

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

Instructed by Matthew Shaw

Chief State Solicitors Office

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

Mr. Rossa Fanning, BL

Instructed by: Kelly Noone & Co.

Solicitors

FOR FINE GAEL: Mr. Charles Meenan, SC

Instructed by: Kevin O'Higgins

Solicitor

FOR AJF O'REILLY: Mr. Paul Gallagher, SC

Instructed by: Simon McAleese & Co.

Solicitors

FOR DICK SPRING: Aileen Flemming

Donal Spring & Co.

Solicitors

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxtton

I N D E X

Witness:	Examination:	Question No.:
----------	--------------	---------------

Dr. AJF O'Reilly	Mr. Coughlan	1 - 77
------------------	--------------	--------

Mr. Nesbitt	78 - 100	
-------------	----------	--

Mr. Meenan	101 - 107	
------------	-----------	--

Mr. O'Hanlon	108 - 132	
--------------	-----------	--

Mr. Gallagher	133 - 192	
---------------	-----------	--

Dick Spring	Mr. Coughlan	193 - 248
-------------	--------------	-----------

Mr. Fitzsimons	249 - 251	
----------------	-----------	--

Mr. O'Donnell	252 - 272	
---------------	-----------	--

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,

31ST MARCH, 2003 AT 11AM.:

MR. COUGHLAN: Anthony J F O'Reilly.

MR. GALLAGHER: Sir, I appear for O'Reilly instructed

by Simon McAleese & Company, and I would ask the

Tribunal for limited representation.

CHAIRMAN: In the context of the intended evidence and

other matters of which I am aware, Mr. Gallagher, I

think it's appropriate I accede to that on the usual

terms, limited order.

MR. GALLAGHER: Thank you.

CHAIRMAN: Good morning, Mr. O'Reilly. Thank you very much for your attendance.

ANTHONY J F O'REILLY, HAVING BEEN SWORN, WAS EXAMINED

AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Thank you, Mr. O'Reilly.

I think you furnished a statement of intended evidence

for the assistance of the Tribunal and enclosed

certain documents, namely a number of letters and a

memorandum you had received from one of your

executives, I think. And then you furnished a second

statement which is in like terms to the first

statement; it contains a correction in relation to one

aspect of it, I think. Isn't that correct?

A. Yes.

Q. I wonder, do you have those with you in the

witness-box?

A. Yes, I do.

Q. And the procedure we follow is that I will take you

through the statement, the content of the documents

which are enclosed with the statement, and then I will

come back and ask you some questions for clarification

if they arise.

A. Surely. Thanks very much.

Q. Now, I think the statement by you furnished to the

Tribunal, dated the 24th September, 2001, and at paragraph 1 of that statement you say that you, Anthony J F O'Reilly, of Castlemartin, Kilcullen, County Kildare, have considered the contents of the letter dated 4th July, 2001, sent by the Tribunal to your solicitor. You were taken aback by the contents of this letter and totally reject Mr. Lowry's assertion that you made any comment to him concerning the second GSM licence or any application by any consortium for such licence.

I should perhaps just put this in context. You received a letter from the Tribunal dated, as you say, the 6th July, 2002, which contained portion of a statement which had been furnished to the Tribunal by Mr. Lowry, wherein he had made reference to you; isn't that correct?

A. That's correct.

Q. This is what you are dealing with.

"While I did meet with Mr. Lowry on the weekend of the Derby, I believe, although I am not certain, that the meeting took place on Derby Day 1996; that is the 30th June, 1996, and not Derby Day 1995, the 2nd July, 1995. In any event, Mr. Lowry has seriously misrepresented what took place at the meeting".

At paragraph 2, you say: "I will deal with Mr. Lowry's allegations on a point-by-point basis, but wish to make it absolutely clear that I never informed

Mr. Lowry that I expected that my consortium would be successful in relation to its application for the second GSM licence. I will outline the circumstances of my meeting with Mr. Lowry in greater detail below". Before doing so, however, you say you will explain why you believe that you met Mr. Lowry during Derby weekend of June 1996 and not July 1995, as suggested by him.

You say at paragraph 3 that you believe that your first meeting with Mr. Lowry took place at the opening of the Arcon mine in Galmoy. This took place on the 15th September, 1995, and is referred to in greater detail by you further on.

At paragraph number 4, you say that if the meeting had taken place, as Mr. Lowry suggests, during the course of the Derby weekend of July, 1995, it would have predated the bid by Irish Cellular Telephones in which Independent Newspapers plc and Princes Holdings Limited had an interest along with several other parties. The bid was submitted on the 4th August 1995, and therefore, as of early July 1995, no application had been submitted to the then Minister by your consortium.

At paragraph 5 you say that Mr. Lowry states that at the meeting you demanded that he as Minister for Communications would forthwith order the shutdown of unlicensed TV deflector systems. You say that you do

not believe that you made any demands. This issue was probably discussed by you with Mr. Lowry on Derby Day 1996 and not on Derby Day of 1995. The correspondence memoranda referred to in more detail at paragraph 13 of this statement confirm this fact, you say.

By late June 1996 you were concerned by the failure of the State to do anything about shutting down the unlicensed TV deflector systems. The High Court had decided on the 10th November, 1995, that the Minister's early refusal of a licence to Carrigaline Community TV was unlawful, and the State was obliged to make a new decision. No such decision had been made by the end of June, 1996, and the delay on the part of the Government in resolving this matter appeared to be wholly unjustified and was causing very serious damage to the legitimate MMDS operators. You say that your solicitors has reminded you that by July, 1995, the proceedings brought by Carrigaline Community Television against the Minister and Cork Communications were at hearing before the High Court, and at the time, the State was prevented by an injunction from seeking to restrain the operation of Carrigaline Community Television.

You were aware of those proceedings at the time. You say this is highly unlikely, therefore, that you would have pressed the State to take action at that stage, when it clearly could not do so, and in circumstances

in which it was hoped by the companies in which you were interested that the High Court decision would go against Carrigaline Community Television and would solve the problem being experienced with the pirate television broadcasting operators.

At paragraph 6 you say that you will now deal specifically with Mr. Lowry's allegations in the context of the meeting which took place at the Curragh during the Derby weekend of June, 1996.

At paragraph 7, now you are turning specifically to matters contained in Mr. Lowry's statement.

Paragraph number 7: You deal in bold type with Mr. Lowry saying in his statement, during the course of the afternoon he went to Mr. O'Reilly's box. And your comment on this is this: "This is correct". You cannot recall whether or not you invited him to join you and your party in the box. At the time, you were entertaining numerous guests in the box. He arrived into the box with a friend. As far as you were concerned, he was quite welcome. He stayed, to the best of your recollection, for approximately 30 minutes. You spoke with himself and his friend for a short period of time, perhaps five minutes. You believe that you had met him only once previously, namely at the opening of the Galmoy mine as explained later.

At paragraph number 8, turning to another matter

raised by Mr. Lowry in his statement, they had a discussion in which Mr. O'Reilly referred to his consortium's application for the second GSM licence.

And your response to that is this: "This is absolutely untrue. I never had any discussion about 'my consortium's application for the second GSM licence.'"

Paragraph number 9 dealing with Mr. Lowry's statement that Mr. O'Reilly sought to impress upon Mr. Lowry his commitment to Ireland and his investment in the country. And you say you will deal with that when dealing with the next item raised by Mr. Lowry.

He also spoke about recognition of his personal standing as an international business leader, and your response to that is: "I believe that Mr. Lowry is misrepresenting what I said to him. I probably complained about the failure to take any action against the pirate television broadcasting operators", and in that context, possibly did emphasise your commitment to Ireland.

At paragraph number 11, dealing with Mr. Lowry's statement to the effect that you stated that you expected that your consortium will be successful. You say that this is absolutely untrue. As already mentioned, you most certainly made no such statement.

Paragraph number 12, dealing with Mr. Lowry's statement to the effect that "He also" that is you

"demanded that Mr. Lowry, as Minister for Communications, would forthwith order the shutdown of unlicensed TV deflector systems."

And your response is: "This was something that Independent Newspapers plc and its international partners felt strongly about", and you probably mentioned this matter to him. Independent Newspapers plc, as it was then called, had, with its equity partners, invested approximately 75 million in the television signal retransmission business, properly known as MMDS. This business operated on foot of exclusive MMDS license granted by the Government. Mr. Lowry and his Government were fully aware of the fact that a substantial number of unlicensed pirate television broadcasting systems were operating throughout the country in breach of the relevant legislation. You, that is you and your fellow investors, were very concerned that the Government did not appear to be taking sufficient action to enforce the law and close down these illegal operators. At paragraph 13, then you say the extent of your concern at the Government failure to deal properly with the pirate television broadcasting operators is reflected in the following correspondence and memoranda, copies of which you attach to the statement at Annex A.

The first matter, and I'll deal with those in due

course, but you say is a letter dated 29th July, 1996, sent by Brendan Hopkins to the Taoiseach, John Bruton, at your request. This letter speaks for itself. Mr. Hopkins, as executive director of Princes Holdings Limited, (Independent's joint venture MMDS cable subsidiary) was expressing concern about losses which were being caused by priority operators. Mr. Hopkins was in a position to furnish Mr. Bruton with fairly exact details of investment costs, losses etc.

Reference in this letter to telephony services is a reference to the possibility of Princes Holdings Limited ultimately offering such services to its cable subscribers as part of an overall package as it currently does under the Chorus name.

I think it might be no harm if we just look at Mr. Hopkins' letter to Mr. Bruton, which was written at your request, wherein he gives such details. I'll open it.

It's a letter dated 29th July, 1996. It's from Mr. Brendan Hopkins, executive director to the Taoiseach, John Bruton. And it reads:

"Dear Taoiseach.

"Further to your conversation with Dr. O'Reilly regarding the performance of PHL since exclusive licences were granted in 1992, I can confirm the results to be as follows".

He then sets out subscribers, revenue, operating

surplus, less interest, depreciation and net loss before tax, as you can see there; I am not going to go into each one of these in detail. And he does that for the years 1992, 1993, 1994 and 1995, and all show a net loss before tax in respect of the operations.

"Accumulated losses since 1992 have reached 18.5 million by the end of 1995 with further losses expected in 1996 and bear no resemblance to the original business plan. The principal difference relates to the non-achievement of anticipated subscriber growth, which is directly related to ongoing pirate activity.

"The failure to police exclusive licences granted by the Government and issued by Mr. Ray Bourke in 1991 has led to significant pirate activity, particularly in the area of Carrigaline, where we estimate in excess of 30,000 homes pay illegal operators $\text{€}1/230$ to $\text{€}1/240$ per annum to provide signal. The recent slowdown in subscriber growth in PHL is directly attributable to pirate activity.

"Princes Holding shareholders, of which Independent Newspapers at 50% is the largest, have invested $\text{€}1/275$ million to date with further significant investment required, specifically to support developments in digital broadcasting and telephony. It is essential that PHL invests in these two areas to enable it to offer legally the requisite quality of service within

its franchised areas.

"I understand that Dr. O'Reilly specifically tabled three factors that can improve the PHL situation immediately.

"(i) a return to growth in subscriber numbers through the cessation of pirate activity, both in Carrigaline and throughout the country.

"(ii) access to advertising revenues both regionally and locally.

"(iii) the ability, as in all UK cable systems, to offer telephony services as soon as possible with a concurrent reduction in telephone charges. PHL has approximately 500 independent transmission systems throughout its network.

"Faced with a poor trading record of PHL and the obvious poor return on investment to date coupled with the short-term requirement for extra funding, shareholders (both Irish and American) are understandably reluctant to provide more capital unless a firm, resolute and speedy political resolve to provide the necessary framework for attractive investment is forthcoming.

"Yours sincerely,

Brendan Hopkins."

I think that was written at your request by Mr.

Hopkins to Mr. Bruton?

A. Right.

Q. You then refer to a handwritten letter sent by you to the then Taoiseach, John Bruton, TD, on Thursday, 30th July I beg your pardon; Tuesday, 30th July, 1996.

And you also enclosed a typed copy for convenience.

And you say that this letter was written two days after Mr. Bruton called to your house at Glandore in West Cork on Sunday, 28th July, 1996. The letter deals with all of the issues which you had discussed with Mr. Bruton during the course of that visit. It is noted that contrary to Mr. Lowry's assertion that the GSM licence issue is not mentioned in this letter, this is of course because the subject was not discussed at the Glandore meeting.

I will open this letter now, Mr. O'Reilly, but I will come back to deal with it, because you know Mr. Bruton has given evidence before the Tribunal, and I just ask for your comments about evidence which Mr. Bruton has given concerning this meeting.

We have the handwritten letter, but I'd prefer, if everybody is happy with that, that I'll read from the typescript. It's just easier for me.

And the letter reads:

"My Dear John,

"Thank you for dropping in on Sunday morning for the proverbial 'cup of tea'. I hope that our conversation served to convince you, or at least explain to you how disappointed I am at the course of action taken by the

present Government in regard to 'private business' as it is quaintly described. I and my colleagues are alarmed at the inattention of certain Ministers, and equally alarmed that we have become something of a political football in other areas of our business.

Counting:

Heinz

Independent Newspapers

Fitzwilton

Waterford/Wedgewood

Arcon

Our hotels which include Ashford,

Dromoland and Portmarnock, in which we have over 25% ownership

Wellworth in Northern Ireland.

"We employ over 10,000 people in Ireland and well over 100,000 people worldwide. We pay taxes, VAT and PRSI directly and indirectly like every other company, and I have to say that we have not in any of our enterprises received any help or encouragement from the present Government or the Ministers.

