

THE TRIBUNAL RESUMED ON THE 10TH NOVEMBER, 2005,

AS FOLLOWS:

OPENING STATEMENT

MS. O'BRIEN: In the course of these sittings, the Tribunal intends to hear further evidence pursuant to paragraph G of its Terms of Reference in relation to the second GSM mobile telecommunications evaluation and licensing process.

With the exception of one other possible witness from whom the Tribunal has not yet conclusively determined to hear evidence, the evidence to be heard at these relatively short sittings should complete the Tribunal's inquiries into the process, save for any other matters that may arise, either in the course of the evidence to be heard at these sittings or otherwise, and which may render it necessary for the Tribunal to hear additional evidence.

Before proceeding to outline briefly the matters into which the Tribunal will be inquiring in these sittings, I should indicate that the Tribunal had intended to hear this evidence at sittings which commenced with an Opening Statement on 15th September, 2004. It will be recalled that the subject matter of that Opening Statement was the Tribunal's inquiries in relation to the Doncaster Rovers football club property. Those inquiries, had they proceeded at that time, would have necessarily involved the Tribunal hearing evidence from Mr. Denis O'Brien and from Mr. Michael Lowry. In order to confine their further attendances at public sittings of the Tribunal, it was

considered sensible and fairer to both Mr. O'Brien and Mr. Lowry to hear the entire balance of their evidence on the one occasion.

In the event, the Tribunal was unable to proceed with its sittings at that time. While the Tribunal had hoped to be in a position to take up the Doncaster Rovers Football Club material and to complete substantially its inquiries into the second GSM licence without further significant delay, due to factors outside the control of the Tribunal, that did not prove possible.

Following the decision of the Supreme Court in May of this year in proceedings instituted by Mr. O'Brien which enjoined the Tribunal from proceeding with public sittings in connection with the Doncaster Rovers Football Club matter until the completion of Mr. O'Brien's application for Judicial Review, the Tribunal felt that it would not be feasible to postpone hearing the balance of the evidence in relation to the second GSM licence pending the final disposal of those proceedings, and decided it should hear the further evidence independent of the Doncaster Rovers Football Club matter. By that time, the Tribunal had already assembled material connected with other aspects of its Terms of Reference involving decisions of the Revenue Commissioners, and decided to proceed with public hearings in relation to those matters in June and July last.

The Tribunal had scheduled the commencement of these sittings for 20th September last. Prior to that date, on

the 13th September, the Tribunal heard submissions from interested persons in connection with an issue which had arisen from the nonavailability of Mr. Michael Andersen, the managing director of Andersen Management International, who had been the technical experts appointed by the Department to assist the Project Group in its evaluation of the second GSM licence as a witness to the Tribunal. As a number of matters were raised in the course of those submissions which were unrelated to the issue under consideration, but which the Tribunal, nonetheless, felt appropriate to comment on in the course of its ruling, it was necessary to defer the commencement of these sittings until after the Tribunal's ruling. The Tribunal delivered its ruling on 29th September last.

In the course of these short sittings, the Tribunal intends to hear some further evidence from Mr. Martin Brennan and from Mr. Fintan Towey. It will be recalled that Mr. Martin Brennan was the Chairman of the Project Group established by the Department of Transport, Energy and Communications, as it then was, to conduct the evaluation of the applications for the second GSM licence. Mr. Fintan Towey was a member of the Project Group and assumed much of the responsibility for the operational aspects of the evaluation and licensing process, and he reported to Mr. Brennan. There, further evidence arises both from material which came to the attention of the Tribunal after the completion of their earlier evidence and from a matter

to which reference was made in evidence heard by the Tribunal from Mr. Owen O'Connell, solicitor to Esat Digifone Limited.

Those further matters on which the Tribunal expects to hear evidence are as follows:

Firstly, following the completion of Mr. Denis O'Brien's evidence on 11th December, 2003, and in response to a request made by the Tribunal on the 4th November, 2003, prior to the commencement of his evidence, Mr. O'Brien's solicitors, William Fry, notified the Tribunal, by letter of 29th January, 2004, that they had concluded a lengthy process of reviewing their client's documents in order to comply with the Tribunal's request, and that, as a result of that review, they had identified further relevant documents of which they had previously been unaware.

These documents included a copy fax dated 5th April, 1995, from Mr. Denis O'Brien to Mr. Massimo Prelz of Advent International. It will be recalled that Advent International, a venture capital company based in London, was a shareholder in Esat Telecom Limited, the company which was ultimately a member of the Esat Digifone consortium which bid for the licence. The Tribunal has already heard evidence that negotiations between Esat Telecom and Datacom and Southwestern Bell did not come to fruition, and that, as of April 1995, Esat Telecom had yet to secure a partner or partners to form a consortium to bid for the licence.

Now, the fax which was produced by Mr. O'Brien reads as follows:

It's dated the 5th April, 1995. It's from Mr. Denis

O'Brien to Mr. Massimo Prelz, Advent International, and it states:

"Dear Massimo,

"Here is the up-to-date position regarding GSM partners.

"1. Bell South cannot move in the time frame we want them to as they are bidding on the Belgian licence. There is a long-shot chance that they will come in at some stage.

"2. France Telecom - the Minister spoke to me yesterday and suggested I contact France Telecom as they have no partner and I am meeting them tonight in Paris for dinner.

"3. Mannesmann - still no reply. Decision with their Chairman.

"4. Airtouch - they think operation is too small in Ireland.

"We expect to hear from Barbara Manfrey tomorrow re written proposal. I will be in Prague all day and can be contacted there" at the number given.

"Best wishes,

Denis O'Brien."

It appears from what was stated by Mr. O'Brien to his partner, Mr. Prelz, on the 5th April, 1995, that, on the previous day, the 4th April, 1995, Mr. Denis O'Brien had

discussed the formation of his consortium to bid for the second GSM licence with the Minister, Mr. Michael Lowry.

It also appears that Mr. O'Brien had informed Mr. Lowry that he did not yet have a partner or partners with whom to form a consortium. It further appears that the Minister informed Mr. O'Brien that France Telecom had no partner, and finally, it appears that the Minister had suggested to Mr. O'Brien that he contact France Telecom.

It will be recalled from evidence already heard that on 2nd March, 1995, the Minister had formally announced the competition; that on the same date, the Request For Tenders document had been issued; that on 6th March, 1995, the Project Group had adopted a protocol to regulate contact with potential bidders, and that Mr. John Loughrey brought that protocol to the attention of the Minister.

It does not appear to the Tribunal that the contact suggested by the fax of 5th April, 1995, constituted other than, perhaps, a technical breach of the protocol adopted by the Project Group. Contacts and exchanges of this type might well have been inevitable at that time, that is during the period after the announcement of the competition on 2nd March, 1995, and the publication of the RFP document and before the receipt of applications on 4th August, 1995.

However, this may underline a distinction that should, perhaps, be drawn between contact and interaction prior to 4th August, 1995, and contact or interaction between 4th August, 1995, and 25th October, 1995, when the result of

the process was announced, and which period was characterised by civil servants from whom the Tribunal has heard evidence as the "closed period".

In the course of its private investigations, the Tribunal raised queries with both Mr. O'Brien and Mr. Lowry in connection with this matter, and Mr. O'Brien has informed the Tribunal as follows:

"Mr. O'Brien believes, based on the contents of a fax dated 5th April, 1995, from Mr. O'Brien addressed to Mr. Massimo Prelz of Advent International, and a perusal of his diary, that he did have a conversation with Mr. Michael Lowry at Comms 95 on 4th April, 1995.

"2. Mr. O'Brien's diary shows an entry for 4th April marked '10.30 Comms 95 Lowry'.

"Mr. O'Brien has a recollection of attending Comms 95 on behalf of Esat Telecom. Contemporaneous news reports confirm that Mr. Michael Lowry made a speech at Comms 95 relating to the liberalisation of the telecommunications industry in Ireland.

"Mr. O'Brien accepts, based on his fax to Massimo Prelz, that he must have had a conversation with Mr. Lowry and that Mr. Lowry must have made some mention of France Telecom. Mr. O'Brien does not recall the conversation.

"Mr. O'Brien has no notes of this conversation, other than the diary entry referred to above.

"Communicorp's relationship with Southwestern Bell Telecom/DETECOM, terminated in mid-March 1995. Mr. O'Brien

immediately took steps to identify a list of approximately ten potential international Telecom partners for the GSM project. These included France Telecom. Mr. O'Brien made arrangements to meet the various potential partners at this time. Such arrangements would have been in mid to late March, and certainly prior to 4th April, 1995.

"Mr. O'Brien recalls meeting with representatives of France Telecom for dinner in Paris, which he believes (based on his diary entries) took place on the evening of 5th April, 1995. Although he cannot be certain at this remove, he believes that Lucy Gaffney and John Callaghan may have been present for this dinner. A perusal of his diary shows two relevant entries for 5th April, 1995. These entries are "4pm EI to Paris" and "8pm dinner." Mr. O'Brien travelled to Prague from Paris the following morning. He has no notes of this dinner engagement.

"Mr. O'Brien believes that he had a subsequent lunch meeting with France Telecom representatives at a later date in April 1995. He understands that John Callaghan and Massimo Prelz may have attended at this meeting. He has no notes of this meeting. There are no diary entries in his diary which assist his recollection in this regard."

Mr. Lowry, in response to the Tribunal's inquiries, has informed the Tribunal that he has no recollection of ever having met Mr. O'Brien and suggesting to him that he should contact France Telecom. Furthermore, Mr. Lowry does not believe that he would have ever made any such suggestion to

Mr. O'Brien.

In addition to Mr. O'Brien's diary which records the Communications Exhibition 95 on 4th April, 1995, the Tribunal has noted that both Mr. Lowry's official diary and his personal diary also contain entries for "Communications 95 Exhibition RDS", for 4th April, 1995.

In the course of its private investigations, the Tribunal has also made inquiries of both Mr. Brennan and Mr. Towey regarding dealings between the Department and France Telecom in relation to the second GSM process, dealings between departmental officials and Mr. Lowry in connection with France Telecom's interest in the licence, and details of their knowledge of any contact between Mr. Lowry and Mr. O'Brien on 5th April, 1995.

In response to these queries, Mr. Martin Brennan has informed the Tribunal that he has no particular recollection of such dealings, but that the Department's records show that the then Secretary General of the Department, Mr. John Loughrey, and Mr. Martin Brennan, met with a delegation from France Telecom at the French Embassy in Dublin on the 30th March, 1995. Mr. Brennan prepared a report of that meeting, which is dated 30th March, 1995, and it's headed "Report of meeting" and it states:

"The Secretary, accompanied by the undersigned, met with Madame Brigitte Bourgoïn, Director General, France Telecom Mobile; Mr. Pierre Jandot, Area Manager, France Telecom International, responsible for a group of countries,

including Ireland; and Mr. Charles B. Jeanlot of the French Embassy.

"Their purpose in coming to Ireland was to outline the strengths of France Telecom Mobile in the context of their interest in the Irish GSM second licence. Madame Bourgoin went through a brochure of slides for that purpose which is on file. She had a copy of the GSM documentation and raised a number of questions of detail. It was made clear to her that even though they were not in time for the closing date of the information round, that the memorandum which would flow therefrom would be made available to all who had formally joined the competition by purchasing the documentation. She will certainly purchase the documentation in the next few days. She was assured that it seemed to us that all possible questions had been raised in one way or another by the various consortia who had sent in long lists of questions. It was made clear by the visitors that France Telecom had no interest in direct equity investment in PTOs in Europe. They were only interested in alliances on individual services. They saw themselves as a bidder for the GSM2 with no conflict of interest in the Telecom Eireann race.

"The Secretary made it clear that their being late coming into the GSM operation was of no disadvantage and that we welcomed the French interest in the emerging Irish Telecom situation."

And it's signed Martin Brennan, and it's dated 30th March,

1995.

Mr. Brennan has noted from his handwritten annotation at the top of the page that he forwarded a copy of this report to Mr. Fintan Towey, and he has informed the Tribunal that he cannot rule out that he sent a copy to Mr. Loughrey as the other participant at the meeting.

Mr. Towey has informed the Tribunal that he has no particular recollection of interest expressed by France Telecom in bidding for the second GSM licence or in forming a consortium to bid for the licence. Neither Mr. Brennan or Mr. Towey have any recollection of any dealings between the departmental officials and Mr. Lowry in connection with the France Telecom interest, nor have they any knowledge of any contact between Mr. Lowry and Mr. Denis O'Brien on 5th April, 1995.

The Tribunal would intend taking these matters up with Mr. Brennan, Mr. Towey, Mr. Lowry and Mr. O'Brien during their evidence in the course of these sittings.

The second matter which the Tribunal intends to raise with both Mr. Brennan and Mr. Towey is a document entitled "Possible questions arising at press briefing on second GSM licence, Friday 19th April, 1996," and in particular the contents of the 7th bullet point on the second page of the document.

Now, the document which is on the overhead screen is headed "Possible questions arising at press briefing on 2nd GSM licence - Friday, 19 April, 1996."

"These points have struck me on a totally random basis and are not listed in any particular order of priority.

" How many times did Denis O'Brien meet a) the Minister, b) the Secretary c) senior officials before the award of the licence?

" Was Padraig O'hUiginn at any of these meetings?

" Were any other board members from Esat at these meetings?

" Did any of the Semi-state Bodies involved in the consortia lobby the Department?

" Have you leaned on any Semi-State to back off?

" How can the Department issue a licence when Esat are flaunting the law with these auto-diallers?

" Surely Esat's financial standing was dependent on their own corporate business plan predicated on these auto-diallers?

" Did the unilateral action taken by the Department instructing Telecom Eireann to calm down on the auto-dialler arise from a desire to maximise the price of Telecom Eireann?

" What involvement had the Minister in the whole process?

" Did any other Minister make any lobby or preparation to the Department's team or officials?

" Did the IDA lobby on behalf of America, US multinationals and others who would be existing or potentially important investors in Ireland?

" Why did the Department spurn 'the pot of gold' up the more than $\frac{1}{2}$ 100 million which could have bid for this licence?

" Why not admit that this is just a mere skin-deep beauty contest and, at best, it was a flip of the coin between the leading contenders?

" Has the Department warned Esat that its licence was at risk if it pursued an aggressive stance on auto-diallers?

" If the Department advice was always for the lowest possible entry fee, who decided to seek a larger cheque which was subsequently struck down by the Commission?

" Is it true, as reported in the papers, that the Secretary met with SBC?

" Why did the Secretary give an undertaking for feedback which was subsequently countermanded by Martin Brennan?

" All the consortia have made it quite clear that they are waiving any confidential clauses, why not publish the final report on that basis?

" Given Dermot Desmond's checkered history in the telecommunications area, surely the Department would have reservations about this investment?

" Has the Minister, secretary any official had contact with Dermot Desmond on this matter?

" What sort of process is this that you didn't know who

the identity of some elements of the consortia?

" When did DG IV first initiate action against Belgium/Italy?

" Who nobbled DG IV to reduce the price?

" How much does the Department think/believe we could have received for the licence on an auction basis?

" How would this have affected Eircell?

" Surely the Department had nobody to blame but itself, having sat on the fence when genuine feedback should have been given long ago?

" What sort of process would allow Esat, a company of, at best, very thin resources and very shallow pockets, to perhaps carry out perhaps one of the most important developments in the history of Irish infrastructure?

" The Department obviously lives in an ivory tower when so many important jobs and other benefits were associated with some of the other bids?

" How much contact/pressure came from a) Telecom b) Alfie Kane c) Department of Finance to bid up the entry fee?

"Strengths to be used in the press statement, the only process that has the full stamp of approval from the Competition Commissioner, Karel van Miert.

"Further questions which could be thought about:

" questions planted by say Persona in general and Tony Boyle of Sigma in particular.

" questions suggested by John Riordan and The Irish

Independent in general.

" any other possible wild card entries."

"NB, we are all very familiar with concepts and process.

Let's not assume others are. Statement should revisit essential settlements of the competition notably the criteria for completeness and journalistic ease of reference."

It will be recalled that Mr. Brennan stated in evidence that he was not aware of the Glackin Report or its conclusions and he had no recollection of any discussion of the report in the context of the licensing process, and in particular in the weeks between the receipt of a letter dated 17th April, 1996, from Mr. Owen O'Connell of William Fry solicitors, notifying the Department of the involvement of IIU/Mr. Dermot Desmond on the 16th May, 1996, the date on which the second GSM licence was issued to Esat Digifone Limited.

Mr. Fintan Towey, in his evidence, stated that he had a general familiarity with the Glackin Report, and, while he did not recall discussing it with colleagues in the context of the licensing process, he could not rule out that such discussions might have taken place.

This document came to the attention of the Tribunal following a further review of the files produced to the Tribunal by the Department of Transport, Energy and Communications. It is clear that the document was generated for the purposes of the press briefing convened

by the Department on 19th April, 1996, and attended by the Departmental officials. The contents of the document suggest that the person who prepared the document was aware of the conclusions of the Glackin Report, and was live to the possibility that the media might quiz the Department on the appropriateness of the granting a licence to a consortium of which Mr. Desmond was a member.

In the course of its private investigations, the Tribunal has asked both Mr. Brennan and Mr. Towey to comment on this document. Mr. Brennan has informed the Tribunal that he is virtually certain that the document was not prepared by him and that he did not contribute to its preparation. He has observed that the copy of the document available to him has some manuscript annotations and that they are not in his handwriting, nor does he recognise the handwriting. He is not in a position to speculate as to who might have prepared the document.

