

A P P E A R A N C E S

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FOR IIU: Mr. Gerard Hogan, SC

Mr. Robert Barron, BL

(Dermot Desmond

and

Pearse Farrell)

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THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY,

25TH MARCH, 2004 AT 11AM.:

MR. COUGHLAN: Mr. Michael McGinley.

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

CHAIRMAN: Morning, Mr. McGinley. Thank you for your
attendance.

Q. MR. COUGHLAN: Mr. McGinley, I think you furnished a
statement to the Tribunal dated the 4th December,
2002; isn't that correct?

A. That's correct.

Q. And do you have that statement with you?

A. I think I have it here.

Q. And I think you explain in the opening paragraph of
that statement how you came about to make the
statement, a submission to the Tribunal, isn't that
correct?

A. Sorry, say that again.

Q. I think in the opening paragraph of that statement,
you outline how you came about to furnish this
statement to the Tribunal, or why you were furnishing
this statement to the Tribunal?

A. That's correct.

Q. And what I intend doing is taking you through the
statement and then coming back to deal with matters
with you.

I think you say that you refer to the Opening
Statement of Mr. John Coughlan, SC, on the 3rd
December, 2002, during the course of which he made

reference to a statement by Mr. Tony Boyle concerning a discussion Mr. Boyle had with Mr. Dermot Desmond at Aintree Race Course in April, 1995. I understand that Mr. Desmond has no recollection of Mr. Boyle being present on that occasion, that he denies having any conversation having had any conversation with Mr. Boyle on that day, and that he denies ever having had a discussion before or since April 1995 with Mr. Boyle of the kind referred to by Mr. Boyle in his statement. Now, I think you were here yesterday, and you heard Mr. Boyle give his evidence in accordance with his statement and what he says happened at Aintree; isn't that right?

A. That's correct.

Q. Now, you say that in light of Mr. Desmond's denials and the failure of his recollection in relation to Mr. Boyle's presence at Aintree on the day in question, that you can confirm the following:

1. You are a longstanding business partner of Mr. Boyle.
2. You have been a co-director with Mr. Boyle of Persona Digital Telephony Limited since it was incorporated in 1995.
3. You attended a race meeting at Aintree in April 1995, and you were a guest in the box of Mr. J. P. McManus along with Mr. Boyle and Mr. Boyle's late father.

4. Mr. Desmond was also present.

5. You recollect that there were approximately 20 to 25 people in the box during the time you were there.

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

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

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

And you dated that the 4th December, 2002.

Now, I think prior to becoming aware of what had been

stated in the Opening Statement at this Tribunal on the 3rd December, 2002, you had not furnished any statement to the Tribunal; isn't that correct?

A. That's correct.

Q. It was as a result of what had been stated was the intended evidence of Mr. Dermot Desmond that caused you to furnish a statement to the Tribunal; is that right?

A. That's correct.

Q. And particularly, it related to Mr. Boyle's or Mr. Desmond's statement that he had no recollection of Mr. Boyle being present at Aintree, and his denial that he had a conversation with him, that you furnished a statement?

A. That's correct.

Q. Is that correct?

A. Yes.

Q. And in the first instance, your statement deals with that Mr. Boyle was present at Aintree; isn't that right?

A. That's correct.

Q. And secondly, that you observed him having a conversation with Mr. Dermot Desmond?

A. That's correct.

Q. You did not overhear what was being said between the two of them?

A. I didn't overhear it.

Q. And your recollection is that that conversation lasted approximately ten minutes, or in the region?

A. Ten minutes, approximately.

Q. And you say that later that day at Aintree, is that correct, Mr. Boyle apprised you in general terms of the nature of the conversation he had with Mr. Desmond?

A. That's correct.

Q. And the significant issue, as you understood it, as being conveyed to you by Mr. Boyle, was that Mr. Desmond had no interest in getting involved in telecoms or that he had enough of telecoms?

A. That's correct.

Q. But also that he had Mr. Boyle told you that Mr. Desmond had informed him that Denis O'Brien had approached Mr. Desmond to become involved as Chairman of his consortium, or words to that effect?

A. That's correct.

Q. And did Mr. Boyle say anything else to you on that day?

A. He said nothing else to me on that day.

Q. On that day?

A. No.

Q. Now, I think you have heard Mr. Boyle give evidence, and you know that there has been cross-examination directed towards the words which Mr. Boyle alleges Mr. Desmond used on that day, apart altogether from this

particular portion of the alleged conversation, namely being approached by Mr. O'Brien to become Chairman of his consortium; but going further, that Mr. Desmond had conveyed to Mr. Boyle words to the effect that he knew who Mr. O'Brien would get, would use to get to Mr. Lowry. Did you ever hear of that from Mr. Boyle?

A. When I heard that, it was in late 1995, 1996, around that time; I can't put a specific day on it, but it was

Q. Do you remember the context in which you heard it?

A. It was around that time.

Well, my office and Tony Boyle's office are adjacent, and Tony would come in to me in the morning and he would just talk about things that were going on with the Persona thing, because I was running the business of 200 people and I wasn't involved, so he just said to me, he said you know, I think what happened, really, was that Mr. Desmond's name appeared as an investor, and it sort of highlighted something in Tony's mind, obviously, which basically says that Mr. Desmond told me at the races that he knew who Denis O'Brien would get to get at Mr. Lowry.

Q. Now, you think it was in the context of this conversation between yourself and Mr. Boyle took place in the context of there being some publicity or speculation about Mr. Desmond becoming an investor; is that right?

A. Exactly.

Q. Rather than in the context of

A. As an investor which I was surprised at, because he said at the meeting that he wouldn't be getting involved in telecoms.

Q. Did you know Mr. Desmond yourself?

A. I know Mr. Desmond, yeah.

Q. And did you introduce Mr. Boyle to Mr. Desmond at Aintree, or can you recollect?

A. It was a casual introduction. I mean, you asked me do I know Mr. Desmond? I probably know him for 10 or 12 years, not on a great basis, on a "hello" basis, and it's not on a business sense in any respect whatsoever. I have actually never discussed I meet him at golf outings or sporting outings or whatever, but I wouldn't you know, I like the man; I'd have nothing against him.

Q. So your relationship with him would have been a casual relationship related to meeting at sports outings?

A. Meeting at sports outings mainly. I have never had a business discussion with him of any kind.

Q. Now, I think it's correct to say that you wrote a letter to Mr. Bruton, the then Taoiseach, dated the 28th February, 1996; isn't that correct?

A. 28th February yes.

Q. You wrote two letters. They are handwritten letters, and I think we have been provided with a typescript of

them overnight. If I could go to the letter of the 28th February, 1996. And if we could just I'll read through it, and you can correct me where I am wrong.

First of all, do you know Mr. Bruton yourself?

A. I had met him once. My company was awarded a medium term company award, and he presented the awards, and I sat at the table with dinner with him. And that was the only time I ever met him.

Q. Might I ask you this question: This writing a handwritten letter to the Taoiseach would probably convey the impression to somebody like me that there was a personal relationship or

A. No, not at all. It was a solo run on my behalf.

Q. It was a solo run?

A. Mm-hmm.

Q. Would it not have been more usual to have this typed up by your secretary

A. No, I saw it as between myself and Mr. Bruton.

Q. Right.

A. You must recall, you know, at that time, I was in charge of the company, and I was being asked a lot of questions, and I couldn't answer them.

Q. Which company are we talking about now? Sigma Wireless?

A. Sigma Wireless. 200 people. We had a manufacturing company, a distribution company, 200 people. We were

exporting about to 40 countries worldwide.

Q. And who was asking you questions? Because you were just

A. My staff

Q. You were just part of a consortium that was applying for the second GSM licence?

A. We had applied for the licence. My staff were asking me questions.

Q. Your staff were?

A. Yeah: "What's going on? Why did we not get the licence?"

Q. Yes, all right

A. And I couldn't answer it.

Q. Anyway, in any event, you wrote this letter to Mr. Bruton on the 28th February, 1996.

"First of all I want to thank you for your responding to my letter and appreciate very much your considerations on this matter".

What does that refer to? That there had been some previous correspondence?

A. Previous correspondence, yeah.

Q. "I am also pleased that the Minister will explain the background to the decision and is addressing a request to see the consultants report. However, there are a few points which I list below that need explaining in any disclosure and are of intense importance to myself and Motorola's John Mitchell". Who was Mr. Mitchell?

Was he the head man of Motorola?

A. The second. The vice-president.

Q. In the United States?

A. In the United States vice-chairman, sorry, vice-chairman.

Q. "1. The tendering documents requested full information on the total ownership of the competing consortia. So far, 20% of the winning consortium is not disclosed. I now read in the paper today of Dermot Desmond's involvement. I attach a copy of the article in today's Irish Times. Minister Lowry must explain the financial credibility of Esat Digifone at the tendering stage and if all finances in place as per the tendering documents.

"2. Esat Telecom has been breaking rules of their existing telephony licence by using auto-dialers for the past two years, and no action whatsoever has been taken by Minister Lowry to correct this matter.

Surely this is not good business ethics, and the Department's secretaries are well aware of this licence-breaking.

"You must understand that Motorola had a major employment expansion for Ireland, which Mr. McGowan of the IDA is well aware. Unfortunately, from being top of the list for Motorola's expansion, Ireland has now been relegated to the bottom. I enclose details of some recent Motorola developments in the UK and

France. Why not Ireland?

"I am well aware, as general manager of Sigma Wireless, of the necessity for employment for our young people. I am proud to say that we have increased our employment in this company by 60 people over the past two years, and I know first-hand the appreciation of these young people who have permanent pensionable jobs.

"Unfortunately I can not now see Motorola viewing its expansion plans as positive, as is should be, when Minister Lowry and his government committee had an opportunity to support Motorola, and they failed to do so.

"I write this letter without any sour grapes of any kind. I want to see good business ethics as corporation tax paying companies and recognition for these companies who play by the rules. The award of a GSM licence is a major concern to many people in the way that it has been handled by the Minister and his Government committee and a lot of questions have yet to be answered.

"Yours faithfully,
Michael McGinley."

Is that

A. That's it.

Q. With that letter, if we go to Point Number 1: "The tendering document requested full information on the

total ownership of the competing consortia. So far, 20% of the winning consortium is not disclosed. I now read in the papers today of Dermot Desmond's involvement. I attach a copy of the article in today's Irish Times. Minister Lowry must explain the financial credibility of Esat Digifone at the tendering stage and if all finance is in place as per the tendering documents."

I want to you look at an article which appeared in The Irish Times on the 28th February of 1996, and

A. I have it here.

Q. Can you first of all say, have you read through this article?

A. Have I read through it? Oh I have, yeah.

Q. Is that the article that you attached to your letter to Mr. Bruton? Because we can't find any other article

A. Well, that's the article, and that's the article that made me sit down and write the letter.

Q. All right. And

A. Because that's the first time that I was aware that Mr. Desmond was involved.

Q. Yes. As an investor potentially involved?

A. Potentially involved as an investor. That was the first evidence that I

Q. If we just look at this article.

"Communicorp, the parent of Esat Telecom, is seeking

to raise 30 million in debt to fund its share of the
i;½100 million cost of launching the second mobile phone
network.

"The company is hoping raise the bulk of the money in
the US and as chief executive, Denis O'Brien is
understood to have been making presentations to US
investors over the last two weeks.

"Communicorp is a 37.5 percent shareholder in the
winner of the second licence, Esat Digifone, through
its holding in Esat Telecom.

"The Norwegian State phone company, Telenor, owns
another 37.5 percent, while Mr. Dermot Desmond's
company, International Investment and Underwriting,
holds the remaining 25 percent.

"Under the terms of the planned fundraising,
Communicorp will be reorganised. A new company, Esat
Holdings, will be created as the holding company for
Esat Telecom for the group's stake in Esat Digifone.

"Communicorp's other interests include the Dublin
radio station 98FM and radio stations in Prague and
Stockholm will be held separately.

"Esat Holdings will be 88 percent owned by Communicorp
and 12 percent by outside investors on Esat's board,
including the former Secretary of the Department of
the Taoiseach, Mr. Pdraig O'hUiginn; the former
senior partner of KPMG/Stokes Kennedy Crowley, Mr.
John Callaghan; and the management consultant, Mr.

Leslie Buckley.

"Communicorp is 65 percent owned by Mr. O'Brien and 35 percent owned by the US venture capital company Advent.

"The \$30 million in debt will be raised through Esat Holdings and will mainly be used to fund its share of the cost of starting up the new network. However, some of the money may be used to fund Esat Telecom's planned expansion."

I don't think I need to go into the rest of the article. We have read it many times at this Tribunal.

Is that the article that you read that caused you to sit down and write the letter to Mr. Bruton?

A. Yes, that's the article. It's the same date as the letter.

Q. And I think you enclosed or you attached a copy of this letter?

A. I did.

Q. Or a copy of the article?

A. A copy of the article to the letter, yeah.

Q. Now, I now want to go to the second first of all, did you receive a response to this particular perhaps I'll go to the second letter first.

A. Yes, I think I received a response, yeah.

Q. To that particular

A. I think I did, yeah. I don't know if I have it here or not. I may not have it here, but I did receive a

response.

Q. From was the response a formal response in the first instance, can you remember? Was it from the Taoiseach's private secretary to the effect that the matter was being

A. I haven't I think it might be down there.

Q. I can just put it up. It's just a formal response.

It's from the Taoiseach's Department or from the Taoiseach. And it's from the Office of the Taoiseach on the 7th March, 1996. It's addressed to you, and it's just "Dear Mr. McGinley, I wish to acknowledge receipt of your letter of the 28 February 1996, which will be brought to the Taoiseach's attention as soon as possible.

"Yours sincerely, the Private Secretary to the Taoiseach." Isn't that right? Again, just a formal response.

A. Yeah.

Q. Did you ever receive a substantive response to that particular letter, to the best of your knowledge?

A. I think I did.

Q. But I don't it might be in my file down there.

I think again it's the original. It's from the private secretary to Minister Lowry. Again it's addressed to you. It's from the Office of the Minister for Transport, Energy and Communications, and it's dated the 24th April, and you have date-stamped

it received on the 26th April, 1996.

"Dear Mr. McGinley,

"On behalf of Mr. Michael Lowry TD, Minister for Transport, Energy and Communications, I wish to acknowledge receipt of your letter of the 28th February, 1996, which was originally forwarded to the Taoiseach.

"I will bring this letter to the Minister's attention, and a further letter will be issued to you as soon as possible."

That's from Mr. Lowry's private secretary. Is that the correspondence you received in response to your letter?

A. I think so. That's it.

Q. Now, if we go to your second letter, then, the second letter, the handwritten letter, dated 31st May, 1996.

Do you have that?

A. I have that, yes.

Q. Again, you wrote to Mr. Bruton; isn't that correct?

A. That's right.

Q. And you say, "I enclose copy letter sent to the Department of Communications by the Chairman of the Persona Group for your personal attention. As you can see, our group is still very unhappy. Personally speaking, I consider the whole process to be totally mishandled by your Minister and Department officials and to have ethical companies who pay their taxes etc.

on time treated in this way leaves a lot to be desired in doing business in Ireland.

"From the Motorola perspective, a lot of image-building needs to be done by your Government. For my part, I am willing to help in any way I can in the national interest.

"Your private secretary sent my last letter to Minister Lowry for reply."

That seems to confirm the chain of correspondence?

A. Yeah.

Q. "I have not had a reply, and please be aware that I do not wish to have any contact with this man in any way.

"Yours faithfully, Michael McGinley."

Why did you write that to the Taoiseach? I know you were enclosing a letter which had gone to the Department, which was a long letter from Persona.

A. Yeah, there was a letter from well, I think a few days I am not too sure of the days; we were at a meeting with the Department to the meeting was supposed to give clarification of why we lost the bid, and I was at that meeting, and I was totally unhappy.

As a result of that, I think I don't know who wrote the letter I have a letter was sent, or Tony Boyle, Chairman of Persona, sent a letter to the Department expressing his unhappiness, and I just a copy came in to me, and I thought, being at the meeting, you know, I wasn't happy myself; I was upset

about it. And I thought it was opportunity to send it to Mr. Bruton to see how he felt.

Q. Now, if we go back to the

A. Have you seen you have the letter, have you?

Q. Yes. It's there. I haven't got it at the moment.

A. Because there is a lot of issues there that, you know, that we were very unhappy about. And we were getting negative answers all along the way. In my view it was a waste of time, and I wanted to convey that to Mr. Bruton.

Q. Right. I want to go back now to the 28th February, 1996. You saw this article in the newspaper which prompted you to write to Mr. Bruton; isn't that right?

A. Yeah.

Q. And you have told us already that the first time Mr. Boyle said anything to you about that portion of a conversation which he alleges Mr. Desmond had with him to the effect that Mr. Desmond had told him that he knew who Denis O'Brien would use to get to Mr. Lowry, or to the Minister, that that was around the time that you first became aware that Mr. Desmond may be involved as an investor in the consortium; is that correct?