"Waterford/Fitzwilton is perhaps the greatest success story in Irish business in the last decade. To take a company that was bankrupt, with almost 300 million of tax loss carry forward, was overstaffed and overpaid, and make it the company it is today, after taking a strike, proving that outsourcing works, and at the end

giving permanent employment to the workers that remain without costing the Government anything, is an example that should be copied by all our State and semi-State companies.

"At Independent Newspapers, the conduct of the Competition Authority was frankly disgraceful. The Authority was rude to Liam Healy and David Palmer and gave the clear impression that they had made up their minds before the arguments had even been heard. To opine that the Irish newspaper market need not take account of the UK newspapers was completely incompetent in defining the 'relevant market' a fact clearly stated by the Newspaper Commission when it reported a few weeks ago. The matter is now closed, but it must be clear to even the most biased observer that the enemy is not within but without it is in the person of Rupert Murdoch, whose affection for Ireland is not among his most discerning characteristics and that if Ireland is to have an indigenous print industry is going to have to have support from every quarter if it is to repulse the long-term efforts of Rupert Murdoch and its lieutenants in Ireland from simply taking over the Irish media scene through BSkyB, The Sun, The Times, The Sunday Times and News of the World.

"To date we have received absolutely no encouragement from the relevant minister or his officials in trying

to level the playing field. Indeed our feelings after meeting on Monday of this week and here I include also The Irish Times is quite to the contrary.

"I am also including the interim report of Arcon plc which after visiting the High Court twice and the Supreme Court once is building Ireland's first mine in 25 years. Again, it required no monetary support"

A. I think that's "from Government".

Q. "From Government" sorry, it's a misprint.

"(i) has to widen roads in Kilkenny,

"(ii) pay money to have the ESB come on, and

"(iii) provide at their expense, a water supply to all local residents whose wells(sic) are in any way depleted "

A. "Whose wells".

Q. "Wells", that must be of course.

"(iv) post a prepaid bonus for the mine closure in 10 years' time.

"As a family, we have over \$60 million in this mine while the Government cannot help on the world price of zinc or the dollar, it is clear that the same incentives that apply to Heinz in Dundalk do not apply to Arcon at Galmoy (my view, mining which is so labour (male) intensive and so beneficial, if successful to the economy, should be immediately encouraged and should be put under Forbairt as a matter of urgency.

"PHL has been the subject of a direct letter (which I might add is confidential to you) from Brendan Hopkins. The figures speak for themselves and do not require amplification from me. What is required is an immediate meeting with Sean Donlon and the committee of PHL which should address each of the points raised in Brendan's letter. I might add that we are under acute pressure from our partners in the venture in relation to the terms under which they made their original investment.

"All in all, it has been a rather joyless period for our endeavours, and I hope that I have conveyed the rationale of this to you in this letter. I fully understand the many complications of coalition and the many pressures that you labour under daily, both at home and abroad. I have no wish to add to these, but felt I should respond openly and frankly to our initial interests as we see them.

"Please give my best wishes to Finola," etc.

It's a personal comment.

I think you then refer to a copy memorandum of a meeting between Liam Healy and Brendan Hopkins of Independent, and Sean Donlon and Mike Burns, Government representatives, on the 4th September, 1995.

You say "This is obviously the meeting which Mr. Lowry is referring to. It is notable, contrary to his

assertion, that neither David Palmer nor the late John Meagher were present at this meeting. It is also notable that the meeting was concerned entirely with Independent's frustration at the Government's complete unwillingness to take action against the pirate MMDS operators. Prior to conclusion of the meeting, both Liam Healy and Brendan Hopkins hinted that Independent would resort to litigation against the Government (the State) to protect its corporate interests, hence the reference to the Government losing Independent Newspapers as friends. It is worth mentioning that Independent's partners in the MMDS ventures were at that time adamant that litigation should be immediately pursued. Independent were reluctant to commence litigation until all other methods of resolution had been exhausted. As it happens, the envisaged litigation was subsequently instigated by Independent and its partners against the State as a result of the State's failures to close down illegal pirate MMDS operators. High Court proceedings were issued against the Minister for Public Enterprise, Ireland, and the Attorney General and the Director of Telecommunications Regulation on the 15th September, 1997".

Now, we do have that memorandum as well. This was opened yesterday at the Tribunal when Mr. Donlon gave evidence. But I'll just run through it quickly.

And I should say that Mr. Donlon agreed with the content of it, corrected a few matters, and just reflected where there might have been slightly different emphasis.

"1. Donlon said the Carrigaline situation was a '4 seat problem 2 in Cork and 2 elsewhere'. 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 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 the air whilst the Supreme Court heard their appeal. It is likely that he 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 could take over subscribers at the $\frac{1}{2}$ 30 current level and increase them over time, it may be possible to persuade the pirates to stop. This 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 $\frac{1}{2}$ 250 each, i.e. $\frac{1}{2}$ 5 million, and in addition the lost revenues would amount to a

further $\frac{1}{2}$ 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 $\frac{1}{2}$ 30 PA and the other was paying $\frac{1}{2}$ 180 PA. It would make a mockery of PHL's charging and would undermine all businesses 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 would only encourage other pirates to continue to operate and expect to be simply accommodated.

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

" extension of the current licence.

"Donlon said that 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.

"2. Granting of telephony licenses.

"Donlon said this was not on the table until 1 January 2000. He said there would be no cutting of the

time-scales as the recent investment by KPN had been predicated on the 1/1/2000 timescale.

"3. Disposal to PHL of Cablelink.

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

"5. 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 tendencies would be to take action against the Government to recover damages over the 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 that this would at least solve their Cork problem and ensure the 4 seats were safe.

"He said that this would lose Independent Newspapers as friends and would mean any future administration would have a large bill to pay.

"The meeting ended."

You then refer to a letter sent by you on the 6th September, 1996, to the Taoiseach, John Bruton. This letter, which enclosed a copy of the meeting

memorandum that we have just referred to, you say speaks for itself. You say that Mr. Lowry has informed the Tribunal that sometime after the announcement of the GSM licence decision, which you understand to be late October, 1995, you conveyed to the Government of the day your extreme displeasure at the fact that the consortium to which Independent was a party had failed to obtain the licence. You said that this was completely untrue. Similarly, it is untrue to suggest that you were seriously aggrieved and annoyed with the non-award of the GSM licence to the consortium which included Independent and relayed these feelings directly to the then Taoiseach, John Bruton, TD. You did nothing of the sort. The Independent executives involved with the GSM application were Brendan Hopkins and Liam Healy. As non-executive Chairman of Independent at the time, you and other board members would have received briefings from time to time as to when major issues arose. Apart from receiving briefings, you played no role in the GSM licence application.

Now, I'll just open that letter to Mr. Bruton.

"My Dear John,

"As you know, I regularly extol the advantages of investing in Ireland around the world and am pleased to be a member of your adviser group in the US. For example, next month I have agreed to speak at a panel

of CEOs at the US Conference on Trade and Investment in Ireland to be hosted by the Secretary of Commerce.

One of Ireland's major attractions is its reputation for being pro business and for having laws that provide a level playing field for investors.

"You can imagine my surprise therefore to receive the attached private note of a meeting between Liam Healy, Brendan Hopkins, Sean Donlon and Mike Burns which has very serious implications for all investors in Ireland, and in particular, an important investment in multi-channel television by Independent Newspapers and our American partners, TCI and UIH/Phillips, two of the world's largest names in cable and electronics.

The impression I receive from this note is that the Irish Government is willing to risk its pro business reputation and yield to populist agitation by hiding behind rather than using the legal process. The investment is now over $\text{€}1\frac{1}{2}$ billion, and last week all partners signed a bank agreement with the Bank of Ireland.

"You are aware from Brendan Hopkins' letter of the losses that all these companies have already incurred because of the State's unwillingness to enforce the law of the land. The courts have instructed the Department of Communications to review Carrigaline's application for a licence. This should have been completed expeditiously, yet already it is a year

since the Court instructed the Department. The pirates' application is not viable, and the Government should immediately apply proper enforcement procedures which effectively end any illegal broadcasting. Of course Carrigaline will then be free to appeal the Department's ruling to the courts. However, they must not resume broadcasting during that process. To allow broadcasting to continue during the prolonged appeals procedure would make a mockery of the legal process designed to protect commerce. You can see from the note that the only immediate alternative offered by Sean Donlon would undermine the business rationale of our remaining cable operators and be totally unfair to law-abiding citizens.

"I am, therefore, forced to ask you, is it Government policy to encourage pirates and business operations to break the law of the land to the detriment of Irish and international investors? The answer to this question, in the light of my rather detailed note to you on the subject, will be of great importance to us and to our position in assessing our future plans.

"I look forward with some urgency to hearing from you.

"All good wishes,

"Yours sincerely,

Anthony J F O'Reilly."

Now, you say that these documents support your recollection that it was in the period June to

September, 1996, that Independent Newspapers plc and its international partners became very concerned about the continued operation of the pirate television broadcasting operators; is that correct?

Now, turning now, you say at paragraph 15, "I should mention that I did meet Mr. Lowry on one other occasion. This meeting, which I recall, was the first time I met with Mr. Lowry, and it took place at the opening of the Arcon mine in Galmoy on the 15th September 1995".

You say as mentioned at paragraph 3 above, you believe this to have been your first meeting with Mr. Lowry.

You say that as you recall, after the official opening ceremony, you were proceeding with a number of guests, including Mr. Lowry, whose constituency was proximate to the mine, towards the refreshment tent. Mr. Lowry made a comment to you along the lines of "Your fellows didn't do too well today." You told him that you did not understand what he was saying. You say he explained to you that he was talking about the presentation, or presentations, which were being made by various applicants for the second mobile phone licence. Independent was at that time an applicant for the second mobile phone licence in a consortium with six other companies, including the American telephone company, AT&T. Mr. Lowry explained to you that the "your fellows" which he was referring to were

in fact the AT&T representatives who had earlier that day made a presentation to the departmental panel in charge of selecting the successful applicant.

You informed the Tribunal that you are aware that the Esat consortium was named as the successful applicant on the 25th October, 1995, and that you wish to emphasise that on this occasion, you neither raised with Mr. Lowry the issue of the GSM licence nor approached him about it. You say, in fact, you were unaware that "your fellows" were that morning making a presentation to his Department. Further discussion with him about the matter was somewhat brief, to say the least. Your personal awareness of Princes Holdings' involvement in the application was very limited indeed, and as you recall, the remainder of your conversation related to the Galmoy mine and its future.

You say that you are very surprised that Mr. Lowry is making unfounded allegations against you and can only suspect that he is doing so in order to cause you as much damage as possible. The needless controversy which a public ventilation of these unfounded allegations would generate, would undoubtedly cause damage to you, irrespective of any vociferous public rebuttal. If the Tribunal wishes you to clarify anything else in the statement, you say you would be happy to do so.

Now, I think as matters proceeded, I think, and it was brought to your attention, the date on which the consortium in which you had an interest made its presentation to the departmental or to the Project Team. I think you furnished the Tribunal with a further statement which is virtually the same as the statement which I have just opened, and I just want to go to I think it's paragraph 14 of the second statement, and I'll just open the whole of the paragraph.

Perhaps I should open paragraph 2 as well. First of all, I'll open paragraph 2.

You say in paragraph 2 of this statement: "I will deal with Mr. Lowry's allegations on a point-by-point basis, but you wish to make it absolutely clear that "I never informed Mr. Lowry that I expected that my consortium would be successful in relation to its application for the second GSM licence".

You say you will outline the circumstances of your meeting with Mr. Lowry in greater detail below, and you will explain why you believe that you met Mr. Lowry during the Derby weekend of June 1996 and not July 1995, as suggested by him. However, before doing so, you should mention that it has been drawn to your attention that Mr. Lowry was invited as a guest of Heinz to the Heinz 57 Phoenix Stakes at Leopardstown on Sunday, 13th August, 1995. You were informed that

Mr. Michael Lowry TD and guest are listed as having been amongst two of 631 people who accepted such invitations to the races that Sunday. The invitees would have included politicians from all parties, business people and individuals from all walks of life. You are not aware whether or not Mr. Lowry attended on that occasion, as you cannot recall meeting him that is, on that occasion; that's the 13th August, 1995.

Now, I turn to paragraph 14, and I'll read the whole of the paragraph.

You say that you should mention that you did meet Mr. Lowry on one other occasion. This meeting which you recall was the first time you met with Mr. Lowry and took place at the opening of the Arcon mine in Galmoy on the 15th September, 1995. You say as mentioned at paragraph 3 above, you believe this to have been your first meeting with Mr. Lowry, and as you recall, after the official opening ceremony, you were proceeding with a number of guests, including Mr. Lowry, whose constituency is proximate to the mine, towards the refreshment tent. Your recollection is that Mr. Lowry made a comment to you along the lines of "Your fellows didn't do too well today". You told him that you did not understand what he was saying. He explained to you that he was talking about the presentation which was being made by various applicants for the second

mobile phone licence. Independent was at that time an applicant for the second mobile phone licence in a consortium with six other companies, including the American telephone company, AT&T. Mr. Lowry explained to you that "your fellows" which he was referring to were in fact the AT&T representatives who had made a representation to the departmental panel in charge of selecting the successful applicant.

You then and this is the correction you make you have recently learned that this presentation was made the previous day, the 14th September, 1995. You can therefore only presume that your recollection is not one hundred percent correct and that Mr. Lowry must have said to you "Your fellows didn't do too well yesterday". The fact remains that such a statement was made to you by Mr. Lowry. You were aware that the Esat consortium was named as the successful applicant on the 25th October, 1995, and that you wished to emphasise that on the 15th September, 1995, you neither raised with Mr. Lowry the issue of the GSM licence nor approached him about it. In fact you were totally unaware that "your fellows", as he had put it, had the previous day made a presentation to his Department. Further discussion with him about the matter was somewhat brief, to say the least. Your personal awareness of Princes Holdings' involvement in the application was very limited indeed, and as you

recall, the remainder of your conversation related to the Galmoy Mines and its future.

