

THE TRIBUNAL RESUMED ON THE ON THE 5TH DECEMBER, 2005 AS

FOLLOWS:

CHAIRMAN: Good morning, Mr. O'Brien. Thank you for reattending. Please sit down.

DENIS O'BRIEN, HAVING PREVIOUSLY BEEN SWORN, WAS EXAMINED BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Good morning, Mr. O'Brien.

First of all, deal with a supplemental Memorandum of Intended Evidence which you furnished. This is the France Telecom. We'll deal with that first because we can go straight into it. Then there are just three other matters that we'll come back to.

I think

A. Just, which tab are we?

Q. This is Tab C of 5. Or Tab 5C, I suppose. It's just dealing with the France Telecom matter, if we just go through the memorandum.

I think you furnished the Tribunal with the following information I think if we just look if we look at your note to Massimo Prelz first, and you were asked about this and a diary entry. Isn't that how it arose, and you furnished this information?

A. That's right, yeah.

Q. I think you informed the Tribunal that you believe, based on the contents of a fax dated the 5th April, 1995, from you, addressed to Massimo Prelz of Advent International, and a perusal of your diary, that you had a conversation

with Michael Lowry at Comms 95 on the 4th April, 1995.

Your diary shows an entry for the 4th April, marked "10.30 Comms '95 Lowry." You have a recollection of attending Comms '95 on behalf of Esat Telecom. Contemporaneous news reports confirm that Mr. Michael Lowry made a speech at Comms 1995 relating to the liberalisation of the telecommunications industry in Ireland.

You accept, based on your fax to Massimo Prelz, that you must have had a conversation with Mr. Lowry and that Mr. Lowry must have made some mention of France Telecom. You don't recall the conversation. You have no notes of this conversation other than the diary entry referred to.

You then inform the Tribunal that Communicorp's relationship with Southwestern Bell, Telecom/Detacon terminated in mid-March 1995. You immediately took steps to identify a list of approximately ten potential international telecom partners for the GSM project. These included France Telecom. You made arrangements to meet the various potential partners at this time. Such arrangements would be made in mid to late March, and certainly prior to the 4th April, 1995. Your meeting with representatives of France Telecom for dinner in Paris which you believe, based on your diary entry, took place on the evening of the 5th April, 1995. Although you cannot be certain at this remove, you believe that Lucy Gaffney and John Callaghan may have been present for this dinner.

A perusal of your diary shows two relevant entries for the

5th April, 1995. These entries are "4pm, EI to Paris", and "8pm dinner". You travelled to Prague from Paris the following morning, and you have no notes of your dinner engagements. You believe that you had a subsequent lunch meeting with France Telecom representatives at a later date in April, 1995, and you understand that John Callaghan and Massimo Prelz may have attended at this meeting. You have no notes of this meeting, and there are no diary entries in which to assist your recollection in this regard.

So, you had we have known and always known that you had discussions with France Telecom.

A. They were on the list of people that we were going to talk to which we drew up soon after dissolving the partnership with Southwestern Bell and Detacon.

Q. And when this memorandum was drawn to your attention, this is your memorandum to Massimo Prelz, and it relates to, as you correctly say, the Comms 95 event

A. That's a trade show.

Q. A trade show?

A. Yeah.

Q. And that you accept that you must have had a conversation with Michael Lowry, and France Telecom must have been mentioned in the course of the conversation?

A. I certainly must have had a conversation, definitely, yes.

Q. Of course, this was before any closing date in relation to the competition?

A. That's right. Well, yeah the competition hadn't

started.