A. That's correct.

Q. So that's what places it in your mind: It was around the time you first became aware of this, and that must have been on the 28th or on the 28th?

A. I can't say for certain. I'm not sure. I couldn't say now that it was on the 28th May or whatever. I couldn't say that.

Q. Right. But it was around that time?

A. Well, there was rumours before that, and I just

Q. It was either before it or soon after it; would that be a fair

A. Slightly before or soon after; I couldn't remember the date.

Q. Right. Now, if it was before, I want to ask you this:

Wouldn't it have seemed like a relevant piece of information to put before the Taoiseach if you were concerned, as you were concerned, about matters, that this might have on one interpretation be evidence that something had gone wrong in the licensing process?

A. You know, I'm not into that sort of stuff. I'm not a bad loser. I didn't want to be saying that to the Taoiseach; it didn't anyway, it didn't even get into my 1 percent of my brain, that issue.

Q. Well, one could look at the statement in two ways.

One could look at it in a benign way. Did you know, for example, that Mr. Boyle had met Mr. Lowry in August during the bidding process?

A. He told me he had met him, yeah.

Q. And Mr. Boyle has given an account of what transpired at that meeting; that he made a presentation of

information which was just highlights from the bid?

A. Yeah. He told me the meeting went well, and that was it; it was nothing more to say about it.

Q. That's at one end of the scale about getting to a Minister, I'd suggest to you.

A. Okay.

Q. The other, using the term "get to" might have a less benign interpretation.

A. Well, when I heard it first, my first reaction was very clear; I said this was this was a man well-known around town who probably knew people and you know, this was a sealed process; there was going to be none of this stuff carried out, and I just I dismissed it out of my mind. As I said, I am not into that sort of stuff.

Q. But isn't it something that one might have thought you'd have brought to the attention of the Taoiseach, if it could be a very serious matter?

A. No, it didn't even

Q. Something the Taoiseach would need to look into?

A. It didn't even cross my mind.

Q. It didn't cross your mind?

A. No. It only became relevant to me at a later stage, when it became evident that Mr. Desmond was going to be an investor. There may have been something going on, of which I still don't know if there was or not.

Q. Yes, you still don't know one way or the other, but

this was around the time when you wrote to the Taoiseach on the 28th February; you didn't know, but there was a fairly detailed article by a significant financial journalist in The Irish Times. Isn't that right?

A. Yeah.

Q. Full of detail which seemed to indicate that this particular journalist had sight of or information of documents that were being used for fundraising in the United States. One wouldn't need to be too much of a genius to figure that one out, the way the article is written?

A. Well, it didn't come into my brain at all. I was more concerned about the credibility, financials

Q. You mean the formal aspect of the

A. Absolutely, yeah, and the nondisclosure of why we couldn't get answers to some of our questions. That was my concern.

Q. Mr. McGinley, wouldn't it seem reasonable to form the view that somebody who was privy to information that Mr. Desmond had indicated that he had no interest or was fed up with telecoms and I'll just take that for a moment and you now see an article which shows him as being a substantial investor, 25%, in the GSM, the second GSM company; did you not think that that might have been information which should have been brought to the attention of the Taoiseach as being

significant?

A. Never came into me at all.

Q. Never came in to you?

A. As I say, I was more concerned about the finance than and just getting answers to questions than that sort I put that out of my head, that was gone

Q. Wouldn't it have at least raised this question, should it have, or did it not raise this question in your mind to ask the simple question: Was Mr. Desmond in the original bid? You had been told by Mr. Boyle that Mr. Desmond had reported or had said to him that he had no interest in becoming involved. You now have read a newspaper article which caused you to write to the Taoiseach.

A. Yeah.

Q. Did it not cause you to raise the issue with the Taoiseach about Mr. Desmond in the original bid?

A. No, it didn't cause me it did not, no, it didn't, and probably my you know, going back to that time, it's a good while ago, but surely one of the reasons that I sent the thing was, you know, that Mr. Desmond was involved was one of the reasons that I probably sent the letter.

Q. As time moved on, in any event, and you had the meeting with departmental officials and Mr. Andersen this was your meeting?

A. This is the letter here.

Q. This was your meeting, the meeting; is it a matter you raised at the meeting or considered raising at the meeting with Mr. Michael Andersen?

A. No.

Q. Or the departmental officials?

A. No.

Q. When you wrote your final letter to the Taoiseach on the 31st May, 1996, when everything had been over, you had your meeting at that stage, why didn't you bring it to the attention of the Taoiseach then? You had a long time to think about it, and you were again writing to the Taoiseach a handwritten letter?

A. It didn't come it didn't get into my brain to do it. It didn't dawn on me to do it. It was gone. I had far more important issues to handle.

Q. Could it be, Mr. McGinley, that it's because this conversation, or these words I know you weren't present with Mr. Desmond were not ones which were ever used?

A. Well, Tony Boyle told me, and I believe Tony Boyle.

Q. Could it be that you are now just backing Mr. Boyle because you are disgruntled at the outcome of the competition and could have a or your company could have a potential financial interest in any litigation against the State in due course?

A. Well, you know, Tony Boyle told me, and I believe Tony

Boyle. I'm only saying what I was told. Whether it was said or not, but I believe Tony Boyle. If Tony Boyle told me, I believe him.

Regarding litigation to the State, listen, I am very happy. If we get legal advice to pursue the State, as a businessman, I must accept it, but I am very happy one way or the other.

Q. You use the phrase in your letter of the 31st May, 1996, to the Taoiseach, the then Taoiseach if you look at the last paragraph: "Your private secretary sent my last letter to Minister Lowry for reply. I have not had a reply, and please be aware that I do not wish to have any contact with this man in any way."

Doesn't that seem to indicate that you were

A. Fed up.

Q. fairly cheesed off

A. Absolutely.

Q. And could this be motivation for you to give such evidence now before this Tribunal?

A. Not at all.

Q. Thank you very much, Mr. McGinley.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

Q. MR. NESBITT: Mr. McGinley, I think it's certain that any role you played in the Persona consortium I understand you are a director of Persona but weren't on a day-to-day level, involved in the consortia bid;

is that right?

A. I wasn't involved in the I was managing a group of companies which consisted of 200 people, and there was a decision made a few years before we applied for the licence at all that Tony would look after the licence bid and I would run the companies. And I was a director of Persona, but I had no involvement on a day-to-day what was happening in Persona. I didn't have time to do it.

Q. So all the information you have to give to this Tribunal is by the arrangements you put in place secondhand; you weren't involved in the application to try and win the right to negotiate the licence in any way?

A. I wasn't involved. The only involvement I had was at the meeting, at this famous disclosure meeting.

Q. The 15th May meeting?

A. It was on the 30th May.

Q. I think

A. I went with the group, and I didn't ask any questions, and I just listened there, the 30th May. I don't know what date it was sorry, the letter is the 30th May; I don't know what date the meeting was on.

Q. I think it was the 15th.

A. Sorry, okay.

Q. So you sat and watched?

A. I sat and watched and listened.

Q. And you never thought it important to communicate any of the issues you had in your mind?

A. No. This was I mean, I went with the view that we will get full disclosure of why we lost the bid, and if it had have been a full disclosure, I was quite happy.

Q. Could we just come back to Aintree for a moment. I mean, are you a regular attender at race meetings?

A. At that time I wasn't.

Q. Now, you have to educate me; I am not a regular attender of race meetings. But I presume it's a social event and a good day out?

A. Well, sorry, what question did you ask again?

Q. I was going to ask you about the race meeting. It's a social event. A good day out?

A. It was a social event. You know, Tony Boyle's late father was celebrating his birthday, and Tony decided he would like to bring him to Aintree because he was a horsy man, and Tony asked me if I'd like to go, and I said I would. I had never been to Aintree before that, and I have never been since.

Q. Okay. So I assume the focus of the day was a celebration, a day out, to make sure that Tony's father enjoyed himself?

A. 73rd birthday.

Q. I presume there was a little alcohol taken?

A. I am not a drinker at all. I am literally a

teetotaller.

Q. In relation to the conversation which you say you had with Mr. Boyle later in the day, after being in the box, how much later was that?

A. It was probably about an hour and a half, two hours.

We were walking down the terrace where all the bookies are and that, and we were just talking as we went down, and he told me there.

Q. And other than learning Mr. Desmond, at that point in time, didn't appear to have an interest in becoming involved in anything, that was the height of what you found out?

A. Well, that was the height that was the height of what I found out then. And I was just saying, "Well, that's good; there is one player less", and we left it at that.

Q. So you would have considered Mr. Desmond somebody of substance if he had chosen to enter the field?

A. No, I said earlier, I like the man; nothing against him whatsoever.

Q. Nothing wrong with him being involved?

A. I have nothing against anybody being involved.

Q. Can we come forward now to the communications you wrote to Mr. Bruton. There is the letter of the 28th February. Could you explain why you were asked to write that letter as opposed to somebody else?

A. Nobody as I said to Mr. Coughlan, it was a solo run

on my part.

Q. And had you discussed the idea of writing the letter with anybody?

A. No.

Q. So this was your opportunity to say whatever you wanted to say about the fact that your consortium or the consortium of which you knew hadn't succeeded in getting the sole negotiating rights?

A. Yes.

Q. Were you aware at that point in time that there was other activity on the part of the consortium concerning these issues?

A. What kind of activities?

Q. Well, I am asking you, Mr. McGinley. You are a co-director of Persona. You feel motivated to write to the Taoiseach on the 28th February concerning the competition process. I am asking you a simple question.

A. Yeah.

Q. Did you know, were there other things being done by the Persona consortium at that time?

A. Was there other things being done by

Q. You really don't have an idea, do you?

A. No, I am not aware. I just can't recollect now if there was or not.

Q. Do you remember a complaint being made to the Commission?

A. There was a complaint made to the Commission, yeah.

Q. When did that happen?

A. I don't know to be honest with you, I just can't tell when it happened.

Q. How did you learn it was happening?

A. Because Tony would keep me informed, and would I generally get a copy of the correspondence if it came along.

Q. But you have no recollection of when it occurred?

A. I can't tell you now. I can find out, but I wouldn't know. I was so far removed from this.

Q. Okay.

A. This whole thing. I never had any input into it in any way regarding the EU thing or whatever.

Q. You see, what I wish to suggest to you is that if there was a real belief that there was some dishonesty in the group who had to make the decision who was the best applicant, you'd see it writ large across every piece of correspondence that issued from your consortium, wouldn't you?

A. Say that again.

Q. If there was a real concern that there had been dishonesty among the group of civil servants who had to decide which was the best application, and you had any real belief in that, you would have been shouting it from the roof tops?

A. Would I have been? I don't know whether I would or

not have been shouting

Q. Let's be real, Mr. McGinley. This was a major piece of business.

A. I am real. I told you I was far removed from it. I got concerned when the article when the Sunday the Irish Times article of the 28th February.

Q. Concerned in what way?

A. Well, concerned with what was happening on the financials. And you must remember that I had 200 people coming to me: "Michael, what is going on here? Why did you not get the licence?" We hadn't got a reply from the Department, or a "Dear John", as we call it in the business, for over two months after it was announced on the radio, and I was upset about that. Because that's not the way to handle taxpaying ethical companies, to write two months after the event as announced on a radio.

Q. You see, Mr. McGinley, as I understood your direct evidence, when you were writing, you had had the Aintree conversation, and you had had a talk with Tony Boyle in relation to the fact that Mr. Desmond was an investor. Anything strange about either of those two matters?

A. Well, it was strange that Mr. Desmond said he was going to have nothing to do with Telecom and then all of a sudden he comes up as an investor. I mean, that was major news to me.

Q. So but that doesn't suggest any dishonesty?

A. Well, it says that he wasn't going to be involved in telecoms and now he was involved, and you know, there was some finances of the event and I am talking in wider terms here, where you know, it was supposed to be the banks who were involved, and all of a sudden it was Mr. Desmond was involved. So you know, I had to I don't know, that's what the thing was coming out.

Q. That doesn't suggest any dishonesty, does it?

A. I wouldn't not to suggest any dishonesty

Q. You don't have anything of your own knowledge to suggest any of the civil servants engaged in judging this competition acted otherwise than in the best interests of the State and the best interests of the taxpayer, have you?

A. Well, as I say, I wasn't involved. You know, I am upset because it was two months after the event that we got the Dear John; we didn't get the contract. That was very upsetting to me.

Q. Okay. Let's just touch upon that. You wrote these two letters. You have had Mr. Coughlan show you the responses you got. Granted, they were holding responses, and eventually you get a letter from the Department indicating that not only are they going to deal with your issues, they are going to call you to a meeting at which you are allowed say what you want and

learn what you want. Are you seriously trying to tell this Tribunal there was no appropriate reaction to the concerns you'd expressed in your letter?

A. No, I was totally and absolutely removed from the whole thing. As I said, I went to the meeting and I listened, because I was even learning stuff at the meeting that I didn't I wasn't aware was even going on.

Q. The next question I am going to ask has probably been answered by you already, but I want to make it very clear that this is a question I am asking you, and I hope for a straight answer. Do you have any evidence to give to this Tribunal that any civil servant who was sitting on the adjudication committee for the winning of this licence acted other than in an appropriate way?

A. Do I have any evidence that just what I there'd be some issues I'd have concerns with.

Q. Issues; you'd have issues. I am asking about evidence.

A. I have no evidence, no.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. McGONIGAL:

Q. MR. McGONIGAL: Mr. McGinley, there is just a couple of things I wonder if you could help me with. I appear for Denis O'Brien in relation to this.

Mr. Coughlan took you through your statement of

December, 2002, and referred you in particular to the opening paragraph, which gives the impression that the first occasion upon which you came to give any material to the Tribunal was in or about December of 2002. Is that correct?

A. I don't know what I gave in December 2002.

Q. Well, you gave a statement.

A. Which statement? This statement here?

Q. Yes.

A. Sorry, yeah, okay.

Q. Can I put the question another way; it might make it easier. When was the first time you were involved with the Tribunal?

A. The first time I was involved how this statement originated was that Mr. our legal our solicitor, Mr. Moloney, called me in my office, and he says, "I have been at the Tribunal today; Mr. Desmond is denying that he talked with Tony Boyle". He said, "Weren't you at that race meeting with Tony?"

And I said I was. And he asked me did Tony and Mr. Desmond were they talking, and I said they were.

He says, "Are you prepared to make a statement to that fact for the Tribunal?" And I said "I am".

Q. Great. Now, when was that?

A. I don't know what date it was. But you know

Q. What I am trying

A. It must have been around the 3rd December, 2002. I

don't know what date it was.

Q. What I am trying to get clear in my own mind, Mr.

McGinley, had you been to the Tribunal before that?

A. Had I been in the Tribunal?

Q. Yes.

A. No.

Q. So because I got the impression from reading Mr.

Boyle's evidence that you and he had gone together to

the Tribunal. Is that a wrong impression to have got?

A. I had gone to the Tribunal

Q. With him?

A. What do you mean, visit the place in here?

Q. Yes.

A. No, I had never been here before. I had never been at

any Tribunal before of any type.

Q. And you weren't interviewed by the legal team of the

Tribunal at any stage prior to Mr. Moloney contacting

you?

A. Oh, I am sorry, now, I went with Mr. Boyle to a

private sitting of the Tribunal; that was away back a

long time. I don't know when that was.

Q. That's what I am trying to understand.

A. Sorry.

Q. Can you help me as to when that was?

A. I am sure we have dates, but I just I can't help

you at this stage, but I can certainly try and find

out.

Q. And where would you have those dates recorded?

A. I mightn't have them recorded, but somebody else might have them recorded.

Q. How would you hope to find out, then, what were the dates?

A. I would talk to our legal people.

Q. And of course the Tribunal obviously would have a record of it?

A. The Tribunal would probably have a record also, yeah.

Q. Now, how did you come to go to the Tribunal at that time?

A. How did I come to go to the Tribunal? God, I have difficulty remembering that.

Q. Well, let me try and help you. Was it as a result of a letter that you received from them? Was it as a result of a letter received by Mr. Boyle from them?

Was it as a result of a letter received by you from your solicitor? Do any of those suggestions help?

A. I can't remember at this stage. I remember just Tony Boyle said to me, "Look, we have got to go to the Gerald wants us to go to the Tribunal". And I said "That's fine; that's okay with me". I don't recollect what time it was or what the issues were.

