

A P P E A R A N C E S

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I N D E X

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THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,

24TH MARCH, 2004 AT 11AM.:

MS. O'BRIEN: Mr. Padraig O'hUiginn, please.

PADRAIG O'HUIGINN, HAVING BEEN SWORN, WAS EXAMINED AS

FOLLOWS BY MS. O'BRIEN:

CHAIRMAN: Good morning, Mr. O'hUiginn. I know, from

dealings on the part of the Tribunal's solicitor with

yourself and your son, that you have had a fairly

difficult year in the health front.

A. I was very lucky. I was one of the survivors.

CHAIRMAN: Particularly in regard to that, I am very

obliged for your cooperation and attendance. Please

take things at your own speed.

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

Mr. O'hUiginn, you were a director of Esat Telecom during the GSM evaluation and licensing process, and you have kindly assisted the Tribunal by providing a memorandum of intended evidence; that's the statement that you furnished to the Tribunal. And just to let you know how I propose approaching your evidence, what I would intend doing firstly is reading out your memorandum of intended evidence, which is in the form of the questions and answers that you have there in the witness-box with you, to ask you to formally confirm that its contents are correct. And then we'll go back and just discuss in a little bit more detail some of the matters that you have referred to in your memorandum, if that's agreeable to you.

A. Yes, I can confirm this is what I wrote.

Q. Now, your memorandum, I think you have a booklet of documents with you in the witness-box, and the memorandum is behind the first divider. Do you have that there in front of you?

A. Yes.

Q. Now, the memorandum states that the following are replies to the matters raised in the Tribunal's letter of the 26th February, 2004. The first matter you were asked was the date on which and circumstances in which you were appointed a director of Communicorp/Esat

Telecom.

And you answered, "I was invited in February 1994 by Denis O'Brien to become a director of Esat Telecom. I had known Denis for a few years from the time when he was part of a trade delegation to Czechoslovakia with the Taoiseach" whom you accompanied as Secretary General of his Department. Is that correct?

A. That's correct, yes.

Q. At Question 2, you were asked for details of your role and function as a director of Communicorp/Esat Telecom and in particular, in relation to the application by the Esat Digifone consortium for the second GSM licence.

And you answered that as a non-executive director of Esat Telecom, you attended board meetings, you were available to the company to give advice as requested, and you were part of a small group that advised Denis from time to time. You also brought the services of Esat Telecom to the notice of business acquaintances.

You were aware of the intention to apply for the second GSM licence, but you were not involved day to day in preparing that application. You were involved with Denis in the fruitless discussions with Sigma about their participation with Esat in the competition. And is that correct?

A. That's correct.

Q. Question 3, you were asked for your knowledge, direct

or indirect, of the circumstances surrounding the establishment of a consortium by Telenor and Communicorp to bid for the second GSM licence including firstly, the manner in which the parties were introduced to each other; secondly, the approximate date of their production; thirdly, the initial proposals for the capital configuration of the bid company; and fourthly, the date on which agreement was concluded between Telenor and Communicorp to establish a consortium.

And you answered that as regards the formation of the Esat Telecom consortium, you had a general understanding that an agreement was reached as a result of board reports. You were not involved in negotiation, and you were not aware of the events leading to that agreement. Is that correct?

A. That's correct.

Q. At Question 4 you were asked about your understanding as of the 4th August, 1995, being the closing date of the second GSM competition, of the funding available to Communicorp to finance its 40% equity participation in Esat Digifone.

And you answer that your information as regards the funding available to Communicorp as of the 4th August 1995 was to the effect that Communicorp's shares would be funded under the Advent agreement. Is that correct?

A. Yes.

Q. Question 5, you were asked for your understanding of the RFP document issued by the Department in March 1995, and in particular, paragraphs 3, 9 and 19, and the contents of those paragraphs was then recorded in the memorandum. But if you don't mind, I won't read them out, because we have been put on the record of the Tribunal many times.

And you answer that your understanding of the RFP document of March 1995 is that the competition would be conducted on the basis of five criteria set out in paragraph 19, subject to the Minister ultimately being satisfied that the successful company had the requisite financial and technical capacity to implement the system.

And I think there where you referred to five criteria, it may just have been a typing error, because there were in fact eight criteria?

A. There were how many?

Q. Just there where you refer to five criteria, do you see there in your answer, Mr. O'hUiginn?

A. There were exactly how many?

Q. There were eight. Eight criteria.

A. I see. It's a mistake.

Q. I presume it's just a mistake.

Question 6, you were asked for details of your involvement in or knowledge, direct or indirect, of

all submissions made to the European Commission by or on behalf of Communicorp, Esat Digifone, Mr. O'Brien or any associated entities or any person on their behalf at any time in relation to, firstly, the auction element of the evaluation process, and secondly, the transparency of the evaluation process.

And you answered that you had no involvement in or knowledge of any submission made to the European Commission in regard to the auction element or the transparency of the evaluation process. Is that correct?

A. That's correct.

Q. Question 7, you were asked for the date on which and circumstances in which you became aware or were informed of the intervention of the European Commission in the GSM licence evaluation had been or was likely to be resolved on the basis of the Department would place a cap of $\text{€}15$ million on the licence fee payable by entrants subject to a payment of $\text{€}10$ million by Telecom Eireann, and the source or sources of your knowledge or information.

And you have informed the Tribunal that you did not become aware of the $\text{€}15$ million cap until it had taken place and become general knowledge. Is that correct?

A. That's correct.

Q. I presume that would have been around the end of July or perhaps into August of '95?

A. I have read many newspaper reports which suggested that I was instrumental in bringing this about through discussions with the Commission. That of course was completely incorrect.

Q. I see. You had no dealings with the Commission whatsoever; is that the position?

A. I had no dealings, no.

Q. Question 8, you were asked for details of all assistance or advices that you provided to Mr.

O'Brien, Communicorp, Esat Digifone or any associated person or any person on their behalf regarding any of the following: firstly, the internal workings or operation of the Department of Transport, Energy and Communications, as it then was; secondly, the departmental officials conducting the evaluation process; thirdly, the functions of the consultants to the competition; fourthly, the oral presentation made by the Esat Digifone consortium on 12th September, 1995; and fifthly, any other aspect of the dealings of Esat Digifone with the Department and including the disclosure of the involvement of IIU as a member of the Esat Digifone consortium.

And you have informed the Tribunal that you gave no assistance or advice in regard to the internal workings or operation of the Department of Transport, Energy and Communications, the departmental officials concerned or the functions of the consultants to the

competition. You attended a trial run of the presentation by the consortium team and advised on the need to highlight the distinctive strengths of the consortium in having experience of telephone services, proven marketing ability and high shareholding by an Irish company and by a successful mobile phone operator. You gave no advice or assistance in any other respect, including the disclosure of the involvement of IIIU. Is that correct?

A. That's correct.

Q. Paragraph 9, you were asked for your involvement or knowledge, direct or indirect, of the preparations made by the Esat Digifone consortium for the oral presentation to the Department on the 12th September, 1995. And you have informed the Tribunal that your knowledge of the pre presentation preparations by the consortium was covered in your answer to the previous question.

A. That's right.

Q. Is that correct?

A. That's right.

Q. Paragraph 10 you were asked for your involvement in and knowledge, direct or indirect, of all consideration by the Esat Digifone consortium of the impression made by the consortium at the oral presentation, and including any consideration given by the consortium to strengthening the financial

capability of Communicorp in terms of its projected equity participation in Esat Digifone Limited.

And you answered that you were told by Denis O'Brien that he thought that the adjudicators thought the Esat Digifone application was excellent but might have reservations about financial strength in the light of their questioning. You were concerned yourself that Telenor were unhappy about the strength of the Advent commitment, and you encouraged Mr. O'Brien to pursue the IIU alternative, the possibility of which he mentioned. Is that correct?

A. That's correct.

Q. Question 11, you were asked for details of your knowledge, direct or indirect, of the dealings and negotiations between Mr. O'Brien, Communicorp, Esat Digifone or any entity on their behalf with Mr. Dermot Desmond, IIU or any person on their behalf prior to the 25th October, 1995, being the date on which the competition result was announced.

You have informed the Tribunal that you were aware, as you mentioned in the previous paragraph, that Denis O'Brien was having discussions with Dermot Desmond.

Your only other contact with this issue was a discussion with Owen O'Connell to explain the 25% shareholding proposed to be given to IIU. Is that correct?

A. That's correct, yes.

Q. Question 12, you were asked for your knowledge, direct or indirect, of a letter dated 29th September, 1995, from Mr. Michael Walsh of IIU Limited addressed to Mr. Martin Brennan of the Department of Transport, Energy and Communications, together with your understanding as to the purpose for which that letter was sent and all matters or considerations which prompted the furnishing of the letter, together with the source or sources of your knowledge.

And you have informed the Tribunal that you had no knowledge at the time of the letter of the 29th September, 1995, or the reasons for it. Is that correct?

A. That's correct, yes.

Q. Question 13, you were asked for the date on which and circumstances in which you first became aware that Esat Digifone had won the licence competition and the source or sources of your knowledge. You have informed the Tribunal that you were congratulated by Ron Bolger, then Chairman of Telecom Eireann, at a dinner in the K-Club the evening the announcement was made by the Minister. A few minutes later you received a phone call from Denis O'Brien confirming what Mr. Bolger had told you. Is that right?

A. That's correct, yes.

Q. Paragraph 14, you were asked for details of your understanding of the following:

Firstly, the composition of the Esat Digifone consortium as of the 4th August, 1995, being the date on which the Esat Digifone application was lodged in the Department. And you have informed the Tribunal that your understanding as of the 4th August was that the composition of the Esat Digifone consortium was 50% Esat Telecom, 50% Telenor, but 20% could be placed with financial institutions and up to 5% could be placed with other institutions later. Is that correct?

A. That's correct, yes.

Q. I think, in fact, where your reference there to 5% may have been an error, and maybe it should read 12%, but we can refer to that later.

A. All right.

Q. Secondly, you were asked about your knowledge of the composition of the Esat Digifone consortium as of the 25th October, 1995, being the date on which the consortium won the licence competition. And you have answered that you think the composition was the same on the 25th October 1995, but IIU were going to take the financial institutions' stake; is that correct?

A. That's correct.

Q. Thirdly, you were asked for your understanding of the capital configuration and beneficial ownership of the shares of Esat Digifone Limited as of the 12th April 1996, being the date of the board meeting at which the

full complement of shares in Esat Digifone was issued.

You have informed the Tribunal that your understanding was or that you had no special knowledge of the shareholding in Esat Digifone on the 12th April, 1996, which is a matter of ascertainable record, which of course it is.

A. Yeah.

Q. And finally you were asked for your understanding of the capital configuration of the issued share capital and the beneficial ownership of the shares of Esat Digifone as of the 16th May 1996, being the date of issue of the GSM licence to Esat Digifone. You have answered that you have no special knowledge of the shareholding in Esat Digifone on the 16th May 1996, which is also a matter of ascertainable record. And that's correct?

A. Yes, that's correct.

Q. Question 15, you were asked for the details of all consideration by you in conjunction with Mr. O'Connell or with any other person as to the manner in which the 25% shareholding of Mr. Dermot Desmond/IIU, consequent on agreements concluded on the 29th September, 1995, should be presented to the Department so as to conform with the bid as lodged by the Esat Digifone consortium with the Department on the 4th August, 1995.

You have answered that your conclusion in discussion with Mr. O'Connell was to the effect that the 25%

shareholding of IIU could be linked to the 5% which it was envisaged in the original submission could be later assigned to other investors. And again I think maybe it was 12%, but we can look at that when we come to consider the documents. But apart from that, can you confirm that that's correct, Mr. O'hUiginn?

A. Yes.

Q. Question 16, you were asked for your knowledge, direct or indirect, of the date on which the Minister or the Department of Transport, Energy and Communications was informed that Communicorp/Esat Telecom did not intend to fund its equity participation in Esat Digifone by drawing on finance to be provided by Advent but intended to fund its participation by placements through CS First Boston. You have answered that you have no specific recollection at this stage of the date the Minister or Department was informed that CS First Boston would fund Communicorp/Esat Telecom, but that this was a matter of ascertainable record. Is that correct?

A. That's correct, yes.

Q. Then Questions 17, 18 and 19 you have dealt with in a composite answer, so what I propose doing is reading all the questions first and deal with your answer then.

Question 17, you were asked for details of all of your involvement or dealings on behalf of Esat Digifone

with the ESB, including the then Chairman, Mr. V.M.

McCann, or any other or associated person, and in

particular in connection with the correspondence

dating from February 1996.

Question 18, you were asked for your involvement in or

knowledge, direct or indirect, of all dealings or

negotiations between Esat Digifone and the Department

in connection with the subject matter of the

correspondence between you and the ESB.

And at Question 19, you were asked for your knowledge,

direct or indirect, of all steps taken by the

Department at the behest or otherwise of Esat Digifone

in connection with the subject matter of the

correspondence between you and Mr. McCann dating from

February of 1996.

And you have answered that you did not have copies of

the correspondence with Mr. McCann, the Chairman of

the ESB. You know that you wrote to him about using

ESB infrastructure, but your recollection is that

other than writing to him, you took no action in the

matter, nor are you aware if the Department took any

action. And you indicated if the Tribunal showed you

the correspondence when you were giving evidence, you

will be glad to add whatever further information you

can give.

And just to confirm there, Mr. O'hUiginn, can I take

it from your answer that you certainly had no dealings

with the Department in relation to that correspondence?

A. That's my recollection.

Q. Question 20, you were asked for details of all meetings, discussions, dealings or contacts of whatsoever nature between you and any of the following: firstly, Mr. Michael Lowry; secondly, Mr. John Loughrey; thirdly, Mr. Martin Brennan; fourthly, Mr. Fintan Towey; fifthly, Mr. Michael Andersen or any member of Andersen Management International; sixthly, any official of any government department; seventhly, any member of the Government; and finally, any sorry, second-last was any public official; and finally, any official or person connected with the European Commission.

And you have answered that you had no meetings, discussions, dealings or contacts with any of the persons listed. Is that right?

A. That's right.

Q. I take it, however, that you certainly would have known Mr. Loughrey; wouldn't that be the position?

A. Yes, I know Mr. Loughrey a very long time, yes.

Q. You might have bumped into him perhaps socially during that time; would that be the case?

A. I think I would have remembered I would have noted the fact that because of the process was in train, that if I had met him, I would remember it. But I

certainly don't remember meeting him.

Q. Did you know Mr. Brennan at all, Mr. Martin Brennan?

A. I didn't know him as well as I knew John Loughrey.

And Sean Fitzgerald was another name, I think, in the Department concerned. I knew both of them very well.

Martin Brennan I met casually a few times, but I didn't know him to the extent that I knew both Loughrey and Sean Fitzgerald.

Q. Then the final question you were asked was your knowledge, direct or indirect, of all meetings, discussions, dealings or contacts between Mr. O'Brien, Communicorp/East Telecom, Esat Digifone or any person acting directly or indirectly on their behalf and any of the following; and again, you were asked about any contacts with the same persons that you were asked about in respect of direct contacts.

A. Yeah.

Q. And you answered: "I have no knowledge of any meetings, discussions, dealings or contacts between Mr. O'Brien, Communicorp/East Telecom, Esat Digifone or any person acting on their behalf with the persons listed, subject to what I say in the following:"

And you inform the Tribunal that while Denis O'Brien was your guest at the All Ireland Final on the 17th September, 1995, you were aware that he met Mr. Lowry at Croke Park and was going to meet him for a drink after the match. You know that he discussed the

auto-dialers issue with Mr. Lowry, and it is probable that you pressed him to do that. You would have heard at Esat Telecom board meetings about contacts with the Department and the European Commission about the use of auto-dialers and the obstruction by Telecom Eireann to Esat's efforts to get leased lines. Is that correct?

A. Yes.

Q. And I think that concludes your formal memorandum.

A. Yes. I should perhaps add that you should appreciate first of all that I was only a non-executive Chairman.

Q. Of course.

A. And secondly I was a very busy person at that time. I was Chairman of Bord Failte, which was engaged in a big reorganisation, and I had to negotiate some 70 people out of the organisation. And I was a director of a number of other companies, so I would get involved in Esat usually only at board meetings, or occasionally, and I wasn't in day-to-day touch. So to some extent, a whole lot of things went on which I wasn't involved in.

Q. Of course. You were involved, if you like, on an in-and-out basis?

A. Yes.

Q. I think you said in your memorandum that you became a director in February of 1994?

A. February or January, maybe it was February, whatever I

wrote.

Q. That you were approached in February of 1994.

A. Yeah.

Q. It's just there on the first question.

And I think you said that you had known Mr. O'Brien from a delegation that you were on to what was then Czechoslovakia.

A. That's right.

Q. And that you would have been there in your capacity as Secretary General to the Department of Taoiseach, and the delegation was led by the then Taoiseach, Mr.

Charles Haughey; is that right?

A. That's right.

Q. And can you tell me, do you recall at all how it was that you came to be approached to join the board of Esat Telecom?

A. Well, I got a call from Denis O'Brien's office asking me to come to lunch with him, which I did, in the course of which he said he was interested to know if I would join as a non-executive director. I was, of course, conscious and knew what business he was doing, because my background up to then had been I had been the chief negotiator of the Programme for National Recovery and the Programme for Economic and Social Progress, all of which set the pattern for social partnership.

And all of that was predicated on the idea that we can

make our economy efficient, and we had always identified telephone charges as one of the impediments to an efficient economy, so and deregulation was coming, and I had worked in Brussels; I was Deputy Director for Energy, Science and Technology, so I was aware of the thrust from Brussels, so I was very glad to when invited to be involved in what I saw as a liberalising of the economy, making it more efficient. And as you know, Esat Telecom brought telephone charges down by 40%.

So, in saying why I would have been interested to join, because this was long ascertained and established in Government that our telephone charges were too high and we needed to deregulate, and therefore Esat Telecom was a company that was engaged in this and very successfully.

Q. And it would have been known that you would have had a keen interest in the liberalisation of that market?

A. Oh, yes. I mean, that was the whole purpose of that is what created the Celtic Tiger, because we became efficient for the first time in 15, 20 years.

We had negative growth for five years prior to '87, and now we became the fastest-growing economy because we became efficient.

Q. And I think you have indicated already that you did attend regular board meetings of Esat Telecom, and in fact, you have assisted the Tribunal by providing a

copy of your diary for 1995?

A. That's right.

Q. And we have the original of that, which we can return to you at the end of your evidence.

A. Okay.

Q. Apart from those board meetings, I think you may have also attended occasionally GSM meetings, or perhaps ad hoc meetings; would that be the case?

A. Well I never, to my recollection, attended what would be a formal GSM meeting. But this was on the periphery all the time. Denis was negotiating here and there.

I should perhaps have mentioned that I not only accompanied Denis to a meeting with Sigma; I knew the Sigma people which was why I said "Let's go and meet them". It didn't come to anything, but that's another story. But I also was present when there were negotiations with Deutsche Telecom and Bell South, a few meetings with them.

Q. As you said, you were very busy at the time, but you would have been contacted from time to time to give advice to Esat?

A. Yeah, yeah.

Q. Would that generally have been meetings that you'd have attended, personal contact, or would you have had just telephone contact?

A. It could be indirect, it could be a call on the phone,

or it could be "Come into the office; I want to talk to you about something".

I'd go in, and I remember when we were debating at the time about who we might have as a partner, I would go to a meeting and we would go and meet Deutsche Telecom and Bell South, and then I took the initiatives of saying, "Why don't we go and see Sigma", and also Lochlann Quinn. He was a friend of mine, and I thought he had a deep pocket; I assumed that I could perhaps entice him in. It was a very brief meeting. Because he said, "I am already in another consortium".

And that was the end of that.

Q. So that was the end of that?

A. Yeah, that was the end.

Q. And when you were contacted like that, just to give advice, either over the telephone or to come in and have a chat, who would it generally be that would contact you?

A. Denis would either ring me or somebody from his office, I don't remember, but generally it would be Denis would contact me and say, "Could you drop in?" Sometimes PJ Mara would be there, and we would talk for example, I know in this issue of trying to bring IIU on board after his meeting with him at the Belfast Celtic meeting, I know Denis PJ Mara was present on that occasion.

Q. Is that the meeting you referred to after the

presentation?

A. Yes, yes. After the presentation and well, I forget the date that Denis went to the Glasgow Celtic match and met Denis O'Brien (sic), and it was after the presentation that Denis came back, as I have said, and said he was a bit unhappy about he felt our presentation on the financing had got some questioning, and he was worried that it might be regarded as too weak.

I had a different view, as I think I have explained.

I couldn't assess that, because I wasn't present. But

I had the view that Telenor were a bit uncertain, a bit unconvinced by the Advent letter, and that

therefore, my view, we should he said already he was talking to IIU, to Dermot Desmond, and I said that

would be much better, because if I explain, I knew

Dermot Desmond very well. He was the man who invented the Financial Services Centre, and it was my privilege

to have set it up. I organised the whole setting up

of it, so I had a lot of contact with him. I also was

aware of his investment in Irish companies, I could

name some of them, and I felt he would be a far better partner than the group of finance houses who were

already listed and that he would be a person, because

of his commitment to the Irish economy, as distinct

from the attitude of a financial house, whose

interests would be primarily monetary, as was shown by

what happened with Eircom: When finance houses took over Eircom, what did they do? Strip out all the assets, take all the money out, and still leave us with the same costly and inefficient Eircom.

So I had no faith in the whole group of against that background, my view was you would be far better to have Dermot Desmond, who is a committed Irishman and is a committed investor, and he would be a much better partner.

CHAIRMAN: You seem to have hit a remarkable note of consensus, Mr. O'hUiginn, in the room on that last observation

A. I am sorry, Mr. Chairman.

CHAIRMAN: You seem to have hit a remarkable note of consensus in this room on your observation on that last matter.

A. I see.

Q. MS. O'BRIEN: Can we just of course, Mr. O'hUiginn, Mr. Desmond did sell out his shareholding in Esat Digifone very quickly, didn't he?

