

A P P E A R A N C E S

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I N D E X

Witness: Examination: Question No.:

Greg Sparks Ms. O'Brien 1 - 64

Mr. Fitzsimons 65 - 180

Mr. O'Callaghan 181 - 203

Mr. O'Donnell 204 - 206

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 2ND APRIL,
2004 AT 11AM:

MS. O'BRIEN: Mr. Greg Sparks please.

GREG SPARKS, HAVING AFFIRMED, WAS EXAMINED AS FOLLOWS
BY MS. O'BRIEN:

MS. O'BRIEN: Thank you Mr. Sparks.

Q. Mr. Sparks, you have kindly assisted the Tribunal by providing a memorandum of intended evidence and how I propose approaching your evidence is to open your memorandum which means that I will read it into the record of the Tribunal's proceedings, and having done that, I'll just ask you to formally confirm that its contents are correct.

Having done that, I would intend to return to discuss with you, in a little more detail, one or two matters arising out of your memorandum, and in the course of doing that I may refer to one or two of the very small number of documents that were brought to your attention, if that's all right?

A. Okay.

Q. Now, do you have a copy of your memorandum with you in the witness-box?

A. I do.

Q. Very good. Now, this was in the form of a questions

and answers that you provided to queries raised by the Tribunal.

Question 1, you were asked for details of your role and functions as programme manager to the then Tanaiste during the years from December, 1994 to June, 1997.

And you answered, that you were appointed programme manager to Dick Spring, Tanaiste, on the formation of the Fianna Fail/Labour Government and continued in that role during the period of the Rainbow Government between Fine Gael, Democratic Left and Labour. Your role as programme manager to the Tanaiste was to ensure the delivery of the programmes for Government.

As you were attached to the Tanaiste office you had no line responsibility but coordinated the Labour programme managers and advisers in the delivery of agreement policy.

Question 2, you were asked for details of the manner in which the various programme managers operated and their involvement in or input to matters which went to Cabinet or to Cabinet subcommittees.

And you answered that in the course of your work you would receive the Cabinet papers on the Friday before the scheduled Cabinet meeting the following Tuesday. Having read the papers you would meet the other Labour programme managers and advisers each Monday to ascertain whether the Labour Ministers and Ministers

for State were happy with the recommendations for Cabinet. Any comments and observations were noted. Early on Tuesday morning the Labour Ministers would meet with the Tanaiste. You would attend along with other advisers to the Tanaiste to discuss the Cabinet agenda for later that day. The general discussion would take place and you would inform the meeting of the comments from the previous day's discussions. The Ministers would then decide the best course of action for the Cabinet.

There were times that the Cabinet would refer issues to the programme managers. In such circumstances, it was the duty of the programme managers to resolve the technical aspects of public policy. This would be completed through in-depth discussion and negotiation.

At times these discussions would involve personnel from their departments. It was the intention, as far as possible, to resolve the issues to the net political point for the Ministers to make the final decision.

You were then asked a series of questions from question 3 to 9 about the GSM evaluation process, and you answered all of those questions together in one answer, so what I propose doing is reading out all the questions first and then referring to your answer, if that's all right.

A. Okay.

Q. Question 3, you were asked for details of your role in relation to the GSM evaluation and licensing process and in particular, in relation to:

1. The agreement of the Cabinet Subcommittee on 16 February, 1995, to proceed with the proposed tender competition as outlined in the Minister for Transport, Energy and Communications aide-memoire to the Cabinet Committee.

2. The decision of the Cabinet approving the announcement of an open competitive bidding process with a view to granting of a licence to a second cellular phone operator subject to the matters recorded in the Cabinet decision dated 2nd March, 1995.

3. The informal Government decision regarding the resolution of the intervention of the European Commission in the evaluation process as recorded on 4th July, 1995.

4. The evaluation process conducted by the GSM Project Group.

5. The decision of the Cabinet Subcommittee on the 25th October, 1995, approving the result.

Finally, the decision of the Cabinet made on the 26th October, 1995, approving the result of the evaluation process.

Question 4 you were asked whether and, if so, to what extent you were kept informed or otherwise aware of

the trend and/or ranking emerging from the evaluation process during the course of the process and if so the extent of the information available to you and the source or sources of such information.

Paragraph 5 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 the light of paragraph 2 of the Government decision of the 2nd March, 1995, namely "A recommendation be put by the Minister to Government in time for a final decision on the granting of the licence to be made by the 31st October, 1995."

Question 6, your understanding in the week prior to the 25th October, 1995, being the date on which the result of the competition process was announced of the stage which the process had reached and as to when the result was likely to be brought to the Cabinet or to the Cabinet Subcommittee.

Question 7 you were asked whether you were informed prior to the meeting of the 25th October, 1995, that the result of evaluation process would be considered by the members of the subcommittee and if so the source of your knowledge.

8 you were asked for each and ever respect, if any, on which the procedure followed in the bringing of the result to the Cabinet Subcommittee on the 25th October or to the Cabinet on the 26th October, 1995, differed

from the established practice.

Finally at question 9 you were asked for the date on which you were first informed that the result of the GSM evaluation process had been approved by the Cabinet Subcommittee and the person by whom you were so informed.

And your answer to all of those six questions is as follows: You said that you will take all the questions listed together. Understanding the context in which the decisions were made is important. The telecommunications industry was going through a period of massive investment due to technical breakthroughs and liberalisation of the European markets through pressure from the European Commission. These pressures were particularly acute within the mobile telephony area. The Government responded to these pressures through announcing a competition for the award of a single licence. This would have been in accordance with procedures adopted within other countries within the European Union. Due to the potential profits in the sector, there were discussions between the Departments of Finance and Transport, Energy and Communications regarding the possibility of fees being paid by the new operator. The Department of Transport, Energy and Communications wished to develop the market as quickly and efficiently as possible. They were of the view that

any licence fee charged would be passed on to consumers and might delay the time for the capital investment required to fully develop the market. The Department of Finance wished to maximise the return to the Exchequer.

On agreement to an open competitive process by Government on the 2nd March, 1995, there would have been no further involvement in the tender process by the Tanaiste's office until a final decision was made.