Q. So you and Mr. Boyle went together to the Tribunal when you say "Gerry", you mean Mr. Moloney?

A. Yes.

Q. And do you recollect who you saw at the Tribunal?

A. I saw Mr. Coughlan, and there was a lady there, which I forget her name.

Q. Was it Ms. O'Brien?

A. I don't know, and Mister another man, I can't remember his name, what's his name, Jerry

Q. Mr. Healy?

A. Jerry Healy, who had a broken leg at the time; I remember that.

Q. Now, you don't recollect when that was?

A. No, I can't tell you. I just can't tell you here when it was.

Q. But I take it you were interviewed at that time?

A. It wouldn't be an interview. Actually I said very little, as usual.

Q. But did you speak at all then?

A. I may have it was very, very little, if I spoke.

Q. But you must have listened to what Mr. Boyle had said?

A. I listened to Mr. Boyle; he was probably talking about a lot of things.

Q. You have no clear recollection?

A. No, I don't have a clear recollection.

Q. There is probably a memo of the interview, Mr. McGinley, and we'll deal with it another way.

A. Okay.

Q. That was your first contact. Following that interview, was there any further correspondence from the Tribunal to you at that time?

A. To me personally?

Q. Yeah, or to you through your solicitor?

A. Was there any not that I recall. Not that I recall.

Q. Mr. Moloney was your solicitor, was he?

A. He was.

Q. Was he your personal solicitor as well as the company solicitor?

A. He wouldn't be my personal solicitor, but he would

Q. He is the company solicitor?

A. He is the company solicitor, yeah.

Q. When you say "the company", you mean Sigma company?

A. I mean the Sigma Wireless Group.

Q. And Persona

A. He was secretary of Persona.

Q. Secretary of Persona. And also presumably solicitor?

A. I beg your pardon?

Q. Was he also the solicitor to Persona?

A. Yes.

Q. And was he solicitor to the consortium?

A. He was was he solicitor to the consortium? I assume he was.

Q. You assume he was?

A. Yeah, I can't remember any other talking to as I say, I was well removed from the whole thing, so there was things happening on a daily basis that I wasn't involved in whatsoever.

Q. Did you tell Mr. Moloney at any time this alleged conversation between yourself and Tony Boyle in February of 1996?

A. Did I tell ... ?

Q. Mr. Moloney, at any time, about the alleged conversation between yourself and Mr. Boyle in February of '96?

A. February this is about the meeting at Aintree?

Q. Yes.

A. No, I can't recall telling

Q. You can't recall?

A. I can't recall.

Q. So is it correct to say, then, that the first time you ever told anyone or committed anything to writing was in December, 2002?

A. Yeah. As I said, Mr. Moloney rang me up and said, you know, "Were you at that race meeting?" And I said I was. He says, "Will you make a statement to the Tribunal?" And I said I would.

Q. On a totally different matter, Mr. McGinley, I just want to get your reaction to something, because it may have a relevance one way or another.

You went to the meeting on the 15th May with the Department; do you remember that?

A. I went to the yes.

Q. To the Department on the 15th May 1996 looking for your explanations?

A. Yes.

MR. McGONIGAL: I wonder if the witness could be shown Document 57/41 Book 57/41.

Q. Do you have a copy of that now, Mr. McGinley?

MR. O'NEILL: Chairman, if I may just intervene, I understood that Mr. McGonigal was going to make available beforehand, and indeed yesterday evening, any documentation that he was going to put to this witness. I am not exactly sure, this document that Mr. McGonigal is now seeking for, but I would have thought that if Mr. McGonigal was going to put it to the witness, it would have been given to my instructing solicitor yesterday evening, or indeed earlier this morning.

MR. COUGHLAN: Perhaps I can clarify matters, Sir. I think Mr. McGonigal is referring to a document which is in the books of documents which were circulated, but of course would not have ever been circulated to Persona or Mr. McGinley or anyone of that nature. I don't think Mr. McGonigal is referring to any other document that he and I are discussing at the moment, Sir. I think if we just look at the document, it's one already in

CHAIRMAN: I think we'll proceed for the moment, Mr. O' Neill. I appreciate it's a less-than-ideal situation, in that Mr. McGinley obviously hasn't had an opportunity to familiarise himself even with the

limited amount of Tribunal documentation that pertains to these aspects, but if it does appear to be that he is being taken unfairly short or that I need to defer to allow him some opportunity to consider, I will do so.

MR. O'NEILL: I understand your ruling, Mr. Chairman.

I should just say my instructing solicitor says he has never seen this document before, and I suspect likewise that Mr. McGinley has seen this document. It seems to be a report of a meeting not prepared by Persona. It's not the same document that was referred to yesterday.

CHAIRMAN: We'll go on as far as we can anyway. We have the document.

Q. MR. MCGONIGAL: Did you get a copy of the document, Mr. McGinley?

MR. O'NEILL: Mr. Chairman, does this mean that Mr. McGinley's legal team are not allowed have a copy of the document? I would have thought, if Mr. McGonigal was going to produce a document

CHAIRMAN: We have it on screen, Mr. O' Neill.

MR. MCGONIGAL: Mr. O' Neill can relax; he can read the copy that he now has.

Q. Mr. McGinley, would you take this slowly, because I don't want to take any advantage of you at all; and if you have difficulty following any part of this document and you want to take time to consider it,

don't hesitate to tell us, okay.

This is a report of the meeting with Persona on Wednesday, 15th May, 1996. Do you remember this meeting?

A. I do remember the meeting, yeah.

Q. And do you see there, Persona delegation on the left-hand side?

A. Yes.

Q. Tony Boyle, Michael McGinley, John McSweeney, Hans Kuropatwa, Thomas Jarne, Gerald Moloney, and Tom Tuijten, is that right, were all part of your delegation? Is that right?

A. Yes.

Q. And is that the way you recollect it?

A. That's the way I recollect well, that's you know, that's the way I didn't know the Unisource gentleman; I had never met him before. So

Q. That's okay. On the right-hand side, then, you see the Project Team delegation; do you see them?

A. Yes.

Q. Mr. Brennan, Towey, McMahan, McQuaid, Buggy, McMeel, Andersen and Nuala Free. Do you see that?

A. Yes.

Q. Now, as far as I can make out, the only place that you have been mentioned, and I want to draw your attention to it, is on the last page. Do you see paragraph 18?

A. I don't have number 18.

Q. Do you have paragraph 18, Mr. McGinley?

A. Yes.

Q. It's the assessment. And bear in mind, when you are reading this, that this is the assessment of Mr.

Towey's, and he has written it on the 13th September

1996, which is some time after May of 1996. What he

says is: "It was clear that the objective of the

consortium was to undermine the process rather than to

get genuine information regarding the reasons why

their application was unsuccessful. Mr. Moloney, Mr.

McGinley, and Mr. Boyle were quite aggressive in their

approach; Mr. McSweeney only a shade less so."

Is that, in your opinion, a good assessment of

yourself, Mr. Boyle and Mr. Moloney towards that

meeting?

A. I would consider it a very unfair assessment.

Q. Okay. What would your assessment be?

A. If anybody says that I am an aggressive person, they

have got it all wrong.

Q. So he must have misunderstood whatever impression you created?

A. Whatever. I am not an aggressive person.

Q. What was your own assessment?

A. My own assessment was that Mr. Moloney, as I said, I

don't think I said earlier, I don't think I even

talked at that meeting. I don't think I even asked a

question. But I do know that Mr. Moloney and Mr.

Boyle were obviously trying, and Mr. McSweeney, were obviously trying to get the information which, you know, wasn't forthcoming, as I remember very much, and you know, I don't know, I can't recall if I said something at the end or something, but maybe I did, maybe I didn't. I don't know.

MR. MCGONIGAL: There are handwritten notes, Mr. Chairman; I can't go into those, because they unfortunately form part of well, they form part, and I won't go into them at this time. It may not be necessary.

Q. The other matter that I just want to ask you about, Mr. McGinley, is that as I understand it, you issued proceedings in 2001; is that right? June of 2001?

A. Proceedings about what?

Q. I have no idea. Did you, your company, have an association with the issuing of proceedings in 2001 in relation to this licence?

A. Well, was it 2001? I am not sure, but we got legal advice and we done it, yeah.

Q. Well, you have issued proceedings. Sigma Wireless, the company, have taken that advice, followed that opinion, and put allowed their name to go to these proceedings?

A. No, Persona. It's nothing to do with the Sigma Wireless Group, nothing whatsoever.

Q. Sigma are part of the Persona Group, are they not?

A. Well, Sigma were a 25% shareholder.

Q. As such, are they not supporting those proceedings?

A. Are they supporting it? Well, I suppose they are, yeah, you could look at it that way.

Q. Well, what other way would you put it?

A. Well, Persona was the company that was involved with the four consortia at the time, and we were a 25% shareholder.

Q. So to that extent, you are responsible for a minimum of 25% of the action?

A. Yes.

Q. Why were proceedings not issued before 2001?

A. The proceedings weren't issued before 2001, is very clear. We had put this thing away beyond, forgot about it. We had a group of companies in Finglas, we were expanding in the world market, we were we got up out of the rut of the disappointment of not getting the licence, and, you know, we have performed a company that now employs 500 people, exports to about 70 countries around the world with first-class products. We have wonderful people working for us, and we done all that. It was all gone by the board. I wanted to go off and play my golf and do other things.

Q. So that between 1995 and 2001, nobody in Persona, Sigma, or any other company associated with the consortium saw any reason to issue proceedings up to

that moment in time?

A. No. We got on with our life.

Q. I understand, Mr. McGinley and it may be that you won't be in a position to answer this question but I understand that what you have done is to issue a writ, issue a Plenary Summons in relation to those proceedings in June 2001.

A. I haven't a clue.

Q. Well, would it surprise you if my understanding is correct that no further step has been taken by this consortium to pursue those proceedings?

A. I don't know. If you asked me what I don't even know what a Plenary Summons is, if it comes to that.

Q. That's okay. Do you know of any reason why these proceedings should have been delayed?

A. I don't know of any I don't know of any reason, really, except that at the time, there was some statutory requirement mentioned at the time, and that was all. And it had to be done

Q. You think that there may have been a reason for issuing the writ was to avoid what is called the statute of limitations?

A. We got legal advice to say that you know, what did we want to do here?

Q. The legal advice that you took, Mr. McGinley, just so as I am not confused at all, was that from Mr. Moloney?

A. Absolutely.

Q. That's the same Mr. Moloney as had been the company secretary in 1995 and your solicitor in 1995?

A. That's the same Mr. Moloney.

Q. And is it the same legal team as you have today, or is it a different legal team?

A. The legal team.

Q. That signed the writ?

A. Mr. Moloney I don't know

Q. That may well be true too.

A. You know, I don't know. Is it the same legal team?

What do you mean by "the same legal team"?

Q. Were there barristers involved in the Plenary Summons?

Sometimes solicitors do it on their own, but were there barristers involved?

A. I don't know. We leave it to our legal people to do these things.

Q. All right. We can find out another way, Mr. McGinley.

The only other matter, then, I just want to check with you is in relation to your correspondence with Mr.

Bruton. If you just turn to your letter of February 28th. You had written a letter previous to that?

A. Yes.

Q. Was that letter in connection with the GSM licence?

A. As far as I can recall, it was, yeah.

Q. And do you recollect when it was that you wrote it?

A. I think it was about a few weeks before wait till I

see yeah, I think it was a few weeks before that.

Q. So it could have been December or January?

A. No, I think it was it might have been early

February. I don't have it here now.

Q. That's okay. We may be able to get it from Mr.

Bruton.

And you got a substantial reply to that letter, did

you?

A. I can't recall what the reply was at the time.

Q. Okay. Thanks, Mr. McGinley.

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

Q. MR. O'HANLON: I represent Mr. Lowry, Mr. McGinley.

And in relation to your recollection of having been

told by Mr. Boyle that Mr. Desmond responded by

knowing exactly who Mr. O'Brien would use to get to

Mr. Lowry, the first time you recorded this was in

your statement for this Tribunal; is that correct?

A. That's not in my statement, is it?

Q. The first time you have actually you didn't record

it in your statement?

A. No.

Q. Is there some reason why you didn't?

A. Well, it's just gone out of my I didn't put any,

you know, in my statement, I mean, I didn't put any

emphasis again, it was way beyond, gone down the

Richter scale in my view. It wasn't in my mind.

Q. So it wasn't a matter that gave rise to a concern,

when you were making your statement to the Tribunal,
that you felt it ought to be recorded in that
statement?

A. No. But it was away beyond listen, I had gone on
so many years, I had done so many things in the
intervening years, it wasn't an issue.

Q. I apologise, but can you recall again exactly when it
was you first heard that this is alleged to have been
said?

A. It was in as far as I can remember, it was late
'95, early '96, around the Christmas time period. I
am not sure I can't give you an exact date on it,
but it was around about that time.

Q. And it didn't give rise to sufficient concern that you
felt you ought to write to Mr. Bruton in relation to
it?

A. No. I mean, I thought it was you know, Mr. Desmond
may have said it in a bit of bluster or whatever; I
didn't put any significance on it.

Q. And it didn't give rise to any to sufficient
concern that either you or Mr. Boyle raised it at the
meeting with the Department on May 15th?

A. No, not at all.

Q. And it wasn't a matter that concerned you when you
wrote in your letter of the 31st May, you don't wish
to have any contact with this man in any way, in
relation to Mr. Lowry?

A. Yes.

Q. It did

A. Sorry, I beg your pardon? I thought you were quoting my letter.

Q. I was.

A. I didn't want to have any contact with this man any more, that's true, yeah.

Q. Sorry, what I'm saying is, what you say Mr. Boyle told you, isn't the cause of that reference to not having any contact with this man in any way?

A. No.

Q. That, I understand, arose because you say you were cheesed off and fed up from the results of the meeting of May 15th; is that correct?

A. No, I think that you know, as far as I can recall, as far as I can recall at that time, Mr. Lowry wasn't responding to our questions, and I had said, "What's the point? I have got other things to do, running a company of 200 people, and I am wasting my time. I want to get on with my life".

Q. I understand that, Mr. McGinley. When you say Mr. Lowry wasn't responding to your questions, I understood from your evidence that there were essentially two parallel inquiries: one being from yourself in relation to two letters you had written, or letters you had written to Mr. Bruton, and a parallel inquiry from the Persona consortium which had

inquired of the Department the reasons for why they didn't win the competition, and it ended up resulting in the meeting of May 15th to answer their questions?

A. As I said earlier, my letter to Mr. Bruton was a solo run on my part. I talked to nobody about it. I went off and done it. The meeting with Persona happened. How it happened, I can't say. All I was asked to go to the meeting, and my name is up there, and I was at the meeting.

Q. But your answer to my question was that the reason you put this statement in, "Your private secretary sent my last letter to Mr. Lowry for reply. I have had not had a reply, and please be aware I do not wish to have any contact with this man in any way", you say was because Mr. Lowry, I presume in his capacity as Minister, was not responding, as you felt, in an appropriate way to the inquiries?

A. No, my view would have been very clear. In fairness to Mr. Bruton, he did reply to me; it mightn't have been what I wanted to hear, but he did reply to me. He said he passed a copy to Mr. Lowry. There was no response, and I said "To hell with it. Let him if he doesn't want to respond, that's his problem". I got on with my things.

Q. Mr. McGinley, wasn't there an acknowledgment on behalf of Mr. Lowry that his Department had received the letter and was it would receive due consideration?

A. Yes.

Q. And response in due course?

A. Yeah.

Q. Wasn't there a meeting at which you attended as a member of the team of Persona to directly answer any of the questions that were raised concerning the competition?

A. There was a meeting.

Q. And that meeting

A. I don't know who organised that meeting. I don't know who organised it.

Q. You attended the meeting?

A. I attended the meeting.

Q. You were aware that on behalf of the Project Team, the Department was represented at such by the team who were involved in the project, the competition?

A. Yes.

Q. What further response did you expect from the Minister in relation to the queries arising from this?

A. I would have expected a letter from the Minister to the effect as similar to what Mr. Bruton had said, like, you know, "It was a tough competition; I am sorry you didn't get it". You know, "Hopefully you'll have better luck the next time".

But you know, that's the kind of thing I would have expected from him.

Q. And because of that, you wanted no further contact

with Mr. Lowry?

A. Well, because yeah, well, because of that, you know, I felt he was just becoming a very inefficient Minister. And you know, I read the papers also, and I would have seen some of his questions to some of the his answers to some of the parliamentary questions, and I wouldn't have been the least bit impressed.

Q. I see. So the Department, having organised the opportunity for the Persona team to come in and put their questions to the Project Team and the Project Team to respond, having clarified the extent to which they were entitled to do so, you felt wasn't an adequate response?

A. Absolutely.

Q. That he ought to have commiserated with you as well?

A. Well, I would have expected as a company, as a taxpaying company employing 200 people, and as an individual of Tony Boyle, who is responsible for setting up the Motorola company in Swords of 1,500 people, surely it's a it would be normal good business practice for any Minister to write and say, "Look, I am sorry, you are a great employer," you know, in fairness to Mr. Bruton, he done it, surely I would expect the same thing, because we did create a lot of employment in the country. He didn't seem to be aware of it.

Q. And specifically, it's because you felt that he hadn't

responded appropriately, and not because you were a sore loser, that you wanted no further contact with him?

