

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, SC

Instructed by: Michael Heneghan

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES:

Mr. Richard Law Nesbitt, SC

Mr. John O'Donnell, SC

Mr. Diarmuid Rossa Phelan, BL

Instructed by Matthew Shaw

Chief State Solicitors Office

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

Mr. Gerry Kelly, SC

Mr. James O'Callaghan, BL

Instructed by: Owen O'Sullivan

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Mr. Rossa Fanning, BL

Instructed by: Kelly Noone & Co.

Solicitors

FOR DERMOT DESMOND: Mr. Bill Shipsey, SC

Mr. Gerard Hogan, SC

Instructed by: Michael Houlihan & Co.

Solicitors

Solicitor

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxton

I N D E X

Witness: Examination: Question No.:

Prof. Michael Walsh Mr. Coughlan 1 - 397

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,
24TH FEBRUARY, 2004 AT 11AM:

CHAIRMAN: Good morning, Mr. Walsh. Thank you very
much for coming back and your assistance to date. I
think you are already sworn from your earlier
appearance approximately two and a half years ago.

MICHAEL WALSH, HAVING PREVIOUSLY BEEN SWORN, WAS
EXAMINED BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Now, I think you furnished a number of
memoranda to the Tribunal, isn't that right, Mr.
Walsh?

A. That's correct.

Q. Do you have those with you?

A. Whether I have the same versions as you have, I am not
sure.

Q. I'll tell you what, the first one is one dated the
28th February, 2002. And that's at Book 36, Tab 6A,
for anyone else. I'll take them in the order you
furnished them, and I think you know the format.

We'll go through the memoranda, and then we'll come back to deal with matters, if that's all right.

A. Yeah.

Q. I think in this first memorandum, you have informed the Tribunal, under the heading "Background", that you understand that Dermot Desmond and Denis O'Brien attended a football match on the 10th August, 1995.

At the match, there was discussion on Denis's progress with the bid for the second mobile licence. Denis indicated that they had made a very good presentation and had a good team in place but were uncomfortable on the funding side. They had no binding commitment from the financial institutions and no indication on pricing and no willingness from the financial institutions to bear any of the costs if the bid was not successful.

You understand that Dermot Desmond offered to invest in Esat Digifone on the same basis as Telenor were investing to meet Denis's proportionate share of the bid costs, and to underwrite Denis's shares of the investment. Following negotiation, an agreement was reached on the 29th September, 1995. And you refer to that, and we can come to that in due course it's the arrangement agreement?

A. Yeah.

Q. Another agreement was consummated between the parties prior to that date. Subsequent to the announcement of

the award of the licence, Denis O'Brien sought to acquire a shareholding in excess of 50% of Esat Digifone. IIU was prepared to agree to this, subject to Telenor being satisfied. Telenor made it clear that they were not prepared to allow one party to have over 50% of Esat Digifone. Consequently, no sale took place.

In May 1996, the Department of Public Enterprise required that the shareholding in Esat Digifone, at the time of the award of the licence, should be at the same level as in Esat Digifone's original proposal; that is, both Telenor and Esat Telecom should own 40% each. Accordingly, IIU agreed to sell 2.5% of Esat Digifone to each of Telenor and Esat Telecom.

Then you say: "As stated in Mr. Davis's letter, IIU disposed of the balance of shareholding at various stages equally to Telenor and Esat Digifone with the final 1 percent being sold to British Telecom's subsidiary".

Turning then to specific issues raised at that stage, I think you were asked about 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 subsequent disassociation of them from the bid or the consortium.

And you have informed the Tribunal that other than as

outlined above or disclosed in the files held by the Tribunal, you are not aware of the role or action of the above-named institutions in relation to the consortium, though it is understood that they were represented by Davy Stockbrokers: Once the agreement of the 29th September 1995 was executed, there was no longer any necessary direct role for the above institutions as equity providers.

I think you were then asked your knowledge, direct or indirect, of the association of Mr. Desmond/IIU with the bid and/or the consortium and their subsequent disassociation from the consortium. And you have informed the Tribunal that Mr. Desmond/IIU became involved with the consortium by virtue of the agreement of the 29th September agreements of 29th September 1995 and May 16th, 1996. Mr. Desmond/IIU became disassociated with the consortium by virtue of disposing of its shareholdings in Esat Digifone, save that Mr. Walsh and Mr. Desmond continued as directors of Esat Digifone for a period after the disposal.

As has already been disclosed in May 1996, 2.5% of the shares were sold to each of Telenor and Esat Telecom.

In April 1997, 5% of the shares were sold to each of Telenor and Esat Telecom. In April 1999, 4.5% of the shares were sold to each of Telenor and Esat Telecom, and finally in January 2000, the remaining 1% was sold to is it Navigate Limited? a subsidiary of

British Telecom.

You were then asked for your knowledge, direct or indirect, of the negotiations with Mr. Desmond/IIU from August 1995 to May of 1996. And you have informed the Tribunal that other than as disclosed on the files, there are no records held by IIU/Mr.

Desmond of the negotiations with Mr. Desmond/IIU in the period August, 1995 to May, 1996. Furthermore, as is clear, contrary to what is stated in paragraphs 1 and 3 of your letter that's Mr. Davis's letter only two agreements were actually concluded; that is, those of September 29, 1995, and the shareholders agreement and side letters of May 1996, that's May the 16th, 1996, which the Tribunal has already received copies of.

I think you were then asked for your knowledge, direct or indirect, of each of the agreements referred to at 1 to 4 above, or any other agreements or arrangements with Mr. Desmond/IIU, whether concluded or otherwise.

And you have informed the Tribunal that other than as disclosed above, Mr. Desmond agreed with both Telenor/Esat Telecom that subject to all necessary approvals, he would sell an additional 5% to each of them within a year on the same terms as he sold the initial 2.5 to each of them. This agreement was never formalised.

I think you were then asked for details of all

involvement in any aspect of the negotiations with IIU/Mr. Desmond or with the agreements referred to above or with any other agreements or arrangements reached with Mr. Desmond/IIU, whether concluded or otherwise. And you have informed the Tribunal that you were primarily involved in the above negotiations; however, other than as already disclosed to the Tribunal, you have no other records or notes of these negotiations.

I think that concludes your first memorandum; isn't that correct?

A. That's correct.

Q. I think the next memorandum is one which is at Book 36, Divider 6B. And it's a short memorandum; it just deals with one matter, and it's yours dated 28th June, 2002. Isn't that correct?

A. Yeah.

Q. And I think in that you were asked for details of all discussions between Dermot Desmond/IIU and Mr. O'Brien or persons on his behalf relating to the backing or funding by Mr. Desmond of Communicorp. And you have informed the Tribunal that you have no knowledge or recollection of discussions or negotiations with Denis O'Brien or anybody on his behalf prior to August 1995 relating to the backing or funding by Mr. Dermot Desmond of Communicorp. You say, as stated at the private meeting with the Tribunal's legal team on the

17th April 2002 in Dublin Castle, you did have one meeting with Mr. Denis O'Brien sometime in 1993 or 1994, the purpose of which was to discuss the fixed-line business. The matter did not proceed any further after that meeting, and you do not have any documents or papers relating to that meeting.

And that concludes that particular statement.

I think the next memorandum you furnished, it was finished, and it's at Book 36, Divider 6C, and you can see it's been put together it was furnished on the 3rd July and the 14th July, 2002, and it's questions and answers.

Now, I think you commence by saying, "Note: All of these questions have been answered without reference to your files which are in the possession of the Tribunal". Accordingly, when you refer to Telenor, you cannot be certain as to which Telenor entity was involved at any point in time. Equally you would not be certain as to which was the relevant Denis O'Brien-related entity at each stage. That's reasonable enough.

A. That's correct. I suppose equally, Mr. Coughlan, I should say that you know, at that time I didn't distinguish between IIU, Bottin, Dermot, you know, because I tend to view all of those as being Dermot. And most of your questions were related to Dermot or IIU, so I answered in aggregate.

Q. That's fine. And I think the first question was, you were asked for your knowledge of all approaches made by Mr. Desmond or IIU or any person on their behalf to any party to join or form a consortium to apply for the second GSM licence by any other party other than Mr. Denis O'Brien, Communicorp or Esat Digifone. And then I think your response to that is we needn't go through the whole question that you have no recollection of any such approach, and you do not believe that any such approach was made?

A. That's correct.

Q. I think the next question was, you were asked for your knowledge of all approaches made to Mr. Desmond or IIU or any person on their behalf to join or form a consortium to apply for the second GSM licence by any other party other than Mr. Denis O'Brien. And then there is a series of questions. And you have replied to that, that you have no specific knowledge or recollection of any such approach, although it is possible that there was a casual inquiry. If there was such an inquiry, the matter was not pursued?

A. That's correct.

Q. I think you were then asked for your knowledge of all dealings, discussions or meetings between Mr. Desmond or IIU, or any person on their behalf, with Mr. Denis O'Brien, Communicorp, Esat Digifone or any person on their behalf in relation to Mr. Desmond or IIU joining

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 prior to the closing date of the competition; that is, the 4th August 1995.

And you have informed the Tribunal that you are unaware of any discussion in relation to the Esat Digifone consortium prior to August the 4th, 1995.

You say that as stated during the private sessions, an approach was made at a much earlier stage, probably in 1994, by Mr. O'Brien to arrange funding for the fixed-line business. As far as you can recollect, a single meeting took place, but the matter was never pursued?

A. That's correct.

Q. I think you were then asked for your knowledge of all dealings, discussions or meetings between Mr. Desmond or IIU or any person on their behalf with Mr. Denis O'Brien, Communicorp, Esat Digifone or any person on their behalf in relation to Mr. Desmond or IIU joining 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; that is, after the 4th August, 1995.

And you have informed the Tribunal that you have no

detailed recollection other than as discussed with the Tribunal during the private session; that is, Denis O'Brien wanted to get interim funding for Communicorp/Esat Telecom for the fixed-line business. You resisted this, and as is clear from the agreement of the 29th September, 1995, there was no agreement in relation to other funding. You also met Jack O'Keefe of Anglo Irish Bank to encourage him to continue to support Mr. O'Brien.

Just very briefly there, we'll look at the documents, and we can see a document I think prepared by Mr. Denis O'Brien where he is making reference to $\text{€}3.5$ million funding for the fixed-line business.

That came to nothing. The only matter that was ever consummated was an agreement, the agreement of the 29th September, 1995, in relation to the mobile business; isn't that right?

A. Yeah, I mean I suppose really from the time that Denis, shall we say, kind of first wrote to Dermot, which I think was the 11th August, Dermot was looking for funding for the fixed-line business as well as participation in the mobile, and you know, for all practical purposes, we continued to resist that. You know, we weren't particularly interested.

Q. You weren't interested.

A. We weren't interested, yeah.

Q. Could I just ask you there, just for clarification,

that you met Jack O'Keeffe of Anglo Irish Bank to encourage him to continue to support Mr. O'Brien; that was in relation to his fixed-line business?

A. I think Anglo were bankers to Communicorp, or whatever the particular company actually was, and you know, we had obviously a good relationship with Anglo, so, you know, we went along and said "These are wonderful people; please continue to support".

Q. That was it?

A. But we weren't committing anything.

Q. No. I think you were then asked for precise details of the negotiations between Mr. Denis O'Brien, Communicorp, Esat Digifone or any entity on their behalf and Mr. Desmond, IIU or any person on their behalf between the 10th August, 1995, and the 29th September, 1995, and including details of the meetings on the 10th August 1995, the 15th September 1995, and the 17th September 1995; and in particular, the persons who attended such meetings, the purpose of such meetings and the matters under discussion.

And you have informed the Tribunal that other than the information and papers already supplied to the Tribunal, there are no notes or any other information in relation to particular meetings. The meetings culminated in the execution of the agreement dated 29th September, 1995, of which the Tribunal has a copy.

A. That's correct.

Q. I think you are then asked for your understanding of the precise obligations and entitlements of IIU on foot of the agreement of the 29th September, 1995, between IIU, Esat Digifone and IIU and Communicorp. And you have informed the Tribunal that the details of the obligations and entitlements of IIU on foot of the agreement of the 29th September, 1995, are set out in those agreements. The principal elements are that the consortium would place 25% of the equity in the consortium with IIU Limited or its nominees, and that IIU would arrange underwriting for the 37.5% of the equity which Communicorp was committed to subscribe for.

A. I think again, Mr. Coughlan, I should just clarify that that answer is, you know, obviously imprecise, in the sense that I answered it on the basis of looking at what Dermot's commitments and obligations were as opposed to distinguishing between himself, IIU or Bottin.

Q. I understand the point you are making. We can deal with that. You were always of the view, and when you were answering this would perhaps be still of the view, that in your mind, it was all Dermot Desmond, as far as you were concerned?

A. Absolutely.

Q. And that's the evidence that Mr. O'Brien has given as

well. So there isn't but we can tease it out and go through, and I understand your ultimate position in relation to these as far as you were concerned.

Now, I think you were then asked and just to be clear and fair, when you were dealing with Mr.

O'Brien, was that your mutual understanding, that it was all Dermot Desmond?

A. Yeah, I mean, I think from day one, you know, shall we say, Denis was focused on this is a commitment from Dermot. You know, and then basically Dermot said to me, you know, "This is a commitment I have made to Denis; go about implementing it", effectively.

Q. Very good. I think you were then asked for your understanding of the purpose of the letter of the 29th September, 1995, from IIU addressed to Mr. Martin Brennan of the Department of Transport, Energy and Communications, together with the source or sources of such understanding.

And you have informed the Tribunal that the purpose of this letter was to give comfort to the Department that the consortium had access to the necessary equity finance.

I think you were then asked the date on which and circumstances in which Mr. Walsh or IIU were first informed of or otherwise became aware that the Department had refused to consider the contents of the letter of the 29th September, 1995, and the person by

whom you were so informed or the manner in which you became so aware.

And you have informed the Tribunal that you cannot recall whether you or Dermot Desmond first was informed directly by Denis O'Brien in conversation or whether you or Dermot Desmond was informed by way of Denis O'Brien sending you a copy of the letter dated 2nd October. That's the letter from Mr. Brennan.

A. That's correct.

Q. I think you were then asked the date on which and circumstances in which you or IIU first had sight or otherwise became aware of the contents of the letter dated 2nd October, from the Department to Mr. Denis O'Brien, returning to Mr. O'Brien the letter of the 29th September 1995 from IIU.

And you have informed the Tribunal the files which the Tribunal hold may indicate that that letter was sent by Denis O'Brien to IIU by fax or courier on that date. You have no recollection of the date or method of delivery of the letter by Mr. O'Brien. You saw the letter at some stage; would that be

A. I would be pretty sure I did. I mean, to be honest, I had certainly seen it from the Tribunal's files, but

Q. Well, even if you didn't see it, you were told

A. Yeah, I certainly certainly I was aware from you know, sometime shortly thereafter, that effectively

the Department were ignoring, you know, our submission.

Q. I think you were then asked for details of all dealings or contacts of whatsoever nature which you or IJU or any person on your behalf had with the Minister or the Department or any person in relation to the letter of the 29th September, the Department's refusal to consider its contents 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. And you have informed the Tribunal that you cannot recollect any contact with anyone in the Department in relation to the Department's letter of the 2nd October, 1995.

A. That's correct.

Q. I think you were then asked for your knowledge, direct or indirect, of all dealings or contacts of whatsoever nature between Esat Digifone consortium or any entity or person on its behalf and the Minister or the Department in relation to the letter of the 29th September, the refusal of the Department to consider its contents, or the letter of the 2nd October and the source or sources of such knowledge, if any.

And you have informed the Tribunal that you have no recollection or knowledge of any such dealings or contacts.

I think you were then asked for your involvement in or

knowledge of the circumstances in which or terms on which J&E Davy, Advent International, Allied Irish Bank, Investment Bank of Ireland and Standard Life agreed to withdraw from involvement in the consortium.

And you have informed the Tribunal that you were aware that indications of a willingness to look at investing in the mobile project had been received from a number of institutions, but absolutely no commitment had been given. The consortium wanted somebody to give a firm commitment on the availability of equity.

Accordingly, once the agreement of the 29th September 1995 had been executed, no further role necessarily existed for these institutions to provide equity.

I think you were then asked for your knowledge of the contents of a letter dated 22nd November 1995 from Mr. Kyran McLaughlin of J&E Davy to Mr. Denis O'Brien in which Mr. McLaughlin requested Mr. O'Brien to provide information regarding three matters raised by Mr. McLaughlin in his letter.

And you have informed the Tribunal that you may have seen but you cannot recall having seen Mr.

McLaughlin's letter of the 22nd November, 1995, prior to its receipt from the Tribunal. If there is a copy on our files that is, IIU files or if the Tribunal has a copy of the response, if any, to Mr.

McLaughlin, this may help any recollection.

I don't believe it was on your files?

A. No, the reason I suppose I was unsure was that you know, I think at a very early stage we were delighted to be putting one over on Davys by getting involved.

And I think at an early stage I drafted a letter, you know, probably in September, saying their services weren't actually required.

Q. The first set of drafts that came in, one was a draft letter a draft of the 29th September letter, I think

A. I think it was probably slightly earlier than that.

Q. I think it was a draft, I think on the 18th September, 1995, I think, you sent to Owen O'Connell, I think, and that seems to be the way the evidence you sent to Owen O'Connell a draft of what ultimately became the 29th September letter and a draft letter to be sent to J&E Davy at that time.

A. Saying good-bye to them.

CHAIRMAN: I think at some stage, Mr. Walsh, in Mr. Loughrey's evidence, he referred to a discussion or a lunch with you in which you had a slightly jocular discussion in these terms of the new kids on the block had put one over on the ancien regime, or something to that effect.

A. We would probably have taken some pleasure in the matter. Yes.

MR. COUGHLAN: I think you were asked for details of all dealings or discussions to which you were a party

or to which you had any knowledge in relation to the queries raised by Mr. McLaughlin in his letter of the 29th November, 1995, and you have no recollection of any discussion in relation to Mr. McLaughlin's letter.

I think you were then asked for your knowledge of Mr. O'Brien's response to the letter of the 22nd November, 1995, on which he dealt with the matters raised by Mr. McLaughlin and the source of such knowledge.

And you cannot recall having any response having seen a response to Mr. McLaughlin's letter. If you received a copy, it would appear on the files which the Tribunal has.

There was no written response.

