

A P P E A R A N C E S

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Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, SC

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I N D E X

Witness: Examination: Question No.:

Leslie Buckley Mr. Healy 1 - 364

Mr. Fanning 365 - 374

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 13TH

JANUARY, 2004 AT 11AM.:

CHAIRMAN: Good morning.

Mr. Healy?

MR. HEALY: Sorry, I have just received some new documents.

Mr. Buckley, please, Mr. Leslie Buckley.

LESLIE BUCKLEY, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

CHAIRMAN: Thanks, Mr. Murphy. I note your attendance.

Thank you for attending, Mr. Buckley. You are of course already sworn from an earlier sitting.

A. Thank you.

MR. HEALY: I am just trying to read over some amendments, Mr. Buckley, to your statement. We can deal with them, I suppose, as we go through it.

A. Fine.

Q. Now, you provided the Tribunal with I think three statements. So that we can refer to them all without there being confusion, I want to identify them and

make sure that you have got them as well; and we'll come to the amendments, as I said, as we reach the relevant portions of the statements that you want amended.

The Tribunal received from your solicitors a document described as "Memorandum of intended evidence of Mr. Leslie Buckley" dated 24th May, 2002, and it contained five numbered paragraphs, is dated the 24th May 2002, and is signed by you. Do you have that?

A. I have, yes.

Q. I propose to call that Memorandum Number 1, for ease of reference.

Then the next memorandum is dated the same date as that memorandum. It contains five numbered queries, together with five numbered answers, and is not signed; and I propose to refer to that as Memorandum Number 2.

And then the third document contains 60 numbered queries, 60 numbered answers, is dated 8th October 2002, and is signed by you. And as I said, I'll call that Memorandum Number 3.

I don't intend to go through everything contained in your memoranda, because in the first place, you have indicated you don't know a lot about a lot of the questions you were asked; and secondly, a lot of the material has been covered by other witnesses. You may be aware of that yourself.

There is a fourth document that I should have mentioned a moment ago, also dated the it's dated 22nd November, 2002, and you may have a signed copy.

The copy I have has your name at the end of it, and it contains eight queries and eight numbered queries and eight numbered responses. And I'll call that Memorandum Number 4.

A. Just on that, my file just shows that 22nd November, five queries, five answers. Maybe I am missing a page.

Q. I have eight queries. I'll get a copy of it for you so

A. Okay.

Q. For a start, maybe you'll just have a look at my copy. And just check that you recognise it, firstly.

(Document handed to witness.)

A. Yes, I recognise that. I just don't have a copy of that page.

Q. We'll get you a copy of it.

A. Thank you very much.

Q. Just a few general queries first, Mr. Buckley. I just want to clarify your current business activities. You are involved, I think, in the telecommunications business still; is that right?

A. I am, yes.

Q. Am I right in thinking you are involved in a company called Digicell; is that correct?

A. That's correct.

Q. Where does that operate? Does it operate mainly in the Caribbean, or is it a world

A. It operates only in the Caribbean at present, in the mobile phone business.

Q. What's your role with that company?

A. I am a shareholder and a non-executive director.

Q. What are your other do you have other business interests at the moment? I am not looking for the details of them.

A. I have, yes.

Q. Are you still involved in a consultancy?

A. Yeah, I still run a consultancy business.

Q. Is that your in fact your main business? Are you still is your main business a consultancy business?

A. Well, my main business is probably I would spend a majority of my time involved with Digicell, and with some other investments that I have, but I still have a consultancy business.

Q. And are those other roles you have, are they related to Digicell and the telecommunications business, or are they other business interests only?

A. No, they are other business interests.

Q. In 1995/1996, in that period, you were operating a business consultancy; is that right?

A. Absolutely, yeah.

Q. Was that your major preoccupation at that time?

A. Yes, it was, but as I set up my consultancy business, I think back in '87, and I took on executive roles in some areas on a consultancy basis.

Q. I follow.

A. So I did it in Waterford Crystal, Irish Steel, and I also did it in Esat Telecom.

Q. So at this particular time, as I understand it, you were acting as, or you were operating as an acting CEO of Esat Telecom; is that right?

A. Acting COO.

Q. Acting

A. Chief Operations Officer.

Q. I see.

A. Of Esat Telecom, which is the fixed-line business.

Q. Yes. And but you were doing that as a consultant; in other words, you came into the company specifically to do that or perform that role for a particular period of time or for a particular purpose. Is that right?

A. Absolutely.

Q. And at that time, did you have other consultancy occupations, as it were, or other consultancy professional interests?

A. I did indeed.

Q. Maybe just clarify for me precisely what the role of Chief Operations Officer entails as opposed to Chief Executive Officer, which is a distinction I don't

quite fully grasp.

A. Well, it probably would vary from company to company.

But Denis O'Brien was the Chief Executive Officer.

Q. I follow.

A. And Chairman and founder of Esat Telecom. So I was

the Chief Operations Officer, and really the role of

Chief Operations Officer in most companies would be

just basically to handle the day-to-day operations of

the business, monitor its performance, you know, drive

it forward, and you know, ensure that it was

operating to budget.

Q. Operating to budget?

A. Operating to budget, yeah.

Q. Is it making money, or will it make money? Does it

have the money to keep doing what it's doing? Would

that be the type of areas or issues that you'd be

dealing with?

A. Yeah, there is a budget agreed at the start of every

financial year, and the role of the Chief Operations

Officer, basically, no matter what business he or she

would be in, would be to ensure that the company was

performing to budget.

Q. I see.

A. If at all possible.

Q. I understand that. Were you a shareholder in Esat

Telecom?

A. No, I wasn't.

Q. At any time?

A. No. I had share options.

Q. You had share options?

A. Yeah, but I wasn't a shareholder.

Q. I suppose having share options puts you in the same position as a shareholder to some degree. At least it gives you an interest similar to a shareholder's interest?

A. Yes, and there were many, many people in Esat Telecom that had share options.

Q. Would they have been mainly employees or executives?

A. They yeah.

Q. Isn't that the normal way of incentivising workers, in particular, employees and higher executives of modern companies?

A. Absolutely, yeah.

Q. So that although they may not be shareholders, they have effectively the same interest as a shareholder, if not indeed a greater interest, because they make more money if the shares increase in value; isn't that right?

A. It's certainly an incentive.

Q. That's the point of it; there would be no other point in offering these advantages to executives. Isn't that right?

Now, in 1995/96, we know that the Esat Digifone bid went in to the Department, was successful, and



ultimately, by mid-1996, the licence had been formally granted to it; isn't that right?

A. That's correct.

Q. I think you became a director of Esat Digifone, the GSM2 company, if I can call it that, the mobile company, in 1996; is that right?

A. Yeah. I think it was at the time of the issue of the licence, the 16th May.

Q. 16th May?

A. 1996.

Q. Prior to that, you had a role in assisting the company or, if you like, the venture, if I can put it in that general way; would that be right?

A. Yeah. I actually had a very peripheral role, because I suppose in back in 1995, probably March '95, I had been maybe it was '94, actually, I was involved with Denis in the radio business, Denis O'Brien, in the radio business, and then in the fixed-line business. And then in March, I think March/April '95, the RFP was issued for the mobile phone licence. And Denis became actively involved in that, and we both agreed that it would be best if I could concentrate on the fixed-line business, and he concentrated mainly on the mobile application and the putting together of the consortium.

So and we had an agreement, you know, that I was at times kept up to date and would attend an odd meeting,

and that's it. But really I just had a very peripheral involvement.

Q. Right. I think in his own evidence, Mr. O'Brien described you, described the entire bid team, if you like, and he described your role as an adviser, I think, an adviser to the Board. I'll get the precise wording if I can.

A. Well, you see, as a management consultant, I'd be I would have been an adviser to the fixed-line business and to Denis O'Brien.

Q. Right.

A. But I think it's important to recognise at this stage that I actually even though I may be down as an adviser, I didn't play and I think my evidence shows that I wasn't particularly involved in putting together the bid. I wasn't on the bid team.

Q. I understand that.

On Day 248 I mean, I can give you a copy of this if you like, but it's only a short snatch from the evidence. I'll just read it out to you, and I'll give it to you as well.

Day 248, page 13

A. Yeah, I see myself here as being described as a Board member and as an adviser.

Q. We'll just go through it for a moment. You'll see Mr. O'Brien firstly refers to "then the Ideas Company, marketing section of the bid, Lucy Gaffney, Paula

McEvelly, and then advisers and consultants.

"Eileen Gleeson;" you knew of Ms. Gleeson's involvement in the PR element of the bid.

"Leslie Buckley, Board member/adviser;

Padraig O'hUiginn, Board member/adviser;

P.J. Mara, adviser;

Paul Meaghar, solicitor; site " I presume that's intended to mean "site acquisition", and I think Mr. O'Brien confirms that on the next line. Do you see that?

A. Yes, indeed.

Q. Then it goes on: Paul Connolly, Declan O'Reilly, Niall O'Brien, Dan Egan, Dave Curran, Geraldine Lally, Eugene Cooke, and so on.

Would your role have been similar to that then of Ms. Gleeson, Mr. O'hUiginn, or Mr. Mara?

A. Yeah, but some people would have had more involvement than others. For example, Eileen Gleeson would have been much more involved in the formulation of the bid and from a PR aspect, with Denis, than I would have been at that stage.

Q. What I'm trying to get at is what were you bringing to the table, as it were? What sort of advice could you give, or what sort of advice would you have been expected to give?

A. I am not too sure what advice I would have been expected to give. We never sat down and defined that.

But I suppose I had a few more grey hairs than Mr. Denis O'Brien, and I was available for his advice, or to give him advice. But as I said, we had agreed that you know, he would actually handle the mobile phone application.

Q. You would handle the fixed?

A. I would handle the fixed. And I tell you, in operating my own consultancy business and in dealing with the fixed-line business was more than a ten-hour-a-day job.

Q. You had enough on your plate?

A. Absolutely.

Q. Correct me if I'm wrong: Would it be fair, then, to describe you as somebody who was in some way a sort of a sounding board for Mr. O'Brien? If he had a problem he might talk to you about it, or if there was some issue that he wanted to think through, he might involve you?

A. If at times he thought it was appropriate, or if I was available. But I have to say, I'd say my availability in relation to that was few and far between.

Q. What I now propose to do is to try and go through these statements. And there may be one or two parts I want to concentrate on, but we should get them out of the way fairly quickly.

A. Thank you very much.

Q. And I'll keep this list of corrections to hand.

If we could start, therefore, with Memorandum Number

1. It's headed "Reply of Leslie Buckley to queries raised in the letter of the 20th March, 2002", from John Davis, solicitor to the Tribunal, addressed to Mr. Frank Murphy, solicitor for Mr. Leslie Buckley.

We begin off: "The Tribunal will be aware that my responses to its queries are based on my recollections of events which took place more than six years ago. I do not have in my possession or available to me information that would enable me to make a very detailed reply. I only became a director of Esat Digifone on the 16th May, 1996."

"The establishment of the Esat Digifone consortium."

"The establishment of the Esat Digifone consortium was dealt with by Mr. O'Brien, who engaged Davys Stockbrokers to place portion of the equity. My recollection of this was that it was not very successful and that Mr. O'Brien approached Dermot Desmond. After months of negotiation, Mr. Desmond agreed to join the consortium. I recollect from conversations I had with Mr. O'Brien that he was negotiating with Michael Walsh, who represented Mr. Desmond. Again, I recollect that these negotiations were not only with Mr. Desmond but had to take account of negotiations with other members of the consortium. The final agreement was reached on the basis that Mr. Desmond would hold an equity stake in

the Esat Digifone consortium to the extent of 20%, and that Esat Holdings Limited and Telenor would each hold 40%."

The heading is "Preparation of the Esat Digifone Application."

You say: "The preparation of the Esat Digifone application took place long before I became a director of Esat Digifone Limited, and I had no involvement in it. I was, at that time, acting CEO of Esat Telecom and concentrating on the fixed-line business."

A. Sorry, could I just make a correction. That should actually read "COO".

Q. I understand that. You can see where I had the impression of CEO.

A. I can understand that.

Q. "The consortium's Dealing with the Department in the Course of the Evaluation Process" is the next heading, paragraph 3. And you say: "I was not involved in any way in this. I, as COO, Esat Telecom, would have had discussions with the Department regarding the fixed-line business but not in regard to Esat Digifone's business. My discussions would have centred around the use of the auto dialer with which Esat Telecom was concerned".

The next heading is "The Consortium's Dealings With the Department in the Course of the Licences Process".

You say: "I had no dealings with the Department in

the course of the licensing process."

The next heading is "The capital configuration of Esat Digifone Limited, specifically the matters raised in the Tribunal's request of the 14th February last."

And your response is: "I have already dealt with this matter in my reply of even date dealing with the queries raised in the letter of the 14th February, 2002."

That brings us on, then, to the second memorandum, Memorandum Number 2, which is headed "Further memorandum of intended evidence of Mr. Leslie Buckley", dated 22nd May, 2002.

Again, you say: "The Tribunal will be aware that my responses to its queries are based on my recollections of events which took place some six years ago. I do not have in my possession or available to me information that would enable me to make a very detailed reply. I only became a director of Esat Digifone Limited on the 16th May, 1996".

The first query is as follows: "As to your knowledge, direct or indirect, of the association of Allied Irish Banks, Investment Bank of Ireland, Standard Life Ireland, and Advent International with the bid and/or the consortium and the subsequent disassociation of them from the bid or the consortium."

And your answer is: "I had no direct or indirect involvement with the association of Allied Irish

Banks, Investment Bank of Ireland, Standard Life Ireland, and Advent International with the bid and/or the consortium or with the subsequent disassociation of them from the bid or the consortium<sup>2</sup>.

In relation to the finances, my peripheral knowledge and awareness emanated whatever information was given to me by Denis O'Brien at various meetings I would have had with him about other matters. I do not recollect any detail surrounding these matters as I had only the most peripheral involvement in the association of the consortium, and there is nothing further I can add to it."

I don't think there is any point in going through the rest of that memorandum unless you think that it's worthwhile drawing my attention to any part of it, because I think it's overtaken in either other evidence or in other responses.

A. Absolutely.

Q. Then if we go on to your third memorandum. Again you have a preamble a bit lengthier, and I think I should read that out, although it reiterates some of what you said in the earlier two memoranda.

