licence was the entity or entities disclosed in the bid, because that was mandatory in the bid document?

A. And the Department went and got counsel advice on that as well, and which proved to which satisfied them that they were totally in their rights to issue the licence the way they did.

Q. The one thing was that Mr. Desmond was not disclosed in the bid document, isn't that right?

A. You see, I think, Mr. Coughlan, maybe there is something missing between the two of us in the last few weeks but can I just say, we always had the right, not just from the RFP but the way we put in our bid, used the way we described the fact that we were bringing third party investors in, we could have brought anybody in that was a financial investor and that would have satisfied the Department. We knew, yes, they would have to approve that person, but ultimately we could have brought anybody in, any institution that we wanted anywhere in the world to take up that 20%. So it is a dead issue, in my mind. Maybe it is a bigger issue for you, but certainly it is not an issue for me.

Q. You see, it is in the light of yourself and Mr. O'Connell clarifying matters that the 20% had never been disclosed to the public, is that correct?

A. We didn't have to, though. Where does it say we have to?

Q. Is it a fact that they weren't?

A. Yes, of course it is.

Q. That is all I want to ask, first of all. But what the public did know, because of matters which had arisen by virtue of public statements by the Department and the Minister, was that the proposed licensee would be Telenor, Communicorp or Esat Telecom Holdings or Mr. O'Brien, we will put it in that broad sense, and 20% institutional investors; that was what was being stated publicly the whole time. So the public did know about that, and would have been entitled to assume that that was in accordance with the bid document. The 25% seems to have caused a problem because that would have raised enormous suspicion and people were saying oh no?

A. What sort of suspicion would that lead to? I am missing something, and I don't mean to be difficult on this point but what is so suspicious about it?

Q. That it wasn't in accordance with the bid?

A. But when we signed the licence it was 40:40:20.

Q. And therefore the suspicion would thereby be removed; it was now 40:40:20, as has been stated. It had never been disclosed to the public or any public announcement made about potential institutional investors and Mr. Desmond and IIU, who again had not been part of the bid or presented on this day as holding 20%, it all seems to fit fairly neatly to accord in some way with the bid document?

A. Are you judging now that we were outside the spirit of

the bid because...

Q. I am asking you for your comment.

A. Because I think I would disagree on elements of what

you have just said. First of all, we were totally

above board. We said that the industrial partners, in

this case Esat and Telenor, would be 40:40. Secondly,

we would bring in third party financial institutions.

We did that. Now, if somebody made statements to the

Dail, whoever that person is, on either side, I think

you need to address those questions to them, what they

said. I don't know what they said. But we, all the

way through this whole process, were totally above

board and we lived up to what we said we would do in

the bid, including the financial aspects and the

construction of the shareholding. And subsequently,

over the next five years, we did exactly the same. So

we met all our obligations.

Now, I don't see anywhere where we broke any rules,

where we weren't full and frank with everybody, and I

think that what you are trying to say is there is some

mystery around the 20%. There is no mystery here.

Q. I know there is no mystery around the 20%. The

important thing was to ensure that nobody knew about

the 25% because that would have immediately drawn

attention to the fact that what now existed was not in

accordance with the bid?

A. You see, if you look at this, there is a sequence.

There was an announcement. Then there was a shareholders agreement, and basically shares were issued and then they were brought back in and when we signed the licence the consortium was 40:40:20. Now

Q. I know that.

A. Where is there rules to say that we couldn't do that?

Q. Just listen to me now, Mr. O'Brien. It had always been stated there was a competition. What was mandatory in that competition was that full ownership details of the proposed licensee would be given.

A. Correct. We did that.

Q. Yes. And that was the bid document?

A. Correct.

Q. You did not state in the bid document that Mr. Dermot Desmond would hold anything?

A. We said that third party institutions would take up 20% of the equity.

Q. Just listen to the question. You did not say, in the bid document, that Mr. Dermot Desmond would be a part of the proposed licensee, did you?

A. No.

Q. You then entered into an agreement with Mr. Desmond?

A. But were we entitled say that there was third party investors? Because we were entitled and we met the spirit of that and what we said, we did.

Q. Just listen to me now. You entered into an agreement

with Mr. Dermot Desmond whereby he became, as you have said at all times even when you gave evidence on the last occasion, on money matters, he was a partner from the 29th September?

A. Correct.

Q. That wasn't disclosed to the public?

A. We didn't have to.

Q. You come up to the signing off on the licence. Mr.

O'Connell makes the point to Mr. Towey and Mr.

Brennan, and you have made the point yourself, that

the public did not know who the proposed institutional

investors would be as disclosed in the bid, isn't that

right?

A. Until we signed the licence we didn't have to disclose

that.

Q. Sorry, I am saying is that right, there was no

disclosure? Mr. O'Connell made the point and you make

the point yourself now there had been no disclosure to

the public good, bad or indifferent, as to who the

potential institutional investors

A. Do you think we should have?

Q. Mr. O'Brien, could just answer the question, could you

answer the question? There wasn't, was there?

A. I have told you that, yes.

Q. If

A. Can I just say one thing to add to this, this is a

very important point, Chairman.

We weren't given the licence on the day of the award.

We were given a right to negotiate the licence and that is a really critical point here. We had to satisfy the Department on who these third party investors were, to make sure that they were suitable.

And ultimately we had to tie down all the different promises in the bid document, including roll-out and pricing and other things, which ultimately found their way into the licence. So there was a hiatus in the middle between October and May where basically we had to make sure that we signed an agreement that satisfied us and satisfied the Government from a contractual point of view in the licence.

Q. Well, can I ask you this, and you are correct, on the 25th October, what you won was an entitlement, the an exclusive entitlement to negotiate, and if agreement couldn't be achieved

A. But we were also told in writing that if we didn't agree to the licence they would move to the second place candidate.

Q. Yes.

A. That is a very important point.

Q. Oh, yes. But that right to negotiate had been awarded to a consortium which had declared that at the time of the licence, the ownership of it would be Telenor, Esat and named institutional investors?

A. No, third party investors.

Q. It had never stated and there had been no award of exclusive negotiations granted to a consortium which included Mr. Dermot Desmond to the extent of 25%, isn't that right?

A. I am trying to be helpful here, but I have always made it very clear; we were given a right to negotiate a licence. We had said in the bid third party investors, and we brought in a third party investor; on the day it was 40:40:20. Now, we were given the right to negotiate. We negotiated with the Government from, in the first meeting, which was the 9th November, all the way through to the 16th May.

Q. And on the first negotiation meeting and right through until the 16th May, on the information available at present, at least, it would appear that the Department were not informed that Mr. Dermot Desmond was a 25% partner in this consortium?

A. You are looking at different documentation to me, then. You musn't have the documentation that I have because there is plenty of references about IIU being involved. There is a letter on the 29th September that went to the assessors.

Q. Yes?

A. And there was more then there was further discussion in the weeks leading up to signing the licence, when this issue came up.

Q. I used the 16th, from the 16th April on when the

direct question was asked, who was behind this. But Mr. O'Connell has given evidence that apart from the letter of the 29th September, that he believed that it had not been disclosed to the Department about Mr. Dermot Desmond's involvement and he volunteered this and he said to me: And if you pushed me I couldn't suggest that that was in error, or words to that effect?

A. I haven't read Mr. O'Connell's evidence. I can only give my evidence.

Q. Because what I am asking you about now is the importance of getting it to 40:40:20 was to, in effect, create the impression that this consortium was the same consortium as had submitted the bid on the 4th August?

A. Are you saying that it is your view that we are

Q. No

A. No, no, you are not, you are making a statement, because if you read that back there just what you said

Q. Mr. O'Brien, I am asking you

A. That is not a question. You are making a statement to me now.

CHAIRMAN: Let's try and I will give you a chance to clarify maybe.

A. Maybe if you could ask the question, then.

Q. MR. COUGHLAN: Right. The importance of getting it to

40:40:20, I am asking you, was for the purpose of giving the appearance that the licensee on the day it was signed conformed with that listen to the question conformed with that which had been contained in the bid document on the 4th August

A. I don't know what you mean by 'giving the appearance'.

Maybe you can help me on that.

Q. It wasn't the same consortium, was it?

A. That is a statement by you and the answer is

Q. It wasn't the same consortium, was it?

A. It was the same, it was exactly the same consortium.

Q. And Mr. Dermot Desmond was a member of that consortium on the 4th August, 1995?

A. We had it. You have to go back and maybe you should

Q. Was he a member of the consortium that was

A. Are you prosecuting or inquiring?

Q. I am asking you a question. Was he a member of

CHAIRMAN: We must keep this on the rails, gentlemen.

I am it is agreed, I think do I understand you to say, Mr. O'Brien, that you feel, by virtue of the 29th September letter of Professor Michael Walsh, and by virtue of subsequent matters conveyed to the Department, perhaps even including the journalism of Mr. McManus, are you familiar with that article in February?

A. I am, Chairman, yes.

CHAIRMAN: Are you in fact saying to me that matters were conveyed to the Department, perhaps not in an explicit declaration, that Mr. Desmond was, at that stage, indeed a 25% partner, but that matters were conveyed whereby the Department were made aware that Mr. Desmond was in?

A. I mean, I thought we they would know from that that Mr. Desmond was the third party investor. I think it is also important to remember that a lot of the big issues in the licence negotiations, Chairman, happened early on, and the smaller issue was who is the third party investor, and then how are we going to fund our share and our shareholding in the licence? And those were the kind of issues left to the end. So there was a natural progression where we with arrived at the end on these issues.

Q. MR. COUGHLAN: If you now go to Tab 149. I know you weren't at this meeting but I wonder would you

A. I will try and help you anyway.

Q. In fact this is where the 'cruising altitude' is used rather than the 'let ink dry'.

You can see do you have the typed version of this as well behind the handwritten one? It might be easier.

A. I do, yes.

Q. You can see there, that it seems to be indicated that the Minister wanted it announced on the, the licence

to be on the 17th May. It seems to have been World Communications Day. There may be something about that.

Then you can see that Martin Brennan is asking various questions. This is preparing for the, I presume a press conference.

"When did Telenor" I presume that is "when did Telenor become involved? Late April/May. Mr. O'Connell has provided this information."

He deals with the question of Southwestern Bell.

"There is nothing much. "

And then: "Co-owned 50:50.

Intention to place/float 20%.

Strong supporting letters were available from a lot of 'blue chip investors'.

In normal course, when project becomes real, negotiated with deal available, which we now have.

IIU not in original."

And then: "Comfort, Minister favourably disposed re letter."

Then you go down: "Dress rehearsal with Minister sometime after 1, some hours later."

Then the 40:45:10 (sic), 'cruising altitude', that is the same point again being made.

"In normal trading circumstances debt equity around 50% in start-up phase, more fluctuations because of capital spend.

Will tend a little more towards equity, especially in early phase.

Martin Brennan some Minister. I think that needs our help."

That appears to Mr. O'Connell to be some more information.

Then you see the question, again raising its head here. "Whether same project as won competition?"

You see, this all seems to be addressing the mind at this time. Was this brought to your attention, what happened on this particular

A. No, not at all, no.

Q. Then, "Martin Brennan not keen on Denis as speaker."

That is because everyone wanted Owen O'Connell to answer it anyway from your meeting with Mr. Loughrey?

A. Can I just say I had no problem answering any questions.

Q. I know. But from the meeting you had with the Minister and Mr. Loughrey on the 14th, I think it had been suggested that Owen O'Connell would speak on behalf of all three shareholders on this point and that the agreement of the three shareholders would be obtained speaking with one voice, I think is the note?

A. That is the sensible thing to do.

Q. I am not saying it wasn't. I am just saying that is the same point here?

A. What normally happens in this situation, you have

people who will deal with different subjects; that is, description of this. We have one person on one issue, another on the next topic. Otherwise you have people answering different topics, different questions that probably they don't have any knowledge of.

Q. I can understand that. If it was something about a legal nature, Owen O'Connell might speak about it, but if it was something of a technical nature, perhaps, I don't know, perhaps one of the engineers or somebody?

A. It wouldn't be me.

Q. Yes. But there was nothing complex in this matter, was there?

A. Far from it.

Q. That is why I was just wondering why would it be necessary for Owen O'Connell to deal with this issue?

A. Because he is the company solicitor.

Q. Well, it seems to me, correct me if I am wrong, if a question was asked at a press conference whether this is the same project as won the competition, it is either yes or no.

