

A P P E A R A N C E S

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I N D E X

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THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 20TH
JANUARY, 2004 AT 11AM:

MS. O'BRIEN: Mr. Paul Connolly, please.

PAUL CONNOLLY, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MS. O'BRIEN:

CHAIRMAN: Thank you for your attendance, Mr.
Connolly.

MR. McSHANE: Before Mr. Connolly goes into his
evidence, I appear for Mr. Connolly, and my
application is for limited representation.

CHAIRMAN: Very good, in those circumstances, Mr.
McShane, I will accede to that application on the
usual terms as I have indicated on numerous past
instances. Thank you.

MS. O'BRIEN: Morning, Mr. Connolly.

You provided two memoranda of intended evidence to the
Tribunal. The first one is a short one dated 5th
March of 2002, and the second one is a more lengthy
document. It's undated. I think it was around

November, 2002. What I propose doing is taking you through both those memoranda, which effectively means I will read out the question and answer. If there is any aspect of your answer that you wish to expand upon or to elaborate on, please feel free to do so. In the course of that, there may be one or two matters that I might ask you to clarify. Primarily what I would intend is to confine my questioning to a stage where your memoranda have been opened; and at that stage I would propose returning to discuss one or two matters with you in greater detail, and in doing so, I will refer you to a small number of the very large number of documents which have already been put in evidence before the Tribunal in the last number of months.

A. Can I just say, it's slightly hard to hear you.

Q. I do apologise; I'll just bring the microphone closer.

I hope that's better.

A. Thank you.

Q. I don't know if you have copies of your memoranda

A. I do indeed.

Q. With you? Very good.

The first one is the 5th March. This was in response to queries raised by the Tribunal by letter of the 18th February 2002, and there were five queries raised. But firstly your knowledge, direct or indirect, of the association of Allied Irish Bank, Investment Bank of Ireland, Standard Life of Ireland

and Advent International with the bid and/or the consortium and the subsequent disassociation of them from the bid or the consortium.

"2. Your knowledge, direct or indirect, of the association of Mr. Desmond or IIU with the bid and/or the consortium and their subsequent disassociation from the consortium.

"3. Your knowledge, direct or indirect, of the negotiations with Mr. Desmond/IIU from August 1995 to May 1996.

"4. Your knowledge, direct or indirect, of each of the agreements or arrangements with Mr. Desmond/IIU, whether concluded or otherwise, between August 1995 and May 1996.

Finally, "Details of all of your involvement in any aspect of the negotiations with IIU/Mr. Desmond, or with the agreements or arrangements reached with Mr. Desmond/IIU, whether concluded or otherwise, in the period August 1995 to May 1996.

And you furnished quite a lengthy composite answer to all of those five issues.

You stated that you are a former director of Esat Telecom, but that you continue to be a director of Communicorp. Given that the matter, the subject matter of the Tribunal's inquiries, occurred up to six years ago, your recollection of detail is limited.

You do not have access to the company records or

documents. You are aware that in or about June of 1995, Messrs. Davy Stockbrokers collated a 20% equity pool for Esat Digifone consortium comprising Allied Irish Investment Managers, Bank of Ireland Investment Managers, Standard Life and Advent International plc. Letters of commitment were furnished by the members of the equity pool. However, the consortium was unhappy with the quality of the letters of commitment as they did not constitute firm undertakings. The consortium wished to ensure that firm undertakings were in place in the event of a licence application being successful.

Such firm undertakings were obtained from IIU in or about September 1995. The consortium attempted to advise the licence with the panel of the fact that it had firm undertakings provided by IIU. However this information was refused by the panel as the bid submission date had passed in August 1995. Your recollection is that as of September 1995, the consortium consisted of the following interest:

1. Communicorp/East Telecom, 37.5%.
2. Telenor, 37.5%.
3. IIU, 25%.

It is your understanding that IIU were fully underwriting their own 25% interest and the 37.5 of Esat Telecom/Communicorp. The award of the licence to the Esat Digifone consortium was announced in October

1995. At that stage, detailed business planning commenced. It was decided by the consortium that the maximum anticipated peak funding of the project would cost $\text{€}187$ million that was Irish punts at the time.

These costs were to be funded on a basis of 60:40 debt to equity split. Therefore, the shareholders, i.e.

Telenor, Esat and IIU would need to contribute a total of $\text{€}75$ million in cash proportionate to their

respective equity holdings. The licence was formally granted in May 1996. In the period leading up to May 1996, the shareholders have been funding the company

by way of loans. The formal signing of the licence

necessitated and triggered the completion of the shareholders agreement. The terms of the shareholders

agreement were negotiated during the period between October 1995 and May 1996. In the days immediately

preceding the granting of the licence and completion of the shareholders agreement, you were aware of the

disposal of 5% shareholding by IIU to Esat and Telenor.

You informed the Tribunal that given the issue of the licence triggered the first formal call on the

shareholders for cash input, IIU disposed of a portion of its shareholding at above par value, making a

profit, which you assumed it used to finance or at least partially finance its first cash call. There

was subsequent cash calls on the members of the

consortium. As far as you were aware, at a number of the cash calls, IIU took the opportunity to dispose of a portion of its equity. Your recollection is that the pattern of reduction by IIU was to the effect that it reduced its shareholding from 25%, then to 10%, then to 1%, and finally to 0%.

You state that the Tribunal will be aware from the licence documentation that as part of the shareholders agreement between the members of the consortium, there was a side agreement to the effect that Esat and Telenor had pari passu preemption rights in relation to the IIU shares. There was a further side agreement which provided that IIU retained the right to make a one-off sale to a third party of all or a portion of its shareholding. This free transfer agreement was ultimately used by IIU in relation to the disposal of its then remaining 1% holding in January, 2000. That would be the disposal to British Telecom at the time.

A. Correct.

Q. You state that regarding your dealings with Mr. Dermot Desmond, the position is as follows:

You had met Mr. Desmond socially on two or three occasions prior to and during the summer of 1998.

Your recollection is that you had only ever had two business meetings with Mr. Desmond. The first of these took place in the Dorchester Hotel in London on the 8th December, 1995. Denis O'Brien attended this

meeting. A number of issues were discussed in the course of the meeting, including the question of the disposal of the then remaining 1% interest of IIU.

So do I take it, therefore, that you hadn't met or had any dealings with Mr. Desmond prior to the 29th September, 1995, when the agreements were concluded between Communicorp, Esat Digifone and IIU?

A. Correct.

Q. You say that you subsequently met Mr. Desmond on a flight from Dublin to London. That meeting, which was accidental, took place on Sunday, 19th December, 1999.

To your recollection, matters of a general nature, including business and issues relating to the hostile takeover attempt launched by Telenor, were discussed at that meeting.

You had no knowledge of any outline agreement in early August, 1995, between Mr. Denis O'Brien and Mr.

Desmond whereby Communicorp would arrange for Mr.

Desmond to have the right to take up at par 15% of the

ordinary shares in Esat Digifone Limited, replacing

Allied Irish Bank, Investment Bank of Ireland and

Standard Chartered Bank, but Mr. Desmond was paid his

portion of the bid costs, but Mr. Desmond would

provide a bank guarantee for 3 million punts in order

to enable Communicorp to draw down a $\text{€}3$ million bank

facility; and in exchange for the guarantee, Mr.

Desmond would have been paid a fee of 300,000 punts no

later than 31 March, 1996.

You say that you were aware that by the 29th September 1995, it had been agreed that in the event that the consortium was awarded the second GSM licence, the consortium would place 25% of the equity with IIU and that IIU would arrange underwriting for the 37.5% of the equity for which Communicorp had agreed to subscribe. You were aware that there were discussions between Esat Telecom, Communicorp and IIU and that IIU would place 12.6% of the equity in Esat Digifone with Esat Holdings and that in return, Esat Holdings would pay subscription amounts due on IIU's remaining 12.4% as they fell due, up to a maximum of 6.448 million punts, and that this arrangement was conditional on Telenor's approval.

You were aware that in May 1996 it was agreed that the equity would ultimately be held as to 40% by Esat Telecom, as to 40% by Telenor and as to 20% by IIU, subject to IIU's commitments to dispose of part of its equity equally to Esat Telecom Holdings and to Telenor at specified times.

You state finally that it is indicated above you were aware of the fact that Mr. Desmond/IIU availed of the free transfer arrangement to dispose of the then remaining 1% shareholding to British Telecom.

And that completes your first memorandum.

Now, your second memorandum, I think you said you have

a copy of that with you also.

A. Yeah.

Q. And in certain instances in this memorandum, Mr. Connolly, you were asked questions which were of interest to the Tribunal, but clearly you had no involvement in those matters; and in respect of those, what I would propose doing is just skipping over them and possibly asking you to confirm that what's in your memorandum is correct and accurate.

A. Fine.

Q. So in fact, in the first six questions, you were asked about early dealings between Communicorp and other parties with a view to establishing a consortium, and you were also asked about the establishment of the consortium with Telenor, the dealings between Communicorp and Telenor with a view to establishing the consortium, and the joint venture agreement entered in between the parties on the 2nd June, and you were asked for your understanding of the reason for various provisions of that joint venture agreement.

I think you made it clear there you really weren't involved at all in that aspect of the negotiations.

You would have known from Mr. O'Brien, and presumably from other people, that those negotiations were proceeding, but you had no hand in them?

A. Correct.

Q. And I take that you can confirm that your answers to Questions 1 to 5 are correct?

A. Correct.

Q. Now, Question 6, you were asked for 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 your knowledge.

And you answer that you were involved in the preparation of the information memorandum that Davys used to seek commitments from financial institutions.

You worked with Tom Byrne, managing director, Davy Corporate Finance, to produce the document. And is that correct?

A. Correct.

Q. Paragraph 7, 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; and you answered that they provided conditional letters of support to funding the Consortium in the event of the winning the competition. That's correct, I take it?

A. Correct.

Q. Paragraph 8, you were asked for your knowledge, direct or indirect, of the precise terms of the agreements concluded between Communicorp, Esat Digifone, Mr.

O'Brien, or any associated entity with Advent International Corporation and including in particular, firstly, an agreement where by Advent provided a facility of $\text{€}3.5$ million to Communicorp or 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 answered that you were aware of these agreements, but you were not directly involved in these matters in the negotiation of the detailed provisions of the agreements.

So I take it, therefore, that you knew these agreements were proceeding; I think it was Mr. O'Donoghue was primarily involved in them. You would have been kept apprised of what was happening, but you had no direct input into the negotiations?

A. Correct.

Q. Paragraph 9, you were asked for your knowledge, direct or indirect, of the precise terms of the offer made by Advent International to Communicorp of $\text{€}30$ million to fund Communicorp's equity participation in Esat Digifone, as referred to in a letter dated 10th July 1995 from Advent International addressed to the Department, together with the source or sources of

your knowledge.

And you answer that your knowledge extends to the detail provided by the Tribunal. This was in a schedule I think attached to a letter furnished to you, and the schedule was headed "Documents furnished to Paul Connolly, Schedule 2 at paragraph 6".

And you also refer to your answer at Question 8 above.

That was where you indicated that you were kept appraised, but you had no detailed knowledge. And I just checked that schedule this morning; I think the document you were referring to there is the actual letter of comfort, dated 10th July, that was provided by Advent and addressed to Department.

A. Correct.

Q. That is the extent of your knowledge of the offer of $\frac{1}{2}$ 30 million funding?

A. I would have been aware through Peter O'Donoghue, Denis O'Brien and Massimo Prelz about the offer from Advent.

Q. Yes. But did you know anything about the terms of the offer other than the fact that there was an offer of 30 million funding?

A. In what sense?

Q. Well, on what basis that money was going to be provided, the interest rate that was going to be charged, whether it was going to be equity participation, the level of equity participation, the

terms that governed the offer?

A. Well, first of all, when it comes to Mr. Prelz, for example, I'd known Mr. Prelz since 1993, because you know he was an investor in Communicorp.

Q. Yes, of course.

A. Also he would have been on the board of Communicorp.

So it would have been, you know, reasonable interaction with him, you know, over those months, and indeed right through '94, and obviously into 1995.

When it came to the actual terms, bearing in mind that we already had a shareholders agreement with Communicorp and Advent, the actual tacking on, if you like, of the a 30 million round was not going to be that difficult in the sense of agreeing terms and so on, because they had, first of all, preemption rights in any event; but also to actually go and execute the actual 30 million injection was not going to be that difficult.

Q. So far as you would have been concerned, if you like, the structure was already in place for the injection of the 30 million?

A. Correct.

Q. Would you have taken it that, if you like, the terms or the manner in which the 30 million would be injected, if it was to be injected, would be in accordance with the earlier shareholder arrangements?

A. In terms of the actual agreement, yeah, it more than

likely would be. Obviously there would be some negotiation around the margin by and large you'd be tacking on because it's one of the easiest finances you can do is a tack-on to an existing agreement.

Q. But you wouldn't have been aware of any terms over and above what you have described now in evidence?

A. Well, I mean the key one would obviously as to how much he was going to get in terms of his in respect of the shareholding. To actually work that out is not that complicated, in the sense that he had already, by his previous injections of capital, provided a market, if you like, or a mark as to what the evaluation was.

And in the event that we won the licence, clearly there was going to be, if you like, a floor value as to what the value of that licence was. So to actually work out, if you like, the floor value of Communicorp at that stage to inject the capital of 30 million is not that difficult.

Q. I think later in your memorandum maybe we'll just come to it; I can deal with it at that stage. But can I just ask you this: Apart from the fact that your understanding would have been that you could work all these matters out and extrapolate them from the existing shareholders agreement on the Communicorp side, were you ever informed of any additional negotiations between Mr. Prelz and Mr. O'Brien in relation to the funding of 30 million, or indeed, were

you a party at all, given your corporate finance

function within the company?

A. I would have certainly known that there was discussions going on between Denis O'Brien and Massimo Prelz. I mean, if you take it from the relationships that I had both with Advent, which had went back to 1983, and also I had first met Credit Suisse First Boston in 1991 in connection with Communicorp, he would have been aware, as in Mr. Prelz would have been aware, that we were looking at competing sources of finance, so he was anxious that we would, notwithstanding his preemptive right, that we would take the money from him. But from our point of view, as in Communicorp, to do so would have meant that he would have clearly certainly had more than 50% of the economic rights of the company, which, as a corporate finance adviser, you would say you'd be reluctant to give anybody, one single party, more than 50% economic rights.

Q. That's perfectly understandable.

A. So he was competing effectively to put the money in, and he was certainly making me aware of that.

Q. Yes. Now, at Question 10, you were asked for your involvement or knowledge of dealings between Communicorp and Telenor in the period from 12th July to 4th August, and you have indicated you weren't involved. It was Peter O'Donoghue was dealing with

that matter.

At paragraph 11, you were asked for your involvement or knowledge of dealings between Communicorp, Mr. O'Brien and Advent in the period of the 12th July to the 4th August regarding the provision of a comfort letter acceptable to Telenor, and particularly you were asked about a telephone conversation of the 3rd August between Mr. O'Donoghue and Mr. Prelz. Again you have indicated that you weren't involved. You say that in fact you didn't receive a note of that telephone call, but I can refer you to it if you wish.

But I think

A. I think it was the 3rd

Q. November.

A. Was the 3rd August or

Q. I think the telephone call was on the 3rd August, but the actual record of it is dated the 3rd November. So you may well have been furnished with it.

A. Okay.

Q. But you don't recall having any involvement in that?

A. No.

Q. Paragraph 12, you were asked for your understanding as of the 4th August, 1995, of the following:

Firstly, the status of Telenor's involvement as a party to the bid, having regard to the failure of Advent to provide a letter of comfort acceptable to Telenor.

You answer that it was your personal opinion that Telenor were always committed, and the issue of the letter of comfort was a contrived distraction or display of PTT swagger, and you have put "swagger" in parenthesis. Can you just expand a little bit by what you meant by that answer?

A. My view is that obviously we joined with Telenor somewhere around April of 1995. There was initially a significant amount of enthusiasm on their part. They certainly he sent over quite a number of their staff to help on the whole bid process. Clearly the the joint venture agreement, for whatever reason, we agreed on this 5 million guarantee

Q. 5 million plus 50% of a the licence

A. Plus 50% of the licence fee. I mean, by July, they were clearly excited by the opportunity, but they also, in my view, were certainly interested in taking more of the opportunity, and they were certainly putting more pressure on us than I think was required; in other words, if we were going to be JV partners, I think they should have been helping us rather than beating us up over the extent of a letter of comfort from Advent.

Q. As far as you were concerned, they were committed; they were there?

A. They were certainly committed. They were certainly pretty excited by the opportunity, given that up until

then, most of their opportunities in terms of participating outside of Norway, they had certainly stakes less than probably in the teens to maybe 20% and this was a significant opportunity to get a licence in an EU country.

Q. You can understand that?

A. They were clearly excited about it.

Q. I suppose, as of the 4th August, the bid was in. They were there; they were committed. They had clearly, by their joinder in the bid and their agreement to the bid being lodged, they had effectively made a representation to the government of a Member State of the EU; so as far as you'd be concerned, they were there?

