

A P P E A R A N C E S

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I N D E X

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THE TRIBUNAL RESUMED AS FOLLOWS ON MONDAY, 1ST MARCH,
2004 AT 11AM.:

MR. COUGHLAN: Sir, before I ask Mr. Desmond to come
into the witness-box, I just want to correct
something.

Mr. Owen O'Connell wrote to the Tribunal on the 26th
February, 2004, and I'll just read his letter. And
Mr. O'Connell is correct, and I just want to read the
letter.

"Dear Mr. Heneghan, I refer to the transcript of
evidence of the last two proceedings before the
Tribunal, Days 273 and 274, during which Mr. Michael
Walsh was giving evidence.

"During his direct examination, Mr. John Coughlan SC questioned Mr. Walsh in relation to the status of IIU and appeared to be advancing the proposition that IIU should not be regarded as a financial institution.

During these exchanges, Mr. Coughlan made numerous references to evidence purportedly given by me during the course of my attendance before the Tribunal. In particular, I would draw your attention to the following statement made by Mr. Coughlan during Days 273 and 274.

Then Day 273 page 58, Question 114: But now you weren't a deposit-taking institution at that stage, were you?

"Answer: No, we weren't then; we still aren't.

"Question 115: 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 conduct prior to getting involved in this was Mr. Desmond's private investment business, effectively, wasn't it?"

Then Day 274 page 95, Question 18: "And in fact Mr. O'Connell gave evidence that they were a financial institution; that to his knowledge they took deposits.

Now, Mr. Walsh has said that they were never authorised to take deposits, not then and not now, so it was in that broad context I was not making any suggestion that Mr. Walsh acted illegally."

I continue with Mr. O'Connell's letter: "Having checked the transcript of my evidence, I can confirm that I did not give evidence to the effect that IIU was ever a deposit-taking institution. I refer you to the transcript of my evidence given on Day 242, Friday 24th October, 2003, and in particular, to pages 94 and 95 thereof.

Question 340: "All right. The draft continues, as you know, the bid merely provided that institutional investors, which IIU is, would be approached to take up, in fairness you put that in brackets. And you are putting that, I suggest as a plea or a submission, or are you stating it as a fact?

"Answer: Depending on one's interpretation of the phrase "financial institution", IIU was a financial institution.

"Question: All right.

"Answer: It was Central Bank regulated. It bought and sold shares. It lent money. Those are the typical activities of a financial institution. And in doing so, as I say, it was regulated by the Central Bank.

"Question: Did you know all of those things at the time?

"Answer: Yes.

"Question: I see.

"Answer: As far as I was concerned, while it wasn't

AIB or Bank of Ireland, it was nevertheless a financial institution, and that it was a fair description of what it did."

Then the letter continues: "The statement made by Mr. Coughlan on Day 273 and 274 are clearly an inaccurate representation of the evidence given by me.

Accordingly I should be obliged if the Tribunal would clarify this misrepresentation at the earliest opportunity."

Then the letter continues: "I understand that Mr. Desmond is scheduled to give evidence on Monday morning next, 1st Marc. I believe it is appropriate in the circumstances that such a clarification is made in advance of Mr. Desmond giving his evidence. I trust this will not present any difficulty.

"Yours sincerely,
Owen O'Connell".

It doesn't present any difficulty, and Mr. O'Connell is absolutely correct, and I make that correction on the record.

CHAIRMAN: Your position is rectified accordingly, Mr. Coughlan.

MR. COUGHLAN: Mr. Desmond.

CHAIRMAN: Good morning, Mr. Desmond. Thank you for coming back to give further evidence. You are of course already sworn from giving earlier testimony.

DERMOT DESMOND, PREVIOUSLY SWORN, WAS EXAMINED AS

FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: I think, Mr. Desmond, you furnished a number of memoranda of intended evidence; and as you have given evidence before, it would be my intention to take you through those in the first instance.

And I think you have furnished one on Friday last, 27th February, 2004, and I would intend commencing with that particular one. I have checked with your counsel; do you wish me to take you through the statement, or do you wish to give it yourself?

A. Whatever you like.

Q. What's your preference? I'll take you through it; it might be easier.

A. Okay.

Q. This is a statement of Dermot Desmond to the Moriarty Tribunal.

"I wish to make a statement to the Tribunal at the start of my evidence. I am aware that such a facility was granted to Denis O'Brien at the start of his evidence to this module of the Tribunal's proceedings and trust that a similar facility will be granted to me.

"I want in particular to be given the opportunity to set out in full how I became involved in the Esat Digifone consortium, and also to address what I regard as the uninformed and prejudicial way in which my involvement and that of my company has been portrayed

during the course of the evidence led by the Tribunal during this module. I do so now because I do not believe that the answers solicited by the Tribunal to the specific questions addressed to me by the Tribunal have afforded me the opportunity to provide a full and adequate account of my involvement in the consortium and because I wish to answer and address the many damaging innuendoes which have been permitted to persist about my own and my company's involvement. "Originally, I had no intention of becoming involved in the competition for the award of the second mobile phone licence. I did not want to become involved in something which might not be awarded purely on merit. Prior to August of 1995, I had met Denis O'Brien on a number of occasions but had no prior business dealings with him. Sometime in 1993 or 1994, he asked me to consider investing in his fixed-line telecom business, but I declined and informed him that I had no interest.

"On the 10th August, 1995, I invited him and a number of other individuals to a Glasgow Celtic football match. During the course of the trip, we got talking about business generally and the application for the mobile phone licence in particular. Denis explained his business plan to me and his thoughts on how the mobile phone network would operate. Denis also told me about the competition process. He said that it was

being run by civil servants and international consultants and was deliberately structured as an open competition free from political interference. I was impressed with the outline of the proposal and equally impressed that a highly reputable telecommunications company like Telenor was his partner in the application process. I believed then and now in a wireless world. At that stage, I knew that everyone else in town and lots of international players were involved, so I thought it must be worth considering, as clearly all of those involved seemed to see value in the business opportunity. So I thought if I could become involved in the consortium on the same terms as Denis and Telenor, that I would be interested.

"Esat Digifone had submitted its application before I first spoke to Denis on the 10th August. Denis told me that the only possible area of weakness in their application was on the financial side. I looked at the funding requirement to see if I could improve his financial position. Denis gave me some figures, and based on these, I made my offer to invest. I was made aware that certain institutional investors had given consideration to investing in the consortium in the event that it was successful. Their interest was conditional. I, on the other hand, was prepared to make a firm and binding commitment before the result of the competition was decided. I also took a

considerable financial risk, in that I was prepared to pay for my share of the bid costs if the application was unsuccessful. Unlike the conditional interest expressed by the proposed institutional investors, I was prepared to take the down side as well as the up.

Denis may be a Goliath now, but he was a David then, and I like helping the Davids of this world.

"International Investment & Underwriting Limited, IIU, which was incorporated in December 1994 and commenced trading from the IFSC in July 1995, was and is essentially a financial advisory company. It advises Bottin and other companies which I own. IIU is my company. It is regulated by the IFSRA. Bottin International is a trust company associated with me incorporated and domiciled in Gibraltar. I have used these and other companies to make investments since I became non-resident in Ireland in 1994. IIU negotiated the deal on the funding of the Esat Digifone consortium, and as is the norm, I helped personally. IIU was a new company at the time of the Esat bid, and the investment in Esat Digifone turned out to be one of its most successful.

"The Tribunal, in essence, has indicated that it wishes to investigate whether my interest and involvement in the Esat Digifone consortium was concealed, and that I thereby avoided the evaluation process. Even if there were any substance to this,

which there is not, its relevance to the terms of reference of this Tribunal remains a mystery to me. I wish to state clearly and emphatically that there was no avoidance of evaluation on my part or on the part of IIU, whether intended or otherwise. There was nothing covert. On the contrary, I wished that my involvement through IIU be disclosed to the adjudication team in the Department. I wanted to be certain that when small-minded people knew I was involved and questioned this, everything would have been done perfectly.

"The deadline for the submission of the written application was, I now know, the 4th August, 1995. I had no involvement whatsoever with the application process up to that time and had no discussion with any member of any of the bidding consortia. Between the 10th August and the 29th September, 1995, negotiations took place with Denis O'Brien, both on behalf of his own company and on behalf of the consortium, leading to the agreements which were concluded on the 29th September, which were designed and which did in fact strengthen the financial standing of the Esat Digifone consortium.

"The line of questioning pursued by counsel for the Tribunal, with many witnesses, has sought to suggest that there was something less than kosher about IIU's involvement and that it somehow represented a

weakening of the position of the consortium owing to the substitution of IIU for the blue-chip institutional investors. This is to misunderstand and ignore the reality and nature of the agreements that were concluded with IIU on the one hand and the highly conditional and equivocal letters of comfort that were provided by or on behalf of those other institutions.

"Certain facts are inescapable. Both Denis O'Brien and Telenor were of the view that the firm agreements concluded with IIU were of value. Both believed that the letter from IIU should be sent to the Department and that the letter should be seen as adding strength and weight to the consortium's application. There was and is simply no other rationale or reason for submitting it to the Department. The fact that the Department chose to return it to the consortium and do not appear to have regard to it is immaterial as far as IIU and the other members of the consortium are concerned. The Department did not have to return it. The Department could have asked any questions they liked in relation to the letter. It is also clear that it was heralding the involvement of IIU in a substantial way with the consortium.

It is simply untenable, incredible, that I would have sent the letter in the first place if I wanted to hide my interest. I was listed on the notepaper as Chairman. It was deliberately signed by Professor

Michael Walsh, Managing Director of IIU, to generate recognition within the Department, as he had extensive dealings with many civil servants in the Department over the years. Logically and commercially, it would not make sense to conceal something which Denis and his consortium partners were convinced would strengthen their bid. Two senior members of the Evaluation Team saw this letter. As I have stated above, there was nothing to stop the Department from looking for further information from Michael Walsh or seeking a meeting with IIU. It was up to the people who received the letter to decide what to do with it. The bottom line is that this letter stated that IIU was involved, and the Department could have come back to IIU if they wanted or required any clarification.

"The manner in which the letter of the 29th September sought to be characterised by the Tribunal demonstrates, I believe, a complete lack of understanding of how corporate finance works. The principal purpose of the letter was to address the consortium's perception that the Evaluation Team thought that the consortium's finances were weak.

"It should also be apparent that Michael Walsh and myself dealt with Denis O'Brien as Chairman of the Esat Digifone consortium and of Communicorp. We did not believe it necessary to have the same active involvement or knowledge as the operational and

technical partners. It was a matter for Denis O'Brien to run the bid and involve us where required. We supplied the letter at the request of Denis O'Brien and as part of our deal with Denis. The letter fulfilled a particular purpose, in that it confirmed that sufficient equity was available to the Esat Digifone consortium and that IIU was ensuring that this would be the case. Our consideration or reward at the time was an underwriting fee plus being allowed to place or take up 25% of the shares.

"I believe that the Tribunal does not understand underwriting or investment. It does not understand what happens in the marketplace and why sometimes shares are taken on one's own account and why sometimes they are placed. It does not understand risk-taking and commercial deadlines. It does not appreciate how difficult it was for a start-up business to obtain finance, particularly in 1995.

Interest rates were much higher. Open competitions for such licences or other contests were in that infancy.

"When we sent the letter on the 29th September, I did not know whether I would take the shares in my own right or place some or all of them. That is why we negotiated and concluded an underwriting agreement that gave the required flexibility in the deal and subsequently in the shareholders agreement. What I

did know was that I was on the hook from this stage.

I was bound to ensure that funding would be available to the Esat consortium, bar Telenor, and had so informed the Department. I was on risk from the 29th September, 1995. I have always lived by the fundamental business principal, dictum meum pactum. I was not going to and have never reneged on my word.

"As the licence negotiation progressed, I would have also reviewed my options. There is a wide perception now that this was a valuable state licence being given away for a capped sum. It is easy in hindsight to forget the risks involved. The reality is that the market conditions in April, 1996, would have made it difficult to sell shares in Esat Digifone to other investors. Complaints had been made by some of the losing consortia, and they were threatening litigation. It would therefore have been very difficult to persuade external investors to acquire shares in something that could have become the subject of a legal challenge. The existing members could not reach agreement among themselves, never mind trying to reach agreement with additional third parties. The shareholders agreement signed in May preserved the rights for IIU Nominees to transfer its shares in order to maintain its flexibility. Otherwise IIU Nominees would have been restricted to selling its shares to Esat and Telenor, who could have possibly

manipulated the situation. It can be seen that the ownership of the Esat Digifone investment was an evolving situation.

"The Tribunal have permitted numerous derogatory remarks to be made about my investment companies and me. It has in its questioning of witness implicitly queried why the Esat Digifone consortium did not source its finances from what the Tribunal terms "blue-chip" financial institutions instead of IIU.

The commercial reality was very simple. Any consortium faced with the choice between several waffly expressions of interest on the one hand and a firm commitment to underwrite and share in the bid costs on the other hand, would and did not hesitate to choose the latter.

"John Callaghan has put it succinctly in his evidence when he said it was not the strength of the institutions which was at issue but the strength of the support. There was never a firm committed financial deal with either Advent or the financial institutions lined up by Davys. It was not a question of IIU being substituted for these institutions. They were never committed in the first place. Any suggestion that the letters from the other institutions amounted to contractual commitments or were comparable to the IIU agreement would be disingenuous in the extreme.

"It is also inaccurate to suggest that I avoid the evaluation process. The bid application provided that Telenor and Communicorp would initially be 50:50 joint venture partners and that 20% of the equity in Esat Digifone would be made available to institutional investors. The joint venture partners were evaluated on the basis of the extensive operational and technical criteria set down in the competition rules. The right to negotiate for the licence was awarded to Esat Digifone on the basis that it was judged to be the best applicant according to the predetermined criteria. The licence was only actually granted after a financial evaluation was carried out of my resources. I furnished the Department with letters from a firm of accountants and a bank that confirmed and satisfied the Department that I had sufficient resources to fund my share of Esat Digifone. I believe that this Tribunal has given credence to the false impression that the identity of the provider of finance was a (or even the) determining factor. This was not the case; the source of funds was not the issue the Department had to be satisfied that there was sufficient liquidity. The proof is and was in the delivery. I paid for my share of the licence from my own resources and also initially covered part of Communicorp's funding commitment. I then funded IUU Nominees from my own resources to meet each capital

call subsequently made by Esat Digifone. I did not default on any occasion. Given the benefit of perfect hindsight, it is unfair in the extreme for doubt to be cast upon the judgement of the civil servants. The civil servants made a correct judgement that I had sufficient finances and would meet my obligations as I always do.

"It is difficult to understand, based upon the evidence led in the public sessions of this module, why it is that the Tribunal ever went beyond the private investigation. There would appear to exist a belief in wild conspiracy theories in the absence of any evidence or interference of Michael Lowry in the evaluation process or evidence of a breakdown in the procedure dictated by the civil servants.

Painstakingly detailed evidence has been given of the selection criteria followed and the protocols on dealings with bid documents and bid applicants. The whole point of structuring the competition process in this way was to ensure that it would be a sealed process, free from political interference. The evidence of the civil servants has consistently been that the process was not punctured. In fact, it was so meticulous that the Department even got a legal opinion on the composition of the Esat Digifone consortium. This fact only came to light nearly eight years later. I am still waiting for the Tribunal to

provide the legal opinion dealing with this issue to my legal team.

"No allegation has been made against me in relation to this module by the Tribunal. Yet there are days reading the transcript when you would think that I was the subject of this inquiry and not Michael Lowry.

"For the record, I have never had any dealings with Michael Lowry apart from meeting him on the rare social occasion. Under its statutory terms of reference, the Tribunal is supposed to investigate whether any inappropriate payments were made to Michael Lowry as a result of which some benefits were improperly conferred on some third party. The Tribunal says it is following lines of inquiry. Under the protection of privilege, the Tribunal has made public statements and inferences about individuals, and suggestions are put to other witnesses that are damaging to reputations. Due to the length of time taken by the Tribunal to conduct its inquiry, these slurs are left out there for years until the individual concerned is called and then has an opportunity to defend his or other reputation. The Tribunal has exhausted enormous time and resources and taken over two years to deal with the licence alone. The evaluation of applications for the licence took less than three months. I believe the Tribunal has lost the plot and needs to be brought back on track

and back within its terms of reference.

"While the opinions I have expressed are my own, I know I am not alone in my views. I think that the time has come for these hard truths to be said. I can understand that those who have given statements or evidence to the Tribunal have been reluctant to criticise the Tribunal to date. I have come here voluntarily to give evidence today. As I have said to the Chairman before, I am not looking for any special treatment. All I am looking for is the assurance that my good name and reputation and the good name and reputation of my company will be respected whether I am present or not. Finally I would like an undertaking from the Chairman that he will be the sole author of this report rather than the reviewer of a report prepared by his legal team.

"Dermot F. Desmond, 27th February, 2004."

I think that's the statement you wanted read first.

A. Thank you.

Q. Now, I think what we'll do is we'll go through the other statements or the other memoranda, Mr. Desmond, and I'll come back and deal with matters then, if that's all right with you.

A. Okay.

Q. I think the first memoranda, or first memorandum was one dated the 22nd February, 2002, I think, is that correct, and I think it's headed "Background".

"Denis O'Brien and I 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.

"I 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 share of the investment. Following negotiation, an agreement was reached on the 29th September, 1995, which is attached hereto at Appendix 1".

I think we can look at that we have been through it already with many witnesses.

"No other agreement was consummated between the parties prior to that date. Subsequent announcement of the award of the licence, Denis O'Brien sought to acquire a shareholding in excess of 50% of Esat Digifone. I was prepared to agree to this, subject to Telenor being satisfied. Telenor made it clear that they were not prepared to allow one shareholder 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 Esat Digifone's original proposal; that is, both Telenor and Esat Telecom should own 40% each. Accordingly, I agreed to sell 2.5% of Esat Digifone to each of Telenor and Esat Telecom.

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

I think we have been through the various stages of disposal with Mr. Walsh.

Then dealing with specific issues raised:

A: You were asked for knowledge, direct or indirect, of the association of AIB, Bank of Ireland, Standard Life and Advent International with the bid and/or the subsequent disassociation of them from the bid of the consortium.

And you replied that other than as outlined above or as disclosed within 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 they were represented by Davys 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 for your knowledge, direct

or indirect, of the association of you or IIU with the

bid and/or the consortium and your subsequent

disassociation from the consortium.

And you have informed the Tribunal that you and IIU

became involved with the consortium by virtue of the

agreements of September 29, 1995, and May 16, 1996.

You/IIU became disassociated with the consortium by

virtue of disposing of your shareholding in Esat

Digifone. You say that Mr. Walsh and you continued as

directors of Esat Digifone for a period after the

disposal. You say, 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,

and that in April '99, 4.5% of the shares were sold to

each of Telenor and Esat Telecom. Finally, in January

2000, the remaining 1% was sold to ^ Levigate Navigate

Limited, a subsidiary of British Telecom.