"The Tribunal will be aware that my responses to its queries are based on my recollection of events which took place some six or seven years ago. I do not have in my possession or available to me information that would enable me to make a very detailed reply. I now



have the benefit of reading the documentation contained in Schedule 2 that accompanied the letter of the 26th June, 2002. It is important to note that I only became a director of Esat Digifone on the 16th May, 1996, and my main function during the period in question within the Esat group, as acting COO Chief Operations Officer, was managing the day-to-day running of Esat Telecom, i.e. the fixed-line business. In addition, as MD of Leslie Buckley & Associates, my management consultancy business, I also had a number of other clients affairs to look after."

Now, there are, as I said, some 60 queries in this, in a questionnaire you were sent, and you provided 60 responses; but because of what you have told me earlier, your peripheral involvement, most of your responses are to the effect that you have no nothing, no information to give?

A. Absolutely.

Q. I don't want to read all those out, because it would simply be a waste of time; so can I take it it is your evidence that your answers to all of these questions are correct, subject of course to the amendments that you want to make?

A. Yes indeed.

Q. And we need only refer to some of them. I just want to refer to Query Number 4, which is on page 4, and it's as follows: It's as to your knowledge, direct or

indirect, of the negotiation of the joint venture agreement dated 2nd June, 1995, including details of any professional advice provided to Communicorp or to Mr. O'Brien in connection with the negotiation and finalisation of the joint venture agreement.

And your response is: "I was not involved directly or indirectly in the negotiation of the joint venture agreement, but William Fry & Sons would have been the professional advisers to Denis O'Brien."

Query Number 5, you were asked firstly as to the purpose for which the joint venture agreement provided for a guarantee by Communicorp of 5 million.

Secondly, whether, and if so, when, such guarantee was actually provided. Thirdly, the form of such guarantee.

And your response is: Firstly, in relation to the purpose for which the joint venture agreement provided for a guarantee: "I cannot recall the purpose of this". Secondly, whether it was actually provided, you say, "I don't know". And it had thirdly, as to the form of the guarantee, "I don't know anything about the form of the guarantee, and I have no recollection of ever seeing and I never would have had reason to ever see it."

Query Number 6 is as follows. It's as to your involvement in or knowledge, direct or indirect, of the dealings between Communicorp or Esat Digifone or

any other person on their behalf with J&E Davy for the purpose of securing the backing of institutional investors, together with the source or sources of Mr. Buckley's knowledge.

And your response is: "Apart from the fact that I would have been generally aware of dealings between Communicorp/Esat Digifone/Denis O'Brien with J&E Davy seeking the backing of institutional investors, I was not in any way involved at this level or in these dealings. I have absolutely no information about them. In fact, I cannot recall anything other than the fact that there were dealings with J&E Davy in relation to securing an investor."

Query Number 7 is as follows, as to your understanding of the commitments provided by Allied Irish Banks, Investment Bank of Ireland and Standard Life to the funding of Esat Digifone.

And your response is: "I was never involved and have no knowledge whatsoever."

Query Number 8 is as to your knowledge, direct or indirect, of the terms of all agreements concluded between Communicorp, Esat Digifone, Mr. O'Brien or any associated entity with Advent International Corporation, and including in particular,

1. An agreement whereby Advent provided a facility of IR£123.5 million to Communicorp/RINV or any other entity associated with Mr. O'Brien;

And secondly, an agreement dated 12th July, 1995, between Advent International Corporation, Esat Digifone, Communicorp and Mr. O'Brien for the provision of letters of comfort by Advent to the Department of Transport, Energy and Communications and to Telenor.

And you say: "I was never involved, and to the best of my recollection I never saw any such agreements nor had any reason to."

I want to pass on to Query Number 24; this contains a reference to the oral presentations. And the query is as follows. It's as to your understanding as to the purpose for which oral presentations by applicants were conducted by the Department.

Your knowledge, direct or indirect, of all queries raised by the Department in the course of the presentation regarding the financing of the Esat Digifone consortium, including any queries specifically addressed to Communicorp's funding of its equity participation in Esat Digifone, and in particular, any queries regarding the letter of comfort provided by Advent for the terms governing the offer of funds by Advent.

Next, as to your knowledge of all queries raised by the Department regarding the commitments provided by the institutional investors in the Esat Digifone bid.

And lastly, your understanding as to the overall

impression made by the Esat Digifone consortium in the course of the presentation, and in particular any matters which appear to be problematic or any areas of perceived weakness.

And you say: "I was not involved in any oral presentations to the Department, but I recollect that it was a requirement of the Department. To the best of my knowledge, Denis O'Brien and Barry Maloney and maybe others made that presentation. But when exactly it was made, I cannot recall. My understanding as to its purpose was that it gave the assessors the opportunity to understand the proposal and to ask questions. As I said in reply to para 24.1, I was not at the presentation, and I can't recall the queries raised or if I was ever made aware of them, and I cannot recall anything about a letter of comfort."

Where the queries raised by the Department were concerned, you say: "I cannot recall."

And finally you say, "My recollection is that the overall impression was a good one."

A. I'd probably just add to that, having reflected on it, that I suppose everything is relative, but that if there was any area that the team had of any concern, there was a feeling there that maybe they hadn't been able to particularly convince the assessors of the strength of the financial position of the consortium.

Q. I see. Thank you.

Query Number 25, I think we come to a change here, maybe.

A. Could I say that that, just when I was going through it, it appears as if there is some kind of a typo error here, and it obviously slipped

Q. Can I read it out first, and you can go over the correction?

A. Absolutely.

Q. Inquiry Number 25 is to as your involvement or knowledge, direct or indirect, of all dealings, discussions or meetings between Mr. O'Brien, Communicorp, Esat Digifone or any person on their behalf with Mr. Dermot Desmond or IIU Limited in relation to Mr. Desmond or IIU joining the Esat Digifone consortium or providing funding for the consortium or any members of the consortium including, in particular, Communicorp or any related or associated entity at any time prior to the closing date of the competition on the 4th August, together with the source/s of your knowledge.

And your response is: "I can recall having meetings with Denis O'Brien which would generally be about other matters where he would have, more by way of general information, updated me in relation to ongoing discussions with Dermot Desmond/IIU in relation to Mr. Desmond/IIU joining the Esat Digifone consortium. But I had no involvement in the dealings or negotiations

surrounding such joining or providing funding for the consortium or any members of the consortium, including in particular Communicorp or any related or associated entity, at any time prior to the closing date of the competition on the 4th August."

I think what you are saying is that you discovered that you gave an identical reply to Query Number 26 as you gave to Query Number 25?

A. Exactly, yeah, except for the one word "Prior to the closing date of the competition on August 4th" and "after the closing date". So I don't know how that there is just one word in the difference in my Answers 25 and 26.

Q. I think maybe you intended to give the same answer.

A. No, I hadn't.

Q. Hadn't you? I see.

A. No, no. Because I'd be very clear that I couldn't give that answer until Denis O'Brien had met Dermot Desmond, I think, on the 10th August, '95. So I wouldn't have had any discussion with Denis O'Brien in relation to any involvement of Dermot Desmond or IIU prior to the closing date of the 4th August, '95.

Q. Prior to the closing date, you had no discussion?

A. Yeah. So there is just two words different: "Prior" and "After".

Q. So would I be right in saying that your knowledge of discussions involving Mr. Desmond or IIU emanates from

information you got from Mr. Denis O'Brien? That's the first thing.

A. Absolutely.

Q. But that couldn't apply to the period prior to the 4th August, 1995, because you knew nothing of Mr. Desmond's involvement or potential involvement, if any, at that time?

A. Exactly.

Q. And that it could only apply to the time after any discussions with Mr. Dermot Desmond had been instituted by Mr. O'Brien, or vice versa, by

Mr. Desmond

A. That's correct.

Q. But apart from that, the answer is correct?

A. Well

Q. The dating is the only issue?

A. No, no, the answer then that I should have given is that I had no involvement, knowledge, direct or indirect, of any such dealings, discussions or meetings, and I am not aware that any such dealings, discussions or meetings whatever

Q. I appreciate your point, but I'm trying to rephrase the question. What was your knowledge of the involvement of Mr. Dermot Desmond or IIU with Mr. O'Brien or his consortium, putting it in that general way, and your answer is: "The only knowledge I had was knowledge I got from Mr. O'Brien".



And am I right in thinking that that can only apply to a period after Mr. Desmond became involved sometime in August of 1995?

A. Sometime, and that sometime was the 10th August.

Q. Correct. So that would be a correct way of describing your information or your knowledge concerning those matters?

A. Exactly.

Q. So that what I have now just put to you in fact takes the place of Questions 25 and 26, doesn't it?

A. Yes.

CHAIRMAN: So, effectively, Mr. Buckley, your first knowledge of these developing discussions was when Mr. O'Brien recounted to you of having been over to the Glasgow Celtic match, and he brought you up to date from time to time thereafter?

A. Yes, absolutely.

Q. MR. HEALY: The next query, Query Number 27, is as to your involvement or dealings, direct or indirect, in the negotiations between Mr. O'Brien, Communicorp, Esat Digifone or any entity on their behalf and Mr. Desmond/IIU or any person on their behalf between the 10th August, 1995, and the 29th September, 1995, and including details of the meetings of the 10th August, 1995, 15th September, 1995, and 17th September, 1995.

And in particular, the persons who attended such meetings, the purpose of such meetings and the matters

under discussion, together with the source or sources of your knowledge.

You say: "I have read the file memo contained in Schedule 2 referred to in the letter on the reply dated 18th September, 1995. This is a memo from Owen O'Connell to his file about a meeting at which he, Denis O'Brien, and I had in Owen O'Connell's office.

It emerged during that meeting that Dermot Desmond was going to join the consortium. I do not recall the references to AIB, Standard and IBI to be excluded, referred to in the memo, and I don't recall any precise discussion about the 5% to Advent and the balance divided between Esat and Telenor. This, I suspect, would have been arrived at by means of a process of elimination.

You were then asked for your understanding of the precise obligations and entitlements of Esat Digifone and of Communicorp on foot of the agreements of the 29th September, 1995, between Esat Digifone and IIU and between Communicorp and IIU.

You say: "I was not involved in the agreements of the 29th September, 1995, referred to, and I never considered or had any reason to" I suppose that should be "be aware of the obligations and entitlements of the parties to these agreements."

A. Yes.

Q. You were asked for your understanding of precise

obligations and entitlements of IIU on foot of the agreements of the 29th September between Communicorp and IIU and between Esat Digifone and IIU.

You say: "I was not involved in the agreements referred to, and I never considered any reason to consider the obligations and entitlements to parties to these agreements".

You were then asked for your knowledge, direct or indirect, of the purpose for which the letter of the 29th September, 1995, from IIU, addressed to Mr. Martin Brennan of the Department of Transport, Energy and Communications, was sent, and all matters or considerations which prompted the furnishing of the letter, together with the source or sources of your knowledge.

Your response is: "As I recall, the purpose for which the letter of the 29th September 1995 from IIU addressed to Mr. Martin Brennan was provided was to counteract the rumours that Denis O'Brien was not capable of funding his bid."

Then if you go on to Query Number 40, page 21. And there is a correction, and we'll read out the query first, and the answer, and then the correction.

You were asked for precise details of your understanding of the following:

1. The composition of the Esat Digifone consortium as of the 4th August, 1995, being the date on which the

Esat Digifone application was lodged with the Department.

2. The composition of the Esat Digifone consortium as of the 25th October, 1995, being the date on which the consortium won the licence competition.

3. The capital configuration and beneficial ownership of the shares of Esat Digifone Limited as of the 12th April, 1996, being the date of the board meeting at which the full complement of shares in Esat Digifone was issued.

4. The capital configuration of the issued capital and the beneficial ownership of the shares of Esat Digifone as of the 16th May, 1996, being the date of issue of the GSM licence to Esat Digifone.

And your answer is firstly with reference to the 4th August, 1995, and you say: "My understanding was as set out in the bid."

Secondly, you were asked for your understanding as of the 25th October, and you say: "As set out in the bid, I cannot recall anything different".

Thirdly, you were asked about the configuration and beneficial ownership as of the 12th April 1996, and you say: "I was not aware of the capital configuration or the precise beneficial ownership in any detail".

Fourthly, "I was not aware" this is with reference to the 16th May. You say: "I was not aware of the

capital configuration or the precise beneficial ownership in any detail."

Now, you say that the reply to Query Number 40 should read as follows: This is as per your amended reply of the 13th January, 2004. In reference to and in response to Query Number 40, subparagraph 1, which sought information concerning the composition of the consortium as of the 4th August, you say: "As per my reply of the 8th October, 2002", which means that your understanding was as set out in the bid.

Next you were asked for your understanding of the composition as of the 25th October, and you say "Communicorp 27.5% (sic); Telenor 37.5%; IIU 25%".

You were then asked for your understanding as of the 12th April, and your response is "Communicorp 37.5%; Telenor 37.5%; IIU 25%".

Then you were asked for your understanding as of the 16th May 1996, and you say: "Communicorp 40%; Telenor 40%; and IIU 20%". Is that right?

A. That's correct.

CHAIRMAN: Mr. Healy, I am not sure whether it was you said it or whether it was just a typing error on the realtime facility, but I think the 25th October was really the two Mr. Buckley, just for clarity, it was Communicorp 37.5, Telenor 37.5, and IIU 25, the same as on the following date, that you were asked in relation to. There was a reference to 27.5%.

A. No, 37

MR. HEALY: On the transcript it says 27; it should be 37.

Q. If we now go on to Query Number 48, it says your knowledge, direct or indirect, of any other contact between any person associated or connected directly or indirectly with Esat Digifone and the Department or the member regarding the Department's request that the issued share capital of Esat Digifone sorry, obviously I can't read out that query unless I read out Query Number 47.

So if I could just go back for a moment and refer to Query Number 47, which was as to the date on which and the circumstances in which you became aware that the Department had requested that the configuration of the issued share capital of Esat Digifone Limited should be restored to the capital configuration of the consortium which had applied for the licence; i.e., restored to the 40:40:20, together with source or sources of such knowledge.

And you say "I do not know the date or the circumstances."

Then you were asked for your knowledge, direct or indirect, of any other contact between any person associated or connected directly or indirectly with Esat Digifone and the Department or the Minister regarding the Department's request that the issued

share capital of Esat Digifone should be restored to 40:40:20, together with the source or sources of your knowledge.

And you say: "I do not know the date or the circumstances."

Query Number 49, you were asked for your knowledge, direct or indirect, of all dealings, discussions and negotiations between Communicorp/Esat Telecom, Telenor and IIU regarding the request made by the Department that the capital configuration of Esat Digifone should be restored to 40:40:20, and including all matters which prompted the agreement of IIU Limited to transfer 5% of the shares of Esat Digifone to Communicorp/Esat Telecom and Telenor. All negotiations regarding the valuation and the 5% shareholding of IIU at IRi½2.75 million, and the agreement of IIU Telenor and Communicorp/Esat Telecom to accept such evaluation, and the manner in which the evaluation of the 5% shareholding of IIU was fixed at 2.75 million.