A. Correct. We were now married at that stage.

Q. Can I just ask you what "PTT" means?

A. It's an old description for the old days of post, telegraphs and telecoms, or telecommunications. It would have been like when Telecom Eireann or the P & T before there was any competition. It's the sort of generic term for PTTs; the incumbent, if you like.

Q. Secondly, you were asked for your understanding as of the 4th August of the funding available to Communicorp as of the 4th August, 1995, to finance its 40% equity participation in Esat Digifone. You have answered that your understanding of the funding position of the

4th August was that Communicorp was fully funded. And you have indicated, I think, that in respect of both of your answers, your knowledge was direct.

Now, in relation to the funding of Communicorp as of the 4th August, you'd agree with me that Communicorp didn't have the 30 million itself to invest in this?

A. No, it didn't have it. It wasn't in a

Q. What it had was a letter of offer from Advent for 30 million?

A. It had a letter of comfort from Advent for 30 million, yeah.

Q. In which Advent had written to the Department saying that it had offered the 30 million?

A. Correct.

Q. It didn't have anything at that stage at all from CSFB, did it?

A. No.

Q. So what you are saying there is that they were dependent on the $\frac{1}{2}$ 30 million offer?

A. At that stage, yes.

Q. Mr. O'Donoghue gave evidence to the Tribunal last I think it was Wednesday, of last week, and he indicated that, if you like, his area of expertise and his area of responsibility was to deal with the debt funding and that your area of responsibility really was to deal with the equity funding side, which was to find the 40% for Communicorp to invest

A. Yeah.

Q. in Esat Digifone. And he said that I suppose his understanding of it at the time was that there had been negotiations already with CS First Boston; that his understanding would have been that as regards the 30 million offer which had been communicated to the Department, that that was in the nature of a backstop, that it was there, that it was something that Communicorp/Esat Telecom would have resort to if there were no other options on the table, but that they were far more interested in proceeding with the CSFB placement. Would that be a fair enough summary of what the position was?

A. Bearing in mind that we had the relationship with CSFB going back a number of years, and also we had a letter of engagement with them, I think, at that stage.

Q. I was going to come to that. I think that was a letter of engagement in which you had given certain advice to Mr. O'Brien in June?

A. Yes.

Q. Now, at paragraph 13, you were asked for your knowledge, direct or indirect, in each and every respect in which it was considered that the terms offered by Advent International to fund Communicorp's equity participation in Esat Digifone were unfavourable to Communicorp, as asserted in a letter dated 4th August from Communicorp to Telenor, together

with the source or sources of your knowledge.

You say you believed that Communicorp Group, Esat Holdings Limited could achieve better terms than those offered by Advent International in the international capital markets.

That's effectively what you have just told me already?

A. Correct.

Q. Of course the international capital markets, that would be going with the private placing through CSFB.

A. True.

Q. Paragraph 14, you were asked for your involvement in or knowledge, direct or indirect, of all steps taken by or on behalf of Mr. O'Brien, Communicorp, Esat Digifone, or any person on their behalf, to secure funding for Communicorp's equity participation in Esat Digifone from any source other than Advent International, including in particular, the following:

1. The identity of all parties to whom approaches were made

A. I think I probably answered two questions in one here in this particular reply.

Q. Yes.

A. In the sense that it's you are asking about Communicorp, but I have addressed both Communicorp and Esat Digifone in the same answer.

Q. You say Davy Stockbrokers well, firstly you have identified the parties to whom approaches were made.

Firstly it was Davy Stockbrokers made a number of approaches to institutional investors on your behalf. They were subsequently identified as the four three institutional investors we have referred to, and IIU was also approached. And of course there you would have been approaching them for funding for Esat Digifone, not just for Communicorp/Esat Telecom.

A. Right.

Q. Secondly, Credit Suisse First Boston approaches were made to numerous financial institutions. That would have been ultimately in connection with the private placement in June of 1996?

A. Correct.

Q. And then thirdly, Dermot Desmond/IIU.

Then you were asked for the person by whom such approaches were made. In the first instance, as regards Davys, you have indicated it was Mr. O'Brien and John Callaghan who approached Davy Stockbrokers. Davy Stockbrokers and all the Irish institutions other than IIU.

As regards the approach to Dermot Desmond, I think you have indicated it was Denis O'Brien who approached Mr. Desmond/IIU.

And as regards Credit Suisse First Boston, you have indicated that you and Denis O'Brien approached Credit Suisse First Boston, that that they in turn made approaches in the USA to financial institutions.

You were then asked for the date of such approach or approaches. In the case of Davy Stockbrokers, that was April/May 1995; in the case of Mr. Desmond/IIU, August 1995; and in the case of Credit Suisse First Boston, mid-1995 through June 1996.

And 4, you were asked for the outcome of such approaches. And in the case of the approach to Davys, the outcome was the continual letters of support from the institutions. In the case of Davys' approach, an underwritten offer from IIU and an investment of $\text{US} \$27$ million in Esat Holdings Limited. The outcome was that the investment was made by Advent International, CS First Boston, Sorus Capital, John Hancock and Metropolitan Life.

Fifthly, you were asked for the precise terms of all offers of funding made available to Communicorp, including the dates of such offers. And you have indicated in your answer that this was in accordance with the letters or subscription arrangements, agreements themselves which you believe had already been furnished to the Tribunal, which of course they were.

And finally you were asked for each and every matter of consideration which caused or prompted Communicorp to refuse such offers, if any. And you have answered that in the case of the Irish institutional offers to Esat Digifone, you believe that the primary cause for

their ultimate rejection was the conditional nature of the institutional letters. You were asked to indicate the source or sources of your knowledge, and you have indicated the source of your knowledge was direct knowledge of the matters.

You have said there in the case of the Irish institutional offers that the primary cause for their rejection was the conditional nature of the institutional letters. What other causes for their rejection do you recall that there were?

A. Well, the primary rejection was the conditional nature, because they were subject to credit approval; and obviously, seeing the terms of the ultimate terms of the licence, which, while the face of it looked fairly innocent, the practical matter, there were significant hurdles to get over.

Q. We'll come back and talk about that a little more when we are looking at documents.

At paragraph 15, you were asked for your involvement or knowledge of the dealings between Communicorp, Esat Digifone, Mr. O'Brien, RINV, subsequent to the 4th August in relation to the facility and in relation to the agreement of the 12th July. And you have indicated that you weren't involved, and Peter O'Donoghue dealt with those matters.

And I take it that's correct?

A. Yes.

Q. Paragraph 16, you were asked for your involvement or knowledge in all dealings between Communicorp, Mr. O'Brien, RINV or any other person on behalf of Telenor subsequent to the 4th August in relation to the funding of Communicorp's equity participation in Esat Digifone by Advent and relating to the provision of a letter of comfort by Advent to Telenor, together with the source or sources of your knowledge.

Again, you have indicated that you had no involvement, and this was a matter dealt with by Peter O'Donoghue.

And I take it that's correct.

A. Correct.

Q. Paragraph 17, you were asked for your understanding of the RFP document, in particular paragraphs 3, 9 and 19, which I don't propose reading out, and you have answered that it was your understanding of the RFT document was limited to the matters as set out therein; clearly the more the bidder scored on each of the subheadings, the greater the chance of success.

And that was your view?

A. Yeah.

Q. Paragraph 18, you were asked for your specific understanding of the requirement that the Minister be satisfied as to the financial capability of the applicant as provided by paragraph 19, and in particular, in the light of the information memorandum issued by the Department to applicants on the 28th

April 1995, and specifically that portion of the memorandum which responded in the following terms to a question posed by Esat Digifone as to how financial capability would be assessed and to whether there were any specific criteria. And the question set out what the answer was, and you informed the Tribunal that your understanding was that the bidders' financial capability would be assessed by reference to the total proposed operation. To you this meant that the level of gearing used had to be realistic, that the consortium members had to have the credibility to achieve its level of gearing, and that the business plan had to be realistic to support this financial structure. There was a general consensus as to what is realistic in terms of scale and gearing. Is that correct?

A. Correct.

Q. At paragraph 19, you were asked for your knowledge of involvement in any submissions that were made to the European Commission. And you say that you don't believe there were any submissions made in relation to the auction element or the transparency of the process. Is that correct?

A. Correct.

Q. Paragraph 20, you were asked for details of the progress which had been made in the preparation of the Esat Digifone bid as of the 16th June, 1995, including

details of all aspects of the bid, which had yet to be finalised. You have informed the Tribunal that as far as you were aware, the bid was effectively ready at that stage, because there was a printed deadline to be met.

At paragraph 21, you were asked for your knowledge, direct or indirect, of the precise level of licence fee which the Esat Digifone consortium intended to nominate in its application prior to the deferral of the evaluation process and the 16th June 1995, and the steps taken by Communicorp to fund its contribution to the proposed licence fee, together with the source or sources of your knowledge.

You state that to your knowledge as of the 16 June 1995, the precise level of intended licence fee was being considered by Denis O'Brien, Massimo Prelz of Advent, and Telenor. Is that correct?

A. Correct.

Q. And I suppose they would have had to have been in a fairly advanced stage of consideration of what that would be, because there would have been certain elements, particularly on the financial side, that would have been dependent on the licence fee; isn't that the position?

A. Actually, when it comes to the licence fee, in terms of the actual funding requirement, it wasn't that wasn't the issue. It was the case of if you were

going to whatever way you called the licence fee, in any event, that it was a beauty contest with an unspecified fee, your decision as an applicant was, do you go obviously for a very high fee, but then obviously somebody has to pay for that, and thereby obviously pricing and so on is higher; or do you go for somewhere in between and recoup it elsewhere?

Basically, when it came to the beauty contest, all applicants were effectively I mean, this bid was not done in isolation in terms of the capital markets. Generally speaking, for a project finance, you are talking about 60:40 in terms of debt equity. So that would be your first constraint, if you like.

The next aspect would be that the expected return you would probably put in a bid and it would obviously depend on each applicant. But somewhere in the late teens, in terms of IRRs, or maybe the early 20s, so that would be your constraint. If you then decided to, for argument's sake, that you wanted to lower your return expectations into single digits, you'd be concerned about your credibility in that. Likewise, if you put it into 0 to 30 percent, you'd be seen as fairly egregious.

So the reality is that when it came to the actual licence fee, in the event that you had to, for argument's sake, go another hundred million, the reality is what you would have done to your actual

financial model is that you would have had to change a number of assumptions, key assumptions, like your sac cost, your churn, your interconnect rates, all of that, effectively backing into the same peak funding, or there or thereabouts.

Q. So would I be correct in thinking that you decide on what your IRR was to start it; you'd pin that down, and then you'd have to back in or build in your licence fee to meet that, and that you'd have to make alterations to other aspects of the bid or other aspects of the financial structure to fit that level of licence fee and make it consistent with the IRR as projected in the bid?

A. Your key call is to how aggressive you wanted to be in terms of the quantum you wanted to bid, because you'd have to recoup it elsewhere, i.e. from the consumer; so the actual the peak funding level I don't believe would have changed materially because you would have, for example, slow down the roll-out of cap-ex, which would have reduced the peak funding. So the actual amount of capital that would have been required from an equity point of view was not going to materially change, in my view, but it was certainly going to be a challenge as to which way to call it.

Q. Would I be correct in thinking that as of the 16th June, that date you were getting ready for the print run, you had, as far as you were concerned, your

backstop funding there, which was your letter of offer for Advent, from Advent for 30 million to cover the Communicorp equity participation. Would I be correct in thinking that that 30 million, you could have assumed, would cover you, whatever the licence fee level you were going to nominate?

A. Correct. What we had in the bag, effectively, from Advent was going to cover us.

Q. All right. Now, at Question 22 you were asked for your knowledge of a meeting between Mr. Ed Kelly and Mr. O'Brien and Mr. Brennan and Mr. Towey of the Department of the 19th. You were asked for various matters relating to your knowledge.

You said you were only indirectly aware as to Mr. O'Brien, and by virtue of documentation supplied by the Tribunal, that the meeting was held to seek clarity as to where the RFP was going to next. Your detailed knowledge is limited to the meeting notes supplied by the Tribunal. I take it that's correct?

A. Correct.

Q. You were then asked for your knowledge, direct or indirect, of the source of certain information, a letter of the 20th June from Mr. O'Connell of William Fry to Baker McKenzie. And you say that you don't know the source of the information that was in that letter.

Paragraph 24, you were asked for your understanding as

to the purpose for which oral presentations by applicants were conducted by the Department. You say firstly, A) to provide the bidders with an opportunity to impress the assessors apart from the cold documentary presentation; and B) to allow assessors obtain clarity on items in the bid.

Secondly, you were asked for 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 query regarding the letter of comfort provided by Advent International for the terms governing the offer of funds by Advent.

You state that you were not present at the oral hearing, and consequently you have no knowledge of the queries raised.

Is that correct?

A. Correct.

Q. Thirdly, you were asked for of your knowledge of all queries raised by the Department regarding the commitments provided by the institutional investors in Esat Digifone.

Again, you say you weren't present at the oral hearing, and consequently you had no knowledge of the query raised.

And finally, you were asked for your view as to the overall impression made by the Esat Digifone consortium in the course of the presentation, and in particular any matters which appeared to Mr. O'Brien to be problematic or areas of perceived weakness.

And again you were asked for you indicated that you weren't present at the oral hearing, and consequently you had no knowledge of the query raised.

A. Correct.

Q. Or indeed of the impression made?

A. Correct.

Q. Do I take it, therefore, from your answer to that, that you weren't involved in any post mortem discussion as to how the presentation went?

A. Not in the the formal sense, no.

Q. Well, were you involved in any sense, in any discussion?

A. Obviously I would have spoken with Denis O'Brien and Peter O'Donoghue after it.

Q. Presumably you gleaned some impression, then, as to what impact

A. I think the main impact would have been that they felt it had gone well. But obviously we needed, you know, through our own self-analysis, we needed to bone up on, from a financing point of view.

Q. Do you recall any discussions at all with Mr. O'hUiginn or Mr. Mara as to whether any steps should

be taken or what impression

A. Not in particular, no.

Q. Paragraph 25, you were asked for your involvement or knowledge, direct or indirect, of all dealings, discussions or meetings between Mr. O'Brien, Communicorp, Esat Digifone or any person on behalf of Mr. 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 or any related or associated entity at any time prior to the closing date of the competition on the 4th August 1995, together with the source or sources of your knowledge.

You have answered that you were aware from Denis O'Brien that he was in discussions with Dermot Desmond from August 1995 onwards about IIU participation in the consortium.

Paragraph 26, you were asked for your involvement in or knowledge, direct or indirect, of all dealings, discussions or meetings between Mr. O'Brien, Communicorp, Esat Digifone, or any person on their behalf, in relation to Dermot Desmond or IIU during the Esat Digifone consortium or providing funding for the consortium or any member of the consortium, including in particular Communicorp or any related or associated entity, at any time after the closing date of the competition on the 4th August, together with

the source or sources of your knowledge.

Again, you have referred to your reply to the previous question, was that you were aware that Mr. O'Brien was in discussions. You have also stated that from April/May 1996, you were involved with Professor Michael Walsh of IIU in discussions relating to the Digifone shareholders agreement of the 16th May, 1996.

And we do see you at meetings around coming up towards the 16th May.

A. Yeah.

Q. Shareholder meetings.

Paragraph 27, you were asked for your involvement in or knowledge, direct or indirect, of 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 and the 29th September, and including details of specific meetings listed there by the Tribunal.

And you state that you have no specific knowledge other than being aware through Denis O'Brien that these discussions were ongoing.

Can I just ask you there and again, we'll come back to it if needs be were you aware at the time of these discussion that they were ongoing, or was it something that you became aware of subsequent to the agreements which were reached on the 29th?

A. I would have been aware from, basically, early August.

Q. From early August?

A. Yeah, that he was talking to Dermot Desmond.

Q. And you were were aware as the discussions were progressing that Mr. O'Brien was in

A. But I wasn't directly in negotiations with either Dermot Desmond or Michael Walsh in connection with those.

Q. So you weren't directly a party to those negotiations?

A. No.

Q. You were 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. You state that your understanding of the precise obligations and entitlements extends to your understanding of the documents supplied by the Tribunal. So you had no greater understanding than what's within the documents themselves?

A. Correct.

Q. You were then asked the same question in relation to the obligation and entitlements of IIU, and again your answer is the same; your knowledge is confined to the contents of the documents themselves.

You were asked for your understanding 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.

You state that your belief was that a fully underwritten bid would help your efforts or would help the efforts of Esat Digifone to secure the licence.

Is that correct?

A. Correct.

Q. Can I ask you there, you say that was your belief.

When did that belief arise? When did you first have that belief, that a fully written underwritten bid would assist the consortium's efforts in securing the licence?

A. Well, if you go back to the May/June period on the Davy underwriting, or not the letters of conditional letters, I mean, the way I looked at the RFT was it was like an exam question, and obviously the higher you scored, the better.

I would say, with the Davy letters, we were probably in, I guess, to use the old leaving certificate parlance, we were in the D category, in terms of we had a pass mark. But we clearly needed to improve that. Through our own self-analysis, you could say it was easy to see we were always going to be regarded as a weaker part. Communicorp clearly didn't have the balance sheet of Telenor, and the more we could do to demonstrate that we were fully underwritten, the better.

