

A P P E A R A N C E S

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(& JOHN BRUTON): Mr. Charles Meenan, SC

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I N D E X

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THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,

23RD MARCH, 2004 AT 11AM.:

MR. COUGHLAN: Mr. Bruton, please.

JOHN BRUTON, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS

BY MR. COUGHLAN:

CHAIRMAN: Good morning, Mr. Bruton. Thank you very

much for your further assistance and attendance. You

are of course already sworn from an earlier occasion.

Q. MR. COUGHLAN: Mr. Bruton, I want to deal now with the

most recent statement that you prepared for the

assistance of the Tribunal. I think you have it with

you, do you? I'll follow the usual procedure. I'll

take you through it, and then we'll come back and

clarify matters if needs be.

I think you have informed the Tribunal when you took

up office in December, 1994, you decided at the outset

what fundamental what your fundamental objectives

in leading the Government would be: firstly, to ensure that the Government that a Government led by you would be as cohesive and workman-like as possible; and secondly, to work tirelessly to maintain the momentum of the peace process and to keep it on track.

To achieve these objectives objects, you realised you would not be a Taoiseach that you could not be a Taoiseach who interfered with the day-to-day management of the various departments of other Ministers. You wanted a Government and Cabinet which ran efficiently, with Ministers whom you could rely on doing their jobs in a way that required little involvement from you, apart from on matters impacting on the broader picture.

You say this at the outset so as to explain why you would not have a detailed knowledge as to the minutiae of various interdepartmental matters, including those relating to the Minister for Transport, Energy and Communications and the awarding of the GSM licence.

You say it must also be borne in mind that you came into Government unexpectedly as a result of a political crisis in the previous Government.

Consequently, when you found yourselves in power, a certain amount of the business of the previous Government had been inherited, including the Government decision to award a second GSM licence. In essence, therefore, you would not have sought

particular knowledge of the competition process for this licence or how it was evolving, as it was business in progress which you had no desire to review or revise.

Responsibility for the award rested with Minister Lowry as part of his Ministerial brief, and you were happy to leave it to him. You felt there was little point in appointing a Minister and then doing his job for him.

You refer to matters raised by the Tribunal in their documents entitled "Matters to be addressed by John Bruton in a statement or memorandum of intended evidence", and the first query raised with you was, you were asked for your understanding of the role envisaged by the Cabinet or Cabinet Subcommittee in the GSM process and in particular, in the light of paragraph 2 of the Government's decision of the 2nd March 1995, namely, a recommendation to be put by the Minister to Government in time for a final decision on the granting of the licence to be made by the 31st October, 1995.

And you respond, "Role of Cabinet Subcommittee".

As far as you can discern, you were not at the Cabinet meeting on the 2nd March 1995. Your diary would suggest that you were in the States at that time. You may have been in touch with the Tanaiste during your visit to the United States, but you do not believe

that you discussed anything to do with the GSM. You think there was a telephone discussion with the Tanaiste about something affecting the ESB and also an announcement that Minister Gay Mitchell had made in regard to Shangan. I don't know what that reference is, but it doesn't matter. It's not to do with the GSM, anyway.

The role of the subcommittee, as you understood it, was to approve of the procedures to be adopted in the holding of the competition. While you would have been aware of the outline considerations regarding the competition, there would not have been any need for you to familiarise yourself with the detail, which was being handled by the Minister and his Department with the assistance of civil servants from the Finance as well as the involvement of an international firm of management consultants.

I think you were then asked for your understanding of the process or purposes for which the competition design allowed a period of six weeks from the date of the availability of the evaluation report to the planned announcement of the result of the competition process.

And you say, six-week evaluation: As you were not present for the discussion at Cabinet on the 2nd March, you would not have been aware of the six-week announcement deferral.

I think you are then asked for your knowledge your role in or knowledge, direct or indirect, of the resolution of the intervention of the European Commission by the capping the licence fee payable by applicants at €15 million. And you inform the Tribunal that you have no knowledge or any memory of any involvement in the resolution of the intervention of the Commission in regard to the capping of the licence fee.

I think you were then asked for your knowledge, direct or indirect, of the progress of the evaluation during the course of the process, either directly from Mr. Lowry or through other officials or programme managers or otherwise.

And you have informed the Tribunal that you have no record or recollection of any discussion with Mr.

Lowry or others about the progress of the evaluation.

Your notes suggest that there was some discussion at or before a Fine Gael Minister's meeting on the 27th July, you think about issues concerning the proceeds of a Telecom-related matter and the ring-fencing of some proceeds for the pension fund, but you really cannot make much sense of the notes you jotted down at the meeting, nor can you say whether they related to the GSM licence or to some other telecommunications matter. A copy of your diary notes for that day are included. You had obviously have taken comfort from

the fact if you had thought about it, that the competition process was being overseen by officials from both the Minister's own Department as well as Finance, and also, as you understood it, looked at by the programme managers, particularly from the Tanaiste's side.

That's something I'll come back to you in due course about, the role of the programme managers in your government, Mr. Bruton.

A. There is one

Q. Yes?

A. There is one point I'd just like to make there.

Having looked back again at the notes that I had of this meeting at or around the 26th or the 27th July, I'm fairly confident now that these related these discussions related to the strategic alliance that was being contemplated between Telecom and some other big operator in respect of their mainstream business, and that it didn't relate to GSM and therefore, you know, the statement that I can't say which it was, wouldn't represent my present view. It was the view I had at the time, but on further examination of the context and of my notes, I am pretty satisfied it was to do with the strategic alliance.

Q. Very good.

I think you were then asked for your knowledge, direct or indirect, in the weeks prior to the 25th October,

1995, being the date on which the result of the competition process was announced, of the stage which the process had reached and as to when the result was likely to be available. And you have informed the Tribunal that you have no recollection or personal record of any discussions in the week prior to the 25th October about the stage where the process had reached in regard to the granting of the licence. You believe that there was quite an intense issue concerning the peace process at that time, with discussions taking place between yourself and John Major over that week. Certainly, that would have been where your preoccupation would have been that particular week.

I think you were then asked for your knowledge, direct or indirect, of the result of the competition process prior to the meeting attended by Mr. Lowry and members of the Government on the 25th October, 1995. And you have informed the Tribunal that you do not believe you had any knowledge, direct or indirect, of the result of the competition process prior to the meeting attended by Mr. Lowry and members of the Government on the 25th October. It is your belief that you were given the information for the first time at that meeting.

I think you were then asked for details of all discussions and dealings, if any, between Mr. Lowry

and yourself, either directly

A. On that point, I do not believe I had any knowledge, direct or indirect, of the result of the competition prior to the meeting attended by Mr. Lowry. Now and members of the Government on the 25th October. I think, for the sake of strict accuracy, I should say that my recollection of the sequence of events is that Minister Lowry came to see me saying that he wanted to have access to the Party leaders with a view to getting something cleared, and that I would have had a discussion with him prior to meeting with

Q. Immediately prior?

A. Immediately prior to meeting with the Minister sorry, the Tanaiste and the Minister for Social Welfare.

Q. Very good. I think that's something I was going to take up with you anyway, because when we come to the note that you made of the time, that would seem consistent with that.

A. Yes. The note, I think, is a note of the discussion, the bilateral discussion I had with Mr. Lowry, rather than a note of a meeting of the Ministers.

Q. Now, I think you were then asked for details of all discussions and dealings, if any, between Mr. Lowry and yourself either directly through officials or programme managers regarding the competition result prior to the meeting between Mr. Lowry and members of

the Government on the 25th October, 1995. And then you go on, subject to what you have just said, you do not believe there was any discussion or dealings between Mr. Lowry and yourself directly in regard to the competition prior to the 25th October, when the meeting between Mr. Lowry and members of the Government took place. You have no record of any such discussions. "I do not believe I was following the matter closely at that time". You cannot answer for programme managers or officials. You have had no recollection of any official reporting anything to you in advance of the discussion of the 25th October and the announcement.

I think you were then asked for precise details of the meeting on the 25th October 1995:

- "1. The approximate time on which the meeting commenced.
- "2. The location of the meeting.
- "3. The identity of the persons present.
- "4. The information provided by Mr. Lowry regarding the result of competition.
- "5. Whether Mr. Lowry informed the meeting that a qualification or rider had been placed on the competition result or that a reservation or concern had been raised by the evaluators regarding any aspects of the competition winner.
- "6. Whether Mr. Lowry furnished the persons present

with any document or documents in connection with the evaluation result, and if so, you were asked to identify or describe such document or documents.

"7. Details of any discussion of the result of the competition.

"8. Details of the discussion, if any, regarding the announcement of the competition result.

"9. Details of all discussions between you and Mr. Lowry, either in the course or at any time proximate to the meeting, and which were recorded by you in your personal note".

And you say that your recollection is that the meeting took place at around 4pm on the Wednesday, 25th October, in Government Buildings. There was to be a discussion between the Tanaiste, the Minister for Social Welfare, the Minister for Finance and yourself at that time about public expenditure. You believe that you met in your office in Government Buildings.

While it would seem that the meeting was convened for the purpose of public expenditure, but it would appear the Michael Lowry communicated with you to the effect that he needed to speak to the Tanaiste, the Minister for Social Welfare and yourself about the GSM2 licence, "so we availed of that opportunity". The Minister for Finance was not present for the discussion.

A. I just would say that I cannot be absolutely

categorical about whether the Minister for Finance was present or not. I don't remember him being so.

Q. I think I can assist you there. You probably are correct if, as you have clarified matters, that you would have had an initial discussion with Michael Lowry, that he would probably not have been present for that, but I think the Minister for Finance himself has informed the Tribunal that he was present with the three Party leaders when Michael Lowry informed the group of the result of the competition; so that may you can't remember?

A. Certainly the Minister for Finance would have been in the vicinity at the time, because there was to be a meeting to consider estimates which was scheduled for 4 o'clock, so that who was actually in the room, there is a suite of rooms there

Q. It wouldn't have surprised you if it was, considering that the meeting or the discussion you were about to have. I think the Minister for Finance, or Mr. Quinn as he is now, has informed the Tribunal that there may have been some discussion taking place as well, perhaps about Aer Lingus

A. I think that the discussion was to do with estimates. There was one meeting of the Subcommittee, the Cabinet Subcommittee. In fact, as far as I know, the only meeting of the Cabinet Subcommittee which took place, I think it was on the 15th February, and my notes of

that meeting suggest that the predominant topic at that meeting was to do with Aer Lingus, actually, even though the minute which you furnished me of the decision-taking at the meeting is all to do with the GSM licence, and there is a sort of a reference to Irish Steel and Aer Lingus being discussed briefly. My memory or, sorry, not memory, my written note that I took, I scribbled down at the time, is about Aer Lingus, so perhaps of those two meetings are being confused. I don't know.

Q. Yes, that's possible.

I think you continue that you have no detailed recollection of the information provided by Mr. Lowry on the result of the competition other than the information you have already supplied informally to the Tribunal, and your notebook entry is available for scrutiny by the Tribunal should that prove helpful.

And we have that note. The notebook entry is mere jottings that you wrote down in your notebook at the time and not attributed to any particular individual, but you assume that most of them are things that were said by Michael Lowry. You do not recall Michael Lowry informing the meeting that a qualification or rider had been placed on the competition result or that a reservation or concern had been raised by the evaluations regarding any aspect of the competition winner. You assume, however, that the reference to

the European Commission taking the Italians to court would have been a reference by him about the dangers to the Government of not accepting the recommendation of independent consultants. The discussion that took place between Michael Lowry, the Tanaiste, the Minister for Social Welfare and yourself centred, to the best of your recollection, around when an announcement should be made. It was accepted by all that a clear recommendation had been made by the independent evaluation process and that neither you nor the Cabinet were going to second-guess the independent evaluation process.

The choice was, therefore, between waiting to make the announcement after a formal Cabinet meeting or making the announcement straight away. The decision was made to make the announcement straight away rather than to wait to consider it further, because it was a decision that was in fact already taken. Once you had accepted the logic that you must go along with the result of the independent evaluation process, it was felt that delaying the matter over a weekend would have led to considerable pressure from disappointed bidders on politicians and others and that this would be unhealthy and productive. Thus, Michael Lowry was then authorised to make the announcement.

You should say that this meeting was immediately followed by the planned discussion on the estimates to

which you have made reference earlier and which involved the Minister for Finance, the Tanaiste and the Minister for Social Welfare. The meeting was in turn followed almost immediately after that by a meeting of the Cabinet Committee on Northern Ireland, which was then scheduled for 5:00pm, the estimates having been scheduled for 4pm. You have no recollection or record of other discussions with Michael Lowry in regard to this matter, either proximate to the meeting in question or at the meeting.

I think you were then asked the approximate date on which you were first informed or otherwise became aware of the involvement of IIU/Mr. Dermot Desmond in the Esat Digifone consortium, and the person or persons by whom you were informed or the circumstances in which you became aware. And you have informed the Tribunal that you have no particular recollection of being aware of the involvement of IIU or Mr. Dermot Desmond in the Esat Digifone consortium. You would not have been aware of the significance of this if you had become aware of it.

I think you were then asked for details of the meeting between you and Dr. Anthony O'Reilly in late August 1996, including details of all matters discussed and any comments or observations made by Dr. O'Reilly regarding the second GSM licensing process. And you

have informed the Tribunal that you met Dr. O'Reilly in August 1996 when as Taoiseach, an impromptu meeting was arranged after you had met at a social occasion in Glandore, where you were overnighing along with your family on your way to Skibbereen to fulfil a public engagement. You note in their letter to the Tribunal of the 17th June last that your solicitors have written in detail concerning this meeting, and you reiterate what was stated therein as representing the nature as to what took place. Your recollection is that it wasn't a particularly long meeting. Dr. O'Reilly raised a number of issues of concern to him, and in particular, the TV deflector issue, and you believe he expressed certain unhappiness regarding the award of the GSM licence. You didn't keep a record of the meeting as you might normally do. This was a meeting of a quasi-social nature arranged spontaneously. Although you don't recall doing a brief note subsequently on the matters discussed, you believe that your special adviser, Sean Donlan, does recollect such a note covering the four main areas discussed as detailed in your solicitor's letter to the Tribunal on the 17th June, 2002.

A. There is just one aspect of that. That solicitor's letter said that I had no prior no indication prior to my arrival in Cork that I might meet Tony O'Reilly. Now, I think it's possible that I may have, in the

sense that it could have been said to me by one by Jim O'Keeffe, who was inviting me to come down, that you know, "Well, you might bump into Tony O'Reilly down there". And obviously, as I will be able to explain, as the leader of the Fine Gael party at the time, I would have had an interest in meeting with a leading newspaper proprietor who was in a position to influence the policy of that newspaper.

And I may have what I am satisfied that while there was no meeting arranged, nor had there been any communication on my behalf with Dr. O'Reilly, that it is possible that it was in my mind going down that the possibility existed that I might meet him. I can't say that categorically one way or the other, but I wouldn't like to be categorically stating that I wouldn't like to state categorically that there was no indication, because I don't know that there was no indication.