A. I am sorry?

Q. He did sell out his shareholding in Esat Digifone fairly quickly, didn't he?

A. Well, he sold it when we all sold.

Q. He sold it much earlier. He sold it to Telenor and he sold it to Esat Telecom.

A. He sold the 5%, yes.

Q. He was only left with 1%, wasn't he, a very short time after the roll-out of the network?

A. Yes, yeah.

Q. Can we just go through that all very slowly, because there was a lot of information there that you gave me and that you gave to the Tribunal.

Now, we know from Mr. O'Brien's evidence and from Mr. Desmond's evidence that they met when they went over to a Celtic match, I think, on the 10th August?

A. Yeah.

Q. Now, do you recall, were you informed after that meeting that there were negotiations between Mr. O'Brien and Mr. Desmond?

A. Yes, my recollection is that we met Denis after the presentation, and he indicated that with the questioning he had received at the presentation, he felt that there were some queries, doubts, misgivings

Q. Before we even get to the presentation, the presentation was the 12th September; that was much later. I am bringing you back now to the 10th August. Now, can you tell me, between the 10th August and the presentation, which was on the 11th September, did you have any discussions or did you have any knowledge of Mr. O'Brien's discussions with Mr. Desmond?

A. No, sorry, the point at which I became aware was in the context of Denis telling and I think PJ Mara

was there as well he said, "I wasn't that happy with the presentation on financing, and I am already engaged in discussions with Dermot Desmond". And I said, "Well"

Q. So you knew nothing about this until after the presentation?

A. No.

Q. You didn't know anything about it in August; you didn't know anything about it until after the presentation?

A. No, that's right, that's right.

Q. Now, what you told us was, in your answer to Question 10, that you were told by Mr. O'Brien that he thought that the adjudicators thought the Esat Digifone application was excellent but might have reservations about financial strength in the light of their questioning. You said you were concerned yourself that Telenor were unhappy about the strength of the Advent commitment, and you encouraged him to pursue the IIU alternative, the possibility of which he mentioned.

Now, can you tell us when that meeting was, roughly?

We know that the presentation itself was on the Tuesday of that week. We know that Mr. O'Brien attended the All Ireland match with you the following Sunday, the 17th?

A. Of September, yes. It would have been sometime after

the 17th September, and in the context of you see, I wouldn't be meeting Dermot Desmond on Denis O'Brien on a regular basis. And it could well have been weeks. I don't see if there is some significance in whatever the date

Q. There is no particular significance. I am just wondering, you did, as I said, give us your diary, and there is an entry on the 14th, Thursday the 14th September, at the 8am time slot, for an Esat meeting.

And I wonder, would that have been the occasion?

A. It could well be, yes, it could well be.

Q. And you remember it, do you, that Mr. Mara was there also?

A. Yes, the three of us were there. And Denis said, "I really feel"

Q. It's on the monitor there beside you.

A. "I really think that the questioning I got at the presentation was such that I think I really should strengthen our funding, particularly Communicorp funding". And he said, "I have already Dermot Desmond has expressed interest", because he said he had already met Dermot. And I gather there were ongoing discussions, which didn't terminate for some weeks later. And I encouraged him, for the reasons I have stated, that I was more concerned about the fact that Esat that Telenor were making adverse noises about the Advent backing and that therefore, I

thought, if you can get Dermot Desmond on board, with a proper guarantee, as distinct from what I think Advent had was a letter of comfort of some kind.

Q. So that the concern was about the Advent letter of comfort in respect of Communicorp?

A. That was my concern.

Q. That was your concern?

A. Yes.

Q. I take it that was also Mr. O'Brien's concern, was it?

A. No, well, I don't know his concern derived from his reaction to the presentation and the reaction in meeting, his questioning at the I didn't pay as much attention; not having been there, I couldn't measure it. But I when he said, "I think Dermot Desmond I'd be interested, I have been talking to him", I very strongly said, "Well, if you can get Dermot Desmond, my view, he has the resources; secondly, he'd be a better partner than four or five financial houses".

Q. Did you know that the commitment or the comfort that had been provided by Advent was for $\text{€}1\frac{1}{2}$ 30 million at the time? Presumably you did.

A. Presumably I did.

Q. Did you know anything about Mr. Desmond's resources at that time or his access to monies of that order?

A. I wouldn't have any direct knowledge of that.

Q. What had you been told about Telenor, Mr. O'hUiginn,

at that time, and Telenor's dissatisfaction, as you described it?

A. What I was told was that they were unhappy that it was not the Advent letter was not a full guarantee; that it was more in the way of a letter of comfort. I understand that the law for a venture capital company is that they could not give guarantees but they could give letters of comfort, and in any event, I presume everybody involved was going to wait until they saw were they going to get the licence before they would then determine the conditions under which they would give money and how much they would give.

But in the knowledge that Telenor and I thought it's wrong if you are going into partnership with Telenor, if they are unhappy, we should try to resolve their unhappiness. And it seemed to me that if he can get a stronger commitment by way of guarantee, whatever, from Dermot Desmond, something stronger than Advent, that that might be acceptable to Telenor, which in fact, in the event, I think it was.

Q. Who would have given you that information about Telenor?

A. I don't know at this stage. I mean, it was on record. I have read somewhere is it in Denis O'Brien's statement

Q. It may well be. I am just thinking about at that time as of the 14th September when you think this meeting

was: Who would have told you that there was any difficulty with Telenor and Advent's letter of comfort?

A. I don't know, frankly, but I mean, it was it was a reality, I think, in all the documentation that they subsequently at some stage had indicated, "We are not happy".

Q. There wouldn't have been the practice of sending you copies of correspondence, would there, at the time?

A. No.

Q. You were far too busy with other things to be given that kind of detail?

A. Yes, yes.

Q. Did Mr. O'Brien tell you at the time what Mr. Desmond was looking for in terms of an interest in Esat Digifone?

A. No. All I knew was he was having discussions. I think they were at a preliminary stage.

Q. This was as of the 14th September?

A. Yes. And they hadn't concluded anything. All I knew was that Dermot was interested. Denis was interested. And they were working towards an agreement.

Q. And you would have been told that on the 14th September?

A. I wouldn't be told other than I think Dermot is interested and we have we are having discussions and we hope to get an agreement. But other than that,

that would be what I would have known.

Q. I want to be clear about it: It was Mr. O'Brien's concern, in mentioning to you Mr. Desmond's interest, was his perception of the Department's reservations on the financial side; isn't that right?

A. Well, "reservation" may not be the correct word.

Q. "Reservation" was the word you used, Mr. O'hUiginn, in your statement; that's why I am using it.

A. I see. Well he talked about disquiet, that he felt that they weren't that happy; they were probing him on it, and he felt he should try to strengthen the financing.

Q. Strengthen it?

A. Yeah.

Q. Obviously, when you encouraged him to pursue the IIU alternative, you would have had in mind that this strengthening which was anticipated on the financial side, and the strengthening over and above what had been provided by Advent, would be communicated to the Department, so the Department would be aware of it, I take it?

A. Well, I hadn't thought that far. I had thought that if he can get Dermot Desmond in place of the other financial institutions, that there must be some point at which this would be discussed, would have to be notified to the Minister and to his staff.

Q. But surely, Mr. O'hUiginn, if what you say in your

statement is correct, and we'll change the wording,
that if what Mr. O'Brien was expressing was disquiet
about the Department's perception of the finances,
that the only reason you'd be getting Mr. Desmond in
would be to improve the Department's perception, and
the only way you could do that was to tell the
Department before the result was announced; isn't that
right?

A. Yes, which I think it was done.

Q. Was there any discussion at that meeting as to how you
might go about informing the Department of this

A. No, because at that stage, the matter was still in
negotiation, and there was no guarantee it could be
concluded successfully. It wasn't a case where there
was in existence an agreement. And I think the
agreement wasn't reached, if I'm correct, until the
29th September.

Q. The 29th September.

A. And at that stage, they notified the Department, I
think in accordance with Mr. de Valera's very wise
advice, when in doubt, act on principle, and that they
decided to inform the Department that we have now got
another partner on the financial on the investor
side.

Q. Were you asked to advise in relation to that at all?

A. No.

Q. In relation to the letter of the 29th, or whether or

how the Department should be informed?

A. No, I knew nothing about it.

Q. Right. Now

A. And I didn't need to know. I mean

Q. Yes. As you say, you were just in and out. You were being consulted as the need arose.

Now, your answer to Question 21, you have informed the

Tribunal in accordance, in fact, with the evidence

that Mr. O'Brien gave can I just ask you one

matter; Mr. Coughlan brings it to my attention

could you explain to the Tribunal why you think that

you were asked to attend the meeting at which the

presentation was discussed on the 14th September?

A. Well, I think it's because he had thought I was worthy enough, able enough, experienced enough, or whatever

speaking with the self-deprecating immodesty of a

Cork man that they thought I'd be of help in

matters of this kind. And he asked me for my advice

on "Do you think this is a presentation" he

wanted to get a new attitude.

I also know that he did at no stage go to London and

get a company there to review it, a big consultancy

firm to review it. So in the same he was bouncing

the thing off different people, and he thought I might

be a person that

Q. Is it because, perhaps, of a particular skill or

insight that you might have as a former very senior

civil servant?

A. Yes, it could well be. Because I would have had insight. I mean, the way I read the Article 19 is that it I saw the distinction between the Minister has to be satisfied subject to being satisfied with the with the financial strength and technical capacity.

My attitude, going into the presentation and having listened to it, I felt there was too much emphasis being attached to the finances and to the technical strength, and I remember saying very bluntly, "Well, if everybody's technical strength will be the same, there is no new technology, everybody has the technology. So don't waste your time on that.

Secondly, on the financing, that will be a decision the Minister will make on the facts before him; and having made that decision, that decision cannot be questioned".

You see, I lived a long time at the highest level in Dublin, and I was very conscious from away back from I think it was Andres O'Caomh in the High Court decision in the early forties, in a case I was involved in in which he said very bluntly, "When a Minister, on the facts before him, makes a decision, nobody can question that decision. He is the person charged, and that is his appointed and anointed role, so to speak, to make a decision on the facts before

him".

And I was always very careful. I lived in that understanding, and every time I had to get decisions made by mainly Taoisigh, but I also had four Ministers; I had to deal with the Minister for European Affairs, the Minister for Arts and Culture, Minister for Women's Affairs, so I was well used to decision-making on facts presented. I always ensured that the facts were properly recorded and that the Minister's consent was properly recorded, because in my view, based on Andres O'Caomh's principle, that could not be questioned.

Now, you could question, I presume, some fault in procedure. I mean, very often Ministers, before they make a decision, may have to consult a Minister for Finance; if they don't consult him, then there is a breach of so my attitude was a Minister will one day sit down there will be no marks given for technical capacity and no marks for financial strength. They'll all have varying technical, they all have the technical capacity, but the financial strengths would vary. The marking system and the evaluation system and the selection system, in my view, would be based on the criteria which I thought was five, but my counting obviously isn't good would be based on those, and having selected because, you see, my knowledge of the background is

that this competition was being run in order to compensate for the failure of Eircell. Eircell had achieved, with a monopoly, only a little more than 20% of penetration. This was an abysmal performance, but the kind of performance you get from a monopoly. They have no marketing skills; they were never marketing much in it's only when Esat got going that they started to market as well, and in fact they were over 20% when they started; they are now something over 50, so they gained a 30% presentation since. Whereas Esat started at blank and ends up with 40-odd percent, so they out performed them.

The background was that this was a competition, and I go back to what I said earlier, about we were engaged in a process of reforming this economy, making it more efficient. And part of the "more efficient" was to improve our mobile phone penetration would have to be part of it, and I took the view that the decision what they should concentrate on are the items on the list of criteria, evaluation criteria.

And I said, "You have to emphasise first of all you have to understand first of all that this is about competition; this is about penetrating a market; this is what will decide it. After that, there is a qualifying thing: Do you have enough money? And do you have the technical capacity?"

But there will be no marks specially for those; they

would have to find who could best take on Eircell.

And that meant, here we had, in my view, the best consortium, because we had two companies with 80% of the shareholding who were telephone sellers, knew how to sell telephone services. None of the other consortia, and in particular one of them, with 40% shareholding, was able to successfully sell telephones. None of the other consortia had that ability. They had nobody who sold telephones in Ireland. They are people who manufacture telephones. They had a whole lot of I forget how many, three or four semi-state bodies, monopolies, who had no marketing skills. I mean, they were complete they never had to market. We were the people, between the success of Telenor and what we had achieved already in Esat Telecom, we obviously had the marketing skills. And I knew this is what the competition was about, reading the thing. So we had that. We had people who knew the Irish market. And we could demonstrate our ability to sell telephones and take on Eircell, and we had the 80% control of the company to do that. So they were the points I stressed. I said the financing will be decided subsequently, if they identify a winner on the real competition, which is who will best sell telephones, who will best take on Eircell.

Q. And that was your view when you looked at paragraph 19

of the RFP document?

A. Yes.

Q. As far as you saw it, the competition would be won or lost on the eight criteria; is that correct?

A. Of course.

Q. And that the requirement of financial and technical capability wouldn't be marked; that would be a decision for the Minister?

A. That would be a qualifying decision which the Minister would have to satisfy himself, and as I explained earlier, from my understanding of administrative procedures, that was a decision by the Minister with the facts before him which nobody can question. Nobody could take the place of a Minister and decide "If I was a Minister, I would have made a different decision".

I am not saying that if there was a mistake in process and I saw recently a High Court judgement where a planning case again, where the judge said, "I can't take the place of the planning board and make a decision, but if there was a mistake in what was before them, I can challenge that." This would be on judicial review.

So I emphasised, don't worry so much about those two.

The way you have to strike, and you have the ability to do that because you are the marketing people, extremely successful Telenor, extremely successful

Esat Telecom, against all the obstruction of the incumbent.

Q. So you saw it all as marketing. As far as you were concerned, it was all going to fall or stand on marketing?

A. Yes, yes.

Q. Can I just ask you there, where you said that the Minister it would be the Minister's decision to decide on the financial and technical capability. If it had been determined by the Government that this decision would be made not by the Minister, but by the Government, then in terms of your knowledge as a former Secretary General, would it have been your view that the decision on financial and technical capability would then have been a matter for the Government, or do you think it would have rested and remained with the Minister?

A. Well, it's the relationship between a Minister and the Government. He was the Minister charged with the responsibility. In my experience, when a Minister makes a decision like that, he may notify Government or he may not notify Government. He may not be required to notify Government. He may think it politic to notify Government, but when he makes the decision on the facts before him, nobody can take his place and say "I would have made a different decision".

And in any case, in this case, the Minister, Mr.

Lowry, can say *solvo ambulando* there never was any problem of financing. He made the right decision, because we were never short of money.

Q. Really what I am trying to get at here, Mr. O'hUiginn, is that the Government had already decided that this was going to be a Government decision, subject to a recommendation to be brought by the Minister; and I am asking you, therefore, that in your experience as, I suppose, one of the most senior civil servants, would that determination, then, of financial and technical capability, have been one for the Government, or would it have remained with the Minister, given that a decision had been made, had already been made by Government, and that was therefore Government policy that this was to be a decision for the Government and not for the Minister?

A. Well, the RFP is that what you call it?

Q. Yes.

A. That says the Minister, subject to the Minister being satisfied with the financial and technical thing. It doesn't say "subject to the Government". So I'm not aware of when I am reading it, simply, I was going into a presentation having read that document, and that was my view based on that, that the Minister would at some stage have to make a decision, a qualifying decision, that you have the financial

strength and you have the technical capacity.

Q. Tell me, when you went to the dress rehearsal, if you like

A. Sorry?

Q. The dress rehearsal for the presentation, were you the only person there, if you like, in the position of a judge who was giving advice to the participants, or was there anybody else there as well?

A. I am sorry, I didn't catch the first part of the question.

Q. Sorry. When you attended the pre-presentation meeting, the dress rehearsal, were you the only person there, if you like, in the position of an adviser as to what impression was being made, or was there anybody else there in much the same position as you?

A. No. They made a presentation. And then they asked me Denis said "I brought Padraig in to see what he thinks", and I gave my view. There was nobody else there. They were drawing on my views, my experience, etc.

Q. Now, can I just ask you about the All Ireland final. This was your answer to Question 21.

Now, can I take it that you would have been a regular attender of the All Ireland Final?

A. I wouldn't have been a regular attendant. I was attending that year because I was Chairman of Bord Failte, and I had tickets in that capacity. At the

same time, that year I negotiated a great deal with the GAA, that I got a box for Bord Failte for nothing for ten years, which is up this year. And I warned the Minister that if he is dealing with GAA again, he'd better remember that he still wants that box.

Q. I see.

A. So there was a period when I could get tickets directly, and I could have a guest. When we moved, as we moved in the subsequent years to the box, there was only twelve seats in the box, and they were they would be filled by friends of the Ministers and so on. There was no possibility of introducing a friend like Dermot Desmond Denis O'Brien.

Q. So did you just have the two tickets that year?

A. Yes. I might have had them the previous year. I might have had them a subsequent year. But after that, I never from the time I got the box, I used to go to the box.

Q. I see. And I just want to be clear: Were you in the Ard Comhairle box?

A. Yeah.

Q. And you had the two seats, the two tickets; is that right?

A. Yes.

Q. So it was just yourself and Mr. O'Brien?

A. Yeah.

Q. And had you asked Mr. O'Brien the previous year as

well, or was this the first time you asked him?

A. I think this might have been the first time that I became Chairman of Bord Failte in 1993, and we are talking about '94 or '95?

Q. '95.

A. '95; I might have been there the previous year. I don't remember. I might have finally realised that one of the perks of being the Chairman was that I could get tickets for the Ard Comhairle box, and so I suddenly was presented with this opportunity, with two tickets, and knowing Denis O'Brien's sporting career, and I had been to rugby matches with him since, and we play golf together, I thought, "Well, this would be a nice I'm sure he'd like to go". And he said fine, he'd love to.

Q. Did you ask him in any subsequent year, do you remember?

A. No, because I am explaining, I didn't have the only visits to Croke Park after that was in this box, which I got from the GAA, and there was only twelve seats, and they were normally taken up by the Ministers from the competing counties and their friends and constituents.

Q. So this was the only year that you asked Mr. O'Brien?

A. Yes, and it's the only year that I was in the Ard Comhairle box that I can recollect.

Q. I see. Now, can I just show you Mr. O'Brien's diary.

It's the second document in that book of documents that you have before you. It's the second of those documents behind your memorandum of intended evidence.

A. Yeah, I see it.

Q. Do you have that there? It looks like Mr. O'Brien was in London that morning, and 1.45 seems to have been a flight to Dublin. Then 3.30 has the "All Ireland". 6 p.m. is "Dermot Desmond". And 6.45 is "ML Harto's".

And I think Mr. O'Brien has explained to us those items were all put in after the fact. All those entries were made after the fact.

A. I see.

Q. Do you remember at all when you asked Mr. O'Brien to come with you to the match?

A. It would have been certainly not earlier than not later than a week before.

Q. Right. Could it have been at the meeting that you had with him on the 14th September?

A. It could have been. I was going to I thought you might ask this question, and I thought, was there an Esat board meeting that I might have met him? In fact I have a feeling that I asked him at an Esat board meeting prior to it; I said, by the way, would he be interested in coming to a football match.

Q. So it was not quite short notice, but it was relatively close to the match itself that you asked him?

A. I would think well, there must be a record of was there an Esat board meeting in the preceding week. My recollection is that it was at a board meeting. At the end of the meeting, I said, "By the way, Denis, would you like to go to the All Ireland Final? I have tickets". He said yes.

Q. He has it in his diary as starting at 3.30. I presume that would have been the time of the kick-off, would it?

A. Mmm.

Q. Throw-in, I am corrected, the time of the throw-in; is that right? Would you have met presumably you'd have met him beforehand outside the stadium?

A. I went to his house, picked him up in Wellington Road and drove him, because I had a car-park pass.

Q. I see.

A. And he had talked about all these privileges that the Chairman of Bord Failte had, but I had not only two tickets, but I also had a car-park pass. So I drove him there.

Q. You drove him. So Mr. O'Brien had no car with him?

A. No.

Q. You were the one who was driving?

A. That's right.

Q. And was it just the two of you?

A. That's all, yeah.

Q. And I suppose the last time you had met, we think was

on the Thursday. You had been talking about Mr.

Desmond and bringing him in, and I suppose Mr. O'Brien probably updated you, did he, on what had happened in his negotiations with Mr. Desmond?

A. No, there was no mention of Mr. Desmond. I didn't learn about Mr. Desmond until we had the conversation about the financing, where he told me he had been talking to Dermot Desmond. But I don't recollect any discussion about Dermot Desmond at that meeting.

Q. You don't recollect any discussion at all between Wellington Road and Croke Park when you were driving him there on the Sunday?

A. No.

Q. Can you remember what you were talking about then?

A. I don't. Wondering who was going to win, did he have a bet, because Denis is a good betting man. I honestly you know, it's ten years ago; I don't remember nine years ago; I don't remember any particular discussion. My concern would have been traffic, will we get there in time, get into the car park, and so on.

Q. Did he tell you he was going to meet Mr. Desmond that evening?

A. No.

Q. With the benefit of hindsight, are you not surprised that he didn't tell you? Because he had been discussing all of this with you the previous Thursday,

his negotiations with Mr. Desmond, bringing Mr. Desmond in, that Mr. Desmond alternative to Advent, his concern with the Department, your concern about Telenor; is it not very surprising, Mr. O'hUiginn, that he didn't mention it to you, and didn't say to you, "By the way, I am meeting Dermot Desmond at 6 o'clock this evening"?

A. I don't think so, because I wasn't close enough, you could say, in a way, to what was going on. I was a non-executive director. I came in and out, and he asked my advice; but in general, I suppose, his success as a businessman is that he keeps his own counsel and doesn't necessarily tell everybody what he is doing.

Q. Would you not have been curious yourself?

A. Well, I wasn't.

Q. So anyway, you got to the match, and I don't know, would you have had time for a drink beforehand in the hospitality area or not?

