

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 WEDNESDAY,

3RD MARCH, 2004 AT 11AM:

MR. COUGHLAN: Mr. Hogan has indicated he is slightly delayed, Sir, and he is just not here yet. So

CHAIRMAN: Very well. As soon as he is available, we will resume. Thank you.

AFTER A SHORT ADJOURNMENT, THE TRIBUNAL RESUMED AS FOLLOWS:

CHAIRMAN: Mr. O'Donnell.

MICHAEL WALSH, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MR. O'DONNELL:

Q. MR. O'DONNELL: As you know, I represent the Department of Transport, Energy and Communications, as it then was.

Just in relation to IIU involvement firstly, as you are aware, what was being contested for here was a bid for the second mobile phone licence, but that bid was

part of a beauty contest; it wasn't a financial contest of any sort, and the bid involved things like tariffs, coverage, roll-out, marketing and other technical matters. IIU had no contribution to make in relation to those matters of any sort; isn't that right?

A. That's absolutely correct.

Q. And therefore, there was nothing for the Department to assess so far as IIU were concerned in that area?

A. At that point in time, that's correct.

Q. And there was no preference indicated by the Department, either, in the rules or subsequently in any discussions by the Department for one bank or one man's money over another bank or another man's money?

A. Well, first of all, I suppose I wasn't familiar with the rules per se, so I can't comment on that element.

But certainly at no stage subsequently did the Department indicate a preference for, shall I say, one financial institution versus another.

Q. IIU had no involvement, therefore, in the preparation of the business plan and had no contact with the Department prior to the lodging of the bid in August of 1995?

A. We had no contact with the Department at all in relation to the second mobile licence, or the competition for it. And in fact, you know, we had no contact with the Department until well after the

announcement was made at the end of the October.

Q. Yes, and just to be clear, Mr. Walsh, neither you we have heard from Mr. Desmond already, but neither you nor anybody else in IIU had any contact with the Minister or the Department or any member of the Project Team in relation to this mobile phone licence?

A. Absolutely none at all. I mean, I think, for the record, I should just make it clear, I think the first time I actually met the Minister was, you know, at the meeting in the Department the day before the licence was actually signed. And I think the 15th May, I obviously met him again on the 16th May at the actual signing ceremony, and I think I saw him once subsequently at the formal launch, you know, of the second mobile system, you know, in the point maybe a year later or thereabouts.

Q. But you had no contact with any of the members of the Project Team or any other members of the Department?

A. No, I had absolutely no contact with them.

Q. You had no inside information or confidential information in relation to the selection process that was taking place in the Department?

A. None whatsoever.

Q. In relation to the letter of the 29th September, I think it's been stated that this was a letter to offer comfort to the Department in relation to the non-Telenor element of the funding that was available

to the Esat Digifone consortium?

A. That's absolutely correct.

Q. The fax number that was given to you, I think you were asked some questions about the fax number. Were you aware that that was a fax number that had already been used by the Department on previous occasions to contact various consortia in the past and that there was no secrecy or mystery about that fax number?

A. I wasn't aware of the fax number. I have no recollection who gave it to me. I presume it was given to me by Denis O'Brien, who would have been with me at the time that the fax was sent out.

Q. And this letter was then simply an attempt to convey information?

A. It was purely an attempt to convey the information to the Department that the non-Telenor component of the equity would be available.

Q. There was I suppose, insofar as it's an attempt which failed, and has been described as such, in that the letter was sent back, that's what Mr. Callaghan and a number of other witnesses said. Would you agree with that characterisation of it?

A. I think that's absolutely fair.

Q. Yes. In relation to the letter, the purpose of the letter, I think, is because of the nervousness which Esat said they felt about their ability to demonstrate their financial strength to the Department; now, I

think you are aware, firstly, that there were some strains in relation to the availability of funding to the Communicorp part of the Digifone consortium?

A. Yeah, I mean, it was clear from really a very early stage that Communicorp were under pressure from a financial point of view. I mean, they had asked us to actually lend them money; they had asked us to guarantee loans, etc.

Q. I think even before the presentation, I think it was clear that there were difficulties, even before the presentation on the 12th September?

A. Before the presentation on the 12th September, it was clear from the Communicorp point of view that, you know, they had difficulties.

Q. And at the presentation, as we know, they were subjected to questioning by a number of members of the Project Team in relation to the Communicorp element of the funding?

A. So I believe. I haven't actually read the transcript of the presentation.

Q. And we know also that in Annex 10 to the final report prepared by the Project Team, concerns were expressed as to how Communicorp might not be able on that day to meet its equity commitment?

A. So I believe, but I haven't read that.

Q. So is it reasonable, in your view, to say that Esat's concerns in relation to the Communicorp element of

funding were justified?

A. I think it is totally reasonable. I think equally well, there is, you know, on file, and I think there is a letter dated the beginning of October, you know, which is effectively from Arve Johansen to Denis O'Brien which basically mentioned the fact that, you know, they were very concerned, you know, that it was clear from the presentation to the Ministry that they were dissatisfied with the finance.

Q. And I think the other element of concern which Mr. O'Brien expressed concern in respect of was the letters from the various banking institutions. Now, they were examined by Mr. Desmond earlier on this week, and in fairly trenchant terms, he made it clear that he didn't regard them as letters that gave any kind of binding commitment. Have you seen the letters in question?

A. I mean, I have in recent times. I mean, it's absolutely clear they weren't binding. I mean, they were fairly standard letters, you know, given out by financial institutions when they want to say, "Well, you know, we are supportive in some senses, but we reserve all our rights to decide whether or not we are interested at a later point in time".

Q. So do you think it was reasonable for Esat to feel uncertain about that element of its funding also, that it might not be able to convince the assessors as to

the stability of its funding?

A. Well, I mean, to be clear, you know, if I were working on the assessor's side as a financial expert, I would have completely discounted those letters as being nothing other than, you know, kind of pieces of paper with you you know, were there. They helped to fill out the bid, and the profile of the bid, but wouldn't have given me any comfort as an assessor that there was a commitment to provide finance.

Q. And I think that's I think at least what one of the witnesses has said, that little or no consideration or seriousness could be attached to these letters at this stage other than that they were statements of intent of willingness?

A. Certainly, as I say, you know, if I was there as the financial expert, you know, doing the assessment, I mean, I would have discounted those completely.

CHAIRMAN: You will have noted, though, Mr. O'Donnell, the apparent satisfaction evinced by members of the Project Team as regards the bank letters.

MR. O'DONNELL: Well, My Lord, the statements contained in the bank letters have always been said to be matters of no commitment of no use whatsoever.

Mr. Towey on Day 233, page 7, said: "I wouldn't have seen this as a binding commitment. They were statements of willingness." Mr. Riordan said he agreed that the "letters imposed fundamental



conditions, gave no binding commitment but rather the possibility of money being granted." Mr. Martin Brennan was unimpressed, and so described by counsel for the Tribunal as being unimpressed, with the nature of the letters in question.

So a number of the members of the Project Team expressed in their evidence here their views as to the lack of commitment given by the banks in those letters.