Q. Well, you believe that's fair enough there was a possibility you could encounter each other in social circumstances to begin with, I suppose; isn't that right?

A. I am sure I would have been told that he lives in that in the vicinity of where I was to stay.

Q. Yes. If we just go to that letter for a moment now, and we have excluded the name of your host, because there is no need to involve your host in the matter.

A. Yes.

Q. I think the letter is dated 17th June, 2002, and it's from Mr. O'Higgins, your solicitor, to the Tribunal.

It says: "I refer to your letter of the 11th June and confirm, having fully raised the matter with Deputy Bruton and other persons who might be in a position to throw light on the matter.

"Deputy Bruton, the then Taoiseach, confirms that he met the then Dr. O'Reilly around late August of 1996.

The meeting was arranged spontaneously. Deputy Bruton had been invited to Skibbereen for an official function, and it had been arranged that both himself and his family would stay with the family of" blank.

"Doctor O'Reilly has a house in the immediate area, but Deputy Bruton had no indication prior to the arrival in Cork that he might meet him".

Well, you have explained that, that there was a possibility.

"Your host provided an evening reception in their own house and invited a number of people from the area.

While Dr. O'Reilly probably was at the reception, Deputy Bruton has no definite recollection."

"In any event

A. I am assured by others that he was.

Q. That's fair enough.

A. But I can't remember.

Q. "In any event, it would appear that a suggestion was

made on the night that the then Taoiseach might wish to visit Dr. O'Reilly, and he agreed to do so on the following morning. The local Deputy, Jim O'Keeffe, accompanied the then Taoiseach to Dr. O'Reilly's house but did not stay for the discussion. Deputy Bruton met Dr. O'Reilly on the basis that there would have to be a more formal contact if any action in regard to any Government matter was to be taken. Deputy Bruton believes he may have jotted down a few notes. He recalls that it wasn't a particularly long meeting, but he does recall Dr. O'Reilly raising a number of issues of Government policy with which he was dissatisfied, and in particular, the TV deflector issue. Deputy Bruton doesn't particularly recall the specifics but agrees that Dr. O'Reilly may well have expressed some degree of unhappiness about the awarding process for the second GSM licence.

"Following on from the meeting he recalls having deputed his senior programme manager, Sean Donlan, to liaise with the O'Reilly interests in relation to certain of the matters raised, and might also have prepared a brief note on the meeting for circulation to those of his Cabinet colleagues who might have had an interest, but has no recall of this or of its contents.

"We understand that a meeting subsequently took place between Mr. Donlan and Mr. Liam Healy of the

Independent Group. Mr. Donlan's authorisation was to do no more than identify or facilitate introductions to those civil servants responsible, yet this was not considered by the O'Reilly interests to be of particular value, and the matters of concern to Dr. O'Reilly were left unresolved.

"Sean Donlan has confirmed to us his recollection of a handwritten note prepared by the then Taoiseach arising out of the meeting. He believes that the note, which was in the then Taoiseach's own handwriting, covered four issues, and in no particular order, he believes the following matters were summarised:

" the TR deflector issue and the O'Reilly unhappiness with the perceived forbearance by Government of illegal deflector operators.

" the question of grant assistance for a Heinz facility in the Louth region.

" the issue of an access difficulty relating to an O'Reilly concerned mining company in the Midlands.

" his unhappiness over the fact that the GSM licence was awarded to Denis O'Brien notwithstanding substantial international competition.

"We have put a request into the Department of An Taoiseach and the then private secretary at the time and shall convey to you any further information which might be forthcoming."

Now

A. The listing there, of the four items that were raised in a letter on my behalf, is based on the information that would have been furnished to us by Sean Donlan, not on my recollection of the precise matters in those precise terms.

Q. We are just trying to clarify, for the assistance the Tribunal and in ease of everyone; it's not unusual for you to make notes about meetings you were attending or subsequent to meeting; would that be a

A. Well

Q. Would that be a fair

A. I tend to make notes at meetings which either are things that are being said to me or notes to myself, things that I would

Q. That occur to you?

A. That occur to me. I would tend not necessarily to refer back to these again at all. It's partly something to be doing with my hand at the meeting rather than necessarily a rigorous process of recording of what is being said. I have boxes of books like this, which I'll show the Tribunal if they are interested, of meetings I had over the whole 10-year period while I was leader of the Fine Gael Party. Obviously I have less occasion to keep such notes at the moment.

Q. Well, would you distinguish so, and I think even in

the Tribunal's interaction with you, it's not unusual for you to keep a little note when you are at a meeting?

A. Yes, yes.

Q. It would be, do you think, less likely that you would make a note subsequent to a meeting, or

A. Very rarely would I make a note subsequent to a meeting, unless there was something I wanted someone to do which had arisen from the meeting. It would if I might anticipate a question you might ask me as to why I didn't have a note of the actual meeting that I had with Dr. O'Reilly, the likelihood is that I didn't have my green books with me, because this was a social visit with my family to West Cork, which included the opening of the Skibbereen Festival, and I probably didn't bring the notebook with me, and therefore I wouldn't have had a place to write it.

And I probably, in this instance, wrote something down subsequently, which it would appear I conveyed by fax to Sean Donlan.

Q. Now, just now, insofar as your solicitors have written this letter, it's based on your best recollection, and I suppose consultation as well with Mr. Donlan, perhaps?

A. I am not so sure I that consulted with Mr. Donlan. I think my solicitors did.

Q. But just if you go to the second page and the

just the concluding sentence on the top paragraph there, where your solicitors are recounting your recollection that it wasn't a particularly long meeting, I suppose is the first thing, that Dr. O'Reilly raised a number of issues of Government policy with which he was dissatisfied. That seems to be fairly standard. And in particular, the TV deflector issue. I think there is no doubt that there was it was something that he was extremely dissatisfied with?

A. Well, he was, and so was I, in a way. I mean, this was an issue which concerned TV deflectors which were operating in defiance of the licensing arrangements for the MMDS system, and this had been a matter of considerable controversy along the South Coast, where a lot of the public were benefiting at I think a lower cost from the deflection system which gave them a limited number of TV channels, and didn't want to be forced to abandon that and to take up the MMDS system, which was the one in which a company with which Dr. O'Reilly would have had some involvement or interest in. In the course of a by-election campaign in Cork South Central, I had attended a meeting in Carrigaline at which I indicated that it was my strong intention to find a way of licensing the deflectors so as to allow them, the two systems, to compete. When we came to office, we found that in fact, the legal

arrangements that had been made for the licensing of MMDS were effectively watertight, to the degree that they precluded such a licensing arrangement. And one of the reasons why I would have been welcoming the opportunity of talking to Dr. O'Reilly would have been that I was hoping that I might be able to persuade him that he that perhaps the company with which he had some association would enter into some arrangement to effectively buy out the deflector interests and the individuals by offering them, you know, MMDS on a preferential basis so as to you know, get the problem out of the way.

I found that Dr. O'Reilly was not interested in this proposal, which I suppose is understandable from his perspective, in that he wasn't the sole investor in this entity, in a way, and couldn't speak for them; but maybe he felt, anyway, he had the law on his side, so to speak, so I believe that the bulk of the discussion would have been taken up with this topic, and then he would have expressed a sort of general dissatisfaction with the way he or his interests were being recognised in Ireland by the then Government, of which I was the Taoiseach, and would have instanced some examples of this which I would probably have taken note of and would have sent subsequently, then, this fax to Sean Donlan asking him to see if there was anything that he could do within the area where proper

discretion could be exercised to be of reasonable or proper assistance to Dr. O'Reilly's case and his concerns.

Q. Well, would I be correct in understanding your recollection of what transpired was there is no doubt about it; the MMDS was a big issue in the Cork area, wasn't it?

A. It was.

Q. It had been a big issue electorally, and whether he was right or wrong, Dr. O'Reilly was of the view that the law was on his side in relation to matters he was extremely annoyed and he wanted the Government to enforce the law; would that be as he saw it?

A. Yes.

Q. You had another issue to consider, which were political issues as well, and you were attempting to resolve matters, and he just wasn't interested in that. Would that be a fair way of summarising the issue?

A. Yes.

Q. And that was the main topic of the discussion, was it?

A. Well, I'd say it would have occupied well, I really don't remember accurately, but I'd say it probably occupied 50% of the time, and the other issues might have occupied the other 50%.

Q. And amongst the other issues were something were, if we just isolate them. One was a question of an

access to a mine. That was a road or something like that, is that right, in the Midlands?

A. Yes.

Q. And the other was related to, I think, a grant for a Heinz factory in the Dundalk region; that was another issue?

A. Yes.

Q. And you say then in this letter

A. There may have been other things discussed as well.

There was a political discussion. I mean, I knew Dr. O'Reilly at the time; I would have met him socially and you know, there may have been discussions about the political situation then current and matters of that nature which wouldn't have been reflected in any note that I sent to Sean Donlan. So that could have taken up some time, and there would have been the normal social niceties.

Q. Yes. When you say, in the letter from your solicitors, that "Deputy Bruton doesn't particularly recall the specifics but agrees that Dr. O'Reilly may well have expressed some degree of unhappiness by the awarding process for the second GSM licence", can you flesh that out in any way for us, to the best of your recollection?

A. No, I can't, really. I think it may have been more that this was just an instance that of his unhappiness, not so much maybe with the process as

much as with the result, I suppose. But it wasn't an issue that he pressed with me. I don't think he, you know, asked me to do anything about it or anything like that. It was an issue that was more mentioned as

Q. An instance

A. Yes, as a contributor to the atmosphere, so to speak, from his point of view.

Q. Right. I just want to, if I can deal with this matter just a little fuller in ease of everybody, I hope.

You know that Dr. O'Reilly has furnished a statement to the Tribunal in which he says that at this meeting in Glandore, that he didn't discuss the GSM he certainly discussed the deflector issue, and certainly agrees that he was displeased with the Government's dealing with that matter; but just to put his position first, he says that he didn't discuss the GSM and that he subsequently, a few days later, wrote you a handwritten note on Heinz notepaper, or a handwritten letter on Heinz notepaper, and there was a subsequent correspondence, I think, from Independent interests following up matters, but that and it's clear, looking at those particular letters at the moment, that there is no reference to the GSM in the letters. There are other matters identified, and there is no doubt that the deflector issue is a major issue arising the whole time.

A. I don't have those letters.

Q. I don't think we need to go into them in any great detail. They don't refer to the GSM.

A. Well, I haven't got them now. And I haven't even though you are referring to a letter that was addressed to me, but I haven't got that letter.

Q. You haven't got that letter; very good.

A. I haven't seen it in advance of today.

Q. All right. Well

A. Other than at the time of receipt, I assume. But I haven't seen it in any of the discussions that I have been having.

Q. Just in the question of the significance was left in your mind after the meeting with him, was the GSM an issue that seemed like a pressing matter?

A. No, no, because well, at this stage the decision had been taken, and taken, you know, substantial time previously.

Q. In fact the licence had in fact been signed off at that stage?

A. Yes, and it would not have been an issue upon which he, as I said already, would have been asking me to do anything. At the most, it could be would be that he mentioned it, as I said, as an illustration of you know, a general underappreciation of the contribution that he might be potentially able to make. And it's quite possible that you know, it

would this that I would remember him making a passing reference, and he would forget it because it was only a passing reference.

Q. Right

A. I can't go any further than that.

Q. All right. I now want to deal with Mr. Lowry has informed the Tribunal about certain meetings he recalls with Dr. O'Reilly. You weren't present at any of these meetings, if they took place, between Mr. O'Reilly and Mr. Lowry. But he does in his statement inform the Tribunal that is, Mr. Lowry informs the Tribunal that Dr. O'Reilly was certainly annoyed about the TV deflector systems, and he says that he conveyed that to the Government when you met Dr. O'Reilly by appointment in Glandore on the 25th August 1996, and that you reported back on your minutes of that meeting to a Fine Gael Ministers meeting, and that you stated that Mr. O'Reilly was seriously aggrieved and annoyed with a number of Government decisions which affected the Independent Group, including the GSM licence and TV deflector issue. During the Minister's discussions, it was generally felt that Mr. O'Reilly's dislike of a then coalition Government was reflected in the Independent Newspapers' political coverage, and that it was decided to involve Government adviser Sean Donlan to mediate in the matter, and on the 4th September, 1996,

Mr. Donlan met with representatives of the Independent Newspaper Group at Hatch Street, and amongst those attending on behalf of the Independent Newspapers was Mr. Liam Healy, Mr. David Palmer and the late Mr. John Meagher. Do you remember informing Fine Gael Ministers of any discussion that you had with Dr. O'Reilly in Glandore?

A. Well, the first thing I'd like to say in regard to the question that you put to me is that I do not believe that my meeting with Dr. O'Reilly was by appointment. It may have been anticipated by me that I would have such a meeting, or it may not, but I think the meeting was actually arranged spontaneously.

Q. Right.

A. Secondly, it is quite possible that I would have informed Fine Gael Ministers of the outcome of the discussion not on the basis, I think, of a minute; I don't think I would have had a minute of it but in an impromptu sorry, in an informal setting, in that on every Thursday, we used to have a lunch for the Fine Gael Ministers. It was a way whereby I would be able to discuss with the Fine Gael Ministers, you know, Party-related matters; and also, if there were any issues that might cause difficulty with the other parties that were coming before Government subsequently, it was an opportunity for me to ensure that those would be, you know, smoothed over and dealt

with.

Now, it would be in the context of the first of those purposes that it wouldn't be surprising if I had had a meeting with Fine Gael Ministers at which I might have made such a you know, told them about this meeting.

It possibly could have been done in a quite a you know, very relaxed way, not a sort of a "Now, I want a report about this item on the agenda". It would be just "By the way, I met Dr. O'Reilly", you know, and they would be interested, obviously, because of who he is and the newspaper that he is associated with. And it is possible that that happened, but I don't have any active memory of it, you know, so it's quite possible that it would have happened.

As to when, I don't know. I'm looking here to see when the first Fine Gael Ministers meeting would have taken place after that, but I mean, I could look it up if you wanted. But again, it wouldn't necessarily be it probably would be likely to have been at the next such meeting or lunch, but when that lunch was, I'd have to check. I have my diary here, but I'd have to yes, there was actually there was a meeting with Fine Gael Ministers and Minister for State on the 2nd September, but I somehow doubt that this is the sort of thing I would have discussed with Ministers for State. In fact I am pretty sure I wouldn't.

There was a Fine Gael Cabinet Ministers lunch on the

5th.