A. No, we got into our seats, and then there is a hospitality area below the Ard Comhairle box where there are hundreds of people, and we went there at the break. There are toilets, there are coffee shops, there are beer counters and so on, and we separated.

Q. You separated?

A. In the hospitality area, because we were milling around. I remember myself the first person I met when

I went there was John Bruton, the Taoiseach, and I had a conversation with him. By then I had lost Denis O'Brien. And then I met Minister Jim Higgins. I met three or four other people that I knew whom I don't even now remember, and then we all arrived back in our seats. That would have been a period of I suppose a fifteen-minute break, arrived back in our seats, and he said "I met Michael Lowry, and I am meeting him after the match for a drink".

Q. I see. Did you mention to me there that you bumped into Dermot Desmond as well in the hospitality area?

A. No.

Q. Do you remember meeting Mr. Desmond that day at all?

Because

A. No, I didn't, no. Well, maybe he wasn't in the Ard Comhairle box. But I do remember well, one would remember meeting the Taoiseach and the Minister, but I remember and I have no idea now of what we talked about; banalities, presumably, about the match.

Q. Were you surprised at all when Mr. O'Brien came back and said that he had met Mr. Lowry and that he was going to meet him after the match for a drink?

A. No, in fact I would have been very pleased that he took an opportunity to meet him, because I think that was quite legitimate, to take an opportunity like that to speak to a Minister. We had grave difficulties with his Department over the auto-dialers issue. I

mean, that was the issue I knew about from Esat Telecom. And we were being impeded "obstructed" is the word, really by Telecom Eireann. The Department was doing nothing to force Telecom Eireann to lease lines quickly; it was taking months. It was a typical stone-walling by an incumbent

Q. Well, wasn't there a view, an issue on the legality as well, Mr. O'hUiginn, of what Esat Telecom was doing? Wasn't there a genuine issue about that?

A. Well, in our board we didn't think there was.

Q. You didn't think there was, but wasn't there another view, Mr. O'hUiginn?

A. There can always be different views on that's what lawyers are for on both sides, but what we had was a letter from a director in the Commission who in fact was informing us that these were legitimate, and Mr. Lowry subsequently did give us DDI capacity, or auto-dialer capacity and Alan Dukes gave it to us subsequently. There was a basic strong case. What the fine points of the legalities were, I am not too sure, but there was an even more serious issue that the Department was not forcing the company that they owned, or the Government owned, to release the leased lines. And it was because we couldn't get the leased lines, they were taking months to give the leased line and the Department was not enforcing that. So it was a very legitimate, in my view, and my

experience in government, I would have said, "This is a great chance; take it up with him".

I was drawing a distinction, and I don't think I needed to do it, between that and talking to him about the competition

Q. Just hold on a moment

A. for the licence

Q. Mr. O'hUiginn, are you saying that you said to Mr. O'Brien, when he told you that he had arranged to have a drink with Mr. Lowry after the match, "This is a great opportunity; take up with him the auto-dialers problem"?

A. I am not saying that with certainty, because what I have said, I probably I am speculating, but I would have seen it as a great opportunity and a correct opportunity. I mean, there is no reason why, in a matter like that, which was a case concerned with his Department, where we were not getting proper cooperation and where we were being impeded and we were being impeded by Telecom Eireann, against a Government decision and a European decision of deregulation, which was really a scandalous situation. So I am quite sure I would have said, "Raise the auto-dialers with him".

Q. Right. I suppose, if he was going to raise that issue with Mr. Lowry about the auto-dialers, he wouldn't be doing it in front of a whole lot of other people,

would he? He'd need to be doing it in a fairly private kind of setting?

A. Well, it would be a polite, discreet way of doing it, but on the other hand, there was no reason to conceal it. It was quite proper to go to a Minister

Q. I am not suggesting there was any reason to conceal it, Mr. O'hUiginn. I am just saying to you that if you were going to raise something like that with the Minister, you weren't going to do it in the middle of a packed pub, surrounded by people, in a group of people having a chat about the match, were you?

Because this was your Mr. O'Brien's private business affairs; isn't that right?

A. Well, it depends on how close people were or whether the Minister could step aside. It wouldn't take much conversation. In my view, all he needed to have said to him was "By the way, are you aware we have a big problem in your Department? We are being impeded by Eircom. There is a solution which the Commission have advised us is correct, and your Department is making difficulties about it."

So I wouldn't attach any great importance

Q. You'd have to step aside to do that. You couldn't do that in the middle of company, could you?

A. Ah yes, but you needn't go hugger-mugger about it somewhere about it. It was a perfectly legitimate

thing to raise.

Q. As you said, you wouldn't need to hugger-mugger anywhere, would you?

A. No.

Q. But would you need to be discreet?

A. But the idea that you couldn't talk if some people were talking here, you could take the Minister aside.

I have done it myself in relation to meeting politicians in situations where there are other people. You can always ask him to step aside for a minute, by the way you are not going to go into a big treatise on the thing. All you need to say is, "By the way, do you know about this problem? and we are pressing."

Q. Was there any difficulty, do you know, in Mr. O'Brien meeting the Minister in the Department in relation to the auto-dialers? Because there doesn't seem to have been. There seemed to have been quite a few meetings with the Department that the Minister was present at in relation to auto-dialers.

A. I am not sure whether they were before or after. Perhaps you could tell me.

Q. There hadn't been any difficulty, though, had there, in gaining access to the Minister in relation to auto-dialers?

A. I think that they may have had access subsequently, and we did get auto-dialers as a result of whatever

representations, whether it was the representations in the bar or whether it was subsequent meetings; but it was perfectly legitimate for the Minister to take account of a representation made by somebody who has a legitimate interest, and that he could raise it with him. We got a number of auto-dialers, a capacity, and we also got it from Mr. Dukes subsequently when he replaced Mr. Lowry, because you must understand, this was the whole question of deregulation was being impeded.

Q. Can I ask you now, Mr. O'hUiginn, when the match was over, what happened then?

A. I drove him back to Wellington Road.

Q. You drove him back to where?

A. Wellington Road. Back to his house.

Q. Do you remember, did you stay on for the presentation?

I think on that particular occasion, I think Dublin may have won; did you stay on for the presentation, or did you leave before the presentation?

A. You mean the presentation of the cup?

Q. Yes.

A. Do cluithre breá sportuile occasion, that the captains' speeches, they make. I couldn't remember. It probably did, because it's not easy to get out from the Ard Comhairle box in a situation where all the teams have now come up and were being presented from the front row. We were at the back or halfway up the

back, so I don't remember.

Q. I see. But your recollection is that you dropped him back to Wellington Road?

A. Yes, yes.

Q. Approximately, could you assist the Tribunal at all as to what time that might have been?

A. Well, I don't know. It would take maybe a half an hour to get from Croke Park to Wellington Road. I mean, it's a Sunday afternoon. Apart from the traffic, all the traffic will be coming out, and I don't recollect any great delay. We were able to drive quickly back to Wellington Road.

Q. Did Mr. O'Brien tell you on the way back where he was going to meet the Minister?

A. I don't think so. He may have, but I don't remember.

Q. I see. Did he indicate to you, at that stage, that he was planning on seeing Mr. Desmond, either before or after he met the Minister?

A. No, no.

Q. He didn't?

A. No.

Q. He didn't say a thing about it?

A. No. The sole conversation was that he came back after the hospitality break and said, "I met Michael Lowry down there, and I'm meeting him for a drink afterwards". And that was the extent of it.

Q. And you encouraged him to discuss the auto-dialers.

We have been into that. You may have.

Can you tell me you say in your statement that you know that he discussed the auto-dialers issue with Mr. Lowry. Is that because Mr. O'Brien told you something of his meeting with the Minister afterwards?

A. No, I don't recollect hearing what was the outcome. I wouldn't expect to have had a great outcome from meeting a Minister like that, in those circumstances. What you do on those occasions is you use the opportunity to alert the Minister to a problem which we were I think in correspondence with his Department, and encourage him to look into it, and explain very briefly how important it was that otherwise deregulation wasn't going ahead.

Q. Subsequent to that you didn't ask Mr. O'Brien how did the meeting go, or anything like that?

A. No, unless he reported at board meetings, I have no recollection of meeting him, because I mightn't see Denis for weeks. So I mean, it's not a question of meeting him on an everyday basis.

Q. Did you discuss at all anything about mentioning the GSM licence to the Minister?

A. No, because my advice, if it came up, I would have said, "You cannot raise the GSM licence". Because my knowledge which is one of the most experienced knowledge you can get in this Tribunal on this issue is this is a completely sealed process. The iron

will of civil servants, of senior civil servants would not let any Minister near a system like that which is sealed.

Secondly, it's a double-jeopardy situation. The civil servants would be jeopardised by a Minister asking them to do something which they which they would consider improper. On the other hand, any experienced civil servant would immediately record any improper influence by a Minister. And if that did not deter him, they would go to the Taoiseach.

I mean, the senior civil servants are very robust people in maintaining the propriety of issues like this in a government department, and in fact, they would go so far as if unless there was a problem, go so far as to go to the Taoiseach's Office. And there have been cases in the past

Q. But short of, Mr. O'hUiginn, discussing, you know, whether Mr. O'Brien would ask the Minister to influence the evaluation process, would you have even discussed whether he should just have a quick word with him about it? You know, "we had the presentation last week," there'd be nothing wrong with that, would there?

A. I would think so.

Q. You would think

A. Certainly I wouldn't as a civil servant, I would say this is sacrosanct. You cannot at any stage

appear to be intervening in this matter, which is so sensitive, sealed off, cannot be touched by Ministers.

And Ministers know it as well, because

Q. But this process was going to be conducted, wasn't it, by the civil service?

A. Yes.

Q. They were the ones who were going to evaluate the whole thing?

A. Yeah.

Q. So would it not have been simple enough for Mr. O'Brien there he was, meeting the Minister in a social context to simply say, "We had the presentation last week," or even to discuss some aspect of finances, or Mr. Desmond, or anything like that?

A. All I can say is I wouldn't do it.

Q. I see.

A. I

Q. You wouldn't do it?

A. I would know the strict line there is in these matters.

CHAIRMAN: There is a protocol, Ms. O'Brien.

MS. O'BRIEN: Yes, of course there is.

Q. Now, can I just ask you to look over the page to the letter of the 29th September.

A. Yes, this is Michael Walsh's.

Q. Yes. You say you didn't know anything about that at

the time?

A. Yes, I didn't know.

Q. If you just go over the page then, there is the letter

of the 2nd October, where that letter of the 29th was

returned. You see it: "Dear Mr. O'Brien,

"I refer to the ground rules of the competition as

outlined at our recent meeting with you on Tuesday

12th September. The Department have already made it

clear that applicants shall not be permitted to

provide any further material to supplement their

applications except where expressly requested to do so

by the Department.

"Accordingly, the additional material received from

you on Friday last is enclosed herewith. It shall not

be taken into consideration in the evaluation process.

"Yours sincerely.

"Martin Brennan."

Do you remember at all whether that was ever shown you

or whether you were asked for your views on it?

A. No, I knew nothing about it.

Q. You knew nothing about it at all. Did you know at all

that that letter had been returned and there was, I

suppose, a suggestion that there had been a breach of

the ground rules?

A. No, I wasn't aware.

Q. I see. Just the final thing I wanted to ask you about

relates to something you referred to in your

memorandum, which is the explanation of the involvement of IIU. The explanation regarding the involvement of IIU, the one that you and I think Mr. O'Connell may have discussed.

A. Yeah.

Q. And I think you deal with that in your reply to Questions 11 and 15 of your memorandum. And I think at Answer 15, on page 9, you say that your conclusion in discussion with Owen O'Connell was to the effect that the 25% shareholding of IIU could be linked to the 5% which it was envisaged in the original submission could be later assigned to other investors. And I think you also refer to it briefly at an earlier stage in your memorandum.

A. That's right.

Q. Now, can I ask you, do you recall when you and Mr. O'Connell set about working on this explanation?

A. I don't recall, but I have seen from this that it was in January that Owen O'Connell recorded that those discussions or communicated that to the Department, so

Q. I think it was in fact April, Mr. O'hUiginn, it was communicated to the Department, but we do have a memorandum. I think we were looking at it earlier, and it's been in evidence, of the 16th January that's the second-last or third-last document in your booklet in which Mr. O'Toole, Mr. Richard O'Toole,

whom you might have known, he was a consultant to Esat Telecom, and he sent a memorandum to Denis O'Brien, and he referred to it, just at the foot of the second paragraph, Number 2 of that document, to "The line worked out by Owen O'Connell and Pdraig O'hUiginn to be consistent with the bid document."

So it would appear that it was possibly in November or December of 1995

A. It could have been.

Q. that you and Mr. O'Connell were working on it?

A. I have no and I think it was my recollection is it was a very short discussion. Whether I was in Esat's office sorry, in Fry's office or whether we spoke on the telephone, but it seemed to me that and I don't know from which side the original suggestion came, but we agreed, well, there is a case for saying, since there was the 20%, there was the intimation that further tranche would be given, and I thought it was up to 5%, would be given to other investors down the road; and therefore, giving 25% now could be interpreted as meeting that criterion.

Q. I suppose you would have realised that something had to be explained to the Department, because having had a capital configuration of 40:40:20, there was now IIU involved, Mr. Desmond, in place of the four institutions, and there was the shareholding increase from 20 to 25%. I suppose those were the two things

that needed to be explained to the Department to show consistency with the bid; would that be fair enough?

A. Yes, my view, as I said earlier, when I spoke to the presentation group, I emphasised the fact that 80% of the shareholding would be held by the two experienced and operative people in telephone business. I mean, as distinct from manufacturing telephones, like Motorola, or as distinct from State companies who had no marketing skills, monopolies and that, I thought this was a strong argument.

So I would have been I could understand ultimately why the Department insisted, the Department and the Minister ultimately insisted that that configuration be kept. But when the issue came up, and when I discovered and was presumably told by Owen O'Connell that in the upshot, IIU had been given 25%, I would have been faced with the reality that, well, how can we justify this?

I presume Owen O'Connell said, "Have you any ideas?"

And I don't know which of us thought of the solution.

Which is an arguable solution, that there was going to be a bigger financial outside investor share ultimately. Did it matter if it was now or later?

And we were rationalising it, meaning, well, 25% in the hands of the investors now, the outside investors now, rather than 20%, is an issue which is an explanation for it.

Q. Do you remember at all if Mr. Burke was involved
did you know Mr. Jarlath Burke?

A. Oh, yes.

Q. Do you remember Mr. Burke, Mr. Jarlath Burke, being
party to any of those discussions that you had with
Mr. O'Connell?

A. No, I don't.

Q. You don't?

A. I am sorry, no, I don't, no.

Q. I'll just show you the explanation. It's the
second-last document in that book of documents. And
I'm not going to open the whole letter. It's
contained in Mr. O'Connell's letter to Mr. Regina Finn
dated 17th April.

And it's the final paragraph on the first page: "The
25% of Esat Digifone Limited held by IIU Nominees
Limited effectively represents the institutional and
investor shareholding referred to in the Esat
Digifone's bid for the licence. You will recall that
this referred to an immediate institutional investor
holding of 20%, with a further 12% in short- and
medium-term stages. Of the anticipated 12%, 5% has
been pre-placed with IIU Nominees Limited. It is
understood that most or all of the shares held by IIU
Nominees Limited will in due course be disposed of by
it, probably to private and institutional investors."
And that appears to have been the explanation that you

worked out with Owen O'Connell. Can I just ask you this: Apart from the reference here of a pre-placement of 5% of the 12% with IIU/Mr. Desmond, do you ever remember anybody else ever referring to a pre-placement of those shares to Mr. Desmond?

A. No. I mean, I was simply confronted with the issue in discussion with Owen O'Connell, and he probably phoned me asking my advice on the matter, and we are now going to have to tell the Department that it's 37.5:37.5:25, and we both, in discussion, concurred in the idea that there was ultimately going to be, in any event, a higher percentage by outside investors. So it's arguable: Is there any reason why it couldn't be given now?

Q. So I suppose it was constructing an argument?

A. Yeah.

Q. I think when Mr. O'Connell was asked, if you like, what you brought to that discussion, what your input is, I think he said that you had a particular knowledge of the people who were going to receive this explanation, so that you would know, perhaps, what could be what would be reasonable or what would be appropriate. And I take it that you wouldn't disagree with what Mr. O'Connell said?

A. I would have knowledge of people, but I wouldn't have any influence.

Q. I am not suggesting I don't think Mr. O'Connell was

suggesting you have any influence.

A. I was being entirely pragmatic. There was now in existence an agreement which had 25% with IIU rather than 20%. And so how can you justify this? It seemed to me, as a simple answer, that you could justify it by the fact that it was always envisaged that the outside investors would have a higher share than 20%.

Q. And as you saw it, that was an argument that might be accepted by civil servants or politicians?

A. It's a reasonable argument, yes.

Q. Thank you very much, Mr. O'hUiginn.

CHAIRMAN: I'll just check, Mr. O'hUiginn, if some of the other barristers might have a couple of questions for you.

Mr. Fitzsimons?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Just a couple of short questions, Mr. O'hUiginn.

The meeting of the 14th September of 1995 that yourself, Mr. O'Brien, PJ Mara is it possible for you to indicate how long that meeting might have lasted?

A. A very short meeting. Half an hour at most. I mean, I don't know how I don't know how succinct Denis O'Brien's evidence was when he was here, but certainly in business meetings, he is very succinct. We would deal with a matter like that very quickly.

Q. And essentially, it was yourself and Mr. Mara advising Mr. O'Brien?

A. Yes, yes.

Q. And you have given us a flavour of some of those advices in your evidence earlier in relation to the question of the involvement of IIU. I think you have indicated that you thought it was a good idea for Advent-related reasons?

A. Yes. As I explained, I felt, rather than a half dozen finance houses, that it was better to have a single investor whose bona fides I knew, who was a man with many investments in Ireland. In any issues that would come up in the course of launching, in carrying through the scheme, that he would be a man who would have regard to the national interest as distinct to the financial interests of finance houses.

By contrast, I mention, we have seen what has happened in Eircom, where financial houses came in and took if I might just say, I was one of the negotiators with the trade unions on the Eircom takeover, and I said we would bring entrepreneurs into the company, and they said "We don't want entrepreneurs; we just want finance houses". And we know why they wanted finance houses, because they were only going to get money. So that was colouring my view, was Dermot Desmond would be there as somebody who would be concerned that the thing would be a success, that he would see to it

that it was a success.

Q. Would it be fair to say that you would have regarded the finance houses as being weak or neutral partners who, by virtue of the fact that they would probably wish to keep on good relations with all of the other consortia

A. I am sorry, I didn't quite catch it.

Q. Would it be fair to say that the banks, as partners

A. The banks as partners, yes

Q. would have been what one might describe them as neutral partners in terms of assisting the bid; they would have no impact on the bid in terms of furthering it?

A. Well, that was the substance of what I am trying to convey. I mean, I knew Dermot Desmond's commitment to development. I mean, he was the one who invented the Financial Services Centre, which now employs 12,000 people. He was the kind of person you'd like to have on your side, where we were launching a new system, which there was going to be a lot of work to be done, a lot of decisions to be made. Rather than finance houses, whose interests, legitimate interests would be with "What return can we get out of our money?"

Q. It would have been I mean, I gather from what you are saying, it would have been your view that the involvement of Dermot Desmond would have strengthened the Irish profile of the bid, of the Esat bid?

A. Yes, well, I don't want to decry AIB and the other I can remember AIB on the other list, and Advent, because I knew Advent in other connections. I wouldn't want to decry that they wouldn't have an interest, but to me it seemed much stronger that to have Dermot Desmond on board, in terms of somebody who would be interested in ensuring the success of the I am not saying the success was due to him, and as you know, it was an extraordinary success, the most successful company going into a system like this, to take on an incumbent and ended up with over 40% penetration, this was I go back to the phrase I used, *solvo ambulando*, that the Ministers and the Department's decision on the financing was correct in the sense there never was any finance shortage; and secondly, in the roll-out, in fact they exceeded the targets in the first year.

Q. At that time, would you have seen Dermot Desmond, if he was brought on board, as being a person, an entity who would take a much more active role in fighting for Digifone than the banks, as

A. I think that would be the nature it was. I mean, there is a difference between one man putting in his money, and all that meant to him in terms of risk, and, if you like, anonymous financial institutions whose responsibility is diffused, and you would not have the same commitment.

Q. Now, Mr. O'Brien, in choosing yourself and Mr. Mara as advisers, certainly showed considerable acumen, is it fair to say you can remove modesty from the stage for the moment but he was choosing yourself and Mr. Mara as advisers because of your tremendous experience and your position and your status in Irish society, political and business, at that time?

A. Well, you are asking me to comment. I think I'll just use the phrase that I used earlier: I always regard myself with the self-deprecating immodesty of a Cork man. I'll deprecate what you said, why he did select me for advice. But he must have thought he must have thought I could give good advice.

Q. Well, again leaving modesty out, it was the two of you, with your backgrounds, from very important people in Irish society in the broadest sense of the term; is that a reasonable statement, would you say?

A. Yes, well, I suppose what I should say was, I was also made a non-executive director of a number of other companies.

Q. Of course.

A. So I mean, he wasn't the only person that appointed me as a non-executive director. I am an executive director of two supply subsidiaries of Bermuda Banks, but well, I won't go it into it all.

So whatever reasons he had, other people had the same reasons.

Q. If, for example, you had heard of Mr. O'Brien describing you as and Mr. Mara as very important sources of advice or of information, you wouldn't say, "Well, that's an incorrect description"?

A. No, I presume not. I mean, I must have gathered some information and knowledge. I was 50 years in the public service, kept on four years over the time that I came to retirement, and I was kept on because it was still considered that I had an important contribution to make, so...

Q. Now, I just want to read a paragraph from a document prepared by Mr. Arve Johansen of Telenor on the 4th May, 1996. It's at Book 49, Document 130, just paragraph 1. I'll just read it out. I don't know if you need to have it yourself.