A. There is a thing called courtesy.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. BARRON:

Q. MR. BARRON: Mr. McGinley, I am here on behalf of Mr. Desmond.

You said, I think on two occasions in your evidence so far, that you had difficulty explaining this to your staff. You had 200 employees; is that correct?

A. That's correct.

Q. And did you have that difficulty from the time the outcome of the competition was announced?

A. Yes.

Q. And yet you yourself have said this was a sealed process, yes? It was a sealed process; isn't that correct?

A. Well, that's what they said, yes.

Q. You didn't your consortium didn't know what the criteria were; isn't that correct?

A. I beg your pardon?

Q. Your consortium didn't know what the criteria were; isn't that correct?

A. My consortia didn't know what the criteria for I am not with you there.

Q. The Department had a sealed process; isn't that

correct?

A. So they say, yeah.

Q. They had an international adviser?

A. So they say.

Q. And they established criteria which were confidential?

A. So they say, yeah.

Q. There was something like five or six consortia

bidding; isn't that correct?

A. Five or six, yeah.

Q. So you had no way of knowing what the outcome of the process would be; isn't that correct?

A. I had no way of knowing.

Q. So what was the difficulty in telling your staff that another consortium had won, and let's get on with our business?

A. It was very clear. At the time it became very evident that the Esat Digifone Mr. O'Brien didn't have any money, and he came on The Late Late Show and he said, "Look, I am broke; only I got the licence I was gone".

Surely our staff had a right to come and say,

"Michael, what is going on here? Why did you did you make a dog's dinner of this show, or what you did you do with it?"

Q. When was that, Mr. McGinley?

A. That was after the licence announcement.

Q. It was some time after that; isn't that correct?

A. I don't know when it was.

Q. Some years later. You see, I have very carefully asked you whether you had difficulty explaining it to your staff at the time the award was announced, and you said yes.

A. I had difficulty because we couldn't get an answer to know where did we go wrong, you know, and I was quite happy to take the result; I didn't have a problem.

And if we were beaten by the better man, I would have clapped him on the back and said, "Where can we do some business?"

Q. Are you sure you are not an aggressive man, Mr. McGinley? You are coming across slightly different.

A. It's emotion more than aggression.

Q. Now, you wrote two letters which you say were a solo run; is that correct?

A. Sorry, say that again.

Q. I say, your two letters you wrote to Mr. Bruton were a solo run?

A. Yes.

Q. At the same time Persona made a complaint to the European Commission; isn't that correct?

A. Persona made a complaint to the European Commission.

Q. And I think the United States Embassy made a complaint to the Taoiseach; isn't that correct?

A. I read it in the paper, but I wasn't involved in that.

Q. And certainly the impression is that all the stops were out to try and derail this process before the

licence was actually awarded. Do you share that impression?

A. No. I would say there was no intention of derailing.

We were prepared to take the beating on the basis that we got full clarification of why we lost the bid, or where did we go wrong? And that was the main issue.

As I said in my earlier evidence, we didn't get our

Dear John for two months until after the event. We

were quite prepared to take it, you know, and clap

them on the back and say "Yes, great, fantastic, well

done, let's get on and do some business together". It

was quite on the cards.

Q. Somebody was seeking interim measures from the

European Commission to stop the grant; isn't that

correct?

A. To stop

Q. To stop the grant?

A. Of the licence?

Q. Yes.

A. Well, I don't know what the EU I don't know what

the EU Commission thing said, really. I don't know.

Q. If Mr. Desmond had said to Mr. Boyle that he knew who

Mr. O'Brien would use to get at Mr. Lowry, if that was

so, that would have been an important matter for

Persona; isn't that correct?

A. As I said earlier, to me it wasn't. It was just

as it could have been a statement he made because

he had knowledge of a lot of people, and it didn't get into me at all. My main thing was I mean, I like this man, I don't have anything against him whatsoever. But my main concern was that he wasn't going to be a player, and he was therefore definitely a formidable player if he had been in the original stages, and we were happy that he wasn't going to be a player.

Q. But you wouldn't need to read in the newspaper on the 28th February that Mr. Desmond was involved to see a significance of a statement of that nature; isn't that correct?

A. Sorry, say that again.

Q. If Mr. Desmond had told Mr. Boyle that he knew who Mr. O'Brien would use to get at Mr. Lowry I beg your pardon, get to Mr. Lowry, if somebody of that nature had been said, Mr. Desmond's involvement in the consortium would not of itself trigger Mr. Boyle telling you about that or doing something about that; that on its own would be a significant statement.

A. Well, I didn't you must remember that I was running a company, you know, that was you know, struggling after the disappointing news we got. I was building it up. I had 200 people. These issues were away a lot of more important things to do than think about that sort of statement. It might have been a significant as it turned out, probably, afterwards

I can say it was a significant statement; but at the time, I didn't have any I didn't even cross as I said, my mind, cross my mind that it was

Q. According to Mr. Boyle yesterday, the other person who was told about this was the company solicitor. Is that Mr. Moloney?

A. Mr. Moloney is the company solicitor.

Q. Right. And Mr. Moloney was the one who asked you to make this statement?

A. Mr. Moloney was the man who asked me to make the statement.

Q. Isn't that correct?

A. He called me up after being at the Tribunal here and he said to me I repeated the evidence earlier; he said, "Were you at the meeting with Tony and his dad in Aintree?" And I said, "Yes, I was".

He said, "Was Tony talking to Mr. Desmond?" And I said he was, and he says, "Will you make a statement for the Tribunal to that effect?" And I said, "Yes, I will".

Q. So why was this business about Mr. Desmond knowing who Mr. O'Brien would use to get to Mr. Lowry, why was that not included in your statement?

A. Because really, as I say earlier, it didn't even come across my mind to do it.

Q. It didn't exist; isn't that the reality of the situation?

A. You know, as I said earlier, Tony Boyle told me. I didn't hear Mr. Desmond say it. But Tony Boyle told me, and I believe what Tony Boyle told me. That's my earlier evidence. That's exactly what happened. And I am here to tell the truth of what happened, and that's it.

Q. I think you said earlier something I don't have your exact words, but something along the lines that Mr. Desmond might have been bluffing. Did you say something like that?

A. I said

CHAIRMAN: I think the word was "bluster".

Q. MR. BARRON: "Bluster", I beg your pardon.

A. It's only a personal opinion I have. It's nothing I have no evidence of anything.

Q. Did you see Mr. Boyle's statement before you made your own statement?

A. I didn't. Mr. Boyle, as I can recall, was on holidays for two weeks at that time, and he wasn't in the country at all.

Q. Did Mr. Moloney tell you what was in it?

A. I don't think he did. No, I don't think he told me what was in Mr. Boyle's. I can't I can't recall.

We may have been talking, we may have talked about it, I can't recall now, but he probably may have led me along the way, because he obviously knew what was in Tony's statement, but what he was saying to me was

what actually happened, so I didn't have a problem.

Q. I think you said at the start of your evidence that Mr. Boyle's office was beside yours, or close by yours?

A. That's correct.

Q. Was he coming in to you on a regular basis, daily, weekly, to discuss things?

A. There would be times when I mean, a lot of the Persona discussions took place over at the Motorola headquarters in Basingstoke, and that could take a week at a time, and he'd be missing those weeks. And other days it would be done in Dublin, so we'd have a cup of tea together, a cup of coffee and a chat or whatever.

Q. Were there a number of meetings about this?

A. A number of meetings about

Q. About the fact

A. No, it was a two-minute meeting, at the most; it wasn't a meeting. It was a walk into the office and a sit on the radiator and say you heard this, and then gone again.

Q. You just said that a lot of the Persona discussions took place over in the Motorola headquarters. A lot of them.

A. Some of them, yeah.

Q. That suggests there were a lot.

A. Well, of course there was quite a few. It just wasn't

a thing you could do in a week. And remember, you had people coming in from Holland and you had people you know, it was a sort of a Motorola headquarters was a convenient venue at times also, particularly when a lot of the technology was in Basingstoke due to the Motorola factories there.

Q. In your letter to the Taoiseach on the 28th February, 1996, what did you mean by saying, "Mr. Lowry and his Government committee had an opportunity to support Motorola, and they failed to do so"?

A. As I said earlier, you know, the Celtic Tiger hadn't hit the country at that stage. A lot of unemployment. Jobs were important. Tony Boyle and myself, who are two ex-Motorola people, were instrumental in bringing Motorola into Ireland, and you know, we had created 1,500 jobs in Swords, in which we had 200. And as an Irishman, I wanted to create as much employment and retain as much employment as possible. And we spent years trying to get Motorola to come into Ireland through the vice-chairman, Mr. Mitchell, who was mentioned earlier, and you know, it happened.

Q. So what was the opportunity?

A. And as a result of that, I would expect, surely, some support from Government on that basis.

Q. What opportunity are you discussing there? You are discussing the grant of the second GSM licence, aren't you?

A. Yes.

Q. So were you suggesting the Government, Mr. Lowry and his committee, should simply have granted to your consortium because of Motorola's involvement in this country?

A. No, I am not.

Q. No? Well, then, what does that mean?

A. It means basically that surely that anybody who is there has to be some credits for people, for companies who are major employers in the country, creating a lot of employment with a lot of technology. There must be some consideration given.

I know I wasn't involved in the bid process, but it would obviously be very clear to me that you know, we made a good bid, and we just wanted to know reasons why we didn't get it; and if we didn't get it, so be it. Let's find the reasons why we didn't get it and improve and go on for the next time.

Q. And the Department had a meeting with you on the 15th May 1996 to assuage your concerns; isn't that so?

A. That's right.

Q. But you weren't satisfied?

A. Well, that's the letter that was sent as a result. Now, I mean, I didn't compile that letter. That was the letter that was given to me at the time. And I sent it to Mr. Bruton.

Q. Thank you.

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

Q. MR. O'NEILL: Mr. McGinley, in preparing your statement of the 4th December that's the one to which reference has been made did you have any contact with Mr. Boyle?

A. No contact. Mr. Boyle was on holidays. You know, I don't know where maybe you can ask him where he was, but I certainly he wasn't in the country.

Q. Now, the letter of the 28th February to Mr. Bruton, the then Taoiseach, which has been referred to, you enclosed sorry, the letter of the 31st May I should refer to, the letter of the 31st May 1996 which you sent to Mr. Bruton, you enclosed with that letter a copy of a letter of the previous day, I think a letter of the 30th May of 1996, which was written by Persona to the Project Team?

A. Yes.

Q. And I just want to go through that letter and to identify whether or not the concerns in that letter represent concerns that you had at the time.

A. Okay.

Q. It's a letter of the 30th May addressed to Martin Brennan, the Chairman of the GSM Project Team. And I think it was

MR. MCGONIGAL: Is this in one of the books, Mr. Chairman? I am having difficulty in finding it.

CHAIRMAN: I am not sure if it was, Mr. McGonigal, but

I have given other people latitude, and I think it's perfectly reasonable that we have this letter, which looks to be of fairly uncontroversial content.

Q. MR. O'NEILL: It's a letter I think written by Mr. Boyle to Mr. Brennan. If I just read it out.

"I refer to the meeting between representatives of Persona and members of the Project Team at the Department on Wednesday, 15th May last.

"I wish to register Persona's strong objection to the fact that the meeting did not result in meaningful disclosure by the Department, either in relation to the process that was followed in evaluating applications or, indeed, in relation to the reasons why Persona failed in its application for the licence to become the second GSM operator in Ireland.

"On the contrary, we left the meeting with at one, feeling completely disenchanted with the process.

"1. No meaningful disclosure of reasons.

"It is extraordinary, in Person's view, that you opened the meeting by declaring that you would not be disclosing the reasons for the decision to award the licence."

Can I pause there: Is that a statement that was made at the opening of the meeting?

A. As far as

Q. That reasons

A. As far as I recall, that statement was made, yeah.

Q. And the letter continues: "Persona is entitled to such an explanation.

"Furthermore, there can be no justification whatever for your refusal to disclose Person's scoring under the selection criteria. There is equally no justification for your refusal to disclose the scoring of the successful applicant. I note that at the meeting on the 15th May, you actually refused to give any explanation for this refusal."

Can I ask you, was there a refusal at the meeting on behalf of the Project Team to give any explanation why they wouldn't disclose the scoring of the successful applicant?

A. Yes, as far as I recall, there was.

Q. "Although at the beginning of the meeting you stated that Esat was exceptionally strong from both a "technical and marketing point of view". You then refused to if I have any comparative information or assessment between Persona's application and that of Esat. This is so that notwithstanding your letter of the 1st May, you acknowledge that to give applicants information regarding performance would, by necessity entail a comparison with other applicants".

Can I just come back to the first sentence of that paragraph and the statement that the Project Team refused to give any comparative information or assessment between Persona's application and that of

Esat. Again, is that your recollection?

A. That's my recollection, yeah.

Q. "Your refusal to disclose the scoring or to give any comparative information between Persona and Esat's applications effectively rendered the meeting meaningless.

"2. Refusal to answer questions.

"In your letter of the 1st May inviting Persona to attend the meeting on the 15th May, you stated that questions posed by Persona would be answered as long as they did not entail the Minister breaching his duty of confidence. Notwithstanding this representation by you, you refused to answer most of Persona's questions without once justifying this on the basis of possible breach of confidentiality."

Then the letter goes on to set out examples of questions that you that's Mr. Brennan or Mr.

Andersen refused to answer, including:

"(a) why Persona's scoring would not be disclosed.

"(b) whether Mr. Andersen thought Esat was the most effective competitor for Eircell.

"(c) whether Mr. Andersen agreed with the apparently low weighting which attached to the tariff criterion.

"(c) how the weighting attached to the first criterion was divided between credibility of business plan and approach to market

development.

"(e) how many points were available to be awarded under the heading of 'Experience'.

"(f) what the weighting attached to the licence fee criterion was prior to the licence fee being capped.

"(g) to what other criterion or weighting attached to the licence fee criterion was transferred?

"(h) how Person's overall scoring related to that of Esat?

"(i) Under which criteria Esat scored higher than Persona.

"(j) generally why Esat was considered to be better than Persona.

"(k) how you could have satisfied yourself with the ownership of Esat.

"(l) how you could have satisfied yourself with the financial status of Esat."

Without going through each of those questions, are those, to your recollection, the types of questions asked to which no answers were given?

A. Well, I can't sit here and say they were all the things. But that was the general play of the thing.

You know, I just you know, if you asked me how Persona's overall scoring related to was that

question asked, I just cannot remember whether it was asked; but I presume if it was there, it was asked.

Q. I'll continue in the letter.

"8. Role of independent consultant.

"In view of the Minister's frequent declarations of the Minister's independent and central role played by the consultants, Persona was very surprised to discover that they were not involved in setting the selection criteria or their order of priority.

Persona is also disturbed by the discrepancies in what was said to the different consortia concerning the role (or absence of any role) of the consultants in setting the weighting which attached to the criteria.

"Conclusion:

"In summary, Persona is extremely dissatisfied with the Department's failure to make meaningful disclosure at the meeting either in relation to the process or the reasons why Persona failed in its application.

The limited disclosure to date falls far short of the minimum disclosure Persona is entitled to. This continued failure on the part of the Department confirms the absence of transparency and openness in the entire process. The sense of disillusionment of our investors in the process has been increased by this token gesture, which was obviously undertaken with a view to appeasing the valid and reasonable requests for proper disclosure and not with a view to making meaningful disclosure at all."

Now, can I ask you, did you leave the meeting of the

15th May 1996 any wiser as to why your consortium had been unsuccessful in the process or why the Esat consortium had been successful?

A. You know, I recall clearly leaving the meeting, and the whole Persona team were unhappy, and I was probably more upset than any of them. And I thought that that meeting would have clarified everything, and the game was over; we would have that was it. We wouldn't be sitting here today if it was done properly. That was it. The Motorola people would have been happy. Everybody would have been happy.

Q. Now, I want to move to another matter. You were asked by Mr. McGonigal in relation to proceedings had been issued arising out of the grant of the licence. Are the elements dealing with the proceedings matters dealt with by you or by Mr. Boyle?

A. Sorry, say that

Q. Mr. McGonigal has referred to proceedings that have been issued, the Plenary Summons issued in 2001.

A. Yeah.

Q. Are the proceedings, are they matters that fall under your domain, or are they matters that fall under the domain of Mr. Boyle?

A. They would fall under both of us, but Tony would take the leading light in doing them.

Q. Mr. Barron asked you a question in relation to when meetings took place, and you indicated that meetings

took place at the headquarters of Motorola in Basingstoke. Did you attend those meetings?

A. No, never attended any.

Q. Thank you.

CHAIRMAN: Nothing in conclusion, Mr. Coughlan?

Mr. Nesbitt?

MR. NESBITT: Just two matters arise in relation to the examination after we asked questions, Mr.

Chairman. Firstly, during Mr. McGonigal's examination, issue arose as to what this witness did or didn't do at the 15th May meeting. I think it would be appropriate, to assist the Tribunal, if I could perhaps ask one or two questions about that.

