

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, SC

Instructed by: Michael Heneghan

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES: Mr. Richard Law Nesbitt, SC

Mr. John O'Donnell, SC

Mr. Diarmuid Rossa Phelan, BL

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FOR DENIS O'BRIEN: Mr. Eoin McGonigal, SC

Mr. Gerry Kelly, SC

Mr. James O'Callaghan, BL

Instructed by: Owen O'Sullivan

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Mr. Roderick O'Hanlon, SC

Instructed by: Kelly Noone & Co.

Solicitors

FOR RUAIRI QUINN: Mr. Ciaran O'Meara

Solicitor

I N D E X

Witness:	Examination:	Question No.:
Ruairi Quinn	Mr. Coughlan	1 - 71
Mr. O'Donnell	72 - 91	
Mr. McGonigal	92 - 111	
Mr. Coughlan	112 - 125	
Sean Donlon	Mr. Healy	126 - 177
Mr. Fitzsimons	178 - 179	
Mr. Nesbitt	180 - 226	
Mr. O'Hanlon	227 - 235	

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,
30TH MARCH, 2004 AT 11AM.:

MR. COUGHLAN: Mr. Ruairi Quinn.

RUAIRI QUINN, HAVING AFFIRMED, WAS EXAMINED AS FOLLOWS
BY MR. COUGHLAN:

MR. O'MEARA: I appear for Mr. Quinn.

CHAIRMAN: Thanks, Mr. O'Meara. And I think, Mr.

O'Meara, in relation to your involvement, a position
that I mentioned to one or two earlier witnesses will
apply; in other words, I am satisfied that any
assistance you may have given Mr. Quinn has to be
remunerated, but without in any way diminishing your
client's high office at the time in question, or the
assistance that he and you have given the Tribunal, it
may be that his involvement was not sufficiently
protracted as to actually need a full representation

order, so I'll leave that open. However, of course, if you wish to intervene or ask any questions at the conclusion of evidence, please feel free to do so.

Thanks for your attendance, Mr. Quinn.

Q. MR. COUGHLAN: Thank you, Mr. Quinn.

I think you have you've furnished two memoranda to the Tribunal, isn't that correct, and you have those with you?

A. That is correct.

Q. Just in relation to the first one we can see from the second one, we put it in the question-and-answer form from the Tribunal. We weren't able to do that in respect of the first one, so I'm just going to very briefly run through the information, the type of information which the Tribunal sought from you in the first instance.

And I think that the Tribunal requested you to provide information on the following matters:

One, your understanding of the role envisaged for the Cabinet or the Cabinet Subcommittee in the GSM process and in particular, in the light of correspondence between Mr. Martin Brennan of the Department of Transport, Energy and Communications, as it then was, and Mr. Jimmy McMeel of the Department of Finance, dating from March to May 1995, and in light of paragraph 2 of the Government decision on the 2nd March, 1995; namely, a recommendation to be put by the

Minister to the Government in time for a final decision on the granting of the licence to be made by the 31st October, 1995.

Secondly, you were asked for 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.

Thirdly, details of all dealings between you and Mr. Lowry or, to your knowledge, direct or indirect, between the Department of Finance and the Department of Transport, Energy and Communications regarding the terms of the competition process governing the licence fee element and in particular, the determination that there should be no limitation placed on the licence fee nominated by competition entrants subject to a minimum of $\text{£}1\frac{1}{2}$ million.

Fourthly, I think you were asked for your role, either directly or indirectly or through the Department of Finance, or 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 $\text{IR£}1\frac{1}{2}$ million.

Fifthly, you were asked for your knowledge, direct or indirect, of the progress of the evaluation during the course of the process, and in particular, whether the

Department of Finance nominees on the Project Group kept you informed of the progress of the evaluation, either directly or through other officials or through your programme manager.

I think then at Number 6 you were asked for your knowledge, direct or indirect, in the weeks prior to the 25th October, 1995, of the stage which the process had reached and as to when the result was likely to be available, and in particular having regard to the contents of the internal departmental memorandum dated 24th October, 1995, from Mr. Jimmy McMeel addressed to you.

Seven, 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.

Eight, you were asked for details of all discussions and dealings, if any, between you and Mr. Lowry, either directly or through officials or programme managers, regarding the competition result prior to the meeting between Mr. Lowry and members of the Government on the 25th October, 1995.

Nine, you were asked for details of the meeting of 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 results of the competition.
5. Whether Mr. Lowry informed the meeting that a qualification or rider 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 the discussion, if any, of the result of the competition.
8. Details of the discussion, if any, regarding the announcement of the competition result.

Finally, in this memorandum of information sought, you were asked the approximate date on which you were first informed or otherwise became aware of the involvement of IIU/Dermot Desmond in the Esat Digifone consortium and the person or persons by whom you were so informed or the circumstances in which you first became aware.

Now, I think you received that, or your solicitors received that, and in response you prepared your first

memorandum, and I intend leading you through that memorandum now.

A. Fine.

Q. Now, I think this is a memorandum of your intended evidence dated the 24th July, 2002, and you say: Your summary understanding of the discussions that took place between the Department of Finance and the Department of Transport, Energy and Communications leading up to the granting of the second generation GSM licence to Esat Digifone Limited is set out below.

1. The question of awarding a second mobile telephone licence and how it should be awarded predated your appointment as Minister for Finance in December, 1994.

Discussions had been taking place between the Department of Finance and the Department of Transport, Energy and Communications during the course of 1994.

In summary, the two departments differed on the approach to the awarding of the licence in that the Department of Transport, Energy and Communications wished to see a regime of low tariffs and maximum price competition, and it felt that a high entry fee would be prohibitive and postpone the reduction in mobile phone costs, while the Department of Finance wished, as it might be expected, to maximise revenue to the Exchequer.

In the context of finalising your budgetary position of 1995, you pressed your colleague, the Minister for

Transport, Energy and Communications, to consider agreeing to the inclusion of a higher value on the licence.

2. Various suggestions had been made that a sum in the order of $\text{€}20$ million or more could be raised as the value of the licence fee. Having regard to the state of national finances at that time, this was then a highly significant sum of money, and it remains so today.

3. At some stage in the course of a dialogue of which you were kept fully informed, you were told that whatever figure that would be agreed in relation to the licence fee would also have to be applied to Telecom Eireann, the parent company of Eircell. The reason for this the reasons for this were that the maintenance of a quality of competition within the mobile sector would require the new entrant into the marketplace not to be put at a disadvantage relative to the original participant, Eircell, who had not been required to pay a fee to pay any such licence fee.

4. There were serious implications accordingly attached to this advice. The strategic objective in respect of Telecom Eireann was to prepare it for a strategic alliance so as to enable to participate efficiently and effectively in a rapidly changing telephony market place. The State, as the sole shareholder of Telecom, was having a difficulty in

attracting and retaining interested parties to participate in such a strategic alliance. One of the issues involved was the level of indebtedness attaching to Telecom Eireann.

5. If the value agreed for the licence fee for the new GSM participant would not have to be attached as a contingent liability of similar size to the books of Telecom Eireann and its subsidiary, Eircell, there was little benefit to the State in general, and to the Department of Finance in particular, in significantly enhancing the value of the licence fee.

6. Against that set of circumstances, as you recall, it was agreed that the licence fee figure would be set at IR£15 million.

Section 2, the decision to award the GSM licence to Esat Digifone Limited:

A decision had been made in principle sometime prior to October 1995 that I think that should perhaps be October 1994?

A. Yes, it should be, yes.

Q. That a competitive tendering process would be put in place and would be administered and adjudicated upon by independent assessors. The Government in effect in setting up the process of decision-making had committed itself to accepting the outcome of that process without retaining to it the need for another formal decision or evaluation until the process had

been completed. This was in the interest of maintaining objectivity in the allocation of the licence to whoever emerged as the successful applicant. A meeting of the Cabinet Committee established to address issues concerning Aer Lingus, known as the Aer Lingus Committee, took place on the afternoon of the 25th October 1995 in the offices of the Taoiseach in Government Buildings. Present at the meeting were the Taoiseach, John Bruton TD; the Tanaiste, Dick Spring TD; the Minister for Social Welfare, Prionsias de Rossa TD; the Minister for Finance, Ruairi Quinn TD; and the Minister for Transport, Energy and Communications, Michael Lowry, TD.

Section 3, the business relating to Aer Lingus, the details of which you do not now recall, was concluded.

At that stage, the Minister for Transport, Energy and Communications indicated that he had the results of the adjudicating committee in relation to the licence applicants and that he was fearful that the result of the competition would somehow or other be leaked to the public before the next Cabinet meeting took place.

He therefore asked that since the Government had previously committed itself to accepting without alteration the results of that independent competition, that he would convey to the Cabinet Committee, the Aer Lingus Committee, the relevant

details of the competition and that he would be authorised by that committee to publish the results later that day and bring the matter as an item to be noted formally at the next full meeting of the Cabinet. The Cabinet Committee agreed to the proposal, and Minister Lowry then proceeded to give you the results of the competition ranked in order of points scored which they had been awarded by the adjudicators. It emerged from the scoring awarded by the adjudicators that Esat Digifone/Telenor applicants were clearly the winners and that it was not a close contest?

A. That's correct.

Q. While some surprise was expressed at the success of this particular applicant by members of the Cabinet Committee present, it was agreed that in view of the clarity of the result, that any suggestion of attempting to review it or otherwise interfere with it would be wrong, notwithstanding reservations that some people might have had in respect of it. Accordingly, the Minister for Transport, Energy and Communications was authorised to proceed with the public announcement, and the Government was subsequently informed at the next Cabinet meeting. To the best of your recollection, the Minister for Transport, Energy and Communications merely conveyed the points scored by the various applicants for the licence as allocated

by the adjudicating process. He did not inform the Cabinet Committee, the Aer Lingus Committee, on the 25th October of any qualification or reservations concerning any of the applicants, in particular or in particular, of the successful applicant.

No documents in relation to the GSM licence competition were furnished by the Minister for Transport, Energy and Communications to the members of the Cabinet Committee. Indeed, the sole purpose of that committee meeting having to discuss matters relating to Aer Lingus.

I think that completed your first memorandum; isn't that correct?

A. That's correct, yes.

Do you wish me to comment at the end, when you finish the second memorandum?

Q. I think perhaps it would be best. Or do you wish to say anything now, at the moment?

A. Just a matter of clarification.

Q. Indeed.

A. In my diary for that 25th October, in both my personal diary and the Ministerial diary, the meeting was at 4 o'clock was referred to as an estimates meeting, but in fact, the item must have been related to Aer Lingus, because Minister Lowry wouldn't otherwise have been at an estimates meeting.

Q. Well, I'll come back

A. Some of the documentation may show in the records that that was an estimates meeting rather than an Aer Lingus Committee meeting.

Q. I'll come back to that in a moment, Mr. Quinn, because Mr. Bruton has said it was an estimates or an expenditure meeting; that was the meeting for 4 o'clock. There had been a Cabinet Subcommittee, way back in March of 1995, to deal with reporting back to the Government in permitting this particular project to go through or some aspects of it, I think, particularly perhaps in relation to the licence fee and that had been an Aer Lingus Committee as well; and Mr. Bruton wondered whether or not some confusion had not been arising in relation to that, but I'll come back to that in a moment.

A. Okay.

Q. Now, I think you then furnished a supplementary statement on the I think around the 4th November, 2002, and I think you were asked specifically to look at extracts from a matter in the Dail on the

A. 22nd November.

Q. 22nd November; isn't that right?

And I think you say that you make this voluntary statement at the request of Mr. John Davis, Solicitor to the Moriarty Tribunal.

"A. I have been asked to comment specifically on an extract from Mr. Lowry's Dail speech on the 22nd

November, 1995."

Now, I think specifically that portion of the speech that may have been drawn to your attention and asked for your comments are on the third page of the extract we have. I'll just put it up now on the screen. I think that portion of the speech commenced on the top of the third page:

"The decision to grant the licence and to whom is statutorily that of the Minister with the consent of the Minister for Finance."

That's of course correct.

"In view of the importance of this decision, I and the Minister for Finance discussed the result of the competition with the leaders of the parties in Government on the 25th October. The matter was put before the full Cabinet for noting on the following morning."

I think it was specifically that portion of the speech you may have been asked for your comments on.

A. That's correct.

Q. And I think you say, at paragraph B, Mr. Lowry's speech is misleading in two respects. Firstly, he states, "in view of the importance of the particular decision, I and the Minister for Finance discussed the results of the competition with the leaders", etc.

While there is no doubt that the meeting took place between the Ministers concerned on the 25th October

1995, essentially it was Mr. Lowry, as Minister for Transport, Energy and Communications, who presented the result of the competition. I was involved in the discussions at the meeting, but I was certainly not the leading contributor to the meeting, nor did I instigate the discussion".

At C, Mr. Lowry goes on to state: "It is clear to me and to the Minister for Finance".