A. No, I mean, I was uncertain responding to those because of the earlier letter.

Q. Yes. I think you were asked for details of all dealings or contacts of whatsoever nature between Mr. Walsh or IIU or any entity on their behalf and Telenor and any entity on their behalf prior to the 25th October, 1995, being the date on which the competition result was announced by the Department.

And you have informed the Tribunal that you have no records of any contact with Telenor prior to the 25th October, 1995, other than whatever appears on the files. The Tribunal has supplied a letter of the 12th October 1995 from Knut Digerud to yourself which indicates that Telenor had had no prior contact with

IIIU. You have no recollection of meeting anyone from Telenor prior to October 25th, 1995.

A. That's correct.

Q. I think you are then asked for your understanding of Telenor's knowledge of the agreements concluded between IIU and Esat Digifone and IIU and Communicorp on the 29th September, 1995, together with the source or sources of such understanding, and in particular, details of your knowledge, direct or indirect, of a meeting between Mr. Denis O'Brien and Mr. Arve Johansen in Oslo on the 22nd September, 1995.

And you have informed the Tribunal you understood that you were entering two agreements on the 29th September, 1995. One of these was with Communicorp, and the other was with the Esat Digifone consortium.

Denis O'Brien confirmed both agreements. You understood that Denis O'Brien had agreed the substance of the Esat Digifone agreement with Telenor. You have no recollection of what, if anything, you were told of what took place at a meeting between Mr. O'Brien and Mr. Johansen on the 22nd September, 1995?

A. Sorry, the one point I have really just picked up in recent days, I also did a briefing for Denis really, when I say "a briefing", a brief profile for Denis

Q. The resume of Dermot Desmond?

A. on Dermot, which he presumably, you know, asked for

in advance of that meeting.

Q. I think that may be correct. It was a little one-page CV, if I could describe it as that. Would that be a fair way

A. That's right, describing Dermot's entrepreneurial and business acumen.

Q. I think you were then asked for details of all information provided by IIU regarding the ownership, incorporation and financial standing sorry, the incorporation and financial standing of Bottin International Limited sorry, of the incorporation and financial standing of Bottin International Limited to Telenor in response to a letter dated 12th October, 1995, from Mr. Knut Digerud of Telenor to you of IIU. And you were asked to indicate whether a written response was provided to the letter of the 12th October 1995, and if so, you were asked to furnish a copy.

And you say you have no recollection of what response, if any, you made to Mr. Digerud. If there was a written response, it should be on your files, and if not, it should certainly be on Telenor's files. It doesn't look as if there was a written response.

A. No, I mean, I think, having reviewed or had the opportunity to review, it's pretty clear I didn't respond to it.

Q. I think you are then asked for your understanding of

the following:

1. The composition of the Esat Digifone consortium on the 4th August 1995.
2. The composition of the Esat Digifone consortium on the 25th October 1995.
3. The capital configuration and beneficial ownership of the shares of Esat Digifone Limited as of the 12th April, 1996.
4. The capital configuration of the issued capital and the beneficial ownership of the shares of Esat Digifone as of the 16th May, 1996.

And I think in each instance you were asked to identify the source of your understanding.

And you informed the Tribunal that in respect of 1, that you have no recollection of having any knowledge of the Esat Digifone consortium on the 4th August, 1995. Subsequently, you understand that at that date, the consortium was intended to be owned as to 40% by Telenor, 40% by Communicorp and 20% by institutions.

In response to 2, you have informed the Tribunal that you understood that as and from the date of execution of the agreement, namely September 29th, 1995, the composition of the consortium was Telenor 37.5; Esat Telecom or Communicorp, or whatever the entity 37.5; and IIU Nominees 25%.

A. That's correct. I suppose sorry, I should just clarify, really, that you know, my response, when

you actually review the thing, really, against some of the evidence that's been, shall we say, dealt with here, clearly is inaccurate in the sense that you know, it's clear that you know, the joint venture, whatever it was described as, was a 50:50 situation until the 12th April '96. So that when I actually respond in relation to 2 to say it was 37.5:37.5:25, that, you know, certainly was the intent following the signing of the various letters. But it was actually 50:50 at that stage, and it was really only on the 12th April '96 that it became 37.5:37.5:25.

Q. The question, really, I I understand the point you make about the joint venture, but what I asked you about was the consortium here. And as of the 29th September, 1995, aren't I correct in saying that your understanding was that the composition was Telenor 37.5, Esat Digifone 37.5, and you I mean, Dermot Desmond/IIU, whatever entity you are talking about, 25% ?

A. Well, you're the lawyer.

Q. Wasn't that your understanding of the matters as of that time? That's how it stood?

A. In commercial terms I would have said we now have a right to, but I would say, you know, it was only when I reread this, and I answered on the basis of what I said we had the rights to; but when I reread this, I think people were focused on the 12th April. I said

they are right, the shares weren't actually issued

until the

Q. I understand that.

Then in relation to the third query, you say that that is the position as of the 12th April, 1996, that you say that you understand that as and from the execution of the agreement of September 29th, 1995 and I take it the commercial composition was as you say, 37.5:37.5:25, and that Mr. Desmond was the ultimate beneficial owner of 25% shares as held by IIU Nominees Limited; isn't that right?

A. That's correct.

Q. And then you say that as of the 16th May, the shares were owned as to Telenor 40%; Esat Telecom 40% and IIU Nominees 20%. Mr. Desmond was the ultimate beneficial owner of the shares held by IIU Nominees Limited?

A. That's correct.

Q. I think you are then asked for your understanding of the Department's knowledge of the composition of the consortium as of the 4th August, 1995, the composition of the Esat Digifone consortium as of the 25th October, 1995 that was the day of the announcement of the result of the competition the capital configuration and beneficial ownership of the shares of Esat Digifone as of the 12th April, 1996, and the capital configuration of the shares issued and beneficial ownership of the shares of Esat Digifone as

of the 16th May 1996.

And you say that in respect of the 4th August, 1995, that you have no direct knowledge of the Department's understanding of the composition of the consortium as of August 4th, 1995. You would assume that the Department believed that the composition of the consortium was as set out in the consortium application.

I think as then you say that by the letter by letter dated 29th September, 1995, you wrote to the Department confirming that IIU had arranged underwriting on behalf of the consortium for all of the equity not intended to be subscribed for by Telenor. You have no knowledge of what, if any, account the Department had taken of your letter as of the 25th October, 1995, other than the fact that it had not been considered as part of the evaluation process.

A. That's correct.

Q. You say as of the 12th April 1995, the shareholding was held as to Telenor 37.5; Esat Telecom 37.5; IIU Nominees Limited 25%. The ultimate beneficial owner of the IIU Nominees shares was Dermot Desmond. You have no knowledge of what, if any, account the Department had taken of your letter of the 12th April, 1996, other than the fact that sorry, that should be the 29th September, I think sorry, I beg your

pardon, of the 12th April sorry, your letter of the 12th April, other than the fact that it was part of the evaluation process.

A. I mean, I think it's probably worth saying I had absolutely no contact at all with the Department until kind of very late in the day, in the sense that all contact with the Department was really through, I think, Owen O'Connell primarily. So you know, I mean, my ability to comment on the state of knowledge of the Department is extremely limited.

Q. Right.

I think you were then asked sorry, in relation to the 16th May, 1996 sorry, the ownership of the shares was Telenor 40, Esat Telecom 40 and IIU Nominees 20. The ultimate beneficial owner of the IIU Nominees shares was Dermot Desmond. The Department must have been aware of this because, as referred to later, the Department insisted on this percentage share ownership.

A. That's correct.

Q. You were then 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 the information furnished to the Department by or on behalf of Esat Digifone regarding such issues and queries, including a letter dated 17th April, 1996, from Mr. Owen O'Connell

addressed to Ms. Regina Finn of the Department.

And you have informed the Tribunal that to the best of your recollection, on two occasions following media publicity stating that the IIU Nominees shares were held for parties other than Dermot Desmond, you were contacted by phone by the Secretary of the Department, and each occasion you confirmed to him that Dermot Desmond was the beneficial owner.

You do not recall any detailed discussion in relation to the letter from William Fry dated 17th April, 1996.

However, this letter confirms an intent that on the date of issue of the licence, IIU would hold 25% of the shares of the consortium.

A. That's correct.

Q. Could I just and we can come back to this, because we have a number of newspaper articles on this sort of thing. You remember being contacted on two occasions following some form of media publicity, is that correct, by Mr. Loughrey?

A. That's correct.

Q. And this was in the period, obviously, subsequent to Mr. O'Connell's letter of the 17th April going in?

A. I mean, the quick answer to that is, I can't be clear at all. I mean, I know that he phoned me on two occasions; you know, they were following sort of media speculation as to who was the actual owner of the shares. My recollection is that one of those was kind

of post Cheltenham, you know, so that would have

been

Q. March/April?

A. Yes, probably kind of late March, early April. But

you know, I think the second time was actually much

later than that, in the sense that I think there was

further suggestions, maybe kind of five or six months

later; when I say "five or six months later", I think

probably you know, the following October/November.

Q. I see. This was after the licence after the

signing off on the licence?

A. Yeah, I think it was sort of five or six months later,

because I think there was again speculation, and there

was also at the time a fair bit of friction, and I

sort of have a recollection, you know, Loughrey asking

both about the friction and you know, the comments

about the shareholders.

Q. That's helpful. We can come back and look at some of

the media activity around the time.

I think you were then asked for details of dealings

and discussions which IIU had with Mr. Denis O'Brien,

any servant or agent of Communicorp, Mr. Arve

Johansen, Mr. Knut Digerud or any servant or agent of

Telenor or any adviser of Communicorp or Telenor in

relation to the issue of queries raised by the

Department in relation to the capital configuration of

Esat Digifone and the beneficial ownership of the

issued shares.

And you have informed the Tribunal that you had no detailed recollection of the discussions in relation to the capital configuration. From an early stage, Denis O'Brien wished to have a majority ownership, and this was not agreed to. Equally, the Department wanted the proportionate ownership of the consortium to be split to 40:40:20 rather than 37.5:37.5:25.

Consideration was given by the consortia members to deriving a structure whereby the shareholding would be split 40:40:20 but the economic benefit split 37.5:37.5:25 sorry

A. You're right.

Q. But ultimately it was agreed that IIU would sell 2.5 to each of Telenor and Esat.

So the position was that, am I correct, you had 25%; the Department wanted it back to 40:40:20?

A. That's correct.

Q. And you looked at ways to do this, and the way to do it was that you would sell 2.5% to the other two shareholders?

A. That's what was ultimately agreed, yeah.

Q. Now, I think you were asked for details of all dealings, discussions or contacts between you or any other person on behalf of IIU with the Department or any official of the Department in relation to the issues and queries raised by the Department regarding

the capital configuration of Esat Digifone and the beneficial ownership of the issued shares, and in particular, the beneficial ownership of the shares issued or to be issued to IIU Limited.

And you have informed the Tribunal that you have no detailed recollection of or notes of any meeting with the Department. As indicated above, you were contacted by Mr. John Loughrey at an early stage in relation to the ownership of the IIU shareholding.

You had at least one meeting with the Department, attended by Mr. Loughrey, of which the main focus was the Department being satisfied that IIU had sufficient resources to meet any necessary obligations under the licence. You expect that the Department has detailed minutes of all meetings which you attended.

That's a meeting just prior to signing off on the licence, I think, the 14th or 15th May, sometime around then?

A. I think it's about the 15th May. It was really just kind of the completion of their due diligence, and I think at the time, and sorry, I suppose again I have used "IIU" where it's really "Dermot", but you know, basically I think I had provided, through Farrell Grant Sparks, you know, kind of a statement confirming that Dermot had the ability to you know commit the 40 million if necessary.

You know, I suppose in essence, John Loughrey and

whoever else was actually with him, you know, were of the view that it was one thing to have assets, another thing to have cash. And John was totally focused on ensuring there was sufficient cash around to make sure that the investment went properly. And it was really as a result of you know, his insistence on kind of proof of liquidity that you know, I organised the letter from Anglo Irish Bank confirming that the funding would be available.

Q. I think you were then asked for precise details of a meeting which took place at the Department on the 3rd May 1996, attended by, according to Mr. O'Connell's attendance, anyway, Mr. Walsh that's you Mr. Digerud, Mr. Johansen, Mr. Peter O'Donoghue, Mr. Paul Connolly and Mr. Owen O'Connell. And you were asked in particular:

1. The purpose for which the meeting was held.
2. The matters discussed.
3. The queries or issues raised by the Department.
4. The requirements of the Department.
5. The request made by the Department to Telenor to underwrite the entire of the equity and operational expenses of Esat Digifone and your understanding of the reasons for such a request.

And you have informed the Tribunal that if the Department's minutes record you as having attended a meeting on May 3rd, 1996, you do not dispute this.

You do not recollect the Department making a request to Telenor to underwrite the equity sorry, you do not recollect the Department making a request to Telenor to underwrite the equity and operating expenses of Esat Digifone. If the Tribunal can supply a copy of a minute of the meeting, it may help to refresh your memory. During the period of late April to mid-May, you attended a number of meetings in the Department, but without notes, you cannot be certain as to the dates of the attendance or contents of such meetings.

Now, there's a supplementary response to that, and I'm just going to slot it in here now.

A. Yeah.

Q. And the supplementary response is that you note that Mr. O'Connell's attendance note supplied to you by the Tribunal records you as being present at a meeting in the Department on May 3rd 1995. You do not recall the meeting, but you have no reason to disagree with Mr. O'Connell's attendance note.

So, I take it you are accepting, if Mr. O'Connell has you as attending, you accept you attended?

A. Absolutely. The reality is there were so many meetings going on that the whole thing becomes a bit of a sea as to what happened exactly.

Q. Apart from and I know, and it's recorded on the Deputy's side, that you did have the meeting with Mr.

Loughrey. I think Mr. Buggy, Mr. Donal Buggy was a young accountant working there at the time he is not in that capacity now dealing with what you describe as the due-diligence side of matters.

A. And again, to be honest, I couldn't be precise. I mean, you know, you tend to identify kind of the main person who was actually there

Q. You remember meeting John Loughrey?

A. I remember meeting John Loughrey. I remember there was a person or persons with him, but who they were, I couldn't

Q. All right. But you say and you have no recollection of attending this meeting, although Mr. O'Connell has you in attendance, and you say that there were many other meetings, so you can't be you can't have a clear recollection. You say many other meetings which you attended at the Department in that period, say, from early May up to the 16th May?

A. Certainly from early May to the 16th May. I mean, there would have been a certain amount of coming and going, to put it mildly, to try and get things finalised.

Q. All right. I think you were then asked the date on which and circumstances you or IIU became aware that the Department had requested that the configuration of the issued share capital of Esat Digifone should be restored to the 40:40:20 configuration. And you say

that you cannot recall when or how you first became aware of the Department's desire to have the shareholding split as to 40:40:20. You would guess that the source of this information was either Mr. O'Connell or Denis O'Brien, as Mr. O'Connell was the primary point of contact with the Department.

A. That's correct.

Q. I think you were then asked for your knowledge, direct or indirect, of any other contact between any person associated or connected directly or indirectly with Esat Digifone Limited and the Department or the Minister regarding the Department's request that the issued share capital of Esat Digifone should be restored to 40:40:20. And you say that you have no detailed recollection of who had contact with the Department in relation to the ownership of Esat Digifone. As indicated, Mr. O'Connell was the primary point of contact with the Department.

A. That's correct.

Q. I think you were then asked for details of all dealings, discussions and negotiations between IIU, Communicorp and Telenor, regarding the request made by the Department and the capital that 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 to Communicorp and Telenor.

2. All negotiations regarding the valuation of the 5% shareholding at 2.75 million.

3. The manner in which the valuation of 5% was fixed at 2.75 million.

And you have informed the Tribunal that you have no detailed recollection of particular discussions or the basis for the arrival of the valuation. There may be some valuation material on the files. I believe that agreement was reached at a meeting held between the consortium parties in your office at the request of the Department.

A. I think again, Mr. Coughlan, just having had the opportunity to, you know, kind of go through the files, you know, it appears from the files that you have that the agreement was actually reached, you know, on the 12th May in terms of those 2.5 percents.

And I would have said that the meeting in our offices was kind of a number of days earlier than that. So I suppose I had thought that we had actually reached agreement that day, but it's clear from the various files that we didn't reach agreement at all at that point in time.

Q. You might have commenced discussion about it?

A. We might have commenced the catharsis, I suppose, is the best way to put it.

Q. I know that's the series of meetings.

You were then asked for your knowledge of a meeting which took place at the Department on the 13th May, 1996, attended by Mr. Digerud, Mr. Owen O'Connell, Mr. Martin Brennan, Mr. Fintan Towey. And you say that you have no recollection of any meeting with the Department on the 13th May, 1996. However, there were many meetings around that date, and if the Tribunal can supply information it seems that I think you were not according to Mr. O'Connell; Mr. O'Connell has a typed minute of this particular meeting that you were not at this particular meeting. But I will bring to your attention something in Mr. O'Connell's notes, because he attributes something to you at that meeting. And in due course, I'll refer you to it and ask you for your views on it.

A. That's fine.

Q. Now, I think you can see there that you were supplied with that note of Mr. O'Connell's on the 13th May, and you are responding to it to some extent here. And you say that based on the attendance note provided by the Tribunal, it appears that the purpose of the meeting was, inter alia, to further the due diligence on the consortium by the Department to review the status of the licence, to devise a plan of action for the formal signing of the licence, including meeting disappointed consortia and preparing for a press conference in

tandem with the signing.

You say that from the attendance note, matters discussed appear to have been referred to above. You say that based on the material supplied by the Tribunal above, Mr. O'Connell and Eileen Gleeson spent some time preparing possible material for a proposed press conference, and from the attendance note, it would appear that the Department wanted to be confident that the press conference went well.

You say that based on the material supplied by the Tribunal, both Mr. O'Connell and Eileen Gleeson that's just the matter typed out again.

I think in due course, you say that you were not involved or you have no recollection of being involved in the preparation for the press conference or any rehearsals in relation to that?

A. I think; I have actually said I have absolutely no recollection of it, but I'd be surprised if somebody didn't talk to me, particularly Eileen, in relation to anything to do with IIU.

Q. I think Eileen Gleeson has informed us that in relation to these matters, she may have touched base back with you, because I think her firm were retained by you also; isn't that correct?

A. Her firm were acting for Dermot as well, so, yeah.

Q. I think we can perhaps skip over 29, so, in those circumstances.

Then you were asked for details of your involvement in or knowledge of all meetings, discussions or contacts of whatsoever nature between Esat Digifone or any person on its behalf and the Minister or the Department in connection with the key questions identified, the draft answers prepared, and the reasons for such answers. Those were the draft questions prepared by Ms. Gleeson, the draft answers prepared in the first instance by Mr. O'Connell and then subsequently the discussion.

