

THE TRIBUNAL RESUMED ON THE 13TH DECEMBER, 2005 AS FOLLOWS:

CONTINUATION OF EXAMINATION OF MR. LOWRY BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Lowry, just one or two matters if I may

just raise with you before I come to the 24th/25th, the

meeting with the leaders of the political parties.

I just want to go back, and I recollect that Mr. Martin

Brennan gave evidence that in early stage of the

competition this was after the receipt of the bids on

the 4th August, which was the closing date that he seems

to recollect having a general discussion with you along the

lines of you inquiring, "Do you know, have we got bids in?

You know, are they good" or matters of that nature. And

him indicating to you, although no evaluation had taken

place, but just on a quick glance through by himself, but

without going into matters in any great detail, yes, that

you needn't be concerned; we would get somebody out of

this; that there were the six bids in, and they might have

fell into sort of two different categories: Three, what

might be described, again without going into them in detail

himself, were in the "Good" category and the other three

mightn't have been as good.

Do you remember that type of general conversation, which

might be an appropriate type of inquiry to make and an

appropriate type of information to receive?

A. The only conversation I remember with him was I was asking

him on the basis I reckoned that politically, I was going

to be asked; and all I wanted to satisfy myself was that in

actual fact, we had a competition, and that there was sufficient interest in it to make it a worthwhile competition. Other than that, I think that was the only conversation we had.

Q. But you do recollect that type of conversation. I remember Mr. Brennan had given evidence about that, but you remember that type of conversation with Mr. Brennan?

A. I remember it in the context I think that conversation was in the context of I making a public statement as to the kind of responses we got.

Q. Now, I don't think you actually you may have sought such information, and there is nobody suggesting that it was inappropriate to seek that type of general information or for that type of information to be conveyed, because it may have arisen politically. I don't think it arose you didn't have to make such a public statement?

A. No.

Q. Now, just going back on one other thing which we covered yesterday, and it was the note of the meeting of the progress team dated the 9th October, where the reference to bankability was attributed to you. You remember that, and we had evidence about that as well.

A. Yes.

Q. I just want to be clear what I was putting to you yesterday. I understand your point that politically it was important that whoever came out would be able to deliver; that was important politically. Isn't that right?

A. Yes.

Q. Now, I think I was suggesting to you that what was happening around the 9th October, on the evidence and from the note of what transpired at that meeting, was that a difficulty was identified in relation to one of the potential licence holders in the Esat Digifone makeup, and that was Mr. O'Brien's company, the Communicorp, or the Esat Telecom, or whatever guise it was in. And the concept of bankability was being introduced to solve that problem.

In other words, that it didn't matter that there was this difficulty you understand the distinction I'm making and it was in that context I was putting it to you that that was an indication you reject it entirely of course of political interference in the process that wasn't completed?

A. I certainly didn't initiate any discussion or initiate any action in relation to the matter of bankability. I wasn't involved in it. Whatever way the project whatever the Project Team did, they did of their own volition; it had no reference to me. And I don't understand the reference in the note to me, because I didn't discuss that aspect of it with anyone.

Q. I understand your position and the evidence you are giving. I just wanted there to be no confusion. We understand each other?

A. Yes, we do understand each other.

Q. Now, one other matter just before I come on to the meeting

with the leaders of the parties. I didn't ask you yesterday because you weren't present if this conversation took place, but it does refer to you, so if you want an opportunity to say anything about it, I should perhaps bring to your attention the evidence of Mr. Per Simonsen. And the evidence of Mr. Denis O'Brien of what Mr. Per Simonsen gave evidence of was a conversation he had with Mr. Denis O'Brien where Mr. Denis O'Brien informed him of meeting the Minister, you, in a public house, and that words to the effect that the Minister had suggested or that Dermot Desmond/IUU would become involved in the project. Mr. Denis O'Brien denies that he had such a conversation, and when it was suggested to him that he might even have been just, you know, lightly fibbing, to indicate that he had greater influence than he might have had, he rejected that out of hand and said that he never said anything of the sort. So I just want you to know that there is Mr. O'Brien's evidence and there is Mr. Simonsen's evidence, and that's a matter for the Sole Member. It does make reference to you, of course.

Do you wish to say anything about it?

A. I had no discussion whatsoever with Mr. O'Brien or with Mr. Simonsen in relation to Mr. Desmond. So, as far as the reference to me is concerned, as I said, I had no input into it whatsoever.

Q. Right.

We know that you went to see the there was a meeting

taking place between, I think, the Taoiseach, the Tanaiste, the Minister for Social Welfare at the time was Mr. De Rossa, leader of the third party in Government, and perhaps the Minister for Finance, dealing with other matters, isn't that right, when you received the note from Mr. Loughrey, and the evidence has been that Mr. Loughrey suggested that you seek to have an audience, effectively, with that group, and to put the position to them and to get their approval to announce the result of the competition. Is that what happened?

A. Yes.

Q. Now, I think you said that you had a phone call with the Taoiseach before you met them, did you?

A. The sequence of events, and to put it all in context for you, was that John Loughrey came to me with the result. To my recollection, he had with him also a piece of paper which was the written form of the message that he was giving me.

And the message that he gave me was very clear; it was very precise. He said, "Minister, we have a winner. We have a clear-cut winner, and we have an anonymous decision, and the winner is of the competition was Esat Digifone".

He then suggested that because the decision was made, that it was likely or inevitable that it would leak. And he said that we should retain control of the process, that we shouldn't lose the impact of the political decision, and he felt that I should seek immediate clearance for it on the

basis that the decision had been taken, and when it was taken, let's announce it and communicate it.

He brought in Joe Jennings, who was the Department press officer at that stage, and we discussed it between us.

John Loughrey was aware himself that the Party leaders were meeting, and the reason he was aware that they were meeting is because they were meeting in relation to a subvention that the Irish Government was considering giving to Aer Lingus, which would have impacted on John Loughrey as General Secretary of the Department of Transport. So for that reason, he was aware that they were meeting.

And John Loughrey said to me then, he said we agreed that we would proceed I agreed on the basis of his advice that it was correct to do so. He had two reasons for it: He felt that it would be dangerous to leave a vacuum, and I think the word he used is that people could get mischievous in a vacuum. I don't understand he'll probably explain it to you in his evidence what he meant, but he was effectively saying that politically, it makes sense to announce this rather than to read it off the paper tomorrow, you know, and you losing the political impact of it for the Department and for yourself as a policy initiative.

He advised me and I wouldn't have understood fully, to be quite honest with you, the procedures but he advised me that it was absolutely necessary for me to get clearance firstly from the Department of Finance. He told me that I

shouldn't go to the Taoiseach or to the leaders until I had clearance from the Minister for Finance and the Department of Finance. So he asked me to bring the Taoiseach and ask the Taoiseach if it were possible to allow me to attend their meeting.

So the first thing I did, I did make contact with the Minister for Finance, Ruairi Quinn. I explained that the competition was over, and what have you, and I have to say that I would think my recollection is very firmly of the view that Ruairi Quinn had also been briefed by some official in his own Department, because his immediate response to me was he was aware of it, or at least I got the impression that he was aware of it. And he was satisfied, he told me, that everything had been done in accordance with the procedures as set down, and he had no difficulty in granting permission to proceed for clearance.

I then came back I think I went to Ruairi Quinn. I came back to the Department, and I told John Loughrey that the Department of Finance and John Loughrey was in contact with the officials in the Department of Finance.

So that housekeeping was done, and I then proceeded to ring the Taoiseach and seek admission to that particular meeting. The Taoiseach invited me my recollection is that I don't think we spoke on the telephone; I think he invited me over, and that we had a meeting in advance of the leaders' meeting. And I think the doodling on the note is probably some some of that probably reflects

Q. A result of that meeting or reflects that meeting?

A. Yes.

Q. Of course Ministers will or on many occasions Ministers will inform the Taoiseach of a position, I suppose, in our political system, if the Taoiseach is supporting a position, it's important?

A. It's important; of course it is.

Q. And the discussion you had with the Taoiseach before the full meeting with the other leaders, as you say, there must have been a bit of chat, and I think we all know that the then Taoiseach, Mr. Bruton, had a habit of keeping these notebooks where he tended to write things down when conversations were taking place. Was that your experience?

We have had that experience here ourselves and we have seen some of his notebooks.

A. I have to say, when I say John Bruton took notes, and he'd be the first to accept himself that at times he couldn't understand his own notes maybe a week after. On a number of occasions publicly he said that his notes used to get mixed and that they wouldn't be totally reliable. On a number of occasions I have seen him to say that.

Q. On a number of occasions you have also noticed him he writes things down, a lot?

A. Yes. And in particular, he had a style that if he was agitated about something, he could write a full page in seconds.

Q. But he tended to be, and I think his evidence was, he

tended to write down what other people were saying to him.

That seems to be his way of

A. No, I wouldn't accept that. His style was, he wrote down sometimes what was in his head and other times what people said to him.

Q. All right. You have seen the note here, and we'll just go through it, because

A. Could I just clarify one point?

Q. Indeed.

A. Could I just clarify one point before you leave it?

Q. Yes indeed.

A. To understand the politics of this, you mentioned about the

Taoiseach and I. It would be understandable in a

three-party Government that the Minister, the lead

Minister, would go in the first instance to his own leader.

For instance, if Ruairi Quinn was bringing something, he

would certainly not go to a leaders' meeting without having

or allow his leader to go to a meeting with the other

leaders unless he had him briefed on whatever issue it

would be. So the Fine Gael Ministers would go to the

Taoiseach, Labour Ministers would go to Dick Spring, and

the two Democratic Left guys would obviously have their

chat before they go in.

Q. No, I think that's understood. In fact, the process was

even more formalised to the extent that the project

managers for the three Party leaders had a system whereby

they were to resolve, behind the scenes, any matters that

were going to Government, if at all possible, so that when things got to Government, it worked efficiently and the decisions could be taken efficiently?

A. I think it's helpful to outline exactly how the Government operated. And when we went into Government, John Bruton was very conscious of the fact that the previous coalition Government with Labour had collapsed and that effectively, it has been said by a number of people who have written books who were there at the time in the Cabinet room, that the decision-making process had become farcical and that they used to give days and nights arguing and tossing about things and ultimately not coming to conclusions. And it led to a lot of unease.

That Government collapsed, and one of John Bruton's first initiatives was, and I recall him saying it, was that he wanted structures in place that would deal with the decision-making process, and he didn't want procrastination, he didn't want delays, and he wanted the decision-making process to be efficient and to be effective.

As part of that process, and the way it operated, was that the decisions at a low level would be discussed at programme manager level. There would be agreement on them, and then they would be formally brought to Cabinet and sanctioned. Decisions of a major nature would always go to the Party leaders, and then the decision that the Party leaders took with the lead Minister would be recorded later

by Government. That was the process; that was the way we operated.

Q. In fact we have had evidence that, in fact, the Cabinet papers were given to the Taoiseach's programme manager, that was Mr. Donlon, I think; to the Tanaiste's, Mr. Sparks; and to Mr. De Rossa's, who was a civil servant programme manager, and that they would resolve that which could be resolved at that level. And anything that could be resolved then, the three leaders would get together and deal with that matter, so that you'd have the efficient operation of Government; when matters came to Government, decisions could be taken quickly if necessary?

A. Yes.

Q. Now, when you spoke to the Taoiseach at that stage, if we just go through the note. We'll put it up on the screen the typed version of it.

And you see the top part there: The then Taoiseach has informed us that that seems to be the end of a note of the meeting he was having with the leaders, because it relates to a financial matter. You can see that; do you see that?

"Spring-27 million added to ODA by June. MD O'Higgins."

That's discussing a finance matter, I think. He thinks it's probably to do with estimate matters, actually.

Now, the next portion of the note was: "Albert had promised it to Motorola." Now, are you saying that that is something the Taoiseach said to you, or something you said

to the Taoiseach?

A. I am almost certain, but obviously I can't be sure, but I am nearly certain that Mr. Bruton raised this with me. I think what you have to understand is John Bruton was removed from this process. He had obviously as Taoiseach, he had a lot of issues to deal with and what have you, and I think what was happening was some of the previous discussion and public debate that had taken place, or political commentary, was coming back into his mind and he was asking questions. And I know that he asked the question about me, had Albert Reynolds that's what I think happened there had Albert Reynolds promised the licence to Motorola?

Q. I see. That's not his recollection, but it's your recollection?

A. That is my yeah.

Q. And then we'll go on.

"ML (Michael Lowry) stayed out of the process.

Leased line issue Telecom's

Account system can cost inadequately."

What do you think that is? Is that something that you had said to him or that he was noting there?

A. Yes, would I say that I told him that I had stayed out of the process. I think the leased-line issue, I don't know how that emerged or why we were discussing it, but I think it was topical that it was topical at the time because I think my understanding of it is that Richard Bruton, in

particular, had raised the nonavailability of a competitor.

Richard Bruton was the Minister for Public Enterprise and

what have you. And I think it was in that context that

there was a discussion in relation to that.

Q. Now, we go then to the continuation: "M communications"

that's you, obviously.

"It can't be given before it goes to Cabinet. GSM."

Do you think that's something that you would have said?

A. I would think that I was telling him that before I went

over, John Loughrey, in my view, wasn't sure. I think John

Loughrey was saying to me that technically, technically, he

was saying that if it had the clearance of the Minister for

Finance, that that concluded at that. He had that view.

And he discussed it with me, and he said "Look, as far as

I'd be concerned" and I think this was probably what I

was saying, I was saying to John Bruton, we need to clear

this at leaders' level and at Cabinet level.

Q. And then the note continues: "Quinn" I presume that's a

reference to the Minister for Finance "should not be

involved. Loughlin is a participant in another one."

Is that something you said?

A. No. I think what John Bruton said to me was that he was

do you know, he was sensitive to Ruairi Quinn's position.

And I have to say that Ruairi Quinn behaved impeccably

throughout the process. There was never you know, even

though his brother was involved in one of the consortia, he

never even brought it to anybody's attention; he just

stayed aloof from it.

And I think what if I recall, I think what John Bruton was saying to me was, "It's better not to discuss it in Ruairi Quinn's presence just in case there could be a perception that he was involved in the decision". And my understanding is my memory is that Ruairi Quinn wasn't actually at the meeting, even though he could have been at the meeting of the leaders.

Q. And then the note continues: "It is a major decision."

A. That was I was telling John Bruton that it was a major decision. And for that reason, that rather than going to the Department of Finance or what have you, that I was looking for an opportunity, because it was such an important decision, to clear it politically.

Q. Then the note continues: "In Italy the Government did not accept the Government report, and there was a consequential challenge. European Commission took them to court because this change of policy."

Do you think that's something that you would have said to him?

A. There is a bit of confusion about that, because I think the Italian position in relation to the licence, that certainly came up at a meeting. And how it came up was, I think in the middle of our conversation, John Bruton I knew what the Cabinet were discussing or what the leaders were discussing that day, and what they were discussing that day was the possibility of our Government making a direct

subvention to Aer Lingus, because as I said yesterday, I had been put on notice by the Aer Lingus Board and by the officials in my Department that unless something was done in relation to the Team Aer Lingus, which was draining the resources of Aer Lingus, that we already had a crisis on our hands, and there was a genuine fear that the entire company was about to collapse. And this meeting was called to look at the possibility of injecting necessary capital resources into the company.

And at that stage, Italy were under the cosh from the European Commission on the basis that they had assisted and supported Alitalia, their national airline, and it was deemed to be uncompetitive practice. And there was certainly a discussion about that. Now, whether that is a mix of it

I also had said to him that if you look, he asked about how much money we were going to get from it, how much money would accrue to the Minister for Finance to assist with our budgetary strategy. And I think he had forgotten that we had had a discussion in relation to the capping, and I explained the background to the capping, and I explained that it was Italy that, effectively, it was their experience that motivated the Commission to move on our Department in Ireland when we were capping it. Now, when we weren't capping it, I should say.

So, that was the kind of conversation we had in relation to that.

Q. We'll come back to the specific note now. "In Italy the Government did not accept the Government report and there was a consequential challenge. European Commission took them to court because this change of policy."

A. Pardon?

Q. "The Commission took them to court because of this change of policy." Do you think that's something that you would have said to the Taoiseach or it's something that he said to you?

A. I actually don't know. I am just trying to give you the background to it.

Q. I understand that you don't know?

A. I didn't say it. I don't recollect saying that.

Q. You think it's something that the Taoiseach said to you, although he wasn't involved in the GSM process?

A. I don't know. I think there is a mix there of a couple of discussions, and he may have it

Q. He may have it

A. incorrect, if you know what I mean, mixed up.

Q. Oh, I see. Well, if he doesn't have it incorrect in terms of sorry, that statement is totally incorrect, of course. That did not happen.

A. I don't know, to be honest with you.

Q. But if he is recording something that was said to him

A. Did that actually happen?

Q. No, it did not.

A. Did it happen in Belgium?

Q. That did not happen sorry, I am just asking you now: In Italy, the Government did not accept the Government report, and there was a consequential challenge. European Commission took them to court because this change of policy."

Now, you say you were having a discussion about Italy and that Mr. Bruton may have got mixed up and that what he is writing down is incorrect. I think, to be clear about it, the statement, the content of the statement is incorrect. That did not happen in relation to Italy.

A. If you say it didn't happen, it didn't happen. But what I'm only trying to assist you. As I said, we had a discussion, and Mr. Bruton is the first man to accept that his notes at times are unreliable. I am wondering I don't know; I am obviously working from memory.

Q. Yes, of course.

A. But I don't know if in or around the same time or whether it came up at that meeting, was there a difficulty? That's why I have asked you the question, and I don't know what the answer is, was there a difficulty of that nature with Belgium?

Q. There was a dispute going on with Belgium as well.

A. Yes, well

Q. But this was not there was no question of not accepting a Government report.

A. It's possible that we discussed the situation in Belgium. There was some country that had a difficulty with changing

a report in around that time, so it's possible that Italy was the difficulty in relation to the subvention and the anti-competitive practice, and that Belgium was the other one that we were referring to. But I can't say how

Q. So you now think that you were talking about Belgium as well?

A. I don't know. At that time there was one country that had a difficulty, and I know that Italy had a difficulty in relation to what the

Q. Italy was in dispute over the question of an open-ended auction. That was that's what Italy and the Commission were having a row about.