You state that as you understand it, the decision of the subcommittee was made in an informal meeting. The Party leaders were meeting in the Taoiseach's office with the Minister for Finance when Minister Lowry rang the Taoiseach to tell him that the Andersen recommending had been received. As you understand, the Minister was invited to the Taoiseach's office where the report and its recommends were discussed. A decision to accept the Andersen recommendation was made. Sometime following that meeting, you met with the Tanaiste who told you of the decision. You expressed surprise. You explained to the Tanaiste that the licence would, in your opinion, allow the recipient access to super profits. You understood that Esat Digifone, at that time, was not financially strong. You acknowledged that with the licence, it would have no problem raising the capital, but you would have thought that its current financial status

was relevant. You went on to say that you also had heard rumours that Mr. Dermot Desmond was a shareholder, and queried had his involvement been considered in the light of the Johnston Mooney and O'Brien report that had been issued earlier by Ruairi Quinn while Minister for Enterprise and Employment. The Tanaiste was not aware of these points. However, in his opinion, the Andersen report had given a clear recommendation and that recommendation had been accepted.

Finally, at question 10 you were asked for details of dealings between you and any entrant or member of any consortium prior to or during the course of the evaluation process.

And you answer that during the period you met with some representatives of the Persona consortium for a presentation. This consisted of a presentation to those involved and their plans.

And that completes your memorandum and can I just to ask you to confirm that its contents are correct?

A. I confirm.

Q. Very good. Just that last matter, I may as well just deal with it at this stage, Mr. Sparks, where you refer to a meeting that you had with the Persona consortium. Do you recall when that was?

A. It probably would have been during the summer of '95.

It was a breakfast meeting and took place for about an

hour. I think it was in the Shelbourne Hotel.

Q. Right. And do you recall was that before or after the closing date for the entry of bids for the second GSM licence which, just to remind you, was the 4th August?

A. I couldn't tell you.

Q. Do you recall who was present at that meeting?

A. There were some representatives from Persona and the company, the Irish company that was involved, and Motorola; I think there were two people from Motorola.

Q. And you were there and was there anybody else there from your side?

A. I think there probably would have been somebody else with me from our side, yes.

Q. Would the Tanaiste have been present?

A. No.

Q. I see. Do you recall if there was anybody from the Department of Transport, Energy and communications?

A. No.

Q. Now, you have explained to us that you were programme manager to Mr. Spring at the time, who was Tanaiste, and I suppose in some ways, you were in an unusual position in that you had been his programme manager from December of 1992 through the Fianna Fail/Labour coalition and then again through the Rainbow Coalition which I think came to power in December of 1994. So you would have seen this process, if you like, go through Government from its inception right through to

the licence stage on the 16th May, 1996, is that

correct?

A. That's right.

Q. So you would have seen the initial proposals, I think, that were made when Mr. Brian Cowen was Minister?

A. Yeah.

Q. And then when the Rainbow Coalition took up power, the matter came back to Cabinet again, and at that stage Mr. Lowry was the Minister?

A. Yeah.

Q. And I think we have seen copies of the various documents that came to the Cabinet, and indeed to a Cabinet Subcommittee in February. I just want to refer you to those very briefly, if you don't mind. If you just look at the 'Aide-memoire for Cabinet Committee'. It's not dated on the first page, but the final page shows the date, February, 1995. I just want to refer you to one portion of that. I think it's the third document, Mr. Sparks, in the small booklet of documents behind your statement. Do you have that there?

A. I do.

Q. Can you just tell me I don't want to take you throughout the entire programme manager procedure again because you explained it very fully in your memorandum and we have also heard evidence in relation to it from Mr. Donlon and Mr. McCrea and indeed from

Mr. Loughrey and other Ministers and so forth, but what all of them did say is that programme managers had a varying involvement with Cabinet subcommittees. Sometimes they were involved, sometimes they weren't. Do you recall at all whether you were involved in relation to the deliberations of the Cabinet Subcommittee that considered the proposals for the GSM evaluation?

A. No, I wasn't involved.

Q. You weren't involved?

A. No. I was involved in the leased line, but that was totally different.

Q. I see. Would this document here, this document, 'Aide-memoire for Cabinet Committee', would you have reviewed the contents of this document in advance of it being considered by Mr. Spring, do you recall? You may not have.

A. Once the decision with regard to the Cabinet Subcommittee, I think what we were all doing was waiting for the process to complete before we would get involved.

Q. I see. I suppose what I just want to refer you to here is, unfortunately there is no internal pagination, but there is the Tribunal has some page numbers printed on it and it's page 126, it's actually I think the sixth page in that 'Aide-memoire for Cabinet Committee', and that all I really want to

draw your attention to is what was stated there in relation to the selection process simply to ascertain whether you would have had an awareness of what the process entailed. And I'll just refer to you it.

It's headed do you have it, it's page 6?

A. Page 6. The paragraphs are numbered, which paragraph?

Q. It's paragraph 11, 11 at the top of the page and it's headed "The selection process." You see there it says "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 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 creditability of the business plans of applicants with particular emphasis on a progressive approach to market development, a commitment to a high quality nationwide service, an innovative approach to tariffs with a view to reducing costs to consumers;

" the proposed fees 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 applications 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." It then just listed the eight criteria.

Would you have been generally aware of this intended selection process?

A. I would have been aware of the selection process and the criteria that's laid down, I probably would have had a general awareness of it rather than a detailed awareness.

Q. And the, if you like, the condition there that the Minister intended to compare the applications subject to being satisfied as to the financial and technical capability of the applicant, would you have been aware of that element of the process as envisaged?

A. Well I would have assumed that would have been part of the process.

Q. Now we know that went to the Cabinet Committee. It was approved by the Cabinet Committee. And then it went by Memorandum for Government on the 17th January, 1995. That presumably would have passed across your desk. It would have come to you on the previous Thursday or Friday. You would have reviewed it. Can I take it that the aide memoire to the Cabinet Subcommittee would have been appended to the Memorandum for Government?