You say that you have no recollection of the content of any draft material prepared for a press conference.

You note that the material in relation to the press conference was provided by the Tribunal and prepared by Owen O'Connell and Eileen Gleeson. You have no recollection of this material, but you presume someone would have talked to you in relation to any comments pertaining to IIU.

A. That's correct.

Q. You were then asked for your involvement in or knowledge of all discussions, meetings or contacts of whatsoever nature between Mr. Digerud or any person on behalf or associated with Esat Digifone and the Minister or the Department, on foot of the Department's request made at a meeting on the 13th May, that a meeting be arranged to discuss/rehearse the press conference.

And you say that you cannot recall any particular meeting which was held to rehearse the press conference. There was at least one meeting attended by the Minister in advance of the formal signing on May 1996, but you cannot recall its content.

A. That's correct.

Q. You were then asked for details of all matters which prompted the renegotiation of the underwriting agreement between the members of the consortium and in particular,

1. The release of IIU from its obligations on foot of the agreement of the 29th September 1995 to underwrite the entire of Communicorp/Esat Telecom's equity participation in Esat Digifone.

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

3. Details of the precise terms on which IIU provided funding to Esat Telecom to finance its obligations to contribute to the licence fee of £15 million paid by Esat Digifone to the Department on the issue of the GSM licence to Esat Digifone on the 16th May, 1996.

4. Precise details of the funding arrangements between IIU, Esat Telecom and Telenor regarding all aspects of the funding of Esat Digifone Limited.

And you say that the detail of the revised

underwriting agreement was incorporated within the bible of documents which the Tribunal has. Your recollection is that Telenor wished to ensure that they did not end up as a minority shareholder, which would have been the case under the initial agreement. Accordingly, it was agreed that the underwriting would be done by both Telenor and IIU in proportion to shareholding. You cannot recall the precise terms, but again, these will be set out in the bible which is held by the Tribunal.

A. I suppose, just to comment there, I mean, re-reading the arrangement agreement, which I never read in any great care in the original days, I am not sure whether Telenor could have actually ended up in a minority position or whether

Q. That's my own view, having read it very closely last night. We can look at it, and you are not being held to this at the moment, Mr. Walsh. I am just I think just in relation to that, I think under the original arrangement agreement, it could have ended up in the position, if Mr. O'Brien hadn't been able to take or keep up his end, that you might have ended up with, I think, about 37.5%

A. Plus the

Q. with Telenor's balance?

A. I think we could have ended up well

Q. Roughly?

A. Roughly on that sort of basis, but when I drafted that, I wasn't sure whether we actually could have ended up as 37.5 plus the 25, which clearly would have been a nonsense from Telenor's point of view.

Q. Yes. I think you were then asked for your understanding of the purpose for which the Department required you were then asked for your understanding of the purpose for which the Department required and it's then listed, and I don't want to read them all out again. These are the documents various certificates from auditors, and matters of that nature.

A. That's correct.

Q. And you say that your recollection is that the Department wanted comfort as to the ownership and financial strength of each member of the consortium, and each letter was provided in that context. These documents have been opened already. I will be having a quick look at them in due course with you.

I think you were then asked for your details of the underwriting arranged by IIU of Communicorp/Esat Telecom's obligation to participate in the equity of Esat Digifone on foot of the agreement of the 29th September, 1995, and as referred to in a letter dated 9th May, 1995, from KPMG addressed to the Department.

And you say that the underwriting agreement arranged by IIU is as set out in the letter of the 29th

September 1995, of which the Tribunal has a copy.

I should just clarify there: I just had a good look at the KPMG letter, and it's a matter we took up with them. It looks as if the certificate provided by KPMG in respect of the underwriting here arose in the context of receiving information from Mr. Paul Connolly, which included the letter of the 29th September, 1995. Would that be your general understanding of what may have happened?

A. I mean, it would be a very vague understanding at this stage, obviously. But it's referred to I would assume that what they would have received is the kind of various letters plus the actual arrangement agreement of the 29th.

Q. I don't think so. From what sorry, from the response we have received from them, but they certainly received the letter of the 29th September 1995 from Mr. Paul Connolly. Would that seem reasonable

A. Sorry, it would seem reasonable, but to be honest, I just couldn't be certain as to what KPMG did or did not receive at the time.

Q. I think you were then asked for your knowledge of all meetings, discussions, dealings or contacts of whatsoever nature between Denis O'Brien or any person on his behalf and the Minister or the Department at any time from the first approach made to Mr. Desmond

or IIU to join the Esat Digifone consortium to the date of issue of the licence on the 16th May 1996.

And you say you have no specific knowledge of what contacts or meetings Mr. O'Brien had with the Minister or the Department. Your recollection is that the primary point of contact with the Department was Mr. O'Connell of William Fry's?

A. That's correct.

Q. And then I think you were asked for details of all meetings or discussions between Mr. Desmond/IIU or any person acting directly or indirectly on their behalf and any of the following:

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

And you say that you had many contacts over the years with public officials. You have no detailed recollection of any particular discussions which are of relevance to the GSM licence other than those referred to above. Mr. Lowry attended one or two meetings immediately prior to the signing of the

licence at which you were present. You have no recollection of ever having met with Mr. Michael Andersen or any of his team.

A. That's correct. I suppose, just to clarify, you know, when I talk about public officials, I wasn't just referring to your subclause 8 there, referring I was referring, you know, to the full list of people.

Q. That is correct. That's correct, and we have had that full list in the past.

Now, there is a memorandum of yours dated the which was furnished on the 9th July 2002 that's at Book 36, 16, and I think you were asked for your knowledge of Mr. Desmond or IIU's interest, if any, in the second GSM licence prior to the involvement of Mr. Walsh and IIU with Esat Digifone, including details of the following:

1. Steps taken or inquiries made by Mr. Walsh or by IIU in connection with the licence competition.
2. Steps taken or inquiries made by you or IIU to investigate the potential market for mobile telephony in the Republic of Ireland.

You say you have no recollection of any steps or inquiries, and you do not believe that any steps or inquiries were made on either 1 or 2. In other words, you hadn't shown an interest or taken any steps to make inquiries about it when the competition commenced; isn't that correct?

A. We did absolutely nothing at all in relation to it.

Q. You were then asked for:

1. Your understanding as to the purpose for which oral presentations by applicants were conducted by the Department.
2. Your knowledge of all queries by the Department in the course of presentation by Esat Digifone on the 12th September 1995 regarding the financing of Esat Digifone, including any queries specifically addressed to Communicorp's funding of its equity participation in Esat Digifone, and in particular, any queries regarding the letter of comfort provided by Advent for the terms governing the offer of funds by Advent.
3. Your knowledge of all queries by the Department in the course of the presentation by Esat Digifone on the 12th September 1995 regarding institutional investors in the Esat Digifone bid.
4. Your knowledge of all or of the overall impression made by the Esat Digifone consortium in the course of the presentation, and in particular, any matter which you understood to be problematic or areas of perceived weakness.

And you were asked to indicate, where appropriate, the source or sources of your knowledge or understanding.

You say you have no particular knowledge as to the purpose of the presentation. However, you can presume that it was to enable the assessment panel to clarify

any issues arising from the proposals. You have no recollection of being aware of the letter of comfort from Advent or any issue raised in relation to it.

You understood from Mr. O'Brien that at the oral presentation, queries were raised on the certainty of the availability of equity finance for the consortium, and that is the only knowledge that you have; isn't that correct?

A. That's correct.

Q. I think you were then asked for your knowledge of a meeting between Mr. O'Brien and Mr. Arve Johansen in Oslo on the 22nd September, 1995.

And you were asked, in particular, your knowledge of the purpose for which the meeting was arranged; secondly, your knowledge of the information provided by Mr. O'Brien to Mr. Johansen regarding the Department's assessment of the Esat Digifone application, and your understanding of the source or sources of Mr. O'Brien's information.

You were asked, thirdly, your knowledge of the information provided by Mr. O'Brien to Mr. Johansen regarding the potential involvement of Mr. Walsh, Mr. Desmond that should be "/IIU" the purpose and status of Mr. Desmond/IIU's involvement and the association of IIU with Mr. Desmond.

And you were asked for your knowledge, direct or indirect, as to whether Mr. O'Brien disclosed to Mr.

Johansen that IIU had agreed to underwrite Communicorp's obligation to contribute to the capital of Esat Digifone.

And then you were asked to indicate the source of knowledge or understanding.

And you have informed the Tribunal that you have no recollection of what, if anything, you were told of either the purpose of or what took place at a meeting between Mr. O'Brien and Mr. Johansen on the 22nd September, 1995. You have no knowledge of what was discussed between Mr. Johansen and Mr. O'Brien. You have no knowledge of what information was provided by Mr. O'Brien. And you have no knowledge of what Mr. O'Brien said to Mr. Johansen.

A. That's correct. I mean, subject to, obviously, the caveat we talked about earlier.

Q. Yes, that you prepared the CV. When you prepared that, can you remember why you were asked to prepare it? I take it was it Mr. O'Brien asked for it,

or

A. I am not sure was it Mr. O'Brien or Dermot or whatever. But I mean, it was clear that it was you know, for Denis, and presumably to actually tell Telenor about the people he was getting involved with.

Q. Right.

A. I mean, it would be a fairly standard CV that we would produce in multiple forms.

Q. Now, I think you were then asked for your knowledge of all further contacts between Mr. O'Brien, Mr. John Callaghan or any person whatsoever with Mr. Johansen or any Telenor official subsequent to the meeting in Oslo on the 22nd September, 1995, and prior to Mr. Johansen's letter to Mr. O'Brien dated 2nd October, 1995, together with the source or sources of your knowledge.

And you have no knowledge of these matters?

A. That's correct.

Q. I think again you were asked about any information or knowledge you might have about the source of Telenor's understanding that the Minister intended to announce the winner of the competition two or three weeks prior to the understood date. And you have no knowledge of this matter at all?

A. No. I have absolutely no knowledge. It seems to contradict, though I mean, I can't remember where on the files, there is a letter from, I think Knut Digerud, in relation to kind of moving on and getting the shareholders agreement completed before the announcement from the Ministry. And, you know, he talks in that letter, I think, of you know, meeting either kind of the following week or the first week in November. So, you know, what I can't tell what the reference actually is, that would seem to suggest that Telenor weren't clear as to exactly when it was going

to be done. But as a matter of fact, I have no actual knowledge of the matter.

Q. You were then asked the date on which and circumstances in which you first became aware that Esat Digifone had won the licence competition. And you say that to the best of your recollection, you had a call from Mr. O'Brien or someone on his behalf inviting you to an impromptu celebratory drink in Scruffy Murphys. You have no recollection of the date?

A. That's correct.

Q. You were then asked for your knowledge of the following:

1. An agreement dated 12th July 1995 between Advent International Corporation and Esat Digifone Corporation and Mr. Denis O'Brien for the provision of letters of comfort.

2. Advent's right on foot of the agreement 12th July 1995 to 5% of the equity in Esat Digifone.

3. The manner in which the issue between Esat Digifone, Communicorp, Mr. O'Brien and Advent were resolved.

And you have no recollection of having any knowledge of the details of the relationship between Mr. O'Brien and Advent. Is that correct?

A. I suppose I'd clarify that to one extent: You know, effectively there was a horse-trading going on as to

whether or not we were going to get 30% of the company which Dermot was looking for or the 15 percent that Denis was offering. I have a vague recollection that at some stage Denis was basically saying, "You can't have 25. We'll give you 20, because Advent are"

Q. Are in for 5.

A. But I don't think we ever saw, you know, any of the agreements with Advent or were involved in any sense.

Q. I think you were then asked the date on which and circumstances in which and manner in which you were informed or otherwise became aware that

Communicorp/Esat Telecom did not intend to fund its equity participation in 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 you and IIU and the sources of such information.

You say that you always understood from Mr. O'Brien that he intended to raise finances from the US market.

You have no recollection of Mr. O'Brien ever discussing this relationship with Advent with you; is that correct?

A. That's correct. I should probably clarify that a little bit further. You know, at the very beginning Denis was trying to organise additional funding in relation to the fixed-line business, and as you know,

I was resisting that all the time. Now, you know, in all of those conversations, Denis was talking about, you know, raising the money from, you know, CSFB, or through CSFB, and you know, really he was suggesting and I think Peter O'Donoghue was suggesting how much money we needed to provide to bridge them until the CSFB facility was actually organised. As you know, we did nothing about that, but the conversation I have in my mind is all about really bridging CSFB as opposed to anything else.

Q. I think and there is consistency in that, because they had been in contact with CSFB prior to the involvement with IIU. But whatever was going on, it was your understanding they were telling you they were going to seek funding through CSFB, and they weren't discussing Advent with you, and as far as you were concerned, you had no interest or knowledge of Advent in relation to funding?

A. That's correct.

Q. Other than there was you were being told they are in for 5% somewhere; that was part of the negotiation?

A. Subject to the previous comment, yeah, absolutely.

Q. I think you were then asked for your knowledge of the date on which and manner in which the Minister or the Department was informed by Mr. O'Brien, Communicorp/East Telecom, Esat Digifone or any person on their behalf that they didn't that

Communicorp/Esat Telecom did not intend to fund its equity participation in Esat Digifone by drawing on Advent Funds.

And you have informed the Tribunal that you have no knowledge of any discussion between the Department and Denis O'Brien in relation to Advent. The due diligence letter from KPMG to the Department in May 1996 refers to CSFB as the source of the funding?

A. That's correct.

Q. I think you were then asked to identify the following:

1. All documents furnished to the Department in connection with the rights and obligations of the shareholders of Esat Digifone inter se in advance of the issue of the licence to Esat Digifone on the 16th May, 1996.

2. All documents furnished to the Department in connection with the project financing of Esat Digifone in advance of the issue of the licence 16th May, 1996.

You say that the primary interface with the Department was Owen O'Connell of William Fry's, and Mr. O'Connell should be in a position to provide this information.

Then you were asked to identify the following:

1. All side letters entered into between the members of the consortia or any two or more of them in September or October 1995.

2. All side letters entered into between the members of the consortia or any two or more of them in advance

of the issue of the licence on the 16th May, 1996.

3. All side letters entered into between Esat Digifone Limited or any shareholder of Esat Digifone Limited with a financial institution which provided project financing to the company.

And your response is that the only letter you were aware of were the two letters executed by yourself and Denis O'Brien dated September 29th, 1995. All of the agreements and side letters are incorporated with the bible of documents which the Tribunal has. Any side letters executed by IIU should be in the files that the Tribunal has. And you would expect that there is a full bible of project finance documents held by the Tribunal which would incorporate any side letters.

A. Correct.

Q. And then there is this final memorandum of yours, which is in Book 40, Tab 13. And it's a memorandum which is dated the 19th November, 2002, I think; isn't that correct?

A. That's correct.

Q. I think the first query addressed to you was:

1. Details of a meeting between Mr. Dermot Desmond and Mr. O'Brien at 6 p.m. on the 17th September, 1995.

And you say that you have no knowledge of any such meeting; is that correct?

A. That's correct.

Q. You were then asked for your knowledge of Mr.

O'Brien's arrangement to meet with Mr. Michael Lowry on the evening of the 17th September, 1995.

And you say that you have no knowledge of any such arrangement?

A. That's correct.

Q. You were then asked for details of all matters relating to Mr. O'Brien or any other person to Mr. Walsh, whether directly or indirectly, regarding his meeting with Mr. Lowry on the evening of the 17th September 1995, including the date and place that such matters were related to Mr. Walsh, and the identities of all persons present.

And your response is that you never heard about the meeting until the Tribunal raised the issue with you?

A. That's correct.

Q. You were then asked for details of the matters discussed of your knowledge of the matters discussed with Mr. O'Brien and Mr. Lowry at the meeting on the 17th September, 1995. And you say that you have no direct or indirect knowledge of any matters discussed at any such meeting.

A. That's correct.

Q. You were then asked for details of all dealings, contacts or communications of whatsoever nature between Mr. O'Brien and you, whether directly or indirectly through any agent subsequent to his meeting with Mr. Lowry on the evening of the 17th September,

1995, at any time on the 17th September 1995 or the 18th September 1995.

And you said that you have no recollection of any dealings, contacts or communications with Mr. O'Brien on either the 17th or the 18th September, 1995. Is that correct?

A. That's correct.

Q. You were then asked for details of all dealings, contacts or communications of whatsoever nature between Mr. Michael Lowry and you, either directly or indirectly, regarding the involvement or potential involvement of Mr. Desmond or IIU in the Esat Digifone consortium. And you have informed the Tribunal that you have no knowledge of any such contact, direct or indirect, with Mr. Lowry other than in relation to a meeting in May 1996 which has already been disclosed to the Tribunal.

A. That's correct.

Q. You were finally asked for details of all dealings, contacts or communications of whatsoever nature between any official of the Department and you, either directly or indirectly, regarding the involvement or potential involvement of Mr. Desmond or IIU in the Esat Digifone consortium.

And you have informed the Tribunal that you have no knowledge of any such contact with the Department prior to submitting the formal letter on the 29th

September, 1995, which the Tribunal has a copy of.

All subsequent contacts with the Department have already been disclosed to the Tribunal.

A. That's correct.

Sorry, just to go back to the answer to Number 5. I mean, amongst other things, you ask dealings or contacts, communications between myself and Denis, directly or indirectly, on either the 17th or the 18th. I have no recollection, but I mean, it is possible that I could have met him, you know, on either of those days, but I mean, I have absolutely no recollection or no notes, minutes or otherwise.

Q. Right. All right.

A. So if you were to say he met me on the 17th or the 18th, I wouldn't have a reason to disagree with you; but I have no recollection, to be honest with you.

Q. Now, am I correct in understanding the situation that prior to any involvement in the GSM process, there was some initial contact between Mr. O'Brien and yourselves where he was seeking funding or support of some nature for his fixed-line business, and that amounted to nothing?

A. You are absolutely correct in that. I mean, my recollection is there was one meeting held in his office in or part of his offices in Upper Mount Street, you know, at a time we were still in Ferry House. But you know, there was, as far as I can

recollect, just the one meeting. I couldn't tell even who was at that meeting. And there was absolutely no follow-up afterwards.

Q. And that is independent of the attempt by Mr. O'Brien to get Mr. Desmond/IIU to support his fixed-line business after he discussed the GSM project with Mr. Desmond on the 10th August?