"Mr. Lowry appears to give the impression here that together with him, I came to the conclusion that there was no doubt as to the clear-cut result contained in the consultants report. This is potentially misleading as far as I am concerned, insofar as it implies a personal involvement on my part. Mr. Lowry may well be referring to me in the speeches as head of my Department. It is true that the Department of Finance indicated their satisfaction with the process, but I had no hands-on involvement in that process as Mr. Lowry seems to imply. The position is that my departmental officials advised me by memo dated 25th October, 1995, as to the recommendations of the consultants and the marks achieved by the six applicant consortia in the competition".

You do not believe you viewed the memo prior to the meeting with the Party leaders. You were satisfied from your officials that the process had been fair and complete. Your view that the process was thorough and

worthy of acceptance was based entirely on the advice you received from your officials and was in all independent of any discussions or consultation with Mr. Lowry.

D: You now wish to turn to specific questions raised by the Tribunal in the letter to you on the 16th October, 2002, and you, for convenience, use the numbering that the Tribunal used.

Question 1. You were asked for details of all information or documents provided to you in advance of the meeting of the 25th October, either from Mr. Lowry or through officials of the Department of Finance or officials of DTEC or through programme managers or otherwise, regarding the evaluation process or the result of the process.

You say you attach a schedule to this statement containing an itemised list of all the documents touching on the evaluation process that you have been able to trace or find in the Department of Finance files.

So that's where the search went; isn't that correct?

A. That's correct.

Q. You didn't have any particular documents yourself?

A. I had no files of my own or no documentation of my own.

Q. I think you were then asked for details of all meetings, contacts or dealings between you and Mr.

Lowry in connection with the second GSM evaluation process or result in the period immediately prior to meeting of the 25th October, 1995. And you have informed the Tribunal that there were no meetings, contacts, or dealings between you and Mr. Lowry in the period immediately prior to the meeting of the 25th October, 1995, in connection with the GSM evaluation process.

I think you were then asked for whether a copy of the evaluation report or any portion of the report or any drafts of the foregoing were available to you prior to the meeting on the 25th October, 1995. And you inform the Tribunal that, no, all you received was a memo from Mr. Jimmy McMeel dated 25th October, 1995, containing the marks awarded. You are satisfied that to the best of your recollection, you did not read and note the memo until after the meeting of the Cabinet Committee.

I think you were then asked for your role in the discussion with the Party leaders on the 25th October, 1995, including details of any information which you provided regarding the evaluation process or the result of the process or any opinion which you tendered regarding the clarity of the result.

And you have informed the Tribunal that you have something further to add to the voluntary statement that you made on the 24th July, 2002 to the Tribunal.

In Section 3 of that statement you described in detail, over seven paragraphs, your recollection of the meeting of the 25th October, 1995.

And you continue: "It is clear from the statement that I was a participant at that meeting. It was the Minister for Transport, Energy and Communications, Michael Lowry, TD, who initiated the discussion. He provided all of the relevant information and received the authorisation from the Committee of Ministers to make the announcement. He subsequently communicated that to the next meeting of the Cabinet".

Minister Lowry had not informed you personally of the result of the competition in advance of the meeting, although it is clear that the Department of Finance was aware of the result by that time.

You were then asked whether you agree with Mr. Lowry's statement as of the 25th October, it was clear to him that the thoroughness of the approach taken left no room for doubt as to the clear-cut result contained in the consultants report. And you have informed the Tribunal that you are satisfied from your officials' participation in the process that the evaluation process was one of integrity and fairness. You were not privy to the work of the Project Team.

I think you were then asked for your knowledge, direct or indirect, as of the 25th October, 1995, of the approach taken in the course of the evaluation process

together with the source or sources of your knowledge.

And you have informed the Tribunal that you were not aware in any way of the approach taken in the evaluation process or the marking system. The two officials from your Department, Mr. McMeel and Mr. O' Riordan, were appointed to the Project Team, handled the entire matter on a confidential basis without reference to you or, as far as you were aware, to senior management.

I think that completes the memoranda prepared by you?

A. It does.

Q. I just want to, very briefly, go back to the first memorandum and, if you go to, I think, page 3 under the heading "Section 2".

A. Yes.

Q. And it's paragraph number 2; do you see that?

You say that "the Government in effect in setting up the process of decision-making had committed itself to accepting the outcome of that process without retaining to it the need for another formal decision or evaluation after the process had been completed. This was in the interest of maintaining objectivity in the allocation of the licence to whoever emerged as the successful applicant."

Now, I also want you then, if you go to the next page, and under "Section 3" again, paragraph 2, and this is Mr. Lowry at the meeting of the 25th October, and it

states: "He therefore asked that since the Government had previously committed itself to accepting without alteration the result of that independent competition, that he would convey to the Cabinet Committee the relevant details of the competition, and he would be authorised by the committee to publish", etc., and the matter to

A. Yes.

Q. Now, is your understanding as stated in paragraph 2 on page 3 under Section 2 as a result of your general understanding of the competition and the process, or is it based on anything Mr. Lowry may have said at the meeting on the 25th October of 1995?

A. No. My understanding is that we had committed ourselves to a process which would produce a result which we had precommitted ourselves to accepting. In other words, the result that would be adjudicated upon by this independent team, with the help of outside consultants, would be final, because we had committed ourselves in advance to accept their judgement and their scoring.

Q. And do you know whether that was ever recorded anywhere? The only reason I ask you that, Mr. Quinn, and I understand your understanding of matters, but there was quite a debate going on between your own Department and DTEC at that time on that very issue, and it was precisely that point that the officials of

the Department of Finance were resisting, and I just wonder, would that type of debate have been brought to your attention at the time?

A. No, absolutely not. I had no contact with the two officials who were working on that team. I was kept informed about the progress that was being made, but I was not briefed nor did I participate in any of the decision-making process.

Q. Right. In particular, I think you were referred to some documentation, but you say that it wasn't something you had been referred to documentation by the Tribunal, but it's not something you were being briefed on or kept up to speed in relation to, at the time when matters were unfolding?

A. I have to tell you, Mr. Coughlan, the only item I actively engaged in negotiation was the issue how much money we'd get for the fee. And I have nothing to add to what's already been put on the record in relation to that.

Q. Well, we can actually see there is actually personal correspondence between yourself and Mr. Lowry on that particular issue at the end of the day; isn't that right?

A. That's correct.

Q. Now, I think from all the documents we have seen and the evidence from all of the officials who have given evidence here before the Tribunal, I think the debate,

if it was a debate, of strong conflicting views at the time between your officials and the DTEC officials, was that the decision was a Government decision, and would always be a Government decision, with the recommendation, of course, coming from the Minister for Transport, Energy and Communications, based on work that was being done?

A. Yes.

Q. Would you accept that that

A. I would. Technically speaking, it would be a Government decision to grant the licence. But the decision was made, so to speak, in advance, that we committed ourselves we set an adjudicating process in train, and when we set that process in train some months previously, we committed ourselves to accepting the outcome of that process. But it would nevertheless be a Government decision, but we were not going to second-guess or put ourselves in a position of second-guessing the outcome of an objective process.

Q. Now, on the 25th October, I think two things happened:

First of all, do you remember being present at a meeting with the Party leaders and Mr. Lowry on that day?

A. Very clearly.

Q. And do you remember Mr. Lowry raising the issue of the second GSM licence? Is that correct?

A. You may have seen television photographs of the Taoiseach's Office. There is a large, heavy bench seat with some portraits of patriots behind them.

Then on the right-hand side, looking towards that desk from the entrance door, there is a small circular table; and Cabinet Committee meetings, which could accommodate up to four or five people, would take place around that table. And I have a very clear visual memory of in fact where I was sitting in that particular group, and Mr. Lowry we completed our business in relation to Aer Lingus, and then he said, as I have indicated in my papers, "Listen, I have the results of the outcome of the competition. And you know, there is a lot of speculation, a lot of interest, people want to know what the outcome is. And can I have the authority of the Government can I have the authority to tell you now what it is, and to notify the Government meeting" which was scheduled it was a luncheon meeting in the Sycamore Room for 12 o'clock the following day, which had been preset.

So, and given the process that we had agreed ourselves upon, we then said, okay, we didn't want speculation, we didn't think that was helpful for anybody. We had the result. The Taoiseach then invited him to tell us what it was.

He told us then what it was, and there was some

discussion, brief discussion, some surprise, but there was well, that's the result of the competition, and then proceed to prepare the aide-memoire which is in the file.

Q. And we see going to Government the next day?

A. And it went to Government the next day.

Q. I think you, independently of that, and you believe it must have been after that meeting, received a note from your official, Mr. Jimmy McMeel, which we have seen many times in the course of the evidence at this Tribunal.

A. Yes. The explanation for that is the following, Mr.

Coughlan: My diary for the 25th October starts

probably at about 7.30 in the office. I have a

meeting at 8.30. It's a Wednesday, which is the

Dail's busiest day. There was a parliamentary Labour

Party meeting at 11 o'clock. There was an executive

meeting of the Labour Party, of which I was a member,

at 2 o'clock. And I went straight from there to the

estimates or the Aer Lingus Committee meeting in the

Taoiseach's Office.

So in reality, after being in the Dail for the order

of business at 10.30, I would not have gone back to my

office in the Department of Finance.

Q. Right.

A. So and a document like that would not have been

brought to my attention.

Q. But you believe you would have seen it after the meeting?

A. I am aware that I saw it after the meeting, but I had no knowledge. I think the point of your question is did I have any knowledge at the time that Mr. Lowry was about to announce the results? Absolutely none.

Q. All right. I just wanted to ask you that there is we'll just put up that note, if we may, because I think everybody present here will recognise the note, Mr. McMeel's note, just so that they are sure of the one I am talking about now.

It's the one containing numerical scoring; isn't that correct?

A. If you scroll it down, in fact, up to the top, that is my handwriting at the top with the tick saying "Noted".

Q. Do you know if you just go there is you see there is some sort of a handwritten note there; do I take it that that is in fact Mr. McMeel's note himself, I think we can confirm that?

A. That's not the handwriting of an architect.

Q. If you go to the bottom, then, there is handwriting on it; do you see "25/10"; do you see that?

A. Yes, I see it there. That's Jimmy McMeel's.

Q. You see there is an asterisk, "Per M. Brennan, DTEC". "It is understood" again this is Mr. McMeel giving the source of his knowledge or information to allow

him make that note "that the Ministers are meeting at 4pm today to discuss the above matter".

So that's he says that that information is coming to him from Martin Brennan.

A. Yeah.

Q. Now, I just wanted to ask you about another note of Mr. McMeel's, which is dated the 24th October, 1995, which is the Tuesday of that week. And you can see there, we have it on the screen you probably have it in hard copy, do you?

"Minister from J. McMeel.

"Subject: Competition for the award of the second mobile telephone licence.

"David Doyle messaged to you last week that the result of this was imminent. MTEC had intended to bring the matter to Government today but will not now do so. The reason is that the Project Team (of which I am a member) has not finalised its work with respect to the consultant's report."

That's dated the 24th October, which is the previous day. Do you see that?

A. Yes, I do.

Q. Do you remember ever being involved I'll just explain, David Doyle is a senior civil servant

A. In the Department of Finance. You would not forget Mr. Doyle.

Q. And in fact he would have been Mr. McMeel would

have been reporting to him in relation to matters;

isn't that correct?

A. Yes.

Q. Do you ever remember

A. If you scroll down, or upwards to the very top.

Q. "Mr. McMeel, Minister informed of position"; I think that's Mr. Doyle's

A. That's not me, no.

Q. I think that's Mr. Doyle's signature.

A. Yes, now, I should tell you again, that took place on

Tuesday the 24th. My diary for that day would show

the following: There was it was normal that the

Labour Party Ministers would meet in the Tanaiste's

office, having been briefed by the programme managers

previously as to what items were coming up on a

regular Government meeting; and anything that was of

some concern or which there was some difficulty would

be discussed informally by the Labour Party Ministers

at this stage. Because I was Minister for Finance,

some of that discussion was internal to ourselves,

because as line Ministers, they were seeking extra

accommodation or whatever. But there might very well

have been other issues which would require the Party

leaders to consult with each other to see if either a

resolution to an impasse or a difficulty could be

found out whether the items should be postponed and

taken on another occasion, because the view was that

was only matters upon which agreement could be reached and a conclusion made at Cabinet to go all the distance to Cabinet.

So that meeting, we would have gone pretty well directly, in terms of not having seen this at the time, and this is the point of my description, from 9 o'clock I would have been out of my office. That note from David Doyle could very well have come into my in-tray and would have gone straight from the Labour Party Ministers meeting through into a Cabinet meeting, which went right through until another meeting scheduled for 2 o'clock.

So it's quite possible that by the time I saw that meeting, which is really just informing me of a delay, I mean, it's a timetable note rather than one of great substance.