And your response is: "I do not know the date or the circumstances. I was not involved in the detail of any of these negotiations."

Then if you go to Query Number 59 on page 32, you were asked for details of all meetings, discussions, dealings or contacts of whatsoever nature between you and any of the following:

1. Mr. Michael Lowry.
2. Mr. John Loughrey.
3. Mr. Martin Brennan.
4. Mr. Fintan Towey.
5. Mr. Michael Andersen or any member of Andersen Management International.
6. Any official of any government department.
7. Any member of the Government.
8. Any public official.

And your response is in relation firstly to Michael Lowry: "I met Michael Lowry on a number of occasions, some on formal occasions where I was carrying out some public function such as the launch of Esat Digifone or the announcement of the licence, and I also met him with Denis O'Brien at meetings to discuss Esat Telecom in relation to its fixed-line business".

Secondly, in relation to John Loughrey, you say "John Loughrey would have attended meetings that myself and Denis O'Brien had with Michael Lowry, to the best of my recollection".

Thirdly, in relation to Martin Brennan, you say:

"Martin Brennan would have attended meetings that myself and Denis O'Brien had with Michael Lowry, to the best of my recollection."

A. Sorry, I think that's incorrect. I think the only time that I would have met Martin Brennan, to the best of my knowledge, is at the signing of the licence on



May 16th.

Q. In relation to Mr. Fintan Towey, you say: "To the best of my recollection, I don't recall ever formally meeting Mr. Fintan Towey. However, I may have had telephone conversations with him".

Fifthly, in relation to Mr. Michael Andersen, you say: "I do not recall meeting Mr. Michael Andersen or any member of Andersen Management International.

Sixthly, in relation to any official of any government department, you say: "Other than the foregoing, I do not recall specifically any other officials, although I would have spoken to some officials from time to time in the course of my work. Prior to the establishment of the regulatory office, I would have met a number of officials from the Department to discuss, in particular, regulatory matters, but I cannot recall precise names or dates or how often".

Seventhly, in relation to the members of Government, you say: "I did not meet any member of the Government in relation to my involvement with Esat Telecom or Esat Digifone apart from Mr. Michael Lowry in relation to Esat Telecom's fixed-line business as outlined above".

Eighthly, in relation to any other public official, you say: "I did not meet any public official that I can recall in relation to any of the foregoing matters."

We'll now go on to your fourth memorandum, which is headed "Memorandum of Intended Evidence of Mr. Leslie Buckley" dated 22nd November, 2002.

Question Number 1 is as follows: It's as to your knowledge, direct or indirect, of the meeting between Mr. Desmond and Mr. O'Brien at 6 p.m. on the 17th September, 1995, and including,

- (A) the place of such meeting,
- (B) the identity of all such persons present;
- (C) the purpose of such meeting;
- (D) all matters under discussion.

And your response is: "I did not become aware of Mr. O'Brien's meeting with Mr. Desmond until I was in the company of Mr. Desmond when we were both in a car on our way to a meeting in William Fry on the 18th September, 1995. I have no recollection of whether or not Mr. O'Brien mentioned to me where the meeting took place, and I cannot now recall and I still do not know where the meeting took place or if there were other people present at it or what the purpose of such meeting was, except to say that following from the information that such a meeting had taken place, Mr. O'Brien stated that Dermot Desmond was going ahead with the financing transaction."

Query Number 2 is as follows. It's as to your knowledge, direct or indirect, of Mr. O'Brien's arrangement to meet with Mr. Michael Lowry on the

evening of the 17th September, 1995, together with the source or sources of this knowledge.

You say: "I was never aware, directly or indirectly, of any arrangement of Mr. O'Brien to meet Mr. Lowry on the evening of the 17th September, 1995.

The third query is as to is for details of all matters related by Mr. O'Brien or any other person to you, whether directly or indirectly, regarding his meeting with Mr. Lowry on the evening of the 17th September, 1995, including the date and place that such matters were related to Mr. Buckley and the identities of all persons present.

You say: "I first became aware of Mr. O'Brien's meeting with Mr. Lowry when we were both in the car on Monday 18th September, 1995, on our way to meet Mr. Owen O'Connell of William Fry. Mr. O'Brien informed me that he had met Mr. Lowry the previous evening in a public house after the All-Ireland final. I do not recall if he even mentioned the name of the public house. This meeting was not mentioned to me by any other person at any stage prior to it being mentioned to me by Mr. O'Brien. From what Mr. O'Brien informed me, I do not recollect that he mentioned whether or not there was any other person present".

Query Number 4 is as to your knowledge, direct or indirect, of the matters discussed by Mr. O'Brien and Mr. Lowry at the meeting on the 17th September 1995

together with the source or sources of your knowledge.

And your response is as follows: "While we were driving to Mr. Owen O'Connell's office as mentioned above, Mr. O'Brien informed me that he discussed with Mr. Lowry the problems we were having concerning the Esat Telecom fixed-line business, particularly as they related to the shortage of capacity, i.e. DDI/DDO telephone lines from Telecom Eireann. This is the area of business I was particularly involved in and concerned with. I have no recollection whatsoever of Mr. O'Brien mentioning anything else about his conversation with Mr. Lowry."

You were asked then for your knowledge, direct or indirect, of all dealings, contacts or communications of whatsoever nature between Mr. O'Brien and Mr. Desmond or Mr. Walsh, whether directly or indirectly through any agency subsequent to Mr. O'Brien's meeting with Mr. Lowry on the evening of the 17th September, 1995, at any time on September 17th or the 18th, 1995.

And your answer is: "I am unclear as to which evening of September 1995 is being referred to in the question. However, as previously stated in my last memorandum of the 8th October in reply to Question 25, Mr. O'Brien would have more by way of general information updated me in relation to ongoing discussions with Dermot Desmond/IIU in relation to Mr. Desmond/IIU joining the Esat Digifone consortium. I

am sure this would also have been mentioned at Esat Telecom board meetings. I again wish to emphasise that I had no involvement in dealings or negotiations surrounding such joining or providing funding for the consortium or any members of the consortium."

You were asked for your knowledge, direct or indirect, of all dealings, contacts or communications of whatsoever nature between Mr. Michael Lowry and Mr. Dermot Desmond/Mr. Michael Walsh/IIU, either directly or indirectly, regarding the involvement or potential involvement of Mr. Desmond or IIU in the Esat Digifone consortium.

And your response is: "I have no knowledge of any dealings, contacts or communications between Mr. Lowry and Mr. Desmond/Mr. Walsh/IIU regarding the involvement or potential involvement of Mr. Desmond/IIU with the Esat Digifone consortium."

You were asked for your knowledge, direct or indirect, of all dealings, contacts or communications of whatsoever nature between any official of the Department of Transport, Energy and Communications and Mr. Desmond/Mr. Walsh/IIU, either directly or indirectly, regarding the involvement or potential involvement of Mr. Desmond or IIU in the Esat Digifone consortium.

You say: "I do not believe that I ever had any knowledge, direct or indirect, of any dealings,

contacts or communications whatsoever between any official of the Department and Mr. Desmond/Mr. Walsh/IIU regarding Mr. Desmond's or IIU's involvement in the Esat Digifone consortium. The only dealings, contacts or communications that I was aware of surrounded the letter of the 29th September, from IIU addressed to Mr. Martin Brennan, referred to in my reply to Question 30 in my previous memorandum dated 8th October, 2002."

Then you were asked for your knowledge, direct or indirect, of all references of whatsoever nature made by any person associated with Esat Digifone Limited, Esat Telecom Limited, Communicorp Limited, IIU Limited or Telenor Limited to any contacts or communications between Mr. O'Brien and Mr. Lowry at any time during the evaluation process or the licensing process.

And your response is: "I cannot recall any specific references made by any persons associated with Esat Digifone, Esat Telecom/Communicorp, IIU Limited or Telenor Limited or any contacts or communications between Mr. O'Brien and Mr. Lowry at any time during the evaluation process or the licensing process.

However, I was of course aware that meetings between Mr. O'Brien and Mr. Lowry with reference to the fixed-line business of Esat Telecom, some of which I attended and to which I have already referred in my reply dated 8th October, 2002, in reply to Question

59.1".

Now, before going to some aspects of those statements, I want to just tease out with you, Mr. Buckley, there are a number of references in the attendances made by, I think, mainly solicitors, of meetings held in the course of the relevant periods of '95/'96, to your attendance. And I just want to get those out of the way, and then we'll have got rid of most of the documents.

The first document that I'll be referring to, maybe at a later point as well in the course of dealing with some of your answers, is contained in Book 49, Tab 84 sorry, I beg your pardon, Book 48, Tab 42. We can put it on the projector. It's a short document.

What you have got on the projector is the is a photocopy of the original document. It might be easier if I put the typed version if we put the typed version up, it would be a lot easier for you to follow.

It's a file note of Owen O'Connell's to which you have already referred. First of all, "a meeting Denis O'Brien and Leslie Buckley, Dermot Desmond going ahead with financing transaction.

Need "underwriting" letter for Department because finances are seen as a weakness.

DD wants 30% of GSM. AIB standard and IBI to be excluded"

Underneath that: "DD 30"

"5% Advent, 32.5% Esat, and 32.5% Telenor."

We may be coming back to this later, but do you see the reference to Esat?

A. Yes.

Q. That's presumably a reference to Esat Telecom, isn't it?

A. Yeah, quite possibly it would have been.

Q. Now, strictly speaking, I think at that time Communicorp was carrying, if you like, what I call the Denis O'Brien interest; isn't that right?

A. Yes.

Q. But there was a tendency always to refer to Mr. O'Brien's interest as the Esat Telecom interests; isn't that right? And ultimately his interest was carried by that company; isn't that right?

A. Yes. And I have to say that at that stage, I would have been in Fry's on a fairly frequent basis, and I think, you know, when they would see me there, they would again say, Esat, because we had continuing problems with the Department in relation to capacity, and I had a lot of involvement with Fry's on that.

Q. I follow. Again, I'll come to the next document; so that you'll have some familiarity with them, I am going to mention them all to you.

A. Okay.

Q. The next document is in Book 49, Tab 84. It refers to



a meeting of the 3rd November, 1995. You see it on the projector, and I'll get the printed version again, put on the overhead projector.

Now, again, this is an attendance of Mr. Owen O'Connell, client: Esat. Now, here we know that this is a reference to Esat Digifone. There was a time when I couldn't follow all these references, but I think we are all satisfied, aren't I right, that this is a reference to Digifone?

A. Yes.

Q. "Matter: GSM". Then there is no file number.

"Attendance here on Denis O'Brien, Leslie Buckley, Paul Connolly and John Callaghan.

"IIU issue bullet point for press release problem re material change in shareholders versus bid."

Underneath that: "Group of institutional and other investors to be located by underwriters IIU.

"Had to upgrade financing arrangements (primary criterion) from comfort to underwriting. IIU willing to give underwriting commitment and did so. Clearly gave control of 20% to underwriter. Understanding is that underwriter will be placing shares with investors and institutions."

Underneath that: "Michael Walsh call?"

Then the question mark underneath that is an indication that it's been it's proved impossible to

decipher the handwritten note. Then underneath that,

"Financing options confidential at present; will be revealed in due course when finalised."

Now, you have told us about the last meeting that I referred you to the attendance of. Do you remember this meeting in November of 1995? I am not going to go into the details of it.

A. I actually have just a very vague recollection of it, but you know, I vaguely recall it, and yeah, I can see, I certainly attended it.

Q. The next document is contained in Book 49, Leaf 135.

This time it's again an attendance of William Fry's.

It's an attendance of Mr. Gerry Halpenny, and the client is Digifone. If you go to the printed version again, you'll see things more clearly.

In attendance are "P. Connolly, L. Buckley, Owen O'Connell, Gerry Halpenny" then "TN" bridge dependent on the 12.5%." Bridge is a reference to bridging.

A. Mm-hmm.

Q. "Knut Digerud call to the Department to say that no cash available immediately."

"DOB phone call", presumably indicating that Mr.

O'Brien called the telephoned in to the meeting.

A. Possibly, yeah.

Q. "Minister of opinion that cash not available call by KD to M Brennan.

DOB to call Knut Digerud."

Underneath that, "Sequence of events.

IIU

TN possibly sell 50% of the 40% to somebody Tele Danmark?"

Next page: "Cap at 40% Norway not an EU state."

Underneath that, "Irish", and I think it should have the word "Partner" after it.

Underneath that, "Letter to sell shares TN said that not prepared to sell."

Underneath that, "CSFB call by KD re the 12.5%.

"Call to the Department re the 12.5%.

"One free transfer

" waive 12.5% preemption if IIU wish to sell.

" Telenor no placing to date.

"If public offering at holding level, offer some liquidity at the subsidiary level.

" real value is at the market.

" take out part of holding on flotation.

"Liability subject to licence to sell up to 50% of them holding without preemption.

" exclude somebody with substantial interest in telecoms in Ireland.

state that 50% only for technical reasons.

"Reaffirm the commercial basis of the deal as equal partners recognised in the shareholders agreement."

Underneath that, "Licence windfall."

Then the next part couldn't be deciphered.

Underneath that, "Difficult to resolve and highly emotive.

"Profits over a certain level."

Firstly, there is do you remember the meeting of the 9th May 1996?

A. Yeah, I recall the meeting.

Q. What can you recall about it?

A. I remember my recollection at that stage is that there was probably a lot of pressure building up, and there was, I'd say, at the start, there, you referred that Knut Digerud telephoned the Department, and that was probably to say that the licence wasn't able to be signed because the shareholders agreement wasn't finalised.

Q. It says "Cash not available immediately", I think.

A. Yeah.

Q. You remember that, do you?

A. I kind of have yeah, I have a certain recollection of it.

Q. It seems to have been a fairly important or fairly critical meeting, doesn't it?

A. There was a lot of meetings at that stage.

Q. There were, yes.

A. And I really don't know, because it seems fairly speculative in certain areas. Like, we are talking about Norway, you know, not being in the EU, and it

seems to be kind of futuristic. Yeah, certainly there was a reference to free transfer, and IIU had a right to offer any share once without offering to either Esat or Telenor, if they so wished.

Q. Can you remember what your role would have been at such a meeting?

A. I can't, specifically.

Q. If your involvement was, as you say, peripheral, why would they have brought you along?

A. I could quite possibly have been and again, I am just speculating I could quite possibly have been in Fry's on that day, having discussed on other issues and been asked to come into that meeting.

CHAIRMAN: Is your discipline that of an accountant, Mr. Buckley?