I think you were asked for your knowledge of the

negotiations between you and IIU from August 1995 to

May of 1996.

And you say that other than as disclosed on the files,

there are no records held by you or IIU of the

negotiations with yourself or IIU in the period August

1995 to May 1996. Furthermore, as is clear, contrary to what is stated in paragraph 1 and 3 of that's Mr. Davis's letter only two agreements were actually concluded. That is those of September the 29th, 1995, and the shareholders agreement and side letters on May 16th, 1996, which the Tribunal has already received copies of.

You were then asked for your knowledge of each of the agreements referred to at 1 to 4 above I don't think we need to do that.

You reiterate the two sets of agreements, isn't that right, the 29th September and the 16th May, 1996?

A. Yes.

Q. And then you were asked for details of all your involvement in any respect with the negotiation with IIU or you or with the agreements referred to above or with any other agreements or arrangements reached with you, whether concluded or otherwise.

And you say that Mr. Walsh was primarily involved in the above negotiations. However, other than as already disclosed to the Tribunal, neither you nor IIU have any records or notes of these negotiations.

I think you then provided a further statement, dated the 28th June, 2002, and this is dealing with Mr.

Boyle, I think. Do you have that?

Now, I think, in fairness to you, I should perhaps read what Mr. Boyle has said. Mr. Boyle hasn't given

his evidence yet, and Mr. McGinley and then deal with your statement in any way you wish to deal with it, if that's all right.

A. Okay.

Q. I think Mr. Tony Boyle informed the Tribunal in a statement dated 16th September, 2002, and it reads:

"I attended the Grand National race meeting at Aintree Race Track in Liverpool on the 8th April 1995 with Mr. Michael McGinley and my father, Mr. James Boyle, deceased. We were guests in the box of Mr. J. P. McManus at the invitation of Mr. Colm Moloney, insurance broker to our firm. In the course of the event, I was introduced to Mr. Dermot Desmond, who was familiar with our business through my business partner, Mr. Michael McGinley.

"The topic of the second mobile phone licence competition came up, and I explained that we had a consortium together to bid for this licence. Mr. Desmond mentioned that he had been approached by Mr. Denis O'Brien of Esat to act as Chairman of his consortium but said that he had declined, as he had enough of telecoms.

"Mr. Desmond asked what the process involved and who the decision-maker was. I explained that this would be a public competition run by the Department of Communications and that the decision would be made by them and their Minister, Mr. Michael Lowry. Mr.

Desmond then responded by saying that he knew exactly who Mr. O'Brien would use to get to Mr. Lowry. No further conversation of significance took place."

Now, I think when you received that particular statement from the Tribunal, you responded to it by your statement of the 28th June, 2002. I just want to deal with them in order as they came in. And then as a result of my Opening Statement, Mr. McGinley, I think, furnished a statement, and I'll deal with that then so that you can comment as you see fit in relation to those.

I think when you were furnished with Mr. Boyle's statement, I think you informed the Tribunal on the 28th June, 2002, and I'll just you were asked for details of all discussions between you and IIU with Mr. O'Brien or persons on his behalf relating to the backing or funding by you of Communicorp.

And I think you responded: "I have no knowledge or recollection of discussions or negotiations with Mr.

Denis O'Brien or anybody on his behalf prior to August 1995 relating to the backing or funding by me of

Communicorp. Mr. O'Brien contacted me in relation to funding of the fixed-line business in either 1993 or

1994. Mr. Michael Walsh did attend one meeting with

Mr. O'Brien to follow up on this contact. I did not attend that meeting, and I do not have any documents or papers relating to it.

"I confirm that I attended the Aintree race meeting in April 1995, and that I was a guest in Mr. J. P. McManus's box. I am acquainted with Mr. Tony Boyle and have met him on a number of occasions. I have absolutely no recollection of Mr. Boyle being present in Mr. J. P. McManus's box at Aintree or being at the races in April 1995, and even if he was, I am absolutely satisfied that I did not speak with him. Certainly the conversation he now alleges took place did not take place, neither at Aintree or at any time before or since that day.

"I am absolutely satisfied that I never at any time told Mr. Boyle that I had been asked by Mr. Denis O'Brien to be Chairman or President of a consortium with which Mr. O'Brien intended to establish to bid for the second mobile licence. I was never asked by Mr. O'Brien to become Chairman or President of any such consortium. I confirm that I never asked Mr. Boyle what the process involved or told him that I knew exactly who Mr. O'Brien would use to get to Mr. Lowry. For the avoidance of doubt, I never suggested to anyone that Mr. O'Brien was in a position either directly or indirectly to assert influence or Mr. Michael Lowry or anyone in connection with the granting of the second mobile licence.

"I am surprised that Mr. Boyle would state that I was asking about a process when, according to him, I was

being approached to chair a rival consortium. I find it even more surprising that at this stage, Mr. Boyle should contend such a conversation took place, especially as no such suggestion has heretofore been made.

"I do not know whether Mr. Lowry attended Aintree in April 1995, and I have no recollection of meeting him there."

Now, I think in the course of the Opening Statement, and I understand your response was based on Mr. Boyle's statement as furnished to you, and as a result of opening both statements in the Opening Statement, the Tribunal received a statement of Mr. Michael McGinley. And I think it has been furnished to you, but you probably don't have it there with you now.

A. No.

Q. But I'll just read it. And I'd like just so that you can follow it.

(Document handed to witness.)

Q. MR. COUGHLAN: I think Mr. McGinley furnished this statement on the 4th December, 2002. And he said: "I refer to the Opening Statement of Mr. John Coughlan, SC, on the 3rd December, 2002, during the course of which he made reference to a statement by Mr. Tony Boyle concerning a discussion Mr. Boyle had with Mr. Dermot Desmond at Aintree Race Course in April 1995. I understand that Mr. Desmond has no recollection or

Mr. Boyle being present on that occasion, and he denies having any conversation with Mr. Boyle on that day, and that he denies ever having had a discussion before or since April 1995 with Mr. Boyle as referred to by Mr. Boyle in his statement.

"In the light of Mr. Desmond's denials and the failure of his recollection in relation to Mr. Boyle's presence at Aintree on the day in question, I can confirm the following:

"1. I am a longstanding business partner of Mr. Boyle.

"2. I have been a co-director with Mr. Boyle of Persona Digital Telephony Limited since it was incorporated in 1995.

"3. I attended at a race meeting at Aintree in April 1995 and was a guest in the box of Mr. J. P. McManus, along with Mr. Boyle and Mr. Boyle's late father.

"4. Mr. Desmond was also present.

"5. I recollect that there were approximately 20 to 25 people in the box during the time we were there.

Mr. Boyle and I spent approximately five to six hours in the box, and Mr. Desmond was present throughout much of that time.

"6. I witnessed Mr. Boyle having a conversation with Mr. Desmond. My recollection is that the conversation lasted in the region of ten minutes.

"7. I did not overhear the contents of the

conversation between Mr. Boyle and Mr. Desmond.

However, I confirm that later that day, Mr. Boyle reported to me in general terms the contents of the conversation with Mr. Desmond. In particular, Mr. Boyle told me that Mr. Desmond had indicated that he had been approached by Mr. Denis O'Brien to become Chairman of the Esat consortium and intended to apply for the second GSM licence. Mr. Boyle told me that Mr. Desmond said he was not going to become involved because he had had enough of telecoms. I confirm that at that time the issue arising from the conversation that would have been of most interest of Mr. Boyle and I was Mr. Desmond's statement that he did not intend to become involved in an application for the second GSM licence".

Does that in any way help your recollection or your memory of whether Mr. Boyle you remember Mr. Boyle being present at Aintree on the day and that you possibly did have a conversation?

A. No.

Q. Now, the next memorandum is one which was furnished on the 3rd July, 2002, and it's questions and answers.

It's in like format as furnished to Mr. Michael Walsh.

And I think the first question that you were asked sorry, you say at the beginning: "As already stated in your memorandum of the 22nd February, 2002, Mr. Michael Walsh was primarily involved in the

negotiation of IIU's involvement in the Esat Digifone consortium. You had no direct involvement in the day-to-day negotiations".

And I think we see from the documents that seems to be the case. But I'll just run through this fairly briefly because there are many instances where you weren't involved or had in recollection?

A. I am happy to take it as read. I have no change to my statement.

Q. I appreciate that, but I have to get some evidence out in relation to the matter.

I think the first question you were asked was any approaches made by you to any persons to join in the consortium.

And you have informed the Tribunal that you made no attempt to form a consortium. Isn't that correct?

A. Correct.

Q. I think we can I think you can confirm that you have no knowledge of any approaches made to you or IIU or any person on your behalf to join or form a consortium to apply for the second GSM licence; isn't that correct?

A. Correct.

Q. I think

MR. SHIPSEY: Sorry, Sir, Mr. Coughlan omitted to say "other than Mr. O'Brien", just

Q. MR. COUGHLAN: Sorry, well, other than Mr. O'Brien, as

and from the discussions on the 10th August?

A. 10th August.

Q. That's right. I wasn't reading the question in that context. But that's fine.

You were asked about details of all dealings, discussions or meetings between you and IIU with Mr. Denis O'Brien, Communicorp or Esat Digifone prior to the 4th August of 1995. And you say that no discussions or dealings took place prior to the 4th August 1995 in relation to the GSM business. Isn't that correct?

A. Correct.

Q. I think you were then asked for details of all dealings, discussions or meetings between you or IIU and Mr. Denis O'Brien and the Communicorp/Esat Digifone in relation to you or IIU joining the Esat Digifone consortium after the 4th August, 1995. And I think you have responded that you met with Denis O'Brien on the 10th August, 1995. You then had one subsequent meeting with Denis O'Brien to put him in touch with Michael Walsh to finalise the deal. The deal was done as per the agreement of the 29th September, 1995.

I think you were asked for details of the negotiations between Denis O'Brien and you/IIU, between the 10th August, 1995, and the 29th September, 1995, and including details of the meeting 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, "I met with Denis O'Brien on the 10th August, 1995. I then had one subsequent meeting with Denis O'Brien and put him in touch with Michael Walsh to finalise the deal. The deal was done as per the agreements of the 29th September, 1995.

You were asked for your understanding of the obligations and entitlements of IIU on foot of the agreements of the 29th September 1995. And you say that as is in the agreements.

You were asked for your understanding of the purpose of the letter of the 29th September 1995 from IIU addressed to Martin Brennan of the Department, together with the source or sources of your understanding. And you say that your understanding of the letter was to give comfort to the Department that the consortium had access to necessary equity finance.

I think you were then asked for the date and the circumstances in which you first became aware or were informed that the Department had refused to consider the contents of the letter of the 29th September, 1995, and the person by whom you were informed or the manner in which you became aware. And you say that

you have no recollection.

Likewise, you have no recollection, I think, when you first saw the letter from the Department sending back Michael Walsh's letter.

You say that you were asked for details of dealings or contacts between you or IIU with the Minister or the Department in relation to the letter of the 29th September or the Department's letter refusing to consider it or the contents of the letter of the 2nd October. And you say that you had no dealings with the Minister or anyone else in the Department.

You were then asked for I think you were then asked for details of any knowledge you had of dealings between the consortium and the Minister and the Department. And you have no recollection of any such dealings.

You were then asked for your involvement or knowledge of the circumstances in which or terms in which J&E Davy, Advent International, AIB, IBI and Standard Life agreed to withdraw from involvement in the consortium. And you say that you had no involvement in this and no recollection.

A. Correct.

Q. You say that you have no recollection of the letter sent by Mr. Kyran McLaughlin on the 22nd November, 1995, to Mr. O'Brien raising certain queries.

You have no recollection of dealings or discussions to

which you were a party or which you had knowledge of in relation to queries raised by Mr. McLaughlin.

And you were asked for your knowledge of Mr. O'Brien's response to Mr. McLaughlin's letter of the 22nd November, and you say you have no recollection.

And you were asked then for details of all dealings or contacts between you or IIU or any entity on your behalf and Telenor and any entity on their behalf prior to the 25th October, 1995. That's the date on which the competition result was announced. And you have no recollection of any contact with Telenor.

I think you were asked for your understanding of Telenor's knowledge of the agreements concluded on the 29th September, 1995. And you say that your understanding was that Denis O'Brien would convey to Telenor what was agreed between IIU and Esat Digifone and IIU and Communicorp.

You were then asked for details of all information provided by IIU regarding the ownership, incorporation and financial standing of Bottin International Limited to Telenor in response to a letter dated 12th October, 1995, from Knut Digerud when he sought that information. And you say that you have no recollection of this request.

I think you were then asked for your understanding of the composition of the consortium as of the 4th August, as of the 25th October, 1995, as of the 12th

April, 1996, and as of the 16th May 1996. And you say that as of the 4th August, you have no recollection of having any knowledge of the Esat Digifone consortium on the 4th August, 1995. Subsequently, you understand that as at the date the consortium was intended to be owned as to 40% by Telenor, 40% by Communicorp and 20% by the institutions. You say that as of the 29th September, you understand that as and from the date of the execution of the agreement, namely the 29th September, 1995, the composition of the consortium was Telenor 37.5; Esat Digifone 37.5; and IIU Nominees 25. You say that as that you understand as and from the date of the execution of the agreement of the 29th September, 1995, the composition of the consortium was Telenor 37.5, Digifone 37.5, and IIU 25. You were the ultimate beneficial owner of the shares held by IIU Nominees. And you say that as of May 1996, the shares were owned as to Telenor 40%, Esat 40% and IIU Nominees 20%, and you were the ultimate beneficial owner of the shares held by IIU Nominees.

Now, you were asked also if you had any knowledge of the Department's understanding as of those various dates of the makeup of the consortium, and you say that you have no understanding of the Department's knowledge as you had no dealings with the Department.

Now, you were then asked for your knowledge 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, solicitor, addressed to Ms. Regina Finn of the Department. And you have no recollection of that.

Now, you were then asked for dealings or discussions which IIU had with Denis O'Brien, Mr. Arve Johansen, Mr. Knut Digerud, advisers of Communicorp and of Telenor, 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 you say you have no recollection of this.

And you were then asked for all dealings or contacts between you or any other person on behalf of IIU with the Department or any officials 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 say that you had no contact with the Department.

You were then asked for your knowledge of a meeting which took place at the Department on the 3rd May 1996, attended by Mr. Knut Digerud, Mr. Arve Johansen,

Mr. Peter O'Donoghue, Mr. Michael Walsh, Mr. Paul Connolly, and Mr. Owen O'Connell. And you say that you were not in attendance and you have no details of this meeting.

You were then asked the date and the circumstances in which you or IIU became aware that the Department requested that the configuration of the issued share capital would be restored to 40:40:20. And you say that you have no recollection of that.

You were then asked for your knowledge of any contact between any person associated or connected with Esat Digifone and the Department or the Minister regarding the Department's request that the issued share capital of Esat Digifone should be restored to 40:40:20. And you say you have no information.

You were then asked for details of all dealings, discussions and negotiations between IIU, Communicorp and Telenor regarding the request made by the Department that the capital configuration of Esat Digifone should be restored to 40:40:20. And you say that precise details elude you. The 40:40:20 configuration was agreed between all the various parties. This was finally agreed at a meeting between the consortium members held in your office at the request of the Department.

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. O'Connell, Mr.

Brennan, Mr. Fintan Towey. And you say that you were not in attendance and you have no recollection of this meeting.

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

1. The questions identified
2. The answers prepared
3. The reasons for such answers
4. The identity of all persons who had any input into the identification of questions and preparation of draft answers.

And you say that you were unaware of the Department's request, and you were therefore not in a position to give the answer.

Likewise you say you have no knowledge, nor were you involved in meetings, discussions or contacts between Esat Digifone or any person on behalf of the Minister or the Department in connection with key questions and draft answers prepared.

You were then asked for any your knowledge of any 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, 1996, that a meeting be arranged to discuss/rehearse the press conference. And you say you have no recollection.

You were then asked for details of certain 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 Limited.

2. The assumption 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 obligation to contribute to the licence fee of i£½5 million paid by Esat Digifone to the Department on the issue of the GSM licence to Esat Digifone on the 16th May, 1996, and 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 you cannot remember all of the details, but they will be apparent from the files in the Tribunal's possession.

I think you were then asked for your understanding of

the purpose for which the Department required

1. A letter dated 7th May 1996 from Mr. Chris McHugh,
company secretary of IIU.

2. A letter dated 7th May 1996 from Farrell Grant
Sparks, auditor to Mr. Desmond.

3. A letter dated 9th May, 1996, from KPMG auditors
to Communicorp Group Limited.

4. A further letter dated 15th May, 1996, from
Farrell Grant Sparks.

And your response is that this was part of the
Department's due diligence process.

You were then asked for details of the underwriting
arranged by IIU of Communicorp/Esat Telecom's
obligations to participate in the equity of Esat
Digifone on foot of the agreements of the 29th
September, 1996, and as referred to in a letter dated
9th May 1996 from KPMG addressed to the Department.

And you say as per the agreement.

You were then asked for your knowledge of all
meetings, discussions or dealings, contact of
whatsoever nature between Mr. 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 till the date of issue of the licence on
the 16th May 1996. And you have informed the Tribunal
that you were not aware of or privy to any such

approaches or contacts.

I think you were then asked for details of all meetings or discussions between you or any person acting directly or indirectly on your behalf with any of the following:

1. Mr. Michael Lowry.
2. Mr. John Callaghan.
3. Mr. Martin Brennan.
4. Mr. Fintan Towey.
5. Mr. Michael Andersen or any member of Andersen Management International.
6. Any official of any government department.
7. Any member of Government.
8. Any public official. And that included a list of named public officials.

And you say that you had no meeting with any of the above in connection with the GSM licence.

I think that completes that particular memorandum.

Now, again you furnished a further memorandum dated 9th July, 2002. It's the fourth memorandum. I think we can dispense with the first one; I think you have already responded to that and dealt with it in your previous one.

A. Yes.

Q. I think if we go on to 2.

You were asked there for your understanding as to the purpose for which oral presentations for applicants

were conducted by the Department and your knowledge of all queries raised by the Department in the course of the presentation of Esat Digifone on the 12th September, 1995, regarding the financing of the Esat consortium, including any queries specifically addressed to Communicorp's funding of its equity participation in Esat Digifone and in particular, any queries regarding the letters of comfort provided by Advent or the terms governing the offer of funds by Advent.

And you were also asked for your knowledge of all queries raised by the Department regarding the commitments provided by the institutional investors in the Esat Digifone bid and your knowledge of the overall impression made by the Esat Digifone consortium in the course of the presentation, and in particular any matters which you understood to be problematic or areas of perceived weakness.

And you say that you have no recollection in relation to these matters.

I think you were asked then for your knowledge of a meeting between Mr. Denis O'Brien, Mr. Arve Johansen on the 22nd September, 1995 in Oslo. And you were asked a series of supplementary questions arising out of that.