And then secondly, in relation to what's just been said in answer to Mr. O' Neill in relation to the asserted failure to give information and indications as to the weaknesses in the Persona application.

Now, these are probably matters for another witness, given this witness says he doesn't really recollect what happened at the meeting.

CHAIRMAN: I think they should then be left to another witness, Mr. Nesbitt. I'll deem you as having mentioned these matters now, but I don't think it's appropriate that I, in effect, give you a second round of questions.

MR. NESBITT: Perhaps if I just mention one thing. The Persona note of the meeting has this witness as

asking questions. His direct evidence was he didn't ask questions.

A. I think that I said in my evidence that I may have asked one question at the end. I think I said that in my evidence.

CHAIRMAN: You have nothing to raise in conclusion, Mr. Coughlan?

Just two very small things before your evidence finishes, Mr. McGinley.

You mentioned that your social association with Mr. Desmond came about through golf, and of course it has been mentioned that your son is a distinguished golfer; would the association have reached the degree of closeness of perhaps your son and Mr. Desmond playing in pro-am functions together?

A. Never. I never played golf with Mr. Desmond.

CHAIRMAN: Pardon?

A. I have never played with him. I have never played golf with Mr. Desmond.

CHAIRMAN: I was only asking, did your son play with him in pro-amateur functions.

A. Absolutely.

CHAIRMAN: Yes, that was the type of thing.

Regarding the 28th February, when you wrote your letter, can you remember, was it you just picked up your own Irish Times on the day and saw the McManus letter, or were you telephoned by anyone?

A. I saw the sorry, the McManus, yeah. No, I picked up the Irish Times. It's delivered to my office, The Irish Times and The Irish Independent, every day.

CHAIRMAN: And as a subscriber, you turned to the business page and you read this article?

A. Absolutely.

CHAIRMAN: And you promptly took the action that you have described?

A. Absolutely.

CHAIRMAN: Thank you very much, Mr. McGinley, for your assistance.

I see Mr. De Rossa is present.

MR. COUGHLAN: I think he is available for the afternoon. It's just coming up to lunchtime.

CHAIRMAN: I think it might be rushing matters to try to conclude it in ten minutes.

MR. FITZSIMONS: Sorry Chairman, just arising out of your last question, could I ask a question of the witness?

CHAIRMAN: All right.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: You say that you read the newspaper on this day, and you immediately wrote this letter in your office; is that correct?

A. That's correct.

Q. You wrote a three-page handwritten letter without a single error or crossing out or revision?

A. Yes.

Q. Is that your evidence?

A. Yes.

Q. I see.

CHAIRMAN: Thanks, Mr. McGinley.

Two o'clock. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

MR. COUGHLAN: Mr. Prionsias de Rossa.

PRIONSIAS DE ROSSA, HAVING AFFIRMED, WAS EXAMINED AS
FOLLOWS BY MR. COUGHLAN:

CHAIRMAN: Thanks for your attendance, Mr. De Rossa.

Q. MR. COUGHLAN: I think you prepared a memorandum of
intended evidence for the assistance of the Tribunal.

Do you have it with you in the witness-box?

A. I just got a copy of it, just

Q. I think you have. If there is need, reference to a
bundle of documents as well. There may not be need
to.

A. I just received these now.

Q. The procedure that we adopt here, Mr. De Rossa, is
I'll just lead you through that statement, and perhaps
I'll come back and ask a few questions for
clarification if needs be.

A. Okay.

Q. You say in your memorandum that "I, Prionsias de
Rossa. 48 Old Finglas Road, Glasnevin, Dublin 11,

make the following statement regarding" your knowledge of the licence competition resulting in the granting of the second GSM licence by the Department of Transport, Energy and Communications, to Esat Digifone Limited."

I think you then respond to a number of queries the Tribunal put to you; isn't that correct?

A. That's right.

Q. And the first and second query you answer together, so I'll just read those.

Query Number 1, you were asked for your understanding of the role envisaged for the Cabinet or Cabinet Subcommittee in the GSM process, and in particular in the light of paragraph 2 of the Government decision of the 2nd March, 1995, namely, "A recommendation to be put by the Minister to Government in time for a final decision on the granting of the licence to be made by the 31st October, 1995".

And the second query is your understanding as to the purpose or purposes for which the competition design allowed a period of six weeks from the date of the availability of the evaluation report to the planned announcement of the result of the competition process.

I think you have responded as follows: You would like to address your understanding of the role envisaged for the Cabinet or the Cabinet Subcommittee in the GSM process. Your recollection is that the Cabinet had no

role in formulating the selection criteria, and that Mr. Lowry and his Department had this responsibility, and this is, as far as you were concerned, was the normal practice. You had no reason to believe that the announcement procedure, including the time-frame allocated by the Minister, was anything other than normal procedure in such competitive processes.

I think you were then asked for your knowledge, direct or indirect, of the resolution of the intervention of the European Commission by the capping of the licence fee payable by the applicant at $\text{€}15$ million and your knowledge, direct or indirect, of the progress of the evaluation during the course of the process, either directly from information provided by Mr. Lowry, or through other officials or through programme managers.

And you have informed the Tribunal that you had no knowledge, either direct or indirect, of the intervention of the European Commission by the capping of the licence fee payable by applicants at $\text{€}15$ million, nor did you have any knowledge, either direct or indirect, of the progress of the evaluation, either directly from information provided by Mr. Lowry or through other officials or through your programme manager.

I think you were then asked a series of questions, and you answered them together, so I'll just run through those.

I think you were asked for your knowledge, direct or indirect, in the weeks prior to the 25th October, 1995, being the date on which the result of the competition process was announced, of the stage which the process had reached and as to when the result was likely to be available.

You were asked for details of your knowledge of the result of the competition process prior to the meeting attended by Mr. Lowry and members of the Government on the 25th October, 1995, and you were asked for precise details of the meeting on the 25th October 1995, at which Mr. Lowry informed members of the Government of the result of the competition process, and in particular:

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

evaluation result, and if so, kindly identify or describe such document or documents.

7. Details of any discussion, if any, of the result of the competition and date, details of the discussion, if any, regarding the announcement of the competition result.

And I think you have informed the Tribunal as follows:

In the week prior to the 25th October 1995, you believe that Mr. Lowry may have presented his views on who should be awarded the GSM licence in advance of the Minister announcing same to Cabinet, but you cannot be certain of this. If such information had been forthcoming, it would most likely have been provided at a meeting prior to the meeting of the Cabinet. Such meetings usually took place in the Office of the Taoiseach and lasted for approximately one hour, depending on the number of items on the agenda.

If it was a pre-Cabinet meeting, Mr. John Bruton, Mr. Dick Spring and yourself would normally have been present, and in this instance Mr. Lowry would also have been present. You recall being informed at some point that Esat Digifone were considerably ahead of other bids and that they were the clear winners.

Whether this information came to you via Mr. Lowry at a pre-Cabinet meeting or at a Cabinet meeting, you don't recall. No documentation regarding the

evaluation process or the evaluation result was ever received by you.

You have no recollection of the details of discussions following the announcement of the result, or even if such a discussion took place.

I think you were then asked for the approximate date on which you were first informed or otherwise became aware of the involvement of IIU/Mr. Dermot Desmond in the Esat Digifone consortium and the person or persons by whom you were so informed or the circumstances in which you became aware.

And you informed the Tribunal that you were not made aware of the involvement of Mr. Desmond in the Esat Digifone consortium and only became aware so when the matter first arose at the Tribunal.

Now, can I take it, just to put matters in context, this was a coalition government; Mr. Bruton has given evidence about this.

A. Yes.

Q. And it would be usual comprising Fine Gael, Democratic Left and the Labour Party and it would be usual for the three Party leaders to meet prior to Cabinet meetings or when important matters needed to be discussed to ensure the smooth operation of Government; would that be

A. That would be true, yes.

Q. And in that regard, I think you each, along with other

ministers, but you each had a programme manager also;

isn't that correct?

A. That's correct, yes.

Q. We know that Mr. Spring's programme manager was Mr.

Greg Sparks; Mr. Donlon's was Mr. Bruton's; and I

think, in your instance, you had a civil servant as a

programme manager?

A. That's right, yes.

Q. I think that was in the context that you had not

served in Government before, and you were of the view

that you would be better served by somebody who knew

the machinery?

A. Who knew their way around, yes.

Q. Now, and am I correct in thinking also, as Mr. Bruton

has indicated, that it would be usual for the

programme managers, again, to receive Cabinet papers

some days prior to the Cabinet meeting, so that,

again, they could come together, particularly the

three programme managers of the Party leaders, again,

to deal with matters, smooth the operation of

Government or advise on deferral of matters where

agreement couldn't be reached. Would that be the way

it worked?

A. In general, yes.

Q. Now, just from your statement, do I take it that the

second GSM licence was not a matter that you had

were paying particular attention to in the period when

it first came to Government and the decision was made to have a competition in that regard?

A. Yeah, it was a matter which another Minister was dealing with, and I had enough on my own plate.

Q. So do you have any clear recollection of matters around that time other than that there was a competition?

A. Just that there was a competition, that the Minister brought his proposals to Cabinet for approval, and they were approved, and he was to get on with the job, yeah.

Q. And again, coming then, you heard nothing in the intervening period, to the best of your knowledge, as the competition unfolded in the summer months of 1995?

A. No, I didn't. I had representations made to me by the Persona people, who had apparently also submitted a bid, which I ignored, because I considered that any action that I would take on foot of that would be seen as interfering with the process.

Q. And coming up to the time of the announcement of the result of the competition, I just want to do you have any clear recollection of a meeting where Mr. Lowry said anything to you, Mr. Bruton and Mr. Spring and perhaps Mr. Quinn, the Minister for Finance at the time?

A. Yeah, I do have a recollection of a meeting in Mr. Bruton's office, in the Taoiseach office. I actually

don't recall Ruairi Quinn being present but that's not to say he wasn't; I simply don't recall him being present where he indicated that the evaluation process had produced a bid which was way ahead of every other bid and that it was the Denis O'Brien bid. And I was relieved, from the point of view that it was a clear result and therefore was unlikely to be to be challenged or give rise to critical public comment.

Q. I think you have answered in your statement, you didn't see any documentation?

A. No, no.

Q. And on that representation, did you give your assent to the matter being made public, do you know?

A. The purpose of the meeting, to my recollection, was that Minister Lowry wanted to announce the matter quite quickly because he was fearful that it would leak, and he wanted it to be out in the public domain officially, and we readily agreed to that.

Q. We know that the matter we know that there was a meeting on the 25th October. Could that be the meeting, I am just wondering, because you do say in your statement and I know that you may not have a clear recollection of the timing of matters but that in the week prior to the 25th October, 1995, you believe that Mr. Lowry may have presented his views on who should be awarded the GSM licence in advance of the Minister announcing same to Cabinet, but you

cannot be certain of this. If such information had been forthcoming, it would most likely have been provided at a meeting prior to a meeting of the Cabinet.

Could I take it there was only one meeting as far as you were concerned?

A. Yes, and it's quite possible that that was the meeting that was referred to. My I mean, my recollection of it is that it was an afternoon meeting, but that and that would have been unusual, as a pre-Cabinet meeting, because meetings normally took place on the mornings of the Tuesdays. But it wasn't you know, there were occasionally afternoon Cabinet meetings, so as I say, I am not absolutely sure of the date.

Q. I can assist your recollection, perhaps assist your recollection. There was a Cabinet meeting on the 26th; there is no doubt about that.

A. Yes.

Q. There was a meeting of Ministers, of Party leaders and perhaps the Minister for Finance to discuss estimate matters, maybe, or expenditure matters.

A. Sure.

Q. At 4 o'clock the previous day, according to Mr. Bruton's note, and I think then there may have been another meeting in relation to I think the Northern Ireland, or Northern Ireland, at 5 o'clock?

A. I was probably more interested in the budget meeting

than this particular one.

Q. Yes, but so can I take it it's not something that exercised your mind greatly when the recommendation or the advice came from Minister Lowry?

A. No, no, it wasn't a matter I had any concerns about, no.

Q. And you knew nothing about the process.

A. No, other than that I understood the process to be an arm's length process which was being carried out by a group of people who were not even within the sort of the influence of the Minister; that it was arm's length from the Minister as well as from the rest of the political system.

Q. Were you ever informed, at whatever meeting, at the meeting that you recollect but can't put an exact date on, that the recommendation came with what would be described has been described by the Assistant Secretary to the Department, Mr. Sean Fitzgerald, that it contained a health warning in relation to the financial circumstances of Communicorp? That was Denis O'Brien's company, which formed part of the Esat Digifone consortium.

A. No.

Q. Were you ever informed as to the actual makeup of the consortium at that time or previously, to the best of your knowledge?

A. No.

Q. You were aware that it was the Denis O'Brien consortium; is that as much?

A. Yes.

Q. That's as much?

A. Yes, mm-hmm.

Q. And we have had evidence from Mr. Bruton, and I don't think he was suggesting that either you or the

Tanaiste or Minister Quinn would have been present

when he noted certain matters which he says Mr. Lowry

relayed to him, perhaps immediately prior to meeting

with you and the other Ministers; but did you ever

hear anybody say anything to the effect and this is

Mr. Bruton's note that "It can't be given before it

goes to Cabinet, GSM, Quinn should not be involved,

Loughlin is a participant in another one"?

That's a reference that Mr. Quinn's brother Lochlann,

I think, was a participant. You never heard any

discussion about that?

A. No, I can't say I recall it, no. No.

Q. And did you you weren't privy to any discussion or

statement being made by Mr. Lowry that in Italy the

Government did not accept the Government report, there

was a consequential challenge, the European Commission

took them to court because of this change of policy?

A. No.

Q. And did you ever hear it being said that Albert had

promised it to Motorola obviously a reference to

Mr. Albert Reynolds, the previous

A. No, I have seen this in the newspapers, but I haven't

Q. Nothing like that was said to you?

A. No, no.

Q. Thank you very much, Mr. De Rossa.

CHAIRMAN: I'll just check, Mr. De Rossa, in case some of the other barristers may have a couple of questions for you.

MR. O'DONNELL: Just a few questions for Mr. De Rossa.

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

Q. MR. O'DONNELL: I appear for the Department of Transport, Energy and Communications.

Just I know you were in Government for some time, perhaps not as long as you might have liked, but you had considerable experience of the civil service during your time in Government, and I presume you were happy that this competition was to be run by the civil service?

A. Oh absolutely, yes, yes.

Q. You trusted them and their integrity and their independence?

A. My primary experience of the civil service would have been obviously in my own Department. I have nothing but the height of praise for them.

Q. Therefore you would be happy that this was appropriate, that this competition would be given to

them as a sealed process and would remain a sealed process?

A. Yes.

Q. And as far as you are concerned, that's the way it was carried out?

A. That's to my certain knowledge that I I mean, the fact that I did not sort of go through all of the papers with a fine-tooth comb indicated that I had trust in the process.

Q. And just that last question in relation to the papers, there is some suggestion that the report, the final report of the review of the team was not in the Department. We actually think it was, but there has been some suggestion that it wasn't at the time of this meeting; but the meeting on the 25th, I think, was a Cabinet Subcommittee meeting to deal with expenditure at 4 o'clock, and there was then a meeting about Northern Ireland at 5 o'clock, and you obviously had other things on your mind as well as those two subcommittee meetings. Can I put it to you that you wanted to know from Mr. Lowry in relation to the contest, was the outcome, the result?

A. That's absolutely. I mean, that was the purpose of him being present at the meeting, yes.

Q. You didn't want necessarily to read a 50-page account of how the competition had gone and how the various scores

A. No.

Q. had been allocated?

A. No.

Q. You wanted to know the final score?

A. Yes.

Q. And that's what you got?

A. Yes, and as I say, if it had been a result which was

Q. Ambiguous, for example?

A. ambiguous, or marginal, or only one or other being very close to each other, then clearly I would have had to look at it in more detail.

Q. Yes, if it had been a draw or an inconclusive result?

A. Sure.

Q. That was going to be a problem?

A. Obviously.

Q. But this was a conclusive result, and the margin to some extent didn't matter once it was conclusive?

A. Yes.

Q. Thank you.

MR. COUGHLAN: Just one question arising out of My Friend's questions there.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS

BY MR. COUGHLAN:

Q. MR. COUGHLAN: You say obviously if it had been a draw, if it had been announced it was a draw, it was something you had to go into in more detail?

A. Yes.

Q. I think you also said if the result was close, it's something you'd have to look at also. It was never presented to you as being a close result?

A. No, no. It was presented very much as the Esat bid being so far ahead that there could be no question but that if we were to give it to anybody else, there would be questions.

Q. I see. Thank you very much, Mr. De Rossa.

CHAIRMAN: Thank you very much for your assistance, Mr. De Rossa.

THE WITNESS THEN WITHDREW

MS. O'BRIEN: Mr. Pearse Farrell, please.