A. No, no, no; I am a master of science.

CHAIRMAN: I see.

Q. MR. HEALY: If I bring you on to the next document, it may jog your memory in relation to some of the things that were happening at this time.

A. Sorry, I have to say, you say jog my memory, I am actually trying to help but I have to say to you, I am speculating; all I can say is what I have said.

Q. Let me put it this way: There is a lot of technical stuff on that page, and a lot of it, as I say, looking way into the future.

A. That's what appears, yeah.

Q. If we just go on for the moment to the next document, it's Book 49, page 136, and I'll get it on the overhead projector. It's a letter that Mr. O'Brien wrote to or I beg your pardon, it's a letter that Mr. Johansen wrote to Mr. O'Brien.

Are you familiar with the letter? Does it ring any bells for you, just looking at it there?

A. I remember the meeting in

Q. Maybe I'll just read the first paragraph. It says

"Dear Denis,

"I refer to the meeting held today at which I attended together with Rolf Busch, general counsel of Telenor, Arthur Moran of Matheson Ormsby Prentice, our solicitors, and Leslie Buckley and Paul Connolly and your solicitor, Gerry Halpenny, and Knut Digerud and Owen O'Connell representing Esat Digifone. I would like to clarify our position following that meeting.

"The joint venture entered into between Communicorp and Telenor last year in order to bid for and be awarded the licence for the second GSM network in Ireland was originally based on a 50:50 participation of Communicorp and Telenor."

Now, had you seen that letter before? Because it had been referred to a good few times in the course of Tribunal's proceedings.

A. I am not sure if I remember seeing the letter, but I certainly remember seeing the reply to that letter. I

remember seeing that all right.

Q. Just for a moment

A. I presumably did see that letter, but I can't actually recall it. I can certainly recall the reply to it.

Q. Okay. What do you know about the reply, and what do you recall about seeing the reply?

A. I remember meeting at at the meeting, we were there was funding taking place in the States, and we were using the services of Credit Suisse First Boston, CSFB, and they had informed Denis that if we could consolidate our accounts, Esat Digifone and Esat Telecom, okay, then it would make the funding process much easier. So consequently, we were endeavouring to get the 50 or at one stage it could even have been 51% shareholding of the consortium so that we could consolidate the accounts. And my memory of that meeting is that's what we were endeavouring to do, to try and get Telenor to agree to reduce their shareholding, and that we could get either 50 or 51%, I can't recall, of the consortium. But I do remember it was a very heated meeting.

Q. Yes. The people who were at the meeting seemed to be the same people who were referred to in the Gerry Halpenny note that we just looked at a moment ago; do you notice that?

A. Sorry, just the Gerry Halpenny note is

Q. The one

A. What date is that?

Q. We looked at a note a moment ago on the overhead projector of a meeting of the 9th May of 1996 attended by Paul Connolly, Leslie Buckley, Owen O'Connell, Gerry Halpenny. And there seems to have been a meeting at around the same time involving those people but also involving people from the Telenor side. Can I put it that way?

A. Mm-hmm.

Q. And there is some references, if you look at the overhead projector for a moment, there are some references in that memorandum that contains some of the documents I am referring to, but this might be an easier way of looking at it it contains a reference to some of the matters mentioned by Mr. O'Brien in his letter to Mr. Johansen and by Mr. Johansen in his letter to Mr. O'Brien.

Do you remember a reference to contacting CSFB on that memorandum that you are looking at on the overhead projector? I'll show it to you. It's on, I think, the I think it's on the

A. I do remember in, I think, Denis O'Brien's reply

Q. If you go to the second page of that memorandum for a moment, the second typed page, now, do you see the fourth entry "CSFB call by KD re the 12.5%"; do you see that?

A. Yes.



Q. Do you remember Mr. O'Brien, in his letter to Mr. Johansen, took issue with the fact that Mr. Johansen, or his company at least, endeavoured to contact CSFB, who Mr. O'Brien saw as his bankers, and having a private relationship with him? Do you remember that?

A. I recall that being included in the letter.

Q. And Mr. O'Brien said in his letter that at one point, yourself and Paul Connolly indicated you were not prepared to accept some of the personal nature of the some of the allegations that were being made?

A. Mm-hmm.

Q. So it seems to have been a fairly hot and heavy meeting about, am I right in saying, control of the consortium?

A. Yes, I remember it being a very heated meeting.

Q. But the subject matter under discussion and the subject matter that prompted those two letters, which were fairly sharp-ish letters, if I can put it that way, was an allegation by Telenor that Mr. O'Brien was seeking to get control from them, and that that's all he was doing in bringing in outside people such as Mr. Desmond and others, and a resistance to that by Mr. O'Brien saying "That's not what I was trying to do at all", and he was explaining his position. But that would have been the main thrust of the two letters; is that right?

A. Yeah, I think so. Except to say that and at the

meeting at MOPS was basically instigated as a result of the advice we were getting from CSFB.

Q. I understand that.

A. And it wasn't yes, of course, you know, Denis would have always liked to have had the Irish label very prominent in the consortium, but the whole purpose of that was to actually be able to consolidate the accounts and to be able to raise the funds, as I recall it.

Q. But I take it that you are agreeing with me that there was a bit of a collision at this meeting between the Irish end, Mr. O'Brien's end, and the Telenor end?

A. Absolutely, there was quite a collision.

Q. And it resulted in perhaps the sharp-ish correspondence we have seen maybe in the whole relationship; would that be right?

A. Yeah, there was certainly words said, and

Q. That you didn't agree with, anyway?

A. That I didn't agree with, and I think Paul Connolly didn't agree with, to the extent that I think we ended the meeting fairly promptly, if I recall it.

Q. I think you said to me earlier, correct me if I am wrong, that you may have seen this letter before it went out, Mr. O'Brien's letter.

A. I couldn't swear to seeing it before it went out, but I remember seeing it.

Q. I suppose it's a letter he'd have shown you, because

it was a fairly serious letter, wasn't it?

A. It was; there was a lot of activity going on at that stage, and

Q. Well, you were up against the deadline?

A. We were up against quite a deadline, and I think it almost showed the tenacity of the man to be able to reply to that letter. Because I think Arve Johansen's letter, I think, was dated the day of the meeting.

Q. The 10th

A. I think that was the day of the meeting.

Q. I think it may have been the day after, or something like that.

A. Was it? And then there was a reply pretty promptly.

Q. Can I ask you again what your particular role would have been at that meeting, which might throw some light on your role at the meeting which took place, because they obviously took place around the same time.

A. At the meeting in MOPS?

Q. Yes.

A. Again, to endeavour to persuade Telenor to reduce their shareholding.

Q. That meeting that is referred to in the memorandum on the overhead projector, the meeting of the 9th May, 1996, seems to have involved, if you like, purely some of the people or some of the personal alternatives on the Irish, or the O'Brien side. You'll find it, Mr.

Buckley, at

A. Yes, I have it here, 49, 135. 9th May, '96.

Q. Yes. That seems to have been a meeting involving the purely Irish side, the Esat Telecom side, if I can put it that way. Then you had the joint meeting with the Telenor meeting in MOPS, and obviously you weren't in MOPS weren't getting advice on DDIs/DDOs. So you were at that meeting; there was a purpose in bringing you to it?

A. Mmm.

Q. If you go for a moment to 49, 135, do you see that?

A. That's the 9th May?

Q. I beg your pardon, I was misleading you there. If you go to 141, it's Book 50, Tab 141.

A. Yes.

Q. This is a note in what looks like Mr. Gerry Halpenny's handwriting; I think I am correct in identifying it as his handwriting. It's an attendance of a meeting at William Fry. Do you see the handwritten note at the top, 12th May, 1996, at William Fry?

A. Mm-hmm.

Q. "Denis O'Brien, Paul Connolly, Leslie Buckley". Do you see that?

A. Yes.

Q. Again a fairly lengthy meeting discussing some of the matters that were discussed, or were being discussed at the other two meetings we referred to.

A. Mm-hmm.

Q. And this was also the date of Mr. O'Brien's letter to Mr. Johansen, isn't that right, 12th May, 1996?

A. Yes, I think that's correct, yeah. Yes.

Q. It seems to have been a fairly crucial meeting, in that it involved the relationship between Telenor and Mr. O'Brien within four days of the granting of the licence?

A. Mm-hmm.

Q. And may I would I be right in thinking that again, you were at that meeting for a specific purpose, and not just because you were in the offices for something to do with DDIs and DDOs?

A. No, no, I don't think it would have been, at that stage. It possibly could have been as a follow-on to the meeting that we had on the 10th.

Q. Right, but nothing to do with DDIs/DDOs?

A. No, I don't think.

Q. You would have been there on purpose to deal with this?

A. Yeah.

Q. I think in fact the 12th was a Sunday. However pressing the DDI/DDO issue was, it wasn't bringing you in on a Sunday

A. There was many a Sunday I was involved in DDIs/DDOs, but I don't know whether that was a Sunday or not. There seemed to be a lot of speculative ideas going

around here.

Q. That's true. I am not going to go into the detail of it, not at this point.

A. No, no. I am just picking it up.

Q. Can I just briefly refer to you to another letter, it's at Book 50, Tab 144, addressed to do you have it? It's a letter from William Fry of the 13th May, 1996, addressed to Mr. O'Brien and yourself at Esat Telecom and also to Mr. Michael Walsh.

A. Yes.

Q. And it says: "Dear Denis, Michael and Leslie, "I enclose final draft letter to the Department which has been prepared by Knut and myself". Do you see that?

A. Yes indeed, yeah.

Q. And if you go on to the next page, you will see the letter that's being referred to. It's a relatively pro forma letter. It refers it says:

"Dear Mr. Brennan" addressed to him as Principal Officer, Department of Transport, Energy and Communications, 44 Kildare Street, Dublin "I refer to our recent meeting and to your request for information concerning this company. I confirm that I am a director and Chief Executive of Esat Digifone Limited."

That's Mr. Knut Digerud writing. Then he encloses a number of documents that were sought by the

Department. And at that stage, Esat Telecom were not only, if you like, generally held to be the entity carrying Mr. O'Brien's interest; they were formally carrying it at that point. Do you remember that? Because Esat Telecom was actually going to take over, step into Communicorp's shoes, because there was a restructuring of Mr. O'Brien's interest.

A. Yes, yes. I actually just have only a very vague recollection of that letter. I think it was probably sent to me from a communications point of view, rather than anything else. I do see a "PS" here on it, but I don't see myself taking any action as a result of that.

Q. Do you notice it says: "I enclose the final draft letter to the Department, which has been seen by Knut and myself". Do you see this in Mr. O'Connell's letter?

A. Yes.

Q. Which has been prepared, I beg your pardon, by

A. Yes.

Q. Do you see that?

A. Yes.

Q. "And seen by Arve Johansen and Paul Connolly". So Mr. O'Connell is saying that he has examined it or he has prepared it; it has been prepared with the help of Knut, who was the Esat Digifone person, seen by Arve Johansen, who was the Telenor person, strictly

speaking. Isn't that right?

A. Yes.

Q. And Paul Connolly, who would have been an Esat Telecom person; wouldn't that be right?

A. Yes.

Q. And it's being sent then to you, as the Esat Telecom person, to Mr. Denis O'Brien and Mr. Michael Walsh and the IIU person?

A. Mm-hmm.

Q. And it says: "Please confirm approval urgently." Do you see that?

A. I do indeed.

Q. Do you remember getting back and saying to Mr. O'Connell, that's okay

A. No, that's the point I was making. No, I absolutely don't, and I even see a "PS" here saying you know, Martin Brennan has asked Knut to deliver the letter personally at 12.30. I actually don't remember taking any action, because I think I'd have just assumed Denis O'Brien was getting a copy of this. Michael Walsh and these were the people that were most directly involved.

Q. There is one other document that should have been put in here, and I'll try to get it for you because it may arise in a minute, and it's an earlier draft of that letter I want to ask you about. And I'll try to get that for you before



A. Right.

Q. Now, if you go to the next leaf, which is an extract from Book 50, Tab 147 sorry for delaying you, Mr.

Buckley; I am just trying to confirm that I'm right in thinking that's Mr. Owen O'Connell's handwriting on a memorandum regarding a meeting Mr. O'Brien had with Mr. Lowry and Mr. John Loughrey. If you want to, you can go to the typed version

A. Yes, I have gone to that. I see I am being held responsible for something here.

Q. Yes, that's what I am going to come to. It says:

"DOB re meeting Lowry/Loughrey.

"Minister" obviously a reference to something the

Minister said "haven't got information wants.

financial information IIU (MW to go to the

Department for private meeting.)" We know that either

happened or was happening around that time, Mr. Walsh

was going to the Department for private meetings.

A. I see.

Q. Underneath that: "Letter that finance is in place

from the underwriters.

DOB underwriters are Telenor and IIU; will satisfy

tomorrow.

"Lot of frustration/pressure.

"All by 11 o'clock tomorrow; Lowry "will check with

sec" and hold DOB/LB responsible.

"Has to be 40:40:20 on the day.

"DOB Article 8 very tough, can do nothing. Shares amongst parties. Will not allow telecom parties to reduce holding.

"Loughrey to meet OO'C/Martin Brennan tomorrow A M.

"Minister informed of 45:45:10 very quickly"; that's a reference to a change, I think, in the shareholding from 40:40:20 to 45:45:10 within a short period of time.

Then there is a quotation from Mr. Lowry saying "Let ink dry".

After that, "Public announcement. Lowry wanted last week. Do everything in one go. Deflect attention away from ownership. Discuss business infrastructure, contracts, roll-out plan, employment..."

I think the next bit is just indecipherable.

"... new contracts, hold off buying phones public etc.

"Must be phenomenally well briefed on bid document in its tender. OO'C to be present to answer questions.

"Legal ownership issue extremely important. All reporters focused on this. All 3 shareholders to agree OO'C answers, questions, rehearsal.

Persona have written another letter to ask licence not be granted. Just want one person with one signal."

Firstly, does this ring any bells for you?

A. No, it doesn't, no. I really don't understand what I was being held responsible for there. As the meeting

goes on, they seem to be preparing for, you know, the public announcement. I think that was taking place on the 16th. And this was the 14th. There was obviously very little time in between. But I just don't recall having seen this before.

Q. Well, even for a moment, if we leave the document itself out of the account, if we just refer to the events that are being referred to. There is a reference to a meeting Mr. O'Brien had with Mr. Lowry and Mr. Loughrey, and it appears that from that meeting, Mr. O'Brien reported that Mr. Lowry would hold himself, Mr. O'Brien, and you, Mr. Buckley, responsible, it would appear, for getting things done on time. Wouldn't that be the thrust of what's recorded here?