A. I can't

Q. You can't assist?

A. I can't assist you on that.

Q. There is reference to it in fact in the Government decision; that's why I wondered?

A. If it is referred to, then it would be, yeah.

Q. I'll just refer you to the Government decision itself, which is the next document on, dated 2nd March.

"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 meet 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."

You see there the reference to the aide-memoire; that's why I was just asking did you think it was probably appended to the Memorandum to Government?

A. A lot of them would have that, it wouldn't be a problem.

Q. Now, you would have been aware that that Government decision had been taken?

A. That's right.

Q. What would you have envisaged in terms of the matter coming back to the Cabinet at the time?

A. Well, I would assume that the independent people would have been appointed. They would come back with a recommendation and then the recommendation would have been considered by the subcommittee.

Q. Yes, and would you have expected that recommendation to come back, if you like, in such a way that it would go through the programme manager system?

A. Something as sensitive as that, no. It may have gone through one or two of the senior programme managers but something as sensitive as that would have not gone

Q. through the full programme managers?

A. No, it certainly would not.

Q. Perhaps one or two of the senior programme managers?

A. Yes.

Q. You would have been one of those, you were the leader of the labour programme managers at the time?

A. Yeah.

Q. And I presume Mr. Donlon, I think he was the leader

A. Sean, yeah.

Q. He was the leader on the Fine Gael side?

A. Yes.

Q. The announcement then was made and the evaluation process commenced in terms of inviting bids to be submitted. Would you have known at the time that a special Project Group was going to be established within the Department?

A. Well, at that stage it would have been up to the Department. And as we wouldn't have been involved in it

Q. Of course not.

A. And we would have known that there would have been a process going on somewhere within the Department.

Q. But you wouldn't have known any of the details of it?

A. No.

Q. You wouldn't have known, for example, that there was a project group of, I think, the senior people from each of the telecommunications divisions in the Department?

A. I would have assumed that Martin Brennan would have been involved because he was involved in telecommunications, but that's about it. I wouldn't have known about Andersen or anything like that.

Q. But you would you have known that there were independent consultants?

A. I would have known there may have been independent consultants, yes.

Q. Did you know at all how this process was proceeding

and progressing in terms of

A. No.

Q. the European intervention and the capping of the licence fee and so forth?

A. Well I knew about the EU intervention because there was some controversy about the, whether to go for an auction process; I think Greece had gone through that, and there was controversy and there was a conflict between the Department of Finance and this particular Department. The Department of Finance wanted to maximise the return to the Exchequer through an auction process, while the EU were frowning upon that. And there was also a knock-on impact from a competition point of view with Eircom. So I knew about that controversy, but only on a peripheral basis.

Q. Would you have made any inquiries, say, in the course of the progress as to how it was going? Time-scales, so forth, when it was expected the recommendation might be made?

A. No.

Q. You wouldn't?

A. No.

Q. Prior to the discussion, or conversation that you had with the Tanaiste on the 25th October, had you any inkling that this recommendation was imminent, say in the days or perhaps the week prior to the 25th

October?

A. No, I was totally surprised.

Q. Now, if I could just go back to your statement, just page 5 of your statement. You say that you understand that the decision of the subcommittee was made in an informal meeting. The Party leaders were meeting in the Taoiseach's Office with the Minister for Finance when Minister Lowry rang the Taoiseach to tell him that the Andersen recommendation had been received. As you understand it, the Minister was invited to the Taoiseach's Office where the report and its recommendation were discussed. A decision to accept the Andersen recommendation was made.

Now, can I take it that the information that you have set out in that paragraph is based entirely on what you were told by Mr. Spring?

A. Yeah, as I understood it, Dick was meeting with the two other Party leaders and the Minister for Finance and they had the issuing of the licence was not on the agenda at all. And that it was during that that the idea of the Andersen report coming in was raised and the decision, because the same personnel that were at that committee were also the subcommittee of it and they were able to make a decision.

Q. Yes. Now, you say then that sometime following that meeting you met with the Tanaiste who told you of the decision.

A. That's correct.

Q. Do I take it that it would have been shortly after the meeting that evening?

A. It would have been that evening, and it would have been it wouldn't have been sort of, 'I have news to tell' you was the conversation.

Q. Yes. You say that you expressed surprise.

A. That's correct.

Q. Can you recall or can you tell me what was the focus of your surprise?

A. Well, the focus of my surprise was that I had heard about the cash, the financial strength, as I understood it, of Esat Digifone and that would have been the area, if it had come to me I would have concentrated upon. And I assumed that this was looked at and I just sort of said 'I am surprised it was able to have been dealt with'.

Q. Now, I suppose the first thing I should ask you is, how would you have had any knowledge about the financial strength of Esat Digifone?

A. Well, I had no real knowledge. I just had heard rumours, and that's what I would have been looking at. That was basically it.

Q. Would you have known at the time that the composition of the Esat Digifone consortium was that 40% was to be held by

A. No.

Q. Esat Telecom, if you like, and 40% by Telenor, the Norwegian semi-state operator, as it then was?

A. No. The only thing I would have had a very general knowledge what would have happened is Dick would have come and said that Esat Digifone were the successful consortium. And I was surprised because of the financial rumours that I had heard, and that was I was going to look at that area if it had come for my advice.

Q. Right. But I take it the financial rumour that you had heard was in relation to the Denis O'Brien side of the consortium?

A. That's correct, yes.

Q. Now, you say that you acknowledged that with the licence it would have been no problem raising the capital but that you would have thought that its current financial status was relevant.

Now, can I take it from that the way that you say that you acknowledged that, if you like, you were responding to something that was said by Mr. Spring?

A. No, I would have gone through it, that once you had the licence, well then you had something of value so therefore you would have been able to raise the money.

Q. But you still thought that the current financial status was relevant?

A. I would have, yes.

Q. Was that based on the fact that, as I referred you to

the intended process, selection process, that there was a requirement of financial capability or would you consider that in any circumstance where a Government was going to confer a privilege or a licence such as this on an applicant, that their current financial position would be relevant?