Q. Now, I think the only other documents that are included there, and I'm not going to go into them at all, they just happened to show up on a final trawl of departmental files, and all they are are your kind of trade

A. Bizarre customer newsletter.

Q. Customer newsletter and just sent around, circulated to everybody, effectively?

A. Yeah.

Q. Very good.

Now, I think there are now just three matters to come back to from your evidence previously that I want to take up with you now. And I don't mind which order we do it in, but I suppose the first one, if we might look at would be we had to cease consideration of your evidence, and this is in relation to the Fine Gael golf fundraiser, and the letter which was sent to you, I think, under the name of Phil Hogan inviting the contribution and indicating the introduction through Mark FitzGerald; you know that particular letter?

A. Yes, August.

Q. The August letter. And I think you accept, because of some notation on that letter, we know that a bank draft was purchased as a result of a cheque being drawn for  $\text{€}1/24,000$ .

And on the notation on the letter, it's ticked off, or there is an indication that it came to you; isn't that right?

A. I believe the letter came to me.

Q. You believe the letter came to you. And I suppose we now know that the issue that I was asking you about on that occasion was this, that the letter clearly indicates that an introduction was being effected or had been effected through Mark FitzGerald; isn't that right?

A. That's right.

Q. And Mark FitzGerald had given his evidence, and I'm not going to go into Mark FitzGerald's evidence here. He was cross-examined on your behalf in relation to that. And I asked you you say that you never had any meeting with Mark FitzGerald; isn't that right?

A. That's correct.

Q. And I'm just we had to stop because you hadn't had time to consider that particular letter at that time, which clearly indicates an introduction through Mark FitzGerald. And I suppose what I was waiting for was, do you have any comment to make on it?

A. That's right. That's where we had got to.

Q. Do you have any comment to make?

A. Not particularly. All I remember is getting the letter, and then we became a sponsor.

Q. All right. Now, I suppose in the same vein, I think it was following on that particular letter, the second issue, or the second matter was, I had asked you you had given evidence in relation to the \$50,000 donation. I think that it would have been inappropriate it was inappropriate

for you to be asked for it, it would have been inappropriate for you to give it, as far as you were concerned, for Communicorp, Esat Digifone or Esat Telecom, and as far as you were concerned, on your evidence, it was a matter for Telenor themselves in relation to whether they would or wouldn't. Would that be a fair way of summarising?

A. That would be a reasonably good summary, yeah.

Q. And I think I was asking you, bearing in mind your view that it would have been inappropriate in all the circumstances to be asked for and to give the \$50,000, I was asking you, did you have any view or wish to express any view or comment on the appropriateness or inappropriateness of these particular donations? That is the Golf Classic, some of the the ones we have been through, the lunches, the Wicklow by-election contribution, and matters of that nature.

A. Well, we have been over that ground, but the only

Q. I'm just asking you, it really is the question of having expressed or formed a view of how inappropriate it was at one stage

A. I think there was two different situations here. One is the political events that I went to golf classics, lunches, dinners or whatever prior to winning the licence, and we continued that on in latter years, right up to the current time. That's one set of political donations, and that's part of the political process. It's

the way business interacts with politicians. It's an opportunity to push liberalisation at that time. Because two of the members of Government, DL and Labour, were against, you know, liberalisation, whereas Fine Gael were for. So it was an opportunity to meet the Ministers and to put our case forward for liberalisation, but also to explain that we were one of the contenders for the licence; that's that.

Q. And you had put the \$50,000 in a different category or I wonder, do you?

A. Well, if you you probably weren't watching the situation, Mr. Coughlan, in 1995, because probably, you know, you weren't a participant. We were a participant in the competition, but once we won the competition, there was, first of all, a lot of congratulations; and then within days, all the losers rallied around their local TDs, Maura Geoghegan Quinn, Desmond O'Malley, Bobby Molloy, and they got up in the Dail and said outrageous things, and it was you know, everybody was whinging that we had won the licence.

So it was in the media, and you know, we knew that we had won the licence fair and square. We were greatly insulted.

Our staff were absolutely outraged what people were saying.

We even invited people to say it outside the protection of the Dail, and they wouldn't come out: So it was in that context that there was hysteria nothing in reality and it's taken ten years to prove that. But, you know, we

got a phone call from Fine Gael: "Would you like to buy places at a table in New York?" And I said, "No."