A. Possibly. I don't know what basis he'd have used my name, because I would not have been seen in any way to have been involved in the mobile phone end of it, apart from

Q. Seen by who?

A. Seen by anybody, any

Q. Presumably you were seen by people in the

A. I was seen by people in the Department to be involved in the fixed-line business.

Q. Yes, but you would have been seen, presumably, by people on the Denis O'Brien side as being involved at least as some sort of adviser?

A. Yeah, but just in a very peripheral way.

Q. Yes, but

A. So, I think you'll have to address that to Mr. Lowry.

I really don't know.

Q. But at this time you were playing a role in some of the really heavy hitting meetings, isn't that right?

A. Well, it was coming up to the crunch point, and the licence was being issued on the 16th, and even though I would have been fairly very involved in Esat Telecom fixed-line business at that stage, I was obviously being brought into some of those meetings. And if I recall, I then became a director of Esat Digifone on the 16th.

Q. Well, up to then, Esat Telecom were going to be paying money, weren't they?

A. They were indeed, yes.

Q. So that was going to affect you, wasn't it?

A. Yes.

Q. Did you have any contact with John Loughrey that you can recall that could have given rise to this reference?

A. At that period?

Q. Yes.

A. The only contact I would have had with John Loughrey at that period would have been talking to him about capacity.

Q. I see.

A. As I recall it.

MR. HEALY: I think, Sir, that's the end of all the documents

CHAIRMAN: It's perhaps as good a time as any to rise until two o'clock. We'll take up your further evidence then, Mr. Buckley. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF LESLIE BUCKLEY BY

MR. HEALY:

MR. MURPHY: Mr. Chairman, sorry, Mr. Chairman, I'd just like to I understand Mr. Healy has already advised you that Mr. Buckley has to leave, and that every effort will be made to finish his evidence today.

CHAIRMAN: That's what I understand to be the position, Mr. Murphy. Very good.

MR. MURPHY: We appreciate it very much, Mr. Chairman, because unfortunately Mr. Buckley was to be down in the Caribbean, and he has already missed a flight, so we want to try and get him out tonight. And I appreciate

CHAIRMAN: We'll press ahead in any event, Mr. Murphy.

Q. MR. HEALY: Mr. Buckley, there was one document which wasn't in the booklet of documents I gave you before lunch and which I want to refer to your attention. I am giving you a copy of it now. It's in Book 49, Tab

135 A.

(Document handed to witness.)

Now, if you could for one moment open the booklet of documents I gave you at Tab 50/144, which is a reference to Book 50, Tab 144.

A. Is that the letter dated 13th May?

Q. Correct. A letter from Owen O'Connell to you and Mr. Denis O'Brien and Michael Walsh enclosing a letter which he had prepared with Knut Digerud dated the same date, 13th May, and addressed to Martin Brennan. Do you remember we touched on that letter?

A. Yes indeed, yes.

Q. Now, I have just given you another document, which is from Book 49, Tab 135 A. Do you have that document? It's just been handed to you loosely; yes?

A. Yes, "Draft, 10/5".

Q. Yes. Now, if you look at the second page of that document, you'll see some manuscript marks; do you see that? And again on the third page, do you see those?

A. Yes.

Q. I understand from the evidence that those marks were made by Mr. Denis O'Brien.

A. Is that correct?

Q. Yeah. Now, that letter had been sent to him for his approval; do you understand me?

A. Yes.

Q. I don't have any covering letter sending it to him,

but I understand from his evidence that it had been sent to him for his approval, and hence, his marks on it.

A. Mm-hmm.

Q. Now, that letter was to serve the same purpose as the letter that was sent to you dated 13th May, 1996. You can see that, like the letter from Esat Digifone to the Department of the 13th May, 1996, it contains firstly a list of documents; do you see that?

A. Yes.

Q. Then it goes on, unlike the letter that was actually sent, as follows, on the second page do you see the second paragraph of the second page?

A. Yes.

Q. It says "During our meeting" it's a reference to a meet between Mr. Digerud, and indeed others, and Martin Brennan. You asked for an explanation of the involvement of International Investment & Underwriting Limited in this transaction, having regard to the prior involvement of Davy Stockbrokers and certain of their clients.

"As you know, the bid was made jointly by Telenor and Communicorp, who are accordingly responsible for its financing. However, the bid also indicated an intention to place 32% of the company with private and institutional investors (as to 20% immediately and 12% in the short to medium term). At that time, Davys and

their clients had given conditional letters of intent in regard to funding 20% of the equity element of the investment, but there was no legally binding commitment by them.

"Throughout the period prior to and after submission of its bid, Esat Digifone behaved consistently on the assumption that it would be awarded the licence, planning and spending accordingly. It was thought desirable to secure the proposed 20% non-Telenor/Communicorp funding, and in addition, Communicorp wished to improve its financing arrangements for its share of the cost of the licence fee and subsequent construction and launch costs associated with a successful bid.

"Following the review of the possibilities available in the financial market, IIU indicated a willingness to arrange funding commitments; in exchange it wished to have the placing of shares and sought in addition, a pre-placing of part of the 12% of Esat Digifone which (as indicated above in the bid) was to be placed over time. All in all, Esat Digifone and Communicorp felt this to be a very advantageous offer.

"As you know, the bid merely provided that institutional investors (which IIU is) would be approached to take up the non-Telenor/Communicorp shares and references to other investors (AIB, IBI, Advent and Standard Life) were given on an



indicative/intent basis. Accordingly, we believe that the present structure is fully in accordance with the bid.

"IIU has agreed initially to take up loan stock in lieu of shares in respect of the "pre-placing" element of its commitment, which will result in the shareholding structure certified in the attached letter from Mr. Blank of Esat Digifone Limited. In this regard, I should make it clear that the shareholdings and the 40:40:20 ratio certified in that letter (and also referred to in Mr. Connolly's letter) relate to the situation which will prevail upon and immediately prior to the grant of the licence; their delivery today should accordingly be regarded as being in anticipation of the issue of the relevant shares.

"I hope that all the enclosed documents are clear and helpful, but if you have any queries thereon, please let me know.

"Yours sincerely".

Now, does that letter is that a letter that you have seen before?

A. No, I don't think I've ever seen that letter. I certainly can't recall it.

Q. The reason I draw it to your attention, because the letter that was actually sent and to which I referred you earlier, the letter of the 13th May, was sent to

you for your approval; do you understand me?

A. Yes, indeed, yeah. I suppose one could question whether it was for my approval. It was a draft letter. It had to be sent to the Department within a certain time period, and you know, I recall seeing it, but I certainly don't recall doing anything about it once Denis O'Brien and Michael Walsh had got copies of it.

Q. I appreciate that. I just want to be clear about one thing where your answer is concerned. You were saying one could question whether it was for your approval.

It was certainly it was certainly stated to be for your approval; isn't that right? Can you just clarify that? Do you appreciate that

A. It says "I enclose the final draft letter to the Department which has been prepared by Knut and myself and seen by Arve Johansen and Paul Connolly. I also enclose copies of this enclosure. Please confirm approval urgently." Yeah.

Q. Just to clarify one matter, then: The letter definitely did seek your approval?

A. Yes, it did.

Q. And it occurred to me that you might have been sent the earlier letter as well.

A. No, I wasn't. Well, if I was, I certainly don't recall it.

Q. Right. I see.

A. And I know that at that stage, if I had got a copy of the letter of the 13th, okay? Maybe I would have rang Denis and said, "Denis O'Brien, I have a copy of this letter, and you deal with it", but that's as much as I would have done. I don't remember doing that, but possibly I did do it.

Q. I see. I suppose if you got the earlier letter, the draft, and subsequently got the final draft, would it have occurred to you to ask why the long narrative section explaining the involvement of Dermot Desmond and IIU had been taken out?

A. Maybe it would, but I think we are speculating now, you know. What I would have done, I really don't know. Sorry, I can't help you more on that.

Q. I just want to clarify one or two things in your statements.

If you could go to your first memorandum, please, dated 24th May, 2002, and signed "Leslie Buckley"; it's the one we have described

A. Sorry, my apologies, I am just getting it out. The very first one, is it?

Q. Yes. It's the one we have described as Memorandum Number 1.

A. Yeah, dated 24th May, 2002?

Q. Yes. In relation to the establishment of the Esat Digifone consortium, you say that your recollection was that Davy Stockbrokers were engaged, and you

recall that they weren't very successful in placing the equity and that therefore, Mr. O'Brien approached Dermot Desmond; is that a fair summary?

A. Yeah. And I suppose, when you were reading it out this morning, it rang a bit of a bell with me. When I say "not very successful", that they were not prepared to actually make a commitment to invest until the licence was granted, and I also think subject to certain terms and conditions.

Q. And were you involved in discussions at the time concerning those matters?

A. No, I wasn't, no.

Q. When you say it wasn't very successful, are you being quite accurate, in that you did run with it, the consortium did run with it, didn't they?

A. Yeah, I think the word "successful" is basically saying, okay, it was there, but it wasn't an un conditional you know, there were quite a number of conditions attached to the Davys offer.

Q. Yes. And how were you aware that there were a number of conditions attached to it?

A. Just in general terms I was aware, and you know, that they weren't prepared to give binding letters prior to the licence, but again it was just in general terms.

Q. Was that from chatting to Mr. Denis O'Brien?

A. It probably was. Or maybe other members of the team.

Q. I understand. And was that, as you saw it, the only

reason that they were moved out, because they were not prepared to give a sufficiently unconditional commitment?

A. Yes, and I think from memory, Telenor wanted firmer commitments at that stage. And that's why the agreement, the underwriting agreement that was eventually reached with Dermot Desmond and IIU, was more attractive.

Q. Could I just ask you just to clarify one thing about your response to Query Number 6 in the third memorandum.

A. I actually that's the one I don't have a copy of it, if I remember.

Q. No, that's the fourth memorandum. The third memorandum

A. Sorry.

Q. Which is the big long one.

A. Oh, yes, I have that, yeah.

Q. If you just look at that query, you were asked for your knowledge of dealings between Communicorp and any other person on behalf on their behalf with J&E Davy for the purpose of securing the backing of institutional investors together with source or sources of your knowledge.

And you say "Apart from the fact that I would have been generally aware of dealings between Communicorp, Esat Digifone, Denis O'Brien with J&E Davy seeking the

backing of institutional investors, I was not in any way involved at this level or in these dealings. I have absolutely no information about them. In fact I cannot recall anything other than the fact that there were dealings with J&E Davy in relation to securing an investor."

You seem to recall a little more about it now; is that right?

A. I suppose when you do all your homework, it kind of helps to refresh it. This is six, seven years ago, but you know, I was not involved in the detail. Any information I had would have been of a general sense.

Q. Could you just go on to the next query for a moment.

You were asked for your understanding of the commitments provided by Allied Irish Banks, Investment Bank of Ireland, and Standard Life to the funding of Esat Digifone

A. Sorry, is that Question 7?

Q. On the same page, in fact.

A. Yes.

Q. On the same third memorandum.

You said, "I was never involved and have no knowledge whatsoever." Again, that's a fairly strong assertion that not only were you not involved, which you have said on a number of occasions, but that you have no knowledge whatsoever. You said you had absolutely no information I am just wondering why it is that you

seem to have a relatively firm recollection now of knowing about the details of the dealings with Davys concerning the institutional investors.

A. Well, I don't. I just was aware that the letters weren't as firm as we would have required them, and that there was an opportunity or an offer to have an underwriting letter from IIU, so that would have been more attractive. But the terms and conditions and all the details of them, I wasn't aware, and I am not aware of today.

Q. You were aware that there were unsatisfactory terms and conditions attaching to the banks' commitment, as far as you saw it; is that right?

A. Well, let's put it this way: I think the terms and conditions from IIU were more satisfactory.

Q. I see. Well

A. But the details of it, I wouldn't be aware.

Q. Would I be right in saying, then, that while when you prepared your statement, you felt you had absolutely no knowledge or no information about these things, your subsequent dealing with the matter has brought to your mind other recollections of somebody

A. I suppose when you spend quite some time on a refresher course on this, and going through all the information that you have sent me, and I have spent quite some time in preparing for this today so as to be able to assist you, you know, maybe I have a

clearer knowledge. But I would have been answering that on the basis that I didn't know the details, and I still don't know the details.

Q. I appreciate that. I am just trying to clarify a small matter. You said you have absolutely no information. It's clear now you do have information. You have a good broad outline of, as far as you were concerned, what was going on?

A. I suppose that's relative, isn't it?

Q. Yes. It wouldn't be right to say you have no information. And did you have access to documents before or did you study the documents before preparing your long response to the 60-query memorandum?

A. I did to the extent possible. But in the areas that I thought that I needed to do some more homework on, I gave you the replies earlier today.

Q. When you finished this document, did you think that you needed to do more homework in some areas?

A. Well, it was obvious I actually did. You know, in reviewing it, there was two questions there that I didn't answer as satisfactorily as I possibly should have.

Q. We may come back to it later on.

Could you just go back to Answer Number 1 again, on the first memorandum. Do you see the last sentence, where you say "The final agreement was reached on the



basis that Mr. Desmond would hold an equity stake in the Esat Digifone consortium to the extent of 20% and that Esat Holdings Limited and Telenor would each hold 40% "?

Can you maybe just clarify for me what you mean by the "Final agreement"?

A. You know, when the final shareholding agreement of what? May '96.

Q. I see. I understand.

A. The initial one of September '95 was 37.5:37.5:25.

Q. But at that stage, that was the final agreement, wasn't it, in September 1995?

A. I suppose it wasn't final until it was in the shareholders agreement, but, yes, yeah. Certainly I am referring here to the agreement.

Q. I understand, but am I correct in thinking that you wouldn't disagree with the proposition that in September of 1995, the final agreement at that stage was 37.5:37.5:25?

A. Yeah, absolutely.

Q. Nobody was going to take 5% off Mr. Desmond without paying for it?

A. Mm-hmm.

Q. Can I ask you to turn for a moment to Query Number 24 on page 14 of the third memorandum. You were asked about the presentation, in Query Number 24, which goes onto the next page, page 15; do you see that?

A. Yes, indeed.

Q. And in your response in answering Number 24, you say you weren't involved in the oral presentation, and your final answer was that your recollection was that the overall impression was a good one. And when I read that out this morning, you wanted to correct it, and I think you said something to the effect that you also understood that the assessors hadn't been able to convince or I beg your pardon, that the Esat Digifone team hadn't been able to convince the assessors of the financial strength of the consortium.