A. And you know, as I say, that doesn't surprise me at all. I mean, I think people have to understand that from a financial institution point of view, if they had given a formal underwriting commitment, you know, they would have had to effectively reserve it in their books, you know, they would have actually imposed charges. There would have been a lot of extra additional expense there, and in practical terms, to get a financial institution to commit, given the degrees of uncertainty that were there, I don't think you would have found any of the traditional players, other than kind of somebody with more of a venture type capital orientation, prepared to give a commitment.

Q. Now, you weren't aware of any warning that had been given by the Department at the presentation as to what was to be the sequence of events vis-a-vis sending in correspondence or other information subsequent to the

presentation?

A. No, I was not aware.

Q. All you were doing was presenting a letter to the Department indicating the availability of funding?

A. All I was doing was presenting a letter at the request, really, of Denis O'Brien as Chairman of the consortium.

Q. Now, you were not an operational partner; you were only going to be a financial partner?

A. That's correct.

Q. And the financial partner's role in a situation such as this is to assist in providing funding to the operational partners?

A. That's correct.

Q. And the only thing to assess, I would suggest, of a financial partner is: Is he good for the money?

A. That's correct.

Q. Can I put it this way, Mr. Walsh: If IIU had sent in a cheque, or if any of the banks had sent in a cheque as financial partners, the only issue which would have arisen is: Were those partners, were those financial institutions good for the money?

A. That's correct.

Q. That's the only question to be asked?

A. Mmm.

Q. And when that question was asked of IIU, were you good for the money?

A. We were.

Q. You also said in the course of your evidence, in response to Mr. Coughlan Mr. Coughlan said to you that he thought there might not have been any of the sensitivity in relation to the change of personnel if the things at that stage were exactly as they had been in the bid. Your answer to that was "I think the reality is, these things always change a bit through the process."

A. Yeah, I mean, I think it is absolutely normal that there is elements of change going on. You know, the sensitivity was much more to do, as we said the last day, with the fact that there were people threatening legal action. You know, if you actually go back to the various minutes of the Department meetings, you know, the one that's there on whatever it is, the 13th May, you know, Martin Brennan basically said that the Department had written to the solicitors for Persona informing them of the intention to grant the licence and that if the Persona consortium wished to challenge this, they should do so through the courts. And clearly the Department had taken the view at that point in time that Persona didn't have a case, but they were very sensitive to make sure that the Department didn't expose themselves in any way to a threatened case.

Q. But is there anything unusual, in your view, in your

experience of the financial world, of a new financial backer coming in to replace a previous financial backer?

A. Absolutely not. I mean, the practical reality is that the operating partners will look for the best financial deal, and you know, if they have any sense, they'll try to play one finance house off against the other to get the best deal.

Q. The only other contact that IIU appear to have had with the Department, aside from the letter of the 29th September, was in relation to demonstrating its ability to meet the Department's requirement that it put up the money?

A. That's correct. I think, sorry, with the exception, obviously, of, you know, the kind of telephone conversation that we referred to before in, you know, kind of April, I think, and the few meetings with the Department, you know, which were actually minuted; I think there was one or two of those.

Q. There was one suggestion made in a memo of Mr. O'Connell's, which is at 49, 111, and it was a meeting of the 8th February of 1996 where, in the second-last line, Mr. O'Connell notes various difficulties and then notes: "Problem for IIU in coming up with capital in the interim."

I don't know if you have that.

A. I don't have it, but I remember the discussion the

last day in relation to that.

Q. I think we have a printed one. I'll read it out to you.

"MW talked DD

does not want to sell out fully.

Happy with convertible structure.

Uncomfortable about shareholdings in multiple companies.

"Some discussion with DD co-investing with CSFB but this very tentative.

Current position IIU will do 12.4%.

Will resolve 5% problem by convertible.

"Same effect as share".

"See MW memorandum lot of difficult points.

"Problem for IIU in coming up with capital in interim."

Mr. Walsh, it was put to you at that stage that you had a difficulty, a financial problem or difficulty in coming up with the funding in question. Is it possible that that note and it was suggested by Mr. Desmond that it may have been noted incorrectly, but is it possible that that note meant that you had a problem in the sense that you had an unwillingness or a reluctance to commit the funding until such stage as these matters were sorted out, rather than an inability to do so?

A. I think Mr. Coughlan asked me about this the last day.

And as I indicated at the time, first of all, in factual terms it would have been entirely incorrect. We would have had no difficulty providing the capital. The only basis I was able to rationalise the thing to myself on was that, you know, we may well have been saying, or I may well have been saying, "Well, if there isn't a completed shareholders agreement, I am not putting in the capital, because I want to be protected".

I mean, it's very clear from some of the correspondence and some of the stuff that's disclosed by the Tribunal that, you know, there were some elements of conversation, I suppose primarily promoted by Richard O'Toole, which was considering, you know, how best to effectively squeeze IIU into a situation where we would have to accept a watered down shareholders agreement, and trying to see is there a way to actually force capital in on that basis. You know, from a practical point of view, I would certainly have done everything possible to fight against a situation where we were putting in capital before there was a shareholders agreement that I was happy with.

Q. So a problem in that sense is a reluctance or unwillingness, is it

A. Sorry, this is ex post rationalisation, because I can't understand how Mr. O'Connell could have made the

comments. But certainly I would have been absolutely unwilling to put money in unless I was comfortable that the shareholders agreement was going to be in a form that I was happy with.

Q. Let's be clear. IIU were going to be able to meet any commitment it made?

A. Absolutely.

Q. In relation to the assessment carried out by the Department of the ability of IIU to fund its commitment, there was some discussion of a somewhat attenuated nature of the examination and assessment of IIU's ability to provide the funding in question, and some comparison was made to the due diligence that would be carried out in buying a company. Is there any reality in comparing a due diligence process, which might be carried out in buying a company, with an assessment of whether or not somebody is good for the money in a situation like this?

A. No. I mean, the two things are totally different. If you go to, you know, buy a company on which I suppose we do do on a fairly frequent basis the practical reality sufficient to examine, you know, all of the elements of the books of the company, all the history of the company, what you know, potential assets or liabilities are there. In the context of this, it was a very simple question. You know, there was money required to actually invest in the project.

You know, how do we actually find a way of guaranteeing that money will be available at the right time? And as I say, the Department, you know, required that we provide a letter of undertaking from a bank, and that absolutely met everything that they could have reasonably required to actually ensure that the financial party stood up and actually met the obligation, which was to provide the money.

Q. Was there anything more the Department could have looked for?

A. There was nothing more that they could have looked for which would have been relevant. The only relevant issue was whether or not the cheque, effectively, was good.

Q. Was there anything more that you, in your capacity as a banker and a person of considerable financial experience, would have looked for in a similar situation?

A. Absolutely not.

Q. Finally, if I just might ask you in relation to the primacy of the Department's role. IIU acknowledged that this was a competition being run by the Department at all times?

A. That's correct.

Q. And that the rules were the rules set by the Department?

A. Absolutely. But as I said, we never reviewed in



detail the rules.

Q. When the letter was sent back because of the view taken by the Department, there was no query or quibble by IIU in relation to that?