Q. And it was in that particular context that

A. I should never have been asked, would be my view.

Q. Okay. Now, I think the final matter that I had to return to was the copy, the photocopy of one page of Commissioner van Miert's letter that was in Jarlath Burke's papers.

A. That's right.

Q. And you hadn't prepared yourself, and that was fair enough, at the time we mentioned that. And I think again, if I might just summarise briefly, I don't want to keep you awfully long on this, but reading over Jarlath Burke's evidence in relation to the matter, would you agree it would be fair summary to say that he has no recollection of receiving the document or from whom he received it; he makes an assessment that he possibly could have received it from Mr. Ungerer's unit in the Commission, and that that possibly could have been from Mr. Hoceped, although he has no recollection of any of these

A. In reading his evidence, yes, he may be a bit stronger than that.

Q. You think it's stronger?

A. Well, you know, just looking at the transcript yesterday, you know, I thought he was really saying that it was much, much more likely that the letter came from the Commission.

Q. Very good. Well, we have the transcript. I'll just read it's at page 39, Question 86.

A. Can somebody put that on the screen?

Q. Yes indeed, I'll get it up on the screen, perhaps. It's

Day 257 sorry, I beg your pardon, it's Day 239. If you

go down to, I think it's Question 86.

I ask him, I think: "Can I take it, as far as your

recollection is concerned, you don't remember getting this

document, you don't remember from whom you got the

document, you don't remember who you discussed the document

with, and you don't remember who you might have shown or

given the document to; is that correct?"

And his response is, "That is correct".

"Question: May I then ask you to consider this: You have

informed the Tribunal in evidence this morning that you

have concluded; can I take it that that was a judgement

made by you?

"Answer: That would be correct.

"Question: That it was almost certainly received or

obtained from within the ranks of Mr. Herbert Ungerer's

unit and most likely was faxed to you by Mr. Christian

Hoceped. How do you make that or draw that conclusion

when you have no recollection of events at all?

"Answer: First of all, I did not say that I had no

recollection of events at all. In relation to

"Question: Of this document?

"Answer: Yes, but you said in relation to events at all.

"Question: No, about this document.

"Answer: I have no recollection in the terms that I

confirmed to you a few minutes ago. However, I believe that in circumstances where I brought information to the attention of the Commission touching upon some of the points which were eventually part of the outcome of a process between the Irish Government and the Commission, that it would not be unusual for the Commission to inform me, as an interested party, of the outcome of this process.

And I say that as somebody with a lot of experience dealing with the Commission, and the fact that the Commission, as a courtesy, likes to keep people informed in these situations. That is the basis for my indication as to the likely source of the document.

"Question: Right. So, therefore, you are basing it on a courtesy which you would have received from the Commission in response to information which you had brought to the attention of it?

"Answer: That is correct.

"Question: Did you receive one page or two pages, do you know?

"Answer: Based on the information before me, it appears that I only received one page.

"Question: Why do you say that!

"Answer: Because I don't have a specific recollection, as I have told you, of receiving the fax. However, it's undisputed that the fax was in my possession. It was on my files, and that was one page. Therefore, that's all that I can say.

"Question: You raised an issue, a legal issue; isn't that correct?

"Answer: Correct.

"Question: Or you brought you provided the Commission with information about the legal basis on which it was proposed to issue a licence, isn't that correct?

"Answer: Correct.

"Question: You also gave information to the Commission about international

"Answer: International interconnection.

"Question: international calls?

"Answer: Correct.

"Question: Isn't that correct? I take it you have by now seen the second page of the document.

"Answer: That is correct.

"Question: The information dealing with the legal basis and with international calls, I take it you that agree is contained on the second page of the letter?

"Answer: That is correct.