A. Sorry, I wasn't endeavouring to correct my answer. I was just enlarging on it.

Q. I see.

A. And there was, at that stage, a perception that maybe they hadn't, I suppose, relative to how good they had done in the other areas, my view was that they felt somewhat disappointed and maybe that they hadn't been able to convince the assessors of the strength of the financial position sufficiently.

Q. Right. They had the presentation on the 12th September. You may not be aware of the precise date, but it was the 12th September.

A. Yeah.

Q. And as you say, you weren't at it.

A. No.

Q. So therefore, any impression you formed of it had to

have been gleaned from what other people told you.

And can you tell me how you formed the impression that you have just described?

A. Oh, that's a difficult one. I'd say from general discussion. I know the general view was that from our side and Telenor's side, that you know, there was a perceived weakness in the financial. Maybe it came from Denis O'Brien, but I am sure it probably came from other people as well.

Q. And can you recall, did you meet people after the presentation to discuss it, in particular to discuss maybe how you might progress things having regard to the impressions they formed of the presentation?

A. No, I don't remember meeting the team. I actually think that other people, they went off and did do some homework. But I know that over the next the following few days, I met them maybe in the corridor and maybe talking on the phone or whatever. But over a number of days, I just gleaned or obtained the general impression that if there was a weakness.

Q. And you got that impression from both the Telenor side, if I can put it that way, and the Denis O'Brien side?

A. That would be my recollection, yeah, that there was a kind of a general view.

Q. Who would have been meeting on the Telenor side at that time?

A. It could have been Knut Digerud; it could have been Arve Johansen. I can't recall.

Q. Would it have been more likely to have been

A. It could have been Barry Maloney.

Q. I see. Would it be more likely to have been one or other of them on the Telenor side?

A. How do you mean? Could it be more likely

Q. One or other

A. I'd be absolutely speculating. I have no idea.

Q. Who would you have been mainly communicating with on the Telenor side?

A. If I was having communications, it would probably be more with Knut Digerud, because from memory, he was the then Chief Executive.

Q. And would you have had some communications with Arve Johansen around that time?

A. Not really. No. I think I had met him once or twice before that famous meeting in MOPS, but I don't recall having met him very often.

Q. I think the only Esat personnel at the or, if you like, the only Denis O'Brien side personnel at the presentation were Mr. O'Brien himself, Mr. Peter O'Donoghue, Mr. Moloney he was a new person on board; well, he wasn't perhaps literally on board, but he was the proposed new executive; isn't that right?

A. Mmm. I am sure I would have had some discussion with Peter O'Donoghue, now that you mention his name.

Q. It probably would have been someone like him, or Denis O'Brien himself?

A. Yeah, absolutely. Like, I have no doubt that soon after Denis O'Brien would have rang me, you know, and given me his views, but it was over the next few days then that the view certainly that my recollection, it was a view that look, maybe there is a weakness here in the financial area.

Q. And do you remember any discussion about what might be done about it?

A. Not in particular. Not in particular. Until such time, I suppose, as the meeting of the 18th, is it, the 18th September?

Q. Mm-hmm.

A. And I would have met with Denis in Owen O'Connell's office.

Q. In your discussions with Mr. O'Brien about how things were going, or Mr. O'Donoghue or anyone else, when this question of a weakness might have been canvassed, wouldn't it be fair to suggest that there must have been some discussion: "Well, can we do anything about it?"

A. I am sure there was, but you know, at that stage, I'd have been heavily involved in Esat Telecom.

Q. I understand that.

A. And I'd have left that to Denis O'Brien, Peter

O'Donoghue and the rest of the team.

Q. When this step was taken ultimately to communicate with the assessors and to inform them of changes in the configuration of the company, or at least of the involvement of IIU, that was, as we know, to deal with this weakness, isn't that right, this perceived weakness?

A. Yes, the perceived weakness, yes.

Q. And Mr. O'Brien has given evidence that after the presentation this was a very big issue for him, and I think I am summarising his evidence correctly when I say that he said we all knew, himself, Mr. Johansen, Mr. Mara and Mr. O'hUiginn who weren't at it but were presumably reported to, that we had to do something to deal with this, but they felt it was a serious matter. That being the case, would it be fair to say that the overall impression was a good one, if there was this serious problem?

A. The overall impression that there was a weakness?

Q. Yes. No, would it be fair to say that it being the case that after the presentation, the members of the consortium and some of their advisers believed that there was a serious weakness requiring immediate attention, in those circumstances, would it be right to say that you could have been given the impression that the overall impression created was a good one?

A. The overall impression to the assessors, in my view,

yes, was a good one, and I think history has proven that.

Q. Could you just go back to page 15 for a moment. And if you look at Query 24, subparagraph 4, you were asked as to your understanding "as to the overall impression made by Esat Digifone consortium in the course of the presentation, and in particular, any matters which appear to be problematic or areas of perceived weakness." Do you see that?

A. Mmm.

Q. If your impression is the one you have described, that it was, overall, a good impression but that there were these weaknesses, is there some reason why you didn't state that at the time?

A. No, there isn't any reason.

Q. Why are you adding to it today? I mean, have you had I am not criticising you for this have you had any discussions with anyone that caused you to caused your memory to be jogged?

A. No, no, but I don't want to be repeating myself, but as you prepare for this, you probably reflect a bit more on it, and you know, I was able to recollect that yeah, there was an overall view that there was a perceived weakness.

Q. This was the

A. And on reflection, maybe I should have put that in there.

Q. It seems to be an important matter, doesn't it?

A. Yeah. I suppose it actually probably just reflects my peripheral involvement in it, you know. If that was the fixed-line business and there was a weakness there, then I'd have actually seen it almost my responsibility to do something about it. But here was Denis O'Brien and other people involved in this, and you know, to be quite honest, I was so busy, it was their job to look after that end of it. Which, you have to remember, I was equally running a consultancy business as I was acting COO of Esat Telecom. None of that was easy.

Q. That week was the week of the All-Ireland Final that we have already heard mentioned in evidence?

A. The 17th of

Q. Yes.

A. Yes.

Q. Were you at the All-Ireland yourself, can you remember?

A. No, I wasn't, no.

Q. When you were asked about your knowledge of what meetings had occurred on the 17th September and on the 18th September, you provided the Tribunal with your fourth memorandum; isn't that right?

A. Yes. Is that the one dated 22nd November?

Q. Yes. On the 18th September we know that you went to a meeting in Mr. O'Connell's office with Mr. O'Brien,



and I think in your one of your earlier answers you say that during that meeting, it emerged that Dermot Desmond was going to join the consortium. Do you think that was the first time you ever heard of Dermot Desmond's involvement?

A. No, no, it wasn't.

Q. I see.

A. I think Denis O'Brien would have mentioned to me that after the meeting of the 10th

CHAIRMAN: Yes, I think it was already established the 10th August on

Q. MR. HEALY: So you were aware that Dermot Desmond was out there in the wings, as it were?

A. Yes.

Q. And it wouldn't have been until that meeting that you learned that he was definitely going to come on board; is that right?

A. Well, on recollection, I think that meeting that Denis O'Brien and Dermot Desmond had on the 17th, they certainly progressed their arrangement; and after that, I felt that it was, you know, quite a possibility that he was going to come on board. That was my view.

Q. One thing is certainly clear; from that day onwards, a lot of time was devoted by the lawyers, anyway to pinning down Dermot Desmond's involvement leading ultimately to the agreement of the 29th September;

isn't that you are aware of that from the

documents, aren't you?

A. It appears so, yes.

Q. Wouldn't it be fair to say that it's from that 18th onwards, 18th September onwards, that the real effort goes into concluding the deal with Dermot Desmond?

A. Yes indeed.

Q. In your memorandum you say that in the meeting in going to the meeting with Mr. O'Brien on that day, Mr. O'Brien mentioned to you that he had had a meeting with Mr. Dermot Desmond previously; isn't that right?

A. Yes, on the previous day.

Q. And you say "I have no recollection of whether or not Mr. O'Brien mentioned to me where the meeting took place, and I cannot now recall and I still do not know where the meeting took place or if there were other people present at it or what the purpose of such meeting was, except to say that following from the information that such a meeting had taken place, Mr. O'Brien stated that Dermot Desmond was going ahead with the financing transaction"?

A. Mm-hmm.

Q. So presumably some agreement in principle had been made, but it hadn't yet been tied down in the way it was ultimately tied down by the 29th September, would that be right?

A. Certainly an amount of progress appeared to have been

made at that meeting.

Q. Yourself and Mr. O'Brien were the only two people with Mr. O'Connell at that meeting on the 18th September;

isn't that right?

A. Yes.

Q. And as far as we can see from the documents, the only matters discussed were the involvement of Mr. Desmond;

isn't that right?

A. Yes. As per this document.

Q. And for what reason do you think you were brought to that meeting?

A. That's an interesting question, because I actually think that I was on my way up to Fry's, and I happened to meet Denis doing exactly the same thing, and he asked me would I he was on his way to Fry's, and he asked me would I jump in the car with him, and it was on that journey up that he mentioned that he had met Minister Lowry. And he may have mentioned in the car that he had met with Dermot Desmond as well, but actually, I am not that clear on that. But it was actually almost quite by accident that I ended up at that meeting.

Q. That you ended up in the car, purely serendipitous that you happened to be going there?

A. Absolutely, yeah.

Q. And did you have a reason for going there, do you think?

A. I am sure I was probably going to see Fry's in relation to capacity issues or other issues in relation to Esat Telecom.

Q. But you weren't seeing Mr. O'Connell in relation to other issues about this?

A. Maybe I was. I actually can't recall.

Q. But Mr. O'Connell certainly has no note of anything else.

A. No, no, he hasn't.

Q. Did Mr. O'Brien tell you what he had discussed in the pub with Mr. Lowry?

A. Oh, he mentioned that he had raised the capacity issues, the ongoing capacity issues that we had with Telecom Eireann, and that he had raised that fairly significantly with the Minister.

Q. And can you recall what he told you the Minister said he would do or would not do?

A. I can't. At that stage, we were running out of capacity almost every two months, and we had an ongoing battle, I suppose, with the Department on the one hand and Telecom Eireann on the other. And I can't recall. I would just have felt fairly satisfied that at least the Minister was aware, and hopefully he would take some action. Because there was this conflict as to whether the use of audio dialers was legal or not.

Q. Whether it was voice telephony or not?

A. Exactly.

Q. Nothing that happened at the meeting between Mr. Lowry and Mr. O'Brien, then, according to your recollection, was mentioned at the meeting with Mr. O'Connell?

A. No, it doesn't appear to have. And I suppose, if we were discussing capacity issues, it would have been.

There is no reference to the meeting with the Minister at all, as I see it here.

Q. There is no reference to the meeting with the Minister, none at all?

A. No, no.

Q. And what I'm trying to get at is why you were at the meeting at all.

A. You keep asking the same question.

Q. Even if you had other business in Fry's, why did you stay at that meeting?

A. Because Denis O'Brien obviously asked me to come into the meeting, and you know, I can't remember who else I was meeting. Maybe I was meeting Owen later, I don't know, but I probably wasn't, but Denis asked me would I come into the meeting and I went into the meeting, and that's my absolute recollection of it.

Q. But if you were asked to go into the meeting, was there a contribution that you were being asked to make, or did you have a function to fulfil at the meeting?

A. I suppose you never ask somebody to come into a

meeting and say, "Look, this is the contribution I want to you make". Denis asked me would I come to the meeting. I know I was on my way up to Fry's. What I was on my way up to Fry's for, I don't know, and I went to the meeting. It doesn't appear as if it took very long.

Q. It doesn't.

A. It was probably a short meeting.

Q. But looking at all the other meetings that you appear to have been at, you don't appear to have been a passenger at any of them; let me put it that way. I think you agreed with me this morning that you were at a number of meetings, including the famous meeting, as you put it, in MOPS, and you clearly appear to have been there to perform some function, to fulfil some role; isn't that right?

A. Yeah, in the case of the MOPS meeting, yes.

Q. You don't appear to be recorded as having attended any meeting merely as a passenger. After all, I think aren't I right in saying you told me you were very busy; you had a lot on your plate?

A. Absolutely.

Q. You had your Esat Telecom work, you had your own work?

A. That's correct.

Q. Would you have been at this meeting because it was an important meeting?

A. No. Denis was well capable of transferring that

information to Owen O'Connell on his own and would have, only perchance we actually happened to meet, I think at the foyer of the building.

Q. Do you have any recollection of what or who you met in relation to the other Esat Telecom business that you had

A. I haven't, no, and I have tried to think of that.

Q. Who would you normally have been meeting?

A. Owen O'Connell or Owen O'Sullivan or Liam McCabe, or you know...

Q. I don't know, was Mr. O' Sullivan there at that time?

A. Maybe he wasn't. Is he able to answer that there? He is gone.

Q. Who was the person you most frequently met in Fry's on Esat Telecom business?

A. Owen O'Connell.

Q. And I suppose if you had had something I am just trying to help your recollection, to deal with where Mr. O'Connell was concerned on that day, on behalf of Esat Telecom, wouldn't he have a note of it somewhere?

A. He may.

Q. And he doesn't appear to have a note of it.

A. He doesn't appear to have a note of it at this meeting.

Q. I am not aware of any other note either; I am sure we would have found it by now. Is it possible you are mixing this day up with some other day

A. No, no.

Q. and that you went to this meeting exclusively for the purpose of dealing with Esat Digifone business?

A. No, I don't think so. No of course it's a long time ago, but my recollection is that I met Denis at the foyer of the building, and I was on my way now, maybe I actually never got to the other meeting that I was going to. I don't know. I can't recall.

Q. Did you talk to anyone or tell anyone that Denis O'Brien had met the Minister in a pub after the All-Ireland and that he had spoken to him about capacity for your routers?

A. I don't know whether I did or I didn't. Denis O'Brien and myself would have met the Minister on a fairly regular basis in relation to capacity issues, so whether I would have then, after those meetings maybe I spoke to somebody in Esat Telecom and said, you know, "Look, Denis has met with the Minister, you know, last Sunday, and had a discussion in relation to capacity"; I don't know.

Q. Are you aware of the statement made by Mr. Simonsen that

A. Mr. who?

Q. Mr. Simonsen, Mr. Per Simonsen. Do you know Mr. Per Simonsen?

A. Yeah, I remember him.

Q. Are you aware of his memorandum of intended evidence?



Have you seen it?

A. I may have.

Q. Well, are you aware, even if you haven't seen it, of the fact that he refers to something Mr. O'Brien said to him about a meeting in a public house?