A. None at all. That was entirely the Department's decision. They were free to make whatever decisions they felt appropriate in the circumstances.

Q. When the Department insisted that the shareholding be broken down as 40:40:20, IIU complied with that, even though it was perhaps not what they might initially have desired?

A. We did comply. I mean, they were setting the rules, and we were happy to "happy" is probably too strong a word; we'd have much preferred to retain kind of a bigger shareholding for longer, but we were prepared to comply.

Q. You complied with the direction of the Department?

A. Absolutely.

Q. And the only question, as you say, asked by the Department in respect of IIU was the only question that could have been asked was, were you good for the money?

A. That's correct.

Q. And you say that you were?

A. Absolutely.

Q. Thanks very much, Mr. Walsh.

A. Thank you.

CHAIRMAN: Mr. Fitzsimons?

MR. FITZSIMONS: No questions.

CHAIRMAN: Mr. McGonigal?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. Walsh, just one or two questions

in relation to the bank letters which I want to just try and get a proper understanding of. The bank letters that I am talking about are the AIB letter, the IBI letter and the Standard Life letter.

Now, there is in fact absolutely no doubt that as institutions, they would be perceived as having substantial funds available for any investment that they choose to invest in?

A. Absolutely.

Q. So far as these particular letters are concerned, it does appear that all they are indicating is, in the case of AIB, the potential investment of a sum of  $\text{€}1/3$  million; similarly, in relation to IBI, a sum of  $\text{€}1/3$  million; and Standard Life,  $\text{€}1/2.5$  million. And that seems to be the height of the level of the investment at that stage.

A. To be honest, Mr. McGonigal, I haven't read those letters for a very long period of time. So if you want me to go through them, I'd really need to take them out.

Q. Okay. Just briefly, I'd like you to have a look at them, Mr. Walsh. There is one of them there on the

screen. It's 48, Tab 8, I think.

A. I have that, yeah.

Q. You will see there in the second paragraph, "We have prepared to invest  $\frac{1}{2}$  million by way of equity and/or loan stock."

A. Yes, I see that.

Q. So that insofar as that letter has any strength, the strength is indicative only of a potential investment of  $\frac{1}{2}$  million?

A. That's correct.

Q. So whatever assets AIB may have apart from that, the only amount they are indicating through that letter that they may be prepared to commit is a sum of  $\frac{1}{2}$  million?

A. That's correct.

Q. And similarly in relation to the IBI letter; it's again a sum of  $\frac{1}{2}$  million?

A. That's correct.

Q. And again, the Standard Life, 2.5 million?

A. That's correct.

Q. So that if one is looking at three letters and what strength they may be offering, the first comment that one would have to make is that while the institutions may be tremendously sound, the amounts that they are prepared to commit is actually no more than 3 million, 3 million and 2.5 million.

A. That's correct.

Q. Whereas in fact, IIU, when they made their commitment, were making a commitment to the 62.5%, circa 60%, 58 million I think it was, give or take?

A. Yes, 62.5 of the 58.

Q. Now, nowhere in those three letters is there any indication by either AIB, IBI or Standard Life that they would contribute or invest anywhere near the 58 million?

A. Well, sorry, I suppose, anywhere we were really committed to investing, I suppose, up to about 36 million; right.

Q. Even up to 36 million, there is nothing in the letters to indicate that either?

A. No, there is nothing in those letters to indicate that they would go beyond whatever it is, 8.5 million, whatever is covered by those three letters.

Q. So is it right to suggest that the position in relation to those letters, if they had remained, that Mr. O'Brien and/or the consortium would have had to go to each bank, after the winning of the right to negotiate, to see if the banks, at that stage, between the 25th November and the 16th March, would have been prepared to (A), confirm their investment, and (B), possibly increase it?

A. I mean, what would have probably happened, I mean, first of all, your sequence is right; first of all he would have had to go back with the final proposal.

And secondly, you know, he would have either have to ask those institutions or alternatively to ask other institutions to increase their investment to bring it up to the 35.8 or 36 million. So he would have had to get whatever; roughly speaking, an extra 26 million from them.

Q. So that in reality, replacing the AIB, IBI and Standard Life with the commitment and Advent with the commitment from IIU was in fact giving him the financial commitment to the project which he needed?

A. Yes, absolutely.

Q. And removing any difficulties in relation to negotiation or otherwise that might occur with the other institutions, excluding Advent?

A. Yeah. I mean, from Mr. O'Brien's point of view, what he had was an irrevocable commitment; you know, he was in a perfect situation at that point in time. He didn't have to worry about the other institutions.

Q. Thanks very much, Mr. Walsh.

CHAIRMAN: Mr. Fanning?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FANNING:

Q. MR. FANNING: Mr. Walsh, I appear for Mr. Lowry. I just have a few short questions for you.

Firstly, I think in answer to Mr. O'Donnell this morning you have stated that you did meet Mr. Lowry in May, 1996?

A. Yeah, my recollection is that there was one meeting in

the Department prior to the signing of the actual licence. It would appear, but I have no recollection, that that took place probably on the day before the licence was actually signed. That meeting effectively, I think, was probably chaired by Mr. Lowry. I can't remember, you know, which civil servants were present or otherwise, or indeed who else was there from the consortium's point of view.

Q. The first thing to say, though, and I think it's implicit from the answer you have already given me, is that there no question of meeting Mr. Lowry alone.

This was a meeting attended by quite a number of civil servants?

A. That's correct.

Q. Mr. Lowry will say he attended that meeting at the behest of Mr. Loughrey, his Secretary General, who wanted Mr. Lowry's authority and imprimatur qua Minister at the meeting. Do you have any reason to doubt that?

A. Absolutely none.

Q. Mr. Lowry will say that at all stages, and certainly around May 1996, he effectively followed the advice of his senior civil servants; in particular, Mr.

Loughrey. Do you have any reason to doubt that?

A. Absolutely none.

Q. Do you have any recollection at the meeting you have described of Mr. Lowry doing anything other than

simply endorsing positions that had previously been taken by Mr. Loughrey on, for instance, the 40:40:20 requirement, and indeed any other issues?

A. I have no recollection, but I think the 40:40:20 would have been dealt with by that stage.

Q. Exactly. But you have no recollection of Mr. Lowry taking any positions different to those that you knew to have been the position of Mr. Loughrey at a previous date?

A. Absolutely no recollection.

Q. Now, is it a fair summary of the position, Mr. Walsh, that in respect of your involvement in the matter generally, that Mr. Desmond essentially delegated to you the task of negotiating, I suppose, the detail and the finer points of his involvement in the consortium?

A. I would say Mr. Desmond delegated pretty much everything to me, yes.

Q. And in that context, then, may I take it that from your perspective, it would be, to call a spade a spade, a nonsense to suggest that Mr. Lowry, or indeed any other third party, had a role in thrusting Mr. Desmond into the arms of Mr. O'Brien?

A. It would be a nonsense.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. HOGAN:

Q. MR. HOGAN: Mr. Walsh, you were asked I think by Mr. Coughlan the other day, or at least the comment was

made to the effect that you were the new kids on the block, that IIU were the new kids on the block; can you tell the Chairman what your qualifications are and what your experience was prior to the establishment of IIU?