"Question: And we know from the evidence of Mr. Hocepied, and I didn't get into any debate with Mr. Hocepied about the confidentiality of this document; the Tribunal can form its own view about that, having heard everybody's evidence.

I'm not going to get into the same I'm not going to get into a debate with you either about it, Mr. Burke. But Mr. Hocepied has expressed his view that if he was responding to an interested party who had furnished information, or if

he had been asked for a response, he would have furnished the whole document, particularly" and it continues in that vein.

Now, we have heard Mr. Bourke's evidence. What I want to ask you at this stage is, do you have any recollection of seeing the document at the time?

A. No, I don't.

Q. You don't have any recollection of Mr. Bourke bringing it to your attention?

A. I actually don't, no. He may have, but I actually don't remember.

Q. I'm just wondering, we know he sent it to Mr. Kedar, who was a director, isn't that right, a Canadian

A. Yeah, he was our director with the most experience of regulatory affairs.

Q. Do you think if it was being sent to Mr. Kedar, would you think that it was more likely or less likely that he'd have brought it to the attention of other members of the board or senior executives?

A. It wouldn't be something that would have been brought to the board at all.

Q. Right, or executives?

A. Jarlath could have discussed it with other people, but I actually don't know.

Q. Right. Because just, do you know well, you have no recollection; you don't know where it came from?

A. No. But from his evidence, and from years of experience in

dealing with the Commission as a company, if you are a notice party or if you raise a particular issue with the Commission and they are making a ruling on it, they will tell you what is happening.

Q. I understand that, and I understand the courtesy point, and I understand that they are less hell bent on confidentiality, if I could put it that way, perhaps than some national bureaucracies might be, but and it's only a point I make. The actual matters raised by Mr. Bourke are responded, or dealt with on the second page of that letter, which doesn't seem to have been one that found its way to his files, according to his evidence, anyway.

A. I have only seen a photocopy of the first page.

Q. Thank you, Mr. O'Brien.

CHAIRMAN: Well, I had indicated that Mr. O'Brien's resumed examination would not be free ranging but would be limited to the matters that have been discussed by Mr. Coughlan, so if there are any other persons present who wish to raise anything on those matters, I'll hear them.

Anything to raise, Mr. Fitzsimons?

MR. FITZSIMONS: No, sir.

CHAIRMAN: Mr. Nesbitt.

MR. NESBITT: Just for the Department Chairman. Do I understand that the balance, then, of the cross-examination or my right to cross-examine Mr. O'Brien would be put off for another day?

CHAIRMAN: You mean on the substantive matters relating to

the GSM?

MR. NESBITT: Yes.

CHAIRMAN: Well, has this been discussed, Mr. Coughlan?

MR. COUGHLAN: I suppose what we indicated to Mr. O'Brien's

legal advisers when this issue was raised on Friday is that

as far as the Tribunal were concerned, the Tribunal would

only raise the matters which the Tribunal had indicated it

would raise, and would be very conscious of everybody

else's entitlement participating to cross-examine, subject

of course to protecting Mr. O'Brien's interests if he was

unprepared in relation to matters which might be raised.

I think that was the way it was left, and I think that that

is really the position. So I really don't know how long or

what line My Friend wishes to pursue. But Mr. O'Brien may

or may not be

CHAIRMAN: Well, Mr. O'Brien, I'm trying to combine the

factors of both utilising time and commitments, and

likewise trying to ensure that you are not taken by

surprise on free ranging issues that you may not have

addressed yourself to for some time

A. Well, if there are matters, Chairman, that some of the

other parties want to ask me questions about, I'll try and

answer them now, or else I'll be glad to come back if

you know, obviously people will tell me what matters that I

can refresh myself on.

CHAIRMAN: We'll see what progress we make.