A. No. In any business plan, the financial strength of the people involved is important.

Q. So you would have been going back to first principles in terms of your experience as an accountant?

A. Yes.

Q. You then state that you went on to say that you had also heard rumours that Mr. Dermot Desmond was a shareholder and queried had his involvement been considered in light of the Johnston Mooney and O'Brien report that had been issued earlier by Mr. Quinn while Minister for Enterprise and Employment.

Now, I am not going to ask you where you had heard the rumours that Mr. Desmond was a shareholder, but can I take it that these were general rumours?

A. That's right.

Q. You of course said to me you really didn't know anything about the composition of the Esat Digifone consortium that had won the licence, so could I take it that the rumour you heard was that simply Mr. Desmond might be a shareholder?

A. That's correct.

Q. Now, you queried whether Mr. Desmond's involvement had been considered in the light of the Johnston Mooney and O'Brien report which had been issued. And you say the Tanaiste was not aware of these points, so I take it that the Tanaiste said to you that it hadn't been considered?

A. That's correct, yeah.

Q. Can I take it from that, that if it had been known that Mr. Desmond was a shareholder in the Esat Digifone consortium, that you would have or if he had a financial interest in the Esat Digifone consortium, can I take it that you would have considered that the contents of the report of Mr. Glackin, the Glackin Report, would have been an appropriate matter for the Cabinet to consider?

A. Well I think you'd need to distinguish between the two. The involvement of Dermot Desmond could have created a political problem insofar as what I didn't want was the Tanaiste, when the thing was announced and if it was confirmed and I didn't know whether it was that Dermot Desmond was involved, that he be doorstopped as to that question. So I was, I would be looking upon that as a political situation.

With regard to the financial strength, I would consider that as a fundamental with regard to the business plan. So they are two totally different

Q. I see the point you are making. I can understand it.

Would I be right in thinking that if you had anticipated that this matter had come to the attention of, if you like, the senior programme managers, which would have included yourself, that these are two matters that you would have been raising with the Tanaiste?

A. Yeah, I would have raised if my understanding of Esat Digifone's financial strength was as the rumours were, I would have raised that. But that would have been considered, presumably, by Andersen, because the very first thing in the order of priority, which I am looking at now is the business plan and I would assume that that's what would be looked at.

With regard to the Dermot Desmond situation, I would be advising him from the point of view of the political consequences of that and to have that prepared.

Q. Yes. They are two matters on which you would have been advising him?

A. That's correct.

Q. I am sure you recall that there was some subsequent controversy in the media in relation to Mr. Desmond's involvement prior to the issue of the licence, and indeed I think there were questions in the House regarding Mr. Desmond's potential involvement. Do you recall at that stage whether you raised that issue with the Tanaiste or with anybody else?

A. The fact that it was in the House and raised?

Q. When it was raised in the House and when there was some speculation and coverage in the media subsequent to the announcement of the winner of the competition, do you recall whether you raised with the Tanaiste, or anyone else, the rumours that you had been aware of circulating in October of 1995?

A. No, I would have been just looking at it from a political point of view. That was basically it.

Q. Thank you very much, Mr. Sparks.

CHAIRMAN: Some other questions may be asked of you, Mr. Sparks. Mr. Fitzsimons?

MR. FITZSIMONS: I have a few questions, Mr. Sparks.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

MR. FITZSIMONS: I appear for Telenor, just so that you know where I'm coming from.

Q. Did you keep a diary when you were programme manager?

A. No.

Q. You didn't keep a diary and you had no appointments book whatsoever?

A. Oh I would have had an appointments book all right.

Q. That's what I meant when I use the term "diary". And would the appointments book have recorded the date of the breakfast meeting that you had with Persona?

A. I would assume it would have, yes.

Q. And is that appointments book with the Department still?

A. No, it would have been a I kept an electronic diary, one of these things that you have that you carry around.

Q. I see. So there is no record on paper of the date upon which you met with Persona?

A. I doubt it.

Q. And was that an invitation that was made verbally or in correspondence from Persona?

A. No. I think it probably would have arisen that Dick would have sort of said: listen, he had been approached and would I meet with them, and I would have met with them.

Q. I see. So the Tanaiste was in fact approached

A. It may have been.

Q. Sorry?

A. It may have been that way.

Q. It may have been that way?

A. Yeah.

Q. You can't recall at this stage?

A. No.

Q. And why did you meet Persona, knowing that it was an applicant for a valuable State licence?

A. Well, I mean, the meeting was just sort of an introduction, that's basically they were introducing themselves.

Q. I know, but this is a breakfast meeting. Your time as programme manager to the Tanaiste was very valuable

time. And why did you give these people so much of that valuable time, bearing in mind that they were applicants for a valuable State concession?

A. There would have been no reason why I wouldn't have met them.

Q. Yes, but there must have been reasons that made it, if you like, worth your while, or worth the Tanaiste's while to meet them, or the State's maybe it was the view it would be in the State's interest to meet them and I just want to try and find out what was your perspective at the time?

A. My perspective was that they were just people that were interested in the licence. They were talking about other investments that Motorola were considering at the time, and that was just to hear what they had to say.

Q. I see. Other investments. What other investments were they talking about?

A. As far as I know, Motorola were considering making an investment, I don't know of what sort, a large investment with a number of jobs.

Q. I see. And was this associated then with their licence application?

A. If it was in their mind, it wasn't in mind.

Q. But it was put to you as the the two were put to you in tandem?

A. Well, I think what was put is that Motorola was a very

large corporation with large financial interests

already in Ireland.

Q. Yes, and they were considering and making those interests even larger?

A. Yes.

Q. Which of course would have been in the interest of the State, obviously, for its economic reasons?

A. Mm-hmm.

Q. And do I gather from your description of that meeting, that it was quite a high powered delegation: two people from Persona and two from Motorola; were these Americans?

A. One of them certainly was an American.

Q. He had travelled from the States to meet you?

A. I doubt he travelled from the States to meet me. I'd say he was here already.

Q. Well, we know that Motorola had a base in England, we have heard that already from a witness?

A. Right.

Q. So he may have come from there, I suppose?

A. I don't know.

Q. And what was the nationality of the other Motorola person?

A. I couldn't tell you.

Q. Can you recall their names?

A. No.

Q. And what about the two Persona representatives; can

you recall their names?