A. I mean, it's completely independent. I mean, there would have been quite a lengthy interval, to put it mildly. We are talking about a year or two years; I am not sure which.

Q. Now, in August of 1995, first of all, you, Mr. Desmond/IIU/Bottin, whatever we want to call it at the moment

A. Let's call it the generic Dermot.

Q. The generic Dermot had, as far as you were aware, paid no attention, had carried out no studies and had shown no interest in applying for being involved in the consortium applying for the second GSM licence?

A. I mean, that's absolutely correct. I mean, we were focused on doing other things, to be honest.

Q. And you may or may not have been aware that the bid documentation went in on the 4th August of 1995. You wouldn't have perhaps been aware at the time, because you had no interest?

A. I certainly wouldn't have been focused on it, because we weren't interested in the thing.

Q. You may have seen it in the newspaper?

A. We may well have, but

Q. And as far as you were aware, the first time any discussion arose about the GSM project was when Mr. O'Brien and Mr. Desmond had a conversation at the time of attending a Glasgow Celtic football match on the 10th August of 1995; isn't that correct?

A. That's correct. I mean, I couldn't precisely tell you when after that it first became a problem for me to deal with.

Q. But it was around that time?

A. It was certainly, I think, probably the first contact was in relation to the memo that Denis sent in on whatever the 11th

Q. Can I take it that as you have informed the Tribunal in your memorandum that it was your understanding that and Mr. Desmond can tell us about the actual conversation; you weren't present there

A. Sure.

Q. It's your understanding that whatever the conversation was, Mr. Desmond offered to become involved on the same terms as Telenor were involved in the consortium? Is that

A. I mean, that's my understanding. I mean, Dermot would be a fairly pragmatic individual, and I think Dermot's analysis would be very simple; you know, if this was a good deal for somebody like Telenor, who are kind of

very professional, and we could get in on the same terms as Telenor, you know, why wouldn't you want to do it? You know.

Q. Sorry, and so, that the and the terms were essentially equal partnership would be a way to describe it?

A. The only thing that surprises me is that Dermot didn't look for 33 and-a-third percent as opposed to 30. But apart from that, you know, it was absolutely going in on identical terms to Telenor, and indeed in identical terms to you know, Communicorp/East Telecom, whatever that entity was.

Q. Virtually equal. Equal partnership is what

A. Equal partners. I mean, effectively it was completely equal, as long as we ensured there was no, shall we say, funny things actually happening in terms of people getting paid separately for you know, shall I say, kind of services or otherwise.

Q. Oh, yes, yes.

A. You know, which is where we would have been very focused on a shareholders agreement that protected against conflicts of interest.

Q. And can I just ask you, and I understand you use the generic Dermot Desmond, but you were operating, at that stage, where, Mr. Walsh?

A. In IFSC House.

Q. And what were you operating as, could I ask you

what name?

A. I mean, the formal entity was International Investment and Underwriting Limited.

Q. When did that company come into being?

A. I mean, I couldn't give you a precise date, but I mean, within a relatively shorter period of time, because I mean, the evolution of things is what kind of December of '94, we had actually sold NCB to kind of Ulster Bank at the time, and really, kind of the essential life, for all practical purposes, was kind of the move from NCB to kind of the setting up of IIU. And my recollection is that we actually only moved down to IFSC House probably sometime actually in August of '95.

Q. Was that when IIU commenced its or, sorry, IIU had an identity, if I might describe it as that?

A. Probably is in the sense that I am not sure; we did I mean, we had done a few things, obviously. We had completed the acquisition of the shares in Glasgow Celtic, I think probably in March or thereabouts of '95. We had invested in a company called Pembroke Capital, which is an aircraft leasing business, in I think May of '95. And you know, whether you know that was really as kind of IIU or Dermot or you know, I mean, it clearly wasn't NCB, because we were no longer part of NCB, but effectively we had become active as soon as we had actually parted

company with NCB. It wasn't a matter of going into cold storage for a period of time.

Q. But you can remember that you purchased the shares in Glasgow Celtic? Would that be right?

A. That's correct, yeah.

Q. And you perhaps invested in another company in that period?

A. I mean, we did, yeah.

Q. Now, you weren't a deposit-taking institution at that stage, were you?

A. No. We weren't then; we still aren't.

Q. It's just something Mr. O'Connell said, and I think he must be mistaken about that, that he understood and you are not, of course, and you wouldn't and the business you conducted prior to getting involved in this was Mr. Desmond's private investment business, effectively, was it?

A. Absolutely, yeah, yeah.

Q. You hadn't conducted any underwriting business; isn't that correct?

A. Well

Q. At that time?

A. It was kind of a slightly grey area. Certainly we had, in the context of Celtic, you know, we had agreed to take a certain amount and in the event of, shall we say, success or failure, to actually take an additional amount, so that if Celtic ended up short in

terms of its fundraising, we were going to put more money in.

Q. Was that Mr. Desmond

A. Sorry, Mr. Desmond, yeah, absolutely.

Q. Sorry, I am just trying to understand: Was this private business being conducted by Mr. Desmond?

A. Absolutely, yeah.

Q. Now, whatever you were made aware of after Mr. Desmond and going to the football match, you were given the bones of the discussions, I suppose, by Mr. Desmond, thought it was a good idea to get involved in this, wanted to be involved in equal terms, or as close as possible, and you were to set about putting some structure on it, I suppose. Would that be a fair way of putting it?

A. I think that's a fair assessment. I mean, I was probably to meet with I am not sure; either Denis or Peter O'Donoghue. But to be honest, I can't remember the precise next steps.

Q. Now, we know on the 11th you go and I'll wait for Mr. Desmond, the particular document; nothing much turns on it at the moment as far as you are concerned. Mr. O'Brien sent Mr. Desmond a memo where he set out various headings, much of it to do with still trying to get access to some sort of money for his fixed-line business as well. The 3.5 million was mentioned in that particular document; isn't that right?

A. That's correct, yeah.

Q. But Mr. Desmond's interest and your instruction was to have nothing to do with that side of things, but to be involved in the GSM licence business?

A. Yeah, I mean, to say that it was an instruction at the time would be a little bit

Q. Sorry. Your understanding from Mr. Desmond's position?

A. To be honest, I mean, at this stage it's too far removed. I am not sure what Dermot's views were as to what extent he would have been happy to supply Communicorp, but I suppose from my point of view, I would have been quite nervous about getting involved in, shall we say, kind of a wider picture; you know. The idea of getting actually involved in just a single entity, where you knew you were getting involved in and what was controlled, was a much easier you know, a much more compact transaction, is the best way to put it. So I would say, you know, shall I say, Dermot probably gave Denis more warm-sounding noises than I was ever really implementing, is the best way to put it, you know.

Q. Now, can you remember meeting Peter O'Donoghue and/or Denis O'Brien in August of

A. I mean, I don't have a clear recollection of you know, who I met and what actual dates, but I mean, clearly the files actually disclose that Peter wrote

to me, I think, was it I can't remember, sometime early in September actually clarifying the amount of money they needed to support the fixed-line business. I can't remember; it was some date in March, was it? But I mean, clearly there had been kind of meetings or interaction kind of prior to that.

Q. Or some formal discussion?

A. There had to be, in a sense, that I mean, that wouldn't have come out of the blue, but exactly, you know, who attended which of those sessions, whether it was Denis or Peter, I couldn't tell you.

Q. Now, nothing had been finalised, had it, between you up to, say, the middle of September of 1995?

A. To be honest, I'd say nothing was finalised until, you know, the 29th September. I mean, the reality is, I mean, shall we say, there was a certain amount of discussion, some of it heated and some not so heated.

Q. I can understand that.

A. I mean, as with all kind of negotiations, there is to-ing and fro-ing, so I would be very clear that you know, and I suppose in addition to kind of letters that the full understanding was what was encompassed within the letters and agreement so as to avoid any question as to whether or not there was any confusion as to what we were agreeing to.

Q. Now, Mr. O'Brien has an entry in his diary for the 15th September, 1995, and it's an entry in respect of

meeting you. Do you remember that?

A. No, I don't. I mean, he may well have. But I mean, I have no, shall I say, precise recollection. I mean, to be honest, I had forgotten about meeting Denis and Gerry Halpenny on the Sunday night until I read Gerry Halpenny's testimony the other day.

Q. And it looks as if whilst there might have been a bit of to-ing and fro-ing, nothing much was happening between, say, the 11th August and I understand there are holiday times as well involved here and, say, about the 18th September, when things started to move?

A. I mean, I am not so sure that that's true, in the sense that you know, I mean, if you actually take the sort of submission from Denis, you know, on the 11th, you know, I mean, that was a pretty immediate response, effectively. You know, I am pretty certain that Dermot immediately went back looking for the 30%. You know, they also came back looking for, as I say, kind of various amounts of funding.

So I would suspect that there was probably you know, kind of more meetings, you know, may actually be recorded in, you know those meetings may well have been with Peter as opposed to Denis. I really just couldn't tell you at this point in time. I mean, my sense of the whole thing is that it was, you know, kind of an ongoing process. Now, I mean, at the same

time, you know, I was involved in actually, you know, negotiating in relation to acquisition of London City Airport. So you know, I mean, we had our hands full.

Q. Again, can I take it that was a private investment by Mr. Desmond that

A. That's correct, yeah.

Q. At that stage, had you carried out any business had IIU been used for any business other than Mr. Desmond's private business?

A. Well, I mean, at that time, I was actually selling a business on behalf of, you know, another individual. But I mean, not an individual in any way connected with the company, or indeed any way connected with the phone business.

Q. You see, I am just if you go to your memorandum, your first memorandum, that's the one dated 22nd February, 2002, and I was just wondering in that I'll give you the copies there Mr. O'Brien has given evidence that he had a meeting with you. He can't remember exactly what was discussed, continued negotiations regarding underwriting, I think he thought might have been, but on the 15th but I was just wondering, in the first paragraph there, you say that "At the match, there was a discussion on Denis's progress with the bid for the second mobile licence. Denis indicated that they had made a very good presentation and had a good team in place but were

uncomfortable on the funding side."

Now, could that information be information which was conveyed to you on the 15th, and you are just confusing the dates of the conversation? Because no presentation had taken place at the time of the football match.

A. Well, I mean, you are absolutely right to point out my drafting of the response is imprecise. I mean, when I say "presentation", I suppose "submission" would have been a more accurate

Q. That could be so, but you used the word, and I was just wondering, could it be that on the 15th, Mr. O'Brien said that to you, and you are just confused as to the dates? I am just wondering.

A. No, I mean, you are right to point out that it was, you know, kind of imprecise drafting of the response. But basically I would be very clear in my mind that you know, shall I say, the conversation as reported back to me and the deal with Denis, which would have been back in August, was in relation to the submission as opposed to you know, kind of an oral presentation per se, and that you know, at that stage, Denis was uncomfortable on the funding side.

Now, you know, in practical terms, I mean, why would Denis have actually sent in the fax to Dermot on the 11th August, you know, if he was happy? So you know, I'd be very clear that that was actually dated

relative to the match as opposed to relative to

something four or five weeks later.

Q. All right. Now, you don't have a recollection. You accept that there you did probably meet Mr. O'Brien on the 15th September, 1995. He seems to remember a meeting, not the contents of the meeting, and he has it noted in his diary.

A. As I say, I have no recollection, but I would have had a feeling that I was meeting them on a semi-continuous basis, so it's quite possible.

Q. Now, do you remember Sunday the 17th September, 1995?

Were you at the All-Ireland Final that day?

A. No, unfortunately I wasn't invited.

Q. And you were never told by anybody whether or not Mr. O'Brien and Mr. Desmond met after that, if they met?

A. Certainly not that I am aware of, no.

Q. And nobody ever said anything to you about Mr. O'Brien ever meeting Mr. Lowry, either at half time or after the match, up in a public house in Leeson Street?

A. I am afraid the first time that that came to, shall I say, publicity was when I got the documentation from here.

Q. Now, on the 18th September, 1995, and this is I just want you to look at a document it's an attendance of Mr. Owen O'Connell, and it's in Book 48, Tab 42.

Do you have the typed-up version there as well?

A. At the moment, I don't have any version.

Yes.

Q. Now, this is Mr. O'Brien and Mr. Leslie Buckley went to see Mr. Owen O'Connell on this day.

A. Mm-hmm.

Q. And he records that "Denis O'Brien and Leslie Buckley Dermot Desmond going ahead with financing transaction."

Do you remember as of that date that a decision had been made by Mr. Desmond to go ahead with the financing transaction?

A. Not particularly. I mean, I would say that Dermot was committed to doing it provided he could get the right deal, you know, from really the very early stage; in other words, from, you know, kind of back in August. Now, I think you know, as is clear from then, or from this note, you know, Dermot wanted 30%. I think that was Dermot's position all the way.

Q. I'll come to that in due course, Mr. Walsh. I just want to concentrate on the second line: "Dermot Desmond going ahead with financing transaction." Doesn't that seem to indicate that something has been conveyed to Mr. O'Brien, which he is now conveying to Mr. Owen O'Connell, that Dermot Desmond is going ahead with the financing of the transaction?

A. It may seem to suggest that, but the practical reality is you know, Dermot, from early not from early,

from the 11th August, or the 10th August, was always going to go ahead with the financing transaction if he could get the terms he actually wanted.

Q. Then we come to the next line, and you see that "Need 'underwriting' letter for Department because finances are seen as the weakness." Do you see that?

A. Yeah, I see that.

Q. Had you had any discussions with Mr. Peter O'Donoghue or Mr. Denis O'Brien prior to this about an underwriting letter for the Department?

A. I mean, to be honest, I can't recall when we first prepared kind of the draft letter to Martin Brennan.

Q. I'll tell you, I think it was the next day. The next day you prepared well sorry, so that I am not trying to catch you out. You received a phone call from Mr. Owen O'Connell on this day.

A. Right, okay.

Q. And I think also on this day, sent to you at 3.05 in the afternoon was a little financial resume about the project, which was sent to you by Mr. Paul Connolly.

A. Right, okay.

Q. On that day. So I just want to put that and the next day I think you furnished the a first draft of the underwriting letter, and I think a draft of a letter to be sent to Kyran McLaughlin as well, I think.

A. Right.

Q. So that's the context.

A. Okay.

Q. Now, can you remember whether, up to the time you received the phone call from Owen O'Connell, whether you had any discussions with Mr. O'Brien or Mr. Peter O'Donoghue about an underwriting letter for the Department?

A. I mean, the reality is, to be honest, at this stage, I can't remember precisely what actually happened at any point in time. You know, as I said, I was kind of very focused on you know, we were trying to get 30%. Denis was looking for various components of underwriting, but you know, precisely, you know, what transpired on what date, I really would not be able to comment.

Q. Right. Okay. And then you are correct: "DD wants 30% of GSM". You are perfectly correct. That was the commercial position he was taking. And then it's noted that "AIB, Standard and IBI to be excluded."

Isn't that right?

A. Yeah.

Q. And had you any understanding of that position prior to this time?

A. I mean, certainly I would have had the understanding, but I think probably from much earlier, that you know, while Denis had various letters of let's call it comfort or support, that he couldn't get anybody

who was really prepared to give him a genuine commitment. And this goes back to, you know, kind of the early, you know, kind of the 10th August discussion, the 11th August, that you know, that Denis was kind of uncomfortable at that point in time in relation to all of his financing, and he was looking for, shall we say, stronger financing and also kind of downside protection from Dermot, in the sense that he wanted somebody to pick up their share of the costs in the event of him not being successful.

Q. Well, I suppose the only way, and Mr. Desmond was quite entitled, if somebody was discussing business with him, to look for as much of anything as he possibly could get; that's a commercial matter. But the only way he could perhaps get in for the 30% was to exclude the financial institutions as well; isn't that right?

A. Absolutely, in the sense that you know, if we were actually taking on or if he was taking on the position, then you know, by definition, what he was taking on wouldn't be available for somebody else. I think it's also true, though, at that point in time, that you know, the whole thing at that stage was, you know, Denis wanted confirmation that funding was available. We hadn't taken a decision at that stage, you know, or even at the end of September, or even much later, as to whether or not we were going to

actually take those shares ourselves or whether they were going to place them with other people.

So you know, it may well have been the case as it happens, with hindsight, it wasn't but it might well have been the case that we would have gone back to you know, AIB or Standard or Bank of Ireland Assets Management or whatever, and said, you know, "Do you want to actually take these shares?"

Q. Do you think you would have if you felt you had just wiped Davys' eye?

A. I'd say the reality is, whatever about the Bank of Ireland, given their business dependency, relationship with Davys, I think for anybody else, I mean, you know, shall we say, there is debate in the paper at the moment about you know, the kind of refloating of a certain telecoms company, and you know, the same institutions who actually sold out are apparently quite happy to buy back in at a higher price now. So the reality is institutions, you know, are fundamentally dealers; if they think it's right, they will do it. If they don't, they won't. So you know, we would have had no compunction, you know, about going back to them if we felt that you know, it was the right thing to do from a market point of view or business point of view.

Q. That related to your underwriting

A. It related to either underwriting or placing. It

related to any of those shares in the sense that we would be in control of how those shares were to be issued. At least, I suppose more precisely would be in control of any of the shares that we ended up with. So you know, be it the kind of placing shares, or if the underwriting was actually called on, you know, by definition we would have, you know, been in a position to sell those shares to people.

Q. Now, Mr. O'Brien has told us that the concept of underwriting came from Mr. Desmond himself when they were discussing that's Mr. O'Brien and Mr.

Desmond were discussing how Mr. Desmond might become involved. And he explained it to us in evidence that of course, ideally, one would like cash put up, but nobody is going to put up that much cash. Second-best thing might be to get a guarantee from a financial institution to that effect, but that's the same as putting up cash, because somebody was going to have to back that.

A. Sure.

Q. And that Mr. Desmond said "We'll do it by way of underwriting". Is that your understanding of matters?

A. Yeah, I mean, my understanding is that Dermot simply made a commitment to Denis that you know, he would ensure that Denis, you know, had sufficient equity.

Q. Now, I just want to just look at the document Paul Connolly sent you. It's at 48, 42A. It's only a

short enough document

CHAIRMAN: Perhaps at ten to, Mr. Coughlan, we'll take lunch now.