Q. That's right.

A. It had been overtaken by events.

Q. Yes indeed, and it didn't go to Cabinet on that day?

A. No, it didn't. That's the very point.

Q. As it didn't happen on that day. But do you remember Mr. Doyle informing you, sometime in the week prior to Mr. Lowry giving the result on the 25th, that a decision was close or imminent or something like that?

A. Well, we had committed ourselves, if my memory serves me right, to making a decision, in a decision note

Q. 31st October was the first

A. 31st October was the deadline for the target for making a decision, and there was some pressure on in order to do this. And

Q. Let me just explain; that had been postponed for a month because of the intervention of the European Commission in respect of the cap, in particular the company issue, and the competition had been suspended for about six weeks. And I think that date had been revised back, because of the closing date, it was now postponed by about six weeks. The decision was put back for a month.

A. We were anxious, and I was anxious, because we were going to get some money as a consequence of this, we needed to know what it was likely to be; so yes, Mr. Doyle would have kept me fully informed on a regular basis about these kinds of matters.

Q. On the progress?

A. Yes. But not on the content, I have to stress. Not on the content of the progress, merely on whether it was coming to a conclusion or not and if it was going satisfactorily.

Q. And apart from being informed by Mr. Doyle, as you understood it, on the progress of matters, that was as much as Mr. Doyle was able to or did inform you of, anyway?

A. That's all, yeah.

Q. On the 25th October, was the information which was

conveyed to you by you and the Party leaders by Mr.

Lowry in similar form to the information contained in

Mr. McMeel's note of the 25th? That is, a kind of a

scoring list or

A. Yes.

Q. That was the type of information that was conveyed,

was it?

A. It was a league table, effectively.

Q. And I think we see you have no reason to believe

that the scoring was any different than in your own

official's note

A. No, no.

Q. in relation to it.

Which gives you a scoring that you can look at, isn't

that right, and gives you a result as you see it?

A. Yes.

Q. Did Mr. Lowry inform you of any health warning or

reservations that there may have been in respect of

the financial capacity or capability of the

Communicorp that is, the Denis O'Brien part of the

Esat Digifone consortium at this time?

A. Absolutely not. He in fact read out the figures, and

some of us took notes in relation to them. He did not

circulate a document. He read out the results. We

asked him again for them, and it was clear, as you can

see from the numbers there, that the winning company

there, Esat Digifone, is quite clear of the rest.

Q. Did was there any information conveyed to the Party leaders that, in fact, the decision was a close one?

A. No, because in fact, when they asked for the figures again, we all asked for the figures again, it was quite clear that it wasn't; in our judgement, anyway.

Q. Very good.

Now, if I might just I asked Mr. De Rossa, but I think in fairness to Mr. Bruton, I think you may be aware that Mr. Bruton has given evidence and has furnished the Tribunal with a note he made of matters he believes Mr. Lowry said to him, and he believes that they must have been said to him by Mr. Lowry before he discussed the matter with the other Ministers, because there is a reference, I think, to you in it.

And it seems are you aware of this particular note?

I think I'll give you a copy of it there. I should just explain, I think you may be aware and the Tribunal is aware that Mr. Bruton has a tendency to keep green notebooks, and he tended to write things in them when people spoke to him on occasions. I'll just put it up now. It's Book 38.

I'll put it up on the screen. It might be the easiest way to deal with it.

A. If you put it up on the screen, we can all see it.

Q. In fact if we go to the other side first, because it's been explained the note in fact reads from right to

left. It's in the way it was photocopied. This, I should say, is a transcription of a written a handwritten note of Mr. Bruton's.

And it's: "Minister for Communications.

"It can't be given before it goes to Cabinet. Quinn should not be involved. Lochlann is a participant in another one.

"It is a major decision". Obviously Mr. Bruton that sort of discussion didn't take place in your presence, anyway?

A. No it didn't, but I do recall some queries about can we there was a surprise expressed at the outcome.

There was clarity in relation to the numbers, but there was some surprise expressed about the outcome.

And there was a discussion about whether we could go with this, and it was quite obvious that we had

committed ourselves to going with it. And I recall volunteering the view that I couldn't possibly

participate in something that would alter the outcome of this result because my brother Lochlann was

involved with another consortium.

But that is a note from John Bruton to him, I suspect, and not and I have to say that John Bruton did not

raise this matter with me, and it only I only made the point when in fact the question was, can we go

ahead with this particular contract? And I felt that

I couldn't possibly be party to something that would

alter that.

Q. That's interesting. And then "It's a major decision"; do you ever remember again, this is Mr. Bruton's note, "In Italy the Government did not accept the Government report and there was a consequential challenge. European Commission took them to court because this change of policy.

"There is a factual note '2 (of the number) Project Team are Department of Finance people."

in fact, do you remember that being said at all in your presence or

A. I don't recall having that specific conversation with the then Taoiseach, but this was a time across Europe when a lot of these licences were being bid for, and governments were looking at the possibility of raising revenue; certainly there would have been the focus of the Department of Finance. In Italy they may have had an additional focus.

Q. Well, that's another day's work. You are not privy to that particular information; you didn't hear that at the time?

A. No.

Q. If we just continue the note, then. The top portion is dealing with the expenditures; it's nothing to do with the note. "Albert had promised it to Motorola." This is kind of political gossip, he said that himself, and Mr. Lowry may have been engaging in or

Mr. Lowry imparted such a piece of gossip to him.

"Michael Lowry stayed out of the process. Leased line issue Telecom's.

"Account system can cost inadequately."

Do you remember anyone saying, in your presence, something like "Albert had promised it to Motorola" at this time, when the decision was being made on the 25th October?

A. I recall a visit from the Chief Executive of Motorola to the Department of Finance many months previously I can establish the date for you, and I'll come back to the Tribunal but it would have been in the context of a regular site visit, as the IDA will call it, of the chief executive in town visiting what was a very substantial presence in Swords, and in the course of that informal conversation, something along the lines of, "Well, you know, we're hoping to be successful in this forthcoming bid", etc.

And I would have simply politely acknowledged that I was aware of that, and wished them well, or made some polite, noncommittal comment. But I have no knowledge

I have no recollection of Albert Reynolds' name being connected in that manner to that particular thing.

Q. You say that at the meeting of the 25th, that you say you seem to recollect, in any event, some surprise, and the numbers were asked for again, or you

think, or

A. There was surprise at the first of all, it was given out verbally. And so people wanted and they asked for it again, and the figures were revealed as they were. And then there was surprise expressed because the feeling from those who knew something about this, and we were all aware of who the various applicants were, that the Esat Digifone/Telenor consortium, on the face of it, and we had no involvement at all, on the face of it had less kind of either experience or muscle than something like Motorola, for example.

Q. Right. And it was that it was a surprise in a general context?

A. It was a surprise, but there was no question of second-guessing the outcome.

Q. You said that you may have said something like or there may have been discussion along the lines, "Do we have to go with this", or words to that effect, and you might have indicated, if you were not going ahead with it, you couldn't be part of such discussion because of your brother's involvement in another

A. Yes, I did say that.

Q. Now, I want to, if I might briefly, Mr. Quinn, it's it was the 10th matter which was raised originally by the Tribunal of information sought from you, and that was the approximate date on which you

were first informed or became aware of the involvement of IIU or Mr. Desmond in the Esat Digifone consortium.

Can you remember that?

A. Sorry, I am trying to find your correspondence to me.

Q. I can take it, it's do you know your long or your first memorandum?

A. I do, yeah.

Q. You dealt with many issues in a composite manner?

A. Okay.

Q. And it was just the one issue that you were asked about, the date on which you were informed or first informed or became aware of IIU/Mr. Dermot Desmond's involvement in the Esat Digifone consortium. And it's just not addressed in, perhaps I don't see it, anyway, addressed in either of your memoranda.

A. Is this my response of the 24th July?

Q. Yes.

A. Can you direct me to any particular paragraph?

Q. Not of your actual response.

A. Your letter to me?

Q. If you go to the memorandum of information sought from you. Do you know that document?

A. I am just trying to get it now.

Q. The first one that I read before. If you go to paragraph number 10 of that.

A. 3rd July?

Q. Yeah.

A. The approximate date on which Mr. Quinn was first informed, etc. that?

Q. Yes, that. Can you be of any assistance to the Tribunal in relation to that?

A. I am afraid I can't. I have no recollection at all as to when that became known.

Q. You became aware of that, or the circumstances, maybe?

A. Yeah.

Q. Thank you, Mr. Quinn.

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

Mr. Fitzsimons?

MR. FITZSIMONS: No questions.

CHAIRMAN: Mr. O'Donnell?

MR. O'DONNELL: Just one or two questions.

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

Q. MR. O'DONNELL: Mr. Quinn, I appear for the Department of Transport, Energy and Communications. I have just one or two questions.

Firstly, I think you said you had faith in the integrity and fairness and independence of the civil servants who were carrying out this adjudicative process, and that extended not only to your own officials, but can I take it it also extended to the departmental officials in the Department of Transport, Energy and Communications?

A. You can indeed.

Q. Mr. McMeel was a particularly senior official in the Department of Finance, and I think you would have relied on his integrity and independence also?

A. Yes.

Q. And he prepared the memorandum, and perhaps it could be put up on the screen, of the 25th October.

I think you said that you didn't see it before the meeting, but you saw it after the meeting of the 25th.

You saw it that day?

A. Yes.

Q. And you saw it before the Cabinet

A. Either that day or the following morning, one or the other. But I saw it very quickly, and I noted it.

Q. I see that it is noted by you and that you saw it before the Cabinet luncheon that was to take place that day?

A. On the following day, yes, I would have.

Q. And that if there were any concerns or reservations of a significant sort which Mr. McMeel had, can I take it that you would have expected a civil servant of his seniority and his skill to set them out in a memo to you?

A. Absolutely.

Q. And of course, no such concerns or reservations are set out in his memorandum of any sort. In fact he says: "I was a member of the team and endorsed the

recommendation"?

A. That's correct.

Q. Without qualification. And I think what has been referred to by in your examination by Mr. Coughlan as a health warning, I think was in fact dealt with expressly in the final report, which said that "Prior to the licence negotiations, it is recommended to redraft the licence in order to transform the favourable offerings in the application into binding licence requirements and to cover the risks identified simultaneously."

And that's in the report. You may not have that document, Mr. Quinn, but in other words, the report made it clear that any risks that were identified were risks that could be covered by attaching conditions in the negotiation licence. And it's reasonable, therefore, to suggest that Mr. Quinn Mr. McMeel, as a member of team, took that into account in sending his memo to you?

A. I'm just yes, I'm just looking at in fact the decision sought in the aide-memoire that Mr. Lowry brought to us on the 26th October.

Q. Yes, which I think is in the booklet of documents.

A. It is.

Q. And I think

A. And it refers to the agreement in the first indent, it says: "The Minister for Transport," etc. "requests

the Government to note his intention to award a licence to Esat Digifone to provide and operate," etc.," with the statutory consent of the Minister for Finance and agreement of appropriate licence terms for Esat Digifone."

I would have taken from that that while broad agreement had been made in relation to the nature of the winning competitor, the hard detail which Finance would be, in particular, conscious of, would be addressed at that particular time.

Q. And would be a matter of negotiation?

A. Would be a matter of negotiation, yes.

Q. So it was quite clear to the Cabinet and to the Ministers that there was a clear winner and that there was no intention of interfering with the result of that at any stage?

A. Correct.

Q. Now, just two other issues. Firstly, I think you have indicated that the Wednesday in question was the busiest day of the Dail. In addition, you had an executive Labour Party meeting; you also had this Aer Lingus meeting, which was urgent enough. Can I take it that if a report of some 50 pages, together with 50 pages of appendices, had been produced at this Cabinet Subcommittee meeting, setting out the various ins and outs of the assessment and who had scored well, where, and who had scored badly in other sections, that you

would not have read it; you would have simply said,

"What is the final score? I don't need to know a report of the entire match", so to speak?

A. You are correct in your description. All of that documentation is there, and if somebody has a query, as a Minister, with the conclusions, then it's appropriate to start to delve into the rationale for those conclusions; but unless you would have disputed conclusions or felt uncomfortable with them, I would have accepted them for the very reason that the Department of Finance has excellent personnel.

Q. And the final issue, then, is in relation to contact with the other consortia. I think you made it clear you had absolutely no participation of any sort in the assessment process?

A. That is very correct.

Q. A letter, I think, just to be fair to you, I think a letter was sent to you dated 10th October, 1995, from a Mr. Tony Boyle, who was the Chairman of the Persona consortium. And we can put that letter up, but I think what's perhaps more significant is the letter back of the 23rd October of 1995, from your private secretary. And perhaps we could get copies of them and put them up.

I think at this stage, Mr. Quinn, in the submission the presentations of the various consortia had taken place in the middle of September of 1995, and the team

of civil servants conducting the assessment said at those various presentations, "We don't want any more information; we'll contact you if we want more information, but don't contact us".