A. And it was yes.

Q. Right.

A. I mean, if you look at the file note, there is more detail here on billing and billing units and packages and

Q. But you would wonder why Mr. Loughrey and the Minister would want Owen O'Connell to deal with the question of

ownership because, as you say, if a question is asked is this the same team or project who applied for the licence and the answer is yes, why you would need a solicitor to answer this and why you would need to get agreement between the three shareholders that they would speak in one voice on it?

A. It is not unusual in commercial matters, Mr. Coughlan, it wouldn't be unusual to have your solicitor in attendance. In fact, I have been at plenty of press conferences and public meetings where for sure I would have my solicitor there.

Q. I understand.

A. So there is nothing out of the ordinary here.

Q. I understand why you might have, it might be to you might need to consult him if something of a legal nature arose. You may need to consult him if you were going to say something, to make sure that it was safe to say this, I can understand all of that.

A. No, no. If you are going to a press conference and you have got your solicitor, most of this has got to do with ownership, shares, shareholders' rights, all of those things. So this is just one topic you would bring your solicitor for.

Q. But in respect of a simple question, like is this the same project which won the competition? You don't need, I suggest to you, great legal knowledge to answer a question like that?

A. I think it wasn't just for that reason that

Mr. O'Connell was there, with respect to him now; he is not one dimensional.

Q. But that was the question he was being identified as being the appropriate person to deal with that question by Mr. Loughrey and the Minister and now again at this meeting with Mr. Brennan and Mr. Towey?

A. I would have identified as the right person as well.

Q. Would you go now to Tab 150. I just wanted to ask you: this is Ms. Gleeson, she sent a letter to Mr.

O'Connell. She says, "Attached is a draft press release which will be sent out today if we get approval from the Department to do so" this is on the 15th of May "which is not at all definite. The Minister's advisers thought it a good idea but I think that Loughrey does not. Anyway, regardless of whether it is today or tomorrow we need to agree details of publication on ownership and funding anyway."

Again the same matter raising its head. This is the sensitive matter.

"Could you look through the attached. I also prepared questions which you might be asked on the issue.

Denis asked me to go to your office at 1 p.m. to discuss the release and questions which will be asked of the Esat Digifone people at the press conference in the interests of everyone being 'on the same line'.

It is very important that this practice session is

undertaken.

"See you in a while."

"Eileen."

I suppose what I want to ask you about there really is, Ms. Gleeson is informing Mr. O'Connell that the Minister's advisers think that it is a good idea to issue this press release or something like it, depending on whatever changes take place to it, but that Mr. Loughrey, she thought that Mr. Loughrey didn't. Do you know if she would receive that type of information from you? I want to exclude her from being somebody that was in contact directly with the Minister and the Minister's advisers and Mr. Loughrey?

A. I have no idea.

Q. You have no idea. Do you think she could have been?

A. I mean, the Department would have their own press people; they would have a press officer.

Q. Well, did you give her any information about this or assist in the preparation of this, of this draft press release?

A. It is eight years ago. I cannot remember. I remember one thing and that is, we put out a press release and also prepared questions and answers that we may get in a press conference.

Q. I don't think that this was the press release, this one that was prepared, it wasn't this particular one that was prepared but this is a draft I take the

point this is a draft.

Do you know who would have assisted Ms. Gleeson in the preparing of this draft because there would have been information that she may not have been privy to; she would have had to receive information?

A. I have no idea. I mean, she was part of the bid team. She would have had enough information to probably write this herself.

Q. You think she might have had enough information to do it herself?

A. Well, she was a key person of our team.

Q. Right. Well, then, you don't know anything about this, or you don't recollect anything about this?

A. I know we sent out a press release, but...

Q. Now, if you go over the tab, 151, I am not going to go through these are the questions Mr. O'Connell has explained about he made a first stab. I think it is the heavy writing is "his first stab". Then he had discussions with people. And the lighter writing are perhaps other suggestions for answering these questions. So that is what these are.

Do you remember were you at a meeting where you may have discussed a question and answer meeting?

A. I would have been at a meeting to discuss Q and A.

Q. A rehearsal?

A. Absolutely.

Q. I am not using that line in a pejorative sense.

A. You can use it, it is fine, it is a good way of describing it.

Q. A rehearsal?

A. Not unusual in a business context before a major announcement.

Q. Yes. You see the second question there, "Was IIU mentioned in the bid document?" sorry the first question, sorry the second question: "Was IIU mentioned in the bid document as one possible shareholder i.e. were they one of those who gave letters of commitment?"

Do you remember any much discussion around that? We see the note there "bid was confidential." It is dealing with the confidentiality?

A. Then it says "IIU just say no" or "say no".

Q. Do you remember a discussion?

A. Not really, no.

Q. No. Then, "Who underwrote finance as detailed in the bid described as 'acceptable blue-chip investors' by the Minister?" That is taken exactly from a statement made by the Minister, 'acceptable blue-chip'. And then, "Confidentiality" again is the proposed answer.

Do you remember a discussion about that?

A. I remember going to a meeting to discuss questions but I don't remember specific questions.

Q. All right. Do you see the second-last question: "Do you regret the fact that the ownership and funding

details" the third-last "Do you regret the fact that the ownership and funding details of this project have become such a focus, and do you think that this could have been avoided by earlier disclosure of the facts?"

Then there is: "They say there is no such thing as bad publicity."

Do you remember a discussion that is not necessarily the answer that may have been agreed on; that may have been Mr. O'Connell's first stab at answering questions?

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

Q. What do you think of it as an answer?

A. I wouldn't have a particular view on it. I mean, it is somebody else's answer.

Q. Now, if you see then in the handwritten note down the last question, "Has Denis O'Brien contributed his share of the equity?" And the note is, "Make or break legally and politically."

A. The answer was yes.

Q. "Company to answer accurately" "answer accurate. If fudge no lies." Now, the position

A. Can I just say, there was no need for a fudge. We had paid our equity.

Q. Had you?

A. Yeah.

Q. How?

A. We had borrowed.

Q. You didn't, I think sorry, borrowing in its broad sense?

A. We borrowed money.

Q. Isn't what happened was that Telenor and IIU lent to Digifone and you obtained, under the shareholders agreement, a grace period, I think, in respect of raising your finances in the United States. You then made your subscription to Digifone, which in turn reimbursed the loans which Digifone had received from IIU and Telenor, isn't that actually what happened?

A. Well, we effectively bridged the initial capital that we had to put in from our partners for a three-week period. And as I explained to you yesterday, that was that was done in this 99p, 1p way for tax reasons and also I think for approval from Telenor.

Q. But in real business terms now you had an arrangement because you had the period of grace from the time of the call being made to subscribe. But it was Dermot Desmond, through IIU and Telenor, which subscribed for all of the equity at this time, isn't that right?

A. Well, in reality, and in the commercial world, we borrowed money from our partners; they put in the subscription. We secured our shares against the subscription and we borrowed the money for three weeks. And as I explained, we couldn't close our US placing at the same time. So there was a period of

three weeks, and in fact we had a longer grace period if we needed it, but we raced to complete the placing as quickly as possible.

Q. Only Esat Holdings had to do that, isn't that right?

A. That's right, yes. And the Department were made aware.

Q. Tell me how and when and by what method was the Department made aware of that, please?

A. I don't know precisely but I know they were aware that

Q. No, no, this is very important, Mr. O'Brien, because Departmental witnesses have given evidence here, I think Mr. Brennan, Mr. Towey, and Mr. Loughrey in the first instance when he gave evidence, said that he was unaware that Esat Holdings didn't have the money there and then to subscribe for the payment of the licence, that an arrangement had to be made. Now, when Mr. Loughrey came back on the second occasion he gave different evidence, and we have to look at the evidence he gave on the separate occasion; when he said that he must have been aware.

Now, I would like to know, Mr. O'Brien, who you you say the Department were aware. Who told the Department? When was the Department told and how was the Department told?

A. I actually can't answer those questions. I am just saying to you I believed that they were aware that

there was a short period of time between raising the money and signing the licence, that there was a bit of a gap and that gap, as we all well know, was three weeks.

Q. You say you can't be precise, but you say you believe, so there must be a basis for your belief. What do you base that belief on?

A. It is just my memories of those critical two or three weeks before we signed the licence.

Q. Something else: there was an issue which was raised by Mr. Fitzsimons, I think

A. When?

Q. Not with you, not with you. It was initially raised by Mr. Fitzsimons, when he put it to a witness, I think it was Mr. Loughrey, that in fact extra capacity was given to you on the fixed line some time after the licence was signed off to enable you to conclude or to conclude your fundraising in the United States and that was essential?

A. Well, I think that is just a matter of timing, Mr. Coughlan.

Q. Well, first of all, I suppose, there was only one document at this stage I was ever going to ask you about.

You had a meeting with Mr. Sean McMahon on the 26th April all about fundraising in the context of extra capacity. Do you remember that?

A. I have seen something on that, but it would be a while since I read it, so I don't know specifically.

Q. But can you just tell me, because it is important to know if the Department knew, who in the Department knew, and what that person may have known?

A. Well, if Mr. McMahon knew, and he was on the Project Team

Q. Yes. He knew on the 26th April that you were saying to him, I want extra capacity?

A. But he also knew that we were doing a funding.

Q. Yes, you told him that you were doing a funding. You were always looking for extra capacity from Mr. McMahon, in fairness, isn't that fair to say?

A. Well, we had World War III with that side of the Department.

Q. Yes. I ask you this, I suppose it is more crucial. You were granted extra capacity within a few weeks of signing off on the licence on the fixed line, isn't that right?

A. Well, it would have been I don't know for sure but if you tell me that's you have seen that.

Q. Were you?

A. I actually, I would have to look at the file and come back to you on that.

Q. All right. Do you know if it was crucial to you in your fundraising with CSFB to have that extra capacity on the fixed line?

A. Well, every grant of capacity was crucial at that time because every number of months we would be seeking capacity, so if they decided not to give us capacity, well then he would have a serious problem with our customers because at peak hours you would get a busy signal. Now, when we were finishing, and just let me complete this

Q. Yes.

A. when we were finishing the due diligence, before we had close of placing, there are last minute due diligence items like a checklist of the people on both sides, the buyers of the shares and the sellers, where you have to be full and frank and tell them, for example, and one of the things would be capacity. So we would probably have told our new investors we are getting capacity there, this is our next lot of capacity. And they probably would have said, well are you getting your capacity? And we would have to confirm or not confirm.

Q. Well, could I ask you this, I suppose, just to put it in a general way, I won't ask you for any detail at this stage. In a fundraising, as proposed in the United States, can I take it that you probably wouldn't have been able to fundraise as you were proposing to do if you didn't have a licence, in other words, if the GSM, if the GSM position wasn't there? That was the nugget, wasn't it?

A. I wouldn't accept that.

Q. You don't accept that?

A. If we hadn't have won the licence we would have completed fundraising, for sure, either in Europe or North America.

Q. What type of it would have been a different type of fundraising?

A. It would have been smaller, yeah.

Q. Having obtained the licence, this was a jewel, wasn't it, in terms of fundraising?

A. Well, it was a licence.

Q. CSFB, you are saying, were saying if you get 50% of the licence company, it really

A. I described it once, I think to you, before where I said it was a licence to spend money.

Q. Mmm-hmm.

A. Because you had to build a network first and then wait for your customers to come to you. So, yes, we thought it was a terrific opportunity, but it wasn't money in the bank, and it was, you know, after ten or 11 months we knew then basically this business is going to be successful.

Q. Even with the licence, was that the perception in the financial world, that it was only a licence to spend money?

A. Of course it was. Investors have hope, but sometimes hope doesn't work. You know, they can lose their

investment, so we were all hoping that this was going to be an enormous success. And ultimately we didn't get that much help in a whole pile of ways; we did it ourselves. Because Eircom, if you remember I explained to you, had a derogation on planning; we didn't. We ultimately paid up a, I think it was 1 or 1½ million as part of the licence because we didn't launch on a particular day.

Q. 1 or 2 million?

A. It was our own abilities and the team that was there that delivered, but it was a licence to spend money.

Q. In fairness, you had committed to that in the bid, hadn't you?

A. And we more than achieved it.

Q. No, you committed?

A. We committed

Q. You had committed in the bid if you didn't get it up and running by a certain date you would pay a penalty of 1½ million; that is what you did?

A. We had other commitments and in some ways the delay in issuing the licence was the thing that led us not to hitting the target coverage.