And you have no knowledge of that meeting between Mr. O'Brien and Mr. Arve Johansen in Oslo on the 22nd

September

A. Correct.

Q. Isn't that right?

Likewise, you have no knowledge of any subsequent contacts between Mr. O'Brien and Mr. John Callaghan with Mr. Arve Johansen after the meeting of the 22nd September, 1995. Isn't that right?

A. Correct.

Q. You were likewise asked about whether you knew anything about Telenor's knowledge of the likelihood that the Minister would announce the competition earlier than the published date. And you have no knowledge about that either.

A. No.

Q. You don't recollect the date and the circumstances whereby you became aware of the fact that the competition had been won by the Esat Digifone consortium.

And I think you were then asked for your knowledge of the following:

1. An agreement dated 12th July, 1995, between Advent International Corporation, Esat Digifone, Communicorp and Mr. O'Brien for the provision of letters of comfort by Advent to the Department of Transport, Energy and Communications and to Telenor regarding Advent's offer to provide $\text{€}1230$ million to Communicorp to fund its equity participation in Esat Digifone.

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

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

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

Now, you were asked at 8, the date and circumstances and manner in which you became aware or were informed 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 placement through CS First Boston, including details of the precise information provided to you and the source of such information. And you said that you have no knowledge.

You were then asked for your knowledge of when and the manner in which the Department or the Minister was informed by Mr. O'Brien that Communicorp/Esat Telecom did not intend to fund its equity participation by drawing on finances to be provided by Advent, but to fund but intended to fund its participation by placement through CSFB. And you have no knowledge of that, you say.

You were asked for to identify the following:

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 on to Esat Digifone on the 16th May, 1996, and all documents furnished to the Department in connection with the project financing in advance of the issue of the licence. And you had no knowledge of that.

I think you were then asked about the side letters; that is, the side letters of September 1995 and the side letters on the 16th May, 1996. And you say that it's as disclosed in those letters.

And that completes that particular memorandum.

I think then there is a final memorandum of yours dated 12th November, 2002, and I think you were asked

1. Details of the meeting between you and Mr. O'Brien as 6 p.m. on the 17th September 1995 and including,

A) the place of such meeting,

B) the identity of all persons present,

C) the purpose of such meeting and

D) all matters under discussion.

And you inform the Tribunal that you attended the All Ireland final on the 17th September 1995, but you do not remember meeting with Mr. O'Brien on that day.

I think you were then asked for your knowledge of Mr.

O'Brien's arrangements to meet with Mr. Michael Lowry

on the evening of the 17th September, 1995. And you say that you have no knowledge, direct or indirect, of any such arrangement.

I think you were then asked for details of all matters related by Mr. O'Brien or any other person to you regarding his meeting with Mr. Lowry on the evening of the 17th September, 1995.

And you say that you never heard of such a meeting until the Tribunal raised the issue.

I think you were asked for your knowledge of the matters discussed by Mr. O'Brien and Mr. Lowry at their meeting on the 17th September, 1995, and you say that you have no knowledge, direct or indirect, of any matters discussed at this meeting.

I think you were asked for details of all dealings, contacts and communications between Mr. O'Brien and you subsequent to Mr. O'Brien's meeting with Mr. Lowry on the evening of 17th September, 1995, and at any time on the 17th September, 1995, or the 18th September 1995.

And you say that you do not remember meeting with Mr. O'Brien on either the 17th or 18th September 1995.

You can confirm that you were out of the country from 8:00pm on the 17th September, 1995, and for the following week.

You were then asked for details of all dealings, contacts or communications between Mr. Michael Lowry

and you regarding the involvement or potential involvement of you or IIU in the Esat Digifone consortium. And you say that you have no knowledge of any such contact, direct or indirect, with Mr. Lowry, other than in relation to the meetings in May 1996 which have already been disclosed to the Tribunal.

I think you were asked for details of all dealings, contacts or communications between any official of the Department and you, either directly or indirectly, regarding the involvement or potential involvement of you or IIU in the Esat Digifone consortium. And you say that you have no knowledge of any such contact with the Department prior to submitting the formal letter of September 29th, 1995, which the Tribunal has a copy of. All subsequent contacts with the Department have already been disclosed to the Tribunal.

I think those are your various memoranda, Mr. Desmond. Now, as I understand your evidence, Mr. Desmond, the first contact you had with Mr. Denis O'Brien in business terms was that sometime in 1993 or 1994, he approached you about investing in his fixed-line business; isn't that correct?

A. Correct.

Q. You arranged one meeting, I think, which Mr. O'Brien had with Michael Walsh and you and Mr. Michael Walsh or Mr. Michael Walsh advising you, decided that you

were not becoming involved in the fixed-line business;

would that be correct?

A. That's correct.

Q. You had not decided to become involved in bidding for

the second GSM licence during the course that there

was it was in the public domain and when the tender

document, the RFP was issued; isn't that right?

A. That's true.

Q. And on the 10th August sorry, I'll just be clear

about this: Up to the 10th August, nobody had

approached you to join in any consortium?

A. Correct.

Q. And on the 10th August of 1995, you invited Mr. Denis

O'Brien to attend the Glasgow Celtic match in Glasgow?

A. Correct.

Q. Along with some other friends. Apart from that

particular contact in relation to the fixed-line

business, can I take it that you had no other business

dealings with Mr. Denis O'Brien?

A. Correct.

Q. Was he a social friend of yours?

A. I met him every now and again, but not a bosom pal,

but I saw him around town.

Q. You saw him around town. He might be at functions you

were at; is that a fair way of putting the

relationship?

A. No, we weren't close.

Q. Can I ask you: Why did you invite Mr. O'Brien to go to the match?

A. To Glasgow?

Q. Yeah.

A. Very simply, sometime in July I had telephoned Denis O'Brien to ask him to give a job to a friend of mine's son who was in the radio business and asked him to give him a job in 98 FM. This person lived in Monaco, and his son was working in a radio station in Monaco, and I asked him could he give him a job as a work experience in a radio station in Dublin for two weeks, which he did. And that person was over at the time, the father of my friend was over at the time, and we were going to Glasgow to the match. I was taking him to Glasgow, to the match, and I invited Denis to come along so that he could thank Denis, and I was also thanking Denis for doing me a favour.

Q. It was just thanking him for

A. Correct.

Q. for doing that. Now, in the course sorry, at some time on that evening of the 10th, I think you say that you were talking to Denis about business generally, and then a specific discussion got around to the second GSM licence. Is that correct?

A. Mm-hmm.

Q. Can you remember how that arose?

A. Well, you know, I knew that Denis was applying for the

licence. So he told me that he had applied for the licence, that he had a strong consortium with Telenor, that he had an innovative marketing plan and that he had recruited a top-class managing director, chief executive and that his difficulty was really on the in relation to the funding; he felt that was his only weakness.

Q. Right. And did he tell you what that difficulty was?

A. He said he didn't have a firm commitment. He got a letter he got a general letter of from some institutions arranged by Davys, but it wasn't firm enough.

Q. And that's that was the nature of the discussion, and the weakness was around these I have to be careful; you can call them waffling letters of commitments, but the letters from the institutions, that they weren't firm?

A. Correct.

Q. I think he might also have indicated, would I be correct in understanding, that not only were they not firm, but they weren't indicating that they would take up any of the bid costs in the instance of being unsuccessful?

A. Yes.

Q. And that's what he identified to you as being the financial problem?

A. He identified it, and I think it transpired on his own

side, his own situation, Communicorp also, is that he felt that he needed he needed assistance there with Communicorp.

Q. Was that discussed that night?

A. Well, he said it that you know, he said he was dealing he said he was dealing with with his own finances, and that hadn't been firmed up. He wasn't specific, because it was just general discussions.

Q. He was dealing with his own finances, that had to be as you understood it, but what he identified to you as a problem, and I put that in quotation marks, was the lack of commitment in the from the institutions and the bid, the bid costs, would that be

A. He was talking about he thought that he didn't have irrevocable commitment from the institutions to take up their stake.

Q. Right. Now, I just want to be clear about this, and it's just that Mr. O'Brien, in his evidence, and I just want to give you an opportunity to deal with it, how things got going.

As I understand Mr. O'Brien's evidence, it seems to be that it was his view that you came to him in relation to becoming involved in the second GSM or in his business, I'll just use it loosely, at that stage, rather than him coming to you?

A. No, no, we had a conversation on the plane, and he

told me about his weakness. And I told Denis, I said,

"Come and talk to me tomorrow. Send me in some information, and I'll see what I could do to help".

Q. Okay. All right. Now, we have a document anyway, you got back to Dublin, and you said "Come and see me tomorrow". And Mr. O'Brien has recorded on his diary, I think, meeting with you at IFSC on the 11th; would that seem to be correct?

A. I think so, yes.

Q. That would seem to accord with your own recollection.

And he either sent you or brought with him a document he prepared which is called "Outline or Heads of Agreement", "Outline of Agreement", or something of that nature, I think, and we might just have a look at that, and ask you do you remember.

Just while I am getting it now, do you remember, was it then when he was discussing in fairly broad terms with you that you said to him that you'd be prepared to get involved on the same basis as he and Telenor were involved? Can you remember that?

A. Possibly. I can't remember exactly.

Q. You can't remember exactly. That's fair enough. Just there is a document, and I'll put it up on the screen. And it's big, so you perhaps can read it from there, and it's in Book 48, Tab 36.

And it's headed "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 the Esat Digifone Limited replacing IBI, AIB, and Standard Chartered.

"2. GSM bid costs.

"2. A total of 1.3 to 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 in order for Communicorp to draw down a $\text{€}1\frac{1}{2}$ million bank facility that will remain in place up to March 31, 1996.

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

Then there is a 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 for $\text{€}1\frac{1}{2}$.

Communicorp currently holds 76% of Radio 2000.

There is a negative pledge. "We understand that you will seek a negative pledge of the assets of

Communicorp."

Now, do you remember, was there a discussion about the fixed-line business? I can see there various references to the GSM aspect of matters. If you take if you go back up, you see there "The GSM bid costs." Right? There is no doubt that's there?

A. Yeah.

Q. And that seems to be linked to the first issue, which was replacing the uncommitted financial institutions standing at 15% I suppose, at that time. And there seems to have been, or it seems to be, from this document anyway, that there may have been a discussion about a bank guarantee for $\frac{1}{2}$ million. Do you remember that at all?

A. No.

Q. Because, the meeting then took place between yourself and Denis O'Brien on the next day, the 11th, I think. And did you have any further discussions with Denis O'Brien in that period that you can remember?

A. Well, let's give you my understanding of it to make it nice and clear, because this is a commercial exercise.

Denis I said to Denis I would be interested in helping him for lots of reasons; I'd be interested in helping him on the funding side of it. He comes along with a proposal next day, and this is the proposal he puts forward.

Now, looking at that, it jogs my memory; I said to

Denis "I am not interested in Radio 2000; I am not interested in this here. I am interested in just the straightforward GSM business. I was never interested in fixed-line business".

And what became apparent with that there, and it developed from there is that Denis was looking for money for Communicorp.

Q. That seems to be so, that he is looking for money for Communicorp?

A. This is how he was using me as a bank to lend him money for Communicorp.

Q. There is no doubt but that document seems to give the impression that he was certainly looking for money for Communicorp. It's all been rolled into one as there; would you agree?

A. That was Denis's proposal.

Q. All right. Now, the next

A. Which we declined.

Q. Which you declined?

A. It's history.

Q. You told him you weren't interest in Radio 2000, fixed line, or any of that; that wasn't your you weren't interested in any of that?

A. No.

Q. All right. The next time now, I know it was August; do you know, did you go away, or were you around yourself, or

A. It's hard to say at this remove. It's likely I was away. I'd say I was away.

Q. All right. Now, the next time we see any document or record of some activity is on the 7th September, 1995, Peter O'Donoghue sent a fax to Michael Walsh.

And I'll just put that up as well, there, so if you want any of these in hard form, I'll give them to you.

A. It's okay, I can read them here, thank you.

Q. He sent this to Peter O'Donoghue, and he said

"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 $\dot{i}_i^{1/25}$ 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."

Now, again, that seems to relate to fixed-line matters, or Communicorp business?

A. Yes.

Q. And Michael Walsh has told us that, like your own view, he, Michael Walsh, I don't think would have been offering any advice to you to get involved with Denis on the fixed-line side if anything or in the radio business, so you seemed to have been of like mind, both you and Michael Walsh in IIU in that regard; isn't that right?

A. Yes, but my reading of this here, this letter here, it's talking about the financial requirements for Communicorp. Okay, now that financial requirement of 31 March, depending on whether that was going to be required for that 5 million was required, I'd have to see the projections behind it; was it required for the licence? That they were bidding in the licence, if they got the licence, it was 5 million? And we have to take into consideration what the First Boston money was coming in for.

Q. Just to clarify that for you, Peter O'Donoghue has given evidence to the Tribunal, and he said that he was asked by Denis O'Brien to send over it was all to do with radio and fixed-line business, that he was asked to send in, just

A. We can dismiss that. We weren't investing in radio or fixed line, ever.

Q. All right. Now, at this time, and it doesn't seem to be, from your own statements, anyway, Mr. O'Brien hadn't said anything to you about having any difficulty or pressure coming on him from Telenor, did he?

A. No.

Q. He didn't tell you that he had in fact, according to your statement, it seems to be that or we'll see in due course that he seems to have been indicating to you that his funding would be coming from CSFB, his

own funding; would that be right?

A. Well, I didn't have any intimate knowledge of his funding. You know, he told me there was parties he was having negotiations with.

Q. Right. Did he ever tell you that he had an agreement, an irrevocable commitment from Advent, did he ever say that to you in relation to his own funding?

A. I don't know; I don't know. I can't

Q. I suppose if he had, I suppose as Mr. Walsh said, if he had that, why would he be coming to us or having discussions with us? I suppose that would be a fair way

A. He could have commitments from lots of different people and he is trying to get the best deal for himself.

Q. I understand.

A. Which would be good business.

Q. I understand that. But he never told that you he had an agreement with Advent?

A. Not that I am aware of.

Q. Now, the next thing that and between the 10th August and, let's say, the middle of September, the 10th, or say, the 12th September, the time the presentation took place, there had been had you had any further discussions with Mr. Denis O'Brien that you can remember?

A. I can't remember.

Q. You can't remember. There certainly isn't any record or document indicating that there were any attempts by Mr. O'Brien to conclude any agreements with you up to that time, either in IIU or in Communicorp?

A. Well, I am sure there was lots of telephone conversations between either Denis and Michael Walsh or maybe Denis and myself, but again, I have no record of them. I have no recollection.

Q. And you have no recollection and Michael Walsh has no recollection. And we don't see any entries in Mr. O'Brien's diaries in relation to those. I'm just pointing out the whole picture to you.

Now, the presentation took place on the 12th September, 1995, and you weren't at the presentation and you don't know what transpired at the presentation; isn't that right?

A. No.

Q. Were you ever told before becoming involved with the Tribunal, that is were you ever told that Mr. O'Brien had stated at the presentation that he had an irrevocable commitment in respect of $\frac{1}{2}$ 30 million for the funding of Communicorp from Advent? Were you ever told he said that?

A. No.

Q. Were you ever told that at the presentation, great play had been made on behalf of the presenting consortium about the involvement of institutional

investors?

A. No.

Q. Now, we do have a record that, in Mr. O'Brien's diary, that on the 15th September, 1995 that's after the presentation he records a meeting with Mr. Michael Walsh. Do you have any knowledge of that particular meeting?

A. No.

Q. You remember being at the All Ireland Final yourself on the 17th September, 1995?

A. I was there, but I don't remember it. I don't even know who played. I can't remember who played. I was trying to think who played in 1995.

Q. Dublin?

A. Dublin were playing, were they?

Q. Do you know, or would you have any idea whether you were in the country before the weekend, or did you come in, you know, that weekend for the All Ireland; can you remember that?

A. I'd say it's probably more likely I came in that weekend for the All Ireland. I make a habit of going to the All Irelands.

Q. And do you remember arranging for any meetings with Denis O'Brien that weekend?

A. No.

Q. And you know now that Mr. O'Brien has an entry in his diary for a meeting with you at 6 o'clock on the

evening of the 17th of September, 1995. You have no recollection of such a meeting; is that correct?

A. No.

Q. Or no recollection, if there was such a meeting, what was discussed?

A. Well, I have no recollection of meeting him whatsoever. I'll just give you from my side of it, that I would have got back from the match probably around 6 o'clock. If the All Ireland finished around five o'clock, by the time you get across town would be six o'clock. Normally I leave to go to the airport about a quarter to seven, because I was on an eight o'clock flight, which is recorded; and so therefore, the only time I would have had home between 6 and a quarter to seven, and I would not have liked to have a meeting at that stage.

Now, but I could have had it with Denis. But I don't remember it.

Q. And if just on that point, as you say, the match being over, presentation, whatever time was involved there, and if you were you had a flight at eight o'clock, would it be likely that you'd head off to your office or to your home at that time and then go to the airport, or would you

A. I'd have gone home. I'd have gone home and got my bags together and headed off.

Q. All right. Now, we know that the next day, the 18th

September of 1995, Mr. O'Brien and Leslie Buckley went to see Owen O'Connell in William Fry's, and he informed Mr. Owen O'Connell that they needed this is at Tab 42 we can put it up in its typed form, perhaps it's Denis O'Brien and Leslie Buckley go to Owen O'Connell, and he records this.

"Dermot Desmond going ahead with financing transaction.

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

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

Then there is a little note. "DD 30, Advent 5 and the other two at 32.5".

Do you think I know you have no recollection, but do you think that it's possible that that was the type of discussion you may have had with Denis O'Brien the previous day?

A. Possibly.

Q. Now, he has said that the concept of underwriting, which is one which would have come from you rather than from him, would you think that would be

A. I think it's absolutely it's a very sensible suggestion of Denis.

Q. I beg your pardon?

A. It's a very sensible suggestion that the underwriting concept came from me.

Q. I see. You think it's probable that it did come from you?

A. Yeah. That's why I called the company International Investments & Underwriting.

Q. And it's recorded there that "DD wants 30% of GSM".

A. Mmm.

Q. Then it's noted "DD 30". So it was you, Dermot Desmond, discussing with Denis O'Brien that you wanted 30% we know it ended up at 25% that you wanted 30%, but that the way to do it was by way of underwriting. Would that be and I'll tell you why I ask you that he said, when I asked him, he said, "Well, you wouldn't tie up" whatever amount it was there; 32 million, I think "You wouldn't tie that much up in cash. You couldn't lodge that much in cash". A bank guarantee would be the same as cash; that would have to tie up something to back it, and that underwriting would be the way to do it.