Now, this is a letter that came in to you from Persona, from Mr. Tony Boyle, setting out various matters, and I wouldn't remotely expect to you remember having read it. But it sets out various points, and it is in effect a letter lobbying for your support in relation to his bid.

Can I take it that you did nothing whatsoever with this letter by way of drawing it to the attention of the assessment team?

A. Can you just scroll through to the bottom of it?

Q. Certainly.

A. Is there handwriting on the right-hand side, or is it no, that's the director's.

Q. I think it's simply the board, yes.

A. Is there any notation from myself on the top of it, or is it just stamped from okay, if you go to the very top, there should be a date-stamp receipt. Now, that's, as you can see, that would have come into Hannah Riordan, the private secretary, and it would have gone from the private secretary's office, without me ever seeing it, to Mr. Jimmy McMeel, as you can see. And the draft would be for Jimmy McMeel for the private secretary to reply. In other words, the

private secretary would invite the relevant official to draft the appropriate reply, which would go out in her name.

Q. And we have that reply. So you never saw it, Mr. Quinn; is that correct?

A. I have absolutely no recollection of it. I have a habit, and still do, of any document that's addressed to me, I note put some kind of mark or note it's usually just "Noted" on it, and

Q. We can show you the reply from your private secretary. And I think

A. It will be a stamped yes, that letter would have been stamped by Hannah, went out in her name. Any letter that went out in my name, I signed personally.

Q. So, we take it that you never saw this letter, and certainly it was never passed on to the team.

Thank you very much, Mr. Quinn.

CHAIRMAN: Mr. McGonigal?

MR. MCGONIGAL: Yes.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

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

I wonder if Mr. Quinn could be should be the decision of the 2nd March 1995, the decision of the 2nd March.

CHAIRMAN: Surely, I think, it's in one of the folders.

Q. MR. MCGONIGAL: I am showing you this, Mr. Quinn, because I just want to seek a little bit of

clarification, as there may be some confusion.

This is a decision of the Government of the 2nd March 1995, and it says that "I am to refer to the memorandum dated 17 February, 1995, submitted by the Minister for Transport, Energy and Communications, and to inform you that, at a meeting held today that the Government approved the announcement of an open competitive bidding process with a view to the granting of a licence to second cellular phone operator on the basis that

"1. The bidding process would be promoted and controlled by the Department of Transport, Energy and Communications;

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

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

Now, now, it's my reading of that, and I am just curious, in the way that it's been taken differently during the course of this Tribunal, is that the intention of that Government decision was that a decision in relation to the granting of the final licence, final decision of the granting of the licence, in other words, the final licence would be

granted by the 31 October, 1995, and that decision is not talking about the result of the competition. It is talking about the grant of the licence, which ultimately took place on the 16th May.

Do you understand do you see what I'm getting at?

A. Can you just go over that again?

Q. What that recommendation what that Government decision is talking about is the grant of the actual licence being made by the 31st October of 1995. It is not talking about announcing the result of the competition?

A. No, that's not the way I would interpret it, Mr. McGonigal. "A recommendation would be put by the Minister to the Government in time for a final decision on the granting of the licence". The final decision on the granting of the licence would be in essence a political one, made by the Cabinet, on the advice received from the civil service. The actual technicalities of granting the licence might subsequently require some further negotiation.

Q. I just want to be clear, because in fairness to you, I should probably also show you the 26th October, '95, the decision which you took after the 25th.

A. Yes.

Q. Because I think it has some assistance.

A. This is the aide-memoire that Mr. Lowry brought to Cabinet?

Q. No, I am going to show you the actual decision of the 26th October.

A. Okay.

Q. And it's again, it's on the screen there, and a copy has been handed to you.

A. Thank you.

Q. And you'll see there that: "I refer to the aide-memoire dated 26th October submitted by the Minister for Transport, Energy and Communications concerning telecommunications issues and to inform that you at a meeting held today the Government "1. Noted the proposal to award the licence to Esat Digifone to provide and operate GSM mobile telephony within Ireland under the Postal and Telecommunications Services Act 1983 with the statutory consent of the Minister for Finance and agreement the appropriate licence terms with Esat Digifone.

"2. Noted that, in the event of failure of the licence negotiation process, the Minister proposed to seek agreement of licence terms with the second and subsequently, if necessary, the third-ranked applications."

So it seems to me it seems that the Government is there noting the result of a competition that there were to be negotiations. Those negotiations, when they were completed, subject to your statutory consent, the licence would then issue, and that would

be the final licence?

A. That is correct. That's correct.

Q. And I am relating that back, then, to the 2nd March in saying that in actual fact, the final decision of the grant of the licence is when the process referred to in the decision of the 26th October is carried out?

A. Yes, because, in fact, if that process the licence was conditional on satisfactory terms and arrangements being arrived at with the winning consortium, but authority was given to go to the second or third should such conditions not be available.

Q. Yeah.

A. Yes.

Q. So that in actual fact, although the decision of the 2nd March of 1995 indicated an intention on the part of the Government that the final licence would in fact issue by the 31st October, '95, that didn't in fact happen, and all that happened was that the competition result was announced and approved by the Government on the 26th October, and then the negotiations and final agreement from the Minister for Finance was sought after that?

A. That's as I would understand it.

Q. Now, apart from that, the only other thing that I just wanted to ask you very briefly, but touch on, was you indicated in your memorandum in paragraph 4, Section 3, that some surprise was expressed at the

subcommittee meeting of the result of the competition, and notwithstanding reservations that some people might have in respect of it. But I understood your later evidence, what you meant by that was that the Cabinet Subcommittee was surprised that Esat Digifone won the competition, as there was a feeling, as you put it, that someone else might have won it, and the anticipation was that Motorola might have won it, or Persona might have won it?

A. No, I would be misleading you if I said there was an expectation that somebody else would have won it.

There was surprise that it was Esat that won it.

There was no indication that there was a kind of somebody else estimated to be in a stronger position.

It was just that Esat were seen as the outsiders.

Q. And the only other thing that I wanted to ask you about, Mr. Quinn, was in relation to interference before or after you have identified not "interference" is possibly too strong a word, but you have indicated the communication which existed between Motorola and yourself through a meeting, and Mr. O'Donnell has taken you through the correspondence. Were you conscious in any way, at any stage, of any interference or perception of interference by any of the other consortia?

A. No, I wasn't.

Q. Thanks very much.

CHAIRMAN: Mr. O'Hanlon.

MR. O'HANLON: Very briefly.

Q. MR. O'HANLON: You clarified I appear for Mr. Lowry.

You clarified that the decision in relation to the result of the competition had been discussed prior to the competition being concluded, in the sense that you were committed to the outcome before it had been arrived at?

A. We were committed to the outcome of the adjudication process between the six claimants, and with the help of the Project Team and the outside consultants, Andersens. But the negotiations then, the licence couldn't be granted until satisfactory terms were concluded, so that followed from that.

Q. Yes, but in terms of announcing the result, and in particular in relation to Mr. Lowry's speech, where you take issue with him describing that he and the Minister for Finance discussed the result of the competition with the leaders, I think the reference there relates to the meeting of the October 25th?

A. The speech, as you call it, Mr. O'Hanlon, is what I have, anyway is the text to a reply to a host of questions which was taken on the 22nd November. So it's and yes, that's the document, and I have clarified what I consider to be possibly misleading references by Mr. Lowry to me as if we had jointly

discussed these matters.

Q. Yes, although there was never going to be an actual discussion on the merits, as such, of the winner; the process, the competition process was a sealed process, and you were committed to accepting the result?

A. That's correct.

Q. And I think where you again take issue, because you are concerned that Mr. Lowry gives the impression that, together with him, you came to the conclusion.

In reality, I think he goes on in that speech to indicate that the recommendation came from him as to the winner?

A. The bit that was highlighted by the Tribunal team here says, asked me to respond to the following: I am quoting now Mr. Lowry's words as given in reply to a Dail question: "It was clear to me and to the Minister for Finance, who was represented in the Project Team throughout the competition, that the thoroughness of the approach taken left no room for doubt as to the clear-cut result contained in the consultants' report. Bearing in mind the foregoing, the Government had no difficulty in agreeing to my recommendation in relation to the result."

My clarification, for the purposes of understanding by everybody, and I think in the civil-service-speak that's set out in that reply, where the reference is to the Minister for Finance who was represented in the

Project Team, that would relate to in fact the officials in the Department of Finance who would be representing the Department of Finance, and ergo the Minister for Finance.

Q. Yes. And in that regard there is no difficulty about what was said?

A. No, but in fact, it could I am clarifying the point that myself and Mr. Lowry did not come to this conclusion. I mean, I am co-joined as Minister for Finance when really he is relating to the Department of Finance.

Q. I see. Thank you.

CHAIRMAN: Mr. O'Meara, anything? Mr. Coughlan, anything in conclusion?

MR. COUGHLAN: One or two matters, if I could clear up.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY

MR. COUGHLAN:

Q. MR. COUGHLAN: First of all, the decision taken by the Government was to hold a competition for the second GSM licence?

A. That's correct.

Q. And the Minister for Transport, Energy and Communications was, or he and his Department were to run this competition, it was to be run under their auspice and a recommendation was to be brought back to Government in respect of the matter. Now, can I take

it that you would not have had I know you had officials on the Project Team, but that you yourself would not have been particularly familiar with what's known as the tender document, or the RFP document itself?

A. Absolutely no familiarity with it.

Q. But just in general terms in relation to it, one of the requirements was, as one might expect, that and it was a mandatory requirement that there would be full disclosure of details of who the proposed licensee would be. You'd expect that; isn't that correct?

A. Yes.

Q. So that everyone would know who was involved in this and who was going to obtain the licence. And would I be correct in that it would be your understanding of your position at all times that when you were informed by Mr. Lowry that the terms of the RFP in the running of the competition had been as set out and had been complied with, would that be

A. Yes.

Q. Would that be a fair view of your understanding?

And secondly, that and we get into a very technical aspect as to whether the assent of the Minister for Finance was necessary, in the end of the day, because of the various provisions of the Act that were being looked at, but that's not important; what was

important was your understanding of matters that if your assent was required, which would be a formal assent from the Minister for Finance, that you would be giving your assent to people in the form of a company who had complied with all of the competition requirements?

A. Yes.

Q. In other words, that they had disclosed who they were who the proposed licensee would be in detail, that that is what won the competition; and it's in respect of that, those entities, you would be giving your assent. Would that be a fair way of putting

A. A very fair way, Mr. Coughlan. And I think the brevity of Mr. McMeel's report to me that we had up on the screen expressed no reservation of any kind in relation to the adjudication process or the outcome of the result.

Q. Well, in fairness to Mr. McMeel, when he sent that particular note to you, Mr. McMeel was not privy to a letter which arrived into DTEC on the 29th September of 1995 from Professor Michael Walsh of IIU. Mr. McMeel was not privy to that.

A. Right.

Q. And did not become privy to that until perhaps during the course of this Tribunal.

But so if I could just recap. You expected that full ownership details of the proposed licensee

A. Yes.

Q. which was required, had taken place; that that was the state of affairs when you were informed of matters by Minister Lowry on the 25th October, and as far as you were concerned, that was the state of affairs if your assent was required at any stage to the issuing of the licence?

A. Absolutely.

Q. Right. And can I take it that you were never informed that there was any change in respect of that?

A. No, not at all. None.

I assume, just to confirm what I understand you are asking me, because it is a serious point, that if Mr. McMeel had any reservations as to the equality of information between all of the applicants, that would have been conveyed to me very quickly.

Q. Now, it's an interesting point Mr. McGonigal raises there on the matter which went to Government in February of 1995, resulting in the promotion of the competition and the actual decision of the Government, we are informed by senior civil servants, such as Mr. Loughrey and perhaps Mr. Sean Fitzgerald, that this would be the correct way to do this, that's in the form of noting the position, but that represents the Government decision in the matter?

A. Yes.

Q. And the Government decision on that date was to, am I

not correct, "Noted the proposal to award a licence to Esat Digifone to provide the service with the statutory consent of the Minister for Finance and agreement of appropriate licence terms with Esat Digifone."

So the decision was noted to award the licence. It was subject to concluding agreement in relation to licence terms?

A. Absolutely. It's slightly like a difference between an approval for planning permission and a grant for planning permission.

Q. In the event there was failure in those negotiations, to proceed to the other matters; isn't that correct?

A. That's correct.

Q. Thank you, Mr. Quinn.

MR. McGONIGAL: Just one matter arising out of that, Mr. Chairman. I am not quite clear whether the Tribunal has evidence of this or not, and I'd be curious to know, if it has, what it is, in relation to when is the Tribunal saying that the statutory consent of the Minister for Finance was given to this process? Was that statutory consent given in May '96, or at some other time? Because it seems to arise directly out of paragraph 1.

CHAIRMAN: Do you want to deal with that briefly, Mr. Coughlan?

MR. COUGHLAN: I think it may have been dealt with by

Mr. Loughrey and Mr. Brennan. But I'll check that and

I'm come back to it.