Mr. Fintan Towey has informed the Tribunal that he recalls Mr. John Loughrey, then Secretary General, saying at some point that he had dictated a number of questions for the purposes of preparing for a press conference or perhaps a Dail statement. Mr. Towey cannot say whether the document in question is the output of that exercise, but that may be the case. He has no specific recollection of preparing any such questions himself, or of the document being produced by any other person.

The Tribunal will wish to pursue its inquiries into this

matter, and in particular in the light of the evidence

which has already been heard.

The third matter which the Tribunal wishes to raise with Mr. Brennan and Mr. Towey relates to evidence given by Mr. Owen O'Connell on the 24th November, 2003, when he was responding to inquiries raised with him regarding the deletion from a draft letter dated 10th May, 1995 prepared by him in response to a request made by the Department on the 3rd May, 1996, for an explanation for the substitution of IIU Limited and Mr. Dermot Desmond for Davy Stockbrokers and the institutions named in the Esat Digifone bid documents. The letter, as finalised and dated 13th May, 1996, contained no explanation for the substitution.

In his evidence to the Tribunal, Mr. O'Connell stated that he had no recollection of why the explanation for the substitution of IIU/Mr. Dermot Desmond was deleted from the draft letter, but that his supposition was that such deletion was made either at the request of, or with the agreement of, the Department.

The Tribunal has raised this matter with both Mr. Brennan and Mr. Towey in the course of its private investigations.

Mr. Brennan has informed the Tribunal that he does not believe that he either requested or acquiesced in any omission or deletion from one draft to the next. He has informed the Tribunal that it is clear and it has been acknowledged by Mr. O'Connell that he was not directly involved in the detailed interface with Mr. O'Connell and

his clients around that time, and that it is clear from other evidence to the Tribunal that Ms. Regina Finn from the Regulatory Division, and Mr. Towey from Mr. Brennan's division were involved in the details.

It appears to Mr. Brennan, from reading Mr. O'Connell's evidence, that the question of whether the Department requested or agreed the deletions from the letter is speculative, and he has observed that Mr. O'Connell, in his evidence, appears to have acknowledged that either Mr. O'Connell or his clients, or both, may have had valid reasons for not wanting to put an explanation about the IIU involvement on record at that time.

Mr. Towey has informed the Tribunal that he has no specific recollection of having previously seen the draft letter dated 10th May, 1995. He believes that he did not see it, as he thinks that he would recall if he had, and, as there is no copy of the letter on the Department files, it is clear that the draft letter was not sent to the Department.

Mr. Towey does not accept that there is any possibility, as speculated upon in the evidence of Mr. Owen O'Connell, that the Department, or Mr. Towey in particular, either requested or agreed to the deletion of this information from the letter finally sent to the Department.

Mr. Towey cannot think of any possible reason why Mr. O'Connell might speculate that the Department might have an interest in such information being deleted.

The Tribunal will wish to pursue these inquiries with both

Mr. Brennan and Mr. Towey in the course of their evidence.

The final matter which the Tribunal intends to raise with Mr. Brennan and Mr. Towey is a press release which appears to have been issued by the Department on 5th December, 1996. The terms of the press release are similar in content to the terms of a letter dated 6th December, 1996, from the then Minister, Mr. Alan Dukes, to Mr. Bobby Molloy, TD.

If I refer, firstly, to the press release and then to the letter.

"1. The Esat Digifone application was on behalf of a consortium owned as to 50% each by Telenor Invest AS and Communicorp Group Limited (the holding company for Esat Telecom). The application disclosed that, if successful, 20% would be placed with financial investors. A list of potential investors was submitted, all 'blue chip' institutions whom we are specifically precluded from naming. There was no room for doubt as to either their bona fides or their financial capacity.

"We can state that the names now being speculated upon in media coverage were not on this list.

"2. At the licensing stage, several months later, Esat Digifone was in a position to announce that it had placed the 20% with IIU Nominees Limited and it was certified to the Department that Mr. Dermot Desmond was the sole beneficial owner of the 20%. Adequate evidence of his capacity was disclosed."

And below that "Ends 5/12/96."

Then the letter on which the Tribunal has already heard evidence was dated the 6th December, 1996, from the then Minister, Mr. Alan Dukes, TD, to Mr. Robert Molloy, TD.

"Dear Bobby,

"There appears to be considerable confusion abroad about the precise situation regarding ownership and investment in Esat Digifone. I hope the following information will clarify the matter for you.

"The Esat Digifone application was on behalf of a consortium owned as to 50% each by Telenor Invest AS and Communicorp Group Limited (the holding company for Esat Telecom). The application disclosed that, if it was successful, 20% would be placed with financial investors.

A list of potential investors was submitted, all of whom are 'blue chip' institutions. The Minister and Department are specifically precluded from naming these, but there was no room for doubt as to either their bona fides or their financial capacity.

"I can, however, confirm that the names being speculated upon in the last few days were not on this list.

"At the licensing stage, several months later, Esat Digifone was in a position to announce that it had placed the 20% with IIU Nominees Limited, and it was certified to the Department at that time that Mr. Dermot Desmond was the sole beneficial owner of the 20%. Adequate evidence of his capacity was disclosed. Mr. Desmond is still the exclusive

beneficiary of the IIU shareholding.

"On 19 April, when the Department held a press briefing, the fact that it was not in a position to give final definitive information on the placement of the 20% minority shareholding may have reduced the clarity of the exchanges.

My information is that when the licence was issued shortly thereafter, the precise situation was clearly stated.

"If I can be of any further assistance to you, within the constraints of the binding confidentiality agreements, I would be delighted to do so.

"Yours sincerely,

Alan Dukes,

Minister for Transport, Energy and Communications."

It will be recalled that, in the course of evidence, Mr. Martin Brennan stated that, while he had no recollection of the letter of 6th December, 1996, he believed that, in all probability, he would have drafted the letter to Mr. Molloy and he would have then passed the draft to the then Secretary General of the Department, Mr. John Loughrey.

The Tribunal has also raised this matter with Mr. Brennan and Mr. Towey in the course of its private inquiries.

Mr. Brennan has informed the Tribunal that he has no idea who prepared the press release.

It seems to him that the proposal for 25% shareholding by IIU Nominees was one which only had a short life, was excluded by the Department on the basis that it was not in accordance with the original application, and that no

significance whatsoever was attached to it by the Department after that event. In his considered opinion, there was no conscious decision by anyone to omit a reference to that 25% proposal. It was simply that it had no ongoing relevance in the minds of the people concerned after it had been disallowed.

Similarly, Mr. Towey has no recollection of the press release, and he has informed the Tribunal that he imagines that it was intended to provide clarification of the investors in Esat Digifone following exchanges in the Dail on the question.

The Tribunal will wish to further its inquiries with both Mr. Brennan and Mr. Towey in relation to the press release, and, in particular, the matters which prompted the exclusion of any reference to IIU's entitlement to a 25% shareholding in Esat Digifone Limited arising from the agreements of 29th September, 1995, or to the fact that IIU Limited was not within the list of potential investors referred to in the Esat Digifone bid.

The Tribunal also intends to hear further evidence from Mr. Tony Boyle, who was Chairman of the Persona Digital Telephony Limited, one of the other consortia that entered the competition for the second mobile phone licence. Mr. Boyle gave evidence to the Tribunal on 24th March, 2004. His examination by counsel for certain parties was deferred at the request of those parties, and Mr. Boyle will be attending for the purposes of the completion of such

examination.

The Tribunal will also be hearing further evidence from Mr. Denis O'Brien in connection with matters which are outstanding from his earlier examination and which he wished to have time to consider. These matters include the following:

1. Sponsorship of $\text{€}24,000$ for Esat Digifone of a Fine Gael Golf Classic held in the K Club on 16th October, 1995.
2. Mr. O'Brien's dealings or contacts, if any, with Mr. Mark FitzGerald regarding such sponsorship.
3. The letter dated 13th July, 1995, from Commissioner van Miert addressed to Mr. Michael Lowry, setting out the terms which had been agreed between the Department and the Commission to resolve the Commission's intervention in the licensing competition and a copy of the second page of which was found within the files of Mr. Jarlath Burke, legal and regulatory counsel to Esat Telecom.

As indicated earlier, the Tribunal also intends taking up with Mr. O'Brien the contents of the fax of 5th April, 1995, from Mr. O'Brien to Mr. Massimo Prelz, and to which I have already referred, and finally, there may be a small number of matters arising from evidence heard by the Tribunal after Mr. O'Brien completed his evidence in December 2003.

Counsel on behalf of other interested parties, including Mr. O'Brien's own counsel, may wish to examine him in connection with all of the evidence which he has given to

the Tribunal in the context of the Tribunal's inquiries into the second GSM process.

Finally, the Tribunal will also be hearing evidence from Mr. Michael Lowry in relation to all of the matters which the Tribunal wishes to raise with him regarding its investigations of the second GSM process pursuant to paragraph G of its Terms of Reference. Mr. Lowry has furnished the Tribunal with a considerable body of information which has all been referred to in the course of previous Opening Statements.

And that completes the Tribunal's Opening Statement, Sir.

CHAIRMAN: Thank you very much, Ms. O'Brien. I think, accordingly, the business of today's listing, and potentially tomorrow's, is to hear the balance of Mr. Tony Boyle's examination, and he is in attendance for that purpose. I think, Mr. Boyle, if you'd be kind enough to come up again, please.

TONY BOYLE, PREVIOUSLY SWORN, RETURNED TO THE WITNESS-BOX

CHAIRMAN: Thank you very much, Mr. Boyle, you are already sworn from the earlier occasion, and I think from my note and the transcript, it appears the position that Mr. Coughlan's direct examination had concluded. I think Mr. Fitzsimons had not sought to question Mr. Boyle and that there had been a number of requests from Mr. O'Donnell, on behalf of the Department, and from Mr. Shipsey, on behalf of Mr. Desmond and IIU. That means that the remaining persons interested would be

Mr. McGonigal, on behalf of Mr. O'Brien, and Mr. O'Hanlon,
on behalf of Mr. Lowry.

MR. O'DONNELL: Sir, I think that my cross-examination was interrupted but had not concluded, because I think, if you'll recall, Mr. O'Neill suggested that Mr. Boyle wanted to familiarise himself with some documentation and, in particular, a report compiled by Persona of the meeting held on the 15th May of 1996, and it was agreed that the balance of my cross-examination would be deferred. If you look at the transcript, then, I think Mr. Shipsey was allowed to cross-examine in relation to the meeting with Mr. Desmond or the suggested meeting with Mr. Desmond, because Mr. Shipsey wasn't going to be dealing with documentation, but I think it's it is fair to say that my cross-examination hadn't concluded and there are matters that I haven't yet put to Mr. Boyle that I want to put to Mr. Boyle, and so I do have

CHAIRMAN: Well, it is preferable, then, that you proceed at the outset, Mr. O'Donnell. I think, insofar as is possible for procedures, what the Tribunal had indicated in correspondence was that Mr. Lowry would be the last witness called in relation to remaining GSM and other matters, and it seems to me, accordingly, that Mr. O'Donnell should be first, then Mr. McGonigal and finally Mr. O'Hanlon.

CONTINUAITON OF EXAMINATION OF TONY BOYLE BY MR. O'DONNELL
AS FOLLOWS:

Q. MR. O'DONNELL: There are certain documents, Mr. Boyle

welcome back there are certain documents that I think we were about to discuss with you about the lead-up to and your attendance at a meeting with the Department in May of 1996. You may recall that we were discussing your dissatisfaction with the response by the Department to your queries about why you had been unsuccessful, and I think that's when we left off on the last occasion. I appreciate this is 18 months ago, but I think that's where we were, and there are just some documents I want to take you through in relation to that and then some other documentation which has come to light since.

Perhaps, firstly, if we could look at the letter of the 1st May of 1996. That's in MOB 17. It's a letter of the 1st May of 1996 written by the Department, by Mr. Brennan to you, referring to the holding of a meeting, and I don't know whether you were given, in April of 2004, you were given an opportunity to look at the additional documentation as requested by Mr. O'Neill, and I am sure you have used the time since then to look at this documentation.

A. I would believe so, yes.

MR. O'DONNELL: Sir, there may be a difficulty, because I understand the Tribunal don't have a copy, although these documents were disclosed to them nearly two years ago, if not more.

MR. COUGHLAN: The Tribunal had no indication of what documents Mr. O'Donnell was going to put. If Mr.

O' Donnell wants to put documents, he can indicate to the Tribunal beforehand and we would have had them ready. We don't have them ready because that was not done.

MR. O'DONNELL: The cross-examination was interrupted specifically to allow Mr. Boyle to look at documentation.

I understand from his evidence that he has had a chance to look at that documentation. It's clear from the transcript that the issue was the lead-up to and holding of the meeting in May of 1996, and it was at that stage, when these documents started, Mr. Boyle's counsel suggested that he didn't have an opportunity to look at them. So perhaps the most sensible thing to do, at this stage, is for us if it suits you, Chairman, is to rise so that we can try to arrange for copies to be provided by the Tribunal to Mr. Boyle, and, if necessary, to be provided to the Tribunal, if they don't already have them, although my belief is that they were furnished to the Tribunal some considerable time ago.

CHAIRMAN: I'll rise for ten minutes. We'll resume promptly then.

MR. McGONIGAL: Since Mr. Coughlan has indicated what he would like us to do. We have actually prepared two books of the documents that Persona were involved in, some of which we will be asking him questions, and it might be handy, during this break, if I distribute them. You will bear in mind, Mr. Chairman, and I will say it now since we are rising, that our cross-examination will be without

prejudice to the fact of our legal proceedings which are in being, as you are aware of, and that we are prepared to go ahead with the cross-examination because it may help to curtail or reduce the High Court proceedings, which will be of benefit, but I am not giving a guarantee in relation to that, but I am prepared to go ahead with the cross-examination.

The other matter which I do want the Tribunal to give some concern to is that it is clear that all of the correspondence and documents between Persona and the Tribunal have not been given to us, and particularly documentation pre-dating 6th June, 2001, and I know there has been correspondence and I know the Tribunal is refusing to give it to us, but I am renewing that application because I believe it is relevant to the issues, and if it isn't relevant to the issue, once I have read it I will be able to see that it is irrelevant and will not be wasting time asking questions about it, but it is material which I believe we are entitled to, and that is all communications between Persona, Mr. Moloney and/or the Tribunal.

CHAIRMAN: I am aware of the correspondence in relation to the basis of the cross-examination. If it is necessary for me to make a ruling on any remaining documentation, I will do so in due course.

Twelve o'clock.

MR. O'NEILL: Chairman, before you rise, Mr. Chairman, if I may just flag one point on behalf of Mr. Boyle. You will

be aware, Mr. Chairman, that the hearing on the last occasion was adjourned to enable documentation to be assembled and to give Mr. Boyle an opportunity of considering that documentation. We were furnished with documentation from the Tribunal. I am not sure, first, if the letter of the 1st May of 1996, to which Mr. O'Donnell has referred to, is in a booklet of documentation. I haven't been able to find it. It may be there, but I simply haven't been able to find it.

And secondly, I am concerned that Mr. McGonigal now has two booklets of documents which may go way beyond what was furnished to us, and I just flag this issue, because the very purpose of the adjournment, in the first instance, was to enable that documentation to be given to Mr. Boyle and to avoid any ambush of Mr. Boyle. Perhaps that something

MR. COUGHLAN: I believe Mr. O'Neill's solicitor may have been furnished with the documentation which Mr. McGonigal has and Mr. McGonigal has said he has put into booklet form. So I don't believe that there is any other documentation that

MR. MCGONIGAL: The only documentation that I have has been given to me either by the Tribunal in fact, only by the Tribunal, because nobody else is allowed to give me documents. So everything I have got, I have got from you, Mr. Chairman. So I am happy to give it to anyone that wants it.

CHAIRMAN: All right, twelve o'clock.

THE TRIBUNAL ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

MR. O'NEILL: Mr. Chairman, if I may indicate to you that we have been given two leverarch folders full of documentation by Mr. O'Brien's legal team. It somewhat disappoints us because our understanding of the basis upon which this evidence was interrupted and adjourned was to enable Mr. McGonigal to identify the documentation which he wished to put to Mr. Boyle and to give Mr. Boyle an opportunity of examining that documentation, and that is very clear from the transcript on the last occasion on which Mr. Boyle gave evidence. The purpose of the adjournment was to enable that documentation to be assimilated and to give Mr. Boyle an opportunity of considering it.

We have looked through the documentation, and fortunately there is an index so one can skim through it quickly to identify what the documentation is. What appears is that there is some documentation that we do have and is included in a booklet of documentation furnished to us by the Tribunal. There is some documentation which Mr. Boyle would have seen previously, but is not in that booklet.

And then there is a third category of documentation which Mr. Boyle has never seen before.

Now, obviously we don't want to be obstructive, and we are anxious, and I am sure the Tribunal is anxious, that matters proceed, and if we could proceed, subject, of

course, to your ruling, Sir, if we could proceed on the basis that Mr. Boyle will take the documents as they come, but he must be able to reserve his right to say that he hasn't had an opportunity of considering that documentation or indeed has never even seen that document before.