MR. NESBITT: Just before I start, Mr. Chairman, as I

understand, Mr. O'Brien has reserved his right to come back and give evidence, depending upon what transpires between now and other witnesses giving evidence. I understand his evidence was truncated because he had commitments, and it had to stop. I understand myself and others have yet to cross-examine. What I don't want to find is I get a chance today, and we run into some difficulty, or there is something he comes back on, and I don't get a chance to ask questions about that. But if we could start and do our best, that might be of assistance.

CHAIRMAN: I think we should do that. Yes.

THE WITNESS WAS EXAMINED BY MR. NESBITT AS FOLLOWS:

Q. MR. NESBITT: Mr. O'Brien, firstly, good morning. It's been I think nearly two years I think you gave your substantive evidence to the Tribunal in relation to the GSM process, and I'm not sure how much of that you recall at this point in time.

A. I'll try and help you in any way I can.

Q. And I think you are aware that there has been various rulings of the Tribunal, or certainly judgements of the Tribunal in relation to where we are and where we are going, and that some of the issues that were debated back and forth between you and Mr. Coughlan are now off the table; were you aware of that?

A. Yes.

Q. And I don't want to deal with those. What I wanted to ask you about was some issues arising in relation to the issue,

to try and use a neutral word, of you desiring to accelerate in some way the competition process or the announcement of an award. And I just wanted to bring you back to the beginning of the competition process.

I think you got the request for proposals on the 2nd March of 1995; is that right?

A. I think that's correct, yes.

Q. And you considered that document, and you put together, I think, a very substantial bid proposal, some 2,500 pages, there or thereabouts?

A. A supreme effort went in to make the bid comprehensive.

Q. As I understand your evidence, one of the essential differences you considered you could bring was a more comprehensive bid than any other bidder?

A. That's right.

Q. And I understand that you substantially invested in putting that bid together?

A. We probably well, we spent, I think, one and a half to  $\frac{1}{2}$  million at that time on our bid. We employed 40 people plus another group of consultants and part-time people, and we went about it comprehensively.

Q. I think you played quite a hands-on part in the preparation of the bid, and you were anxious to ensure that your bid was in final draft form at least one week before the first submission date?

A. That's right. It was frozen one week out from the 23rd June.

Q. And I think that would have been the week beginning around the 16th June?

A. That's correct.

Q. And on the 16th June, I think you learned that because of something that was happening with the State and the European Commission, there was now an extension of time to the 4th August?

A. That's right. We were sending the bid that day to the printers, so we allowed a week for it to be printed in different sections in full colour.

Q. So any suggestion that that delay advantaged you at all or was being sought by you is wrong?

A. Nonsense.

Q. Very good. Now, I wanted to move on to a different topic, and that is a matter that was much debated between you and Mr. Coughlan and you and Mr. Fitzsimons concerning the involvement of IIU in providing finance to the consortium.

And I wanted to ask you in your capacity as somebody who is experienced in putting together bids and continuing to succeed in the mobile phone business, as I understand it, around the world.

A. I would have a lot of experience.

Q. Good. Now, what I want to understand is this: In putting together your bid, you had a joint partner, Telenor?

A. It was a 50/50 joint venture, yes.

Q. But both of you from the beginning wanted other people to supply 20% of the finance?

A. We made a joint decision to place 20%, yes.

Q. Now, you may have seen some of the questioning in relation to this. I want to just identify you are able to deal with it. Was there a distinction between you and your other joint venture participant and the level of their involvement and people who would just be providing finance?

Is that a real distinction to make in business terms?

A. A complete distinction. I mean, we were a telecoms partner, they were a telecoms partner, and the rest was just blind money.

Q. Okay. And what do you mean by "blind money"?

A. Well, it's just institution money. They know nothing about the business, and the only thing they are contributing is capital. We were putting in capital, but more importantly, expertise to build the business.

Q. Very good. Were they going to be bringing anything that could help you if your business model, your idea wasn't working?

A. Zero.

Q. Very good. And in relation to the position about that 20%, I understand Davys had found some people who said if it was all ready on the night, they'd provide the money?