CHAIRMAN: Well, we'll come back to it, Mr. McGonigal.

I don't think it's necessary to tax Mr. Quinn on it at
this particular juncture.

That I think concludes your evidence, Mr. Quinn. I
omitted to state at the very outset, not for purposes
of roseate nostalgia, but for the record, that you and
I had been schoolmates together, was in fact a rather
depressing number of years back. Thank you for your
assistance today.

A. Thank you.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Sean Donlon, please.

SEAN DONLON, HAVING BEEN SWORN, WAS EXAMINED AS

FOLLOWS BY MR. HEALY:

CHAIRMAN: Thank you for your attendance, Mr. Donlon.

Please sit down.

Q. MR. HEALY: Thank you, Mr. Donlon.

You provided the Tribunal with some information and a
memorandum of intended evidence, and what I propose to
do is go through your memorandum if necessary to ask
you clarify to one or two aspects of it.

You say that you were you make a few I am just
unclear about the first part of your statement.

Sorry, your statement is in two parts. You make some
remarks at the outset, and then you deal with a number

of queries raised by the Tribunal.

You say that as programme manager and special adviser to the Taoiseach, Mr. John Bruton, your main duties were:

A. To assist him in relation to the peace process.

You say you had been professionally involved in Northern Ireland matters from 1969 to 1987.

B. To help create and maintain the cohesiveness of a three-party coalition Government through the operation of a programme manager system.

You say there was an agreed programme of Government, and every member of the Government had a programme manager to monitor and implement the undertakings in this programme.

You say "Where an undertaking or other activity involved a Fine Gael Minister, I tended to leave it to the relevant programme manager to follow it in detail.

In the case of the granting of the GSM licence, this was under the aegis of a Fine Gael Minister, Mr.

Michael Lowry TD, and the programme manager, Mr. Colin

McCrea, who was the point of contact for other

programme managers, especially from the Labour Party and the Democratic Left. With the exception of one

occasion when I sought information to enable me to

respond to a query from the US Ambassador, I have no

recollection of any involvement in the matters before

the Tribunal. I have detailed the query from the US

Ambassador in reply to the Tribunal's Query Number 12.

The examination of Government papers relating to the granting of the GSM licence shows that they were not normally copied to me.

Then you refer to your detailed answers. You say, please note that in some instances these rely on your memory, since either there are no relevant papers or you have not been able to trace relevant papers.

The first query that was raised with you was as to details of your role and functions as programme manager to the Taoiseach during the years 1994

December 1994 to June 1997. And you say "As special adviser and programme manager to the Taoiseach, Mr. John Bruton TD, my main duties were", and you bulleted the various items.

Firstly, to advise on all aspects of the Northern Ireland situation.

Next, to join the official level Anglo Irish Liaison Group to negotiate the Framework Agreement 1995 and the subsequent procedures for Inter-Party talks process.

Next, to coordinate the implementation of the 337 commitments in the Programme for Government agreed by the parties in the Rainbow Coalition of 1994-97.

Next, to chair the weekly meetings of the programme managers which, inter alia, reviewed matters arising at that week's Government meeting.

Next, together with the programme managers from the other two Party leaders, identified and attempted to reconcile differences arising between the three parties: Fine Gael, Labour and Democratic Left.

Next, to chair the weekly meetings of Fine Gael programme managers and special advisers.

Next, as a member of the legislative committee which coordinated under the Chairmanship of the Chief Whip, the preparation and prioritisation of the legislation.

Next, as a member of the interdepartmental tax strategy committee.

Next, to assist in the briefing of the Taoiseach for Dail meetings.

And lastly, the drafting of speeches as requested by the Taoiseach.

You were then asked for details of the various you were asked for details of the manner in which the various programme managers operated and their involvement in or input into the matters which went to Cabinet or to Cabinet subcommittees.

And you say the manner in which the various programme managers operated varied enormously depending inter alia on their own professional or other background, their previous political activities, if any; the nature of their personal relationship with the minister; the nature of their minister's portfolio and the nature of their relationships with the civil

servants in their Department.

"All programme managers received a copy of the Cabinet agenda and all the accompanying documentation at the same time as their Minister. This was usually done on the Thursday or Friday prior to the Cabinet meeting.

The programme manager would normally previously have had sight of and might have been involved in matters emanating from this Minister's Department. They were all generally aware of the Government Procedure Instructions, (Fourth Edition, Department of Taoiseach, August 1993), as subsequently amended, and had been briefed on these procedures at a seminar organised by the Institute of Public Administration early in the term of 1994-1997 Government. Some items arising at Cabinet might be the subject of bilateral consultations between programme managers, usually with a view to obtaining clarification or explanation as to why a particular course of action was being taken.

"From time to time, an item might be discussed at a programme managers' meeting. Exceptionally an item might need discussion and negotiation by the programme managers for the three Party leaders.

"Programme managers as a group were less involved in Cabinet subcommittees. Some Ministers, members of subcommittees, involved their programme managers in the work of the committees. Others did not. To the best of my knowledge, there were no written guidelines

relating to how these committees worked".

You were asked for details of your role in relation to the GSM evaluation and licensing process, and you say that you had no role.

And I think your answer to the whole of Query Number 3 in general is that you had no role. So I don't think I need to trouble you with any of the specific answers.

Query Number 4 is as to whether, and if so to what extent, you were kept informed or otherwise aware of the trends or ranking emerging. And again you say you had no role.

On the same basis, I think we can dispense with Query Number 5 and Answer Number 5.

In relation to Query Number 6, seeks details of your understanding in the week 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 brought to the Cabinet or to the Cabinet Subcommittee.

And you say, "As I have already informed members of the Tribunal legal team at a meeting on the 25th November, 2002, the only occasion on which I recall any involvement in this matter was in late August or early September, when I was asked by the US Ambassador if the decision in relation to the second GSM licence

would be a Government decision. I checked probably with the Secretary to the Government, and also with programme managers for the leaders of the other two parties, and told the Ambassador that the decision would be a Government decision. The queries from the Ambassador and the reply arose on the margins of the discussions or other unrelated matters. I had no knowledge in the week prior to October 1995 of the stage which the process had reached or as to when the result was likely to be brought to the Cabinet or the Cabinet Subcommittee".

You were asked whether you were informed, prior to the meeting of the 25th October, that the result of the evaluation process would be considered by the members of the subcommittee. And you say that you were not so informed.

You were asked for details of each and every respect, if any, in which the procedure followed in bringing the result to the Cabinet Subcommittee on the 25th October or to the Cabinet on the 26th October differed from the established procedure.

You say "Government Procedure Instructions appear to allow decisions to be taken as this one was.

(Paragraph 2 of the instructions refers.) In my 30 years experience as a civil servant, I was aware of many Government decisions taken in way either for reasons of urgency or confidentiality or both".

Query Number 9 is as to the date on which you were first informed of the result of the GSM evaluation process. And you say that "Immediately after the meeting of the Cabinet Subcommittee members on the 25th October, 1995, the Taoiseach informed me, in reply to a question as to how the meeting had gone, that the GSM evaluation process had yielded a result and that the subcommittee had accepted that result".

You were asked for details of your dealings, any dealings between you and any entrant to the competition. And you say you had no such dealings.

Query Number 11, you were asked for details of your recollection of any inquiry made to you by Mr. Mark FitzGerald regarding the second GSM process, and including the date of any such inquiries, the subject matter of your response and your understanding of the purpose for which the inquiry was made.

And you say, "As I have already informed members of the Tribunal legal team at a meeting on the 25th October, 2002, I have no memory of any query from Mark FitzGerald in relation to the second GSM licence."

Query Number 12 is as to details of all other inquiries made to you by any person regarding the second GSM evaluation process, and in the case of each such inquiry, you were asked for specific details.

And you say: "I received only one query regarding the process leading to the award of the second GSM

licence; details are as follows".

You received the inquiry approximately at the end of August/early September 1995. You received it from the US Ambassador, Her Excellency, Jean Kennedy Smith. The query was, would the decision on the award of the licence be a Government decision? And your response was in the affirmative.

You were asked for your understanding of the purpose for the inquiry, and you say that the Ambassador was assisting in the promotion of the interests of a consortium involving a US corporation.

You were asked for details of all your knowledge, direct or indirect, of a meeting between Mr. Bruton, the then Taoiseach, and Anthony J. F. O'Reilly in August 1996, and including in particular any discussion concerning the second GSM evaluation or licensing process.

And your response is as follows: "The Taoiseach told me in late July 1996 that he expected to meet Dr.

O'Reilly shortly and asked that I make inquiries internally and brief him on matters which might arise.

I was generally aware of the Cork Communications issue. Dr. O'Reilly believed that the State was not honouring the terms and conditions of the licence and wrote to the Secretary of the Department of Transport, Energy and Communications on the 25th July, 1996, asking for information on this topic.

And I think it's easier if I just go through your letter at this stage. It's a letter addressed to Mr. John Loughrey, from the Office of the Taoiseach, and it's as follows:

"Dear John,

"The Taoiseach expects to meet Dr. AJF O'Reilly privately in the next day or two. Among the topics on which he wishes to be briefed is the Cork Communications/South Coast Television transmission problem.

"Recent correspondence between the Taoiseach and your Minister gives us sufficient information on the technical side.

"It would be helpful if you could have a note prepared summarising the legal position with particular reference to the possible consequences of granting a licence to South Coast Community Television. Does it remain your Department's view that Cork Communications would in those circumstances have a good case for claiming compensation from the State, given the exclusive nature of its licence?

"Lastly, what is the current shareholder structure of Cork Communications? Is it controlled by O'Reilly interests?

"A reply to fax" whatever "if possible today, would be greatly appreciated."

You go on to say: "In response I received an oral

briefing either from Mr. Loughrey or one of his senior colleagues and subsequently conveyed that information to the Taoiseach, probably orally. The Taoiseach met Dr. O'Reilly at the latter's house in Glandore, County Cork, on the 25th October, 1996."

Now, there has been some discussion about that day, and I think you have a view on how you arrived at that date?

A. That date is incorrect. The meeting took place in July. The confusion arose when I was drafting this reply. I knew the meeting had taken place on a Sunday; I knew it had taken place before the Taoiseach went on holidays; that it was the last Sunday in July. I looked up a calendar, and flipped to August instead of July. So I am absolutely certain that meeting took place in July, as the context of my letter clearly indicates. I apologise for that error.

Q. So I'll just go over that again, and I'll correct it. "The Taoiseach met Dr. O'Reilly at the latter's house in Glandore on the 25th July, 1996 and that evening faxed to my home a handwritten note summarising the issues raised. I have been unable to trace a copy of this note, but believe that it covered a number of topics, by far the most pressing of which for Dr. O'Reilly was that involving the Cork Communications licence. The other topics were his disappointment regarding the outcome of the competition from the

telephone licence, road access to a mining facility in the Midlands, and the level of State aid for a Heinz facility in County Louth".

You were then asked for details of a meeting attended by you with representatives of Independent Newspapers in September of 1996, and in particular, details of all discussions during the course of the meeting relating to the GSM evaluation or licensing process.

You state the meeting took place over lunch at the offices of Independent Newspapers in Hatch Street, Dublin 2. You say you were unaccompanied. The lunch was hosted by Mr. Liam Healy, who was accompanied by Mr. B. Hopkins and Mr. Mike Burns. The atmosphere was cordial and relaxed. Messrs. Healy and Burns and I had known one another for a considerable number of years. Most of the pre-lunch drinks and the lunch itself was devoted to a discussion of the alleged failure of the State to enforce the terms and conditions of the Cork Communications licence, but dissatisfaction was also expressed at the Government's general attitude to O'Reilly interests, including the failure to secure the second mobile licence. This was, however, en passant and not central to the lunch discussion, which included gossip about the political situation and the general election prospects. Despite the relaxed mood, I was left in no doubt about Independent Newspapers' hostility to the Government

parties if outstanding issues were not resolved to their satisfaction".

You were asked for details of all meetings, discussions or conversations or contact between yourself and Anthony J. F. O'Reilly in connection with the second GSM evaluation, or the result of the evaluation.

And you say: "I had no contact, direct or indirect, with Dr. O'Reilly before or during the evaluation process for the second mobile licence. I became aware subsequent to the granting of the licence that Dr. O'Reilly may have been disappointed that the consortium of which he was part had not been successful. My sources for this were the Glandore meeting referred to above and the conversation with the US Ambassador when she expressed the view that US interests were confident of securing the licence because of Dr. O'Reilly's involvement. In or about June of 1997, at an America Ireland function in UCD, Dr. O'Reilly did convey to me a sense of displeasure at the way in which the Government was treating his interests."

Can I just clarify one thing about the dating of your reference to the conversation with the US Ambassador.

Can you let me know whether there is any connection between that conversation with the US Ambassador and the one that you described in Answer 12, if you go to

Answer 12 for a moment?