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

A. He is referring to taking IIU on board.

Q. Exactly. Mr. Johansen is referring to a discussion, a meeting he had with Mr. Denis O'Brien on the 22nd

September, 1995, about a week after the meeting of the 14th September, 1995. And on what you have told me in answer to your questions, he is essentially imparting to Mr. Johansen the advice that he received from yourself and Mr. Mara on the 14th September in that paragraph.

A. Well, if you remember what I said earlier, when I was addressing the presentation team, that I said, "One of your strengths is that you have 80% shareholding in the hands of two people who actually sell telephone services and 40% in the hands of a company that knows the Irish market, has already successfully marketed a telephone service". And it seemed to me that by adding Dermot Desmond, a man who had substantial investments in the Irish economy, and had been the great, the one and only begetter of the Financial Services Centre, this was a very strong addition to the team.

Q. Other than advising Mr. O'Brien at the meeting on the 14th September, 1995, can you recall whether or not you gave him any further advices between that date and his trip to Oslo for the meeting of the 22nd September, 1995, relating to the involvement of Mr. Desmond?

A. All I know is that I must have learned that a decision he had reached agreement with Dermot Desmond and IIU, and that other than that, I had no further

involvement.

Q. Thank you very much, Mr. O'hUiginn.

CHAIRMAN: Mr. O'Donnell?

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

Q. MR. O'DONNELL: Just one question, Mr. O'hUiginn.

Your 50 years' experience in the public service would have obviously brought you into the contact with many, many civil servants, and you have spoken about the iron will of the civil service in protecting the sealed process of this situation. Are you aware of anything now which would lead you to change your view that this was and remained a sealed process?

A. None whatever. I mean, I have read evidence from the people who were concerned, and they have all insisted that Mr. Lowry made no approach to them, showed no preference, did not try to influence them; and as I have said, he wouldn't succeed, because civil servants are not like that. They will not accept it.

I mean, nobody you have to remember, the sanctions that senior civil servants have are pretty severe. They can record which they would do any untoward, improper, uncalled-for intervention in such a situation, and if that did not deter the Minister, they would always go to the Taoiseach's Department. I myself have had to go to the Taoiseach, in a case of a Minister who made an innocent but improper decision, and had it overruled. There is this ultimate

implacable gulf between senior civil servants and Ministers not that we encounter very often Ministers who do try to exceed their functions improperly, but the fact is no and these, as I think I said, these were top-of-the-range civil servants.

Q. Mr. Brennan I think was known not well to you, but was known to some extent; he was Chairman of the team?

A. Yes. John Loughrey I knew very well, Sean Fitzgerald I knew very well. I would rate them as amongst and if you look at their career, how they won their way from Finance to other departments through a system, these are top-of-the-range guys, you know.

Q. Could I just ask you in that context, Mr. Brennan, as you know, was the person as you now know, although I don't think you knew then was the person who sent back or on whose behalf the letter of the 29th September was sent back on the 2nd October. And the letter makes it clear: "I refer to the ground rules of the competition as outlined at our recent meeting with you on the 12th September. The Department has already made it clear that applicants shall not be permitted to provide any further material to supplement their applications except where expressly requested to do so by the Department.

"Accordingly the additional material received from you on Friday last is enclosed herewith. It shall not be

taken into consideration in the evaluation process."

The author of that letter was clearly setting out his view of the rules and was saying that he was abiding by those rules.

A. Yes.

Q. That was a bona fide decision taken by civil servants trying to adhere to their own rules, the rules that had been set for the competition?

A. Yes.

Q. And in that context, didn't they do the right thing by sending the letter back and not taking into account no matter how inconvenient that may have been for Esat at the time?

A. Yes, I would say at that stage they were still in the midst of the evaluation. It would have been very dangerous for them to compromise the evaluation at that stage. This did not alter what I said earlier.

Now, if to me, it would have compromised the entire thing if they if Esat had written in and said, "We want to change our tariffs. We want to change our roll-out period. We don't have 120 planning permissions", or whatever number. "We only we want to change all that". That would compromise entirely the evaluation procedure.

As regards the finances, obviously they would eventually have to come back to the finances, because a Minister could not give the licence unless he was

satisfied they had the financial strength. And which is what he did ultimately.

Q. But they were right, I think you'll agree, to be seen to be above suspicion, like Caesar's wife, to send this letter back?

A. Yes, yes.

Q. No matter how inconvenient that might be.

A. Yes.

Q. Thank you.

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

Q. MR. O'HANLON: I'll come back very briefly to that last point you made about the Minister being satisfied in respect of the financial aspect. I think you were clear that in relation to your advices to Esat, that those two aspects, the financial strength and the technical expertise, were matters which were not going to distinguish the bids?

A. Yes, I mean, it was clear to me there would be no marks attached, comparative marks attached to financial strength on the one hand or technical capacity on the other. Technical capacity would probably be the same anyhow. Financial strength was going to be different, I was quite sure, between everybody. And that would become an issue only when the Minister had to face the clause in which he said, "Subject to me being satisfied of financial strength and technical capacity."

Q. And that related to the actual granting of the licence?

A. Yes, that would be my view.

Q. In relation to the Project Team, insofar as they had to consider it, that was done independently, obviously, in the sealed process of the Minister?

A. Yes. I mean, they once the once Esat Digifone had won what I call the evaluation process, where the marks and so on were attributed, then the Minister had a serious responsibility of being satisfied that they had the financial strength and that all all the decision he made, as I understand it, all the decision he made was based on the analysis made by the civil servants, still on a confidential, sealed basis, and saying "We have looked into all this, and we are satisfied he has the financial strength".

My point is, in my existence in the public service, ever since Andres O'Caoimh's judgement in a planning case in the early forties the early seventies, in which I was involved, once the Minister, on the facts before him, makes that decision, you cannot gainsay or second-guess him and say, "I would have made a separate decision".

Now, obviously

Q. Sorry, I'm trying perhaps to distinguish two separate matters. In relation to the Project Team and the winner of that process, that provided the

Esat/Telenor, or the Communicorp/Telenor consortium with the opportunity to bid for the licence and subsequently negotiate for the licence, and subsequently they are granted the licence. In terms of the evaluation process, the Minister would only be considering that at the granting of the licence himself. The Project Team were independent in relation to who was entitled to win the competition to bid?

A. For the licence, yeah to negotiate. I mean, the first evaluation was to establish with whom would they negotiate to give the licence.

Q. And if I can very briefly return to the All Ireland Final that you attended with Mr. O'Brien. You mentioned at half time, going into the hospitality area below the box, the Ard Comhairle box, and when you met Mr. O'Brien after that, it appears that there was such a fortuitous meeting with Mr. Lowry?

A. Yes, as I mentioned, I met the Taoiseach there, and I met Minister Jim Higgins quite fortuitously. I met other people.

Q. It was clear at that stage that there was a very serious distinction drawn by yourself in terms of what Mr. O'Brien might bring to the attention or alert the Minister in respect of difficulties Esat were having in relation to the dialing issue, the auto-dialers, and any attempt by him to raise the issue of the GSM

licence?

A. I mean, I am quite clear that I said to him, "Here's a great chance; don't forget the auto-dialers, because he needs to know how bad the situation is". And our business was coming to a halt because we couldn't get auto-dialers. We couldn't get leases for months from the Department. I had no clear recollection of saying to him, "Well, for God's sake don't mention the licence", because I would have known well that you couldn't mention it to him.

Q. But the opportunity was simply to alert him to the problem and ensure that he was aware of it, rather than to expect him to respond at that meeting?

A. Oh, yes. I mean, that's all you could do in a situation. I mean, I had done it myself on occasions, meeting Ministers and saying, "By the way, could I mention to you, we have a problem with your Department".

When I was in the Taoiseach's Department, I might meet the Minister socially, and I would say, "We have a problem with your Department; would you look into it".

And it would be quite proper to do this, because there was no sealed process as regards auto-dialers. This was the normal business in which a Minister was involved directly and would have to make a decision, which he did make, and which Alan Dukes made when he subsequently came in.

Q. Thank you.

CHAIRMAN: Anything in conclusion, Ms. O'Brien?

MS. O'BRIEN: No, Sir, thank you.

CHAIRMAN: It remains only then, Mr. O'hUiginn, happily your evidence has concluded just on lunch, so we won't need to trouble you further. Thank you very much for your attendance and assistance, and I hope your recovery continues satisfactorily.

Ten past two for further evidence.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

MR. COUGHLAN: Mr. Tony Boyle.

MR. O'NEILL: Mr. Chairman, I appear with Mr. Maurice Collins, instructed by G.J. Moloney for Mr. Boyle, and indeed also for Mr. McGinley, who will be giving evidence later this afternoon. I will apply for limited representation on behalf of both of those individuals.

CHAIRMAN: Yes, as individuals, you seek it, Mr.

MR. O'NEILL: On behalf of the individuals.

CHAIRMAN: Well, although the matters involved in the potential evidence are quite limited, they do involve a measure of possible controversy or cross-examination, and in the circumstances, I think I should accede to that application. But it will be subject to, first of all, the usual caveat, Mr. O' Neill, that I am implying no view that may or may

not be taken in due course as regards any costs adjudications at the end of proceedings; and secondly, it will of course be limited representation, and will be limited only to the issues covered in the couple of quite brief statements or memoranda of evidence submitted from each of your clients. Very good

MR. O'NEILL: Thank you, Mr. Chairman.

TONY BOYLE, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Boyle, I think you have furnished the Tribunal with two memoranda for the purpose of giving evidence to the Tribunal; isn't that correct?

A. That's correct.

Q. Do you have those with you in the witness-box?

A. I do indeed.

Q. Now, what I intend doing, Mr. Boyle, is the way the Tribunal operates, I will lead you through both memoranda and then come back and deal with matters that need clarification.

A. That's fine.

Q. I think the first memorandum I want to deal with is the one dated the 12th June, 2001, and it's headed "Narrative account of meeting with Mr. Michael Lowry TD".

As Chairman of Persona Digital Telephony Limited, you led the team that prepared and submitted the bid for the second GSM mobile licence. In connection with

this responsibility, you undertook an intensive lobbying campaign with various interested parties, including the media, political leaders of all parties, representative bodies, etc. The purpose of this campaign was to explain to all interested parties the strength of your bid and the credentials of your partners.

The insurance brokers to the Sigma Group were Barrett Hegarty Moloney Limited, Kildress House, Pembroke Road, Dublin 4, who are known to have who were known to have a strong relationship with Fine Gael.

Your main contact in Barrett Hegarty Moloney was Mr. Colm Moloney, Chief Executive Officer, who introduced you to their Chairman at the time, Mr. Frank Conroy. Mr. Conroy offered to request Mr. Lowry to meet with you so that you could make a presentation to him.

Subsequently a meeting was arranged with Mr. Lowry and Mr. Conroy in the Fitzpatrick Castle Hotel in Killiney, County Dublin. Your diary indicates that this meeting was arranged for 6 p.m. on the 16th August, 1995. Bids had already been submitted by this date.

You have a general recollection that this meeting may have been rescheduled but cannot find any note to that effect in your diary. Anyway, there or thereabouts, on the 16th August, 1995, the meeting took place with Mr. Lowry and Mr. Conroy in the public bar of the

Fitzpatrick Castle Hotel. Mr. Conroy introduced you to Mr. Lowry and then attended the meeting, which lasted approximately 30 minutes.

You introduced yourself and explained that the purpose was to ensure the Minister heard directly of your interest in the bid and the strength of your team.

You had prepared publicity material, which was to be shared with each member of the Oireachtas and with the various interested parties, which outlined the key elements of your bid. Among other things, it identified the members of your consortium and their credentials, your approach to marketing, your environmental approach, your proposed tariffing philosophy, your state of preparation for early launch, your funding, and various other items of information on your bid.

Mr. Lowry listened intently to your proposals, and he said he was aware that your consortium was a very strong contender. Upon conclusion of the meeting you reported to the board that you had had the opportunity of putting a positive presentation to the Minister on the credentials of your proposal. You do not recollect any other meeting with Mr. Lowry except perhaps by a casual introduction at a social event.

Now, I'll now turn to the second statement made by you, dated the 16th September, 2002, and the heading is "Statement re conversation with Mr. Dermot

Desmond."

You inform the Tribunal that you attended the Grand National race meeting at Aintree race track in Liverpool on the 8th April 1995 with Mr. Michael McGinley and your father, Mr. James Boyle, deceased.

You were guests in the box of Mr. J. P. McManus at the invitation of Mr. Colm Moloney, insurance broker to your firm. In the course of the event you were introduced to Mr. Dermot Desmond, who was familiar with your business through your business partner, Mr. Michael McGinley. The topic of the second mobile phone licence competition came up, and you explained that you had a consortium together to bid for this licence. Mr. Desmond mentioned that he had been approached by Mr. Denis O'Brien of Esat to act as Chairman of his consortium but said that he had declined to do so, as he had declined, as he had had enough of telecoms.

Mr. Desmond asked what the process involved and who the decision maker was. You explained that this would be a public competition run by the Department of Communications and that the decision would be made by the then by them and their Minister, Mr. Michael Lowry. Mr. Desmond then responded by saying that he knew exactly who Mr. O'Brien would use to get to Mr. Lowry. No further conversation of significance took place.

Now, perhaps if I start with the second statement, because it's the first in time, dealing with the period that is first in time.

A. Sure.

Q. I think it's correct to say that this statement is dated the 16th September, 2002; isn't that correct?

A. Yes, that's correct.

Q. But the content, although it wasn't in statement form, that particular type of information you first brought to the attention of the Tribunal sometime in 2001, in May 2001, orally; isn't that right?

A. Yes indeed.

Q. And you then subsequently committed it in the form of a statement; isn't that right?

A. At the request of the Tribunal.

Q. And it was submitted to the Tribunal.

Now, I think you were aware, Mr. Boyle, and you have perhaps been following the proceedings here, that Mr. Desmond denies ever having had such a conversation with you, at Aintree or anywhere else, along the lines as indicated by you.

A. I am indeed.

Q. Specifically he denies that he ever had a conversation with you wherein he stated that he had been asked by Denis O'Brien to act as Chairman of the of Mr. O'Brien's consortium, or words to that effect; you are aware that he denies that specifically?

A. I am indeed.

Q. And I think you are also aware that he denies having any specific conversation with you, either at Aintree or anywhere else, to the effect that you informed him of how the process would be run, who the decision makers would be, and specifically he denies ever having said to you that he knew exactly who Mr. O'Brien would use to get to Mr. Lowry. You are aware of all of that?

A. I am indeed.

Q. Now, I now have to ask you questions about your memory in relation to this matter, and also on the question of your credibility in the sense of whether you were motivated by malice in making this type of statement or giving such information to the Tribunal. I think you understand that as well?

A. Of course.

Q. In the first instance, there is no doubt that you were a member of a losing consortium; isn't that correct?

A. That is correct.

Q. And there is no doubt you are now aware that, from the workings of this Tribunal, that your consortium, the Persona consortium, was ranked Number 2 arising out of the competition held by the Department?

A. Yes, I am aware of that.

Q. At the time that the competition was being run, first of all, we know that your consortium included yourself

and, amongst others, Motorola; isn't that correct?

A. That's correct.

Q. And that the people in your consortium, including Motorola, had shown an interest in a second mobile or second GSM licence in Ireland from about 1993 onwards; would that be correct?

A. We were working on this project for three years.

Q. For three years. And am I correct would I be correct in understanding that over that period, you would have made representations to the Department and/or Minister in that Department, whoever that Minister might have been, over that period of three years?

A. There were several meetings; I believe our first meeting with the Department was as early as 1992. That was with the then Secretary of the Department, whom I believe was Mr. McDonagh; it was with regard to finding out information on the status of the proposed licensing process and what the key criteria would be.

Q. Now, this was all before the publication of the RFP document, the competition document?

A. Certainly, by its nature, to be successful in a process such as this, there would be significant advance work done, and our work was done over a three-year period.

Q. Over a three-year period. Now, when the RFP document was published, that's the tender document, if we could

describe it as that, or the that was in March of

1995; isn't that correct?

A. That's correct.

Q. Early March, I think, of 1995. And your consortium paid the $\frac{1}{2}$ 5,000 and purchased the RFP document along with other potential applicants?

A. We certainly purchased it.

Q. All you knew is you purchased it. And having studied the particular document, your consortium, I think, prepared its application or its submission; isn't that right?

A. That is correct.

Q. And when the RFP document was first published, at that time it was a document which was a combination of what we now know is called a beauty contest, with an open-ended provision for a licence fee; isn't that right?

A. Yes, or potentially it could be described as a hybrid document, where there was a beauty contest, where the amount of the licence fee was one of the key criteria.

Q. And you prepared your application on that basis; isn't that correct?

A. We certainly did.

Q. Now, we know at a certain stage Commissioner van Miert sent a letter to the Minister to the then Minister, Mr. Lowry in respect of the RFP document and drew attention to the concerns the Commission might have

had in relation to the auction element in the competition. I think you are now aware of all of that from the documents you have seen in the course of the Tribunal?

A. We are certainly indirectly aware, yes.

Q. I just want to ask, can you be of any assistance to the Tribunal as to what Persona might have been prepared to bid at that time, when the competition was still one which contained an open auction element? Or had that decision been made?

A. Based upon the advice of our international partners remember, on our team there were companies who had operated in 43 different countries based upon their advice, the final decision on the actual licence fee was to be kept to the executive committee, which was just five people, or four people, and was to be made on the final day of submission of the bids. That was the final decision. And this was because there was widespread in other markets there had been widespread potential espionage, so their strong advice was to keep that closed.

So with that in mind, a final decision had not been made. The range was in the following: Between $\text{€}1235$ million and $\text{€}1270$ million, that is the range that the parties were discussing at the time. The ESB, who were one of our key members, had achieved board approval for $\text{€}1250$ million from their board and had been

told that they could refer back further if the amount went higher. The figure from Motorola, who were one of the parties, was in the region of $\dot{i}_c^{1/2}40$ million, where they had approval.

It was a complex matter. My belief at the time was that if we had made a decision at that point in time, it would have been just under $\dot{i}_c^{1/2}40$ million. And the reason why we were going at the low end of the scale was that we had also made a decision that we would be offering very low tariffs, because they were interrelated issues. If you offered a very low tariff to the consumer, it would fuel competition; then there would be less money for the licence fee. So we were going to go with if that decision had been made, it would have been just under 40 million, with tariffs which were at a very, very low level.

Q. Well, the reason I am asking you this is I just want to understand what stage you were. No decision had been made about this, but that was the range of discussion that was taking place?

A. Absolutely.

Q. Now, we know, and you knew at the time, that the competition was adjourned for a month; isn't that correct?

A. We were told the competition was adjourned well, it was actually adjourned indefinitely, was the actual status, and then it was reconvened, I believe, several

weeks later.

Q. Six weeks, I think, was the period.

A. But when adjourned, it was an indefinite adjournment.

Q. It was indefinite at that time. And we know when it recommenced, you were informed that there would be a cap of 15 million in respect of the licence fee; isn't that right?

A. That is correct.

Q. In any event, the new closing date was the 4th August of 1995, and I think there were, as we now know, six bids submitted.

A. Yes.

Q. One of them being your consortium's bid. And in the period from the publication of the RFP, that was early March 1995, to the closing date of the competition, or submission of bids for the competition, which was the 4th August 1995, you have informed the Tribunal that in that intervening period, that was the 8th April, 1995, you attended the Grand National meeting at Aintree, and you were a guest in the box of Mr. J. P. McManus; is that correct?

A. That is correct.

Q. And you were there at the invitation of your insurance broker, Mr. Colm Moloney?

A. That's correct.

Q. And that you were accompanied by Mr. Michael McGinley, who was a business associate of yours; isn't that

correct?

A. That's correct.

Q. And by your late father, Mr. James Boyle?

A. That's correct.

Q. I take it, you did attend?

A. Absolutely. I am on the guest list. It's a matter of public record I was there.

Q. Now, you say that in the course of the event, you were introduced to Mr. Dermot Desmond. Who introduced you to Mr. Dermot Desmond?

A. Well, I mean, it was a busy box. There was perhaps two dozen people in the box at the time. My recollection is I was standing with Michael McGinley, who is my business partner. Michael, through his son Paul McGinley, who is the golfer, had met Dermot Desmond on a number of occasions, and Michael made a casual introduction of myself to Dermot at that and we commenced a discussion.

Q. So you say that Mr. Desmond and Mr. McGinley were known to each other?

A. Michael's son is Paul McGinley, and in that context, I believe Michael had met Dermot Desmond with Paul playing golf.

Q. Mr. Paul McGinley, the golfer?

A. That's correct, yes.

Q. And you say in your statement that Mr. Desmond was familiar with your business through your business

partner, Mr. Michael McGinley; is that correct?

A. He had met Michael on a number of occasions, again in the golfing context.

Q. I am just trying to understand. Your business wasn't to do with golf; your business was to do with telecommunications?

A. Telecommunications, indeed, yeah.

Q. And you say that Mr. Desmond was familiar with your business through your business partner, or through your business partner Mr. Michael McGinley. What do you mean by that, or can you assist the Tribunal?

A. I mean he would have been familiar that we were in the communications business. I believe he had got some mobile phones at various times from us.

Q. I see.

A. And so in that context, he would have been familiar with the business that we were in. We had been supplying mobile phones here in the market for many, many years. We were the leading supplier.

Q. Now, you say the topic of the second mobile phone licence competition came up. Can you remember how it came up?

A. Well, I would have been pretty anxious to understand at that point in time, remember, the competition had just started. We were very interested to find out who was bidding. So, clearly, that was of major interest to us. We needed to know who our competition

was. Whether I raised it or whether Mr. Desmond raised it, I believe he raised it, but it would have been one of those types of iterative discussion where I would have been keen to find out was he getting involved, so that the discussion I said that we had a consortium together, which I was the Chairman, which was going to bid for the licence.

Q. Yes, and I am just trying to understand your recollection in relation to this matter now. You can't remember whether it was Mr. Desmond or yourself initiated the discussion?