A. That's correct.

Q. Is that a fair encapsulation of the position from your point of view?

A. Well, they had indicated an interest, but they hadn't fully committed. And there is a major difference if you have

got a huge capital project and some people saying "We are interested, and maybe, and perhaps, and subject to, subject to", and an investor that will give you an irrevocable commitment.

Q. You have described how you met Mr. Desmond of IIU and how discussions developed into a more concrete form of interest on his part.

A. Yeah, we started quite early on in August; I think it was the 7th or 8th August that we started, certainly in that time-frame, and we came to a deal, and then it was then it was left to other people to work out the details.

Q. Very good. Now in the context of what you have said about the 20% not being able to help you if your business idea and your expertise wasn't good enough to make the day, was Mr. Desmond going to be able to help you on that level?

A. Well I mean, first of all, he would have a lot of experience of startups, and that is a particularly valuable piece of experience. Secondly, you know, he had operated at a significant level himself in various different businesses, was used to big capital projects, and so he was an added-value investor.

Q. But he wouldn't have any expertise in the business that you were going into?

A. No, not in the mobile business, no.

Q. So in that regard, so far as you were concerned as a businessman looking at the reality, he wasn't greatly different to somebody else who might come in to fill the

20% ?

A. In some respects, yes, you are right.

Q. Now, there is a distinction between leading up to the decision of the Project Group as to who the winner would be and what would happen thereafter. You put in your application or your tender to win the competition, and things happened, and then a result was announced in October of 1995; isn't that right?

A. Well, it was kind of an initial result, because you only got a right to negotiate.

Q. I just wanted to ask you about that right to negotiate, because I'm not sure that's been very fully examined in an appropriate way. That right was two-sided, was it? It was for the licensing body to tell you what they wanted and what was going to actually be the licence, and you saying to them, "yes, that's acceptable", or "No, I can't wear that"; is that right?

A. That would be true, yes. Because you'll we got a draft licence, and then we had to negotiate the terms of the licence; and we at any time could have said "We are not going to accept those terms", or else the Government could have turned around and said "We are not giving you the terms that you want". So there could have been a breakdown.

Q. I think there had been some form of sort of draft licence suggestion put before you, but not in any great detail?

A. Yes well, we would have known from the RFP what the term

of the licence was, but not the nitty-gritty. And ultimately we signed a licence that we were not entirely happy with, but that's the way of the world.

Q. So just coming back to entering the competition, hoping to win the right to negotiate, and understanding what might be at the far end and this is at the beginning of the competition, when you didn't know you had won, and you had hoped you would, and you then had to negotiate I just want to find out what was in your mind and what was the reality, the commercial reality of this transaction.

Did you understand that you were going to be asked to sign a licence that would be exclusive to your consortium? In other words, you'd have to explain who you were?

A. Yes.

Q. Did you understand they would be interested to find out the consortium would be as you had indicated, you and Telenor and third-party investors?

A. Yes, with a greater emphasis on the two core partners.

Q. And did you understand that given the position of the expressions of interest, if I can use it in that way, of the third-party investors, they might come, they might go, there could be other people?

A. Well, they had left the door open for them to come and go.

Q. And

A. Mainly go.

Q. And we have seen before in the paperwork that was produced, there is actually copies of the letter which they wrote,

which was conditional?

A. That's right, highly conditional.

Q. So did you ever believe you could get to be granted a licence, if you won, without having to produce a final form of investor?

A. No. I mean, we always expected the Department to, you know, go through all the investors, where the money was coming from, how firm that money was, so that when they granted a licence to us, that we were going to perform.

Q. So if there had been infirmity and no investors, having won the right to negotiate and before the licence was granted, you would have been in trouble?

A. Yes.

Q. So you had to disclose to them during that piece of negotiation whatever they needed to know?

A. That's right, in a lot of detail.

Q. Yes, to be certain when the licence was signed, there was money there?

A. Yes.

Q. And you have been criticised for writing at an early stage, but when you were asked questions thereafter as to who was taking the 20%, did you have any reason not to explain who that was?