A. One of them has been mentioned in some of the documentation, but I don't know the other person.

Q. Is it a Mr. Boyle by any chance?

A. Yes.

Q. I see. And another would a Mr. McGinley have been present?

A. I don't know who the other would have been.

Q. Okay. And who was with you at this meeting?

A. I can't remember the I think it may have been William Scally, but I can't recall.

Q. William Scally; is that Mr. Scally who was the former Secretary of the Labour Party?

A. No, no, that's Seamus Scally.

Q. Well, is Mr. Scally a civil servant?

A. No, he is an adviser he was an adviser, an economic adviser to Dick.

Q. To Dick. And why was he with you at this meeting if it was an introductory meeting?

A. Because he and I worked together closely on all issues.

Q. Where did this meeting take place exactly?

A. The Shelbourne.

Q. The Shelbourne Hotel.

Now what other consortia did you meet? What other delegations from the applicants did you meet?

A. None.

Q. None?

A. None.

Q. Would you not have considered it appropriate if you met one applicant, to meet others, in the interests of

A. Well, I wasn't involved in the process.

Q. I think you have told us you knew nothing about the process?

A. That's correct.

Q. Now, just coming back to that meeting; was a case made about the application to you?

A. Only in very general terms, because I had no knowledge, so I wouldn't

Q. You, of course, like, presumably, everyone, would have heard of Motorola as being a huge American corporation in music and associated industry. I think everyone can claim knowledge of that

A. I have heard of them.

Q. Sure. So they were a big, big, multinational firm that were part of this particular consortium?

A. That's correct, yeah.

Q. Now, when the time came and the licence sorry, how long did the meeting last?

A. I'd say three-quarters of an hour to an hour.

Q. And did you report to the Tanaiste on the meeting?

A. If I did, it would have been in very general terms.

Q. But you would have prepared a memorandum?

A. No.

Q. Well, would Mr. Scally have prepared a memorandum?

A. No, I doubt it.

Q. Surely you would need a record of a meeting like this
for

A. I don't think

Q. files and for future action if needs be?

A. No.

Q. What was the point

A. I don't think there was much involved in the meeting
to be able to have prepared a memorandum.

Q. Well, you were informed that there would be major
that Motorola were considering major investment,
additional investment in the State which was a very
important piece of knowledge from the point of view of
the State. Now, surely that piece of information
warranted a note or memorandum for the files?

A. No. I didn't keep very many files.

Q. And did you not report to the Tanaiste that Motorola
were considering further major investment in the
State?

A. I think it was public knowledge at the time that they
were considering to invest.

Q. Sorry?

A. I think it would have been public knowledge at the
time they were considering to invest.

Q. They wouldn't have brought you along to a meeting to

give you this information if it was public knowledge at the time, Mr. Sparks.

CHAIRMAN: I suppose we did hear, Mr. Fitzsimons, that every member of the Oireachtas I think had been circulated with some documentation from Mr. Boyle's consortium.

MR. FITZSIMONS: Well, that's another matter that we have presumably have, that presumably the Tribunal will be looking into and investigating fully in due course, having regard to the fact that relevance is being given to the position of Persona in the ranking for the final award.

CHAIRMAN: Indeed.

MR. FITZSIMONS: All of this information is obviously highly relevant to your inquiries, Sir, and that's why I am asking Mr. Sparks these questions, as he is the only person so far before the Tribunal who has actually met Persona in the course of their pursuit of this concession.

Q. So you are saying do I gather what you are saying now, Mr. Sparks, is that this information that they gave to you about the fact that they intended major additional investment in the State was in fact not new information; that it was a matter of public knowledge?

A. As far as I am aware, Motorola had were looking at plans for an expansion already, and that was public knowledge. It would be fair to say I didn't see

anything very of high import with regard to this particular meeting.

Q. You saw nothing incorrect about meeting an applicant for a concession in this manner?

A. From the point of view of finding out information and an introduction, I didn't see anything wrong with that.

Q. Well what information did you need to have from Persona and why did you need information from them?

A. I didn't need it. They were the ones that wanted to give me the information. I didn't seek out this information at all.

Q. What was the point of the meeting if there was no point in either you seeking information or if there was no point in their giving you information, what was the point of the exercise?

A. Well, you'll have to ask them that since they asked for the meeting, not me.

Q. Yes, but why did you meet them if there was no point for the meeting from your point of view?

A. I presume I was asked to meet with them and I met with them.

Q. And you say you have no note or memorandum of the meeting?

A. That's correct.

Q. Now you say that when the result was announced, you expressed surprise. Was this because of what you were

told by Persona?

A. No.

Q. Was it because that you had heard of Motorola and that they were a big, big multinational firm, and you hadn't heard of the others?

A. No, it was nothing to do with the meeting. I had heard it was my surprise was a) that I didn't know it was coming up; and b) one of the questions, as I have already stated was, I was looking at the I had heard rumours with regard to the financial strength of Esat.

Q. Were you aware of the other applicants? Did you know what their makeup was? What their financial strength was? Did you know who they were?

A. Within the Esat

Q. No, no, the other applicants for this concession.

A. I was aware of the other applicants who would have been involved, just the names, that's all.

Q. So you did have some familiarity, then, with the process in that you knew who the other applicants were?

A. I would have had a vague recollection I mean, I don't know whether I found that out afterwards or before.

Q. So you mightn't have had any knowledge at the time?

A. I mightn't have had any knowledge at the time.

Q. So the only party of whom you, in fact, had knowledge

was Persona and in fact they had made a presentation to you personally extolling the virtues of their bid, presumably not unnaturally from their point of view?

A. I don't think they were they were more sort of telling how wonderful they were rather than their bid, which is slightly different.

Q. Well now that's sorry, Mr. Sparks, we are trying to get the facts here. That's a third element of the meeting, because you have told us already that they gave you a general presentation on the bid. You have told us that they informed you about their plans for future investment. And now you are saying that the meeting was just to give you a general description of themselves. Now

A. I don't think they are contradictory.

Q. You don't?

A. No.

Q. So long as all thee elements are there, I am quite happy with that. But they are the only people who had made a presentation to you of their bid. Now and you are the person who was surprised at the result?