A. No, clearly not, because the answer to Question 12 was given prior to the outcome of the competition. I met the Ambassador on a very regular basis, sometimes every second day, and that reference to which you have just referred would have come later. I can't be sure, but obviously it was post the announcement of the result of the competition.

Q. Do you know if it was post or prior to the Glandore meeting?

A. I guess it was prior to the Glandore meeting, because she wasn't the sort of person who would let something sit for that length of time; and given the frequency of my contact with her on other matters, she would almost certainly have made the reference as soon as she was aware of the outcome of the competition.

Q. You were asked for details of all discussions between yourself and Mr. Michael Lowry in connection with any dealings between Mr. Lowry and Anthony J F O'Reilly or between yourself and Mr. Anthony J F O'Reilly in connection with the second GSM evaluation or the result of the evaluation. And you say shortly after the September 1996 lunch hosted by Liam Healy, I conveyed to Minister Lowry the strength of feeling relating to the Cork Communications issue. Either then or subsequently, Mr. Lowry told me about his meeting with Dr. O'Reilly at the Curragh races. I am

not aware of other contacts between Mr. Lowry and Dr. O'Reilly.

CHAIRMAN: Well, we are just at the conclusion of Mr. Donlon's statement now, Mr. Healy; it's probably a sensible demarcation point to take lunch now.

And if it suits you, Mr. Donlon, we will we resume with a view to concluding your evidence this afternoon, if possible, at five to two.

A. Thank you very much.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF SEAN DONLON

BY MR. HEALY:

Q. MR. HEALY: Thank you, Mr. Donlon.

Could I ask you just one or two things about the way in which programme managers operated and the sort of relationships they had with their Ministers. I think in your statement you mentioned that all programme managers received copies of the Cabinet agenda and any accompanying papers, usually, I think you said on the Thursday or Friday prior to a Cabinet meeting?

A. Mmm-hmm.

Q. That in other words, on the Thursday or Friday for the following Tuesday?

A. Yes.

Q. You say that sometimes programme managers would get together I think you mentioned that they had fairly

regular meetings, in any case, at which they might dispose of points of clarification, whatever. If there were more significant issues, I think you mentioned that there might be bilateral meetings between programme managers for one matter and programme managers for another Minister, and ultimately I think you mentioned that the programme managers for the three Party leaders might get together on, I suppose, what were more serious issues, or issues that required more sorting out in advance of a Cabinet meeting?

A. Yes, particularly issues that were politically potentially divisive as between the parties. The role of programme managers was to seek to sort things out, as has already been said. Items tended not to go to Government unless they had been previously sorted out.

Q. I see. And Cabinet or I beg your pardon, programme managers were presumably bound by the same obligations of confidentiality as other civil servants advising a Minister?

A. Yes, absolutely, yes.

Q. So that if they got Cabinet papers, they'd be bound to maintain confidentiality in relation to the content of those papers in the same way as the Secretary of a Department or an Assistant Secretary dealing with similar matter would be so bound?

A. Yes.

Q. You mentioned that you had communication in late August or early September from the US Ambassador, and the query you had was, would the GSM licence be a Government decision? And I think I am right in summarising your memorandum of intended evidence, and indeed your evidence to date, to the effect that you said yes, it was a Government decision.

A. That's correct.

Q. And what did you mean by "Government decision" in that context?

A. I meant a decision taken in accordance with Government procedures as set out in what we call the Green Book, the green handbook.

Q. I appreciate that, but I suppose if you were giving that information to an ambassador, and if you were asked a bald question, is it a Government decision I presume as opposed to some other class of decision

A. As opposed to a decision by an individual Minister yes, exactly, that's what I meant, yeah.

Q. And in conveying your response that it was a Government decision, am I right, then, that you intended to convey that it was the Minister it was not the Minister himself who would be making the decision, but would the Government would be making it at the end of the day?

A. That's correct, yes.

Q. Could I ask you to look at page 11 of your memorandum of intended evidence, which contains your response, or part of your response to Query Number 13.

A. Forgive me, but my pages are probably different pagination to yours. Which question?

Q. Query Number 13.

A. Okay, I have it.

Q. And it's the third paragraph of your response. You are referring to your involvement, such as it was, in the meeting the Taoiseach had with Dr. AJF O'Reilly in Glandore in July of 1996.

A. Mm-hmm.

Q. You say, in the second line of that last paragraph of that response, you say that evening that the Taoiseach faxed to your home a handwritten note summarising the issues raised. And you say you can't find it, but that by far the most pressing issue was the Cork Communications licence issue. This is the MMDS or deflector issue?

A. Mm-hmm.

Q. And the other topics were disappointment regarding the outcome of the competition for the telephone licence, road access to a mining facility in the Midlands, and the level of State aid for a Heinz facility in County Louth.

Can you recall whether the handwritten note, in summarising the issues conveyed to you, what was at

issue in relation to each of those items?

A. No, not sorry, I can recall that it was not much more than a listing of issues. In relation to the licence for the second mobile telephone, it was simply an expression of disappointment. In relation to the Cork what we used to call the Carrigaline issue, it went into somewhat more detail because that had, as I understood it, taken up most or a significant part of the meeting. In relation to a road to a facility in the Midlands and the Heinz financial support for a Heinz facility in County Louth, these, as far as I recall, were simply mentioned, but no detail was gone into.

Q. What I am wondering is, how were you going to follow up on those issues?

A. Normally what I would do is identify the Department responsible, get onto either the programme manager or a civil servant, get a briefing on the topic, and be ready for a general discussion, but not a detailed discussion, because my role would simply have been or was in that case simply to try to establish or re-establish a contact between O'Reilly interests and the relevant Minister and civil servants. So my briefing would not have been a particularly detailed one; it would have been to establish what Department is it, or what agency is it? Who is dealing with it? And maybe a definition of the issue.

Q. You refer, in your answer to Query Number 15, to a conversation with the US Ambassador in which she expressed the view that US interests were confident of securing the licence because of Dr. O'Reilly's involvement. Now, I was asking you about that earlier in the context of dating it, but leaving that query aside, can you remember in what context that matter was mentioned by the Ambassador?

A. I believe it was in the context of I mean, first of all, disappointment that there was no American involvement in the successful consortium. She had actively promoted and supported US interests in this competition. And she was a somewhat aggressive person; she wouldn't hesitate to convey in fairly direct terms how she felt about a particular issue. So I was not surprised that she referred to this one.

Q. Do I understand that your appreciation of what she was saying to you was that the US interests involved were confident that they'd get the licence because Dr. O'Reilly was involved in the application on their behalf?

A. Yes. Because of Dr. O'Reilly's, you know, reputation, as she would see it in Ireland, as far as most American interests were concerned, he would have been a major player, a major figure in Ireland, and American interests would assume that his contacts and his track record were such as to, if not guarantee

success, at least to give success a very good chance.

Q. When you say that you subsequently had a meeting in around June of 1997 at an America Ireland function at which Dr. O'Reilly conveyed to you a sense of displeasure at the way in which the Government was treating his interests, did that include any reference to GSM?

A. No, no specific reference to GSM, no. It was very much and it was a very brief encounter. There were other people in the company. It was a reception to announce, I think, grants from the America Ireland Fund, and he just we both happened to be in the same group, and he turned to me and he made a remark to indicate his unhappiness, but there was no specific topic.

Q. Did you ever have a discussion with him about or in which he expressed his displeasure or dissatisfaction or disappointment at not having got the GSM licence?

A. Personally, no, I did not.

Q. You went to a meeting with Mr. Burns and Mr. Healy, Mr. Hopkins at Independent Newspapers' offices in Hatch Street; isn't that right?

A. That's correct, yes.

I should make it clear, by the way, having read the evidence given last week, there is a reference to the late John Meagher attending that meeting; I have no idea where that came from. Mr. Meagher did not attend

the meeting.

Q. You have seen, I think this, as far as I know, has been mentioned in evidence already, an account of at least some of the matters mentioned at that meeting, an account prepared by, or in Independent Newspapers?

A. Yes, I have that.

Q. Just bear with me for a minute; I just want to be sure to see if it's been read out already. This is a document which is

A. Two pages here?

Q. Yes.

A. Yes, I have it here.

Q. I think it can be found at found in the relevant book containing Mr. Tony O'Reilly's memorandum of intended evidence, I think. Just put it on the overhead projector for a minute.

I just want to go through it very quickly, firstly just to establish, in case it comes necessary in dealing with the evidence of other witnesses, that it at least is accurate, so far as it goes, concerning the matters referred to in it.

A. Yes, broadly speaking, it is, yes. I mean, I would take exception at one or two sentences, but

Q. Well, what I'll do it is go through it very briefly, and you stop me at any point where you think it's appropriate to introduce a qualification or to disagree with anything.

It starts off: "Donlon said the Carrigaline situation was "A 4-seat problem 2 in Cork and 2 elsewhere".

A. I don't frankly understand that, because there aren't four seats in that area. So I don't understand what that reference is. There was certainly a political reference to the fact that the that whole issue of the transmission, the illegal transmission of television signals was an issue country-wide, and I would probably have said that it involved at least four constituencies.

Q. I follow.

"He said it must be understood that all items were being looked at on this basis in an election year.

"2. The timescale for the Carrigaline decision in the Department was by the end of the year. He said it's highly likely that if the Minister refused the licence application, then Carrigaline would appeal. In these circumstances, he believed the legal view (since confirmed) would be that the Pirates would be allowed to remain on air whilst the Supreme Court heard their appeal. It is likely that this appeal will take two years to come to court.

"3. Donlon asked if a commercial solution could be broked by the Government? He said if PHL" meaning Princes Holdings Limited "could take over subscribers at i_l½30 current level and increase them over time, it may be possible to persuade the Pirates

to stop. It could be "sweetened" for INP through the extension of the present advertising licences.

"We said that the cost of installing 20,000 illegal subscribers would be at $\text{€}250$ each, i.e. $\text{€}5$ million; and in addition, the lost revenues would amount to a further $\text{€}3$ million in the first year. These numbers are much greater than any benefit from local advertising revenues.

"In addition, we said:

"1. It would be impossible to conceive of a situation where one address on the same road was paying $\text{€}30$ p.a. and the other was paying $\text{€}180$ p.a.. It would make a mockery of PHL's charging and it would undermine all business in Cork.

"2. As a PHL board we have consistently looked to the Government to provide the impetus to police our exclusive licence. By negotiating with the Pirates we would be breaking faith with our previous resolution.

"3. 'Dealing' with Carrigaline will only encourage other pirates to continue to operate and expect to be similarly accommodated.

"4. Donlon asked what else we might be offered to help us settle?

"(i) Extension to the current licence.

"Donlon said the Government were in no position to extend the present 10-year exclusive licence. We put the argument of the non-exclusivity. However, Donlon

said this would be an EEC matter and was not within the remit of the present Government."

A. I would probably have said "this would be an EU matter", not "EEC".

Q. "3. Granting of telephony licences.

"Donlon said this was not on the table until 1 January 2000. He said there would be no cutting of the timescale as the recent investment by KPN had been predicated on the 1/1/2000 timescale.

"3. Disposal to PHL of Cablelink.

"He said this was likely to be over a similar timescale to telephony. However he would raise this question with the relevant Department on his return.

"We said we were thoroughly disappointed with what seemed to be on offer and said we would have great difficulty presenting the outcome of today's meeting to our fellow shareholders. We stressed that their tendency would be to take action against the Government to recover damages over their failure to police the exclusivity of the licences. We said that large numbers might be at stake and that this surely would not be good for the Government in an election year.

"Donlon said any case would not come to court before the election (next November likely), and this would at least solve their Cork problem and ensure the four seats were safe.

"We said they would lose INP as friends and would mean any future administration would have a large bill to pay.

"THE MEETING ENDED".

Can you just clarify one matter for me. Can you look at the paragraph 4, and the second of the three numbered items; it's on the second page.

A. Mm-hmm.

Q. "Granting of telephony licences": Do you know what that refers to?

A. I would have to say immediately I don't, no. I would have to go back to files.

Q. If you could just think of the list of items that you had to deal with well, the Carrigaline issue, disappointment regarding the outcome of the competition for the telephone licence, road access to a mining facility, and State aid for a Heinz facility in Louth.

A. Mm-hmm.

Q. Now, am I right in saying that even including the reference to telephony licences, none of those four items, apart from Carrigaline, are mentioned in the memorandum?

A. Yeah, you are correct, obviously

Q. I think it might be the strategic alliance, but I am not sure.

A. This note, I think, was written by Brendan Hopkins,

who was specifically interested and involved in that issue.

Q. I see.

A. In respect of the other issues, my memory of what happened is that at the beginning of the meeting and bear in mind it was an unstructured meeting. I arrived, I was greeted by three people, we stood around, we had drinks, some people left the room, came back in again. Eventually we sat down. By the time we sat down, I think this topic certainly took up at least, at a guess, half of the lunchtime. The rest of the lunch was probably taken up by what I would call political gossip, because Liam Healy had made it clear that the other issues were not issues that he was briefed on in detail to discuss.