The second point I would make, and I have also been given we have also been given a leverarch folder of documents from the Department; I imagine that, probably, the same documents as were furnished to us by the Tribunal. It's simply that the order is different, and the first page of our booklet doesn't coincide to the first page of their booklet. I suspect it's probably the same, but, again, I would like to reserve my position in respect of those documents in case they don't coincide with what we have been given.

CHAIRMAN: I accept that, Mr. O'Neill. I think there has been correspondence seeking to bring about a state of things that might have been more to your satisfaction, but there has been case law and other matters since Mr. Boyle was last before the Court, and I think we must proceed on the basis that I have indicated, making due allowance for what you have stated to me.

MR. O'NEILL: Thank you, Sir.

MR. MCGONIGAL: Mr. Chairman, I don't want to prolong this issue, but I do just want to bring one correction to mind, just for the record, and that is that my understanding, rightly or wrongly, at the end of the last session, was

that the documents which we produced were being given to the Tribunal to enable you to determine whether or not those documents were to be admitted or not, and there then proceeded a long correspondence, not only in relation to those documents, but also in relation to other discovery which we were seeking. So that it's not a simple issue, as Mr. O'Neill would purport to suggest, and some of this is indicated in a letter of the 17th June, 2004, which I'm not going to open, but draw your attention to, because it reiterates what I say.

CHAIRMAN: Very good. We'll proceed.

MR. TONY BOYLE CONTINUED IN CROSS-EXAMINATION BY MR. O'DONNELL AS FOLLOWS:

Q. MR. O'DONNELL: Mr. Boyle, I think you now have the letter of the 1st May of 1996 and some additional subsequent documentation relating to the meeting of the 15th May of 1996?

A. I do.

Q. And if we look, firstly, at the letter of the 1st May, 1996. It's clear that despite the restraints imposed upon the Minister, he did wish to provide information, such information as he could, to unsuccessful participants, and that's clear from that letter, isn't it?

A. I don't accept that there were restraints on the Minister at all, so I certainly can't commit that to you. I have made that clear previously.

Q. Doesn't the letter make it clear?

A. Well, that's what you say. That's not what I accept.

Q. Perhaps I could read it to you and you could see whether it makes this clear or not.

The letter says, at paragraph 3: "As you know, the basis upon which all applicants submitted information in the course of the competition require the Minister to keep the information made available to him permanently confidential.

This quite understandable restriction has constrained the Minister in a manner in which he may respond to the requests made of him."

Will you agree with it or not, that was a restriction he believed he was under?

A. I am not disagreeing. I don't accept it or believe it, but if that's what the Minister said, fine.

Q. He believed it. And the person who wrote this letter, Mr. Brennan, clearly believed it, it's evident from the letter?

A. That's fine.

Q. And he, therefore, within those restraints, decided to "offer you a meeting, a one-to-one meeting with members of the project team and representatives of the consultants to the Department Andersen Management International. At the proposed meeting you'll be given an outline of the assessment of your submissions by reference to the competitive evaluation criteria with particular reference to the areas where the Evaluation Team identified weaknesses in your presentation."

So you were told that you'd have a meeting on a one-to-one basis and that the areas where you were weak would be identified to help you, perhaps, for future applications; isn't that right? Isn't that what the letter says?

A. That's what the letter says.

Q. And you were also told that questions asked by you would be answered so long as it didn't entail the Minister breaching his duty of confidence; isn't that correct?

A. That's correct. And no questions were answered at all.

Q. Well, we'll come to the meeting in due course. But it is clear to you that this meeting was going to take place but on a restricted basis, and you were aware of that before the meeting took place; isn't that right?

A. That's correct.

Q. Did you respond to this letter?

A. I believe we did. We requested legal representation at the meeting.

Q. But that was your if we look at the next letter, which is a letter I think of the 14th May of 1996, that seems to be the only issue that's raised because that letter is a appears to be a response to an intention to request lawyers and their teams.

A. Okay.

Q. And I think the Department say that they are of the view that legal representatives shouldn't be part of it, because they think it would be more appropriate to keep the consortium members only present and keep the numbers

attending the meeting to a reasonable size. So that it would be similar to the type of team that turned up for the oral presentation. That's what that letter of the 14th May says; isn't that right?

A. That's what the letter says.

Q. And it suggests that you shouldn't bring legal advisers; they don't see any reason to bring legal advisers because there were no legal issues to be discussed?

A. Well, it's clear the Department didn't want legal advisers because the process wasn't going to stand up to scrutiny, as it hasn't. So I can't agree with you that that was valid.

Q. Mr. Boyle, you don't have a single piece of evidence in relation to any the performance by any of the members of the Department; isn't that right?

A. I have listened to the evidence here extensively and exhaustively and there is much evidence in that regard.

Q. Mr. Boyle, you don't have any evidence in relation to the performance of any member of the Department in relation to this process; isn't that right?

A. I have listened to the evidence

Q. No, no, I am asking you, Mr. Boyle?

A. I am answering you that I have listened to the evidence of the Tribunal presented here which presents significant evidence of major flaws in the process.

Q. Mr. Boyle, you don't, and didn't then have, any evidence in relation to the performance by any of the Department; isn't

that right?

A. There were significant unanswered questions which then remained unanswered in the light of the disclosure meeting.

Q. What you wanted was to bring your legal advisers?

A. I wanted the truth, which I still want, and I wanted the truth to be disclosed of the process.

Q. And you brought your legal advisers; despite this letter, you brought your legal advisers to the meeting on the 15th May; isn't that right?

A. I believe that I guess they are on the list of the people who attended.

Q. Mr. Moloney is your solicitor; isn't that right?

A. He is the Company Secretary to Persona Digital Telephony.

Q. Is he also your solicitor?

A. But he is Company Secretary he is a director and Company Secretary to Persona Digital Telephony.

Q. Mr. Boyle, is he your solicitor instructed in this inquiry?

A. He is, yes.

Q. Is he the solicitor instructed in your legal proceedings?

A. He is.

Q. And at the start, a summary of opening remarks were delivered by Mr. Brennan; isn't that right?

A. That's correct.

Q. And Mr. Brennan indicated to you that there were restrictions on the type of information which he could provide; isn't that correct?

A. That's correct.

Q. He also told you that the purpose was to provide such information as he could, having regard to those constraints, and to try to identify weaknesses; isn't that right?

A. That's correct.

Q. And he then told you why the Persona application was weak, and identify particular areas of weakness; isn't that right?

A. He gave some very evasive, misleading disinformation, in my view.

Q. Well, Mr. Boyle, that's a very colourful allegation to make, but, in fact, both in your own summary and in the summary prepared by the Department, the weaknesses of the Persona application were outlined; firstly, low network capacity both in absolute and per customer terms. That was identified as a weakness in the Persona application; isn't that right?

A. He certainly mentioned that, yes.

Q. Secondly, that there was a weaker approach to market development, leading to low market size projections and a low share of market. He identified that as a weakness in the presentation made by Persona; isn't that right?

A. I think it would be more appropriate to read the full minutes of the meeting which basically confirm the issues which he did not answer, and I am quite happy to read those if you would like, and that list is much more there were a number of very minor feedback presented. It's clear that

and it is clear that that information, and indeed it's clear from the departmental minutes on the matter, the internal minutes which have been disclosed, that they were going to give evasive and that there was real concerns that correct answers, if they were provided, would lead to further questions, and these minutes have been disclosed, including so that's the basis and that is the environment in which this entire nondisclosure meeting happened. So to suggest that was a nondisclosure meeting. There was no meaningful disclosure granted, and I would refute absolutely that any meaningful disclosure of either the irregularities, which at that point in time were abundant in the process. Indeed, I think what was also presented this morning, which is the list of questions which would have been the trick questions as presented, I'm not sure it wasn't clear who did them, but it's certainly obvious that the Department were well aware there were serious questions which they wanted to evade answering.

Q. Do you want to deal with the meeting of the 15th May, Mr. Boyle?

A. Well, I'm certainly happy to read out my minutes of the meeting of the 15th May where the information that was not I'll answer yours, if I can read out the information that wasn't provided.

Q. Mr. Boyle, you referred to the minutes of the Department which have been disclosed to you. I am taking you through

those minutes. Paragraph 2 of those minutes and I'll

read it out, if that's what you prefer. At paragraph 2:

"The weaker points of the Persona application were outlined as being:

"Low network capacity, both in absolute and per customer terms;

"A slightly weak approach to market development leading to quite low market size projections and a slow share of same, especially after the first few years;

"Low coverage at launch, giving rise to questionable market acceptance;

"Relatively weak performance guarantee; and

"A lack of consistency between marketing and financial plans in relation to usage revenue, per call minute and tariffs."

Now, they are a number of weaknesses identified by the Department in the Persona application which were then identified to you at that meeting on the 15th May; isn't that correct?

A. They were very simplistic points which we were unable to understand because there wasn't sufficient information behind them and they did not address to the key issues. So it was that is why I say it was a meeting which was clearly intended not to provide us with a disclosure, but, in fact, to actually ensure that there was no meaningful disclosure provided. We responded immediately to the Department by letter, explaining, and that letter is read

into the minutes, and Mr. McGinley was last in the box, and that letter explained our total dissatisfaction of all the members of our consortium that no meaningful disclosure.

So I would not accept in any way that any meaningful disclosure was given by the Department.

Q. Well, you accept that these weaknesses were pointed out to you. Do you accept I mean, that's a simple 'yes' or 'no' answer?

A. I am assuring you that the weaknesses that you pointed out did not give any meaningful disclosure to our consortium.

Q. But you were told why you failed?

A. These are meaningless points in terms of the entire, entirety of the process. This was not a meaningful disclosure.

Q. Isn't the position, Mr. Boyle, that you didn't like what you were hearing at this meeting?

A. Absolutely not.

Q. And you were unhappy because you had lost?

A. We were unhappy that we were not given a proper explanation either of the reasons why we lost

Q. Because, you see, this record prepared by the Department was prepared in May of 1996 sorry, in September of 1996, and it says at paragraph 3 that your team repeatedly interrupted the opening remarks to raise questions on the process overall as well as their application, which gave rise to a fragmented and unstructured question-and-answer session.

A. Well, I would certainly much more rely upon the minutes which we prepared on the 15th May, not in September I can assure you, we prepared these contemporaneous minutes.

They have been present and I am happy to refer to them

Q. I am asking you to consider the departmental

A. I think the departmental's view, clearly, potentially it was their view. If you are saying it's three months later, perhaps I certainly can't explain how they wrote it three or four months later. I wouldn't have recollected it to that detail, but when we left the meeting, we wrote detailed contemporaneous minutes. They are now provided to the Tribunal, and we went officially on record to the Department in a letter from my solicitor no, in fact, a direct letter from myself, as Chairman, expressing the fact that this was not a meaningful disclosure, and I do not and will not accept that, you know, the relevance of the points there. These were not important issues and there was no meaningful disclosure provided, and, in fact, it was an attempt it was an attempt to just mislead us.

Q. Do you accept that you repeatedly interrupted the opening remarks?

A. The situation was very clear, that they were not willing to give any answers. We continued to ask for answers, and, if you wish, I will give you a list of the 10 or 15 things that we asked for answers on and that they refused to respond to.

Q. Well, Mr. Boyle, the report itself makes it clear that you

did raise questions, albeit in a fragmented and unstructured manner, but that you did raise particular questions, and they are set out under "Process Issues" at paragraph 4. You say, "Persona indicated they wished to raise questions on the process before applications were received, but the Project Team indicated that this was not the purpose of the meeting, but rather to discuss the assessment of the Persona application."

And it had been made clear to you that what was going to be discussed at this meeting was the weaknesses in your application, why your application didn't win. It was made clear to you that, for various reasons, there was not going to be a comparative analysis and that this was the level at which the meeting was going to take place. Now, that was made clear to you in advance?

A. No, I think it's very important to understand that this meeting came after six months of letters and requests and ignoring our legitimate requests by the Department, right, questions from other parties, PQs in the Dail on behalf of many parties, questions regarding the regularity and the issues in terms of many issues on financial standing and ownership of issues which were not disclosed. These were valid requests for information. A press conference was held in April, again with disinformation provided at that press conference regarding matters such as the ownership, and that's obvious. And effectively, at the end of the day, a token meeting, and I stress this was at very best, a

token meeting was offered. We accepted that token meeting and we found it totally unacceptable with no information provided, and that is our perspective. You can have your but my perspective is very clear, and we communicated that. As I say, we wrote our minutes the same day, not four months later, we wrote our minutes that day. We sent them and we wrote to the Department outlining why we were totally dissatisfied with the lack of explanation and the lack of answers.

Q. Mr. Boyle, you were never happy with the Department once you lost; isn't that right?

A. What's 'happy'? I mean, I am not looking for happiness. I am looking for fairness, I am looking for the truth.

Q. You were looking for a way excuse me, Mr. Boyle, just to ask you a question. You were looking for a way to undermine the granting of this licence?

A. Absolutely not. I was looking for a proper explanation, which we were entitled to and which we had legal advice that we were entitled to, to get a proper explanation from the Department. We had spent in excess of $\text{€}1/25$ million to submitting a bid. There was no proper explanation provided. We simply asked, "give us an explanation," and what that is all we are looking for today, the truth and the facts.

Q. Mr. Boyle, you were given an explanation

A. It's nothing to do with being happy.

Q. you weren't happy with the explanation?

A. I don't accept happy is not relevant in this matter,
Sir. This is a matter of the truth and the facts and the
explanations, which we did not get.

Q. We'll come to your conduct in relation to the process in
due course, but let's just continue with this meeting.

At the meeting, it was made clear to you that there were
difficulties in relation to the process; isn't that right?

A. I am actually not sure what you mean.

Q. That there were difficulties in relation to the process of
the meeting because they could not give you the kind of
information that you wanted. They couldn't give you that
information; isn't that right?

A. They said they couldn't.

Q. For example, you asked numerous questions seeking a
comparative analysis of your scores with other consortia?

A. Yes.

Q. And you were told you weren't going to get them; isn't that
right?

A. It would be impossible without comparison. How could one
compare? You have

Q. But weren't you being told that you were that's right,
you weren't going to get that information.

A. That's a classic example why they didn't provide any
information. I mean, I am quite happy to go through the
list of 10 or 15 items which they wouldn't give us answers
on if you

Q. Well, there are, I think, some 17 issues raised in this

meeting. There may be a page missing, I'm not sure whether it's there is we may be able to rectify that over lunch. But even if you look at the third page, you inquired about the importance of pre-application planning for service launch, the Project Team confirmed that pre-preparation enhanced credibility, but you were not satisfied on that point, and, in the process, you revealed that you discussed the matter with Irish Mobicall, which had attended a meeting with the Project Team. So your dissatisfaction on that issue is recorded; isn't that right?

A. Yeah.

Q. "The performance guarantee issue was raised, and you asked for a clarification of the process whereby the selection criteria were defined and weightings agreed. The Project Team explained that paragraph 19 had been written by the Department with advice from London based consultants and subsequently approved by Government. Weightings were not defined at this stage. Following the appointment of AMI after the launch of the competition, the weightings formula was devised before 16th June. You wondered if the weightings were subsequently amended. The Project Team explained the weightings were adjusted after the licence fee was capped, but the order of priority was respected. You inquired as to whether the weightings of tariffs was increased, and, if not, why not. The Project Team indicated it would not respond at this level of detail, but

confirmed that the weightings of the licence fee had been reduced and the surplus allocated to a criteria higher in the order of priority." So you were told that.

A. But that's a classic example of where they didn't even tell us which criteria they used. Was it the ones originally or the ones that withered away or the ones which were substituted in Copenhagen? I mean that's a classic example of what criteria weren't used.

Q. Mr. Boyle, it was made clear to you that the weightings had been adjusted after the capping of the licence fee, but it was also made clear to you that the order of priority of being respected. You couldn't live with the answers you were being given because they all meant that you lost?

A. That is not the issue at all. The issue was they did not give proper answers, and I will give you a list of the things which they didn't give answers on, if you wish.

Q. Under "Ownership," you asked on the question you pressed on the question of the meaning of the ownership in the context of the requirement to disclose ownership details, but the Project Team clarified the interpretation and there was a reference to the OED.

A. That's another example where a totally dissatisfactory answer was given.

Q. Again, you were dissatisfied

A. No, I am sorry; in fact, as you raise that particular point, we asked them had they been disclosed full ownership of the consortia at the bid, and Mr. Brennan said yes, he

had been disclosed full ownership, even though media reports indicated that full ownership wasn't disclosed. We asked Mr. Brennan the question was "Can you please confirm that you have disclosed full ownership." What do you mean by that? He came back with a smart remark, I mean, what the English Oxford Dictionary says. Now, that's sorry, that's a classic example of misinformation, Sir.

Q. But, Mr. Boyle, again, if we look at the issue of tariffs, you were asked specific questions "you asked specific questions about the assessment of tariffs and business plans. You asked if an applicant could be doubly penalised for low tariffs because the what you regarded as low weighting of tariffs and because low tariffs would give rise to a low IRR, but it was explained to you that credibility had to be taken into account, the consistency of the business plan and tariffs was specifically addressed. It was further clarified that the assessment of credibility could have changed the result but had not." So you were given an explanation in relation to that issue, also?