Q. On the 5th September?

A. I am not saying that this was reported at that meeting; I don't know, because I don't remember.

Q. Well, you think that it's not improbable that you had such a discussion with Fine Gael Cabinet Ministers?

A. Not improbable.

Q. Now, we know that Mr. Donlan had a meeting with Mr.

Healy and Mr. Palmer and Mr. Meagher, I think; isn't

that right? And again, we'll have Mr. Donlan giving

evidence about that, about the matters they were

discussing there. And he said that, again, there were

issues raised, and the deflector issue was certainly

raised, and he believes that the issue of the GSM

licence was mentioned en passant, as he said in his

statement himself. Mr. Donlan would have, I suppose,

discussed with you what had transpired at the meeting

with Mr. Healy and Mr. Palmer?

A. I suspect so, yes. I mean, it would appear that I

sent him a note of it, and he would have probably

discussed it with me subsequently; but discussions

with Mr. Donlan are not things I'd necessarily

remember, because there would be so many of them every

day. His office was literally, you know, four or five

yards from my own office, and you know, we wouldn't

be meeting by appointment.

Q. Mr. Lowry has informed the Tribunal that Mr. Donlan

informed Mr. Lowry

A. Could I have time just to find Mr. Lowry's statement, if you are quoting from it. Is it a particular tab,

or

Q. It's in Book 39, Tab 1 or sorry, 3.1. There is just one matter I want to refer to for the moment in it.

A. I have a lot of paper here, but it seems to elude me.

Q. I'll give you a copy.

A. Thank you.

(Document handed to witness.)

Q. You can see under Number 2, "Tony O'Reilly". If you go down to the bottom there, you can see that

A. This is a separate statement from the statement about the licence.

Q. Yes, Mr. Lowry referred to a number of statements.

Different issues were raised with him and

A. I am not sure I have read this before. I don't think I have seen this before. Maybe I have.

Q. You can see there that "Mr. Donlan met with representatives of Independent Newspapers at Hatch Street and amongst those attending on behalf of Independent Newspapers were Mr. Liam Healy, Mr. David Palmer and the late Mr. John Meagher. Mr. Sean Donlan reported back that it was a most difficult meeting and that some very harsh comments were made about the Government and individual Ministers. He outlined a

list of grievances and a series of demands from the Independent Group. Mr. Donlan expressed concern that the Government was being placed over a political barrel."

Do you remember the tenor of the meeting being reported to you by Mr. Donlan in these terms, or

A. I don't really have a memory of that. I'd normally, if I wanted to refresh my memory on that, I would look at the relevant book. I haven't got that book with me. This statement that I have just been handed, as far as I can discern, I am seeing for the first time.

Q. All right, fair enough.

A. And you know, obviously, if I had seen it before, I would have brought the relevant book with me, which would be the basis upon which I would activate such memory as I might have.

Q. Well, perhaps you can look at the relevant Green Book to see if you have anything around that time.

A. I'd have to go back

Q. You needn't do it today.

A. Yeah, okay, I will.

Q. And do you remember whether it was ever reported to you to your knowledge, anyway that Mr. Lowry was considered a persona non grata with the Independent Group, by the Independent Group?

A. I can't say.

Q. All right, fair enough.

A. I can't say one way or the other. I just can't say.

I don't have I don't have a recall of the reporting back by Sean Donlan on the 5th September. I do remember being told, or learning, but where or when I learned it, whether it was at that meeting or otherwise, or even in subsequent preparation for this Tribunal, but I do remember learning that Sean Donlan's discussions with the representatives of the Independent Group had been fairly fraught. But as to more than that, I cannot really say more than that.

I'd have to

Q. All right. Mr. Donlan will be giving evidence anyway.

A. Yes, yes.

Q. Well, we needn't go on. We all know about the newspaper headline on election day in June 1997; I think that's a matter of public record, isn't it?

A. Yes. It was an editorial on the front page, which is an innovation for that particular newspaper.

Q. If you wouldn't mind, Mr. Bruton, if you just go back to page 4 of your own statement now. It's just something I'd like your assistance on.

And this relates to the progress of the competition, and you say that you took comfort from the fact that the competition process was being overseen by officials from both the Minister's own Department as well as Finance and also, as you understood it, looked at by programme managers, particularly from the

Tanaiste's side. That was a reference to Mr. Greg Sparks, I think, isn't that right, the programme manager on the Tanaiste's side?

A. Yes.

Q. And am I correct in understanding the way matters worked?

A. Could I just say something on that?

Q. Yes.

A. I think it would be more accurate to say that I was aware that programme managers from the Tanaiste's office, and in particular Mr. Greg Sparks, would have been taking a particular interest in telecom-related matters, and it may be that the bulk of their interest was more in the strategic alliance than in the GSM issue. But notwithstanding that, I think I would have still drawn some comfort from the fact that there was this you know, additional political oversight on the general in that general area and that Mr. Sparks, who is a very able person, was reasonably knowledgeable about telecommunications matters.

Q. Am I correct in understanding that the way matters were handled, in general, in your Government, was that the programme managers for the three Party leaders that is, Mr. Sparks; Mr. Donlan I presume was your programme manager would that be the position? and I think Mr. De Rossa had a programme manager who was in fact a civil servant that they would have

received the Cabinet papers the Thursday or the Friday preceding the next Cabinet meeting, and that the task was to reduce any areas of misunderstanding or conflict that might arise in relation to matters coming to Cabinet, to allow for the ordinary progress of matters at Cabinet, because it was a coalition Government; would that be a fair way of describing how things worked in general?

A. I'm not so sure it would be as formal as that. The programme managers had a meeting every week anyway, and their function is as I think set out in an intended statement of evidence from Mr. Donlan.

Q. It is, yes.

A. But I think their primary function was to ensure that the programme for Government was actually carried through, because there had been examples in the past which had caused difficulty to some of the smaller parties in previous governments, that once the Government was formed, the programme for Government was forgotten. And they were anxious to ensure that that wouldn't ever happen, and the programme managers system was instituted for that purpose.

But I think once established for that purpose, it did evolve into performing the function that you have referred to in your question, which is to smooth the path for Government decision-making by identifying in advance issues that were likely to be contentious.

Obviously it wasn't the programme manager system wasn't the only method that we had available to us for doing that, in that we also would have had a meeting of the three heads of Party in the Government an hour before each Cabinet, in the normal course, where we would decide what our joint recommendation would be on particular items on the agenda, or alternatively that we weren't ready to make any recommendation and that the matter might not therefore be taken.

So you know, there were layers of layers of winnowing of business to ensure that those items of business that came to Cabinet were ones upon which a reasonably speedy decision could be taken because issues had been smoothed out.

Q. Yes. And on the as you say, you were not involved with the minutiae of each Department, and that was how you decided to be Taoiseach in your own Government, isn't that right, and you weren't going to interfere in Government departments and you left it to Ministers?

A. Yes.

Q. The question of the second GSM licence was a Cabinet decision; we know that, isn't that right? And that the running of the competition was to be run by Mr. Lowry's Department, and in that Department, there was an Evaluation Team assembled comprising of civil servants from Mr. Lowry's Department, civil servants

from the Department of Finance, and the assistance of international management consultants, Andersen Management International. Would you have been aware, in broad terms, of that?

A. Yes, I would. As you will be aware, I was not present at the meeting on the 2nd March when the competition was launched, because I was in the United States; and that might have meant that I would be, shall we say, less aware of the

Q. The detail?

A. of the detail that would normally be expected of someone in my position, because you know, I would have had a memory of it, if I had been there, from the discussion, which I didn't have, because I wasn't there.

Q. But I think it was you would perhaps have been aware, again in general terms, that the Minister, following this competitive process, was to return to Government with a recommendation, but the decision was a Government decision?

A. Yes, I think so. I mean I think it is normal that matters are approved by Cabinet, even though sorry, it would be normal that there are many matters that would be approved by Cabinet formally, even though Cabinet might have decided that the actual decision would have been taken elsewhere, but that the Cabinet's role would be the one of formally noting and

approving the decision taken elsewhere.

Q. But the decision of the Cabinet on the 2nd March, 1995 and you'll find that do you have a separate book of documents? It's in Book 41, Tab 44. I think we may have served you with a separate book just with these specific documents referred to.

A. I think I have this stuff here all right. This is

Q. You can see that it's

A. This is the decision of the 2nd March?

Q. Yes. I think you have that, do you?

A. Yes, I have that.

Q. And you can see that the Secretary is informing that

"I refer to the memorandum dated 17 February 1995, submitted by the Minister for Transport, Energy and Communications, and the Government approved the announcement of an open competitive bidding process with a view to the granting of a licence to a second cellular phone operator on the basis that

"1. The bidding process would be promoted and controlled by the DETEC.

"2. The recommendation would be put by the Minister to Government in time for a final decision on the granting of the licence to be made by 31 October 1995.

"3. The general terms and conditions attaching to the licence would be as set out in appendix to the aide-memoire."

So it was approved to announce the open competitive

process. The bidding process would be promoted and controlled by DTEC, and the recommendation would be put by the Minister in time for a final decision to be granted for the licence to be granted by the 31st October, 1995.

Now that changed; that date, I think, subsequently changed when the Commission intervened, and the competition had to be adjourned for a period. That went back for a month, in any event, but would you have been generally aware that this decision had been taken by Cabinet?

A. Generally aware, yes, but not specifically aware. I wasn't there.

Q. I appreciate that.

A. And I you know, I wouldn't have asked the Tanaiste of a run-down of all the decisions that had been taken in my absence.

Q. I understand.

A. So I mightn't I might only I mean, I cannot say how aware I was, really.

Q. All right, all right. Well, can I take it that you would have had, again, some awareness of the Commission's intervention in relation to the Irish process, or was it something that you weren't particularly

A. No, you cannot take that.

Q. All right, you weren't involved.

A. I really don't remember that at all.

Q. That was a departmental matter, if anything?

A. Well, I have no memory of it, anyway. And I don't think I was made aware of it.

Q. Right. Well, did you, in any event, become generally aware that there was going to be a cap placed on the licence fee in the Irish competition?

A. No, I don't believe I did.

Q. Right, all right.

Now, can I also take it that you would have been unaware of the makeup of the various applicants for the licence?

A. I might have heard gossip.

Q. That so-and-so, so-and-so was involved?

A. Yes, moving in sort of social setting, but not in any formal or official way.

Q. Would you have known the actual makeup of a particular consortium or anything like that?

A. No, not at all. I wasn't in any way interested in this at all.

Q. Now, I'll come in a moment to the meeting of the 25th October, and that is the meeting of the Party leaders, and/or the Minister for Finance and Mr. Lowry, and just any discussion which you had with Mr. Lowry which preceded that. But could I ask you this: Did you have any in that period prior to that meeting, did you have any knowledge of what was going on at all

about this second GSM licence process, other than that it was going on?

A. Any knowledge at all?

Q. Other than it was going on?

A. I don't think I would. I mean, that was a particularly fraught period in the peace process. It was a day before the bishops made their statement about the divorce issue in preparation for the divorce referendum, and there were a number of other there had been quite a substantial controversy concerning CIE, I think in which Mr. Lowry himself was involved, and those were the sort of things that would have been preoccupying me, rather than anything to do with the licence.

Q. I understand.

A. I probably wouldn't have been aware that there was a deadline of the 31st October for a decision on that; you know, I would have

Q. Or you wouldn't have been aware that it would have been extended to the end of November?

A. I don't believe I was. I really don't.

Q. I just want to ask you, because it's just a civil servant who was involved in the evaluation process, a Mr. Ed O'Callaghan from DTEC, made a note at one stage, and he has given evidence, and I just want to ask you it's on Day 196, page 70 and 71. Now

A. I haven't perused this evidence at any time.

Q. It's a very small issue that I am going to ask you to consider, whether you had any involvement at all, is what I wanted to ask you. I'll give you a copy there, if you go to Question 123, there. He is making a note of various things that happened at various times at various meetings. That's what he is recording here.

If you go if you go to Question 123.

"6. Informed at meeting of 23/10 that Minister wanted to go to Government 24/10 and get clearance for winner. Sean McMahon and I said that we couldn't sign off on it as the report was deficient and had not been fully read. Martin Brennan, Sean McMahon and John McQuaid met secretary and a further week was agreed to consider report. Meeting went on until 7:30pm.

"23/10 informed that Taoiseach had requested Secretary to expedite the position with a view to clearance of government the following day. I went through drafting changes with MB 4-5. Meeting at 5pm. Left at 7:15pm drafting changes still being discussed and to be faxed to MA."

I just wanted to ask you, did you intervene or do you ever recollect intervening I should say that Mr. Loughrey has given evidence to the Tribunal; he has no recollection of you intervening seeking to expedite matters to go to Government the following day around this time, or at any time.

A. I don't believe that I did intervene at all in that

fashion. There was a Government meeting on the 24th October.

Q. There definitely was, yeah.

A. But I certainly would not have been likely to have made any such request.

Q. This is just this man recording something that he is told by somebody else now, by another civil servant.

He thinks he would have been told this by somebody in the Development Division or Sean McMahon, another civil servant in his Department, but he is not saying he was told this by you or that you intervened or anything. But do you have any recollection?

A. I think if I had wanted to convey some request to another Department, I would have done it through someone in my office. I certainly wouldn't have ever been in touch directly with people in another office. I don't believe I made any such request.

Q. Would you have had any reason yourself to wish to expedite a matter like this, when you had no involvement or great knowledge of the process?

A. No, no. I suppose it's possible that you know, somebody might, for other purposes, have used my name as a way of

Q. That's what I was thinking

A. Might have quoted me as a way of helping, put the fear of

Q. Lending the weight of the Taoiseach office

A. political retribution, but I don't believe I made any such intervention, but...

Q. Now, if we could go then to the 25th October and your note, Mr. Bruton, please. If we just look at the handwritten note first. And I think am I correct in thinking the correct way to read this note is, you read the right-hand side of the note as being the first part of the note; is that correct?

A. Yes.

Q. And then you go to the left-hand side of the note for the follow-on?

A. Yes.

Q. Now

A. Just to fill up the page, basically.

Q. The portion of the note at the top of the left-hand side, you see: "Spring 27 million added to ODA by June MD O'Higgins". That has nothing to do with the GSM matter?

A. No, I think that's actually probably something that overflowed from the previous note, which was a preparation, I think, that I was having for the discussion on public expenditure, and there is a number of miscellaneous matters jotted down here to do with different departments and their spending. And I think this reference here is probably a reference to overseas development assistance, which would have been a matter probably that would have been of interest to

the Tanaiste because it was in his Department.

And then there is it's possible that I was advised that the Tanaiste would be raising some matter in regard to the allocation for Michael D. Higgins, but that's now, I am just

Q. Interpreting?

A. I am interpreting these notes; I have no active memory of the matter.

Q. But the note, on the right-hand side and the latter portion of the note, where it begins with the word "Albert," that is, to the best of your recollection, a note of a discussion you had with Michael Lowry; is that correct?

A. I believe it is, yes. It is something that I wrote down during a discussion.

Q. Can I take it, as you have clarified this morning, you believe this was a discussion that would have taken place when he first contacted you to see if he could avail of the opportunity to bring a matter before the Party leaders which was scheduled for 4 o'clock in relation to expenditure matters?