Q. I am just wondering why, if you like, this seemed to

become something that everybody was addressing around September, in view of the fact that from the 16th June to the 4th August, there was, I think, a lengthy period of review when, due to the deferral of the closing date, everybody had an opportunity to look at the bid again; and in fact, I think portions of the bid, or indeed perhaps the entire bid document was sent over to KPMG in London for a full review. I am just wondering, would that not have occurred to everybody?

A. PA Consultants

Q. I should correct; it's PA Consulting.

A. First of all, to try and improve the we'll call them the Davy letters. First of all, those institutions are not involved in underwriting, per se. They were fund managers. So it wasn't really a question of going back to them and saying, "Look, fellas, you wouldn't mind dropping out a couple of those conditional paragraphs to see if we could improve?" They just were not in the business of doing underwritten offers.

So bearing in mind this is risk project risk that we are talking about here, it's highly unusual, in an institutional sense, to get underwritten commitment for project risk. It's different when you move to corporate risk, but this is clearly project risk. So to improve on those in the conventional sense, with

institutions, was going to be difficult. In fact I have never seen it done, to be frank with you, in terms of project finance.

Q. I appreciate all of that. I am just wondering, why was it that this was something that was only addressed after the 4th August, when the bid was lodged, and not addressed between the 16th June and the 4th August, when there was all that time for review? And indeed, I think from Mr. O'Donoghue we know that there were certain negotiations, albeit in relation to the fixed-line business and the radio business, that were proceeding at that stage with IIU and Mr. Dermot Desmond; and I am just wondering why it was that nobody seemed to have looked at this in a concrete way between the 16th June and the 4th August.

A. It was certainly front of mind, I can assure you, in terms of how can we improve our funding credibility. But terms of the opportunity didn't arise to improve it until August.

Q. I see. Very good. Now, 31, I think that was the next; we left matters off at 30. You were asked for your involvement in or knowledge, direct or indirect, of all dealings or contacts of whatsoever nature which Mr. O'Brien, Communicorp, Esat Digifone or any associated entity or any person on their behalf had with the Minister or the Department or any person relating to the letter of the 29th September,

Department's refusal to consider its content or the Department's letter of the 2nd October, whether in advance of or subsequent to the forwarding of the letter of the 29th September, together with the source or sources of your knowledge.

You state that you had no knowledge of these matters on that go by bear that the Department rejected the letter from IIU. Is that correct?

A. Correct.

Q. Paragraph 32, you were asked for your involvement or knowledge of a meeting in Oslo on the 22nd September with Mr. Johansen. And you stated that you had no knowledge of that meeting. Is that correct?

A. Correct.

Q. Paragraph 33, you were asked for your knowledge of all contacts between Mr. O'Brien and Mr. Callaghan and Mr. Johansen or any other Telenor official subsequent to the meeting in Oslo. You say that if this query relates only to the matters pertaining to IIU, that you had no knowledge?

A. Correct.

Q. You were asked for your knowledge, direct or indirect, as to the source of information available to Telenor as of the 10th October 1995 that the Minister intended to announce the winner of the petition process in the following two or three weeks, as relayed by Telenor to its solicitors on the 10th October 1995, and you have

informed the Tribunal that you do not know the source of that information.

A. Correct.

Q. You were asked for the date on which and circumstances in which you first became aware that Esat Digifone had won the licence competition. And you say that you heard it on the 98FM news, standing in the 98FM news room.

A. Correct.

Q. Paragraph 36, you were asked for your knowledge, direct or indirect, of the circumstances in which and terms on which J&E Davy, Investment Bank of Ireland, Allied Irish Banks and Standard Life agreed to withdraw from involvement in the consortium, together with the source or sources of your knowledge.

And you have informed the Tribunal that you understand that John Callaghan spoke with Kyran McLaughlin of Davys requesting him to get the institutions to withdraw on the basis of the conditional nature of their letters. Is that correct?

A. Correct.

Q. Paragraph 27, you were asked for details of all dealings or discussions to which you were a party or of which you have or had knowledge, direct or indirect, in relation to the query raised by Mr. McLaughlin in a letter dated 22nd November 1995 from Mr. McLaughlin to Mr. O'Brien, together with the

source or sources of your knowledge.

And you have informed the Tribunal that you were aware, through both the letter that's the letter from Mr. McLaughlin, I take it

A. Yeah.

Q. and from Mr. O'Brien that Davys were less than happy, as you suppose it caused them some embarrassment with their clients. Is that correct?

A. That's correct.

Q. Paragraph 38, you were asked for your involvement in or knowledge, direct or indirect, of the manner in which Mr. O'Brien dealt with the queries raised by Mr. McLaughlin in the letter of the 22nd November, 1995, together with the source or sources of your knowledge. And you say you believe that John Callaghan dealt with this, given his longstanding relationship with Davys. Is that correct?

A. Correct.

Q. Paragraph 39, you were asked for your knowledge, direct or indirect, of all contacts between Esat Digifone consortium or any member of the consortium or any person on their behalf and the Department regarding the involvement of IIU Limited as a member of the consortium and in particular, the Department's attitude to such membership as recorded in an attendance of Mr. Gerry Halpenny of William Fry Solicitors dated 21st November 1995, together with the

source or sources of your knowledge.

You have indicated that you didn't appear to have been furnished with that attendance. I think you would have been furnished with it subsequently, when you were served with all the books, and you may recall, you may have identified it, in fact, as the attendance which records that the involvement of IIU was not a problem for Martin Brennan. And I don't know if, in that knowledge, you can be of any assistance to the Tribunal?

A. Not in this case, no.

Q. Very good.

Paragraph 40, you were asked for precise details of your understanding of the following: the composition of the Esat Digifone consortium as of the 4th August 1995, being the date on which the application was lodged with the Department.

And you have informed the Tribunal that your understanding was that the shareholding was Communicorp 40%, Telenor 40% and institutions 20%; is that correct?

A. Correct. Although technically I guess it was 50:50 at that stage.

Q. 50:50 on the basis of the shareholding had been issued, but I suppose on the basis of the agreements that were in place, it was 40:40:20?

A. Correct.

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

And you answer there that it was 37.5, 37.5, 25% to IIU; is that correct?

A. Correct.

Q. Thirdly, the capital configuration beneficial ownership of the shares of Esat Digifone 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.

You say your answer is the same. That was Communicorp 37.5, Telenor 37.5 and IIU 25%; is that correct?

A. Correct.

Q. Finally, 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 licence. And in that I understand you have indicated that your knowledge was that the shareholding was Communicorp 40%, Telenor 40% and IIU 20%; is that correct?

A. Correct.

Q. Paragraph 41, you were asked for your understanding of the Department's state of knowledge of the capital configuration of the Esat Digifone consortium, and eventually of Esat Digifone Limited, as of the same four dates.

And in the case of the first date, which was the 1st August, your understanding of the Department's knowledge was the same as your own knowledge, that it was 40:40:20. As of the second date, that's the 25th October, your understanding of the Department's knowledge was that it was still 40:40:20; but you do point out, however, that the Department was up on notice of IIU's involvement per the rejected IIU letter of the 29th September, 1995. Is that correct?

A. Correct.

Q. Can I just ask you there, as a matter of clarification, would that have been your view at the time, or I suppose is that your view with the benefit of hindsight?

A. I would have known the letter had gone in and the letter had been rejected at the time, so it was my view at the time.

Q. Right. So the time your view would have been, "Look, the Department is on notice of this; they may have sent the letter back, they may have rejected it, but they know it"?

A. Correct.

Q. Paragraph 3, you were again asked for your knowledge of the Department your understanding of the Department's state of knowledge of the capital configuration as of the 12th April 1996, and you say, again, Communicorp 37.5, Telenor 37.5 and IIU 25%.

And presumably that's on the same basis as your previous answer, that the Department was on notice?

A. Yeah.

Q. Did you know of any other matter that might have put the Department on notice of the higher IIU shareholding and the corresponding lower Telenor Communicorp shareholding as of the 12th April, other than the fact that it was on notice by the letter of the 29th September?

A. No, not at that time, no.

Q. Finally, the capital configuration as of the 16th May. And that was 40:40:20; and you have confirmed that in each case, the source of your knowledge was direct knowledge.

A. Correct.

Q. Paragraph 42, you were asked for your knowledge, direct or indirect, of the queries and issues raised by the Department regarding the ownership of the Esat Digifone consortium and in the information provided to the Department by or on behalf of Esat Digifone regarding such queries, including a letter dated 17 April 1996 from Mr. Owen O'Connell, solicitor, addressed to Ms. Regina Finn of the Department, together with the source or sources of your knowledge. You have answered that your understanding of these matters extends to the understanding of the documentation supplied by the Tribunal.

Do you recall that letter at all of the 17th April?

It was a fairly lengthy letter that Mr. O'Connell sent to the Department.

A. I don't, no. Just as a general point, when all these this sort of period, while I do appear in a number of meetings and so on, I was also heavily involved in the CSFB fundraising at that stage. So both being in the US and also effectively capping out in William Fry Solicitors to get the documents executed, ultimately they were done in June, so I appear at a number of meetings; but effectively, you know, you are coming in and out to them.

Q. Your focus was to get the CSFB funding up and running?

A. Correct.

Q. Paragraph 43, you were asked for your knowledge, direct or indirect, of dealings between Mr. O'Brien and IIU with Mr. Digerud and Telenor in relation to issues and queries raised by the Department regarding capital configuration. And you have stated that you have no knowledge of these matters.

Similarly, you had no knowledge of the matters of which you were asked at Question 44, which was dealings or discussions between Mr. O'Brien and the Department and/or any official of the Department in relation to the same matters, the capital configuration. And you have stated that you have no knowledge of these matters also.

A. Correct.

Q. Paragraph 45, you were asked for your involvement in or knowledge, direct or indirect, of the manner in which and the date on which the Minister of the Department was informed by Mr. O'Brien, Communicorp/East Telecom, Esat Digifone, or any other person on their behalf, that Communicorp/Esat Telecom did not intend to fund its equity participation in the Esat Digifone by drawing on finance to be provided by Advent International but intended to fund its participation by placements through CS First Boston, including details of the precise information provided to the Minister or the Department, together with the source or sources of your knowledge.

And you answer that you do not know how or when this was communicated to the Minister or the Department.

You are aware of a letter of William Fry of the 7th June 1996 to the Esat Holdings subscribers advising the Department of a potential change of shareholding in Esat Holdings Limited. That letter was consequent upon the placement through CSFB?

A. Correct.

Q. Which would have involved a corresponding collusion in the shareholding of the existing shareholders in Esat Holdings?

A. I remember from the licence itself that any effect of the change, control or shareholding movement in any of

the parent companies, if you like, effectively required the consent of the Department. That's what that letter was about.

Q. I see. But you aren't aware of when the Department was actually told, "Look, the Advent International 30 million is not going to be used; we are going to do a funding through CS First Boston"?

A. As far as I am aware, that was the formal notification. They may have known informally that we were doing it.

Q. That was post the issue of the licence?

A. Correct, at that stage, yes, that letter, yeah.

Q. Paragraph 46, you were asked for your knowledge, direct or indirect, of a meeting which took place in the Department on the 3rd May. In fact this was a meeting at which you were present. I think it was the only meeting, in fairness to you, that you attended with the Department.

A. Yeah.

Q. And in particular your understanding of the following:

1. The purpose for which the meeting was held.
2. The matters discussed.
3. The query or issues raised with the Department.
4. The requirements of the Department.
5. The requests made by the Department to Telenor to underwrite the entire of the equity and operational expenses of Esat Digifone, and Mr. O'Brien's

understanding of the reasons for such request. I think that should have read "your understanding for the reasons for such request".

In each instance you were asked to indicate the source or sources of your knowledge.

You have answered that as of the 3rd May 1996, the form of the licence had not been finalised. "The meeting was convened by the Department for the purpose of finalising detail in relation to the licence, and my recollection is, to a great extent, based on the memo dated 3rd May 1996, as furnished by the Tribunal".

That's a copy of the attendance kept by Mr. Owen O'Connell. We'll look at that when we are looking at the documents.

A. Okay.

Q. You were asked for the date on which and circumstances in which you became aware that the Department had requested that the configuration of the share capital of Esat Digifone Limited should be restored to the capital configuration of the consortium that had applied for the licence that is, restored to 40:40:20 together with the source or sources of such knowledge.

You answer you do not recall when you became aware of that, but you would have become aware of it, because I think you were fairly heavily involved in the

shareholders negotiations?

A. With Richard O'Toole, yes.

Q. 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 requests that the issued share capital of Esat Digifone should be restored to 40:40:20.

And you say that you have no knowledge in that regard; is that correct?

A. Correct.

Q. You were asked then, in 49, for your involvement in or knowledge, direct or indirect, of all dealings, discussions and negotiations between Communicorp/East Telecom, Telenor and IIU regarding the request made by the Department for the capital configuration of Esat Digifone should be restored to 40:40:20 and including, 1, all matters which prompted the agreement of IIU Limited transfer 5% of the shares of Esat Digifone to Communicorp/Esat Telecom and Telenor.

You have answered that your understanding in relation to this aspect of the matter is set out in the 10th, 11th and 12th paragraph of the letter from John J. O'Hare dated 5th March. That's effectively what's set out in your first memorandum, which I have already read out and which you have already confirmed?

A. Correct.

Q. Paragraph 2 of that question, you were asked for, in particular, all negotiations regarding the evaluation of the 5% shareholding of IIU at IRi;½2.75 million and the agreement of IIU, Telenor and Communicorp/Esat Telecom to accept such valuation.

And you state that's based on negotiation?

A. Correct.

Q. Finally, you were asked for the manner in which the evaluation of 5% was fixed at 2.75 million. And again you state that's based on negotiation. And you confirm that all of those matters are based on your direct knowledge of them?

A. Correct.

Q. Paragraph 50, you were asked for your knowledge, direct or indirect, of a meeting which took place in the Department on the 13 May, 1996, attended by Mr. Knut Digerud, Mr. Owen O'Connell, Mr. Martin Brennan, and Mr. Fintan Towey, and including in particular your knowledge of the following:

1. The purpose for which the meeting was held.

And you have answered that you were aware that the overall purpose of the meeting was to resolve any issues outstanding in relation to the details of the licence itself, and also to discuss the official signing and announcement of the licence award.

2. The matters under discussion.

And you have referred to your earlier answer.

3. The request made by the Department that Esat Digifone identify key questions likely to be raised at the press conference to announce the issue of the licence, to draft answers to such questions and to explain to the Department the reasons for such answers.

And you have answered that you assume the Department wanted to make sure that the press conference was conducted in a controlled manner.

And finally you were asked about your knowledge of the request made by the Department that a meeting be arranged between the Minister and Mr. Digerud, together with one or two others, at which the press conference would be discussed, rehearsed. And you say you were unaware of that Department request.

Paragraph 51, you were then asked for details of all steps taken by Esat Digifone on foot of the Department's request that key questions be identified and draft answers be prepared.

And you have indicated that to your knowledge, the questions were identified by FCC, who prepared questions and answers, and that would have primarily been Ms. Eileen Gleeson and Mr. Brian Harmon.

And can I take that was the full extent of your knowledge, your involvement in this particular exercise of the preparation of specimen questions and answers?

A. Correct.

Q. Paragraph 52, you were asked for details of your involvement and your knowledge, direct or indirect, of all meetings, discussions, or contacts whatsoever between Esat Digifone or any person on its behalf and the Minister in connection with the identification of the key questions and the answers.

And again, you have indicated really your own knowledge of the meeting of the 13th May and your only further knowledge was that these were prepared by FCC; is that correct?

A. Correct.

Q. Paragraph 53, you have indicated that you have no knowledge of or involvement in discussions, meetings, or contacts between Mr. Digerud or Esat Digifone and the Minister on foot of the Department's request at the meeting of the 13th May to attend a discussion or to rehearse a press conference in relation to the issue of the licence; is that correct?

A. Correct.

Q. Paragraph 54, you were asked for details of all matters which to your knowledge, direct or indirect, prompted the renegotiation of the underwriting arrangements between the members of the consortium and in particular, firstly, the release of IIU from its obligations on foot of the agreements of the 29th September 1995 to underwrite the entire of

Communicorp/Esat Telecom's equity participation in Esat Digifone Limited.

And you have answered that you have no knowledge of that.

Secondly, the assumption by Telenor of an obligation to share with IIU the underwriting of Communicorp/Esat Telecom's equity participation in Esat Digifone on a 2:1 ratio.

You have answered that you assume that this was based on the ratio of ownership; that is, Telenor 40% and IIU 20%. Is that correct?

A. Correct.

Q. I take it that that's something that you are assuming, but you didn't actually have any direct role in the negotiation of those underwriting arrangements?

A. No.

Q. Thirdly, details of the precise terms on which IIU and/or Telenor provided funding to Esat Telecom to finance its obligations to contribute to the licence fee of i£½50 million made by Esat Digifone to the Department on the issue of the GSM licence to Esat Digifone on the 16th May 1996.

And you state, as per the shareholders agreement grace provisions, i£½6 million was lent at an interest rate of DIBOR plus 2%?