A. Yeah. I mean, Chairman

CHAIRMAN: Mr. Hogan, for clarification, the question was mine. And I was quoting a phrase that was used by Mr. Loughrey. I wasn't seeking to make any pejorative descriptions.

MR. HOGAN: No, I am not I think we are at cross-purposes, Chairman. I wasn't suggesting that in any that it was any criticism or anything of the kind. It was just simply the phrase that was used. And I had forgotten, Chairman, that in fact the phrase was used by you in quotation from Mr. Loughrey. There was no suggestion on my part that the phrase was used in some sort of pejorative way or anything of the kind.

A. Anyway, Chairman, I suppose I have been involved in the kind of business financial side, you know, really all of my life. I originally did kind of BComm and MBS degrees in UCD. I then got a scholarship to the Wharton School in the US and did an MBA there followed by a Ford Foundation grant; did a Ph.D. there. I returned to Ireland in 1977 and worked initially with one of the kind of largest I think probably



the largest public company, primarily dealing with the mergers and acquisitions side. About 1981 I became the Irish banks professor of banking finance at UCD and continued in UCD for about five years. In 1986, you know, I joined NCB to really set up the corporate finance side and became managing director of NCB corporate finance at that stage. I continued to be involved, really, in kind of mergers and acquisitions, along with Mr. Desmond, you know, up to and including, you know, today, through the various existences that we have actually had.

Q. MR. HOGAN: I take it in that capacity you are familiar with the requirements of due diligence, for example?

A. I would be very familiar, yes.

Q. And I take that you would understand the difference between an operational partner and a financial partner?

A. I would.

Q. And can you say, Mr. Walsh, and to some extent you have already said this in answer to Mr. O'Donnell, but just for the sake of the record, can you describe what the nature of the involvement in IIU in the consortium was?

A. IIU was a financial partner and was there to ensure, as the original letter said, that all of the equity not provided by Telenor would be available to the

consortium.

Q. I am going to ask you a series of heterogeneous questions, Mr. Walsh, and in no particular order

A. Will you translate that for me?

Q. Sorry, a series of diverse questions about various odds and ends, to put it prosaically.

Can I first mention ask you about your knowledge of Mr. Michael Andersen. Have you ever met Mr. Andersen?

A. As far as I know, I have never met Mr. Andersen, unless he actually attended some meeting at the Department that I was at. But I am not aware that he was at any of the meetings.

Q. Do you know anything about Mr. Andersen's expertise?

A. I believe his expertise is in telecommunications.

Q. Now, the suggestion was made with Mr. Desmond on Monday by Mr. Coughlan that Mr. Andersen was the consultant who had been involved in the evaluation process, that he was in the Department on one of the days in mid-May of 1996, and he was not consulted about the Anglo Irish letter and the confirmation procedure and so on. Do you recall that question being put?

A. I wasn't here for the question, but I read the transcript.

Q. Are you aware of that question being put?

A. I am aware, yes.

Q. Can you say whether somebody whose specialty is in

telecommunications would have anything useful to say on the issue of the availability of finance and IIU's capacity to deliver on its financial commitments?

A. I couldn't see how he could have had anything to contribute. I mean, Mr. Loughrey's own background, I think, is many years with the Department of Finance, a number of years with the European Investment Bank, so he is very knowledgeable from a financial point of view or a financial markets point of view. In addition, you know, Mr. Loughrey was accompanied by another gentleman whose name I can't remember, but as I understood it, was an accountant from, I think, Price Waterhouse, or it may have been KPMG.

Q. And can you say, for the benefit of the Chairman, what the net issue was in the middle of May, 1996?

A. The net issue was confirmation that when it was required, the equity that was needed for the project would be made available. And there was no other issue.

Q. Is that in any way comparable to the range of inquiries that would be involved in a due diligence?

A. Absolutely not at all. You know, this is a very simple net point, you know: Is the liquidity going to be available to meet the requirements to get this project off the ground?

Q. Now, just returning back to the events of August, 1995. So far as you are aware, Mr. Walsh, had IIU or

Mr. Desmond any intention of getting involved in the application for the second mobile licence prior to the 10/11 August 1995?

A. Absolutely no intention.

Q. Were you familiar at the time with the rules of the competition?

A. I was not.

Q. Were you aware of an admonition or an instruction which apparently had been given to the various consortia at their presentation that they were not to contact the Department further, and any contact would be the Department contacting them?

A. I was not.

Q. Can you say who was the person who had suggested or who had urged the letter of the 29th September to be sent in to the Department?

A. It would have come from Mr. O'Brien.

Q. You were also asked by Mr. O'Donnell, and I think by Mr. McGonigal as well, about the various letters from the banks. Can you say whether letters of this kind are common for so-called beauty contests, whether they may be for mobile telecommunications licences or other forms of similar competitions?

A. I mean, they are very common. I would personally be surprised if anybody going in for one of these types of beauty competitions didn't have some sort of letter saying, for all practical purposes, you know, "We know

these people, we like these people, we'd be happy to talk to them afterwards".

But, you know, they are letters that are almost like kind of, you know, references of good character, saying, you know, "We're happy to deal with them" as opposed to sort of other people saying "No, we are not happy to deal with them".

Q. And quite apart from the financial limits to which Mr. McGonigal has drawn your attention in the various letters, these letters were highly conditional, were they not, in terms of requiring the approval effectively of a credit committee?

A. That's right. I mean, as I say, I haven't actually checked them; I was just looking at them there when Mr. McGonigal was going through them. I know the first one says "This is all conditional on the approval of the investment committee", which is the same way of saying you know, "We are not giving any approval at all".

It would be, you know, like me issuing the letter and putting in a condition and saying "This is subject, you know, to Mr. Desmond agreeing to put the money in". It would be a nonsensical thing.

Q. Can you say whether there was a critical difference between those type of letters and the letter and the commitments which IIU entered into in September, late September of 1995?

A. Yes, it was absolutely totally different. I mean, our letters at the end of September were an absolute commitment, subject to, you know, a number of conditions, but they were absolutely commitments to put the money in. The conditions, I think as everybody is probably familiar with, related really to first of all whether or not Telenor were still committed to the project; secondly, I think, whether there was, shall we say, a situation that the licence was significantly different from the one that had actually been provided in draft form; and I suspect that I also had a material adverse-change clause in there.

Q. And can you say what the exposure of IIU would have been had the application for the licence been unsuccessful?

A. If the application for the licence had been unsuccessful, we would have had to pay, you know, our 25% share of the bid costs. You know

Q. So you were taking IIU were taking on a risk at that stage?

A. We were taking on different types of risk. First of all, if the application hadn't been successful, we were taking on a percentage of bid costs; but equally well, you know, we were committing to provide effectively up to about 35 or 36 million, you know, if the bid was successful. Because the reality is that,

you know, if, for example, we had tried to, shall we say, not put the money in later on, you can be quite sure that the other consortium partners, if they had any sense, would have, you know, gone to court to actually insist on us putting in the money, unless they could find it from somewhere else on better terms.