A. There was an estimates meeting scheduled for 4 o'clock and a Northern Ireland Committee meeting scheduled for 5 o'clock. And I assume that the then Minister for Transport, Energy and Communications would have phoned my office and said, "I want to see you; there is something I want you to bring before the Party

leaders, and can I see you now".

And I would have seen him, and I assume that this was you know, at or around 4 o'clock, which was the scheduled time for the commencement of the estimates meeting.

Q. That estimates meeting was to take place in your office, you believe; is that right adjacent to your office?

A. Well, yes, there is the Taoiseach's Office, which is the office where the Taoiseach sits and does his work, and then there is a meeting room on the sort of off the corridor beside it. I think that it's probable that the discussion with Minister Lowry and possibly the discussion with the Party leaders about the matter that he brought to me would have taken place in my own personal office, and it's probable that the estimates meeting would have taken place in the next room, which is a formal meeting room. But then obviously I'm speaking on the basis of what would have been the norm rather than what I actively remember.

Q. All right. Well, the note, anyway, commences:

"M/communications"; that's the Minister for Communications, I take it?

A. Yes.

Q. "It can't be given before it goes to Cabinet GSM.

Quinn should not be involved.

Loughlin is a participant in another one.

"It is a major decision.

"In Italy the Government did not accept the Government report and there was a consequential challenge.

European Commission took them to court because this change of policy.

"2 (of the) Project Team are D/F (Department of Finance).

"Albert had promised it to Motorola. ML had stayed out of the process. Leased line issue Telecom's account system can cost inadequately".

Now, if we just go through the note, am I correct in understanding that what is being communicated to you is that the result can't be given before it goes to the Cabinet? Is that right?

A. That would be my understanding of what that means, yes.

Q. And it relates to the GSM; would that be correct?

A. Yes well, the result, or the licence? Sorry

Q. I'll just explain to you: The competition produced a result, which then involved a licence negotiation process.

A. Yes. Well

Q. The recommendation of the Department had to be approved by Cabinet. Now, I think there is no major dispute, if the leaders of the political parties were perhaps in agreement, it would be reasonable to assume it would go through Cabinet, I suppose, wouldn't it?

I am not saying it would be a shoo-in but it would

be

A. Oh, yes.

Q. And then "Quinn should not be involved. Loughlin is a

participant in another one." That has to be a

reference to the Minister for Finance, and that would

make it seem reasonable that he wasn't present when

this discussion took place, in any event, because I

think his brother, Mr. Lochlann Quinn, and his

business partner, Mr. Martin Naughton, were involved

in another consortium.

A. Yes.

Q. That may or may not have been known to you at the

time, or prior to this.

A. Indeed, probably not. But

Q. But this is something that Mr. Lowry is conveying to

you, at least?

A. I believe so. I mean, these are just the bits of the

discussion that I wrote down because they seemed

you know, interesting or whatever. I didn't this

is not a comprehensive note of what was said to me.

Q. I appreciate that.

Then he says, "It's a major decision." There is no

doubt about it. And then obviously he is informing

you then: "In Italy, Government did not accept

Government report and there was a consequential

challenge. European Commission took them to court

because this change of policy."

Then he that's informing you, would you agree, that it looks we must accept this report because there was trouble in Italy, where they didn't accept the report and the Commission got moving over it?

A. Yes, that's what I wrote down. I understand that the issue in Italy may have been a slightly different one.

Q. It was different. But you are noting what you are being told, at least, anyway?

A. I am noting what I understood I was being told. What my understanding was.

Q. And can I take it from that that you would have no reason not to accept the word of your Minister when he is informing you of something that: "Look, effectively, what I am advising you in relation to the matter is we must accept the report because there was a problem in another country where the Commission were unhappy with how things transpired there"? That seems like a reasonable interpretation.

A. Certainly that's what I wrote down, and you know, it is likely that what I wrote down is what I absorbed. It is also possible that you know, issues concerning the up-front fee and that should be charged, which I have subsequently familiarised myself with, are things that I wouldn't have understood and I mightn't therefore have you know, written an accurate note that if they were explained to me, I

might have written it differently; but I think that's

you know, that that's speculation.

Q. It probably is, because in fact the whole question of fee had been resolved to the mutual satisfaction, I think perhaps unbeknownst to you to the mutual satisfaction of Ireland and the Commission by this time in fact; isn't that right?

A. Yes.

Q. And then there is just housekeeping information, isn't that right? "2 (of the) Project Team are Department of Finance". I suppose that again is something which is comforting to a Taoiseach, is it, to know that the Department of Finance are watchmen?

A. I think my concern in this discussion would have been to ensure that we would not decide to announce something unless there had been adequate checks and balances within the system.

Q. I understand that.

A. And I think one of the checks and balances that is wont to be relied upon in any matter is the check of having a different Department, who have a different Minister and therefore separate access to Cabinet in the event of something going wrong involved.

And I would have written down the reference to "On the Project Team" or "From the Department of Finance" as a point that reassured me that the matter was being had been dealt with in a very careful way, in the

careful way that I had come over my career to expect the Irish civil service to deal with any matters affecting public interest or public goods.

Q. And particularly the Department of Finance, perhaps, as

A. And particularly the Department of Finance, I suppose, as someone who has been twice had the honour of being the Minister for Finance, I have a particularly high regard for that Department, and it would have been something that would have reassured me considerably that two officials from that Department were involved.

Q. And then, the next note is pure politics, isn't it: "Albert had promised it to Motorola"?

A. Yeah, I think it's more gossip than politics. It's sort of a passing remark that might have been made to yes, sort of paint the sort of political context.

Q. All right. I'll come back to that in a moment.

Then obviously there was some discussion along the lines of whether Mr. Lowry was involved in it, and you note here that you are being told "Michael Lowry stayed out of the process"; isn't that right?

A. Yes, that he kept himself separate from it, in order that there would be no suggestion that his any preferences that he might have had would influence in any way the decision-making which was to be done through this Project Team on which two of the Project Team were from the Department of Finance, not the

Minister's own Department, therefore people who referred to another Department; and also, as we are aware, there were the consultants, and I would have been told as well, I am sure, at this meeting that this these consultants, Andersen Consultants had made this recommendation, that this had been endorsed by the Project Team and that it was therefore something that was ought to be accepted and announced. And the fact that there was no Ministerial involvement, it would have assisted me in coming to that decision.

Q. Now, can I take it that you were never told that the work of the Evaluation Team sorry, first of all, were you told at this time that the final report was not available, or may not have been available?

A. I don't remember that. I think

Q. Wasn't available.

A. I think we were concerned with the timing of an announcement of a decision that had been made by the Project Team, and it being the case, that it was our collective resolution that we would accept what the Project Team had decided without question, and once that was the case, I would not have been minded to go behind that and to start asking about you know, which document was ready or

Q. I understand that.

A. I mightn't even have been aware that there was such a

thing and an evaluation report.

Q. Fair enough.

A. Because it wouldn't have been

Q. It's not something you were told, at least, to the best of your knowledge?

A. To the best of my knowledge, I don't believe I was. I don't yeah, and it's not something that I would necessarily have been minded to ask, because once I was assured that the Project Team had made a recommendation, that it was clear and unambiguous, that that was a Project Team that had representation of more than one Department and it was acting on independent consultants' advice, I wouldn't have been inclined to go into the detail of it. I would have assumed that others would have checked that, you know, that the content of the paperwork was adequate; whether it was already printed or not was another matter.

Q. Right. Were you ever informed that the recommendation of the Project Team contained what was described by Mr. Sean Fitzgerald, when he gave evidence to the Tribunal here, and he was the Assistant Secretary in the Department in relation to communications, contained a health warning in relation to the finances of the Communicorp Group in the Esat Digifone consortium?

A. I don't believe that I was informed of that. I

believe, as I said already, the concern would have been with the bottom line, which was that there was a recommendation that was clear.

Q. Were you ever informed that the report, even in draft form, contained what Mr. Michael Andersen has informed the Tribunal in correspondence, contained what he described as a marker in relation to the finances in respect of the Communicorp side of the Esat consortium?

A. I don't believe I was. And I think it's important to make the point that this was a meeting I had with a Minister who wanted me to get other Party leaders, who were waiting in another room, possibly, for a meeting for another purpose, to agree to something, and I would therefore have been concerned only with the essentials. And the essentials, in this instance, would have been that a clear recommendation had emanated from the independent process. The issues of the kind that you are mentioning are ones that you know, if I had been able to devote a day to the subject, might have come up with not in the context of a day on which I had an estimates meeting at four o'clock and a Northern Ireland Committee meeting which was due for 5 o'clock, and a meeting with the staff of the Attorney General's Office, which I subsequently had a social meeting with them, which I had later on that evening.

Q. This isn't direct a criticism of you, Mr. Bruton

A. I am not taking it in that way, either, but I am anxious, at the same time, to assist the Tribunal in setting the context, which is the sort of time pressure that a not untypical day one would be under in the job that I had at that time.

Q. Would I be correct in understanding the process of Government that if the Taoiseach in a Government is persuaded of a situation by a Minister, that the support of the Taoiseach carries substantial weight in getting any decision through?

A. It does, of course, but that varies depending on the composition of the Government; and the Government, in my instance, in the case we are speaking of here, was a three-party Government, so it wouldn't, in practice, have been necessary to have the consent of all three Party leaders.

Q. I understand that.

A. But undoubtedly the support of the Taoiseach would be important.

Q. Can you recollect if, in the course of this discussion, that Mr. Lowry informed you that there were there was a ranking, that there was a 1, 2, 3 or something of that nature?

A. I just can't remember.

Q. All right. Well, could I just perhaps you can assist us, or maybe it may assist your memory; looking

at your note here, the references in the note are in fact to the 1, 2, 3, and the reference to "Quinn should not be involved, Loughlin is a participant in another one" related to the consortium which ranked third at that stage. Does that assist you?

A. No, it doesn't, really.

Q. And the reference to "Albert had promised it to Motorola"; Motorola were in the consortium which ranked second at that stage.

A. I think if that was if the discussion with me was one where I was being informed of the ranking, I think that the references to those in the ranking would have come together in the note. There would have been a reference to each of them in sequence, but in fact, as you can see from the note here, there is a reference to one of them, which is in the context of the you know, ensuring that the Minister for Finance was not put in any difficult position personally as distinct from his Department. And then the other reference, which is the "Albert had promised it to Motorola" reference, is considerably further on, so to speak, in the sequence of the writing.

So I don't think that there is any basis from the note of drawing any inference. I don't remember at all any reference to one 1, 2 and 3, or who was 1 sorry, who was 2 and who were 3; I don't remember any such reference. I don't believe that I was given any such

information at that time. I don't believe I would have been interested. I was simply interested in whether or not it would be appropriate, given that a clear recommendation was made, to make that announcement there and then or wait.

Q. Now, I appreciate that you were just recording, and there were time constraints, and you were just jotting down some notes of what was being said to you. But you have, in your note, recorded some of what Mr. Lowry said to you, and would you not agree with me that there are two references there one which is of a clear political nature reference to a promise being made to Motorola by a previous Government, and also one of a quasi-political nature, if I could use it in that respect, because it was a reference to Mr. Quinn.

And doesn't it look, Mr. Bruton, that what was happening here was that Mr. Lowry was getting your support you were not involved in this process, you had no great understanding of the process but he was getting your support for the purpose of an early decision and announcement in relation to this matter by making references to political matters and not to any sort of evaluation process. Isn't that what was happening?

A. No, I don't think so. I mean, it would be likely that any discussion I would have had with him would have

had quite an amount of political content. I think it's likely that the main focus initially would have been on the business of the meeting, which was on the issue of deciding whether or not we would go ahead with an announcement that day, and certainly the reference to "Albert", which is later in the note, probably was something that was said to me after I had already decided that the process was of a sufficiently watertight and satisfactory nature, that an announcement could be made, and as the meeting was winding up, there would have been some, you know, chat about it, but I don't know. I mean, it's I wouldn't really

Q. The last reference to that Mr. Lowry stayed out of the process you see, what I'm trying to understand here is this, Mr. Bruton: According to evidence we have heard, that two days prior to this there was a meeting of the Evaluation Team, and at that, there was some disagreement amongst people, and certain Principal Officers went to see the Secretary; and according to the evidence of some of them, extra time was granted to consider the matter. Now, they came back, and you see the note that I read to you earlier there, Mr. O'Callaghan saying that the Taoiseach wanted to expedite the matter, another note saying Minister wanted to expedite the matter, and matters moved very fast then; and this came to this group of Ministers

who were scheduled to meet at 4 o'clock, you being the Taoiseach, and you being present.

In the normal course of events, based on the Government decision, and on the running of this process, matters had always gone to Government; they had gone by way of aide-memoire normally, but they had gone to Government with the full matter detailed for Government, and a decision was taken. And as I understand it, in the normal course of events, those papers would have come to the programme managers as well to consider matters.

A. Not necessarily in the matter of issues that had to be or ought to be decided quickly. I think

Q. Why did this have to be decided quickly?

A. Because I think it was known that a decision had actually been taken.

Q. Who knew this?

A. Known to the people who had taken the decision, and known to the Minister, and known to those who were being informed of it, including myself. And I think

Q. It wasn't known to one member of the Project Team, Mr. Sean McMahon, at that time

MR. FANNING: Chairman, I want to object to this line of questioning by Mr. Coughlan. In the last few minutes, he is necessarily, by implication, trying to suggest that there was something insidious, something

underhanded or something sinister about the manner of Mr. Lowry's approach to Mr. Bruton on the 25th October, 1995, and that he in some way acted improperly. The evidence that the Tribunal has heard is to the effect that Mr. Loughrey, the Secretary General of Mr. Lowry's Department, had advised him, had advised Mr. Lowry, as Minister, that a result was in. Mr. Loughrey has given evidence, and for that matter, Mr. Jennings, the departmental press secretary, has given evidence that it was preferable that the result be announced as soon as possible.

That is the evidence the Tribunal has heard. On that basis, Mr. Lowry went and spoke to the then Taoiseach, Mr. Bruton. And it is very unfair that Mr. Coughlan is persisting in putting questions without that important piece of information put to the witness, that appears to suggest that Mr. Lowry was taking some kind of shortcut on a frolic of his own. That is not the evidence that this Tribunal has heard.

CHAIRMAN: There may be that evidence, Mr. Fanning, but there also is the evidence that was given by members of the Project Group that they were of a belief that extra time had been granted. There is the evidence of what is contained in Mr. Bruton's own memorandum, and in the task of the Tribunal, in seeking to elicit what may have transpired at this important stage of events, it is necessary for Mr.

Coughlan to explore matters, and I am certainly not going to inhibit him from doing so.

Q. MR. COUGHLAN: Sir, perhaps I should explain, Mr. Bruton.

Mr. Jennings, who was the press secretary, or a press officer in the Department, has given evidence to this Tribunal that in all his dealings with the Project Team, that is the Evaluation Team, a team which had adopted a protocol over and above their normal civil service responsibilities in relation to confidential matters, that there had been, as far as he was concerned, it had been rock solid; that they behaved absolutely perfectly; they didn't leak, as far as he was concerned.