Q. I don't want to get into too much detail over that because

A. It is a very

Q. There has been lot of evidence here about the licence and the delay and which side the delay emanated from,

but even during the period from January right up into April, that sort of period, you weren't too keen to force through things like the shareholders agreement, yourself; Mr. O'Toole was, on the other side, isn't that right?

A. That is a totally different situation.

Q. Yes.

A. In other words

Q. You weren't in a position to subscribe at all, Mr. O'Brien?

A. We were, because if you remember we were going to get a bridge loan.

Q. From Telenor?

A. If we'd signed the licence in January, we would have been ready with our US investors. There may have been a little gap, okay, like there was in May, but signing up a shareholders agreement had nothing to do with it; it was the pace of the drafting on the agreement on the licence, and if the licence had have been issued within a month or two, we would have been ready, Mr. Coughlan.

CHAIRMAN: It is hardly an issue.

MR. COUGHLAN: Not an issue. I wasn't getting into an issue.

A. That is not a criticism of the Department. Far from it.

Q. Yes. Now, if you go to Tab 155.

Now, this is a note headed "Thursday 11:30" you see

"12 noon" with the circle around it on the left-hand side. Under that "Michael Walsh talk to J

Loughrey. Seen enough to satisfy." There is a line

under that. "Letter finance in place from

underwriter." A line under that.

"40:40:20. Don't discuss 5%:5%.

"Worse possible questions.

Number 37 competition for GSM Licence.

William Fry to play devils's advocate.

Legal advisers" could you read the next please,

"will" what?

A. "Legal advisers..."

Q. "... will attack Davy" it seems to me, "solicitor to attend."

A. "Attach" or "attack". I don't see why they would be attacking them.

Q. Why would they attach?

A. I don't know either.

Q. It looks like "attack", doesn't it?

A. "Legal advisers will attack" I don't know. It looks like "attach" or "attack". I am just looking at my Ks.

Q. "Solicitor to attend:

"1. Ownership. 2. Deflect attention away. More business info. Infrastructure and don't" sorry it is your writing, perhaps this is the benefit of

the business, isn't that right, or it is to deflect attention away from the ownership issue, isn't it? Then you go onto the next page and you deal with fixed line, DDI/DDO?

A. "Justify requests..."

Q. Yes.

A. That is for capacity.

Q. That is for capacity. What is this meeting first of all, what is this meeting or what is it noting that happened on the 16th May of 1996?

A. I actually don't know whether it is a meeting or I am just writing notes to myself.

Q. Why would you have two dates or two times written on it, do you know?

A. 12 noon and 11:30?

Q. Yeah.

A. Maybe Michael Walsh was supposed to ring at 12. I have no idea.

Q. That is a fair point. Do you think you may have been making notes of various telephone calls here?

A. Well, I think the Department wanted to get satisfaction on IIU's financial structure.

Q. That is true, I think. That is true. Do you think you were getting some information or you were communicating information, somebody was talking to you on the phone?

A. I actually don't remember. I mean, it would have been

IIU for them to deal with the Secretary General, if he had queries.

Q. It does, the note there, "Seen enough to satisfy" that tallies with the evidence we have heard. That seems to be correct around that time, yes, the 40:40:20, yes?

A. Ultimately we satisfied them, yeah.

Q. "Don't discuss the 5:5." We know about that. "'Cruising altitude' already." You see that down there "worse possible questions. Number 37 competition for GSM Licence." Is that noting something at a rehearsal? I was just wondering could it be a note or a piece of a book you had, a notebook you had and you are writing a further note?

A. I probably I don't know what the context of these they are definitely my notes but I don't know whether there was somebody with me or I wrote them to myself. But I was getting ready for an oral, or basically a press conference.

Q. But, again, why this is on the 16th now. Why would there have been a need to deflect attention away from ownership? Why?

A. As I explained to you before, there was such a hullabaloo in the Dail.

Q. So what?

A. Exactly. So what?

Q. Why deflect attention away? Why?

A. On the day we answered all the questions nobody said, you know, none of us said we are not answering that question. We just answered all the questions as they came at us.

Q. I can understand a situation there was a lot of hullabaloo going on, there was stuff in the newspapers, stuff in the Dail and all that, and it is very easily dealt with by saying, look, everything is all right, this is what happened. This is the consortium that submitted a bid, and this is the consortium which is getting the license. Wasn't the necessity to deflect attention away from ownership because you were all conscious that that was not the situation?

A. It is as you describe it there, apart from your last sentence, and that is everybody was fine, everybody is saying this is us, this is who we are, this is the consortium, here is our financial investor, this is what our plans are. And it was very, very relaxed and very friendly on the day. It is just when you go to do something like this you prepare yourself.

Q. Well, if that is the case, why deflect attention away from it? What is wrong say, if you say, right it is a little bit confused, we have to explain this, as people have been doing or attempting to do on occasions here. If it is that simple, that there is nothing wrong with it, why deflect attention away?

A. It says here "deflect," but what I probably meant was:

look, there is a really positive story here, competition is coming, we have spent now, since 1991, fighting for liberalisation and this a very important day and we should be talking about the positive nature of competition, what we are going to bring to the market, what we are going to give our customers and what our promise is to the market.

Now, all of the stuff about ownership, that doesn't mean anything to the consumers. We were using this as an opportunity to pre-sell our services to the people of Ireland.

Q. Yes?

A. And that is why the press conference was there primarily.

Q. I know that, Mr. O'Brien. But you see, many people have given evidence here and have said various things about various stages and the involvement of various people, but primarily IIU and Mr. Dermot Desmond and the share configuration and there has been explanations given about various things.

Now, if, as everybody who has come here to say, were of the view then that this is just perfectly all right, it is in accordance with everything that has happened, why would there be the need to deflect attention away from ownership? Why?

A. Well, because you take that opportunity at a press

conference too pre-sell your services. I mean, what was the point in going and talking about ownership and that?

Q. If there was nothing wrong with it, there was no sensitivity about it, why deflect attention away?

A. It was dealt with in the press release, it was dealt with in the press conference, but 90% of the questions were questions relating to what we were going to bring to the market.

Q. Mm-hmm. Do you know something has just been drawn to my attention here, it is a note of Mr. O'Connell's memorandum of a meeting he had on the 13th of May. This is something that he said Martin Brennan said to him, that, "He would also then wish to arrange a meeting between the Minister for Transport Energy and Communications and Knut Digerud, together with one or two others, at which the progress of the press conference would be discussed/rehearsed." Do you know anything about

A. There was a dress rehearsal.

Q. a joint dress rehearsal; do you remember that?

A. I couldn't be totally sure, but there could have been a joint rehearsal.

Q. Do you remember such do you remember being at a joint rehearsal?

A. I don't, no.

Q. Do you happen, at this stage, to remember where the

press rehearsal you were at, or whether it took place on just one occasion, or whether it was a rolling situation?

A. Well, I know from our team's point of view we would have met before the press conference, discussed what was coming up, who would answer what questions, and we would have had a very coordinated approach to how we would answer questions. Technical people would answer technical questions. Commercial people would offer or answer questions. Finance people, legal questions. You know, a whole range of topics would have been divided up.

Q. Yes. Now, if you go over the page to 155A. Owen O'Connell sent Martin Brennan a press release which he had, Mr. O'Connell believes he had requested, would be issued by your side. And the portion of the press release dealing with ownership, I suppose, is the second paragraph.

"Esat Digifone also confirmed details of its shareholding structure. Esat Telecom Holdings Limited (a wholly-owned subsidiary of Communicorp Group) owns 40% of the shares. Telenor owns 40% of the shares, and IIU Nominees Limited (a wholly-owned subsidiary of International Investments and Underwriters Limited) holds the remaining 20% of the shares on behalf of Mr. Dermot Desmond.

"IIU has stated that this shareholding, or part

thereof, may be placed with additional investors at some future time. This will be reviewed when Esat Digifone is operational towards the end of the year.

"The shareholders listed above have each contributed to the investment made in the network to date and will each discharge its financial responsibilities to the entire investment required for the project, which is in the order of  $\text{€}120$  million. This funding will be provided by equity from the shareholders and by debt financing."

And the debt financiers then are set out.

Then a lot of other information about the company is contained in the press release.

So, all it does is state that as of that day, isn't that right, this is the position, and that was the press release?

A. I am not sure if that is the final I don't know if this is a draft or ultimately whether it went out.

Q. Can I ask you this: Where have Bottin gone at this time, do you know?

A. As I explained to you before, IIU, Dermot, Bottin, they are all the one, as far as I was concerned.

Q. So it wasn't something that concerned you? As far as you were concerned, they were all the one?

A. I was dealing with Dermot, so....

Q. All right. Now, if you go to 159, in the first instance, we will just come back to 158. It is just a

short note. It is Mr. O'Connell's note of the press conference. 159 is the rehearsal for the press conference.

This is Mr. O'Connell's note.

"When did Telenor and Esat get together?" Discussing that.

"Whether ready to put in bid? Certain 9 May. April is answer.

"Whether ready 23 June. Felt penalised. Better prepared.

"Team disappointed. Added half a million to cost (keeping them together). One new competitor. Arve." Arve I think, was to deal with this.

"Delay in licence. Government/State.

"DOB contribution.

"I wish to scotch the persistent rumours on this. The licence fee has been paid, millions have been spent by the company to date, almost entirely out of shareholders' funds. Little or no bank funding to date. All of Esat Telecom Holdings' share of the funds have been paid. Arrangements among the shareholders have been concluded to everyone's satisfaction and are working.

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

Again, obviously the question about your funding or your financing was being rehearsed here?

A. Well, this goes back to all the companies that didn't

win the licence. And you know, there were things said in the Dail about our financial standing, about the size of our company, and the fact that we won this licence. And basically we were going ahead you know, take these head on. If somebody asked a question, this is probably the answer that I would have given them.

Q. Very good.

A. They didn't say them outside the protection of the Dail though, which is a pity.

Q. We will just go back to the press conference note then.

A. Which tab, sorry?

Q. I will just give it to you now. 158. And this is just a short note. We don't it is obviously Owen O'Connell's note.

"Michael Lowry - unanimous decision.

Questions conclusively responded to.

Competition fully respected.

Signed, dated, timed.

Top table - Loughrey, Lowry, DOB, PJ, MW" and then John Callaghan, I presume.

"KD" Knut Digerud. "BM? MBR?

Question: Why so long?

First kind, very comprehensive, complex process, prudent and cautious.

DOB - whether 120 million has changed from previous

100?

Plan said 124 million. Total investment 50 million.

Question: Re money, planning.

Looking good, not an easy ride."

I think it is, "Now an easy ride," I think?

A. No, it is not.

Q. Is it not?

A. I can assure you it was not.

Q. "Will meet objective, 80% of pop at start-up.

Introduced KD BSM."

Now, this whole question of the rehearsal, of you wishing to scotch the rumours about your financial capacity at that time; Mr. O'Connell has told us that a few days before the announcement of the competition result, that there had been preliminary discussions held, at which he attended, where consideration was being given

A. They weren't preliminary, Mr. Coughlan. I mean, preliminary is if you are going to do something.

Q. Discussions took place?

A. Yeah.

Q. At which the question arose as to whether examinership would be necessary in relation to your company, isn't that right?

A. Well, it wasn't just examinership, it was a number of different things. One is an equity raising exercise.

Secondly, you know, what assets we would potentially

dispose of. Then we spoke about examinership being an option, but by no means a real option, because basically we were always going to raise money if we hadn't won the licence.

Q. If you hadn't won the licence?

A. Yeah. We would have gone back to Advent and said, we need more funding, and they would have provided in fact, they did make an offer of funding.

Q. Would that be at the type of premium they were charging earlier that summer, or would it have been for more increasing

A. More increasing shares.

Q. Increased equity?

A. Yes. But can I give you the commercial reality here?

Q. Yes.

A. Every company that grows from being a small  $\frac{1}{2}$  company into, say, a billion pound company, or a euro company

Q. Yes?

A. there is not one story, commercial story where companies at various stages have liquidity issues.

Q. Yes, I understand that.

A. We were no different than that. In fact, if you interviewed any businessman about their business, they would say, at a certain stage in time we had a liquidity issue, and it is all about timing. And effectively, we, at that stage, had a liquidity issue,

but we had every confidence we would have raised the money, or else personally I could have put the money in.