And Mr. Walsh, we'll resume, if it suits you, at two o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF MR. WALSH

BY MR. COUGHLAN:

Q. MR. COUGHLAN: I think just before lunch, Mr. Walsh,

we were going to have a look at the little document

that Mr. Connolly sent you on the afternoon of the

18th September, 1995. You see that fax. It's just

sent to you by fax. I don't think there is any

difficulty about it. And it's just there was

enclosed with that it was an information memorandum

which Mr. Connolly had prepared in conjunction with a

member of Davys; this was when we were doing the

rounds of the financial institutions. Do you remember

receiving that? It's an executive summary, I think

it's described as.

A. I remember seeing this before. I am not sure that I

was ever aware that it had been prepared in

conjunction with Davys. But

Q. You mightn't have been. I think that's where it came

from.

A. Right.

Q. They had it to hand. And we have opened this before.

I don't have any great necessity to open it. It was just for your information; isn't that correct?

A. That's correct. I mean, the reality is, you know, I mean, for all practical purposes, as I said earlier, our decision was a much simpler decision, in the sense that if it was the right deal for the people like Telenor, it was the right deal for ourself. You know

Q. I think what you are saying is this wasn't necessarily going to influence one way the other. You were making a

A. I mean the reality is, you know, this wouldn't have made any difference.

Q. I understand that.

A. I am not sure how much attention one would have paid to it even on that basis.

Q. Exactly. It was just sent to you for information. It was not something that necessarily caused you to do anything or not to do anything. The judgement made by Mr. Desmond was based on the fact that if it was good enough for Telenor, it seemed like a good enough business idea for him. That was that broad general approach to things. We are not getting into the details of it or anything like that.

If I could just that's on the 18th September of 1995. So you received a phone call from Owen

O'Connell, I think, and whatever was discussed at that resulted in you furnishing the next day two draft letters.

A. Yeah.

Q. But before we get to that, could I just drop back again to the 10th and the 11th August, because I just want to be clear about this. There seems to be no doubt but that Mr. O'Brien and Mr. Desmond had a discussion at the or on the aeroplane going to or coming from the Glasgow Celtic football match?

A. They both claimed to have done that.

Q. Mr. O'Brien even remembers the score of the match, but that's another issue.

A. As I say, I am still not aware of what the score was in the match, but however.

Q. The next day, whatever was discussed anyway, the next day you know that Mr. O'Brien sent a document to Mr. Desmond; isn't that right?

A. Well, I do now. I mean, to be honest, I can't remember when I first saw that fax.

Q. All right. If we just look at that document, and it's at Book 48, Tab 36. I wonder, do you have that now?

A. I have, yes.

Q. And it's sent the next day, so it's a reasonably contemporaneous note, because the meeting was on the or the discussion was on the night of the 10th.

A. Mm-hmm.

Q. And it's from Mr. O'Brien to Dermot Desmond, and it's headed "Re outline agreement on $\frac{1}{2}$ million guarantee for Communicorp Group Limited.

"1. Esat Digifone Limited.

"Communicorp Group Limited will arrange for Dermot Desmond to have the right to take up at par 15% of the ordinary shares in Esat Digifone Limited replacing IBI, AIB and Standard Chartered.

"2. GSM bid costs.

"A total of 1.3 million 1.5 million will have been expended on the bid by award of licence. It is agreed that DD will pay his portion of the costs win or lose.

"3. Bank Guarantee.

"DD will provide a bank guarantee of 3 million to Communicorp to draw down a 3 million bank facility which will remain in place up to March 31, 1996.

"In exchange for this guarantee DD will be paid a fee of $\frac{1}{2}$ 300,000 no later than March 31, 1996. Should Communicorp complete its placing of equity through CS First Boston before the 31 March 1996, the fee will be paid within 10 days after completion of the placing.

"Security.

"If the 3 million facility including interest is not repaid by March 31, 1996, DD will have the right to purchase 33.3% of Radio 2000 Limited (Classic Hits 98FM) for $\frac{1}{2}$ 1. Communicorp currently holds 76% of

radio 200 limited.

"Negative pledge.

"We understand that you will seek a negative pledge of the assets of Communicorp Group Limited."

Now, I should also state here that Mr. O'Brien's diary records a meeting with DD at the IFSC on the 11th August at 3pm. That's the day after this.

A. Mm-hmm.

Q. It's the same day as this document. Now, it appears that from this note at least, or it appears to be Mr. O'Brien's understanding that this was the heads of agreement

A. Or Mr. O'Brien's objectives, whichever.

Q. Whichever. But heads of agreement or outline of an agreement following on the discussion the previous night. Isn't that right?

A. Mmm.

Q. There is no discussion there about underwriting. What it appears to be was a guarantee for $\frac{1}{2}$ million, a fee of $\frac{1}{2}$ 300,000, paying half sorry, paying the proportionate bid costs; and for all of that, it looks like that Communicorp Group Limited would arrange for DD to have the right to take up 15% of the GSM company in place of IBI, AIB and Standard Chartered. Is that right?

A. That's correct.

Q. Now, I think on the I'm just looking at the paper

trail at the moment now.

A. Sure.

Q. On the

A. Sorry, is there any note of what was actually decided at that meeting of the 11th?

Q. There is no note. No.

Now, the next thing is Peter O'Donoghue sent a letter to you it's a fax it's Divider 38 in that book.

A. This is the one we referred to this morning, I think.

Q. Yes. You can see it's dated the 7th September, and it reads "Michael,

"Further to our conversation of this morning, the cash requirements for the Communicorp Group to the 31st March 1996 would be in the order of $\frac{1}{2}$ million. This does not take into consideration any scale-back of investment or asset disposals that may be required in the event that the First Boston money is not forthcoming."

Again that seems to relate to fixed-line business?

A. That's correct. I suppose it relates really to obligations of Communicorp, so you know, I mean, one of the reasons

Q. Yes, you are right. And radio business, perhaps?

A. I am sorry, I mean, I wouldn't have known whether Denis had some I would have perceived Communicorp as being Denis, in a global sense. So

Q. I accept that.

A. I wouldn't have known what was in there, whether there were other things in there or otherwise, which was why I was always reluctant to get into providing such guarantees.

Q. Those two documents undoubtedly seem to relate to fixed-line business, the guarantee for the 3 million, and the financial or the financial requirements of 5 million for Communicorp, and they also seem to record, in some way at least, either what was discussed between Mr. Desmond and Mr. O'Brien on the 10th or Mr. O'Brien's understanding or perhaps desire as to what might have been discussed on the 10th?

A. I suspect it was more, shall we say, a desire, because I suspect that there was a response from Dermot, you know, pretty much immediately saying, "Good luck to you, Denis; you can't have that. You know, we want 30% or 33%."

Q. Do you know that?

A. I have a vague recollection, certainly, of seeing, you know, a response somewhere at kind of a 30% figure.

Q. No, you're right about that, and I am going to come to that 30% figure in a moment. But Peter O'Donoghue has given evidence to the Tribunal, and he has informed the Tribunal that he had no involvement in the IIU involvement in the GSM project, if you understand my point.

A. Yeah.

Q. That he was asked to provide information about Communicorp, as the financial officer of the company. And he did that. He had no involvement. So can I take it from that that you had no discussions with Peter O'Donoghue between other than that particular one about the fixed-line business up to, say, the weekend of the 16th/17th September, about the GSM?

A. To be honest, I couldn't be certain, because you know, I mean, it goes back to the point I made, I mean, I would have not been able to tell you if I hadn't seen the notes here that I had actually met with Peter. You know, my focus was you know, this was kind of an integrated deal, and it may well have been that Peter was giving me some elements of information. I sort of have a vague recollection of having met with somebody, and I think it was probably Luke Mooney or somebody, in relation to the radio side, so you know

Q. That might be right.

A. So the practical reality is that you know, this whole thing was getting you, know, kind of more and more complex and more difficult to actually tie down, so I mean, I would have been quite anxious to focus it in on you know, what is the thing he'd actually see and identify and look at something that was close.

Q. Right. But you don't have any recollection of sorry, it's probably the case, if Mr.

O'Donoghue's evidence is correct, that you didn't have any discussion with him about the GSM aspect.

A. If that's his recollection, I have no reason to disagree with him.

Q. Mr. Mooney was dealing with the radio matters; isn't that right?

A. Yeah. As I say, I have a very vague recollection.

Q. And if it was, it would have been on the radio side of things; he wasn't involved in the GSM side. Do you remember ever having any discussions with Mr. Denis O'Brien?

A. I mean, I have a feeling that there were continuous discussions with Denis O'Brien. But I mean, I can't actually sort of say, you know, I met him day, one, two, three or four.

Q. You see, the next and there were discussions in a period I am going to come on to now the next document in the paper trail appears to be Mr. O'Brien's entry in his diary of a meeting with you on the 15th September of 1995; you know that; that's a Friday.

A. We mentioned that earlier. I mean, the bit I didn't understand on that is, you know, there is a reference to London. Did that meeting take place in our offices or did it take place in London

Q. No, I think it was he may have been in London that morning and came back. I stand to be corrected on

this, but I think that's the situation, that this was

a meeting in the afternoon, I think?

A. Sorry, I am not sure. Because, as I said to you earlier, I was in the middle of negotiating the London City Airport acquisition, so it is remotely possible there was a meeting there, you know, but I just have no recollection.

Q. Perhaps. But it's after that particular entry and the entries in his diary for the 17th, that's the Sunday where he has an entry for Mr. Desmond and he has an entry for Michael Lowry, it's after those particular entries that we see a lot of documents being generated dealing with the concept of providing a letter of underwriting and removing Davys from the situation.

A. I mean, that's

Q. That seems to be

A. That certainly seems to be the case, in a sense, that those letters are dated whatever.

Q. Which brings me back to that first paragraph again of your statement, or of your memorandum dated 22nd February, 2002, that Denis indicated that they had made a very good presentation and had a good team in place but were uncomfortable on the funding side.

Doesn't it seem more likely, Mr. Walsh, that that information was imparted to you on the 15th, after the presentation was made, and not prior to the presentation?

A. I mean, to be honest, as I explained earlier, I don't actually accept that interpretation at all. You know, I mean, I apologise for kind of the loose language in terms of "presentation" versus "submission".

Q. That's fine. I am just trying to understand the picture. And I understand there is some time has elapsed since then.

A. I think when you come to Mr. Desmond's statements, you'll find the same word is used, because he more or less photocopied mine.

Q. I know that. But you see, what strikes me as perhaps a reasonable question to ask: If a discussion centred around, you know, concerns about the financial situation, good presentation/application, if that took place around the 10th August, 10th or 11th August, around that time, when Mr. Desmond and Mr. O'Brien had meetings, wouldn't it seem likely that if that level of concern existed for Mr. O'Brien, that all that transpired after the 17th September; that is, getting the underwriting letter in position, getting the arrangement agreement sorted out and all of that, that that would have taken place prior to the presentations which Mr. O'Brien knew would be taking place in September, and he had virtually a whole month to arrange that. Wouldn't it seem reasonable?

A. I mean, I suppose with hindsight you'd say, well, wouldn't it be nice to do everything faster than they

were actually done. But I think the reality is, you know, we worked to a timetable. I would say you know, I had ongoing contact with Denis as frequent as, you know, was actually feasible in the context of everything that was going on. If he was and sorry, I wouldn't have been focused on the fact that he was doing a presentation in September at all.

Q. I understand you wouldn't, and it wouldn't have been your business, and it would be none of Mr. Desmond's business, because what Mr. Desmond wanted to do was to achieve a commercial transaction for himself in his own right. He wasn't thinking about the niceties of the competition, or probably had no interest or probably had little knowledge at all of it.

A. I expect we had very little knowledge, if any, at the time, and you know, couldn't have really cared less. From our point of view this was a very simple sort of transaction. You know, here we had somebody who was actually looking for funding. You know, we were in the business, effectively, of actually providing funding in various circumstances or providing commitments in various circumstances, or underwriting commitments.

Q. I was just looking at it and trying to tease out the situation, because undoubtedly Mr. O'Brien, in indicating that he was uncomfortable about the funding side, he certainly has given evidence that he was

uncomfortable about the funding side after the presentation.

A. And the date of the presentation I think was

Q. The presentation was the 12th September.

A. So maybe, whether that meeting or telephone call or whatever it was on the 15th may well have been Denis actually saying, you know, we have to relook at this in some other fashion, but

Q. That's what I was just wondering.

A. I just can't recollect.

Q. That's fair enough, Mr. Walsh. That's fair and reasonable. I am just looking at the money trail.

There seemed to have been certain types of discussions going on the document trail seems to indicate that there was a certain type of discussion going on prior to this, and after this, it shifts differently altogether. The fixed-line business is out. Total concentration on the GSM, the underwriting letter and the arrangement agreement and all that flowed from that; isn't that right?

A. There certainly seems to be, but the facts of the matter is I just have really zero recollection of what was discussed. I mean, it's clear from the letter from I think it's Telenor or Arve, or whatever it is, 2nd October, that I mean, you know, the Telenor perception was that you know, there was a weakness in terms of the funding. So you know, it may well

have been that both Denis and Telenor actually felt

there is a weakness on the Irish side of the funding.

But you know, as a matter of fact

Q. You were on the outside in relation to that?

A. Absolutely. And as a matter of fact, I just have no recollection of what was discussed.

Q. You were also on the outside. You weren't at the presentation.

A. No.

Q. If you were told anything about it, it had to be told, but by perhaps Denis O'Brien, perhaps?

A. I would imagine by Denis, because you know, he was in some sense from my point of view, I had no contact with Telenor at all. So from my point of view, he would have been the person who was effectively running, you know, that consortium bid.

Q. Yes. Now, when you received the phone call from Owen O'Connell on the 18th September, the Monday the 18th September of 1995, can I take it, whatever conversation you had didn't come out of the blue; you had some knowledge in general terms of that he was discussing Denis's business?

A. You know, sorry, I can't remember in here whether there is any note that Owen took of that actual phone call.

Q. No?

A. I mean, I have no recollection of the phone call

itself, but it wouldn't necessarily surprise me to hear from Owen, in the sense I mean, you know, he would have been, in my mind, been associated with Denis.

Q. And the upshot of the discussion, anyway, is that you prepared two drafts, isn't that correct, I think?

A. That

Q. One is a preliminary draft of what ultimately became the letter to the Department, and the other was a draft letter to be sent to a Mr. McLaughlin in Davys; isn't that right?

A. That's correct. It would also appear, though, that it was Owen O'Connell was actually doing a draft.

Q. Sorry, this is something I'd like to clear up if we can, because Mr. O'Connell isn't absolutely clear, and he thinks the reason why he thinks that you may have prepared the draft is there is handwriting on if we go to Document

A. 47 I think.

Q. 48, (44).

A. Document 47, I think.

Q. Do you have

A. Sorry, I think we are at cross-purposes, on the basis of what's up on the screen.

Q. We are in different places, are we? I have that

A. We are trying to be in the same place, but, no sorry, what appears from the material that's

there is there is a number of letters actually drafted
by myself, with my beautiful scrawl all over them, and
there also appears to be a more formal document
prepared by William Fry, also dated the 19th
September, which looks like it's an Owen O'Connell

Q. All right. If we go first to if you go to Document
Number 44 in that book for a moment.

A. Mm-hmm.

Q. I am just wondering, is that your handwriting? Do you
see that document there?

A. It certainly looks like my handwriting. Sorry, that
doesn't seem to be in 44 in this it's here, yes.

That actually looks, sorry if I can interpret that for
you, that looks like both my original draft. I
suspect

Q. Do you see the word "Digifone"; that's Mr. O'Connell's
writing. He

A. He can confirm that. Certainly the scrawl at the
bottom is definitely mine. I could easily qualify as
a doctor. But

Q. I am not going to go into the actual the draft
sorry, the amendments to the draft seem to have taken
place after the 19th September '95, I think. The
first draft is probably in the typed form.

A. Yes, I mean, the first draft is clearly in typed form.

It looks to me, given that there is my writing and, as
you point out, some of Owen O'Connell's writing on it,

that you know, there was presumably some sort of meeting took place. But again, you know, I have no recollection of it.

Q. All right. Do you know why you were asked to prepare a draft?

A. People do that all the time.

Q. Solicitors?

A. Solicitors don't ask me to, but you know, certainly in something like this, I mean, I would normally actually do the first draft of what we were actually going to do.

Q. Right. You were asked to prepare or maybe you weren't asked; maybe it just arose out of a discussion you prepared a first draft of a letter to be sent to Kyran McLaughlin as well; isn't that right?

A. I did, yeah.

Q. That's Tab 43.

A. Yeah.

Q. That's your writing, I think, on it.

A. It is indeed. I'd say it's both my draft and my writing.

Q. Now, there is just behind it you'll see there is a further draft which incorporates the handwritten note on the first draft.

A. Yeah.

Q. Now, these were never sent anyway, but you were asked to prepare these particular drafts; is that right?

A. I was asked I'd say I was probably insistent on preparing them.

Q. I see.

A. In the context of what they were doing.

Q. Right. Now, if we go to the draft, so, at 44. I wonder, can you assist us with any of the handwriting?

And I am not going to criticise you if you don't,

because I find it hard to read my own notes.

If we go to the bottom, I think would I be correct

in the bottom paragraph there, "We refer to the

presentation made by the consortium to the Department

last week in relation to their proposal for the second

cellular mobile telephone licence. During the course

of the presentation there was a detailed discussion in

relation to the availability of equity finance from

Communicorp and a number of institutions." Is that a

fair stab at it?

A. That's an excellent stab at it.

Q. Now, that must have been information you had got from

somebody, I take it, because you weren't there

yourself?

A. Yeah, I mean, I would guess that, as I indicated

earlier, what actually happened is I did a first

draft, which is the typed version here. I suspect I

then sat down with you know, some mixture of, you

know, Denis or Owen and you know, made, shall we

say, amendments on my copy of the thing so as to get

us to the next one. And then, by the looks of it, you know, Owen O'Connell made, you know, kind of two or three adjustment in his handwriting.

Q. Now, can I just ask you, as of this time, I take it, and this information being imparted to you here, Mr. O'Brien wasn't saying anything to you about problems with Telenor, was he?

A. No.

Q. That he was having?

A. No.

Q. And

A. I think it's probably fair to say that I mean, you know, from our point of view, Telenor was just, shall we say, the partner of Denis O'Brien, in the sense that you know, naturally, you know, kind of Denis was the Irish focus; he was the lead person, you know, as far as we were concerned.