A. I would say that they did not make a presentation of their bid, as I said already.

Q. Sorry?

A. They did not make a presentation of their bid.

Q. Oh I am sorry, you have told us, and it's on the record, that they made a general presentation of their

bid. You have told us that, Mr. Sparks. And I can refer back to the transcript if you wish me to?

A. Fine, you can refer back to it but, I mean, I had no detail of their bid.

Q. I am sorry, do you wish to change your evidence now?

A. Let me be straight about this. I met them for breakfast. They introduced themselves. They said they were a bidding they had a bid in. They introduced themselves and the financial interests they already had in Ireland and what they were proposing to do, and that was the end of it.

Q. Well, I am sorry, it's not as simple as that because you have told us that they made a general presentation of their bid, not the detail obviously, not in that space of time. You have told us that they told you about their plans for additional major investments in the State not minor investment; major investment. And now you say they told you about themselves generally. So that's three elements of the presentation.

So that's the only knowledge you had in terms of factual knowledge of the profile, or of any of the bids that were presented to the project committee, isn't that so?

A. That's correct, yeah.

Q. You had no knowledge of the form or content of the Esat Digifone bid?

A. That's correct, yeah.

Q. You had no knowledge of the form or content of any of the other bids?

A. That's right.

Q. So when you expressed surprise at the result, is it not just about possible that you were influenced by the knowledge that you had been given of the Persona bid, backed, as it was, by this huge prosperous multinational?

A. No. My surprise was with regard to Esat and the rumours I had heard about Esat.

Q. What did you know at the time about Telenor?

A. Telenor?

Q. Yes.

A. It was a very large communications company from the Nordic countries.

Q. Did you know that?

A. I did, yes.

Q. At that time?

A. Yes.

Q. Did you know that it had experience in the rolling out of GSM systems and that Motorola did not?

A. I wouldn't have known that.

Q. You wouldn't have known that. And you wouldn't have been told that by Motorola either, isn't that so?

A. It's highly unlikely I would have been told that, yes.

Q. Yes, it is. But the committee that were examining the

bids would have known all of that, isn't that so?

A. That's correct, yes.

Q. And that committee would have known all about the financial situation of the different applicants, isn't that correct?

A. I would assume that they would have taken that into account.

Q. Were you aware that that committee had, as its members, two accountants seconded from major Dublin firms to advise the committee on all financial matters in relation to the bid?

A. No, I was not aware of that.

Q. And taking that into account, would you accept that these gentlemen, on the balance of probabilities, would have been capable of adequately advising the committee

A. I certainly would have thought that, yes.

Q. in relation to financial matters.

If you had known that at the time, would you have been less surprised at the outcome?

A. Well, let me put it to you like this: my surprise was from a point of view of ignorance insofar as a) I didn't know where it was coming but I had heard rumours about the financial situation of Esat, so that would have been it.

Q. Yes, I fully appreciate you haven't put it further than that and I am not trying to suggest that you had.

But, now, armed with the knowledge that there were two prominent accountants from major firms, PriceWaterhouse and I forget the other one for the moment, on this committee, if you had known that at the time, can I take it that you would have had, to put it at its mildest, less respect for any rumours that you might have heard?

A. I have very little respect for most rumours that I hear but I usually follow them up just to make sure.

Q. Of course, I appreciate that, but would you have drawn comfort from the fact of the presence of these accountants in terms of the correctness of the decision?

A. Well, I would have drawn comfort from the fact that what the Tanaiste said was that there was a clear winner from the Andersen report and there was a business plan to be included in that, so therefore, I presume that it was considered.

Q. Well of course it was considered. And we have had a lot of evidence on that.

And the Tanaiste, of course, as the Tribunal at an earlier stage in its questioning of witnesses, particularly the civil servants, of course solely for the purpose of inquiry, were emphasising over and over again that the result was very close; in other words, that there was nothing effectively between the top two. But we know from the Tanaiste and we know from

Mr. Ruairi Quinn, who have given evidence, and indeed we know from the numbers, that there was a clear result, and that's what the Tanaiste was informed?

A. That's what the Tanaiste said to me.

Q. Did you know about the expertise of the other members of the project committee?

A. I didn't know who was on the project committee so I wouldn't have known.

Q. And did you know that they had international consultants advising them, experienced international consultants?

A. I understood they had independent consultants, yes.

Q. Now, your statement says, "I understood that" this is from the rumours of course "I understood that Esat Digifone at the time was not financially strong."

Esat, at the time, was a company made up of the Denis O'Brien interests Esat Telecom and Telenor.

Now, Telenor, a huge, experienced, financially strong Scandinavian company, was part of Esat Digifone. Now, did you take that into account when you heard the rumours about Esat Digifone not being financially strong?

A. On hearing the rumours I would have thought it would have been beholden to me to follow them up to make sure that they were or were not true.

Q. I am not suggesting there was anything wrong. Of course you had to keep the Tanaiste right and tell him

about everything?

A. That's right.

Q. But did you take into account the fact that Esat

Digifone had, as part of it, this huge

A. If I had done subsequent investigation, I probably

would have taken that in, but since I didn't

Q. I see. So you never reached that stage?

A. I never reached that stage.

Q. I see. So can we take it, then, that you were at a

very early stage in terms of what you had heard and

with the benefit of hindsight, you wouldn't place as

much store on what you thought at the time as possibly

you do now?

A. What I would have done was, I would have followed up

the rumours to satisfy myself.

Q. And is it possible that you heard those rumours from

Persona?

A. It would be absolutely impossible because they

wouldn't have been allowed if they had tried to raise

the subject with anybody else.

Q. But this information was clearly, however it was

imparted to you, was imparted to you for a purpose,

presumably by somebody who had an agenda in the

particular context at the time, namely most likely the

application for the licence?

A. No, that would have been true if there was somebody

who specifically came to me and sort of told me this,

but that is not how I would have heard the rumours.