Q. I think you've already said this, Mr. Walsh, but again just for the sake of the record, IIU was operating only as a financial partner?

A. That's correct.

Q. It had got nothing to do with questions of the spectrum access, or the roll-out of the masts, or obtaining planning permission or anything of that kind?

A. Absolutely nothing at all to do with any of those matters.

Q. Now, you have already said that you didn't meet Michael Andersen during the course of the application for the licence, and just for the sake of the record, had you ever met him? Have you ever met him?

A. Not that I am aware of. Sorry, he may well have been aware sorry, present at things, you know, like the point where, you know, the system was actually launched. He may well have been present at the signing of the licence. But I have no recollection of ever having been introduced to Mr. Andersen.

Q. And you have already told Mr. Fanning that you met Mr. Lowry, I think, once or twice, but that was at the very end of the process?

A. That's correct.

Q. And again, just to confirm what I think you said to Mr. Fanning, that you have no reason to suppose that Mr. Lowry did anything other, at that stage, than comply or conform to the recommendations or decisions of his civil servants?

A. Absolutely no reason at all.

Q. And apart from the sending in of the letter of the 29th September and the subsequent negotiations so far in April/May of 1996, did you have any did you have any contact with any members of the Evaluation Team or any of the civil servants involved?

A. None at all.

Q. So far as the 40:40:20 split is concerned, I think you indicated to Mr. O'Donnell that you would have preferred to retain the 25%?

A. Absolutely.

Q. And can you say, why did you dispose of the 5% in May of 1996?

A. Well, it was really reflecting pressure from the Department to have the share structure at 40:40:20 at the time the licence was signed.

Q. If there had if that instruction or something conveying profound instruction or something of that



kind had not emanated from the Department, do you believe that you would have retained the 25% at that stage?

A. At that point in time, I do. Obviously Mr. O'Brien was pressing all the time to try and increase his shareholding, so whether or not there would have been, shall we say, in the absence of the departmental issue, whether or not there would have been a change in the shareholding, you know, to enable Mr. O'Brien to have a bigger percentage, I couldn't tell. It's impossible to rerun history.

Q. But in all events, were it not for the Department's views, expressed by the Department, you would have retained the 25% at that stage?

A. As at the time of the licence, we would definitely have retained the 25%.

Q. Finally, Mr. Walsh, may I ask you, I know you have only been giving evidence for I think two or three days; but you have been following the transcripts to some extent?

A. To some extent.

Q. Have you heard anything or were you personally aware of anything that suggests to you that the integrity of this licence competition was in any way compromised?

A. I have heard absolutely not. In fact, I think anybody, you know, who is reasonable and, you know, read John Loughrey's evidence, you know, you'd have to

believe that the whole process was, I mean, effectively hermetically sealed from political interference. I mean, you know, if you want to go the other way, you have to, for all practical purposes, assume that there was a massive conspiracy within a whole series of different levels of the public service, and I don't believe that's tenable.

Q. Thank you very much, Mr. Walsh.

CHAIRMAN: Anything in conclusion, Mr. Coughlan?

MR. COUGHLAN: Just a few matters.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS

BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Walsh, if I might ask you, firstly, and you did, in your own statement, I think, say that you had one or two meetings with Mr. Lowry prior to the signing of the licence at which you were present.

A. That's correct. I mean, the only one that I can find any evidence for, you know, is the one effectively, I think, dated the 15th May.

Q. What's the evidence that you find for that? I am just interested in that.

A. Sorry, I can't remember which divider it's actually at, but there is basically a suggestion that, you know, Mr. Lowry wants to meet with all parties at I think it was one o'clock today or

Q. I just want to clarify, because this is something I am interested in, because we don't have any departmental

records of any meetings in this period. I am just

interested in that, if you could

A. Sorry, my recollection but you know, to be honest,

I'd need to dig it out. It's in Book 50 somewhere, I

think, is a suggestion, really, on I think it's

Owen O'Connell's, you know, kind of notes or draft

notes that there was to be a meeting.

Q. That's a meeting on the 13th May, I think?

A. No, well, sorry, I think the meeting with Mr. Lowry,

to be honest, was set for the 15th May.

Q. Sorry, I am interested in this, and I just want to

if you could point it out to me. There is Owen

O'Connell's this is Owen O'Connell's long

memorandum, is it?

A. No, I think it's actually a much shorter one.

Q. All right. We do have reference in Mr. O'Connell's

long memorandum where it was indicated I think this

had been indicated by Martin Brennan to Mr. O'Connell

and Mr. Digerud at page 4 of his memorandum

A. No, I think sorry, Mr. Coughlan, if you have a look

at Divider 149, and you see the second page of that,

there is kind of a statement at the end: "Dress

rehearsal with Min sometime after 1, some hour side".

Q. I see that note. That's interesting. And do you

remember, were you at a dress rehearsal?

A. Well, I do have a recollection going to a meeting, you

know, which the Minister was present at, which there

were a bunch of civil servants at. I couldn't tell you who was there from our side. And you know, the main purpose of the meeting, as I recall it, was to, you know, make sure that everything was lined up properly for the actual formal signing and the press conferences that would have been associated with that.

Q. I see. So it could have been the dress rehearsal that could have been the dress rehearsal?

A. If you like to put it that way.

Q. Well, sorry

A. I mean, I can't recall whether it was a dress rehearsal in a sense of, you know, people asking questions and answers.

Q. I understand that, but you think that you attended a meeting or, sorry, you have some recollection, it would be a fair way to put it, would it, that you attended some meeting that you believe the Minister was at, and civil servants, and probably somebody other people from your side, but you can't remember who?

A. I can't remember the details of who were actually present. I mean, I would have been astonished if, you know, Mr. Digerud wasn't there on behalf of Telenor. Mr. O'Brien would obviously have been there, you know

Q. And what jogs or what jogs your memory in relation to it is this note of Mr. O'Connell's, this reference

in this note of Mr. O'Connell's?

A. That note jogs, shall we say, kind of the timing or the dating of that meeting. It doesn't actually jog me much in terms of exactly what happened, I mean, of sort of vaguely remembering going into a room.

Everybody shook hands with the Minister. Sat around a big table. He sat at the top of it. But I couldn't even place where the room was.

Q. I take it it was in the Department?

A. Sorry, it would have been in the Department, but

Q. Or was it somewhere else?

A. No, no, it was definitely in the Department, you know, my recollection is actually actually, I couldn't be sure, but I am pretty sure they were in Kildare Street at the time

Q. I think they were, yeah.

A. But I wouldn't be a hundred percent certain. But certainly it was a meeting in whatever building one normally went to to meet with the you know, the civil servants.

Q. You can remember I just want to be clear about this: You can remember attending a meeting, and there were as you have described it, and the impression it conveys to me is that there were a fair number of people at that meeting.

A. That's correct.

Q. You don't have any great recollection of what was

discussed, but that it seemed to be, as far as you can recollect, centred around preparation for the signing of the licence and a press conference or that

A. That would be the general context, yes.

Q. And can you remember, was it a lengthy meeting?

A. To be honest, I have absolutely no recollection. I suspect it was relatively short, of the when I say "relatively short", 20 minutes, half an hour, something like that. But I just have no recollection.