Q. Yes.

A. So I wouldn't like you to think that we were on the verge of going over the cliff, Mr. Coughlan. We weren't.

Q. But you see, it is just in the context of, if there were rumours or questions were being asked?

A. No, there was never rumours or questions. This was an internal discussion

Q. No, I am not talking about that.

A. Okay.

Q. You say if there were rumours about your financial situation?

A. No, there wasn't rumours about our financial situation.

Q. Well, I think you had said at a rehearsal of a press conference that you wished to "scotch these persistent rumours"?

A. Whether we had well, I think whether we had the capital to put up but it was already in the public domain, that we were in the middle of a placing in North America.

Q. All I am saying is this; you see what is the problem, the explanation you have given there a few moments ago, at a certain stage in any businessman's life or

any company's life one might find oneself in some sort of difficulties in relation to liquidity, it is all about timing, trading your way through a situation, obtaining credit, if you can?

A. And the asset test is being in a position to meet payments as they fall due, and to meet your cash payments.

Q. Yes.

A. And we have always met we, at that time, and we continued to do so until we sold our company; we always were in a position to meet our liabilities as they fell due.

Q. Could it be that the way you tell it now, perfectly understandable, I don't think would surprise anybody or shock anybody?

A. It shouldn't anyway.

Q. But if, at the rehearsal of the dress the rehearsal for the press conference, it was decided that a response should be that you were going to scotch those rumours now and say that there had been full subscription, or words to that effect, I suggest that that was in the context of having an eye, like the ownership issue, on the competition and the bid document, and to ensure that no questions arose but that everything was in conformity in relation to the bid document?

A. Well, you know, first of all, I want to say to you

that we had nothing to hide. I mean, we had conformed in every way possible with what we said to the Department. And yes, there were people, hurlers on the ditch, saying that commentators, or commentators saying, will these people have enough money to fund this major capital project? It was at that time probably the biggest capital project, or one of the top three or four in the State, in 1995.

Q. Yes.

A. I mean, we look back and we say 120 million today wouldn't build you maybe 100 yards of the tunnel under the Liffey, but at that time we were building a totally new telecommunications infrastructure.

Q. I agree, it was a very, very big project. It was. 120 million was an awful lot of money, yes, yes.

A. So I mean, ultimately we said we were going to raise money, we did. We brought in top class foreign institutional investors. We brought a billion and a half of capital into this country with no grants. So, that wasn't an easy thing to do. And yes, there were people out there who were hurling on the ditch, as such, about Esat, but totally incorrectly.

MR. COUGHLAN: I wonder would we break now for about 15 minutes, Sir. And I will just sort of review the rest of the documentation I want to go through. I may get most of what I want to deal with done today with Mr. O'Brien.

CHAIRMAN: Well, I think if we can remotely end that, it is an eminently desirable business. I said we would rise for 15 minutes. We will take it now at half past. A quarter to four.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

Q. MR. COUGHLAN: Now, Mr. O'Brien, I just wanted to turn to the political donation aspect of the matters, and we'll deal with it as a discrete issue.

CHAIRMAN: Perhaps a more general question, as we leave the licence, and I am not expecting a perfectly prepared answer, Mr. O'Brien, but obviously, having read your statement, heard your evidence and having heard the lengthy evidence that we heard from the civil servants in earlier months, there were obviously, on any appraisal, very strong aspects of the Esat bid, and I have regard to matters such as technical strength, site and planning preparation, and the like. In your own view, as the person heading the consortium, what do you think were the distinctive couple of factors that may have justified you getting the verdict over some other very strong competitors?

A. I think we demonstrated that we had a lot of marketing wherewithal. I mean, technical ability you can buy in, but if you don't have good people with good marketing and sales flair, you never succeed in the market. And what we tried to do, with our

application, was to make it very vivid and very real and very lively, right down to actually making the advertisements, the launch advertisements. We made television ads just to give a sample, for example, to the assessors of the kind of strong marketing that we would launch into the market. So I suppose our forte of marketing and sales and everything else would follow from that.

CHAIRMAN: Thank you.

Q. MR. COUGHLAN: Now, Mr. O'Brien, I think you furnished us with a detailed schedule of political donations, which you prepared from documentary evidence available to you and from recollection, where you possibly could.

Now, it's not my intention, Mr. O'Brien, I know it's your information, and it's not my intention to open all of this to anybody. I want to address just certain aspects of it, if that's all right with you?

A. That's fine. That's fine.

Q. And the first point I just wanted to ask you about, I think it is correct to say, is it not, from the schedules you furnished with us, that the first time that you, in the schedules, you inform us of making donations to Fine Gael is in 1995, isn't that right?

I'll just go through it with you. And we do have information also from Mr. Tom Curran of, the current General Secretary of Fine Gael, who has reviewed, in

so far as he can, the records of that party.

The first contribution was on the 9th March, 1995, and this was the Carlow/Kilkenny constituency fundraising lunch on that date. I'll just

A. I can see that.

Q. Have you got that?

A. I think you know, this was in response to, from the Tribunal. And what I would have done is gone through all my files and that, and this may not be the total list, but

Q. I think you very fairly say that

A. It's as good as I could

Q. It's what you have done is your very best from all records available and from any information you have obtained or any recollection you had, you have added, and I take that point.

A. Okay. Because I notice that in other people's statements, there may be ones that I didn't see or

Q. Yes.

A. Okay.

Q. Not a big issue. Well, the first one was a £1,000 table at a Carlow/Kilkenny constituency fundraiser, which was held in the New Park Hotel, Kilkenny, on the 9th March, 1995 I think, isn't that right?

A. That's right.

Q. You then the next one is, you have is the

A. The next day.

Q. the next day, 10th March, 1995. A Fine Gael economic seminar. And this was a Jim Mitchell, it was a lunch for Jim Mitchell, TD. And you purchased a table for  $\text{€}1,000$ . Mr. Mitchell, of course, was an adviser to the company?

A. An adviser.

Q. Then, on the 17th May, there was  $\text{€}1,000$ . Again, it was a table I think, isn't that right?

A. Yes.

Q. And that was a Richard Bruton fundraiser at Fitzers?

A. That's right.

Q. You are unsure if you attended that particular event?

A. Correct.

Q. The next one then was on the 26th May. You attended a fundraiser for Mr. John Bruton in County Meath, and that was  $\text{€}1,000$  table, I presume, again, would be the

A. That's correct.

Q. And on the 7th June, 1995, there was a Dublin West launch at the Burlington Hotel, and that was a  $\text{€}1,000$  table, again. And you received a letter, I think, from Mr. Austin Curry seeking that donation or that contribution?

A. That's correct.

Q. Then, on the 22nd June, 1995, there was a Fine Gael lunch at the Glenview Hotel. And I think it's your evidence that you were requested for a donation for

the Wicklow by-election, is that right?

A. That's correct.

Q. And that's for  $\text{€}5,000$ ?

A. Yes. 22nd June.

Q. 22nd June. Am I correct in thinking that that request was made of you by Mr. Phil Hogan, or was it? Can you remember? I know he may have been a Director of Elections?

A. You know, I mean I read the statements of Ms. Carey and Mr. Hogan, I couldn't be a hundred percent sure. It may have been him, it may not have been him.

Q. All right. And then, on the 2nd October, 1995, there was a Fine Gael lunch in the Berkeley Court Hotel, that was a  $\text{€}600$  donation.

Then we come to the 16th October, 1995, the Fine Gael Golf Classic at the K-Club. That was  $\text{€}4,000$ ?

A. That's right.

Q. The 11th December, 1995, there was a Dublin North Central lunch at the Regency Airport Hotel, and that was  $\text{€}1,000$  table I presume, was it?

A. Yes.

Q. And you received a letter from Mr. Richard Bruton, dated 20th December, and again the 22nd December.

Again, I presume that was seeking a subscription to attend the lunch or

A. Yes.

Q. Then, on the 26th February I am only going to go up

to the period of the signing off of the licence for the moment. 26th February, 1996, a Fine Gael dinner at the Burlington Hotel; that was I think, a Mr. Michael Lowry dinner, fundraiser. We know it as the Burlington fundraiser. You can't assist us as to whether sorry, I think you did make a contribution, you can't assist us as to how much, or is it that

A. The same, I don't know what the numbers, but I believe it was somewhere around the €1,000 as well.

Q. And then we come to the 6th June, 1995, and that's after the licence was signed off. It's just again, in case the 6th June, it's €1,000, Fine Gael dinner at Fairyhouse, Meath constituency. I think that's the period I want to cover for the moment, if that's all right with you?

A. Fine.

Q. Now, I think Ms. Sarah Carey, I think you are aware she has furnished a memorandum to the Tribunal, and do you have that?

A. I have, yeah.

Q. And she says in her Memorandum of Intended Evidence that she has been asked by the Tribunal of Inquiry to provide such information as she has, in particular in relation to two donations in particular, made by way of Denis O'Brien/Esat Telecom to the Fine Gael Party in 1995. The first of these donations was the sum of €5,000 in connection with the Wicklow by-election.

The donation was made to Mr. Phil Hogan, TD. The second donation of €1/4,000 was by way of sponsorship of a Fine Gael Golf Classic which took place on the 16th October, 1995. Then it goes on: "The Tribunal wishes Ms. Carey to give details of her role in connection with the making of the donations and the details and all of her dealings with Mr. O'Brien, Mr. Hogan, or any member or official of the Fine Gael Party, or any other person regarding the donations in question."

And then she says, that in order to understand her role in the foregoing, she wishes to state the following as follows: "Ms. Carey joined Esat Telecom as marketing coordinator in January, 1995." I take it that's correct, is it?

A. Yes.

Q. She was a graduate of Trinity College, Dublin, and had done a post-graduate course in business in UCD. At the time she applied for a job in Esat Telecom she was working with the EBS Building Society. She had a variety of responsibilities with Esat Telecom. As regards general marketing issues, she reported to Mark Roden, Director of Marketing, and Greg Mersh, Chief Operations Officer. As regards particular issues, including aspects of the licence bid with which she was concerned, she reported directly to Mr. Denis O'Brien. Her responsibilities included some of the public relations aspects of the licence and a

bid such as dealing with journalists and ongoing publicity stunts. Ms. Carey was then, and is now, an active member of the Fine Gael Party. Mr. Denis O'Brien was not aware of her Fine Gael connections when she joined Esat Telecom.

A short time after her appointment, Ms. Carey spoke with Mr. Denis O'Brien and told him of her Fine Gael connections. She explained that some members of the Fine Gael Party had a negative perception of Mr. O'Brien and that others did not know anything about him, or indeed anything about the liberalisation of the telecommunications industry, both fixed and mobile. She thought it would be helpful for his business generally, from a public relations point of view, if he were to raise his profile with the Fine Gael Party and meet some of the people in it. She thought that they should know more about him personally and what his business was about and how it would benefit consumers and so on. In this context, she suggested to him that it might be a good idea to attend a forthcoming Fine Gael social function at the Carlow/Kilkenny constituency at which the Taoiseach and members of the Cabinet would be present. As a result of attendance at that lunch, further invitations were issued by Fine Gael to Esat Telecom in respect of other Fine Gael social functions. Some of these invitations were accepted and some were not.

The decision in this regard was made by Mr. O'Brien.

Ms. Carey herself attended some lunches, possibly ten.

She recalls, in particular, one luncheon at Blackhall

Place for Jim Mitchell's constituency; one in

Westmeath, where she attended alone; one in Dublin

South East which she attended with Mark Roden.

Generally  $\text{€}1,000$  was the standard contribution made at

all of these events."

And she goes on then: That it was against this

background that an offer of financial assistance was

made by Phil Hogan at the time of the Wicklow

by-election in June, 1995. Mr. O'Brien told her he

had spoken to Phil Hogan, and that he would make a

donation of  $\text{€}5,000$  to his campaign. Ms. Carey had a

vague recollection that she may also have previously

indicated to Mr. Hogan that a donation to his

political campaign might be forthcoming from Esat,

however Ms. Carey cannot remember any specific

detail."

Now, do you remember how the donation to the Wicklow

by-election came about?

A. I don't remember precisely who asked me to make the

donation, but I wouldn't necessarily disagree with

what Ms. Carey is saying here. I just can't totally

remember. And we either paid a cheque or a draft, I

don't really know.

Q. That's why I was just asking you if you could remember

that, because this is you know I will, when we come to the golf classic, be asking you about the draft and the cheque?

A. Yeah, sure.

Q. The contribution to the Wicklow by-election would have gone into the it would have been banked in the local party or the funds for the election. Just to explain to you: We have not been able to recover the instrument because it went in, pooled with a number of contributions, into the bank in Blessington. There were so many transactions seemingly, unrelated to Fine Gael, I hasten to add, on the day, that not everything was microfiched. It was Bank of Ireland in Blessington. So we have been unable to recover the actual instruments. I am just wondering do you know whether it was by way of a cheque, and on what account it might have been drawn?