A. I think it's also very important to understand the meeting were Persona was attended by the following individuals: John McSweeney, senior director of ESB; Hans Cropatrell (?) senior director of Motorola, who subsequently became the director of Vodafone Ireland; Mr. Thomas Jarney, senior director, Unisource. Mr. Tom Titan, senior director of Unisource. These people had participated in processes such

as this all over the world. The questions that we asked were not my questions. The questions that we asked were questions which these people, of the utmost standing in their industry and in the sector on a global basis, felt were necessary to give a proper explanation. These are what the questions were. The reason we were unhappy is that when these questions, which, as I say, experts and directors felt that they were the questions which should have been answered to allow us form a view on balance, those questions were not answered, and that is why we were unhappy.

Q. But isn't the position, Mr. Boyle, that what happened is that you got answers but just didn't like them?

A. No, Sir. The situation is that the questions which the directors of the company asked to be answered and addressed, based upon their international experience, were not answered.

Q. You were asked about the weighting you asked about the weighting of the licence fee criteria before the adjustment, and they said that the Project Team said that this would be considered but couldn't be released on that day. You also you were there was a question in relation to the Motorola link with Airpage, and it was confirmed to you that that had not been a negative factor in assessing your application. And you said you were told that the selection criteria did not allow assessment of such issues to be taken into account. You said that the

application that you had made was already to be submitted on the 16th June I think that's 1996, although it says 1996 when the GSM competition was postponed. You inquired whether, given the windfall gains provision was included in the competition documentation, it was necessary to postpone the competition until the fee requirements were clarified? And it was explained to you that it had been considered necessary to clarify the fee requirements for potential applicants before the closing date.

So, absent the page that appears to be missing were the documents, I don't know whether you have it, but absent that page, you were given you asked, I think, 16 15 or 16 questions, or areas, probably a great deal more questions, covering 15 or 16 areas. You got answers. You weren't happy with those answers.

A. We did not get comprehensive answers at all. It is not that we didn't like the answer; it is that we did not get an acceptable explanation.

Q. And the explanation that was given to you for the inability to give more detail was because of the restrictions imposed on the Minister by virtue of the restrictions maybe if you don't interrupt, Mr. Boyle, please because of the restrictions based on the competition, isn't that right, that was the explanation given to you?

A. Yes.

Q. And that's also recorded in your own notes?

A. There is no question that there was an attempt to hide

behind confidentiality.

Q. That's your comment, and it's a serious allegation to make, but that's your comment.

You commenced proceedings in Europe in relation to the grant of the licence to Esat; isn't that right?

A. We commenced proceedings in Europe under the regarding, in particular, we were looking for openness and transparency, and we complained on issues regarding competition

Q. Those proceedings were against the State; isn't that right?

A. I would assume so, yes.

Q. Of which you were effectively attacking the Department?

A. We were looking for an explanation, which we didn't get.

Q. Mr. Boyle, what happened to those proceedings?

A. The proceedings were referred back by the EU on the basis that they told us that this was properly a matter for the Irish courts.

Q. Weren't you told that the EU weren't going to go anywhere near this?

A. They told us that these were a matter for the Irish courts, and, if we wished to proceed, we should proceed in the Irish courts.

Q. And you commenced proceedings in the Irish courts; isn't that right?

A. That is correct.

Q. When did you commence those proceedings?

A. On the around the 16th June, 2001, which was just five

days before the statute of limitation expired.

Q. The Department are a defendant in those proceedings?

A. That's correct.

Q. And I don't think you have even delivered a Statement of Claim in those proceedings yet?

A. We are continuing to collect information and evidence for our claim.

Q. Well, would you agree that you have a vested interest in this Tribunal in those circumstances?

A. I have a very clear desire to have the truth of the matter and the correct result.

Q. But isn't the position that you are using the Tribunal procedure as a kind of a stalking horse for your own attack on the grant of the licence by the Department to Esat?

A. I would not accept that. We are in the process of gathering information. Clearly, evidence presented at the Tribunal is certain information, but we are in the process of gathering information for a claim which we will proceed with regardless of the outcome of this Tribunal.

Q. Well, isn't it a bit more than that, Mr. Boyle? Just before we go into your communications with the Department with the Tribunal. You know Mr. McGinley, your fellow director?

A. I do.

Q. And you remember he gave evidence here?

A. Yes.

Q. And he was asked day 281 did he have any evidence

that any of the civil servants acted otherwise than in the best interests of the State and the taxpayer or that they acted in any way inappropriately or dishonestly. And his answer was that he had no evidence. And that was his answer given on the 25th March, 2004, which I think was the day after you gave your evidence. Is the same true of you?

A. I have certainly heard evidence at this Tribunal

Q. Mr. Boyle, I am asking you a very specific questions. Do you have any evidence that any civil servant who participated in this process acted in any way dishonestly or inappropriately or otherwise than in the best interests of the State in the manner in which this process was conducted? That is a 'yes' or 'no' answer.

A. My advice is not to make any comment on our legal action.

Q. No, Mr. Boyle, that's an unacceptable with the greatest of respect

MR. O'NEILL: If I may sorry to interrupt My Friend.

This line of questioning is clearly directed towards the proceedings that Persona has against the Department, and, in those circumstances, it is quite inappropriate, I would submit, for Mr. O'Donnell to use this forum as a stalking ground, the words he uses in respect of those proceedings.

He should not be asked and he should not be allowed to ask questions arising out of the evidence that may or may not be available in relation to legal proceedings. For a start, it is privileged information, and secondly, it is not a matter of any particular relevance to this Tribunal.

The Tribunal will determine its Terms of Reference on the basis of the evidence presented to it, and not on the basis of evidence presented in another forum.

MR. O'DONNELL: Chairman, it is an astonishing submission to make that on behalf of Mr. Boyle that whether or not Mr. Boyle had evidence of dishonesty or inappropriate behaviour by the Civil Service is not a matter of any interest to this Tribunal. That is an astonishing submission.

CHAIRMAN: Well, I think what I'll do is I'm anxious to try and proceed with this matter as expeditiously as possible I think I'll allow that one question. Is it a position, Mr. Boyle, that you can give me any evidence of any actual impropriety or misconduct on the part of any of the Project Team or the people that dealt with the competition on behalf of the State?

A. Well

CHAIRMAN: I mean, I can see your objections, obviously. I am aware of that. But is it that you have any specifics that you want to lay before the Tribunal for its consideration?

A. Well, I don't believe it's appropriate for me to do that, Chairman. I believe that there is evidence been presented in terms of the conduct of the process which has heightened my concerns in terms of which have always been there about the process.

CHAIRMAN: You have made that clear, Mr. Boyle, and I

understand your answer on that, but I am simply asking, is there anything specific against any particular individuals who conducted the process that you wish to bring to the Tribunal's attention?

A. I certainly do not bring anything of that nature.

Q. MR. O'DONNELL: You don't know of anything you don't have any evidence; isn't that right, Mr. Boyle?

A. I have answered the Chairman's question.

Q. I am asking you the question

A. Sorry, Chairman

CHAIRMAN: All right, the answer stands. Let's proceed.

MR. O'DONNELL: Sir, with the greatest respect, this is a matter of some more significance than can be simply brushed away.

CHAIRMAN: It's not brushed away. I have asked him a question and he has given an answer. Now, proceed, Mr. O'Donnell.

MR. O'DONNELL: Sir, with respect, the correspondence which I am about to open with the Tribunal is a litany of complaints against the Department which, in circumstances where he has absolutely no evidence, is requires some explanation as to how it is that he is now suggesting that he has no evidence of any inappropriate or dishonest behaviour.

CHAIRMAN: Well, his answer stands for purposes of my taking it into consideration.

Q. MR. O'DONNELL: Well, Mr. Boyle, confirming, as you do,

that you have no evidence of any misbehaviour or inappropriate behaviour by the Department or the departmental officials involved in this process, you have, nonetheless, been in lengthy correspondence with the Tribunal; isn't that correct?

A. We have certainly communicated with the Tribunal.

Q. And the documentation, and I think you should have a booklet of the documentation, includes a number of situations where allegations are made by you or on your behalf against the Department; isn't that right?

A. If you can refer to a particular matter, I shall certainly attempt to address it.

Q. Well, if we look at the first document, which is a meeting that you held with the Department with the Tribunal in May of 2001.

A. Okay.

Q. If you turn to paragraph 7 of that.

A. Yes.

Q. At paragraph 7 you are quoted as saying, "As far as Tony Boyle is concerned, the reality is that strings were pulled by Loughrey, Lowry and Brennan. They constructed the criteria, weighting and effectively had Andersens rubber-stamp them. Whoever had access to the weighting of the criteria won the competition."

That's an allegation you made about the Department and about departmental officials to the Tribunal in May of 2001; isn't that right?

A. It's an opinion I expressed.

Q. Without any evidence?

A. I think there was very clear

Q. Without a shred of evidence, that allegation was made; isn't that right?

A. It's an opinion that I expressed in terms of upon

Q. It's an opinion, but without a shred of evidence?

A. I think subsequent evidence would certainly

Q. Mr. Boyle, you made that allegation in May of 2001, long before any evidence had been given to the Tribunal, at a time when you were still dissatisfied with the granting of the licence to Esat, and at a time shortly before you instituted your proceedings against the State, seeking to set aside the grant of the licence by the Department to Esat; isn't that right?

A. I think you are placing too much stay on the wording. I mean, you know, it's civil servants

Q. You said it, Mr. Boyle; they are your words?

A. Well, I think you then need to ask, what I would mean by that.

Q. You had no evidence; isn't that right?

A. That what?

Q. That strings were pulled. You had no evidence whatsoever to support that allegation?

A. I think there was enough question marks, both then, and as witnessed, the questions which were identified for the press conference, there was more than enough questions. Of

this the evidence this was the matter that was presented earlier on today, the list of potential questions. They were significant questions.

Q. Mr. Boyle, this is an allegation against departmental officials, leave aside Mr. Lowry, against departmental officials of pulling strings. It's hard to think of a more serious allegation to be made against a departmental official; isn't that right?

A. It depends what you pulling strings doesn't indicate anything incorrect. I didn't suggest there was anything incorrect. Pulling strings I mean, what's pulling strings?

Q. Is there a correct way to pull strings?

A. Presumably, civil servants make decisions all the time

Q. Is there a correct way to pull strings?

A. I am not a civil servant.

Q. Would you not agree that it's a pejorative description?

A. I certainly didn't indicate here I didn't, by its nature, indicate that there was anything incorrect there.

Q. Well, do you withdraw the allegation then?

A. No, I said they constructed the criteria, the weighting and effectively had Andersens rubber-stamp them.

Q. Do you withdraw the allegation sorry, Mr. Boyle, if you just hear the question, otherwise we will have a fragmented and interrupted question-and-answer session. Do you withdraw the allegation that strings were pulled by the civil servants?

A. No.

Q. Well, then, what basis do you have on which to base that?

A. I went on to say they constructed the criteria, the weighting and, effectively, had Andersens rubber-stamp them.

Q. What basis do you have for that? What basis have you?

A. It's subsequently been presented in evidence.

Q. What basis had you in May, or now, for that?

A. That I gave my opinion. I made it clear it was my opinion.

Q. It was your opinion. But you were prepared to blacken the names of these departmental officials because of your ire at not being awarded the licence?

A. This has nothing to do with ire at not being awarded the licence.

Q. So you are not prepared to withdraw the allegation against these witnesses?

A. I stated that as my opinion, and that is was my opinion, and now, more than ever, is my opinion.

Q. Are you prepared to withdraw the pejorative nature of it, even?

A. I didn't draw any incorrect assumption. If you have drawn on something, I didn't indicate that.

Q. Do you regard it as a positive or good thing to say about somebody?

A. I don't have any views on that.

Q. Mr. Boyle, be sensible here. This is a serious allegation, effectively suggesting that something improper was done;

isn't that right? You made that allegation without any evidence?

A. I expressed my opinion on the matter.

Q. Yes. Well, now, Mr. Boyle, your solicitor, Mr. Moloney, is the solicitor instructed in your legal proceedings against the State?

A. That's correct.

Q. And he is also the solicitor who you instructed in the unsuccessful proceedings in the European Union?

A. Yes.

Q. And he has also been in attendance, or someone from his office has been in attendance, throughout the Tribunal here; isn't that correct?

A. Not necessarily throughout, but at relevant sections, yes.

Q. Well, he's been here for the GSM module?

A. I would believe so. That would be natural, yes.

Q. Why would it be natural?

A. Because we are very much an interested party.

Q. You have a vested interest in the outcome?

A. What is vested interest?

Q. Your own solicitor said it, that you have a vested interest in this matter?

A. We are certainly an interested party. We were an under-bidder in the process. We spent a lot of money, and there is a public sworn inquiry here investigating the matter; naturally, us observing that would be totally appropriate.

Q. Your solicitor did not put to either Mr. Loughrey or Mr. Brennan that they had pulled strings in relation to this during the evidence given by Mr. Brennan and Mr. Loughrey; isn't that correct?

A. We weren't offered any opportunity.

MR. COUGHLAN: They had no representation before this Tribunal.

Q. MR. O'DONNELL: Mr. Boyle, did you seek representation before the Tribunal in order to put these allegations to these witnesses?

A. I believe we were informed at the private session that we would not be offered

Q. Did you seek this?

A. I believe we were informed by the Tribunal it's in the minutes of the meeting, if you look at the same meeting date we were informed by the Tribunal that we would not be offered representation at the Tribunal.

Q. Where do you say that is?

A. It's in the minutes of the meeting.

Q. But, Mr. Boyle, if you had

A. Of the next meeting.

Q. Mr. Boyle, if you had evidence yes, it's in the 12th March, 2002 Mr. Boyle, if you had evidence which you wished to put to these witnesses that they were pulling strings, you would presumably either have brought it to the attention of the Tribunal or you would have sought representation to bring it to put to those witnesses

yourself; isn't that right?

A. We have no role to play in this Tribunal. We didn't seek participation. We didn't we were informed we would not be represented, and it was therefore not appropriate for us to request representation to address questions to Mr. Brennan or Mr. Loughrey.

Q. Weren't you operating behind the scenes, Mr. Boyle?

A. Operating behind the scenes is absolutely incorrect. We attended meetings at the request of the Tribunal and provided information, and that is now in these documents in terms of the minutes.

Q. I have more to go with this witness, Sir.

CHAIRMAN: All right. I'll adjourn for lunch until five past two. Thank you.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MR. BARRON: I wonder, before you resume with this examination, My Lord, I am instructed on behalf of Mr. Dermot Desmond by Michael Houlihan & Partners. We have been before the Tribunal before. There has been correspondence between my solicitors and the Tribunal concerning a legal advice or legal opinion that was furnished to the Tribunal by the Department and Mr. Richard Nesbitt. There has been ongoing correspondence in relation to that matter. Now, we haven't been provided with that, and we understand, obviously, that the Tribunal is intending, next week, to recall Mr. Brennan and Mr. Towey.

We have written eleven letters on this matter, and we are anxious that we get that this opinion be provided to us, or, at least, that if the Department have a reason not to provide the opinion, that they be that the Department provide the reason, because at the moment we are in a situation that we have to come down here next week, having witnesses being recalled, they are going to be examined, and there is a document that we understand, or I believe, is relevant to this which we believe will assist Mr.

Desmond's situation, which we simply haven't been provided with, and we don't want to be engaged in endless rounds of correspondence which don't further the matter. I know that you are in the middle of something different at this stage, but it's Thursday afternoon and we are anticipating this is due to happen next week.

CHAIRMAN: Well, I think I had indicated already in the course of mention of this matter on a recent occasion by Mr. Hogan, a disposition, if it was at all possible, to see that you were accommodated in that regard, Mr. Barron. I am right, Ms. O'Brien, in surmising that a pretty intensive correspondence is taking place with the State?

MS. O'BRIEN: That is, indeed, the position, Sir, and we are awaiting the outcome of the State's position on the matter. The opinion was one that was furnished to the Tribunal on the basis that the State was retaining its claim to privilege. That has always been the position. It's not an opinion that's ever been led in evidence by the

Tribunal, and the Tribunal is endeavouring to obtain the waiver of the State so that that opinion, or at least a portion of that opinion, can be made available to Mr. Desmond.

CHAIRMAN: All I can say, Mr. Barron, I will certainly maximise my own efforts to try to ensure that that is made available as a matter of urgency, but I don't have the legal giving of it myself. It requires, on the part of the State, a particular disposition, but insofar as my own view is that it would be preferable, in the interests of fairness, that you have access to it, I will see that that is even further expedited.

MR. BARRON: If you'd allow me take instructions on this, not now, and come back, if necessary, perhaps on Monday or Tuesday.

CHAIRMAN: Well, that's all I can do for the moment, Mr. Barron, so be it.

CONTINUATION OF EXAMINATION OF MR. BOYLE BY MR. O'DONNELL:

Q. MR. O'DONNELL: Mr. Boyle, you made you were asked to and made a statement in June of 2001 to the Tribunal following your meeting in May of 2001 where you allege that there were strings pulled; you made a statement to the Tribunal, isn't that right, concerning your meeting with Mr. Lowry?

A. Yes, I did.

Q. And one of the complaints you make in the course of your correspondence with the Tribunal is inappropriate level of

communications between Mr. Lowry and Mr. O'Brien; isn't that right?

A. Where did that statement get made?

Q. You made that complaint in a letter, not directly written by yourself but by your solicitor. Were you aware that your solicitor was writing to the Tribunal?

A. Absolutely. I don't recollect the specific letter you are referring to, but if you draw my attention to it, I'll read it.