Q. Can you remember what your role in the meeting was?

A. Well, I would have been there on behalf of IIU Nominees.

Q. Was it do you remember a discussion about deflecting attention away from ownership at the press conference? Do you remember that type of discussion? There are references in notes; can you remember that type of discussion?

A. I mean, I really can't I mean, I said my recollection of the meeting is extraordinarily fuzzy at this point in time.

Q. All right. That's one meeting you have, as you say, a fuzzy recollection of, and you remember, I think, seeing the Minister or meeting the Minister I put you in the same room as the Minister on the day of signing of the licence and the press conference; is that right?

A. That's correct. I can't recall whether I was at the

press conference.

Q. All right.

A. But certainly I recall I was at, you know, whatever kind of bit of signing ceremony there actually was.

Q. Do you remember or can you remember, I am sorry, can you remember discussions about deflecting attention away from ownership?

A. No, I don't.

Q. You don't. Do you remember, that larger meeting, was there any discussion about newer finances, I mean, IIU/Dermot Desmond or anything of that nature?

A. No, there was no discussion that I can recall. I mean, to be honest, I would have been astonished, shall we say; that's not the type of thing you'd expect a Minister to get into. You'd expect him to get his officials and their advisers to do that.

Q. To do that?

A. Yeah.

Q. You'd expect him to get them to do that, yes.

Now, do you remember having a meeting with John Loughrey at the Department?

A. I do.

Q. And do you remember having a meeting with I know you don't know the name of the person, but another person it happens to be Donal Buggy, I think, or

A. I am happy to accept that it was Donal Buggy.

Q. Donal Buggy/Martin Brennan may have been introduced;

do you remember that?

A. I mean, my primary recollection is that there was kind of Mr. Loughrey, sort of sitting more or less opposite me at the table. There was somebody sitting to his left who was, you know, a financial person from either KPMG or PwC. As I say, I couldn't recall the name of that individual. I cannot recall whether or not Mr. Brennan was actually present at that meeting.

Q. All right.

A. You know, because, I mean, in some senses, the, shall we say, focus of the discussion or the debate that would have gone on was really centred on Mr. Loughrey and, you know, his, let's say, financial adviser who was sitting beside him. So you know, to be honest, if Mr. Brennan or indeed other people were there, you know, at the time, obviously, I would have been aware of it; but I have no recollection of being there, and they wouldn't have been in some ways material.

Q. You may be aware from the documentation, but I am just wondering, was there any discussion? You say there was some debate going on between Mr. Loughrey and his financial person. You may be aware from the documentation that when the financial person was carrying out an assessment of the situation as was conveyed to him in May of 1996, one of the matters which he considered or noted, at least was the possibility of carrying out well, there were a



number of possibilities; one was having  $\frac{1}{2}$ 20 million in escrow unrealistic, I think you're aware of that.

Another was carrying out a due diligence on Dermot Desmond's personal finance; I think that was one of those noted. Do you remember that type of discussion taking place at that meeting with Mr. Loughrey, yourself and this person?

A. Well, I mean, I remember not so much a discussion of kind of due diligence on, you know, Dermot's situation, because to be honest, the focus, really, from Loughrey's point of view was very much, well, you know, you can do all the due diligence you want at this point in time, but you know it's not today that the money is actually required. The money is going to be required, you know, over a period of time for the actual project. We did have, I suppose, some argument in a sense that I suppose he would have liked us to put, you know, kind of 20 million or 30 million, or whatever, actually on deposit and you know, I mean, when we argued it out, I mean, I think everybody accepted that was, you know, both unnecessary and unrealistic in the circumstances.

So, you know, on the basis of those discussions, it was agreed that the sum that we would actually, you know, get an undertaking from a bank to ensure that it was there was in relation to 10 million.

Q. And those are the meetings you have a recollection of:

that one with John Loughrey and a financial person and maybe Martin Brennan; you are not sure about that?

A. That's correct.

Q. A meeting with a large number of people present where there was, you believe, some discussion about a press conference, and then the day of the signing of the licence?

A. That's correct.

Q. So if we could discount the day of the signing of the licence as a meeting, do you remember any other meeting at which the Minister was present with civil servants and with members of the consortium?

A. No, I don't.

Q. Or one that he was present with, that you know of, that you were present with John Loughrey or any other civil servant?

A. No.

Q. So, just in response to an answer you gave to Mr. Hogan, when you were asked that the net issue which was in discussion around this time was liquidity?

A. Absolutely. And I think

Q. It started that position, did it? It started with a view being taken or, sorry, a debate taking place, at least, that you were aware of, whatever was going on in Mr. Buggy's mind, he has given his evidence, but one of the matters he was considering was a due diligence?

A. I think, to put it in practical terms, there had been the discussion with Farrell Grant Sparks, there had been a letter from Farrell Grant Sparks. And as I think I said in my evidence last week, whichever day it was, that John Loughrey's view was, "Well, it's all very well having a series of assets at this point in time, but what I want is confirmation"

Q. Sorry, that came from John Loughrey, as far as you recollect?

A. At the meeting, I don't know how the interplay went between of two of them. At the meeting, what Loughrey was clearly saying is, you know, "It's all very well to kind of have certain things at this point in time, but what I need is absolute confirmation that when the project actually needs the cash, the liquidity will actually be available, and the way to actually do that is to actually get an undertaking from a bank".

Q. I understand the point. And do you say and I know you have said this when you gave evidence the other day as well that in effect, you reached an agreement or a requirement was that you'd get a letter of undertaking a bank; that's the way it would be done?

A. That's correct.

Q. And you prepared the draft of that for the bank; isn't that right?

A. I did.

Q. And was that as a result of your understanding of the agreement you had reached with John Loughrey?

A. Absolutely. What Loughrey said was he wanted a letter of undertaking from a bank that, you know, when the project actually needed money during whatever year it was, 1996, that that liquidity would be available.

And we agreed on the actual sum and

Q. And the period, because the letter is to the end of 1996?

A. That's correct; that's just what I said. I mean, the agreement was for the period of 1996, there would be 10 million actually available. And he was viewing that, I suppose, really, as, shall I say, the "take-off runway," I think, to use his words, in relation to the project.

Q. It sounds like

A. I think that's the word

Q. It sounds like his words, as you say.

A. Yeah.

Q. Maybe you can explain to me, just, could a due diligence not have established that as well?

A. Well, I don't believe so, and certainly it wouldn't have done it very efficiently. You know, what a due diligence will do is disclose what a situation is at a particular point in time. It won't actually tell you where it's going to be in two months' time, three months' time. What Loughrey wanted was not to know,

you know, at that point in time, because as everybody knows, the money was sitting in the bank at that point in time. What Loughrey was concerned about was to ensure that when the money was required, you know, would it be available? And the letter of undertaking from the bank was to effectively ensure that the money would be available whenever it was required during 1996.