A. I mean, it would have been drawn on either the joint venture account or the Esat account. I actually don't know. But I know this much: We made the contribution.

Q. Yes, I accept that. I accept that. There is nobody disputing I think you made the contribution.

A. Yeah.

Q. Fine Gael say the contribution was made. There is no doubt about that.

A. Okay.

Q. When you say "we", who

A. I mean collectively my company or the joint venture company.

Q. Your company or the joint venture company. But you can't have a clear recollection on that?

A. I am sorry, I don't. I mean, I have taken I have gone through everything in as much detail as I could to give the schedule.

Q. And we tried to carry out all the banking inquiries and the searches in relation to this, and it's just that the actual instrument itself cannot be located, because, as I say, for a reason

A. It's either a cheque or a draft. It wasn't cash anyway.

Q. No, no, no

A. Okay.

Q. I am not saying that.

A. All right.

Q. I would be interested to know if it was a cheque or a draft; that's all.

A. Okay.

Q. And on which account it was drawn.

Now, the next matter I want to ask about is the

€4,000 I think it's fair to say that before this

Tribunal commenced its work, there was always

something in the public domain about you making a

contribution to the Wicklow by-election. I seem to

remember even hearing that on, I don't know, the radio or television or something like that. Would that be correct? It was

A. Yes. I mean, it was

Q. It was in the public domain?

A. Yeah.

Q. Now, the golf classic, the  $\text{€}4,000$  to the golf classic is the one that I want to ask you about now, because we know that, and it caused certain confusion in our inquiries at one stage, the donation to the golf classic was a bank draft made payable to Fine Gael, isn't that right? It was drawn on a bank draft

A. Yes, I mean there was six cheques made payable that day and this was one of them.

Q. There was a bank draft

A. 6th October, I think it is.

Q. I think you are right. Yeah, the 6th October, 1995.

Now, the bank draft was drawn on the Bank of Ireland branch at, I think, Pembroke Street Pembroke Branch. And to purchase that bank draft made payable to Fine Gael, a cheque was used drawn on the joint venture account for, I think it's  $\text{€}4,001.99$ , or  $\text{€}1.75$ ; that would be the fee for the purchase of the draft.

And that was drawn on the joint venture account which had its account at Bank of Ireland, Lower Baggot Street. So they weren't purchased in the same branch?

A. Yeah.

Q. I'm just

A. Okay.

Q. That appears to be the position at least anyway. Now,

what Ms. Carey has told us, that and I'll just

continue with her statement that she obtained an

Esat Telecom cheque in order to purchase a draft to

make the donation. Ms. Carey believes that the idea

to use a draft came from Mr. O'Brien. At that time

the licence campaign was underway and there was a high

degree of secrecy attached to it in order to protect

the application strategy from disclosure to other

contenders or to Telecom Eireann in the prevailing

climate concerning the bid. The instructions to make

the payment by draft did not surprise her, as a

payment to the Fine Gael Party at that particular

point in time might have been deliberately

misrepresented by other bidders or the media. Ms.

Carey did not attend the event in the Glenview. Mr.

Denis O'Brien and members of the senior management of

Esat Telecom attended the event."

Sorry, I think I beg your pardon. I think she

seems to be indicating that there was a draft for

the I misread that, that draft for the Wicklow

by-election as well as a draft for the golf classic.

A. I actually don't know.

Q. All right. Continuing with the golf classic anyway.

In relation to the Fine Gael Golf Classic and the

letter of the 9th October, 1995, forwarding a draft of  
€124,000 to Mr. Phil Hogan, Ms. Carey recalls a specific  
instruction from Mr. O'Brien that there should be no  
advertising at the golf classic. She believes this  
instruction came after she informed him that she had  
sent Fine Gael Esat Telecom's logo at their request.  
Ms. Carey, therefore, set about retrieving the logo  
and arranged the payment. She is reasonably certain  
that it was her sole decision to obtain a draft for  
this amount, thus following the precedent of the  
Wicklow by-election. She is also quite certain that  
it was her decision to use the phrase 'no reference'  
in her letter to Mr. Hogan, saying she wanted to avoid  
the possibility that Mr. Hogan might publicly thank  
Esat Telecom for their sponsorship at the presentation  
ceremony that night or, for example, note on the menu  
card that Esat Telecom had officially sponsored the  
wine. Mr. O'Brien was a very strict employer and she  
wanted to make sure that his instructions regarding no  
advertising was not disobeyed in any regard."

A. I was more lenient than maybe she gives me credit for.

Q. With regard to the purchase of the draft, Ms. Carey  
probably would have requested a signed cheque from the  
Financial Controller of Esat Digifone, although she  
does not remember the exact circumstances of this  
request. It is most likely, although not absolutely  
certain, that she would have purchased the draft

herself. Her recollection is that she herself did not ask anyone on the Telenor side to sign the cheque or to authorise it, although it was possible that somebody else did. She said that in relation to all of these matters, she dealt directly with you and nobody else. So that's in relation to the Wicklow by-election and this golf classic.

A. And probably there were other political functions that I attended that she was involved with as well.

Q. But she is specific in relation to these.

Now, do you remember, I am not going to go over the evidence in relation to Mr. Mark FitzGerald now, but you and you have given your evidence about that can you remember how you came to be invited to participate in the golf classic or how you became involved in the golf classic?

A. I think it was a letter.

Q. Can you remember I am just trying to get

A. I think it was a letter from Phil Hogan, and he credited Mark FitzGerald.

Q. That's a letter of the 30th August, 1995, is that right? And he says, "I am delighted to hear" I'll put it up

A. Well, it's fine for me.

Q. "I am delighted to hear of your response in booking a sponsor of the Fine Gael Golf Classic. I gather this arose through discussions with Mark FitzGerald. Your

very generous sponsorship of  $\$4,000$  will be used twofold, with  $\$1,000$  sponsoring a hole and the remaining balance sponsoring the wine for the gala dinner. As I am sure Mark already discussed with you, appropriate advertising will be utilised.

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

Now, do you remember having a conversation with Mark FitzGerald about the golf classic?

A. I believe that Mark FitzGerald was the person who initiated the sponsorship.

Q. Can you say how?

A. I actually don't. I mean, this letter refers to him.

Q. It does. It certainly does.

A. I remember getting the letter, but I'm not sure how it was initiated. I mean, why disbelieve what he is saying there? It could very well be what he is saying there is true. It more likely is.

Q. Well, if this be correct, it would seem to indicate that there was some discussion between yourself and Mark FitzGerald, doesn't there?

A. That's one interpretation of it.

Q. What would the other one might be?

A. Well, either he contacted me or else Mr. Hogan was told by Mark FitzGerald to write to me, that I'd agree to put up, or to sponsor the wine.

Q. It's fairly specific, this, isn't it? It's  $\$4,000$ ,

and 1,000 of that will be going towards the wine?

A. That's correct, yeah.

Q. And he says, "As I am sure Mark already discussed with you, appropriate advertising will be utilised." I am just wondering

A. You know, I was asked to become a sponsor. And I did.

Q. It's just not a question and I have to be careful about this now. It's just not a question of a different recollection. You are saying that you never had the meeting Mr. FitzGerald describes; you describe that as lies on his part. What other contact can you tell us about?

A. Well, first of all, I didn't believe we were going to go back to the Mark FitzGerald today, so I haven't read anything to do with it.

Q. All right. I won't all right

A. So, I am

Q. Fine, okay. If that and I understand, and I'm not going to try and

A. If I can help you, I will. But...

Q. I am not going to but you might just think about that, Mr. O'Brien, because

A. Somebody contacted me.

Q. it does have to be addressed?

A. Of course it does.

Q. Now, I'm not going to go into all of the you then got a letter from, on the 8th September, from Phil

Hogan. Now, as I understand it, these letters from Mr. Hogan were prepared for Mr. Hogan and he signed them as Chairman. That might be normal enough in some sort of fundraising activity. And we have been informed by people who acted as the secretariat for this fundraising that they would have prepared these letters, which Mr. Hogan would have signed, but that they would have prepared them on the instructions of Mr. David Austin. Did you have any discussions with Mr. David Austin around this time about this particular event?

A. No.

Q. Now, you knew him well, isn't that right?

A. Yes.

Q. All right. That's something you might just consider.

I am not going to pursue it now. It's something you might consider, when dealing with this.

Now, the next document is a letter dated 8th September, 1995. And this is a letter from Mr. Hogan.

Again one it's a fairly standard one going out; it's about signage and logos and matters of that nature. It's recorded there that you were supposed to be the 17th hole. No signage. The logo was received on the 13/9 and returned on the 15/9 to Ms. Sarah Carey. And Ms. Carey informed us that she requested to get it back.

Then the 9th October, Ms. Carey sends the draft to

Phil Hogan. She says: "I understand Denis has requested that there are no references made to his contribution at the event."

Now, there is no dispute about this; there was no signage, that is correct. And there was no reference made to Esat at the event?

A. No, we deliberately did that.

Q. Now, coming to this question of the draft, and how it was obtained as described by Ms. Carey. I think just by way of background: When the joint venture was when there was an agreement in relation to the joint venture, there was an account set up, a joint venture account, isn't that correct?

A. That's correct.

Q. And there were to be there were four authorised signatories in relation to that account, and there had to be two signatories on every cheque. I think that was the way the account worked, isn't that right?

A. One from either side.

Q. And one from either side. And I think on your side, it was you and Peter O'Donoghue; and on the

A. Per Simonsen and Hans Myhre.

Q. Per Simonsen and Hans Myhre, isn't that right?

A. Yeah.

Q. And would I be correct in understanding that Hans Myhre was a technical man?

A. Predominantly, yes.

Q. Predominantly a technical man?

A. Yes.

Q. And do you remember Ms. Carey asking you to sign a cheque for the purpose of the draft, or do you remember giving her one to purchase the draft?

A. No.

Q. There is no doubt about it, you signed the cheques, isn't that right?

A. Quite definitely.

Q. And there is no doubt about it, Hans Myhre

A. It looks like his signature to me.

Q. From the microfiche we have of the matter, it appears to be his signature?

A. And he says he signed it.

Q. Now, what Mr. Myhre says about this is I wonder do you have his statement

A. Somewhere I do.

Q. I'll give you a copy of it.

A. I have it somewhere, hold on. I have it.

Q. First of all he deals with how he became he said:

"In the last week and for the first time" this is in November of 2002 "I had been made aware that a party political donation of €1/24,000 was paid by Esat Telecom/Denis O'Brien to the Fine Gael Party. The donation was made by means of a bank draft. The draft was sent by the marketing coordinator of Esat Telecom to Phil Hogan TD of the Fine Gael party. I have also

been informed that the funds for the donation were drawn on an account named the Esat/Telenor JV account.

This is the first time that I have heard that drawings on the account were used for such a purpose. The use of funds from the account for the purpose of a political donation was done without my knowledge or consent.

"To the best of my recollection, sometime in late May or early June 1995, it was agreed between Telenor and Esat Telecom that a joint account be established in the name of both parties. I understand that a resolution was signed on behalf of Telenor Invest for the establishment of an account with the Bank of Ireland, Baggot Street Branch. I understand that the account was later established. This was to be a joint venture current account for the purpose of making payments for and on behalf of Esat Digifone's project until Esat Digifone Limited became operational. The account was funded by equal contributions from Telenor and Esat Telecom.

"Based on information received from Per Simonsen, and copy documentation received from Kilroys, the account was to operate on the basis of all instructions to the bank would require two authorised signatories, at least one on behalf of Telenor and at least one on behalf of Esat Telecom. I and another Telenor executive named Per Simonsen were authorised

signatories on behalf of Telenor. Peter O'Donoghue and Denis O'Brien were the authorised signatories on behalf of Esat Telecom. It was not possible to make withdrawals or draw funds from the account without one authorised signatory, each from Esat Telecom and Telenor.

"In practice, Per Simonsen was the actual authorised signatory on behalf of Telenor in relation to most of the withdrawals from the account. I may have been asked to sign some cheques when Per Simonsen was not available in Dublin. I was engaged in the technical side of the Esat Digifone project and I was not responsible for the commercial and business aspects of the project.

"To the best of my knowledge, the initiative for drawings on the account primarily, if not exclusively, originated with Esat. Peter O'Donoghue or Denis O'Brien proposed various items for payment which were accepted based on their explanations. Generally speaking, Telenor were entirely dependent upon explanations received from Esat, who were dealing with the local day to day running of the project.