Q. You are aware, in general terms, that he was writing to the Tribunal?

A. Yes, indeed.

Q. You also had a meeting with Mr. Lowry on the 16th of August of 1995; isn't that right?

A. Absolutely, yeah.

Q. And that was what that statement was about?

A. It's what statement was about?

Q. The statement you gave on the 19th June, 2001?

A. That's correct.

Q. And that was during a time when the period was closed, if I can put it that way, in that the tender documentation had been submitted and the presentations

A. I am not aware of any closed period, but, yes, the tender documentation was submitted, and, yes, I did send a formal letter which identified my desire to meet with Mr. Lowry, and I explained that if Mr. Lowry felt it wasn't appropriate that I would accept his I would accept his

feedback, and he deemed it appropriate, and I met him and I feel it was totally appropriate.

Q. That's a matter that Mr. Lowry can deal with, or Mr. Lowry's counsel can deal with. But what I'm saying, Mr. Boyle, is that you made a complaint you make complaints about the conduct of the Department and other people, but you seem to have participated in similar conduct yourself?

A. I'd appreciate if you could draw my attention to the particular letter.

Q. We are coming to it.

A. Okay.

Q. Before we get to that, though, your solicitor made a submission to the Department on the 29th May of 2002 about the postponement of the original deadline and the capping of the licence fee?

A. Okay.

Q. I presume he did that on instructions?

A. Yes, he did.

Q. He wasn't asked to make that submission by the Tribunal?

A. On the 29th May, 2002?

Q. He wasn't asked to make it.

A. We met we had been in a series of meetings with the Tribunal, and the Tribunal had indicated that their willingness to accept.

Q. But they didn't ask for a submission. And I'm going to suggest to you, Mr. Boyle, that this was the first of

numerous unsolicited submissions made by or on behalf of the Persona consortium with the intention of trying to damage or in some way undermine the granting of the licence by the Department to Esat?

A. You may interpret it how you wish. It was a submission which was made, of facts which were in my possession, in our possession, which we felt were germane to the inquiry being carried on by the Tribunal.

Q. Were you just trying to be helpful, is that what you are saying, Mr. Boyle?

A. Absolutely.

Q. Can I suggest to you that that helpfulness was, in fact, a mask to cover your intention and your idea to leave no stone unturned to try and set aside, however you could, the granting of the licence?

A. I have reassured you and I have stated this morning, my goal in this matter is very clear, to get to the truth of the circumstances. Any information that I have, as an Irish citizen and as a concerned party in the process, naturally I will bring to the attention of the Tribunal, and I will be absolutely unapologetic for that.

Q. But, Mr. Boyle, this morning you refused, until pressed by the Chairman, to answer a question as to whether you had any evidence of wrongdoing by the Department.

A. Naturally, it's not for me to suggest evidence of wrongdoing. What I presented I presented you with information. It's the Tribunal's role to decide whether

there is wrongdoing. It is not mine. It is my right, as a citizen and as an involved party, to provide information to the Tribunal, and, as I say, I absolutely defend my position and right to do so.

Q. But it's not your right to make groundless allegations against members of the Department who have not been criticised by any other opinions in this Tribunal, whose honesty has not been impeached, the appropriateness of their behaviour has not been impeached by any other witness except you. You feel it is appropriate for you to make those allegations and yet not substantiate that with one whit of evidence?

A. On the one hand you are complaining if I presented evidence. I presented evidence there, which is what you are referring to. I am assume you are still asking about the question of the documentation I provided, which was evidence which was in my possession which I believe was relevant was germane to the inquiries of the Tribunal.

Q. It was a submission, Mr. Boyle, without the Tribunal looking for it. You were trying to steer the Tribunal in a particular way?

A. Absolutely not. I repeat, I provided information to the Tribunal which was in my possession which, as an Irish citizen and as an interested party, I absolutely maintain my right to do so.

Q. And you would have no difficulty with this submission being circulated?

A. That's a matter for the Tribunal.

Q. I am asking you, did you have any difficulty with the submission being circulated?

A. I assume it has in due course.

Q. I am asking you, did you have any difficulty with the submission, if you are looking for openness and truthfulness, did you have any difficulty with the submission being circulated?

A. Well, I certainly never objected to it being circulated.

Q. Well, you did, Mr. Boyle, because in the submission itself, it says "This analysis commentary, as distinct from facts and documents, is submitted on the basis that it can not be disclosed, published or copied without the prior written consent G.J. Moloney and Persona."

A. It would be a standard disclaimer by the legal profession.

Q. Mr. Boyle, if you

A. I think you really need to address that to my counsel. I can't comment on the legal status of that.

Q. Mr. Boyle, if you believed that it was in the public interest that your submission be made known to everybody involved in the Tribunal, there is no reason why you would deliver it on a confidential basis?

A. I think you are referring to a standard boarder-plate disclaimer in any letter, and trying to trick me on it in terms of the legal interpretation is not a valid position, and if you wish to address it to my senior counsel, you are perfectly willing to do so.

Q. No, Mr. Boyle, I am asking you if you felt that

A. I don't intend to answer it, Sir.

Q. Pardon?

A. I don't intend to answer it. I have told what you my answer is, that I provided it. If there is a standard disclaimer I provided information to the Tribunal which would assist them in their inquiries. If there is a standard boarder-plate disclaimer, you need to ask my solicitor why that's there. I can't comment on it.

Q. But notwithstanding the fact that you want truth and openness, you didn't want this document circulated to anybody else, isn't that the position?

A. I have told you that is a standard boarder-plate disclaimer which I have no knowledge or why or where it was there.

Q. Did you know what your solicitor was writing?

A. There is a very clear final sentence, if you read it, which is, "If you wish to circulate it, seek permission." That did not say permission would not be granted.

Q. No, Mr. Boyle, it says "Cannot be disclosed, published or copied without the prior written consent."

A. Okay. And it didn't say that consent would not be granted.

Q. But, Mr. Boyle, if you really felt that it was something that you didn't mind being circulated to everybody, you would have done so?

A. I think you are nitpicking. I have told you I don't understand the legal significance of it. If you want to address what the significance of a standard boarder-plate

disclaimer is to my lawyer, please do. I am quite happy that I submitted evidence to this Tribunal and I would never be under any question that the Tribunal could do with it what it wished.

Q. You followed up this submission with another letter on the 5th June of 2002, which I think is Tab 8 of the booklet, Book 1 of the disclosure documentation, and in that letter your solicitor said "Persona is of the view that both the Minister and civil servants involved went to some trouble deliberately to mislead people with regard to the degree to which the EU Commission was either involved in or agreed to the level of the cap on the licence fee."

Later on in the letter you say, "It is our view that to connect this paragraph of the Commissioner's letter to the capping of the licence fee is a carefully executed deception."

And at the conclusion of the letter you say, "Clearly, both the Minister and the civil servants were going to a lot of trouble to give a false impression about the Commission's involvement."

These were a series of extremely serious allegations made against senior and respected civil servants; isn't that correct?

A. Absolutely, and it's very clear when you read the Minister's statement at the time, and you read the letter from Commissioner van Miert, what Commissioner van Miert was approving. He was approving the recommendation that a

maximum of 15% be allocated to the auction process. Not approving and if you read the letter, it's very clear, and that was our legal position and our legal view, that the letter from Commissioner van Miert was fundamentally different to

Q. Mr. Boyle

A. As I understand, the Tribunal has decided not to investigate the matter of the EU.

Q. Mr. Boyle, that may be, but the position is you made an allegation against the civil servants, and you have no evidence, and you have answered to the Chairman of the Tribunal, you have no evidence of any wrongdoing by any civil servant?

A. I absolutely stand over the comment which was made in that letter, and if you refer to the correspondence

Q. Do you want to change the answer you have given to the Chairman earlier? Do you want to change the answer that you have given to the Chairman earlier?

A. What you are asking me a question regarding the letter to the EU. I am quite happy to answer that letter, and to answer my position.

Q. No, Mr. Boyle. I asked you, quite clearly, you made allegations against the civil servants. You said here, on oath, that you did not have any evidence of any wrongdoing by any civil servants. Yet, you are prepared to make these allegations in correspondence to the Tribunal with a view to blackening their names in the eyes of the Tribunal;

isn't that right?

A. I think if you go back to the comment that I made, I'd like you to read that back, if you wish me to comment upon it to Mr. Moriarty.

Q. I have read it out, "Persona is of the view that both the Minister and the civil servants involved went to some trouble deliberately to mislead." Now, I don't act for Mr. Lowry. But you have made an allegation against the civil servants there, for whom I do act. Do you have any evidence?

A. The letters are there abundantly clear. The letter from Commissioner van Miert, the statement from Mr. Lowry and the statement from Mr. Lowry and the Department is totally it's totally at odds with the letter from Commissioner van Miert.

Q. I'll ask you the question again: Do you have any evidence against the civil servants, the Department?

A. I presented the letter, through my solicitors, to the Tribunal, which identified the discrepancy between the statement from Commissioner van Miert and the statement from the Department, and I stand over that.

Q. You were asked, again I am asking you, again, do you have any evidence? Do you want to change your evidence?

A. I have told you what the evidence here is on this matter.

Q. So you have nothing else to add to your letter?

A. To which letter?

Q. The letter that I have just read out of the 5th June. You

have nothing else to add to what's contained in that

letter?

A. No.

Q. On the 28th June, your solicitor wrote to the Tribunal

arising out of a meeting with you on the 26th June, "In

Jerry Healy's phone call to me" Mr. Healy is counsel

retained by the Tribunal ; isn't that right?

A. I believe so.

Q. And there is then an indication that a letter will be

written about various matters in that that must have been

discussed in some way; isn't that right?

A. Pass.

Q. Well, have you read the letter?

A. Sorry, if you don't mind, I'll get it. What number is it?

Q. It's Tab 11.

A. What's your question?

Q. This appears to be an unsolicited submission, yet again.

It's a decision by the author, "I am going to write to you"

"Arising out of our meeting, I am going to write to you

over the course of the next few days in relation to the

following separate areas."

And I suggest to you, Mr. Boyle, that this is another

situation where, under the guise of being helpful, what

Persona is, in fact, doing is trying to steer the Tribunal

a particular way so as to vilify the Department?

A. I have answered you that four or five times. We provided

information, and I defend my right to provide any

information that's in our presence. We had knowledge of the process, we knew that the Tribunal were interested to know what was the level of licence fee, and we provided feedback, as I have given on evidence here, also.

Q. You provided a similar four-page letter, and some 100 pages of enclosures on a letter of the 13th July, 2002; isn't that right? It's the next tab.

A. That's correct.

Q. Whereas, in fact

A. That was in response to a comment that was raised.

Q. But, in fact, Mr. Boyle, doesn't it go a lot further than that.

A. Absolutely not. It was information that was available that would allow the Tribunal

Q. The only thing that you were asked the only things that you were asked to make statements about were the alleged meeting between yourself and Mr. Desmond; the meeting between yourself and Mr. Lowry; and payments made by the Persona consortium to politicians. Aren't they the three areas that you were asked to cover in statements?

A. I think if you go to the letter of the 6th June, 2001 from the Tribunal, you will see that "I am now writing to seek your client's assistance in connection with the circumstances surrounding the granting and the conduct of the competition for the granting of the second GSM licence."

Q. Yes. I don't know if we have that letter.

A. It certainly was in the bundle you provided to me, Sir.

Q. What we have is the statement of the 6th June. Well, Mr. Boyle, you haven't given a complete and accurate account of that letter, because what, in fact, this requests is, at paragraph 2, "I would be much obliged if you could let me know whether Mr. Boyle is disposed to provide the Tribunal with a narrative account of his dealings with Mr. Lowry or any other person on his behalf in connection with the granting of the GSM licence."

And what you do in response to that, at the next tab, is to send an account of your meeting with Mr. Lowry in Fitzpatrick's Hotel. So that is one of the three areas I said you were asked specifically to address.

A. Well, the question is, do I not have a right to talk to the Tribunal and to provide information which is in my knowledge, as an Irish citizen and as an involved party in the process? And I maintain I do. You know, you can keep asking the question, you know, there is no question that we did provide information which was in our knowledge.

Q. You volunteered information.

A. We provided information that was in our knowledge.

Q. Didn't you do a bit more than that?

A. I have no idea what you are talking about.

Q. You spoke to a witness whom the Tribunal was going to call. Have you heard of Mr. Christian Hocepied?

A. Mr. Christian Hocepied was the official in the EU. I didn't speak to him, but my solicitor did.

Q. But your solicitor spoke to him?

A. Yes.

Q. And then furnished an account of that meeting to the Tribunal?

A. Absolutely.

Q. They weren't asked to speak to Mr. Hocepied; Mr. Hocepied was interviewed by the Tribunal, and it is a matter of presumably, for the Tribunal to do their own job. Why did you do it?

A. I repeat that I absolutely maintain our right to provide any information that's in our possession to the Tribunal.

Q. Didn't you do it to try and steer the Tribunal

A. Absolutely not.

Q. Well, your letter of the 2nd October it's Tab 16 refers to the meeting of Mr. Moloney with Mr. Hocepied, and the last sentence of the second paragraph says, "However, it does seem to me that a number of my notes of meetings and telephone conversations with the Commission officials at that time may also be partly relevant. I would, therefore, furnish them to you in a separate letter."

So again, you were trying to be helpful; is that right?

A. We were trying to provide any information that was in our possession which was relevant or germane to the inquiries of the Tribunal, to the Tribunal.

Q. But the Tribunal didn't ask you to interview Mr. Hocepied.

A. I'm not too sure how often I have to say that. I maintain, if we have information in our possession and it is our

right to pass it to the Tribunal.

Q. In your letter of the 18th sorry, in your letter of the 11th November, 2002, which is Tab 18, your solicitors admit page 2, second paragraph "Obviously, Persona has a vested interest in this whole matter because of the separate legal proceedings that have been commenced against the State."

A. We were clearly disclosing that matter to the Tribunal, absolutely.

Q. I don't think anybody would have been in any doubt. But haven't you a vested interest in doing anything you could to undermine the granting of the licence to Esat?

A. Absolutely not. I have continually assured what we want is the truth and the facts on this matter. That is all we asked for all along. And that is why, if the Department had correctly handled the matter in 1995, the matter would now be dead and done and buried. There was no proper as I witnessed this morning no proper disclosure provided. All I am all I have consistently sought is a proper explanation.

Q. So your only criticism now of the Department is that you weren't happy with the meeting on the 15th May, is that it?

A. If you have got all day and all week, I can tell you the other issues, but that's not my only

Q. Well, you said if it had been if the meeting had been handled properly, the matter would now be dead. Do you want to change that answer?

A. Correct. If explanations had been provided. If, for example, you want to talk about some of the explanations, you know, if the original explanations which the Department had drafted and were provided to us on discovery were, in fact, provided, rather than the versions which were provided, then maybe there might have been more clarity, and I can read out some of the comments on which were provided to me on discovery from the Department's files, of what original statements were to be which were then changed before that meeting.

Q. Mr. Boyle, are you saying that all you were unhappy with was what happened at the meeting of the 15th May, 1996? If that's your only complaint against the Department. Is that what you are saying, yes or no?

A. No.

Q. So it's not confined to that meeting. Why did you say it was, two minutes ago?

A. I said if they had properly had been in a position and properly explained the matters.

Q. You wrote, on the 4th December, 2002, to the Tribunal, to comment on the Opening Statement made by Mr. Coughlan Tab 20 isn't that right?

A. Absolutely. When Mr. Desmond was denying that the meeting happened, naturally we clarified.

Q. This was unsolicited. The Tribunal hadn't asked you for this.

A. I was absolutely involved when Mr. Desmond gave evidence,

when it was suggested that Mr. Desmond was giving evidence that he hadn't even met me, when, obviously, he had, and I had independent witness to say verify it, naturally I would communicate that. I mean, that's absolutely my right.

Q. You made another submission on the 11th December of 2002 about the Opening Statement. That's Tab 23.

A. Absolutely. I drew the attention of the Tribunal to the factual differences between our bid

Q. You drew the attention to your opinions on matters?

A. No, no, sorry, they were facts.

Q. Well, the last paragraph sought a clarification from the Tribunal in the Opening Statement. You wanted the Tribunal to issue you with a kind of an apology or a clarification; isn't that right?

A. We were not looking for an apology, no.

Q. Well, the last line

A. We suggested that the statement perhaps be clarified, was worthy of being clarified.

Q. You requested clarification because you did not want to be compared to Esat; isn't that right?

A. We had pointed out the factual differences and we wanted it clearly we suggested that perhaps it would be beneficial to clarify that.

Q. You were trying to direct the Tribunal as to how to do their job?

A. Absolutely not. We pointed out the factual differences

between the two positions.

Q. And you sent in a draft clarification on the 12th December; isn't that right?

A. We pointed out what we felt would clarify.

Q. You also made a submission, on the 12th December, saying making what you regarded as preliminary observations on the postponement of the licence of the competition and the capping of the licence fee; isn't that right?

A. What tab is that?

Q. Tab 24. Isn't that right?

A. Tab 24 refers to a different matter in mine.

Q. Well, if you turn over the pages you will see your request for a clarification, your draft clarification, and then the fax cover sheet sending in the submission. Do you have that letter?

A. I'll read it out

Q. No, no, I just want to draw your attention to paragraph 5, of it, because firstly, this was an unsolicited submission, yet another unsolicited submission, but secondly, you make an allegation against the Project Team, at paragraph a 5.