A. I certainly believe he was interested in what I had to say, and whether it was specifically I asked him first, he would have known we were in the mobile communications business for sure, right. Whether he said to me was I bidding or whether I said to him, are you bidding, or sorry, that we were bidding, I cannot be absolutely certain. I know that the conversation came fairly quickly to the point where I made it clear that we were bidding.

Q. All right. And you say that Mr. Desmond mentioned that he had been approached by Denis O'Brien of Esat to act as Chairman of Mr. O'Brien's consortium?

A. He certainly did.

Q. Can you remember the exact words he used, or

A. He said that he just said it directly like that.

That he had been approached by Denis, I think perhaps

is what he would have described him, to basically be the Chairman of his consortium, but that he had declined because he had had enough of telecoms, with a superlative attached to it.

Q. I beg your pardon, "with a superlative attached to it": Did you understand what he meant by that, or did you both understand what was being referred to there, so? Can I take this, then let's be clear about this: When you say "superlative", do you mean that he had enough of an expletive?

A. That would be correct, yes.

Q. What did you understand by that? What did you understand by that, that he had had enough? What did you understand him to mean when you were having this conversation with him, Mr. Boyle?

A. I am not sure it's up to me to comment on that matter

Q. You were the one present. I am trying to test your recollection and your motivation all in one here, Mr. Boyle. What did you understand that to mean?

A. I think Glackin clearly sorry

Q. You then said that he asked what the process involved. Was that after he had said that he had no interest in becoming involved because he had had enough of telecoms, that he then asked what the process involved?

A. The discussion continued into yes, well, "What's

the deal, basically? What is it about? And how is it going to operate?" And I said it was an open competition process run by the Department of Communications with a tender process.

Q. Why did that conversation continue, Mr. Boyle, if Mr. Desmond had obviously indicated to you, according to your recollection of events, that he had been approached by somebody, he had no interest because he had enough of expletive telecoms?

A. Well, I mean, he asked me he continued with the conversation; he clearly asked me what it was about, and I gave him what I knew about the matter.

Q. And what was that? Can you remember?

A. Well, it was that it was a public competition that was underway, run under a licensing directive or run by the Department of Communications, and that the decision would be made by the Department of Communications and the Minister, Mr. Lowry.

Q. And what happened then? Did he just

A. He made a statement then that he knew who Mr. O'Brien would use to get to Lowry.

Q. Just like that?

A. Just like that.

Q. And that was the end of the conversation?

A. That was the end of other than chitchat, that was the end of the conversation.

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

Michael Lowry, and I don't think there's any dispute between yourself and Mr. Lowry that you did have a meeting in August of 1995.

A. That's correct.

Q. Arranged by Mr. Frank Conroy. So if this conversation you had with Mr. Desmond had taken place at Aintree, it must have been something that was in your mind around this time, is that correct, from April on, if Mr. Desmond had said to you he knew who Mr. O'Brien would use to get to Mr. Lowry?

A. I mean, the significance of that part of the conversation had not even occurred to me at that point in time. So I certainly that certainly would not have been foremost in my discussion with Mr. Lowry.

Q. I wonder, could that be so, Mr. Boyle, if it was said? Because you were involved in the competition; it was a serious and important matter for you. Surely it is a matter which would have, one would have thought, exercised the mind of somebody greatly if they thought that a competitor was going to have an advantage by having access to the Minister whom you believed to be one of the decision-makers in this?

A. I certainly I didn't exercise my, you know, concerns in terms of worrying about who somebody else would it certainly did not exercise my concerns for one minute thereafter until

Q. Doesn't that seem extraordinary, Mr. Boyle? Well,

you, and there is no doubt about it, everyone took the view, and it was in the media even around the time of the result of the competition coming out, that the Motorola consortium was always viewed as being a strong consortium. Wasn't that the general view in the business, and perhaps in the political and the general world in Ireland at the time, that the Motorola consortium was a strong consortium?

A. I think, you know, the consortium was often described as the Motorola consortium, but it is important to remember this: They in fact were only 26% of it. You know, the Persona consortium was very strong. It did comprise the ESB, Sigma Wireless, my company, Motorola, and then a consortium of the Spanish, Dutch, Swedish PDTs.

Q. I understand that. But there was a general conception that your consortium was a strong consortium, and your own view was that you had a strong consortium; isn't that right?

A. I think it was our view. We had done a lot of preparation and spent a lot of money.

Q. Now, if Mr. Desmond had said this to you Mr. Desmond, I take it, you knew to be a man of business in this town; isn't that right?

A. Yes, indeed.

Q. That if he said something to you to the effect that "I know who one of your competitors will use to get to

the Minister", surely that would have caused you to at least be concerned, if not alarmed?

A. I think we were working on a principle, this was a very structured, enclosed, sealed process, and we worked ahead very diligently on that basis. I think you need to understand the environment that we were working in then was virtually 20 hours a day, seven days a week to submit our bids. So you know, it certainly wasn't exercising our minds that this was of concern. It was the key thing which I took from the meeting with Mr. Desmond, the key thing was the key part of competitive intelligence, that he was not going to be part of the bidding process. That's what I

Q. I understand that point. There were two issues. You were trying to identify potential competitors; isn't that right?

A. Absolutely.

Q. I think you would have had little doubt but that Mr. O'Brien was going to be a competitor?

A. That was clear.

Q. That would have been clear?

A. Yeah.

Q. You mightn't have known who his partners might have been, but you would have had little doubt that Mr. O'Brien was going to be a competitor?

A. Yes indeed.

Q. And I state that because he was in the telecommunications business himself at the time, through Communicorp and Telecoms Holding; he was involved in the fixed-line business at the time.

A. Indeed.

Q. Now, there were two issues so: One was you felt that you were able to rule out Mr. Desmond as a potential competitor because of what had been said to you; is that right?

A. That's correct.

Q. But secondly, you now had, perhaps only something that you believed was said to you, and couldn't be proved or anything of that nature, that one of your competitors that you had been told by Mr. Desmond that one of your competitors might use somebody to get to the Minister. What I want to ask you now about it, when you yourself saw the Minister in August of 1995, is it a matter that you brought to his attention, that there was this rumour going around the place that he could be got to?

A. Absolutely not.

Q. You don't think, in the interest of protecting the Minister's reputation, that it might have been something that you would have said to him, perhaps?

A. I mean, as I say, it would not have been in any way, shape or form in my central vision it. It may have been in peripheral vision that this comment had been

said, but I was focusing on very strongly and when I met the Minister, I met him to make a sales pitch to him about the strength of our consortium. That's what I met him for. I talked to him strictly based upon our strengths and our unique competences to be selected, and that's all I talked that's my entire focus.

Q. All right. Well let's, for the purpose of this discussion, accept the process was in train at that time when you had the meeting with the Minister in August. You didn't know, and nobody knew, what the outcome would be at that time, in August of

A. That's correct.

Q. You did know on the 25th October of 1995, I think, that Mr. O'Brien's consortium was successful in the competition; isn't that right?

A. If that's the date

Q. That was the day of the announcement of the result.

A. Sure.

Q. 25th October of 1995.

A. Okay.

Q. Did you think back to what had been said to you by Mr. Desmond at that time and say, "My God", or words to that effect, or perhaps use an expletive?

A. I think, I mean, I would have said that the first thought that I would have had, the first time that would have been voiced or raised in my mind was when

media reports started to link Mr. Desmond to the consortium. The first media report remember, there was actually no I think it is important to remember here that even as one of the losing contenders, we didn't have the privilege or the benefit of any explanation from the Department. They gave us they didn't even officially tell us. We heard it through the media that we had not won, so that's important to remember.

Q. Right. So are you saying that as of the 25th October, all you would have known on the public pronouncement on the matter is that it was Mr. O'Brien and the Norwegian telephone company, Telenor, were participants in this particular consortium; that's as of the day of the announcement of the result of the competition?

A. No, I believe there was it did also say that there was 20% reserved for undisclosed financial investors, I believe is what the actual wording said.

Q. Right. So that's what you would have known then?

A. Yes.

Q. I think some short time later, it started to, because we have been through newspaper articles here at the Tribunal.

A. Sure.

Q. And that would have been in November of 1995, there was the first public statements or comment being made

in newspapers linking Mr. Desmond's IIU with the successful consortium, particularly in the context of perhaps being placers of the 20% institutional or financial investors. That was the first time that anything began to emerge; isn't that right?

A. That's correct.

Q. And you say that at that time, things began to happen in your mind, or your memory was thrown back to what had been said at Aintree; would that be

A. It was thereabouts at that time that the significance of that comment became clear.

Q. Well, so we take it that it was from, say, the end of 1995, November 1995, there or thereabouts, that

A. Yes.

Q. you were thinking about this.

You didn't, or did you, bring the matter to the attention of Mr. Desmond at that time, what had been said by him at Aintree?

A. Certainly not. I mean, after my conversation with Mr. Desmond in Aintree in April '95, I have never spoken with the gentleman, other than potentially a casual hello at a social function, but I have never spoken with him since that matter. I certainly brought the matter to the attention of my counsel, Mr. Moloney, who was the company secretary also to our consortium, and I brought it to the attention of my business partner, Michael McGinley.

Q. Did you bring it to the attention of anyone in Government?

A. We were not afforded the opportunity of any discussion with Government.

Q. But nothing would have stopped you writing a letter in, would it, and saying: "Look, I am a bit disturbed about this, now that I see perhaps some link, albeit an advisory link, between Mr. Desmond and Mr. O'Brien's consortium, and Mr. Desmond said this to me at Aintree"? There was nothing to stop you writing a letter to that effect, was there?

A. Well, I think again, it's probably important to bear in mind the context that at that point in time, first, this wasn't just me; we were I was the Chairman of a board of very senior directors, two of whom were public servants representing ESB, directors from Motorola, directors from Sweden and from the other members; and what we were, at that point in time, absolutely focused on was getting a full explanation from the Department of the entire decision process. We weren't focused on one particular aspect. We were talking to the Department, or communicating with the Department through our solicitor, saying, "Please give us an explanation for your decision, why we haven't been successful". Which we believed was our absolute entitlement.

So that's what we were focused on, and that's what our

board was reviewing, so that's where I think it's important that that's where

Q. I understand that point, and I appreciate that point. But you informed Mr. McGinley and you informed Mr. Moloney, who was company secretary and solicitor, I think the company solicitor also, or counsel?

A. That's correct.

Q. Did you inform the other board members? Because your consortium wasn't a consortium that was to come about in terms of a company and a shareholders agreement in the future; isn't that correct? Before the submission of the bid, your consortium in fact had a company and a shareholders agreement; isn't that right?

A. We had a structured bid; the shareholders agreement was submitted with the bid.

Q. So you had board members?

A. We had board members.

Q. Did you bring this matter to the attention of your board members, the other board members?

A. I have no board minute of that, of bringing it to their attention, and I do not recollect I have not checked with all of them if this matter was brought to their attention.

Q. But you don't recollect?

A. I don't recollect.

Q. In any event, as time moved on, and certainly by the date that the licence was signed off on, which was the

16th May of 1996, there was an announcement made which made it abundantly clear, didn't it, that Mr.

Desmond/IIU were in fact shareholders in this GSM company; isn't that right?

A. That is correct. I believe just at the date of the announcement, I think even at the press conference where it was announced, it was still not confirmed, but I believe at the final I think it was totally at the 11th hour, I believe.

Q. But it was there or thereabouts?

A. There or thereabouts.

Q. So, now, whatever you might have seen in the media in the preceding period, there was an absolute confirmation, isn't that correct, by the time the licence was signed off, that Mr. Desmond was in fact involved in this GSM company as a shareholder Mr. Desmond/IIU?

A. That's correct.

Q. Did this conversation that you have described as taking place at Aintree exercise your mind at that time?

A. I would say not unduly. Still, again we were immediately after the decision was made, or after the licence was signed, we had a board meeting where the various representatives reviewed the issue and reviewed the possibility of pursuing a judicial review of the decision. The board was unable to reach an

agreement to pursue that judicial review. There were many different views on the matter, and indeed different conflicts. Clearly ESB had particular issues with regard to their ownership. Two of the other members had decided to pursue the strategic alliance with Eircom, with Telecom Eireann, and indeed successfully became strategic investors, KPM Intalio. But what was agreed by the board was we would make a complaint to the EU on the matter, but that was focused on very clear issues, which indeed would have been issues relating to competition and relating to openness and transparency, which is which was the basis, and that's where we were focusing at the time, and that's where our entire concerns lay.

Q. Can I ask you this: Would it not have added another string to your bow, if you were able to add to any steps you wished to take, that you were now in possession of what you say was information from one of the shareholders in this company which had successfully obtained the licence, you had information which had been given to you that there was the potential that there had been some form of interference in this process?

A. It certainly was not our advice at the time that that would have been one of the key bases of our complaint to the EU. The key basis of our complaint was, as I say, our request for openness and transparency in the

decision-making process, because that had been our major concern, that we believed we were entitled to an explanation on openness and transparency, and we believed that had not been provided.

So that was the basis of where we were focusing.

Clearly a report of a conversation, you know, it wasn't our advice that that would have been a key part of that complaint.

Q. What you were seeking was disclosure of the content of the competition; is that right?

A. We wanted to know the reasons.

Q. The reasons?

A. The reasons.

Q. The reasons. That's what you were seeking?

A. The reasons why we lost and the other party won, which was the advice we had received that we were entitled to. Nothing else.

Q. And in the years since then, and the matter being brought to the attention of the Tribunal, as we know, in May of 2001, you took no further steps in relation to this conversation which Mr. Desmond you say you had with Mr. Desmond at Aintree; is that right?

A. I think it's important to remember that once the once this matter was closed, and it was totally and effectively closed, once the EU decided that they would not be pursuing the complaint, the EU decided fundamentally that this was a matter which, if we

wished to pursue, we should pursue in the Irish courts, as I said, the board were unable to reach a consensus to take that matter.

So we decided that the file would be closed. We obviously had a business to build, and to continue to build. We had spent a lot of time and a lot of our money in this bid process. And we put the matter entirely behind us and continued to go and build our business, which we have done very successfully, where today we have got 500 people and we have got a very successful business. But we didn't, so the file was closed, and we went on and got on with it.

Q. You see, I have to put this to you, Mr. Boyle: that by not making use of that information that you say you had as a result of a conversation with Mr. Desmond, either at the time of the announcement of the competition result or thereafter, before you closed your file or subsequently, but that you have brought it to the attention of the Tribunal, that you are a disgruntled loser and that you are motivated to make a statement that Mr. Desmond had this conversation with you by reason of being annoyed at losing the competition and seeing him as a shareholder in the company.

A. Well, I mean, absolutely, that's absolutely not the situation. First of all, an attempt to make this a personal matter is not the reality. The reality of

the situation is that the company of which I was the Chairman, and the board of which I was Chairman, had valid concerns at the time, had requests for information, were refused those requests for information, but you know, then made a conscious, clear business decision to move on from that.

Q. I want to be very clear about this, because the issue the Tribunal will have to consider is that and I want to put it straight to you is that you were motivated by malice to make this statement to the Tribunal. Because Mr. Desmond will say that this never occurred, this conversation never occurred. He says that he didn't even meet you at Aintree.

A. Well, I think you further suggest I wasn't there. Now, I was clearly at Aintree. The conversation absolutely happened. I have sworn on oath that is the case; it absolutely happened. My business partner has validated that he was there and the conversation did happen. I have reported the contents to him. I reported the contents to our company secretary. Again, all that evidence can be presented. The facts the fact that there is not one iota of doubt in my mind on this matter that it happened, and that is the situation.

Q. But you understand the issues that the Tribunal has to consider?

A. Absolutely.

Q. Now, I now want to turn to the meeting that you had with Mr. Lowry yourself in August of 1995, which took place in the Killiney Castle Hotel. That, I think it's common case between yourself and Mr. Lowry, that meeting was arranged by Mr. Frank Conroy; isn't that right?

A. That's correct.

Q. And the Tribunal is familiar with Mr. Conroy. He has given evidence already. Mr. Conroy was the Chairman of your insurance brokers, and he was a member of the Capital Branch of the Fine Gael Party, I think would have been known to have been a senior Fine Gael supporter; isn't that correct?

A. That's correct.

Q. Now, did you seek the meeting with Mr. Lowry? In other words, was it you initiated the discussion with Mr. Moloney in the insurance brokerage firm, or how did that come about?

A. I believe it would have been through regular contact which I would have had on an ongoing basis with Colm Moloney. My clear knowledge that, as you said, Mr. Conroy was a member of the Fine Gael Party. We had a desire to make a sales presentation to Mr. Lowry. In discussing with Mr. Moloney would Mr. Conroy be open to make an introduction, Mr. Moloney obviously made the request of Mr. Conroy and came back and confirmed that Mr. Conroy would be prepared to do so. I then

wrote to Mr. Conroy explaining that I was seeking the meeting with Mr. Lowry. I explained very clearly in my letter that if Mr. Lowry felt there was a conflict in this meeting, that I would understand. Mr. Lowry accepted the offer of the meeting. And I met him and made a sales presentation, which I believe was totally open and transparent.

Q. Just one point; you say that Mr. Conroy remained for the meeting. Mr. Conroy furnished a statement. Mr. Conroy has been in poor health. I think you may or may not know that.

A. I am sorry to hear that.

Q. Mr. Conroy informed the Tribunal in his statement that he arranged the meeting. Mr. Lowry in fact stayed with him in his apartment close to the Killiney Castle Hotel, and they went across to the hotel, he made the introduction, and he retired to another area whilst you had the meeting; could that be correct?

A. Mr. Conroy sat perhaps the same distance you are from me right now; that is what actually occurred.

Q. And where would Mr. Lowry have been sitting?

A. Just beside me. Okay, so it was a 10 to 15 feet distance. Mr. Conroy sat at the bar; we were sitting at a table having a conversation.

Q. He wasn't part of the meeting?

A. He certainly did not make he made no contribution.

Could he have overheard it? Almost certainly. But he

certainly did not make any contribution in terms of any input to the meeting other than making the introduction.

Q. Now you had submitted your bid, isn't that correct, on the 4th August?

A. That's correct.

Q. And you knew that it was a competition, isn't that right, and whilst you mightn't have known the exact workings within the Department, can I take it that you would have been aware that this was a sealed competition?

A. Yes, indeed.

Q. Because it was a competition, it had

A. Sure.

Q. What was the purpose at all of seeking to meet Mr. Lowry or making an appointment and keeping such an appointment? What was the purpose of that?

A. Well, it was to make a sales presentation. We had decided, again at the board, and we printed in fact we had an officially printed brochure, which was a highlight of the key aspects of our bid. We issued that brochure to every single member of the Oireachtas; we wrote to everyone giving them that brochure. We wrote to key interested parties, such as the Employers Confederation etc., to give them copies of that, just to ensure that they were aware of our bid and our strength. And it was my intention and

desire to present this bid, present this document, which was a precis of some of the key aspects of our bid, to the Minister so he personally understood the strength of our consortium, the strength of our preparation, and the strength of our credentials.

And that's the purpose of that, and that is exactly what I did, and that's what I then reported back to my board.

Q. Well, the document was a document which I presume it was a glossy document of some sort, was it?

A. Yes.

Q. And highlighted in bullet points, perhaps, aspects of the bid?

A. That's right.

Q. It was that type of document?

A. That's exactly it.

Q. Could that not just have been it wasn't enhancing any bid; it wasn't detracting from anything that went into the bid. It was just a general blurb?

A. It was a general blurb, and I just wanted to ensure that the Minister read it, that the Minister was aware of the contents of it.

Q. Couldn't you just have you could have taken a number of steps, I suppose. You could have sent it to the Minister. You mightn't have felt it would be read; I can understand that.

A. Indeed.

Q. You could have asked Mr. Moloney, of the insurance broking firm, could he ask Mr. Conroy to personally give this to Mr. Lowry and just ask him to read it; there was nothing unusual about that?

A. No.

Q. Why did you yourself want to meet Mr. Lowry?

A. I suppose ultimately, you know, my strength in business and what I have been in for many years is that I am a salesperson. I mean, that's ultimately that's my strength; that's how I built a successful business. And I wanted the opportunity to convey directly the you know, I think it's one thing to read a document; it's a different thing to listen to somebody and to try and see the depth of their sincerity of commitment. And I think that that's what one does as a presenter or as a sales you know, so it was done in that context, as a sales presentation to I felt that by sitting with him, I could convey more, but you know, convey more the our the fact that we were the right party to win this bid.

Q. Well, if I might just borrow on the words that you say were used by Mr. Desmond at Aintree, that he knew who Denis O'Brien would use to get to Mr. Lowry, couldn't it be said that you used Mr. Frank Conroy to get to Mr. Lowry?

A. I certainly used Mr. Frank Conroy to request a meeting with Mr. Lowry, and I certainly explained to Mr.

Conroy in that context that I would understand if Mr.

Lowry felt it inappropriate. But yes, I did ask Mr.

Conroy in writing to arrange a meeting with Mr. Lowry.

Q. You see, what I am trying to understand is this, or perhaps you can be of assistance, to use the term "to get to Mr. Lowry", did you understand that to mean to influence Mr. Lowry, or was it your understanding that it was nothing more sinister than yourself going to make a general presentation based on a glossy document which was nothing more than a few highlights from the bid?

A. I certainly don't think it's for me to interpret what Mr. Desmond said. I mean, I am simply reporting exactly what he said to me. It's not for me to interpret it.

Q. Well, it was said to you, of course, and it's a matter which caused you concern at certain times, and it was a matter which you considered significant enough to bring to the attention of the Tribunal; isn't that correct?

A. I think again it's important to bear in mind the context that we were attending the Tribunal at the Tribunal's request, because clearly they knew we were an interested party, and we were sharing with them certain information that we had

Q. But this was information that you considered significant?

A. This certainly was information I considered significant. But it was just it was just one it was just a piece of information. And as I say, it was in the course of meetings requested by the Tribunal, at the Tribunal's request, to help in their work.