"I have been shown a statement of the account for October 1995 from the Bank of Ireland, Pembroke Branch. I have no recollection whatsoever of having authorised a withdrawal for the purpose of a political donation, whether to Fine Gael or to anybody else. If

I had been requested to authorise a withdrawal from the account for the purposes of a political donation, I would have refused. The purpose of the account was to deal with business expenses. A donation to a political party was not such an expense. I had no authority to permit or authorise a withdrawal for that purpose.

"I have been shown an electronically scanned image of a fiche copy of a cheque dated 6th October, 1995 signed by Denis O'Brien and myself. This was the cheque which authorised a withdrawal for the sum of £4,001.75, which sum of money, based on the statement, was debit on the account. I accept that based on visual inspection, the signature of 'Hans Myhre' on the cheque looks like my signature, even though I have no recollection of signing the cheque. The cheque is dated 6th October, 1995. This was a Friday.

According to my travelling invoices, I was in Dublin on that date, and according to the presented cheque, signed the cheque. I categorically state that I did so without any knowledge whatsoever as to the true purpose of the withdrawal, and I certainly did not know that it was for the purpose of a political donation.

"I am shocked and upset to find my name associated with the donation about which I knew nothing at the time and I have only been informed of last week."

Now, I don't think we are in any doubt about what Mr. Myhre is saying there; that if he signed the cheque, that it must have been represented to him as being for a purpose other than a political donation.

MR. MCGONIGAL: With respect, Mr. Chairman, I don't accept that he is saying that, and we pointed that out in correspondence, and I don't think it's helpful, unless Mr. Coughlan wants to, to go through this argument again. But the facts as adverted to in that statement do not make any allegation of misrepresentation.

CHAIRMAN: Well

A. It's Mr. Myhre's solicitors, in fact. Mr. Myhre's solicitors I think made the point

MR. MCGONIGAL: That was part of the correspondence which I think the Chairman is aware of.

CHAIRMAN: I read it at the time, Mr. McGonigal, but it's not easy for Mr. O'Brien, when a moderately lengthy letter is put, much of it is common case, we're agreed that there was the joint venture scheme of things that there'd be two nominees, yourself and Mr. O'Donoghue, Mr. Simonsen and Mr. Myhre. So the element of potential conflict appears to be

Mr. Myhre's averment or statement in the course of his remarks that he only contemplated signing cheques that related to the business venture of the consortium, and that had he been aware it was a political donation, he

would not have appended his signature.

A. In response to that, Chairman, I would say, what normally would happen, for example, there were six cheques issued on that day. Attached to every cheque there would have been a statement or an invoice or some piece of correspondence surrounding that payment. And it would be extremely rare for somebody to sign a cheque without having those attachments just to because otherwise you'd be signing cheques and you wouldn't know what you'd be signing them for. So it would be my recollection that that was the norm and that was procedure.

Q. MR. COUGHLAN: Well, what do you think so, if that was the and I'll operate on the basis of your normal procedure and practice what invoice or letter would have been attached to that cheque to enable Mr. Myhre to

A. It probably would have been the 30th August.

Q. You think the letter you say the letter of the 30th August, from Mr. Phil Hogan, was probably attached to it?

A. Yeah. And then we would have probably received a receipt once the function had, you know, been finished and we had paid they would have sent a receipt some days after the function was completed.

Q. Who would have been sent that?

A. Fine Gael would have sent a receipt, probably.

Q. And to whom would that have gone?

A. It would have gone to

Q. Probably not Mr. Myhre?

A. He may have sent it to me, because I was the person that he wrote to originally.

Q. And where would that have gone then?

A. It would have gone to the Accounts Department. I mean, normally political parties, when they you send them a donation, they will give you a receipt. So that is the norm. But, I think there is a wider point here, Mr. Coughlan, and I address this to the Chairman, is that what happened really was that, there was a new government in power. Nobody knew any of the ministers, at least I didn't, and nobody in the Esat organisation did. And going to these political functions was an opportunity, number one, to introduce ourselves; number two to introduce Esat and our company and what we were trying to achieve, and number three, promote a liberalisation agenda and to actually persuade, in particular, Fine Gael, as the senior party in the Rainbow Coalition, the merits of opening the market quicker. We were conscious that Democratic Left and Labour had a different view, that they wanted to open the market much more slowly, and so far as I am concerned, you know, I have never made a political donation for the purposes of achieving something, for example, like this licence. Like, we were part of the

political process. We were supporting the political process, and to this day, I still do, and in fact, these donations that you have listed, would pale into comparison the donations that I would have made in Northern Ireland to support the political process there as well. So, there is no linkages here.

This is getting to meet people, going to events, talking to them at any opportunity, and in promoting liberalisation and Esat as well, and the fact that we were worthy people to consider for a mobile licence.

Q. I just want to be clear there, when you talk about political donations at the time in the North of Ireland; you are not talking about that time in the North of Ireland?

A. Well, I'm saying to you, I have made political donations going back to the early '90s, but right up until today, I still do.

Q. Mr. O'Brien, the reason I am asking you about these at the moment is that there are two matters, particularly I think the

A. I might add, when you are looking for that material, that at most of these political lunches and dinners and golf outings, we met the other bidders for the licence as well. So we were not alone.

Q. Well, what I wanted to ask you about was this: That the 5,000 sorry, I beg your pardon, there were, from March until the 7th June, you had bought a couple

of tables at Fine Gael fundraisers, i.e. 1,000 a table.

That's fine. On the 22nd June, the original closing date was to be the 23rd June, I think, for the competition, isn't that right? On the 22nd June there was the Wicklow by-election fundraiser, or donation.

And according to Ms. Carey, that was done in a manner whereby a cheque would not go to Fine Gael, but it would be done by way of bank draft. Do you remember what she said in her statement?

A. Is this related to the golf?

Q. No, the Wicklow by-election as well.

A. You know, I can't remember whether it was a cheque or a draft, Mr. Coughlan.

Q. She says that she believes that it was a draft, and the reason being that you wanted confidentiality in relation

A. That could have been a reason.

Q. And we now have this golf classic, and again, it's being done in a confidential way?

A. Correct.

Q. Right. But, of course, this was now, and particularly the golf classic, but the Wicklow by-election in its in the initial understanding of the competition, they were the dating of those two donations was around the time of the competition, or during the course of the competition?

A. Well, it was spread apart by a number of, three, four,

five months. I don't know what the dates are.

Q. Now and this was to be done, to be kept confidential. You wanted it kept confidential?

A. Well, as I have said, you know, we were in the middle of a bidding process, and we did not want the donations to be misinterpreted in any way.

Q. And according to Mr. Myhre, in any event, he didn't know about it?

A. Well, that may be his evidence, but I am explaining to you the procedures under which cheques were raised, and also, if you look at the management accounts and the joint venture accounts, it's clearly notated that it's Fine Gael. So nobody was hiding anything.

Q. Now, when you gave evidence previously on the \$50,000 fundraiser, New York fundraiser

A. Well, can I just say, I gave evidence for seven days. If you are going to open that up, I am not prepared for it.

Q. I am not going to open it up, unless you want me to. You gave evidence on that occasion that it was inappropriate to have been asked for the donation, isn't that right?

A. I will repeat again, I have not prepared myself for the \$50,000

Q. All right. Just so that you can, I'll point out to you what you did say. You said it was inappropriate for Esat Telecom to make such a donation because of

its close proximity to the announcement of the competition result. And as I continued to ask you about it, you also stated that it would have been equally inappropriate for Esat Digifone to have made a contribution because of the proximity to the announcement of the competition result.

Now, can you distinguish for me how it would have that fundraiser, it would have been inappropriate to make that donation and it would have been appropriate, applying whatever standards or judgements you were, to make these two particular donations, which you say were confidential?

A. Well, first of all, I would like to review my evidence, because it's two years ago.

Q. All right.

A. Secondly, I would point out, and I have made this point to you already, that we were supporting the political process. And it was for the only reason of meeting ministers, as all business people, to put forward their case, to tell them about their business. But also in our case, we were pushing a liberalisation agenda. So

Q. Well, the liberalisation agenda I can understand perhaps in the early period of 1995 when you made contributions listen to me for a moment

A. I am listening because

Q. When you made contributions, you know, for a table at

a lunch or something like that, you might be trying to push the case in relation to liberalisation. The competition was announced in March, isn't that right?

A. But that was only the first step of liberalisation.

Q. Sorry, competition in relation to GSM?

A. But the market wasn't liberalised until the residential market was opened up.

Q. That's fixed line?

A. I am sorry, the mobile and the fixed. Mobile was the first of the markets to open up under liberalisation.

So, if you look at the other if you look through the rest of the schedule of my political donations, they carry through all the way till 1999/2000, and in fact, I bought the same golf outing for Fine Gael in 1996 as well, for 3,000. So it was there is basically we were campaigning for the liberalisation of the market. But it didn't stop in June 1995; it kept going.

Q. Why, and you are unsure as to whether the Wicklow by-election donation came out of an Esat account or a joint venture account

A. I think you have to be fair, Mr. Coughlan, where I have my information, I'll tell you. But how you can ask me whether it was a cheque or a draft in 1995, eight years ago

Q. But you think it may have come from the joint venture account?

A. It may have. I don't know.

Q. Right. We know that the golf classic certainly came from the joint venture account?

A. Yes.

Q. And the joint venture account was exclusively directed towards the GSM project?

A. Correct. But can I just clarify one thing, and be helpful with you?

Q. Yes.

A. And this is commercial reality outside of this room.

Is that people go to political functions to press the flesh and to meet people who are in power. And it is nothing to do with actually you don't get anything out of that process. All you have an opportunity is explaining to the Minister and introducing your company to it; there is nothing else in it. And we want to be very clear about that. You never get anything for buying a golf classic. You never get anything for donating money to a political party. That's my experience.

Q. You see, I am just wondering, again, and I know you want to review the evidence and I'd ask you to review it in this context: You had no doubt, when you went to see Mr. Arve Johansen about the \$50,000 donation

A. You are talking about two things differently completely, and I will only say this in relation to

Q. I am talking about the same thing, Mr. O'Brien.

A. I am not.

Q. You

CHAIRMAN: Let him answer.

A. Can I answer, just say, you are talking about we were bidding for a licence, we were pushing liberalisation.

We won the licence, okay? You have to look at those two time periods separately and not mix the two of them.

Q. MR. COUGHLAN: So it would be all right to make political contributions or donations when you were involved in the process bidding for the licence, but having won it, it would be very wrong to do it?

A. No, I am not saying that at all.

Q. What are you saying?

A. But you are trying to try something and say it was inappropriate or appropriate, I am not sure what your arguing point is.

Q. Now, you said it yourself. You were the one who always said it about the New York fundraiser; that it would be inappropriate to be asked for the money. It would be inappropriate for Esat Telecom to make

A. You are paraphrasing seven days of evidence, and I don't think that is fair.

Q. When you review it, Mr. O'Brien, tell me where I have got it wrong in relation to that.

A. Like, we are arguing about I am saying to you, seven days of evidence two and a half years ago, I am

saying I can't go there, I can't be helpful. I'll talk to you about anything up until what you told me to prepare today.

Q. Right. All right. Well, can I ask you then just to look at your own statement which you furnished to the Tribunal. And page 3 of that statement, where you say the following matters also

A. I have only two pages, sorry.

Q. I beg your pardon. I'll give it to you.

A. It's your well, basically it's from correspondence that's cut and paste, isn't it?

Q. No, it's your lengthy one dated

A. I have that.

Q. If you go to page 3, where you say you list the following matters which also occur to you. Do you see that?

A. Yeah.

Q. And if you go to the fourth bullet point?

A. And I'll read it, if you want?

Q. Yes.

A. "Esat Digifone took great heart that when the licence competition was announced, that it would be conducted totally independently and would be above any political interference."

Q. Could I ask you then why money would be used from the joint venture account to make donations to a political party, the lead political party of the Government at

that time?

A. I have already explained that Fine Gael and the Rainbow Coalition came into power. None of us knew anybody in Government, and we were advised by our lobbyists that we should go to these political events, introduce ourselves, make people aware about the services that our company wanted to offer, and also the fact that we were also in the middle of bidding for a licence. We behaved no differently than any other bidder in that regard.