You say, "Having regard to what now might be interpreted as a high degree of communication between the Minister and/or the Project Team and/or Mr. O'Brien during the evaluation process, it is not unreasonable to suppose there might have been that degree of communication at times between April and July of 1995."

Now, Mr. Boyle, that is speculation, pure and simple, isn't

it?

A. It was our opinion at the time

Q. It is speculation, Mr. Boyle. You have no shred of evidence?

A. Well, there are two copies of letters there which are evidence there are two letters which were communication from Esat to the Commission at that point in time.

Q. Mr. Boyle, what evidence do you have for this Tribunal that there was contact communication between the Project Team and Mr. O'Brien?

A. The main issue was the coincidence of timing on the matter.

Q. Mr. Boyle, I am pointing out to you that, again, you make a baseless allegation against the Project Team. I am not interested in the Minister for the present, but it is

MR. O'NEILL: I think, Mr. Chairman, it's only fair to this witness that he be given an opportunity, looking at the letter Mr. O'Donnell is very quickly bringing him through short passages in letters, and, in fact, misquoting them because, in fact, what this letter says is "Having regard to what's now been interpreted as a high degree of communication between the Minister and/or the Project Team and/or Mr. O'Brien during the evaluation process," and he now reads that out as being "communication between the Project Team and Mr. O'Brien," leaving out the Minister. I don't think that is particularly fair and I think the witness should be given an opportunity of answering the questions as well. He is attempting to answer the

questions and Mr. O'Donnell is interrupting him and asking another question. I don't think that's a fair form of examination of the witness.

MR. O'DONNELL: I object to that comment, the last comment by Mr. O'Neill.

Q. Do you have any evidence of contact between the Project Team and Mr. O'Brien during that period, yes or no?

A. Do I have any evidence? Where is that I'm just not sure what point you are referring to. I think it clearly says what might be interpreted.

Q. Do you have evidence of any communication?

A. I think it was presented this morning

Q. Do you have evidence of any communication?

A. I think in the Opening Statement.

CHAIRMAN: Let's move this on, Mr. O'Donnell. You put that it was speculation. He said it is an inference to be drawn which is tacitly agreeing. I take the point.

MR. O'DONNELL: Sorry, Chairman, the position is I am unhappy with a tacit agreement because he is not prepared he is prepared to make allegations and not prepared to withdraw them when he realises that there is no evidence to support them, and that speculation is going to lie there unanswered in circumstances where he is not prepared to withdraw them. You saw this morning, Sir, how difficult it was to get him to say that he had no evidence of dishonesty on the part of the members of the Project Team, and here we are again, I am asking him for any evidence and he can't

give, but he won't admit that. And I think it's an issue

it goes to his credibility, if nothing else.

CHAIRMAN: Well, I have noted his answer.

MR. O'DONNELL: Very good, Chairman. I'll move on.

Q. You also, on the 20th February, 2003, your solicitor wrote to the Tribunal commenting on the evidence of Mr. Loughrey Tab 25; isn't that right?

A. He actually referred no, Mr. Loughrey referred specifically to an equivalence of jockeying within other consortia, and we obviously did not have such because we had a signed shareholders' agreement, and that was a very clear difference. So

Q. You didn't feel it was appropriate to seek representation, to put any of these points to either Mr. Brennan, Mr. Towey or Mr. Loughrey if you let me finish the question you didn't think it was appropriate to seek representation to put any of these points to any of these witnesses?

A. We had been very forcibly told by the Tribunal that we would not be represented and we would not be granted representation, and it was clear that we would get limited representation for the statement. That is all. There was it was made absolutely clear by the counsel for the Tribunal that we were not to seek it and we would not be granted it.

Q. You were told not to seek it?

A. Sorry, we were told we would not be granted.

Q. Did you feel an injustice was being done to you?

A. We didn't see that it was our business. This is a public sworn inquiry. It's not up to us to seek representation, but if we have evidence to bring to it, I again repeat that we bring the evidence.

Q. Isn't this what's happening, Mr. Boyle

A. It's up to the Tribunal to accept or ignore that evidence.

Q. That you are constantly trying to feed the Tribunal with information to damage the granting of the licence?

A. Absolutely not. We were constantly feeding if there was any information that was in our possession, this particular one you are currently referring to was a very clear example where Mr. Loughrey made a statement which indicated that other consortia were that there was jockeying for position in other consortia, that it was standard. We obviously clarified there was no jockeying for position in our consortia. He had made a statement which, you know, was obviously and abundantly could have been addressed at our consortia, and we made it clear that there was no equivalence. That's all.

Q. Further speculation in other

A. That wasn't speculation.

Q. Well, I am moving to another document. Further speculation in other unsolicited submission on the 28th May, 2003?

A. Tab?

Q. Tab 27. You are dealing with the Commission's response to your complaint. Isn't there speculation contained in the second-last paragraph about on page 2 about the state

of knowledge of Esat about a meeting between the Department and the Commission in relation to the ultimate postponement of the competition and the capping of the licence fee?

A. That was our opinion at the time.

Q. More speculation, again to try and damage the Department, to be fed to the Tribunal?

A. It pointed out the coincidence of timing, that there was a fax from them on the very same day the Department were in Brussels, and that was also supported by the fact that that company had a copy of the confidential note from the EU on their files when nobody else did.

Q. 23rd

A. Not an unreasonable position.

Q. 26th June, 2003, next tab, 27, you comment on the ongoing evidence concerning the investigations by the PTGSM and the amount of time spent at meetings in around May 1996." And the last sentence of the second paragraph, "It appears to me, therefore, that some or all of the members of the PTGSM were very tied up with these meetings" this is meetings with five failed consortia "which would have left very little time for the detailed financial inquiries which were apparently also being carried out at the same time."

Now, Mr. Boyle, I think anybody who has been here hearing your evidence would appreciate that the meeting with the Persona consortium was likely to be a long one. But do you not accept that this is speculation by you as to the amount of time or the amount of effort put in by the Department

into the financial inquiries?

A. It was our opinion at the time.

Q. It was speculation without evidence.

A. Well, the evidence the meetings had happened, certainly.

Q. Over the page, letter of the 10th July, 2003, you claim

that the Department is last paragraph, second page

you say, "The Department is still going to some trouble to

prevent Persona obtaining copies of certain documentation

which are in the EU."

A. I believe that was based upon either a letter or a phone

conversation with the EU which confirmed that matter. That

was based upon actual evidence that had come to us.

Q. This is, again, you believe that the Department were out to

do you down?

A. Well, I can't give you the exact answer, but it was, at a

minimum, a phone conversation between my solicitor and the

EU which confirmed that the Department were resisting it,

or it was a letter, it may have been.

Q. On your letter Tab 30 the 11th July, 2003, even your

solicitor is beginning to realise that he may be a nuisance

to the Tribunal. First paragraph,

"Dear Mr. Davis,

"Please excuse me for this intervention in anticipation of

the remainder of Mr. Hoceped's evidence. However, at the

risk of being regarded as an annoyance to the Tribunal's

work, I prefer to make the following point rather than to

leave it unsaid at the time."

Again, this is an unsolicited, under the guise of being helpful to the Tribunal, but, in fact, an attempt to try and steer the Tribunal in a particular way in relation to Mr. Hoceped and to blacken Mr. Brennan and others.

A. It was, once again, providing information, which were the minutes of a conversation that Mr. Moloney had with Mr. Hoceped which wouldn't have been in the knowledge of the Tribunal, and bringing it to their attention.

Q. Your proceedings in the High Court are stalled; isn't that right?

A. What does "stalled" mean?

Q. Stopped, they have not gone anywhere. You haven't furnished a Statement of Claim?

A. We are still in the process of collecting information.

Q. You issued the proceedings in 2001?

A. Yes.

Q. And apart from a Plenary Summons, you have not issued a Statement of Claim?

A. We are still in the process of collecting information, and that is one of the reasons why, I explained earlier, we are observing at this Tribunal.

Q. You are waiting for the outcome of this Tribunal before deciding what to do?

A. We are proceeding with our case regardless of the outcome of this Tribunal.

Q. And you are using this Tribunal and the process of inquiry as a stalking horse to mount your own attack on the

Department's decision to grant the licence to Esat?

A. We are certainly not using this as a stalking horse. We are in the process of collecting information, one of the items being attendance at this Tribunal.

Q. And you have made a series of groundless allegations against various members of the Department. Do you still hold to your answer that you gave to the Chairman before lunch?

A. The Chairman has accepted the answer which I have provided.

Q. Do you stick with it or do you want to change it?

A. I have presented to you all of the information. I have answered all of your questions, and I don't intend answering any more.

Q. That can be for the Chairman to decide whether you answer any more questions, not you, Mr. Boyle. But isn't it the position that you have absolutely no evidence of dishonest or inappropriate conduct?

A. Well, we are very certain that there is evidence of fatal flaws in the process.

Q. But you don't make any allegation against the departmental members?

A. It's not up to me to make an allegation.

Q. You don't dismiss them, isn't that right?

A. It is not up to me to make an allegation against departmental members.

MR. O'DONNELL: Sir, I should say that we have not had full disclosure yet from the Tribunal I am not making that

point in an adversarial way at this stage, but I know that there is more documentation to come, and on that basis I am reserving my rights in relation to further cross-examination of this witness if necessary. We believe that there are documents that have been the existence of which have been disclosed to us, but we have not, as yet, seen them. Nothing may turn on them, but it may not be necessary, but I formally reserve my right in relation to, if necessary

CHAIRMAN: If something arises that you might be prejudiced, of course I'd have regard to that, Mr. O'Donnell. But the lines of your examination are pretty clear.

MR. O'DONNELL: Yes. Thank you.

CHAIRMAN: Mr. McGonigal.

THE WITNESS WAS EXAMINED BY MR. MCGONIGAL AS FOLLOWS:

Q. MR. MCGONIGAL: Mr. Boyle, can you clarify one thing for me in the beginning. Have you ever attended a meeting with Tribunal counsel at which the Chairman was present?

A. I have never attended a meeting with the Chairman, to my knowledge.

CHAIRMAN: I should make it clear, Mr. McGonigal, I do not attend meetings because I have to adjudicate or assess witnesses as they appear in the Tribunal, and except, I think, for one very early occasion on a fairly non-contentious situation when the Tribunal was very short-handed, I have made it an absolute rule of policy that

I do not attend meetings, except, perhaps, in introductory ones with individuals who are in the fringes, but I do not, as a general practice, attend meetings with witnesses.

MR. McGONIGAL: Thank you, Mr. Chairman.

Q. The reason I ask you, Mr. Boyle, is because you are very definite that at some meeting which you had with Tribunal counsel, that it was made abundantly clear to you that you should not, and would not, get representation, should you apply for it, at the public hearing.

A. Yes, I believe so.

Q. And that statement or representation, presumably, was made to you by one of the counsel attending that meeting?

A. I believe so, and it is in the minutes of the meeting, yes.

Q. Because normally that would be a decision of the Chairman, and that was what prompted my question, as to whether there had ever been any ruling by him to you in private or otherwise that you were not to get representation at the public hearing, but I gather you didn't have any such meeting and you have had no such correspondence?

A. Absolutely not.

Q. I just want to clarify a couple of odd things, Mr. Boyle, if you would. Mr. Moloney, who is first of all your solicitor the company's solicitor; is that right?

A. He is, yes.

Q. When you say he is the company's solicitor, to which company is he the solicitor?

A. He is the solicitor to Persona Digital Telephony Limited.

He is also a solicitor to the Sigma Communications Group.

Q. Is he also solicitor to the Sigma Wireless Group?

A. Yes, Sigma Communications. There is no such company as Sigma Wireless Group. But Sigma Communications Group is our holding company, as I said to you, and he is solicitor to that company, yes.

Q. And as I understand it, he was also the Secretary to one or other of your companies?

A. He is the Secretary to Persona Digital Telephony Limited, which is the company that bid for the licence.

Q. And when did he become the Secretary?

A. In 1994, 1995, when that company was formed.

Q. So that, in practical terms, for all purposes, he has been both the Secretary and the solicitor to the company since, effectively, you became very nearly since you became involved in the competition?

A. Yes, that's correct.

Q. And clearly, he was both the Secretary and a solicitor when he was advising you after the result of the competition in October '95 through to 1996 in relation to any proceedings which were being contemplated or any complaints which were being contemplated?

A. He would have been the solicitor to the company, yes.

Q. And during that time

A. Well sorry

Q. Yes?

A. I suppose, the other consortia members would have had their

legal representation, also, but the main advice and solicitor to the company was Mr. Moloney.

Q. Oh, there is nothing unusual in it, Mr. Boyle, I just wanted to clarify the situation. But it was Mr. Moloney who assisted and advised you in relation to the complaint which you made to the Commission?

A. That's correct.

Q. And it was also Mr. Moloney who helped and assisted you in relation to the Judicial Review proceedings which you were contemplating?

A. That is correct.

Q. As part of the legal team, you also had barristers involved?

A. That is correct.

Q. Both Mr. Gerard Hogan, who is now counsel to Mr. Desmond or yes and Mr. Healy, who is counsel to the Tribunal?

A. That's correct, the substantive advice was from Mr. Gerard Hogan.

Q. When did you take your legal your barristers on board?

A. When you say "on board" sorry, on board for which?

Q. When did you seek their advices in relation to any of the matters which we have touched upon?

A. The matters which we touched upon regarding

Q. Being either the Judicial Review proceedings or the complaint to the EU Commission?

A. Roughly November 1995, after the decision.

Q. And when did you make a determination that you were not

pursuing the Judicial Review proceedings?

A. Within 30 days of that. I would say, November, December 1995.

Q. We'll come back to that, because I think it may have been later in April of '96 that you were making a determination.

A. Certainly, I recollect a board you know, we can check the Board minutes, but the Board took the advice which came from Mr. Hogan regarding the process for Judicial Review, and the Board decided that it was not going to pursue the now, perhaps you are right, but certainly it was in that time-frame, between the

Q. But clearly, during that time, any information which you had or which you considered relevant to either the complaint or the potential Judicial Review proceedings, you made known to your legal advisers?

A. No. If you are suggesting to the counsel the situation is we had a limited consultation with Mr. Hogan and Mr. Healy, specifically all it related to was what the process was for Judicial Review and what the likelihood of granting same was. That consisted of extremely I had one meeting and it was a very limited advice taken in November 1995 and the services were dispensed with, and it was thereafter the advice from our team was by Mr. Moloney until such time as 19 sorry, 2001, when we appointed Mr. O'Neill and Mr. Maurice Collins for the purposes of observing at this current process.

Q. So, you are saying that there was only limited material

made available to Mr. Hogan and Mr. Healy?

A. There was no material available at all at the time.

Q. In particular, did you tell them about the Aintree meeting?

A. There was absolutely no there was only one question which we asked.

Q. I see.

A. It was only regarding simply one question. It was: What is the situation? Are we entitled to get a response from the Department with reasons why we didn't win the process, or with an explanation? That is the only issue we referred to. We did not discuss anything else. It was a limited advice. It was taken by Mr. Hogan, who was the expert in administrative law. He explained the process, and their advice was and it focused solely on, and the written advice confirms that, I believe, that it focused solely on what was the possibility of getting Judicial Review based upon the refusal by the Department to grant the benefit of a disclosure.

Q. You see, I'm just curious, Mr. Boyle, because Ms. O'Brien, at lunchtime, showed me a letter from the Tribunal to you, requesting that you would consider giving a waiver to Mr. Healy in relation to his dealing with the GSM. I wonder, Mr. Chairman, if that letter could be put on screen.

Can you see the letter, Mr. Boyle?

A. I can only see the top part of it now.

Q. You have got the address there, and the Tribunal of

Inquiry, and then it continues, "Dear Mr. Moloney, I am writing to you at the request of Gerry Healy, SC, in connection with his role in advising the Persona consortium's application for the second GSM licence.

"As the Tribunal (Terms of Reference enclosed) is in the course of carrying out certain confidential queries in relation to the granting of this licence, Mr. Healy has asked me to inquire whether Persona would be willing to waive any duty of confidentiality he may owe to Persona in connection with his work as an adviser to the consortium, and, in particular, with respect to any information he may have obtained in the course of carrying out that work.

"I would be much obliged to hear from you at your earliest convenience."

Now, I have to say to you, Mr. Boyle, I only saw this after lunch, and I am actually stunned by the fact that it exists, I am stunned by the fact that it has been withheld deliberately by the Tribunal, and I am not certain at the moment as to its full implications, but I want to advise you that I do consider it relevant to the High Court proceedings which we have in being. But I want to give you an opportunity of saying anything that you want to say in relation to it. Is there anything you want to say about that letter? If there isn't, just say so.

A. I have nothing to say.

Q. That's okay. You did reply to it, anyway, so we better have your reply. The date of that letter is the 26th

March, 2001.

"Dear Mr. Davis," first of all, Mr. Boyle, before we read that letter, as a matter of interest, the first letter that I read was written to Mr. Moloney. You probably noticed that?

A. Yes.

Q. Do you remember Mr. Moloney coming to you and asking you about this?

A. I would be pretty sure that he did consult with me, yes.

Q. No, no, I didn't ask you that; I asked you if you remembered it. I didn't ask you if he did; I asked you if you remembered him consulting you. If you don't, just say you don't?

A. I said I am pretty sure he did consult with me.

Q. You are pretty sure he did doesn't necessarily mean he did. Do you remember an occasion on the 26th March, him ringing you up and talking to you about this?