A. Correct.

Q. And finally you were asked for precise details of the

funding arrangements between IIU, Esat Telecom and Telenor regarding all aspects of the funding of Esat Digifone Limited. You have answered a debt/equity ratio was agreed at 60:40. Equity was assumed to be i;1/275 million, and consequently each party had to contribute pro rata to their shareholding. Is that correct?

A. Correct. Obviously the figure became more as the project got larger.

Q. Yes, yes. But it was still a pro rata contribution?

A. Yes.

Q. Paragraph 55, you were asked for your understanding for which the Department required the following:

Firstly, a letter of the 7th May 1996 from Chris McHugh of IIU.

You state that you were unaware of that letter. You also state that you were unaware of a letter of the 7th May from Farrell Grant Sparks, auditors, to Mr. Desmond. You say that you haven't seen copies of letters from KPMG of the 9th May or a further letter of the 15th May from Farrell Grant Sparks?

A. Correct.

Q. I think those letters primarily related to inquiries which the Department was making in relation to the financing of IIU, and I don't think you had any role in dealing

A. No.

Q. with those inquiries which had been raised by the Department, even though you were at the meeting of the 3rd May?

A. Correct.

Q. Paragraph 56, you were asked for your knowledge, direct or indirect, of the underwriting arranged by IIU of Communicorp/Esat Telecom's obligations to participate in the equity of Esat Digifone on foot of the agreements of the 29th September and as referred to in a letter of the 9th May from KPMG. And you say that you were unaware of the underwriting, if any, arranged by IIU; is that correct?

A. Correct.

Q. Paragraph 54, you were asked about documents furnished to the Department in relation to the shareholders obligations and documents furnished to the Department in connection with the project financing. And you have informed the Tribunal that you were unaware of what documents were furnished to the Department. Is that correct?

A. Correct. At this time, effectively, Esat Digifone was operating on its own account; and obviously it had an executive team, and Owen O'Connell was a solicitor for the company, as in Esat Digifone, so a lot of interaction, I guess, between Esat Digifone and the licence, and so on, and the Department was being handled by them, as in the new executive team.

Q. And you remained within the Esat Telecom/Communicorp side?

A. Correct, yeah.

Q. 58, you were asked for your knowledge, direct or indirect, of all side letters between the members of the consortium or any two or more of them in September, October 1995.

You say that your understanding of those letters extends to the understanding of the documents, details of which you have supplied to the Tribunal.

Secondly, of all side letters entered into between members of the consortium or any two or more of them in advance of the issue of the licence on the 16th May. And again, your understanding is based on what's been furnished to you by the Tribunal. Is that correct?

A. Mm-hmm.

Q. Finally, all side letters entered into between Esat Digifone Limited or any shareholder with the financial institutions providing finance to the company. And again you have stated that your understanding is based solely on the contents of the documents provided to you by the Tribunal.

A. Correct.

Q. Then you were asked at paragraph Question 59, you were asked for details of all meetings, discussions or contacts of whatsoever nature between you and any of

the following:

1. Mr. Michael Lowry.

You inform the Tribunal that you met Michael Lowry on three occasions: firstly, at the signing of the licence; secondly, at the launch of Digifone; and thirdly, you had an unarranged encounter with him circa 1999 in the Berkeley Court Hotel.

Secondly, Mr. John Loughrey.

You state that you met Mr. Loughrey at the signing of the licence.

Thirdly, you say, in relation to Martin Brennan, you say "I met him twice, firstly on the 3rd May 1996 and secondly at the signing of the licence on the 16th May 1996.

Fourthly, Mr. Fintan Towey.

Again, you met Mr. Towey on the same occasion as you met Mr. Brennan.

Fifthly, Mr. Michael Andersen or any member of the Andersen Management International team.

You say that you never met anyone from Andersen Management International.

And any official of any government department.

You say that in connection with Esat, the only contacts you had were those that you referred to at 2, 3 and 4 above. They are your contacts with Mr.

Loughrey, Mr. Brennan and Mr. Towey.

Then any member of the government.

You stated that you have met various members of Government on the chicken-dinner circuit and at golf outings.

And finally, any public official.

And again, you have stated that your answer is as per paragraphs 6 and 7 above: that you met public officials only in connection with those identified contacts with Mr. Loughrey, Mr. Brennan and Mr. Towey, and that other than that, you would have met them only in relation to official events that you were attending. Is that correct?

A. Correct.

Q. Can I just

CHAIRMAN: I take it, Mr. Connolly, that your reference to an impromptu meeting with Mr. Lowry in 1999 was of little moment; otherwise, you'd have enlarged upon it?

A. Sorry, what was that?

CHAIRMAN: I take it your meeting with Mr. Lowry in 1999 was of no great consequence?

A. No, no, it was just in the lobby of the Berkeley Court Hotel.

CHAIRMAN: You just chatted generally?

A. Correct.

Q. MS. O'BRIEN: Can I just ask you there, your final, penultimate answer to that subparagraph, that you met various members of the Government on the

chicken-dinner circuit and at golf outings. Would that have been at various Fine Gael functions that had been arranged around that time?

A. I certainly went to a number of both Fianna Fail and both Fine Gael lunches and dinners, I guess, from probably 1993, 1994 onwards.

Q. Right. And when you were attending those political functions, were you attending them in a personal capacity, or were you attending them on behalf of Communicorp/Esat Telecom?

A. I was attending on behalf of Communicorp/Esat Telecom.

Q. Do you recall at all whether you attended the golf outing which was in the K-Club in Kildare in October of 1995?

A. No. I didn't play in that.

Q. You didn't play in that?

A. No, no, nor at the dinner.

Q. But you do recall attending other of the Fine Gael events in that year?

A. Yeah.

Q. On those occasions, would you attend them on your own, or did somebody else from Esat Telecom or Communicorp accompany you?

A. Generally there might have been four to five of us at any one time at the dinners. At the lunches.

Q. I think Mr. O'Brien has said he went to some of them. He mightn't have gone to all of them, but he did go to

some of them?

A. Correct.

Q. Then there'd be you and

A. Peter O'Donoghue. They were the main people. And maybe Seamus Lynch.

Q. Who was, I think, project coordinator?

A. Correct, yeah. So I went to a few of them, but it wasn't a huge feature.

Q. Finally, you were asked for your knowledge, direct or indirect, of all meetings, discussions, dealings or contacts of whatsoever nature between Mr. 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 state that you have no specific knowledge of such meetings, discussions, dealings or contacts.

I am not trying to be pedantic here, but I am just wondering, when you say "I have no specific knowledge": Did you have any knowledge at all?

A. I would have been aware that obviously he met with the Department from time to time, bearing in mind, obviously, we had a fixed-line business that we had significant challenges on.

Q. Of course.

A. From effectively, 1991/1992, he certainly sought, with one or two colleagues, to get access to the Department to see what could be done. But in terms of specific

knowledge of any particular meeting, no.

Q. You had no knowledge of the meeting that Mr. O'Brien had with the Minister in Hartigan's on the 17th September, I think?

A. Only subsequently, as in when it was brought up in connection with this Tribunal.

Q. I see. But at the time, you had no knowledge of it?

A. No.

Q. Very good. And that concludes both your memoranda.

A. Yes.

Q. Now, I wonder, Mr. Connolly, do you have copies of Tribunal Books 48, 49 and 50 with you?

A. Yeah.

Q. I am going to be referring to not very many, but just a small number of documents from those books in the course of today.

Before doing so, can I just ask you: You stated, I think, in your first memorandum, that you were formerly a director of Esat Telecom.

A. Correct.

Q. Could you tell me when you were appointed a director of Esat Telecom?

A. In terms of the Esat Telecom group, Esat Telecom Holdings would have been 1996, May 1996, but I was director of a predecessor company I think from around 1993.

Q. Communicorp? You were a director of Communicorp?

A. Effectively from foundation, I can't remember that would have been I think Communicorp was it was founded in connection with the Advent investment, which would have been October '94.

Q. October '94. And you ceased to be a director of Esat Telecom. Was that on the takeover by British Telecom?

A. Yeah, in April 2000.

Q. But you continue to be a director, at the moment, Communicorp?

A. Correct.

Q. Now, I think you were a non-executive director; would that be correct?

A. Correct.

Q. Of both Communicorp and Esat Telecom?

A. Yeah.

Q. And I think Mr. O'Brien, in his evidence, did say that he would have considered you to be an adviser or a consultant to the bid, and that your principal focus was in the area of project finance?

A. Correct.

Q. I think apart from your duties, if you like, as a consultant or adviser to the bid and as a non-executive director to Esat and to Communicorp, that you also may have pursued an independent consultancy yourself?

A. Correct. Since March 1991, I have my own corporate finance firm, with seven employees at this date.

Q. I see. So at the time that we are talking about, I suppose, mid-1995 to May of 1996, you would have been involved in a lot of other activities, apart from what you were doing in connection with the bid and what you were doing in connection with the funding of Communicorp? Would that be fair to say?

A. Correct, but I have to say heavily involved particularly with the US investment banks and CSFB at that time, which would have been ongoing.

Q. Yes. I think we know that you had no involvement in the finalisation of arrangements with Telenor, but you were aware that Telenor was there and that a joint venture agreement had been finalised?

A. Correct.

Q. I think we see, I suppose, your that we can see on the documents and that we have an interest or the Tribunal has an interest in, I should say is your dealings with Davys in relation to the securing of institutional support?

A. Yeah.

Q. And we have heard evidence from Mr. Callaghan in relation to this, and also from Mr. O'Brien. From your own point of view, can you recall what was your understanding of the basis of the decision to bring in these institutional investors, if you like, to set aside 20% of the shareholding and make it available to the non-telco investors?

A. There was a perception that we needed to have in the bid it would look better if there was pension funds, basically, participating in the bid, and also to keep up the content, the Irish content of the bid itself in terms of control or, if you like, majority.

Q. Why did you feel it would look better if you had pension funds there?

A. Because I guess it lightens the ownership, given that we are all, in one shape or other, investors in pension funds. So it widens the ownership, basically.

Q. I suppose it would give substance to that part of the investment also?

A. Correct.

Q. And I think Mr. Callaghan said that he was the one that made the initial contact with Mr. Kyran McLaughlin in Davys, and that thereafter, the matter was taken up by yourself in conjunction with Mr. Tom Byrne, who I think was managing director at the time; is that correct?

A. Correct.

Q. I think, between you, you produced this document. I'll just refer you to it; it's at Divider 6 of Book 48. It's headed "An Executive Summary". And I suppose it would be reasonable to describe it as an information memorandum to be circulated to prospective investors?

A. Sorry, what's the tab?

Q. Tab 6. Do you have it there?

A. I do, yeah.

Q. Do you recall preparing that with Mr. Byrne?

A. Correct, yeah. In Davys and in my office.

Q. And do you recall, was this did it take you a number of days or weeks to actually work on it and prepare it?

A. From memory now, I would say about two weeks; but it's a fairly generic-type information, based on the RFP, and I guess industry information as well.

Q. Yes. It's an undated document, but I take it that it was being prepared around May, because I think the letters of interest, or letters of commitment, were dated fairly early June. So I suppose it would have been around May that you were doing this?

A. Correct.

Q. Could I just ask you about one or two matters in that, if you wouldn't mind.

If you go to I don't propose opening the entire document unless you want me to.

A. No.

Q. But if I take you directly to page 9. And that's headed "Investment". It says "As indicated earlier, the current partners believe that the bid would be significantly enhanced by Irish institutional participation. Accordingly, if the bid is successful, it is proposed to raise up to 12 million from new

investors for 20% of the total equity investment of
İ£120 million.

"Esat Telecommunications Limited and Telenor Limited
will invest the balance of 48 million pounds in cash
on a pro rata basis.

"The total cost of establishing the GSM system,
including the initial fee payable for the licence, is
estimated to exceed İ£120 million. Accordingly, the
balance of the finance required will be raised through
borrowings.

"At this stage it is estimated that the licence fee
payable may be in the region of İ£20 million. The
balance of the funding will be used primarily for
capital expenditure and working capital, with the
remainder going for the licence fee and funding costs
for a number of years.

"It is estimated that the consortium will have
incurred costs of up to İ£1 million by the time the
application is submitted."

I just wanted to ask you there: Can you recall how
you went about estimating the licence fee payable as
in the region of İ£20 million?

A. Well, first of all, we had to think about this very
carefully, in the sense that this was a document that
was obviously going to go from Davys to a number of
institutions. So obviously three institutions came
through in the end, but we were obviously concerned,

from confidentiality point of view, as to where we were going to go.

So we had to pick a number. But as to how we actually picked that number, we wanted to make sure that we left ourselves plenty of wiggle room, if you like, as to which way we'd go. We were obviously concerned by putting that figure in the public domain, so we picked the 20 million. There was no great science to it other than that's how we approached it.

Q. Did you have any discussions with Mr. O'Brien about it, or with anybody else

A. I would have discussed it with Mr. O'Brien, yes.

Q. You say in it it's estimated that the licence fee will be in the region of $\frac{1}{2}$ 20 million. So you do cover yourself fully on it?

A. Yeah.

Q. Because I suppose, as an information memorandum being circulated to people with a view to investment, you had to take some steps to ensure that it was reasonably accurate?

A. Correct.

Q. So you couldn't be nominating a fee that was going to be wide of the margin, or very wide of the margin?

A. Well, bearing in mind we weren't looking for exclusivity from these institutions. We had no idea if they were in any other bids, so we were obviously fairly cautious as to how we picked a figure.

Q. You would have considered that to be fairly sensitive information?

A. Correct.

Q. Can I just ask you, at the end, then, if we go over the page to page 10. It's headed "Commitment". It states: "Effectively what is being sought is an option to participate if the consortium is successful with its bid. As indicated earlier, the consortium believes it would strengthen the bid if Irish shareholders held a majority of the shares, and consequently a limited number of institutions are being approached for investment.

"Telenor and Esat Telecom would like to have, as a minimum, 40% each, so up to 20% is available for institutional investors for their $\text{€}12$ million investment.

"Despite the fact that up to $\text{€}1$ million will have been spent on the licence application, no immediate contribution is sought from institutional shareholders."

You see there it states on its face what was being sought was an option to participate if the consortium is successful with its bid. Isn't that correct?

A. Correct.

Q. I mean, that was the extent of the commitment you were seeking from the institutions?

A. I think we also had to be realistic as well. I mean,

there is a certain, I guess, custom and practice in the industry, if you like, in corporate finance or investment banking, that for a project risk, realistically, to get firm underwritten offers was completely unrealistic, to be honest.

Q. It would have been unrealistic to look for anything more than that?

A. Correct.

Q. That's fair enough.

Can I ask you, do you know how many institutions would have been approached by Davys with this information memorandum?

A. I don't, actually. But I don't think it was blanket coverage. I think it was reasonably well selected.

Q. Would you have had a role in the identification or selection?

A. I may have discussed, but I can't recollect specifically, but I certainly I wasn't sort of blast-faxed everywhere.

Q. It would have been a limited number of institutions?

A. I think Davys you know, obviously the reason we went to Davys was because they would have a good handle on what institutions would be interested in something like this. So clearly they were able to whittle down the list to who it went to.

Q. So they could limit the number to start with?

A. Yeah.

Q. And you had no role whatsoever in approaching any of these institutions yourself?

A. No, that was done directly by Davys.

Q. Can I ask you, do you know, was there any other agreement or any further negotiation by Davys with the three institutions that expressed an interest in this?

A. I don't believe so, apart from those letters.

Q. It's just that I think in the course of the presentation, which I know you didn't attend, on the 12th September, I think Mr. O'Brien stated in the course of the presentation that it was anticipated that these institutions would form themselves into a single block and that they would nominate one director to the board. And in his evidence, when asked about that, Mr. O'Brien stated that that would have been as a result of advice that you gave him that that would be the way to deal with the institutions. Do you recall discussing that aspect of the institutions with Mr. O'Brien?

A. Not specifically, no. But normally, when you have got shareholders who hold, if you like, single-digit percentages, you try and group them into one single group because obviously it's easier to deal with.

Q. Easier to deal with and just in terms of practical organisation as well?

A. Correct.

Q. You don't know, or do you know of any agreements with

these three institutions, that they would assist Esat Digifone if it won the licence, in the medium term, in going to the market with an additional 12%, going to the market here in Ireland?

A. No.

Q. And just again, by way of clarification, because of your involvement in this, am I correct in thinking that Davys had no role whatsoever in bringing Advent in with their 5%?

A. No.

Q. That was completely separate. Very good.

Now, I just want to come on next and discuss with you in a bit more detail the CS First Boston funding.

Now, I think you said earlier, when I was opening the memorandum to you, that the relationship with Advent had gone back a number of years, the relationship between Communicorp and Advent, and there had been the initial investment in Communicorp by Advent. Do you recall when Communicorp or Esat Holdings or any of the Denis O'Brien companies established initially a relationship with CS First Boston?