Now, do you have any information which would assist the Tribunal as to why matters needed to proceed with such haste at this time, or did you even know they were proceeding with such haste?

A. Well, my recollection is that it was represented to me that once a decision had been taken, that it was desirable that an announcement should be made. And as I explained in my written statement to you, the view that I took was I will quote from

Q. I think it's page 8.

A. "The choice was therefore between waiting to make the announcement after a formal Cabinet meeting or making the announcement straight away. The decision was made

to make the announcement straight away rather than wait to consider it further, because it was a decision that was in effect already made. Once we had accepted the logic that we must go along with the result of the independent evaluation process, it was felt that delaying the matter over a weekend would have led to considerable pressure from disappointed bidders on politicians and others and that this would be unhealthy and unproductive. Thus Michael Lowry was authorised to make the announcement."

Q. That's fair enough. It was as a result of those representations being made to you that you were of the view that matters should proceed; is that right?

A. It would be wrong to say that these were representations. This is a view that I came to myself, as well, that this was the

Q. Well, on what basis, Mr. Bruton, can you assist the Tribunal, did you come to that view?

A. On the basis I have just set out in my statement.

Q. Where did you get you got information from Michael Lowry that isn't that right, that you must accept the decision of the you must accept the decision of the Evaluation Team, is that right, because of what he said happened in Italy?

A. Well, I don't think that the matter to do with Italy was all that relevant. I think the real consideration was if you had set up an Evaluation Team, if you had

ensured that that Evaluation Team was operating with the aid of international consultants, if those international consultants had made a clear recommendation, and if the Project Team had decided to accept that recommendation, that the only decision that one could then take, other than accept that and go ahead with it, would be to not accept it, in which case you'd have to re-open the whole process all over again. And I would have thought that that might not have been prudent, given that this was an international competition and there had been quite an amount of notice given to it, that I think it wouldn't have been particularly prudent to have put the matter in that put the matter aside for a further length of time. And I have learnt since, from reading some of the material that has been provided to me by the Tribunal, that in fact Ireland was at that stage behind the game, so to speak, in introducing a second operator into the mobile market; and I assume that those arguments would have also argued in favour of a reasonably speedy decision rather than a nonacceptance of the decision that had been come to from an independent process and starting from scratch all over again.

Q. Well, could I just ask you this, and I understand the argument you make, but as you say, if you set up an Evaluation Team, and you retain international

consultants, and you pay for them, and they come up with, as you say, a clear recommendation, that when it goes to Government, there would have to be very substantial there'd have to be a very substantial reason, perhaps, for the Government to say "We are just rejecting that", having gone through a process; I think that's what you are saying. Isn't that right?

So therefore the decision was one that was taken, in effect.

But applying that logic, Mr. Bruton, what was the need for any expediting of the situation in not allowing it go to the Cabinet, where the same argument would prevail, the following day there was a Cabinet scheduled for the following day, even, or if it were to go back to the next Cabinet meeting, what would be the compelling logic for not allowing that happen?

A. Well, it was a scheduled lunch of the Cabinet the following day which was concerning itself with employment-related matters.

Q. Right, all right.

A. It wasn't a normal Cabinet meeting.

Q. All right.

A. But the net point that we had to decide, the Party leaders and I, was one of whether the matter was ready to be announced at that stage, and whether there was any point in delaying a further 24 hours simply to go through the formality and it would have been a

formality of approving something that had been decided in principle, in the sense that one had decided that one was minded to accept the independent evaluation process result.

Q. Now, nobody will know, because it didn't happen, but if the matter had gone in the normal way to Cabinet, and if the report had been available and had been scrutinised, as would be the normal procedure in relation to Cabinet, perhaps even by the programme managers, perhaps matters which such as referred to by Mr. Sean Fitzgerald, that it contained a health warning in relation to the finances, may have been something that could have been considered by Cabinet, may have been; isn't that right?

A. It is right, but I think one would say that in all decision-making in Cabinet, one is deciding on the basis of a balance of probabilities as to what's right; and the fact that there might be, you know, arguments on the other side, or health warnings, or markers, or any of those terms that you use, would be noted, but I think they would be noted against the background of the greater reality. And that greater reality, in this instance, was that we had established an independent evaluation mechanism. It had involved more than one Department. It had involved an international consultant. And it had come to a conclusion. And we, I think, would therefore have had

to have a very substantial reason, is the word I think you used yourself and I would agree with it very substantial reasons to want to upset that on the basis of markers or health warnings. The very you know, the very term itself, "health warning", implies that you know, it's something that you are free to accept or not.

Q. But, of course, this decision was taken without the decision-makers here, which was the Cabinet; isn't that right?

A. In formal terms, yes, but in fact

Q. And the people who had to make this decision, as we now know, were not privy to all information, all important information relating to the matter; isn't that right?

A. I think that's a statement that is open to contention.

Q. Well, let's look at what happened here, Mr. Bruton. On the 25th October, Mr. Michael Lowry came to you, and he informed you that there was a decision; isn't that right? Is that right?

MR. MCGONIGAL: What relevance does that have, Mr. Chairman

MR. COUGHLAN: Mr. Bruton is a former Taoiseach, and surely he should be able to answer that.

MR. MCGONIGAL: Sorry for interrupting you, but what concerns me, Mr. Chairman, is that what Mr. Lowry seems to have been informing Mr. Bruton about was the

result of a competition, not the decision to award or grant the licence. That decision to award or grant the licence wasn't taken till May of 1996. I think we want to be careful what we are talking about in October of '95. And I think if we scrutinise the document of the 25th October from Mr. McMeel to the Minister for Finance, which was the information given to him, apparently, prior to the meeting of what may have been the meeting between the Taoiseach and the other members of the then Cabinet, and if we then look at the decision which was taken on the 26th October and the aide-memoire which was before the Cabinet on the 26th October, we begin to get a true understanding of the nature of the business that was taking place at that time. And there has been a tendency to confuse the granting of the licence with the announcement of a decision to award a right to negotiate or a decision to announce the result of a competition. Those things should not be run together. They are definitely separate, and it's clear from the documents that they are separate.

CHAIRMAN: Well, at five to one, I think it's appropriate we take up those and any remaining matters in the balance of your evidence this afternoon, Mr. Bruton, at five past two, if that's suitable to you. Thank you very much.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF JOHN BRUTON

BY MR. COUGHLAN:

Q. MR. COUGHLAN: I just want to wind up in relation to this note now, Mr. Bruton, your note of the 25th. And would it be a reasonable understanding of the note and the meeting that you had, or the discussion you had with Mr. Lowry, that he came to you to seek consent to announcing the result of the competition? Would that be

A. He came to me to seek consent from me to his being allowed to make a recommendation to the three leaders of the parties in Government that rather than delay the matter, that as the process had come with a clear result on a basis that we had agreed would be the basis upon which the result would be determined, that that result could be announced straight away.

Q. Fair enough. And would it be a fair reading of your note that he was conveying to you that the recommendation was one that, in effect, should be or had to be accepted?

A. Well, it wouldn't be a fair reading of my note because my note doesn't refer to these matters at all.

Q. Would it be a fair reflection of your understanding of what happened?

A. It would be a fair reflection of what happened at the meeting. My note would only represent odd bits of

things that I wrote down in the course of the meeting, reminding the Tribunal, if I may again, that these notes were not prepared by me for any purpose of subsequent use.

Q. I understand that

A. Or recording anything or anything like that. They were just things that I wrote down at random during the meeting. Sometimes I might refer back to them, but it would be quite rare.

Q. In the context of accepting the recommendation, one of the matters, at least, which you note is a reference to something that happened in Italy; would that be correct to say?

A. Yes. There is a reference to it, yes, that's right.

Q. And would it be fair, whatever weight might be attached to it, whatever there is, to some extent, a political flavour to some of the comments made, notably the one relating to Albert and Motorola; would that be a fair way of interpreting it?

A. There is a political flavour to it indeed. It would be wrong, however, to assume that everything that's written down there was persuasive in regard to the decision. It wasn't. The decision was made on the basis that I have already described in my evidence here. The material that's written down there are just, as I have said, things I jotted down in the course of the meeting.

Q. Very good.

A. I don't I don't remember each of those individual things being said. I do recognise that they are written down in my handwriting. That's all.

Q. All right. Well, that can be viewed by the Tribunal, and I just want to ask you now, turning to another matter altogether.

You have given evidence in the past about the New York fundraiser. I just wanted to ask you this: Did you know anything about the Golf Classic in the K-Club in October of 1995? And I mean not "anything" that it took place, but did you know anything about those who had contributed and how they had contributed at the time?

A. Well, I was at the Golf Classic in question, so obviously I would have seen the people that were there. I do not believe, but then I do not believe that I had any advance involvement in either the selection of the invitees or the arrangements for the function. It wasn't something that it would have been my custom to be involved in.

Q. Specifically, were you aware of an Esat/Denis O'Brien contribution to that classic?

A. I don't believe so, but it may be that someone from as I say, it may have been that someone from Esat, or Denis O'Brien, whom I would have recognised, was present; and if he was present, I would tend to

assume, I suppose, that he was there because he had contributed rather than that he was someone else's guest. But I don't have, really, a very full recollection of that event. I mean, I am not so sure, but we could have had more than one fundraiser in the K-Club during the ten years that I was Party Leader, and I could have these elided in my mind.

Q. This was the first one.

A. Was it? I see.

Q. This was the first one organised by Mr. David Austin, and it was the first event organised by Mr. Austin, according to Mr. Miley, that this was the first. I know there were subsequent golf classics in the K-Club, and we know that Mr. O'Brien did subscribe to others in subsequent years as well. But do you have any specific recollection or knowledge of that particular Golf Classic at that time, or the fact that the contribution was to be done on the basis that there would be no publicity attaching?

A. No, I don't, and I think it's not the sort of thing that I would be likely to have known about, either. I could look up my diary for that day, but I imagine that I would have gone to the function, and that would have been it, you know. I don't think that I'd have been certainly, you know, I wouldn't have been involved in any of the preparatory work. What date was it?

Q. It was the 16th October, 1995.

A. That's right. Well, I was at the dentist that day.

That much I can say. And subsequently, the following day, we had a Government meeting. It was 7.30 was the time. I don't seem to have had a particular number of things on that day.

Q. Now, Mr. Sean Donlan has informed the Tribunal in his memorandum of intended evidence that in sometime in the summer, August, September of 1995, around that time, he is not sure of the exact time that he received an inquiry from the American Embassy, I think, about whether the decision in relation to the GSM would be a Government decision. And he made inquiries and he, I think, responded by informing whoever made the inquiry of him that it would be a Government decision. Can I take it that that is the sort of thing Mr. Donlan would have been able to do without conferring with you or discussing with you?

A. It would indeed, yeah.

Q. It's not anything that you have any recollection of?

A. No.

Q. Do you ever remember if Mr. Donlan or anybody ever spoke to you about anything that may have been said to Mr. Donlan, if it was said to him, by Mr. Mark FitzGerald?

A. I don't recall anything

Q. About the decision, whether the decision

A. I don't recall anything of that nature, no.

Q. Thank you very much, Mr. Bruton.

A. Thank you.

CHAIRMAN: Mr. Fitzsimons?

MR. FITZSIMONS: No questions.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Just a couple of matters, Mr. Bruton.

Mr. Coughlan was asking you a moment ago about the

16th October and the Golf Classic, and if I'm

understanding you correctly, you have no real

recollection of attending the Golf Classic or very

much about it?

A. I don't think no, that's not quite the way I have

put it. I do recall I was at a Golf Classic. There

was a Golf Classic on. As I explained to the previous

questioner, the there were there may have been

other golf classics that Fine Gael held there, and my

memory of it would be sort of the elided with all of

those. I don't have a specific recollection of

anything that happened that night. Now, if my memory

were jogged and if people could produce things that

happened that I could be asked about, I might be able

to recall them; but I have no I have no active

memory of it, if I may use that term.

Q. That's what I had understood, that you have no active

memory. And in particular you have no active memory as

to whether or not you met Denis O'Brien, or whether he

was there or not?

A. I don't, but that's not to say he wasn't, and that's not to say I didn't meet him.

Q. But equally, if you had been there, certainly the people that you might have met would have been members of the committee organising the Golf Classic?

A. If they were there, I probably would, but I wouldn't meet people at a Golf Classic in any hierarchical order. I would just meet them as I came in the door, and I would chat with people I knew and seek to maybe be introduced to people I didn't know, and it would all be in

Q. Very casual and informal?

A. All done in a slightly jocose sort of

Q. It would be a relaxed meeting?

A. Yes.

Q. Casual and informal?

A. Casual and informal, rather than memorable.

Q. Well, I'll take your word for that.

Now, just in relation to the matters relating to your notes and the decision, I just want to try and properly understand that. The meeting between yourself and Mr. Lowry was effectively Mr. Lowry coming to inform you as to the position in relation to the result of the competition to award the licence?

A. Yes, and also to convey a recommendation that we would meet with the other two that I would meet with the

other two leaders and himself with a view to a decision being announced.

Q. And as a result, during the course of that conversation, you noted certain matters which were said to you by Mr. Lowry?

A. I think most, if not all of the things that I wrote down, were things that were said to me by him; but it is not impossible, as I explained earlier in regard to these notebooks, that I might have written down something that was an impression I had in my own head. But I think most of these things were things sorry, I'll start again.

I think it's probable that these were all things that in one form or another, Michael Lowry might have said to me.

Q. And following on that meeting, then, there was a meeting between yourself, Mr. Lowry, the Tanaiste, the Minister for Social Welfare, and possibly also the Minister for Finance?

A. Yes.

Q. When these matters when this issue was rediscussed, that is the issue of the result of the competition?

A. Well I think it would have been at that meeting with the other two Party leaders that the decision would have been taken that we would authorise the Minister for Transport, Energy and Communications to make an announcement.

Q. And that is what you are referring to at the bottom of page 7 and the top of page 8 in your statement, where you say that it was accepted by all that a clear recommendation had been made by the independent evaluation process, and that "neither we nor the Cabinet was going to second-guess the independent evaluation process."

A. Yes.

Q. And then the other bit that was read out this morning. Now, do you recollect, as a matter of interest, whether the Minister for Finance was at that meeting or not?