A. I am absolutely certain that Mr. Moloney consulted with me regarding getting giving a waiver to the Tribunal regarding Mr. Healy.

Q. Mr. Boyle, I just want you to be a little bit careful.

A. All right.

Q. The letter that was written to Mr. Moloney was dated the 26th, do you see that? And the reply is dated the 26th.

So it doesn't seem to have left much room for consultation.

That's why I suggested there might have been a phone call, and that's why I am asking you whether you recollect, and I

didn't think you would recollect, but maybe you do, whether you recollect Mr. Moloney contacting you in relation to this matter and specifically asking you, as chairman of the company, as to whether you were willing to waive any confidentiality?

A. Well, I am certain that Mr. Moloney wouldn't have responded to a matter of that import without checking with me, whether it was in person or on the phone, I can certainly check my diary, but

Q. I think there is a piece of paper coming to you post-haste, which may be of some help to you.

A. Okay.

Q. Does that have any assistance to you?

A. Yeah. So Mr. Moloney sent me a fax, which was the letter from the Tribunal and his suggested response for my approval.

Q. I am grateful to Mr. Moloney and to you, Mr. Boyle, because it's better that we have the truth.

A. I agree.

Q. If we could have a copy of that, please. "I acknowledge receipt of your fax of earlier today.

"I confirm that we act for Persona Digital Telephony Limited, one of the applicants for the second GSM licence.

"As my clients do not wish in any way to hamper the Tribunal in its inquiries in relation to the granting of this licence, they are agreeable to releasing Mr. Healy from any obligation of confidentiality he may owe to them

with respect to information he may have obtained in the course of carrying out his work as an adviser to them."

That was Mr. Moloney's reply, supported by you. And that meant that any material, written or oral, which had come into Mr. Healy's possession or knowledge during the time or any time that he was advising you, he could now use in whatever way he considered necessary in the Tribunal's investigations; isn't that right?

A. The only information he got from us in the course of that was the tender documents, and a response as to whether, under the tender rules, that there was a basis to seek a Judicial Review on the basis of the Department that's all it was referred to, so if that's what you want, I mean that's what he got.

Q. At the moment, Mr. Boyle, the only persons who know what material he had or hadn't got were you, Mr. Moloney, Mr. Healy and possibly Mr. Hogan. None of us would know. And at the moment, I'm not interested in that aspect of the matter.

MR. COUGHLAN: I don't wish to intervene at this stage, Sir, but if My Friend is continuing with this line of examination I'd like to state and put the record very straight arising from comments made by My Learned Friend about his High Court proceedings on behalf of his client. This is not a reflection on his client at all.

My Friend was shown this particular document by my colleague, Ms. O'Brien, at lunchtime. He gave no

indication that it caused him any concern. It was a letter appropriately written by the Tribunal seeking a waiver of confidentiality. At the time that the Tribunal commenced inquiries into any connection in relation to the second GSM, Mr. Lowry, Mr. O'Brien, My Friend was informed in full detail of Mr. Healy's previous involvement, together with Mr. Hogan on behalf of Persona. My Friend, I would believe, took instructions and conveyed back to me and to Mr. Healy and to the Tribunal that his client had no objection whatsoever to Mr. Healy continuing to act in the matter.

CHAIRMAN: That has certainly been my understanding to date, Mr. McGonigal.

MR. MCGONIGAL: Well, it may be your understanding to date, Mr. Chairman; it's not my understanding. First of all, when Ms. Jackie O'Brien showed me that, I did not indicate that

MR. COUGHLAN: I didn't say you indicated anything. I put the record straight that you had been informed of the full circumstances, had taken instructions and had conveyed the matter that there was no objection. In all my years in practice, I have never heard a barrister behave in this way.

MR. MCGONIGAL: Well, I am sorry to disappoint Mr. Coughlan and behave in a way that he may not like or be used to

CHAIRMAN: I find it disappointing.

MR. MCGONIGAL: I am sorry you are disappointed, too,

Mr. Chairman, but one of the things that surprises me about this is that this is a document that indicates that senior counsel sought a waiver from a previous client for whom you had been acting in relation to GSM. That correspondence, whatever was said in private between counsel, that correspondence was not disclosed. That, in my respectful submission, in the first instance is a reflection against the Tribunal for not releasing

CHAIRMAN: Sorry, what was said in private between counsel now accounts for nothing, does it, Mr. McGonigal? Is this the standard that you are bringing to this?

MR. MCGONIGAL: What was said between counsel accounts for everything, Mr. Chairman, and what was not said to counsel was that Mr. Healy had been given a waiver by Persona. He sought

MR. COUGHLAN: He had to seek permission, and My Friend knows if he acted for somebody previously, he was obliged to seek release from those people. My Friend knows how matters proceed and a barrister should properly behave.

MR. BARRON: Chairman, could I just address you very briefly.

CHAIRMAN: It's something I propose to take up with Mr. Hogan, but I'll hear you.

MR. BARRON: Just in relation to what Mr. Coughlan has said vis-a-vis My Friend's client, Mr. Desmond was certainly not asked at that time about any issue of waiver. Our team did not have the conversations with the Tribunal's team at that

time, were not asked about this. Now, the matter has been raised previously with you. Just at this point in time, this is very relevant to Mr. Desmond's position.

MR. COUGHLAN: I'll correct the record there, also.

Mr. Hogan, who was Mr. Healy's junior in the matter, and furnished the opinion, knew of Mr. Healy's involvement.

The matter was discussed between Mr. Healy and Mr. Hogan.

CHAIRMAN: Are you saying otherwise, Mr. Barron?

MR. BARRON: As I understand it, what Mr. Coughlan said, and does say, is that, on behalf of Mr. O'Brien, he was asked whether he had any difficulty in relation to

Mr. Healy's involvement. I do not understand that that was asked and it is said and it is said that there was a communication back on behalf of Mr. O'Brien that there was no objection.

Certainly, whatever was said to Mr. Hogan in relation to this, there was no communication back, "Do you have any objection?" And as a result of that, there was no clearance or waiver on behalf of Mr. Desmond of Mr. Healy's involvement. This matter has been raised previously, and I am only standing up now to say insofar as the Tribunal makes an objection about a party complaining about this matter, we are not in the position that we cleared this on day one. We didn't know that another party was asked to give a clearance for Mr. Healy's involvement at the time and we certainly didn't know, any more than anyone else did, about this particular letter, and it has been said, we

don't know at this moment what the implications of this are, because the first time we saw it is just now. But I am just intervening to say that we are in a different position. We did not give we were not asked to give a waiver and we did not give a waiver.

MR. COUGHLAN: I should also comment; Mr. Hogan, of course, is in full possession of the information which was imparted. This, Sir, is appalling behaviour.

MR. MCGONIGAL: First of all, Mr. Coughlan is wrong in a sense that I did say to Ms. O'Brien when she showed me this material that I was very unhappy with it, and she said, "What do you mean by that?" And I didn't answer that. So far as previous experience is concerned, Mr. Healy did come to me Mr. Healy and I have did have a conversation, and it is reflected in the correspondence, I think in May 2001, but, I am not a hundred percent sure; that correspondence isn't here. But what I absolutely know is at no stage, ever, was anyone ever told that Persona had granted a waiver to Mr. Healy to continue acting. Never, ever told that. Not only that, if we had been told it, there is no justifiable reason for this correspondence not having been disclosed in recent times, particularly when we have, letter after letter, been seeking all correspondence prior to the 6th June, 2001, not because we knew of any letter of behaviour, but because it has fascinated us that there is no communication in writing between Persona and the Tribunal, despite the fact that there have been at

least one private meeting with no lead-up to it or lead-up from it, and we did not understand that. At no stage was anyone ever informed of the existence of the waiver, and that is what shocks me and that is what stuns me, and I am totally and utterly surprised by you, Mr. Chairman, in not releasing this document or holding some kind of claim of privilege or something over it.

CHAIRMAN: Is the substantive factor, Mr. McGonigal, not the one that Mr. Healy went promptly to you, indicated the position, which is one that I think in an earlier ruling I may have alluded to, that when one undertakes a tribunal, be it as counsel or chairman, you cannot undertake, as in a normal High Court case, what may come up at some later stage; that he indicated that to you and that you indicated, having taken instructions, that it did not appear to present

MR. MCGONIGAL: That is absolutely right as of the time that he mentioned it to me, but that is not the point in issue. At that stage, it was not clear to us, or anyone, Mr. Healy's full involvement of any kind. And certainly, never was it made clear to us that Persona had granted him a waiver, nor were we aware, as such, that there needed to be such a waiver. And I am absolutely surprised, in a public Tribunal, that you did not choose to make this fact public that he had been given a public waiver. We had this issue before in relation to Cement Roadstone. This is the second time we have had a conflict of interest situation,

and the Tribunal has not been open in relation to this one,
and that is wrong.

CHAIRMAN: So it means, Mr. McGonigal, you are going to
utilise this matter, in which your colleague made full
disclosure to you, to see if you can attempt to blacken the
personnel of the Tribunal and to otherwise obfuscate

MR. MCGONIGAL: Absolutely rubbish, Chairman. The issue is
whether or not there is a conflict of interest in which the
way in this Tribunal has pursued the GSM and the
information which was or was not available to Persona. It
is clear, as night follows day, if you follow the
correspondence, that Persona and Mr. Moloney were pursuing
their case through the Tribunal to try and get evidence to
pursue an action against the State. Mr. Boyle has admitted
that. So, in essence, what you start with in the building
of a structure is that it is admitted by Persona that they
are using the Tribunal to try and find evidence which they
do not have to enable them to mount a case against the
State, and the State only. You follow that by looking at
the material which has been given at various stages by
Persona to the Tribunal, unsolicited in a lot of cases, and
ask the question, how did this come about? You then find,
in some of that correspondence, that not only did Mr.
Moloney give information to the Tribunal, but the Tribunal
wrote to the Commission seeking a concession in relation to
the release of documents in July of 2002 as a result of a
direct communication between Mr. Moloney and Jerry Healy.

Of course, these matters raise issues, and we cannot and will not turn a blind eye to them, even if others want to. It's not a question of blackening anyone's name; it's a question of investigating and inquiring. This is a very serious issue. It goes to the absolute credibility of this Tribunal in relation to the investigation of the GSM licence, why they did it, how they did it and who allowed them to do it.

CHAIRMAN: And to such a level, Mr. McGonigal, that you think you can erode your personal relationships with colleagues?

MR. MCGONIGAL: I beg your pardon?

CHAIRMAN: Does it go to such a level of seriousness that you can ignore the duty of disclosure that a colleague made to you?

MR. MCGONIGAL: Mr. Chairman, let me make one thing absolutely clear: If at any stage I have to do something which is in the interests of my client and the interests of justice, I will do it, and to hell with who is suffering because of it. If he is not prepared to come up here and stand up for himself, so be it, but Mr. Healy has never been in this Tribunal at any stage when Persona or any of those issues have been discussed or inquired into. I have never understood that. If everything was above board, why is he not here?

MR. COUGHLAN: I lead this Tribunal, and I, together, with discussion with you, decide who will man various aspects of

the Tribunal's business. We have had cross-examination so far by Mr. O'Donnell of Mr. Boyle. Mr. McGonigal is about to commence his cross-examination. I haven't seen the full aspect of the documentation which he intends putting to Mr. Boyle.

What has been blown up out of all proportion, and I want to nail it now, is where a letter which did not fall within the O'Callaghan categorisation of documents, and My Friend knows this from correspondence that has been had by their solicitor with our solicitor over time. Mr. Healy and the Tribunal appropriately sought the waiver to enable Mr. Healy to act in the Tribunal, to continue his work on behalf of you, Sir, in the Tribunal.

It is correct that submissions were made by Persona. It is correct that there were some meetings held with Persona.

It is correct that letters were sent in by Persona. But in the cross-examination which has been conducted by My Friend, Mr. O'Donnell, so far, I think what seems to be the case, in general, is that the submissions and the information on the whole which was being made available to the Tribunal by Persona, in many cases unsolicited, was not accepted by the Tribunal as being of any validity for the purpose of holding an inquiry into the matter in public.

In fact, if you look at the key issues which Persona identified in relation to the postponement of the GSM competition; in relation to the capping of the licence fee, these are all matters from day one, when I made the Opening

Statement in relation to GSM, that the Tribunal never attached any credence to. So what is being attempted here by Mr. McGonigal, I submit, Sir, is an attempt to muddy the waters and cloud the issue and not address the specific facts, as My Friend, Mr. O'Donnell, did, when he dealt with Mr. Boyle in relation to the various matters which he was bringing to the attention of the Tribunal. And it also flies in the face of the ruling of this Tribunal and the issues which this Tribunal may still consider to be pertinent and relevant as we continue on.

CHAIRMAN: It would be my preference, Mr. McGonigal I don't know if this, by any chance, is with a view to inviting persons on the Tribunal side to make temperate or extreme remarks. It has always been my preference that the evidence be explored in a detached a manner as possible, and it would be my preference that you continue with your examination of Mr. Boyle.

MR. DESMOND: Mr. Chairman, I wonder would you oblige me by allowing me say a few words.

CHAIRMAN: No, Mr. Desmond, you have written to me on several occasions; I have written to you, unavailingly, to your legal advisers, that when somebody is granted representation, it is, in general terms, undesirable that the parties communicate personally, and I do not think it is going to be helpful that you do that.

MR. BARRON: Mr. Chairman, could I just make one thing absolutely clear: Mr. Gerard Hogan has played absolutely

no part in any aspect of this Tribunal that relates to Persona. He is not here today, he hasn't been here when Mr. Boyle was here previously, or Mr. McGinley. He doesn't attend meetings that we have internally in relation to this matter.

I have said to you that I couldn't the implications of what we have just seen is it go and don't know for the time being, but certainly the fact that there is a waiver of confidentiality does, on its face, raise serious questions, because, for confidentiality to be waived, it does imply that some information is being provided.

Mr. Hogan, on the one hand, has not provided any information whatsoever. He has taken no part in this, he hasn't been asked, he hasn't tendered any information. We know nothing about what Mr. Hogan about his relationship with Persona.

Now, what I can indicate, at the moment, is, it is, on its surface, very, very disturbing. You know Mr. Desmond's views because you had correspondence previously, and you have had Mr. Walsh was here previously and you have heard what's been said. Mr. Coughlan said he wanted to nail it. All I can indicate at the moment is we are not in a position to allow the matter be nailed, but obviously it's something that we'll have to take up further with the Tribunal. It's not something we can deal with now. So that's

CHAIRMAN: I have indicated the examination should

continue.

Q. MR. McGONIGAL: Mr. Boyle, this morning we gave you two books, and I understand that your counsel indicated that there was a series of the documents in those books which you weren't particularly familiar with, and I wondered if you would assist me by explaining to me or telling me which ones they were.

A. Well, Mr. McGonigal, it was a perusal of less than five minutes of documents, so I just gave some quick feedback. The ones which jumped out at me were letters from William Fry, solicitors, to the Tribunal. Obviously, that William Fry are solicitors to Esat; naturally, I wouldn't have seen that, I don't believe. Letters from the Tribunal to the EC; I don't believe I would have seen that. You talked about a document which was Comcast, Statement of Claim; naturally, I wouldn't have seen that. They were just some small examples, but they were, as I say, in the process of a five-minute perusal of a list of several hundred, or maybe well over one hundred items, so I can't confirm that that's an exhaustive list, but that's my first reaction.

Q. No, I understand that, and I simply wanted to get an answer to the question so as I could assist my own mind in relation to any documents which you were unfamiliar with, that we could read them out so you could become familiar with them or take your time in relation to answering questions.

So, we'll see how we can go with them, Mr. Boyle. One thing I do want to clarify with you: I understand from reading the transcript of your evidence on the last occasion, that, really, after the Commission had rejected your complaint and after you had taken a decision not to pursue your Judicial Review, that you effectively decided that life must move on and you got on with other business, and effectively closed down this side of things?

A. I think that's very clear, yes, we went and built our business.

Q. Sorry?

A. We went ahead and built and rebuilt our business.

Q. What I meant by that, Mr. Boyle, is that you did it to such extent that I think the company was struck off or came close to being struck off?

A. I don't think it was struck off, but I think it would have been just normally done by the accountants or the auditors to the company each year.

Q. And my recollection was, from the documents, that in 1999 you had to reapply to have the company reregistered?

A. I believe there were matters at the time which were just to be tidied up with the shareholding, so they would have been routine Company Act matters.

Q. If you go to Tab 56, Mr. Boyle?

A. Okay.

Q. Do you have that?

A. I do, yes.

Q. And that's a company search in relation to Persona Digital Telephony Limited. Do you see that?

A. That, obviously, is one of the documents that I wouldn't have seen previously, so and is one of the ones which I circled on the if you check with my counsel there, it's one of the ones

Q. There is no problem, Mr. Boyle. I just want to try and get a few things, and if you are not clear, just say so and we can come back to them at a later stage. But if you go to page 5, there is a Company Registration Office document, H1, and it appears to suggest that the company was dissolved on the 16th April of 1999. Do you see that?

A. Page 5 in mine is a document dated 12th April, 2000.

Q. Yes. And do you see, just to the left of that, the typed writing "The company was dissolved on 16th April, 1999"?

A. I see.

Q. And as a result of that dissolution then, the company had to apply to be reregistered. What I am curious about, Mr. Boyle, is why you applied to have the company reregistered?