Now, I think that's the statement that you made to the Tribunal

A. Could I just add a little point. In regard to paragraph 12 in my second statement, I did append a letter.

Q. Yes, indeed. And I have that. And that's a letter that you sent to Mr. Denis O'Brien after the announcement of the result of the competition; isn't that correct?

A. Right.

Q. And I'll just put that letter up. I should perhaps go to paragraph 12 for the moment, because you again revisit some of the matters that you dealt with in the first statement; but dealing with the question of being seriously aggrieved and annoyed, words used by Mr. Lowry in his statement, you say it is untrue to suggest that you were seriously aggrieved or annoyed with the non-award of this licence to Irish Cellular Telephone limited. Your thoughts in relation to the GSM award, such as they were, are probably best encapsulated in a letter which you sent to Denis O'Brien on the 30th October, 1995, very shortly after it had been announced that his consortium was to receive the licence. And you say for ease of reference, you attach to this statement a copy of that

letter.

And the letter is in these terms: "My Dear Denis,
"Many years ago at Blackrock Baths I watched your
father diving in the national championships, I think
against a certain Eddie Heron. The multitude of the
Kavanagh brothers were there flexing their pectorals,
and I was sure your father would win an Olympic gold.

"In fact he didn't, and you did, and I think your
achievement in securing the second digital network is
its equivalent. I wish you and your colleagues every
success.

"Please convey my best wishes to your father.

"Yours sincerely."

That's the note you sent to Mr. O'Brien after the
announcement of the competition.

Now, I just want to ask you now, Mr. O'Reilly, I think
as you say in your statement, you were contacted by
the Tribunal, and through your solicitor, and informed
of certain matters which Mr. Lowry had stated had
happened between you and he; isn't that correct?

A. Correct.

Q. And in the first instance, I think it was brought to
your attention that Mr. Lowry had stated that he had
met you at the Derby in July of 1995, the July Derby
at the Curragh, and that in the course of a
conversation in your box, that he says that you
discussed his consortium's application for the second

GSM licence and that you sought to impress upon him your commitment to Ireland and your investment in Ireland. Isn't that correct? And he says that you also dealt with the question of the MMDS and used words to the effect that you demanded the closing down of the pirate operators.

I think that is how you were first approached by the Tribunal

A. I got to be here.

Q. And you were asked about this; isn't that correct?

A. Yes.

Q. And I think he also and it was also brought to your attention on that occasion, in that statement which he furnished to the Tribunal, dealt with a meeting which you had, or Mr. Bruton had at Glandore with you, and a report back from that meeting, and a report back from a meeting which Sean Donlon had with two of your executives; isn't that right?

A. That's correct.

Q. Now, these were the matters that were brought to your attention, and these were the matters you were addressing in your response in the first instance; isn't that right?

A. That's correct.

Q. And in the course of giving that response, you informed the Tribunal that to your best recollection, the first occasion that you had met with Mr. Lowry was

at the opening of the mine at Galmoy in September of 1995; that is, the 15th September, 1995?

A. Correct.

Q. And you also informed the Tribunal that at that opening, what transpired between yourself and Mr. Lowry, and that he had said words to the effect that "Your fellows hadn't done too well", you thought "today" in the first instance, you now you believe it must be "yesterday"?

A. That is correct.

Q. Now, you were non-executive Chairman of Independent Newspapers at the time; is that correct?

A. That is correct, yes.

Q. And did you hold a similar position in Princes Holdings, or did you hold any

A. I held no position whatsoever in Princes Holdings.

Q. But Princes Holdings was a vehicle through which Independent Newspapers effected, or your interests effected investment; would that be a fair way

A. That's correct, yes.

Q. And I think Princes Holdings and Independent were part of a consortium, along with AT&T and others, applying for the second GSM licence?

A. Yes.

Q. Did you have any hands-on role in relation to the application for the second GSM licence?

A. None whatsoever.

Q. Did you have any detailed knowledge of what was involved in the process of applying for the second GSM licence?

A. Almost none.

Q. What type of information would have been conveyed to you as a non-executive Chairman of a company in relation to a matter of that nature, or can you remember specifically in relation to this application?

A. Well, if there was a large sum of money involved, the matter would come before the board of Independent Newspapers eventually, and approval would be sought for an investment of that nature. At this stage, it was very much a prospective investment. It was being handled by Brendan Hopkins primarily, and Liam Healy, who was the CEO at the time, and I had virtually nothing to do with it, and it did not come before the board of what is now Independent News & Media.

Q. Specifically, did you have any knowledge of the application itself, in other words, the bid or the tender or what was involved in that?

A. Really, I have to say, virtually no.

Q. Did you know, in general terms, for example, that it was going to be a competition, a beauty contest in the first instance, before it was adjourned as a result of the intervention of the European Union, with an auction element in it, would you have had

A. I have to say I would not have been aware of that.

Q. Would you have been aware, for example, that there had been perhaps intervention by the European Union which caused a postponement of the competition, or would you have

A. No, I would not have been aware of that.

Q. Would you have had any knowledge of what was involved in the competition, in other words, what the makeup of the evaluation of departmental panel or panel of evaluators might have been, or anything that have nature?

A. No, absolutely not. I would have had no knowledge of that nature. And I was, I need hardly remind you, full-time Chief Executive Officer of the AJ Heinz Company in America at that time, so I'd be unaware of these things until it came to, certainly to a degree of fruition before being put to a board.

Q. Did you have any knowledge of the ground rules of the competition, what was involved?

A. No.

Q. Specifically, did you know anything about the internal workings of the departmental officials in respect of the running of this competition?

A. No, I did not.

Q. Were you aware that they had adopted a protocol of confidentiality over and above their obligations as civil servants in the normal course of events?

A. No, simply because I wasn't privy to the process; that

we were, as I say, almost marginally involved in at this stage, I was not involved.

Q. Specifically, were you aware of the fact that this protocol which was adopted by the group of evaluators was brought to the attention of the then Secretary of the Department, Mr. John Loughrey, who brought it to the attention of the Minister, Mr. Michael Lowry?

Were you aware of any of that?

A. No, I was not aware of that.

Q. When you furnished your response to Mr. Lowry's statement which had been brought to your attention by the Tribunal, and you made reference to the meeting at Galmoy and what you say Mr. Lowry said at Galmoy, were you aware that this was a competition which was supposed to be a sealed competition, even sealed from the Minister? Were you aware of that?

A. No, I was not aware of that.

Q. And when Mr. Lowry spoke to you at Galmoy on the 15th September, 1995, what was your understanding of I know what you have told us he said to you, and you asked him what did he mean about the term "your fellows", and you say he referred to "your fellows" being the AT&T representatives who had made a presentation, did it seem in any way unusual or amiss to you on that occasion?

A. Not really, because I was very concentrated on the opening of the mine that day. And Mr. Lowry had been

extremely efficient and speedy in helping us to get that mine underway. We had been in the process of opening that mine from 1992, and it went through a series of iterations and protests, visits to the High Court, visits to the Supreme Court, and there was a decision taken by Mr. Cowen, the previous Minister, to issue a mine licence, and then there was a change of Government. Mr. Lowry read himself expeditiously into the brief and was helpful in every way in getting us to the point of opening that mine on that day, and I was quite excited to be there with him and to meet him for the first time at that opening.

Q. You see, I just want to make it clear, and I think the Tribunal made it very clear in the Opening Statement delivered by the Tribunal, why matters are now being pursued with you.

The reason why the Tribunal is interested in this evidence is that if Mr. Lowry said that to you, the Tribunal stated in the Opening Statement on the 5th December, 2002, that "It would appear that the GSM competition process, and more particularly the oral presentation part of that process, may have not remained intact and may have been compromised."

That's why there is a focus of inquiry at this stage.

A. I see.

Q. Now, for that reason, there may be other matters which may seem to you irrelevant, namely the whole question

of your conversations with John Bruton and your attitude to the Government, but these are significant in testing your evidence, Mr. O'Reilly, and I'm going to do that now and explain why I am doing it so that you and the public can understand why I am doing it.

First of all, do you have any doubt in your mind but that Mr. Lowry spoke to you in the terms you say he did at Galmoy on the 15th September, 1995?

A. None whatsoever. I mean, it was such a strange turn of speech to me, because I wasn't quite sure who "our fellows" were.

Q. Now, can I ask you this: You have said in your statement, or statements statement; we'll call it that that you never discussed the question of the second GSM licence with Mr. Bruton at Glandore in July, I think, of

A. 28th July, yes.

Q. Of 1996.

A. Mmm.

Q. Now, Mr. Bruton has given evidence that at that meeting, you did mention it, but in fairness, Mr. Bruton has put it this way: that if you were to use the expression "aggrieved and annoyed", that that might have been an expression that he would feel might be appropriately attributed to your views about the MMDS and the operation of what you considered to be the Government's inaction in relation to pirates

operating in

A. I think that would fairly describe my views on the deflectors, yes.

Q. He said that when you mentioned the second GSM, that it was in the context really of a disappointment, a general disappointment, amongst a statement that you were generally disappointed in, I suppose, recognition of business commitment that you had made to this country. Now, do you remember having any discussion at all with Mr. Bruton, even in those terms, at Glandore?

A. No. I must confess to being a friend of Mr. Bruton's; we have been friends for a long time. He and I have a shared admiration for a former Irish politician of some stature called John Redmond, so I always call him, address him in the terms of the Secretary of the Kilcullen branch of the John Redmond Society when I meet with him, and so the conversation would be very clear to me, and my recollection of it would be very clear to me in that I would have a relationship with John Bruton which, in my view, would be absolutely trustworthy.

I have read John Bruton's evidence, and he appears to be somewhat tentative in his recollection of what actually went on at the Glandore meeting. I have no such tentativeness, and I have put it down in writing; I put it down a day and a half later. I sent it to

him. There appears to be no documentation contemporaneously on his side which contradicts that or which says that the GSM licence was mentioned. It wasn't mentioned, and the letter that I wrote to Denis O'Brien is, in my view, my last thoughts on the mobile licence.

Q. Now, Mr. Donlon said that when he had the meeting with Mr. Healy and Mr. Hopkins, that again, the central issue, and was always the central issue, was the MMDS matter. And I think again Mr. Donlon, although he said the meeting was cordial, but I suppose, being a former senior diplomat, he said he was left in no doubt of the views of the Independent Group about this question of the MMDS?

A. That's right.

Q. And what he perceived to be a hostility towards the Government arising from that, at least?

A. I think "hostility" may be a pejorative word in this case. I believe it was a straightforward commercial proposition. The law of the land was not being enforced. It should be enforced. The Government was dragging its feet. The memorandum was clear that it was dragging it for political reasons. Our partners were seething with us as well as with the Government at the amount of money they were losing in Ireland, and so the atmosphere, I would say, was just simply one of, "Here's the commercial situation; it is

somewhat fraught, and we want to convey it to you so you can convey it to others as vigorously as possible". I think that's the background of the meeting.

Q. Yes, I suppose maybe

A. I think "hostility"

Q. People I suppose the term "hostility" might arise when I come to ask you about the famous front-page editorial on election day which is definitely seen, I think both by Mr. Donlon and Mr. Bruton, as having been unfair and perhaps related to a hostility which what Mr. Donlon described as "O'Reilly interests", I'll call them "Independent Group interests", had towards this Government as regards its business activities in Ireland.

A. Well, I presume we'll get to discuss the issue of the division between the clear commercial interests of our newspapers and the independent editorial policy of all our papers around the world at a later stage. But I would make a comment, just make a comment in regard to the point that you make, that in that particular election which Mr. Donlon and Mr. Bruton referred to, Fine Gael increased their votes from 24.5 to 27.9% and the number of seats they held from 46 to 54.

I'm not sure what the point is. It could be that the front-page editorial helped them.

Q. Well, I suppose their point is that it wasn't designed

to help them, would be a fair way of putting it; but

I'll come to that in a moment, if I may.

A. Yes.

Q. I want to yes, I think both Mr. Donlon and Mr. Bruton, and it might appear understandable that in defending a commercial interest where $\text{€}1/275$ million, which was not an insignificant sum of money at that time or now, but it was a big sum of money, had been invested, and where there were significant losses, and I don't think that either Mr. Donlon or Mr. Bruton were suggesting that there wasn't validity in the argument being put forward that the law was not being complied with, as you saw it.

A. Enforced.

Q. Or enforced, but that there were political issues as well. And I think there was reference to the number of seats in Cork?

A. Right.

Q. And there was an attempt to broke some sort of a deal in that regard.

A. And we were under acute pressure. My letter of the 28th July, and my letter of the 6th September, and the meeting, all direct themselves to the issue that a big bill will have to be paid by the State if this is not rectified. And the following year, if you recall, a Statement of Claim went in for $\text{€}1/2100$ million against the State.

Q. Yes. Now, I think another point that would be made by Mr. Lowry, and perhaps Mr. Bruton as well, and was made by Mr. Bruton, the suggestion by you, where there is a statement to the effect that they would lose Independent as a friend, was really a reference to this potential litigation that you talk about?

A. Absolutely unequivocally.

Q. But surely, again looking at it and separating purely commercial matters from friendship or emotional matters, it would, in the normal course of business, not be unusual for people to be involved in litigation with the State even though one's friend might even be the Taoiseach; that happens in business the whole time, doesn't it? Surely it's not

A. It's not really about the non-enforcement of the law.

Q. It's not specific to a Taoiseach; it is the State that is being sued in a situation like that?

A. Exactly. And I think our grievance was against the non-enforcement by the Government, or a Minister, or the State, of a piece of legislation that clearly was causing us a great deal of loss.