Q. Well, just using the phrase itself, if the suggestion were made that you were trying "to get to Mr. Lowry" when you met him in August, what would your response to that be? In other words, are you trying to influence him? Your bid had gone in. The competition was taking place, and you requested a meeting, and you attended a meeting, and you made a presentation.

Wasn't that to attempt to influence Mr. Lowry yourself?

A. It certainly was an attempt to make a sales presentation to Mr. Lowry and to let him know of our strength, yes.

Q. To influence him; would you go that far?

A. Yes.

Q. Thank you, Mr. Boyle.

CHAIRMAN: Mr. Fitzsimons?

MR. FITZSIMONS: No questions.

CHAIRMAN: Mr. O'Donnell?

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

Q. MR. O'DONNELL: Mr. Boyle, I appear for the Department of Transport, Energy and Communications, as they then were. And I think you indicated that before

you before the competition was announced, you had lobbied the Department on a number of occasions to try to get a competition going, to try to get a competition started?

A. Yes indeed.

Q. And I think on the 2nd March of 1995, you wrote to the Department, and I am just going to hand you a copy of that letter. I think that letter was addressed to Mr. John Loughrey, and it coincided with the announcement that a team would be set up to carry out the competition. It's in the

MR. COUGHLAN: Sir, I don't believe that this is a document sorry, I am not cutting My Friend out, but this is a document which I believe has not been discussed with the Tribunal as to whether it should be introduced in the first instance, and it may have come from somewhere else.

MR. McGONIGAL: No, it did not.

MR. COUGHLAN: I said "may". I don't know.

MR. McGONIGAL: Mr. Coughlan, how dare you even make that suggestion?

Might I respond to what My Friend is implying, Mr. Chairman? Last week, as a result of a request by us to peruse the documentation of the Tribunal, we did peruse the documentation of the Tribunal, and we managed to get copies of a number of documents for further consideration. Some of those documents relate

to Mr. Boyle and this aspect of the Tribunal, and I have discussed those with Mr. Coughlan. I have not discussed them with anyone else, nor have I given copies of them to anyone else, but certainly, of the documents that I have, since they are Department documents, I would have been surprised if the Department didn't have them in the first place.

But I want to make it absolutely clear, I absolutely resent any suggestion by Mr. Coughlan that I may have in any way or any part of my team would have handed these documents out, having regard to the confidential nature in which they were given to us in the first place. And such an innuendo should not have been made in public in this way.

CHAIRMAN: Well, I didn't interpret it as amounting to that, Mr. McGonigal. And I am happy to take

MR. MCGONIGAL: I am, Mr. Chairman.

MR. COUGHLAN: And I accept unreservedly

CHAIRMAN: Let's lower the temperature, Mr. McGonigal.

We have had enough

MR. COUGHLAN: I accept unreservedly and I withdraw any suggestion which Mr. McGonigal may have drawn from the matter.

MR. O'DONNELL: These documents were discovered by the Department to the Tribunal over two years ago, I think. I am not exactly sure which booklet they are (it may be MOB 7), but they have been circulated to

the Tribunal some years ago, and some of them are in different books, but they have been circulated. In any event, Chairman, it's

CHAIRMAN: I think I'd be disposed to let you proceed on this document. I am obviously wary of you raising matters that may necessitate other people being circulated. I don't want to delay matters further.

MR. O'DONNELL: There are two letters. This is one letter, and there is one other letter. They are both from Persona. I am sure they're on their Persona files. They were both discovered some years ago.

And then there is a memo which I think does arise in the context of Mr. Boyle's complaints made today. But if I just draw Mr. Boyle's attention to this letter.

Q. This is your letter, signed by you, I think; isn't that right?

A. That's correct.

Q. And it's coinciding with the day of the announcement of the launch of the competition, the 2nd March

A. Okay.

Q. of 1995.

And it says: "I am writing" it's addressed to Mr.

Loughrey. It says: "I am writing to inform you that

today sees the launch of Persona, a consortium

involving Motorola, Sigma Wireless Technologies,

Unisource Mobile to bid for Ireland's second GSM

licence. I enclose a detailed briefing pack about

Persona which hopefully will be of value to you.

"We are eager to explain to you in detail our proposal and to hear your views as to the approach you believe would best benefit this country. To this end I would hope that an early meeting can be arranged between you and the representatives of the consortium.

"We will contact your office shortly to see when a suitable time can be arranged. I look forward to meeting you."

And it's signed "Yours Sincerely".

At the top, in handwriting, there is "Mr. Brennan, will you please deal with this"; do you see that?

A. I do.

Q. And then underneath there is, in a separate handwriting there is: "I spoke to T. Boyle. He will make fresh contact with me next week when they have fully studied the documents. I told him I and you"

I think by "I and you" it's Mr. Brennan and Mr. Towey because Fintan is the person whose name is obliterated the by the letters MB "I and you are the conduits for clarification and not the Secretary.

He will separately seek a meeting for his principals with the Secretary/Minister" and I think there is a word missing "when the clarification comes through". It's signed underneath do you see at the bottom of the letter by Mr. Brennan "That seems okay to me. I also told him" that's Mr.

Boyle "that the ground rules precluded acceptance of his party's invitation next Friday. He understands this."

A. Okay.

Q. I think at that stage you were holding a party to celebrate the launch of the Persona bid. You had invited the Department officials, but the Department officials made it clear that their rules wouldn't allow them come.

A. Okay.

Q. And you understood that. You understood the people to talk to you were the team and nobody else?

A. No, I think what it says is that he will separately seek a meeting with its principals with the Secretary/Minister when the clarification phase is over, I guess is what that would have said. I am not sure.

Q. The people who were dealing with this, the assessment of the bids, were the team; isn't that right?

A. The people who were dealing with the conduits for clarification, right, that he was the conduit for clarification and not the Secretary.

Q. Weren't the people who were dealing with the assessment of the bids the Project Team?

A. And then it goes on to say

Q. No, I am asking you, Mr. Boyle, weren't the people who were dealing with the assessment of the bids the

Project Team?

A. What this says he told me was that he was the conduit for clarification and not the Secretary.

Q. Weren't you aware that the people who were dealing with the bids were the Project Team?

A. If that's what your interpretation is, that's fine.

Q. Did you understand it to be some other way? Did you understand it to be some other way?

A. That I believe that he said exactly what he said here.

Q. Did you understand that there was some other person involved in the assessment of the bids?

A. Well, the documentation was very clear that the Minister would make the ultimate decision.

Q. Based on?

A. Based upon the recommendation, but also based upon his satisfaction as to the technical and financial capability.

Q. Wasn't it based on a recommendation of a team that was being set up expressly to do this?

A. My reading of the documentation, if you read it correctly, that the Minister will make the ultimate decision subject to the financial and technical capability of the applicants, based upon the recommendation of the Evaluation Team. That's my reading of how the documentation

Q. Did you feel yourself free to ignore what the Project

Team said in relation to how the bids should be assessed?

A. I believe, if you read on correctly further here, you will see that I made it clear to him, and he noted that I would further seek meetings with the Secretary and Minister for you know

Q. People assessing the bids were the team; isn't that right?

A. It's not what the documentation said. The documentation said that the Minister was the ultimate decision maker.

Q. Based on a recommendation from the team who were assessing the bids; isn't that right? Mr. Boyle, this isn't difficult. Nobody else has difficulty in understanding this.

A. It's certainly not difficult for me to understand what it says. And it does say the Minister will make the ultimate decision. That was clear to me.

Q. Do you feel free to ignore the team and go and make recommendation despite the rules in relation to the team being the people responsible for carrying out the assessment of bids?

A. My reading of this letter here is that it says it seems okay to me. What he says is that I would use them as the conduit for clarification. And I would separate representations to the Minister and the Secretary.

Q. Did you feel free at all times to make separate representations to members of the Government in relation to your bid?

A. I believe in terms of making a sales presentation to any member of the Government in terms of why we were the successful party, or why we should be the successful party, was correct.

Q. Let's move, then, to the day of the assessment of the presentation, which I think is it's in Day 171 of the transcript, Chairman.

But I think you attended the presentation which was put forward by Persona to the Project Team; isn't that right?

A. This is the oral hearing; yes, I did, yes, I did.

Q. And I think on that occasion Mr. Brennan said, "In general we would prefer to avoid further contact with applicants originating with the applicants. If we feel it is necessary to ask follow-up questions of detail at all, and we hope that this will not be the case, but if it is the case, we will aim to do so quickly and in writing; but we would like the communication to be at our initiative rather than yours for the remainder of the selection process."

Do you remember that? Do you remember him saying that?

A. I do, yes.

Q. And he also said, "We are trying as much as possible

to avoid any further communication from applicants to us as a result of this week's presentation. So unless we specifically ask for something, we'd prefer not to receive it." Do you remember that?

A. I certainly understood that they did not want any new information, yes.

Q. And that at this stage, the presentation was to be the last time information was to be presented for assessment; isn't that right?

A. That would be my understanding, yes.

Q. Could I draw your attention to a letter of the 10th October, 1995. Now, Mr. Boyle, this is a letter written by you on Persona stationery, to Mr. Rory Quinn, who was then the Minister for Finance. And it's dated the 10th October of 1995. So it postdates the deadline, the closing date for receipt of information, but it predates the announcement of the decision; isn't that right? And perhaps we'll just read the details of that.

"Dear Minister,

"You will recall we wrote to you on March 3rd this year providing you with an information briefing pack about the launch of our consortium, Persona. We have been working on this project now for three years, and because of the confidentiality of the competition process, this is the first time I have had an opportunity to give you a detailed briefing document

about our business strategy. We are confident our proposal will maximise benefits to the customer, the State, and to businesses throughout the country.

"The key points in our business strategy, which are outlined in the documents enclosed, are:

- " significant price reductions in both handsets and call charges;

- " guaranteed exciting business opportunities for independent service providers and retailers.

- " readiness to implement immediately because our consortium has committed hundreds of man year of preparation over the last three years;

- " experience of operating GSM mobile systems in 14 of the 57 countries with licences today.

"Furthermore, all partners involved in Persona are and have proven their long term commitment to the Irish economy. Motorola is one of the largest industrial employers in Ireland, with 1,500 employed in Swords, and it is set to double that number over the next two years. Motorola is also a large employer in the south, with 200 employed in Cork, all highly trained graduates in the company's worldwide GSM software centre.

"Unisource Mobile has committed that it will locate its European Customer Service Centre in Ireland, employing 250 people.

"Participation of ESB in Persona presents an ideal

opportunity to capitalise on its engineering expertise and to maximise the return on existing assets and infrastructure to the benefit of the customer, the environment and the Irish economy.

Finally, Sigma Wireless, an indigenous Irish manufacturer employs over 160 people in Finglas, exclusively in mobile communications, and exports to over 40 countries worldwide.

"Please do not hesitate to get in touch with me if I can provide you with any more information, and thank you for taking the time to read this letter."

The assessment team had made clear they didn't want any more information; isn't that right?

A. We were providing no new information there. That is a summary of information that was already factual in the bid and in the public domain. That is not any new information. That is a summary we provided to the Minister.

Q. Why was it being provided at this stage?

A. Just to ensure that he was aware of the details of the bid.

Q. He wasn't going to be involved in the assessment process at all?

A. There was a Cabinet Subcommittee, was there not, which involved again, the terms of the licence was that the Minister for Communications, subject to the approval of the Minister for Finance, would award the

licence. So it was clear that the Minister for Communications and the Minister for Finance were the ultimate decision-makers in the bid document.

Q. So this was to get around the Project Team and to give information to the Minister for Finance instead?

A. This was not new information. This is a summary of public domain information, which was just to ensure that the Minister understood the facts and the background to our serious position in the country and our serious commitment.

Q. Mr. Boyle, hadn't the Government taken a decision that a Project Team made up of civil servants and an independent assessment entity from Denmark would be the ones who would make the recommendation for the Government to act on? They and they alone would make that recommendation, and they would do it based on information supplied to them and to them alone. Isn't that clearly what the Government decision said?

A. Well, if you would like to afford me the opportunity to consult with exactly what the document said, I shall do that. But it was clearly my understanding of the matter that the ultimate decision was to be made by the Minister for Communications. The wording was that it was in consultation with the Minister of Finance, and based upon the report of an independent Project Team. What that says is that the ultimate decision-maker on the technical and financial

capability of the business was the Minister. That was certainly my clear understanding, and that's what I believe the document said.

But perhaps, if you if the Tribunal or if my counsel would wish to clarify exactly what that says, I would appreciate it.

Q. Mr. Boyle, do you believe that you were entitled, notwithstanding the fact that the Project Team had said "No new information is to be supplied; we don't want any more information", did you believe that you were still entitled to lobby anyone else you wanted to, including the Minister for Finance, before the decision had been announced but after the deadline had been passed?

A. I absolutely provided no new information.

Q. Did you believe you were entitled to lobby these people?

A. Lobbying or sales representation, I believe, is not presenting new information.

Q. Did you believe you were entitled to lobby these people by sending them a letter like this?

A. What I would like to do, if I could have the clarification from my counsel what the wording regarding the role of the Minister for Finance and the Minister for Communications I believe it's appropriate because I believe that they were key factors in the ultimate decision here. And for me not

to provide new information, because we never provided new information, but merely to summarise to those parties, those issues, I believe was appropriate.

Q. Why? Why, if a departmental team of independent

MR. O'NEILL: Excuse me, Mr. Chairman, perhaps the witness is referring to the RFP document, and perhaps he could be given that document to expand on his answer.

CHAIRMAN: Yes, we can do that, Mr. O' Neill.

MR. O'NEILL: I can make that available to him, Sir.

(Document handed to witness.)

A. I think there are two clauses of relevance. I believe

Clause 19 says "The Minister intends to compare the applications on an equitable basis subject to being satisfied as to the technical and financial capability of the applicant in accordance with the information criteria."

I believe there is a separate section which I can

find, which relates which indeed, it's probably

part of the Act, Section 1.11, that says that the

Minister for Finance has a role with the Minister for

Communications in the awarding of a licence under the

Act. So that, I believe, is again I think that's

where it's enshrined.

Q. MR. O'DONNELL: But Mr. Boyle, you are under no

misunderstanding or misapprehension that the people

who were responsible for making the recommendation to

the Minister and the Minister here is of course Mr.

Lowry, as he was you were under no apprehension but that the people responsible for that were the Project Team, consisting of the departmental officials and Andersen Management International and no one else?

A. I certainly would not and did not step one inch over the line in terms of providing any new information to the Minister, and would not have done so. As I said, I firmly believe that, as it says in the Act, that this is the role of the Minister for Finance and the Minister for Communications. And as the RFP document says that the Minister will make the ultimate decision, that I had the right to make to write to the Minister setting out no new information, but setting out some of the reasons which were enshrined in our document why we were the most suitable applicant.

Q. Wasn't your purpose in doing that to try to circumvent the process which had been set up by the team?

A. Absolutely not.

Q. And to say to the Minister, "Well, look, here's a good reason to pick me; it doesn't matter what the Project Team say. Here's a reason to pick me"?

A. It was a normal sales presentation to bring to the Minister information that was within the document, which I believe was totally within our right.

Q. Well, now, Mr. Boyle, it can hardly be regarded as a

normal sales presentation. This was a contest which had been hotly contested. It was a multi-million-pound contest. There had been a clear deadline drawn by the departmental officials at the presentation on the 12th September. You had been left in no doubt but that no additional information was to be supplied; indeed, that there should be no further communication from applicants. And you had made it quite clear that you understood that, and yet what you did is you went out of the preparation and decided that you wouldn't write back to the departmental team who are the people responsible for this, but you instead wrote to the Minister for Finance. And wasn't the purpose of you doing that to try and get what you had in your letter taken into account in deciding who should get the licence?

A. There was no new information provided. I certainly wrote to the Minister whom I believed was the ultimate decision-maker in conjunction with the Minister for Communications. As I say, in accordance with the regulations.

Q. Wasn't the purpose of you writing that letter to have what you had put in that letter taken into account in the award of the licence?

A. If the Minister is the ultimate decision-maker, and as I say, the regulations say that, I believe I have the right to communicate to him directly, as I did, in a

formal letter, and not any new information, but a

summary of information that was in our bid.

Q. Notwithstanding the fact that the Project Team had made it clear that they were the people responsible for the running of the competition, and that they had made it clear that no further communication should take place?

A. It would certainly have been my understanding of what they made clear is that no new information was to be provided, and no new information was provided.

Q. No, they said, "We are trying as far as possible to avoid any further communication from applicants"; not just new information, but any further information?

A. You will recollect we did not have a transcript of that, for sure, and the view we would have left that meeting with was that no new information was to be provided. That was

Q. Did you not understand what the Department had said?

A. We certainly understood. And obviously it's some time ago, but my clear recollection is that we were not to provide any new information, and we did not. But we did ask them, if they required any more clarification, to come back to us.

Q. Did you ask them was it all right to write to the Minister for Finance?

A. I don't believe we had to.

Q. You felt that you were free to write to a Minister,

notwithstanding the fact that the Government had set up a specific team to do this?

A. That certainly is my belief, yeah.

Q. And in doing so, to circumvent the competition?

A. We did not attempt to circumvent the competition.

Q. As you are aware, this letter of course was not taken into account by the Project Team; isn't that right?

A. I am not aware of anything. I am not aware of that matter.

Q. Well, you have no reason to believe that it was, Mr. Boyle; isn't that right?

A. I am not aware of anything of that matter.

Q. Anyway, you stand over this letter. You say that you were entitled to write this letter, and if you had the same opportunity to do so in the morning, you would do it again?

A. That would be my view.

Q. Now, Mr. Boyle, you also said that you were given no opportunity to have any discussion with the Government in relation to the fact that you had been unsuccessful; isn't that right?

A. What I said was, the history is as follows

Q. I'll read out exactly

CHAIRMAN: Let him just distinguish first, Mr. O'Donnell.

MR. O'DONNELL: Yes.

Q. Sorry, Mr. Boyle, yes?

A. The point I made was, Number 1, that we heard of this decision from the Government, or from the Minister, on the radio. We did not get any official communication.

We wrote to the Minister immediately requesting details of their decision and the reasons why and the reasons not.

After many activities and many months, many months of campaigning, requesting what we were entitled to, and many, many letters, we were afforded the opportunity of a disclosure meeting, which we basically then responded to the Department very clearly that none of our questions were answered. And that matter that meeting was closely minuted, and those minutes are available. It can be made available, and they are in the books, and we did make we made it clear, and this was only after many months of requesting what we were validly entitled to.

Q. There was a meeting between you and a number of other departmental officials sorry, your team and a number of other departmental officials in which you addressed various questions and you got various answers. You may not have been satisfied with the answers, but the questions were answered.

A. That is absolutely incorrect. There was a meeting many months later, when we asked many questions. We received no satisfactory answers whatever. No detailed answers. And again we documented that in

writing with the Department.

Q. You may not have been satisfied with the answers, but you got answers.

A. There were no answers.

Q. You say, though, that the first time that you had an opportunity to discuss this matter with anybody involved in the Government was at this meeting, in I think May of 1996?

A. I don't recollect any other, but I am just trying to remember when the disclosure meeting was offered. It was sometime around the press conference date, which I believe was May '96; I believe that's the

Q. And you say you had no opportunity to discuss your misgivings about the outcome of the process before that?

A. We certainly put through letters. I am just trying to recollect if we put through phone calls. But we put through many letters of request for information, and we got responses which basically said that the information could not be provided because of confidentiality.

Q. Weren't you concerned, Mr. Boyle, that an advertisement had appeared in the Sunday Business Post from the EERA, the Electrical and Electronic Retail Association, an open advertisement in the form of an open letter addressed to the Minister, I suppose criticising the involvement of the ESB in the Persona

bid? Weren't you concerned about that ad at the time,
in October/November of 1995?

A. We certainly felt it was very dirty tactics, yes.

Q. And you wrote I think you wrote subsequently to Mr.
Lowry about that; isn't that right?

A. It's quite likely. It's not my immediate
recollection, but

Q. Well, we have a letter from the 2nd November of 1995
to Mr. Lowry indicating that you did. But didn't you
also

MR. O'NEILL: Mr. Chairman, I think, in fairness to

this witness, he hasn't seen any of the
correspondence, or not recently seen any of the
correspondence to which reference is now being made.

I know Mr. O'Donnell and of course the State team have
full access to all documentation which is circulated
in the Tribunal, but it has to be borne in mind that
this witness does not.

MR. O'DONNELL: This is a Persona letter, Chairman,
and it's only in relation to an issue which Mr. Boyle
raised, which is that he was never given any
explanation, and said, at page 92 of today's
transcript, that he never had any opportunity to
discuss what happened with the Government.

Q. And I am going to put to you now, Mr. Boyle, a
telephone conversation that you had with Mr. Loughrey.
Do you remember that?

A. I did say there, if you recollect, a couple of minutes ago, that there may have been a telephone conversation.

Q. We have a note of that telephone conversation on the 31st October of 1995.

A. Okay.

Q. And I'll read it out to you: "Tony Boyle called me earlier in the day, but I was not in a position to get back to him until 3pm. He stated that in all stages, Persona had participated in the bid process in an impeccable way. They had been dismayed by the Business Post revelations, and he emphasised that their media expressions of horror were not based on any sour grapes or on the basis of a bad loser but on the fact that a winning bid had been promoted by Esat who used business methods which were, in his opinion, less than ethical. I" that's Mr. Loughrey "I reassured Mr. Boyle that the placing of an advertisement by anybody, whether directly or indirectly, would not or indeed could not have affected the outcome of the competition. In fact I stated colloquially that if any promotor had brought the four Sunday papers and distributed them as a free propaganda sheet, it would have been totally irrelevant. Mr. Boyle stated that they had consulted with their legal people, who felt the situation, if demonstrated to be true, would provide the grounds for

serious damages against Esat. I asked Mr. Boyle to follow through the logic of the situation from his viewpoint. He used horse-racing terminology in which he recalled the first race at Leopardstown on Bank Holiday Monday, i.e. yesterday; the horse first past the post was stood down and the race was awarded to the second horse even though the first horse past the post had only inadvertently taken the ground of the runner up. Tony Boyle went on to say he had made a statement to RTE which had two elements. The first element being that he had no quarrel with the Minister of the Department as such, but the second element being that in the light of the Minister's announcements on standards required of semi-state bodies in the context of the task force that the standards demanded of private enterprise bidding for a public enterprise should be no less exact. In those circumstances he would be calling for the Minister to investigate Esat's behaviour and take action accordingly.