Q. He wasn't looking for Mr. Desmond's backing because of any declared problem he was having with Telenor?

A. With Telenor, no, no.

Q. Now

A. I mean, I don't think there was any kind of question, you know, at least in my mind at the time, other than Telenor were absolutely committed to this. Now, sorry, I think I am sure we'll come on to it later on; there clearly was kind of a lack of a hundred percent comfort on Denis's part as to where Telenor

were, because I think if you look at the letter well, the various letters on the 29th, there is actually a difference between those on the 29th and those a week earlier, and one of the changes actually relates to the fact that I think we had in as a precondition that Telenor would fully take up their 37.5%, whereas you know, it's clear that it's watered down to 30% in, you know, the actual final letter that was signed.

So I suspect that there must have been some suggestion at the time from Denis's side that he was nervous as to whether or not Telenor would actually take up 37.5% or whether they take up some lower amount.

Q. We'll look at that in a moment.

Now, at this time when you were asked to prepare the drafts, as you say, perhaps occurred a combination of yourself, Denis O'Brien; yourself, Owen O'Connell; or all three, perhaps, or something like that, whether it was by telephone or at a meeting?

A. My best guess is that the first draft was prepared by, you know, myself, following either a conversation between Denis and Dermot or following a conversation between Denis and myself. Then I would have taken those to, you know, some meeting and this is all supposition at this stage I would have taken those drafts to some meeting, and they would have been parsed and analysed.

Q. And this all seemed to be directed towards these two documents, at least, seemed to be directed towards first of all getting a letter to the Department?

Isn't that right?

A. Yeah.

Q. And secondly, asking Mr. McLaughlin to step aside?

A. Not so much asking him to step aside; telling him he was no longer needed. I should say for the record that Mr. McLaughlin I think is an excellent adviser, and I would be quite happy to use him, but quite happy to beat him, as well, you know.

Q. The way it happened was that ultimately it was decided to do it more politely and Mr. Callaghan went to see him and asked him to step aside?

A. John has a more delicate bedside manner.

Q. That was the way it was done. But that was what was in issue between yourselves and Denis O'Brien on the 18th and 19th, isn't that right, those two matters?

A. Those two matters, yeah.

Sorry, I think sorry, there is the next letter at Divider 45, which is also, you know, kind of a draft which I think probably has to be read in conjunction with

Q. Sorry, you are right. "I am writing to confirm the basis of our agreement with the Consortium as consideration for us issuing the attached letter to the Department of Transport, Energy and

Communications.

"1. The total maximum commitment under the underwriting and placing will be 32 million and will be for the 60% of the equity not held by Telenor in the consortium.

"The consortium will pay a fee of 1% of the commitment to IIU Limited.

"All shares will be subscribed for on the same basis by all members of the consortium.

"4. IIU Limited or its nominees will retain 30% of the equity.

"5. IIU Limited will have security over 30% intended to be placed with Communicorp Group Limited. In the event that Communicorp Group Limited does not subscribe for this 30%, then IIU Limited will be entitled to place these shares with any other party."

Then it says, "Please sign the enclosed if you accept the terms".

Is that the first stab at what became the arrangement agreement or

A. I mean, that certainly is the first stab at kind of, shall we say, the letters that I think ultimately were split between two solicitors; one to the consortium and one to Communicorp. And you know, that certainly would have been, shall we say, my draft. You can still see they were looking for the 30%.

Q. I see that. And if you go to Owen O'Connell's note,

his attendance of the 18th September, which is at Tab 42 in that book there, if you just go back.

A. This is the one we discussed this morning?

Q. Yes. You see Point Number 3, is it there do you see "DD wants 30% of GSM"? Do you see that?

A. Yeah.

Q. "AIB, Standard and IBI to be excluded." There is an Owen O'Connell note down at the bottom, "DD 30 and Advent 5". The two of them this is just something they were noting down at that stage what might be the situation.

So whatever discussions had taken place, Mr. O'Connell is being informed that there was need for an underwriting letter for Department and that DD wanted 30%; isn't that right? That was the

A. I mean, that's I mean, shall we say, one interpretation of the thing. And I wasn't at the meeting, so...

Q. No, no, but just it doesn't seem unreasonable to read it that way.

You then prepared a draft of the of a letter for the Department. You prepared a draft to exclude AIB, Standard Life, etc., and you sent, or you prepared a draft of a letter to Denis O'Brien setting out the various matters and the 30% requirement. Isn't that right?

A. That's correct, yeah.

Q. And that seems to be all consistent with the note of Mr. O'Connell, I suggest.

A. Yeah.

Q. Now, I think, if you go to Document Number 46. This is Mr. O'Brien's

A. retort.

Q. "Dear Michael," he thanks you for your letter.

"As a result I have had Owen O'Connell prepare the enclosed draft of this document. The following points are relevant.

"1. We did not agree to the underwriting fee your 'reward' for underwriting is participation in Esat Digifone." So he is querying the 1%, I think; isn't that right?

A. That is correct.

Q. "2. The level of participation which I can give you is limited to 20%. Third-party constraints make it impossible to commit more. However, Advent's right to 5% of the project (according to Owen O'Connell) is doubtful. Subject to you taking responsibility for cost, etc., involved in a challenge by Advent, I will try to secure that 5% for you."

He is saying to you, his response to your 30% is 20%, but I'll try and get to 25%, looking like they are edging for a split-the-difference on the settlement.

"3. I have retained Owen O'Connell's format because I feel it is more likely to achieve our common objective

with the Department. I understand that Points 1 (subject to an increase to 35 million), 3, 4, (subject to a decrease to 20% and Point 2 above) and 5 are reflected in this draft.

"4. DD agreed to meet his portion of the bid costs, win or lose."

Can I just ask you there, what did you understand Mr. O'Brien was writing about there when he referred to at paragraph number 3, "I feel that it is more likely to achieve our common objective with the Department"?

What common objective was that?

A. I think the common objective, as is clear from my draft of the letter to Martin Brennan, is to actually give the Department confidence that you know, the equity required, shall we say, on the you know, kind of Irish side would actually be met.

Q. And had you discussed that with Mr. O'Brien on the 18th or 19th, do you know?

A. Well, I mean, sorry, I must have, in the sense that you know, the draft letter of the 19th, which we looked at a few minutes ago, you know, which is a draft letter in whatever it is, Tab 44

Q. I know the one, where the amendments and the additions were made as a result of information furnished to you.

A. Yeah.

Q. Now, enclosed with that was a at Document Number 47 was an underwriting letter of Esat Digifone

Limited, and it was prepared by William Fry's, I

think?

A. That's correct, yeah.

Q. Unless you think we need to, I don't intend to open this particular document, because that wasn't what ultimately transpired to be the situation.

A. I mean, it's probably fair to say sorry, I agree with you; we don't need to open it. But you know, I think I was much more focused, shall we say, on the letters that I was writing, and other people were, shall we say, accepting, than, shall we say, the draft from Fry's; because to be honest, I wasn't using legal advice at the time, unfortunately. So, as a result of that, I actually felt more comfortable with the scripts that I was doing as opposed to the scripts they were providing.

Q. You were taking the commercial view and protecting your own position as you understood it?

A. Yeah, well, I was always concerned with the various drafts that came from Fry's, you know, that maybe something would actually go in that wouldn't suit my commercial interests, and consequently I wanted to make sure that my letters were actually the controlling element.

Q. Your letters were your letters?

A. Yes.

Q. All right. Now, I think if you go to Tab 48A, please.

Now, this was a meeting which is noted by Mr.

O'Connell, and it's a meeting

"Michael Walsh, plus Denis O'Brien phone

Commercial deal".

It's dated 21st September, 1995; do you see that?

A. Yeah.

Q. "25% to IIU or nominees.

Underwrite 40% (covenant)

no placing of shares with Telecom

company (competitor of Telenor) otherwise no

restriction. Wording re behave reasonably in placing

shares. Will consult company on all material places.

Fee side letter DOB."

Now, Mr. O'Brien has given evidence that on the 21st,

he reached what he described as a handshake on the

phone with Dermot Desmond. Dermot Desmond was, he

thinks, in the Canaries or in the Caribbean at the

time. And

A. More likely than the Canaries.

Q. And that the as you said, the handshake on the phone

took place; the deal was done. And all that was

required was to give effect to the deal then?

A. Yeah. I mean

Q. I think he means there 25%

A. The 40% doesn't make sense.

Q. No. I am just wondering can you

A. Because I mean, if you took the 25 and the 40 we'd be

up at 65, which you know, just I don't believe

there was ever, you know, a discussion.

Q. Well, I suppose at that stage, we do know, from evidence of Mr. O'Brien and from some documents of Telenor's, that when Mr. O'Brien visited Mr. Johansen in Oslo on the 22nd September, he did try to get Telenor to take further dilution, that they'd take the full 35% and he'd stay at 40%. So it may make sense in the context of that.

A. It may in that context, but I say from our point of view, I don't recall I mean, we were focused on the 25.

Q. You were focused on the 25% ?

A. But I

Q. Now, also there is some documentary evidence of Mr.

O'Brien's it's his diary it's at Tab 49, where

he records: "Speaking to Mr. Desmond on the phone",

so...

Now, at Document Number 52, I think if you just go to

that, this again is a Fry's document which is a Deed

of Covenant which was prepared by Owen O'Connell, I

think. Again, I don't believe that this ever amounted

to anything, and perhaps it's in the same category,

you wanted to make sure that your documents were your

documents, and you didn't want to rely on drafts

coming from anybody else; would that be fair?

A. That's correct.

Q. And then, if you go to a document we have been discussing, 53, this is the CV or resume of Mr. Desmond's. And I think you would have furnished that to Denis O'Brien. Isn't that right?

A. Yeah.

Q. At that time did you know what that was for, or did you know it was for Telenor?

A. I mean, it's impossible to say with this sort of distance in time. But I mean, I can't see why else I would have provided it to him other than because you know, he wanted to actually tell Telenor, you know, this is who Dermot Desmond actually is, you know. But I mean, as a practical matter, I just, you know

Q. If you go and can I take it that this was information, as you said, you could furnish this information to many people; you wanted to furnish this. This was stored information or retrievable information or I suppose?

A. Yeah, I mean in the sense that, shall we say, I would have done many similar sort of things, updated it, adjust it, depending on the circumstances, but

Q. You see there paragraph number 6: "In August 1995 he founded a new company, International Investment and Underwriting Limited Financial Services Centre, to specialise in corporate finance and fund managements." That is the position, isn't that right, that you moved into the IFSC then, and that's when the company ran

from?

A. Yeah, I mean, as I say, I don't remember the date of incorporation of the company, but effectively you know, shall we say, the real benchmark from my point of view was when we moved to the IFSC, which was August '95.

Q. Now, Document Number 60B, I think, is the next document I might ask you to look at. I have it on the screen. It's a short it's Gerry Halpenny's note of a meeting which took place on Sunday night, the 24th September, 1995, at the offices of William Fry's. And he was there with you and Denis O'Brien. It was a short meeting. He thinks it lasted no longer than an hour. It happened around teatime. Do you remember such a meeting?

A. Not particularly. It wouldn't be the first time that we had worked on Saturday or Sunday.

Q. Right. And it's "52 million-31.1 million change of investment indicated to the Department.

"IIU DOC not lodged in the" I beg your pardon:

"IIU document not lodged with the Department.

"Telenor 37.5/25."

Do you remember a discussion about the IIU document, which I take it to mean the draft which had been worked, or had been prepared and worked on by you and the others?

A. I mean, a quick answer is I don't, you know, recall

that meeting in any sense; so I mean, anything I say now would be kind of an interpretation, you know, of these notes. I mean, the comment on the range of investment, presumably, I mean, just from memory, the 52 million was the minimum amount of equity I think we perceived was required. You know, I think there was a feeling that it could be higher than that depending on, you know, kind of market penetration, etc.

Q. That's right.

A. The "IIU document not lodged with the Department", I suspect, but I really can't recall, that there was probably a debate as to well, shall we say, what document would be lodged with the Department, you know, would it be my letter to Martin Brennan? Would it be my letter to Martin Brennan in conjunction with Fry's draft? You know, the more kind of technical legal document, or what it was? And I suspect, but you know, I don't know when a decision was taken we would just send in the letter as opposed to the technical legal document. But I mean, I have no specific recollection as to that. And the "Telenor 37.5/25", that

Q. That just seems to relate to the split.

A. It may refer to what actually happened, but just in the context of the dates, I am not sure.

Q. Now, at Document Number 60, there is a draft this is a draft dated 25th September, 1995, and this is a

letter a draft of the letter to be sent to the

Department. And it reads: "Dear Sirs,

"Refer to the presentation made by the consortium"

do you have that?

A. Actually, my version of

Q. Let me just

A. I have it now.

Q. It's exactly the same terms as the letter which was

ultimately sent, with the exception that there

was with the exception that there was inserted in

the letter which was sent, in brackets, "circa 60%".

You know that particular

A. Yeah, I think there are actually two changes in it, I think.

Q. All right.

A. There is the addition of the "circa 60%", and I gave myself additional titles as well.

Q. Oh, yes.

Now, if we go to Document Number 64, this was the

actual letter that was sent with the "circa 60%"

included in it.

A. Mm-hmm.

Q. Can you tell me, what discussion took place which gave rise to the inclusion of this?

A. To the inclusion of the "circa 60%"? I mean, I can't really you know, because I mean, at this stage, why we made that adjustment, it seems to me that it's

really to do with, you know, kind of highlighting the fact that things weren't identical to before. Because if you were to read the letter of the 29th September without the "circa 60%" in it, you know, you'd simply have the version you read out, which is "We confirm we have arranged underwriting on behalf of the consortium for all the equity not intended to be subscribed for by Telenor". So actually putting in the words "circa 60%" is raising a flag which is not identical to what had been talked about in terms of the original submission.

Q. In what way, sorry, can you help me?

A. Well, in the original submission, as I understand it, it was 40:40:20. And you know, when we did the first previous draft of this letter, even though we had shifted to 37.5:37.5:25, or were arguing about that, you know, we effectively you know, weren't dealing with numbers at all. We simply said that we confirmed that we have arranged underwriting on behalf for all the equity not intended to be subscribed.

So I imagine that somebody said "Well, we better flag the fact that it's not actually precisely the same as before". But I don't recall who suggested that we should flag it, but clearly, you know, the addition was put in there to flag the fact that it wasn't identical.

Q. You mean as a anyone reading it closely would be

driven to ask the question: "Well, what is going to be subscribed for by Telenor here? Is that is it going to be more, or less?"

A. No, in the sense that I think anybody reading the original draft closely

Q. We'll leave out the "circa 60%"

A. So, if anybody reads

Q. "We have arranged underwriting on behalf of the consortium for all the equity not intended to be subscribed for by Telenor."

A. In that draft there is not a hint of fact that things are not exactly as they were in an earlier stage, right. So when we sent the letter into the Department, we had added in a flag which said, "Look, it's about the same, but it's not identical".

Q. Well, is that the case, Mr. Walsh? Because, I was just wondering and I take the point you make, but if somebody wanted to, you know, flag the situation, it would have been very simple to say, "We confirm that we have arranged underwriting on behalf of the consortium for all the equity not intended to be subscribed for by Telenor. That is, 62% of the equity".

A. Or 62.5%.

Q. Wouldn't that be what you'd say if you wanted to flag it to the Department that that's not the same as the submission?

A. Well, I mean, first of all, I think you know, you're the lawyer here. You know, if somebody sent you in something saying "I have done circa 60%", you immediately say, "Well, if he had meant 60%, he would have said 60%".

So I think by definition, we are actually highlighting the fact that it's not actually 60, and it was entirely open to the Department to come back and say, "Well, you know, we see that it's now circa 60, you know, tell us a bit more".

Q. I'll be coming back to look at the letter in closer detail in a moment, and we can take that on board.

If you wouldn't mind going to Tab 62 for a moment, would you, Mr. Walsh? It's just I passed over it in error.

I think this is a fax sent by Mr. Gerry Halpenny of William Fry's to you on the Tuesday, the 26th September, 1995.

A. Mm-hmm.

Q. And he said,

"Dear Michael,

"Further to my conversation with you earlier this morning, I enclose revised draft of the deed of covenant marked to show the amendments made from the previous draft.

"As mentioned to you, I am uncomfortable with the idea of signing the letter as drafted by you with the

agreement to be entered into later on. Given the consequences of the issue of the letter to the Department, I feel strongly that the deed of covenant should be executed before that letter is issued.

"I have tried to incorporate all of the points in your letter into the agreement and hopefully it will be possible to agree the document very quickly. The two outstanding issues are probably the transfer provision and the requirement of Telenor regarding the number of placees.

"In relation to the transfer provision we have discussed on Sunday, the replacement of the words "is likely to" with the words "has stated an intention to", I will put this wording to Telenor for their views. I should also point out that I have added Esat Telecommunications Limited in the fifth line", and he deals with a number of technical matters there.

"As I understand it, you are happy to have the number of placees limited to four as long as one of these placees is a nominee who may hold the interest of a number of other investors. Your particular concern in this regard is should that your underwriting obligation be called upon, you would wish to have the ability to seek investment from a larger number of parties.

"On the basis of the deed of covenant being agreed, your letter to Esat Digifone would then I think be

reduced to the last two paragraphs 6 and" sorry it is out of mine "as it is not appropriate to cover those Deed of Covenant, the introductory paragraph then should simply refer to the fact that the Deed of Covenant has been signed and that it is on that basis that the attached letter to the Department is to be issued.

"I am also sending a copy of this letter to Per Simonsen of Telenor to ask for his comments on the revised draft."

Now, do you remember that, that there was a discussion that the letter, which ultimately was the letter of the 29th, would be sent to the Department before the arrangement agreement and the letters were signed?

A. Well, I remember, shall we say, a discussion as to whether or not the arrangement agreement would be signed, i.e. you know, the formal thing from Gerry Halpenny, and you know, to be blunt about it, it goes back to a situation where I actually felt very uncomfortable, I think, if you read that agreement, you know, and shall we say, in places it was tortuous and open to lots of what I would have said, interpretations. So I actually felt very uncomfortable with it, so I would have been very happy in some senses to, shall we say, kind of do a letter in my terms that I actually understood precisely what was actually being said, and you know, to postpone in

some senses, you know, kind of any other document to a later date.

Q. Was there no question of a discussion around the urgency of getting a letter to the Department?

A. Yeah, but in some ways the urgency to the extent that there was one, and I am sure there was but the urgency of actually getting the letter to the Department would have actually helped my side of the situation, because you know, effectively they were the people under pressure. I wasn't.

Q. You mean Mr. O'Brien's side were under pressure?

A. Mr. O'Brien's side.

Q. And can I take it I am just trying to get the understanding your understanding at the time would have been, once this letter was gone into the Department indicating this underwriting commitment, that short of walking into the Department and pulling the plug on the whole thing, Mr. O'Brien was effectively tied in by that letter, as far as you were concerned?