A. In the summer of 1991.

Q. Summer of 1991?

A. So it would have been myself and Denis O'Brien would have met with CSFB.

Q. And how did that relationship or contact arise at the time?

A. Through myself directly with CSFB.

Q. And was that in relation to funding that Mr. O'Brien was seeking to raise at that stage, or

A. It was in connection with radio business in eastern Europe. We were looking to expand into Eastern Europe, and we went to the US to seek funding to see if we could

Q. And was funding raised at that stage, or was he funding from Advent?

A. No, at that stage they although we kept in regular contact with them, as in monthly contact through visits and so on, the project was simply too small for a US investment bank to get involved of the scale of First Boston at that stage.

Q. Did you have any personal contact in CSFB that took you to see to CSFB, or was it just a general business matter?

A. I had a colleague, a former school friend was working in CSFB, so he provided the introduction to Tom Keavney.

Q. Was that Mr. Muldowney?

A. Correct.

Q. Mr. Peter Muldowney?

A. Yeah.

Q. And you would have kept, although as you say, the Eastern Europe radio funding didn't go ahead, you kept in close contact?

A. Correct, yeah. I mean, we extended the relationship then to the head of investment banking on the telecoms side, to a guy by the name of Scott Seaton.

Q. Was Mr. Muldowney involved in your approaches regarding funding for Esat Digifone?

A. No, no. He didn't work in that particular section.

The section we dealt with was in private placements.

He was working with on the stockbroking side for high net worth individuals.

Q. So he didn't really come back in until the IPO in 1997; would that be

A. Again, but he is a stockbroker rather than an investment banker. He is not involved in transactions per se.

Q. And Mr. Muldowney and you were both in school together, and maybe in college together?

A. Yeah.

Q. And he is still with CS First Boston; isn't that correct?

A. No, he is since with I can't remember the name of the bank CIBC Capital Markets in New York.

Q. I see. Now, if I could just ask you to go to Divider 14 of the book we are working with at the moment, Book 48, that's a memorandum from yourself to Denis O'Brien and to Peter O'Donoghue. That's where clearly you have been furnished with a draft engagement letter by CSFB, and you have reviewed that, and you are sending

your comments on the letter to Mr. O'Brien. And unless you want me to read out the entire of it, I don't intend to.

A. No, that's fine.

Q. I just want to refer you to something on the second page. You can see it's in four sections, "Main Issues", "Fees", "Section 5", then four housekeeping issues.

You deal with expenses. You then move on to investors. You say "Restrict circulation of book to say 30 prospects initially. After that we will reconsider. We don't want this in mass circulation." The book you are referring to there, that would be in the nature of the information memorandum, or a mini-prospectus, if you like, for potential investors, would it?

A. Yeah, to be prepared, yeah.

Q. And there you were suggesting it initially be limited to 30 prospects. I presume that means 30 interested parties?

A. Correct.

Q. And "We don't want it in mass circulation"?

A. Correct.

Q. Why wouldn't you want it in mass circulation, I am just wondering?

A. Well, what can happen in a typical investment bank in a relationship like that, in the event that they have

various termination provisions in their agreements, and normally that if they introduce you to somebody you know, for argument's sake, Fidelity Investments, even though you may have terminated a relationship with the investment bank, in the event you consummate a deal with that investor within two years, they have the rights to get fees off you. So what can happen is that if you are not aware of this, they'll tend to send out to 200 prospects even though they know that

Q. They corner the entire market?

A. and then you are, effectively, you are tied to that investment bank even though they necessarily haven't delivered for you on a timely basis.

Q. I think Mr. O'Brien in his evidence indicated that he had attended meetings with you in New York in May and June of 1995. Presumably early stage of your negotiations?

A. Yeah.

Q. Can you recall when the actual engagement letter was signed?

A. The actual date, no.

Q. Not the actual date, but around and about, the month, perhaps, or whether it was shortly after this?

A. It would have been shortly after this memo, I guess, yeah.

Q. So it would have been either towards the end of June

or early July?

A. We would have been anxious to get going with them, yes.

Q. Now, we know that on the 4th August, then, the bid was lodged, and that the funding in the bid was that the Telenor 40% would be funded by its own resources. The institutions obviously were going to fund their own, and there would have been no question mark as to their capability of doing that; and the Communicorp 40%, the arrangement there was the letter of the 10th July from Advent. And of course there was no reference to any CS First Boston funding in the bid document itself?

A. Correct.

Q. Now, I think in your memorandum of intended evidence, you indicated that you weren't at the presentation and that you didn't have a clear impression, I suppose, other than that a good impression had been made. I think you said that you didn't attend any formal post mortem after that presentation and that you certainly didn't attend any meetings with Mr. O'hUiginn or Mr. Mara.

Can I just return now also, if you don't mind, Mr. Connolly, to your knowledge of the involvement of IIU.

I think you said in your memorandum that you were aware at the time that Mr. O'Brien was having discussed with IIU; is that correct?

A. Correct.

Q. Do you recall when you first became aware of that?

A. It would have been shortly after he met with Dermot Desmond.

Q. Because it was pretty shortly after the 10th August?

A. Yeah.

Q. Right. And what do you recall of your understanding at the time of the negotiations that Mr. O'Brien was having with Dermot Desmond?

A. I am paraphrasing it, but that it would be an opportunity to strengthen our commitments that we had already received from both Advent, and also the institutions, by going with Dermot Desmond.

Q. And what about the opportunity to strengthen, if you like, the Communicorp side?

A. That's as I said, yeah, both sides, as in the institutional side and also the Communicorp side.

Q. And did Mr. O'Brien keep you apprised of how those negotiations were going?

A. Generally, yes, yeah.

Q. Would you have met with him frequently at that stage, through August and September?

A. Probably, yeah, more than likely, yes. We would meet on a fairly regular basis.

Q. Would that be once a week, or twice

A. More often than that.

Q. You'd have been in almost daily contact, would you?

A. Yeah.

Q. I presume if you didn't meet, you'd have been on the telephone?

A. Correct.

Q. Do you recall on the 18th September that Mr. O'Brien asked you to send a document to Mr. Michael Walsh?

A. I don't recall it particularly, but I know obviously from documentation I know what you are referring to.

Q. It's actually at Divider, I think it's 42A

A. This is the fax cover sheet on the

Q. Yeah. Where in fact you enclosed the information memorandum. Do you see that?

A. Yeah.

Q. Just looking at the top of it, the fax banner, that was a kind of five past three in the afternoon that you were faxing that to Mr. Walsh. Do you recall, was it on that, or do you recall what was it that prompted you to fax this?

A. Presumably at the request of Denis O'Brien. I guess, at that stage, he had been dealing with Dermot Desmond directly at that stage, and I guess he wanted to widen the net in terms of keeping Michael Walsh fully appraised.

Q. It's just we know from the documents and indeed we know from Mr. O'Brien and from Mr. O'Connell that on that same day, Mr. O'Brien went to Mr. O'Connell in William Fry it's just the previous divider, if you

have the book there and indicated that Dermot Desmond was going ahead with the financing transactions, and what was needed was underwriting letter for the Department because finances are seen as a weakness.

Do you see that? It's both handwritten and typed.

It's in the previous divider in the same book.

A. I have that, yeah.

Q. Do you see that there?

A. I do now, yeah.

Q. "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.

"DD 30,

"Advent 5,

"Esat 32.5,

"Telenor 32.5."

So that seems to be a projection of what the shareholding might be if Mr. Desmond did get the 30% he was looking for and if Advent remained in with their 5%; do you see that?

A. Yeah.

Q. I suppose I was just slightly intrigued that when Mr. O'Brien was going to Mr. O'Brien involving lawyers and saying Mr. Desmond is going ahead, that it's only on

that day that you are even sending them the executive summary.

A. Yeah, again, that was to Michael Walsh. I mean, clearly Dermot Desmond is effectively the principal, and

Q. It might have been just to fill in that ground for Michael Walsh?

A. Correct.

Q. If you were in touch with Mr. O'Brien at the time on virtually a daily basis, and he was keeping you very much up to date on Mr. Desmond, and of course you were the project finance, corporate finance person, presumably he told you on the 18th that Dermot Desmond, subject to finalising the legal arrangements, was going ahead with the financing transaction?

A. I would have known that, yeah.

Q. We see there, on the 18th, that Mr. O'Brien was talking about underwriting letter for the Department. So clearly this was something that the principals were instructing the lawyers about; do you see that?

A. Yeah.

Q. Do you recall discussing that need with Mr. O'Brien in advance of the 18th, or indeed at any time prior to the 29th, when the letter went?

A. Well, I think if you go back to May/June, when we had the letters from the Davy letters, I mean, as I mentioned, I mean, we had a pass mark, if you like, so

it was certainly to the forefront of our mind in terms

of how can we improve that.

So effectively, I mean, the only way you can improve a

project finance, if you like, Level 1 letter, which

the was the letter that we had, was to go to

underwriting. So there was clearly no point in going

from one Level 1 letter to another Level 1 letter. So

it was either going to be underwritten or not.

Q. You see, this underwriting wasn't just in relation to

the 20% that was going to be subscribed for by the

institutions; it was also the 40% or indeed 37.5% to

be subscribed for by Communicorp. So it wasn't just

improving the level of finance that you were offering

to the Department; it was actually improving a very

significant part of it?

A. Correct.

Q. I am just wondering, do you recall having discussions

with Mr. O'Brien in advance of this, that

underwriting, if you like, of Mr.

O'Brien/Communicorp's investment would be a beneficial

thing to arrange?

A. Well, as I say, it's fair to say that it exercised our

minds, going back a number of months, as to how can we

improve our perceived financial weakness of being a

small group, as in Communicorp. So it wasn't just

suddenly on August/September that we decided that we

needed to do something about it.

Q. Would it be fair to say that as a corporate financier, you would have always felt that, if you like, the ideal way to improve Communicorp's perceived weakness was to be underwriting?

A. Correct.

Q. I suppose it's reasonable enough that Mr. O'Brien probably discussed this with you in August, perhaps July even, and earlier, from what you have said, June, July, August, September: "Look, if you can get underwriting, that's the best way to deal with this perceived weakness"?

A. It deals with all the questions, yes.

Q. So you were fairly relieved, were you, around this time when you heard that this underwriting was going to be there for Communicorp?

A. Correct.

Q. Do you recall any discussion or having any input into the decision to send the letter of the 29th September to the Department to notify them?

A. I don't remember anything in particular. Although I guess in, if you like, normal commercial discussions, notwithstanding that this was a competition, you'd generally keep the other side, or the informed as to any material change in your makeup of financing or whatever. And that's that was the thinking there.

Q. I suppose there was no point in strengthening this if the person judging the competition wasn't going to

know it was strengthened, was there?

A. Correct.

Q. I think you also said to me earlier that you were aware that that letter of the 29th had been rejected by the Department?

A. Yeah.

Q. Would you have seen a copy of this letter of the 2nd October which returned the letter it's at Divider 49.

A. No.

Q. You wouldn't?

A. It would have been just mentioned to me in passing.

Q. I see. Do you recall who mentioned it to you?

A. Denis O'Brien.

Q. And do you remember what discussion you had with Mr. O'Brien at the time in terms of both your reactions to the rejection of the letter?

A. Not in particular, other than you know, it may have been just paraphrasing, it was turfed back at us.

Q. Sorry?

A. It was turfed back at us. I can't remember in particular how it was described.

Q. You'd put a huge effort into this. As you said, it was always your idea that underwriting should be there, and Mr. O'Brien had been working away and plugging away. Presumably there was some disappointment; or was there not?

A. Yes, there was. But also, from our point of view, I think it also helped in the second aspect of this, where we were obviously under pressure from Telenor, going back to early July, about what they thought of our funding. So at least we had dealt with the internal side of it by having this arrangement in place.

Q. Mind you, of course, you always felt anyway that was just a bit of swagger; that they were always there?

A. Swagger, yes, but that they were the bigger player and that they had the bigger balance sheet.

Q. Yeah. Can I ask you about the dealings with Davys in the end of November. In your memorandum I think you have said that you understood that Mr. Callaghan had approached had approached Mr. McLaughlin. I think we know that that was on the 29th September, and that he had asked Mr. McLaughlin whether the institutions would stand aside so that another institution, who was prepared to give a firmer commitment, would come in in their place.

Do you remember discussing the approach to Mr. McLaughlin prior to the 29th September?

A. No, not with John Callaghan, no.

Q. Not with John Callaghan. You would have discussed it with Mr. O'Brien, would you?

A. Correct.

Q. In your memorandum you state that you knew, if you

like, that Davys had objected somewhat to what had happened, by virtue of the contents of the letter of the 22nd November and also by what Mr. O'Brien told you.

Can I just refer you briefly to that letter. It's the next book. It's Book 49, Divider 91. I am not going to go through it with you, Mr. Connolly. It's just to refresh your memory of it; that's all.

A. What's the tab, sorry?

Q. 91. Book 49, Divider 91.

A. Okay.

Q. You stated in your memorandum that you knew about the view being taken by Davys, both from the contents of the letter and from what Mr. O'Brien told you at the time; do you remember seeing this letter at the time?

A. No.

Q. At the time it was received?

A. No.

Q. Do you recall, then, when it was shown to you?

A. I certainly was made aware of both John Callaghan's meeting and also the Davys being less than happy, if you like, about the fact that their, if you like, their institutional clients were no longer involved.

Q. Again, would it have been Mr. O'Brien who was the source of that information to you?

A. Yeah. I don't recollect talking to John Callaghan directly about it.

Q. Right. You said in your memorandum that your understanding was that it was Mr. Callaghan who then met with Mr. McLaughlin to sort the matter out?

A. Correct.

Q. To smooth over the waters, because of his long relationship with Davys?

A. Yes.

Q. You didn't have any discussions with Mr. Callaghan about that, or Mr. O'Brien?

A. I would have spoken with Denis O'Brien about it, all right, but not John Callaghan, as I say.

Q. And what about Mr. Byrne you had worked on the information with?

A. No.

Q. Would you have any dealings with him about it or any discussions with him about it?

A. No.

Q. Now, I think when the result of the competition was announced, I suppose your focus shifted immediately, and you accelerated your dealings with CSFB with a view to putting the funding in place; would that be the case?

A. Correct.

Q. And I presume that took up most of your time, did it, from October

A. Very much so.

Q. to the following, May/June?

A. Yeah.

Q. Now, you did attend one or two meetings that I just want to ask you about, if you don't mind. Again in the same book we are working from, Book 49, Divider 84, there was a meeting on the 3rd November, 1995, of which Mr. Owen O'Connell kept an attendance. It was a meeting at William Fry Solicitors. It was attended by Mr. O'Brien, by Mr. Leslie Buckley, by yourself and Mr. John Callaghan. It's at Tab 84 of Book 49.

Now, we have both a handwritten note there in your book, and I don't know if you were served with a copy of the typed version.

A. I got that, yes.

Q. You have it. I'll just refer you to that briefly. We'll put it up.

It says: "Attend here on DOB, LB, PC, J. Callaghan. "IIU issue, bullet point for press release, problem re material change in shareholders versus bid. 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.

"Michael Walsh call?

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

Do you recall that meeting at all?

A. Broadly, yes, yeah.

Q. It seems to have been a meeting which centred around discussions of points to be included in a press release relating to the involvement of IIU. Would you agree?

A. Yeah.

Q. I think Mr. O'Connell indicated when he gave evidence that what he did when he was keeping attendances is that he took a note of what he was being told by his clients, and he also took a note of any steps that had to be taken by him.

A. Mm-hmm.

Q. Do you recall discussions of this press release?

A. As I said, broadly, yes, I remember being at this meeting, yeah.

Q. Was it felt at the time this was the 3rd November the licence award had been announced on the 16th November; was it felt at the time that it would be a prudent thing to deal with the IIU involvement?

A. I can't recollect the actual sequence as to why we were going ahead, or if we did actually go ahead with a press conference post this meeting, but I remember the actual meeting itself.

Q. Well, presumably it must have been the view of the meeting that a press release was a good idea at that stage; otherwise you wouldn't have been discussed what should go into it?

A. Or if not, at least be prepared if the question was asked.

Q. Yes. Do you recall any meetings subsequent to that at which there was further consideration of whether you should proceed with a press release?

A. I don't think the press side of it was dealt with again until I think April/May '96. I could be wrong.

Q. You don't recall any further meetings around that time?

A. No. This may well have been a preemptive-type meeting, in the sense that if the question had been publicly asked, we were in a position to deal with it.

Q. What's interesting here, of course, is that it says here and these are obviously ideas people have for what should go into the press release "Clearly gave control of 20% to underwriter. Understanding is that underwriter will be placing shares with investors in institutions."

I am just wondering how that could have been, because of course at that stage it was 25%, wasn't it?

A. At that stage, yes.

Q. I am just wondering why the 20% would have been mentioned at that stage, when the agreements had been

concluded on the 29th September.

A. I don't know, other than that the bid itself was at 20% in terms of institutional amount.

Q. Perhaps because that was what's in the bid.

CHAIRMAN: Probably an appropriate moment to adjourn, Ms. O'Brien, for lunch.

Mr. Connolly, we'll take up the balance of your evidence, which I expect should end this afternoon, at five past two, if that suits you.

Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

Q. MS. O'BRIEN: Thank you, Mr. Connolly.

I think you were saying to me before lunchtime that after the announcement of the result of the licence competition, that your involvement with CSFB increased and accelerated?