A. Well, I don't

Q. So and then "2 of the Project Team were Department of Finance." I take it that was information that you would have conveyed to

A. I think John Bruton asked me what was the Department I think that probably note reflects the fact that he was after asking me the position in relation to Ruairi Quinn, the Minister for Finance, and then he in the course of the conversation, it became evident that two members of the Department of Finance were on the Project Team.

Q. Now, looking at the note as a whole, you say that that portion of the note which said "Albert had promised it to Motorola", that that is something that Mr. Bruton brought up and not you; is that correct?

A. That's my recollection, yes.

Q. And that that portion of the note that "In Italy Government did not accept Government report" etc., and that there was a consequential challenge, European Commission took them to court because of this change of policy", you say that Mr. Bruton has got the conversation mixed up or is confused about it?

A. With a number of other conversations, yeah.

Q. Although he was making these notes at the time?

A. Sorry, I can't I mean, how can I speak

Q. Sorry, I am asking you, do you remember, was he making we can take it he was making notes?

A. I presume he was taking notes if they are his notes, but I don't recall him taking notes.

Q. Now, Mr. Bruton I think informed us that he did make the notes at the time.

A. That was his practice.

Q. We all know his practice; we have all had experience of it.

If Mr. Bruton was not the one who raised the question of Albert had promised it to Motorola, and I just wonder why he would raise that particular matter with you if you were coming to him to inform him that there had been a result from the PTGSM, why he, as Taoiseach, would then inquire as to whether Albert had promised it to Motorola. Do you know why he would have raise that sort of question with you?

A. What was the question?

Q. Why he, as Taoiseach you were coming to inform him of a result in your Department of a competition in your

Department. And you say that he raised the issue with you.

Obviously you were informing him of what the result was and that it didn't involve Motorola, would be fair to say; isn't that right?

A. Yes.

Q. Or that they were in the second ranking the consortium was in the second ranking position. Why do you think that he, the Taoiseach, was raising a question with you as to whether or not Albert meaning the previous Government had promised it to Motorola. What type of discussion had had been taking place giving rise to him asking that question?

A. I think it would be perfectly normal if somebody in his position in such circumstances had something on his mind or entered his mind at that particular time or triggered a memory he had heard something like that previously, it's perfectly normal for him to say, you know, "What's the position in relation to that? Was there any credence to that?"

Q. Well, I don't know, perhaps you can tell us, but from seeing Mr. Bruton give evidence and observing him as Taoiseach and as a politician over the years, he didn't seem to come across as a gossipy type of person, or would that have been your experience as well, dealing with him as a politician?

A. Well, as you know, I worked very closely with Mr. Bruton for many, many years, and I see nothing unusual, and that

certainly question wouldn't be at all out of character with John Bruton, if it was on his mind, to ask it.

Q. But I am trying to understand what type of conversation was taking place between you that would prompt him. You come to him and you say, "I have a result. There has been a competition. I have a result. And this is what I am putting forward as the recommendation, because that's the recommendation that's come to me, and there you are. I have got a piece of paper from Mr. John Loughrey."

I am just wondering what conversation was taking place that would have prompted the Taoiseach to ask the question of of what relevance it would be to ask the question, did Albert promise it or Albert had promised it to Motorola. Why or in what context would that arise, it being initiated by the Taoiseach?

A. There was never any deep discussion about it. It was in passing I am certainly convinced there was no deep discussion about Albert Reynolds. It was simply a throwaway comment: "What was that in relation to that rumour about Albert Reynolds? Was there any truth in that?" Or something to that effect. That's as simple as that. I am sure the Taoiseach was no different than anybody else. He heard the rumour, and we were now discussing something which would with which he hadn't been involved and which he hadn't been familiar with for a certain period of time, and I suppose it just came back to his head.

Q. All right. So it's your recollection that he raised the issue. What did you respond to him, or how did you respond?

A. How did I respond?

Q. Yes.

A. I said that I had heard it, we all had heard it, but I said there was absolutely, in my view, absolutely no substance to it.

Q. And we see that that response wasn't noted by Mr. Bruton?

A. That was?

Q. That response wasn't noted by Mr. Bruton?

A. Sure we had a conversation. I only see three or four notes there. He didn't write everything down on that day, obviously.

Q. I think he told us that he tended to write down what he considered to be important things.

A. He obviously didn't think it important.

Q. Well, the important bit surely the important bit would be if the Taoiseach raises a question I don't, or I find it difficult to understand the context in which he would raise that particular question, but if he raised such a question, surely the response would be the important part of it?

A. He was probably very satisfied with the answer that I had given him, which was direct and clear.

Q. Because if Mr. Bruton is recording things that are said to him, doesn't it appear, from this note, that you were

trying to get a political fix or a political prejudice in, because what you had was a recommendation ranking first, second and third; isn't that right? Doesn't that appear to be the situation, Mr. Lowry?

A. I take offence to that comment. I take exception to an accusation such as that. You are questioning my political integrity. I did no such a thing.

Q. And if you continue on with the note, the references to Italy, I suggest to you, seem to indicate a further attempt to get a fix in and to prejudice the mind of the Taoiseach to the extent he would support your position, he not being au fait or familiar with what was going on in GSM.

MR. FANNING: I beg your pardon I beg your pardon, Chairman, before the witness answers that question, I object in very strong terms to the line of questioning that Mr. Coughlan is putting. If he is proposing to put that line of questioning, I think he should at least first put Mr. Bruton's evidence on what Mr. Bruton understood his own note to represent. And I think that should be put up on the screen, and the witness should be given an opportunity to comment on that before Mr. Coughlan puts any of these propositions.

The section I would like the witness to be able to see is Mr. Bruton's evidence on Day 279 at page 47, Question 104 of the transcript.

CHAIRMAN: Well, if you care to read that in the first instance, Mr. Fanning.

MR. FANNING: Yes. Mr. Bruton was asked in relation to the content of his note: "But this is something that Mr. Lowry is conveying to you, at least?"

And Mr. Bruton replies: "I believe so. I mean, these are just the bits of the discussion that I wrote down because they seemed, you know, interesting or whatever. I didn't this is not a comprehensive note of what was said to me."

Now, there is a concession in Mr. Bruton's own evidence to this Tribunal arising out of the transcript, but it's not a comprehensive note and it doesn't take into account everything that was said, and it's simply the only comments Mr. Bruton found interesting. He has not given the note the weight that Mr. Coughlan is attaching to it in the questions that he is putting to the witness. And Mr. Bruton's own evidence to this Tribunal, and he was Taoiseach of the day, and at no stage was any of his evidence impugned or challenged in the manner that it would have to have been for Mr. Coughlan's present line of questioning to be a legitimate one. Mr. Bruton's own evidence to the Tribunal was that Mr. Lowry came to him with a result as conveyed to him by Mr. Loughrey, his Secretary General, and that Mr. Bruton approved the announcement of it.

And in those circumstances, where Mr. Bruton was never challenged on that, it seems to me a wholly inappropriate line of questioning for Mr. Coughlan to engage in.

CHAIRMAN: I note those matters, Mr. Fanning, but it seems to me, given that the overriding task of the Tribunal and its counsel is to inquire into these matters, that these are matters which a person looking at the evidence and the facts that has to date emerged would be concerned to know the outcome of, and I feel Mr. Coughlan's line of questioning is one that requires to and is being properly put.

A. Mr. Chairman, please

CHAIRMAN: Yes, Mr. Lowry?

A. Mr. Chairman, I would like my political integrity to be protected here, and as I understand it, this is an inquiry, and as I understand it, you are an independent Chairperson.

I am not going to accept accusations put to me. If I am asked a question, I'll accept it, and I'll answer it, and I understand that those questions have to be put to me. But they should not be put to me in this forum in the form of an accusation.

Q. MR. COUGHLAN: Sorry, if you understood them to be an accusation, Mr. Lowry, and you are perfectly correct and I wouldn't put it in the form of an accusation, I put it in the form of a question to you.

Mr. Bruton if you continue looking on in the transcript does acknowledge that it's not a verbatim note, but he is writing down his understanding of what was said to him. And the question is this: Were you not, in conveying the information, if Mr. Bruton is correct about

his note, about Mr. Reynolds and the position of Italy, were you not attempting to put in a political fix in an attempt to get the Taoiseach on your side in relation to this matter? That's the question.

A. My response to that question, which is now a question, is that at no stage did I ever attempt to persuade the Taoiseach or, as you say yourself, to prejudice the Taoiseach against any participant in the competition. I did

Q. Or in favour of anybody?

A. Or in favour of anybody in it. I had a result, and would I ask you now, Mr. Coughlan, in the light of what you are after the issue that you have raised, I would ask you to put on the screen for me the piece of paper and the decision which I had received from Mr. Loughrey which I was conveying to the Taoiseach.

Q. Yes, I will indeed, of course.

A. And we will see is there any openness or room there for prejudice or favouritism.

Q. There were two

A. There is two

Q. There are two documents?

A. Two documents.

I'd like, Mr. Chairman, if it were possible, to see those two documents, put them on the screen and to take me through them line by line so that this Tribunal is quite clear of the advice on which I was acting when I went to

the Taoiseach.

Q. There were two documents, both dated 25th October 1995.

And I think you see the first document we'll have to tease it out as to which came first, but these are the two documents.

"The process in selecting the most qualified application"

A. Sorry, the context of this is, this is the Secretary General, one of the most experienced civil servants in the country, verbally giving me a message for my Taoiseach and for the Party leaders. And so that there be no mistake, he puts it in writing to me, and I have this in my possession, and it's in that context that you are making a suggestion.

Q. I made no sorry, let's be clear

A. That I possibly prejudiced the Taoiseach

Q. Let's be clear, Mr. Lowry. I made no suggestion. I am asking you a question. I am asking you a question, Mr. Lowry. Now, you asked me to put this document up. I have the document up. Now let's deal with it.

"The process in selecting the most qualified application for exclusive negotiation with the intention of awarding a second licence for a mobile phone operation is now complete.

"I am fully satisfied that the process in selecting the potential holder of this licence was carried out in a scrupulously fair and professional way.

"The process was cleared with the EU Commission, and the

independent Danish consultants acted at all times with expert professionalism and disinterest.

"The project steering group comprised senior officials of this Department and the Department of Finance. Their selection was unanimous."

It's signed by Mr. Loughrey, the Secretary, and it's dated.

Now, the other document, which is his note to you

A. Could I say in relation to that

Q. Yes, indeed.

A. I am meeting the Taoiseach let's put it in its context

I am meeting the Taoiseach with that information, and somebody is trying to infer that I prejudiced the Taoiseach in any way. I think it's an outrageous suggestion.

Q. Right.

Could I ask you this, Mr. Lowry: Had you ever seen the final report when you went to the Taoiseach? Had you ever seen a report from Andersens or from the Project Group which indicated any position of an outcome?

A. No.

Q. We then go to the second document.

A. Yes, there is a briefing note which was, as you can see, provided for me as Minister. I would like that put on the record, and I would appreciate if it was put on the screen for me.

Q. Which briefing note are you talking about now?

A. The briefing note to the Minister in respect of the GSM licence from my Department.

MR. FANNING: 43/136.

MR. COUGHLAN: 43/136; all right. We'll put it up.

Q. "Briefing note for the Minister.

Recommendation regarding the best application in the GSM competition". Is that the document?

A. Yes, please.

Q. When do you say you received that document?

A. In or around the time the decision was made.

Q. When do you say because this is a document that we have never been able to pin down when it was prepared and to whom it was given. So when do you say you received it?

A. The document was most certainly given to me in or around the time of the decision. I can't be specific about the date.

Q. It's very important to be specific, because the Tribunal if you can help the Tribunal as to being specific, because the civil servants and the civil servant who prepared this could not be specific about it, because this is a document that has caused considerable controversy at the Tribunal.

Now, when do you say you received it, Mr. Lowry?

A. I would have received that document in the at the time that the decision was made.

Q. So you are saying that you received that document on the 24th October

A. In or around that time.

Q. No, Mr. Lowry, we can't have a fudge on this one. When do you say you received the document? Did you receive that

document on the 24th October of 1995?

A. In around the time the decision was made, I received that document from the officials, yes.

Q. Which official?

A. From the Secretary General of the Department.

Q. Mr. John Loughrey gave you that document?

A. Yes.

Q. On that day?

A. I'm not sure about the precise date.

MR. FANNING: Mr. Lowry has answered the question; he is not sure on what day he has got the document. And he shouldn't be harassed any further on that issue.

MR. COUGHLAN: If he wants me to consider the document, it's important to the best of his ability he tell us

A. Of course I consider the document is important, because the document sets out the position as it was advised to me as Minister. Of course the document is, and I don't think I think it's a bit selective that this I haven't seen this document put to me in evidence as yet, and I am bringing it to the attention of the Tribunal, that this document was a very important document in briefing me, and I gave the background to the decision that was made, and I would like the document put in its totality on the record.

Q. MR. COUGHLAN: This document was gone through in great detail just listen to me for a moment in the evidence of officials. It's a document that has the Tribunal has shown keen interest in, and it's a document which officials

have been unable to inform the Tribunal as to whether or not it might have been furnished to you; right? Your counsel and your solicitor were present at all times in relation to this, or had the availability of transcripts in respect of it. Now, I am going to go through this document in great detail with you now.

A. Just to put this in context. This is my first time giving evidence. I have sat outside this Tribunal for eight years now. I have sat outside this Tribunal for four years while this licence is examined. I am entitled to clear my participation and my role in this process.

Q. Absolutely.

A. I have suffered greatly in relation to it. This document was given to me as Minister. When, I'm not quite sure. But this document would have formed my opinion in relation to many of the statements that I made then and subsequently since.

Q. What I want to know is, did it form the basis of any statement you made on the day you went to see the Taoiseach?

A. It's possible, yes.

Q. We'll look at the document.

"Evaluation of the applications.

" initial evaluation showed that A5 and A3 stood head and shoulders above the rest."

A. For the interests of clarity, A5 and A3 are?

Q. Esat and Persona.

A. Esat is A5?

Q. And Persona, yes.

"Detailed examination has shown that A5 is clearly the best application."

"Evaluation of the top two applications in light of paragraph 19 of the tender document.

"1. Credibility of the Business Plan and the applicant's approach to market development.

" A5 is better because it

" has detailed well advanced plans for brand development and market expansion.

is consistent as between projected tariff/usage levels and Revenue streams.

demonstrates high degree of preparedness.

" this lends considerable credibility to its business plan.

" For its part, A3 is:

" less ambitious for growing the market;

its distribution planning is weaker;

its marketing budget is far smaller;

does not display full consistency between projected tariff usage and revenue.

seems generally less 'ready to go'.

"2. Quality and viability of technical approach proposed and its compliance with the requirements set out therein.

" critical issue is radio signal availability and strength, so technical approach is evaluated by comparing

radio network architecture and network capacity.

" technical experts agree A5 is better because it has:

" a more attractive radio network design;

more antenna sites and more cells;

it surpasses A3 in respect of its capacity of its

proposed network.

"3. The approach to tariffing proposed by the applicant

which must be competitive.

" both A5 and A3 offer tariffs which are highly

competitive when compared to Eircell.

" A3 has lower tariffs than A5 for its domestic calls

i.e. A3's air time charge for consumers is 9.9p per minute,

20.8% cheaper than A5's charge of 12.5p.

" however, A5 has:-

" cheaper international tariffs;

offers volume-related discounts of 5-15%;

plans metering and billing methods which could cause a

difference of 10% in the price of an effective call

minute.

" Actual A5 customer bills might well turn out to be

broadly equivalent to A3's or at any rate only a fraction

higher.

" therefore, while A3 has lower domestic tariffs at

launch, A5 is only marginally inferior in respect of its

overall approach to competitive tariffing.

"4. The amount in excess of the minimum initial licence

fee which the applicant is prepared to pay for the right to

the licence.

" all applicants offered the maximum fee of 15 million.

" consequently this criterion has become irrelevant in

the evaluation.

"5. Timetable for achieving minimum coverage requirements

and the extent to which they may be exceeded.

" both A5 and A3 fulfil the minimum requirement of

serving more than 90% of the population within 4 years.

" A5 is better because it:-

" offers a remarkable high coverage at launch (80%);

this will be significant in building up customer

confidence and growing the market.

" A3 plans to launch with only 40% coverage which is

poor in terms of providing an acceptable level of service.

"The extent of the applicant's international roaming plan.

" Impossible for an organisation with no GSM licence to

enter negotiations to establish roaming agreements.

" Therefore, none of the applications contained hard

facts on this criterion.

" It was agreed to focus on:-

" the understanding of roaming issues displayed;

the commitment expressed to develop roaming agreements

within Europe.

" both A5 and A3 proved to be equally satisfactory in

both these respects.

"7. The performance guarantees proposed by the applicant.

" A5 is better because it:-

" has proposed milestones by which its performance can be measured.

these have been substantiated with specific penalty clauses should A5 not deliver on its promises on time.

" A3 for its part has only suggested a number of technical action plans in cases of proven noncompliance with service level commitments.

"8. Efficiency of proposed use of frequency spectrum resources.

" Both A5 and A3 intend to request the same amount of frequency.

" However expert examination has shown that A5 displays much better economy since it has conducted effective traffic and network planning in order to avoid wasteful use of spectrum.

" Therefore, A5 is better than A3 in this regard.

"Conclusion.

" Disregarding the criteria where both score the same, A5 is superior to A3 in five out of its six cases, including in respect of the two most important criteria, i.e. market development, credibility of business plan and technical approach.

" Where A3 is judged to be better than A5 as regards tariffing, it is noted that A5 scores a very close second.

" Hence, it is clear that, evaluating in accordance with the criteria set out in paragraph 19 of the tender document, A5 has the best application.

"Recommendation:

" The GSM Project Group is therefore unanimous in its recommendation that the Minister should enter into licence negotiations with the A5 consortium.

" Should negotiations with A5 fail, the Minister should enter licence negotiations with the applicant ranked second, namely A3."

Do you know when you got that document?

A. As you can see, and it's crystal clear from what the Secretary General of the Department told me, that there was a decision made by the Project Team; that it was clear, unambiguous and unanimous. That was the first letter.