MR. HOGAN: Chairman, just before Mr. Farrell enters the witness-box, I wonder, might I apply if necessary for limited representation in respect of Mr. Farrell.

Obviously what he was doing was as agent for Mr. Desmond, for whom I also appear; and perhaps, Sir, you might consider it more appropriate that I would have a right, if necessary, of re-examination in that capacity. But I am in your hands, Sir.

CHAIRMAN: Well, I think by way of consolidation, Mr. Hogan, I did glance last week at some of the older transcripts, and I think I may have separately acceded to requests from both Mr. Shipsey and yourself on separate occasions in respect of both Dr. Walsh and Mr. Desmond. Perhaps the most convenient thing, to

avoid needless proliferation of orders, would be if I simply amended the substantive limited certificate to represent IIU, and to deem that as being sufficient to encompass Mr. Farrell's limited participation today.

MR. HOGAN: I am very grateful, Sir.

PEARSE FARRELL, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MS. O'BRIEN:

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

Mr. Farrell, you are a member of the firm of Farrell Grant Sparks, chartered accountants; isn't that right?

A. That is correct.

Q. And you were in 1996, and you possibly still are, an accountant to Mr. Dermot Desmond, and I think perhaps auditor to at least IIU and possibly one or more of Mr. Desmond's other companies; is that correct?

A. I am, or was at the time, an adviser to Mr. Desmond, and continue in some capacity in relation to some of his local interests as an adviser. We are not auditors to IIU.

Q. I see. All right. Now, I think the reason the Tribunal asked for your assistance is that you had some very limited dealings with the Department of Transport, Energy and Communications in the days leading up to the grant of the licence. I think you attended one meeting at the Department on the 14th May; isn't that correct?

A. That is correct.

Q. And I think you also sent two letters to the Department: one on the 7th May and then another more lengthy letter on the 15th May; is that correct?

A. That is correct.

Q. I think initially the Tribunal made contact with you directly on the 19th June, 2002, seeking your assistance, and I think in response to that request, you indicated that you had no difficulty at all in assisting the Tribunal; you were quite happy to do so, but obviously you would have needed a waiver of confidentiality from your client. Isn't that right?

A. That is my recollection.

Q. I think in the event, at that time the waiver from Mr. Desmond was not forthcoming; isn't that the position?

A. That is my recollection.

Q. I think following that, the Tribunal, I believe, on the 16th January, 2003, served a Witness Summons on you to secure your attendance to give evidence and also to direct the production by you of certain documents; isn't that correct?

A. That is correct.

Q. I think the position is in fact that last evening, you secured confirmation that the waiver of confidentiality from Mr. Desmond was forthcoming, and that enabled you to produce to the Tribunal this morning, voluntarily, the documents that the Tribunal had sought; isn't that correct?

A. That is correct.

Q. And I think the Tribunal is quite happy that you are now appearing entirely as a voluntary witness to give evidence.

A. That is correct.

Q. Now, you produced to the Tribunal this morning a series of documents. I think there are ten documents in all, and I wonder if you have copies of those before you, and perhaps also copies of the small number of documents which the Tribunal brought to your attention?

A. Yes.

Q. Now, I think your first dealing with the Department was a letter that you sent to the Department on the 7th May of 1996, and I think a copy of that letter is at Document Number 2 in the small booklet the Tribunal prepared a booklet of the documents that you produced, and they are actually behind numbered dividers. I wonder, do you have a copy of that booklet?

A. I have that.

Q. If I take you straight to Divider Number 2, and that's a copy of the letter that you sent to the Department, which was dated the 7th May. And just to put that letter into context, the Tribunal has heard evidence that on the 3rd May, Mr. Owen O'Connell, who was solicitor to Esat Digifone, and Mr. Knut Digerud, who

was then Chief Executive, attended a meeting at the Department of Transport, Energy and Communications with Mr. Martin Brennan, who I think you subsequently met, and with Mr. Fintan Towey, who you may or may not have met and we'll come to that and that at the end of that meeting, Mr. O'Connell made a list of what the Department required from Esat Digifone before the licence could be issued. And that included auditors' certificates in relation to each of the shareholders in Esat Digifone. And I think it was in that context that your letter of the 7th May was provided to the Department ultimately on the 13th May.

Now, if we just look at that letter. It's addressed to the Department of Transport, Energy and Communications, and it's for the attention of Mr. Martin Brennan.

"Re: Esat Digifone Limited.

"Dear Sirs,

"We act as financial advisers and auditors to Dermot F. Desmond. We confirm that Mr. Desmond is the beneficial owner of one hundred percent of International Investment and Underwriting Limited (IIU).

"We are informed that Mr. Desmond/IIU have undertaken to invest and/or underwrite an equity investment of up to $\frac{1}{2}$ 40 million in Esat Digifone Limited. We confirm that Mr. Desmond/IIU is in a position to make this

investment and to make the underwriting commitment."

It's signed "Yours faithfully, Farrell Grant Sparks."

Now, if we go to the previous divider, Divider 1, there is a note here, I think in your own handwriting; is that right?

A. Sorry, these are my notes?

Q. Yes, your own notes at Divider 1.

A. Yes.

Q. Now, can you tell me and assist the Tribunal as to what that note records?

A. Well, first of all I would just say that these were the files I got back from storage as a consequence of our initial correspondence. And I can best speak from recollection in relation to these notes, rather than with any degree of absolute certainty about them.

My recollection as regards this first note is that this would have been having had a discussion, either a telephone discussion or a meeting with Mr. Desmond, and these would have been the notes I'd have taken from what he said to me in the course of either that telephone conversation or of that meeting.

Q. And do you think that that telephone conversation or that meeting predated the letter of the 7th May?

A. I strongly suspect that it did.

Q. And I think it records and perhaps it's best if you read it, because it's in your own handwriting.

A. Well, it says:

"1. Auditors confirmation.

"2. Resources available meet commitments under arrangements."

Then there is a line, and then it says

"Total assets 90 million.

Irish 30

GB 23

others 23

Probets 4.4".

And then there is a line, and it says "94.4".

Then it says "Other assets \$180 US".

Q. Now, do you think the total assets figure you have there at 90 million, that that's made up of the Irish at 30, the "GB" I take it that's UK, Great Britain assets; would that be right?

A. Yes.

Q. At 23. "Other 37" and "Probets 4.4" that's Mr. Colin Probets, is it?

A. That's what I would understand that to mean.

Q. They total 94.4, so presumably the total assets of 90 million are made up of that list of assets?

A. Yes, that is how I would interpret that.

Q. The other assets, \$180 US, how would you interpret that?

A. I would interpret those as assets arising from Mr. Desmond's activities overseas, arising from activities from the time that he would have gone abroad, and/or

activities that were outside of his IIU and Irish-based activities. That's how I would interpret those.

Q. So would you think that \$180,000 US would include the UK, other, and Probets assets that are listed above, or do you think they are in addition to those?

A. I would have thought they were in addition to that.

Q. And it's your belief that that note was created by you, and that conversation that it records would have been prior to the letter of the 7th May?

A. That would have been my instinct.

Q. Can I just refer you on to another of your notes which I think you think was probably also prior to the 7th, and that's at Divider 4. Do you see that?

A. Yes.

Q. Now, again, can you tell me what you think you were recording there?

A. I believe this to have been a discussion probably with Dr. Michael Walsh in which he would have set out the shareholdings as regards Esat at 62.5%. The equity requirement of Esat of 50 million, there is a note that I'm not totally familiar with what it is, the 38.75 million, which is over to the left. And the 31 and three quarters would seem to be a 75%, 73% of the 50. I don't know quite what that figure is; I am not quite sure in this context what its meaning is.

The Point 1 refers to the 40:40:20, and the 20 is

circled, and there is a note after that saying "DFD".

I am satisfied that that is the shareholding arrangements that existed in the consortium, and that the "20" refers to Mr. Dermot Desmond's percentage. Point 2 refers to "Resources to underwrite", and then there is a reference to "Known assets 85 million".

And this would have been in the context of the letter of the 7th May.

Q. I see. And you believe that it's more probable than not that you were recording that information on the basis of what you were being told by Mr. Walsh rather than Mr. Desmond?

A. I would say that that is correct.

Q. Why is that?

A. It's because the figures are I'd have a better recollection of it, and the figures seem precise in terms of trying to give me an overview summary of what the arrangement was about in a circumstance where things were moving very fast.

Q. Now, I think the previous page and at Document 3, that's a draft of a letter of the 7th May, and am I correct in thinking that in fact the form of that draft was furnished to you by Mr. Walsh?

A. Yes, that's what I told you this morning, that the draft was this was the form that Dr. Walsh wanted the letter, a letter addressed into the Department.

Q. Right. Do you know why the figure of $\frac{1}{2}$ 40 million was

chosen there?

A. No.

Q. If we just go back then to the letter itself. Now, you were saying that you were informed that Mr. Desmond/IIU had undertaken to invest and/or underwrite an equity investment of up to 40 million, and you confirmed that Mr. Desmond/IIU was in a position to make this investment and to make the underwriting commitment?

A. Yes.

Q. Now, would I be correct in thinking that in stating that there, and in providing that confirmation, you were doing so based on the information provided to you by Dr. Walsh and Mr. Desmond?

A. That is correct.

Q. You haven't gone outside the information and undertaken any separate or independent verification process?

A. No. Again, I think the circumstances were such that things were moving very fast. The need for the form of documentation was urgent. I certainly understood that I was prepared to provide information based on the representations by Dr. Walsh and Mr. Desmond, and based on my own knowledge of Mr. Desmond's affairs.

Q. Right. So you were basing that, firstly, on the information that you were being given by Dr. Walsh and Mr. Desmond?

A. Yes.

Q. And secondly, your own knowledge of his affairs?

A. Yes. I had considerable knowledge, at the time, of his affairs.

Q. Right. Now, can I just refer you on to two more handwritten notes: One at Divider 5, and one at Divider 6. And I think we'll just look at these

A. Sorry, we are back to my notes again?

Q. Your own notes, yes. These are your own handwritten notes.

A. Yes.

Q. Now, the first of these is at Divider 5, and you seem to be listing there information that you are being given, or that you have in relation to the value of certain assets; would that be correct?

A. Yes.

Q. Now, do you recall when you made that note or in what circumstances?

A. It obviously preceded the letter of the 15th, and I'm not quite sure whether it would have I suspect it did precede my meeting with the Department. It would have arisen from discussions I would have had with Dr. Walsh and discussions that he would have had with the Department, and it would have represented the form of schedule of assets that the Department would have agreed, I suspect, with Dr. Walsh in terms of presentation.

Q. Right. So you have IIU there, 20 million. You have "Quoted stocks and shares at market value"; is that correct?

A. That's correct.

Q. 10 million. "Pembroke"?

A. Yes.

Q. "\$15 million"; is that correct?

A. Yes.

Q. "Airport"; I presume that's London City Airport.

A. Yes.

Q. "26 million sterling.

"Cash: 20 million sterling". Is that correct?

A. That's what it says there.

Q. Then below that, in brackets, "Fry's 5 million"?

A. Yes.

Q. Presumably that would indicate that the figure of $\frac{1}{2}$ million held with William Fry was included within the overall figure of 20 million; would that be right?

A. Yes.

Q. And then below that you have, in quotation marks, "Letter from bank $\frac{1}{2}$ 10 million cash available".

A. Correct.

Q. Now, do you think that was information, again, that was being given to you by Dr. Walsh?

A. I would say that was information given to me by Dr. Walsh.

Q. You think that was probably after your meeting with

the Department on the 14th?

A. I suspect that may have been before the meeting on the 14th.

Q. Right. So that you would have information available to you so that you could disclose it to the Department if required or if necessary?

A. Correct.

Q. Again, now, if we just go over the page and look at the next note, which is behind Divider 6. And this is on a note of I think the Carlisle Hotel, but I don't think you were in New York at the time, were you?

A. I don't think I was.

Q. On the left, it's "D. Desmond", and you have dated this the 14th May, 1996?

A. Yes.

Q. And again it looks like you were setting out similar information. "Marketable securities"; is that correct? "Excess 10 million"?

A. Yes.

Q. "Cash at bank: 15 million.

"William Fry client account investment Esat

Digifone Limited 5 million". Would that be correct?

A. Yes.

Q. Then below that, "Principal unquoted investments at cost.

"IIU 20 million". I suppose the "1.56" in brackets refers to the exchange rate?

A. Conversion rate.

Q. Then "London City Airport" you have again at 25 million sterling.

And then below that is "Pembroke investment 9 million". So you seem to have done the conversion there from dollars all right; would that be right?

A. Yes.

Q. That's dated the 14th May, and do you think that note was made before the meeting, or after the meeting?

A. I suspect well, obviously the date is on it. Again I suspect that both notes are an account of two separate discussions, conversations, or phone conversations that I would have had with Dr. Walsh, and they would have been notes that were taken contemporaneous with those discussions.

Q. We'll look now at your note, I think, of your meeting with the Department on the 14th, and that's at Document Number 9 in your booklet of documents. Now, we have both your note of this meeting and we also have Mr. Buggy's note of the meeting, and again just to put this meeting into context.

I think following receipt, not just of your auditor's certificate but also a number of other documents by the Department on the 13th, that Mr. Buggy, who had been seconded from Price Waterhouse, who was also a chartered accountant to the Department, had been asked I think by Mr. Loughrey, the Secretary General,

through Mr. Brennan, to undertake a task of determining whether or not the shareholders in Esat Digifone had the financial wherewithal to meet their equity investments and any of their underwriting investments. And I think it was in that context that you were meeting Mr. Buggy?

A. It was.

Sorry, just to correct one point. The letters were not audit certificates. The letters were confirmations, and they were more in the form of comfort letters than audit confirmations.

Q. You saw them as being that; confirmation letters?

A. I saw them as being that.

Q. You didn't see them as being certificates in any way?

A. No, in the circumstances, they couldn't have been. In the time-frame, they couldn't have been. In terms of the work that would have been required to provide audit certificates, they couldn't have been.

Q. And would you believe that anybody reading those letters would have realised that that is all they were?

A. Anyone reading them or anyone having discussions with me should have been quite clear that they were that that was the form they took.

Q. And of course you would have been quite amenable to dealing with any queries that the Department may have wished to raise with you in relation to those letters?

A. I said that in the letter. Certainly in the second letter.

Q. Tell me, in relation to the second letter we'll come to it in a moment could you tell me, did you receive any queries at all from the Department in relation to that?

A. No, again as I explained, I mean, it's quite clear to me that this was quite a complex transaction. There were different parties to it. I was being asked to provide a role as an accountant to Mr. Desmond, to provide information in relation to that role. So my role was very limited in the whole process. And all discussions, I would have said, were between Dr. Walsh and the Department. My role with the Department was certainly to attend a meeting that I was requested to attend by Dr. Walsh and to deal with the issues that arose at that meeting.

Q. At that meeting. And no more?

A. And no more.

Q. Your note of the 14th May is at Divider 9 in the booklet of documents?

A. That is what I suspect that note is. I can't be categoric as to that.

Q. Maybe we could assist you when we look at Mr. Buggy's note of it, because it does seem to cover the same ground as Mr. Buggy's note. So I think you probably rely on your instinct on it?

A. I would agree with that.

Q. Now, you have recorded the presence of Martin Brennan, Donal Buggy, and Fintan Towey; and I think you hadn't met anybody else at the meeting before, had you?

A. No, I hadn't.

Q. Dr. Walsh wasn't at the meeting, was he?

A. Dr. Walsh was not at the meeting.

Q. And there was nobody else other than yourself, if you like, at the meeting on behalf of Mr. Desmond or IIU?

A. That is my recollection.

Q. Below that you appear to record:

"Clarity investment/underwriting.

"Companies

" 5 year trends.

"Individuals

" due diligence

" escrow".

Then again, in parenthesis, you appear to have recorded "'Underwriting commitment in accordance with Communicorp agreement 29th September 1995'." Would that be correct?

A. That is correct; that's what that says.

Q. Right. Can you tell me what you meant by

"Clarity investment/underwriting"?

A. I suspect that what I have written there reflects what the Department would have said.

Q. To you

A. The explanation they would have given me at the time, at the beginning of the meeting up to the underwriting thing; I believe that's what they said at the end, but we can come to that anon.

Q. Right. Would I be correct in thinking, therefore, what they were saying to you is they wanted clarity as between investment/underwriting?

A. That's what the note says. And again, I don't have a clear recollection of that per se. What I do have a recollection of is that I suspect we discussed the schedule of assets, and I would have made a number of points broadly in line with what Mr. Buggy says in his note, although I don't have a clear recollection of that. It strikes me as the form of discussions that would have taken place. And in the context of all that, they wouldn't have said an awful lot.

Q. Okay. So what you feel you are recording what they said to you here in your note?

A. I believe the point about clarity, the companies, they were explaining to me what their process involved.

Q. I see. And below that, "Companies 5-year trends"; was that suggesting, in the case of a company, they want to look at a 5-year trend?