A. Correct.

Q. Now, can I ask you to refer to a document at Divider 94 of the book we are looking at at the moment, Book 49. It's a letter which you sent to Mr. O'Brien on the 5th December of 1995.

I do apologise; it's at tab 94. It's dated 5th December, 1995. It's to Denis O'Brien, from Paul Connolly. It's re merger options.

"Denis,

"Further to our meeting this morning, I have done a

fourth option this is merging everything together and then doing a fundraising for Esat Holdings Limited, the 100% owner of Esat Telecom and Esat Digifone.

"My preferred option is Number 3, the part buyout of the IIU stake.

"I have a call in to Michael Walsh, but it hasn't been returned yet will try again later.

"Best regards.

"Paul Connolly."

And with that you included a document we'll refer to now, briefly, setting out the four different merger options which you had devised and which would in turn give rise to four different financial proposals and financial outcomes. Do you recall doing that?

A. I do, yeah.

Q. And was that analysis undertaken by you in connection with the CSFB funding?

A. It was done on my idea. I mean, along the way, CSFB had mentioned if we could, you know, if we could get control, as in 50%-plus of Esat Digifone, clearly would be a larger offering, and also from a, I guess, for their own selfish reason, it would be a bigger client, from their point of view, if it was combined.

Q. So it was CSFB suggesting it could make for a larger offering?

A. Correct.

Q. And from your own point of view, having 50%, it would be a better proposal?

A. Yeah.

Q. So the source, if you like, of that strategy would have been advice from CSFB?

A. Initially, yeah.

Q. Do you recall when CS First Boston first mooted that proposal?

A. It would have been around, I guess, October/November time. In other words, after the award of the licence.

Q. And it was that which prompted you and your firm at the time to sit down and to work out these various proposals?

A. Correct.

Q. Perhaps we can just look at them briefly.

A. Yeah.

Q. Esat Holdings Limited, financing options. And you made a number of assumptions.

"1. Esat Telecom pre money value is 15 million".

That's the value excluding the interest of Esat Telecom in the licence; is that correct?

A. Correct.

Q. "2. Esat Digifone value is based at US\$25 per population, giving a net value after licence fee of 41.25 million".

So that's post award of licence.

A. Correct.

Q. "3. Esat Telecom shareholders are as follows:"

You have set them out there. Mr. O'Brien, 57.2%;

Advent International, 30.80%; minorities, 12%; giving

a total of 100%. Then you set out the Esat Digifone

shareholdings as they were.

Now, first option was to merge IIU/Esat Digifone

interest into Esat Telecom and then seek funding on a

joint basis. So I'd be correct in thinking that

option was to merge, if you like, the IIU interest

with the Esat Telecom interest and look for a joint

funding?

A. Correct.

Q. And IIU would then become a shareholder in that merged

company; is that right?

A. Correct.

Q. Now, if you just turn over the page and look at your

considerations in relation to that. Firstly, you

noted that that would be inconsistent with the bid in

that Digifone ownership would be Esat 62.5% and

Telenor 37.5%; secondly, Esat would not be an

Irish-controlled company, and nor would Digifone; and

thirdly, Esat would be able to consolidate Digifone.

Can I just ask you what you meant by that, "Esat would

be able to consolidate Digifone"?

A. Well, we'd control Digifone through that.

Q. Right.

A. Consolidate from a revenue point of view as well.

Q. I see. You noted there that it would be inconsistent with bid if the Digifone ownership would be 62.5% and Telenor 37.5%, so presumably, therefore, you were live to the need for the structure consistent with what was in the bid?

A. Absolutely.

Q. And that wasn't an option that you favoured?

A. No.

Q. Now, your second option was to was that the entire of the IIU interest would be bought out by Communicorp/Esat Telecom? Is that right?

A. Yeah.

Q. And then you'd raise the funding for the entire of what you required plus the acquisition of IIU through a CS First Boston placing?

A. Correct.

Q. And again your considerations were that it would be inconsistent with the bid, in that Digifone ownership would be Esat 62.5 and Telenor 37.5. Esat would not be an Irish-controlled company, nor would Digifone. Again, you said Esat would be able to consolidate with Digifone; fourthly, Telenor would probably object. Again, you weren't favouring that particular option?

A. No.

Q. Was that because of the potential for the Telenor objection or because of the acquisition of the entire of the IIU shareholding?

A. I actually can't recollect that I'll come back to that particular one, yeah.

Q. Option 3, now, I think was your preferred option. And that is that Communicorp/Esat Telecom would buy out 51% of IIU Digifone interest now. That, I think, would have been about a 12.75% additional shareholding in Esat Digifone. And that you would raise then the funding through CS First Boston for both the buy-out and the equity funding. That would have required, I think, a funding of $\frac{1}{2}$ 41,890,000. And you then set out what the revised shareholding would be, where this was post funding: Mr. O'Brien 32.6%, Advent International 17.56%, minorities 6.84%, new investors they would be the investors following the CS First Boston funding 43%.

And your considerations there would be that it would be inconsistent with the bid, in that Digifone ownership would be Esat 50.25%, IIU 12.25% and Telenor 37.5%. That's again indicative, I think, of your sensitivity and concern that there should be a consistency with the bid?

A. Correct.

Q. Again, there is the issue of control. Also the issue of consolidation, and then the potential for an objection from Telenor.

And the final option which you came up with, that was the one you were referring to in your letter, was that

you'd merge all the interests in Esat Digifone to the the IIU interest, the Communicorp interest, and the Telenor interest, and that you'd all go jointly to the US market through CS First Boston to fund Digifone.

Is that right?

A. Correct.

Q. And there your considerations, again, was that it was inconsistent with the bid, in that Digifone ownership would be Esat Holdings 100%, albeit that Telenor would be an indirect shareholder in Digifone. Secondly, Esat Holdings would not be an Irish-controlled company. Thirdly, Esat would be able to fully consolidate Digifone. Fourthly, Denis O'Brien's interest would be 19.22% of 100% in Esat and of 100% in Digifone. And fifthly, Telenor could well believe it is better value for them to put up their own equity rather than raise it through CSFB. It would increase their ownership in the enlarged group.

We did know that Telenor did in fact put up their own equity?

A. Correct.

Q. And it was this third option of acquiring 51% of the then IIU interest in Esat Digifone that you were proposing as your favoured option?

A. Yeah. To go back to the Option 2, the reason I favoured Option 3 over 2 was that it involved less dilution initially. In other words, you got a control

situation, a consolidation situation, but you didn't have to put up as much money initially. So that was the reason 3 over 2.

Q. You didn't have to put up as much money to buy out the IIU interest?

A. Correct.

Q. So you weren't losing out as much in the way of shareholding to the new investors?

A. Correct.

Q. Do you recall I presume that you had further discussions with Mr. O'Brien after the date of this letter, 5th December, in connection with these options, did you?

A. I would have, yeah.

Q. And I mean it's clear, I think, from the documents we have seen and from the evidence that we have had to date, that it was this third option which in effect appears to have grounded Mr. O'Brien's strategy from then on with regard to acquiring a further interest in Esat Digifone?

A. Correct.

Q. Now, do you recall what discussions you had subsequent to this with Mr. O'Brien, or indeed with anybody else, in relation to these options?

A. Well, I guess in context, if we go back to the July period, where we had the Advent letter of comfort issue, and also that the day that the bid was actually

lodged, on the 4th August, and obviously the concerns Telenor had in terms of the financing, our financing. We then sorted that out in our minds, certainly with the IIU underwriting to the end September. Also with the award of the licence itself and the announcement of the award of the licence at the end of the October, there was, I guess, in terms of relationships between ourselves and Telenor, we were there was a certain amount of euphoria, for want of a better word, and hence the idea of maybe going forward on a joint basis or at least enlarging you know, certainly if you look at Option 4, albeit that we ended up in Option 3, was that you'd end up with a larger group, clearly. And also, you know, I think at that time, it would have been more liquid approach for them to go down that route rather than being in a subsidiary company. This was now going to be an overall holding company with other telecoms interests.

Q. But it was Option 3 that you was your preferred option?

A. Yeah. Because clearly we thought that Telenor didn't want to move their position in the sense that they would put up their own equity.

Q. Yes. You had identified in it that if you went ahead with this option, it would be inconsistent with the bid?

A. Correct.

Q. How did you anticipate that you'd be able to get around that inconsistency or that difficulty?

A. I guess it was still going to be controlled the same members were still going to be involved, albeit it was going to be different percentages. But you know, the principle we started off the whole process was that it was certainly initially a joint venture between ourselves and Telenor, and we were the operators. So from that point of view, that's the way we viewed it, that it was still the two operators were involved.

Q. And what about the potential for objection from Telenor? Because we know really that's what really brought the whole thing to an end

A. Clearly, we recognised all the way through this that Telenor were always going to have the final say as to whether it was acceptable, and clearly they didn't find it acceptable in the end.

Q. Why did you think, when you were putting this together, that IIU might be disposed to selling you just a little more than half of their shareholding in Esat Digifone?

A. I guess at that stage, given that we now had the announcement of the licence, that we'd moved on in the project stage where it was more bankable from the next round of equity point of view.

Q. Yeah, but would you think that Mr. Desmond would want

to dilute his shareholding in what everybody considered to be a very profitable venture?

A. Well, at this stage I hadn't discussed it with IIU, so I wasn't sure what their views were, whether they wanted it moved along. But clearly, from an underwriting point of view, their risk level had lessened, given that the announcement of the licence had been made in the end of October. So like any financier, you know, the two operators involved, and this was an opportunity to, from a financier's point of view, to realise some of the investment.

Q. I see; okay. I mean, it was that option there which from then on dictated, if you like, Mr. O'Brien's strategy in his negotiations with Mr. Desmond and IIU?

A. Correct.

Q. Now, it appears from the documents, really, that we have seen, that you didn't have very much further contact with the Department or with any of the meetings of the Department until May. But before I come to that, can I just refer you to a document in the same book, at Divider 99A.

We have had some difficulties in identifying the provenance of this document, and I just wondered if you could be of assistance. Mr. O'Brien recognised the document, and in fact, he stated in his evidence that the annotation up there, "File IIU" was in his handwriting. So he would have seen the document, but

he didn't think it certainly had been produced by him, nor did Mr. O'Connell think it had been produced by him.

You see it's headed "IIU Issues", and I'll tell you why I think you may be able to assist. There is reference to CSFB in it. It says:

"1. Need to clarify IIU involvement to Department, Telenor and prospective financiers of Esat.

"2. Need for IIU now to join Esat Holdings/Telenor in negotiating shareholders agreement.

"3. Settle IIU shareholding: 25%, 20% or 12.5%."

Then that would have come, presumably, the 12.5 from the earlier analysis that you had undertaken.

"4. Recognise that whatever their shareholding, that percentage of circa $\frac{1}{2}$ 25 million may have to be drawn down before Christmas when licence could be awarded.

"5. In addition, IIU underwriting of Communicorp/Esat Holdings of 37.5% will have to be confirmed; again portion of this commitment may have to be drawn down before Christmas.

"6. Political aspects:

"(i) Lowry has indicated 40:40:20 to Dail.

"(ii) as an offshore company, Bottin could present problems to Lowry.

"(iii) Department will want to know soon who comprises the 20%; i.e., who are the IIU placees

"7. Coordination with CSFB financing; CSFB are currently arranging financing of i;½30 million for Communicorp/Esat; they are concerned that IIU placing of its 20 to 25% should not cut across their marketing of their offer. Hence need for full and close coordination between IIU, Communicorp/Esat and CSFB.

"8. Who will represent IIU in shareholder agreement discussions? Contact point for other issues, who can be readily available to participate intensively in work programme over coming months."

I just wondered, can you assist the Tribunal at all as to the provenance of that document?

A. I'd say it's probably me.

Q. Right. And just looking at it, although it's not dated, you are referring to before Christmas there, so...

A. Yeah.

Q. Could we take it that it must have been you must have been referring to Christmas of 1995?

A. Probably November '95, I would guess.

Q. And I see there that you're mindful of the political aspects, in that you refer to what Mr. Lowry had stated in the Dail, that it was 40:40:20?

A. Correct.

Q. And also you were concerned about the coordination of the CSFB financing, that that didn't cut across or both the CSFB and the IIU financing didn't cut across

each other?

A. Yeah, clearly, from a marketing point of view.

Q. And also under the heading "Political Aspects", at 6, you will see there: "Department will want to know soon who comprises the 20%; i.e., who are the IIU placees?"

A. Yeah, as to what institutions they had intended placing with.

Q. Can I just ask you why you called or you labelled that a political aspect?

A. Clearly there was, in terms of Michael Lowry had indicated to the Dail the 40:40:20, so it was also part of our bid was 40:40:20; so we had to be mindful of that, that there wasn't material changes in terms of structure.

Q. As far as you were concerned, of course, I think you said in your memorandum that from the 29th, the Department was on notice of IIU involvement; isn't that correct?

A. The 29th September, yeah.

Q. I am just wondering what's political about the identity of the placees.

A. I guess whether they were going to be Irish institutions or not, or where these institutions were going to be domiciled, basically. My view at the time of, you know, this 20% or 25 was in any licence, be it media or Telecom, there is either some shift in terms

of obviously you have the operator side of it; but in terms of the actual institutional side or other investors side, there can't be shifts between bid process to announcement to an actual formal award.

And I think that's I think on a global basis there is plenty of examples of that.

Q. And you'd have been concerned about that?

A. I wouldn't have been concerned about that. As long as that broadly the operators were in control of this, as in Telenor and Communicorp were in control of this, from my point of view, that was the spirit of the application.

Q. I know you weren't at the presentation, but you would have been aware, presumably, at the presentation, much was made of the fact that these institutions were going to be Irish institutions; and as you said to me yourself, that Irish pension funds were going to be there behind the bid?

A. Yeah.

Q. Would that have perhaps prompted or contributed to part of your concern as to what was going to be as to what the Department was going to ask and what explanation was going to be given?

A. I think also what I can say, with the political respect, bearing in mind you had to balance the CSFB were interested in marketing and also, you know, to deal with them in terms of what they were doing with

the marketing, but also in terms of with IIU, if they were going to be going either domestically or overseas, clearly you had to be mindful, politically, if you like, that people weren't tripping up over each other with the same placement.

Q. You think that you probably prepared this document presumably around December?

A. Somewhere in that zone, yeah, November, December, yeah. I guess the timing aspect was probably driven off the "Lowry has indicated to the Dail" so I don't know what date that was.

Q. That was the 22nd November.

A. Okay. So it was post that, obviously.

Q. Would you have been aware, at the time of the media comment and speculation that there had been in November, as to the involvement of Mr. Desmond within the consortium, and also the questions in the media as to whether he was going to take this investment himself personally?

A. I would have been aware, yes.

Q. You would have been aware of that?

A. Yes.

Q. So presumably your view would have been if he is going to take this himself, the Department better be told?

A. Correct.

Q. And you would have circulated that to Mr. O'Brien; and who else would you have circulated it to?

A. It's unlikely it went to anybody else other than Mr.

O'Brien.

Q. Denis O'Brien?

A. Yeah.

Q. And this would have been the nature of you bringing to his attention the principal issues on which you had concerns at the time and in respect of which you felt that action should be taken?

A. Yeah. I think a lot of this would have been driven by CSFB, in the sense that when investment banks are appointed, obviously they like to be exclusive; but when they hear of any other investment banks being involved, clearly they want to make sure that everybody knows where they are going, in the sense of you don't, for want of a better word, thrash the presentation by two people trying to sell the same thing. So coordination is vital.

Q. Of course. So as far as your dealings with CSFB would be concerned, it would be good news if you were able to go to them and say "Look, IIU are not doing any placing on this"?

A. It would have been, yeah.

Q. Do you recall when you were in a position to give them that assurance?

A. I don't, no. Not a particular day, no.

Q. I know you wouldn't know a particular date, but do you recall whether it was shortly after this, or do you

remember it as being something they were constantly asking you about, or were you able to put their mind at rest reasonably early?

A. Reasonably early.

Q. Reasonably early; okay.

Now, can I just take you fast-forward you on to the 3rd May. It's Divider 128 in the book that we are looking at.

And you remember, this was Mr. O'Connell's attendance of the meeting at the Department on the 3rd May which you attended. And I think in your memorandum you indicated that your recollection of it is primarily based on Mr. O'Connell's note?

A. That's true.

Q. And I'll just refer you briefly to the note. Mr.

Digerud, Mr. O'Donoghue, Arve Johansen, Michael Walsh, Paul Connolly, Owen O'Connell at Department of Communications, Martin Brennan, Fintan Towey, Regina Finn, Eanna O'Conghaile.

It says "Clear a political football.

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

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

They were the kind of issues that you were really addressing in your memo to Mr. O'Brien of December, weren't they?

A. Yeah.

Q. "Need detailed information/quality/about IIU.

"Confirmation that Telenor is same as at bid date.

"Differences (in detail) as to expertise and asset strength between Communicorp and Esat Telecom Holdings.

"Numbers re IIU.

"Telenor 'Backdrop' statement as operator as last resort. AJ that's the way we see it anyway.

'We'll never abandon this one'. Not requesting statement but would be helpful per Martin Brennan.