This letter sets out this briefing note for me sets out in even greater detail that it was clear, unambiguous and unanimous, and it's

Q. But the important thing I want to ascertain from you, Mr. Lowry, is, because we know that this document, from the civil servant who prepared it, was one where that civil servant considered once a result was understood, that there was nothing wrong with making it look firmer than the report had actually stated. So I want to know, when did you get that document?

A. I would have got that document when the decision was made.

That document was conveyed to me, and I have never at any stage I have never at any stage questioned the like, your theory is that I didn't have a clear-cut decision and that I was effectively going to the Taoiseach. The

question you put to me I am reasonably intelligent
the question you put to me is that I went to the Taoiseach
and somehow or other I prejudiced his thinking against
Motorola. I went to the Taoiseach with a very clear
decision from the Secretary General of my own Department.
I conveyed that decision to him. It wasn't garnered in any
way. I didn't show anything other than what the reality of
the situation was, and I asked the Taoiseach if it was
possible to get a decision at leaders' level. And when we
subsequently discussed it at leaders' level and the
recommendation of the Project Team, which was clear, as I
said, and very precise and easily understood, was accepted.

Q. Mr. Lowry, I bring this way back, and I'll just let you
know the question that I am asking you to consider. And
it's this:

It was clear, in the work of the Project Team, that an
element of the Esat Digifone consortium had frailties in
relation to its financial capability, and that was Mr.
Denis O'Brien's Communicorp element of that consortium.

You remember that?

A. Pardon?

Q. You remember that?

A. I remember what?

Q. That it was clear from the evidence that in the work of the
PTGSM, that there was a frailty in relation to one element
of the Esat Digifone consortium, and that that was
Mr. Denis O'Brien's element.

MR. FANNING: Before the witness answers that

A. Mr. Coughlan, I wasn't aware of anything that was happening within the Project Team.

Q. MR. COUGHLAN: I am saying that you are now aware that's what was happening.

A. I am referring back I had no information to that effect at any stage. I was

Q. Mr. Lowry, I am asking, are you now aware that that was what was happening?

A. I am not aware of it.

Q. Okay. So you have not been following what was going on in the Tribunal in that respect?

A. I haven't followed everything, Mr. Coughlan. I have to live as well. I have a lot of other things going on in my life. I haven't read the transcripts of every Tribunal, but what I can say clearly I can only speak for myself; I can only speak for myself I had no such knowledge at that time in relation to any matters to deal with the Project Team. I was outside of that process.

What I'm saying to you, Mr. Coughlan, is that every decision that I took and every message that I communicated to my Party Leader, then Taoiseach John Bruton, was brought to him on the advice of the General Secretary of the Department of Transport, Energy and Communications, Mr. John Loughrey. And his advice to me there was no reference to anything other than that the process had concluded; that a winner had been arrived at; and that that

winner had won clearly and that the decision was unanimous.

That was all the information that I had when I went to the Taoiseach. And I acted on that basis.

Q. Right, now, I'll just ask you to look at what has emerged.

It has emerged it has emerged that you were informed by Martin Brennan, at least on your own evidence, of the names of the top two ranking after he returned from Copenhagen; isn't that right?

A. No. Mr. Brennan told me I think you are using the word "ranking" what Mr. Brennan told me was

Q. The names

A. We were down to the last two, and he gave me the names.

Q. Sorry, on your own evidence, you knew the names of the top two?

A. Yes.

Q. What Mr. Brennan informed the PTGSM was that you knew the order of the top two. Now, you don't agree with him that that was the conversation you had?

A. Absolutely not. I didn't know the order.

Q. What was clear at that stage to the PTGSM was that there was a financial frailty in relation to the Communicorp group, one element of the Esat Digifone consortium. And it again is attributed to you by Mr. Brennan that bankability was the solution to that. That's what's attributed. You don't agree with that.

A. I do not agree with it.

MR. O'DONNELL: Sorry, I don't think that Mr. Brennan said

at any stage that Mr. Lowry suggested that a problem within the Esat Digifone consortium could be solved. I don't think Mr. Brennan ever gave evidence of anything even close to the colour of that suggestion, and I think it's most inappropriate for Mr. Coughlan to put that suggestion to Mr. Lowry.

Because that is what is being suggested, that a civil servant had a discussion with Mr. Lowry about what was in the makeup of the Esat Digifone consortium and said, "There is a problem", and that this was a solution suggested by Mr. Lowry to Mr. Brennan. That's what's being suggested here in this Tribunal. And that's an accusation not simply against Mr. Lowry, but it's an accusation against Mr. Brennan as well. And I think it is wholly inappropriate, and I don't think there is any evidence whatsoever to support it.

CHAIRMAN: There aren't accusations in this matter, Mr. O'Donnell. I have to act on the notes that we heard was in yesterday's evidence referring to the Minister knowing the order, and a reference shortly afterwards to bankability, and I have to do the best I can in deciding what are the proper conclusions to be drawn from that.

MR. O'DONNELL: But, sir, with the greatest of respect, we can't simply walk around or pussyfoot around the situation and say, "Well, of course, these aren't accusations". They are. There is no avoiding this. They are.

Mr. Lowry's counsel can look after him, but this is an

allegation made not simply against Mr. Lowry, but against Mr. Brennan. It is an accusation. And we can say that it's in the form of a question, but it's a question which is clearly an accusation. And I object to it in the strongest terms.

MR. FANNING: And I might add, sir, the empty formula that is relied upon, whenever an objection is made to a line of questioning, that it's simply a legitimate line of questioning is, in my respectful submission, absolutely insufficient comfort for the parties appearing before the Tribunal at this stage, of whom I represent only one.

Mr. Coughlan is leading this Tribunal and has been engaged as full-time counsel on behalf of the Tribunal for a period of eight years. And it can't simply be suggested that he is merely offering a sort of a menu of questions to Mr. Lowry that may or may not result in a finding. He is pursuing a line of inquiry with Mr. Lowry based on evidence that he is relying upon from other witnesses, and he can't simply fall back every time an objection is made, no more than you, sir, can fall back every time an objection is made and say that Mr. Coughlan is entitled to pursue lines of inquiry, as if it were the case that there is any number of open-ended lines of inquiry that Mr. Coughlan is pursuing, when that is abundantly not the manner in which his examination is being pursued. He is pursuing particular lines of inquiry, and he is basing it on documents and previous evidence.

And he is obliged, in that circumstance, to adhere to the evidence that's been heard heretofore. And what's coming out now is that Mr. Lowry had clear basis at all times on the 25th October, on the advice of his civil servants, to approach Mr. Bruton, and nothing of the kind that Mr. Coughlan is suggesting to Mr. Lowry in the witness box this morning was ever put to Mr. Bruton, and it is just so wholly inappropriate that his bona fides be challenged in this way when the Taoiseach signed off on this decision and his actions in this regard were never criticised in the witness box.

CHAIRMAN: The matter of bankability simply has to be inquired into, and I have to afford a measure of latitude.

Can we go back in the first instance, Mr. Lowry, because I don't want you to feel that you are not being properly heard. Most of this started from the evidence that you gave this morning in relation to your meeting with the Taoiseach.

Now, can I just go back to see that I am properly recapitulating your evidence of what exactly took place at this meeting, and that I'll fairly balance that and have regard to it, and any other evidence, before I draw any conclusions.

The matters in relation to which some possible differences emerged from Mr. Bruton's notes were, first of all, the reference to Mr. Reynolds having promised it to Motorola; secondly, the possible conflict of interest of Mr. Quinn,

the Minister for Finance's brother, Mr. Loughlin Quinn, having been a senior member of a third rival consortium, and then lastly, the reference to matters having transpired in a way that proved difficult for Italy on the European front.

Now, am I right in saying that firstly, as regards your factual evidence, it is the case that the references to Mr. Reynolds in the first instance, and then laterally to Mr. Quinn, arose from matters which were actually, on your recollection, raised by the Taoiseach, Mr. Bruton, and that the reference to the Italian matters may have represented a slightly more confused exchange of views between you in which, perhaps, the reality of matters may primarily have been concerned with the model of Belgium; but that as regards each of those matters, it was not your intention, it was not what you stated, and it would be wrong for me to infer or decide that you went to the meeting with a view of influencing the Taoiseach in a way that was either adverse to Mr. Boyle's consortium or Mr. Quinn's consortium, or that you attempted to speed matters unduly by suggesting that difficulties that other Member States in the European Community had had with the Commission should influence people to very speedily adopt a recommendation such as you had produced?

A. You put it very fairly, Mr. Chairman.

CHAIRMAN: Very good. We'll continue.

Q. MR. COUGHLAN: Now, if I may just in relation to the

document that's on screen at the moment, I think the evidence from Ms. Nic Lochlainn, who prepared this document and I am just wondering whether you could have had it when you went to that meeting that day, because I think she said she prepared

A. Sorry, could I have when I went to what meeting?

Q. The meeting with the Taoiseach.

A. I have already said the only document I was in possession of when I went to the Taoiseach was John Loughrey's document. The other document came in or around that time, but I'm not saying that I brought that document with me to the Taoiseach.

I would think, just to assist you, Mr. Coughlan, I would think that that document was prepared for me for the morning of the Cabinet meeting that would be my best effort at putting a date on it which was the day after.

Q. I think her evidence was and she accepted that the document was in rather firm language; she took the view that it was there to sell or defend a decision subsequently, not and not to influence the making of a decision. Do you understand me?

A. I have to accept, Mr. Coughlan, that whatever anybody may say about how they put the document together, I, as Minister, acted on the information that was put before me. And I acted in the best of good faith, and let me make it quite clear, because either I or John Bruton never at any stage even entered our heads that we would do anything that

would prejudice one or favour the other. We simply dealt with the facts as we had them and as they were presented to us by the head of the Department in which I was a Minister. Nothing more, nothing less.

Q. This was to be a Government decision, and by virtue of the fact of and there was plenty of time for consideration by virtue of the fact of the decision being taken in the manner which it was, detailed scrutiny or examination of the potential frailties of both A5 and A3 was not given consideration by the ultimate decision makers, and that was Government; isn't that right?

A. Okay, let me answer take that question for you. And I think it would be helpful for the Tribunal to make contact with the Secretary General of the Taoiseach's Department, because my experience was that there were more decisions made in that Government of political import, big decisions made at leadership level, than there were at the Cabinet table.

So let me make it abundantly clear, the manner in which this decision was made wasn't exceptional. In actual fact, it was nearly the norm. And the reason it was is, if you had a single-party Government, it wouldn't have arisen. If you have a two-party Government, it wouldn't arise as often. In a three-party Government, it was the only way that would actually work in practice.

And when I went, if you want to move on to I went to the Taoiseach, and the Taoiseach said, "Well, let's discuss it

with our colleagues", and then we progressed, and we had the meeting with our colleagues. And my recollection of it is very simple: John Bruton asked me to say what I had to say. And the central point I want to make here is: John Bruton didn't lead that discussion; I led the discussion, as the person who was bringing the recommendation with me. And the reaction that I got from the leaders of the Party, number one, I have no doubt that Ruairi Quinn had communicated his satisfaction with the process to Dick Spring. Dick Spring was happy to make the decision. Secondly, Prionsias de Rossa, his reaction was, "Michael", he said, "This poses a problem for me. Motorola are in my constituency. But I accept the decision that has been made. We established a protocol," and he said "For me to do anything else would question the integrity of the people who made the decision. And, he said, "We'll live with it." And then the final person who spoke at that meeting was John Bruton. And John Bruton was happy that we had a process in place. He was happy with the decision, and I would think that his main objective at that stage was the how would I put it the formalities of it. And he suggested that I allowed be allowed to announce the decision, and it was said that it would be recorded, as it was normal, I think the Cabinet meeting was the day after.

Q. That's right.

A. And that's how the decision was arrived at.

Q. I just wonder why you asked me to put up that particular

memorandum or note, because the witness who prepared it, Ms. Nic Lochlainn, has informed us that the note and we went through it in great detail with her and in relation to the report and the state of discussion in the PTGSM that that note was not prepared to enable a decision to be made; that it was prepared for the purpose of perhaps subsequently defending a position.

Do you understand the position?

A. Even allowing for that

Q. I am just asking why did you ask me because you said that you would have had that when you went to the meeting of the political leaders. I am suggesting to you that it's im

A. Sorry, Mr. Coughlan, I didn't say that. I said the note that I had going to the political leaders was John Loughrey's note.

Q. Well, then, why did you ask me to put this up? You said that you were in possession and you suggested that it should be brought to your attention. Now, I am asking you why.

A. Because your line of questioning inferred that I was going with an iffy decision to Government; in other words, that Michael Lowry was somehow or other swaying my political colleagues to the view that it should be given to Esat Digifone. I went with a clear-cut decision.

Q. You went with a clear-cut decision as you were informed by Mr. Loughrey?

A. I was informed by Mr. Loughrey verbally and in writing, and that was the decision that I brought and the recommendation that I brought.

Q. Mr. Lowry, you never saw the final report, did you?

A. Pardon?

Q. You had not received or seen the final report when you went to seek this decision; isn't that right?

A. That's correct.

Q. You did not know that there might even have been a health warning in the final report in respect of the financial position; is that right?

A. I received from the General Secretary of the Department, who I totally relied on and depended on, and so did my colleagues in Government, and I got an unconditional decision from him. The decision from Mr. Loughrey was very simple: "This is the result; it's clear-cut; it's unconditional". There was no conditions attached to the decision that was communicated to me.

Q. So you were not informed that there was a health warning?

A. What health warning?

Q. A health warning in relation to the potential financial frailty.

A. My understanding was subsequently that I certainly wasn't informed of any financial frailties, no.

Q. But you are not suggesting that sorry, you didn't have the report; you never saw the report at that time?

A. I hadn't I have seen no reports in relation to it. As I

restate again, the Government made a decision to put a number of people in charge of it. They were all experienced professional civil servants. We relied on them to carry out the task that they were given to do. They proceeded and did that. They reported back to us. I got a decision, and I communicated the decision exactly as I got it to Government. And based on the information that was provided by the Project Team, the Secretary General of the Department, my colleagues in Government made a collective decision to sanction it.

Q. Now, yesterday you said that the first time that you became aware of Mr. Desmond/IIU's involvement, you thought initially but you corrected yourself, and I think correctly corrected yourself, you thought that you had first heard about that around the time of the announcement of the competition, but you think that it was later; it was in the April/May period. Is that right?

A. Yes.

Q. Now, I think we know that there were some newspaper articles soon after the announcement of the decision, and I think you may have seen those particular newspaper articles dealing with headings "Desmond firm advising Esat Digifone on share placing"?

A. What tab is that?

Q. If you go to there are two tabs. There is 58 sorry, I beg your pardon 58/1B5, and 58/B6.

A. And the second one?

Q. The next tab. This one is up.

Do you remember anything?

A. I remember one of them. I don't remember seeing the small one. I think I saw the big one.

Q. All right. Now, did you remember seeing that, do you?

A. I think I do, yes.

Q. And I think the matter, that is the GSM competition matter, was raised in the Dail, I think, on a number of occasions; isn't that right?

A. Numerous occasions.

Q. And I think the first one was on the 22nd November of 1985; that's Tab 43/156. And we have what you stated in the Dail, and we also have what was prepared by the officials and potential supplementaries in relation to it.

But what was being asked about at this time was the identity of the 20% of the proposed licensee; isn't that right? That was one of the issues. I know there were many other issues.

A. One of numerous issues we gave days in the Dail talking about, yeah.

Q. But that was one that was raised. The other one was about the postponement of the competition, the capping of the fee and matters of that nature, and these were all dealt with.

Now, just in relation to this question of the identification of the 20% of the proposed licensee. It was always phrased in terms of ownership; ownership only ever arose in terms of the competition of the proposed licensee.

And you were responding, briefed by your officials, that for reasons of confidentiality, that you couldn't disclose that information but that you were satisfied in other words, you were informed by your officials that there had been a number of financial institutions of high standing indicated or sorry, the Department had been informed of a number of financial institutions of high standing, and that there should be no need to worry about it. That would be, in general, the information that you were conveying; isn't that right?

A. I accept that, yes.

Q. And can I take it that at that time, when you were responding in the House in that manner, that you were completely ignorant of any interest or potential involvement that Mr. Desmond and IIU would have in the consortium?

A. I would have formed the view in relation to the 20%, or whatever percentage it was, that that was a matter for the consortia to make a decision on and to arrive to a conclusion on. I wasn't

Q. In what sense now? Sorry, could you tell me what view you formed and when you formed it?

A. I don't know. I can't say exactly when, but in the Dail, as you stated, I was asked about the process, and I took people through the process. Every aspect of the process was detailed in analysis. There was a detailed analysis of it. There was some unbelievably hypocritical and

contradictory positions taken up by Fianna Fail in opposition at that particular time. They completely they did a somersault in what their previous position was and then changed it, for political opportunism reasons, to match the bill of the day.

So you have to put if you are going to start talking these Dail debates, you have to put it in the context .

The 20% was only one element of the questioning in relation to that matter.

Q. I know that. We have been through them all. Oh, I know that. We have been through them all.

A. And my view in relation to the 20% was, that was a matter to be resolved in the first instance between the consortia; in other words, the partners in the consortia which the major partners were Telenor and Communicorp, and I left all those matters to, as I said to you yesterday, to John Loughrey. Anything to do with the when we got to this phase of the competition, I had a discussion with John Loughrey, and I asked him to take direct responsibility for it. I was completely outside the loop in relation to this, and any information that I would have got or given to the Dail would have been based on the information that was provided to me by my officials within the Department.

Q. Right. I just want to ask you, Mr. Lowry, can you assist the Tribunal as to what consideration you gave to the matter and when you arrived at a view that it was a matter for Esat, or for Communicorp and Telenor in relation to the

20%? When did you first arrive at that decision?

A. I have no idea. Sometime around the negotiation period, around that time.

Q. But "the negotiation period"; can you be a little bit more specific?

A. Pardon?

Q. Can you be a little bit more specific?

A. Pardon?

Q. Can you be a little bit more specific?

A. I'm not able to be more specific. I have no idea when.

Q. You have no idea when you came to that view?

A. I have no I can't be specific. I have no detail on it.

Q. If you just look at Tab 58/B7.

A. 58/B7?

Q. Yes.

Irish Times, 28th February, 1996, do you remember seeing that article?