Q. And what is being suggested, I think, is that one couldn't reasonably take the view that a commercial entity suing the State would result in a loss of friendship, but that this was at least perceived to be a threat of using the media muscle of Independent Group to cause difficulty for the Government?

A. I would think that would be the sort of criticism that might be made by our competitors and rivals, etc., but I think it is absolutely, unequivocally clear from the letters that this particular use of the word "friends" related specifically to losing us as friends in this debate internally within our consortium to stop them from taking the State to law and allowing us to exhaust all the various means that we could to remedy the deflector crisis.

I'll deal with the wider issue, if you wish, now or later.

Q. I'll come to that, because I want to now ask you something you see, Mr. Lowry also says that after the meeting Mr. Donlon had with Mr. Healy and Mr. Hopkins, Mr. Lowry uses the expression that Mr. Donlon informed him that he was persona non grata. Now, as to whether Mr. Donlon would have used that particular term, but he certainly wasn't he got the impression that he wasn't "flavour of the month" with Independent Group. And Mr. Lowry responded that he knew that himself; he had heard it from the horse's mouth, which was yourself, in relation to the MMDS in particular.

A. I think that's absolutely untrue. It's not anyone who knows Liam Healy couldn't possibly conceive of him using the word persona non grata, or thinking it. And the same is true I have checked this with Mr. Brendan Hopkins, and he has denied it. I was not at

the meeting, and I certainly didn't use it myself.

Q. In fairness, Mr. Donlon probably says he wouldn't have used the term *persona non grata*, but we all know what he means. Like somebody could take it up if they were told 'you are not flavour of the month' or 'they are not too happy with you,' one might use it Mr.

Lowry might use it to mean the same thing in those circumstances. I am not sticking anyone to specific words. But Mr. Lowry was undoubtedly the Minister responsible for the MMDS as well; isn't that right?

A. That's correct.

Q. And you

A. We were asking him to do his job.

Q. You and your fellow investors were certainly well, you were annoyed that that Department was not doing what you understood to be its job; isn't that right?

A. Yes, I think the word "aggrieved".

Q. "Aggrieved"?

A. Yes.

Q. So I now want to ask you in those circumstances, first of all, you say that as regards your recollection of the conversation you had with Mr. Lowry on the 15th September, 1995, that you have no doubt that that took place. So you say there is nothing wrong with your recollection, although you are correct to the extent that it's not a hundred percent recollection, because in the first instance you thought he said "today",

whereas he must have said "yesterday", meaning "your fellows".

A. Yes.

Q. I now have to ask you this: Because of you being aggrieved at what you understood to be Mr. Lowry's Department and Mr. Lowry not enforcing the law, I have to ask you if you are motivated by malice towards Mr. Lowry and that you made up this conversation to cause difficulty for him before this Tribunal or anywhere else.

A. Absolutely not. I have no malice whatsoever against Mr. Lowry, and certainly had no malice whatsoever in regard to this matter. It's a matter which was a Minister and his Department being asked to do to enforce the law of the land, and the question of malice would not come into that. I think it was quite clear from the demonstration of Mr. Donlon's reply that he considered it to be a political issue. There were four seats, and in fact, if you recall, in Carrigaline, a seat was won, and there was a TV deflector candidate elected in Donegal, so it became a real issue. It was a very important so to

Q. I know that.

A. So when people are saying they can't enforce the law of the land because of politics, you don't feel maliciously against them. What you feel is affronted, and you say there are consequences. And I think I

tried to outline those in my letter to John Bruton.

Q. Well, what I am specifically is the conversation at Galmoy. Did you make that up

A. On the contrary

Q. to cause Mr. Lowry difficulties?

A. No, absolutely not.

Q. Now, there can be little doubt but it's public knowledge that on election day of 1997, The Irish Independent, I think perhaps for the first time in its history, is that correct, carried an editorial on the front page, and under a banner headline, I think "Payback time"; is that correct?

A. Yes. I don't think it was a banner headline, but it was a front-page editorial, which is, as you say, unusual. I am not sure if it was the first time in history, but it is unusual.

Q. And I'm correct in understanding the situation that it is significant when an editorial is expressed, that is the view of the paper; isn't that right? That's the paper perhaps advocating a position, as opposed to any columnist in the paper saying anything; isn't that right?

A. Well, yes, I accept that. I mean, many different papers I'll talk a little later about the Washington Post, in which I was a member of the board for a great number of years, and they have an editorial page editor and they have the editor of all

the rest of the paper. And you will all, I think, as an audience, know the name of the editor of the paper from the Watergate story; it's Ben Bradlee. But he was not editor of the editorial page. So many papers approach editorials as being the voice of the paper, but the voice of the news may be slanted quite differently.

Q. Yes, I understand that, and even columnists in the paper can be slanted. In fact one can see in the papers columnists have diverging view

A. Contradict each other.

Q. Contradict each other, yes, I can understand that. But when the editorial is published, that's the stated view of the paper?

A. That's the stated view of the editor of the paper.

Q. Of the editor of the paper. I want to ask you, did you cause that editorial to be published first of all, did you have any input into the content of that editorial?

A. Absolutely none, nor do I interfere in the editorial process whatsoever in the Independent News & Media Group throughout the world. And I might at some point in time just talk a little bit about the Group and how we differentiate between business and editorial policy.

Q. Yes, so you did not cause that editorial to come into being?

A. Absolutely not, nor did I know it was going to be on the front page.

Q. And did you not know it was going to be on the front page?

A. Absolutely not. In most cases I mean, I have been living for 30 years in America. In most cases I don't see The Irish Independent for at least five to ten days after it's printed.

Q. And is that a policy which is pursued in all other newspapers coming under the umbrella of the Group?

A. Absolutely. And I was just reflecting on the fact that there are interventionalist papers and non-interventionist papers, and I would put the Independent News & Media Group as a strongly and staunchly anti-interventionist group. We publish in 6 countries. 70 percent of our business is outside Ireland. We have 20 daily papers throughout the world. We print 14 and a half million papers per week. It would be impossible to try and interfere editorially, even if one wanted to, in all of those. The editorial policy of the paper is administered under the broad remit of an editorial policy which is accepted, I think, right across the Group. And that Group is that we are independent, we are non-violent, we are non-sectarian, we are anti-apartheid. In Europe we are pro European. We are free trading, mixed economy. They are the views of our newspapers,

and within that remit, the editor has absolute and complete authority.

And it is not many people I think refer to me loosely as the proprietor of the paper. I am not the proprietor of the paper. I am a very large shareholder of the paper. If you own 51 percent, you might be able to say you were the proprietor, Mr. TV Murphy in the old days, before it became Independent News & Media today, had the A and B shares, and he had the A voting shares and controlled editorial policy, and he was the owner. I am not.

And the board of directors does not interfere, nor does any individual CEO or Chairman, in the editorial policy of the paper. And that can be ascertained by direct contact with any of the editors in the Group.

That stretches into those areas of the world in which there are very combustible situations, like South Africa, and Belfast, and obviously London, where we have the London Independent, and its stance on the war, which is a very, very strong one, anti-war, etc., which causes offence to a great number of people, the board of directors do not interfere whatsoever in that. That is the sole province of Simon Kellner, the editor.

Q. It could be said and I take your point that you view yourself, as a group, non-interventionalist, is how you describe The Independent, but not

interventionalist, and I take your point about The London Independent and the role and the position it may have taken on the war in Iraq.

A. And on the Hutton Report.

Q. And on the Hutton report. But would you agree the editorial on election day 1997 could be described as being interventionist, an editorial on the front page?

A. It could be described by enemies as interventionist.

As I say, the results for Fine Gael don't seem to bear it out, but

Q. I appreciate that.

A. But allowing that the the general view, I would say, about the Independent News & Media is that the governments always feel they are being maligned by it, whatever Government, and opposition feel that they are being ignored by it.

Q. I understand that as well. But would it also have been a view that the historical view of the newspaper, The Irish Independent, from the time of the foundation of this State, might have been that it was one that it was more benignly disposed towards that party which came into power at the foundation of the State? Would that be a correct view?

A. William Martin Murphy was, as you know, a member of the old Irish Parliamentary Party and was a strong Parnellite in his time, etc., and of course the early

impetus was that he was the owner of the paper. I suppose I don't know, because I have never checked. I suppose that the Murphy family continued that policy. The policy that I have tried to adopt, and my fellow colleagues on the board, is to be strongly commercial, to separate completely the editorial from the commercial side of our business, to strive for profit and to be accountable to the sort of remit that I outlined to you in regard to the broad policy of our papers all over the world. And as I say, 70 percent of them are outside Ireland.

Q. Now, I take it that on a day-to-day basis, directors wouldn't know what was going to be in the paper at all, or what editorial might be in the paper?

A. Nor the Chairman.

Q. Nor the Chairman sorry, I use "directors", I include the Chairman. But on an issue like where are we going on an election? Are we taking a position? Is that something that would be discussed by the editorial board with the directors or Chairman?

A. It would not be discussed by the board, either formally or, importantly, informally. I think the minute books of our paper will reflect that there have been no such decisions ever taken by the paper, certainly in the 30 years I have been associated with them.

By the way, I should just clarify for you the fact

that we have boards of directors, not just the board of directors sit in Dublin, being the legal board of directors, but we have a board of directors in Belfast, we have the one in London, we have one in South Africa, we have one in Australia and one in New Zealand, and in addition, we have an international advisory board which is constituted under the Chairmanship of Ben Bradlee and includes people such as Brian Mulroney, former Prime Minister of Canada, Ken Clarke, the Chancellor of the Exchequer, a great number of South Africans who are quite important to us, and people from Ireland such as Maurice Hayes and Dermot Gleeson, etc., on that board. And that board sounds it's an advisory board; it simply advises how we are doing around the world and

Q. You see, I suppose, I have to ask you this: If the view was taken by obviously taken by Mr. Bruton, and perhaps his other colleagues in Government, that it was I think he put it in a fairly low-key way himself when he said that such an editorial, I suppose, directed at a Government that had presided over a 9 percent growth in the economy was and I forget the exact word he used; it was perhaps "perverse". That may be a difference of view. But I'm more concerned with something else here, and what I'm concerned about is testing your evidence about this conversation that you say happened at Galmoy of

1995. And the reason I am asking you is, were you in any way maliciously disposed towards the Government of the day or, in particular, Mr. Michael Lowry, which caused you to make this statement to the Tribunal?

A. Absolutely not.

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

CHAIRMAN: Well, Mr. O'Reilly, I don't think you are going to be one of our longest witnesses, but you have still enticed a somewhat larger list of potential examiners than many other witnesses, so we'll just see what progress we can make.

Mr. Fitzsimons, have you anything to raise?

MR. FITZSIMONS: No questions.

CHAIRMAN: Mr. Nesbitt?

MR. NESBITT: Mr. Chairman, yes.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

Q. MR. NESBITT: Mr. O'Reilly, I appear for the Department of Communications, among others, and I am interested in the events that attended upon your visit to the opening of the Arcon mine.

Now, you have explained how Minister Lowry had come into the picture as an appropriate Minister concerning that opening, and you found him to have dealt with that in a business-like way, and you had certainly no axe to grind with him when you attended the opening of the mine?

A. On the contrary.

Q. Now, I think as I understand your evidence, at that point in time, although your business interests were in turn interested in Irish Cellular Telephones, you had a Chairmanship role but not much else; is that right?

A. Sorry?

Q. You had a Chairmanship role in that consortium, but not much else?

A. A Chairmanship role in what consortium?

Q. Irish Cellular Telephones, the consortium that was moving forward with your interests involved for the second GSM licence.

A. I wasn't Chairman of that.

Q. Sorry, I misunderstood you.

And in relation to Minister Lowry, when he spoke to you, what was the nature of his approach? Was it a friendly, jocular approach? Was it somebody attempting just to make conversation, or what?

A. I think Mr. Lowry is a very charming man. And I met him. We walked it was a cold-ish day; we walked across to the mine, and it was in walking across to the mine he said that to me. It surprised me, because I didn't quite know what he was talking about, and it was just a point of conversation. We then he explained it. I went I didn't respond. We went into the tent, and from then on we talked about mining and zinc and the future and all the things that we

hoped would come to pass and of course which don't come to pass. The zinc business over the next seven years.

Q. So far as you are concerned, you didn't feel inclined to take the matter further?

A. No, absolutely not. I really didn't quite understand what he was talking about.

Q. It never occurred to you to take the matter further?

A. No.

Q. Now, you have been asked a lot of questions about other things, and I think just one element I'd like to ask you about is: As I understand your approach to business, business is business. You do business and you get on with it. And you appear to be someone who is willing to complain if you suffer what you consider inappropriate treatment at the hands of the State.

You did say that to them in an open way?

A. I can say it to you in an open way?

Q. If the State treat you in a way you think is inappropriate, you are prepared to say so?

A. Absolutely. Yes. My father was a civil servant, so I learned early. I also worked for the State, if you recall, in Bord Bainne and the Sugar Company for ten years.

Q. So can this Tribunal understand that if you felt there was something you wished to say about the running of the process to award the second GSM licence, you would

have been the first person to say something about it?

A. Well, if it affected me in a very important way, yes.

If I had a huge amount of money involved or I was involved in some other way, yes. In this case I did not feel involved.

Q. Indeed. And your very clear evidence is you didn't choose to make any comment to the State about what happened to the consortium in which you had an interest?

A. I wrote to Denis O'Brien and said "Well done".

Q. And that was the end of it?

A. That was the end of it.

Q. And I think again you have had the occasion to consider some of the evidence that's been given yesterday; I don't know if you had the chance to look at Mr. Donlon's evidence of yesterday.