A. That's a pretty close answer. That's a pretty good answer.

Q. And you think that that's probably

A. If you want me to explain it, because I know that you went through several lectures by Michael Walsh on underwriting and this tribunal has cost a lot of money on the word "underwriting", and I think it's a very simple explanation here and it's allay insurance, if you like to put it. If I have decided to underwrite

Denis, and the reason why I decide to underwrite is because he didn't need investment then. He needed investment which was contingent on something that may or may not happen in the future. He may not win the licence or not. So therefore I was underwriting him.

Generally, what underwriting is about, it's like insurance; as you will appreciate, if your insurance is underwriting, they will underwrite the risks that may or may not happen; earthquake etc. I said to Denis, "We will underwrite the portion that we would take up here", whatever that was, 30%, "and we'll also commit to underwrite your investment in the licence if you won it.

Q. But what you were agreeing was to underwrite Denis, and for that you wanted 30%?

A. Correct. Underwrite Denis, and underwrite and also get the opportunity to invest in the consortium.

Q. Yeah, but you I'm just trying to understand, who are we talking about?

A. IIU when I make a commitment, when I make a commitment, it's Dermot Desmond making the commitment.

Q. Right. That's what I am trying to understand. So that you were to get well, you were looking for 30%. You were to get as we know, as things turned out, you were to get 25% for yourself or to place as you wished. That's

A. Correct.

Q. And you were underwriting Denis's 37.5%, as it transpired and that is that the nuts and bolts?

A. Correct. I was underwriting the funding there.

Q. And it was you, Dermot Desmond, was doing the underwriting?

A. Correct.

Q. And I think that was your understanding, and in fairness to Mr. O'Brien, whatever vehicles you see around the place, he said it was Dermot Desmond.

Would he be correct in that?

A. There was no confusion.

Q. There was no confusion?

A. No.

Q. There was no confusion; all right. I get the point.

Now, you see the note "Need 'Underwriting' letter for Department because finances are seen as weakness."

You weren't involved in the bid. You weren't involved as of the 4th August?

A. No.

Q. You knew nothing other than that Denis was involved with Telenor. You knew that much?

A. Yeah.

Q. But you knew nothing about the bid, or how it was put in, or what it contained in general terms. You weren't at the presentation?

A. No.

Q. You didn't know what happened there?

A. No.

Q. You or Michael Walsh had no dealings with the Department about this particular matter at all, so the question of needing an underwriting letter for the Department isn't something that would have come from you?

A. No.

Q. So can I take it that that must have come from Denis?

A. Well, I didn't write in. They weren't at the

Q. Michael Walsh drafted an underwriting letter in due course that went or a letter to the Department about underwriting. I want to ask you about that in a moment. But you were asked can I take it that if the letter if a letter for the Department was needed, you were asked for it, rather than you coming up with the idea or a suggestion or a solution in relation to something, because you didn't know what was going on on the bid side with the Department; would that be a fair way of putting it?

A. Yes.

Q. Would you agree with that?

A. Yes. But I should say that right in the first instance, when I was talking with Denis about funding, we were always talking about underwriting, that I would underwrite the equity if there was an equity content that was needed.

Q. Right. But the idea of underwriting for the

Department wouldn't have come from you?

A. No.

Q. Now, you see, I am just and I appreciate it's a long time ago, and but on that day, that's the 18th, September, 1995, as a result of Denis O'Brien and Leslie Buckley going to Owen O'Connell, Owen O'Connell made a phone call to Michael Walsh. And whatever the full discussion was, there was certainly discussion which resulted in Michael Walsh sending over to Owen O'Connell the next day two documents: One was a draft of a letter for the Department which was worked on in subsequent days; and a draft of a letter to be sent to Davys about the institutions being out.

But I just want to ask you, on the same day, at three o'clock or perhaps before I do that, you say in your statement, if I just go back to your most recent statement if you just go to the first page of your statement there. And I'm just trying to fix a time in relation to some of these matters, really, Mr.

Desmond. This is your statement of last Friday. Go to the last paragraph on the first page.

"Esat Digifone had submitted its application before I first spoke to Denis on the 10th August. Denis told me that the only possible area of weakness in their application was on the financial side. I looked at the funding requirements to see if I could improve on

its financing position. Denis gave me some figures, and based on these, I made my offer to invest."

Now, the figures there that we see on the 11th August weren't the figures in relation to the GSM, you know that note of Denis's, the 3 million?

A. Mmm.

Q. And I am just wondering on the 18th September, 1995, Paul Connolly sent a document over to Michael Walsh at three o'clock in the afternoon when he had been discussing matters with Owen O'Connell, when Michael Walsh had been discussing matters with Owen O'Connell; and what it was was a document which had been drawn up by Paul Connolly and Davys, I think, when they had first of all gone to the financial institutions in the first instance, dealing with matters, the GSM, setting out who they were, the type of business, the type of equity that would be required and how it was proposed that the funding would be done, perhaps 60% debt financing, 40% equity, and seeking support in a very specific manner, the manner in which it came from the institutions. As it transpired. But this was sent over to Michael Walsh on the 18th, and I am just wondering, are those the figures that Denis furnished to you? Because I don't see any other figures anywhere else.

A. I don't know what figures were furnished or when they were furnished, but we got I am absolutely certain

that my commitment to fund Esat Digifone was based on projections that we got of Esat Digifone, not Communicorp, and not of any other of Denis's businesses, that we took a view on the value and the commerciality of the Esat Digifone if they won the licence and therefore, that we ring-fenced our investment there, or I ring-fenced it.

Q. Right. I am just wondering if, if you just look at this particular document, and what I wanted to go to was this sets out it's an executive summary. I am not going to go through all of this.

You can see there that this was prepared in the first instance to go to the institutions who had furnished letters, and you can see down at the bottom of that first paragraph: "A total investment of $\text{£}12$ million in amounts of not less than 1 million is now being sought. The investment will only be required if the consortium is awarded the licence in October 1995 in terms acceptable to it."

Now, it goes on to describe the licence proposal, what GSM is in Europe, what Communicorp is, what Telenor is, the history of Communicorp's relationship with Southwestern Bell at some stage and why they weren't going that way, Telenor reputation and track record in the Nordic countries, how the Nordic countries were to the forefront in this type of activity, and then it goes on to deal with investment. Do you see that

there?

"As indicated earlier, the current partners believe that the bid would be significantly enhanced by Irish institutional participation. Accordingly, if the bid is successful, it is proposed to raise up to 12 million from new investors for 20% of the total equity investment of 60 million.

"Esat Telecommunications Limited and Telenor Limited will invest the balance of 48 million and cash on a pro rata basis. The total cost of establishing the GSM system, including the initial fee payable for the licence, is estimated to exceed 120 million.

Accordingly the balance of the finance required will be raised through borrowings.

"At this stage" this was before it was capped they were predicting that the licence fee would be 20 million, that would be 15 million. Do you think those are the type of figures that you would have received?

A. I probably saw that document. But behind that, behind that, then, we would have figures, we would have seen some projections of profit-and-loss projections, I would imagine, that must have been prepared.

Q. I see.

A. Because you'd like to see how if you are talking about how the 120 million is going to be expended over what period, what's going to be capital costs, what are operating losses, etc.

Q. You might there was a business case in the bid as well which dealt with that?

A. That we saw, because we got those bid documents.

Q. And was that that's what I am trying to understand.

Do you know when you got the bid documents? Was it around

A. I think Denis brought down the bid documents when I met him on August 11th, because I know they were

Q. You think he might have brought them down?

A. I think so.

Q. Now, the Mr. O'Brien then said that as far as he was concerned, the deal was struck with you on the telephone, I think it's on the 20th September of 1995, and he has that recorded in his diary. He says you were in Barbados and that the deal was done then. He then felt he had a deal on the 20th. Do you have any recollection of that?

A. If I said he had a deal, he had a deal.

Q. But you don't actually I accept that; you don't recollect that?

A. No, no.

Q. He says that the deal was done because the percentage was agreed, 25%, you were to get 25%. That's Dermot Desmond was to get 25%?

A. Yes.

Q. And you were to underwrite him?

A. Mm-hmm.

Q. And a letter was to be sent to the Department. You see, I know it was none of your business and you weren't involved in matters up to the presentation, but there was no movement to conclude a deal before the presentation; isn't that right?

A. I don't know.

Q. Well, you don't remember it?

A. I don't remember, so to say there wasn't, I can't say that.

Q. We certainly see evidence of a lot of movement to do certain things and to conclude the deal around the period, as you say, 18th, 19th and 20th September. But you don't actually remember that either?

A. No.

Q. All right. And you're unaware that Mr. O'Brien had met Mr. Lowry on the Sunday the 17th, the night of the All Ireland; isn't that correct?

A. Yes.

Q. And you were unaware of any conversation that transpired as a result, of course?

A. Correct.

CHAIRMAN: It's probably a suitable stage to leave it until two o'clock, if that suits you Mr. Desmond, we'll resume. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

MR. SHIPSEY: Just before Mr. Coughlan resumes,

Mr. Desmond is quite happy to sit late this afternoon if that would convenience if there was some prospect that he might be finished this afternoon.

Obviously he is available to come tomorrow, but he is quite willing to sit late if that

CHAIRMAN: I'll certainly progress on the basis, Mr. Shipsey, it's not to go beyond tomorrow; it may be a little optimistic to hope to conclude today.

Obviously, if it's a question of some fifteen minutes or so, I'll naturally do that. We will re-appraise things closer to the time.

CONTINUATION OF EXAMINATION OF DERMOT DESMOND
BY MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. Desmond, I think we have been looking at Mr. Owen O'Connell's note of a meeting on the 18th, before lunch. And I just, before I go on, just at lunchtime we looked at the documents, the IIU documents, your files in relation to matters, and we certainly see the document we had up on the screen, you know, the executive summary. I think that came that was on your files. There are draft shareholders agreements prepared by Owen O'Connell. Some of these there is a draft articles of association and a draft shareholders agreement; this is an original draft, I think, that may have accompanied the bid, may have.

There were various drafts being worked on on the file,

but we don't see any other documents containing figures or anything of that nature, and I am just wondering, was the document containing the figures, that executive summary, that's what's on the file, anyway, but you may have a different recollection.

A. I am absolutely sure that Denis gave us the documents that he submitted in the application, and I am sure those documents had figures, and I would not have decided to underwrite unless I saw some projections of figures.

Q. I understand that. Yes, I take your point, and the underwriting, you wouldn't have underwritten unless you saw some figures. Could those be figures that were seen around the 19th, 20th, that period, 18th, 19th, 20th?

A. I'd say it all depends when I made the commitment.

If I said to Denis that I'll underwrite for 30% of the equity in the end of August, well, I probably saw the figures at the end of August. If I saw them in mid-September, I probably saw them, so I don't know

Q. You don't know exactly when you saw them; that's fair enough.

Now, I just want you to look at a document. It's at Tab 45. This is draft of a letter prepared by Michael Walsh which he sent to Denis O'Brien on the 19th September, 1995. I'll just ask you to look at this.

Now, I think there accompanied with this a draft

letter for the Department and a draft letter for

Davy's:

"Dear Denis,

"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 (the Commitment) and will be for 60% of the equity not held by Telenor in the consortium.

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

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

"4. IIU Limited or its nominees will retain 20% of the equity of the consortium.

"5. IIU Limited will have security over the 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 "Please sign the copy".

Now, if you then go to Tab 46 on the same day first of all, does that reflect in some way your understanding of things as of that time, say 19th September?

A. Generally, yes.

Q. Generally?

A. Yes.

Q. Fair enough. You were leaving the detail of this to Michael Walsh; isn't that right?

A. Yes.

Q. And I was just wondering, in that regard, when you say that in your statement that you had one meeting with Denis O'Brien after the 10th, the match, and that you then left matters to Michael Walsh to sort out

A. Yes.

Q. Could it be that it was the meeting on the I know you have no recollection of such a meeting that there was a meeting on the 17th, Sunday the 17th, and you arranged a meeting, and that Michael Walsh took matters up from there onwards?

A. Maybe that's the case. Maybe I did meet Denis and agreed this, but I don't have a recollection of it.

Q. All right. Then go to Tab 46, and this is Denis's response to Michael Walsh. He thanks him for that letter, and he says he reviewed the contents both commercially and legally. As a result, he asked Owen O'Connell to prepare an enclosed draft of this document. The following points are relevant what he enclosed was an underwriting letter which Michael Walsh took no notice of anyway, but I just want you to

look at this particular letter from Denis and see what you think.

He said: "The following points are relevant.

"1. We did not agree any underwriting fee your 'reward' for underwriting is participation in Esat Digifone Limited.

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

"3. I have retained Owen O'Connell's format because I feel that it's more likely to achieve our common objective with the Department. I understand the points".

Then he goes into a few technical things.

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

Now, I can see there, there still seems to be haggling going on over the percentage for IIU or you?

A. Yes, yes.

Q. You said 30, and that was reflected in what Michael Walsh was saying. Denis is now saying, 20. It's looking quite obvious it's going to meet somewhere on this basis, but those were the positions that were

A. That's with hindsight you can say that.

Q. I appreciate that; that's with hindsight. That's how it did end up, anyway?

A. Yeah.

Q. And I suppose, so he is pointing out where he can get you another 5%; he is referring to the Advent situation there. But would you agree with his understanding, leave aside the 30% and the 20%, we didn't agree an underwriting fee, he was saying there. Your reward for underwriting is participation in Esat Digifone. And the level of your participation, he is saying 20%, he may be able to get you another 5%. You were looking for 30%. Is that a fair and reasonable general reflection of the state of play?

A. I would consider that's good old-fashioned commercial negotiation.

Q. Would you say it's good old-fashioned commercial understanding of what you were both engaged in here?

A. It was. I am a little bit confused about one point.

Q. Yes, okay.

A. And in our letter we put "32 million", and the figure was the original figure was 60 million that they were to put up. And if 60% of 60 million is 36 million, and if we were going along the Department's route here, I can't understand why we are increasing it to 35 million. It's just it's inconsistent.

Q. All right. All right. But what he is saying here is

that and it reasonably reflects the negotiation

I'll just describe it still as "negotiation."

A. Yeah.

Q. That "Look, we didn't agree about an underwriting fee, but your fee, or reward, whatever we wish to call it, is that for underwriting us, that you will get"

he is saying 20% here.

A. Mmm.

Q. And he then said that on the 20th, I think he had a telephone conversation with you; it was agreed at 25%.

As far as he was concerned, you shook hands on the phone; the deal was done. You now had to give effect to it through the lawyers. Isn't that

A. Yeah.

Q. And would that be your understanding of matters as well?

A. Yes.

Q. All right. So as far as we come to the 20th, you shake hands on matters, and it's agreed that you will underwrite him and in return for that, you will get 25%

A. Yes.

Q. of the company. Right. And I just want to be clear about this now: When I say "you", it's you, Dermot Desmond. I know you are going to perhaps use a vehicle, IIU, and I am going to have to ask you about Bottin in a minute as well.

A. Okay.

Q. But what you are saying here, and what Denis O'Brien has always said in evidence, was "Forget about all these vehicles and all the rest of it; Dermot Desmond and I did this deal".

A. Yes.

Q. And that was it?

A. Yes.

Q. "And he was going to get 25% of the company, and he was going to underwrite my 37.5%". Would that be a fair way?

A. That's

Q. And Telenor has agreed to all of this?

A. Yes.

Q. Now, the way Telenor's involvement is slightly different to a direct Dermot Desmond they had no interface with you. You had no contact with them at the time?

A. No.

Q. But as far as you were concerned I just want to be clear about this: As far as you were concerned, Denis was dealing with Telenor, Denis was dealing with the Department. You were doing the deal, and you had no reason to believe, whenever any documents were executed, that Denis wasn't entitled to do so on behalf of Esat Digifone; in other words, he was acting for himself and Telenor in that respect?

A. He was acting for we took it Denis was chairman of Communicorp, he was acting for Communicorp, he was Chairman of Esat Digifone, and he was acting for Digifone, and he was bringing along Telenor.

Q. And you had no reason to believe otherwise?

A. No.

Q. And I am not saying that's an unreasonable position.

He was the Chairman; he was presenting himself in that, and you were happy to do business on that basis?

A. Correct.

Q. Now, there is a document at Tab 53; I am just referring you to it. I am not going to open it. It's Michael Walsh's curriculum vitae of you. I think you may have seen the document. It's dated the 21st September, 1995. It gives your age, what you did in 1991. You founded NCB. You had a number of software businesses in Dublin, together with financial businesses, etc. You were previously Chairman of Aer Rianta. You recently acquired a 50% stake in Pembroke Capital. You were initiator of the Irish Financial Services Centre. You founded a new company, International Investment & Underwriting Limited, in August 1995. In fairness, that commenced trading in July/August, isn't that right, of 1995 IIU? And then about significant holdings in Celtic, and in Jordan Formula 1, and it mentioned about the Irish entry in the Whitbread around the world. And he said

that's fairly standard type of information; he might have had that on file or disk or something like that and would have produced that type of information where necessary.

But one thing is absolutely clear, from your point of view and from Michael Walsh's point of view: It was information about you, Dermot Desmond, that was being produced, isn't that right, here? That

A. Who was looking for it?

Q. I'll tell you now in a moment. I don't know whether Michael Walsh can remember exactly, but it appears that this was a document which Denis O'Brien took to Oslo on the 22nd September, 1995, when he had a meeting with Arve Johansen. That's what it looks and it looks that that may have been the purpose for it, and that that's why Michael Walsh would have given it to Denis O'Brien. You yourself don't have any recollection of that?

A. No.

Q. You would have had no difficulty with Arve Johansen or you didn't know who they were at that time?

A. All that stuff is pretty accurate; I can't deny it.

Q. It's about you. That's the point I am making. It's about you isn't it? It's all about you, and it's not saying much about IIU other than that you commenced business in IIU in August of 1995; isn't that right?

A. IIU is owned by me, and

Q. Yes, I know that. I am just trying to have an understanding of the state of knowledge of various people at this time. But that's a document all about you; isn't that right?

A. Mm-hmm.

Q. Now, during this period, were you aware that there was any correspondence or discussion taking place between Telenor and Denis O'Brien about Advent International?

A. No.

Q. And can I take it that the most that you or Michael Walsh might have been aware of at that time about Advent is the reference which Denis O'Brien made when he wrote to Michael Walsh saying "Advent are in for 5%, and I may be able to get you that", because they were in the category of a financial institution, one of those type of potential investors?

A. Venture capitalist, I would call them.

Q. As you understood the state of affairs?

A. Yes.

Q. But can I take it that you were aware that well, sorry, perhaps I'll come to it in a moment.

I take it you weren't aware that documents that is, IIU documents, Mr. Walsh's documents were going to or were being considered by some element or some level in Telenor? I take it you weren't involved in any of that

A. No.

Q. to-ing and fro-ing.

A. I would imagine that Denis would have conveyed our interest or commitment to them in the normal course of events.

Q. You weren't involved in what was going on at that stage?

A. No.

Q. All right. And were you being kept abreast of the letter that was being prepared for the Department, or did you leave that to Michael Walsh and Denis O'Brien?