Q. So are you saying that apart from if that note is anything to go by a relatively detailed discussion on Carrigaline, you were no wiser in relation to the other issues after the meeting than you had been before it?

A. Well, I was slightly wiser in this sense, that it was clear that Independent were not in a mood to even discuss these matters.

Q. What do you mean by that, "Not in a mood even to discuss it?" Do you mean they were saying "Unless you are prepared to play ball with us on this"

A. Carrigaline is the issue. That's the issue we want to

focus on, and we see the purpose of this meeting to see if we can advance discussions of the Carrigaline issue to the point where there would be an opening or a re-opening of discussion with the relevant Department, which was DTEC.

CHAIRMAN: What was the status of Mr. Mike Burns, Mr. Donlon? Just the meeting seems to refer to, from an independent standpoint of meeting you and Mr. Burns.

Q. I understand he is a consultant or was then a consultant to Independent News & Media.

CHAIRMAN: But he was part of their team despite

A. He was part of their team, correct, yes.

Q. MR. HEALY: I just want to clarify one or two matters of timing, Mr. Donlon. If you look at your answer to Query Number 60, you say: "Shortly after the September 1996 lunch hosted by Liam Healy, I conveyed to Minister Lowry the strength of feeling relating to the Cork Communications issue. Either then or subsequently, Mr. Lowry told me about his meeting with Dr. O'Reilly at the Curragh races. I am not aware of other contacts between Mr. Lowry and Dr. O'Reilly." Have you any more detailed recall of what Mr. Lowry said to you about his meeting with Dr. O'Reilly at the Curragh races?

A. I indicated to him that if I can put it this way, that the focus of hostility at the lunch was very much

on him, and was on him because of the perceived failure to deal with the Carrigaline issue. That led him then to say that he had had what he regarded as a hostile or an unfriendly contact with Dr. O'Reilly, I believe he said at a race meeting.

Q. And did he give you any indication as to when that had occurred?

A. No. Other than that it had occurred obviously prior to our conversation in September, no, no.

Q. Did he say what the hostility was, or did he say what Dr. O'Reilly said to him or give new indication of what he had said?

A. At this remove I can't, I am afraid, be specific. I took it at the time, or at least as far as I recall, I took it to be a general hostility relating to issues that came within the competence of the Department of Transport, whatever it is, of DTEC.

Q. Are you familiar with Mr. Lowry's own statement referring to that meeting in the Curragh?

A. I don't believe I have seen it, no, no.

Q. Mr. Lowry says that this is at Book 39, Leaf 3, I think sub-leaf 1 I'll put it on the overhead projector; it might be easier for us all to read it.

"I recall attending the Curragh races on the weekend of the Derby in July 1995. While at the races, some party whom I cannot now recall approached me and asked if I would go to see Tony O'Reilly in his executive

box. During the course of the afternoon I went to Mr. O'Reilly's box, and a discussion ensued. He discussed his consortium's application for the licence and sought to impress upon me his commitment to Ireland and his investment in the country. He also spoke about recognition of his personal standing as an international business leader. He stated that he expected that his consortium would be successful, and he also demanded that I, as Minister for Communications, should forthwith order the shutdown of unlicensed TV deflector systems.

"Sometime subsequently he conveyed to the Government his extreme displeasure at his consortium's failure to get the licence. I understand that the then Taoiseach, Mr. John Bruton, met with Mr. O'Reilly by appointment in Glandore on the 25th August 1996. Mr. Bruton reported back on his minutes of that meeting to a Fine Gael Ministers meeting. He stated that Mr. O'Reilly was seriously aggrieved and annoyed with a number of Government decisions which affected the Independent group, including the GSM licence and TV deflector issues. During the Minister's discussions it was generally felt that Mr. O'Reilly's dislike of the then coalition Government was reflected in the Independent Newspapers political coverage. It was decided to involve Government adviser Sean Donlon to mediate in the matter, and on the September 4th, 1996,

Mr. Donlon met with representatives of Independent Newspapers at Hatch Street. And amongst those attending on behalf of Independent Newspapers were a Mr. Liam Healy, Mr. David Palmer and the late Mr. John Meagher. Mr. Sean Donlon reported back that it was a most difficult meeting and that some very harsh comments were made about the Government and in individual Ministers. He outlined a list of grievances and a series of demands from the Independent Group. Mr. Donlon expressed concern that the Government was being placed over a political barrel. He told me that I was persona non grata with the Independent Group. On the morning of the election in June 1997, the front page of The Irish Independent carried a banner headline, "Payback Time". This was accompanied with a front-page editorial urging the electorate not to vote for the Government parties." Now, the first paragraph of that, we'll put it back on the overhead projector so that you can look at it, relates to a meeting at the Curragh races on the weekend of the Derby; do you see that?

A. Mm-hmm.

Q. And if you just look at what Mr. Lowry says was discussed, I just want to know whether that rings any bell for you in terms of the discussion you had with him in 1996.

Now, before I do that, I just want to draw two things

to your attention. There certainly seems to be some echo of what is contained in that note, or there seems to be some echo of what is contained in that note in the discussion you had with the Ambassador; do you remember that?

A. Yes.

Q. But I also want to draw to your attention a correction supplemental statement of Mr. Lowry, in which you see he says: "I refer to my original statement furnished to the Tribunal by Kelly Noone & Company, Solicitors, with letter dated 27th June 2001, and I refer to the statement of Anthony J F O'Reilly to the Tribunal dated 24th September 2001, a copy of which has been provided to my adviser herein.

"I believe that my account of the events and the date with my meeting with Tony O'Reilly on the weekend of the Derby in July 1995 fairly reflects what transpired at that meeting. In relation to my recount of what transpired at that meeting I would make one comment to the effect that in my previous statement, I stated, and I quote: 'He stated that he expected that his consortium would be successful'.

"I do not wish to convey a wrong impression by this.

Mr. O'Reilly was simply expressing his opinion in relation to his consortium's application rather than making a specific demand from me in relation to the matter."

And the rest goes on to deal with a matter with which you weren't involved. So just to deal with the first query I have.

Does what's contained in that statement stimulate your memory in any way in relation to your conversation with Mr. Lowry after your meeting with Messrs. Healy and Hopkins and Burns?

A. Not in that detail. I mean, it's clear that the last sentence of that first paragraph is certainly the sort of thing that I would have expected Dr. O'Reilly to say. I am not sure about the rest, but I just don't know. But there was a general view around the place, after the outcome of the competition was announced, there was a general view that the successful consortium was by no means the favourite, and some surprise that a consortium which included someone as well connected as O'Reilly had not been successful.

Q. Well, that brings me to the second part of that statement and to the supplemental statement of Mr. Lowry. You will see that Mr. Lowry is referring to a date in July of 1995.

A. Yes.

Q. And in his clarificatory statement, I take it that as I understand Mr. Lowry's clarificatory statement, he is making it clear that he doesn't want to convey the impression that Dr. O'Reilly was making a specific demand but that he was expressing an

opinion in relation to his consortium's application.

I think, taking both those statements together, Mr.

Lowry seems to be referring to a competition yet to be concluded, do you understand me, as opposed to a competition which had been concluded and about which Mr. O'Reilly might have been in some way disappointed.

If Mr. Lowry is correct that they were referring to a competition the result of which was in the future, was prospective, then his dating of 1995 might be the correct one; isn't that right?

A. Yes.

Q. Did you say anything to Mr. Lowry about the note you had received from the Taoiseach of the four issues discussed at Glandore, and specifically the fact that the licence was mentioned at one of them?

A. Yes. I believe Mr. Lowry also received a copy of that note, as did other Ministers whose functions might be referred to in the course of the meeting; but unfortunately, I haven't been able to trace the note.

But the Taoiseach, Mr. Bruton's style, would certainly be to fax it almost immediately to relevant people, and I would not have been the only relevant person.

Q. I see.

A. For example, my memory is that it was sent to Mr. Lowry; it may also have been sent to Mr. Richard Bruton, who was then the Minister for whatever the title was, Industry and Commerce and possibly to

others. So I wasn't the sole recipient of the note.

My recollection is that Mr. Lowry received a copy of it, if not at the same time, within a day or two. So when I was going to have lunch with representatives of INM at the beginning of September, I would certainly have had a conversation with Michael Lowry, both before and obviously after the meeting. I don't know if Mr. Lowry's evidence I haven't read it or seen it; I don't know if he makes a reference to having received that manuscript note.

Q. I don't think so. He refers to I'm simply trying to ascertain whether you can throw any light on the dating of the remarks the meeting that Mr. Lowry was referring to at which the remarks that he mentions were made.

A. No, I am afraid I can't I don't think I can help you in that. All I can tell you is that in 19- whatever time it was, in September 1996, when I conveyed to Mr. Lowry that he was not in the best odour in Hatch Street, it didn't seem to come as a surprise to him. He told me he had met O'Reilly previously, but he didn't say when, or I didn't establish precisely when. He said, you know, "I have got it from the horse's mouth" type of thing.

Q. Thank you very much, Mr. Donlon.

CHAIRMAN: I'll see if there is some other counsel who may wish to ask you some matters, Mr. Donlon.

Mr. Fitzsimons, anything?

MR. FITZSIMONS: I have no questions.

CHAIRMAN: Very good.

Mr. Nesbitt?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Sorry, there are you mentioned,

Mr. Donlon, as did Mr. Quinn this morning, that there

was some surprise at the outcome of the process, the

fact that the Esat Digifone consortium came out on

top. Would it be fair to say that amongst ordinary

people and indeed I include civil servants and

Ministers not connected with the process that there

would not have been an appreciation of the strength

and profile of Telenor as a top-class

telecommunications company which had already had

experience in the GSM area?

A. Speaking as a layman on these matters, certainly I

would have had no knowledge of their track record or

background, none whatsoever. And I imagine that would

be a general reaction among non-specialists.

Q. Thank you, Mr. Donlon.

CHAIRMAN: Thank you.

Mr. Nesbitt.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

Q. MR. NESBITT: Mr. Donlon, just a couple of questions

about the nature of the competition process, so far as

you were concerned.

As I understand your evidence, you weren't involved in any way in the development of the competition process or the manner in which it came to the Cabinet or the manner in which it was then rolled out and an eventual winner selected?

A. That's correct.

Q. Now, in the context of discussing the outcome of the competition and the issue of it being a Government decision, could I just ask you to try and explain in a little more detail what you mean by that?

A. There is a very specific procedure for taking Government decisions outlined in this book, called "Government Procedure Instructions". I saw my role in conversation with the American Ambassador, I suppose, as explaining to her, because their Cabinet system is very different to ours. Even if I didn't, you know, give a tutorial based on this book, I would certainly have emphasised to her that this is a decision not simply to be taken by one Minister. I think what she was looking for was information to help her in her lobbying, and what she wanted to know was, who would she have to lobby in support of US interests? And in effect, I suppose, what I was saying to her was, "It's a Government decision. You are going to have to deal with every member of the Cabinet if you are going to get into that business".

But I suspect I would also have told her that

lobbying, particularly at that stage, was not likely

to be the best course of action.

Q. Just to tease out again, your interest was one in dealing with somebody of importance who seemed to be aggrieved by the fact that somebody with American connections hadn't won; is that right?

A. Well, no, no, hold on, at the stage at which she first approached me, the competition was still in train. So there was no grievance. It was a request for information: How could she best influence its outcome of the competition?

Q. She seemed to be motivated on her own account, or for somebody else?

A. No, no, she is acting in the interests of US commercial interests, which is a perfectly normal thing. I have done it myself, in any country where I have been based.

Q. And what you wanted to tell her is what everybody in Ireland would have known, that this is a process that you can't influence in that way?

A. I would first of all have set out for her the difference between an individual departmental or Ministerial decision and a Government decision. And yes, would I probably have given her, as my own view, the fact that it's unlikely that this would be a productive use of her time.

Q. Now, again, as I understand you weren't involved in

any way in the way in which the competition came into existence and how it was run, but it was a reasonably novel sort of project and competition for the awarding of a valuable commercial interest such as a GSM licence; wasn't that right?

A. It may have been. My own knowledge, my involvement was nil, and my knowledge was nil. There were many issues at the time that absorbed a lot of my time, particularly matters relating to Northern Ireland. My brief was very wide, and unless it was absolutely necessary, I tended not to get into the things that were not part of my immediate brief. And again, following the general instruction I had from the then Taoiseach, you know, let Ministers and their civil servants and their programme managers get on with the tasks allotted to their departments.

Q. You see, the reason I am asking these questions, Mr. Donlon, is I am concerned I have misunderstood some of your evidence possibly, in that you are attributing some special magic to the concept of Government decision.

A. Well, the only magic I am attributing to it is it's a decision taken by a group of people, either the whole group or a group delegated by that group, as opposed to a decision taken by an individual Minister. There are many decisions taken by individual Ministers, but this was not a Ministerial decision.