A. Certainly as far as I was concerned, you know, when we actually signed up, you know, the kind of two letters: the one to Communicorp, the one to the consortium, and then, you know, the letter to the Department, that you know, I had satisfied what I had undertaken to do.

Q. I understand.

A. And I think I would have fought very hard against it

if they tried to actually renege on the agreement in any sense.

Q. Yes, I am just recollecting Mr. Halpenny's evidence if I can. He thought that there was pressure sorry, that there was time pressure to get this letter into the Department. You don't disagree with that, necessarily?

A. No, I would say that they were quite anxious to get the thing complete.

Q. Now, the arrangement agreement the sorry, could I just ask you this: The letter at Tab 65, that's the letter between yourself and Communicorp Group?

A. Yeah.

Q. The two letters there, and the letter between yourself and Denis O'Brien signing on behalf of Communicorp Group and Esat Digifone?

A. Yeah.

Q. And the arrangement agreement, were they all signed at the same time, or do I understand you to say that the two letters were signed up to before the arrangement agreement was signed?

A. No, sorry, I may have indicated what my preferences would have been. I mean, my preference would have been not to have had anything to do with, you know, what's entitled "the arrangement agreement", because it was tortuous. My preference would have been to simply go with, effectively, shall we say, my two

letters of the 29th: one to Communicorp, one to the consortium.

Q. They are your letters, are they? They are prepared by you?

A. They were prepared by me, yes.

Q. So if we just look at the first of those letters, so at Tab 65, you wrote to Mr. O'Brien of Communicorp.

"Dear Denis,

"I am writing to confirm the basis of our agreement with Communicorp Group Limited as consideration for us issuing the attached letters to the consortium and to the Department of Transport, Energy and Communications. The definition of this letter and the letter to the consortium are the same.

"1. Communicorp has undertaken to subscribe for 37.5% of the consortium on the same terms and pari passu with the placees. IIU Limited has arranged underwriting for the obligation. As consideration for arranging the underwriting, Communicorp will pay IIU Limited a fee of $\frac{1}{2}$ 219,000".

Could I ask you, this is something that has always puzzled us as we look through the document and asked Mr. O'Brien, was that ever paid? Or do you know?

A. I'd be pretty sure it wasn't paid.

Q. All right. It's something that

A. No, I think in fairness, I mean, because that sounds like he defaulted in some sense.

Q. I am not suggesting that for a moment. Was it written off? Was there

A. No. What actually happened, you know, and you know, it would have been, you know, out in I couldn't tell you precisely what date, but very close to the end; when I say "the end", very close to the 16th May.

You know, basically I suppose everybody had been beating up everybody for so long that you know, the underwriting process was really changing at that point in time, and it was really becoming kind of Telenor and ourselves actually underwriting Denis on a two-thirds:one-third situation. And you know, to be honest, in that context we agreed, "Look"

Q. Everything is settled?

A. "Just forget it".

Q. "2. All shares would be subscribed for on an absolutely pari passu basis other than specifically provided for in the agreement by all members of the consortium.

"3. In the event of the bid not being successful, the Placee will pay 25% of the net bid costs, excluding the arrangement fee, of the GSM licence incurred by the consortium. The aggregate of the bid costs will be a maximum of 1.6 million and will be independently verified as being properly incurred and paid. The placee's obligation in relation to 25% of the net bid costs will be paid after deduction of the underwriting

fee.

"4. In the event that Communicorp fails to meet the obligation in full and the Arranger or its assignee is called upon to satisfy any of the obligation, the Arranger will procure that for a period of four months, Communicorp will have the right to meet the obligation or the balance not satisfied, as the case may be, by paying the amount of obligation together with the interest at a rate of DIBOR plus 2% on the amount of such balance.

"5. This letter, together with the attached letter addressed to the consortium and the agreement, represents the full understanding between the parties, and no other commitment exists between the Arranger or the placees on the one hand or the consortium or its shareholders on the other hand.

"Please sign the enclosed copy."

And it was signed by Denis O'Brien.

Then the document to Mr. O'Brien qua consortium is:

"Dear Denis,

"I am writing to confirm the basis of our agreement",
and you set out:

"1. In the event that the consortium is awarded the second GSM licence then the consortium undertakes to place 25% equity in the consortium with IIU or its nominees (together the placees). IIU Limited (the Arranger) will arrange underwriting for the 37.5% of

the equity which Communicorp Group has committed to subscribe for. The maximum combined commitment under the placing and underwriting will be 36.5 million.

"The Arranger has assigned the agreement in its entirety both benefits and obligations to Bottin International Investments Limited.

"3. The obligations of the Arranger or its assignee under the agreement are conditional on:

"A. The terms of the grant of the GSM licence not being materially different from the request for proposal in connection therewith by the Department of Transport, Energy and Communications.

"B. Communicorp and Telenor having signed a shareholders agreement, to which the Arranger is also named as a party, containing protections in favour of the Arranger which would be reasonable for a shareholder subscribing for 25% of a private company.

"C. GSM market conditions in the Irish telecommunications industry not having materially disimproved.

"In each such case, on or before the date of the first issue under the commitment.

"4. The placees will be entitled to nominate a representative (the placees' representative) to represent their aggregate interest in the consortium, and the placees' representative will be a party to the shareholders agreement which will be executed in a

form substantially similar to the draft supplied to the Arranger by William Fry Solicitors on September 21, 1995, and the placees' representative will be deemed to hold the aggregate of all shares held by the placees for such purposes.

"5. In the event that Telenor fail to fully subscribe for their 37.5% share in the consortium then all obligations of the Arranger or its assignee or placee are void save where Telenor and Communicorp collectively subscribe for their 75% share, provided in such instances Telenor will retain 30%.

"6. The existing shareholders in the consortium represent and warrant that the consortium will, at the date of the award of the licence, be free from all debt and liabilities other than the bid costs properly incurred. The placees and the Arranger will be fully indemnified by Mr. O'Brien and the existing consortium shareholders if this is not the position.

"7. The attached letter is strictly private and confidential for the Department to which it is addressed. It may not be used or taken as a commitment for any other purpose other than for the departmental submission. Mr. O'Brien and Communicorp will fully indemnify the Arranger and the placees in the event of any cost or obligation or liability arising as a result of the use of this letter or the attached letter for the Department other than for the

purpose of submitting the attached letter to the

Department to which it is addressed.

"8. The terms other than the amount of any tranche of the obligation governed by the arrangement will be subject to the prior approval of the Arranger.

"Please sign", and that was signed by Denis O'Brien on behalf of Communicorp and Esat Digifone. Isn't that right?

A. That's correct.

Q. And you believe he had the authorisation of Telenor to sign that letter?

A. Yes.

Q. Now

MR. FITZSIMONS: Not that letter.

MR. COUGHLAN: Sorry, I beg your pardon.

Q. Sorry, perhaps I'll ask, Professor Walsh, what was your understanding of Mr. O'Brien's position when he signed this?

A. Sorry, this particular letter is the one addressed to the consortium, and I would have seen Denis signing on his own behalf, on his Communicorp behalf, and also on behalf of the consortium.

Q. I stand corrected by My Friend; that was your understanding, that he had authority to sign that letter?

A. Yeah

Q. You had no reason to think he didn't have authority?

A. No, I mean, as I said before, I mean, we perceived Denis as the person who was leading this consortium, speaking on behalf of it.

Q. Right.

If you go to the arrangement agreement, which is at Tab 66, am I correct and I know you have expressed the view that it's cumbersome and may be open to interpretation, but you did sign up to this arrangement agreement; isn't that correct?

A. I did, on the basis of the fact that it was subject to the earlier letters.

Q. It was subject to the earlier letters?

A. Which is actually set out in the other

Q. Where does it say that in the arrangement agreement?

Can you help me? Because I spent along time reading this last night, and it's not the easiest document to read, I agree with you.

A. The letter we just read a minute ago, which is you know, the one to the consortium, you know, "Our agreement is based" sorry, the third, fourth and fifth lines there: "Our agreement is based on the attached arrangement agreement prepared but is subject to this side letter."

Q. I see. I take your point.

A. So because I mean, I have to repeat, I mean, I felt very uncomfortable with this, because I didn't know what was in it, shall we say. I mean, I had read it

as a lay person, but I wasn't using any legal advisers at the time. So I wanted to make sure that, shall we say, there wasn't too much diversion or divergence between the two interpretations.

Q. Can I take it just looking at the agreement, and I don't want to read the whole thing out, but am I correct in thinking that if you go to Clause 3 of the agreement, that that provides that in consideration for you undertaking the obligations in the agreement, that you will be entitled to not less than 25%?

A. Sorry, that's correct, that's my interpretation of it.

Q. And that you would be entitled to

A. I mean, sorry, I have

Q. And you were entitled to place them with four entities, if I could describe it like that; would that be your broad understanding of

A. Sorry, that would be my broad understanding. I am just marginally concerned because at the end of that, shall we say, clause, there is kind of two sort of lines and illegible writing, and I have no idea what that illegible writing says at this stage.

Q. This is at Clause 3?

A. This is at Clause 3.

Q. Where you have two downward strokes?

A. I have two downward strokes, and there is writing over on the right-hand side.

Q. I see that; it's not clear. But on this document,

would that be your that's my broad understanding of

it. Would that be your broad understanding of it?

A. Absolutely.

Q. Then if you go to clause number 5, this is in effect

the obligation being undertaken; isn't that right?

And the obligation was, in effect, to underwrite the

Communicorp equity?

A. Sorry, I just needed a minute to read it. It's not

easy reading.

Q. No.

A. The first part of it maybe if we take it in parts,

seems to me to be saying that you know, in the

event that there is, you know, an issue of shares, and

you know, that they are actually taken up, our

obligation in relation to that will actually cease.

Then it goes on to say that you know, if, shall I

say, I suppose a Communicorp-related entity, if we can

use that approximate paraphrasing, doesn't take up its

entitlement, then it is first offered to the other

shareholders pro rata in respect of their

shareholdings.

Q. That's the obligation, really, isn't it, the

obligations would seem to be in clause 5, your

obligations?

A. Yeah, I think probably in B, is it, really?

Q. B. 5B.

A. Yeah.

Q. And then if you go to 5D(ii) on the next page, you see there: "The limit on the maximum number of subscribers set out in clause 3 shall apply also in respect of clause 5."

That seems to be that again, in relation to your obligations that is, the underwriting obligations that you would be entitled to place, is the term, with, again, the same number of entities; that's four. However, in the case of this, one of those four could be a nominee for third parties other than the subscribers procured by the covenant or pursuant to this agreement.

So it seems to be that, again, in relation to this, you could place them with four entities, but one of those entities may hold for a number of investors.

Would that be a

A. I mean

Q. reasonable interpretation of it?

A. My recollection of the events is that, you know, Telenor didn't really want to end up having to deal with a myriad of people, so that you know, in the event of us actually, you know, placing the shares, then you know, they really wanted to confine it to a manageable number, which is quite a reasonable sort of process; and in that sense, I mean, at this point in time, you know, there was no clear view as to what was going to happen to the shares. You know, there

was an undertaking to ensure the money was there, but there was no kind of clarity or perception as to whether or not the shares were going to be held by, you know, individuals or institutions, as the case may be.

Q. Now, the arrangement agreement, leaving aside the language for the moment, as I understand it, is in is attempting cover the same matters that are contained in your letters, save for the Bottin issue, and I'll leave that out for the moment. But in broad terms, what it's talking about is that "In consideration for us underwriting Denis O'Brien's side, we will receive 25% of the equity of the GSM company, and we can place it with up to four entities". That's in broad terms, is that right?

A. I mean, in essence, and I mean, to be fair, you know, I think the previous document that we opened, or one of the previous documents, you know, Gerry Halpenny was trying to make the same point that you are now.

So but I was as uncomfortable then

Q. It's in the first paragraph of your own letter to Denis O'Brien, both in you can see that there in the first paragraph to Denis O'Brien on the consortium, "in the event that the consortium is awarded the licence, you will agree to place 25% of the equity in consideration for the underwriting of the 37.5%." That seems to be

A. No, I mean, as I say, Gerry Halpenny would have argued that, shall we say, my letters were redundant and that his document was perfect; but then, you know, people differ.

Q. I am not going to get into that dispute. Luckily, I don't have to. But that was your understanding, wasn't it, of the position? And it seems to be, as I understand it, Mr. O'Brien's understanding of the position as well.

A. Yeah. Sorry, I don't think anybody is disagreeing; it's just I mean, I think it's evident from the some of the later documents that, you know, shall we say, if I had relied exclusively on, shall we say, the arrangement agreement, it would have left me less protected than having those side letters in place.

Q. Do you mind me asking about side letters? Because we see them again in May, and it's a different type of side letter then, but what is the side letter as you understand it?

A. I don't know. There were so many lawyers in the room. I suppose, as I would see it, I mean, side letters are kind of a normal part of actually doing business. You have frequently lengthy detailed agreements, and then there are points of clarification that people want to put in for whatever reason, and you know, somebody decides that they will be done by means of a side letter between parties as opposed to I mean, as I

say, there are many more learned people here to actually explain.

Q. Sorry, I keep asking people. I am just wondering myself. As far as you're concerned, they are used extensively in commercial transactions, are they?

A. Absolutely, yeah. I mean, I think if you go to the you know, actual bible of documents, on whatever it was, the 26th, whatever date it was in May

Q. The side letters to the Department as well; I know that.

A. There is side letters all around the place. If you go to the bank funding, I suspect there were a pile of side letters there as well.

Q. Right. Now, so as far as you were concerned, as of the 29th September, 1995, by reason of your two letters and the arrangement agreement, the position was that in consideration for underwriting Communicorp's position, you were entitled to 25% of the consortium, if the licence was awarded; that was it in a nutshell?

A. In broad terms, I suppose, I say in more precise terms that we were entitled to it all, you know, in return for issuing the letter to the Department.

Q. Yes, yes, sorry, yes, the issuing of the letter to the Department, the underwriting of Communicorp, that you were entitled to 25%. That's

A. Yeah. I mean the total thing, the willingness to bear

percentage of the costs, their undertaking to pay the fee that was never paid, etc., you know, so...

Q. Yes. Can I just ask you to go back to the letter which went to the Department. That's at Tab Number 64.

And if you just take the first paragraph for a moment.

You say, "We refer to the recent oral presentation made by the consortium to the Department in relation to their proposal for the second GSM cellular mobile phone licence. During the course of the presentation there was a detailed discussion in relation to the availability of equity finance to the consortium from Communicorp and a number of institutions."

Now, that's information, you say, which you got from either Denis O'Brien or Owen O'Connell or a combination of both. The probability is you must have got it from Denis O'Brien, because Owen O'Connell wasn't at the presentation, and you certainly weren't at the presentation; isn't that right?

A. Yeah, well, I mean, at the end of the day, it was, shall we say, a combined draft letter.

Q. Yes. I am just wondering, what did Denis O'Brien tell you about what happened at the presentation?

A. To be honest, I am not sure that I ever discussed it in any great detail. You know, I mean, I have

Q. It's I saw something in opening your memoranda this morning, and I just if I can find it now; I won't

deal with it otherwise.

Yes, if you go to your memorandum of the 9th July, 2002; it's the third memorandum. And it's on the second page. It's your response to Question 2 and do you see 2A, and it's Roman numeral III; do you see that? You say that and the question that was asked was: your knowledge of all queries raised by the Department regarding the commitments provided by the institutional investors in Esat Digifone bid.

A. Sorry, Mr. Coughlan, which memorandum are you on?

Q. Sorry, I beg your pardon, it's the one on the 9th July, 2002. It's Divider 6D.

I wonder, do you have that? The question is, your knowledge of all queries raised by the Department regarding the commitment by the institutional investors in the Esat Digifone consortium.

And your response is that "I understood from Mr. O'Brien that at the oral presentation, queries were raised on the certainty of the availability of equity finance for the consortium."

A. Yeah.

Q. What did Mr. O'Brien tell you about that?

A. I have just to be honest, I have absolutely no idea at this stage. I mean, shall I say, to put down this statement, I mean, it's very clear that it was actually said to me, you know, in the context of the drafting.

Q. I am just trying to find out what you remember Mr. O'Brien you weren't at the presentation; you don't know what questions were asked or what responses he gave?

A. No. I mean, I wasn't at the presentation. I have no idea what questions were asked or otherwise. But I mean, all I can tell you at this stage is that you know, shall we say, the way the letter was actually drafted, you know, was clearly on the basis of, you know, Denis telling me directly or telling me through Owen O'Connell that, you know, they were concerned.

Q. About the availability of equity finance or the certainty of the availability of equity finance. You didn't hear from Mr. O'Brien what response he gave to that at all?

A. No. I have sorry, he may have told me, but I have zero recollection.

Q. All right. If he told you, I am just wondering, did he tell you that he had informed the presentation that he had an irrevocable commitment, an irrevocable commitment of equity from Advent and that he had an agreement to that effect? Did he ever say that to you, or did you ever hear that before the evidence in this Tribunal?

A. I certainly didn't hear it before the evidence of this Tribunal because, to be honest, if he had irrevocable commitments, then you know, what was he doing talking

to us?

Q. Sorry, I just you didn't hear that before this Tribunal, anyway?

A. No.

Q. All right.

A. I mean, it would have made us redundant, I am afraid.

Q. Mm-hmm. Now, I just want to go onto the next paragraph, and you state that "We confirm that we have arranged underwriting on behalf of the consortium for all of the equity (circa 60%) not intended to be subscribed for by Telenor. In aggregate, the consortium now has available equity finance in excess of $\text{€}1/258$ million."

Now, can I just ask you a question about that paragraph there: Why did you say in that that you had arranged underwriting for the consortium for all of the equity not intended to be subscribed for by Telenor? I am leaving the "circa 60%" out of it for a moment. That wasn't what happened, was it?

Sorry, am I not correct in thinking that that was not the position as of that day?

A. Well, sorry, to be absolutely precise, I mean, we had, you know, a very firm commitment, as we have just seen, to actually provide all of the equity. So in that sense, we were absolutely, you know, committed to underwriting and ensuring that the money was available.

Q. So with whom had you arranged the underwriting?

A. Well, I mean, the practical reality is that from day one, this was a commitment by Dermot that either he would put up the money or alternatively, you know, we would actually get other people to put up the money.