Q. How did you hear it? Who

A. I don't know, I can't recall, but I heard lots of different rumours at different times.

Q. Well did you hear rumours about any of the other applicants?

A. Not that I can recall. I am sure I did.

Q. Did you hear rumours about Persona and Motorola?

A. Not that I can recall, but I am sure I did.

Q. But you just happened to hear rumours about Esat Digifone?

A. I just happened to recall the rumours about Esat Digifone because they were successful.

Q. Now, you also heard you say you also heard rumours that Mr. Dermot Desmond was a shareholder. Well we know that that was not the case at the time, and indeed there was no question of his having any interest in the company unless and until the licence was awarded, if it was awarded. That's a legal fact. That can not be gainsaid.

Now, from whom did you hear the rumour that you heard that he was a shareholder?

A. As I said, I can't recall where I would have heard the rumours because I would have heard lots of different rumours in my position.

Q. But this, now, would have been a hot rumour, Mr. Sparks, and you know that as well as I do at the time,

a very hot rumour indeed. So from whom did you hear that rumour?

A. Well, most of the things I was involved with were hot, as you would say, because it was a fairly hot period of time in Government I think you were there yourself at some stage, it was a particularly hot period. There were rumours going around all the time.

Q. I appreciate that, and I don't suggest the position may have been otherwise, but this particular rumour would have been a particularly hot one that could only have arisen, that could only have arisen during a very short timescale prior to the 25th October, 1995, when the result was announced, because the relevance we are talking about say two months, or three months possibly, thereabouts. So who gave you that rumour?

A. As I said, I don't recall who gave me the rumour and I received lots of rumours.

Q. Well, if you heard that rumour, why didn't you tell the Tanaiste about it as soon as you heard about it because that would have been a pretty hot rumour? I take it it's part of your task to keep the Tanaiste informed of all rumours that could have implications?

A. Well, first of all, as I said, we didn't know that the decision was being made, so the decision was made on the 25th, I think it was, and certainly I wasn't prepared, at that stage, to be looking at the issuing of the licence.

Q. Well, does this mean that you heard the rumour in the week beforehand?

A. As I said, I don't know.

Q. Well, now, you can remember when you mightn't be able to remember from whom you heard the rumour, but a rumour like that

A. If I could remember when, I would most likely remember from whom.

Q. You have recalled the specific rumour, the wording of it: Dermot Desmond was a shareholder. This huge State licence was awarded. You would have immediately, presumably, thought of when you heard that rumour, and from whom you heard it. Now, can you please do your best to help us on that front?

A. I have already done my best and have tried to give you as much information as I possibly can.

Q. Well, I take it you would accept, Mr. Sparks, that it would have been part of well I take it you were meeting the Tanaiste every day when he was in Dublin, isn't that so?

A. Most days, yes.

Q. And it would have been very definitely part of your duties to keep him informed of any activities, rumours, developments, events, that might have any political impact whosoever where he was concerned?

A. That's right.

Q. Now, you heard this rumour, you say, at the time. Are

you telling me that you did not inform the Tanaiste of it?

A. Well, if I had let me put it to you like this: the relevance of the rumour prior to the issuing of the licence, or prior to the decision of the licence, if I had known he was considering it, I would have given him these two rumours to have been considered, but since the decision of made prior to me knowing that decision was made, I didn't take the opportunity of telling him those.

Q. Well, do I take it, then, that you had only heard the rumours shortly before the 25th?

A. You have asked me that already and I have answered that already, that I don't know.

Q. Do I gather from your evidence also, that the purpose, if you had reached the stage where you would inform him of such rumour, the purpose of it would be so that preparations could be made on the political front for dealing with any possible fallout from the licence being awarded to a firm in which Mr. Desmond happened to be a shareholder?

A. Yes, it was political.

Q. But that's as far as it went?

A. That's as far as it went.

Q. There is no question of the licence not being awarded to the to a company of which Mr. Desmond was a member, provided it met the requirements of the

competition?

A. Absolutely. It was a political.

Q. Because we have heard from Mr. Quinn, and of course Mr. Spring very correctly and properly, that so far as they were concerned, there was a competition process and the result had to be accepted. If it was not accepted, you were into a morass of litigation possibly involving the European Commission?

A. That's right.

Q. Thank you very much, Mr. Sparks.

CHAIRMAN: Mr. O'Donnell?

MR. O'DONNELL: No questions.

CHAIRMAN: Mr. Kelly?

MR. O'CALLAGHAH: I have four very short questions, Mr. Chairman.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR.

O'CALLAGHAN:

MR. O'CALLAGHAN: Mr. Sparks, I appear on behalf of Mr. Denis O'Brien.

Q. I think you said in your statement that you met the Persona consortium and they made a presentation, isn't that correct?

A. We have been through that already; yes.

Q. Were you aware at the time that you met them that Persona had been established solely for the purpose of applying for this mobile phone licence?

A. I wouldn't have been aware of that, no.

Q. Are you aware of any other significant corporate act that Persona would have engaged in at that time other than applying for the mobile phone licence?

A. I can't recall any anyway.

Q. Thanks.

CHAIRMAN: Very good, Mr. Sparks. I suppose, Mr. O'Callaghan, I suppose nearly every consortium was an ad hoc grouping for the purposes of applying for the licence, would that not have been the case?

MR. O'CALLAGHAN: That would have been the case, that would have been the case.

CHAIRMAN: Very good. Mr. Fanning?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FANNING:

MR. FANNING: Briefly.

Q. Mr. Sparks, I appear for Mr. Lowry. Mr. Fitzsimons asked you in quite some detail about the meeting that you did have over breakfast in the Shelbourne Hotel with members of the Persona consortium and the representatives from Motorola.

Am I to take it from the large amount of answers that you provided to his questions that you regarded it as an innocuous meeting?

A. That would be correct.

Q. And am I to take it from the fact that you didn't really appear to answer Mr. Fitzsimons's question as to what purpose you met for other than for the fact that they wanted to meet you, am I to take it from the

facts, from that, you really just met them more as a courtesy more than anything else?

A. That would be correct.

Q. And following on from that, I suppose the meeting had no ultimate effect or significance from your perspective?

A. I saw no importance with regard to it.

Q. Would you have seen it at the time as part of, I suppose, a comprehensive lobbying and PR strategy that that consortium were clearly engaged in?