A. No, I haven't. I know Sean well, but I didn't get a chance. I mean, I obviously got a chance to read something in the papers this morning about it, but not the full evidence.

Q. Well, again it's going to be a matter for the Chairman; I don't want to trouble you with it. But I think, if you did get to read it, you'll find nothing in that it suggests it's likely you made a complaint to Mr. Bruton.

A. Oh, I certainly didn't.

Q. Thank you very much.

CHAIRMAN: Mr. McGonigal?

Q. MR. MCGONIGAL: Sir Anthony, I appear for Denis O'Brien, and I have just one or two questions.

As you have just indicated to Mr. Nesbitt, you have a unique experience in relation to the civil service of this country, in the sense that you worked both with them and have been aware of their ability through business. I think that's a correct statement, is it?

A. Yes. If you work with the Department of Agriculture, you know a fair bit about the workings of the State.

Q. But can I take it that as a businessman who has significant interests throughout the world, that you would have absolutely no difficulty or hesitation in entrusting a competition in Ireland to civil servants of the State?

A. None whatsoever.

Q. And you would have complete faith and ability that the work they would be asked to do, it would be done carefully, properly and with integrity?

A. I would assume that.

Q. And I think, as you have said in paragraph 12 of your statement, which was partly read out, but the part which interests me is this: Halfway down, you say "However, it is totally untrue to say that I expressed to Mr. Bruton or to the then Government any annoyance or displeasure, extreme or otherwise, at the non-award of the second mobile phone licence to Irish Cellular

Telephones Limited, a consortium of which Independent was a member. Similarly it is untrue to suggest that I was seriously aggrieved or annoyed"

A. I am sorry, which paragraph are you reading from?

Q. This is paragraph 12.

A. Of the second statement?

Q. Of the second statement, yes. The corrected paragraph. Do you have it there?

A. Yes.

Q. It's towards it's the second half of it.

And it begins: "However, it is totally untrue to say

that I expressed to Mr. Bruton or to the then

Government any annoyance or displeasure, extreme or

otherwise, at the non-award of the second mobile phone

licence to Irish Cellular Limited, a consortium of

which Independent was a member. Similarly it is

untrue to suggest that I was seriously aggrieved or

annoyed with the non-award of this licence to Irish

Cellular Telephones Limited."

The position your position in relation to that

competition was is that the competition was held,

was run by the people who were designated to hold it,

and a result was arrived at. So far as you are

concerned, in whatever capacity you want to be

considered, you have no evidence, good, bad or

indifferent, to suggest that that competition was in

any way improperly run or improperly interfered with?

A. Correct.

Q. Thank you very much, Sir Anthony.

CHAIRMAN: I think, of the remaining persons, it's more logical, Mr. Meenan, that I invite you before Mr. O'Hanlon on behalf of Mr. Lowry.

MR. MEENAN: Indeed, Chairman.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MEENAN:

Q. MR. MEENAN: Dr. O'Reilly, I appear on behalf of Mr.

John Bruton. And I think it's fair to say that much of the issues that arose between Mr. Bruton and yourself in terms of the evidence, the Tribunal have been dealt with fairly by Mr. Coughlan. But there is just one matter I just want to refer to, and that is the meeting in Glandore in Cork in 1996. Your evidence, you were clear that you did not raise the issue of the GSM licence, and whereas Mr. Bruton's evidence was that he has a recollection that you did

A. A sort of vague recollection I think he

Q. I think you called in aid as to your evidence in support of your evidence that you didn't raise a contemporaneous letter which you sent to Mr. Bruton following the meeting; isn't that correct?

A. Correct.

Q. And in that letter there is no reference to the GSM licence?

A. Right.

Q. The only matter I want to refer you to, and that is that in Mr. Donlon's statement, he refers to a fax which Mr. Bruton sent to him on the evening of the meeting in Glandore. And we don't have that fax, but Mr. Donlon's recollection of the fax was that it did contain a reference to you raising the issue of the GSM licence, albeit in a manner of disappointment rather than anything else.

Now, if Mr. Donlon's recollection of the contents of the fax is correct, would you agree with me that would indicate that there was another contemporaneous note at the time which did indicate that you did raise the GSM licence?

A. First of all, I must say, having lived in Glandore for a number of years as a summer home, to actually send a fax from Glandore is a remarkable event. And I would like to ask you whether there is any evidence of this fax anywhere. It was sent, according to certain people, I think, to a number of Mr. Donlon did indicate that he certainly sent evidence of this fax to other people in the Government. I have no understanding whether this fax did emerge or not, but nobody seems to be able to produce it, and the only note of that meeting is in my note.

Q. Well, I mean, unfortunately we don't have the fax, and I can't produce a copy of the fax. But would you accept that if Mr. Donlon's recollection of the

contents of the fax is correct, it would be a contemporaneous note of this matter being raised by you with

A. That's a very hypothetical question.

Q. I understand that, but would you accept that that would be the case?

A. It's a hypothetical question. I can't answer it.

Q. Well, I mean, I can't obviously force you to answer it; I don't propose to do it. But I'll just ask you the question again: Would you agree, if Mr. Donlon's recollection of that fax is correct, that that

A. If Mr. Donlon says that is correct, it's his view, and I think he is entitled to his view.

CHAIRMAN: I think it's a fair answer, Mr. Meenan. I don't think I should press the witness in the absence of any documentation, as suggested.

Mr. O'Hanlon?

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

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

There are a number of short matters, just to clarify.

Your meeting at the mine with Mr. Lowry, at that time you were I suppose "grateful" might not be the word, but you were satisfied that Mr. Lowry had been operating properly in relation to assisting in the opening of the mine?

A. Correct.

Q. And you were glad to meet him at that time?

A. Yes.

Q. Mr. Lowry's recollection is, as he said, and you have noted in your statement, that he had previously met you on the Derby Day in the Curragh earlier that year, 1995?

A. I think I have refuted that, I hope, to the satisfaction of the Tribunal, but certainly to my own satisfaction.

Q. Although you are not certain of it?

A. Well, I am absolutely crystal clear now, yes. Absolutely.

Q. Although when you made your statement, you had indicated that you weren't certain of it?

A. I think, when you put together all the evidence that obviously we all have been trying to put together to reconstruct a period of seven or eight years ago, it becomes absolutely clear that I met Mr. Lowry in 1996.

Q. And when you made your second statement, you still weren't certain of it?

A. The second statement was only three or four months after that, the first one.

Q. And it's clear from Mr. Donlon's evidence that when he had the meeting with your executives after your meeting with Mr. Bruton, that the Mr. Lowry was what he described as the focus of hostility for the newspaper group?

A. I think that's an overstatement by Mr. Donlon, if I

may say so. I really believe the Department the Ministerial function within the Department was the focus of our concern. A great deal of money was being lost, and if you and I were in a situation where a great deal of money was being lost, we'd obviously feel aggrieved or affronted.

Q. Because he was clear in his evidence that while the Government while there was a focus of hostility against the Government to a degree, and in particular, the MMDS situation was most prominent, he seemed to be clear in his evidence that it was specifically Mr.

Lowry who was the particular focus of hostility for the group, and that that had been going on, that hostility would have been present for some time?

A. Well, in regard to the mobile licence, there was absolutely no hostility, and my letter to Denis O'Brien clearly evidences that. The matter was over. That was the end of it. In regard to the MMDS, the hostility, as you might or somebody has classified it, was not hostility per se. It was straightforward commercial frustration that the law was not being enforced, and not being enforced for political reasons.

Q. Because he also agreed that from the impression he had as a result of that meeting, that it would have been unlikely that Mr. Lowry would have been invited to the box in 1996, whereas it might have occurred in 1995?

A. On the contrary. He was most welcome in 1996.

Q. He agreed that or he suggested that he might have been invited simply as a social event, but the impression was very clear, and I have to suggest that Mr. Lowry's recollection that it was 1995 is in fact correct, and that might also explain why he found himself invited to your box in August of that year at another race meeting, in Leopardstown, I think.

A. I think his recollection is incorrect. And my recollection is absolutely correct. It was 1996.

Q. But he was subsequently invited in or he was invited in August 1995, when you apparently, on your recollection, would never have met him at all at that time?

A. I don't think he attended that meeting.

Q. Well, I think, I'm not sure, but certainly there was no meeting between yourself and him on that day, if he did?

A. I would suggest that if a Minister of State came to a meeting like the Heinz 57, he would make himself known to the host.

Q. I don't think he did attend. But it's clear that he was invited?

A. Absolutely. So were a great deal of our Ministers, and other politicians of other parties.

Q. You see, you're aware now, I think, that the competition was what's been described as a sealed

process in relation to the GSM licence?

A. Yes, I am aware of that now.

Q. And in September, 1995, if the process was operating as it was meant to have operated, then Mr. Lowry would not be aware how any team had performed in relation to their presentation to the Project Team?

A. Correct, yes.

Q. And on the day of the Arcon mine in Galmoy, Mr.

Lowry's recollection is that he arrived at the mine

from his home near to the mine. He hadn't been in

Dublin and was unaware, completely unaware of how your

consortium, as it's been described, the consortium of

which you were a member, had performed, and he

wouldn't have been in a position to tell you and

wasn't in a position and didn't inform you as to any

opinion as to how the consortium had done in their

presentation?

A. Well, I think you have you can take it from my evidence I reject that. He made that statement to me.

It took me aback. I asked him what it meant. He

explained what it meant, and that was the end of it.

I didn't ask him was it part of a sealed bid process,

or I didn't ask him about the process at all. I was

concerned about the mine and appreciative of what the

Minister had done for us, so it was almost just a

brief coda in the day, so far as I was concerned. It

had assumed greater importance later, but at the time,

it didn't appear to be important.

Q. And it wasn't something that gave rise to you feeling that there was any need to act on it?

A. Absolutely not.

Q. Did it appear to be simply a casual comment?

A. Yes, more or less, I would say.

Q. Because I am not sure if you are aware, but the relevant civil servants who were would have been present, none of them appear to have had any opportunity or passed on the information to Mr. Lowry.

A. No, I am not aware of that fact.

Q. Because Mr. Lowry's recollection is, while there might have been mention of the GSM licence, that he certainly did not comment on the performance of your consortium.

A. Mr. Lowry's evidence was that he did mention the GSM mobile?

Q. No, that that might have been that while the GSM, the applications for the GSM might have been mentioned or discussed on a casual basis, there was no representation by him commenting on the presentation of the of the performance of any of the consortia.

A. So he does suggest that he did say something about GSM but it wasn't to the effect that there was a competition in which our fellas had gone badly? Is that what you are saying?

Q. Well, he doesn't have a specific recollection of the

conversation or the details of the conversation. He does recollect the GSM might have been mentioned between, in passing, but he is clear that he did not comment in relation to the performance of any of the consortia on their bids, because he would have among other things, he'd have had no knowledge of it.

A. I see. Well, that's his point of view. As I say, the phraseology was unusual to me, "Your fellows didn't do so well yesterday", etc., that it just stuck in my mind.

Q. Although it in fact appears to have your initial recollection was

A. being "yesterday" rather than "today".

Q. it was on the day?

A. Yes.

Q. Thank you.

CHAIRMAN: Mr. Gallagher.

MR. GALLAGHER: May it please you, Sir.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. GALLAGHER:

Q. MR. GALLAGHER: Mr. O'Reilly, I have a few questions for you, and I want to begin firstly with the first meeting that you say you had with Mr. Lowry. And I think you have told the Tribunal that you believe that Mr. Lowry had done a very good job in connection with the Arcon mine, and in particular, in assisting in the overcoming of difficulties that stood in the way of its opening?

A. Correct.

Q. And you specifically recollect the opening of that mine; it was an important day for you, an important event for you?

A. A long postponed event, if I may say so.

Q. And I think you say you specifically recollect it as your first meeting with Mr. Lowry?

A. Yes.

Q. Now, it's been suggested that you had in fact met him a little more than, or a little less than two months previously, at the Derby in July of 1995; have you any doubt now as to whether or not you met him in July of 1995 at the Derby?

A. I have no doubt whatsoever that I did not meet him at the Derby in 1995.

Q. You describe the meeting at Arcon mine and the circumstances in which he made the statement to you about the GSM competition. And I think you say you were walking towards the mine; is that correct?

A. Towards the tent in which the lunch was going to take place.

Q. And was that before or after the formal opening of the mine?

A. The formal opening of the mine had just taken place, and we were walking towards lunch.

Q. Now, the next matter that I want to bring you to is the meeting that you had with Mr. Bruton in Glandore.

And I think you, from the very beginning, indicated that this meeting took place in July of 1996, specifically the 28th July of 1996?

A. Correct.

Q. And I think it was initially suggested by Mr. Bruton and Mr. Donlon that the meeting had taken place in August?

A. So I understand.

Q. And do you remember meeting Mr. Bruton prior to the meeting in your house on the 28th July while you were both in Glandore?

A. Yes. I met him the night before, at a dinner party given by Mr. Bernard McNicholas.

Q. I think Mr. Bruton gave evidence that he doesn't recollect that meeting; but you do recollect that meeting?

A. Well, absolutely. I was sitting adjacent to him at the meeting, or at the dinner, and it was a very pleasant evening given by Bernard McNicholas, who is a strong supporter of Fine Gael in the area. There were a great number of people there, maybe 75 people, and it was a very pleasant evening indeed.

Q. And did you have a conversation with Mr. Bruton, or did you speak to him during the course of that evening?

A. On and off during the meeting. We moved around. It was a sort of buffet dinner.

Q. Apart from your recollection as to what was said at the Glandore meeting, do you remember anything else about the circumstances of that meeting or what transpired at that meeting?