A. What date was the reregister, if you can see it?

Q. 12th April, 2000?

A. I would assume it was the normal company secretarial matters. We obviously have a lot of companies, perhaps ten or twelve different companies. I would normally just get matters for signing by our company secretarial or company registration and activities through KPMG.

Q. The reason I am asking is because the only reason I can

see, or I have been able to guess at, is because of the possibility of the GSM being investigated by the Tribunal?

A. I would have thought, while it's still within the statute of limitations, that it would have made sense to keep it on. I guess that is probably what it was.

Q. Presumably, that was a decision made a sometime around then?

A. If my recollection serves me correctly, it was more about corporate governance in terms of the but, I may be wrong, but there was an issue not an issue, but a need for a shareholding of certain of the other parties to be changed, but perhaps I genuinely can't recollect what it was.

Q. That's okay. It's quite a long time ago. Would you go to the fourth page from the back of those documents, Mr. Boyle?

A. Okay.

Q. And that is a list of past and present members?

A. Okay.

Q. And do you see the first one is Sigma Wireless Networks Limited; the second one is Unisource NV?

A. Yes.

Q. And it seems that on the 8th May, 2001, transferred to Sigma Wireless Networks Limited one share I don't know but I take it that what that indicates is that, as of that date, Unisource were no longer part of Persona?

A. I believe they were I believe they were actually out of

existence at that point in time, but I guess that was the formal registration of the transfer of the shares.

Q. And similarly, Motorola International Network Ventures Incorporated, on the 30th April, 2001, they transferred to Sigma Wireless Network, so they were no longer part of the consortium?

A. That's correct, yes.

Q. And 12th June, 2002, the ESBI Telecoms Limited transferred to Sigma Wireless Networks Limited?

A. That's correct, yes.

Q. So as of June 2002, the only persons in the consortium were Sigma Wireless Networks Limited?

A. That's correct.

Q. And that is you and Mr. McGinley?

A. That's correct.

Q. And Mr. Moloney, as secretary?

A. That's correct.

Q. So am I right also in understanding from that that neither Unisource, Motorola or the ESB have any interest, good, bad or indifferent, in the legal proceedings which you have in being?

A. There is a financial agreement with ESB.

Q. So there is a side issue with the ESB?

A. It's not a side issue.

Q. A side letter, is it?

A. There is an agreement for reimbursement of their costs as part of the transferring the share.

Q. But there is no agreement with Motorola or Unisource?

A. There is no agreement. They simply transfer their shares.

Q. So that in the unlikely event of you being successful in your proceedings, should they ever happen, the only persons, apart from yourselves, who might have a gain, would be the ESB, the semi-State body, and only insofar as any costs incurred by them in relation to taking part in the competition?

A. That is correct.

Q. So the only persons presently interested in this Tribunal and the evidence or material that was coming before it, so far as your proceedings are concerned, are your company, yourself, Mr. McGinley and Mr. Moloney?

A. Well, Mr. Moloney is an advisor to the company. It's myself and Mr. McGinley are the

Q. He is both advisor and secretary of the company; he is a man of many hats?

A. He is not a shareholder in the company. It's myself and Mr. McGinley, and then it's a financial interest with ESB International.

Q. Speaking of which, I think that in fairness to Mr. Moloney, he was also a stager in DG IV at one stage in the Commission?

A. I am not aware of that. You must address that to him. What's a stager?

Q. Apparently it's some official within DGIV. I am afraid I am not a European lawyer of but I have no doubt that

Mr. Moloney will tell you.

Now, in relation to your dealings with the Tribunal,

Mr. Boyle, the first one that I want to touch upon, is one that has already been touched on by Mr. O'Donnell, and that is the one of May 2001?

A. Is that in your tab here?

Q. It's Tab 58. Do you remember that meeting?

A. Pretty well, yes.

Q. Sorry?

A. Yes, I have got a reasonable recollection of it.

Q. Can you recollect who was at it?

A. I believe Mr. Coughlan was conducting it, there was a solicitor who, I think Ms. Jacqueline was I am not sure at that one, there was a solicitor whom I think changed before, was there a solicitor before Michael Heneghan?

Q. Mr. Davis?

A. Mr. Healy was at one meeting with a broken leg, so that might tie down the I don't know whether it was that one or not, but he had a broken leg one time so

Q. Do you recollect how that meeting was set up?

A. I would have had a phone call from Mr. Moloney to accompany him to a meeting at the Tribunal.

Q. Do you recollect why it was set up?

A. I think it was at the

Q. My reason for asking, Mr. Boyle, is I can find no correspondence, prior to this May 2001 from the Tribunal to

yourself, indicating that there were matters upon which they wished to discuss with you, and I am just wondering how this meeting came about and why it came about at this stage?

A. I have honestly nothing. I don't know. I assume we just got a phone call and we attended. I believe that's the first communication we had. I don't have any other reference.

Q. Had there been any meetings prior to that?

A. Certainly not to my knowledge.

Q. Was there any follow-up from that meeting, so far as you were concerned?

A. There were letters, which I think you have evidenced, and there were two further meetings I believe the next year.

Q. I know there were

A. I have a record of three meetings.

Q. If I can just approach it this way, Mr. Boyle: Do you see in paragraph 9, you talk there about "In April '95, Tony Boyle had a chance encounter with Dermot Desmond. This was in J.P. McManus's box in Aintree. Dermot Desmond told Tony Boyle he had been asked by Denis O'Brien to be chairman/president of the consortium. He asked Tony Boyle what the process involved. He told Tony Boyle that he knew exactly who Denis O'Brien would use to get to Michael Lowry. Michael Lowry was in the box later that day together with Sean Barrett."

Do you remember telling anyone that? You probably don't,

but do you?

A. I told Gerald Moloney. I told Jerome Malm in Gerald Moloney's office, I told Michael McGinley.

Q. Don't worry, I'll come to that. Do you remember telling anyone in the Tribunal this? Do you remember this conversation?

A. Of course, it's in the minutes of the meeting.

Q. I know it's in the minutes, but I'm just trying to find out, Mr. Boyle, what you recollect of that meeting. Do you remember talking about this incident?

A. Absolutely.

Q. I see. Because one of the things there are a couple of things that puzzle me about it, having regard to your evidence. First of all, you make reference to Mr. McGinley having been there or about. Do you see that?

A. I also didn't comment I mean, why would I have? I am sorry, I am just not clear.

Q. I don't know why you wouldn't. But subsequently, it appears that Mr. McGinley first of all, it appears from later material that Mr. McGinley was in the same box, and that you had a conversation with him and that he saw you talking to Mr. Desmond. That was the evidence. And what's puzzling me is why you would have left that out when you were recalling this event for the first time, apparently, to the Tribunal lawyers?

A. Why would I have referred to it? I simply gave evidence of what had happened. I didn't say that

Q. I'm not talking about your evidence, Mr. Boyle; I am only talking about your recollection?

A. My recollection is crystal clear.

Q. As of 2001, it seems to have been less than crystal clear in that you omitted any mention of Mr. McGinley?

A. That's completely incorrect. My recollection is crystal clear.

Q. So should I read that as if you had told them about Mr. McGinley as well?

A. No. Why would I?

Q. Well, then, do you clearly, as crystal, recollect Michael Lowry was in the box later that day together with Sean Barrett?

A. I am pretty sure that they were actually in an adjoining box with Vincent Daly, I think it was there was an adjoining box and they popped in later, yes.

Q. All you said in this, Mr. Boyle, I just want to keep an eye on it: "Michael Lowry was in the box later that day together with Sean Barrett."

A. He was guest in an adjoining box.

Q. "In the box" I assume you mean by Dermot Desmond's box?

A. Well, Mr. McManus's box.

Q. Mr. Desmond may have two or three boxes, but I am assuming that it's the box that you were in that you thought that Mr. Lowry and Mr. Barrett were in; is that right?

A. That is that is correct. The box I was in

Q. Or maybe it's Mr. J.P. McManus, Mr. Kelly advises me. He

is a racing-goer. You see, the funny thing, so far as I am concerned, Mr. Boyle, is that that doesn't appear in your statement, later, that Michael Lowry was in the box later that day together with Sean Barrett. They are airbrushed out, effectively, and I wondered why that was?

A. I was asked to give a precise account of what Mr. Desmond said to me. I didn't talk about the weather or anything else that happened on the day; I gave a precise account of what Mr. Desmond said to me, which was the basis of my statement, and that is absolutely correct. And what else happened on the day, or wasn't, was not relevant to my statement. My statement was simply a request to provide a detailed statement of what Mr. Desmond said to me.

Q. It seems to have been relevant in May 2001, and I am just trying to understand, I mean, I may be absolutely silly about this, Mr. Boyle, but I'm trying to understand why it was left out at a later stage, because presumably the reason why it was put in in the first place was to give an air of credibility and belief that they would be able to say that Mr. Barrett, for example, would be able to say that he saw you in Mr. Desmond's box, or whatever, and presumably the Tribunal would have made inquiries about these things, as they usually do?

A. I presume that would have been chit-chat, that part. There was probably 20, 25 people in the box. I am quite sure quite a lot of them could give evidence that I was there.

Q. That may well be so, Mr. Boyle, but I am just curious as to

why the two that you picked are taken out or do not appear in the statement?

A. I think the statement, I repeat I was requested to give a statement on exactly what Mr. Desmond said to me that day, not, as I say, of anything else that happened on the day or who was there. It was to give a statement of what Mr. Desmond said to me.

Q. You see, your statement is the 16th September, 2002, and it's at Tab 73. Do you have that?

A. I do.

Q. And do you see there in the first paragraph, "I attended the Grand National meeting with Mr. Michael McGinley and my father, Mr. James Boyle, deceased. We were guests in the box of J.P. McManus at the invitation of Colm Moloney. In the course of the event I was introduced to Dermot Desmond, etc." So Mr. McGinley is now into it in the statement where he wasn't in it in 2001, do you see that?

A. Have you checked the guest-list? I mean, he was on the list.

Q. No, no, I am talking about your statement, Mr. Boyle.

Don't get excited. I am talking about the statement, and the first thing that you told you see, most people take a view, rightly or wrongly, that when you are asked to remember something close to an event, that that is your best recollection. And when you are asked to recollect something, particularly when you are talking to a Tribunal, that if you are asked about an Aintree meeting close to the

event, that you would tell them everything that you would remember about it, and anything that you told them would be your best recollection. Now, the only point I'm making at the moment is that, when you got your first opportunity to tell anyone about Aintree, so far as the Tribunal is concerned, that you omitted to refer to Mr. McGinley, it may have been an oversight, you omitted to refer to Mr. McGinley, but you did refer to Mr. Lowry and Mr. Barrett. And on the second occasion when you were asked for a statement, nobody seems to have referred you to your meeting of May 2001, and the statement came out with Mr. McGinley in and Mr. Lowry and Mr. Barrett gone. Do you understand my concern?

A. Not really.

Q. If you'd go, then, to the 4th December, 2002, and I just lost my tab for a moment. Tab 48. Do you have that?

A. I do, yes.

Q. And here we have Mr. Moloney, on foot of Mr. Coughlan's opening "In the light of reference to Mr. Desmond's total contradiction of Mr. Boyle's statement concerning a discussion he had with Mr. Desmond at Aintree and in the light of Mr. Desmond's failure of recollection, I have taken instructions from Michael McGinley and confirm as follows." And then he sets out the seven paragraphs in relation to the events, and confirms that Mr. McGinley will furnish his statement to the above effect to the Tribunal in the next 24 hours.

Now, it seems to be clear that, at least I am going to assume, that the Tribunal did not write to Mr. McGinley and ask him for a statement following your statement in September 2002, but Mr. Moloney decided, in December 2002, that he should advise the Tribunal that Mr. McGinley was in a position where he might be able to give evidence, and so informed the Tribunal. Do you see that?

A. I do.

Q. And, of course, in that there is no reference to Mr. Boyle or Mr. Lowry or Mr. Barrett, either.

A. That wasn't relevant.

Q. Sorry?

A. That was not relevant at all to the report or to the statement.

Q. That's okay.

A. That's why it wasn't in it.

Q. The next one I want you to have a look at is 9th February, 2004, which is 90 sorry, no, it's not 90, it's 91.

This was a letter from Mr. Moloney to Mr. Heneghan. He says, "I refer to the statements of intended evidence of Tony Boyle and Michael McGinley concerning the meeting with Dermot Desmond in April 1995.

"I thought I should bring one small matter to the attention of the Tribunal, just in case it comes up during the evidence of Mr. Boyle. Obviously, it is Mr. McGinley's evidence that is of most significance concerning the fact that Mr. Boyle did meet with Mr. Desmond at Aintree and

that Mr. Boyle recounted some of the contents of the discussion to him on the day.

"However, as Mr. Desmond denies that the meeting even took place and speculates as to why Mr. Boyle never raised the matter previously, Mr. Boyle may also say that he told me of the meeting and the contents of the discussion sometime after it took place. I was Company Secretary and solicitor at the time.

"I merely wanted to inform the Tribunal that that is correct. I have a clear recollection that Mr. Boyle told me that he had met Mr. Desmond at Aintree and that Mr. Desmond had told him that Mr. O'Brien had asked him to become Chairman of his consortium; that he had refused because he had had enough of telecoms; that Mr. Desmond had asked who the decision-maker was and that he knew who Mr. O'Brien would use to get to Michael Lowry.

"Mr. Boyle told me that sometime late in 1995 or during the first few months of 1996. He told me sometime after there was speculation that Dermot Desmond was, after all, involved in the Esat consortium. I cannot be more specific than that.

"I think I may have said this at a private meeting with the Tribunal when the issue first came up, but I felt that I should confirm it to you so that you would not be surprised during Mr. Boyle's evidence if this matter is mentioned."

So we have moved a long way from September from May 2001. We now have Mr. McGinley in and Mr. Lowry and

Mr. Barrett gone, and we now have Mr. Moloney having had a conversation with you at some stage where you appear to have told him, but you forgot that in September of may have forgotten that in September of 2002 when you were dealing with your statement. Although, in fairness to you, I think you did mention it in your evidence. Do you recollect when it was you told Mr. Moloney?

A. It's very clear at the time that in late '95/early '96 it was discussed with Mr. Moloney and Mr. Jerome Malm, who were both willing to give evidence on that matter.

Mr. Malm is senior solicitor in G.J. Moloney in Cork.

Q. I know you probably won't like me saying this, Mr. Boyle, but late '95/early '96 covers a multitude of months. You can't help me as to when that was within that period?

A. It's what I said, late '95 or early '96.

Q. Or can you help me as to why you might have been telling Mr. Moloney this?

A. It was very clear that when the matter started arising and Mr. Desmond's name was linked with the process, that it would have become crystal clear in my mind or it would have become more the focus of my mind that this was a potential issue.

Q. That it was what?

A. A potential linkage or a potential issue.

Q. A potential linkage to what issue to what?

A. Well, it was clear that there was a less than total disclosure of the ownership of the consortium that had bid

and then newspaper reports emerged, appeared which indicated that Mr. Desmond was involved.

Q. Therefore, in your mind, when you were talking to Mr. Moloney, would have been telling Mr. Moloney this because you thought it might be relevant or capable of being considered as part of a matter that would be dealt with in a Judicial Review?

A. This was after we decided against Judicial Review, so it would have just been

Q. Well, if it was after you decided against a Judicial Review, it certainly wasn't related to the complaint to Brussels?

A. The complaint to Brussels only referred to openness and transparency and Competition Law.

Q. But, you see, that's why I am puzzled as to why you would have mentioned to Mr. Moloney. I can't even understand, if it had not come up in the context of Judicial Review, why it would have come up at all?

A. Are you suggesting I didn't, or what's the inference?

Q. Mr. Boyle, I am only asking you a question. If you don't want to answer it, just say you don't want to answer it. I am not here to make any allegations at the moment?

A. That's fine.

Q. I just wanted to know if you'd help me?

A. The conversation happened. I was at Aintree.

Q. No, I am not talking about the conversation?

A. I reported it to Mr. McGinley on the day. I reported it to

Mr. Moloney separately.

Q. But why?

A. And Mr. Malm.

Q. Why?

A. Did you not think it sounded strange, or might have some linkage with Mr. Desmond?

Q. I am trying to understand the context I can't understand why it would have come up, Mr. Boyle.

A. Did you read the media at the time between November '95 and April '96 where lots of speculation was there regarding Mr. Desmond's involvement?

Q. I see.

A. So this was a clear pointer.

Q. But was that not considered as part of your Judicial Review proceedings?

A. No.

Q. Oh, I see.

A. Our Judicial Review proceedings were solely linked, and we explained it at the time, were linked to whether we had the right to get a declaration from the Tribunal on reasons

Q. I am going to go

CHAIRMAN: From the Project Group?

A. From the Project Group.

MR. MCGONIGAL: I am going to go on to a new matter,

Mr. Chairman. It might be a good time to rise.

CHAIRMAN: Well, can we anticipate this will finish tomorrow, Mr. McGonigal?

MR. McGONIGAL: I would hope so, Chairman.

CHAIRMAN: If I start at half ten, will that

MR. McGONIGAL: Yes, it would suit me perfectly.

CHAIRMAN: If that's suitable to you, it might improve the prospects of your evidence concluding tomorrow. Half ten please, Mr. Boyle. Thank you.

THE TRIBUNAL ADJOURNED TO THE FOLLOWING DAY, FRIDAY, 12TH
NOVEMBER, 2005, AT 10.30AM