Q. Well, very well. You want to review the evidence that you gave in relation to the New York fundraiser, I won't

A. But in all the evidence that this Tribunal has heard, we all know that this licence was issued entirely free of all political influence, every screed of evidence that we have all heard at this stage. And going to a political lunch certainly did not in any way help us to win this licence.

Q. I am asking you in the context of the evidence you gave in respect of the New York fundraiser

A. Why do you keep coming back to that when I said I can't summarise seven days of evidence?

Q. Because, Mr. O'Brien, it was in relation to that, and information which was brought to this Tribunal by Investec as a result of advice from the Central Bank that we first got involved in all of this?

A. What's that got to do with us winning the licence?

Q. That was not brought to the attention of the Tribunal.

I am asking you, in that time and in the context of

that, Mr. O'Brien will you listen to the

question

A. No, you are making a statement now.

Q. You stated that it was inappropriate. I am now asking

you if that was inappropriate, can you point out to me

the difference between that and making these donations

on a confidential basis to Fine Gael prior and during

the licensing, or the bid competition?

A. I don't know what your question is; it's more like a

statement.

Q. You can't

A. I don't know what your statement is.

Q. Can you distinguish? Can you give me

A. I can't distinguish between a question and a

statement. Maybe I'm tired.

Q. Can you give me the difference between the

inappropriateness of attending and making a donation

for the New York fundraiser

A. I think you are running out of questions if you keep

coming back to the \$50,000. I explained to you

already, seven days of evidence is not going to be cut

up and diced and put into one question this afternoon.

Q. You want to review that?

A. For the fourth time, yes.

CHAIRMAN: Well, you can certainly do that. Is it your preference to put it back, Mr. O'Brien?

A. It actually is. Because he keeps going back to that. It's as if Mr. Coughlan is running out of things to ask me at this stage.

CHAIRMAN: It's a matter I have to address, Mr. O'Brien.

A. Of course, Chairman.

CHAIRMAN: So I want to see that you are given a chance to consider it properly.

A. Okay. Thank you.

Q. MR. COUGHLAN: Now, Mr. O'Brien, I have another question to ask you, and that is I think we have because we'll have to come back to this.

A. Please do.

Q. Sorry, we have to come back because you need to review the documents.

A. No, you want to come back to it and so do I, so we both want to come back to it.

Q. Now, Mr. O'Brien, there was evidence given here by many witnesses about a document that was found on the file of a Mr. Jarlath Burke, who was a legal counsel to Esat Telecom Holdings. And it was a copy of a first page of a letter from Commissioner van Miert to the Minister, Michael Lowry?

A. Can you tell me what tab that is?

Q. Yes, I can. Book 50, last tab.

A. Can I just say, Chairman, that I haven't reviewed Mr. Burke's evidence, and I understand that we weren't going to this today. But if I can answer the questions of Mr. Coughlan, I will.

CHAIRMAN: Well, if a stage is reached, Mr. O'Brien, on which you prefer to refresh yourself on what took place, of course.

A. Thank you.

Q. MR. COUGHLAN: Well, could I ask you this: Can you without reference to what Mr. Burke said, can you tell us anything about this?

A. Well, I have read the letter.

Q. Yes. But can you tell us anything?

A. It's a letter to Mr. Lowry.

Q. The reason I am asking you, Mr. O'Brien, is I think that on the 4th December, 2002, you gave a television interview about this?

A. That's correct.

Q. So can I take it that you had informed yourself fully of the position to enable you to do that

A. Not entirely.

Q. Not entirely, very good. I won't deal with it so until you have had an opportunity to.

A. Thank you.

MR. COUGHLAN: That's as far as I can go, so, today.

A. Thank you.

CHAIRMAN: Well, it seems, then, that bar these two

remaining matters, Mr. Coughlan, may I surmise that your examination of Mr. O'Brien is concluded? So it certainly is within comparatively limited remaining dimensions. Of course, other counsel have to be offered an opportunity of raising matters that may be relevant.

It seems, Mr. Fitzsimons, you normally being first, that it would probably not be desirable that we take it up at this stage, unless you felt you were going to be relatively brief in the 15 to 20 minutes. I am conscious if I do then split your examination from that of Mr. Nesbitt or Mr. O'Donnell and Mr. McGonigal, we may have a somewhat unwieldy procedure. Have you any particular views yourself?

MR. FITZSIMONS: Well, I am in your hands there, Sir.

But Mr. O'Brien has come, it's his 16th day in the box, on my count, and he has prepared for this. I should be about a half an hour, and it may be convenient in just making various points. I am sure he wants to get it over, and frankly, I want to get it over, I want to move along, if it's possible to do so, but I am entirely in your hands, Sir.

A. I am happy, Chairman, if you feel we should sit

CHAIRMAN: I think if we can make one significant further stage towards concluding Mr. O'Brien's evidence, I am content to go with that. And you don't feel impeded by the fact that there remain the two

limited aspects still to be finalised in direct

examination.

MR. FITZSIMONS: Hopefully I won't have any questions

on those. If I do

CHAIRMAN: Very good. Obviously, Mr. Fitzsimons, I am

not going to put a ceiling on any counsel, let alone

someone of your eminence, but perhaps if we get to a

quarter past five and there is no sign of fairly

imminent conclusion, it may be a little tough for

everybody involved.

MR. FITZSIMONS: I'll try and move it along, Sir.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Mr. O'Brien, I am just going to deal

with a number of points. I am certainly not going to

attempt to address the various issues or many of the

various issues in which my client's witnesses may be

giving evidence that differs from yours. That's a

matter for the Chairman at the end of the day. But I

do wish to seek to just refer to a number of matters.

Firstly, Mr. O'Brien, just a straightforward point. I

think you accept that you were the leader of this

consortium?

A. I was Chairman of it, yes.

Q. But in active terms, I mean, you have used phrases

like you were pulling the strings "We were the

people in the command tower, if you like, calling the

shots," "We were running the bid"?

A. Yes.

Q. That's fair enough. Okay.

A. We were getting help, obviously, from the other people involved.

Q. Of course, that's fully accepted. Just in relation to your evidence, "Had Telenor seen the Advent agreement of the 12th July, 1995?" Day 250, page 48, question 199, you said, "I believe so, I couldn't be 100 percent.

Who saw it?

Knut Haga."

We have taken instructions from Mr. Haga, and he will say that he didn't see that document.

You said, at question 197, same page: "They knew what was in the agreement." Again, Mr. Haga would say Telenor did not know the actual content of the agreement. So I just make that point to give you a chance to comment on it?

A. I think that could have been the case. But I suppose in practical terms then, how would they then be how could they turn it down, that it wasn't a financial guarantee? So I mean, it's open.

Q. It's the document I am talking about. Just a physical I just want to give you a document, put it in evidence, Mr. O'Brien.

The Tribunal have been furnished with a copy of this.

This is a legal submission furnished to the Tribunal,

on the 4th December, and it was also furnished to your

legal advisers?

A. That's right.

Q. I don't know if you have read this document, or had an opportunity of doing so?

A. Unfortunately I haven't.

Q. Okay.

A. But I am aware of some of the material in it.

Q. The document establishes that the shareholders in Esat Digifone from the 23rd June, 1995, to the 12th April, 1996, were Esat Telecom Holdings and Telenor Invest AS on a 50:50 basis, and also, of course, that Esat Digifone, that company, applied for and was awarded the licence.

It also

A. That would be correct.

Q. establishes that the suggestion that the banks were 20% investors and were replaced by an IIU company on the 29th September, 1995, is incorrect as a matter of law.

A. I haven't read your document, but

Q. Very good. Perhaps I could put this to you: Would you accept that IIU, the IIU company that was a party to the arrangement agreement only had such rights and obligations as were provided for in that actual arrangement agreement?

A. That's right.

Q. And would you accept that under that arrangement agreement, IIU, or the IIU company could, in fact, have placed the 20%, or 25% shares with Bank of Ireland, if they had wished to?

A. Probably, yes.

Q. The only limit upon their discretion in that regard was they couldn't place it with more than four places?

A. Yes, they were limited.

Q. And in fact, the company that actually did take the licence was a different company, so it must be assumed that IIU placed with that company?

A. It was well, it was all under the Dermot Desmond umbrella.

Q. I appreciate that. But Mr. Desmond's name was being thrown about the place, but in fact in law this is what happened?

A. Well, I was told that Bottin was Dermot Desmond and he was the beneficial owner, so...

Q. But in fact, IIU could have placed the shares with Rafidin Bank in Baghdad, if they wished, and you couldn't have done anything about it, in law?

A. In law, I'll accept that if you are saying it.

Q. Ultimately, on the 12th April, 1996, 250 ordinary shares in Esat Digifone were for the very first time issued to IIU Nominees, a different company from the IIU company that was a party to the arrangement

agreement?

A. Well, I always believed whether it was IIU Nominees or IIU Limited or Bottin, that it was Mr. Desmond.

Q. I appreciate that.

A. So...

Q. Just moving on; uncertainty re IIU involvement. I have to suggest to you that some of the documentation we have gone through reveals some of that type of uncertainty regarding the rights of IIU; for example, the Esat Digifone minutes of the 20th December, 1996, first paragraph, Document 49 Mr. Halpenny's attendance of 8th January, Document 49, 102, demonstrates uncertainty re IIU involvement. In other words, a recognition that IIU had rights that might be used in an unanticipated manner?

A. I have never believed that IIU would do anything that would be hostile to Telenor or Esat.

Q. I'm not suggesting that it would be hostile in any way. Just they had rights in law?

A. Well, I wouldn't be a lawyer, but I'm sure if you are saying that, I accept I mean, it would be hard for me to disagree with you.

Q. Moving on. One little point regarding the arrangement agreement. In your evidence, Day 256, I didn't note the page, there is a suggestion that Telenor actually cleared the arrangement agreement, and indeed Mr. Owen O'Connell, in his evidence, on day on the 4th

November, at page 81, suggested that Telenor might have, he wasn't certain, cleared the arrangement agreement.

I have to suggest to you that the position is as follows: Certainly Telenor knew that there was an agreement being prepared, were involved in it, clearly, because they were being given drafts, and indeed, proposing amendments, but they never actually finally cleared it and did not authorise its signing.

Now, I follow that by saying that, of course, when it was all done they accepted what had happened.

A. I wouldn't agree with that statement.

Q. Okay.

A. I think the other point is that Mr. O'Connell was not doing the work on that agreement; it was Mr. Halpenny, if I remember rightly. So at all times, I would never have signed that agreement without the express consent of Telenor.

Q. Very well. Now, Telenor's knowledge of IIU, you were asked at Day 250, 137, page 137, Mr. Coughlan, he asked you: "So did Telenor know about Mr. Desmond as of the 12th September of 1995 at the presentation?"

And you answered as follows: "I believe they did, yeah. I couldn't be totally certain of that, but I may have mentioned it to them, I don't know."

Now, my instructions are that Telenor certainly did not know of IIU's imminent involvement as of that

date, the 12th September, 1995. And my instructions are that the first intimation was via the Per Simonsen conversation. Those are my instructions now. You say that didn't happen. Of course I accept that you have said that. But certainly on the

A. There is conflicting

Q. on the 12th September they didn't know?

A. There is conflicting evidence there, clearly.

Q. Okay. Now, just to deal with Mr. and I am using the language now of Mr. Dermot Desmond, Day 251, page 72, question 281. You are describing your deal. You say: "That was later on in September." And you have been discussing discussions in August, so we are just into September, it doesn't mean late September, I think. You say: "I didn't have a deal with him.

Once we had shaken hands on the phone on his percentage, then I felt I had a deal with him and it was a matter of the solicitors to tie up the detail on the letters and also to get Telenor's ultimate approval that they were happy for this to happen."

Can we take it then as of that time, the shake hands on the phone, you regarded yourself as honour-bound to go through with what you had verbally agreed with Mr. Desmond?

A. Subject to Telenor.

Q. Subject to Telenor. And as you have already told us, that Mr. Desmond himself was a person who, once he

makes a verbal deal, he sticks to it?

A. He has proved that.

Q. Now, could I suggest to you, that at this time it was particularly important for you to have this arrangement with Mr. Desmond, the deal; you saw it as a good deal for you, for financial reasons, for example, and for the project generally, as you saw it?

A. Well, I think you need to look at it from this point of view: One, we still had to satisfy Telenor on the financial guarantee, and secondly, we felt we'd strengthen the consortium considerably by underwriting the third party investment.

Q. And I don't want to get into any contentious area, but you needed Communicorp needed financial guarantees for itself at that time; for example, on the 11th August, '95, Document 48/36, you had written to Mr. Desmond with an outline agreement relating to funding of  $\frac{1}{2}$  million?