A. I left it to Michael Walsh and Denis.

Q. And we know that from Michael Walsh's evidence, he was involved in discussions with Denis O'Brien and perhaps Owen O'Connell in respect of that.

Now, were you aware that I take it you have seen a document called the arrangement agreement; it's a Fry's document. Were you aware that that was being prepared at that stage, or

A. This is our letter to Denis; is that what you call it?

Q. No, I am not. I am talking about you knew that Michael Walsh was in discussion with Denis O'Brien and perhaps Owen O'Connell; is that right?

A. Yes.

Q. Can I take it you weren't being kept informed on an hourly or a daily basis about any of this?

A. If I agree a deal, let's say 25% and an underwriting fee, and that's the bones of the agreement, that's the

deal, well, then, I trust Michael Walsh implicitly to put that into practice, and I didn't get involved with it.

Q. That's fine. I just want to now go to the 29th, so, of September. And this is at Tab 65. Now, first of all, I'll go to Tab 66; this is the arrangement agreement; it's the Fry's prepared document. It was signed by Michael Walsh on behalf of you, but I'm not going to read it because it's it doesn't make for exciting reading.

A. I can tell you I never read it.

Q. All right. Well, can I take it so that you have no reason to disagree, and I'll just tell you how Michael Walsh characterised the Mr. Walsh was asked his understanding of the precise obligations and entitlements of IIU on foot of the agreements of the 29th September, 1995, between IIU, Esat Digifone and IIU and Communicorp.

And he said: "The details of the obligation and entitlement of IIU on foot of the agreements 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." Would you agree with that?

A. Yes.

Q. That's very good. Well, then, I don't need to open the agreement or go into the two side letters in any great detail with you, that you were to get 25% of the equity and you were to underwrite 37.5% of Communicorp, isn't that and just a slight little thing, over and above that, you were to have I am going to describe as a privilege, you may not agree you were to have a privilege. The reason for it, as you say, is that the market mightn't have been good, and you could have been squeezed, if you attempted to deal in your own shares, by either Telenor or Communicorp, and you were entitled to the privilege of being able to place those with up to four people or four entities if you so wished; isn't that right?

A. It's not a privilege. It's a standard commercial practice.

Q. All right. Okay. But that was agreed, anyway; that was agreed between the three of you?

A. Yes.

Q. Let me put it that way.

A. Yes.

Q. All right. Now, the agreement in its entirety, both benefits and obligations, were assigned to Bottin International Investment Limited. I think you are aware of that, are you?

A. Yes.

Q. And were you aware at the time, or would that have been something that Michael Walsh would have had full authority to do on your behalf?

A. No. What Michael Walsh had asked me, he said, "What are you taking what company are you funding this with?" And I would have given him Bottin.

Q. Right. Okay. It's as simple as that. And just about Bottin and I know you always think that I am prying too much. I am just going to ask you this: You have described Bottin first of all you have described IIU, that it's essentially a financial advisory company; it's wholly owned by you?

A. Yes.

Q. It advises Bottin we'll leave Bottin out for a moment and other companies which you own?

A. Yes.

Q. And that's the way so, you are IIU as far as you are concerned; isn't that right?

A. Yes.

Q. Now, you go on to say and I just want to ask you this: "IIU negotiated the deal on the funding of Esat Digifone consortium and, as is the norm, I helped personally." Can I take it that what you're talking about there is that IIU was, in the first instance, a vehicle through which you were doing something, and when Michael Walsh asked you the question "What

company are you going to take it in", or words to that effect, you said "Bottin"; is that right?

A. Mmm.

Q. So it was always you were taking it?

A. Correct.

Q. Now, you say "Bottin is a trust company associated with me, incorporated and domiciled in Gibraltar. I have used these and other companies to make investments since I became non-resident in Ireland in 1994". You were non-resident at this time.

Now, you say that Bottin is a trust company associated with you. First of all, can I ask you, is Bottin a discretionary trust, to the best of your knowledge?

A. Well, I think you'd have to write to the directors of Bottin for information.

Q. You say it's located can you help us about, you know, about it?

A. Bottin was a hundred percent controlled by me, owned by me, and there was nobody else involved in Bottin.

Q. That's fine. That's all I wanted to know. Even if it was discretionary, you were a class of person who was the object, and I could even go so far, that if it wasn't you, even members of your family; but that's the type of company it is. Is that a fair way

A. Absolutely correct.

Q. So whilst it's a trust company, in your mind, and in the commerciality of all of this, as far as you're

concerned, even perhaps in legality in relation to

this, that this was you, this was Dermot Desmond?

A. Yes.

Q. Would that be it? All right. So by reason of the deal which you made with Denis O'Brien, which we can date, the conclusion of the deal you made with Denis O'Brien, which we can date to the 20th September of 1995, you had done the deal; you would underwrite his 37.5% for 25% equity in the mobile phone company.

Would that be

A. That's correct.

Q. And it was a matter for you to do what you liked with your 25%; you could hold them yourself, or you could place them, if so you wished; isn't that right?

A. Yes.

Q. All right. And as far as you were concerned, on the 29th, when the agreements were signed, that was still the position; there were vehicles being used, I know, but that was the deal, and it was understood by you to be that, and it was understood, I think, from the evidence I heard from Mr. O'Brien to be that as well; is that

A. Yes.

Q. And another thing is certain, I think, that on the 29th, did you know that John Callaghan had gone to Kyran McLaughlin and asked him to asked the institutions who had given these letters to step

aside?

A. No.

Q. You know that now, I think.

A. Yes.

Q. And that was done, wasn't it, as far as you know? But you did know that you were coming in in their place; isn't that right?

A. Yes.

Q. Now, I just want to the letter that went to the Department on the 29th, had you any sight of that before it went to the Department?

A. No.

Q. You hadn't; right. And if we just look at it for a moment. Could I ask you, did you know whether or not the agreements that were signed were going to the Department at that time? Did you know anything about that particular

A. What agreements?

Q. The arrangement agreement and the side letters, but let's take the arrangement agreement.

A. No, I didn't know.

Q. You didn't know anything about what the mechanics, what they were doing with those?

A. No.

Q. You didn't know at that time?

A. No.

Q. All right. Now, I think we can leave aside I think

from your point of view, all I want to ask you about there is the middle paragraph. You can see that there: "We confirm that we have arranged underwriting on behalf of the consortium for all of the equity (i.e. circa 60%) not intended to be subscribed for by Telenor (aggregate the consortium now has available equity finance in excess of £1258 million."

Now, I just want to ask you about that, and it's this:

There is no doubt about it, just in fairness to you, in relation to this, this is on IJU-headed notepaper; right? If we can just push it up, or if you want to go to the bottom of it, please, you can see there, there you are directors/partners: "D. F. Desmond (Chairman)"; you can see that there, and the other people there as well?

A. Mm-hmm.

Q. So you are on the paper. Your name is on the paper.

If we just go back to the and just ask you, the actual facts that existed, as far as you were concerned, as of the 29th September and perhaps a little earlier it was, that you were underwriting 37.5% of this company and that you were in for 25%; isn't that right?

A. Mm-hmm.

Q. Now, I must suggest to you and you were not involved in the drafting of this letter, I accept that; you didn't see the letter before it went in.

But I must suggest to you that reading that letter, whilst one might be able to understand that IIU, with Dermot Desmond as its Chairman, are doing something here, I want to suggest to you that it doesn't inform the Department that you were in for 25% and you are underwriting 37.5%; would you agree with that?

A. Yes.

Q. All right. And it's in that context that the expression has been used we know the letter was returned; you have no recollection of when it was returned or when you were informed?

A. No.

Q. Or were you informed? Does it stick in your mind about anything about the letter?

A. I think there was some reference made to me at some stage later on, the letter was but I couldn't tell you when it was told.

Q. All right. But would you agree that a view, reading that letter one view of reading that letter, is that was designed not to show your actual involvement in the thing as was the factual situation at the time.

I know you had no part to play in that.

A. It showed that I had no involvement.

Q. No, no, I am not saying your actual involvement. You were underwriting Communicorp for 37.5%; there is no doubt about that. You had agreed to that.

A. But it does show our involvement it. It says, "We

confirm that we have arranged underwriting on behalf of the consortium." If IIU is me and IIU is we, then I must be I.

Q. Okay. That's fair enough.

Mr. John Callaghan said that when you look at that, "We confirm that we have arranged underwriting on behalf of the consortium", this, in the normal course of events, somebody reading that would probably take the view that this is being arranged with the third party; but he says, knowing you and IIU, he would have a different view of it, coming from you and IIU, because he has an understanding or perhaps a knowledge or an experience of the way you do business. But for somebody who doesn't have that and remember, IIU didn't have a track record at that time, if you understand; it had commenced business July/August of that year. It was a new company. Do you understand

A. Well, no, I don't understand. I think that's unfair to say is that Michael Walsh and myself, we would like to think we had a track record before IIU started.

So

Q. I understand that.

A. That's the first thing. Second of all, you asked me what my understanding is. I am not going to give you anybody else's understanding, because some people have an understanding of underwriting and some people don't

have an understanding of underwriting.

Q. Well, what is clear about this is we continue on so "For all the equity (i.e. circa 60%) not intended to be subscribed for by Telenor." That wasn't the position that existed at that time. What you had arranged underwriting and I am using "arranged underwriting" in its broadest sense, as you accepting an underwriting obligation, as you say, dictum meum pactum but what you had agreed or arranged was to underwrite 37.5%, and you were to get 25% of the equity. Isn't that the true situation?

A. Okay, well, I think what we should concentrate on the words "for all the equity, (i.e. circa 60 percent)".

It doesn't say exactly 60%. It could be 62.5%, or it could be 57.5%. That's that's why I would imagine the word "circa" was put up there.

Q. I understand that, but it wasn't that. What you were doing was underwriting 37.5%; isn't that right?

A. No.

Q. Which isn't circa 60%?

A. No, we were underwriting, in total, to be exact, 62.5%.

Q. How were you underwriting that?

A. Because we were underwriting our 25% that we were putting in, subscribing for, and we were underwriting Denis's 37% our 25% and Denis's 37.5%, which is 62.5%.

Q. Before lunch when you were explaining for the assistance of the Tribunal, in layman's terms underwriting, you described it as like you were insuring; it's a contingency?

A. Yes.

Q. And the contingency that you were underwriting is in the event that somebody can't subscribe for what they agreed to subscribe for, that you must cover that.

That's the contingency; isn't that right?

A. Correct.

Q. The contingency here was in relation to Denis O'Brien's 37.5%?

A. And also, also the other 25% that wasn't Denis O'Brien's and that wasn't Telenor's.

Q. I know that, but that was yours.

A. No, it wasn't mine, because "we have arranged underwriting..." It's not IIU this is IIU's letterhead "we have arranged underwriting on behalf of the consortium for all the equity not intended to be subscribed for by Telenor." So they have arranged on behalf of the consortium now, if it was three; take Telenor off, you are left with two. So you are left with Communicorp and you are left with myself.

Q. Well, IIU wasn't underwriting you.

A. Pardon?

Q. IIU wasn't underwriting you.

A. No, we confirm we have arranged underwriting. And the

underwriter there was Bottin.

Q. No, well, I wonder, are you correct there. If you just look at it, what happened was the underwriting obligation, the underwriting obligation, according to the letter, was assigned to Bottin; the underwriting obligation, not the arrangement of the underwriting with Bottin. I didn't want to get into the technicalities so much

A. The simple thing, this is a letter going to the Department, and it's saying that IIU has arranged that circa 60%, or 62.5 percent if we put it precisely, that they have arranged underwriting for this, okay, so they have arranged for 62.5%. That's all the equity excluding Telenor.

Q. Well, I wonder, are you correct about that, Mr. Desmond, and

A. I am absolutely certain about it. That's what it says here.

Q. I thought you agreed with me a few moments ago, by virtue of the agreements you made with Denis O'Brien on the 20th, which was concluded on the 20th September, 1995, and as evidenced in the concluded documentation on the 29th, that, as Professor Michael Walsh put it, the principal elements of the agreements 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.

So I thought you agreed with me about that. I thought you also agreed with me that forget about the vehicle and forget about all of that, that I, Dermot Desmond, had given my word that I will underwrite 37.5%, and for that, my reward will be that I will get 25% of the equity of the company. I thought we agreed that.

A. No, no.

Q. I see; you don't agree with that?

A. No, because in here we have arranged underwriting on behalf. Arranging underwriting underwrite something covering the placement of the shares, the 25% that IBI has undertaken to take up plus it's underwriting Communicorp's ability to subscribe for the shares that they are supposed to take up. So it's covering both the placing and the underwriting, so underwriting is covering placing here as well.

Q. I thought you told me, when you were assisting the Tribunal in understanding underwriting before lunch, that it was like insurance; that what it was was it was a contingency.

A. Correct.

Q. And the contingency the only contingency that you had an obligation in relation to was the 37.5% of Communicorp's entitlement to take up. You had a right

to 25% for doing that, to do what you wished to do with it, to take it for yourself or to place it if so you wished, but that there was no underwriting. There was no contingency in relation to your 25%. That was a done deal.

A. No.

Q. I see.

A. Okay.

Q. I completely misunderstood, but we can see the record of what you have said already. And I'd just leave it at that.

A. I was using the insurance in a case this was a competition, and our contingency the contingency of IIU subscribing for shares, or its designated entity, was dependent on winning the competition; coming up with the underwriting for Communicorp was dependent on winning the competition. So both of them was dependent on winning the competition. That's why I said it was like insurance.

Q. The whole thing was dependant on winning the competition, but as I understood you, the contingency, the underwriting contingency was in the event that those people who were entitled to subscribe for the shares couldn't subscribe; that in that situation, you as the underwriter had an obligation to cover their position. Isn't that what underwriting is?

A. Okay, well, maybe we'll go back in this way and we'll

work in this way: There was an arrangement fee for underwriting in our letter.

Q. Yes.

A. Okay?

Q. Yes.

A. So that arrangement fee was for doing the underwriting, what we were underwriting.

Q. That wasn't agreed to, and it wasn't in the final

A. It was in the final did we get any fee? I thought we got a fee at the end of the day.

Q. Which was, as I understood, I understood well, Mr.

Walsh put it, it was sorted it was never it wasn't paid. He wasn't saying that somebody wouldn't pay for it; he said that it was sorted out at the end in the shareholders agreement.

A. Well, I haven't got the documents here; you have got the files now. What I'd like to know

MR. SHIPSEY: Just in relation to this, I know Mr. Coughlan has been trying, in fairness to him, not to go into the detail of these letters when Mr. Desmond wasn't the person who drafted them; but in the letter of the 29th, one of the letters, there is certainly a contractual commitment on the part of Communicorp to pay an arrangement fee for underwriting to IIU. I think Mr. Coughlan is correct that Mr. Walsh admitted that it was never in fact collected, but there was a contractual obligation on the part of Communicorp to

pay an arrangement fee for underwriting, and I think that's perhaps what Mr. Desmond was referring to.

CHAIRMAN: That it may have been waived as a practical contingency in due course?

MR. SHIPSEY: Correct.

A. Could I ask how much that amount is? How much was that amount?

Q. MR. COUGHLAN: $\frac{1}{2}$ 219,000?

A. Over what principal was it?

Q. The principal was 37.5, so I presume it was over 30 million or so sorry, let me get this right; it would have been I am just trying to do a quick sum now.

A. If you tell me the amount, maybe I'll do it

Q. I think what you would have had to underwrite was

A. How much of the underwriting fee?

Q. The underwriting fee was 219.

A. 209?

Q. 219,000.

A. 219,000, and what percentage was that?

Q. It doesn't state it as being a percentage. It doesn't state it as being a percentage. But it's in respect of the 37.5%. "Communicorp has undertaken to subscribe for 37.5% of the consortium on the same terms and pari passu with placees. IIU Limited has arranged underwriting for the obligation.

"As consideration for arranging the underwriting,

Communicorp will pay to IIU (the "Arranger") a fee of \$219,000." Do you see that there? So it was in the respect of the 37.5%.

Now, there is no underwriting fee in respect of the 25%. So it would appear that, by virtue of the deal done and this documentation, you were entitled to take as principals, would you agree, you were entitled to take 25% as principals?

A. Yes.

Q. Now, all I am saying there is that the letter that went to the Department makes no distinction. I know there has been a lot of discussion about it, but that there is no distinction here, but what you were entitled to here, what you were entitled to take as principals, 25%.

You were indeed underwriting Communicorp; there is no doubt about that. There were agreements to that effect.

A. Yes.

Q. 37.5%. All I am saying is in the letter that went to the Department, it didn't make that distinction. Now, you didn't draft this letter.

A. Well, you see, if I am reading this here, if you'd read the line underneath that: "The consortium has available equity finance in excess of 58 million."

What we are basically saying is all the commitment and I think it was circa 60 million, original figure,

like, and if you take 60% of 58 million, it's 34.8 million. So that comes to the 35 million we talked about earlier on. To me, it's simply that we have confirmed to the Department that all the equity is available, whatever word you put on it.

Q. I know, and we can debate on this. But I am asking I am trying to look at the facts as they actually were at the time and what was told to the Department.

Now

A. Excuse me, Mr. Coughlan; move on to the last line.

"We do not foresee any additional need for equity.

However, we are confident if such equity is required

we will not have difficulty arranging it." We are

giving the commitment, whether it's underwriting

additional equity, we are saying we are confident of

getting that additional equity. Now it's really for

the Department to come back and ask us who are the

details

Q. I'll come to that now in a moment, and I want to be

fair to the Department as well about this, and to the

people in the Department. I know you have made that

point, and I am going to ask you about it in a moment.

Now, you weren't involved in the drafting of this

particular document. Now, you say that you wished

your involvement, as you said in your statement, you

wished that your involvement through IIU be disclosed

to the adjudicating team in the Department. You want

to be certain that when small-minded people knew you were involved and questioned this, everything would have been done perfectly".

A. Yes.

Q. Right. I just want to you were entitled to take, as principals you were underwriting 37.5%. You could have give any assurances you liked to the Department. That wasn't stated to the Department. We can see in that letter, it wasn't stated that clear proposition wasn't stated to the Department.

A. What clear proposition?

Q. That you were taking 25% as principals look, let's look what the real position was here, as you have outlined here. And I am leaving aside the vehicles for a moment, but the real position here was this: Dermot Desmond is entitled to take 25% of this company as principal. Leave aside even that you might place it if you so wanted. There may be commercial reasons for that, but he is entitled to do that as principal. And he is underwriting Communicorp's 37.5% equity requirements here. The underwriting is being performed through IIU or Bottin, one or other of those companies has sufficient to do that. But in any event, Dermot Desmond stands behind the whole thing. Now, I don't know what the reaction might have been if it was said like that, and I don't know what the reaction might have been if it was said that "Dermot

Desmond, his word is his bond", or "His word is his covenant", or anything of that nature; "He never goes back on a deal". They might have had to make further inquiries; they may have done whatever. I don't know. But all I am saying is that in the way it went in to the Department, I am suggesting to you that those bald facts were obscured.