Q. Well, I just want to be clear

A. So as of this date, sorry, you know, to be clear, it was a Dermot commitment.

Q. So the underwriting was arranged with Mr. Dermot Desmond?

A. Strictly speaking

Q. Or IIU on its own account; is that right?

A. Strictly speaking, I suppose it was arranged with Bottin in this event, but effectively that's the same as Dermot.

Q. Well, I'll ask you about that. And I won't do that today, but I just want to ask you this: What was IIU as of the 29th September, 1995?

A. A company, I suppose, you know, based in the IFSC, regulated by the Central Bank, to provide investment and advisory well, corporate advisory services, I think.

Q. Corporate advisory services?

A. Corporate finance services, I guess.

Q. What was could you just tell me exactly, because I am just trying to understand the position.

Underwriting is an authorised activity, isn't that

right? It has to be authorised? Or am I correct?

A. You actually aren't correct. It depends what you actually mean. I mean, if somebody came in to you in the morning and said, you know, "Mr. Coughlan, will you actually agree to invest, you know, in my company", and you know, basically I think you'd be entirely free to say yes, you would. If the person came to you and said "Well, I am hoping to be able to raise, let's say, £1 million from other sources, but if I don't succeed, will you make it good?" I'd say you are perfectly entitled to do that.

Q. I know that. That's something that's just a private agreement.

A. This is an agreement with a private company.

Q. Well, as I understand the situation correct me if I'm wrong that underwriting in respect of the issue of one or more investment instruments, or the placing of such issue, or both, is investment is the carrying on of an investment business service; is that right? I am looking for your assistance there as a professor of banking.

A. Unfortunately my knowledge of the technicalities of professorship are long since waned. So if you have a document there that actually quotes it, I think if you actually look at what was being done here, there was a commitment, you know, by Dermot or one of Dermot's vehicles to actually provide the money to you know,

the Esat Digifone consortium.

Q. I am trying to distinguish

A. I have great difficulty in understanding why there would be anything wrong with actually doing that.

Q. I'm not suggesting that as regards a private individual doing something. I am looking at two matters here, Mr. Walsh, if you just bear with me, what I am trying to identify here.

What a private individual is doing and what is being contended for by people who have given evidence in this Tribunal that IIU was a financial institution, or something akin to a financial institution, and made no difference in the public aspect of this licensing process. I am concerned about that for a moment because of evidence other people have given.

I am not being critical of you or Mr. Desmond in relation to Mr. Desmond carrying out private business.

But as I understand the situation, and correct me if I am wrong, that the carrying out of investment an investment business service, of which underwriting is one of those activities, is an authorised activity and has to be authorised under the Investment Intermediaries Act of 1995. Isn't that correct? And the reason I ask you that is because, as I understand it, and from information available to me from the Central Bank on the public register, that IIU was authorised under Section 10, that is the carrying out

of investment business services, on the 8th February, 1996, to provide investment advice in relation to one or more investment instruments, and the following investment business service:

- A. Receiving and transmitting on behalf of investors of orders in relation to one or more investments instruments.
- B. Execution of orders in relation to one or more investment instruments other than for own account.
- C. Dealings in one or more investment instruments for own account.
- D. Managing portfolios of investment instrument on deposit and in accordance with mandates given by investors.
- C. Underwriting in respect of one or more investment instruments or the placing of such issue or both."

I am just wondering, was there any authorisation from the Central Bank prior to the 8th February, 1996, as regards IIU to carry on any type of activity? I just wonder, can you help me on that?

A. My understanding, and sorry, it's a matter of just checking the record.

Q. This is the public register of the bank?

A. I am pretty certain, but I couldn't give you an absolute confirmation without going to check the records, that you know, we were authorised to do you know, certainly provide corporate finance advice

and to do investment business from sometime early in September of, you know, '95. So you know, strictly speaking, I mean, if we are down to, shall we say, interpretation of a you know, the legalities or otherwise of things

Q. No, I am not dealing with that at all.

A. No, no, but if that's what we are down to, then, you know, the fact that it was actually arranged as opposed to underwritten is an important distinction.

Q. That's just occurred to you right now, Mr. Walsh. And I think you were the one who didn't like the arrangement agreement. I'm looking at what has been contended for by other witnesses looking at this particular transaction. This is not a personal criticism of you or Mr. Desmond, let me hasten to add.

A. That's quite all right. No offence is taken. But I think, you know

Q. Well, can you assist us, so, as to what authorisation, just to help us, IIU, in the first instance, had as of the 29th September, 1995, or are we free to go to the Central Bank to get that information?

A. First of all, I am sure you are free to go to the Central Bank. Equally well I am sure I can actually check this evening.

Q. The second question

A. Sorry, just to complete the answer. I mean, I am 99 percent certain that you will find that as of

sometime early in September, we were certainly authorised to give corporate finance advice.

Q. I think that is probably so. That's probably so. I am not disputing that at all.

A. And if we were authorised to give the advice, we would certainly have been authorised to arrange we mightn't have been authorised to actually go and underwrite.

Q. All right. Maybe I don't want to heat this up. Let's sort it out, and let's check it all with the Central Bank.

A. Sorry, I think there are only two letters, as I recall, from the Central Bank: one in the beginning of September, you know, facilitating our corporate finance advisory services, and then kind of the next one, you know, providing kind of a wider range of investment services as we effectively extended kind of what we were doing and started looking at doing stockbroking and other services similar to some of the things we had been doing before.

Q. Can you assist me here

A. Sorry, I suppose it's also worth pointing out, certainly the memorandum and articles of the company, and the company is obviously called International Investment and Underwriting Limited, you know, allowed it to do underwriting.

Q. I am sure it does. I wouldn't doubt you for a moment

in relation to that I wouldn't doubt you for a

moment in relation to that.

A. It's more whether you doubt the company secretarial

people to be honest.

Q. Can I ask you this, can you assist me here: The

rights and obligations were assigned to Bottin; isn't

that right?

A. That's correct, yeah.

Q. Can you tell me to your knowledge whether Bottin were

authorised to carry on any business investment

business: In other words, were they authorised to

underwrite in this jurisdiction?

A. Well, I would be surprised if I wouldn't be

surprised, I would be certain that Bottin has no

Central Bank approval and never had any Central Bank

approval. As I think you probably know, it's a

Gibraltar-based company. But equally well, Bottin was

entirely free, I would suggest, to enter into the

commitments that it entered into in these agreements.

Q. I'm not asking about Bottin. I'm looking at a

licensing process here and matters relating to that.

A. I understand that, but I mean, I simply want to make

it clear that my understanding of the way, you know,

this transaction actually worked, is that it's

entirely within compliance with any regulations.

Q. And just in that regard, when the assignment took

place to Bottin of the obligation, the rights and

obligations under the arrangement agreement, can you tell me, what was Bottin at that time?

A. Well, I mean, I suppose, you know, I would view Bottin as just being, you know, a creature of Dermot, in the sense a company actually owned or controlled by him. But you'd really have to ask Dermot about Bottin and his relationship to it.

Q. Okay. Fair enough. Your view about Bottin and your acceptance of the position of Bottin and the financial wherewithal of Bottin would have been based on information and accepting the assurances of Mr. Dermot Desmond; would that be and that would not be unreasonable for you to do?

A. I'd be very slow to suggest to him that he wasn't going to honour his obligations. I've never seen him do anything other than honour his obligations. So from that point of view, if he said actually to put it into Bottin, then I would have put it into Bottin.

Q. You see, it's just as of September of 1995, IIU had carried out, as you have told us, a number of private investments on behalf of Mr. Dermot Desmond, isn't that right that's what it was primarily doing at that time?

A. That's primarily what it was doing at the time, yeah.

Q. And it was owned and controlled by Mr. Desmond. Would a fair way to put it?

A. That's absolutely true.

Q. So it was his own private business, being conducted through his own vehicle, would be a reasonable way of putting it?

A. To a substantial extent. I mean, shall we say, what was intended at the time and the way things have evolved are never quite the same. At the time, as I say, as I referred to earlier, you know, without disclosing the company, we were also working, you know, as advisers in the disposal of quite a substantial business. When I say "a substantial business", I think it was 30 million or so at the time.

Q. That was in your capacity as financial adviser?

A. Absolutely. Well, corporate finance advisers.

Q. Corporate financial advisers?

A. Yeah.

Q. It wasn't a firm of stockbrokers at that time, was it?

A. No. I'd say we got our UK stockbroking licence, I don't know, maybe a year later or thereabouts. But I couldn't give you a date.

Q. It wasn't a firm of stockbrokers. It had, you say, you believe, authorisation to give financial and commercial advice. It had no authorisation to take deposits at that time?

A. And still doesn't. We have never been a deposit-taking institution.

Q. And I take your point about Mr. Desmond doing something privately through this, but I am looking at it from the outside now, looking at the institution:

It does not appear to have been authorised to carry out underwriting at that time, in its broad sense.

A. Well, I mean, what I would say to you is that IIU wasn't, you know, underwriting. We were arranging the underwriting.

Q. With whom?

A. With Bottin.

Q. And?

A. Dermot Desmond.

Q. Who owned IIU. It came all around in a circle. It was Mr. Desmond carrying out his private business?

A. I mean, that's why I think I have tried to be very clear to distinguish between Dermot IIU and Bottin.

Q. I know. You see, what I'm really trying to get at here is when you say you got one over on Davys, you know, and sort of I understand the competitive you weren't doing the same business as Davys at that time; isn't that right? You were not

A. I mean, I wouldn't say that they were doing it then or doing it now. I mean, the practical reality is that what we were doing in this case is you know, they were going about arranging people to take up, and we actually took over the role that they had. Now, we were going further than they were, in the sense that

Dermot was committing to actually make sure the equity was available.

Q. No, what Davys were is that they were first of all they were a firm of stockbrokers; isn't that right?

A. Absolutely.

Q. They were, as far as we know, at that time, authorised to engage, perhaps, or arranging underwriting?

A. Well, to be precise, at that stage, I mean, Davys themselves weren't actually underwriting.

Q. I am not saying they were. They were I am looking at them as an institution; that's what I am really interested in. That they would have been authorised to arrange underwriting at that time. They were an institution, a financial institution?

A. They were an integrated stockbroking house, who I suspect at that stage were probably owned by the Bank of Ireland, but I couldn't be sure.

Q. And AIB, IBI, Standard Life were blue-chip financial institutions; isn't that right? I don't think anyone would gainsay that at that time, whatever you might think about them now.

A. Well, it depends on which time in history you ask each of the institutions. But I think we are straying into territory where we'll all get sued outside of here if we're not careful what we say.

Q. One thing that's absolutely clear is that IIU were carrying on a business of financial and commercial

advisers and were not a financial institution in

September of 1995?

A. I think that depends entirely on you what you define as a financial institution.

Q. Well, akin to?

A. If you are saying were we akin to Standard Life, no, we weren't providing life insurance. If you are saying were we akin to Bank of Ireland or AIB, no, we weren't taking deposits. If you say were we akin to the corporate finance part of Davys or Bank of Ireland or AIB, we were probably very akin to them, so you know

Q. You had commenced business in August of that year, the previous month; isn't that right? You had carried out a few private investments by Mr. Dermot Desmond, and you were giving advice to one other company, a substantial company, in relation to the disposal of assets perhaps in the region of 30 million. That's the business you had carried out, in fairness, and that's not a criticism.

A. I should hope not, because everybody has to have a beginning.

Q. I understand that. I understand that. You are quite right.

A. Right. I'll have a glass of water and calm down.

Q. Now, can I ask you this: And I understand what you're saying, that IIU, Bottin, behind both Dermot Desmond.

So you knew this; Denis O'Brien knew it, and he has given evidence here that it didn't matter to him whether it was whatever the vehicle was, it was Dermot.

A. Mmm.

Q. First of all, taking into account what you might describe as the legal niceties the documents. You have IIU underwriting; you have IIU or that being assigned to Bottin, and both well, sorry, Mr. Denis O'Brien acknowledging that assignment on behalf of Communicorp and Esat Digifone; isn't that correct?

That's the position?

A. Mmm.

Q. Why wasn't that stated to the Department in terms of how would it in any way, if the money was there or if the reputation was there or whatever the situation, how would that weaken the comfort of support for Communicorp's perceived fragile financial position, if that was declared to the Department? Wasn't that the fact?

A. Well, I think you have to read this letter in context.

I mean, the context of the letter from IIU was, you know, I suppose to put it kind of at its simplest, it was really kind of almost a marketing-type thing.

It's there to advertise that we are actually involved, that we are supportive, and you know

Q. I can see that, and it can come in on IIU notepaper.

Why it didn't come in from Denis O'Brien and you, I am at a loss to understand, but

A. Why would it have come in from Denis O'Brien?

Q. He was the one involved in the process. You weren't in it at all at this stage. Why do you remember any discussion as to why the letter would come from you rather than come in from or through Denis O'Brien?

Do you understand the point I am making?

A. When you say whether it came through Denis O'Brien, I mean, I have no idea whether Denis was present at the time in our office at the time it was faxed or whatever. I mean, I would have thought at the time it was very simple, you know, what we were saying to the Department: "Look, we are here, we are actually supporting this project", you know

Q. Could you just tell me about the faxing of it to the Department. Can you remember, did you make contact with the Department to enable it to be received?

A. I mean, to be honest, I have no idea. I mean, clearly going through it, the fax cover sheet is actually done in my handwriting, so you know, I mean, I kind of addressed it, put the phone number in, etc.

Q. Did you know Martin Brennan?

A. Vaguely, in the sense that I mean, I did a lot of work with the Department back around 1980, 1985, and you know, Martin, you know, would have been there. He

wasn't somebody I had actually worked directly with at the time. But certainly he would have been there, and I would have been aware of him.

Q. Do you know if you made any inquiries to see if Mr. Brennan was available to receive the fax? It's not the sort of fax that one might sent in just generally, I suggest, is it?

A. Well, it's not one that you'd kind of expect to, shall we say, kind of just be left lying around the place.

Q. That's what I mean by that.

A. So I presume Denis told me where I was to fax it to, or the number I was to fax it to; but I mean, as a matter of fact, I don't have any recollection of that.

Q. Do you remember any discussion with Denis that conveyed to you any impression that he himself had made any contact with the Department in relation to receiving this particular fax?

A. No, I don't, no.

Q. Well, you were anxious to have control over your own documents, letters and documents, and not to have solicitors' documents coming in that you might find that there would be some clause that might be capable of some interpretation at some stage, and I understand that. Can I take it you'd want to have control over where documents of this nature were going to? As you say, you wouldn't want this sort of thing lying around the place?

A. That's why I say I presume that Denis O'Brien told me exactly where I was to fax it to. I mean, the other thing, and I don't know, is you know, it wouldn't have surprised me if we both faxed and couriered it.

But you know, I have no record of having couriered it.

Q. That's what I was just wondering. Fax one normally faxes things if there is a degree of urgency about them, particularly coming up to a weekend like this; one might send over the hard copy on the Monday, or

A. Yeah, and

Q. or at the same time?

A. Well, I have more sorry, this is total hindsight guessing; I mean, I haven't seen the original of this letter at all, so I have no idea, you know. It would surprise me if we didn't courier it as well as fax it, but you know, who is to say we did the right or the wrong thing?

Q. In any event, on the if I just go back to the letter again for a moment. Just the wording. Was it correct to say that you had arranged underwriting on behalf of the consortium for all of the equity not intended to be subscribed by Telenor? You had arranged underwriting that is, Mr. Dermot Desmond was going to underwrite for Communicorp's equity commitments, but you hadn't arranged any underwriting in respect of the 25%. Would that be fair to say?

A. Well

Q. That was going to be Mr. Desmond's for doing this?

A. Well, I think that's kind of over, shall we say, stating the situation. I mean, the reality is that we were entitled to place 25%, as you know, shall we say, our compensation for actually having looked after the Communicorp side of the thing. But I mean, it's totally unclear as to whether we intended to take that 25% ourselves, whether we intended to place it on with other people, and I mean, no decision was really taken on that until much later in the day.

Q. Well, I just wonder, I am just trying to look at the situation as you have described. Mr. Desmond had told Mr. O'Brien he had come in on the same terms as he wanted to be an equal partner; 30% was the figure. 25% not too far off, was it?

A. Not too far off being equal partners?

Q. Yeah.

A. No, absolutely not.

Q. And did you or Mr. Desmond ever see yourselves just fulfilling a role, when you were directors, of just being some sort of passive investors in this company?

A. Whenever we have money at risk, we make sure that we have sufficient controls in place to make sure that people do what they are supposed to do.

Q. I say in fairness, and it's been stated by both Telenor and by Denis O'Brien, that there were occasions when I don't know if he used the term

"civil war" might have broken out between the other two shareholders; that is, Telenor and Mr. O'Brien's side. And we saw, for example, on the occasion that Mr. Barry Maloney resigned as Chief Executive, Mr. Desmond wasn't slow about rolling up his sleeves and getting well stuck into a situation like that; isn't that right?

A. I mean, the reality is if we have money at risk, you know, we are not going to sit blithely back and say good-bye.

Q. Absolutely nothing wrong with that. Perfectly right to do. But you roll up your sleeves and you get involved seriously. You are not like sort of, as I might say

A. I'll put it to you this way: My ideal investment is one where I put the money in today, take it out with a return five years' time, whatever, and have to do no thinking about it in the interim. But I mean, the whole purpose of a shareholders agreement is to actually ensure that if things don't go the way that you would like them to go, that you have at least some degree of protection and comfort.

Q. All right.

CHAIRMAN: It's just four, Mr. Coughlan.

MR. SHIPSEY: Sir, Mr. Chairman, I am just wondering, I did mention it to Mr. Coughlan, Professor Walsh will of course be back here tomorrow. He has a pressing

engagement on Thursday and Friday in relation to another business transaction that he is involved in, and if it if there is a risk that it will not finish tomorrow, of course he can come back another time. He would have a preference to finish tomorrow, and he is quite happy to sit late either today or tomorrow if that would convenience the Tribunal.

CHAIRMAN: Very good, Mr. Shipsey. I think perhaps, rather than going on further today, it's been quite a long two-hour session; we may try and structure tomorrow in such a fashion so there may be provision for a certain amount of overtime, and if conveniently, without any unfairness to anybody, we can terminate it tomorrow, I think we should make every effort to do that.

Mr. Coughlan, is there anything to be said for starting a little earlier, in the light of that, tomorrow?

MR. COUGHLAN: Yes, we could start at 10.30. If

CHAIRMAN: Would it suit you if we started at half ten?

A. Perfect.

CHAIRMAN: Half ten tomorrow.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
WEDNESDAY, 25TH FEBRUARY, 2004 AT 10.30AM.