A. Well, as I explained this morning, my own feeling would have been that he possibly wasn't at at least the initial part of the meeting, where the decision was taken to authorise the announcement, which is which I think was a meeting between the Tanaiste, the Minister for Social Welfare, and myself and the Minister. But as I also explained this morning, the Minister for Finance was in the vicinity, and I understand that the Minister for Finance has furnished a statement to the Tribunal to the effect that he was present at the meeting, and you know, it's quite possible that he was and that my recollection to the effect that he wasn't is faulty. It's also possible, however, that as he was in the vicinity, that part that there was, so to speak, an overflow

of the initial meeting which was just between the three leaders and the Minister into the other meeting at which he was present for certain, which is the estimates meeting which took place

Q. But a decision was taken amongst whoever was at that meeting?

A. Yes.

Q. And then, the following day, then, the matter came before the Cabinet and the decision to note the proposal to award a licence to Esat Digifone to provide and operate GSM mobile telephony within Ireland under the Post and Telegraph Services Act of 1983 with a statutory consent of the Minister for Finance and agreements of appropriate licence terms with Esat Digifone. That was passed on the 26th October?

A. Yes.

Q. I think you have seen that decision and

A. I have that decision, and also the memorandum that was considered

Q. the aide-memoire attached to it?

A. which has been circulated to me.

Q. And the aide-memoire, I think also?

A. Yeah.

Q. I think the aide-memoire preceded the meeting, and then the decision of the meeting, and in particular paragraphs 1 and 2 are the material ones. And at that

stage, that was recognising the decision of the Project Team to award the or what was happening was you were awarding the right to negotiate the terms of a licence to Esat Digifone?

A. Well, the content of the decision is as set out.

Q. Thanks, Mr. Bruton.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'DONNELL:

Q. MR. O'DONNELL: Mr. Bruton, I appear for the Department of Transport, Energy and Communications, as it then was.

You, I think, were familiar with the civil service for some considerable time prior to 1995 when you were Taoiseach; you had worked as a junior Minister in the seventies and then as a Minister in the eighties?

A. Indeed.

Q. And can I take it that you would not question the independence or integrity of the civil service?

A. I'd go further than that, and I'd say that it is something that I implicitly relied upon at all times in my political career as a Minister. I have regarded the integrity of the Irish public service as one of the most important elements in the democracy of this State, and its probity and its ability to attract investment, the fact that we have a civil service unlike that in other countries, which is non-political, which is extremely trustworthy, perhaps slow in its decision-making, but slow for the reason

of ensuring that its decisions are entirely proper at all times, and in this sort of matter, I would have relied implicitly, at all times, on the probity and the professionalism of the Irish civil service, both in the Department of Transport, Energy and Communications and in the Department of Finance, which were the particular departments involved in this, but in general as well.

Q. And both then and looking back from where you sit now, you have no reason to question your judgement as to the independence or integrity of the civil service generally and in particular, the civil servants involved in this

A. Absolutely not. On the contrary.

Q. Now, just one other matter, Mr. Bruton. There is some dispute as to whether or not the final version of the report was in the Department of Communications when Minister Lowry went to see you on the afternoon of the 25th. Some witnesses think it may have been; others aren't sure whether it was or not. But it's a document that runs to 52 pages, and there are approximately the same number of pages in the appendices to that report. If Minister Lowry had had that report and came to you with approximately 100 pages, would you prefer to read the report, or would you just want to know what the result was?

A. I am afraid I have to say I would have just preferred

to know what the result was. As I have explained in regard to earlier, in response to earlier questions here, this matter came to me on the basis of some urgency, but also on a day in which I had a very full agenda of prearranged meetings, one a Cabinet Committee on estimates, another a Cabinet Committee on Northern Ireland, and you know, if unless there was ambiguity, I would not and it was presented to me that there was ambiguity, I would not have wanted to have read through the report.

Q. Unless, if I could put it this way, unless there had been a draw; provided there was a clear winner, you were happy to go with the result?

A. Yes, and it was represented to me that there was a clear winner. It was represented to me also that not just the Minister, but also the view at the top level of the Department was that there should be a quick decision and an announcement, and for those reasons, I was persuaded.

Q. And can I take it that when you went in to meet the other Ministers, the Minister for Social Welfare, and the Tanaiste, that there was no demand at that stage that a final report be produced for them to consider?

A. I can't recall whether there was even a reference to the existence of a final report. I wasn't at any of these meetings, so I don't know, you know, I couldn't say.

Q. Can I put it like this: If there was anxiety or distress about the absence of a report, you probably would have remembered that?

A. I would indeed, I would indeed.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FANNING:

Q. MR. FANNING: Mr. Bruton, I represent Mr. Lowry in this matter. There are a few matters that I am hoping you can assist me with.

Firstly, if I can just go back to the 25th October, 1995, once again. I think we have established at this stage, and it's agreed from your perspective, that Mr. Lowry came to you that afternoon with a result of the competition from the Project Team, or the Project Group?

A. Yeah.

Q. Mr. Coughlan, in his questioning of you earlier on before lunch, suggested that there were political issues or political considerations that were evident from the notes that you did take from your discussion with Mr. Lowry. I think that's self-evidently the case; isn't that so?

A. Political factors didn't influence the decision in any way.

Q. I'll be the last person to suggest that to you, actually.

A. The decision was taken on the basis that I have already outlined; I won't recite it again. The things

that I happen to have noted down, perhaps because I am a politician myself, were things that caught my interest because of their, you know, political character, perhaps.

Q. Well, isn't the point, Mr. Bruton

A. But there were other matters as well which I noted down which were manifestly not political, such as the involvement of the Department of Finance, which was important to me from an administrative point of view as distinct from political.

Q. Even to the extent that you did note down matters political in that note, it is the case that you were a politician and Mr. Lowry was a politician, and the technical work was in fact over. Isn't that so?

A. Yes.

Q. So it actually was a political matter, at this stage, for you to be discussing with Mr. Lowry on the 25th October?

A. I suppose there was a political dimension to the question of the timing. I mean, the timing of announcements is something that is quintessentially a matter for political decisions in governments.

Q. Exactly. And you had political options at that stage open to you?

A. Yes, we had the option of delaying the matter or deciding otherwise, I suppose. The matter didn't arise.

Q. Exactly. So I mean, what I want to suggest to you at the very outset, that there is nothing odd that Mr. Lowry would come to you and you'd have some sort of a political discussion with him as to the issues that arose out of the technical result that the Project Team had produced. There is nothing odd about it, is there?

A. No, nothing odd that we would have a political discussion. I don't I don't think that the matter that you describe as political matter was persuasive to a significant degree, or at all, in regard to the decision. But you know, when you meet a fellow politician, there will tend to be chat about things that are not necessarily going directly to the point, but are sort of atmospheric or surrounding.

Q. Well, if I can put it like this: Isn't it a fact that ultimately you went with the recommendation of the Project Team, so ultimately the political input was relatively neutral?

A. Yes, as I explained in response to an earlier question, I was very much persuaded by the fact that not only was the Project Team, which consisted of officials of two departments and the consultants recommending this, but also the Department at official level was also recommending a quick announcement. So these are the issues that really would have been persuasive of me in agreeing to the course to take.

Q. Can I ask you more specifically, did Mr. Lowry make you aware or can you recollect if Mr. Lowry made you aware that his Secretary General, Mr. Loughrey, and his departmental press secretary, to name but two, had specifically advised him that it was best that the result be announced immediately?

A. It's quite possible that he did, but I don't have a specific recollection of it. It would be likely that I would, you know, would have asked him, you know, "What's the official advice", or something like that, and it would be if that was the advice, it would be likely that he'd have told me. But I can't you know, I didn't write that down, so I can't say much more.

Q. And from your own perspective, leaving aside the view that Mr. Lowry brought to the meeting, you agreed, I take it, that it would be unhealthy and unproductive to attempt to delay the announcement, and to leave a sort of a vacuum where rumours and pressures may emerge?

A. Yes.

Q. To the extent that you took a view yourself, that was the view you took?

A. Yes.

Q. And the option taken, to announce the decision straight away as opposed to waiting for the subsequent Cabinet meeting, was, from your perspective as

Taoiseach, a legitimate political option available to you?

A. I wouldn't describe it as a political option as much as an option in regard to the way the decision would be brought forward. It would be wrong to, you know, characterise this as political in the sense that sometimes people understand the word "political" to mean as motivated by extraneous factors. This was a decision which seemed to be in the public interest because of the need to make the decision quickly from the point of view of getting the roll-out of a second operator quickly, and it seemed to be wise, given that we had decided that we would act in accordance with the outcome of an independent process rather than have this matter, a matter for Ministers separately to decide, that once the operative part of the decision-making, which was the independent evaluation and official evaluation was concluded, to make the announcement.

Q. Mr. Bruton, Mr. Lowry will say in evidence that he had absolutely no influence over the work of the Project Group. He will say that he was given very limited information as to its progress, and when informed of the final result, he really just brought that result to Government straight away. Do you have any reason to doubt his position on that?

A. None, no.

Q. Has anything subsequently arisen then, Mr. Bruton, which would cause you in any way to question the role played by the Minister, who you selected for that office, in connection with the award of the GSM licence?

A. No.

Q. And I think you have already answered my colleague Mr. McDonnell that nothing has subsequently arisen to your knowledge, Mr. Bruton, concerning Mr. Lowry or any other aspect of the integrity of the process which would cause you to question it?

A. I have no reason at all to question the process.

Q. I want to ask you now, Mr. Bruton, a few questions in connection with your dealings with Mr. O'Reilly.

Firstly, you have given evidence today in response to Mr. Coughlan's questions about a meeting you had with Mr. O'Reilly in Glandore. The first issue that's troubling me is what date that meeting was on.

A. Yes.

Q. Well, do you know what date it was on, that meeting?

A. I think I do; hold on a second. I'm trying to find the reference to in my diary here to the visit to

Q. Well, I'll tell you the date Mr. Donlan thinks

A. Yes, I have it here, actually. Saturday the 27th July is the day; I have it here now. Saturday the 27th or the 28th, it could be.

Q. 28th of which month?

A. It looks like July.

Q. 28th July?

A. Yeah. This is what my diary suggests.

Q. Can you tell me what your diary says you were doing on the 25th August?

A. 25th August, I was in Lougala, Roundwood, it was a Sunday, with Richard Ryan.

Q. That's quite a distance from Glandore.

A. Well, there is obviously no question it's obviously July, then.

Q. Because, I mean, there does appear to be quite a bit of confusion in the statements as to when this meeting takes place, Mr. Bruton. There was only one meeting in Glandore; can I start with that proposition?

A. Yes.

Q. Because, to be quite fair now, Mr. O'Reilly has taken the view in his statement that the meeting was on the 28th July.

A. Yes.

Q. In your statement, and in Mr. Donlan's statement, it appears that the meeting you thought was in August, on the 25th August; but perhaps that's just an error.

A. I think it is an error, because I obviously didn't check the date, as I ought to have done, with my diary, and I have the diary here now. And the diary would suggest that this meeting was on the 28th, but I

think the possible explanation well, it's not an explanation but I went on holidays on the 4th August and was on holidays in France until the 20th August. So there wouldn't have been a lot done about it.

Q. No, no, no, I'll come to that point. Just on the net issue, different people seem to think the meeting took place at the end of August and the end of July. But your diary seems to suggest that it was in fact at the end of July?

A. That's what it does suggest, yes.

Q. Okay. So others may be wrong in their recollection.

I mean, Mr. Donlan

A. Including myself.

Q. Including yourself, including Mr. Lowry, indeed, who was probably receiving the information secondhand. No one suggests he was in Glandore. And including Mr. Donlan, who again was receiving information secondhand?

A. Well, that may be his it's possible, although I find it hard now to explain how this might have happened, it's possible that because I went on holiday so soon after the meeting, that the outcome of it, as far as Mr. Donlan is concerned, wasn't conveyed to him until the end of August. That's possible, but I can't really say.

Q. You see, the interesting point is Mr. Donlan is quite

clear in his statement, on page 11 of his statement, that the evening of that meeting in Glandore, you faxed to his home a handwritten note summarising the issues raised. It would have to be said his memorandum isn't in the slightest bit ambiguous as to the sequence of events. But he says the meeting was on the 25th August. We just think at the moment that he is mistaken in that?

A. Yes.

Q. Okay. Well, let's press on.

There was only one meeting in Glandore with Mr.

O'Reilly; we are clear on that?

A. Yes.

Q. For what purpose did you meet with Mr. O'Reilly in Glandore?

A. As I explained in my earlier testimony, I was anxious to meet with Mr. O'Reilly because I was aware that he is somebody who had and has influence in the country through one of the media outlets which he is involved with. I would also have been concerned that he might have had some might have had some difficulties in his perception of the way he was being treated by the Government, which might be influencing the way in which his influence in his media outlet might have been exercised; and I was anxious, to the extent that it might be possible for me to do so, to allay any concerns that he would have.

I also, more particularly, was concerned about the differences which had emerged in regard to the operation of deflector systems in West Cork sorry, not in West Cork, on the south coast of Cork, and I was anxious, as I have already explained, to see if we could not resolve those by a method that I have already outlined here.

Q. If I could take it slightly in stages, that's quite a comprehensive answer, but if I could take it slightly in stages. You described the meeting in your statement as being an impromptu meeting, and you went on to say, at Answer 10, page 9 of your statement, that it was a meeting of a quasi-social nature arranged spontaneously. You qualified that position slightly this morning in your evidence; is that not so?

A. In the extent that I acknowledged the possibility that I might have known before I went to Cork, or as I was going to Cork, that there was a possibility that I might meet Dr. O'Reilly and that therefore I might have prepared myself in some way for that possibility. But the actual meeting was arranged spontaneously. It was not arranged in advance.

Q. I wonder, could we have page 10 of Mr. Donlan's statement, Answer 13, page 10 of Mr. Donlan's statement.

The first paragraph there, Mr. Bruton, you are

probably able to read it on the prompter: "The Taoiseach told me in late July 1996 that he expected to meet Dr. O'Reilly shortly and asked that I make inquiries internally and brief him on matters which might arise." That's Mr. Donlan's memorandum of intended evidence.

Now, if he is right about that, Mr. Bruton, it does appear to suggest that you knew a meeting was looming with Mr. O'Reilly.

A. Well, I knew that Mr. O'Reilly had a home in Glandore. I knew I was going to stay in Glandore.

Q. Well, was it more than intuition, now, Mr. Bruton, or

A. I am not sure about that. It may have been suggested to me that, by someone like, say, Deputy Jim O'Keefe, who was the person who had sought to have me come to Skibbereen to open the festival, that it would be possible for me to meet Tony O'Reilly if he happened to be there at the time, and that that could be useful to Fine Gael, the Party of which I was a leader, that I should do so.

Q. I mean, just on the face of that paragraph, though, it does appear that you were asking Mr. Donlan on your behalf to effectively brief you and prepare you for a meeting that you were likely to have with Mr. O'Reilly on the various issues?

A. Yes.

Q. So, whilst the specific arrangement to meet him on a particular day might have been spontaneous and might have been impromptu, the general idea that you were likely to meet him at some stage rather than later was not accidental?