A. Yes.

Q. And what is your awareness of that, of what Mr. Simonsen says?

A. And again, it's just purely my recollection, that Per Simonsen would have said that Denis had Denis O'Brien had met or spoken with Minister Lowry and that and this is Per Simonsen that Minister Lowry felt that IIU should be approached or get involved. But that's my and that's only

CHAIRMAN: Sorry, Mr. Buckley, I just missed the last line, just the acoustics aren't too great in here.

A. Oh I see. And that Minister Lowry felt or said to Denis O'Brien that IIU/Dermot Desmond should get involved. But it wasn't until I read through all the documentation that I actually realised that that was what was

Q. MR. HEALY: I see. Did you know something about it before you read the documentation?

A. No, no, I didn't. That's the point I am making.

Q. And what Mr. what you said is more or less what Mr. Simonsen said, with one small addition. Mr. Simonsen says that Mr. O'Brien informed him that in or about

the last two weeks of September 1995, Mr. O'Brien had happened to meet the Minister in a public house and that Mr. O'Brien informed Mr. Simonsen that the Minister suggested that IIU should be involved in the consortium. That would accord with your recollection, wouldn't it?

A. My recollection of what Per Simonsen said.

Q. Yes.

A. But it certainly doesn't accord with anything Denis O'Brien ever said to me.

Q. Denis O'Brien never said anything to you about that?

A. Absolutely not.

Q. Did you ever hear, independently of the proceedings of this Tribunal, that Mr. O'Brien might have said that to Mr. Simonsen?

A. Independent to this Tribunal?

Q. Yes.

A. Absolutely not. And you know, if one looks at it, Denis O'Brien met perchance with Dermot Desmond on the 10th August, and it was from that meeting that discussions started taking place. So how Minister Lowry would have been involved or would have ever given any advice in that regard, I don't know how that could have happened.

Q. I see.

A. And anyway, I was never aware

Q. You were never aware of that suggestion being made by

anyone?

A. Absolutely not, until I read the papers.

Q. You had never heard of it up until then?

A. Absolutely.

Q. The first you ever heard of it was when Mr. Per

Simonsen's recollection, as he put it, was brought

either to your attention, or perhaps if not to your

attention, to the attention of Mr. O'Brien or other

people who might have heard it then? Would that be

right?

A. No, from my recollection, the first time I heard of it

is when I read the papers in relation to this

Tribunal.

Q. I see. Could I ask you to look at your third

memorandum again, please.

A. This is the big memorandum, the 8th October?

Q. The big memorandum, correct. If you look at your

response to Query Number 60.

If you look at Query Number 60, you were asked for

your knowledge, direct or indirect, of all meetings,

discussions, dealings or contact of whatsoever nature

between Mr. Denis O'Brien, or any person on his

behalf, and the Minister or the Department at any time

prior to the date of issue of the licence on the 16th

May, 1996.

And you say: "Other than what I have already referred

to, I am not aware of any other meetings, discussions

or dealings or contacts whatsoever between Denis O'Brien or anyone on his behalf and the Minister or the Department at any time prior to the issue of the licence on the 16th May, 1996."

Do you see that?

A. Yes indeed, yeah.

Q. You then provided the Tribunal, I think some six weeks later, would that be right, with a memorandum of intended evidence relating to the meeting of the 17th September, do you see that, and the 18th September?

A. This is the my evidence of the 22nd November, is it?

Q. Yes.

A. And what question are we covering now?

Q. Am I right in thinking that

A. Sorry, Mr. Healy, what question are you on?

Q. I am sorry, on this memorandum, I am on no question for the moment, except to refer to the memorandum in general. The entire memorandum really deals with the 17th and the 18th September, and it shows that you had a certain amount of knowledge, doesn't it, of what happened in the meeting between the Minister and Mr. O'Brien on the 17th September?

A. Mm-hmm.

Q. And I am just wondering why you didn't mention it in your earlier memorandum, your long memorandum.

A. I don't know what point you are making here.

Q. Your long memorandum, you were asked about your knowledge of any contacts between Mr. O'Brien and Mr. Lowry of whatsoever nature, and I think you said you hadn't any knowledge. In your later memorandum, which was I think only about six weeks later, in fact specifically six weeks later, you appear to have quite a lot of knowledge. I am just wondering, how did you acquire all that knowledge, or how did that recollection come to you? Do you follow me?

A. Yeah, I do. I just thought that in the evidence of the 8th October, I thought there was some reference to the meeting of the 17th September.

Q. Maybe you're right.

A. No, no, maybe I'm wrong as well. You'd know this better than I would.

Q. I think I'm right in saying that you do refer to the meeting of the 18th September

A. I think only as it relates to Dermot Desmond; isn't that right?

Q. Yes, correct.

A. I have just located it here now. I think when I was replying to that, I probably had in my I just can't remember, but I was certainly always aware of the meeting that Denis had with Minister Lowry on the 17th. Okay?

Q. Why would you have always been aware of that, as a matter of interest?

A. Well, from the following day that he mentioned it, I was aware of it.

Q. But from your description of what happened in relation to that meeting, it wouldn't seem to be of any importance at all. Why is it that you remember it if all it meant was he asked the Minister

A. I just particularly remember, you know, getting into the car and Denis O'Brien telling me about it, okay, and he saying that you know, "I spoke to the Minister about additional capacity".

Q. Was it an important thing for you at the time?

A. It was, yeah. Every time that we could get our hands on additional capacity, that was very meaningful to us in Esat Telecom.

Q. Isn't it strange then when you were asked the question and you responded in your response of the 24th October, you didn't refer to it?

A. The 24th October?

Q. Yeah, you didn't refer to that meeting at all in your response to Query Number 60.

A. Of the 8th October

Q. I beg your pardon; on the 8th October.

A. You are confusing me.

Q. I am sorry. When you were asked about meetings between Mr. O'Brien and Mr. Lowry, you didn't refer to that meeting at all?

A. Yeah, that's I'm quite surprised at that, actually.

Q. You see and I think your response of the 22nd November was based on specific matters drawn to your attention by the Tribunal; isn't that right?

A. Well, it always refers to specific matters drawn to my attention.

Q. Yes, but you didn't write to the Tribunal, in other words, on the 22nd November, saying "I have just remembered something about the 17th September that I omitted to mention in my earlier memorandum"?

A. No, no, because I probably didn't even realise. To be quite honest, I hadn't realised I omitted it until you brought it to my attention now, Mr. Healy.

Q. I see.

To get back to what was important about the meeting

A. Sorry. If I did, I think I'd have brought it to your attention on the 22nd that I omitted it, as I have brought it to your attention on two other issues here this morning.

Q. Yes. I think we are aware that Mr. O'Brien has indicated in evidence that he took every opportunity to push his case on capacity with the Minister; isn't that right?

A. Absolutely.

Q. Any chance he could get?

A. We kept banging down the door of the Department at that stage.

Q. And that was the purpose of his meeting with the

Minister, according to his evidence, on the 17th

September; he took a further opportunity

A. I don't think it was the purpose of the meeting. From my memory, I think it was a social meeting, but he took the opportunity to raise the capacity issue.

Q. Yes. And it would have happened on any other occasion, social or otherwise, officially at which he might have met the Minister?

A. I am sure.

Q. But he wouldn't have mentioned he said anything to do with the GSM competition because he felt that would have been taboo?

A. Mm-hmm.

Q. I am just wondering why this particular meeting that he had with the Minister should have stuck out in your mind so much; do you follow me?

A. I suppose, when you read so much about those issues I have spent some time over the last number of years reading those issues, and you know, I specifically remember that meeting.

Q. Yes.

A. I remember other meetings with the Minister and John Loughrey on capacity. I don't remember the dates. But I remember that particular one because it was tied in to a meeting that he had had with Dermot Desmond.

Q. Why would the tie in with the meeting with Dermot Desmond have particularly planted it or implanted it



in your memory?

A. I don't know.

Q. Is it because the meeting with Dermot Desmond was, presumably, a fairly important meeting, more or less doing the deal, in principle at least? Isn't that right?

A. Yeah, it certainly progressed the deal and seemed to you know, I felt after that meeting that there was a basis for a commercial agreement.

Q. Certainly the pedal was pushed to the floor after that meeting to get things finished?

A. Yes.

Q. So it was linking the Desmond meeting with the other conversation that Mr. O'Brien had with Mr. Lowry that caused it to stay planted in your memory?

A. I don't know whether there was any linkage there or not, but I just remember both meetings. Now, if you want to draw a correlation to it, that's up to yourself, but...

Q. If you could go for a moment to page 18 of your third memorandum again; it's the long one. And you are being asked about the letter of the 29th September; do you see that?

A. Which question now?

Q. Well, if you look at the top of the page, Query Number 28 deals with the agreement of the 29th September; do you see that? And I think you said you knew nothing

about the you were not involved in the agreement of the 29th September.

A. I am just trying to get where you are. Is it Question 28, is it?

Q. Yes. And you say that you were not involved in the agreements. And again in response to Query Number 29, which relates to the obligations and the agreement, and again you say you were not involved and you never considered the obligations or the entitlements of the parties in the agreement. Then you were asked in Query Number 30 for your knowledge, direct or indirect, of the purpose for which the letter of the 29th September from IIU addressed to Martin Brennan of the Department of Transport, Energy and Communications was sent and all matters or considerations which prompted the furnishing of the letter together with the source or sources of your knowledge.

Do you see that?

A. Yes.

Q. And you say: "As I recall, the purpose for which the letter of the 29th September from IIU addressed to Mr. Martin Brennan was provided was to counteract the rumours that Denis O'Brien was not capable of funding his bid."

I am just wondering, what rumours are you referring to?

A. We are going back a long time, but I think there was

some speculation that Communicorp couldn't fund, okay?

Q. Yes.

A. Together with the perception that you know, there was a funding issue, so and you know

Q. Were these rumours in the public domain, you are talking about?

A. I'm trying to recollect. I think it may not have been in the public domain, but I think there was a certainly a kind of a grapevine out there in the city that Communicorp weren't able to fund. And again, I am trying to recall eight or nine years, and but I think probably even more importantly was the fact that there was a view amongst the team that they hadn't particularly impressed the assessors as to their funding ability.

Q. Well, you have given me you have already said that to us now. You didn't put it in your statement, your first statement. You said that was you now say that's the most important reason that prompted the letter. Wasn't it a wonder you didn't say that in your answer? I am just wondering

A. I am kind of really speculating. I literally don't know. If I didn't put in the rumour, you'd be questioning why I didn't put that in. I am not trying to be smart, but you know, I think we are going around in circles on this one.

Q. I agree with that. I might have been questioning why

you hadn't put in the rumour if you told me today for the first time that you were aware of rumours, but I have always known that was your answer. It's the other part of your answer that I'm not aware of. The more important part you tell me the most important part is that there was a perception that there was a weakness, and you wanted to counteract that. Is that the most important thing that you'd be more likely to remember?

A. But there was a perception, and there was also a view in the city that Communicorp couldn't fund. So... Which is the most important, it's kind of fairly relevant, isn't it?

Q. There were no rumours from the Department, were there?

A. I don't know. I don't know. You are asking me for my impression of eight years ago.

Q. You are now saying, for certain, that you were aware that really the more important function of the letter was to counteract the impression or the perception that the team had that the assessors were not convinced of the financial strength of the consortium, certainly of Communicorp; is that right?

A. That was the main purpose of the letter.

Q. And do you remember having any involvement at all in the decision to send in a letter like that, regardless of the contents of the letter?

A. I don't. Maybe there was some peripheral discussion

on it, but I literally don't I am sure there was a

lot of discussion, but I actually don't.

Q. If we could just get on the overhead projector Mr.

O'Connell's note of the meeting of the 18th September.

If you find it easier

A. No, I have that one here in front of me, thanks.

Q. You see the note, Denis O'Brien and Leslie Buckley.

"Dermot Desmond going ahead with financing

transaction.

"Need 'underwriting' letter for Department because

finances are seen as the weakness."

Do you remember that being discussed at the meeting?

A. If I hadn't that document in front of me, and you were

asking me what did we actually discuss at that

meeting, I couldn't recollect. But you know,

obviously there was some discussion in relation to

sending an underwriting letter.

Q. Could I just remind you

A. But I do recollect the fact that on an ongoing basis

in that period until the 29th September, there was

some discussion in relation to putting together in

relation to the underwriting letter.

Q. But do you see that the memorandum says "Need

'underwriting' letter for the Department because

finances are seen as weakness"?

A. Yeah.

Q. It suggests that it's to satisfy the Department that

there was a need for an underwriting letter.

A. I'm not too sure it was to satisfy the Department. It was more or less to satisfy the assessors.

Q. The assessors, but I think for the assessors, you can read "Department".

A. Right, yeah.

Q. You are aware that

A. But of course, if Dermot Desmond said and I actually can't I remember that there was progress made at the 17th September meeting. If there was then discussion in relation to the underwriting letter, then of course if there was a perceived weakness, it would be fairly natural that, look, it would be good to send in a letter to the Department/assessors.

Q. I think are you aware that from the other evidence, that in fact the Department had said there was to be no more communication? You were presumably aware from that from the other documents and from the evidence?

A. Yeah, I am aware from somewhere.

Q. So it was going to be a fairly important step to do something the Department had asked the consortium not to do; wouldn't that be right?

A. Yes, but I think that here is information and a change, and we can firm up on it, and I am sure the team felt that, look, it would be useful to send that letter in.

Q. Can I just remind you of something from Mr. O'Brien's

evidence. This is Day 251, and I think I have a copy of it somewhere I can give you. It's Day 251, page 80. I'm giving you 79, 80 and 81, but in fact it's only 80 I am interested in.

(Document handed to witness.)

A. Just 80 and 81, is it?

Q. 79 was just to give you the run-in to it. I don't think it adds anything.

Mr. O'Brien was asked about this particular period, and he was referred to that document that's on the overhead projector. And at Query 334, the note is mentioned, do you see that, Mr. O'Connell's note?

A. Yes.

Q. And then if you look at the question "Have you got that? It is Owen O'Connell's note. And you and

Leslie Buckley went to Mr. O'Connell, and he notes:"

Then you have the note which we have just referred to.

Then Mr. O'Brien is asked, "Now, what was that about?"

And his answer is: "I had a meeting with Dermot on the 17th, and I then knew that basically that the

documentation should go into sort of its final form.

And I went to see Owen O'Connell with Leslie and explain to him. I don't know whether this is the

first time he knew about it. I think it could be the

first time he heard about it. And he said "Why are

you doing this?" I said, well our finances, you know,

in our view there is a perception that they are weak,

and we are bringing in Dermot for the lot, which was 40 plus 60, or 40 plus 25. And " and so on.