"Project finance Peter O'Donoghue, bank 60/equity 40.

"ABN and AIB appointed co-providers. $\frac{1}{2}$ 25 million bridging committed.

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

"Donal Buggy and Billy Riordan. Maybe Andersen.

"Better than 50% chance that Commission will send us

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

When Telenor and Esat began to talk? (Reference complaint)."

As you say, these are all very much the same issues that are now being discussed between the consortium and the Department that you were adverting to in your memo to Mr. O'Brien of December of 1995.

This was a fairly significant meeting, wasn't it?

A. It was indeed, yeah.

Q. I mean, you had Mr. Johansen there over from Norway, I think it was the very first meeting that Mr. Walsh or indeed Professor Walsh, or indeed anybody from IIU, had ever attended with the Department, and I think it's the only meeting that you ever went to with the Department?

A. Correct.

Q. When you say it was significant, what do you mean by that?

A. Well, I think, as I indicated there this morning, at this stage that Esat Digifone, as in the company, had its own executive team, and they were, as well as legal advice, and they were doing their own negotiation on the licence and so forth. I mean, a lot of what you might call we put in, in the bid itself, we put in quite a number of particular performance targets and so on. Quite an amount of time was spent on, how we were going to deal with those, how we were going to meet them, what happens if we didn't meet them and so forth. But then this comes down to, effectively, the shareholders going to the Department to meet. And this would have been the first time that certainly from my point of view was my first meeting, I guess, Arve Johansen as well from Telenor.

I think the Department wanted to see at this stage who is behind all this, because you know, I guess the way you could view the announcement in October '95 was that we had won the award to have the right to negotiate a licence, and now it was getting to the stage where we were about to formally sign the licence, and they wanted to see exactly who was who at this stage, in a formal sense.

Q. Very good. And they had the same kind of concerns that you had identified earlier on

A. Correct.

Q. about changes in the personnel. Changes in the people behind the consortium, changes in the relative ownership

A. I wouldn't have viewed it changes behind the personnel in the consortium, and essentially the two operators were still there.

Q. Of course they were. The changes were the difference between the institutional investors and IIU?

A. Yeah.

Q. And that was clearly troubling the Department?

A. Yeah.

Q. If you just go to the following page; it's 129.

That's just a note of Mr. O'Connell, that he believes he made after the meeting, of what he needed to do and what he needed to get to the Department arising out of that meeting of the 3rd.

You see "directors certificates x 3" that would be

for each of the three shareholders.

"Auditors certificates x 3.

"Comparison bid versus now.

4. IIU versus Davys etc. explanation.

5. Telenor 'backing' statements.

6. Detailed information re IIU quality.

7. If Esat Telecom holdings confirmation re

strength.

8. Bank letter.

9. When Telenor and Esat began to talk.

10. If Communicorp how subsequently to get holdings

in.

11. Digifone/IIU agent re 5% (if 20%)

"If GSM operator of the year award for Telenor."

You see that was his list, effectively his to-do list?

A. Right.

Q. That included a statement to the Department apparently

wanted by way of an explanation of the difference

between IIU versus Davys?

A. Mm-hmm.

Q. That's the same matter as I said that you had

identified way back in December.

A. Yeah.

Q. I think that's also reflected I'll just draw your attention to it briefly in a memorandum made by Mr.

Arve Johansen, on I think the 4th May. It's at the

next divider. I am not going to open it all to you.

I am just going to refer you to the specific portion of the memorandum which relates to that meeting of the 3rd. It's on the second page of the memorandum, at paragraph 6.

He says, "As we go along we learn more, but it all serves to disclose more details which, again, more and more prove the above scenario".

He says: "In the meeting with the Department of Communications Friday May 3rd, it became evidently clear that IIU was not a favourable name from an 'Irish public' point of view. On the contrary, the Ministry basically asked for help for how to explain why we had substituted Advent, Davy Stockbrokers and the other recognised named institutional investors in the bid (AIB, Investment Bank of Ireland, Standard Life Ireland).

"Eventually, the project coordinator from the Ministry Mr. Martin Brennan actually appealed (off the record) to Telenor to write a letter of comfort that would serve as a lost resort for the Digifone company for funds and operational support. My feeling was that if Telenor had owned it alone, he had been more comfortable than with the current shareholders."

So you can see there that Mr. Johansen has again recorded the same concerns which I think you agree

were being expressed by the Departmental officials at that meeting?

A. Correct.

Q. Now, can I refer you can I just ask you, before we move on from there, can you recall why you attended that meeting on the 3rd May?

A. Because I was a director of Communicorp, I was representing Communicorp as a shareholder. Peter O'Donoghue at that stage would have been Esat Digifone.

Q. Is there any reason why it would have been kind of you rather than Mr. O'Brien, or would that have been just a matter of convenience, or

A. I would say clearly because some of the questioning was going on to funding and that I was heavily involved in the Credit Suisse, so I could give first-hand account of what the status was on that.

Q. So it was anticipated at the time that questions would be asked about funding?

A. Correct.

Q. Now, if I can refer you to Divider 135, there is a note here of a meeting on the 9th May; that would have been just Thursday the 9th; that would have been just a week before the licence was actually granted.

And that's a note, an attendance made by Mr. Gerry Halpenny, who was solicitor to Esat Telecom.

A. Correct.

Q. And it's an attendance of a meeting attended by yourself, Leslie Buckley, by Mr. O'Connell and by Gerry Halpenny.

"TN bridge dependent on the 12.5%."

I am not clear what that might refer to. I wonder, can you be of assistance?

A. I am the same.

Q. Right. Okay.

A. This is a period where I was effectively camped out in Fry's for the Credit Suisse First Boston funding, so this particular memo, I have to say, I am not a hundred percent sure on myself.

Q. So you were there all the time in Fry's because of the pressures from Credit Suisse First Boston

A. In any event.

Q. They were constantly coming back to you, was that with a view to preparing the prospectus?

A. Oh it was well prepared. We had the shareholders wound up at that stage, in the sense that we were well down the legal process, but bearing in mind we not alone had Advent obviously coming in, but we had First Boston, as in the merchant banking side, getting involved as well as Soros Capital, Metropolitan Life and John Hancock. And the issue there was you were dealing with five parties, five shareholders, and obviously five legal teams and five investors themselves, plus your own. So it was a case of

corralling all of that to get the thing to the line.

So I was

Q. Keeping the balls in the air?

A. Yeah.

Q. And you were pretty well camped out in Fry's. You were saying to me you may have been at meetings, but it's just because you happened to be there, rather than to any immediate input into them?

A. Yeah. Certainly that particular meeting, to be frank, I have to say is vague.

Q. Can I just ask you, over the page, there is one thing I want to ask you; it does relate to CSFB. If you go to the second page of the typed-up version. Just below "Letter to sell shares TN said that not prepared to sell.

"CSFB call by Knut Digerud, re the 12.5%. Call to the Department re the 12.5%."

Correct me if I am wrong, but the 12.5% presumably relates to the 12.5% of the additional shares that Communicorp was still trying to purchase from IIU?

A. I am not a hundred percent certain, because I don't recollect much about this meeting, to be honest.

Q. Did you know of or do you recall any phone call made by Knut Digerud to CSFB?

A. Not Knut. No, I think there was one by Arve Johansen, but I don't think it was around this time. It may have been, but I don't think it was.

Q. Do you also recall at all whether there was any communication to the Department regarding Mr. O'Brien's ambitions to acquire the further 12.5%?

A. I don't believe so, no. Because I was the one at the Department meeting on the 3rd May.

Q. Well, after the 3rd May, do you remember any contact with the Department?

A. No, not to gain control of the IIU piece, no.

Q. Now, it appears that you also attended a meeting on the Friday; again, you might have just happened to be there. We don't have a note of it. But there is a reference to it in a letter from Mr. Johansen to Mr. O'Brien dated 10th, which was the Friday, and that's at Divider 136.

And that appears to have been a meeting between Communicorp, Esat and Telenor where, from reading between the lines of Mr. Johansen's letter, it would appear that you and Mr. O'Brien and perhaps the others present, Mr. Buckley, were perhaps trying to persuade Telenor of the merits of Esat/Communicorp's wish to acquire a further 12.5% of the shareholding. And if I can just refer you to the letter it's at Divider 136. Do you have that before you?

A. Yeah.

Q. It says at the top of it, "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."

And he then goes on to set out how Telenor was determined that there be equivalent interest between Telenor and Communicorp in Esat Digifone. You see that?

A. Yeah.

Q. Do you recall that meeting on the Friday?

A. I do, because I can remember it was in the old MOPS office on Barrington Road. I think that was it was the first time I had met Rolf Busch; I think he was the senior general counsel to Telenor. I think they were effectively formally rejecting, if you like, any notions that we had about gaining control or getting a different percentage to Telenor. And that meeting was that effective formal rejection, and I think subsequent to that, that led to an, I think, a *pari passu* agreement then later on.

Q. It appears to have been a fairly heated meeting, just judging from the letter itself.

A. Yeah.

Q. I think then, over that weekend, on the 11th and 12th, a Saturday and Sunday, that you probably did attend a number of meetings where you were trying to thrash out

final arrangements between the shareholders. As you say, they went back to a 40:40:20 arrangement, but there was, if you like, a gentleman's agreement by Mr. Desmond that he would sell equivalently pro rata to each of the shareholders from time to time, and then he had this one free transfer, which was used ultimately for the sale to BT?

A. Right.

Q. And can I just refer you in the next book, at Divider 141 of Book 50, there is just a note here of a meeting that you attended at William Fry's on the Sunday, Sunday 12th May. You were at it. Mr. Buckley was at it; Mr. O'Brien was at it. Gerry Halpenny kept the note, and Owen O'Connell I think was occasionally present.

And there you seem to have been discussing various options as to how to get over the impasse that had been reached where you had a desire to retain a majority shareholding, or at least increase your shareholding, and at the same time Telenor was insistent on maintaining a parity of shareholding; would that be fair enough?

A. That's right, yeah.

Q. Can I then refer you over the page again, Divider 142; it's a letter of the same date that Mr. O'Brien another letter from Mr. O'Brien to Mr. Johansen; it's in response to Mr. Johansen's letter of the 10th. And

Mr. Johansen's letter of the 11th to Michael Walsh, and it refers back, I think, to the meeting of the 10th. And again it makes reference to your attendance at the meeting and Mr. Buckley's attendance at that meeting of the 10th, and apparently some exception you and Mr. Buckley may have taken to something that was said by Mr. Johansen, which I am sure was in the heat of the moment and the heat of negotiation.

But what I want to ask you is this: That meeting on the Sunday that you attended and as you said, you were virtually camped out in William Fry do you have any recollection of Mr. O'Brien preparing this letter of the Sunday, 12th May?

A. I would have, yeah.

Q. You do?

A. Yeah.

Q. And can you tell me when it was prepared and in what circumstances it was prepared?

A. I think it was done down in his office I think.

Over that weekend.

Q. That was in Mr. O'Brien's own office?

A. Yeah.

Q. It wasn't in William Fry?

A. No.

Q. And do you recall whether Mr. O'Brien's solicitors had any input into it?

A. I don't recall, no. I don't think so, and I don't

recall, either.

CHAIRMAN: I suppose it's fair to say it has a slightly more homemade air about it. It may have been written somewhat in the heat of the moment. Would that be fair to say?

A. Perhaps, perhaps.

Q. MS. O'BRIEN: We know that matters of the shareholders were largely resolved by that Sunday evening. I want to refer you now to a letter of the Monday that's at Divider 144A; it's a letter from Mr. O'Connell to Mr. Buckley, Mr. O'Brien to Mr. Walsh, and it's also CCed to Mr. Halpenny and Mr. O'Byrne. Do you see that letter there? It's just a very short letter enclosing a draft.

I don't know if you have it in your book, do you?

A. 144

Q. 144A. If you don't, I can arrange to have a copy of it handed up to you.

A. Yes, I do.

Q. In fact it's a fax, and it's:

"Licence.

"Dear Denis, Michael and Leslie,

"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 its enclosures.

"Please confirm approval urgently.

"Yours sincerely,

Owen O'Connell."

We can see there a note it was approved by Esat. The note I want to draw your attention to it; it appears that you had seen this final draft of the letter to the Department?

A. Right.

Q. And just to explain a bit of the background and put it in context for you, this was a letter that was going to the Department enclosing the documents and the letters that the Department had sought at the meeting of the 3rd May that you attended, which may explain why you were being shown this letter.

A. Mm-hmm.

Q. All right? You see here it's dated 13th May.

"Dear Mr. Brennan,

"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."

And it lists the enclosures. In fact I'll refer you to one of them because in fact it's a letter from yourself. You see at 5, it's a "letter from Paul Connolly, Director of Communicorp Limited, concerning its ownership and interest in Esat Digifone Limited."

Then over the page, it says: "The company will in or before the grant of this licence be owned as to 40%

each by Telenor Invest AS, (a wholly-owned subsidiary of Telenor AS) and Esat Telecommunications Holdings Limited (a wholly-owned subsidiary of Communicorp Group Limited) and as to 20% by IIU Nominees Limited (holding on behalf of Mr. Dermot Desmond): IIU Nominees Limited is a wholly-owned subsidiary of International Investment & Underwriting Limited, which in turn is also wholly owned by Mr. Desmond.

"I hope that the above is of assistance.

"Yours sincerely.

Knut Digerud."

Now, do you remember seeing that final draft of the letter that was going to the Department?

A. I do, yeah.

Q. Can you tell me in what circumstances you were shown it?

A. Well, I guess because I was at the 3rd May meeting, first of all. But also it was within days of signing the formal licence on the 16th May, and I suppose with any closing, there is always a number of documents, confirmations and so on, required. And this enclosed a number of those documents as requested by the Department.

So I guess in the sense of closure, or closing the loop, if you like, given that I had been at the 3rd May meeting, I was shown this.

Q. Right. And do you remember, was it because you

were when you were in William Fry, that Mr.

O'Connell came to you with the draft, or do you remember him discussing the draft with you, or can you recall what the circumstances were?

A. I honestly think that this was done by Knut Digerud and Owen O'Connell as adviser to Esat Digifone, and that it was Esat Digifone, as in the company getting its paperwork, if you like, lined up for the formal closing of the licence, and that I, as a shareholder then, was you know, representing Communicorp, was shown this then.

Q. All right. I'll just show you there the letter that you signed for Communicorp. There is not an awful lot in it, really. It's to the Department of Transport, Energy and Communications,

"Attention Mr. Martin Brennan."

"Esat Digifone Limited."

You won't have a copy of it there, but I think we do have some copies, additional copies with it. It's actually in another Tribunal book which you wouldn't have been served, and it's in Book 44, behind Divider 214, for everybody else. But we have a copy of it for you.

(Document handed to witness.)

You see it there?

A. Yeah.

Q. "Dear Mr. Brennan,

"Further to your request for information regarding the ultimate ownership of Communicorp Group Limited and its interest in Esat Digifone Limited, I have set out below the details required.

"I confirm that I am a director of CGL and that I am duly authorised to make the following statements.

"1. I attach a chart which, together with the notes there to, correctly states the current ownership of CGL.

"2. CGL owns 100% of the issued share capital of Esat Telecommunications Holdings Limited, and confirmation will be given on or before grant of the second GSM licence that ETH owns 40% of the issued share capital of Esat Digifone Limited.

"3. CGL is also the owner, through a number of other subsidiaries, of certain radio stations and interests with the exception of the disposal of the radio station in Stockholm for market value, neither these interests, nor the percentage ownerships of CGL therein has changed since the submission of our bid for the second GSM licence in 1995.

"4. CGL's financing commitments to Esat Digifone Limited, as outlined in the 1995 bid, are underwritten by or through International Investment and Underwriting Limited.

"5. I wish to confirm that long-term commitment of ETH, of which I am also director" that's Esat

Telecom Holdings "to this project and its determination that Ireland's second GSM network is successfully constructed, launched and operated. Furthermore, CGL is both capable and willing to increase its financial commitment through Esat Telecom Holdings if necessary. Such increase in financial commitment would require that Communicorp Group Limited/ETH reach agreement with other interested parties as to its implications for CGL/ETH's influence over Esat Digifone and its operations.

"Should you require further details or clarification, please let me know."

And it's signed by you. I just want to take up two matters with you arising out of that letter. You see at paragraph 4, you were referring to "The financing commitments to Esat Digifone as outlined in the 1995 bid are underwritten by or through International Investment and Underwriting Limited."

Would I not be thinking that by then the underwriting arrangements, whatever they were, as of the 29th September, had been superseded by what was ultimately concluded in the shareholders agreement?

A. Which I think was signed on the 16th May.

Q. On the 16th May. So the point you were making was as of that date, the IIU obligations under the agreement of the 29th September continued and were extant?

A. Yeah.

Q. And just at 5, you said: "I wish to confirm the long-term commitment of Esat Telecom Holdings to this project and its determination that Ireland's Second GSM network is successfully constructed, launched and operated. Furthermore, Communicorp Group Limited is both capable and willing to increase its financial commitment through Esat Telecom Holdings if necessary," but would require greater influence as regards Esat Digifone.