A. Nothing other than it was I was very pleased to see John Bruton; despite our differences on this particular issue, I have always regarded him as a very excellent politician and a good friend. And I remember him coming to my house on the Sunday morning meeting that was arranged by the local TD, called Jim O'Keeffe. And he came to the meeting, sat in for a moment or two, coffee was brought or tea was brought, and he left. So I was left with John Bruton for about an hour, and the result of that meeting is incorporated in my letter.

Q. At that meeting, did you have any concerns at all about any question relating to the GSM licence?

A. None whatever. The GSM licence was dead.

Q. When you wrote to Mr. O'Brien on the 30th October of 1995, that I think was within five days of the award of the licence?

A. Yes.

Q. And I think that letter was written prior to any controversy at all about the licence?

A. Absolutely. I thought it was a I thought it was a fine achievement, and so far as I was concerned, I had remembered his father as you will recall from the

letter, he was a very fine athlete, and I just recall that, linked that to his achievement and said, "Well done".

Q. Now, in your letter of the 30th July that you wrote two days after the meeting, you say you set out the issues that were discussed at that meeting.

A. Yes.

Q. And one of the issues that you set out in the letter or one of the matters that you set out in the letter is an issue about the conduct of the competition authority. I think that matter was no longer current.

The letter records that the matter is now closed.

A. Yes.

Q. But nevertheless, despite the matter being closed, it was a matter you referred to in your letter of the 30th July?

A. Yes.

Q. And why was that?

A. Well, I felt that the if you refer back to the notion of our company was becoming a political football, and the issue in regard to the competition authority related to the actual definition of the market for newspapers in Ireland. It was very important to all of us, particularly ourselves and The Irish Times, that all English newspapers be included in that market. They were excluded, and that gave market share figures that were quite erroneous in

relation to the overall circulation of our papers, and also particularly in regard to the advertising.

Q. And that was a matter that you brought up with Mr. Bruton at the meeting?

A. Just, in a sense, to illustrate, because in fact his brother, Mr. Richard Bruton, was in fact the relevant Minister at the time.

Q. You see, it has been suggested in other evidence that the reason the letter makes no reference to the GSM licence, but refers to other matters, is that the GSM matter was closed but the other matters were ongoing.

What do you say to that?

A. I say the GSM matter was totally closed. It was not mentioned. The issue in regard to the competition authority was merely to flag something that might be ongoing, and the future conduct of market analysis in this country could well learn from the experiences of this competition authority report, which was erroneous, in my view.

Q. And you draw attention in the second- or third-last paragraph of that letter, on page 2, to sorry, the fourth-last paragraph, the pressure you were under from partners in the venture, the Princes Holding venture?

A. Well, they simply couldn't believe it. I mean, Americans are, by nature, litigious, which might be a great knowledge to everyone in the room; but I mean,

they are by nature very litigious, and they are impatient.

Q. And what were the pressures that were on at that time

A. The pressures were to go to court and to seek a remedy in law and have the law of the land enforced.

Q. And I think the same paragraph specifically mentions that the matter is being dealt with in the separate letter from Mr. Hopkins, and it was hoped Mr. Hopkins would attend a meeting with Mr. Donlon about that specific issue?

A. Yes, that was the issue.

Q. Was it ever intended that the meeting with Mr. Donlon would concern any other issues other than the Princes Holdings issue?

A. Absolutely not. And I have checked that with Mr. Liam Healy, with whom I have worked for the past 35 years and learned greatly to rely upon, and his memory, and he has assured me that the sole item on the agenda that day was PHL: Find a solution.

Q. And the letter to which reference is made is the letter of the 29th July of 1996, and I think that sets out the extent of PHL's investment at the time, which was $\frac{1}{2}$ 75 million?

A. Yes.

Q. And what were the circumstances, or did you provide any encouragement to the American partners in that

venture to get involved investing in Ireland?

A. Well, I mean, the American partners were plainly getting impatient; found Ireland to be far less attractive to invest in than they had been led to believe. There is a great aura about Ireland, particularly at that time. In the United States, investing in Ireland was regarded as a very good after-tax location, and a great number of American companies were either coming to Ireland, like Heinz, or were actually here. And so but they were losing faith, because in their particular area, they were finding they were not getting the protection of the law. The consequences of this, of course, still went on, and I have to say that long after Mr. Bruton and I had this discussion, we had last year, in the accounts of Independent News & Media, the fact that Chorus, which is the direct lineal successor to the Princes Holdings, Chorus in fact wrote off a hundred million and is now in examinership.

Q. And I think that letter, at that stage, as of July 1996, shows that in 1995, the number of subscribers to the system had declined from the previous years and the revenues had remained almost static. There is a reference in that letter to an offer of telephony services. Had that anything to do with the GSM licence?

A. Absolutely not. They are land-based telephony

services. Need I tell anyone in this room about the difference between land-based and mobile phones? It's been part of the national debate for the last two or three years. Possibly even longer. Telephony there means telephony that goes with cable systems. And NTL, in TeleWest, in England, lost a great deal of money trying to graft onto their basic television system what they call a bundle service, which would be telephone, the Internet, broadband and TV. I think Chorus tried to do the same. I think NTL tried to do the same here, and it all ended in tears.

Q. And can I then briefly take you to the meeting or the record of the meeting of the 4th September of 1996, and I think there is one matter that you want to clarify for the Tribunal. Mr. Burns attended at that meeting, and can you identify for the Tribunal on whose behalf he attended?

A. Yes. In my memorandum I said Mr. Burns was in fact attending as a Government representative. He in fact is employed as a consultant by Independent News & Media, so he in fact was part facilitator for that meeting.

Q. You explained to Mr. Coughlan that the reference to losing INP as friends was in a context of litigation that was intended to be brought against the Government?

A. And was brought.

Q. And was brought. And that was very substantial litigation in which I think a sum you said of $\frac{1}{2}$ 100 million was claimed?

A. It was, and that only led, Mr. Gallagher, to the further erosion of the entire business for both NTL and for Princes/Chorus to the point where the company, as I say, Chorus, is now in examinership.

Q. And I think the basis of that litigation was the Government's failure to honour the promises that were made when the MMDS exclusive licences were issued, namely to enforce the law?

A. Well, that was part of it. I think there were lots of other things in subsequent years, but that was part of it.

Q. And do these anything in these documents that is, Mr. Hopkins' letter of the 29th July, Mr. Healy's note or Mr. Hopkins' note of the meeting, I think on the 4th September, and your subsequent letter of September the 6th to Mr. Bruton, assist you in putting in context that reference to losing INP as friends?

A. Yes. I think collectively they make it quite clear to any fair-minded person that you are losing us as friends in regard to this litigation. We are losing our clout in the debate that's going on internally in our consortium.

Q. And could I ask you just to look I wonder if it could be put up for a moment the meeting of the 4th

September, on the screen. I think you perhaps have it convenient to you, Mr. O'Reilly, if you wouldn't mind opening that document, Mr. Hopkins' note. And I think the second page, if you'd be so kind. And the very last paragraph on that second page?

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

Q. And I think further up in that memorandum, Mr. Hopkins or Mr. Healy is stressing in the third-last paragraph that "their tendency" that is a reference to the partners "would be to take action against the Government to recover damages over their failure to police the exclusivity of the licence."

A. Correct.

Q. And Mr. Donlon's response was that that wouldn't come before the election, and it would at least solve their Cork problem and ensure that four seats were safe.

A. That's correct.

Q. And if I could ask you to look at your letter of September 6th to Mr. Bruton and the second paragraph on that letter where I think you make reference again to that issue. And I think you express surprise at the response of Mr. Donlon to what you regarded as an issue that not only affected you but had serious implications for all investors in Ireland. And what were the serious implications, as you saw them, for

all investors in Ireland?

A. Well, basically, the business of foreign investment in any country today is hugely competitive. I, for example, am on President Mbeke's Economic Council for South Africa. South Africa is a country that is trying to attract inward investment. It is competing now against the newly enlarged EU countries that have come into being with low-cost labour, highly skilled, literate people, and they are going to find it very difficult. And the last agenda we were looking at was discussing with them both that and the enormous pull of China.

Now, these were issues that were not there at that particular time, but they are issues that concern Ireland. Ireland is looking for inward investment, and anything that affects our name internationally cannot be good for it in a very, very competitive market.

Q. And did you see the failure of the Government, or the State, to enforce the law as something that would impinge on Ireland's good name?

A. Well, it certainly would be used by our adversaries against us.

Q. And I think you identify the partners, and you say the impression you receive from this note is that "the Irish Government is willing to risk its pro business reputation and yield to populous agitation by hiding

behind rather than using the legal process," and again, you stress the investment and the commitments that have been made to banks.

A. Correct.

Q. And then you end the letter with the second-last paragraph asking Mr. Bruton whether this is Government policy?

A. That is correct.

Q. And you ask that there be a response as a matter of urgency?

A. That is correct.

Q. Did you ever get any response to that letter?

A. No, I didn't get any response to that letter.

Q. Now, it was mentioned by Mr. Donlon in his evidence that Ms. Jean Kennedy Smith made some reference to you in a conversation with him, I think on two separate occasions. And can I ask you, for the record, whether you ever discussed any matter relating to the GSM licence with Ambassador Jean Kennedy Smith as she then was?

A. Absolutely not. I know the Kennedy family very well over a long period of time. They have been very good to the Ireland Fund. I know Jean Kennedy Smith, who was a very good Ambassador here. I had no contact with her whatsoever in regard to the mobile licences.

Q. I think she made a reference to American interests. I think you're aware that some of the other consortia, I

know the two other consortia had American interests involved; is that correct?

A. That is correct.

Q. Now, in 1996, I think it is clear from that correspondence and the records of those meetings that this issue of enforcement of the deflector system was a matter of very serious concern to you and INP?

A. And became even more so.

Q. And does that fact assist you in recollecting whether or not your meeting with Mr. Lowry took place in 1996 as opposed to 1995?

A. Well, it certainly confirms, in my mind, absolutely that it was 1996, because there was a coalition of issues between the June and September of that year, all focusing on this issue of non-enforcement of the law in regard to the deflectors: It was very fraught from a financial point of view. We were signing a lot of agreements with the banks. We had invested 75 million. We had lost 18.6 million. Mr. Hopkins' figures on these are quite clear. Subscriber numbers were not going up, and we were very, very concerned, so I expressed my concern to Mr. Lowry in the box at the Derby in 1996. I met Mr. Bruton. Mr. Bruton apparently was briefed before he came as to a possible meeting with me, and he met me, and so he was not surprised when I brought up the whole topic of the MMDS deflectors.

Q. We know from the record that Mr. Bruton was, as you say, briefed in advance of going to Glandore. Had you, at that stage, requested a meeting?

A. Absolutely not.

Q. And there was some suggestion, I think by Mr. O'Hanlon, that because this was an issue in 1996, that you wouldn't have welcomed Mr. Lowry into your box at that stage. Did it cause you any problem in meeting with Mr. Bruton in 1996?

A. It certainly did not cause me any problem, then or now. And certainly having Mr. Lowry to my box in 1996, when he was the Minister for Mines, etc., is a very obvious reason for him being there.

Q. I think it's clear from the documentation at the time, the memorandum of the meeting and the correspondence, that you were trying to sort this matter out in circumstances where the other partner was pressing for litigation?

A. Very strongly pressing for litigation.

Q. And you were anxious to see if it could be sorted out, and hence you requested a meeting with Mr. Donlon?

A. Correct.

Q. Now, it's suggested by Mr. Coughlan that, well, litigation against the Government, many people are involved in litigation against the Government, and perhaps that's not something of great significance or that could lead to any level of loss of friendship.

So far as you are concerned, what was your attitude to commencing litigation of this magnitude and this nature against the Government at the time?

A. I was uncomfortable about it, I must say. I felt that the matter would be easily circumvented by simply applying the law.

Q. And were you anxious to have it sorted out in that manner?

A. I was anxious to avoid litigation, to have it sorted out in that manner.

Q. Now, I think you say in your statement that in July of 1995, when Mr. Lowry says you would have mentioned the MMDS to him or the deflector system, at that stage there was nothing the State could do about enforcing the law because there was an injunction against the State preventing them taking any action against the deflectors until the outcome of the High Court action?

A. It would have been futile.

Q. And that High Court action, judgement was delivered in that in November of 1995?

A. Correct.

Q. And by July/August of 1996, as you make it clear in your correspondence, a period of eight months or more, nearly ten months had passed without the Government having resolved the issue?

A. Of absolute inaction, yes.

Q. And I think the effect of the High Court action was to

quash the earlier decision of the Government refusing a licence, but it didn't involve the granting of any licence to Carrigaline, and they were still broadcasting in breach of the law, and that was your concern?

A. Correct.

Q. And finally, Mr. O'Reilly, if I can ask you in relation to the question of editorial independence which you have answered to Mr. Coughlan, I think you have confirmed that you didn't, then or at any stage, interfere in the editorial independence of The Irish Independent, or indeed any of your newspapers, in connection with this or any other matter?

A. Correct.

Q. And that the position can be confirmed, if necessary, by the editor, by Mr. Healy, and by Mr. Hopkins?

A. By the editors.

Q. By the editor?

A. Yes.

Q. Thank you very much.

CHAIRMAN: Anything in conclusion, Mr. Coughlan?

MR. COUGHLAN: Nothing.

CHAIRMAN: Only one small point. I think it is the case that you have, from your early days, been a solicitor, and I think you maintained one position of Chairmanship. Was it that you had applied your knowledge and interest in Irish law to some extent in

keeping abreast of the various procedural stages of the High and Supreme Court with the deflectors controversy?