A. Sorry, I was criticised in what context?

Q. There was a letter written I don't want to labour it you know the letter that was written by IIU that was sent back sorry, it wasn't you, it was IIU sent the letter.

A. And it was sent back and said it was inadmissible.

Q. I want to get on to when you were actually negotiating the licence. Did you have any reason not to explain to the Department exactly how you had a certainty that there were 20% of investors to put the money in as promised?

A. Well, we knew it was always there from IIU. They sent a letter in, I think more out of courtesy.

Q. Don't worry about IIU. That's them; they can explain themselves. I am more worried about you negotiating and having to tell the Department "Yes, I have got me 40 percent, I have got Telenor 40 percent, and I have got the 20% I said I'd bring: There they are". Did you have any difficulty in explaining who that 20% was?

A. Not really, no, no.

Q. And did it make any difference to the concept and idea you had that was central to your pitch to be allowed be the second GSM operator?

A. No it didn't, no. I mean, we knew that we were 50/50 and that we would place 20% with an acceptable third-party institution.

Q. The original possible investors or conditional investors were produced by Mr. McLoughlin of Davys; is that right?

A. Well, three of them, yeah.

Q. Three of them. And I think you met with him?

A. No, I didn't meet with the institutions.

Q. I thought you met him after the event; I thought you met with him when the institutions went in, it was IIU?

A. Well, I'll just break it into two pieces. Mr. McLoughlin organised three institutions, but I actually never met the institutions.

Q. I'm not worried about the institutions. I am more concerned about Mr. McLoughlin.

A. His role?

Q. Not his role. I think you met him after it was clear IUU was taking up the 20%, and he didn't need to go back to see if his people were interested, you met him?

A. Yes.

Q. And did he understand that somebody else was able to step in?

A. He understood what we were doing, and he understood that we wanted to make sure our finance was totally firm, and I believe we also told him that Esat's share of 40% was also underwritten. So you had a fully underwritten package of equity apart from Telenor, and they were Double A Moody's, so they were never going to be a problem.

Q. You see, it seems to me and I could be wrong, but I want to ask you this question, that there seems to be some cloud hanging over the fact that you needed 20% of investors?

A. I never saw it as you know, I am amazed at the amount of detail the Tribunal has gone into this, because I never felt that this was an issue. We were 50/50. We said it in our application. We said we were going to place 20%. So I don't know what I mean, I'm not sure what people's thinking is about this. I am very clear on my thoughts why

it was done, and I would hope my evidence was clear on that as well.

Q. I think IIU, they tried to get a bit more at one point?

A. They did, of course, yeah.

Q. I suppose once you were a winner, things were looking a bit better?

A. Absolutely. Look, I've been involved in doing placing of equity in a variety of businesses, and if your business idea is good, there is always people clamouring to get in. And you ultimately fill your book, and then you decide where you actually place the shares.

Q. I think IIU were prepared to be committing themselves before they knew you had won?

A. Well, they were an entirely different investor to the other institutions.

Q. But third party

A. In the sense they were fully firm on their commitment.

Q. But they are still third party, no expertise in running mobile phone operations, and just putting their money down?

A. Yes, with a little I think the added benefit of Dermot as a board member.

Q. But you probably could have brought him in anyway?

A. Yes, we probably yes.

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

CHAIRMAN: Mr. O'Hanlon?

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

Q. MR. O'HANLON: Sorry, Mr. O'Brien, I have just a few

questions.

You may recall last time, I appreciate it's two years ago when you gave evidence; you gave evidence relating to a meeting that occurred with Mr. Lowry between Mr. Lowry and yourself in Hartigan's and Hourican's after an All Ireland Final?