A. I think it was more PR.

Q. Very good. Can I just ask you in relation to page 5 of your statement, you expressed surprise, and you have told us about that, and you say that you explained to the Tanaiste that the licence would, in your opinion, allow the recipient access to super profits. Are you intending to convey something pejorative by the expression "super profits"?

A. No. That was just a fact.

Q. I suppose it wasn't a fact at that stage; it was a prediction?

A. Well, I think that the competition on the European mainland was showing and the growth with regard to mobile showed that it was a very lucrative business to be in.

Q. Yes, but there appears to be something in your statement, and maybe I am wrongly deriving this

flavour from it, that part of your surprise or your concern was that the recipient would have super profits?

A. I have no concern whether somebody makes super profits or not.

Q. And you are aware that the structure of the competition was arrived at following intervention from the European Commission. I think you have already said that this morning?

A. That's correct, yeah.

Q. And you are aware that there was an extensive background of discussions and negotiations between the Department of Communications and the Department of Finance on the question of whether a beauty contest versus an auction was appropriate, and it was only following the intervention of the European Commission that the formula eventually arrived upon was determined to be the appropriate one?

A. That's correct, yeah.

Q. So the ultimate circumstance where in six, in fact, applicants bid the maximum 15 million, it wasn't, if you like, a unilateral Government decision to give away a State asset undervalue; it was a much more nuance than that; it was a formula reached following negotiations with the European Commission to prevent action from being taken against the State?

A. Yeah, I think

Q. Can I just say, were you aware of that at the time?

A. I was aware that I mean, of the argument taking place between the two departments and the Mr. Lowry's Department wanted to have a competitor rolled out as quickly as possible, and he saw that if you would increase the amount of money that obviously you are transferring the capital investment from the actual infrastructure to a licence fee.

Q. Yes, but I mean, perhaps I am wrong in this, but I am taking a flavour from your statement that you have some objection to the solution that was reached by your reference to super profits. What I'm really trying to suggest to you is that following the European Commission's intervention, there was really little alternative for the Government or the Department to reach the solution that it did. I mean, do you want to disagree with me on that?

A. No, I don't want to disagree with you.

Q. Okay. The process by which the decision came to the Cabinet Subcommittee on the 25th October, from your perspective, was entirely orthodox, isn't that so?

A. As I understand it, there was a Cabinet Subcommittee and that this is subsequent that Mr. Lowry got the results of the Andersen report and to prevent lobbying and various things he was anxious to try and get a decision as quickly as possible and I think he was correct in that.

Q. And you have already said quite clearly that you are not at all surprised and indeed you would have expected the programme manager apparatus to be bypassed on account of the sensitivity of this particular decision?

A. The programme managers were bypassed quite often.

Q. And it didn't surprise you at all, and I indeed you would have expected it in this circumstance?

A. It didn't surprise me.

Q. And finally then, the significance of Mr. Desmond's potential involvement, insofar as you were appraised of rumours of it, was purely political?

A. Correct.

Q. And it didn't alter for you or for anybody else the fact that the Andersen report had given a clear recommendation in favour of Esat?

A. Well if Andersens had given a clear recommendation, then that was the decision. The fact that whether Mr. Dermot Desmond was a shareholder or not a shareholder was not relevant to it. There was a political consequence that I had to alert the Tanaiste to in case he was doorstopped.

Q. But at no stage was it a thought in your mind that the Government should interfere and change the result?

A. No.

Q. Thank you.

MR. O'DONNELL: Could I just ask one question?

Sorry, there is just one question came to mind while

Mr. Fanning was asking his questions about the financial position.

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

Q. MR. O'DONNELL: Just in relation to I appear, Mr.

Sparks, for the Department of Communications, and it

was then the Department of Transport, Energy and

Communications. I think you said in your evidence

that you assume that the financial position of Esat

had been looked at and you were surprised that it was

able to have been dealt with. Were you aware that in

the report the report identified the potential

financial risks associated with the Communicorp part

of the consortium, but also set out how those

potential risks could be dealt with?

A. No, I wasn't. I never saw the report.

Q. All right. But you accept that that is contained in

the report, that the risks are identified, but also a

manner of how they would be dealt with which was to

insert terms into the licence?

A. If you tell me, I am sure. I have never seen it so I can't

Q. Thank you.

CHAIRMAN: Anything, Ms. O'Brien?

Well it's known by everyone here, Mr. Sparks, but for

the record it's desirable that we record that you have

been a senior accountant in Dublin for several years

and you'd be a founder member and partner of the firm of Farrell Grant Sparks. And as regards your involvement as Mr. Spring's programme manager, was it that you took leave of absence from your firm for those two periods in Government?

A. That's right.

CHAIRMAN: Very good. Thank you

MR. FITZSIMONS: Just one little point could I just make arising out of your exchange with Mr. O'Callaghan there about each of the applicants being ad hoc groupings?

CHAIRMAN: Yes, of course.

MR. FITZSIMONS: The applicant who won the licence was Esat Digifone Limited, a limited liability company incorporated under the Companies Acts. It was not an ad hoc grouping. I just want to make that point. The applicant and the proposed licensee was Esat Digifone Limited. Just in case any looseness

CHAIRMAN: I take that point, but plainly it was Mr. O'Brien's consortium with all the benefits acquired of going into partnership with your clients.

MR. FITZSIMONS: Oh absolutely, but at the end of the day when all that had been worked out, the applicant and the proposed licensee was Esat Digifone Limited, and no other entity. That's very important in the light of some of the lines of inquiry that have been engaged in, so I am just saying this to assist you in

your consideration.

CHAIRMAN: As ever, Mr. Fitzsimons.

Mr. Sparks, thank you very much for your assistance.

That concludes today's sitting and also concludes with the end of term. The considerable preponderance of the evidence on this lengthy phase, we will announce the date of prompt resumption after Easter on the web side on the usual basis with a view to concluding this phase at the earliest opportunity. Thank you very much.

THE TRIBUNAL THEN ADJOURNED UNTIL FURTHER NOTICE.