A. Pardon?

Q. Do you ever remember seeing that article at the time?

A. I don't have a recollection of it. Maybe I did.

Q. Well, we know the Department had a cutting service, and we are informed by the press officer that as regards the official civil service line in the Department, that that sort of thing would have been monitored, and he would have distributed it to the appropriate division/section. Would it be fair to say that the Minister would be kept aware of matters which were developing in the Department in terms of

how they appeared in the press?

A. Well, usually what would happen is, if there was something directly impacting on something you had said or if you wanted the cuttings were mainly kept, you reviewed them at a later stage. I don't know whether that was brought to my attention or not, maybe it was.

Q. That clearly

A. What year is it?

Q. That is February 1996.

A. Hard to remember, you know, ten years ago, what was in the papers.

Q. But this is fairly significant because it's a fairly reasonable representation of the position regarding IIU, Telenor and Communicorp.

You see there: "Communicorp is a 37.5% shareholder in the winner of the second licence, Esat Digifone, through its holding company Esat Telecom. The Norwegian State company Telenor owns another 37.5%, while Mr. Dermot Desmond's company, IIU, holds the remaining 25%."

This seems to be a report of information which was being made available in a fundraising being conducted I think by Mr. O'Brien's company in the United States. Now, can you remember, because it's kind of important to try and establish who knew what at what time, can you remember ever seeing that at the time?

A. I don't remember. I can't say specifically that I saw that article, but I would have been aware the small article

is the one that I actually can remember that one, the first one. But I can't say that I can put that into a time slot.

Q. All right. Now, I'm not going to ask you there were during the negotiation phase, there were a number of, or a number of times when you were asked to intervene to hurry things up. That is that the licence be issued as expeditiously as possible. I am not going to ask you about those matters.

What I would ask you about, then, is that when communication was made with the Department by Mr. Owen O'Connell on behalf of Esat Digifone and informed the Department of the potential shareholding in the licence holder, did that come as a surprise to you, or do you think you might have known anything about it in general terms before that?

A. This is the IIU involvement?

Q. Yes.

A. As I said, I had a recollection of reading or knowing that Dermot Desmond was involved in the placing of the 25%.

Q. I understand that. That was clear; there was an article that put him in a broker-type capacity.

A. Yes. And when it came towards the close of the when we were getting to the final stages of the licence, and at this stage I had become, how would I put it, extremely frustrated with how sluggish the whole process had been.

We had granted the licence or granted the right to negotiate, I think it was in December, or sorry,

October, and we were up at this stage up to April, May, I can't be precise, but my consideration was, why the hell had this taken so long? What were the delays? I had this project on my to-do list. I was being asked by my colleagues in Government why there wasn't movement on it.

I felt myself that I was letting down the public, in the sense that we were still the only country in Europe that hadn't a second mobile operator. And, needless to say, I was anxious to get the show on the road and get it up and running, and it didn't conform with my political character as somebody who liked to get things done.

So and you rightly said there on a couple of occasions there were different aspects of it, and I'd get on with the business, finalise it and get out. At that stage at that stage, when I was pushing for this, I think John Loughrey was conscious of the fact that there was an outstanding issue, and that was that involved IIU, and it was at that stage that he called me and explained to me the background of it and sought my intervention, and I did intervene at his request. And that's the intervention that I referred to you yesterday

Q. I am just interested, if you could go through that and assist us. Mr. Loughrey, from your recollection at least, anyway, brought to your attention that there was an outstanding issue in relation to IIU?

A. Yes.

Q. Was it that type of language, "an outstanding issue"?

A. Well, what he had said I think what he had said was that effectively what I am saying is the background was, there was a huge amount of to-ing and fro-ing. For instance, the licence, as I understand it, Loughrey was in charge of it, John Loughrey. I think Sean McMahon was drafting it in consultation with John Loughrey. But the real holdup, as I saw it at that particular stage, was that we had the Attorney General's Office involved in considerable detail, and I recall Dermot Gleeson discussing it with me, and Dermot Gleeson was, fair to say, a small bit critical of the fact that stuff wasn't coming back from the Department, and in particular from the draftsman, as expeditiously as it should. So I was conscious of the involvement, a very detailed involvement, and I am sure the Tribunal has access to all that documentation in relation to the Attorney General, but there was considerable to-ing and fro-ing with the Attorney General's Office. And I'm not aware of the detail of it, but I know that it was happening, from comments that were passed to me by Mr. Dermot Gleeson at the time.

And I also recall that John Loughrey, the careful and thorough man that he is, he sought legal advice within the Department, and we had counsel advice given directly to the Department of Transport, Energy and Communications, in this instance, Communications. So I was satisfied at that stage that if all these people were involved at this high level, that everything would be in order. And John Loughrey, when

he came to me, kind of emphasised that, and said "We are down to a net issue".

And the net issue at that stage was that, as I understood it, in my layman's language, was that IIU were holding out for 25%, and John Loughrey explained to me that the legal advice that he had got said that the bid as the bid was lodged, the bid stated 40:40:20, and that under no circumstances would he allow a deviation from that configuration of 40:40:20. And that IIU were holding out for 25%.

So, I don't know, my recollection is that John Loughrey lined up the principals. He marched me in as Minister, having told me what the problem was, and I think I said to them, "Look, you know" my language would have been direct; I would have said "This licence will not be signed unless it's 40:40:20. Get your act in order. Sort it out amongst ourselves, and if you have differences of opinion on it, you can resolve them between yourselves at a later stage. I want this licence signed. I want the public to have the benefit of a second mobile operator".

And that was my message. I withdrew from the meeting, and they progressed it from there. And at some stage later, John Loughrey came back to me and said, "We are now in a position to sign the licence". And I suppose we signed the licence in May, I think was it, which was a long

Q. I think the 16th May?

A. They were negotiating from October to May. It was a pretty

extensive, drawn-out process.

Q. And can you remember when you were, to use your own phrase, marched in by John Loughrey to get the message across? Was that in the Department that that meeting was held?

A. Yes, it was.

Q. And who was at the meeting?

A. My recollection of it, I can't be precise, but I certainly know that Dr. Michael Walsh was there. It was the first time I had met him. There was some guy there from Telenor.

Q. Can you remember who that was, or what he looked like?

A. I am sorry, I can't. I didn't know any of the Telenor guys, to be honest with you, so they wouldn't mean anything to me.

There was somebody from Telenor. There was somebody from Michael Walsh. And maybe there was one or two others; I don't I don't recall. As I said, I just went in, said what I had to say, and withdrew.

Q. As far as you can remember, there was somebody from Telenor, there was somebody from IIU Dr. Walsh; there may have been other people. Was there anybody there from the Communicorp/Esat Telecom side, to your recollection, at that time? I am just trying to see who was at the meeting.

A. I just don't know. I genuinely don't know.

Q. All right.

A. I presume that the Department would probably be aware of that kind of detail.

Q. You see, we have a problem, because there is no record in

the Department of any of these meetings, or no note. So your evidence is very helpful in trying to understand what was happening.

And what John Loughrey wanted you to producing you as the Minister to say, "Listen, this licence won't be signed off unless it's 40:40:20". Because that was

A. Yeah.

Q. And he had told you that IIU were holding out for 25%, and that there was no way that that could be done?

A. Yes, I am quite clear on that, yes.

Q. And that was the issue that was taking place?

A. Yes.

Q. Now, I just want you to look at something you said in the Dail on the 30th April of that year. I'll just get it for you now. It's in the second volume I'll put it up; it's only a small portion I want you to look at it's 44/202.

It's in the second volume. This is the one that

A. 44?

Q. 202.

A. I don't seem to have it here. Could you put it on the screen, there, please.

Q. It's in Book 2.

CHAIRMAN: Perhaps we can get it on the screen.

MR. COUGHLAN: Yes.

Q. Do you have it now?

A. 44/202.

Q. It's the Dail debate sorry, you have that?

A. Yeah.

Q. Can you tell us how this came about in the Dail? It doesn't arise as a question time. You have prepared yourself to make a statement to the Dail. Do you know

A. 44/201.

Q. Maybe we have them the other way around. 44/201 is the

A. I think that this 44/202 is probably their response to my statement.

Q. Well, yes, the statement you made a statement to the Dail; isn't that right?

A. I made a statement in 44/201.

Q. That's the script, actually. Maybe that's your script, 201.

A. And I'd say

Q. Is the report, it's the actual report?

A. Yeah.

Q. And then matters arose. So but in 44/202, that's the actual report of what happened in the Dail. 44/201 is the script.

Now, can you remember why you were making this particular statement at the time?

A. What date was that?

Q. It was the 30th April 1996.

A. I would say that I was making the statement I haven't read that statement other than I would think that I was making the statement on the basis that there was a lot of political jumping up and down. At that stage, Persona had

mobilised all their forces, they had inundated TDs, they had a sense of persecution, and they got that message across to others. I suppose, you know, they used the political forum to get their message across. I think it was around this time as well that they sent in the American Ambassador into my Department to make a protest at the fact that they hadn't won.

So there was a lot of political activity, and I, in this statement, I would say was making a comprehensive effort to clear up all of the issues that had been raised in the preceding times.

Q. No, I understand what you were doing. But do you know how you came to do it? It didn't arise as a result of any question being asked?

A. Sure the Minister can make a statement any time.

Q. I know that. I know that. Just, can you help us as to the context whereby you came to make the statement in the House?

A. No, I don't recall. I can't put it precisely into context as to why it was made, but I would say that it had to be made on the basis of the ongoing public debate about the issue.

Q. Now, if you just the text of the statement as prepared by your officials is there. But this was one that wasn't just prepared by officials, because we know from a subsequent note, which is in the documents here, Mr. Martin Brennan wrote a note to Mr. Loughrey complaining about the

pressure that they had to work under in preparing the statement; that he was involved and officials were involved in preparing portions of the draft; Mr. Loughrey and you were involved in it, and perhaps some political advisers as well. And you can see portions of the statement that would perhaps not have been prepared by officials and some that might have been prepared by your political advisers, all the references to Mr. Lemass and matters of that nature.

A. Yes, as I say, there was an input on the official level which was in relation to because none of my officials or myself could write a script in relation to the detail of the licence and the procedure. So that had to be left to the officials.

Q. I understand.

A. I was also under attack in a political sense, and I wanted to respond to the political attacks. And there is a lot of that statement probably has a political input from myself.

Q. I understand that. And you can see the different portions of the statement.

But what I wanted to ask you about was something that was not in the statement as prepared at all, either on the political side or on the official side. And that is if you go to the second-last page of the Dail report

A. Just give me the what is it?

Q. I'll put it up, in fact.

A. The second-last page of my statement?

Q. No, no, of the actual Dail report as you have it there.

A. Which section?

Q. The second-last page, the very last paragraph.

Do you see "Mr. Lowry"? Do you see that? I'll put it on the screen if you want.

A. I see it here: "The Deputy has missed point."

Q. Yes. "The Deputy has missed the point. I stated clearly that all five of the participants in this competition had various ways and means of raising funds to fund the project. I will not speculate at this stage or cast aspersions on the credibility of others. The Deputy mentioned Mr. Desmond. If Mr. Desmond or any other company is in a position to fund this project and is acceptable to Esat Digifone, and if it means that this project is up and running, so be it that is their business. It is not my business to determine who should participate in a consortium of this kind. My only priority is to ensure that the necessary funds are in place to fund the project and get it to roll out on time. It is very simple."

How did you come to make that particular statement, do you know?

A. You know, isn't it I actually put it very well, I thought, because it reflected the view that I had earlier on, and that was me speaking off the cuff, and that is my view that was my view then, and is still my view, that it wasn't my business to determine who the funders of the 20% were going to be. That was a matter for the consortia. And my understanding is, once the consortia was split

40:40:20, that the legal advice we had received in the Department was that that conforms with the terms of the competition.

Q. Mr. John Loughrey has given evidence that that particular statement couldn't have been made on the advice of any official because it's wholly erroneous.

A. That what?

Q. Wholly erroneous.

A. We all make mistakes. Maybe I did make a mistake.

MR. FANNING: And for that matter, a mistake made by the Minister speaking in the Dail is not something that can be investigated into by the Tribunal, pursuant to the provisions of Article 15 of the of Article 15.13 of the Constitution, that says all utterances in the House by a member of the Oireachtas are not capable of review and are not amenable to an authority outside the House.

And whilst I don't object to Mr. Coughlan putting Mr. Lowry's Dail statement in some sort of context, it would be inappropriate for him to cross a line and to effectively cross-examine or challenge the veracity of anything that Mr. Lowry said to the Dail, because constitutionally, this Tribunal, sir, is absolutely prohibited from making any findings in that regard. And that's as apparent from the terms of the Supreme Court's decision in Attorney General v. Hamilton No. 2 as it is from the terms of Article 15.13 of the constitution.

We have to have some context. And I accept that the

Tribunal is engaged in a legitimate inquiry but he can't be put to the pin of his collar and challenged on what he said in the Dail.

MR. COUGHLAN: I'm not doing that. We have been over this before, and Mr. Lowry understands the position, I think, and has always been ready to answer anything in relation to anything he said in the Dail.

Q. Isn't that correct, Mr. Lowry?

A. There is probably times, Mr. Coughlan, when I should use the political comment "No comment."

Q. Now, you see what was happening at this time was that, according to Mr. Loughrey, and this is why I'm just very interested about what you said here in the Dail, that you are saying it's not a matter for you, as Minister, meaning you, the Department Minister, as to the makeup of this.

Did you have any regard at that time that there had been to the fact that there had been a competition?

A. Pardon?

Q. Did you have any regard at that time to the fact that there had been a competition to enable somebody obtain the negotiating rights leading to a licence, and that one of the mandatory provisions of that particular competition was that the bidder would have to disclose full ownership of the proposed licensee at the time of the competition? Did you have any regard to that particular matter when you made that statement?

A. I would have left all of those aspects, as is quite clear,

I think, from the evidence of everybody, I would have left all the matters of detail such as the composition, the funding, whatever requirements, whatever criteria was there. I didn't follow that. I would, to a large extent, be ignorant of it.

Q. Right. So can I take it that you did not have regard to that when you made this statement?

A. If I was I was speaking, as I said, off the cuff. My way of explaining that is that I felt that I didn't I think what I'm saying there, really, is that the issue of the 20%, or who takes out the placing in it or who fills the funding requirement of it, that's the message I was trying to get across, that that was a matter for the consortium and obviously John Loughrey and his team, when they were negotiating it. It wasn't for me as Minister to determine who should or who shouldn't be in it.

Q. Were you ever informed as to how and when IIU/Mr. Desmond became involved?

A. No.

Q. Never?

A. No. Mr. Desmond's involvement was one that emerged as the Tribunal progressed, for me. And obviously I was informed by the Department

Q. Yes, I am asking you when were you informed by the Department; that's what I'm really asking you. Or what were you told about it, to the best of your knowledge?

A. I think I was told in or around, you know, the time

Q. Around this time?

A. Around the time they were negotiating the licence, I presume, yes.

Q. There was negotiation going on for a period

A. I would say April/May.

Q. That's what I mean. In this time-frame?

A. In around that time.

Q. That you were told that Mr. Desmond/IIU were involved?

A. Maybe not so much involved when I said "involved", that they were certainly I don't know whether I was told they were involved, or whether or not I was told that they were advisers to it or not; I'm not quite sure which or other.

But I know they had some involvement, yes.

Q. You said that you were told by Mr. Loughrey that IIU were holding out for 25%.

A. Yes. I think that was in May, wasn't it?

Q. What was your understanding of they were holding out by 25%; what did you understand by that?

A. My understanding of that is that they felt that instead of having 20%, that they had some entitlement to 25%.

Q. I see. And that was as far as information was conveyed to you to form any sort of

A. Yes, I didn't ask how that had materialised or what was the position. Again, as I said, my frame of mind would have been that whoever was going to be involved like, I am only looking at it as I say, I never got involved in the technical detail of it. I had a view of it, and maybe my

view of it was too simplistic, but my view of it was that O'Brien's consortia had always stated that they were going to place 20%; in other words, that they needed somebody with money to fund 20% of it.

And my discussion with John Loughrey appeared to be in the same way of thinking as I was: Look, this was originally a bid which said it should be 40:40:20, and now there is somebody trying to break that divide into whatever configuration it was, but it was giving IIU 25%. I suppose that's when it crystallised in my mind that IIU were involved. And I am sorry, I can't put a date on that, but it would be near the end of the process.

Q. So what was being brought to your attention was that somebody is trying to get 25% of this; they can only have 20%. That's the type

A. Yes.

Q. And there was nobody bringing anything to your attention as to whether this person was entitled to be there or not?

That was not an issue that you were being asked to address at all?

A. No.

Q. Now, I think you had, in your previous Dail statements, on the basis of briefings you had received, or speeches prepared for the purpose, had always indicated that the makeup of that consortium, you couldn't divulge the 20% for confidentiality reasons, but you, on the advice, were quite satisfied that there were a number of top-class

institutions and that they were there, isn't that that

was the advice you were receiving?

A. Yes.

Q. And can I take it that nobody or did anybody ever inform

you that these institutions were now gone, and that

Mr. Desmond or IIU were there? Did anyone tell you that?

A. When IIU, when it became apparent that IIU were involved, I

asked John Loughrey about this that issue. I did ask

him, and I said, "How does this conform with what I had

been saying as Minister?"

And he didn't see any difficulty. As he said to me,

"Anybody who has been named" and I am almost certain,

because John Loughrey was a very precise man, and he said

that these names are the names that we have are the

names that you are aware of are indicative, and this is

where the conversation would have taken place where he said

to me, you know, "There isn't any difficulty in funding

this project. This project is strong".

And he went through it with me on the basis that Telenor

were exceptionally strong on the technical side of it, had

a very good track record in relation to their own exploits

in communications. Communicorp obviously were doing well

here. And he said that there'd be no difficulty in

relation to the funding.

Q. What did he say about Communicorp, do you say?

A. What did he say about Communicorp

Q. That they were doing well here at that time?

A. Well, that would be I think that was a general perception, that they were. I certainly was of the opinion that they were doing well.

Q. You had to take certain steps in relation to their fixed-line business soon after the licence; isn't that right?

A. I had to?

Q. Take certain steps in relation to allowing their fixed-line business to have greater flexibility or access soon after the mobile licence was signed over?