"I thanked Mr. Boyle for having let me know directly as to what action he was taking but stated very carefully and got his agreement that my only function in taking the call was to listen very carefully to what he had to say and to thank him for having informed me directly. He accepted that there was nothing I said which indicated that the Minister would

take any action or that there would be any particular outcome to the points he was raising."

So wasn't that an opportunity the first opportunity generated by yourself, a telephone call to the Secretary of the Department to inquire as to why you had lost?

A. No, no, that's not as to why we lost. That's a very specific request aimed at a particular issue.

Q. Wasn't that the only issue that was ever raised?

A. Absolutely not.

Q. In your correspondence of the 1st and 2nd November of 1995, that was the only issue on your mind, was that this advertisement had been placed in the Sunday Business Post, and that you were concerned that this had in some way influenced the outcome of the Project Team, and you were re insured by Mr. Loughrey that it couldn't possibly have done so?

A. That's a totally different issue. There was two separate issues here. What I referred to previously was the requests which we made, continuously and consistently, in writing to the Department seeking a full explanation for their decision, not on this matter of the ESB advertisements. This was a full explanation of their decision for the reasons why we had lost and why the other party had won, which was our advice from counsel that we were entitled to.

That's the matter I referred to. This was a side-show

discussion with on a particular issue. That was not a this was not our main contentious point with the Department. Our main contentious point with the Department was, "Please give us an explanation; we are entitled to get it". And we were told no. That's the point I referred to.

Q. Mr. Boyle, what I am putting to you is that the first opportunity you had to contact the Department you took in or around a couple of days after the announcement of the result, and your principal gripe and your principal cause of concern at that stage, as recorded by the Secretary of the Department whom you had phoned, was that you were upset about an ad in the newspaper, and that Mr. Loughrey did his best to put your mind at rest in relation to that, and that you followed that up with a letter of the 2nd November of 1995, again complaining about the ad in the newspaper. You were, at the same time, looking for some sort of explanation as to why you had lost, and you were eventually invited to attend a meeting where this was gone through in some detail, but that your concern in October of 1995 really related to the ad in the newspaper which you were unhappy about.

A. That's absolutely incorrect. You are taking the matter totally out of context. The key issue in the overarching and overriding issue was our request which pre-dated that matter, which went in immediately from

our company secretary, requesting formal response from the Department on this matter. That was a side-show issue which was raised, and that was raised with the Department.

The key issue, if we again, if we have the letter, we can present it, but I am sure you will see the key issues here were letters from G.J. Moloney solicitors requesting the information on the result and yes, the non disclosure/disclosure meeting which we discussed did happen in May 1996; that was after major pressure, which was exerted through many quarters and at the request of many organisations, including five of the losing bidders, and representation made by those bidders or on behalf of those bidders for four American companies by the American Ambassador, it was very serious reservations, senior-level requests had to be made to get any disclosure, and that disclosure was totally, totally irrelevant.

Q. Well, it wasn't irrelevant. You may have been unhappy with it, but you were certainly given responses to your questions. You may not have felt that they were the responses that you would have liked.

A. Well, that's your view. Our view was very clear, that the answers did not answer that the answers given by the Department did not answer any of the concerns we had raised.

Q. Well, isn't it clear that at the conclusion of that

meeting, weren't you told in bald terms, when you continued to press why Persona had failed, you were told because it was not the best application? Having gone through the various scores, having gone through the various criteria, weren't you told didn't you keep asking this, "Why didn't we win?"

A. That was a very simplistic answer given by the Chairman of the team when he had failed to answer the other very relevant and very direct questions which he had failed to answer relating to many aspects.

Q. Do you think that's correct, Mr. Boyle? Because in your own minutes, which are referred to in the book, Book 44, Tab 219, there is a summary, "Weaknesses in Persona's Application". Do you remember those being outlined to you?

A. I do.

Q. And under the heading

MR. O'NEILL: Mr. Chairman, sorry to interrupt My Friend. We don't have copies of that document. I think, in fairness both to the witness and his legal representatives, we should be given access to that documentation. He is being asked questions on matters and indeed they may well be legitimate, but he came here to deal with the issues covered in his two statements. He will be glad Mr. Boyle will be glad, I have no doubt, to deal with other issues, but I think he must be given an opportunity of having a

look at the correspondence and documentation that is available to all other parties so that he can adequately deal with it. It's very difficult for him to deal with documents taken or plucked off a file when Mr. Boyle himself doesn't have access to that file.

CHAIRMAN: There is some merit in that, Mr. O'Donnell.

MR. O'DONNELL: There was an issue that was raised by Mr. Boyle in his evidence here today. I am representing the Department, and I have to defend the position of the Department, because it's being suggested that they ignored or refused any meeting with him, and when they did meet with him gave him answers that were irrelevant. That was the word Mr. Boyle used, "irrelevant".

Now, I am entitled to address that with Mr. Boyle.

And if he feels that he wants the minutes, I am happy to provide a copy of the minutes, but they are summary minutes. And I am more than happy for him to see them, but I don't want to drag him back another day.

CHAIRMAN: Well, he should have sight of that. We are not going to finish this, because obviously some of your colleagues will have some questions, and obviously it's imperative that Mr. O' Neill have an opportunity at the conclusion of Mr. Boyle's examination, as is the practice here, to have, save for the Tribunal's, colloquially, sweeping wind-up, to

have the last word.

So I think it is important that Mr. Boyle have an opportunity to see any this or any other further matters upon which you may be placing reliance overnight. But I think we will proceed for the remaining until shortly before a quarter past four to try and ensure at least matters do not take overmuch tomorrow.

MR. O'DONNELL: This is the last issue I propose to raise.

CHAIRMAN: Right.

Q. MR. O'DONNELL: Mr. Boyle, I am just going to draw your attention to the summary minutes, and in particular, to page 5 of those minutes. It's Book 44, Tab 219: "Weaknesses in Persona's Application".

"Technical:

"Mr. McQuaid pointed out that the Persona application was perceived to be weak in respect of network capacity. When asked why, again he confirmed

MR. O'NEILL: Again, Mr. Chairman, I don't think the witness has even a copy of this document.

MR. COUGHLAN: I think this is a Department summary, I think. I don't believe Mr. Boyle may have seen this

MR. O'DONNELL: It's in Book 44.

MR. COUGHLAN: I know that.

MR. O'DONNELL: If it hasn't been circulated, Mr.

Boyle can obviously

MR. COUGHLAN: That's the only issue.

CHAIRMAN: But these, Mr. O'Donnell, these minutes weren't furnished to the losing consortia.

MR. O'DONNELL: I am not certain whether these are Department or the Persona documentation. The reason why there are comments within them which lead me to believe they may be a Persona minute.

MR. COUGHLAN: I think they only the only place they come from, as I understand it, is the Department files.

MR. O'DONNELL: Well, they have been circulated to the Department, to the Tribunal, and they are in the books of documentation.

MR. COUGHLAN: I appreciate that. The point I am trying to just it's usual to circulate all documents about which a witness is examined. It happens on occasion that a document arises, but somebody who hasn't seen a document must be entitled to have an opportunity to examine the document in the first place before he is asked questions about it.

If Mr. Boyle can deal with it, that's fine; but I am just intervening at this stage. It's usual to give somebody time to look at the document. This would not have been circulated to Mr. Boyle.

MR. O'DONNELL: We think they are Persona documents, and one of the reasons why we think they are is unlike

any civil service minute, there is a comment on page 4 in relation to an answer that Mr. Brennan gives. He says: "Mr. Moloney asked at what point the question of a preparedness of an applicant was assessed. Was it at the time of the decision to award the licence?"

The response is: "Mr. Brennan answered somewhat unconvincingly that it was at the time of the submission of the applications, i.e. the 4th August."

That is not, I may respectfully submit, a description that would be seen in a civil service memorandum.

CHAIRMAN: Scarcely, Mr. O'Donnell.

MR. O'DONNELL: Particularly of its own volition, so it seems, given that the only other party that were there were Persona or possibly Sigma, that it was within Mr. Boyle's ken, the document in question was within Mr. Boyle's ken

MR. O'NEILL: Mr. Chairman, I can cut this short. We can now identify that document. We now have identified that document as a minute prepared by Persona, but it is an eight-page document, and I think it is very unfair to ask this witness questions in relation to that, and indeed in relation to the response which is clearly set out of Persona to that meeting on the 30th May of 1996.

I think this witness must be given an opportunity of looking at the or at that documentation before he is asked questions in relation to issues about which

he has not prepared himself. He came here to give evidence as I have indicated of course he can give evidence on any matter, but he came prepared to give evidence on the two statements that he made to the Tribunal.

CHAIRMAN: Yes. Well, Mr. Boyle, I take it, even though this document may have emanated from your own advisers, it's something that you would prefer to familiarise yourself with before dealing with any remaining questioning on. I think it's not unreasonable if you tell me you'd rather do that, rather than take it on the hoof, so to speak.

A. I feel it would probably be more appropriate to review it in the light of the response, but certainly I have an overriding view in terms of the of our lack of satisfaction with that meeting and the fact that we communicated that in writing to the Department immediately thereafter with very detailed explanations why we were unhappy. So that, I guess, is where the disconnect lies.

CHAIRMAN: Well, I think the likelihood there will be some other counsel with some questions for you, Mr. Boyle. So my feeling, as of now I'll hear what you may wish to propose, Mr. McGonigal is that it seems unlikely we can fairly or properly finish today, and that we should try and make up any lost time by making an early start tomorrow.

MR. McGONIGAL: I have no difficulty with that, Mr. Chairman. The only thing that concerns me is that arising out of his evidence and arising out of some of the documents that have now been put by Mr. O'Donnell to this witness, it does seem to me that there is a substantial number of other documents which may be relevant and should properly be put to this witness in relation to various issues which have now been raised. Some of these documents have already been isolated by us in relation to material we saw last week from the Department, and I certainly, at the moment, take the view that I may wish to ask Mr. Boyle questions on a lot of these documents, and while not fully committing myself to that position, I have already indicated this to Mr. Coughlan that I would be doing this, and he would need an opportunity, Mr. Boyle would certainly need an opportunity to see some of these documents to enable his mind to be refreshed on certain facts which may be relevant. And it would take longer than tonight, without causing too many difficulties, but being fair to the witness.

CHAIRMAN: Obviously, Mr. Shipsey, you are here with a view to asking some questions.

MR. SHIPSEY: I would, and I'd be anxious, obviously, if I could start today, Sir, just in terms of my own personal convenience, at 11 tomorrow, but I know there is you were indicating that you were going to sit

till about a quarter past four. I'd be happy to make a start, if that were possible

CHAIRMAN: The only thing now, Mr. Shipsey, if Mr. McGonigal tells me and of course I must have due regard to that that it's now proposed that some further documentation may have to be circulated in particular to Mr. Boyle, which may be difficult to attend to overnight before concluding his examination. I don't want to impose on him the somewhat oppressive task of having to come back tomorrow and then perhaps face yet a further hearing from Mr. McGonigal.

MR. SHIPSEY: Will we take it, then, he will not be back tomorrow? Is that what you are saying, Sir?

MR. COUGHLAN: As I understand Mr. McGonigal, Mr. McGonigal is going to discuss certain matters with me in relation to documents. He may not be able to do all of that overnight. That's as I understand it.

MR. MCGONIGAL: No, no, I mean, I am quite happy to deal with these tomorrow if necessary. I just want to give the witness an opportunity of reading, to deal with them if necessary

MR. COUGHLAN: I won't say anything further. I'll talk to Mr. McGonigal.

MR. O'HANLON: I am concerned, Chairman, that a document which appears to relate directly to the meeting between the Minister and Mr. Boyle was presented by Mr. O'Donnell, which has been furnished

apparently two years ago to the Tribunal, was not discovered to the Minister, to his team. It appears to relate directly to him, one which refers to Mr. Brennan saying it would be okay for Mr. Boyle to meet the Minister, and I am concerned that any other documentation which relates directly to this, to the meetings with Mr. Boyle, which was an issue which was opened some short time ago, when Mr. Coughlan made his Opening Statement, as being a matter which was due to be investigated by the Tribunal, that all relevant documentation in relation to that has been furnished to us, and that we don't find new documentation arising in the course of cross-examination.

CHAIRMAN: Well, it seems to me at the moment there are two elements in the remaining testimony of Mr.

Boyle: There are the matters that have emerged in the course of today's hearing, which are essentially procedural, concerning the degree to which the Department may have responded to requests made by him to account for the basis upon which he was not successful on behalf of his consortium; but there is also perhaps the somewhat separate matter for which Mr. Shipsey has presumably primarily intended, which is a less documentary and more net issue.

And as I surmise it, Mr. Shipsey, I take it you are probably scarcely proposing to raise much by way of documents.

MR. SHIPSEY: No, I am not.

CHAIRMAN: Well, Mr. O'Donnell, I think probably the best thing is if I give Mr. Shipsey an opportunity of dealing with what it seems the most obvious part, until matters took their course today, of Mr. Boyle's cross-examination, and that if we can seek to conclude that how long are you going to be, Mr. Shipsey?

MR. SHIPSEY: I would have thought about half an hour.

CHAIRMAN: Well, Mr. Boyle, would you at least face trying to get that much of it over with today? And if it does seem that to ensure that things are procedurally fair, that we then have to make your remaining testimony, rather than tomorrow, a short time further off, I'll see that your commitments are heeded in regard to dealing with that.

But I think we should probably try to use the time to dispose of what had seemed the more apparent ground for cross-examination. So if you have some further matters to raise, I won't shut you out, Mr. O'Donnell

MR. O'DONNELL: I am quite happy that Mr. Shipsey would go now, and we can deal with the remainder of this, which is short, Chairman. And which, I should say, Chairman, I would not have had to raise this save for Mr. Boyle's evidence in chief, so to speak, but I am happy to deal with it either tomorrow or some alternative date.

MR. O'NEILL: I am sorry to interrupt again, Mr. Chairman. My only concern is if Mr. Boyle is undoubtedly going to have to come back to give evidence in relation to other matters. If Mr. Shipsey is going to put any documentation to him, I think it's only fair to him that he be given the opportunity of considering that documentation. If he isn't

CHAIRMAN: I understand. It's

MR. O'NEILL: I know you don't want to waste the time that is now available. But I am concerned that Mr. Boyle be given a proper and adequate opportunity of considering any documentation.

CHAIRMAN: Well, Mr. Shipsey does indicate to me that he is not proposing to raise documents, so I think we'll take, without tying you utterly to half an hour, as close as remotely as possible to that, Mr. Shipsey, and then we'll decide what's to be done as the balance.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SHIPSEY:

Q. MR. SHIPSEY: Mr. Boyle, I appear for Mr. Dermot Desmond. And I am correct, am I not, that you made, in total, two statements for this Tribunal: one in June of 2001 and one in September of 2002. Is that correct?

A. That's correct.

Q. They are the only two statements you have made to this Tribunal?

A. Yes indeed.

Q. And how many meetings did you have with the Tribunal?

A. Perhaps three or four.

Q. And did you

A. Something of that nature; maybe three.

Q. Were you asked to provide any documentation by the Tribunal? Any documents in discovery?

A. I believe we have provided certain documents.

Q. None, however, in connection with the statement that you made in connection with Mr. Desmond; isn't that correct?

A. Absolutely not.

Q. There are no documents that you provided in connection with the allegation that you made of the conversation with Mr. Desmond in 1995?

A. Are there any other than the documentary evidence of the statement of myself and of my business partner, Michael McGinley.

Q. Apart from the statement, the 17-line statement in September, 2002, there is no documentary evidence in connection with the alleged conversation with Mr. Desmond; isn't that correct?

A. That's correct. It was a conversation.

Q. And that statement is written by you seven and a half years after the event; isn't that correct?

A. There or thereabouts.

Q. And it's written some fifteen months after the first

statement that you made to the Department(sic) in connection with your meeting with Mr. Lowry, isn't that correct, made in June of 2001, the other in September of 2002?

A. With the Tribunal.

Q. The Tribunal, I am sorry. To the Tribunal.

A. Yes.

Q. And would I be correct in describing both of those statements, one as being a defensive statement, in that the statement in relation to Mr. Lowry is explaining or defending your meeting with him; would that be fair to categorise that statement?

A. I certainly don't feel it was needed to defend it. It was explaining it.

Q. You don't feel defensive about it, or you don't feel there was anything wrong in having that meeting or in having that meeting set up for you; isn't that correct?

A. Not, indeed, no.

Q. And again insofar as that meeting is concerned, and insofar as Mr. Conroy is concerned, he is the person that you could describe as having been used by you to either set up the meeting or to get to see Mr. Lowry; isn't that correct?

A. He certainly was used to set up the meeting with Mr. Lowry.

Q. And you could describe that as the person that you

used to get to Mr. Lowry?

A. I have already said that I had placed no interpretation on what that "get to" meant, and that's for the Chairman to form a view.

Q. I wonder, is that true, now, or fair, Mr. Boyle?

Because if it was only being used by Mr. Desmond, if your recollection is correct, to suggest that Mr.

O'Brien would have a way of arranging a meeting with

Mr. Lowry, there'd be nothing wrong with that, would

there? If, for example, Mr. O'Brien had gone in the

way that you had, to Mr. Conroy, and said, "Would you

set up a meeting with Mr. Lowry for me", there'd be

nothing wrong with that; isn't that correct?

A. That's correct.

Q. And therefore, when you suggest to the Tribunal here

that you are not placing any interpretation on the

second-last sentence of your statement in connection

with Mr. Desmond, you are, in fact, in that statement,

trying to make some suggestion, or else you wouldn't

have bothered making it; isn't that right?

A. I think it's very important to understand that this

statement was made in the middle of other discussions

with the Tribunal. Clearly we were an interested

party. The Tribunal were asking us regarding certain

matters, and that particular matter was brought to

their attention. Some significant time later we were

asked for a written statement, and we provided that

statement.

Q. But the statement that suggests that Mr. Desmond said to you that he knew exactly who Mr. O'Brien would use to get to Mr. Lowry, in making that statement, you were seeking to suggest that there was something wrong or something untoward about that; is that right?

A. I am not seeking to suggest anything. I am relaying factually the conversation exactly as it happened, where and when it happened, and that's all I am relaying.

Q. Now, in relation to this conversation that you say took place with Mr. Desmond, you say it took place at Aintree. Was that on Grand National day?

A. Absolutely.

Q. And do you recall who won that Grand National?

A. My father was the only person in the box who bet on it, Lord have mercy on his soul, and he won $\frac{1}{2}$ 118 for a pound. I can't remember the actual name, but he was the only person who selected it. So if we go back and check the facts, it was a 118-to-1 winner. I can't remember the name, but it was definitely a very significant day for him.

Q. You don't remember the name, but you remember this conversation with Mr. Desmond; is that correct?

A. Sorry, I mean, I remember exactly the price which if you can go and check, you will see that the tote paid $\frac{1}{2}$ 118 for $\frac{1}{2}$ 1 on the day. My father, again, was

the only person in the box who bet on it. And there was no question and by the way, it was the only time I was ever at Aintree. It was a day that I took my father as a very special treat. He was a very long-time racing fan, and that's why it's so vivid in my mind also.

Q. Would I be correct in saying there were lots of people coming and going in Mr. McManus's box?

A. There were certainly around two dozen people there, continuously, and then there were lots of people coming in and out, yes.

Q. There was 50 or 60 people coming and going; would that be

A. I wouldn't think there was 50 or 60. It was a limited group.

Q. And the conversation you say you had with Mr. Desmond, you say you were introduced to him. You had met Mr. Desmond before; isn't that correct?

A. I had casually met him in the box at Leopardstown.

Q. Before this?

A. I mean, very casual, where there would have been a perhaps a conversation about a horse, but certainly no formal meeting.

Q. And at that stage, you were introduced by Mr. Moloney to Mr. Desmond; isn't that correct?

A. I would have been at the box as guest of Colm Moloney, yes, in Leopardstown, that is.

Q. Would you agree with me that insofar as this statement is concerned that is, this statement of the 16th September of 2002 that if you removed the sentence or any innuendo in the sentence that Mr. Desmond allegedly said to you, that he knew exactly who Mr. O'Brien would use to get to Mr. Lowry, that it's a totally innocuous conversation?

A. I think it's not for me to form a judgement on that matter. The Tribunal must have reasons why it asked me to provide this evidence. I gave the evidence, certainly, as I said to you, as a bidder; it was of key competitive information to me at the time, so it was a very significant piece of information. It was a significant key. The Tribunal will have to answer why it is relevant, whether Mr. Desmond was or wasn't involved in March 1995.

Q. No, but would you agree with me, Mr. Boyle, that if you take out the sentence, if there was no sentence suggesting that Mr. Desmond knew who Mr. O'Brien would use to get to Mr. Lowry, it's hardly worthy of reporting; isn't that correct?

A. As I say, the Tribunal has got to form a view on that. If I read some of the transcript from Mr. Desmond, there was different suggestions as to whether he had or hadn't been requested

Q. Could you just answer the question, Mr. Boyle. If that sentence comes out, it's entirely innocuous;

isn't that correct?

A. It was a crucial statement, in my view, absolutely crucial to me in my business context, right, that Mr. Desmond had said that he was not involved in the bidding process.

Q. I am talking about the sentence where he is alleged to have said that he knew exactly who Mr. O'Brien would use to get to Mr. Lowry. Isn't it an entirely innocuous statement without that sentence?

A. Innocuous to who? It's certainly not innocuous to me. It was very important and crucial to me.

Q. Because what's significant about your business associate, Mr. McGinley's statement, is that he does not record any recollection of you telling him that Mr. Desmond had responded by saying that he knew exactly who Mr. O'Brien would use to get to Mr. Lowry. Isn't that correct?