A. Well, whenever I am asked what I am, I always say I am an unfrocked lawyer, and I still take out my practicing certificate, so I am still very proud to be a member of the profession. The issues obviously train you to take a look at the various findings that are handed down in regard to, particularly, the mining process, which is extremely arcane and mysterious, so I was very interested in the process, if that's what you are referring to, by which Arcon got to have a mine licence. And it was a very prolonged process.

CHAIRMAN: Well, I am thinking more, in fact, of the deflectors controversy in Carrigaline, and your references to the various stages of High and Supreme Court adjudications on that over the couple of years. Was it that you had sought specific instructions or inquiries of Mr. McAleese as to what was happening?

A. Well, I would certainly rely on Mr. McAleese more than on myself for a final judgement in these matters, but I have a reasonably informed view, when I hear about these reports, about what is going on.

CHAIRMAN: The matters weren't foreign to you. Thank you very much for your attendance and assistance today.

We have another witness after lunch. Perhaps I should

just make inquiry. I see Mr. Dick Spring present. Is there any difficulty about legal assistance, or can we resume at the normal time?

Very good. I'll say, perhaps, as we sat on a little to finish Dr. O'Reilly, twenty-five past two. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

MR. COUGHLAN: Mr. Dick Spring.

MS. FLEMMING: I appear on behalf of Mr. Spring, and I would wish to make an application for a limited representation.

CHAIRMAN: I think I'll make a similar order to that which I made in relation to Mr. Ruairi Quinn, and also to I think a solicitor who appeared in recent weeks; that is to say I will indicate that the appropriate remuneration will of course be payable, but it may not perhaps be that it requires a full order for representation.

And I can clarify that in due course if needs be, but I'll certainly note your presence on behalf of Mr. Spring, and of course if there are any observations or any questions that you may see fit to ask, please feel free to avail of that.

Thank you very much for attending, Mr. Spring.

DICK SPRING, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Spring, thank you.

I think you furnished a memorandum for the assistance of giving evidence to the Tribunal, and I think you have that with you?

A. I have that with me.

Q. And I think you may have observed, I'll take you through that first, and then we'll come back to ask some questions.

A. Fine.

Q. I think what you have done is you have supplied replies to queries raised by the Tribunal; is that correct?

A. That's right.

Q. The first query raised was, you were asked for your understanding of the role envisaged for the Cabinet or the Cabinet Subcommittee in the GSM process, and in particular in light of paragraph 2 of the Government decision of the 2nd March, 1995.

And that paragraph 2 reads: "A recommendation to be put by the Minister to Government in time for a final decision for the granting of the licence to be made by the 31st October, 1995."

And you have responded that during your period in the Government it was normal to establish Cabinet subcommittees to expedite Government business. In instance the Minister for Transport, Energy and Communications would revert to the subcommittee with

the consultants recommendation after the resolution process for consideration, and then refer to the Government.

You were then 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.

And you have had informed the Tribunal that the period in question was suggested by the Department of Trade and Communications, and it seemed reasonable at the time to allow a period of time should any further investigation or elaboration of the consultants report be required.

I think you were then asked for your knowledge, direct or indirect, of the resolution of the intervention of the European Commission by the capping of the licence fee payable by the applicants at $\frac{1}{2}$ 15 million.

And you informed the Tribunal that your knowledge in relation to this matter would be from briefings given by the Minister for Transport, Energy and Communications, and you would have been aware that the decision was arrived at after lengthy discussion with the EU Commission.

You were then asked for your knowledge, direct or indirect, of the progress of the evaluation during the course of the process, either directly from Mr. Lowry

or through other officials or through programme managers or otherwise.

And you say that you had no information about the progress of the evaluation on an ongoing basis.

You were then 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 you have informed the Tribunal that you do not recall having any particular information in relation to the process in the week prior to the announcement.

You were then asked for details of your knowledge of the result of the competition process prior to the meeting attended by Mr. Lowry and members of the Government on the 25th October, 1995, and you have informed the Tribunal that you had no knowledge, direct or indirect, of the result of the competition process prior to the meeting attended by Mr. Lowry and members of the Government on the 25th October, 1995.

I think you are then 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 then in particular, you were asked the approximate time at which the meeting commenced, the location of the meeting, the identity of all persons present, the information provided by Mr. Lowry regarding the result of the competition,

whether Mr. Lowry informed the meeting that a qualification or rider had been placed on the competition result or that a reservation or concern had been raised by the evaluators regarding any aspect of the competition winner, 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. Details of the discussion, if any, of the result of the competition. Details of the discussion, if any, regarding the announcement of the competition result.

And you have informed the Tribunal that your recollection of the meeting referred to is as follows:

The meeting took place in the Taoiseach's Office in Government Buildings. Present were the Taoiseach, Minister for Finance Mr. Ruairi Quinn, Minister for Social Welfare Mr. Proinsias de Rossa, and the Minister for Transport, Energy and Communications, Mr. Michael Lowry. Mr. Loughrey and Mr. Brennan from the latter's Department were in attendance for some part of the meeting.

Your recollection is that the main purpose of the meeting was to discuss matters pertaining to Aer Lingus. Mr. Lowry informed you, that is the group, that the evaluation process in relation to the mobile licence had been completed and he wanted to discuss

same with the Cabinet Subcommittee. Documentation was put on the table, and the Minister for Transport, Energy and Communications and his officers gave a summary of the consultants recommendation and the evaluation process that had taken place.

The consultants were recommending that the licence be awarded to Esat Digifone subject to negotiation, and in the event of failure of these negotiations, then the Minister would commence negotiation for the next qualified applicants.

The agreement of the subcommittee was then given, and it was decided to announce the decision at the earliest opportunity. This was the correct decision, in your view, as it would come into the public domain shortly thereafter anyway.

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

And you say you have no specific recollection of when you were first informed of the involvement of IIU/Mr. Dermot Desmond in the Esat Digifone consortium, but you are aware that sometime after the contract was awarded to Esat, you were made aware that there were rumours circulating to the effect that Mr. Desmond was

involved with Esat.

I think you were then asked about the Dail report on the 22nd November 1995, which includes at page 11 the following statement by Mr. Batt O'Keefe, TD: "In respect of the decision to grant the licence, is the Minister aware that the Tanaiste, the day before the licence was issued, met one of the competitors, informed him that the tender was above board and it would receive the support. He also informed the group that a decision would not be made for a month, yet the following day the decision was made."

And you say that in relation to the statement made by Mr. Batt O'Keefe, TD in Dail Eireann, you do not know what he is referring to, and you cannot therefore comment.

Now, I think, Mr. Spring, you were the Tanaiste in that particular Government which awarded the second GSM licence?

A. That's correct, yes.

Q. And we know that it was a coalition Government, and Mr. Bruton was the leader of the Fine Gael Party. You were the leader of the Labour Party, and Mr. De Rossa of the Democratic Left Party at the time?

A. That's right.

Q. And am I correct in understanding, as we have heard from a number of witnesses, that the usual practice in relation to the working of that Government was that

Cabinet papers would be given to the programme managers of the three Party leaders, perhaps the Thursday before the Tuesday Cabinet meeting or Thursday or Friday before the Tuesday Cabinet meeting?

A. That's correct, yes.

Q. And the purpose of that was to enable them to work through and deal with any difficulties which might arise, either resolve them themselves or in conjunction with discussion with their particular Minister, and matters that couldn't be resolved would be put to one side for the moment, and matters that could be resolved would proceed to Cabinet, to allow for the efficient working of the Government?

A. That's correct. In fact it had emerged from the previous Government, the whole system of programme managers to expedite Government business and not to have the Government ministers wasting time, quite frankly, if they couldn't make decisions on the day. So that was a procedure we adopted, and I think it certainly worked very well in both governments.

Q. Very sensible. What you wanted was when decisions had to be taken, all the preliminary work had been done, insofar as it could be, to eliminate as much debate and discussion?

A. Absolutely. And if it was obvious that a decision or agreement hadn't been reached between the three parties as to how to resolve a particular issue, it

would go back to the programme managers, or indeed be dealt with by Party leaders at another time, but obviously not at that Cabinet.

Q. Now, I think that you had been in the previous Government when the whole question of a second GSM licence had arisen, I think; isn't that right?

A. Yes.

Q. In fact it had its genesis back in the Fianna Fail/Labour Government?

A. That's right.

Q. In any event, the matter leading to the announcement of a competition for the second GSM licence took place during the period of the Fine Gael, Labour and Democratic Left Government?

A. Yes.

Q. That was in March, I think, of 1995?

A. Yeah.

Q. And as there had been a previous decision back in November of 1994, but in fact matters came again to the new Government in 1995 with some slight alterations. I don't think there is anything significant about that. But the matter came to Government, anyway, by way of an aide-memoire. And I wonder, do you have that particular document with you? It's the aide-memoire

A. I am sure I can get it.

Q. dated February of 1995. I'll get you a copy, if I

can, in any event.

A. Okay.

Q. In fact I'll put it on the screen.

That's the aide-memoire.

A. Yes.

Q. Now, if we it sets out the whole case, but I want to come to Number 11, which is Item Number 11. You can see the election process.

"Consultants will be engaged to assist in the process of final selection and will also be on board in time to assist in the final stages of the preparation of the Department's information memorandum mentioned in paragraph 10. The selection of the successful tender will be determined by reference to the following:

" the quality and credibility of the business plan of the applicants with particular emphasis on the progressive approach to market development; a commitment to high-quality nationwide service and innovative approach to tariffs with a view to reducing costs to consumers.

" the proposed fee for the licence.

"The highest bidder will not necessarily be successful, and this is clearly stated and emphasised in the tender documentation. The documentation indicates that the Minister intends to compare the applicants on an equitable basis, subject to being satisfied as to the financial and technical capability

of the applicant, in accordance with the information required therein and specifically with regard to the list of evaluation criteria set out below in descending order of priority." And then the criteria are set out, as you can see.

Then it continues: "Tenderers will be requested to specify the approach which will be adopted to the disposition of windfall gains and other such matters.

Now, I think, arising from that matter being brought to Government, and a subcommittee at that time, there was a decision, which is dated the 2nd March. You can see there, this is the decision. This is from the Secretary the Government Secretary.

"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, the Government approved the announcement of an open competitive bidding process with a view to the granting of a licence to a second cellular phone operator on the basis that

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

So that was the decision.

A. Yeah.

Q. Now, do you specifically remember it, or can we take it that this was a matter that

A. I would certainly recall it when it was presented to me as a decision being made by the Government at the time. We were under enormous pressure, if I remember correctly, from Brussels to get on with the process of having a second mobile operator, and it certainly would have been and the Government would have been very conscious to do everything properly in terms of getting this competition out there and making sure that we had a competitive tendering process and to attract, perhaps, international worldwide attention so we'd get the best to operate in this field.

Q. Now, the decision, can we take it, speaks for itself?

A. Yes.

Q. That the bidding process would be promoted and controlled by the Department of Transport, Energy and Communications, and that a recommendation would be put by the Minister to Government for a final decision of Government; is that right?

A. Yes. The normal course of Government, doing Government business, the Minister, Mr. Lowry, and his

Department officials were obviously running their Department, and they would be given the responsibility to get on with it. The rest of us did what our jobs were in Government, and they would come back, and the subcommittee was there if there were any issues on a day-to-day basis. But that would be normal regular Government procedure.

Q. Now, can I take it that as matters unfolded in terms of the competition, it's not something that you had any direct day-to-day involvement in or knowledge of?

A. Absolutely no. It

Q. You were involved in the Department of Foreign Affairs?

A. I would like to think, at the time, I was saving the world, so we were quite busy at the time. And you are also in fairness to all Ministerial colleagues, they would assume the responsibilities with the line Department and they would do what they have the Government instruction to do.

Q. So the next time, can I take it, that it impinged on your consciousness was when the matter came to the committee?

A. Subcommittee.

Q. Of which you were sitting on the 25th October of 1995; is that right?

A. Exactly.

Q. And can I take it that in general terms, you would

have been aware that there was a competition going on?

A. Yes, from the nature of the Cabinet meetings, obviously, we were aware there was a competition going on. And we would have been I think there may have been from time to time, you know, when will this be over? And there were time-scales and there were deadlines, and again there was a consciousness, in relation to Brussels, that we were we needed to have a second mobile operator.

Q. As to the design of the competition, or matters of that nature, would you have had any particular knowledge?

A. None other than the generality of what was available to the Cabinet, and also that the matter would have been handled by Fintan Towey, first instance, the Department, Mr. Loughrey and his officials, in whom I would have absolutely respect for their integrity in this matter, and obviously they were bringing in some international assistance as well.

Q. Now, on the 25th October, I think you were at a meeting, and if I just go to it's page 3 of your sorry, first of all, if I could just deal with paragraph 2 of your statement.

There was, in the design of the process, a period of six weeks allowed from the time that the final report was obtained to the time when there would be completion of the process; in other words, there was

that period of time allowed. And you were asked what your understanding of that was, and you say that the period in question was suggested by DTEC, and it seemed reasonable at the time to allow a period of time should any further investigation or elaboration of the consultants report be required.

A. And I would have said that, perhaps, if you said two weeks, four weeks or six weeks or whatever. This is a matter for the Department, if they felt they needed a time-frame. Now, whether they could adhere to that or not is a different question, but I think it sounded reasonable.

Q. And would that be unusual, in your experience?

A. I would have thought that you always allow certain amounts of slippage time in Government business, which isn't unusual. And I would have thought that sounded like a reasonable period if the Department wanted to follow up any aspects.

Q. If the matter came to Government, or programme managers, with any queries or reservations or health warnings, is that the sort of thing that might require investigation, elaboration or consideration?