A. Can I answer that.

Q. Yes, indeed.

A. I'll give you my reply. First of all, I really think this letter is firmly planted in mid-air, because it's in a letter that we sent in, Michael Walsh drafted with Denis O'Brien, we sent in, confirming that we had arranged, IIU, I'm down there as Chairman. Now, unless you want me to send a band with the letter, you know, I was making myself available on the letterhead; so was Michael Walsh.

The trouble about this letter, it was never acted upon by the Department. They sent it back, so there was no question you can't go along and start analysing now what would happen if this, that and the other thing, because they sent the letter back. Maybe, if they didn't send the letter back, and they were looking at the letter, they would then ask all these questions: Who was arranging it? Who was underwriting? What part of the equity and all the other details. But as they dismissed the letter and sent it back, that

wasn't because of our fault.

Q. Well

A. Why are we discussing something that they went back?

Q. Because you were asked for this letter by Denis O'Brien.

A. And we sent the letter in, and it was agreed my understanding it was agreed with Denis O'Brien and agreed with his legal people.

Q. I want to know, as you say, you wanted

A. But this sent the letter

Q. You wanted your involvement to be disclosed to the adjudication team so that if there was any questions, everything would have been done perfectly?

A. Am I not disclosing my involvement there? Am I involved or not?

Q. Yes.

A. Well, then, am I disclosing my involvement?

Q. Are you disclosing the full nature of the involvement?

Sorry, I want to be careful. You didn't draft the letter. You didn't draft the letter. Is the true nature of your involvement or the full nature of your involvement being disclosed there?

A. The full nature when I was going to send the agreement to them? We disclosed our involvement there, a wording that was agreed with Denis O'Brien and Owen O'Connell, and we sent it in. So I don't see I don't see there was nothing covert about our

involvement. If they wanted to see the full extent of our involvement, we would have happily given that to the Department. But the Department sent back the letter because they didn't want to know about the letter.

Q. Now, could it be the situation that there would have been a sensitivity about disclosing the true nature of your involvement because and I want to be careful about this because controversy surrounded you resulting from the Johnston Mooney & O'Brien affair?

A. Not in the slightest. In fact I was delighted to put my name up there.

Q. Now

CHAIRMAN: Mr. Desmond, I mean, I've fully taken your point long ago, and I raised it with one of the Department witnesses, I think, that when you had your name at the bottom of the paper, when you had your quite distinctive letterhead, it certainly would be very long odds, if you were betting on it, that people afterwards would say you never mentioned yourself. You could hardly have assumed that people weren't going to read that, or note what may have been the particulars behind what was a relatively new company. But I suppose what Mr. Coughlan is putting to you is, might it not have been desirable to put it no more than that, that full details be set out of the actual beneficial interest you had acquired and of the actual

changed percentages, rather than just a reference

towards "circa 60% "?

A. Well, I didn't draft the letter.

CHAIRMAN: I appreciate that.

A. I wasn't involved in drafting the letter. It was a letter I presume they wanted to put in very clearly and to the point, and all that Denis and his team wanted to do, I would imagine, was say "We have got the money; there is no doubt about the money, and if we need more, you can have more, and if the Department want to come back for clarification, we will be happy to give them all the clarification about the percentages, etc."

And we would have hoped the Department would have come back, but unfortunately they dismissed our letter.

Q. MR. COUGHLAN: Now, in fairness to you, as well, and in fairness and I have been through this with

Michael Walsh: You hadn't ever read the tender document, the RFP?

A. No.

Q. You were unaware of what had happened at the presentation, and what had been stated to every consortium making a presentation by the Chairman of the Evaluation Team: "The ground rules are, we don't want any information to be sent in to us. If we want information, we'll call you; you can't call us". You didn't know that?

A. No.

Q. All right. Now, but as far as you were concerned, in any event I am not trying to catch you out. So I better give you as far as you are concerned, from then, you were effective shareholders in this particular project from the agreements, from the time of the agreements in effect?

A. We were potential shareholders.

Q. The reason I ask you is because yes, you were potential, but you had an enforceable situation?

A. Correct.

Q. Because I just point out to you, on Day 136, this was when we were back talking about the famous \$50,000 donation. I think in response to Mr. Fitzsimons, when he was asking you questions on behalf of Telenor and it's a fairly net issue; it's on Day 136, page 25, Question 97 you had been complaining that you hadn't been told about this donation at the time the shareholders agreement was concluded. I think you remember that.

And Mr. Fitzsimons asked you at Question 98: "When did you become a shareholder?"

"Answer: Effectively we became we signed a shareholders agreement, probably, I think it was in 1996 but we were acting as shareholders in 1995, since August 1995, when we joined the consortium."

I suppose we could say since September at least,

anyway, 1995.

"Question: So you weren't a shareholder until May 1996?

"Answer: We were effectively all shareholders. We had assumed the bidding liability, the bidding costs in 1995.

"Question: But you weren't shareholders until 1996."

You had, as you saw, an enforceable situation, and you had, as you say, put your position on the line as well; you had agreed to assume 25% of the bidding costs if the thing wasn't isn't that right?

A. Yes.

Q. And we know from much of the documentation and from the evidence given by Mr. Michael Walsh that as far as he was concerned, the main interface with the Department in relation to matters concerning discussion of licence terms and matters of that nature was coming through Mr. Owen O'Connell or somebody on that side, the Esat Telecom side, or sometimes on the side of Telenor?

A. Mm-hmm.

Q. And that you or Mr. Michael Walsh were not involved in any of the nitty-gritty in relation to that?

A. Yes.

Q. And in fairness, you never attended any meeting in relation to these matters with the Department.

And to the best of my knowledge sorry, I could be

wrong I don't think you attended any shareholders meetings. You may have been contacted on the phone once or twice; there may have been something at the end, just in relation to the sale of 2 1/2% to each, but I don't think you were involved in the shareholders agreements yourself, personally?

A. No.

Q. Or meetings.

And just before I move on now, I just want to ask you about the letter of the 29th, as it went in, in the form it went in; what you have stated to be the position, your own position, and the consortium's position, and your statement that if you had indicated, by your name being on the notepaper, if the Department wished to come back and ask you anything, they could have come back and asked you anything. They didn't. The letter went out. Do you remember having any discussion with anybody about "What do we do now?" Or is there anything like that?

A. No.

Q. As far as you were concerned, you were still in for 25 percent, and that was it; is that right?

A. Nothing has changed.

Q. And did you have any discussions with anybody about informing the Department after the announcement of the competition, the 25th October, "Look, Dermot Desmond's in for 25%"?

A. Sorry, did I have

Q. Did you have any discussions with anybody about consideration being given to informing the Department that you were in for 25%? That's after the 25th October when the competition was announced.

A. I wasn't talking to the Department.

Q. No, I mean with anybody in the consortium anyone from Telenor, Denis O'Brien, Michael Walsh, anyone like that?

A. Which presumed that was all being handled by the consortium people.

Q. Right. That's fair enough. When you mean "consortium people", do you mean

A. I mean, what I would consider Telenor and Communicorp to be the operating partners.

Q. And the solicitors, I suppose, acting on behalf of the consortium?

A. Yes.

Q. You see, it's in the context of that letter going in in the form it did and not stating baldly that you had 25% and that you were underwriting 37%, and the competition proceeding to a result whilst you still remained a 25% having a 25% interest or potential interest, enforceable interest in relation to matters, that the expression has been used that you avoided the evaluation process. Do you understand?

A. To be honest with you, I think that's this is

something that I understand it to be incorrect. My understanding about the process was that when Esat consortium won, it was the right to negotiate a licence. And then the evaluation process took place where we were financially evaluated. So we were I was financially evaluated. Part of my assets were financially evaluated. A letter came from a bank confirming that I had the funds to make the commitment to the Department. So I never avoided any evaluation. You know

Q. Sorry, in fairness again, you didn't know what was required under the bid documents?

A. We weren't involved.

Q. And you had, again, no involvement in the presentation; you did what you were asked to do in relation to providing the letter for the Department?

A. We honoured, absolutely.

Q. Now, we have been through late December or late 1995, into early 1996, with Professor Walsh and dealing with Mr. O'Brien attempting to get more of a shareholding in the consortium and various negotiations. You are indicating that you were prepared to sell, but Telenor would have to agree to it. And he said that he would have had a reasonable understanding that Telenor weren't going to agree to it anyway, but the negotiations went on in that form.

Isn't that

A. Yes.

Q. in general how it went?

Now, what I want to go to now is, were you aware, you may or may not have been, that in, I think, November of 1995, a couple of articles appeared in the newspaper mentioning the fact, I think, that in effect, that you were replacing the Davy role, if I might describe it as that, in relation to the consortium, and there was some speculation that you might or mightn't have some interest yourself. You may or may not have been aware of such articles.

A. I may have seen it or may not.

Q. Would you have been aware that in February of 1996, Mr. John McManus, who seems to have got hold of the red herring prospectus that was being used in the United States by Mr. O'Brien in his fundraising over there, had an accurate description of the position of the 25% 37.5:37.5:25; were you ever aware of that article?

A. No.

Q. Did you know that on the 16th April of 1996, that Mr. Owen O'Connell had a conversation with Regina Finn of the Department about the makeup of or composition of Esat Digifone?

A. No.

Q. That he sent a letter on the 17th, setting out the position, indicating the 25:37.5:37.5

A. No.

Q. and offering what he has described as a rationalisation that the extra 5% was a pre-placing of something that had been indicated in the bid, but you didn't know anything about that?

A. No.

Q. Did you hear around this time that there was a bit of a problem arising about IIU/the share configuration or the capital configuration?

A. No.

Q. You weren't aware around April

A. Not that I am familiar. I don't know when I was made aware that we had to sell our 5%. It could have been April; it could have been May. I am not sure.

Q. Do you know how you would have heard that or

A. Probably Michael Walsh would have told me.

Q. Right. Did you ever hear anybody, or were you informed that Owen O'Connell, in discussion, I think he says, with Mr. Pdraig O'hUiginn and I think Mr. Jarlath Burke, had worked out a rationalisation of how IIU's 25% involvement could be explained to the Department? Had you

A. No, no.

Q. I am just looking now for Mr. Arve Johansen's memorandum. It's at 130. I'll give you just you may have seen this before.

(Document handed to witness.)

Q. MR. COUGHLAN: Now, I'll just explain: This is a memorandum which Mr. Arve Johansen made on the 4th May, 1996, after he had attended a meeting in the Department of the 3rd May. I'll just go through it just to ask you for any comments which you may have to make in relation to it.

It says: "I set out below a few points that have become clear to me over the last 24 hours as a consequence of information acquired regarding Communicorp's attempt to buy back 12.5% of the IIIU shares.

"1. Denis O'Brien came personally over to see me in Oslo probably sometime during September last year" we now fix that on the 22nd "He informed me that based on information from various very important sources, it was necessary to strengthen the Irish profile of the bid and get on board people who would take a much more active role in fighting for Digifone than the neutral banks, which would basically like to keep a good relation to all consortia."

First of all, you had no knowledge of any conversation that had Mr. O'Brien ever said anything to you that it was necessary to strengthen the Irish profile of the bid as a result of information from sources?

A. No.

Q. All right.

"I accepted Denis's word for the necessity for this

new move. Note: Underwriting was never used as an explanation.

"2. IIU should apparently be the ideal choice for this function; the only string attached being that they had demanded a 30% equity participation "for the job". Denis had managed to reduce this to 25%, but it was absolutely impossible to move them further down. It was a disappointment to us, since everything we had said and done up to then had been focused on at least 40% ownership for the principal shareholders at the time of the issuing of the licence. But not only that, Denis then pushed very hard for Telenor to swallow 15% of this, and Communicorp only 10% to which I never agreed but I accepted the principle of "sharing the pain" and maintaining equal partnership (37.5: 37.5). It was also said that a too high Telenor ownership stake would be seen as aggressive and could be inhibiting the award of the licence." Now, again, you weren't part of this. I take it nobody ever said to you that a too high Telenor stake would be seen as aggressive at that time.

"This was the first time I experienced real hard and very unpleasant push from Denis.

"3. Some days later the nature of the agreement with IIU comes clearer into the light as an underwriting agreement to guarantee for Communicorp's timely

payment of its shares of the capital into Esat Digifone and including the right to place their shares with up to four nominees. It was unwillingly accepted by Telenor (since we understood it to be the right steps to be taken from an 'official Irish standpoint' to secure the licence).

"The agreement was drafted by Fry's/OOC and signed in a hurry (basically in draft form) by Denis O'Brien alone on behalf of Communicorp and Digifone (even though we in the draft venture agreement had made it clear the two authorised signatures are required one from each party.)

"4. The agreement was never signed by Telenor, either as authorised Digifone signature nor as a shareholder and a party to the agreement. Sometime shortly after this, the Advent commitment to invest US\$30 million into Communicorp disappears, as it was essentially not necessary any more since the Communicorp liability to pay capital to Digifone was anyway underwritten by IIU.

"5. In hindsight it is quite clear who benefited from this arrangement.

"I have good reasons to believe that the terms put forward by Advent for investing into Communicorp did not suit Denis O'Brien. With the above arrangement, that he orchestrated for all other sorts of reasons, he has actually achieved to bolster his Communicorp

balance sheet and paid for it with Digifone shares, at a cost to Telenor. He has done this in an atmosphere of trust, where Telenor even has agreed to bridge-finance Communicorp while he raises funds through a private placement in the US.

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

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

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

"I think it would be a very prudent thing for Telenor to do especially since we can then effectively underwrite the whole project, both Communicorp and IIU, after already having paid Communicorp's price for

the first underwriting, which now appears to be

useless.

"But the story doesn't end there. Two days ago I was informed by Denis that he had entered into an agreement with IIU to buy back 12.5% of the shares now held by IIU. I found it absolutely unbelievable and made it clear that Telenor would not accept anything but equal partnership, either we buy 6.25% of the IIU-held shares each or Telenor should take the other 12.5% of the IIU-held shares.

"I have now also seen a letter of agreement between Communicorp and IIU which strongly supports the scenario outlined above.

" IIU apparently has no (or very little at least) money and cannot afford more than 12.5%. The price agreed is a little cryptic, but it looks as though any advances IIU has to make for the disposed 12.5% before the transaction's effective date (31 May 1996) is seen as cost(???) It will, if this is the case serve as a moving target for IIU's eventual gain on the transaction, putting an immense pressure on Communicorp to delay capital calls in Digifone until the U.S. placement is finalised.

"The return favour from Communicorp is to release IIU from all its underwriting obligations in Digifone.

Does Digifone have an opinion on this, and what about Telenor? This effectively gives Communicorp back its

12.5% of the shares at par (or close to), releases IIU from all its underwriting liability (which Digifone paid 25% for) and IIU ends up having delivered absolutely nothing, having done nothing but complicated the award of the licence (if we get it at all) but with (some cash?) and 12.5% of the shares of Digifone which effectively have deprived from Telenor at the same time as the Department and our other partner ... to underwrite the whole project.

"Fortunately IIU ... this cannot take place unless Telenor continues to support the project. This fact, the time limit and the cooperative spirit shown (by disclosing the letter) may signal a hope for a sensible solution to this mess."

Now, you weren't at the meeting?

A. No.

Q. There was certainly, and everyone who was at the meeting agrees, there was certainly a discussion about the replacement of the institutional investors with IIU. And there may have been also some requirement from the Department to get an understanding about all of this, and perhaps even a discussion or some reference is made to the configuration.

Now, Mr. Johansen is a Norwegian gentleman. He wasn't in Ireland, and he notes there that there was at least a sensitivity or some discussion, some reference to IIU; and I think it would not be unreasonable to

assume that the reference may have been made about you, Dermot Desmond/IIU, and that there was some sensitivity or concern from an "Irish public" point of view.

Now, again, I know, and I have to ask you this, but as I understand matters, and I asked Professor Walsh about this as well, the only controversy about you related to the sale of the Johnston Mooney and O'Brien site. There may have been views, likes or dislikes, but the only controversy; isn't that right?

A. Yes.

Q. And there was a report in respect of that. That's all I am asking.

A. A political report.

Q. Well, there was a report from Mr. John Glackin?

A. It's a political report.

Q. Now

A. Are you finished with this?

Q. I am finished with that. Sorry, I beg your pardon, sorry, is there anything else I am sorry

A. Mr. Johansen owes us an apology, that we did have the money, and we had plenty of cash, and that's Dermot Desmond had plenty of cash at the time to meet our commitments, which we did all along. As you well know that he is incorrect.

Q. Sorry

A. And the second point, just a comment, Denis is a great

salesman, did a great job.

Q. Could I just ask you this: I know the point you make, that Dermot Desmond had the money to do this. Mr. Johansen says "IIU"; I suppose it might be fair to say that IIU perhaps, itself, without your backing, wouldn't have had the money to do it, in fairness to Mr. Johansen?

A. You will know from your files at that stage, is that the Department were evaluating Dermot Desmond.

Q. Well, it comes a bit later. But you are right, that's how it you're right, that's how it gets going. But I am saying at this stage, let's be fair about this, now, to everybody: The Department didn't know about Bottin. I was always trying to can you help me there? Where did Bottin go in all of this?

A. Where did Bottin go?

Q. Yeah.

A. It stayed where it was. It didn't go anywhere.

Q. I know it stayed in Gibraltar. But at the end of the day, at the end of the day, is the end of the day, does that reflect what it was at the beginning of the day? It was always Dermot Desmond, and IIU or Bottin had nothing to do sorry, they had lots to do, as we go through it and the documentation, but that the firm commitment and understanding was your dictum; it was your word?

A. Mm-hmm.

Q. And that was it?

A. Mm-hmm.

Q. There was a previous reference, Michael Walsh didn't agree with it, but Owen O'Connell notes back in, I think, February or February of 1996, when there was some discussions going on about shareholders agreements and matters of that nature, and he records that IIU would have difficulty in coming up with funds in the interim.

A. Who said this?

Q. Sorry, Owen O'Connell notes he is at a meeting, and he notes he said that when he takes a note of a meeting, he is either noting something somebody said to him or he is noting something that he has to do; that would be the purpose of taking a note, and Michael Walsh was at the meeting, Owen O'Connell was at the meeting, but the only one who would have any knowledge about IIU at the meeting was Michael Walsh, I think.

A. Did Michael Walsh say that?

Q. Well, Michael Walsh has no recollection of saying it, and he doesn't accept that that was the position.

A. It wasn't the position.

Q. But it's noted by Owen O'Connell.

A. Well, it's a false note, incorrect note.

Q. Well, did you have the 30 million sitting on deposit in February of 1992 or 1996?

A. If I made a commitment, I definitely had it on deposit.

Q. Well, did you, do you know?

A. If I made a commitment, those funds were available to me and I had the money.

Q. I am going to go on now, because after that, there continued to be a certain amount of discussion between the various shareholders; I think Mr. O'Brien was still seeking to get more shares than he had at that time, and there was some fairly heated discussions.