Q. Now, can I just ask you about another matter. As I understood your evidence and Mr. Desmond's evidence that when you got sorry, when you got involved I am using "you" meaning "he" got involved as and from the 10th August of 1995, the way discussions went between Denis O'Brien and Dermot Desmond were in the form that Mr. Desmond would agree to pay a portion of the bid costs; that was and that was your risk in relation to matters. And I think Mr. Desmond told us that what Denis O'Brien said to him was that they had made a good presentation, application; I am not quibbling about that particular matter at the moment, but that as he said it, that the finances were weak in relation to the financial institutions. That's he never said anything about his own position at that time. As I understood Mr. Desmond's evidence, that Denis was going to nail down his own financial position; that was the initial way the discussion went?

A. I mean, within reason, that appears to be I mean, I think, you know, the actual proposal from Denis on the 11th August, you know, is looking for help in relation to the Communicorp side. I mean, there is talk about I can't remember the radio stations and everything, so you know, shall we say, Denis was looking for, I suppose, you know, some element of or composite funding is the best way to put it.

Q. That may be so as it may be, but the position was that the type of money that we can see reference being made to certainly wasn't the type of money that would be necessary for the GSM project?

A. No, I mean, the amount was much smaller.

Q. And we can see you don't recollect what transpired at the meeting with Denis O'Brien on the 15th September of 1995, it's noted; I think you can't even remember the meeting specifically?

A. No, I mean, I can't remember the meeting. I mean, I have no reason to disbelieve.

Q. Undoubtedly we can so before the presentation, Denis O'Brien hadn't, as far as we can see, put anything in position with you in relation to underwriting his position, isn't that right, before the 12th September?

A. Certainly I can't find any documentation to suggest that.

Q. We certainly see it after the presenting.

A. That's correct.

Q. Now, just a few matters that you might be able to assist us on in relation to the letters from the banks. First of all, were you aware that those letters were obtained as a result

A. Sorry, do I need to get the letters out?

Q. You don't need to.

That those letters were obtained as a result of a presentation being put together by Paul Connolly and somebody from Davys, and the banks were approached on the basis of that presentation. You weren't aware of it at the time?

A. At the time, I wasn't aware of it, no.

Q. And I think the banks, in fact, according to Mr. Callaghan, anyway, gave what they were asked for, in effect, in relation to the presentation. You weren't aware of that?

A. I wasn't aware of it, no.

Q. That's the first thing.

Secondly, I take it you weren't aware that at the presentation, that it was represented that the banks were in, these institutions were in; you weren't aware of that?

A. No, I wasn't aware of that.

Q. And thirdly, I take it you were not aware that at the time of the evaluation process up to the 25th October, and the announcement of the competition result, it was

never stated by anyone in the Evaluation Team that there was any difficulty with those particular letters or the position of the banks; you weren't aware of that?

A. I mean, to be absolutely clear, and I think I have said it to a number of people, I mean, we had absolutely no information from within the Department as to what was in their mind or their process or otherwise.

Q. But may I also ask you this, as somebody who is involved yourself, the Chairman of a public company, a financial company isn't that right?

A. We'll argue about the definition of "public", but nonetheless

Q. Sorry

A. Go on.

Q. You know what I mean, anyway?

A. I know exactly.

Q. That you have an understanding of these things, that the letters from the banks all reputable institutions; there is no doubt about that in the State?

A. I wouldn't query any of their credibility.

Q. And I think you put it quite well yourself, I think, in response I think to Mr. Hogan and Mr. McGonigal, that they represent this: They represent that in relation to the person who is putting them forward,



that these institutions are reputable institutions who think "This person is all right, and we're prepared to do business with them", so they affect the reputation of the person using them; isn't that right?

A. Absolutely.

Q. And secondly, the institutions themselves, in furnishing such letters, in the absence of something fairly significant, have reputations themselves, particularly in relation to dealings with the State, or anything of that nature?

A. I mean, absolutely, they have reputations themselves.

Q. And they wouldn't lightly avoid their reputational responsibilities?

A. Of course they wouldn't. I mean, if you are trying to hit at the fact that somehow or other that because of that, they were actually legally committed or legally bound in or indeed morally bound in, you know, I wouldn't accept that at all.

Q. You wouldn't accept that?

A. Because I think the practical reality is, you know, if, you know, I were sitting in any of those institutions and issued those letters, what I would be indicating is a willingness to discuss in good faith, for all practical purposes, an involvement; but you know, I wouldn't be setting out the terms and conditions until much later in the day.

Q. I think perhaps you put it well there: You'd

"discussed in good faith" is the operative aspect of that?

A. Yeah, absolutely. But I mean, the reality is that, you know, shall we say, all of those institutions are actually in the business, you know, in the particular institutions, are in the business of making investments; so, you know, if it is a good investment proposition and they are happy with the people they are dealing with, they would be more than happy to go ahead.

Q. And in fairness to those institutions, they didn't in any way ask to be relieved of any moral obligation, if we can leave it as light as that, that they might have had to Mr. O'Brien in relation to these letters. They were asked by the consortium to step aside; isn't that right?

A. That's correct.

Q. So it wasn't anything that they did; it was something that they were requested to do?

A. Yeah, which would be quite normal in these circumstances, in the sense that you know, as I said earlier, you know, if you are raising finance for a project, you know, you try and get the best possible deal. And normally, if it's a sensible investment project, you'll find a long queue of people who are prepared to make the investment. So in this particular situation, you know, we had an investment

opportunity presented to us; we were happy to do it on terms which other people weren't prepared to do at the time, and fortunately it's one of the good decisions we have taken.

Q. Now, you weren't aware of the competition documentation; isn't that right?

A. That's correct.

Q. Had you ever seen any of the documentation relating to the competition?

A. Not that I can recall.

Q. And can I take it that the only document that you can recall perhaps receiving but not paying any particular attention was the document that was sent over by Paul Connolly on the 18th September of 1995?

A. That's correct.

Q. You never saw any figures behind anything else other than what was contained in that documentation, to the best of your recollection?

A. Other than what was actually contained in that. I know Mr. Desmond seemed to believe that we had done a phenomenal amount of analysis, but I think the analysis, you know, shall we say, being brutally frank about it, was fairly simple; you know, we were getting in on the same terms of either of the people who had been through this

Q. I am not making a big issue about it, Mr. Walsh. You were the one dealing with the matter. And in

fairness, when you go to your files, you don't have big analysis taking place or anything of that nature.

A. He was probably on the golf course at the time, so...

Q. Now, did anybody tell you that it was part of the competition that one had to give and this was mandatory full ownership details of the proposed licencee; in other words, full details about it? Did you know that that was part of the competition requirement?

A. I mean, I think as I have already indicated, you know, I had never studied the actual rules. My understanding, though, is that at the time that the proposal was put in, and it was a clarification I gave I think the first day of my evidence, you know, the consortium was actually owned on a 50:50 basis between the two operational parties. Anything else, you know, was only indicative of potential investments.

Q. Did you know I understand that kind of thing did you know that it was a requirement that there be full disclosure in relation to the ownership of the licencee, that that had to be disclosed in the competition you didn't know that?