A. That's right.

Q. Mr. Lowry has made a statement in relation to that, but in particular, there was a suggestion that he might have suggested to you about involving Mr. Desmond. Am I correct in understanding his position is that that never came up at that meeting, in any event, between yourself and himself at all?

A. It's nonsense.

Q. I don't think I have anything to add in relation to the IIU position that you have already clarified, and there is one other issue that came up this morning in relation to a meeting between yourself and Mark FitzGerald. I think your position in relation to that is that you have no recollection of that ever having occurred at all?

A. That's correct.

Q. Mr. Hogan and I think Jim Mitchell were meant to have attended, and that still doesn't bring back any meeting to your mind at all?

A. I don't remember any meeting where Phil Hogan and Jim Mitchell and Michael or and Mark FitzGerald were present.

Q. You said at the outset, as I understand it, in relation to your evidence here, that in your view, what happened in relation to the competition for the licence is that it was wholly independent of Mr. Lowry; he didn't involve himself in the process or interfere with its decision, that it was carried out by independent supervised, adjudicated upon by a Project Team and external consultants. Is that still your view of what happened, that Mr. Lowry didn't interfere or have any hand, act or part in it?

A. More than ever.

Q. Thank you very much.

CHAIRMAN: Mr. McGonigal?

MR. MCGONIGAL: No, I am reserving my position.

MR. COUGHLAN: Just to clarify one or two matters.

THE WITNESS WAS FURTHER EXAMINED BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Just in response to My Friend Mr. O'Hanlon on behalf of Mr. Lowry.

You say that you have, when asked specifically by him if you have any recollection of that's the second Mark FitzGerald meeting, the one with Phil Hogan and Jim Mitchell, and you say you have no recollection. Am I taking it now that it's a question that you don't have a recollection, or are you standing by the line of cross-examination that was pursued?

A. Sorry, I should have answered that probably differently. Absolutely not.

Q. I don't want confusion.

A. No, no, we don't.

Q. That's one matter cleared up.

Two matters Mr. Nesbitt brought up with you, and I think one was that when IIU were in for 20%, they tried to get a little bit more. IIU were always in, and you have given evidence again I just want to clear up confusion you have always maintained that IIU were in for 25%, and whatever about legal niceties, as far as you were concerned, that business deal was done between you and Dermot Desmond; isn't that right?

A. That's right. And then it subsequently reduced down to 20. And we always knew it would have to.

Q. They sold out 5; isn't that correct? That's how they reduced to 20?

A. That's right, they sold down a bit.

Q. And then finally, again just to avoid confusion, we can go over this over and over again, about Kyran McLoughlin's evidence; and I put Mr. McLoughlin's evidence to you, that Mr. McLoughlin was approached, I think, by John Callaghan and asked that the investors would step aside, isn't that right, the people he had lined up?

A. Yes.

Q. And it was in the context of something being explained to him by John Callaghan that he may have showed some understanding, but subsequently he joined issue with you about the position; isn't that right?

A. He joined issue

Q. With you; he wanted an explanation as to why they had been

A. Yes, he did, yeah.

Q. Thank you.

CHAIRMAN: Very good. Thank you very much for your attendance, Mr. O'Brien.

And I understand, Mr. Coughlan, that what's proposed for the remainder of this week and the short portion of the term remaining is that Mr. Lowry will start his evidence tomorrow, but because of a number of matters, primarily the conclusion of the Judicial Review proceedings currently at hearing before Mr. Justice Quirke, they will be not taken up further in the latter part of the week but will be resumed and concluded on Monday of next week.

MR. COUGHLAN: Monday, Tuesday and Wednesday of next week?

CHAIRMAN: And succeeding days following which there will be a short additional passage of evidence entirely unrelated to the GSM.

Very good. What time will I say tomorrow?

MR. COUGHLAN: Say eleven o'clock.

CHAIRMAN: Very good. Thank you very much.

THE TRIBUNAL ADJOURNED UNTIL THE 6TH DECEMBER, 2005.