We don't need to go into them in any great detail. I just want to look at some of the documents, the Farrell Grant Sparks documents and those documents just for a moment, if I may. And these are in Book 44 at Divider 220.

And I'll just put it up there. This is one of the documents which accompanied the letter from Esat Digifone dealing with the various members of the consortium sorry, I beg your pardon, this was the one first of all, there were a number of documents submitted on the 13th May, and one of them was a document there were a number of documents: There was a document confirming the position of Communicorp, Telenor, and there were some documents that came in in respect of IIU as well at that time. And that was on the 13th May of 1996.

Now, this is the first document from Farrell Grant

Sparks.

"We act as financial advisers and auditors to Dermot F. Desmond. We confirm that Mr. Desmond is the beneficial owner of 100 percent of International Investment & Underwriting Limited.

"We are informed that Mr. Desmond/IIU have undertaken to invest and/or underwrite an equity investment of up to 40 million in Esat Digifone. We confirm that Mr. Desmond/IIU is in a position to make this investment and to make the underwriting commitment.

"Yours faithfully,

Farrell Grant Sparks."

Did you yourself have any discussions with Mr.

Farrell?

A. Maybe I did; I can't remember.

Q. Right. Now, what then happened was the Department looked for further information, isn't that right, and then this, the next letter, from Farrell Grant Sparks, which is dated the 15th May, 1996.

And it says: "We act as financial advisers and auditors to Dermot F. Desmond. We confirm that Mr. Desmond is the beneficial owner of 100 percent of International Investment & Underwriting Limited.

"We are informed that Mr. Desmond /IIU have undertaken to invest and/or underwrite an equity investment of up to 40 million in Esat Digifone Limited. We confirm that Mr. Desmond/IIU is in a position to make this

investment and to make the underwriting commitment.

"We are also authorised to confirm that Mr. Desmond is the beneficial owner of the following principal assets". Then it lists:

"Various marketable securities valued in excess of Principal unquoted investment at cost International Investment & Underwriting Limited," and there is a value put in there. I don't know where that came from, but it's there, anyway.

"London City Airport,
44 percent of Pembroke,

Cash at bank

Cash at William Fry's client account."

Then it gives the total there.

Now, were you aware that a Mr. Donal Buggy was asked in the first instance to carry out an examination of these matters?

A. No.

Q. If you just if we can go over to the next tab, then. Not the next tab, the we have handwritten notes, but we have them typed up, and it's a meeting at 8.30am, Wednesday, 15th May, 1996. And these are his notes.

First of all, "No dilution below 80% stick to 40:40:20 note DTEC satisfied cruising altitude was reached".

You can see then, "Cash balance of DD, but what about

liabilities.

" conditions under licence agreement, roll-out

targets will require capital to remain in the

business.

"Could 5 financial institutions stand behind DD

"Shouldn't be seen to be treating an individual

different from a company therefore need to fall

back on fact that we don't have a track record.

" is there a joint and several liability no

use 'big brother'.

"Escrow until money put into company by both parties.

can't withdraw.

No dividends." These are solutions he is suggesting.

"Monitoring conditions

quarterly accounts including cashflow to regulator.

Meeting with Michael Walsh

Telenor undoubted ability to bankroll the project.

Need to ascertain ability of other parties to bankroll

their share.

Share capital going in as follows".

Then he sets out how the share capital is going in.

And then "8.30am, meeting with Michael Walsh 15/5/96.

"Letter from Telenor underwriting up to 66.6%. And up

to 100%.

"Letter from IIU underwriting up to 33 1/3.

Bank confirmation of IIU stating $i_{\frac{1}{2}}$ 10 million available

for all of 1996 includes 5 million to be paid over

today.

what about when DOB comes up with the funds?

"Letter outlining in general assets supporting DD's financial position.

"Also confirming of revised capital requirement from Esat Digifone no.

"Shareholders agreement."

And then, if you go over, then there is a note of a meeting with Pearse Farrell which took place it did take place on the previous day, the 14th.

"Resident abroad" if we just look at this

"Resident abroad, assets spread out worldwide.

Logistically difficult before you get to confidentiality.

Track record over the years (NCB etc.)

"i½20 million in bank at present but leaving it there for up to 12 months is costly."

That was a discussion taking place between them as to whether you could put 20 million to support the position in a bank, but I think both came to the view, nobody would leave i½20 million on deposit in a bank for a period of time backing a position; that that was not going to be something that would work.

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

Now, it seems to be as a result of that meeting that the revised letter from Pearse Farrell came into the

Department, the one we have just been looking at. The first letter came in, the Department weren't satisfied, and then the revised letter came in.

A. Can I just ask a question, just so did I meet all my commitments to the Department?

Q. Sorry, that's did you meet your commitments to the Department?

A. Yes, did I meet all my commitments as far as Esat Digifone was

Q. Did you meet your commitments as regards Esat Digifone?

A. Yeah.

Q. I am sure you did.

A. I did, absolutely. So why is this relevant?

Q. This is relevant, Mr. Desmond, because it's part of the negotiations with the Department leading up to the signing off of the licence, and the view that the Department were taking at that time in relation to two matters, specifically your involvement and the configuration to be in accordance with the bid.

A. Absolutely. But my understanding is that negotiations, the Department wanted a letter from a bank stating that it was $\frac{1}{2}$ 10 million available. And we provided that letter.

Q. That's something

A. And any time there was a cash call, we provided a cash call.

Q. That's what I want to find out, because Michael Walsh said something similar, that when he met with John Loughrey, that there would be problems here in the assessment of IIU. And you can see there could be problems in relation to well, Dermot Desmond stands behind IIU, but IIU itself mightn't have been in a position to do all these things.

Leave that aside. They get a letter from Pearse Farrell indicating various assets around the place, Mr. Buggy carrying out the examination of matters, and the Department says, "Fine, the assets we don't have anything about the liabilities".

Mr. Farrell tells him it's difficult, matters are spread worldwide, or around the world, and before you get to confidentiality at all, there are logistical problems in relation to matters. Right.

Mr. Loughrey has given evidence that even he disregarded all of this, disregarded all of this work, because his view was that assets are one thing; liquidity is another thing. That was his position.

A. A fair statement.

Q. Yeah, and that in consultation or in discussion, according to Mr. Michael Walsh, what you were asked for and I just want to is a letter from a bank; is that right? You were asked for it?

A. Yeah.

Q. By the Department?

A. Yes.

Q. Now, to your knowledge, and we know the funding of the actual licence fee itself, Mr. O'Brien didn't have the money on the day of the 16th, on the call for the licence fee. And it appears to have been funded in this way: that in proportion, you and Telenor lent the money to Esat Digifone with a charge over Mr. O'Brien's shares, I think that was the way it was done, and then when his funds became available, I presume that was released in due course.

Did you know, or did you ever hear anyone from the Department or were you told that anyone in the Department had ever indicated a knowledge that Mr. O'Brien didn't have the money to meet his licence commitments, or his call for the licence fee on the day?

A. Did anybody in the Department tell me that?

Q. Or did you ever hear any discussion from anyone that would lead to you believe that?

A. No.

Q. Now, I want to ask you about some matters now, just if you can help us.

I think you have told us that when you first got involved in this matter by reason of a discussion with Denis O'Brien on the 10th August of 1995, that he told you about the position of the banks, the lack of commitment from the banks, and that they weren't

committing to pay any bid costs as well; isn't that right? That was the discussion. And that he was nailing down his own financial position, I think you said. But that was the nature of the discussion; isn't that right?

A. Yes.

Q. And he didn't have any discussion with you about Telenor at that time, did he?

A. No, he just said they were a very good partner, very credible.

Q. And he didn't give any indication to you, did he, that he needed you to give him either a guarantee or a commitment or underwriting to satisfy Telenor?

A. No.

Q. So just an opportunity I am not asking you to disagree but you didn't have this discussion, so Mr. O'Brien must be incorrect about this, from your perspective at least, anyway, when he said at Day 251 at page 68 I suppose I can commence just he said at Question 258, he was talking about the GSM licence:

"Was this the first one, was this the first one you were interested in?

"Answer: Licences, licences?

"Question: Yes. But just going back, you say that when you were on the way back from the match, you discussed the prospect of this company underwriting Communicorp's financial commitment, because you were

seriously concerned that Telenor would use their financial muscle to take control of the consortium; is that right?

"Answer: Yes.

"Question: Well, just tell me, what discussions took place between Mr. Desmond and yourself?

"Answer: Well, I described previously that I on the way back, we had a discussion in the back of aircraft.

"Question: Yes.

"Answer: And he was asking me how things were going.

I explained to him about the bid, and we got on to you know, obviously my major concern at the time was making sure that we could demonstrate that the funding was there.

"Question: Communicorp's funding?

"Answer: And the fact that the Norwegians, well, primarily the Norwegian firm, Telenor, wanted to make sure that we would have a sort of financial guarantee in place. So the financial guarantee was the centre of the discussion.

"Question: The financial guarantee was the centre of the discussion, and that was because your concern, your twin concern was Communicorp's position and, as you said, Telenor's pressure.

"Answer: More concerned about Telenor, because at that time I had Massimo/Advent in the bag, but the

main thing was trying to satisfy the Telenor side of the house.

"Question: And what discussion? What was the nature of the discussion, how to satisfy Telenor's side of the house?"

"Answer: Yeah, how could I satisfy them on their 3rd June agreement."

Now, as far as you were concerned, you had no discussion with Mr. O'Brien about satisfying Telenor side of the house?

A. No, my understanding of my discussion, unless I took it up incorrectly, was purely and simply was a firm commitment of the institutions. But he did say, as I said earlier on, that he was concerned; he was concerned about strengthening his own position, financial position in Communicorp.

Q. Now, I think we have discussed the letter of the 29th September and matters surrounding it, and I think there can be no doubt that you, IIU or Bottin were not in the original bid; there is no doubt about that.

That went in on the 4th August 1995.

A. Well, we weren't in the original bid on the 4th August.

Q. You weren't in it. Sorry, the generic Dermot Desmond wasn't in the bid?

A. No, because we didn't even know the bid went in.

Q. Fine. And I think we know that the letter was sent

back that is, the letter of the 29th September
and Mr. O'Brien was informed that it would not be
taken into account in the evaluation; isn't that
right?

A. Yes.

Q. So when the competition was won, the consortium which
had been evaluated, to the best of your knowledge, at
least, anyway, was the one which was contained in the
bid; isn't that right?

A. The consortium that I was part of?

Q. No, the consortium which won the competition had to be
the one which was contained in the bid.

A. Yes.

Q. So, for whatever reason and let's avoid the word
"avoiding evaluation."

A. That, we did not do.

Q. As of the 25th October, 1995, you had not been
evaluated, IIU had not been evaluated, Bottin had not
been evaluated; in other words, the generic Dermot
Desmond had not been evaluated as of the 25th October
1995. Would you agree with that?

A. Yes, but may I ask, was IBI and Standard Life and
Advent evaluated? Just out of

Q. I'll just explain to you what actually happened in
relation to they did carry out some inquiries; they
knew who Standard Life were, they knew who IBI were,
and they knew who I can't remember the AIB were.

And all information in relation to them was capable of being obtained from public documents anyway. They did carry out inquiries through a firm of accountants for which two accountants seconded to the Department worked for in relation to Advent. Just to let you know just so that you know.

A. That's okay.

Q. Now, I was going to go back and just ask you some questions, and it relates to the statement made by Mr. Boyle and Mr. McGinley. I know you have given your evidence in relation to that, that you have no recollection of Mr. Boyle being there, and if he was there, that you didn't have the conversation with him that he says occurred. Isn't that right?

A. Yes.

Q. And that's still your position?

A. Yes.

Q. And the fact that Mr. McGinley has furnished a statement doesn't assist your recollection of speaking with Mr. Boyle at Aintree in at the Grand National in 1995?

A. Correct. Can I comment on that?

Q. Yes.

A. The first thing about it is that Mr. Boyle did not Mr. McGinley did not introduce me to Mr. Boyle originally. I met Mr. Boyle before 1995 in Leopardstown, and I was introduced to him by Mr.

Moloney. So that statement that they introduced me, I would imagine, if he did introduce me, Mr. McGinley would have been part of the conversation, there and then.

Second of all is the only person that I knew that was in common to Denis O'Brien and to Mr. Lowry is Mr. Jim Mitchell, Lord be good to him, and he is the only person I know. So

And the third point is I was never offered Chairman or Presidency, which is an American title from Mr. Boyle.

And thirdly I think it's worth mentioning that Mr.

Boyle was the failed bidder in the consortium with Persona, was the principal that was the driving and is eaten up with envy ever since, and is a bitter man.

And his counsel, Mr. Healy, has advised Persona.

Indeed, my counsel, Mr. Hogan, has also advised Persona, but he got my permission to be excused, but I don't know whether the Prosecution gave permission or not.

Q. Now, may I ask you this: Apart from Mr. Boyle being a member of the consortium which was unsuccessful, a consortium which was unsuccessful in relation to this matter, may I ask you this: Did you have business dealings with Mr. Boyle, ever?

A. No.

Q. You had met him personally on a number of occasions?

A. Socially.

Q. Socially. Had you had any business or personal fall-outs with him?

A. No.

Q. And had you, to your knowledge, or any member of your family, had any difficulties or problems with any of Mr. Boyle's family or associates or anything of that nature?

A. No.

Q. None of that. And the one thing you can point to, as to why there may be malice on the part of Mr. Boyle in relation to making a statement about you, is that he was part of a consortium which was unsuccessful; is that right?

A. That's one thing. And also that it's something he never raised with me. He never raised he never raised that. If I had said that to him, I would imagine that he would have raised it with me at the time of the competition or the time of the announcement that I was involved, or something, picked a fault with me and complained about it. Six years later is the first time I have ever seen anything about it or read anything about it.

Q. Do you ever remember discussing the competition with Mr. Boyle?

A. No.

Q. At any time?

A. No.

Q. Other than Aintree.

Thank you, Mr. Desmond.

CHAIRMAN: Well, we'll see what progress we can make.

Mr. Nesbitt?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

Q. MR. NESBITT: Mr. Desmond, I act for the Department,

and there are a number of questions I'd like to ask

you. Perhaps we could start at the material you have

just finished with which concerned the competition.

Now, as I understand your evidence, you didn't see the

competition document, and you weren't very clear

exactly what terms it contained?

A. That is correct.

Q. And no doubt in answering questions, you have been

dependent to some extent on the questions you were

being asked to try and assist in allowing you make an

answer; is that right?

A. Yes.

Q. Now, in relation to the arrangements in place, I think

it's fair to say that the entity that was to seek the

licence was a 50:50 consortium between Telenor and

Communicorp. Were you aware of that at some point in

time?

A. Well, I knew that as I called operating partners,

which is generally the case if you are investing in a

business that where people have technical expertise

and you are the financial partner, you are secondary

to the operating partners.

Q. Fine. So operational partners were going to bring to the arrangements to be put in place the expertise to allow the business plan to work?

A. Correct.

Q. Now, I am not sure if you are aware of this, and if you weren't, say so, and I'll change the nature of the questions. Were you aware exactly how the fact that there would be institutional investors, in other words banks would come in as well, was being presented in the way in which the competition document had been set out by Esat?

A. No.

Q. Do you see an important distinction between the concept of operational partners and the concept of an institutional investor or an investor who would simply bring money?

A. I do.

Q. And perhaps you could help us, because we haven't that much expertise at this level.

A. I think that operational partners make things happen. Financial partners just assist in funding those strategic plans of the operational partners.

Q. Now, I think you know now, but may not have known when the competition entry was made, that there would be the two operational partners, and they would own 50% of the company each, but they would then give away

effectively 20% to an investor?

A. I didn't realise that.

Q. You didn't realise that. Well

A. What I inferred, from speaking to Mr. Coughlan, that the application was 40:40:20, and you are telling me different now, Mr. Nesbitt.

Q. I think what you are going to find out and if you haven't read the documentation, I needn't labour it because it's there and the Tribunal can see it, you will see in fact it was a 50:50 joint venture, with the ability of 10% of those 50 percents to be given down to institutional investors; had you not understood that?

A. That's totally different.

Q. So in venture capital terms, or in terms of seeking out investment, this was, from your point of view, what sort of investment if there was

A. I think the analogy there similar that I was allowed to place some of my underwriting to subunderwriters or to placees in the same way that Telenor and Communicorp went in as 50:50 with the right, advising the Department that they could place 10% each to various institutions or financial investors.

Q. Okay. Well, just to make sure that we are not misleading you, perhaps I'll read just from a section of the competition application form by Esat Digifone. And it's paragraph 2.2; we have had it many times

before.

But there, third paragraph, it says as follows: "The shareholders agreement states that Communicorp Group and Telenor will each initially hold 50% of the equity in Esat Digifone." That's the applicant company. "In the period leading up to the award of the license, 20% of the equity, 10% from each of the partners, will be formally placed."

Now, perhaps I could just short-circuit things and ask you if you, as somebody experienced in investments in businesses like this, would understand this to mean as follows: that the applicant company was one containing two equity partners, each with 50:50?

A. Correct.

Q. And at some point in time before the grant of the licence, they could sell down or otherwise deal with 10% each?

A. It's very clear from that.

Q. Now, when you came to be involved in all this, as I understand it, on the 10th August 1995, you had nothing to do with this other than probably just notice in passing the competition process was going on and read the newspapers or whatever?

A. Yes.

Q. And that's because I am not sure why that was: Was that your decision, or did it just happen that way?

A. I was leaving the operational partners it was

something that Denis, as Chairman of the bidding, of the applicant company, had invited us to make a proposal in relation to the funding, and which we did.

Q. Okay. Now, again, I am not certain if you have all the dates to hand, but on the 10th August of 1995, I think you said in evidence that you were aware that the application to seek to win the licence had actually been put in by Esat Digifone

A. Yes.

Q. at that time.

So the thing you were being asked to become involved with was something you could do very little to shape or model; it was a fait accompli?

A. Yes, and we didn't have the ability except the financial ability in any event.

Q. Very good. So this was a business plan that was not going to change between the time you started discussions on the 10th August and the time the award of the right to negotiate getting the licence would be eventually made?

A. Absolutely.

Q. So all you were ever going to do was to put in the funding that was needed to make the thing work?

A. Yes.

Q. Very good. Now, I think from your evidence and the documentation that was put to you today that it was clear that Mr. O'Brien indicated that 20% was all he

could offer to you; that was what he was constrained

to award. Do you remember that?

A. At the end of the day?

Q. Yes.

A. Yes.

Q. Now, I think you were simply seeking to make an investment at that point in time?

A. Are you talking just so we are not at cross-purposes, was this my original, the original proposal by Denis, or subsequently, when we went from 30, 25, 20?

Q. If you just go back to the original, when you have talked after the 10th August, and he is looking for financial assistance, and you are looking for some business proposition that suits you; isn't that right?