A. I think you'll need to ask Mr. McGinley that.

Q. It's not in his statement. You have seen his statement?

A. It's not in his statement.

Q. And you have seen his statement?

A. I have seen his statement.

Q. And would it be fair or unfair to suggest that you knew what was going into his statement when he was making his statement?

A. Mr. McGinley didn't consult with me before he made his

statement. That was his independent statement.

Q. I see. Did you talk to him about it?

A. Not before he made it.

Q. At any stage?

A. About his statement?

Q. Yes. Did you go into the Tribunal with Mr. McGinley, or did you go on your own?

A. We went to the well, we went to the Tribunal together, but we certainly talked about the full content if your question is when we did discuss the full context of the statement, that was shortly thereafter, when the questions became raised. So in late '95, early '96, when the questions were raised about Mr. Desmond's involvement and the full significance of the statement became clear. I raised it at that point in time with Michael McGinley and explained to him the full details. I raised it with Mr. Moloney, our company secretary again, he can give evidence on that matter and representatives of his firm, so it certainly was raised as far back as late '95. The full context of the statement.

Q. Mr. McGinley has no recollection of this?

A. I think you need to address that to him.

Q. It's not in his statement. Isn't that correct?

A. Mr. McGinley has absolutely recollection of it.

Q. There is no reference in Mr. McGinley's statement to the suggestion that Mr. Desmond said he knew who Mr.

O'Brien would use to get to Mr. Lowry; isn't that correct?

A. I think, if your question is does he have any recollection, you need to address that to Mr. McGinley.

Q. It's not in his statement, and you know that.

A. It's not in his statement that I have read.

Q. And I have to suggest to you that the most significant portion of what you say you recall Mr. Desmond saying doesn't appear to have been relayed by you to Mr. McGinley, because it's certainly not in his statement; isn't that correct?

A. The most significant portion in my mind on the day of what Mr. Desmond said to me is that he was he had been asked, and he was not bidding. And that's what I relayed on the day to Mr. McGinley, because that's what I felt was the crucial piece of information that was imparted. When the full implications became clear, when Mr. Desmond was involved, then I relayed the balance of that conversation to him, many years ago, seven years ago, and also to Mr. Moloney, our company secretary.

Q. Are you aware of any written record by any other person, contemporaneous record, of you telling him about this conversation?

A. I am not aware.

Q. I take it there isn't any recollection; that the first

time that it's written is seven and a half years

later.

A. There certainly is recollection.

Q. Written record, Mr. Boyle?

A. I am not aware of a written record.

Q. There isn't any, Mr. Boyle; isn't that correct?

Because if there was, you would have produced it.

Isn't that right?

A. I'm not there is none to my knowledge, yes.

Q. And you checked, isn't that correct, Mr. Boyle?

A. Yes.

Q. You didn't bring it up in '95 when the Esat Digifone consortium was awarded the licence; isn't that right?

You didn't raise it with any third party?

A. It was certainly raised with our company with our company lawyer, yes.

Q. You didn't raise it with any third party, with the Minister or with anybody else?

A. The key issue we were raising, as I explained, with the Minister at the time was seeking an explanation for their decision.

Q. You didn't raise it; isn't that correct?

A. I did not raise it.

Q. And you didn't raise it in May of 1996?

A. This was in the meeting with the Department?

Q. At any time in May '96, you didn't raise it as an issue; isn't that correct?

A. That's correct.

Q. And you didn't raise it in your complaint to the European Commission?

A. It was not the focus of the complaint to the European Commission.

Q. Sorry, whether it's the focus or not, Mr. Boyle, you didn't raise it; isn't that correct?

A. That is correct.

Q. And the first time you raise it is in response, you say, to questioning in private session by this Tribunal; is that right?

A. The first time it was raised with parties other than our company solicitor and my business partner, yes.

Q. Some six or seven years later?

A. That's correct.

Q. Now, you have referred, in the course of your evidence, to the matter being closed in 1996. Is that still the position, Mr. Boyle? Is the matter closed, or have you or any company associated with you instituted any proceedings in connection with the award of the second mobile phone licence?

A. We have issued proceedings against the State based upon the legal advice.

Q. So it's not closed?

A. The matter was closed fully in 1996.

Q. And reopened?

A. And the matter was reopened in recent times.

Q. And in fact you, although not in any sense central to this module of the Tribunal's inquiry, you have arranged for representation at this Tribunal; isn't that correct?

A. We don't have representation at this Tribunal.

Q. Well, you have arranged for people on your behalf to be present for the Tribunal; isn't that correct?

A. We are observing certain modules of the Tribunal.

Q. And can you tell us how much your consortium expended in preparing its bid and in entering the second mobile phone licence?

A. We expended in excess of $\text{€}1/25$ million.

Q. And can you tell us roughly what you have expended in observing this Tribunal? Ballpark, is it a million, is it 2 million, is it 3 million?

A. A lot less than that.

Q. What is it, Mr. Boyle? I take it you are paying the bills.

A. It would be significantly less than $\text{€}1/21$ million, that's for sure.

Q. Are we talking about half a million, 600,000? What are we talking about?

A. Perhaps less than that.

Q. But you are interested in the outcome of this module, isn't that correct, very interested?

A. That is correct.

Q. Because evidence that may be elicited in this module

will or could assist you in the litigation that you have commenced against the Department; isn't that right? Isn't that correct?

A. The advice that we have is that we have a basis for issuing a case, which we have done, and we will be proceeding with regardless of the outcome of this module.

Q. Could you answer my question now? Evidence elicited at this Tribunal could assist in your proceedings; isn't that correct?

A. I have certainly no idea what the outcome of this Tribunal will be, but as I say

Q. Maybe none of us have that, Mr. Boyle, but my question is, you have an interest in the outcome, and it is in your interest for there to be an adverse finding against parties in relation to the award of the second mobile phone licence; isn't that correct? That won't hurt your civil proceedings against the State, isn't that right, Mr. Boyle?

A. I understand the two matters are totally separate.

Q. And is it your evidence, then, that you have spent and you won't tell us the precise amount

A. I am happy to tell you, I mean, if you want to know the precise amount, but I just don't recollect it offhand. But I'll certainly find it out, and I'll let you know officially what we have paid.

Q. Let's say it's several hundred thousand euro that you

are expending, and happy to expend several hundred thousand euro in the hope that you can glean something from this Tribunal that will assist your civil proceedings, isn't that correct, otherwise you wouldn't be expending it, Mr. Boyle? You could get copies of the transcripts every night. You could read the newspapers. Isn't that correct?

A. One certainly could read the entire transcripts.

Q. And therefore, you have a very material, if not one of the most material interests in the outcome of this Tribunal; isn't that right, Mr. Boyle?

A. As I understand the outcome the purpose of this Tribunal is different to what our purpose is in pursuing the legal case, and they are different matters. If we are pursuing a legal case, we are

Q. You are happy to have observer representation here and spend several hundred thousand euro even though it's got, according to your evidence, nothing to do with your case; is that what you are telling the Tribunal?

A. It's certainly my view that it's not directly relevant.

Q. I see. Well, indirectly relevant, Mr. Boyle. You are in business, Mr. Boyle; you expend your company's money for a purpose, I take it, and you wouldn't expend several hundred thousand euro if there wasn't some perceived benefit. Would that be fair or unfair to suggest?

A. You would also pursue it under your fiduciary responsibility, and based upon the legal advice we have that there are matters and there is a basis for investigation, we are pursuing a legal case. As part of that legal case the advice from our solicitors was that limited observation of certain modules of the Tribunal was what they recommended.

Q. Now, that 5 million you expended in the bid process, you didn't get any of that back; isn't that correct? If you lose the bid, that is sunk or lost money; isn't that right? So that's 5 million, as it were, down the hole, as far as your consortium is concerned; isn't that right?

A. That was long since done with, yes.

Q. However, if you are successful in your civil litigation with the State, you could hope to recover that; isn't that right? It would be one of the heads of damage that you'd claim, and probably have claimed in that civil litigation; isn't that correct?

A. I am not sure this is appropriate for this particular environment.

Q. I am sure the Chairman will stop me if the question is inappropriate.

CHAIRMAN: It's probably not an unreasonable question, Mr. Boyle. It would seem sensible to assume that if you were to successfully sue the State as a result of some deficiencies in the competition, that certainly

one of the minimum entitlements that you would seek would be the thrown-away money on the competition costs.

A. Okay. Well, that is correct.

Q. MR. SHIPSEY: And it is part of your claim?

A. Yes.

Q. So there is every incentive, I'd have to suggest to you, Mr. Boyle, to seek to influence this Tribunal and convince this Tribunal that there was something wrong or untoward or crooked in the award of the second mobile phone licence; isn't that correct?

A. I relayed to the Tribunal the answers to the questions which they put to me.

Q. And do you not think it's somewhat surprising, since we only have, if you discount the statement in relation to your meeting with Mr. Lowry, which I have described as a defensive statement, to justify it or explain it or to show how innocent it was, that the only thing we have from you in connection with this module of the Tribunal is this seventeen-line statement, and I'd have to suggest to you only one line of which could be construed as being relevant to the terms of reference of this Tribunal, and that's the line suggesting, if it has an innuendo which you are not prepared to admit you are placing upon it, but if it has the innuendo that Mr. Desmond was able to say to you that he knew exactly who Mr. O'Brien would

use to get to Mr. Lowry, that's the single sentence that is of relevance to the terms of reference of this Tribunal. Isn't that correct?

A. I am not sure what's relevant to the Terms of Reference of this Tribunal. My evidence is very clear. The conversation happened exactly as I reported it. My evidence is unwavering in that. That is the conversation that I presented, and that's what was important. I will not make any comment. It's up to the Tribunal to decide is it relevant or not. I simply presented, as requested, my evidence.

Q. You are aware of Mr. Desmond's evidence and Mr. O'Brien's evidence that the first time he is approached by Mr. O'Brien occurs in August of 1995?

A. I am certainly aware of his statement.

Q. And insofar as any evidence of Telenor is concerned, there is no indication that Telenor were aware of any involvement or any invitation to Mr. Desmond prior to August of 1995; are you aware of that?

A. I am not. I have no knowledge of that matter.

Q. In fact, insofar as Telenor is concerned, I believe it's late September of 1995 when they become aware.

A. As I say, I have no knowledge of the matter.

Q. Would it strike you, Mr. Boyle, as being surprising that Mr. Desmond would say to you or that Mr. O'Brien would invite Mr. Desmond to be chair of his consortium without telling his partners?

A. It's not up to me to comment on surprise regarding anything Mr. O'Brien might do.

Q. It's not something you'd do, is it, Mr. Boyle? You wouldn't invite somebody to be chair of your consortium and not tell, for example, Motorola?

A. It's not the way I'd do business.

Q. It's not what you'd expect of business people; isn't that correct?

A. As I said, I wouldn't comment on the way Mr. O'Brien would do business. It's not up to me to do that.

Q. And I have to suggest to you it's highly improbable that such an invitation would be made without notifying his partners.

A. It's not up to me to comment. All I can give you is my evidence that the conversation happened. It's up to

Q. You see, if, as you suggest, Mr. Desmond mentioned that he had been approached by Mr. O'Brien and saying that he had declined as he had enough of telecoms, it displays a lack of interest on Mr. Desmond's part, isn't that correct, a lack of interest in the competition or the process; isn't that correct?

A. No, I wouldn't say it was a lack of interest. It expresses it says that he was informing me at that point in time, he had been approached and said no. I mean, he could have been baiting me; I don't know. It certainly doesn't express lack of interest. I don't

know. That's what he expressed.

Q. If somebody invites you to participate and you decline

A. That's what he told me.

Q. Yes, but does that not indicate that you are not interested in participating?

A. If that was the correct facts, yes.

Q. So if we assume for the moment that it is the correct facts, and you have no reason to suggest

A. Well, he doesn't even recollect me being at the races, and I was there, clearly, so clearly his recollection of the day is flawed.

Q. If we just say the conversation you say you had with him, Mr. Boyle. I have to suggest to you that if you are correct that there was a conversation, and that he did say that he had declined as he had had enough of telecoms, that indicates a lack of interest.

A. It indicates that he suggested a lack of interest.

Q. Okay. But if we take him at his word insofar as what he has stated and this is a friendly, this is a social occasion; it's not a business meeting, is it?

It's not a business meeting in Aintree, Mr. Boyle?

A. It was certainly a ten-minute business discussion that we had, for sure. It happened in the environment of a social occasion.

Q. But not a meeting you had set up. You hadn't used anyone to get to Mr. Desmond, had you?

A. No.

Q. And I'd have to suggest to you that your recollection, if it is your recollection, that he said he declined as he had had enough of telecoms, would suggest that he wasn't interested, and it would make it surprising, therefore, that he'd go on to ask you about the process involved; isn't that correct?

A. No, it's absolutely not correct.

Q. And you explained that it would be a public competition, you say, run by the Department of Communications.

A. That's correct.

Q. Now, when Mr. Desmond said to you, you say, that he knew exactly who Mr. O'Brien would use to get to Mr. Lowry, did you ask him who that was?

A. No.

Q. Why not?

A. I didn't feel it was my place or appropriate to say that to him.

Q. Was there anything that was or wasn't your place in relation to this conversation? Was there any inhibition upon you asking Mr. Desmond anything in connection with this conversation?

A. I think it would be

Q. You could have asked him what he meant by it, couldn't you? Couldn't you, Mr. Boyle?

A. I could, of course.

Q. And you didn't?

A. I did not.

Q. And you didn't ask him who the person was?

A. I didn't ask him who the person was.

Q. Now, insofar as this comment is made, do you remember anything about the demeanour of Mr. Desmond when he is alleged to have made this comment to you?

A. Nothing particular, no.

Q. And then the conversation ended, according to your recollection; is that right?

A. It fizzled out very shortly thereafter, yes.

Q. I have to suggest to you, Mr. Boyle, that you have in excess of 5 million reasons to come to this Tribunal to suggest that the conversation took place with Mr. Desmond, because he is the only member of the consortium that you had had any dealings with prior to the bid; is that correct? You never met Telenor?

A. No, I hadn't met Telenor.

Q. Never had a conversation with Mr. O'Brien in relation to this competition?

A. Absolutely, yes, I did. I did.

Q. No statement in relation to that?

A. There was nothing of relevance to report.

Q. You see, that does bring me back, then, Mr. Boyle, to the relevance. In making this statement, you knew the relevance of what you were alleging was in the conversation with Mr. Desmond. It's not just

recalling it because it's a conversation you had. You didn't take the trouble of writing a statement of conversations you had with Mr. O'Brien, is that correct, because they were irrelevant; is that right, Mr. Boyle?

A. That's correct.

Q. But this is a relevant conversation, and its relevant and its only relevance is in connection with that one sentence, Mr. Boyle, where you allege that Mr. Desmond said that he knew exactly who Mr. O'Brien would use to get to Mr. Lowry.

A. Or else when his involvement commenced, it's also clearly relevant in that context, at least, and certainly from our perspective, the key issue, that that was a very key issue.

Q. But not in any there was nothing wrong with Mr. Desmond having an involvement in a consortium, would there?

A. That's not up to me to judge.

Q. No, but if Mr. Desmond decided in March or April of 1995 to become involved, there is nothing untoward about that?

A. It's not up to me to judge. I am simply saying that what he told me on the day.

Q. But, again, insofar as that is concerned, he is telling you that he was not involved, and had declined; isn't that correct?

A. That's what he told me.

Q. Now, would I be right in saying that you stand over your meeting with Mr. Lowry?

A. Yes.

Q. And you don't think there is anything wrong or unusual or irregular about that meeting?

A. Absolutely not. I put it on record that if the Minister felt it inappropriate to meet, that I would be that is in writing, that I would agree not to.

And I met him and presented to him information which had already been circulated to every other member of the Oireachtas. It was a published document; there was nothing new presented. And it was presented. It was formally requested through Mr. Conroy, and basically, I presented that information.

Q. And in that statement in relation to the meeting with Mr. Lowry in June of 2001, you make no reference to the conversation with Mr. Desmond?

A. It was a different statement on a different topic.

Q. But connected with the same issue, Mr. Boyle. Connected with the same module of this Tribunal.

A. It was a different statement on a different topic, and there were a number of meetings with the Tribunal at different stages on different matters.

Q. So when is it that you had your memory triggered, Mr. Boyle, to make the statement of 2001? When did this road to Damascus take place in relation to this

statement?

A. There was no question of a memory trigger. I have operated at the most senior level in business now for 30 years. I have an absolutely photographic memory in terms of my business, having operated at a very high level in business. You know, I have an absolute recollection of this matter. It was relayed at the time, not subsequently, relayed at the time. It was witnessed, despite Mr. Desmond saying I wasn't present. I was there. I was witnessed there; many people can witness that I was there. The conversation happened. Mr. McGinley will go on record to confirm that. The contents of that conversation were communicated to Mr. McGinley and to Mr. Moloney. So that is to suggest that this is something which is which was an afterwards recollection is totally incorrect.

Q. Well, I'm only going on the fact that the statement, it takes seven and a half years for to you write it down, Mr. Boyle. And I am asking, when was your memory triggered to write it down?

A. When requested by the Tribunal to give a formal written statement, I gave them a formal written statement.

Q. But why would they be concerned with it? Why would your memory need to be triggered by the Tribunal if it's as important and significant and as clear in your

mind as you suggest?

A. I think it's very important to remember that when the case was closed at the end of 1996, we had a very serious business to build, which we went and did. And we have built that business into being what is today, a business employing 500 people, you know, selling 90 million this year, in this country. We have been absolutely busy building our business, providing employment, growing jobs, growing technology, which is what we do. That's where our total focus has been. Both in a professional sense not in a personalised sense, as Mr. Desmond has said. It has been in a professional sense, operating as a business; that's the way we have operated. We have grown other business; we have developed key partnerships and key relationships in this market.

So that is the situation. When the Tribunal requested us to give them information or provide input to them, knowing that we were an interested party, indeed, and this was matters which were raised by the Tribunal, not by ourselves.

Q. And are you suggesting by that that you wouldn't have brought it up but for the fact that the Tribunal raised it? Is that what you are suggesting, that you would have sat on your hands in relation to this alleged conversation but for the fact that you were

A. I am not focusing on the specific conversation. What

I am saying is that we would have we had closed and absolutely closed the chapter on the second mobile licence; that was totally closed by us. We were continuing to build our business. So the matter that caused us to re-open that file was the subsequent information which came to bear and the legal advice which we received.

Q. And when did your civil proceedings start?

A. 2002, was it?

Q. Is there any reference in those proceedings to this conversation?

A. It's in a Statement of Claim, as I understand it.

Q. Any reference in the correspondence or anything touching on this statement in that civil litigation?

A. No, not to my knowledge. It's not at that stage.

It's a preliminary statement.

Q. Thank you.

CHAIRMAN: All right. Well, that's as far as we'll manage to take things today.

Mr. Coughlan, Mr. McGonigal, obviously, if we can maintain momentum, it would be my preference to try, and I am sure it would be Mr. Boyle's preference to see if we can dispose of the remaining matters tomorrow. And I'll start at whatever time suits you.

MR. MCGONIGAL: The difficulty will be in relation to the documents, Mr. Chairman. I am not trying to cause problems for you, but I do I mean, that is the

bundle of documents.

MR. COUGHLAN: Mr. McGinley is ready to give evidence today, but he will come back in the morning.

CHAIRMAN: Well, I suppose, Mr. McGonigal, rather than deferring matters, it's better, then, that if Mr.

Boyle and Mr. McGinley will be kind enough to attend in the morning, and we'll finalise then the most appropriate procedural way of dealing with what remains.

MR. O'NEILL: Mr. Chairman, I have seen the bundle of documents to which Mr. McGonigal has made reference.

I would be very anxious that Mr. Boyle be given access to those documents this evening. There is no point in them being put to him when he is in the witness-box; he is going to have to go off and consider those documents. If they can't be made available

CHAIRMAN: The Tribunal will assist in any photocopying that may facilitate.

MR. O'NEILL: If they can't be made available this evening, it does seem to be thank you, Mr.

O'Donnell, that is very helpful if they can't be made available this evening, I would have to suggest, Mr. Chairman, that really Mr. Boyle should be given an opportunity of considering that documentation and coming back on a date that's convenient to him and the Tribunal rather than tomorrow.

MR. MCGONIGAL: I suspect that might be more sensible,

and I say that for this reason, Mr. Chairman: Mr. Coughlan and I, in our discussions, we got sight of these documents on a confidential basis as a result of a request by us. And Mr. Coughlan has explained to me that it is necessary for you in the first instance to clear whether these documents should be circulated or not, and it may well be that you yourself would have to read them before such decision were taken.

And I also have a suspicion, a feeling, that there is other documentation which we haven't got which we may well be looking for, and I just have a concern that this should not necessarily be rushed, because in not rushing it, it may not arise as well.

CHAIRMAN: All right. Have we other witnesses provisionally lined up for tomorrow?

MR. MCGONIGAL: We have witnesses for tomorrow.

CHAIRMAN: Well, then, I think it's probably a little unfair to Mr. McGinley if we were to take him whilst some of these issues are still outstanding.

MR. COUGHLAN: It is a fairly net issue, perhaps.

CHAIRMAN: Can we deal with Mr. McGinley in conjunction with the other shorter witnesses tomorrow, and defer Mr. Boyle until approximate date to be finalised?

MR. MCGONIGAL: There is one document referable to Mr. McGinley which he should be shown.

CHAIRMAN: We can certainly manage that overnight,

Mr. McGonigal.

Very good, Mr. Boyle, I am sorry for that slight uncertainty. It does seem that whilst your colleague, Mr. McGinley, may be able to dispose of his testimony tomorrow, that because of these documents and matters that have arisen, to enable you fairly to meet questions that may be asked of you, it's preferable that these be put together, discussed by the lawyers, and that the matters be narrowed and finalised as far as possible. We will endeavour to fit in with your commitments as regards the balance of your evidence at an appropriate date.

Eleven o'clock for other evidence tomorrow. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 25TH MARCH, 2003 AT 11AM.