A. Perhaps. But to the best of my knowledge, the fact that this was really a sealed bid and a sealed competition, it would have been outside of the remit of the programme managers, and others, indeed, so it was really a matter the Department suggested a time

period. I assume they knew why they wanted the time period. I am not sure if they told us, but it sounded like a reasonable period of time.

Q. Now, on the 25th October, you were at a meeting, and you believe that it was there was an Aer Lingus

A. I think it was the original raison d'etre for the meeting was that some Aer Lingus business needed to be attended to. And we were all together in the Taoiseach's Office, "all" being the Taoiseach, Ruairi Quinn, Proinsias de Rossa, Michael Lowry who had line responsibility for Aer Lingus, and myself.

Q. And it's your recollection that Mr. Lowry asked to discuss the GSM matter?

A. When we had completed our deliberations in relation to Aer Lingus, my recollection is that Michael Lowry asked or informed us that the competition had come to a conclusion, and he felt he asked us could he bring the results of that to the subcommittee.

Now, my own reaction to that would have been that if it was concluded, then we should get on with it, and we should consider it and make whatever decision was necessary, or give him the authority to do whatever was necessary as soon as possible.

Q. Yes. And you seem to recollect and I should say that you are the only one at the moment you seem to recollect that there may have been some officials present for some period?

A. Yeah

Q. Are you sure about that?

A. Well, I am as sure as any politician can be about anything that happened X number of years ago. I'm not perhaps Mr. Loughrey and Mr. Brennan were there in the Aer Lingus context. It would have been quite normal for them to have been involved, if they were dealing with some difficult issue in Aer Lingus, for officials to have been present at the meeting. In my memory, as best I can delve into it, would be that Mr. Loughrey and Mr. Brennan were in the room at the time when Mr. Lowry unfolded the results of the competition.

Q. That's your recollection?

A. That's my recollection, but if others say otherwise, I couldn't I wouldn't push the point.

Q. All right. You say that you were given a summary of the consultants recommendation. Do you remember that, or

A. What I remember was that the Minister Lowry, Mr. Lowry informed us that there was a clear winner in the competition, and they I think he may have pointed out the actual points system, the scoring system that was attributed, that was part of the competition. And until I saw the numbers in the paper yesterday or today, I have to confess to you I could not have remembered those numbers, but it was very clear there

was a very clear that Denis O'Brien's consortium had been a clear winner in the process and that the decision was very straightforward. There was no reason to question that or for us to

Q. That was the way it was presented?

A. That was the way it was presented.

Q. And you accepted that at face value?

A. We accepted that, and it was also made very clear, at the time, that the Department would then enter into discussions or negotiations with Denis O'Brien, and if any difficulties or problems arose with their bid that is, a situation where they couldn't fulfil their obligations that they would then move down to the next the second bidder in the competition.

Q. But you have no doubt that the competition was presented to you in terms of numbers and not letters the result?

A. The result in numbers, yes. Which and perhaps I assume there was a quick, or a brief discussion on, if you like, the evaluation process, how these numbers were arrived at. And it seemed clear. It wasn't as if there were very two very close bidders. There was a very clear distinction between the company that was first and others.

Q. If it had been presented as being close, is that a matter which might have required further consideration or elaboration?

A. Well, in the reality of the process, no. It might have required it might have led to some further discussion, but the reality was that we were not we were accepting the recommendation from the bidding competition, which we would have had absolute confidence in, and there was no reason for us to question it in any way.

Q. If you had been told that it was a draw?

A. Like the man who was in the box this morning said that is rather hypothetical.

Q. Well, I put it to you if it wasn't hypothetical; if the result of the competition had been presented to the members of the Cabinet Subcommittee as it is in the final evaluation report, which does not appear to have been available at that time, not in terms of numbers which are presented as a way of looking at the matter in the final table, but were presented that in respect of the three top applicants, they were presented on a table as being a B with an arrow up, a B, and a B with an arrow down. Now, it wasn't presented to you in that way, was it?

A. No, no, it wasn't in any way. I mean, it was a very clear result of a competition that there was a clear winner.

Q. And that was the firm impression you got?

A. That was the firm impression that I took from that meeting. And it was also on the basis of that firm

decision, and I certainly once the decision was being made by the Cabinet Subcommittee, I would have been very much of the view that the announcement should be made sooner rather than later. I personally felt that if we didn't announce it immediately, and if, like all things in politics, it got into the public domain, then there would be a possibility of another debate starting about the whole business. And I thought it was better it was complete, it was finite, and the decision should be put into the public domain.

Q. I understand. Can I take it that you wouldn't have been aware of the actual makeup of the various consortia who had applied for the licence?

A. Not I think there was some there was obviously some press coverage, and I would have been aware of the generality, and I would have been aware of the various consortia, Irish American, etc.

Q. Would you have been and perhaps not, but would you have been aware that in the tender document or in the RFP document that there was a mandatory requirement to disclose full ownership of the proposed licensee?

A. I don't think I would have been at the time, no.

Q. If the competition documents required that, I take it you would have expected that that would have been complied with in bringing the matter

A. I would have expected the those who were in charge

of the competition to adhere to all of the requirements of the competition that was set out.

Q. Now, I think your programme manager was a Mr. Greg Sparks; isn't that right?

A. That's correct.

Q. And I think you were aware that Mr. Sparks has furnished a statement to the Tribunal?

A. Yes, I am.

Q. Isn't that right? And I think you are aware that Mr. Sparks has informed the Tribunal, in his statement, that he understood the decision of the subcommittee was made at an informal meeting; that is, the decision on the 25th October. The Party leaders were meeting in the Taoiseach's Office and the Minister for Finance when Mr. Lowry rang the Taoiseach to tell him that the Andersen recommendation had been received. He says, as I understand, the Minister was invited to the Taoiseach's office, where the report and the recommendation were discussed. A decision to accept the Andersen recommendation was made.

Now, he said that "Some time following that meeting, I met the Tanaiste, who told me of the decision. I expressed surprise" first of all, do you remember meeting Mr. Sparks?

A. No, I don't.

Q. He says that he expressed surprise and that he explained to the Tanaiste that the licence would, in

his opinion, allow the recipient access to super profits. He understood that Esat Digifone at that time that's Mr. Sparks was not financially strong. Do you ever remember having that type of discussion?

A. I don't actually recall the that meeting with Mr. Sparks. I don't recall as I don't recall the meeting, I don't recall any of the content as Greg is saying in his statement.

Q. Well, specifically, do you remember him mentioning the name that there were rumours that Mr. Dermot Desmond was a shareholder, and queried his involvement had his involvement been considered in the light of the Johnston Mooney and O'Brien report?

A. I don't.

Q. You don't remember?

A. I don't recall.

Q. You don't recall that discussion at all?

A. No.

Q. So, as far as you were concerned, the competition was run as you would have expected it to have been run, and the decision was made on that basis?

A. Exactly.

Q. And that the people who had applied in the competition were the people to whom you agreed should be awarded the licence, subject to the negotiation?

A. That's right.

Q. And that was what you agreed to?

A. That's what we agreed to in Government, yes.

Q. You did not agree, did you, that anybody else would be a proposed licensee?

A. No, we did not.

Q. Thank you, Mr. Spring.

CHAIRMAN: We'll see if a couple of other counsel may wish to raise some matters briefly with you, Mr. Spring.

Mr. Fitzsimons?

MR. FITZSIMONS: One question.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: The applicant was the company known as Esat Digifone

A. Yes.

Q. which had shareholders at that particular time, and that was the company that the Government decided?

A. That was the company that was presented to us as having won the competition.

Q. Thank you.

CHAIRMAN: Mr. O'Donnell?

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

Q. MR. O'DONNELL: Just one or two questions, Mr. Spring.

I appear for the Department of Transport, Energy and Communications.

Firstly, I think you served in a number of different governments, and you would have been familiar with the

civil servants operating in a variety of different departments?

A. Well, yes, between the periods of '82 and '87 and '93 and '97. I would have been very familiar with the civil service, yes.

Q. And can I take it that you would, like many of the other politicians who have given evidence here, have the utmost faith in their integrity and independence?

A. Yes. I hadn't worked with Mr. Loughrey previously, but I would have known him and known his reputation as a very forthright, strong-willed civil servant. I have absolute belief in his integrity. I had worked with Mr. Martin Brennan previously when I was Minister for Energy.

Q. He was Chairman of the Project Team?

A. And absolutely I would stand over anything that he was involved in in terms of his service to me in three years in Energy.

Q. When it was decided in the previous Government to allow the independent civil service, with the outside assessors, to carry out this assessment and make the recommendation to the Government, you had no difficulty with this task being entrusted to the civil service?

A. None whatsoever.

Q. You had no fear that they would be compromised or suborned or in any way interfered with?

A. It would never have crossed my mind, quite frankly.

Q. We now come to the meeting of the 25th October. You had already given, as a Government, in effect, the discretion as to who was to be given the negotiation rights to that independent assessment team?

A. That's right.

Q. Subject to any ambiguity in the result?

A. That is correct.

Q. So all you were concerned with, and I think Mr. Quinn said yesterday, that you had set in train an adjudication process, and you had committed yourself as a Government to accepting the outcome of that process; so while it was technically a Government decision, you were never going to second-guess the independent assessment team or the outcome of that process?

A. That is absolutely correct.

Q. And the only area in which a difficulty might arise is if there was an ambiguity or a draw, or something that was much too close to call?

A. Then it probably would have reverted back to a full Cabinet for consideration.

Q. Yes. Now, when you assembled on the 25th October, you weren't given the report. Can I suggest firstly, you said earlier that you introduced a number of measures to try to expedite Government business to try to avoid Government ministers wasting time. Can I suggest to

you that if a 50-page report had been available to you, or a page with a summary of the results on it, it is more likely that, as busy Ministers, you would have picked the one-page summary rather than the report of 50 pages to read?

A. That sounds reasonable, yes.

Q. Your predecessor I think favoured one page as being the appropriate document for summary of information?

A. Well, I have no comment on that.

Q. The document itself, and I appreciate you never saw the document, but the scores that were set out and perhaps if we could just put up Mr. McMeel's memo, which is at it's Book 43, Document 138 that is a memo which Mr. McMeel, who was the senior official in the Department of Finance, and who was working with Mr. Quinn and who was also on the team that carried out the assessment, that is the memo that he drafted, and they are the scores, if I can put it that way.

Now, Mr. Spring, I don't I accept that you don't remember specifically that the scores were 432, 410 and 362 eight years ago, but if I put this way, if there was a different margin, you'd have remembered it. If you were told something different to what was there, you might remember it?

A. Yeah. 432 for Esat Digifone as opposed to 410 for Persona strikes me as a very clear margin.

Q. Put it this way, Mr. Spring: Seats have been lost

with much tighter margins.

A. Tell me all about it, with all due respect.

Q. And won, in fairness to you, Mr. Spring, and won.

So it was very clear what the result was to you, and I think Mr. Quinn said that in his judgement it was extremely clear.

A. There was no second-guessing required. There was no querying because it was a clear recommendation from the competition authority that had been overseeing it.

Q. And there was absolutely no basis for you to go behind that at that stage?

A. None whatsoever.

Q. Now, also in relation to the release of the information, if you like, the authorisation of Mr. Lowry to announce the result quickly. Firstly, I think you have said that you were under, as a Government, considerable pressure from Brussels to sort this problem out?

A. Yes, we were. It was very obvious that we were behind, if you like, in terms of the second mobile licence being issued.

Q. Secondly, there was, as there always is, the prospect of a possible leak to the media or out of the Government, no matter

A. I would regard that as an understatement. It was inevitable if this matter, once the decision was made, it would have been out in the public domain; and it

was better that it was put out through official channels rather than it being done otherwise.

Q. In a controlled manner?

A. In a controlled well, in a controlled manner.

Q. And there had been, of course, thirdly, speculation in the press as to who had won this; there was something of a feeding frenzy within the press as to who was going to win this.

A. I don't honestly recall that.

Q. In any event, for a number different reasons, it seemed appropriate to you, at the time, that information be released quickly

A. It was primarily my political instinct that sooner once the decision arrived, the sooner it was put into the public domain, through official channels, it was the better for everybody.

Q. Thanks very much, Mr. Spring.

A. Thank you.

MR. MCGONIGAL: The matter that I want to raise, Mr.

Chairman, is more a matter of correction as opposed to a question for Mr. Spring, but I can deal with it while Mr. Spring is there. It's in relation to the aide-memoire which Mr. Coughlan referred to and which was put on the screen in relation to paragraph 11.

What I want to say in relation to that is that's an aide-memoire for the Cabinet Committee. And it's clear from the first paragraph that that was drawn up

in accordance with a Government decision of S22048E of the 7th February of 1995, which I don't think has been put in evidence yet, but can be found the genesis of it can be found in memorandum for Government of the 4th February of 1995. And is that aide-memoire is not a document upon which the Cabinet meeting of the 2nd March was based. There was a memorandum for Government on which that would have been based which was the 17th February of '95.

MR. COUGHLAN: I think that aide-memoire was annexed to the memorandum that went to Government. There has been evidence about that.

MR. MCGONIGAL: It's just Mr. Coughlan left out the memorandum, and I think it's better to get the sequence of these things properly.

Thank you, Mr. Chairman. Thank you, Mr. Coughlan.

CHAIRMAN: Mr. O'Hanlon?

MR. O'HANLON: I have no questions.

CHAIRMAN: Anything by way of clarification?

And nothing in conclusion, Mr. Coughlan?

I think you can make such air services as are necessary, Mr. Spring. Thank you very much for your attendance and assistance today.

A. Thank you, Judge.

CHAIRMAN: Tomorrow morning, usual time. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 1ST APRIL, 2004 AT 11AM.