A. Correct.

Q. And the business proposition you were going to make was in some way become involved in the funding and make money out of that?

A. Yes.

Q. And as I understand your evidence, one of the things that was crossing your mind was to possibly take up the allocation of shares yourself in some manner or means?

A. Well, I was to take up what Denis started off with was he started off, as has been shown earlier on today, inviting us to participate 15% of the equity,

which was the equity available to the institutions.

And then it became more complex when he was looking for Communicorp capital to be underwritten for the Esat licence. So we put a proposal that we would underwrite Communicorp's capital requirement for the licence, plus the institution's capital requirement for the right to take up 30% of the equity.

Q. Yes. So you were looking to obtain, if possible, 30%; that was your idea?

A. Yes.

Q. It wasn't Mr. O'Brien's desire?

A. No.

Q. Now, in relation to Telenor, they certainly, from the evidence you have given, didn't appear to be interested in giving away any equity they thought they had?

A. No.

Q. And was that tension something that surprised you?

A. No. The way I read it was that was that Denis ultimately he gave away part of Telenor's equity to his benefit.

Q. You have seen Mr. Arve Johansen's note that we were dealing with

A. Yes.

Q. when he gives an account of what he thinks happened in relation to the arrangements put in place. He sees Mr. O'Brien seeking to reduce their shareholding to

37.5%.

A. My reading of this here is that Denis was being opportunistic. He was getting Telenor or trying to get Telenor to dilute in order that he can get capital backing for Communicorp, and at the end of the day, he wanted to end up as the major shareholder in this licence. So...

Q. Now, I think he didn't succeed in being too opportunistic, because Telenor weren't prepared to go below the 40%. And secondly, and a lot later, the licence was granted; the Department made it crystal clear they were not prepared to see a bid that had more than 20% investor capital in it?

A. Yes, that is correct.

Q. Now, can I come back to the position you were adopting. As I understand it, you had no difficulty in your name being attached to the funding of this bid or the arrangements being put in place to effect funding?

A. Not in the slightest.

Q. You were happy that the letter of the 25th or the 29th September would go mentioning you?

A. No difficulty.

Q. And did you give any directions to anybody to say "Don't mention our involvement"?

A. No.

Q. You have heard of the communication between Mr. Owen

O'Connell of William Fry and Regina Finn of the Department when she asks what is the makeup of the shareholding in the business or the company that's going to take the licence. Were you asked whether you minded information being given in that letter?

A. No.

Q. Would you have had any objection

A. No, not the slightest.

Q. Were you upset that 25% was mentioned, as you have learned today, when Owen O'Connell spoke?

A. No.

Q. Is there any reason why you would want to hide your involvement in this?

A. No. On the contrary.

Q. Now, I think you made the distinction between the licence competition which gave somebody the chance to exclusively negotiate to get the licence. Did you understand that at the time the licence competition was won, it was still reasonably unclear as to what all the terms of the licence would be; there was a lot of negotiation to be done?

A. Yes.

Q. Now, that must have had some impact on somebody who was going to fund the transaction by way of an institutional investor, because they'd be concerned to wonder what the licence terms would be?

A. Well, we had made there was a caveat that to the

agreement that we made that the licence terms were on the outline that Esat Digifone had put forward to us; if there was a major change in that, we had the ability to withdraw.

Q. In relation to the licence terms, it was your understanding there was likely to be some sort of restriction on the transfer of shares in the future?

A. Well, there could have been a restriction; we didn't know what the terms were.

Q. So, but you weren't were not going to be surprised by some sort of reasonable restriction in that regard?

A. No, no.

Q. Very good. So the funding that you were offering, the institutional investment that you were going to find was something that would be able to accommodate that sort of arrangement?

A. Well, it's very hard to sell something unless you know the terms, but at the end of the day, I was making the commitment that I was going to fund it in any event, and then it was up to me whether I wanted to sub-place some of those shares to other parties.

Q. So when you say that you were offering a binding commitment, do you mean "I was going to be providing the money they required"?

A. Yes.

Q. Come what may?

A. Provided there was no material change from what they

had outlined to us to be the position.

Q. Now, I just want to bring you back now to the application which eventually was put in by Esat Digifone. Information was given in that in relation to the nature and quality of the commitment of the institutional investors that existed then. Had you been told anything much about that?

A. No.

Q. Now, basically four institutions are mentioned, and what is said is that, as of submission of this application, Davys Stockbrokers have received written investment commitments from, and they name the four institutions, and they give letters of commitment in Appendix D.

Now, we got these letters of commitment, and I just want to ask you one or two questions about them to see if you are willing to express an opinion as to the quality of the commitment that's actually been made in these documents.

And the first one, I won't insult the people who wrote them. I'll just read out the important points. But the first letter I am reading from is a statement that they are "prepared to invest a sum of money subject to the licence being prepared to the consortium on terms broadly in line with those set out in the memorandum or the tender documents, or where amended, on terms which we agree with the consortium are acceptable."

Now, do you view that as a condition that's easy to see the outcome of, or is that a condition that could well leave that bank to disappear?

A. That's not a bankable letter. That's a letter I'd call a lotto letter; that if you win the lotto, I'll give you the money.

Q. Well, let's assume that we take out the risk of having to win the lotto, and look at the second condition and ask you to comment on this. "The terms of our investment being approved by our investment committee or board." I mean is it possible to say a letter that has that level of conditionality that somebody else has to decide later if they want to do it, presents any level of commitment?

A. There is no level of commitment or no level of comfort.

Q. There is a second letter in similar terms, and I'll pass over that.

There is a third letter, and it has a different set of terms, but there is a condition I'd ask you to comment on. It says: "This expression of interest" that's an expression that they would invest a certain amount of equity "is subject to the licence being granted by" they again give a date which has to be met.

Now, if that date is passed, did you view that condition as one that could cause problems for lending or investments?

A. Yes.

Q. How strong a commitment would you express that to be?

A. I would consider that what you read out there to be a waste of paper and a waste of time.

Q. And I think there is a final letter I wanted to draw your attention to. And this again indicates the availability of money, and it states at the end:

"Please note that this letter is to be interpreted only as a strong expression of interest and should in no way be construed as a formal commitment to provide financing."

How useful is that if you are trying to be certain you have your money to do the deal?

A. Zero.

Q. So insofar as the business plan that was produced here said that the institutional investors, in your experience as somebody who finds money to do joint ventures or does joint ventures or does your own ventures, how would you qualify the strength of the institutional commitment to be on board when the eventual licence terms were negotiated?

A. There was no commitment there. They were highly contingent letters of interest.

Q. And as I understand your evidence, you wanted to tell this Tribunal that you were different to that. You had said you would make sure the money would be there?

A. I did.

Q. Now, in relation to the distinction between having to win the right to negotiate and the later issue of then having to negotiate the terms of the licence, are you able to assist the Tribunal in understanding to what extent you believe I am just asking about you, to start with that it was essential and would be necessary to disclose your clear involvement in this before the licence was granted?

A. I was very impressed by the whole process, what I heard about the process, put together by an independent group of civil servants with some outside advisers. I thought that was a new way forward for awarding franchises or licenses in Ireland. And I felt that there had to be total transparency, and I wanted to participate in that transparency.

Q. Well, you have said you had no trouble with your involvement and the terms of it being agreed, but perhaps I could try and tease it out a little bit more.

This was a licensing arrangement; the State was going to give a licence to somebody; it needed to understand who they were. So did you have any view as to the fact that it would be most probable you would have to identify yourself before the licence could be granted?

A. No, no, I didn't I really didn't have any difficulty about identifying myself. I felt that my money was as good as anybody else's money. There was

no exchange rate money between my money and institutional money, and I was very happy to come forward.

Q. Now, in relation to your involvement, I'll ask you a couple of general questions to make sure we haven't missed anything.

Did you ever discuss the fact you were investing, or the terms of your investment, with Minister Lowry?

A. No.

Q. Did you ever discuss either of those two things with Department officials John Loughrey, Martin Brennan, or Fintan Towey?

A. No.

Q. Did you ever discuss either of those matters with any Department officials?

A. No.

Q. Did you ever discuss either of those matters with Andersens, the consultants to the Department?

A. No.

Q. And I am not sure if I have to define this term, you probably know better than I: In relation to sensitive or possibly inside information in relation to the opportunity to be awarded the license, did you have any that was impacting upon you?

A. Absolutely not.

Q. As I understand your evidence, you had simply noted that a lot of people who appeared to know what they

were doing were anxious to go after this licence, and that was good enough for you?

A. Yes.

Q. And you became involved and put your money where your mouth was?

A. I did.

Q. And were willing to stand up and be counted?

A. Yes.

Q. Thank you.

A. Thank you.

CHAIRMAN: Mr. Fitzsimons, are you going to be a little time?

MR. FITZSIMONS: No questions.

CHAIRMAN: Very good.

Mr. McGonigal?

MR. MCGONIGAL: Just a couple of questions there, My Lord.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. Desmond, just in relation to a matter which Mr. Coughlan put to you about Mr.

O'Brien's evidence on Day whatever it was, 251, and

he read out a series of questions and answers as to

part of the conversation which Mr. O'Brien recollects

as having taken place on the aircraft on the way back

from Celtic. I understand I just want to be clear

as to what it is you are saying, in the sense that

are you saying that that conversation didn't take

place, or that you don't recollect that conversation?

A. I haven't got a recollection of the conversation.

What I took out of what he said, I conveyed to Mr.

Coughlan.

Q. So it is possible, in fact, that during the course of the conversation on the aircraft, that Mr. O'Brien may have discussed or mentioned the Telenor guarantee and the problems that he saw as he was having with it?

A. He could have, yes.

Q. Thank you, Mr. Desmond.

CHAIRMAN: Mr. O'Hanlon.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'HANLON:

Q. MR. O'HANLON: Very briefly, you commented about the nature of the letters of comfort from the banks that formed part of the bid, and that in fact they didn't appear to bind them at all. Mr. Walsh appeared to suggest, when he was commenting in relation to the process of going from the bid result to the final agreement, that the nature of the financial backing frequently might change and could change a lot from the time when the winner is announced to the time when the licence is agreed. On the basis of those letters, that would seem self-apparent, would you agree with that, that there is nothing unusual in that?

A. No, no, those letters are unusual in the sense that they haven't received any Credit Committee approval. There is no terms by which they invest at. Whether

it's at par, at a premium, etc. There is lots there is nothing there. It just says "if you get the licence, then we'll talk to you". That's what it is.

Q. So it's not unusual or strange that the financial backing would not be the same as the people who were named in those letters or those particular institutions when the final licence came to be negotiated?

A. The people

Q. They stayed the same, but they could change; they are not committed?

A. But they could be the same.

Q. Your involvement in this arose following Mr. O'Brien bringing to your attention the nature of his bid, and you being impressed with the quality of the bid, and you being satisfied with the manner in which the competition had been set up to ring-fence itself from political interference?

A. Yes.

Q. And would it be fair to say that you are satisfied that the competition was operated as you expected it to be and was independent of interference, from your knowledge?

A. Everything I have read about over the last two years of this Tribunal has confirmed that.

Q. Thank you.

CHAIRMAN: Mr. Shipsey?

MR. SHIPSEY: Just a few minutes, in fact.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SHIPSEY:

Q. MR. SHIPSEY: Mr. Desmond, between the time of Aintree in 1995 and 2002, would you have met Mr. Boyle on other occasions?

A. Yes.

Q. And I think you said, in response to Mr. Coughlan, that at no time prior to receiving the very short four-paragraph statement that he made to this Tribunal did he ever hint or intimate or suggest that you had had a conversation with him bearing upon the second mobile phone licence; is that correct?

A. That's correct.

Q. And similarly, insofar as Mr. McGinley is concerned, did you ever have cause to meet Mr. McGinley after March or April of 1995?

A. Yes.

Q. And did Mr. McGinley ever suggest or hint or intimate to you that he was made aware by Mr. Boyle of a conversation with you bearing upon the second mobile phone licence?

A. No.

Q. Did Mr. Denis O'Brien ever invite you to become Chairman or chairperson or President of the Esat Digifone consortium?

A. No.

Q. Either before the 10th August or after the 10th

August?

A. Never.

Q. Now, you are now aware that the written bid was submitted and had to be submitted by the interested consortia by the 4th August of 1995. Were you so aware on the 10th August, coming back on the plane from Glasgow Celtic? Or is that something you found out subsequently?

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

Q. The 4th August, 1995, as we now know, was the closing date for the submission of the written bids.

A. Yes.

Q. Did you know that, or were you informed

A. I knew that Denis had put in his submission.

Q. Now, insofar as any suggestion of you or any of your entities avoiding an evaluation, you certainly, according to your evidence, had no knowledge or no involvement prior to the 10th August?

A. Absolutely none.

Q. And again, insofar as your position was concerned, until the 29th September of 1995, you had no agreement with Mr. O'Brien unless, I suppose, insofar as an oral agreement was reached some days prior to

A. That was more important, the 20th September.

Q. The 20th September. But the written terms of that are left to Professor Walsh; isn't that correct?

A. That is correct.

Q. And you have a binding commitment from sometime in September of 1995?

A. Yes.

Q. And then that is also, and you are aware, after the date of the oral presentation that took place, we now know, on the 12th September

A. Yes.

Q. of 1995; isn't that correct?

A. Yes.

Q. You have mentioned the fact that you were different, and materially and what I would describe as qualitatively different than the expressions of interest that were obtained through Davys from a number of financial institutions; isn't that correct?

A. Yes.

Q. You have described them as "waffly", I think, the expressions of interest, whereas what you had agreed on the 20th was confirmed in writing on the 29th, was a binding commitment?

A. Yes.

Q. And I think the point has been made that you were on the hook, so to speak, for 25% of costs estimated at $\frac{1}{2}$ 1.6 million, but even more than that, once the licence, and if the licence was awarded, you were on the hook for a far greater sum; you were on the hook for 62.5% of the equity funding that was required.

Isn't that correct?

A. Yes.

Q. Can you think of any reason why, if you desired either personally or if anybody else desired to conceal your involvement, why the letter of the 29th September, 1995, addressed to the Department, would have been sent in?

A. There was no desire to conceal our involvement.

Q. And as we know, it was sent in on some colourful IIU notepaper with you as the Chairman described?

A. Yes.

Q. Now, also, insofar as IIU is concerned, whilst IIU was a relatively new entity, Dermot Desmond was not a stranger in Ireland?

A. No.

Q. And Professor Michael Walsh was not an unknown entity, both in relation to the Department and in relation to business circles in Dublin; isn't that correct?

A. That's true.

Q. Because I think you had been the founder and principal of NCB, which, until it was sold in December of 1994, was the largest independent stockbroking firm in Dublin; isn't that right?

A. Yes.

Q. And I think Professor Walsh was the director of corporate finance and had been so acting for between seven and eight years?

A. Yes.

Q. Would there have been anyone in business circles in Dublin that wouldn't have known of your reputation and the reputation of Professor Walsh as of August or September of 1995?

A. We'd be well-known, I think.

Q. Did you ever meet Mr. Michael Andersen of Andersen, the consultants

A. No.

Q. who were advising the Department?

A. No.

Q. Did you ever have any dealings with any with his company or anyone on his behalf?

A. No.

Q. Now, you weren't, and you have said to Mr. Coughlan, you weren't aware of details of the competition rules?

A. No, I was not.

Q. And I think you have also admitted that you weren't aware that at the presentations that were made in September of 1995, that it was explained apparently to the presenters, the various consortia who were presenting or making their presentations, that there were to be no further documents submitted unless solicited by the Department. You weren't aware of that, were you?

A. No.

Q. Insofar as Mr. Michael Lowry is concerned, I think you have already answered Mr. Nesbitt some questions in

relation to this; did you have any communication, good, bad or indifferent, direct or indirect, with Mr. Michael Lowry in connection with the award of the second mobile phone licence?

A. No.

Q. Thank you.

MR. COUGHLAN: Just one or two matters.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS

BY MR. COUGHLAN:

Q. MR. COUGHLAN: Just, Mr. Desmond, you'll appreciate that everyone's reputation is important before this Tribunal, and just in relation to some of the comments that were made about the letters from the financial institutions. I am sure you didn't mean them in the sense that I understood it there for a moment.

A. I did mean them.

Q. Very good?

A. I was very clear.

Q. Could I ask you, in relation to the arrangement agreement of the 29th, particularly when Mr. Nesbitt asked you about the conditionality on the terms of obtaining the licence on terms broadly similar to that which was contained in the draft licence which was indicative at the time of the bid, wasn't that similar conditionality in respect of the commitments made by IIU?

A. No, because they didn't have approval by the Credit

Committee.

Q. Sorry, no, I am asking was that not the same conditionality I am not talking about the Credit Committee; I am interested in everybody's reputation now, Mr. Desmond.

Now, wasn't that the same sort of conditionality which you have decried as being absolutely worthless but which had the backing of you in terms of dictum meum pactum? Everybody else who has come here has said it had a commerciality

A. As you said yourself, Mr. Coughlan, earlier on, our letter was enforceable. Okay. It was enforceable.

Q. Can I ask you another thing, because I am quite surprised when counsel acting on behalf of the Department would ask questions along a certain line without giving you the whole picture.

The people who sat on that evaluation board have come before this Tribunal. The Chairman of that board, in the course of giving evidence in this Tribunal, has argued about the position in relation to the conditionality of those letters. Mr. John Loughrey has made the same point: He wasn't a member of the board. No member of the Evaluation Team who came to give evidence before this Tribunal has informed the Tribunal that there was it was ever articulated or ever viewed by anyone on the Evaluation Team that there was any difficulty with the letters that were

received from the banks. They didn't even have to consider them. They didn't think there was a difficulty. Did you know that?

A. No.

Q. All right. That's one thing.

Secondly, may I ask you another thing: When there was, as you say, a due diligence taking place in relation to you/IIU, but you particularly, and you have said that you were very impressed by this new form of competition where there would be transparency, whereby you would have an independent team of evaluators assisted by experts, as was your understanding, were you ever aware that when there was discussions or examination of your affairs taking place in the Department in the period, let's say 13, 14, 15th, 16th, that period of May 1996, were you ever aware that Mr. Michael Andersen, who was the consultant who had been involved in the evaluation process, that he was in the Department and was not consulted about what was going on in relation to your position? Did you know that?

A. No.

Q. Thank you.

CHAIRMAN: Thanks for your attendance, Mr. Desmond.

It's Thursday, then; we have a witness travelling from abroad.

MR. SHIPSEY: I think Mr. Walsh, or Professor Walsh,

is coming back for a short time on Wednesday, by arrangement.

CHAIRMAN: That has been finalised. It's obviously desirable that be done as soon as possible, Mr. Shipsey.

MR. SHIPSEY: Eleven o'clock on Wednesday; is that all right?

CHAIRMAN: Eleven o'clock on Wednesday. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL WEDNESDAY, 3RD MARCH, 2004 AT 11AM.