A. As I said, I wasn't familiar with the details of the competition at all.

Q. Thank you very much, Mr. Walsh.

CHAIRMAN: Can I just ask a small thing in conclusion, Mr. Walsh. You have distinguished, in response to

counsel, your concepts and experience of an industrial or operational partner as against a financial one.

There was, as you referred to in your own evidence, and as we heard earlier in the week from Mr. Desmond, an inevitable amount of to-ing and fro-ing over the share that IIU and Mr. Desmond might succeed in getting. And at one stage, I think you had said in your earlier evidence that you were surprised that Mr. Desmond didn't try to get a 33.5% holding, although I think that was probably in terms that prospects were scarcely realistic?

A. They probably weren't realistic. But if I had gone out and looked for less than 33%, he would have complained.

CHAIRMAN: Yeah, I imagine that. If you had done better, if you had got perhaps up to or around 30%, would the category of investor you'd have been in have changed because of the ratio of your holding? Would it be usual that a financial partner would have as big a percentage of the overall consortium as that?

A. No, Chairman. It wouldn't be unusual at all. I mean, just by way of illustration, but I would rather not disclose who, in confidentiality

CHAIRMAN: Sure.

A. The deal that I was completing at the end of last week is actually a 50%:50 joint venture where we are exclusively the financial partner in the thing. We

have no operational or other involvement in the role.

We obviously have a shareholders agreement, with all the appropriate protections to make sure that the operational partner is actually behaving. If you think of a management buyout, you know, typically, you know, 80 percent of the money gets put up by financial institutions. You know, nonetheless, the operational people are actually the management who are being supported by the institutions rather than the other way around.

So I think it's, you know, not really abnormal at all, whether we had kind of 10, 15, 20, 25, 40, 45, or even a majority situation, it wouldn't be abnormal in terms of financial partnerships.

CHAIRMAN: Yes, as it transpired, you got two seats on the board, and it's fair to say, in yourself and Mr. Desmond, you had two strong and resourceful members of the board who were in fact were asked to stay on even for a short period after the ultimate takeover; isn't that correct?

A. Well, that is correct. Though we did have a minor dispute along the way.

CHAIRMAN: Well, we needn't activate that one. But had it been that the initial institutional investors, the three banks of whom we have heard, and Advent, had come on board as envisaged in the initial bid, would it have been more likely they would have been required

to nominate one agreed name as a board member rather than getting two?

A. I think, you know, I would almost distinguish between the different parties that were actually involved on the financial institutions side, you know, the probability is that they would have agreed, you know, a single but you know, it would have depended very much on how the whole thing had been negotiated.

Advent obviously is in some ways a much more pro-active venture capitalist than, you know, AIB or Bank of Ireland or Standard, so you know, they may have been more demanding in some senses. So it's very difficult to, you know, predict, you know, what would have been the actual makeup of the board. I think it was clear that, you know, we were quite happy to take lesser, shall we say, number of directors to reflect the fact that we were a financial partner as opposed to one of the key operators. And there was a lot of debate as to whether it should be a 2: 2:1 breakdown or a 3:3:2. And we agreed, you know, if it was reduced to a five-man board, that we were quite happy to go to a single representative as opposed to two.

CHAIRMAN: Yes. Thanks for your attendance

Q. MR. COUGHLAN: There is one thing, in fairness, I forgot to ask, and it relates to Mr. O'Connell. When I asked you the other day were you a deposit-taking institution, and you said you weren't and you aren't

now. You weren't a lending institution either, were you, in 1995?

A. I suppose that's kind of a grey area. You know, deposit-taking institutions have a very specific situation.

Q. I know.

A. A lot of the investments that we make, we actually make in the forms of loans, which would be quite normal in the venture capital world. And those loans, you know, would have warrants or conversion rights or whatever actually attached.

Q. They are ventures. They are in the nature of an investment or

A. Yeah, but in a legal sense, they would be fairly frequently structured as some form of loan as opposed to just ordinary shares or equity.

Q. Okay.

A. I think, Chairman, just maybe before I finish, there is something I feel very strongly about, and I'd like to put it on the record.

The first thing is, you know, as I said in my evidence, I think in July 2001, you know, I have absolute confidence in the integrity of the civil servants actually involved. This Tribunal really is all about integrity, and really, in that context, I think if integrity is questioned, it's not the civil servants' integrity that we should be questioning at



all.

Given the focus on integrity, I actually fail to understand why Mr. Healy did not resign a long time ago from this Tribunal. Mr. Healy was part of Persona's legal team. In my view, in such circumstances, a person with integrity would have first of all publicly declared on the record that they had been part of that team and they had a conflict, and equally well, they would have resigned from the Tribunal at that stage.

Now, Mr. Healy did neither of those things. In fact, I note from the papers last weekend, you know, he was paid over 700,000 euros to investigate the independent assessors who had determined that his clients were the second best.

Chairman, when a leading member of the Tribunal is compromised, how can I or anybody else be confident in the integrity of any report produced? You have a reputation, Chairman, for fairness. The only comfort I can have is the hope that you and you alone will be the author of the final report.

Chairman, I really feel very strongly about this. I didn't discuss this with my legal counsel because I think they would have told me "You shouldn't say anything". But you know, this Tribunal, as I feel, it is about integrity. Everybody who comes here has their integrity questioned, and to be honest, I can't

understand why that is the case.

Thank you, Chairman.

CHAIRMAN: Mr. Walsh, in relation to that, all I will say is that it was made apparent to me that Mr. Healy had had a limited and brief involvement, together with Mr. Hogan, who was then a junior counsel, in the context of some proposed judicial review that did not come to fruition. That was made apparent to me. It was discussed, and correspondence was exchanged between both solicitors and counsel on the IIU and on the Tribunal side. I have absolutely no hesitation in finding that Mr. Healy behaved with the utmost integrity. I do not feel his position was compromised. I am extremely content, as I am with the rest of my legal team, with the very considerable endeavours he has put in in assisting me in the presentation of evidence and examination of it, which will finalise in a task in which it will be my ultimate responsibility, and one that I must undertake, to prepare a report in which I regard myself as being just as fully bound, even though I have been seconded for several years from my duties in the High Court, on a basis that has been extensive and unsought, but I have already made it apparent at a much earlier stage that I regard my duties in this Tribunal as being bound by my judicial oath of office. I do have no hesitation whatsoever in accepting the

utter bona fides of Mr. Healy.

And I do find, Mr. Walsh, having noted, whatever conclusions I may come to, that Mr. Desmond and yourself were capable, articulate and perceptive witnesses on earlier occasions, I do regret that it has proved necessary to embark in observations, and I will not make any pejorative observations, which do not, in my view, enhance or facilitate the ultimate task that I must attend to on the basis that I have indicated.

Mr. Fitzsimons, we have a witness tomorrow. I think Mr. Lang has expressed concerns that his evidence will conclude within two days. We will start at the normal time, 11 o'clock tomorrow, but I will seek to structure the day and Friday in such a way as to seek to ensure that that aspiration is met.

Very good. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
THURSDAY, 4TH MARCH, 2004 AT 11AM.