A. In relation to what?

Q. I'll have to get the full detail

A. Routers, is it?

Q. Routers.

A. Yeah, I think that would have been emerged on the basis of, I suppose, that would be a similar campaign that O'Brien was running, which was one of long standing. I think you could compare it to the Michael O'Leary campaign in Dublin Airport to let liberalisation out there, to get competition, as he saw it. I think O'Brien had a long running battle.

Q. It's obvious

A. I think what happened in June was not to do with the licence

Q. I'm not making that connection at all. I am saying in the context of you saying that they were doing well at that time. I am just asking you, is that what Mr. Loughrey said

to you?

A. Mr. Loughrey was, at all times, happy, and I have to say

I can say this for definite Mr. Loughrey was at all times happy that the combination that was before us, of Telenor and Communicorp, that it was soundly based, technically, financial and every other way, and that it could deliver. That was the message I was getting.

Q. At all stages?

A. At all stages.

Q. And can I take it that, therefore, you weren't getting any negative or cautious messages

A. No.

Q. from Mr. Loughrey at any stage in May or June?

A. Absolutely never.

Q. And that the only thing that he asked of you at that stage was to come in and show yourself when he wanted something done?

A. Yes.

Q. Can I take it, so, that you were unaware that there was an assessment being conducted in the Department in respect of the financial position of IIU when you made the statement in the Dail?

A. I wouldn't have been aware of that, yeah.

Q. And you never became aware of that?

A. No. The financial assessment of IIU?

Q. Yes.

A. No, I wasn't aware of that.

Q. What official I am sorry to come back to this, but it is important what officials were present at the meeting you say you were asked to attend?

A. The one with

Q. The one with Telenor, and you remembered Dr. Walsh and somebody from Telenor. What officials were there, to the best of your recollection?

A. What officials?

Q. Yes.

A. John Loughrey was certainly there, and I don't I am nearly sure, I think Sean McMahon was there. I am almost certain, but I couldn't be definite on it.

Q. All right.

Now, there was a press conference proposed, and can I take it that you were aware that there were preparations being made for that press conference?

A. Yes. This is the press conference

Q. At the signing of the licence.

A. At the signing of the licence, yes.

Q. And it was to be a joint press conference, wasn't it?

A. Yes.

Q. And you were to say your few words, and I think Mr. O'Brien was to say a few words or somebody on behalf of the Esat Digifone side, and there was preparation made for that press conference; isn't that right?

A. I presume so. I was just given my role, and I presume there was a lot of background preparation. I am sure there

would be, yes.

Q. But were you aware that this preparation was taking place?

Because there are notes there is a note

A. I would say I was, yes.

Q. And there is also a note were you in contact with Denis

O'Brien over this period at any stage? Because there is a

note of him having a telephone conversation with you

recounting Lowry or Minister saying "Getting there slowly",

or words to that effect, "Getting there" or "getting there

slowly". Do you remember any of that conversation?

A. I don't, but it's possible, yeah. It's possible that there

was contact at that stage on the basis that maybe I am

incorrect, but am I reflecting

Q. Sorry, I'll just bring it to your attention. It's just

44/215. It's a note of Denis O'Brien's. And he said

A. Could I just ask one question, Mr. Coughlan, just it

might help to get my memory.

Am I correct in stating that at that time O'Brien was

threatening legal action against the Department because of

the delays in concluding the licence?

Q. I don't know, and I don't think at this particular time.

There were, perhaps, on an earlier occasion

A. At some stage there was, anyway, I thought.

Q. But this is a note of the 14th May 1996, and it's

recording: "DOB/Lowry called questioned, 'Getting there,

slowly but surely.' Called last night re auto-dialers

meeting today Loughrey and how are re this."

Now, do you remember having contact with Denis O'Brien or a meeting with Denis O'Brien in conjunction with Mr. Loughrey around this time?

A. I don't recall it, but I don't actually recall that meeting, but maybe we did.

Q. Now

A. Is this in advance of the press conference?

Q. It's before the signing off on the licence.

A. It's possible we had. I don't have a vivid recollection of it.

Q. Now, the next if you go over, there is a note: "DOB re meeting Lowry/John Loughrey.

Minister haven't got information wants.

Financial information. IIU - Michael Walsh to go to the Department private meeting.

Letter that finances in place in underwriters.

DOB underwriters are Telenor plus IIU will satisfy tomorrow.

Lots of frustration.

"All by 11 tomorrow. Lowry 'Will check with sec' but hold DOB/LB responsible.

"Has to be 40:40:20 on day.

"DOB Art 8 V tough, can do nothing. Shares amongst parties. Will not allow telecoms parties reduce holding.'

Loughrey to meet OOC and Martin Brennan tomorrow.

Minister informed of 45/45/10 very quickly. Lowry 'let ink dry'.

"Public announcement. Lowry wanted last week. Do everything in one go. Deflect attention away from ownership. Discuss business infrastructure, contracts, roll-out plan, employment new contracts.

Hold off buying phones to public etc.

"Must be phenomenally well briefed on bid document and tender. OO'C to be present to answer questions.

"Legal ownership issue extremely important. All reporters focused on this.

"All 3 shareholders to agree OO'C answer questions.

Rehearsal.

"Persona have written another letter to ask licence not to be granted.

"Just want one person with one single message."

Do you remember a meeting with Denis O'Brien and John Loughrey where matters of that nature were discussed? In other words

A. This was in preparation for the preference conference where we were saying what the issue was?

Q. I don't know, because what I am trying to do is get your recollection. You say

A. I think we had a meeting it's just you are jogging my memory when I read this, and I think we had a meeting in or around, you know, the days when we were preparing for the press conference.

For instance, what rings a bell with me there, deflecting attention away from ownership. I would say that that's

probably something I said, because I was worried that it would get carried away, that you know, the big day, the occasion that it was with bringing competition to the sector and what have you, that my political agenda would be swept away over some of those other issues.

For instance, the legal ownership. That was being discussed. I was satisfied that the Department had taken advice on it, that the position was strong on it. And I suppose some of that I don't know how many of those comments are attributed to me, but my state of mind, just to assist you at that stage, was, look, this has been a long drawn-out protracted issue. Several questions had been asked in the Dail in respect of it. Some of them were contentious. More of them were asked in a mischievous way. More of them were asked in a political way.

Effectively what I was trying to do was to keep the emphasis on what I considered were the positive dimensions of signing the licence, which was you know, the usual.

And I don't have to repeat them all again.

Q. Tariffs, etc., etc.?

A. Tariffs and handsets

Q. Tell me this: Why would you want to deflect attention away from ownership? What did you see as being the problem there?

A. I didn't see a problem other than a public relations difficulty.

Q. What was the public relations difficulty?

A. The public relations difficulty that was in the Dail they were jumping up and down in relation to, I suppose, you could say that some of them were, how would I put it, I suppose some of them were putting emphasis on the fact that Dermot Desmond was involved, yes, in the Dail.

Q. Explain to me so, the public relations issue or difficulty.

I am interested in this. Sorry, the question was asked about Dermot Desmond. As far as you were concerned, you had made a statement that no matter who they want to get involved, that was a matter for them. That's what you stated. You said you were speaking off the cuff. Here you were talking about deflecting attention away from ownership. Wasn't the significant matter that was being discussed here was that the ownership that was going to sign off in relation to the licence, that is the licensee, was not what had been disclosed at the time of the close of the competition in 1995, the 4th August?

A. I would have to say that as Minister, when John Loughrey came to me about this, I was perfectly happy in relation to the ownership of that consortia. My understanding is that advices legal advice had been taken

Q. Tell me about that understanding. Tell me about that understanding now, because

A. Which understanding?

Q. That legal advice had been taken. Because Mr. Loughrey has given us evidence on this, and Mr. Loughrey, although he said he didn't see anything at the time, having considered

the documentation that he saw, realises that no advice was obtained, although sought, on this particular point. So what can you tell me now about your understanding of this?

A. My understanding from John Loughrey was that he I had understood that he had been advised, that he had checked it. I was relying on John Loughrey's conclusions, and we went through, obviously, a checklist of the issues this is my recollection that we'd have gone through a checklist of the issues that would have been raised with us. I think that checklist was comprised of issues that were raised first of all in the Dail, and I think at this stage we would have also had correspondence from Persona, the losing owners, or the losing competitors, and I would think that it was a combination, and obviously we would have had press queries.

So my understanding of the press conference was that we had met and we had gone through what we considered were the issues that were going to be raised. And I think it's perfectly normal, if you are making an announcement and if it's open to question, it's perfectly normal that you would anticipate whatever difficulties or perceived difficulties were there that would be raised by others, that you would formulate your response to it. In other words, you'd be prepared for every question that would be put to you.

So I would my recollection is that that was the process that was conducted, and arising from that, I suppose, you know, from when I say to be honest the bottom line

is, I didn't want, as Minister, to be dealing with the ownership issue, on the basis that I wasn't familiar with it. And I would think that when you talk about deflecting the ownership, I am talking about deflecting it from me. As far as I was concerned, the ownership was something that would be answered for by officials in the Department or by O'Brien or by somebody on his team.

Q. Well, that doesn't seem to be what the note indicates

A. Well I can't speak for the note. I can only speak for what was in my frame of mind then.

Q. What I'm asking you is deflect attention away from ownership issue, emphasise, as you say, the positive matters, the tariffs, the roll-out, good for consumers, emphasise all of that, deflect attention away from ownership.

Now, the one thing that was going to be stated clearly at the time of the press conference and the signing of the licence was that the ownership of this particular licence, the licensee comprised was a company called Esat Digifone, and that that was made up of Telenor as to 40%, Communicorp as to 40%, and IIU as to 20%, and that Mr. Desmond was the owner of IIU; isn't that right?

A. That's correct.

Q. That was going to be stated?

A. That is correct.

Q. Okay. No matter what had been said in the Dail, and questions raised about Mr. Desmond, you couldn't deflect

attention away from the fact that those were the three named entities who own IIU, have a shareholding in IIU; isn't that right? That was

A. That was public knowledge.

Q. So I must suggest to you that the deflection, deflecting attention away from the issue of ownership, was that very question that what had been disclosed in the application as to who the proposed the ownership of the proposed licensee would be was now completely different, to the extent that Mr. Desmond was now in there for 20%. Isn't that the issue that you wanted attention deflected away from?

A. No. I am absolutely certain, absolutely certain that I discussed this with John Loughrey, and obviously I had previously put him responsible for negotiating it, and I would not have signed a licence at the request of John Loughrey unless he was a hundred percent satisfied and the staff that he had involved were a hundred percent satisfied that they were within the terms and the conditions of the licence, and that all of the regulation in respect of that was complied with.

And I got an assurance from Mr. Loughrey that that was the case, because I did ask the question in relation to the composition of it, because I had previously been asked about it in the Dail. And I received an assurance from John Loughrey

Q. What question did you ask?

A. I asked him in the context of you recall he came to me earlier, which I have told you about. His attitude at that stage was that if it was 37:37 with 25% to IIU, that it would not have complied with the bid. He told me quite clearly that by bringing it to 40:40:20, that it was in full conformity with the bid and with the terms of the licence, and I accepted that from him.

MR. FANNING: Mr. Chairman, the witness has been in the box at this point nearly two and a half hours.

MR. COUGHLAN: Yes, certainly.

CHAIRMAN: Five past two. Thanks very much.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF MICHAEL LOWRY BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. Lowry

CHAIRMAN: Mr. McGonigal, I should just say that I am quite sad to hear that Mr. Kelly has been a little unwell today.

I hope all is well on that front.

MR. MCGONIGAL: Yes. I'll convey your concerns, Chairman.

Thank you very much.

Q. MR. COUGHLAN: Now, Mr. Lowry, I just wanted to in relation to this area that we are talking about, just one or two further matters.

One is you have informed us that you knew you had no knowledge that there was an assessment or an evaluation being made in respect of IIU's financial position around

this time; isn't that correct? You have told us that.

A. Correct.

Q. Now, I just wanted to ask you the note, and I just want to

because, again, this isn't trying to catch you out or anything. Can you help us as to how this could appear in the note that note we were looking at of the 14th May, 1996, the typed note?

You see there, just under

"DOB re meeting Lowry/John Loughrey.

Minister haven't got information wants."

Do you know anything or can you assist us on that? I am not necessarily suggesting

A. What's the term?

Q. I think that is a reference to "Minister, haven't got information, wants"

I beg your pardon; I'll just put it up on the screen. You see, "Minister haven't got information, wants.

finance information, IIU (Michael Walsh to go to Department/private meeting)"

Now, looking at the note, or reading the note, one might think that you had some knowledge that there was an evaluation taking place and that sufficient information hadn't been supplied; do you understand the way the note, you'd read the note? Can you help us as to how that note would have been made?

A. I didn't have any I didn't have any knowledge that an evaluation was necessary or that it was taking place,

certainly not.

Q. All right. And just finally on this point, you told us that you did have some conversation with Mr. Loughrey when you raised the query with him, "How does this square with what I had said in the Dail?"

Obviously that's a matter of concern to any minister any member of the Dail what you had said in the Dail. And you had said in the Dail, based on documentation that had been prepared for you as well, that the terms of the competition had been complied with; that when you were questioned about ownership under paragraph 3 of the bid document that is, the ownership of the proposed licensee you said that that had been complied you were satisfied that had been complied with?

A. Correct.

Q. And that in relation to the winning consortium, that that had been indicated as being Telenor, Communicorp and a number of high-quality financial institutions, and that that had been all complied with. That's what you had been saying in the Dail?

A. Yes.

Q. And you were concerned that what was happening now, whether it was for just pure political reasons or whatever, that you hadn't in any way said anything in the Dail that wasn't in conformity; that was your concern?

A. Correct, yes.

Q. Political concern. And Mr. Loughrey, you say, informed you

at that stage that these had been indicative; isn't that right? Is that the first time that anyone had ever said to you that these had been indicative? Because no reference is ever made to that in any Dail statement you made previously.

A. I would say, yes, this is before the wrap-up of the licence, and I would say, yes, that was the first time.

Q. That was the first time anyone said something like that to you?

A. Yes.

Q. Now, can I just finally ask you, when the licence was signed off, can I take it that you had no knowledge of the financial arrangements which had been put in place between the members of the the shareholders in the Esat Digifone company in respect of how the Communicorp shareholders were going to provide the funds to pay the $\text{€}15$ million, or their share of the $\text{€}15$ million licence?

A. No, I had no knowledge. Simply, John Loughrey had come to me, that the process had concluded, that he deemed it appropriate that the licence be signed. I took his advice, and I did that.

Q. I now want to turn to another area, and I have indicated to Mr. Fanning, and I think it's the it relates to the statements furnished and the evidence given by Mr. Mark FitzGerald. And I think these were furnished to you by the Tribunal, and you responded by reference to the statements, and we opened that; but I think we might look at that in a

bit more detail, if that's all right with you.

A. Yes.

Q. Dealing with Mr. FitzGerald's first statement of which he gave evidence about, he informed the Tribunal of various meetings that he had with you, or discussions he had with you over the time. Just to set this in context.

Mr. FitzGerald was a member of the Fine Gael party; isn't that right?

A. That's correct.

Q. And you were one of the Trustees of the Party; isn't that right?

A. Correct.

Q. And I think Mr. FitzGerald was also a trustee, at a certain time, of the Party; isn't that right?

A. Correct.

Q. And I take it, if we just go through his statement, the areas where you agree or disagree or have no recollection might be the better way I'm dealing with the statement dated the 26th November, 2002, first. Or sorry, I beg your pardon, you should perhaps just bear with me for a moment, Mr. Lowry I have it.

It's the statement dated 11th November, 2002, his first statement. And I'll put it up on the projector as well.

He says: "I was a member of the organising committee for the Fine Gael Golf Classic which was held in the K Club on the 16 October 1995." I don't think there is any dispute about that

A. Agreed.

Q. "2. At the time of the event Mr. Denis O'Brien and I knew one another, though we were not particularly friendly. I remember having previously had two earlier business contacts with him." Something you wouldn't know anything about?

A. I wouldn't have any knowledge about that.

Q. "Sometime in August 1995, Mr. O'Brien telephoned me at my office at Merrion Row and asked me to meet him for a cup of coffee in the Shelbourne Hotel. I assume that Mr. O'Brien wanted to discuss some business matter. Mr. O'Brien told me that he was applying for the second mobile telephone licence; that he was facing an uphill struggle against Motorola and it was rumoured that Mr. Albert Reynolds was in line for a payoff if Motorola was granted the licence."

I want to just emphasise here that Mr. O'Brien denies that he ever had this conversation, and I also want to emphasise that the Tribunal is making no suggestion that there is any credit to be attached to that suggestion in respect of Mr. Albert Reynolds.

"I should say that there was no discussion as to whether this rumour was in any way creditworthy. Mr. O'Brien also told me that he (Mr. O'Brien) wanted to keep up his profile with Fine Gael and that he had heard that Fine Gael were having a golf outing. I told Mr. O'Brien that I thought it might be unwise for him to be involved in the event in the circumstances in which he was applying for the licence, but

I said that Mr. David Austin was running the Government event if Mr. O'Brien really wanted to become involved."

Again, you had no knowledge or involvement in relation to any discussion which may or may not have taken place between Mr. O'Brien and Mr. FitzGerald?

A. That is accurate.

Q. I think it is correct to say that Mr. David Austin was running the event, I think.

He said "Shortly afterwards, I spoke to Mr. Jim Miley, the then Secretary General of Fine Gael, and told him that I had been approached by Mr. O'Brien and that I did not think that Fine Gael should accept a corporate donation from him. I was aware that Mr. O'Brien had previously supported other Fine Gael functions."

Again, you have no knowledge

A. No.

Q. And Mr. Miley has given his evidence of having no recollection of that.

"At a subsequent meeting of the organising committee, Mr. Austin thanked me for the introduction of Mr. O'Brien whose company, Esat, was offering to assist in sponsoring the event. I was a little uncomfortable about the sponsorship, but having already spoken to Mr. Miley, did not think it necessary to involve the fundraising committee in the question. Either then or at a later meeting I became aware that there was to be no signage associate the Esat at the event. I did not regard that as especially

noteworthy, because that was to be an arrangement in respect of a number of the sponsors."

Again something you have no knowledge of?