Can you tell me on what basis you felt that you could state that Communicorp Group Limited was capable of increasing its financial commitment as of that date?

A. Well, I guess we were within, at that stage, probably three weeks of signing the completing the deal through Credit Suisse First Boston, so you know, we were very well advanced in getting that deal done.

Q. You weren't trying to suggest that Communicorp was capable of funding or increased funding from its own resources?

A. No. What I may have been suggesting here also is that at that stage, we had refined the business plan, and it was clear that it was going to cost us more money. I am not a hundred percent sure if that's what I was alluding to, but we were going to need more capital than we had already indicated.

Q. You didn't refer there to CS First Boston at all and the placement that was in train. Can you tell me why

you wouldn't have, at that stage, at that late stage,

referred to it?

A. As I referenced earlier this morning, as part of the licence itself, any change in Esat Telecom Holdings, as in the control of that, was going to require the consent of the Department. And obviously we applied for that consent, I think, in early June of '96. I think to do it at that stage would have caused more confusion than it was worth.

Q. I see.

A. And besides, we hadn't definitively closed with Credit Suisse First Boston at that date.

Q. Very good. Now, can I just ask you, again, to turn back to that letter, the main the draft letter that you were that you had seen of the 13th May. Do you recall at all whether you saw an earlier version of that draft?

And in order to show you the earlier version of the draft, I have to ask you to go back to Book 49, in which we have an earlier version; it had been prepared on the previous Friday. It's Book 49, and it's Divider 135A. Do you see that?

A. Yeah. This is the Gerry Halpenny file now, is it?

Q. No, no; it's Divider 135A. It's an earlier draft of the letter to Mr. Brennan in the Department with the enclosures. Do you have it?

A. Yeah.

Q. Now, that was prepared by Mr. O'Connell on the Friday;

you'll see draft 10/5/96. The time is on it: 9.28am.

And we know that the handwritten annotations on the

second page of the letter were made by Mr. O'Brien;

that Mr. O'Brien had seen the letter.

And you will see it starts off in much the same way.

It lists the various letters and certifications that

were being provided by the letter.

A. Yeah.

Q. And then it goes on to provide an explanation of the

difference between the four institutional investors

and IIU. You will recall from your own evidence, and

from the note of the meeting of the 3rd May, that this

was one of the matters which you had been concerned

about way back in December, which was discussed at the

meeting of the 3rd May, and which Mr. O'Connell listed

in his to-do list which he prepared after the meeting

as being one of the requirements of the Department.

Do you recall that?

A. Yeah, his list that he drew up after the meeting, yes.

Q. And this is where Mr. O'Connell effectively set out

the explanation. I'll refer to you it briefly.

It says: "During our meeting you asked for an

explanation for the involvement of IIU 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 were 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".

Over the page, it continues: "Following a 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 an additional pre-placing of part of the 12% of the Esat Digifone which (as indicated above and 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 whether 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 a shareholding structure certified in the attached letter of" 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 would prevail upon and immediately prior to the grant of the licence. Their delivery to date will accordingly be regarded in anticipation of the issue of the relevant shares. I hope that all of the enclosed documents are clear and helpful, but if you have any queries thereon please let me know.

"Yours sincerely,

Owen O'Connell."

Now, that was the draft of the 10th. And you have already seen what was described by Mr. O'Connell as

the final draft of the 13th, which he says had been seen by you.

Do you remember being shown this earlier draft, or indeed any other earlier draft, which included these additional paragraphs or equivalent additional paragraphs?

A. I may have seen this one. I can't recollect specifically.

Q. I suppose you would have expected that if you were shown the final draft, you would have also been shown the interim draft?

A. I expect so, yes.

Q. Do you recall at all being aware of why these paragraphs, which contain the explanation of the institutional versus IIU involvement, were excised from the final draft?

A. I have no idea.

Q. Mr. O'Connell, when he gave his evidence, indicated that it's his belief that they were excised either with the agreement or at the request of the Department. Did you know of any contacts between Mr. O'Connell, or indeed anybody on the Esat side, with the Department in relation to the draft letter or the explanation?

A. I would have been generally aware that the company, as in Digifone, would have been certainly in this period would have been in reasonable contact with

the Department, particularly in relation to the final detail of the licence. But in terms of specific reference, no, to this letter.

Q. If you had seen the first draft and then you were shown the final draft, and you saw that this whole explanation had been removed, given that from the very earliest date you had a concern about this issue, would that not have occurred to you, would it not have made an impact on you?

A. All I can say is if the Department were indicating that they wanted this removed, that they they were clearly on notice they had it, so they didn't require that sort of level of detail.

Q. It would have been removed?

A. If that was what the Department had requested.

Q. Thanks, Mr. O'Connell.

Now, just finally, Mr. O'Connell, you might recall just before we started at two o'clock, I mentioned to you just some information which was came to the attention of the Tribunal from a book that was published in relation to the Esat I think it was called The Esat Story, which made reference to, I think, a letter received from Advent International a short time prior to the grant of the licence. Can you assist the Tribunal at all in relation to that matter?

A. I think, again, if you step back and I know the portion you are referring to. First of all, the book

itself was written by Brendan O'Kelly, who was a non-executive director of Esat, also went on to serve on the board of the plc, and had been involved I think from the very early stages, in probably 1991/1992, on the board. He obviously prepared the book effectively without our assistance, for want of a better word, albeit granted he was present at a lot of board meetings, and he would have been present at some of the meetings, particularly in the early days, with regard to the fixed-line business. So that would be the context of how he prepared the book.

When it comes to the I think it's important to think about from Advent's point of view, they were they are a venture capitalist. If they see a good investment, they like to follow their money.

Q. Of course.

A. Because clearly that's what they get, both increased leverage, from their point of view and from their positional point of view, and also from where they hopefully make more money.

If you remember, this morning, also, I mentioned that Advent themselves were, I mean, effectively Massimo Prelz was selling Advent to me, if you like, because he would have been aware that I was engaged on the CSFB funding.

Q. Yes, of course.

A. From our point of view, clearly at times, because of

the other activity that Communicorp was involved in both at the on the radio side and also on the fixed-line telecom side, there would have been, for want of a better word, cash squeezes, and he may have sought to, at times, indicate that he could be of assistance; but obviously there was going to be a price for that.

As to references that we burnt letters and that, I think, for want of a better word, I think the book is slightly sexed up, for want of a better word.

Q. It's poetic licence, is it?

A. Correct.

Q. Do you recall a letter arriving, though, a very short time after the announcement of the 16th October, in which Advent had effectively asked Mr. O'Brien to step aside as Chief Executive of Communicorp, and that on that basis they would be prepared to provide additional funding to the company?

A. There was some reference to how he could be helpful in terms of providing additional funds. As to the actual I never saw an actual document, but he was certainly indicating that he was there as a backstop.

CHAIRMAN: I think it was in terms of a 66% ownership of the equity which was required if it was going a runner.

A. Yeah, it was going to be fairly brutal.

Q. MS. O'BRIEN: And Mr. O'Brien brought this letter to

your attention, did he?

A. I don't recollect seeing that letter specifically

but it certainly would have been brought to my attention that Massimo Prelz was there as a friend.

Q. I see, was there?

A. As a venture capitalist, correct.

Q. Very good. Thank you very much, Mr. Connolly.

CHAIRMAN: I'll just see if any other counsel or practitioners have matters to raise with you just for one moment, Mr. Connolly. Mr. Fitzsimons?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Just how bad was the financial situation in which Mr. O'Brien found himself in the week before the

A. In terms of the actual cash position, I can't say.

But or I can't recollect but the bear in mind we did, as in Communicorp, did own additional assets in the radio business and also we had a fixed-line business, albeit burning a lot of cash at the time, and clearly while you might have cash squeeze, it doesn't mean to say that you were completely out of options to raise additional capital. But tight would be a fair description.

Q. There was a reference in Mr. O'Connell's evidence that the question of examinership was raised in a very abstract way, it must be said, it wasn't raised as a project that was being considered, that it was raised

as a possibility in the circumstances. Do you recall that?

A. Not that particular piece, no, about examinership, no.

Q. The word was never used in your presence?

A. No.

Q. Notwithstanding the role you were playing?

A. Correct.

Q. And even though you were in Fry's office all of this time?

A. Not at that particular time. This is the period you are referring pre this is in October '95. I was in Fry's

Q. Yes, that's what I am talking about.

A. I was in Fry's more in 1996 to do with the Credit Suisse First Boston funding.

Q. I see.

A. Which closed in June '96.

Q. Thank you very much, Mr. Connolly.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'DONNELL:

Q. MR. O'DONNELL: Just two points. Firstly in relation to the project finance. I think you made a distinction between project risk on the one hand and corporate risk on the other and I think you indicated that project risk was considerably more speculative and considerable forgone to get finance for?

A. Correct.

Q. That was the position not only in June but also as of

the 29th September 1995, that you were still a project; you had no guarantee you were going to get any licence of any sort?

A. Correct. Even if you had moved it on till the 16th May it's still you are at a project risk level.

Q. Because you don't have a licence?

A. It's more to do than the licence. Effectively if you think from an underwriter's point of view, a project risk is because a project hasn't been developed and if an underwriter takes on that risk and he ends up having to be in those shoes, he effectively becomes the operator and clearly he doesn't want to be in that position. However, if you are talking about corporate risk, clearly there is a business there, it's got revenues, it's got profits, hopefully. From an underwriter's point of view, it's clearly easier to move on, if you like.

Q. It's more attractive?

A. It's far more attractive and it's the risks are more clearly identifiable.

Q. And I think that, I think you categorised, or characterised I should say, the institutions's answer to you as an a kind of pass mark answer, that the banks, through Davys, had given you a pass mark, but that it was clear that the banks were never going to give you more than a pass mark as of September 1995 where it was clear equally that IIU were prepared to

give you honour's mark answer at that stage?

A. I mean, I think the way we categorised the pass mark, it was our assumption it was a pass mark in the sense that knowing the financial markets as they are, to improve on a project risk with those institutions was never going to be on, so it was pointless to go and even approach them.

Q. I think Mr. Callaghan, Mr. John Callaghan indicated in his evidence here when he was asked, well why didn't you, why didn't he, or Davys go back to the banks and ask them again, he puts it the other way, he says why didn't the banks offer? And your point is that the banks were never going to offer to improve?

A. Certainly two of those institutions just simply don't to underwritings.

Q. And equally, of course, not only had you the advantage of a definite commitment as opposed to a conditional commitment, but you had it from one institution with whom you knew you could do business as opposed to a conglomerate of institutions and executive committees and so on?

A. Correct.

Q. Now, just in relation to the letter of the 29th September, I think you were aware that it was sent in?

A. Correct.

Q. And that it was sent back?

A. Correct.

Q. And that was your only awareness of what was communicated to the Department?

A. Yeah.

Q. Nobody in the Department ever told you what had been in the letter?

A. No, definitely not.

Q. You never discussed the contents of that letter with anybody at that stage or later?

A. No.

Q. And I think, again, Mr. Callaghan refers to the letter of the 29th September as an attempt to tell the Department of the involvement of IIU which was then sent back. And you wouldn't disagree with that?

A. That's a fair assumption, yes.

Q. And yes, thank you very much, Mr. Connolly.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FANNING:

Q. MR. FANNING: Mr. Connolly, I appear for Mr. Lowry, the former Minister. Just by simple way of introduction, and I won't be long at all. I don't know how familiar you are with the terms of reference of this Tribunal, but this current module is examining really Mr. Lowry's behaviour as Minister in or about the Government decision to award the second GSM licence to Esat Digifone ultimately in May, 1996.

Now, you have given evidence this morning about the general issue of the change of the horses from the institutions to IIU and just following on from a

couple of questions that my colleague Mr. O'Donnell just asked you, I think you said in oral evidence this morning that you, in your experience of corporate finance, had never seen what you described as project risk underwritten by institutional investors as distinct from ordinary commercial risk, isn't that so?

A. Correct.

Q. And you are saying that as somebody who is very experienced in financial matters of this type, I take it?

A. Correct, substantial experience.

Q. You have spent how long in the corporate finance business in Dublin?

A. 1991 I set up my own firm on the corporate finance side. But over 20 years as a chartered accountant.

Q. Yes, and from that experience you are making the statement that underwriting simply wouldn't have been available as an option from the institutions?

A. Correct.

Q. And it was the conditional nature, in fact, of the institutional letters that ultimately led the Esat consortium to seek the underwriting from IIU?

A. Correct. As I said this morning I felt we had a D grade; enough to satisfy but that was the height of it.

Q. And your evidence in your second Memorandum of Intended Evidence, and you confirmed this orally to

Ms. O'Brien I think this morning, was that you were aware from your virtually daily conversations with Mr. O'Brien that he was in discussions with Mr. Desmond from on or about the 10th August 1995 about IIU's participation in the consortium?

A. Correct.

Q. And given that this was something that Mr. O'Brien discussed with you in his virtually daily discussions with you, according to your evidence, can I ask you at any stage did he intimate to you the Minister, my client, Mr. Lowry had suggested that Mr. Desmond be involved in the consortium?

A. Absolutely not.

Q. Absolutely not. And I put it to you the reason he didn't suggest anything of the kind to you was because nothing of the kind occurred?

A. Correct.

Q. And nothing of the kind occurred in Hartigan's on the 17th September 1995

CHAIRMAN: Mr. Fanning, if you are going to come up and give evidence do so. But really that's hardly a matter to put

MR. FANNING: I am just asking the witness to confirm my understanding, Chairman.

Q. You can confirm that your understanding, Mr. Connolly, is that nothing of the kind occurred at any stage at any time?

A. Correct.

Q. And Mr. O'Brien certainly never suggested it to you?

A. No.

Q. And you have no reason to believe that it did happen?

A. Correct.

Q. And from your perspective, Mr. Connolly, the reason was in fact a bona fide commercial decision from the perspective of Communicorp, to improve the financial credibility of the bid?

A. That's true.

Q. And it wasn't done for any ulterior political motive?

A. That's true.

Q. Very good. I wonder could we have the document that was up on the screen a short time ago up once again.

I think it's document 99A in Book 49. It has eight points in it and it's headed "IIU issues". Just focus on point number 6. That's the point I am concerned with. It's entitled:

"Political aspects: (i) Lowry has indicated 40:40:20 to Dail.

(ii) as offshore company, Bottin could present problems to Lowry."

Can I just ask you, Mr. Connolly you have given evidence you think you may be the author of that document why did you use the word "Lowry" rather than the word "Minister"? Is there any significance

to the distinction?

A. Nothing particular.

Q. You might as well have said "Minister" when you say "Lowry"?

A. Correct.

Q. Therefore, you really making a comment about the potential difficulty in the discharge of a political office; you are not making a comment that's personal to Mr. Lowry?

A. Correct.

Q. And you are really only referring to him in the context of his office then as Minister?

A. Sure.

Q. And you might have made the same comments in the memo if it was an altogether together different Minister

A. True.

Q. if the facts were still the same? Very good. If I can finally then just turn to the issue of, I think, your limited dealings with Mr. Lowry. You answered, I think, in Question 59 in your second Memorandum of Intended Evidence, and I think again you confirmed this evidence to Mr. O'Brien this morning, I think you met Mr. Lowry on three occasions. The first two of those occasions was at the signing of the licence and the launch of Digifone. Can I take it on those occasions that your dealings with Mr. Lowry were simply in the order of run-of-the-mill formalities and

pleasantries?

A. Correct. The licence had been signed it stage and there was I think, I can't even remember the detail, we were down in the Department on the 16th May and there was a formal signing, if you like, and then there was a couple of informal words afterwards; that was the height of it.

Q. Certainly nothing untoward occurred on either of those occasions?

A. No.

Q. I think, just to cover the ground. The third occasion on which you say Mr. Lowry was by chance, from your perspective at least, in the Berkley Court in or about 1999?

A. Correct.

Q. And I think you will certainly accept in any event that that was, if it was in 1999, over three years after Mr. Lowry left Ministerial office?

A. True.

Q. And indeed I think you can take it from me that that's two years after this Tribunal began hearing oral evidence.

A. Right.

Q. And nothing untoward happened on that occasion. I think you confirmed that to the Chairman who fairly intervened just to confirm that this morning?

A. Right.

Q. So I can take it from all of that then, that your evidence, Mr. Connolly, is that you are not in a position to make any insinuation of wrongdoing or impropriety in respect of my client Mr. Lowry in any of this affair?

A. Correct.

Q. And as far as you are concerned, there simply was no impropriety or misbehaviour on the part of Minister?

A. That's correct.

CHAIRMAN: I think, not to be pedantic, Mr. Fanning, I think it was 1999 the Tribunal started oral evidence.

Mr. McShane, any questions?

MR. McSHANE: No, Sir, nothing.

CHAIRMAN: Nothing to raise in conclusion? Thanks for your attendance and cooperation, Mr. Connolly.

MS. O'BRIEN: There is no further witnesses today, Sir. Mr. Connolly's evidence has perhaps finished earlier than anticipated. There will be witnesses again tomorrow and on Thursday.

CHAIRMAN: Eleven o'clock. Very good. Thank you very much.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
WEDNESDAY, 21ST JANUARY, 2004 AT 11AM.