A. Mm-hmm.

Q. If you read that, doesn't it suggest that Mr. O'Brien there is no suggestion that Mr. O'Brien simply accidentally bumped into you. He says that "I went up to see Owen O'Connell with Leslie and explain to him that our finances, you know, there is a perception that they are weak."

A. I think this is very unfair. It would depend on what stage like, if you had put up the memo, all right, then Denis of course would say that he was with Leslie; right? Without the memo, maybe he wouldn't have even remembered he was with me.

Q. Of course. But he did say "I went up with Leslie and explained to Mr. O'Connell." I am simply suggesting to you that that would seem to indicate that you and he, both of you went up with the purpose of both of you explaining to Mr. O'Connell what the situation was and what steps were going to be taken thereafter, and that you weren't just an accidental passenger on the day. Would you agree with that?

A. I wouldn't agree with you at all. I have said on a number of occasions today, and in my evidence, okay, that I have supplied, that I met Mr. O'Brien in the foyer of Esat. I was going to Fry's for another meeting. Went with him to that meeting. Right? And



we had that discussion took place. But Denis O'Brien didn't contact me and say would I please come to this very important meeting that I'm having with Owen O'Connell.

Q. Could your recollection be wrong in that?

A. I don't think so.

Q. Aren't I right in thinking that your recollection has only developed as things have gone along?

A. Well, everybody's recollection is probably the same, okay?

Q. But there are a number of matters where you haven't been able to recall precisely what happened and you have had to correct or add to your evidence.

A. Yes, and where I realised that maybe there was any error of judgement, then I brought it to your attention. But I am certainly

Q. I think I brought some of them to your attention.

A. Okay, maybe you did, and that all helps. And I am here to help you. But all I can do is say that that's exactly my recollection of it, and that's how I recall it. Now, if somebody else can refresh me and show me something that's different to it, well, that's fine.

Q. Were you surprised that Mr. O'Brien said at that meeting, or even are you surprised now that he said at that meeting, "We need an underwriting letter for the Department", considering that he had just had a meeting with the Minister the previous day?

A. Where does he say in this that he had

Q. "Need 'underwriting' letter for Department."

A. Was it Denis said that?

Q. According to Mr. O'Connell, he writes down what his clients tell him.

A. I don't know.

Q. Are you surprised that that happened just one day after a meeting with the Minister in fact less than a day?

A. If that's what Denis O'Brien said at that meeting, okay, of the 18th September, okay, and you know, it wasn't I said it. It presumably wasn't Owen O'Connell, so it presumably was Denis O'Brien. But you know, to tie that in to the fact that he had had a meeting with the Minister the previous day, you know, I think you're this is absolute speculation. And if Denis O'Brien had raised the issue in relation to any aspect of the GSM issue, I think he would have said it to me in the car, or else said it at this meeting and would be recorded. And I don't see it recorded here.

Q. You mean if he had raised any aspect of the GSM matter with the Minister with you?

A. Yes, with me, or raised it at this meeting with Owen O'Connell, and I don't see it recorded here.

Q. He would have kept you involved at that level of detail?

A. Well, if he was telling me that he had met with the Minister and that they discussed capacity issues, right? I think if he had had any discussion in relation to mobile operation, he'd have said it; we were sitting in a car driving to Fry's. There was time for him to say it, I am sure. And I am sure he would have said it as well at the meeting with Owen O'Connell, and you know, I think as you can see, Owen O'Connell basically records everything that the client says. And I don't see it recorded here.

Q. What did you know about what happened at the meeting of the 29th September, the one that went to the Department setting out

A. The meeting the letter?

Q. The letter, I beg your pardon, of the 29th September, the one that went to the Department, if you like, following on that discussion with Mr. O'Connell on the 18th September.

A. All I know is that the letter was returned.

Q. Yes. Were you consulted about that?

A. I am not too sure I was consulted. I was told. At what stage I was told, I don't know. I can't recall.

Q. What was your reaction when the letter was returned?

A. I can't remember. I suppose some surprise that it was returned.

Q. Do you remember what Mr. O'Brien's reaction was?

A. I don't. I am sure he was surprised as well. I

don't.

Q. Do you mean disappointed?

A. I think you'd have to ask Mr. O'Brien that. Was I disappointed?

Q. No, I was asking you what's your recollection or what impression did you form of his response to the returning of the letter?

A. I think he was probably surprised that it was returned.

Q. But was he disappointed? After all, he saw one of the reasons for it was the perceived weakness?

A. I am sure he must have been. Yeah, but I didn't ask him, Denis O'Brien, "Are you disappointed?"

Q. Did you see it as a blow?

A. Well, here was an opportunity to, I suppose, strengthen one's position, and you know, it was lost.

Q. Do you recall having a discussion with Mr. O'Brien, or would it have been a passing remark he made about it?

A. I literally can't remember. I just don't know. I don't know.

Q. You just have an impression that he was surprised?

A. Yeah, that would be my view. It was an important letter, so therefore, when it was returned, I am sure he was surprised.

Q. Yeah, well, you are saying you are sure he was surprised. Is that your impression?

A. Yeah, that's my view. You are asking me my view.

Q. I am asking you what impression you formed. But am I right in saying your impression was you were surprised; that's what you gleaned from Mr. O'Brien, that's your recall of what you gleaned?

A. Yeah, that's my recollection.

Q. You didn't you are not aware of any suggestion that there was some delight this letter had gone in, even if it had been rejected?

A. How do you mean, "delight"?

Q. Well, you see, there might be it has been suggested that sending in the letter, regardless of whether it was rejected or not, would, in any case, have pinned the Department's knowledge of the content of the letter; do you follow me?

A. Yeah, I understand what you are saying.

Q. You are not aware of that perception?

A. I am not, no.

Q. I don't think there is anything else I need to ask you, at least at this time, anyway, and hopefully not in the future either, Mr. Buckley. Thank you very much.

CHAIRMAN: Very good, Mr. Buckley. I'll just offer a number of other counsel I don't think it's likely there will be any enormous matters raised, but obviously other barristers and solicitors present, including your own, may wish to raise some matters in

clarification.

Mr. Fitzsimons?

MR. FITZSIMONS: No questions.

CHAIRMAN: Then Mr. McGonigal?

MR. MCGONIGAL: No questions.

CHAIRMAN: Mr. Fanning?

MR. FANNING: Just very briefly, Chairman.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FANNING:

Q. MR. FANNING: Mr. Buckley, I appear for Mr. Lowry, the former Minister of the Department. I just want to ask you a couple of very brief questions.

Your evidence speaks for itself thus far. You have given evidence today to the Tribunal that you were and to a certain extent still are a business adviser and associate of Mr. O'Brien and that you had some peripheral involvement in the bid process for the second GSM licence.

Now, you have given evidence today as to your understanding of the reasons behind the entry of Dermot Desmond/IIU into the Esat bid, and I think I am fair in summarising your evidence as being that there were bona fide commercial reasons from the perspective of Mr. O'Brien for the emergence of Mr. Desmond and IIU into the bid replacing the institutions and the Davy's option.

If I haven't asked you that clearly, I'll repeat the question. From your perspective, the reason for the

entry of IIU and Dermot Desmond was a bona fide and commercial reason?

A. Oh, absolutely.

Q. And your evidence I think quite clearly today has been that the process of involving Mr. Desmond in the consortium began from a meeting that Mr. O'Brien had with him on an aeroplane, I think on the 10th August, 1995, when he accompanied Mr. Desmond to Glasgow Celtic to see a football match?

A. That's correct.

Q. And if I could put it like this: Mr. Desmond was in the frame from the 10th August on, and negotiations had effectively begun immediately after that date?

A. Yes.

Q. And I think you have given evidence quite clearly in answer to Mr. Healy that whilst the Minister, Mr. Lowry, my client, certainly met Mr. O'Brien in a public house on the 17th October (sic), 1995, you are certainly not aware, and it was never suggested to you before you, I suppose, became acquainted with Mr. Simonsen's memorandum, that the Minister, on that occasion or on any other occasion, suggested to Mr. O'Brien that Mr. Desmond or IIU should be involved in the consortium?

A. Absolutely.

Q. And you have given evidence today quite clearly that I suppose well, maybe I should simply ask you a

question: have you any reason to believe that that would have occurred?

A. I have none whatsoever.

Q. And I think you are almost certainly aware that Mr. O'Brien has vigorously denied in the witness-box that Mr. Lowry made any such suggestion to him, and I can certainly inform you that Mr. Lowry will equally deny that. Have you any reason to doubt either of them?

A. I have none.

Q. Now, I think you have suggested again today in the witness-box that you had some involvement again towards the end of 1996, or rather towards the end of the process in May, 1996, at meetings with the Department prior to the issue of the licence. Can I just say that you have given evidence to the Tribunal today that you met Minister Lowry on a number of occasions, some formal and some informal, at meetings largely concerned with the fixed-line business of Esat. Can I ask you that insofar as you ever had dealings with Minister Lowry, are you in a position to offer any evidence of wrongdoing or impropriety on the part of the Minister to the Tribunal here today?

A. None whatsoever.

Q. I want to suggest to you that at all times in the process, Minister Lowry, certainly dealing with the issue of the licence in May '96, acted in accordance with the advice of his senior civil servants,



including Mr. Loughrey, the then Secretary General.

Do you have any reason to doubt that proposition?

A. None whatsoever.

Q. Did anything strike you as improper or inappropriate about Minister Lowry's behaviour insofar as you dealt with him?

A. No.

Q. Thank you.

CHAIRMAN: Thanks, Mr. Fanning.

Mr. O'Donnell?

MR. O'DONNELL: No questions.

CHAIRMAN: Mr. Murphy?

MR. MURPHY: No questions.

CHAIRMAN: Very good.

Then, Mr. Buckley, it looks like you are safe to make the next flight. Thank you for your assistance.

A. Chairman, could I just say to a degree I was unfairly treated here today. Everybody was very courteous, but last Tuesday, Tuesday of last week, it became apparent to me that I needed to be in the Caribbean tomorrow and Thursday, and Mr. Murphy contacted Mr. Heneghan, and we eventually agreed I said I am available to come here at nine o'clock this morning and stay until one o'clock. There was eventually an agreement and understanding that we would start at ten o'clock today and finish at one o'clock, and every effort would be made for me to finish. I am sure, Chairman, you are

not aware of it. I then asked Mr. Murphy to contact Mr. Heneghan and find out what the seating arrangements are, because I have a bad back. And when he contacted Mr. Heneghan at four o'clock yesterday, he was informed that "Oh, you are not needed until eleven o'clock today". Having made arrangements. Now, if Mr. Murphy hadn't contacted Mr. Heneghan, I would never have been aware of it, so we would have been here at 9.45 this morning, and I understood that I was going to be released at one o'clock. The connection that I was making, okay, after this meeting this morning, to facilitate the Tribunal, I have missed, and I must now try and travel to London tonight, miss the meeting tomorrow, but try and get to the Caribbean for meetings on Thursday. I just don't think that that was very good treatment.

CHAIRMAN: Well, Mr. Buckley, I am aware of some, perhaps not of the entirety of all of the details of the matters that took place. It has been the practice of the Tribunal to seek to facilitate witnesses on a voluntary basis, but the statutes do provide that tribunals have the powers of the High Court to subpoena witnesses if necessary. And it's always been my anxiety to facilitate people. I am concerned at the length of time this phase has occupied, and in the context of that, and also in the context of seeking to release you from further involvement with the

Tribunal, I was very anxious that your evidence be concluded in the course of this first week of term.

I am aware that there were some dealings as to which days you would in fact be testifying on this week, with the possibility of a second day being at least hypothetically possible, and I am also aware that Mr. Peter O'Donoghue, the other witness scheduled for this week, was of considerable assistance in effectively substituting initial arrangements that were made.

So accordingly, whilst I regret that you may have been caused personal and commercial inconvenience as regards your undoubtedly important attendances at meetings out of the jurisdiction, I hope you will realise that I have the duty entrusted to me by the Oireachtas of trying to finalise and get ahead with this long-running matter as far as possible.

And my understanding is that my legal team did, in conjunction with Mr. Murphy, try to facilitate you as far as possible. If there were some degrees in which there was not complete consensus in that regard, it wasn't my wish to inconvenience you, but I regard the priority as having been to conclude your evidence in the course of this week. And I don't think it's particularly helpful that we go any further into this matter.

In those circumstances, my understanding, Ms. O'Brien, is that because of the circumstances I have mentioned,

that Mr. O'Donoghue will be available to testify on Thursday and perhaps Friday.

MS. O'BRIEN: Yes, I think that's the position, Sir.

CHAIRMAN: I don't think it's helpful to take this matter further

A. I think this courtesy should be extended, that I would have been informed that the meeting wasn't taking place at 9.45 a.m. this morning, and that it wouldn't take place until 11 o'clock. I think normal courtesy should have been extended, at least.

MR. HEALY: There has been a mistake in relation to the attendance of Mr. O'Donoghue. Mr. O'Donoghue will be attending tomorrow and Thursday, not Thursday and Friday.

I should say, Sir, in fairness to Mr. Heneghan, Mr. Heneghan went to enormous trouble to try to arrange for Mr. Buckley to be in attendance prior to Christmas. Eventually a date was fixed. Mr. Buckley wrote indicating he would not be in attendance. He pointed out his attendance was voluntary and that he was not here under summons and indicated that he would not be available. Mr. Heneghan went out of his way to facilitate him; got requests late in the day, it's impossible in these circumstances, in these very narrow circumstances where facilities are concerned, to meet everybody's requirements, but I think that Mr. Buckley must be mistaken about some of the things he

mentions, because

A. I am not mistaken at all, Chairman. I am very clear of the fact that I was supposed to be here at 9.45 a.m. this morning, okay, and that I wasn't informed of the change of that until Frank Murphy, my solicitor, contacted Mr. Heneghan. Now, surely that shouldn't happen.

CHAIRMAN: Well, Mr. Buckley, I am aware of very extensive correspondence going back to before Christmas. In regard to your attendance. I am aware that you weren't entirely well and that you had certain procedures, and I fully sympathise and was anxious to facilitate that. I am conscious and that's why I don't think it's going to be helpful to ventilate these matters to inordinate length that Mr. Heneghan, the Tribunal solicitor, did go to considerable lengths to facilitate matters. If, in the course of doing that, it may be that not every aspect that may have been to your satisfaction was met, that would not have been my wish. But overall, I do remind you that I have the powers of the High Court, and that it is imperative that evidence, that has gone on longer than I and many other persons would have wished, be finalised.

In that context, I'll conclude matters by acknowledging your attendance today and thanking you for your assistance.

Very good. Tomorrow.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
WEDNESDAY, 14TH JANUARY, 2004, AT 11AM.