A. No bearing on me.

Q. He said that "I received a further telephone call from Mr. O'Brien around the middle of October 1995. My recollection is that this was after the Golf Classic, which was held on Monday 16 October 1995, but it must have been before the end of that week, because during much of the following week I was in the UK. Mr. O'Brien asked me to meet with him for coffee at a restaurant close to his office. He assumed that this might relate to a business matter about which he had shortly before spoken to Mr. O'Brien. He was surprised when he arrived to find Mr. O'Brien sitting at the table with Mr. Phil Hogan and Mr. Jim Mitchell. As he sat down, Mr. O'Brien asked him if he had heard any news of the licence. Mr. O'Brien had never previously asked him anything about the licence. He told Mr. O'Brien that he had bumped into you, Mr. Lowry, at the Golf Classic at the K Club, and that you had said to him that Denis O'Brien had made a good impression on the Department, and that he had good sites and good marketing. Mr. FitzGerald says that he also that he may also have said that you, Mr. Lowry, had said that there would anyway be a third licence because Mr. FitzGerald recalls that Mr. Lowry said this to him. He does not recall any other significant matter arising in that brief conversation with

Mr. Lowry. He continues that he was annoyed with himself at having passed on the comments made to him by you, even though they had been gratuitous and you believed them unimportant he believed them unimportant.

Mr. FitzGerald understood that Andersen Consulting were responsible for evaluating the bids in the competition, and shortly after that solvency meeting, he checked with Colin McCrea and Sean Donlon, respectively, Mr. Lowry's and the Taoiseach's programme managers, who confirmed that the award itself would be a decision for the Government rather than for the Minister alone."

Now, I suppose the portion of that that's of any significance to you is what Mr. FitzGerald states happened I think the evening of the Golf Classic at the K Club. And that is that there was a conversation between yourself and himself.

A. Yes.

Q. And I think you have informed the Tribunal that it was as a result of an inquiry being made of you by Mr. FitzGerald that you made some noncommittal or innocuous response?

A. Yes, that is my recollection of that evening.

Q. That's your recollection of that evening.

Then Mr. FitzGerald continues that when the outcome of the reasons was announced, which you understood to be the 26th October, 1995, he was in the UK on business. On the Thursday afternoon, he was back in Dublin. He received a phone call from his secretary on his mobile that somebody

on Mr. O'Brien's behalf had phoned to say that he had won the licence and asked him to drop into a celebration party that evening. On his way from the airport he called into the Party at about 11 p.m. for a short time.

Again, that's not anything would you know anything about.

So, just in relation to that, your recollection of what transpired is different to Mr. FitzGerald the evening of the Golf Classic.

A. Yes. I have no doubt that Mr. FitzGerald approached me first of all, I agree that I was in the K Club, that I was there in my capacity as a Minister, having been invited by the organising committee, and the expectation is that Ministers would turn up for those events. So I was at the K Club that evening. And I have a distinct recollection of Mr. FitzGerald approaching me, and I think he is mixed up between Luttrellstown and the K Club, because this conversation he had with me, he approached me after the presentation as I was at the bar speaking to somebody else, and we just had a brief conversation. He asked me about Denis O'Brien and how he was going in the licence. I gave him totally noncommittal information, because I didn't have information. I simply said to him that they had made a good impression and that, you know, in the event of they not winning this time around, that we would be having a third licence soon. In other words, I suppose I was putting it in a dismissive way. He was looking for information. I didn't have it, and I just I shrugged it

off. And I think he is even saying that it was, it wasn't any detailed how will I put it to you conversation in respect of it.

Q. He himself didn't consider what was being said important.

But I just want to ask you, could you first of all, where you differ is that he approached you, and it wasn't you who initiated the conversation?

A. Absolutely. I am certain he approached me.

Q. There probably isn't any disagreement that you may have said that they made a good impression and that there would be a third licence?

A. I did say that, yes.

Q. I wonder, then, that other point that was made, did you or could you have said to him that they have good sites and good marketing?

A. I did. And I said that on the basis of what was fresh in my mind, all that was public knowledge, because Esat Digifone, at that stage, had a big publicity campaign underway, and what was fresh in my mind was that they had made a presentation to the Department. Most of the applicants dropped in their applications hand-delivered, or they were delivered in some form or other.

O'Brien's crowd at that stage had decided to make a public relations exercise out of it, and they reinvented the Viking scene, and they arrived down through Kildare Street in I think it was on a boat. They were all dressed up in Viking gear. And they delivered the boxes which

contained the bid to my Department. And when I say they made an impression on the Department, I know they did, because on the that evening, I had previously been asked by somebody within the Department if I was prepared to be available to accept the lodgement of the application, and I said no, because it could be interpreted that I was showing favouritism, and I declined the offer to meet them.

It got coverage on the TV news. I saw it on the TV news, and it got coverage on the following day's papers. And part of that, they refer to their marketing and their sites. And when I went back to the Department, whatever day it was, a day or two later, I recall the very first person that I met within the Department was the security guy, the guy on the door, and he started telling me about the impression that O'Brien's crowd had made that week.

And when I went up to my office, they were all saying that it was great craic, there was big razzamatazz about it. So it's for that reason in my mind I would have had the impression was created.

Q. And what about the question of sites and marketing?

A. I think that was contained, if I understand it, in a number of press releases around that time. In other words, O'Brien was putting his team or deliberately putting this into the public arena, and they had done it through several advertisements and letters to papers and what have you.

Q. Right. So the only area of Mr. FitzGerald's evidence that you don't agree with is you say that he asked you, rather

than you volunteering information?

A. I am quite certain of that, because I wouldn't to be honest with you, I wouldn't have associated Mark FitzGerald with Denis O'Brien at that stage. I don't know whether they had a relationship or not, but I certainly wouldn't have associated him with O'Brien. In actual fact, I would have thought that if Mark was going to make reps about anybody, I would have thought it would be the independent group, that consortia, on the basis of the family friendship that existed there. But he actually made this request in relation to O'Brien's crowd.

Q. Now, if you go to his next statement, that's the one dated the 26th November, 2002. The reason it's easier to deal I can take you through the transcript, but this is

A. I think the format we are doing it the easiest.

Q. And he said: "This statement is a second statement by me to the Tribunal, my first statement being dated 11 November 2002.

"I was appointed a trustee of the Fine Gael party in 1991 and remained a trustee continuously up to June 2002.

Mr. Michael Lowry was appointed Chairman of the Trustees in, I think, 1993. I do not recall having any individual contact with Mr. Lowry before he became a trustee. Prior to the Fine Gael/Labour Government taking office in December 1994, I recall only two individual meetings with him.

"3. In 1993 or 1994, while I was walking on Upper Mount

Street, Mr. Lowry stopped his car and got out and greeted me. He told me that he had an apartment near the KCR in Kimmage which he wished to have valued. I said I would arrange for someone from Sherry FitzGerald, Terenure office to, contact him and took his telephone number. I did arrange that, but Sherry FitzGerald were never subsequently instructed to sell the apartment."

I don't think you have any disagreement with any of that.

"4. In the autumn of 1994 I attended a dinner at Luttrellstown Golf Club following a Fine Gael golf outing there. While at the bar I joined in a brief casual conversation with Mr. Lowry and Mr. Phil Hogan."

A. I think he is mixing the two. I don't remember meeting him at Luttrellstown. I was there, but I think the conversation at the bar is the conversation that took place in the K Club rather than Luttrellstown.

Q. And do you think Mr. Phil Hogan was at the K Club rather than at Luttrellstown?

A. Yes.

Q. "5. After the Fine Gael/Labour Government took office in December 1994, the first meeting I recollect with Mr. Lowry was at a meeting of the Trustees in February 1995. In a brief one-to-one conversation before the meeting began, Mr. Lowry said to me that the Chairmanship of the ESB was coming up and asked me did I know of any businessman who might make a good Chairman and who would be acceptable to Dick Spring and the Labour Party. I suggested two names to

him in that context, including Mr. William McCann of PriceWaterhouse, who was at the time already a member of the ESB board. Much later, in or about January 1996, Mr. McCann was appointed as ESB Chairman."

A. What happened with that was that sometime earlier the vacancy had occurred in the ESB. A lot of people, you know, in business circles I wouldn't have been familiar with, and it was Dick Spring, leader of the Labour Party the way the system worked, it was their position to fill. Now, on the rota basis that operates with public bodies and he mentioned the name of McCann to me, and I simply asked Mark did he know of McCann and you know, what kind of a fellow was he, what kind of a guy was he? You know. And he recommended him. You know, he said "You should be happy with that appointment". And McCann was subsequently appointed as Chairman of the ESB.

Q. And everybody agrees an excellent candidate.

A. Yes.

Q. Do I take it, therefore, there isn't any much of a difference between yourself and Mr. FitzGerald about that?

A. I think there is certainly a different emphasis on it. He is effectively saying that he recommended him and that he was subsequently appointed. The reality is it was the Tanaiste recommended him, and we subsequently appointed him.

Q. Very good. Then at "6. In late March or early April 1995, Mr. Lowry telephoned me on my mobile phone. It was the

first occasion I ever recall him telephoning me, and I do not recall him ever asking for my mobile phone number, but that number would have been known by a number of my co-Trustees. Mr. Lowry asked me whether there was 'a man called Gill' working in Sherry FitzGerald who was involved with the building off O'Connell Street where Telecom Eireann was the tenant. I confirmed that Gordon Gill was a member of our firm, but that I did not know anything about what he was referring to, but that I would inquire.

Mr. Lowry said he would be in touch again."

Do you ever remember that?

A. Yes. If we take this whole issue. I have already you know, made a statement to the Tribunal in relation to it, and I have to say of all the aspects of this statement, this is the one that disappoints me, because I believe it's factually incorrect and obviously, in its format as it stands at the moment, is damaging to me as an individual.

And my recollection of this is that I received a telephone call from Ben Dunne, and the only request that Ben Dunne made of me was he said to me that this whichever House Marlborough House, that it had been stuck in arbitration. And my memory of it is that a previous attempt had been made to arbitrate on it, and for some reason it fell through. It was now gone back into arbitration again, and effectively, it was locked up, in the sense that there was no movement on it. And he was worried that this current phase of it, of arbitration,

would last indefinitely again.

He had made, obviously Ben Dunne, a connection in the sense that he knew Mark FitzGerald was Fine Gael, he knew that I would know him, and he rang me and asked me to know would I mention to Mark FitzGerald to get whoever within his company was dealing with it to expedite it, to hurry it up and to get it dealt with conclusively.

Now, that was the only request that was made of me. That was the request that I passed on to Mark FitzGerald. And Mark FitzGerald's response was that he would do that. And what I'm puzzled about is, you know, if the request that I am supposed to have made, which I would consider, myself, to be inappropriate, if I had made that request, Mark FitzGerald is one of the leaders in his profession, in his business, in real estate. He would have immediately known, number one, that was inappropriate; number two, that it couldn't happen. But he didn't say that to me. He said he would go and do it. In my view the reason he said he would go and do it is that he clearly understood that I was asking for this to be expedited.

And the next step that happened then was he rang me back and said that there was a Mr. Gill within his unit dealing with it and that he conveyed my request to him. And he said, "it will have to take its course".

And I reported back to Ben Dunne that they were aware that it was, as far as he was concerned, it was a matter of urgency and that it would be dealt with. And my

understanding from the evidence that has been given in relation to this is that I mean, I would expect that a professional like Mr. Gill, what have you, like, he would dismiss a request such as that from anybody, including me. And in actual fact, it took its course. And I don't know what the level of arbitration was agreed, but at the end of the day, I am sure it was agreed on the basis of what was value and what was proper and what was correct.

Q. Fine. Perhaps we'll then proceed with Mr. FitzGerald's statement, and if we take it if that's all right with you paragraph by paragraph and deal with the portions of it to see where you agree or disagree.

Do you agree that you made contact with Mr. FitzGerald on his mobile phone?

A. On his sorry which one are we on?

Q. Paragraph 6. This is the statement of the 26th November, 2002. Paragraph 6. Mr. FitzGerald has stated that you contacted him on his mobile phone.

A. Sorry, this is in relation to the Ben Dunne thing?

Q. Yes.

A. Yes, I did, yes.

Q. He says that you asked him whether there was a man called Gill working in Sherry FitzGerald. Would you agree or disagree with that?

A. I actually don't believe that I did, because I wouldn't have known who was dealing with it. I certainly didn't know. Unless Ben Dunne had told me, I don't know that

part of it

Q. I'll come back to what Ben Dunne and yourself spoke about.

He says that he confirmed that Gordon Gill was a member of the firm, but he didn't know anything about the reference you had made to a building off O'Connell Street of which Telecom Eireann were the tenants. Do you remember or do you agree or remember anything like that being said?

A. I can't do you know what I mean, I don't have a complete of recall everything.

Q. I appreciate that. He said that he would make an inquiry and that he would be in touch.

Now, the next thing that he says is, he said that he then telephoned Gordon Gill at home about his call from you, and that Mr. Gill informed him that the property in question was Marlborough House, which was also known as Telephone House, and it was in Marlborough Street, and that he, Mr. Gill, had just been appointed as arbitrator in relation to a rent review. And in the circumstances of being an arbitrator, Mr. FitzGerald stated that he did not consider it appropriate to discuss the matter any further with Mr. Gill during the arbitration process.

Obviously, you know nothing about what transpired between Mr. Gill and Mr. FitzGerald?

A. I do know

Q. I see.

A. I do know, in that Mark is incorrect in his recollection of that, because he didn't have to ring Mr. Gill to know that

it was Marlborough House that we were talking about. I was hardly going to ring him and make a request to have something expedited if I didn't know the name of the house, do you understand the building Ben Dunne had told me the building that was involved.

Q. Yes, I think what he said, that you telephoned him if you go to the previous paragraph about a building off O'Connell Street in which Telecom Eireann were tenant?

A. No, I would have had the details. I got the details from Ben Dunne in relation to the name of the property, and I would have communicated that to him. I wouldn't have said to him I'd be a little bit more efficient than that, to send somebody off looking for the building in the corner of O'Connell Street. I would have told him the property involved and asked him to look it up.

Q. If we go to paragraph No. 8, then.

"Some very short time later Mr. Lowry telephoned me again (this time to my office) and asked me to meet him at what was formerly Powers Hotel, Kildare Street. I agreed to do so within an hour or two of his call, and we had coffee together. Mr. Lowry then told me that Marlborough House, of which Telecom Eireann was the tenant, had recently been bought by Mr. Ben Dunne, and Mr. Dunne had been in touch with him (Mr. Lowry) and wanted to get the rent up from $\text{€}1\frac{1}{2}5$ per square foot to $\text{€}1\frac{1}{2}10$ per square foot, and that 'Your man Gill' was involved, and could I organise it.

"I told Mr. Lowry emphatically that I could not and would

not, and I referred to Mr. Gill's independent role as an arbitrator. Mr. Lowry then asked, 'What are we going to do' as Ben Dunne had contributed $\text{€}170,000$ to Fine Gael. I told Mr. Lowry that that was the first I had heard of this contribution and that he should not pursue the matter further."

If we take it step by step. First of all, do you remember having coffee with Mr. FitzGerald in the former Powers Hotel in Kildare Street?

A. I do, but not in relation to this discussion. There was no such discussion. I certainly met him in Kildare Street, but it was about an entirely different matter. It had absolutely nothing to do with the you see, this doesn't this statement is totally inaccurate. This statement could not be right, because I had conveyed to Mr. FitzGerald over the telephone what my request was. He didn't need to come into Kildare Street to meet me for me to tell him what my request was. My request was conveyed to him after the phone calls from Ben Dunne and my subsequent telephone call to him. The time that the request was made to him was the moment when he said he was wondering where I got his telephone from, and I conveyed my message to him over the telephone.

This is totally erroneous in relation to Powers in Kildare Street. And this idea of a rent going up from $\text{€}5$ to $\text{€}10$ per square foot is ludicrous. Even I, who knows little or nothing about that arbitration system, what have you, would

know that it's simply not feasible or possible for anyone to make such a daft request of anybody.

Q. And then if you go to paragraph 9.

"A very short time after that Powers Hotel meeting, Mr. Lowry telephoned me at my office and said he wished to buy a house but wanted to keep a low profile. He referred to a mews house for sale by Sherry FitzGerald in Palmerstown Close, off Palmerstown Road, and asked could he view it the following day. I said I would arrange this and get back to his office with a suggested time and identity of the member of staff who would show him the property. He said he did not want anyone to show him the property but me, as he did not want anyone to know his business. I indicated that that was not the way we operated, but I agreed to turn up myself with the person who was actually handling the sale of the property, who I said was likely to be a Ms. GERALYN BYRNE. Either then or in a short subsequent call, Mr. Lowry asked me to pick him up in advance at the Orwell Lodge Hotel Rathgar. I arrived first at the Orwell Lodge Hotel at the agreed time and Mr. Lowry arrived a short time later in a State car and got out and walked over where I was parked and we drove together the short distance to Ms. Byrne at the Palmerstown Close property."

Did that happen?

A. This is where there is confusion in relation to this.

First of all, a very short time after the Powers Hotel

meeting. That's when he met me in Powers Hotel. He didn't meet me in Powers Hotel in respect of the Ben Dunne effort. I gave evidence to a previous module of this Tribunal I was actively seeking to purchase a property in Dublin. Mark FitzGerald was one of the people that I contacted. I had seen an advertisement for a particular property that I liked. I rang Mark FitzGerald and asked him whenever the rest of that statement is actually correct. I asked him to know but he is confused about why that's the day. What happened was he rang me, and we met in Powers Hotel in relation to that that's when I had the coffee with him about looking for a property.

And he then at a later stage arranged for me he rang me one day and said that he could he had the time to view this property.

And the rest of that is subsequently accurate. In other words, I went out there, had a look at it. The Orwell Lodge, all of that is accurate. But he is confused between the that's my recollection of it.

Q. All right.

A. And I am quite satisfied about that.

Q. If you go to paragraph 10.

He said: "We arrived at the property before Ms. Byrne, and while waiting, Mr. Lowry mentioned in the course of casual conversation that the granting of a new mobile licence was likely to generate strong interest. I recall responding that I imagined that a company like Motorola, given their

presence in Ireland, was likely to be a strong contender.

Mr. Lowry did not comment further on the subject, and

Ms. Byrne then arrived."

Do you remember that?