A. Well, I either was going to meet him there on that occasion or it was unlikely that I was going to meet him. If he happened not to be there at that time, I wouldn't have met him probably at all for quite some time. But as I explained earlier this morning, that I have already explained that I

Q. Who was keen to meet who?

A. I'd say that I was keen to have the meeting for the reasons that I have already outlined. I can't say

Q. But Mr. O'Reilly had an agenda, though, didn't he, when he met you?

A. I can't say that he sought the meeting with me. I have no reason to believe that he did. Certainly not directly.

Q. But once it presented itself to him, he certainly had a defined number of issues that he wished to take the opportunity of raising with you?

A. Yes, yes. And I had an issue that I wished to raise with him, which was principally the one to do with resolving the deflector issue.

Q. You have described that already this morning. So it was a meeting, then, that was designed, from

your point of view, irrespective of how planned it was, it was designed to afford some sort of audience to Mr. O'Reilly, and you I think already knew that he had concerns about Government policy in a number of areas. Isn't that so? I mean, it's very unlikely that either of you were going to a meeting to present Mr. O'Reilly with an opportunity to tell you that everything was going just fine?

A. Well, I think it's not it wouldn't well, in fact, the matter was a situation was as you describe, but it wouldn't be unusual for me to meet him anyway if I happen to be in the same place. But in practice sorry, in fact, there were issues that needed to be discussed.

Q. But I mean, meetings generally happen when people are unhappy about things and there is an issue that needs to be addressed. They don't happen for no reason, do they?

A. I don't know that that necessarily follows. Perhaps most meetings happen because people want some outcome from the meeting that can be obtained by having the meeting. Whether that is something that indicates unhappiness or not, isn't always the case, that people would be unhappy.

Q. Well, it is the case in this instance, in any event, that Mr. O'Reilly used the meeting to convey to you a type of wish list of gripes and complaints that he had

about Government policy in various areas that intersected with his business interests; isn't that the position?

A. Yes.

Q. Your recall, Mr. Bruton, is that award of the GSM licence to a consortium other than the one that he was associated with was an issue that was mentioned at the meeting; isn't that so?

A. Yes, my belief is that it was mentioned. I don't think that much was made of it. It was more in the matter of an illustration of a more general concern that he had.

Q. But wasn't it also the case that, amongst the other matters that he mentioned, most of them were forward-looking problems that he wanted the Government to do something about?

A. Well, you'd I'd have to go through the items that were mentioned in Mr. Donlan's memorandum.

Q. We can do better than that, in fact; we can take out Mr. O'Reilly's letter that he wrote to you two days after the meeting. He says

A. As I explained in response to Mr. Coughlan earlier, I haven't had sight of that letter for quite some time.

So

Q. Perhaps now is the moment. I wonder, could the letter be put up. It's the letter that was written on Heinz headed paper. It's undated, but Mr. O'Reilly says it

was written on the 30th July, two days after the meeting, and that would appear now to make sense in light of what you have said.

I wonder if you simply want to read through it there at your own pace.

A. I have to say that I haven't seen this

Q. That's a typescript. I should say it was a handwritten perhaps you should be shown the handwritten version first, just to see if you recollect it.

CHAIRMAN: I am certainly not going to ask you to come back another time. It's sensible we deal would you like me to take five minutes until you familiarise yourself?

A. No, no, I'll just read it now. But it is a bit difficult for me because, as I have explained in response to earlier questions, in trying to remember matters like this, I rely on notes that ^may have taken elsewhere, diaries and things like that, and it is therefore difficult to give absolutely categoric answers in regard to something that I am seeing, if not for the first time, perhaps for the first time in eight years.

CHAIRMAN: I'll bear that in mind.

Q. MR. FANNING: I wonder, could you nonetheless read through the letter?

A. I can, of course.

Q. Perhaps I'll read it out, I think Mr. McGonigal is suggesting.

"My Dear John.

"Thank you for dropping in on Sunday morning for the proverbial 'cup of tea'. I hope that our conversation served to convince you or at least explain to you how disappointed I am in the course of action taken by the present government in regard to 'private business", as it is quaintly described. I and my colleagues are alarmed at the inattention of certain Ministers, and equally alarmed that we have become something of a political football in area others of our business.

"Counting:

Heinz.

Independent Newspapers.

Fitzwilton.

Waterford Wedgewood

Arcon

our hotels which include Ashford, Dromoland and Portmarnock in which we have over 25% ownership and Wellworth in Northern Ireland."

I don't think I need to read through all of it, but I mean, unless anybody particularly wants me to, but

A. What's the date on this letter?

Q. Well, there isn't a date on the letter; that's the curious thing. But Mr. O'Reilly says that he sent the letter on the 30th July, two days after meeting you,

and he does in his first line, you'll see, suggest that it was a recent letter, because he refers to "Thank you for dropping in on Sunday morning", and he says "Tuesday" in the letter, so that would appear to make sense; but do you see the range of topics that he mentions there, Mr. Bruton? That's all I want to raise with you at this point.

A. I see the range of topics, yes.

Q. Now, isn't it the case that

A. I departed for Cork from Cork to Le Havre on Sunday the 4th. I wouldn't have been in the office, I presume, on the 3rd. It's quite possible that this letter arrived, therefore, in my Department at a time when I wasn't present.

Q. Absolutely.

A. And that therefore, this letter was sent to someone to be dealt with without my seeing it. I have to say, looking at this letter, it doesn't look familiar.

Q. I wonder, would you like to see the handwritten version?

A. I have it in front of me. It doesn't look familiar, but that of course is something it is eight or nine years ago.

Q. The only point I want to put to you, just at the minute, is the list of different topics and business interests that Mr. O'Reilly listed right at the outset of the letter, and you at least have heard me read out

those topics.

A. Yes. "Heinz, Independent Newspapers, Fitzwilton, Waterford Wedgewood, Arcon, our hotels and Wellworth in Northern Ireland."

Q. Now, they were all continuing business interests of Mr. O'Reilly's in July of 1996; isn't that so?

MR. MEENAN: I don't actually think how the witness could be expected to know that.

MR. FANNING: That's fair enough.

Q. You don't disagree with me, I take it, that they were continuing business interests?

A. As I am saying, I think I may well be seeing this list for the first time. I'm not sure that this letter was one that I I am not aware that the Tribunal has drawn this letter to my attention prior to my coming up here this morning, and I haven't been able to contextualise it. I would normally, if it was a letter that I had received, I would have been I would have sought the assistance of my then Department, the Department of the Taoiseach, to find out from them what happened to this letter. I haven't had that opportunity, because this is a matter that is being brought to my attention by you here this morning or here this afternoon for what is, in effect, the first time.

Q. Perhaps I'll park the letter, then, for the moment, on that basis.

Can I just return to the answer you gave me shortly before I caused the letter to be put up on the screen, then, Mr. Bruton. The answer you gave to me was that you do recollect Mr. O'Reilly at your meeting in Glandore raising the GSM issue with you; isn't that so?

A. I think he raised it with me. I mean, I find it as I explained in my earlier testimony, I didn't have a note of this meeting, and I formed the impression when it was officially raised with me that this would have been one of the subjects that was raised, but I don't have any way available to me of verifying my memory or my recollection.

Q. I appreciate the caveats you are entering into, but such as your recollection is, your recollection is that it was an issue raised by Mr. O'Reilly; isn't that so?

A. That's right, yes. As I explained, is one of a number of issues indicating what he perceived to be an attitude on the part of the Government, but not something that, in my view, he was asking me to do something about at that stage.

Q. Well, you see, that's the whole point. Nothing could be done about it, for reasons that you explained yourself this morning?

A. That's right.

Q. So there was no point in certainly following up with

any letters about it to you, was there? It was a fait accompli at this stage?

A. It was a fait accompli.

Q. In terms of the confidence in your recollection, are you bolstered in any way by the fact that Mr. Donlan in his statement recollects that you faxed him, on the very same day that you met Mr. O'Reilly, a list of four issues, one of which was the GSM licence, that were raised at the meeting?

A. Well, I think so, yes, because I imagine that I would have wanted to convey to him fairly quickly what had transpired at the meeting so that he could see if it would be possible for him to follow up the matter.

And I think it may well have been that at the meeting with Dr. O'Reilly, I would have said to him, "Well, you are raising these issues with me; I'll see what you know, what can we do about them, and I'll ask my programme manager to follow them up with your people".

And that may have been a way in which we could have ended the meeting on an a comparatively amicable note without resolving the questions, because it wasn't open to me to resolve those questions, because these were matters which were to be dealt with in a proper through proper procedures.

Q. I wonder, could we have page 4 of Mr. O'Reilly's first statement of 24th September, 2001, on the screen.

That's the relevant part.

Halfway through the paragraph beginning with the first bullet point, it says "The letter"; do you see that, Mr. Bruton? Halfway through the first complete paragraph: "The letter deals with all of the issues which I had discussed with Mr. Bruton during the course of that visit. It is notable, contrary to Mr. Lowry's assertion, that the GSM licence issue is not mentioned in this letter. This is of course because the subject was not discussed at the Glandore meeting."

Now, the first thing I can say is the letter he is referring to is the letter we had on the screen a few moments ago, and Mr. O'Reilly is certainly correct that the GSM issue is not mentioned in the letter. Do you have any comment to make about the last sentence in that paragraph, where he says, "This is of course because the subject was not discussed at the Glandore meeting"?

A. Well, as I said, my recollection is that it was mentioned at the meeting.

Q. So you are saying that subject to the qualifications you have made, very fairly, about your evidence, that you believe Mr. O'Reilly to be incorrect in that?

A. Yes, but well, he will be able to explain that himself. I mean, I think it's possible to have a number of matters mentioned and not to remember every one of them.

Q. Absolutely. Mistaken recollection may well be the answer. But from your perspective, he is incorrect in that last sentence?

A. Because I believe the matter was mentioned, but I don't think it was a matter upon which any further action was called for, because it had been decided.

Q. Which would explain why he didn't follow up on it in a letter, because it was a fait accompli?

A. That would be yes, that would be so, yes.

Q. I wonder, could we turn to page 5 of the same statement, overleaf. There is a sentence beginning "Similarly", which is the last word on the third line; I wonder, do you see it there?

"Similarly it is untrue to suggest that I was 'seriously aggrieved and annoyed' with the non-award of the GSM licence to the consortium which included Independent and relayed these feelings directly to the then Taoiseach, John Bruton TD. I did nothing of the sort."

Do you have any comment to make about that statement by Mr. O'Reilly?

A. Well, I wouldn't have thought that he was seriously aggrieved and annoyed about this particular matter, but that he was disappointed about it, and it was amongst a number of issues which he was concerned about.

Q. That's a question of tone, Mr. Bruton. It says quite

unambiguously: "I did nothing of the sort." Do you agree with that statement, or do you disagree with that statement?

A. I believe, as I said, it was amongst a number of matters that he raised with me at the meeting, and you know, as it was a meeting where he was expressing concern about, shall we say, the absence of the sort of support that he might have hoped for from the then Government.

Q. So he did do something of the sort, contrary to what he says?

A. Well, he did raise the matter with me, in my view, yes, that is my recollection, that he did. And he raised it in that context, but it may have been just as an illustration of his view rather than as I say, it was sorry, it was as an illustration of his view about the Government and his concern about the Government rather than he was actually asking me to do.

Q. Mr. Bruton, it wasn't just an illustration; it was an illustration of his negative view of the Government?

A. Yes.

Q. It was raised by way of an example of complaints which he was making against the Government?

A. Yes.

Q. I wonder, could we have his second statement of this is the statement that was sent to the

Tribunal in December, 2002. I think it's paragraph 12; it's the bottom it's paragraph 12 on page 3 of that statement. And there is a sentence about halfway down beginning "However, it is totally untrue". I wonder, can you find that?

A. Yeah.

Q. "However, it is totally untrue to say that I expressed to Mr. Bruton or to the then Government any annoyance or displeasure, extreme or otherwise, at the non-award of the second mobile phone licence to Irish Cellular Telephones Limited, the consortium of which Independent was a member."

Do you have any comment to make on that statement by Mr. O'Reilly, or rather that sentence in his memorandum of intended evidence?

A. As I said, I believe he raised the matter with me.

Q. So you believe he is incorrect in that; isn't that so?

A. Yeah.

Q. From your perspective, Mr. Bruton, was the meeting in Glandore a significant meeting, or not?

A. Not significant in the outcome, really, insofar as all that came of it was that there was this meeting between Sean Donlan and representatives of O'Reilly interests at which there was, you know, an attempt to go through the various problems that the O'Reilly interests had, which were not resolved to the satisfaction of the O'Reilly interests, so there was

no significance in the outcome of it the meeting
was not of great significance in terms of its outcome.

Q. From your point of view, it was a significant meeting,
though, wasn't it, because it sufficiently exercised
you, according to Mr. Donlan, to fax him, the same day
of the meeting, a handwritten note summarising the
issues that were raised?

A. That wouldn't necessarily indicate that I regarded it
as a particularly significant meeting. I mean, if I
met a constituent who had a problem and I felt that it
needed to be dealt with and I wasn't in a position
to

Q. You'd faxed Mr. Donlan about it

A. Let me finish my answer to your question. I would
have faxed it to someone who would have been the
appropriate person to deal with it. The fact that I
faxed something to somebody was simply a sign of my
anxiety to deal with it quickly. Also, if, as it
would appear, I was about to go away on holiday, it's
not something that I would want to be trying to keep
in my head for the three weeks I was going to spend in
France, and it would be, therefore, my anxiety to get
it off my plate as quickly as I could. Therefore, I
would send it in a form of a communication to somebody
whose plate I would put it onto thereby.

Q. So you won't accept that faxing Mr. Donlan the same
day of the meeting suggests that you thought it was

important issues that were raised at the meeting that needed to be addressed?

A. Well, that doesn't I think the issues of course are important, but the I think the original question you asked me was, did I regard it as

Q. A significant meeting.

A. I think that I wouldn't regard it as any more significant than most of the meetings I would have had during that month, if you know I have many given the nature of the office that I then held, most of the meetings I would have would be significant meetings.

Q. You told Mr. Coughlan this morning, in response to a question from him about your practice in connection with writing of notes, that it was only very rarely that you would write notes of a meeting after the meeting ended, and in a sense that's what happened here, isn't it?

A. Well, at most meetings that I would attend, of an official kind, I would have officials present who would take the notes, and therefore it wouldn't be necessary for me to write a note; but on this occasion I hadn't anyone present with me. I didn't have my notebook with me, and as there were matters that required to be followed up, I think the efficient thing for me to have done, which appears to be what I did do, was to send a fax to Mr. Donlan to have him follow up these matters.

Q. Very well, and we know that Mr. Donlan did follow up these matters by having a meeting in Hatch Street on the 4th September, 1996; isn't that so?

A. So it would appear.

Q. Now, I should say, to be fair to all concerned, that there is some confusion as to who exactly Mr. Donlan met on that day. I think Mr. Coughlan put it to you that he met with Mr. Healy, Mr. Palmer, and the late Mr. Meagher. I think, in fairness, it's not necessarily the case that the latter two were at the meeting. Mr. Healy was certainly at the meeting, in everybody's version of events, but I don't think that's the critical issue, though I thought it fair to flag it.