A. That's right.

Q. That couldn't, of course, arise in IIU because it was only recently operational; isn't that right?

A. That's right.

Q. And then below that "Individuals

" due diligence

" escrow"?

A. Yes.

Q. So in the case of individuals, they'd either be

looking at a due diligence exercise or perhaps money

being held in escrow?

A. It says "due diligence", but in the time-frame, it can

only have been a form of due diligence.

Q. Of course. No, Mr. Buggy himself conceded that he was

under and subject to a very significant time

constraint, and I think that's really dealt with in

his note, as well, and was dealt with in his evidence.

Now, below that, "Underwriting commitment in

accordance with Communicorp agreement 29th September

1995".

Now, you have that in quotation marks, so presumably

that is something that one of the other people at the

meeting said to you; would that be correct?

A. My recollection is that having had the meeting, and at

the very end of the meeting, one of the people from

the Department spoke to the others indicating that

they had something to do. That was my recollection of

the meeting, and that abided with me subsequent to the

meeting. From reading this now and reading the

evidence of Mr. Buggy, it seems to me now that they

had in mind that they wanted to go away from the

meeting they were having with me and revert to this agreement and the underwriting commitments being in accordance with the communication the Communicorp agreement of the 29th September, 1995; and the meeting would have essentially concluded on that point, I suspect.

Q. Did you know anything about Communicorp's agreement of the 29th September?

A. No, I didn't. I didn't.

Q. Can I refer you now to Mr. Buggy's note of the same meeting. We have his handwritten note, which we have had typed up because the copy was very poor, and you'll find for everybody else it's in Book 44, at Divider 221.

Now, it's on the monitor as well, but I think you probably have the hard copy in front of you, Mr. Farrell. It's headed:

"GSM2 meeting with Pearse Farrell 14/5/96,
10.30am.

" Resident abroad

Assets spread out worldwide. Logistically difficult before you get to confidentiality.

" track record over the years (NCB etc.)

" i;½20 million in a bank at present

but leaving it there for up to 12 months is costly.

" imagine that IIU is highly capitalised but can't comment on it definitively.

" need to clarify that IIU are underwriting

Communicorp as per agreement of 29/9/95."

You see his last point there also seems to mirror the final entry in your own note?

A. That's right.

Q. Now, when Mr. Buggy gave his evidence, he stated that the first four points that he recorded in his note were matters that you stated to him in the course of the meeting.

A. I can't remember that, but what I would say about it is that if I did say these things, they would have been in a conversational context rather than in an advocating context, because my role was not to advocate on behalf of Mr. Dermot Desmond but to provide information on his behalf. But generally speaking, the form of expressions there would not be generally untoward.

Q. No, no, nobody is suggesting that they are.

If we just go through them point by point. "Resident abroad"; that's correct, isn't it?

A. Yes, that was factually correct.

Q. "Assets spread out worldwide"; that was also pretty well factually correct, based on the notes that you made of the information you were given?

A. Correct.

Q. So there is no reason that you wouldn't have said that?

A. Correct.

Q. Then "Logistically difficult", which I suppose, if they are spread out worldwide, would be logistically difficult, wouldn't it?

A. Correct.

Q. Apart from that, of course, you had the time constraints, and that would double the difficulty, wouldn't it?

A. Correct.

Q. And then you have "before you get to confidentiality."

I think Mr. Buggy's evidence was that you had said that there was the difficulty, obviously, the time constraints, the fact that the assets were spread out worldwide, and that then you'd have to consider the matters of confidentiality?

A. Correct.

Q. Do you recall that?

A. I don't recall that, but I don't take any particular issue with it.

Q. What would have been the difficulty of confidentiality in Mr. Desmond at that time making information available to the Department as part of this exercise that it was conducting?

A. I don't recall. I mean, it could be ownership. It could be structures. It could be a whole host and series of different, complex financial arrangements that Mr. Desmond would have entered into that I don't

have any or didn't have any knowledge of at the time.

Q. Well, when you went to that meeting, would you have had instructions to raise any matter of confidentiality?

A. I don't recall that.

Q. Well, if you didn't have instructions to raise it, wouldn't it be, I suppose, a bit unusual for to you raise it if you were there to give comfort?

A. Other than having said that it may have been conversational. It would have been conversational, but I don't have a recollection of it. And it could well have been that I had instructions; I just don't recall.

Q. Right. Okay. Below that, then, you have "Track record over the years (NCB etc.)" As you have said, that would have been purely conversational?

A. Correct.

Q. You would have been referring to his involvement with NCB?

A. Correct.

Q. Would you have been asking the Department to bear that in mind?

A. No, but I wasn't asking them to do anything like that.

It was simply conversational. I don't believe I was advocating, and I don't believe I had any instructions to do so.

Q. Right.

Third point: "20 million in a bank at present". That was clearly information that you had and that you were giving?

A. Yes.

Q. And that was information provided to you by Mr. Walsh?

A. Dr. Walsh, yes.

Q. "But leaving it there for up to 12 months is costly"; what would you have been referring to there?

A. I think there might have been again some discussion as between Dr. Walsh and the Department that the money would have been left on deposit for a period of time, and that that would have been an ineffective use of funds. And I think I can only speculate, because I don't recall that Dr. Walsh would have had a difficulty with leaving the money in a bank almost just being available for some unlikely contingency that might or might not happen within a period of 12 months.

Q. That's perfectly understandable. And you'd have had those instructions before you went there?

A. I might well have had, but again, I don't recall.

Q. You say "Imagine that IIU is highly capitalised but can't comment on it definitively." That's fair enough?

A. Well, other than the only issue it raises as regards the notes, because if we're to look at the notes which

list the assets, it was clear from the note that IIU was capitalised at \$20 million. Had I said that, it is clear that I didn't have those lists at the Department meeting. That's the only issue that arises from that.

Q. Because you couldn't comment on it definitively and you weren't prepared to?

A. That's correct. If that was discussed at the meeting, and again, I don't have a recollection that it was.

Q. Now, do you remember, if you like, what the upshot of this meeting was as far as you were concerned?

A. No, I don't, but well, if I put that slightly differently, again you will see, at the end of the letter, I offer the Department an opportunity to come back and discuss any issues. They have. And again I was looking to be as helpful as I could to all the parties involved, recognising the limitations that were placed upon all the parties, including myself, and having, I suspect, said to Dr. Walsh that were a more detailed audit required, it would take a lot more time; and had the Department an issue, it would have been a matter for them to come back and say, "Look, we require more audited-type information".

But there was no such comeback, and there was no further discussion, and I had no further involvement or correspondence or discussion with the Department as a consequence of the letter of the 15th May.

Q. To just understand the sequence of events and that's all I am trying to understand at the moment.

A. Sure.

Q. When you left that meeting, it was on the 14th, and that was just two days before the licence was issued.

I think it was the Tuesday morning at 10.30. I don't know, was it lengthy, or a short meeting? Do you remember?

A. My recollection would be that it wasn't a very long meeting.

Q. When you left that meeting, do you recall at all whether you had the impression that you then had to go and do something else directly, or you'd just leave matters lie and wait till you heard further, either from Mr. Walsh or from the Department?

A. My only function, and my only action after the meeting, other than writing the letter, was to report back to Dr. Walsh as to what transpired at the meeting.

Q. So you reported you met Dr. Walsh after this?

A. No, I spoke to him on the telephone.

Q. Do you recall what you said to him or how the meeting went?

A. I don't recall. I just remember I remember being in Galway, at the time, when he either rang me and/or I rang him, and I would have given him a brief account. I don't recall what I would have said to

him. I probably would have identified the need for the clarification. I probably would have addressed the point to him about the underwriting as per the agreement of the 29th September.

Q. Now, I don't know, it may be of assistance to you, but I am just going to refer you to a note of a meeting that Mr. Walsh attended on the Thursday morning with Mr. Buggy, and I think Mr. Martin Brennan. And that's part of the three typed-up documents which were prepared by Mr. Buggy. Do you have that

A. This is the third page?

Q. I think it's probably the third page. It's just there

A. It's 8.30am, meeting with Michael Walsh.

Q. That's it. That seems to have been the following morning, the Wednesday morning, 8.30am meeting with Michael Walsh:

" letter from Telenor underwriting up to 66 2/3%.

Underwriting up to and 100%

(Clause 14)

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

" bank confirmation on behalf of IIU stating

€10 million available of all of 1996

- includes €5 million to be paid over today

" what about when DOB comes up with the funds?

" letter outlining in general the assets supporting

DD's financial position

" also confirmation of revised capital requirement

- from Esat Digifone no

" shareholders agreement."

Now, you see there, it appears that the matter of underwriting had been clarified by the Tuesday or the Wednesday morning; do you see that?

A. Yes, I do.

Q. And then below that it appears to have been I think the evidence is that the Department was requesting a bank confirming on behalf of IIU stating that $i\frac{1}{2}$ 10 million was available; do you see that?

A. I do.

Q. And then below that also requesting a letter outlining, in general, the assets supporting DD's financial position.

A. I do.

Q. I think the evidence has been that it was to Mr. Walsh that that requirement was conveyed on the Wednesday morning.

A. Right.

Q. Do you see that?

A. I do, yes.

Q. Does that assist you at all in

A. Certainly in terms if one looks at the sequence, it clarifies things, doesn't it.

Q. Okay, we'll just go back now to your documents, and if I refer you just to the document at Divider 5, the one

we looked at, the handwritten note.

A. The one of the meeting with the Department?

Q. No, no, the document behind Divider 5. It's your list of the information that you think Mr. Walsh gave you.

And you weren't sure when that might have been given to you, but do you see there it says, at the bottom,

"Letter from bank 10 million cash available". Do you see that?

A. Yes.

Q. Now, that might suggest I don't know if you'd agree with me that that note was probably created on the

15th, after Mr. Walsh had been informed by the

Department of its requirement for a letter from the

bank. Would you agree with me?

A. Certainly, in the context of what you have read out as regards Mr. Buggy's recollection of his meeting with

Dr. Walsh, that would seem to be the case.

Q. So it would appear that this was information that was now being provided to you to enable you to write the

letter of confirmation in relation to the general

asset situation which the Department had requested;

would you agree?

A. The form in which they would have wanted the letter presented to the Department.

Q. I see; the form.

A. The form.

Q. Well, how would that assist you in relation to the

form? Isn't that far more to do with content than

form?

A. Well, it's both. I think Dr. Walsh and again, I think if you look at his letter of representation, it's clear that he has set out, in a handwritten form, representations to me of these assets. They are set out in a manner which again complies with the form of this particular note now that you are looking at, and again I would have been mindful as to the form that they would have required the information to be presented in, as well as the content of the information to be provided.

Q. We'll look at that letter you are referring to. It's at Divider 7 of the documents you have provided. I think you referred to this as a letter of representation?

A. Yes.

Q. Can you tell me what you understand that to mean, "letter of representation"?

A. A letter of representation is a letter which sets out the facts with which a company or a director would give to a professional, that it is reasonable for a professional to rely on in providing information.

Q. So it's a letter that a professional that you would see it that you were intended to rely on by IIU, Mr. Desmond and Mr. Walsh, and did rely on?

A. Yes, it would have been a comfort in addition to the

information and the knowledge that I would have had myself.

Q. All right. Now, this is dated the 15th May. So it's actually the same date as the letter that you sent to the Department. And we see at the top, from the fax banner, that its time is 16.59, so it's just five minutes to five in the afternoon.

A. Yes.

Q. And it's to you at Farrell Grant Sparks, Mollineux House, Bridge Street, Dublin 8.

"Dear Pearse,

"I am authorised by Mr. Desmond to confirm to you that Mr. Desmond is the beneficial owner of

"A) marketable securities in excess of 10 million

"B) unquoted investments at cost being principally

"1. International Investment & Underwriting Limited
\$20 million

"2. London City Airport and associated companies,
sterling $\frac{1}{2}$ 26 million

"3. 44% of Pembroke Capital Limited \$14 million.

C) cash at bank and in William Fry client account $\frac{1}{2}$ 20 million sterling.

"It is Mr. Desmond's intention to invest $\frac{1}{2}$ 5 million of this cash in Esat Digifone Limited tomorrow. I trust that the above is sufficient for your confirmation to be given to the Department of Transport, Energy and Communications.

"Yours sincerely

"Michael Walsh

"for International Investment and Underwriting".

A. Yes.

Q. You would have got the information that you put into the letter, and, if you like, the form of presentation of that information from that letter of representation from Mr. Walsh?

A. And/or from discussions with Dr. Walsh as well.

Q. And/or from discussions.

And this is the information and this is the letter that you relied upon in preparing your letter of the 15th which was forwarded to the Department?

A. That and the information from within my own knowledge of my understanding of the affairs of the company and of Mr. Dermot Desmond's affairs.

Q. Right. And I think you have already made the point that you consider the letter of the 15th, which we are just coming to now, as a letter of confirmation, a form of comfort rather than certification?

A. That's right.

Q. Now, we'll just go to the letter of the 15th, and again a copy of it is in your own documents, and it's behind Divider 10 in that small booklet.

"Strictly private and confidential.

"Department of Transport, Energy and Communications, attention Mr. Martin Brennan, 15th May.

"Re: Esat Digifone Limited.

"Dear Sirs,

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

"We are informed that Mr. Desmond/IIU have undertaken to invest and/or underwrite an equity investment of up to $\text{€}1/240$ million in Esat Digifone Limited. We confirm that Mr. Desmond/IIU is in a position to make this investment and to make the underwriting commitment."

That's really just re-stating what was already stated in the letter of the 17th May?

A. That is correct.

Q. You then go on to say, "We are also authorised to confirm that Mr. Desmond is the beneficial owner of the following principal assets". And then again you set out, in exactly the same order, the assets referred to in the letter of representation?

A. That's right.

Q. And you have made the conversion of dollars to Irish pounds and from sterling to Irish pounds where appropriate?

A. Correct.

Q. And the total there is $\text{IR€}1/277$ million.

Over the page: "We trust that this is the information you require. Should you have any queries, please

revert to me."

A. Correct.

Q. And there were no enclosures with that letter, were there?

A. No, I can't imagine there were.

Q. No, well, there certainly aren't in terms

A. There weren't.

Q. And did you receive any queries at all from the Department in relation to the contents of that letter?

A. No, I did not.

Q. Now, when you say there that "Mr. Desmond is the beneficial owner of the following principal assets", what did you mean by that term, "beneficial owner"?

A. That he was the owner of the assets.

Q. The owner of the assets?

A. In his own right.

Q. In his own name?

A. In his own right.

Q. In his own right. You haven't stated there that they were free from liabilities, have you?

A. No, I have not.

Q. And you didn't intend to state that?

A. No, I did not.

Q. So that wasn't intended to be a statement at all of Mr. Desmond's net worth or net asset position?

A. It was not.

Q. Can you tell me and again, I accept completely this

was just confirmation you were providing; it was merely a comfort and no more but can you tell me what value, if you like, that statement was in the hands of a person to which it was to whom it was addressed, without any indication of what the liabilities were to which that beneficial ownership was subject?

A. I think that's a matter for I mean, for someone receiving the letter. In my own view, it could best be viewed as indicative, and would certainly be in a position to provide some degree of comfort; but if you are asking, is it a form of statement of net worth that would be of satisfaction, it doesn't seem to be. But then again, in the context of what was happening as between Dr. Walsh and the Department, I wasn't privy to that, so I can't really say any more than that about it.

Q. No, of course not. But in the terms in which it's written and again, I am not criticising you at all; it could well be that the, if you like, the liabilities could have amounted to as much as, what, 99% of the value of those assets. I am not saying they did. I am not suggesting for one moment they did. But potentially they could have been, couldn't they?

A. If you are asking me for an opinion, an opinion is it is unlikely that that would be the case, but that is a

personal opinion.

Q. Of course. But they could be subject to very heavy borrowings, couldn't they, all of those assets?

A. They could be, they could be subject to borrowings, but again that's an opinion.

Q. But nobody came back to ask you whether they were or they weren't?

A. No, they did not.

Q. Now, can I ask you just in relation to one final matter. Again I just want to go back to the Department documents, and again to Book 44. It's Divider 221 in the Tribunal books, and I think you have this document loosely before you; it's a memorandum that Mr. Buggy sent to the Secretary of the Department setting out in summary the results of the exercise that he had undertaken. Do you have a copy of that?

A. I do, yes.

Q. I am sorry, I am afraid the copy is not very good.

A. I have read it. I have been able to read most of it.

Q. Have you? Good. I am not going to read it all out to you unless you wish me to.

A. I don't think so.

Q. I was going to direct you to the portions of the memo which relate to the investigations and inquiries made by Mr. Buggy regarding IIU and Mr. Desmond. So if you go to the second page, and if we just go to the fourth

point. It starts at Bullet Point 4.