A. That was to satisfy Telenor, nothing to do with our other businesses at all. We were trying to find a way to satisfy Telenor on the joint venture agreement.

Q. Okay. Now, just one side point here. Your evidence in relation to Mr. Johansen's memo, I am not going to go through it. Mr. Johansen, as you have said, will have to give his evidence on that topic. Just, you have advanced the proposition that Mr. Johansen was under pressure because of his CEO. At Day 255, page

65, question 217, you said, and I quote "He  
Mr. Johansen "arrived over with his Chief  
Executive, and he was clearly under ferocious  
pressure."

Now, my instructions are that Mr. Johansen's CEO came  
to Dublin on the 6th May, 1996. Was here for two days  
until the 8th May, 1996, with the Norwegian Trade  
Minister, part of a trade delegation, and of course  
Telenor had other business in Ireland, other

A. Not at that time.

Q. Other plants?

A. Not at that time.

Q. At that time. I am instructed specifically by

A. Are they?

Q. by an individual who worked for them in Ireland,  
that they had, and he was present and

A. This was well, I don't think so, but I stand  
corrected.

Q. The date is important then. Would you there is  
this conflict?

A. I don't have the benefit of obviously the dates.

Q. Anyway, you are advancing a possible reason for

A. Yeah, that he was under pressure, and every business  
person goes through periods of pressure.

Q. Okay. Well, he can give his own evidence on that.

CHAIRMAN: What you are putting, Mr. Fitzsimons, is  
that the Chief Executive Officer travelled separately

and earlier. He didn't come in tandem with

Mr. Johansen?

Q. MR. FITZSIMONS: Later, later. Mr. Johansen came to Ireland for the 3rd May, 1996; left on that date, went back to Oslo. Came back then again on the 9th May, 1996, and then went away shortly afterwards.

A. It wouldn't change my impression, though. I mean, I met Mr. Hermonsén and Mr. Johansen, they came to my office one morning. And that's well what I deduced out of the meeting.

Q. Now, just to the final matter, this will take a couple of minutes. In your statement, at page 2, you refer to, and I just won't bother referring to the context standard dealings and manoeuvrings associated with business and which are an essential part of business. And I think you were referring at least I assume what you are saying there is that business is business; it is full of dealings and manoeuvrings and operating, interpersonal, interplay and so on and so forth. Is that a fair comment?

A. It would be, yeah.

Q. And sometimes the dealings and manoeuvrings, sometimes, would it be fair to describe them as machiavellian at times, even manipulative? There is nothing illegitimate or illegal about manoeuvring, to that extent, on occasions?

A. I have to I think, I don't know whether machiavellian would be the best way to describe it, but you have your wits about you.

Q. Great businessmen would, I take it, engage in the same way in standard dealings and manouverings, and again at times, if it became necessary, would have to be very clever and machiavellian or manipulative if the strategy demanded it?

A. You'd have to be clever, I am not sure about manipulative or machiavellian.

Q. I now the words sound awful in one way.

A. They sound terrible.

Q. In fact, they describe behaviour that could be described simply as strategic?

A. Yeah, I think but in all walks of life, I don't think, not just in business, Mr. Fitzsimons

Q. Oh, of course, absolutely.

A. Maybe the law as well, I think you have to be

Q. The law, politics, everywhere, I am quite sure, yes.

But great businessmen, could I also suggest to you, that they must have 50:50 vision at all times?

A. Yes, you need your eyes open, yes.

Q. Now, when I referred to the strategies, and indeed use that description of them, could I put it to you that sometimes good businessmen might even use such strategies, I'll just continue to use the word "strategy", but you know what I mean, use such

strategies sometimes in the interest of those who may be affected by them; for example, partners, a partner who was reluctant to go along with a good deal, or alternatively, an uncooperative customer or valued employee?

A. That you would use strategies to handle those circumstances?

Q. Yes.

A. You could, yes. Would be one way of dealing with it.

Q. Wouldn't it be much better to deal with a problem of the type I have mentioned than having a blazing row or a breaking up a partnership or seeing a wonderful deal go astray or having to lose a top-class employee, that you should manoeuvre them

A. Sometimes you have to have a war to have peace. I am not being glib about it, but sometimes a good barney can clear the air.

Q. Well, maybe it does, but all the better if you can manoeuvre them to your, to go in the direction that you wish to go, particularly when it's in their interest to do so?

A. Well, I think you know, if you are in business you need persuasive powers as well.

Q. Yes. Isn't it fair to say, coming back to the 50:50 vision, that great businessmen must anticipate potential problems and cater for them in every possible way in advance?

A. That's easier said than done.

Q. If Telenor had not cooperated in relation to IIU, it would have been a problem for you, wouldn't it?

A. No, it wouldn't be, no.

Q. It wouldn't have been a problem at all?

A. That would mean that they would have accepted the Advent financial guarantee.

Q. No, they weren't accepting Advent either. Let's say they wouldn't accept IIU, that would have been a problem? I am not putting it any further than that?

A. I think it would have been a joint problem. I think if you are in a partnership you have to share the problem when it happened.

Q. It would have been a problem for you because you had this honour agreement with Mr. Desmond, and

A. Well, no, as I explained, it was obviously conditional on Telenor as one of the partners agreeing to it.

Q. But at that time

A. I wasn't acting unilaterally.

Q. Okay. Well, we are into mid-September now in this particular context, Telenor hearing about IIU, and if they had not cooperated and you were into months and months of the same sort of thing you had with Advent, that, surely, would have created serious problems for you, for Telenor, for everyone, and could have meant things going off the rails?

A. No, I wouldn't agree with that. We would have won the

licence anyway.

Q. Now, I want to you would agree with me, I think you said it earlier, at that time you, and indeed everyone, was working under enormous pressures generally?

A. Extreme pressure.

Q. I want to mention the Per Simonsen conversation; you know this thing that he says he was told by you. You have told us that it did not happen. Of course, as you know, we all know, Mr. Simonsen is not saying that what was said was correct. But could I suggest to you

A. I think the language there can be we have seen examples where there is language difficulties as well, Mr. Fitzsimons.

Q. Of course. Could I suggest to you that if it was said, it couldn't have been correct, if it was said?

A. About the pub conversation?

Q. Yes.

A. It was totally incorrect.

Q. Totally, I agree with you, it couldn't have been correct at the time. Because we have heard the evidence before that

A. There was no suggestion.

Q. I appreciate that. But if there had been a discussion, it simply could not the information you were transmitting could not have been correct as a

matter of fact, because, as we know from early August, a process was commenced which culminated in early September with your agreement with Mr. Desmond, and there was no Ministerial involvement at any point in time?

A. None whatsoever.

Q. Is it possible, Mr. O'Brien, that at this stage you, a businessman, tried to cover every conceivable angle, every possible potential problem; that you were concerned about the possible Telenor non-cooperation regarding IIU, and you told a fib to Mr. Simonsen in the belief that it would soften up or even eliminate potential Telenor resistance to IIU?

A. I can assure you quite definitely not.

Q. If you had done that, that would have been quite machiavellian and manipulative?

A. Well, it would have been untrue.

Q. Absolutely. I am calling it a fib. I am not using any stronger language than that?

A. You see, at that time, Telenor wanted to get us to have a financial guarantee, and there was no argument at all and there was no rancor about the decision to bring in IIU.

Q. Yes. You certainly believed at the time that it was in Telenor's interest that IIU be brought in, as in fact that turned out to be the case?

A. It was in everybody's interest, yes.

Q. But

A. I think it also was in the interests in subsequent years when things became a little bit difficult.

Q. But you are not prepared to accept that on thinking over it, that you might have behaved in a

A. No.

Q. machiavellian manner, in order just to solve a possible problem that might never have materialised, but might have been there?

A. Absolutely no.

Q. Okay. You wouldn't behave in that way at all?

A. No.

Q. I want to refer you to just to read out evidence of Day 126, page 134, question 413, during the evidence of Mr. Barry Moloney. This is a quote from your statement given at that stage. I am going to read out just three quotes, and you needn't if you wouldn't mind, if you just bear with me and then I'll just ask you a question.

"Early one morning in October '96" this is of course a year later "I was running in Roundwood in County Wicklow with Barry Moloney. Barry was complaining about the invoices he received from Esat Digifone, from consultants and lobbyists in relation to the bid. I wanted him to pay them because they were from people I had recruited. This was twelve months after the bid had been successful and many of

them had still not been paid. I had indicated that if the company reneged, I was honour-bound to make the payments, and I added falsely, that if you think you have got problems, I have already paid 200 grand to other people."

Now, Day 120, during your evidence, page 81, question 243, this was again your answer to a Tribunal question:

"There was no first payment, nor any second payment. I said I paid out two months of 100,000 each out of bravado to persuade Barry to get the finger out and pay bonuses to PJ Mara, Eddie Kelly and Stephen Cloonan."

Page 82 of the same day, Day 120, question 429, again quoting your statement: "I repeatedly asked Barry Moloney to pay out the bonuses to all the people who had worked on the bid on a contract basis. These included, PJ Mara, Stephen Cloonan, Edward Kelly and Enda Hardiman. BM was dragging his feet, in particular with PJ Mara and Stephen Cloonan. Every time I would meet Barry Moloney I would ask him to pay again. It was getting embarrassing for me and the people concerned. This was the context of my October conversation."

You see, I have to suggest to you, Mr. O'Brien, that here, out of your own lips, we have you acknowledging the telling of a fib in order to motivate someone to

do something that you wanted to get done.

A. It was bravado.

Q. Well, bravado doesn't

A. Well, I was asked the question, and I gave my evidence.

Q. You gave your evidence

A. Completely different things.

Q. Of course. But there is nothing wrong with nothing illegal or illegitimate about a businessman being machiavellian or manipulative, particularly if he thinks it will help to further the aims of the business, is there, if there is nothing wrong then?

A. I don't think you should lie.

Q. Mmm?

A. I don't think you should lie.

Q. I am calling them fibs?

A. Fibs or lies.

Q. You did, on this occasion, tell a lie to Barry to try to get him to do something that you wanted to get him to do?

A. I didn't tell him a lie. It was out of bravado and to try after fifteen months, when people, creditors of the company hadn't been paid. For stupid reasons.

Q. The alternative for Barry was to have a blazing row with him, with possible adverse consequences for the venture?

A. Sorry, I did have blazing rows with him over it.

Q. Or to have him fired?

A. Pardon?

Q. Or to have him fired?

A. If you are 40% of a joint venture, you can seek the removal of a chief executive, but you can't vote it because you don't have the votes.

Q. And you are still sure in your evidence that you never had this conversation with Mr. Simonsen?

A. Definitely not.

MR. FITZSIMONS: Thanks Mr. O'Brien.

Those are my questions, Sir.

CHAIRMAN: Well, Mr. Fitzsimons, it's absolutely spot on prediction of your time, even if perhaps none of us will be going to you as a consultant optician. And in those circumstances, Mr. O'Brien, you are almost done as regards your evidence. And thank you for your cooperation in attending in the course of your other commitments over the last several days.

It seems fairly clear that one day, which can be arranged next term, will conclude the small remaining matters that Mr. Coughlan has to raise, in addition to what Mr. Fanning, Mr. McGonigal, and some representative of the Departmental team may have to raise with you. Thank you for your assistance.

A. Thank you Chairman.

CHAIRMAN: As regards the further course of dealings, I have taken the view that since the only witnesses

that we were able to procure for next week would be of very limited and short duration, it would scarcely be feasible to incur the expense of sittings.

Accordingly, what will be done is to restart the sittings with a view to conclusion of this phase at the start of next term, in fact, on Tuesday, 13th January, when a number of, a considerable number of witnesses have been organised to give attendance in succession.

I should mention, for everybody's benefit, that because of the obvious supervening considerations of Ireland's Presidency of the European Union for the first six months of next year, we are inevitably being evicted from this particular hall, and we are being relocated in the Coach House, close to the Chester Beatty Museum across the back road into the Castle. I have, with the Registrar, and the Board of Works and other Castle authorities, looked at the facilities there. They may not be opulent, but I believe they will be adequate, and I will do everything I can to see that what is in place for witnesses, representatives and media is as satisfactory as can be by the start of next term.

In those circumstances, I thank everyone for their cooperation, and we will, subject to any emergency arising in the interim, resume the hearings of the remainder of this phase on the date I have indicated

in January.

Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 13TH  
JANUARY, 2004.