A. I did, and it was in the course of casual conversation, what have you. And to be honest with you, whatever way that conversation came up, I thought in my head that he had an interest in Motorola, because I recall afterwards I was confused in relation to Mark FitzGerald as to actually who he had an interest in in relation to this particular licence, because I knew he was friendly with one part of a consortium. He had asked me about the other one, and he seemed to be, in that conversation, was interested in Motorola.

So that conversation did take place, yes.

Q. Did take place; all right.

At 11. "According to Ms. Byrne's diary, this inspection of the mews at Palmerstown Close took place on the 6 April 1995. Mr. Lowry looked at the property, but neither at that time nor subsequently expressed further interest in it. At his request I then drove Mr. Lowry back to his Department."

Is that portion of the statement

A. I looked at the mews. I think I wasn't satisfied with the location of it, and we returned, yes.

Q. And he drove you back to the Department; is that correct Mr. FitzGerald?

A. That part it was I can't I would have thought I came back in the State car. I am nearly sure I came back in the State car, but I can't be definite.

Q. He said that "As we drove back, Mr. Lowry again mentioned Marlborough House, and I was again emphatic in my response that I could not and would not intervene with Mr. Gill in his function as an arbitrator."

Did that occur?

A. That is inaccurate. Because it was only this is what I don't understand about this property issue that he is raising. There was little or no conversation. It was a simple request from me to him over the telephone. He obviously followed it up, asked Mr. Gill, rang me back and told me what the position was. And I conveyed that over the telephone to Ben Dunne. And Ben Dunne was happy that he had put down a marker that he needed it dealt with. There was nothing more. This type of long drawn-out process that Mark is referring to here simply never happened.

Q. So you say that that conversation or that statement is inaccurate?

A. Inaccurate, yes.

Q. At 12. "A month or so later, in May or June 1995, I was informed by a colleague in the Sherry FitzGerald Commercial Property Department that Mr. Gill had fixed a rent at about $\frac{1}{2}$ per square foot for Marlborough House."

Something you probably don't know anything about?

A. He didn't communicate that to me.

Q. At paragraph number 13. "My next contact with Mr. Lowry, as I recall, was later in April or early May 1995, when he once more telephoned me to my office. He said he wanted to talk to me about CIE. I recollect that at that time, CIE was having its problems at board and senior executive level. Mr. Lowry said that his Department was keen to get the then Assistant Secretary in the Department, Michael McDonnell, on a short list for the position of Chief Executive of CIE. Even though I recalled meeting Mr. McDonnell only once previously. I told Mr. Lowry that I was aware that Mr. McDonnell had worked with my brother, John Fitzgerald, in the Department of Finance, and that both John and my father, Garret FitzGerald, shortly before that, in the context of a discussion between the three of us about Aer Lingus, had spoken highly of the job Mr. McDonnell had been doing there as a State director and what a final public servant he was.

Mr. Lowry's own perception of Mr. McDonnell as expressed in that telephone call seemed to be clearly the same as mine. He said he was calling me because the CIE board would be making an appointment from the short list, and that would be presented by PriceWaterhouse, and that was being handled there by Tom O'Higgins, whom Mr. Lowry knew I knew. In fact Mr. O'Higgins is a relative of my wife, and at that time I was myself directly involved with him in my capacity as a trustee in relation to the possible recruitment of a

Fine Gael General Secretary.

Mr. Lowry asked me would I mind having a word with Mr. O'Higgins about the qualities of Mr. McDonnell and told me that the Department was keen to see him short-listed."

Do you have any comment to make about that?

A. The vast majority of that is correct, but I actually didn't ring him. He arrived in my Department. I see where Mark says he was in my Department on two occasions. He was in fact in my Department on four different occasions and had I suppose he liked to be involved in departmental life.

He used always call pretty regularly, as well to the Department of Agriculture and a few more departments.

But he called to my office. I think he had heard on the grapevine that Michael McDonnell was applying for the job, and the rest of that in relation to the to-ing and fro-ing.

My request of him was not to intercede he raised the topic of Michael McDonnell. My only interest in respect of the late Michael McDonnell was that it would be known that I, as Minister of the Department, did not have any objection to he going for the job. Michael McDonnell himself came to me, told me what he intended to do, asked me would I have any objection, and I think he was concerned that the interview panel, or Tom O'Higgins, whoever was doing the recruitment, would effectively maybe rule him out because of his background with the Department, and he wanted to establish what my position on it was.

And that coincided, I think, with Mark's visit to the

Department, and he raised it or maybe I raised it with him, but it happened in my office, and we agreed that he should suggest to Tom O'Higgins not that he be short-listed, but that Tom O'Higgins would be aware that we didn't have any we weren't placing any obstacles in his way. And he was subsequently appointed, and I suppose the important message from it, in fairness to his memory, was that he got this job on merit and deserved it, and he was an exemplary public official.

Q. I don't think there is any dispute about that.

A. And everybody is in agreement about that.

Q. So in general terms, you don't have much difficulty with that paragraph; it's just around the edges of where it took place and that?

A. Yes.

Q. At 14, he said: "I did speak to Mr. O'Higgins in those terms. My recollection is that Mr. O'Higgins did not say whether or not Mr. McDonnell would be short-listed but did acknowledge that his perception of him as a public servant of high repute was the same as I had conveyed as being that of my brother, my father and myself. In fact, Mr. McDonnell was short-listed and was the short-listed candidate subsequently selected by the CIE board as Chief Executive."

A. No dispute on that.

Q. Then at 15: "The only other contacts I recollect having with Mr. Lowry were in October 1995 at the Fine Gael golf

outing at the K Club (as already referred to in my first statement to the Tribunal), and in what I think was during January and February 1996 in relation to Mr. Lowry's decision to hold a fundraising dinner in Dublin for his Tipperary North constituency. The fact that Mr. Lowry had decided to hold such a dinner in Dublin had given rise to some angst amongst the Dublin constituency Fine Gael TDs who saw it as an intrusion into their patch. The then Fine Gael General Secretary, Mr. Jim Miley, and the Taoiseach's special advisor, Mr. Roy Dooney, asked me to sit on the arguing committee for that event, to monitor what was going on and to seek to dissipate that angst. I attended at least two meetings held at Mr. Lowry's Department at which I successfully proposed that a significant proportion of the funds raised by the dinner would go to the Dublin constituencies that were in need of funds. The meeting at Mr. Lowry's Department in relation to this Tipperary North constituency dinner were the only meetings I ever had there with Mr. Lowry. That dinner, I think, took place on Monday 26 February, 1996."

You disagree with those being the only two meetings; is that right?

A. Yes. This is you know, his emphasis on this part of the statement, again it borders on the ridiculous. I was Chairman of the Trustees. I was a Minister. I came up with a suggestion that we would run a fundraiser to assist the Dublin constituencies, the weaker Dublin constituencies

for Fine Gael. And I have to say that I was very conscious of the fact that some of our Dublin constituencies, at that stage, weren't prepared to put in any effort or any commitment in relation to fundraising. It was my project. The project was never intended I cleared it with the Taoiseach, John Bruton; I cleared it with Jim Miley. We agreed the principles of it, and there was never a question and this is annoying, to see this kind of an emphasis there was never a question of Mark FitzGerald having come in having to come in to rein the boy from Tipperary. This was the concept from the word go. And we organised the function.

It was extremely successful. It was probably, in that era, it was the most successful function that Fine Gael ever ran. And Mark FitzGerald certainly did make a valuable contribution towards its success. And I recall, at the final meeting, we went through it, and one of the people that I complimented was Mark FitzGerald, on the basis of the number of teams or the number of tables that he actually managed to secure.

But let me be very emphatic on this: The record in this is very simple. It was my suggestion, my idea. It was always intended for the weaker constituencies with a contribution, needless to say, to my own constituency in North Tipperary. And we didn't need anybody at a subsequent meeting to tell us that. That was the understanding, and that was the basis under which it would be taken up.

Q. I don't want to get into any dispute in Fine Gael and about Dublin and country TDs and people protecting their patches, but you say "the record shows". We have been unable and I am not making a point we have been unable to obtain any records in relation to this event. You realise that?

A. It's a long time ago, and I doubt if the records are there, but all I can say is that it was an exceptionally successful event. It was the biggest fundraiser that the Party organised in modern times.

Q. If you now move to the third statement of Mr. FitzGerald, dated 11th March, 2003.

He says at paragraph number 1: "This statement is the third statement by me to the Tribunal and is further to my second statement to the Tribunal of the 26 November, 2002"

A. Sorry, Mr. Coughlan, I actually don't have this one.

Q. Okay. I'll give you this, and we have one here I can give you.

(Document handed to witness.)

A. His first statement was 11th November; his second statement was the 26th November, the third statement, 11th March.

Q. "This statement is the third statement made by me to the Tribunal and is further to my second statement to the Tribunal on the 26th November 2002. The Tribunal has requested me to give details of my discussion with Mr. Killian O'Higgins, with whom I discussed the approach made by Mr. Michael Lowry to me in relation to the review

of the rent of Telephone House, Marlborough Street, Dublin, in respect of which Mr. Gordon Gill was the arbitrator.

"2. On what I recollect was the same day as and shortly following my meeting with Mr. Lowry in early April 1995 at what was formerly Powers Hotel, Kildare Street (as referred to in paragraph 8 of my statement on the 26 November 2002) I discussed the approach to me made by Mr. Lowry with my colleague, Mr. Killian O'Higgins, at the then Sherry FitzGerald commercial offices at 11 Hume Street, Dublin. I was looking for his endorsement of my view that it was inappropriate to make Mr. Gill aware of that approach while Mr. Gill was engaged in the arbitration process.

Mr. O'Higgins and I debated the alternatives of telling Mr. Gill of the approach (which would have resulted in Mr. Gill having to resign as arbitrator) or of not telling him until he had completed his functions as arbitrator. At the end of our discussion it was my decision that Mr. Gill should not be told of the approach until the arbitration process was completed, a decision agreed with by Mr. O'Higgins. During our discussion, Mr. O'Higgins expressed his general awareness of the Telephone House premises and that in his opinion the prevailing office rent would have been in the order of $\text{€}1/25$ to $\text{€}1/26$ per square foot.

"3. Apart from Mr. O'Higgins and subsequently Mr. Gill himself (after his functions as arbitrator concluded) I did not at the time discuss Mr. Lowry's approach to me with anyone else within Sherry FitzGerald. I did however

discuss the matter at the time with a number of people with whom I was closely connected personally."

Now, you don't know anything about any discussions that took place between Mr. Gill and

A. I don't know. You know, how can you respond to something

Q. I'm not asking. You know nothing of this?

A. I know nothing about it. The only thing I can say the only further thing I want to say, just one brief matter in relation to this is, as I say, this statement is factually incorrect in many places, and as I said, I am extremely disappointed in relation to the tone and the content of the statement, particularly in regard to the property.

Now, I find it difficult, and I am perplexed as to why I have to deal with it, particularly after all of this time.

I also well, like, Mark FitzGerald had never at any stage communicated his annoyance to me. He never raised this with me in terms of saying to me, you know, "This is inappropriate; you shouldn't have done it".

Nobody within the Party he was a Trustee; obviously, as a Trustee, he had an obligation if he felt I was doing something wrong. Nobody ever communicated to me on behalf of the Trustees. He had a ready access to the leader of the Party, and nobody at that level, political level, ever came to me and reprimanded me for anything inappropriate in any respect.

And what I really find puzzling is this all happened when

when did it happen, supposed to be in relation to the property?

Q. 1995.

A. Yes. I resigned my position within the Fine Gael party in 1996, in November 1996. And, like, here is, you know, a man who is extremely disappointed with me. And if he is disappointed with me, he is obviously extremely disappointed with Ben Dunne and he feels that it is inappropriate. But Mark is the man who approached me and asked me, in 1996, in the middle of 1996, to know would I approach Ben Dunne and ask him to stand for Fine Gael in one of the Dublin constituencies. Mark was one of our organisers at that stage. He subsequently, in 1997, was the director of elections. Now that's not the actions of a man who deemed that I did something inappropriate, or that Ben Dunne did something inappropriate. And, in fact, I communicated that request and informed the Taoiseach of the day, John Bruton, that Mark had suggested this, and I have no doubt that John Bruton will confirm this.

And I have to say that the response I got from John Bruton is I probably heard one of the heartiest laughs I heard from him in a long time. So that's that has me a bit perplexed, to how you can go from one stage where you deem something is so inappropriate that you should be reprimanded for it. In the meantime, there is no reprimand, or nobody is notified about it until years later; and in the meantime, the guy who has made the

offending request is deemed to be appropriate for public office. I find it difficult to understand it.

Q. All right. Well, obviously you don't agree with what Mr. FitzGerald has stated in his statements or in his evidence about the approach he says was made to you, and I'm dealing specifically now with the Marlborough House property.

He was cross-examined by your counsel, and in response to your counsel he said that when he drove you back to Kildare Street, that you raised the issue again, and he told you in no uncertain terms to forget about it, and that if anyone here wanted to hear the actual language he used, he was prepared to tell everybody. But you say that no such conversation took place?

A. Well, I discussed it with him once, and that was in the first instance when I rang him, and then when he rang me back and said that he was one of his fellas was dealing with it; it was Gill. Now, that was the only conversation I had with him in relation to it. The matter was just dropped. And I think the subsequent events bear that out. I certainly had no further discussion in relation with it, and I have to say I never heard Mark, in any company, using bad language, and he certainly didn't use any bad language to me.

Q. Now, you say that to be asked to interfere with an arbitrator, or to ask an arbitrator to in some way deal with an arbitration, would be not just inappropriate; it

would be improper, wouldn't it?

A. Yes, I would accept that.

Q. No one needs debate that, I think.

A. Yes.

Q. Mr. FitzGerald is very specific in he says what he requested of him, and he is very specific of the time and the occasions on which that happened. You would agree with relation to that, wouldn't you?

A. He is very specific and incorrect in his recall on a number of the features of it.

Q. Now, you say he is incorrect and inaccurate on a number of occasions, and you say that the request that you made of him was to see if he could intervene with the arbitrator to expedite matters?

A. Yes.

Q. Did you consider that appropriate and proper?

A. Yes, I did. I would have to say that as a politician, and I am sure I speak for most politicians, that there is hardly a week that passes without somebody in politics asked to intervene to, how would I say it, to bring two sides of any argument together, or to get somebody who is taking an entrenched position or somebody who has a decision to make to expedite the decision. I do it every day as a politician, and I am sure every politician does it, and I deem nothing inappropriate about making that approach to expedite it.

Q. All right. Can I just ask you on the scale of things where

you see it. Can I take it how do you view the intervention by a politician, say, to expedite a judicial process? You wouldn't dream of making contact with a judge to see if the judge would expedite a judicial process; would you take at that

A. No. I think most politicians, or any of them that know their place, would stop short of intervening in that process.

Q. An arbitrator is fulfilling a quasi-judicial function?

A. I would have to say, Mr. Coughlan, you are about sorry, I should let you make the point.

Q. No, I am only asking you. I am asking you where you consider this, on the scale of things, to be, because you admit that this is what you say you did.

A. I am absolutely certain what I did. I got a request to hurry it up. My position on this has been corroborated by the evidence of Ben Dunne. He says that's exactly what had happened. I communicated that. I did nothing more, nothing less, and personally, let somebody else be judgmental of me in that respect, I didn't see anything inappropriate about making that request. And as I said, we as politicians involve ourselves in that level of representation on a regular basis.

The only time I would ever you asked me a question about a judicial system the only time I would ever make a request in a judicial system would be in similar circumstances. And may I say, I made such a request last

week on behalf of an unfortunate young man that I needed to bring to the attention of the judicial system that there was a need for a review. Not interfering with what happened, but that there should be a review. And in those circumstances, you may write to the Minister for Justice, and I am sure politicians do; but I certainly wouldn't deem it appropriate to interfere with the day-to-day working of the judicial system or the courts.

Q. Let's be clear. I understand writing to the Minister for Justice, of course. You wouldn't dream of trying to make an intervention to get somebody to contact the Judge?

A. No, absolutely not.

Q. You'd consider that inappropriate, and I don't think there'd be any dispute about that. You didn't consider that to be the position in relation to an arbitrator, even if it was only for the limited function that you say was to expedite the situation?

A. I'd make a big distinction between asking an arbitrator to come to a result, to request a particular result. I didn't see any difficulty with asking for the file to be dealt with, on the basis that this had already been held up, delayed. And I don't recall why it was, but I do know that it had already been delayed substantially.

And that was Ben Dunne's only consideration, that it had been already delayed. You'll have his evidence on record, but he had told me at the time, and I assume that he has confirmed that, that I don't know what happened in the

system, but something happened in the system where the first attempt to arbitrate it fell through, and then he was worried that he'd have to wait another two years for this one. And there was no, how would I put it to you, there was no at the end of the day, he got his arbitration and he got 6 euros, and I think the previous one was 5. So obviously he got what he was entitled to.

So it was never my intention never my intention to do anything other than see if something can be done to hurry it up so that he could get what he was genuinely entitled to. Simple as that.

Q. Well, if I might then just look at what you say you requested of Mr. FitzGerald and what he says you requested of him. You say what you asked him to do was to make an intervention to ask somebody to hurry something up?

A. Yes.

Q. He says that you asked him to intervene with the arbitrator in the arbitration process to increase the rent to a certain level; isn't that right? And he is quite specific about that.

A. That didn't happen.

Q. I know you say it didn't happen. You agree that that's what he said?

A. Yes.

Q. Might I suggest to you that those two positions are poles apart and not capable of being resolved on the basis of a difference of recollection or inaccuracy. They are two

very different positions; isn't that right?

A. Yes. And it is because of that fact that that statement disappointed me so much.

Q. I appreciate that.

A. Yes. I read other evidence given by Mark FitzGerald, and I saw where that evidence, in stark terms, was also disputed.

And it was disputed by Phil Hogan; it was disputed by the late Jim Mitchell; his evidence was disputed by Colin McCrea; his evidence was disputed by Sean Donlon; his evidence was disputed by Denis O'Brien; and his evidence is certainly disputed by me.

Q. Just dealing with you now. They are two very different positions, aren't they? And if what Mr. FitzGerald says of his evidence is correct, or even and I'll deal with it if it's correct or not correct. But if Mr. FitzGerald is correct in his evidence, what he is saying is that you asked him to do, as we all agree, a most improper thing; isn't that right?