Q. And the decision that would be taken would be informed normally by an aide-memoire that would be available before the decision was made?

A. Normally, but not universally.

Q. But on this occasion, there were aide-memoire, but you wouldn't have been a party to those?

A. Indeed.

Q. Am I right in thinking to fully understand the true ramifications of a decision, it would be necessary sometimes to look at the aide-memoire to see the breadth of what was being discussed in that?

A. It depends on the individual Minister and how far he or she might have been involved in the issue beforehand. If my memory is correct and I am looking here at some notes I mean, there were, I think, five or six memoranda or aides-memoire to Government between November '94 and October '95, so at least some Ministers, particularly Labour Ministers from the previous Fianna Fail/Labour coalition, might have been more informed than some of the Fine Gael or Democratic Left Ministers.

Q. You see, the point I want to just tease out with you is that the process itself was one of a project committee evaluating applications to be allowed win the right to negotiate the second GSM licence.

A. Yes.

Q. So the very decision itself of who would win was now

dependent upon an evaluation process that was within the Project Group?

A. Mm-hmm, yes.

Q. So whatever the final decision was going to be, there was now an influential event taking place, which was this application to a project committee who would evaluate, using technical assistance from experts, and come up with an answer, who was the best would you agree with that?

A. Yes. I mean, from what I know now, yes, I would agree with that.

Q. You see, what Mr. Quinn said was that "the decision was made, so to speak, in advance. We had committed ourselves. We set an adjudication process in train, and when we set that process in train some months previously, we committed ourselves to accepting the outcome of that process." You wouldn't disagree with that analysis?

A. No, I would not disagree with that.

Q. Although the words "Government decision" and your very helpful pointing to the green book material, what actually happens here and what the Government appeared to want to do, is to give this, to a very substantial extent, to a Project Group appropriately skilled to look at the complex nature of the business plan and all those bits and pieces to be attended upon, a proper GSM licence operation?

A. Mm-hmm.

Q. And then, according to Mr. Quinn, I don't think you disagree with this, then when that came back, obviously there would be some level of commitment to the outcome of that process?

A. I agree with that.

Q. And I think it's Mr. Quinn said, you are not going to second-guess the adjudicative process unless it is considered to be inappropriate for some reason?

A. That's correct. But I imagine, for example, if two of the applicants had or two of the consortia had come in at more or less the same number of marks, they would have had to do something to facilitate a decision.

Q. Yes, if there was a tie break

A. As it happened, that didn't happen.

Q. That's the whole point. So again, I'd welcome your assistance and your experience in these matters. In those circumstances and maybe it was a reasonably new way of making what's effectively a very commercial decision for a Government would you think it would be appropriate to start trying to second-guess where the report was actually indicating there was a winner?

A. No. I mean, there was no second-guessing of that. But when I say I don't know if this will help you Government decisions are recorded by the Secretary to the Government, or one of his assistants.

And there is, as far as I remember, there is a book of Government decisions. This is inscribed in that book. And we have an extract a number of extracts, because there were a number of Government decisions; but in particular, we have the decision of 26th October, 1995, which, from memory, states very specifically, "The Government today decided as follows". That is a Government decision.

Q. Yes, I understand that. You see, in this process, it was a little bit more complicated than that, because it started off life with a desire to have a second GSM operator?

A. Mm-hmm.

Q. Commercial decision, very good for the country?

A. Mm-hmm.

Q. Then there was a consideration as to how they were going to go about finding the best second GSM operator. And it was then realised that the Cabinet couldn't sit around and make that decision; they'd need somebody to do a bit of investigative work for them. It was then considered that some sort of competition process to encourage people who might be interested and capable to put their best foot forward and to apply in a closed competition process, to say what they would do and fulfil certain parameters. Is that right?

A. Yes.

Q. That's all quite novel for a decision like this, isn't it, at that point in time? It wasn't the way things usually had been done?

A. I don't know that it's unique. Relatively speaking, it's yeah, novel, but I don't think it's unique.

Q. The point I want to try and tease out with you, if it's not unique, at that point in time, it was a new way of doing things; it wasn't that common?

A. I agree with that.

Q. You had a coalition Government at the end of the process leading to the competition, and a great interest in making sure things were done the right way; is that the feeling you'd have?

A. Yes.

Q. So it's unlikely any of those people would be willing to let things be put through that didn't have the ring of an appropriate process?

A. That's correct, yeah. I mean, if it helps, I should tell you that at some point after Michael Lowry's resignation as Minister, the then Taoiseach, John Bruton, asked me to look at the process through which the decision had been reached, and I did so at his request by reviewing the documentation, by talking to one or two officials, and by looking at the names of officials who had been involved. Some of these people I had known. One of them had joined the civil service we both joined the Department of Finance on

the same day in 1961.

So all of these things I took into account and went back to John Bruton and said I believed that the decision, that the process was such that it could not have been subverted.

I don't know if that helps you or not.

Q. It does, and thank you very much for saying that.

Because I think there has been a parade of civil servants involved who came here and have sat and given evidence, been cross-examined in detail, and have said they did their best; they did what they thought was the appropriate thing to do and they are not suborned in any way. That does not surprise you at all?

A. Not at all, no.

Q. The reason I am talking about Government decision is it appears to be imbued with some particular magic when questions are put to people like you in the witness-box, and I am just trying to understand that, and how a witness of your experience and capability, it's of great assistance to hear some of your views on this. That's why I am just concerned to make sure that I am not missing a point; that this process was, if not unique, certainly reasonably special. It was a process to achieve the best person through competition?

A. I mean, a Government decision for us, for civil servants generally, is like a papal decree, Non Petrus

Locuta Est Causa Finita Est: You don't argue with you accept it, and you move on. You don't necessarily do that if it's a decision taken by a Minister, because you might appeal it; but there is no appeal, for a civil servant, from a Government decision.

Q. Indeed. And that's why I am just trying to tease out the exact nature of what this decision meant, because it's a slightly more complicated process than saying Mr. A will have this, Mr. B will have that, or Company X or whatever. This was a process that was to lead to a bidding process to be controlled by the Department of Transport. That's one of the Government decisions that was made in relation to this.

A. Mm-hmm.

Q. So immediately the Government has given a very substantial part of this into the hands of somebody else to do the necessary work to make sure an appropriate decision is reached?

A. Correct.

Q. That's the Project Team who had to get in there, evaluate the applications, score the applications, and come back with a winner if they could.

A. Correct.

Q. And as I understand it, your view is that once that winner was brought back to the table from the project committee, the people who were analysing the applications, that would have a very substantial

weight in the minds of the Government who were then looking at it?

A. Correct, yes.

Q. And could you imagine of a situation where, if there was a clear winner, the Government would second-guess that?

A. Not in this instance, no, no.

Q. So when you talk about it being a Government decision, it's a bigger issue than just on that day there is a Government decision saying they are the winner; behind that is a whole process that led to the Government feeling comfortable to arrive at that decision?

A. Yes, and they felt that was the appropriate process for arriving at the decision. I mean, I could see again, perhaps it will help, perhaps it won't help. There are appointments which are Government appointments. And a committee is established, or there is a standing committee. And the committee comes up with three names or five names, perhaps even in the order one to five. It goes to Government. The Government may not necessarily appoint Number 1.

Q. But this is a slightly different thing. There was a process to lead to the best commercial offer. I mean, the process was designed to have a business plan and let people look at that and evaluate it.

A. Yes.

Q. So in the circumstances of where a business plan won,

it would be very unusual, I would suggest, for some Cabinet to make a decision against the business plan.

A. It would certainly have been unusual in the particular Cabinet we are talking about.

Q. And this was pure business. You needed a good operator to roll out a GSM system to serve the nation?

A. Yes.

Q. Even more surprising than to see some political decision being made that would walk away from the decision of the Project Group that this is the best business we have seen?

A. Mm-hmm, that's correct, yes.

Q. Now, just to turn the matter around slightly. You are here giving evidence because you have some understanding, as I see it, of how Mr. O'Reilly felt about the fact that the consortium he was with hadn't got across the line?

A. Well, I am not sure why I am here to give evidence. It started off on a totally different track. I was first approached in relation to a comment that had been made by Mark FitzGerald.

Q. Indeed.

A. That's how it started. How we got to Glandore and beyond is not clear to me.

Q. Well, you are here, and you have been asked some questions about that. As I understand, Mr. O'Reilly appears just to be concerned to find out the way the

process worked, to inform himself about issues; is

that right?

A. Dr. O'Reilly?

Q. Yes.

A. I don't know. I mean, I doubt that he needed to do that.

Q. So his complaint was simply that he didn't win the competition, as far as you were concerned?

A. Yeah, and "complaint" is probably putting it a little bit too strongly. An expression of disappointment, I think, might be a better way to put it.

Q. So

A. I mean, he knows he didn't have any right to win this competition. His own career has its origins in the State sector in Ireland. He headed up Bord Baine when it was a State company. He headed up Erin Foods when I think it had a State involvement. He is very familiar with the processes in Ireland. He wasn't coming to it, you know, like an American tycoon who had never set foot here. Very familiar with the process.

Q. Indeed. So would it be fair to encapsulate his position as not being one of criticism of the process or the civil service, but rather just to express disappointment?

A. He seemed to have a generally he seemed to feel that the Rainbow Coalition was not treating him as

well as he would wish to be treated. And there were a number of issues, the principal one of which was the illegal deflector situation in South Cork. There were other issues which I have referred to. And then, so to speak, in passing, "and I didn't get the licence."

But I don't think it was said in any sense of, you know, "It was promised to me; I deserved it; I scored that try back in, whatever year it was, and therefore I should have been given it".

It wasn't that. I mean, it was a fairly normal reaction.

Q. "And I was chauffeured to the stadium." But it was simply in passing, and it was not said in the context of any particular information or a view he had that there had been some infirmity in the process?

A. No, absolutely not.

Q. Thank you very much.

CHAIRMAN: Mr. McGonigal? Nothing to raise?

Mr. O'Hanlon.

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

MR. O'HANLON: I appear for Mr. Lowry in this matter.

Q. In relation to the meeting where you I think you had lunch with the three members: Mr. Burns, Mr. Hopkins and Mr. Healy. And that followed on from the meeting to Mr. Bruton with Dr. O'Reilly?

A. Mm-hmm.

Q. Now, you have described how the meeting was carried on

in a cordial atmosphere and a relaxed mood, but you were left with no doubt as to the hostility of the Independent Newspapers Group to the Government parties at the time?

A. That's correct.

Q. And I think you have clarified that you subsequently met Mr. Lowry and were able to inform him that he was the focus of that hostility?

A. That's correct.

Just a correction: I don't think I met him. I think we had a telephone conversation on the afternoon of the meeting.

Q. All right. And would you be in a position to say for how long, or would you have an impression of how long Mr. Lowry would have been the focus of hostility from that group on the basis of what you gathered from that meeting?

A. I think it would have gone back almost to the formation of the Rainbow Government in December not immediately to December '94, but I would imagine within a few months of that when, in particular, the issue of illegal defectors was not dealt with. I think the seeds were sown pretty early on in the life of the Government.

Q. And is your impression that they would have been gathering force, a momentum as such, up until they were expressed so clearly to you at that meeting?

A. Oh, yes. It wasn't it wasn't sudden, and I wasn't surprised. I mean, I had, on at least one if not two occasions met representatives of what I call O'Reilly interests because I am not sure which company it was, who came to see me to say that they had been to DTEC, and they had talked to the Minister and they hadn't got any satisfaction, and when was the Rainbow Coalition going to do something about this manifest illegality.

Q. Because what I was hoping you might be able to assist on is in relation to the date of the meeting between Dr. O'Reilly and Mr. Lowry. You believe you are not aware of the actual date, but Mr. Lowry, in his statement, as you have seen, refers to meeting at the Curragh in 1995, I think it's July 1995, on Derby Day.

A. Mm-hmm.

Q. Dr. O'Reilly's impression is that that meeting at the Curragh, they are ad idem that a meeting occurred, but occurred a year later, in 1996; and it just seems, on the basis of the description of the focus of hostility being on Mr. Lowry so clearly in September or October 1996, that it's more likely that he would have been welcomed into the box, into Dr. O'Reilly's box in 1995 rather than 1996.

A. Yes, I think that's reasonable, yes. But, again, I think it's fair to add that Dr. O'Reilly is a sociable, well-mannered gentleman. So

Q. Although I think Mr. Lowry, when you spoke to him or when he mentioned this, didn't go into detail in relation to the date to you?

A. No, he did not, no.

Q. Thank you very much.

CHAIRMAN: Anything in conclusion, Mr. Healy?

Very good. Thank you very much for your assistance and evidence over today and in preparation for it, Mr. Donlon.

That's today's witnesses. 11 o'clock in the morning.

Thank you very much.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
WEDNESDAY, 31ST MARCH, 2004 AT 11AM.