It says: "IIU are a hundred percent owned by Mr.

Dermot Desmond, and therefore, when looking at IIU's

financial strength, we are essentially looking at DD.

According to Mr. Walsh, IIU are only in existence

since August 1995, and therefore, no financial

statements have been produced for the company to date.

" in order to finance its own investment and

underwrite its portion of Esat Telecom Holdings

investment, IIU/DD must have finances of $\text{€}17.3$ million

(being 33.3% of $\text{€}52$ million). While DD is known to

be a very wealthy person, this alone is not considered

enough information on which to proceed.

" to ascertain if DD has sufficient finances to

support this project, we discussed the matter with Mr.

Michael Walsh. He informed us that DD had already put

in $\text{€}0.75$ million into the company and has put in

another $\text{€}5$ million this evening in advance of signing

the licence.

"In order to satisfy us on the remaining $\text{€}11.55$

million, we received the following:

" a letter from Anglo Irish Bank confirming that DD

has $\text{€}10$ million available to invest in Esat Digifone

(including the $\text{€}5$ million put in this evening) and

that this will remain available for the whole of 1996.

" an updated letter from Farrell Grant Sparks which

confirms that DD is worth at least $\text{€}40$ million and

which outlines, in general terms, some of the unencumbered assets totalling some \$277 million which DD owns and which supports their opinion that he is capable of financing up to \$240 million of this project.

" letters from Telenor and IIU stating that they will underwrite Esat Telecom Holdings investment on the project on the ratio 66.6% and 33.3%".

The final bullet point: "A final version of the shareholders agreement.

" on this basis I consider that the financial strength of DD has been confirmed to the" I think it says "satisfaction and ability to finance its own investment in Esat Digifone and to underwrite its agreed portion of Esat Telecom Holdings investment."

Now, if I just take you back to the first page I was reading from, and the second bullet point there, where it refers to the letter from Farrell Grant Sparks which confirms that Mr. Desmond is worth at least \$240 million and which outlines in general terms some of the unencumbered assets totalling some \$277 million which Mr. Desmond owns, and so forth.

Now, there is nothing in your letter that refers to those assets as unencumbered, is there?

A. No, there is not. It just seems to me that's a deduction that he made, possibly, from the letter, but

Q. Why possibly from the letter?

A. Because he sees he references the 40 million, and he references the 70 million, and he deducts one from the other and draws a conclusion.

Q. But it's quite clear from your letter that no account was taken for liabilities, was it?

A. No, no, it's not sorry, it is; it's quite clear from the letter. I am just trying to explain how he may have arrived at his conclusions, that's all.

Q. It's a simple assumption of what was said in your letter?

A. Yes.

Q. Did you have any discussion at all

A. Not that I recall, and it's unlikely that I would have, and it wasn't within my terms of reference to have such discussions.

Q. And nobody ever came back to you to query

A. No.

Q. whether there were any liabilities or whether the assets that you were referring to were net assets?

A. No.

Q. Thank you very much, Mr. Farrell.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

Q. MR. NESBITT: Mr. Farrell, Farrell Grant Sparks I think are a firm of accountants of some standing; and if we just deal with 1996, how long had you been in existence?

A. From the early eighties.

Q. And I think you had a sizable business?

A. Yes.

Q. And you would have been well-known, certainly, in Ireland?

A. In some terms.

Q. And the people who met on the 14th May would have known exactly who they were dealing with?

A. Yes.

Q. Now, how long had you been acting as accountants to Mr. Desmond?

A. Since the early eighties.

Q. And had you been with him through his rise and success as he went through his various ventures?

A. Yes.

Q. And were you well knowledgeable of his financial situation?

A. Yes.

Q. And did that put you in a situation where you felt, subject to appropriate checking, able to make statements about his financial situation?

A. Within context, yes.

Q. Now, if we could just come forward now to the meeting you had with the Department. I assume you knew you were attending at this meeting for the purposes of imparting information?

A. Yes. Sorry, discussing information with a view to

imparting information is what it seems to have been.

Q. You turned up on your own, so to speak, on the Desmond side of the line; isn't that right?

A. Yes.

Q. And you were faced with Mr. Brennan and Mr. Buggy?

A. Yes.

Q. And I think Mr. Buggy you knew to be an accountant?

A. I didn't really know either of the individuals or really what their roles were, other than what Dr.

Walsh would have said to me about Mr. Brennan being, I think, the main coordinator of the project.

Q. But did it become clear in the course of the meeting that Mr. Buggy was in fact an accountant?

A. No, it didn't become particularly clear in the course of the meeting.

Q. Well, did you form a view that he had some

A. Sorry, maybe if I just say that my memory is that I didn't form that view.

Q. Okay. So you discussed matters. Did you make statements unrequested, or did you react to what was said at the meeting by those members of the Department?

A. I can't recall that.

Q. Anyway, the upshot of the meeting was information was discussed, and you said whatever you felt was appropriate?

A. I would have said, again, as I explained earlier, my

role was to provide information. I was looking to be helpful as part of a complex process. I was careful as to what I would say, and I looked to provide relevant and factual information that was satisfactory to all the parties involved.

Q. And the process that you have talked about was the intention, all other things being equal, to grant a licence to the Esat consortium for the second mobile telephone licence; isn't that right?

A. Sorry, I have missed that point.

Q. I was asking, the process you have mentioned, that you were trying to be helpful to, was the decision of the Department to eventually grant a licence to the Esat consortium for the second mobile phone licence?

A. I would have said I was attempting to be helpful to Mr. Desmond in terms of his interests, which were to provide the information to the Department.

Q. And that information was to

A. But that was a consequence; that didn't concern me directly.

Q. That was to give the Department comfort that dealing with Mr. Desmond in the context of the role he was going to play was in order?

A. Yes.

Q. And I presume that you did what you considered to be reasonable and straightforward in relation to fulfilling that role?

A. Yes.

Q. And if we could just turn to your letter of the 15th May, it appears to be what you choose to communicate in writing for the record. I have to suggest to you that letter is a reasonably straightforward letter; you make the point of identifying who you are, financial advisers to Mr. Desmond?

A. Yes.

Q. You confirm that Mr. Desmond is beneficial owner of International Investment & Underwriting Limited?

A. Yes.

Q. You were in a position to confirm that?

A. Yes, based on the representations, I was in a position to confirm that.

Q. You were willing to sign a letter unconditionally stating that that was the confirmation you could give?

A. That's right.

Q. So can we just keep it simple. You wanted that confirmed by your letter?

A. Sorry?

Q. You wanted your letter to confirm that fact?

A. That's the import of what this says.

Q. Very good. Now, if we come on: "We are informed that Mr. Desmond has undertaken to invest and/or to underwrite an equity investment of up to 40 million in Esat Digifone Limited."

Now, you weren't confirming anything there; you are

just communicating what you were being told?

A. Correct.

Q. Now, did anybody at the meeting suggest that it wasn't what they were thinking, or that wasn't what they believed Mr. Desmond or IIU were going to do?

A. My recollection is that the meeting didn't take that form; they were not the issues. They were seeking information. They were looking for solutions. They were not meetings, from recollection, that involved any type of negotiations, as you tend to be suggesting.

Q. Okay, well, can we settle on this, that in relation to your informing, through that letter or elsewhere, you were stating what you had been told to be the position by Mr. Desmond or on behalf of IIU, and nobody was disputing that's what everybody thought was happening?

A. Yes.

Q. So it wasn't a matter of contention between anybody?

A. Yes.

Q. You then use different language at this point in time. You don't use the word "inform"; you say, "We confirm that Mr. Desmond is in a position to make this investment and to make the underwriting commitment."

A. Yes.

Q. Now, I have to suggest to you that on any reading of that letter, it can only mean that you wished to impart that piece of information in a way that the

person reading the letter can rely upon it?

A. Certainly in terms of the context of my discussions with Dr. Walsh, and even of Mr. Buggy's notes of the meetings, I mean, I think Mr. Buggy refers to the process being a desktop process. So I can't even though my recollection may not be clear as to what transpired at the time, I think there is a circumstance where, within the context of the time frames, people are looking to put together the best construction on the information as possible at the time.

Q. They wanted to learn what they needed to know to satisfy themselves moving forward was appropriate?

A. Yes.

Q. And that's what your letter wanted to help them to do?

A. My letter is setting out my understanding based on the knowledge that I had and based on the representations to me of what the position was.

Q. So I am sorry to labour it. It may seem very simple, but it's important; some of the simple bits are the most important.

A. Right.

Q. So the person reading this letter was meant to understand and in your view was reasonable in understanding that the persons you had mentioned, Mr. Desmond/IIU were in a position to make the investment which had been stated to be a 40 million up to a

40 million investment?

A. Yes, and I don't have a particular issue with that.

Where I begin to have a difficulty is that there would be any circumstance in which there would be any question that any certification process or any audit process would attach to that particular statement. I don't have a difficulty in giving and in fact I don't have any difficulty in saying that in terms of the confirmation, that the confirmation was correct; but I am saying that in terms of the form in which it may be certified in, that that is not the case.

Q. Well, I don't want to get into an argument about that.

I just want to let the Tribunal understand exactly what you want to communicate by the letter. And I think we can now agree on that, that it was to confirm that so far as Farrell Grant Sparks were concerned, the person reading the letter could believe that Mr. Desmond had 40 million, up to 40 million, to be in a position to make this investment?

A. Yes.

Q. Now, I think you were then

A. That he was in a position to have available 40 million.

Q. Yes, he was a person you could act with as an underwriter, or if the underwriting goes wrong, to take the personal responsibility for buying in the underwritten stock?

A. Yes.

Q. And that's what you wanted to say, and that's what you said.

A. Yes.

Q. Now, I think I want to get on to the next part of the letter, and I want to suggest to you that the Tribunal's approach is slightly well, another approach might be more appropriate. It's been suggested to you that the balance of the letter was a statement suggesting a status of net assets. Just in the context of that possibility, I just want to ask you some questions.

As I understand the balance of the letter, what you're saying is, you are making a confirmation as to the status of Mr. Desmond's ownership of certain assets?

A. Yes.

Q. So he is the principal owner of or rather the beneficial owner of the assets you name?

A. Yes.

Q. And you make the point you weren't saying that they were unencumbered; you are just simply saying you could confirm to somebody wishing to know was he the beneficial owner, that he was?

A. Yes.

Q. And you weren't intending to say that those were net assets or unencumbered assets?

A. No, I wasn't.

Q. But I think you to make the very important point that for the purposes of your earlier confirmation of his ability to make an investment for 40 million, you were not suggesting in any way that there was a problem with that, or you weren't trying to mislead anybody by simply indicating the beneficial status of his ownership, certain named and valued assets.

A. No, there was no question or no intention of misleading anybody.

Q. So when Mr. Buggy says in his memorandum that the assets were unencumbered, you'll say, "Well, that's a misunderstanding he has derived from somewhere, not from anything I have said"?

A. Yes. I mean, certainly, he certainly didn't get it from the letter.

Q. Indeed. But insofar as he was meant to get from the letter, or the Department was meant to get from the letter, or the people who read the letter were meant to understand it, which was to say, "We are confirming in the capacity we hold, with our knowledge of Mr. Desmond, as known and longstanding accountants of substance in the State, that this is a man who can do a 1/240 million investment"?

A. Yes.

Q. Very good.

Now, in your experience in business terms, would that be a communication that would be of substance and of

material import in a transaction of this nature?

A. Yes.

Q. And I presume that's why you were prepared to write a letter at Mr. Desmond's request, because you wished to be read and believed?

A. In broad terms, yes.

Q. And to be relied upon?

A. In the circumstances of in the circumstances of what was happening at the time in relation to the time frames and in relation to what people's objectives were, yes.

Q. Well, as I understand the time-frame issue, you hadn't been party to this process at all.

A. Correct.

Q. You had been asked by Mr. Walsh and you discussed with Mr. Desmond a need for the imparting of information to the Department?

A. Yes.

Q. And you

A. And I explained to them at the time that the best we could do was provide information; that were there a requirement for certifications, that a greater time-frame would have been required.

Q. And nobody seemed to have a problem with that?

A. Correct.

Q. They were getting information, and they were accepting you on the basis of how you presented yourself?

A. Yes.

Q. Did you have any sense of a terrible hurry on the part of the Department officials that meant the right thing wasn't being done?

A. Not particularly. I mean, I just felt it was a situation where it was, as I think Mr. Buggy referred to, as a desktop exercise, of putting in place the various requirements to conclude their arrangements, and that's an impression I formed. It's from nothing that was particularly said to me, and it's based on your question.

Q. Sorry, did you have any sense of some outside influence driving him in a way that was inappropriate or unbusiness-like?

A. I had this sense of people who were looking to get on with their business, and I had no other sense at all.

Q. So in relation to the communications that took place, were you surprised that the Department was prepared to take what you said and get on, as you say?

A. Well, I am not sure that was really a judgement for me to exercise at the time. I was simply providing information.

Q. Well, you weren't the matter just proceeded, as far as you were concerned?

A. Sorry?

Q. The matter just simply proceeded?

A. Yes, which it did.

Q. And the transaction took place?

A. Which it did.

Q. And Mr. Desmond had the money?

A. He did.

Q. Which you weren't surprised about?

A. No.

Q. Do you think anybody was surprised about that?

A. I don't think so.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. HOGAN:

Q. MR. HOGAN: Mr. Farrell, I think you said to both Ms.

O'Brien and to Mr. Nesbitt that you weren't in any sense providing a certification with these letters.

A. I did.

Q. Just to explain, from an accountancy perspective, what's the difference between the letters of comfort or indication that you provided and the formal audit or certification?

A. Well, an audit certificate or a certification is something that would be to which a degree of solemnity might attach, which would be absolutely relied on and over which an accountant or an auditor would stand over. A confirmation, as I have said earlier, would take the form of a comfort that would be of assistance to someone in terms of making a decision or forming a view.

Q. And I take it that a formal audit certification

process would have required a great deal more work on your part, or more time, indeed?

A. Well, it certainly would have required a full substantiation and paper trail as regards every single item of information that was being that was being provided. It would have required a detailed certification and may also have required the forming of professional opinions as regards any aspect of those matters that would have arisen.

Q. But I think you also indicated to Mr. Nesbitt that quite independently of this process, you were very familiar, or at least in general terms, with much of Mr. Desmond's affairs, at least so far as this jurisdiction is concerned?

A. Insofar as this jurisdiction is concerned, we had been acting for Mr. Desmond for a considerable period of time. We had been involved in a significant number of his businesses. We had been involved in the sale of NCB. We had been involved in the sale of QFS. We had acted in relation to his technology companies, and we acted in relation to the acquisition of Pembroke Capital. So we had a significant familiarity with Mr. Desmond's affairs.

Q. And I take it you would have been aware of his involvement in London City Airport?

A. Absolutely.

Q. And did any of the information that was supplied to

you by Professor Walsh, did any of that come as a surprise to you?

A. None, none of the information most of the information provided to me by Dr. Walsh would have been within my own knowledge.

Q. And you had no reason whatever to doubt, or had you any reason to doubt

A. I had absolutely no reason to doubt what Dr. Walsh said to me. Or Mr. Desmond, for that matter.

Q. And were you aware of the terms of the letter from Anglo Irish Bank Corporation of the 15th May 1996?

A. Other than what had been what Dr. Walsh had said to me and the sight I had of some confirmations from Mr. Desmond, no. But in that context, yes.

Q. But you did have a at the time you were liaising with the Department, you, at least towards the latter part of that, would have become aware that such a letter was

A. Sorry, I was aware of the fact that the funds existed, and the funds were solely and exclusively for the purpose of the transaction. I was aware from my notes that a letter indicating that 10 million was available was circulating. I didn't see a copy of that letter at the time. I did see a copy of some confirmations in the possession of Mr. Desmond at the time.

Q. And of course, as you indicated to Mr. Nesbitt, there was no question but that Mr. Desmond did invest the

requisite degree of funds as indicated?

A. That is my understanding.

Q. Thank you very much, Mr. Farrell.

MS. O'BRIEN: Just one matter arising from Mr. Hogan's examination there.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS

BY MS. O'BRIEN:

Q. MS. O'BRIEN: You have referred to confirmations that were in the hands of Mr. Desmond, and a familiarity that you had with this letter arising from that. What were these confirmations?

A. Well, I am just it's, again, I think it's back to the notes.

Q. Yes.

A. First of all, there is the reference in the note to "Letter from bank, 10 million cash available".

Q. Ah. It's that you are referring to.

A. And that's essentially what I am referring to.

Q. It's no other written confirmation that you were referring to?

A. No. He didn't provide me with any other confirmation.

Q. Thanks, Mr. Farrell.

CHAIRMAN: Thanks for your assistance in preparing and giving your evidence today, Mr. Farrell.

That concludes the sitting for today. 11 o'clock tomorrow morning. Thank you very much.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

FRIDAY, 26TH FEBRUARY, 2004 AT 11AM.