Do you recall, then, Mr. Donlan coming out of this meeting and briefing you afterwards?

A. I'm sure he did brief me afterwards. I have no active recollection of what he said, or of the briefing. I could, as I said this morning, check back on my notes for that particular period, these books that I have, and there may be something in there that would be helpful; but I didn't anticipate this interest in this particular matter to the degree that it has been expressed here, and therefore I don't have those notes with me and didn't take the opportunity to go through them beforehand.

Q. Do you recall nothing, Mr. Bruton, about the general

sentiments that Mr. Donlan would have taken from the meeting that are evident in his statement? I mean, Mr. Donlan says and perhaps we'll put it up, and we can all just read the sentence.

At Answer 14, page 12 of his statement, of Mr.

Donlan's statement, he says there in that second paragraph, the first full paragraph: "Despite the relaxed mood" I wonder, do you see it there? It's up on the screen for your convenience.

He says: "Despite the relaxed mood, I was left in no doubt about Independent Newspapers' hostility to the Government parties if outstanding issues were not resolved to their satisfaction."

Do you see that there, Mr. Bruton?

A. I do.

Q. Now, is that not the kind of thing you'd remember, if Mr. Donlan passed on those general sentiments to you as Taoiseach?

A. Well, I think I was well aware that the Independent Newspapers didn't love us particularly.

Q. Yes, you just can't associate that general impression you had with Mr. Donlan's meetings in particular; is that the issue?

A. As I have explained already, I haven't had the opportunity of refreshing my memory by going through my notes in regard to this matter. If I had anticipated this line of questioning, I would have

done so, and then I could be more categorical in my answers.

And I don't want to make things up here. That's all.

I mean, I don't want to be saying that Mr. Donlan said things to me that I haven't some independent means of verifying that he did say to me. But I am pretty certain that he did convey I am pretty certain well, he did convey, let me say categorically, he did convey the tenor of this meeting to me and the outcome of the meeting. I can't remember the precise terms in which he did so. I can't remember exactly when. But I'm certain that he would have conveyed this the outcome of this meeting to me. It was obviously a meeting of some significance. But having said that, if you are to ask me then to furnish the details of the briefing that he gave me, I have a difficulty, because I don't have anything to refresh my memory with.

Q. Very well; I accept your position on that.

Mr. Bruton, Mr. Lowry will say that Mr. Donlan spoke to him separately following the Hatch Street meeting, and he informed him that he was persona non grata with the Independent Group, and that was apparently a Sean Donlan expression rather than a Michael Lowry expression. Do you recollect Mr. Donlan ever passing that sentiment on to you about Mr. Lowry and the perception of him by the Independent Group?

A. I can't say that he did, but equally, I wouldn't be surprised if he did. I just can't say for sure. But it's quite possible I'd say it's probably the case that he did, if that view was expressed to Mr. Lowry, that he would have also conveyed it to me. I doubt very much if Mr. Donlan would have conveyed only conveyed some part of the meeting to a Minister but not conveyed that part to me, because Mr. Donlan worked for me, so it's likely that he would have conveyed everything to me and then maybe given edited bits to others where he thought it was relevant to them. So it's likely that he did convey that to me, but I can't, you know, I can't I don't have an active memory of it, I would have to say.

Q. Does it have a ring of truth about it to you?

A. Yes, I suppose so, but I mean, I am hesitant to be categorical about these matters, because I don't, as I say, have an active memory of the conversation, and I don't want to I don't want to say more than I can stand over.

Q. Yes. I accept that fully.

Mr. Donlan makes another point on the previous page to the page I have up there on the screen, right at the bottom, I think, of page 11, about the meeting in Hatch Street.

A. Yeah.

Q. And he says that, in the last sentence there,

beginning "But" whilst acknowledging that the main issue was an MMDS issue, he says, "But dissatisfaction was also expressed at the government's general attitude to O'Reilly's interests including the failure to secure the second mobile licence."

So it would appear from that, Mr. Bruton, that Mr. Donlan recollects that this was an issue that was also raised in Hatch Street on the 4th September.

MR. MEENAN: I think, in fairness, the counsel should really read the following sentence to put that in its context.

MR. FANNING: Certainly.

Q. "It was, however, en passant and not central to the lunch discussion, which included gossip about the political situation and the General Election prospects."

While Mr. Donlan is saying it doesn't appear to be a central issue, he says it was raised. Again, do you have any recollection about Mr. Donlan passing that issue on to you?

A. I am afraid that my answer has to be the same as my answer was to the previous questions. I don't exclude that this was said; I think it's quite possible that it was. But I don't have an active memory of it being said specifically. But I perhaps, if I were, as I say, if I had the opportunity to refresh my memory by consulting notes, that might assist me; but obviously

I haven't that opportunity as I sit here.

Q. Mr. Lowry recalls Mr. Donlan using language to the effect that the Government would lose the Independent Group as friends if their demands were not met. Does that language ring any bells with you, Mr. Bruton?

A. Well, I have some question in my mind as to whether it would have been as explicit at that, that they would have said "These are our demands, and you will lose the Independent Group unless you accede to them". I think that would seem to me to be a very unsubtle threat. I would have thought that the matter the view would have been conveyed in a slightly more subtle way, but less but with no less meaning, if you follow what I'm saying.

But again, you are asking me here to speculate eight years later about what I think, with my present knowledge, might have been said to me at a meeting of which I don't have an active recollection. So I have to be keep entering that caveat. But it wouldn't surprise me that something conveying that meaning was said, and we have seen subsequently that Independent Newspapers did take a negative view, both towards the Government and towards me personally as well.

Q. I'll come to that, perhaps, in a moment.

I wonder, it might just be helpful if we looked at Mr. O'Reilly's first statement, page 4 of his first statement, September 2001. It's the centre paragraph

on that page.

A. Mr. O'Reilly's statement?

Q. We'll put it up on the screen for you. Page 4 of his first statement.

Now, do you see the sentence beginning "Prior to conclusion", about halfway down the first complete paragraph? "Prior to conclusion of the meeting, both Liam Healy and Brendan Hopkins hinted that Independent would resort to litigation against the Government/the State to protect its corporate interests (hence the reference to the Government losing INP as friends)."

A. Could I take the time to just get Mr. O'Reilly's full statement here?

Q. By all means.

A. I actually can't find it just now. This is

Q. This is Mr. O'Reilly's first statement, and

A. This is a statement dated

Q. 24th September, 2001.

A. I actually don't think I have this statement hadn't this statement.

Q. Well, I was only going to ask you one very

A. I don't I didn't have this statement amongst the statements that I read in preparation for this

Q. I was only going to make one narrow point

A. for the giving of the evidence here.

Q. I wonder, would you bear with me for a moment?

A. Of course.

Q. And the point I was going to make to you is that it appears to be conceded in that statement that there was a reference at the meeting to the Government losing INP as friends. Doesn't that appear to be the meaning of the sentence that I read out to you? Mr. O'Reilly is, I would have thought, seeking to associate that statement with the taking of litigation against the State, rather than anything else?

A. Sorry, I am not actually looking at that now. There seems to be no correspondence between the documents I have here. Sorry

Q. Perhaps I'll repeat my question.

A. It's not to do with your question; it's to do with the documents I have in front of me. They don't seem to correspond. Anyway, I'll have to do without these documents, if you would

Q. Perhaps I'll just read out the sentence again and bring your mind back to the point I am trying to make.

The sentence is "Prior to conclusion of the meeting, both Liam Healy and Brendan Hopkins hinted that Independent would resort to litigation against the Government/the State to protect its corporate interests (hence the reference to the Government losing INP as friends)."

I think that is a statement of Mr. O'Reilly's.

Yes, there are two statements of Mr. O'Reilly. One is a statement of September 2001, and another is a

statement that was furnished in December 2002. That's the first statement. Sorry if this causes anybody confusion, but I do appear to have two statements of Mr. O'Reilly.

A. I have a statement of Mr. O'Reilly here, in my papers which I had for this meeting, with no date on it.

Q. Yes, that's the second statement.

A. I had one statement. I didn't have the other one.

Q. Well, that's unfortunate, but I wonder, would you address your mind to the sentence that's on his first statement, nonetheless.

MR. MEENAN: It's a bit more than unfortunate. The witness is entitled to see the statement, the context in which that sentence appears, and not just to pluck a sentence out of a paragraph of a statement which he hasn't seen.

CHAIRMAN: Well, I think, Mr. Meenan, for the sake of finality, I think I'll allow it. It's a fairly narrow ground. I am confident Mr. Bruton will be capable of dealing with it.

Q. MR. FANNING: The only thing I am trying to suggest to you, Mr. Bruton, is that this appears to be an acknowledgment that language to the effect of the Government losing INP as friends was used at the meeting, and that's an acknowledgment appearing in a statement of Mr. O'Reilly.

A. Well, it would appear so, but I mean, I have no

greater qualification to interpret the meaning of those words than anyone else here. This is a statement being made to the Tribunal by Mr. O'Reilly. It's not a statement being made to me for my interpretation. It's being made to the Tribunal for the Tribunal's interpretation. And on first reading, the words seem to bear the interpretation you have placed upon them, but that's really outside my competence to interpret. I have already answered, in response to your earlier questions, that the Independent would have adopted a fairly aggressive approach towards the Fine Gael/Labour/Democratic Left coalition, and also that I also have indicated that the meetings that the meeting that Mr. Donlan had was a meeting that was difficult.

Q. Yes. Was it a little bit more than difficult, Mr. Bruton? Would you go so far, Mr. Bruton, as to characterise that language, if it was used, as a threat?

A. Yes, I think you could say it's a threat.

Q. And Mr. O'Reilly seeks, in his statement, to characterise it as a threat to take litigation against the State. Would you confine your characterisation of it to that?

A. Not necessarily, no.

Q. Would you see it as a threat that could implicate media coverage on the part of Independent Group as

well?

A. I think that the words could bear that construction.

Q. And if Mr. Donlan did brief you as a result of the meeting, do you think you would have taken the view at the time that this was a threat of adverse media coverage?

A. I think so, if that was the briefing that he gave me, yes, and I'm certainly not suggesting that he didn't give me such a briefing. As I explained earlier, and I hesitate to repeat myself again, I don't have an active memory of the matter. I haven't had an opportunity of checking my notes to see if those notes could be helpful to me in making my memory more accurate on the matter. But I think it's quite likely that it's more than likely; it's almost certain that Mr. Donlan would have briefed me fully on the outcome of the meeting.

Q. Can you think of a clearer example of the Government losing the Independent Group as friends than the coverage in that newspaper on the 6th June 1997? That was General Election day; the front-page editorial and the "Pay Back Time" headline?

A. I think the fact that Irish Independent chose to put an editorial on the front page of its newspaper on the day of a General Election, urging people not to vote for a Government which had succeeded in recording a 9% annual growth rate in the economy during its term of

office, does indicate a certain perversity of political opinion on the part of that newspaper.

Q. And do you agree with me, then, that the meaning that Mr. O'Reilly seeks to derive from the threat the Government would lose INP as friends is disingenuous?

A. Let me read this paragraph. This is a paragraph I haven't read at all.

Reading this carefully, I don't think that a reference to losing Independent Newspapers as friends could be confined solely to resort to litigation, because I think that someone suing the Government isn't something that has, in any sense, an implication vis-a-vis friendship or otherwise with people who happen to be members of the Government. People who feel they have a reasonable case may sue the Government, whoever the Government may be, quite often in light of whatever case they feel they have, but that does not imply that they, whoever they are that are suing, have an adverse opinion as to their friendship with the parties composing the Government. This would be seen as a separate business matter, really, and it would be different from friendship.

Q. So you don't accept what Mr. O'Reilly says there?

A. I don't accept what Mr. O'Reilly says.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MEENAN:

Q. MR. MEENAN: Just one small matter, just to clarify.

The meeting with Dr. O'Reilly. In your statement you referred to it as taking place in August of 1996, and I think, Mr. Bruton, in the course of giving evidence, you referred to your diaries; but could you just confirm whether or not the diary you were looking at was a 1995 diary or a 1996 diary?

A. I am sure it was 1996, but yes, it's 1996.

Q. It was; okay. Now, just arising out of that meeting with Dr. O'Reilly, in the course of your statement you refer to him expressing a certain unhappiness regarding the award of the GSM licence. That's the way you characterised your recollection of what Dr. O'Reilly said to you concerning the GSM licence?

A. Yes.

Q. Now, in your view, is that the same thing as Dr. O'Reilly telling you that he was seriously aggrieved and annoyed over the award of the GSM licence?

A. It's not the same thing. I think there is a tonal difference, as Mr. Fanning indicated.

Q. Thank you.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS
BY MR. COUGHLAN:

Q. MR. COUGHLAN: Just two questions I want to ask you.

First of all, in relation to that final matter raised by your own counsel, would it be a fair representation of Dr. O'Reilly's views that he might have been seriously aggrieved and annoyed about the MMDS matter?

A. Yes.

Q. And that would be the way you'd look at how the meeting proceeded?

A. Yes, I think that is a fair way of putting it. I think the aggravation was more about that matter than about other matters.

Q. One other matter, Mr. Bruton. I think you said, dealing with the question of the decision and accepting the recommendation of the Evaluation Team, or the expert team or the professional team that had been put in place in relation to the conduct of the competition, I think you had said that you committed yourselves to accepting the recommendation of the Evaluation Team. Was I correct in understanding you to say that?

A. Could you would you mind repeating that?

Q. Yes. I think you said, when Mr. Lowry came to discuss the matter with you on the 25th, and when you proceeded then to meet with whether it was the other two Party leaders or the other two Party leaders and the Minister for Finance, that you had committed to accepting the recommendation of the team, the Evaluation Team.

A. I think that was the view we were taking, that we had come to the conclusion that we would accept

Q. Was that something that was said to you by Mr. Lowry? Because that is something that seemed to have evolved

as a concept within DTEC in September/October of 1995, from the evidence we have heard, because and I am not trying to catch you out we do have a decision, a Government decision of the 2nd March 1995, that a recommendation would be put by the Minister to Government in time for a final decision on the granting of the licence to be made by at that time it was 31 October 1995.

That went back a month because of the intervention I don't see any other Government decision that was taken in relation to that the Government was bound to accept the recommendation. In fact, it had been the subject matter of debate between the Department of Finance and DTEC at one stage. You can't tie the Government's hands. Do you know of any other Government decision that you could point me to just

A. No, I don't. As I explained earlier this morning, there were a number of discussions that took place in regard to this matter at which I may not have been present, or one at least, anyway, at which I wasn't present, and possibly something of that nature was said there, but I can't throw any further light on the matter.

Q. All right. Thank you very much, Mr. Bruton.

CHAIRMAN: Thank you very much, Mr. Bruton, for your assistance and attendance in advance of and during

today. Thank you indeed.

Tomorrow at the same time. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

WEDNESDAY, 24TH MARCH, 2004 AT 11AM.