A. Yes.

Q. And a very serious thing to say about somebody, very serious, you would agree you would agree it's a very serious thing to say

A. I am not going to get into the levels of seriousness. That's for somebody else to determine. All I can say to you is I didn't do it, because personally I would have deemed it inappropriate, and if has the level of seriousness which you attach to it, as I said, somebody who

is involved both in the profession that he was involved in and as, effectively, somebody on the inside of politics, would have been able to marry those two things together.

And what amazes me is that I wasn't asked to resign shortly after this is supposed to have had happened.

Q. I want to ask you now: Can you think of anything in your personal dealings, political dealings or commercial dealings with Mr. FitzGerald which would ever indicate to you that he was motivated by any malice towards you?

A. All I can say to you, Mr. Coughlan, is all I can say to you is that I am still pondering, I am still wondering, and I can assure you that after ten years of the most intense scrutiny, a lot of things have been said about me, a lot of statements have been made, a lot has been written about me; I have taken a lot of it on the chin, and I have moved on.

This statement has caused me genuine hurt.

Q. I understand

A. And I can't there is no point in I can't understand the reason why this statement was put in. I find it difficult to understand the timing of it. I find it difficult to understand the content of it. And I completely and totally refute it.

Q. No, I understand that. What I asked you was a different question.

Can you think of anything in your personal dealings, your political dealings or any commercial dealings you may have had with Mr. FitzGerald which would indicate to you that he

was in some way motivated by malice towards you?

A. Well, I can't get into Mark FitzGerald's head. Like

Q. I am asking you, do you know of anything?

A. I'll put it to you, I'm not going to be judgmental on Mark FitzGerald. I don't know what his motivation is. I simply can't answer that question. But I certainly in my time, I was never anything other than helpful, courteous and respectful of Mark FitzGerald and his family, and I find it I'm really at a loss to understand why I have had to deal with such an allegation.

Q. Well, can I take it that you cannot yourself think of or point to anything in your personal relationship with Mark FitzGerald or his family which would indicate that he was maliciously motivated towards you?

A. I have never had any personal difficulties with Mark FitzGerald. Whether or not there is something underneath the surface that I am not aware of, I can't say, but I'm not in the business here today of attributing

Q. Can I suggest you'd have the same response in relation to any political connection or relationship you had with him or any business connection you may or may not have had with him.

A. I don't know whether I'd be associated with any political matters. Maybe I am associated with some political matters that he wouldn't be happy with; I don't know. Personally I never had a difficulty with him, and I still don't have a difficulty with him.

But I'm as I said, when I saw that statement, I have to say, of all the statements that have been made about me, it was the one that hurt me most, on the basis that I didn't feel I deserved to have those things said about me, particularly in a forum such as this, or put into the public arena. Because they are without substance; they are without foundation.

Q. They have been said under oath by Mr. FitzGerald, of course; you do realise that.

A. And I am very conscious of the fact that I am giving evidence under oath, and I have given my testament in respect of this

Q. It's in that context I am asking you about the seriousness, because they have been said under oath by Mr. FitzGerald.

A. Yes, and I'm I have to say that, as I said already, Mr. FitzGerald has given a lot of evidence under oath here, and I am not the only one. In fact, I am one of six or seven that's disputing some of the evidence that he has already given.

Q. Thank you very much, Mr. Lowry.

CHAIRMAN: I certainly won't ask you, Mr. Lowry, to stay beyond four o'clock, and if it's not feasible, of course we'll proceed tomorrow; but I may see if some limited progress can be made.

Mr. Fitzsimons, are you intending to exercise

A. Mr. Chairman, if it suits, I am happy to stay until half four or five if you think it will assist the Tribunal

CHAIRMAN: I'll see what progress we'll make, Mr. Lowry.

Mr. McGonigal.

THE WITNESS WAS EXAMINED BY MR. McGONIGAL AS FOLLOWS:

Q. MR. McGONIGAL: I have just one question, Mr. Lowry, if I may.

Mr. Lowry, were any of the decisions that you made in respect of the competition for award of the second mobile phone licence made in return for or on account of any payments you received?

A. Absolutely not.

Q. Thanks, Mr. Lowry.

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

Q. MR. O'DONNELL: Mr. Lowry, I think when were you first elected to the Dail?

A. 1987.

Q. And I think your coming into office in early 1995 was your first experience of Ministerial office, either as a junior or senior Minister?

A. Correct.

Q. And it was also your first experience of the Department of Transport, Energy and Communications?

A. Yes.

Q. You didn't know any of the civil servants involved in the Department, and more particularly, in the Project Team, before you came into that Department?

A. That is accurate.

Q. You had no role in the selection of the Project Team other

than that you were aware that Mr. Martin Brennan was heading up that team?

A. Yes, I didn't have any knowledge of I didn't have any input into the selection of the team or knowledge of what they were until later.

Q. The selection of the independent consultants was not done by you either?

A. No, it was done by public tender, and I received a recommendation from the Department. I simply signed off on it.

Q. I think in fact you never met the Andersen personnel, Mr. Bruel, Mr. Jacobsen or indeed Mr. Michael Andersen prior to or during the project evaluation?

A. That is correct. I never met them. I never spoke with them either before, during or after the process.

Q. Mr. Brennan said that he had a courteous and cordial relationship with you, but that it was not a situation whereby he would drop in to you or you would drop in to him on a regular basis. Would you agree with that?

A. Yes. I was only in the Department for a short time. The only contact I would have had with Mr. Brennan is the one that has already been outlined to the Tribunal, and I had little or no contact with him since. I never had any social contact with him of any description. It was simply on a one-to-one professional basis.

Q. And the other members of the Project Team, whether they were from the Department itself or from the Department of

Finance, you did not know and were not involved with in any way?

A. Absolutely not. I had no contact with them whatsoever.

Q. You wanted, and I presume the Government wanted to ensure that the person selected for the award of the mobile phone licence was selected by a team that was experienced and that was competent?

A. Correct.

Q. And you also, I assume, wanted a team which could be relied on and which had integrity?

A. Yes, most definitely.

Q. Did you have faith at the start of the process that the Project Team would deliver a competent result and a result in which you could place faith?

A. Yes. From my knowledge of the people involved, I considered them to be solid, to be capable, to be efficient, to be of the highest probity and integrity.

Q. And I assume it was also of considerable importance to the Government and to yourself that the decision be seen to be an independent decision based on merit and free of any political interference?

A. That was crucial, yes.

Q. And that was a significant motivation in your decision to have a team chosen from trusted and respected civil servants to select the winner to select the winner of the competition, rather than it being a political choice?

A. That was my position, and that was also the position of the

Government of which I was a member.

Q. Mr. McMahon, whose evidence has been referred to in the course of your examination by Mr. Coughlan, said in his evidence that he believed that the decision had been arrived at independently, without outside pressure of any kind; that he was happy that the result was correct, and that there was no outside influence brought about to affect the result.

A. Mr. McMahon was correct in that assertion, as were all the other public officials who gave evidence.

Q. Every single civil servant who was a member of the Project Team who has given evidence here has indicated that he was not subject to any outside influence and that he made, or participated in the decision-making process freely and independently. Have you any basis on which any of that evidence could be contradicted?

A. Absolutely not.

Q. I think you said that you were firstly a busy Minister, and I think, as you have indicated, it was your first experience of Ministerial office, and there were a number of serious issues which you had to deal with in your time in the Department. You outlined Horgan's Quay. You outlined Aer Lingus. You outlined the difficulties in CIE. And you said, as Minister, you had a number of bad days.

A. Mmm.

Q. I take it you wouldn't be human if you didn't want at times to announce a good day, or to have a good day, to announce

a result as soon as you could?

A. That would be a definite.

Q. Ministers like announcing good things. They don't necessarily enjoy announcing bad things?

A. It was the Department of Bad News. And I saw this issue as one of progress, and one of importance, and one an area where a policy difference could make a change, and for the better, particularly for the consumers.

Q. And I think at the time that the announcement of the decision was coming up, you indicated that the Cabinet were considering the crisis in Aer Lingus and were considering the possible funding of Aer Lingus as one of the areas of difficulty which they were facing, which was obviously in your Department in every sense?

A. That's correct, yes.

Q. So that was more potential bad news coming out of your Department, if I can put it that way?

A. Yes, that's true.

Q. And that you were, in that sense, willing and anxious that the result of the competition be announced as soon as possible?

A. Well, my position was simple: That if there was a result, well, what else would you do other than announce it? And you would do that as soon as you possibly could, yes.

Q. So in the sense that you may have been perceived as somebody who was, I think the note says, disposed towards announcing the result of the competition quickly after the

finalisation of the evaluation report, that would be

correct?

A. It would. And I am sure it would be a natural reaction for whoever was minister of the day, and that included me.

Q. That's what the minute of the Project Team on the 9th October 1995 says, that "The Minister is disposed towards announcing the result of the competition quickly after the finalisation of the evaluation report". In racing terms, though, you were aware that you had to wait until the winner alright came through?

A. I did everything on the basis of the advice and the instruction that I was getting from the civil servants.

And as soon as the civil servants brought the result to me, we then moved to the next stage, which was clearance for a political decision and then public announcement.

Q. Yes. Now, there was some discussion about the concept of bankability, and I think that the context of it is in the note of Ms. Nic Lochlainn, which I will just find. It's the note of Ms. O'Keeffe that you did "Minister does not want the report to undermine itself, e.g. either a project is bankable."

Now, Mr. Lowry, your position is that you never sought information about the internal workings of the consortia?

A. That's correct.

Q. And you were never given any information about the internal workings of the consortia?

A. Correct.

Q. But when you were going to announce a decision which was going to be based on independent assessment, can I take it that you wanted that assessment to be clear, that decision to be clear?

A. Yes, I did want it to be clear.

Q. Rather than a muddled decision or an internally inconsistent decision?

A. Absolutely. That was vital to the decision; of course it was.

Q. And is it fair to say that you wanted a decision that both you and the Government could rely upon?

A. Absolutely. That would be of, I suppose, primary importance, that if you were announcing a decision, that that decision was reflected properly in whatever statement you would make.

Q. And so you were anxious to have a decision that was bankable, in the sense of being reliable and internally consistent, rather than confused or contradictory?

A. Exactly.

Q. Now, there was an implicit criticism in one of the questions put to you. It was suggested to you that the issue of bankability was raised with you, and that was there was a solution suggested in what appears to have been some sort of discussion between you and Mr. Martin Brennan. Now, perhaps you would deal with that.

Can I take it, firstly, did you ever discuss the financial frailties of any of the consortia with Mr. Brennan?

A. Most definitely not.

Q. You are absolutely certain about that?

A. I am absolutely certain of that.

Q. Did Mr. Brennan ever ask you to suggest a solution for any potential financial or other frailty in any consortia?

A. He never even suggested it.

Q. And, therefore, the suggestion that a solution was put forward by you to a financial to a perceived financial frailty in one of the consortia is, quite simply, utterly wrong?

A. Utterly wrong. It simply didn't happen.

Q. There was also an implicit criticism in one of the questions put to you by Mr. Coughlan this morning to the effect that because of the, in effect, the manner in which the decision was taken, there was no time for detailed scrutiny by the Government given to the potential frailties of the two top-ranking competitors.

Now, firstly, Mr. Lowry, you and the Government had delegated this job from the Government to the Project Team, the choice of who was to be the most appropriate person with whom to negotiate the next licence; isn't that right?

A. That is correct. We had appointed our scrutineers.

Q. And I think you said earlier on that one of the reasons was because you wanted to avoid a perception of interference and to ensure that this was seen to be an independently arrived-at decision, as well as a decision which relied on the expertise of the civil servants?

A. That reflects our position, yes.

Q. Neither you nor, so far as I am aware, any other member of the Government had particular expertise on roll-out or tariffs or financial capabilities between one party in the consortia or the other?

A. No, and we left that to the people who were competent to do it.

Q. Which was the Project Team?

A. The Project Team.

Q. In issues of policy, such as, for example, whether to put funding into Aer Lingus, that was a matter for the entire Cabinet, on which the Cabinet and indeed all the parties would have had views?

A. Yes.

Q. But this was a competition, and the competition was left to the experts to decide who should be the recommended licencee?

A. That was the position of the Government, and that position is reflected in all of the actions in all of the paperwork on behalf of the Government.

Q. So if you had, in a sense, tried to second-guess what the Project Team had already come up with at a decision, you yourself would have been subjected to criticism for interfering in a political manner in a situation where you had already devised a situation whereby this would be delegated to an independent expert team?

A. Had we deviated from the advice we got or the

recommendation we got, we would have created a horrendous legal minefield for ourselves. Absolutely no doubt about that.

Q. And therefore, had you taken a day or a week or a month or eight years to look at the final report, you still could not have come up with a situation where you would have done anything other than follow the decision of the experts?

A. I had a decision, as Minister, a recommendation from them which was crystal clear, which was unambiguous, which was unconditional. And I did what was expected of me as a Minister: I conveyed that to the Government.

Q. And having heard all the evidence of the civil servants, and indeed the other evidence, have you any comment to make on the integrity of the civil servants who participated in this project?

A. From my knowledge and my dealings with them, as I said, all of them were exceptionally capable people. They were very careful. They were very thorough. They went to great measures to ensure that the integrity of the system was protected, and I have nothing but the utmost respect and regard for those public officials. And it pains me to see the level of publicity surrounding that decision, because I know and I feel in my heart that those public officials did what they are renowned for doing: made a decision in compliance with what the regulations and the rules were, and in conformity with what we have all come to expect from the civil service in this country.

Q. You are aware, Mr. Lowry, that they have been subjected to intensive questioning up here. Mr. Brennan for 20 days; some of the other witnesses for very long periods in the witness box. You are aware of that?

A. Yes, I am.

Q. You are aware that, if I can put it this way, questions of a loaded nature have been put to them on a number of occasions?

A. Yes, I would be aware of that.

Q. And you are aware that their experience up here and the publicity attaching to their evidence is deeply unpleasant for them, and is certainly not part of their job, their normal role as civil servants trying to serve the State in the best way they can?

A. I would say that it's probably unique. I don't believe it ever happened previously in the history of the State.

Q. I see. Thanks very much, Mr. Lowry.

THE WITNESS WAS EXAMINED BY MR. FANNING AS FOLLOWS:

MR. FANNING: If you want to, Mr. Chairman, I'll be somewhere in the region of 35 to 40 minutes. It's probably preferable in all the circumstances to try and conclude Mr. Lowry's evidence this afternoon if that's agreeable to you.

CHAIRMAN: Endeavour to do so.

Q. MR. FANNING: Mr. Lowry, if I can begin with an issue that may be fresh in your mind, and that's the issue in relation to Mr. FitzGerald. The first aspect of his evidence I want

to refer to is his evidence in relation to your conversation with him at the Fine Gael Golf Classic at the K Club on the 16th October 1995.

Mr. FitzGerald alleges that you told him on this occasion that Denis O'Brien had made a good impression on the Department, that he had good sites and marketing, and that there would, in any event, be a third licence. And I think there is very little in between you and Mr. FitzGerald as to the content of the conversation; isn't that so?

A. That's correct.

Q. Now, I have to suggest to you that the nature of the information that you furnished him with, both on your account of the conversation and on his, is innocuous information that was of very little value. Would you agree with that?

A. Absolutely.

Q. And I have to suggest to you, and it was put to Mr. FitzGerald in the witness box, that by its nature as innocuous information, it's not the sort of information that you would have bothered to volunteer, other than an inquiry of it was made of you. Would you agree with that?

A. I would.

Q. I might also suggest that the reference to the fact that there would be a third licence anyway subsequently demonstrates, if that was the extent of your knowledge on the 16th October, 1995 and I'll ask you that in a moment that you didn't know at that stage who was going

to win the licence?

A. I didn't know.

Q. Because it would have been a redundant thing to do, to refer to the possibility of a third licence, if you were aware that Esat were going to win the licence at that time, wouldn't it?

A. That would be a reasonable assumption, yes.

Q. And you have give evidence to the Tribunal that you didn't know the order of the top two at this time; isn't that so?

A. That's correct.

Q. So what you were telling Mr. FitzGerald was in fact your own state of knowledge, in that you really didn't know whether Esat were winning the licence competition or not, as of the 16th October; isn't that the position?

A. That is the position.

Q. Now, in relation to Marlborough House, Mr. Dunne has attended the Tribunal, and he has given evidence under oath also. And he said that he never mentioned to you that he wanted the rent for that property increased from approximately $\text{€}1/25$ per square foot to $\text{€}1/210$ per square foot. Does that accord with your recollection of the conversation that Mr. Dunne had with you?

A. Yes. You are asking me?

Q. I am asking you, did he mention that he wanted an increase from $\text{€}1/25$ to $\text{€}1/210$ per square foot?

A. No, he didn't, never.

Q. And if he didn't mention it to you, and he says he didn't

and you say he didn't, it would have been, I have to suggest, very difficult for you to make up the figure in any conversation that you were going to have with Mr. FitzGerald; isn't that so?

A. Wouldn't have had a clue what figures they were talking about.

Q. Indeed. And you couldn't have been aware of it, but Mr. Coughlan is aware it was, and the Chairman person is aware of it, and I am aware of it, that there was a Harrington Bannon report submitted on behalf of Mr. Dunne in the arbitration which, even putting his case at its highest, as any valuation report submitted on behalf of a landlord in an arbitration always will, didn't even claim $\frac{1}{2}$ 10 per square foot. Were you aware of that at any stage?

A. I wasn't. But it was obviously very interesting.

Q. And not only does Mr. Dunne say he didn't mention a figure to you, I have to suggest to you it's very unlikely that he could have mentioned a figure to you that he wanted, that his own expert evidence being submitted in the arbitration didn't assert any entitlement to; doesn't that stand to reason?

A. It absolutely does.

Q. Now, in relation to Mr. FitzGerald and the evidence that he has given, Mr. Coughlan has put it to you in fairly stark terms this afternoon that there is an inevitable conflict between you and Mr. FitzGerald. And I don't think you disagree with him on that?

A. No.

Q. And you have been asked to sort of look into your crystal ball, as it were, and divine any reason that he might have to make a statement against you borne out of malice. Isn't that so? Can I just ask you this, and I don't want to evince malice if there is none there, but am I correct in saying that it's a matter of public record that Mr. FitzGerald was a Trustee of the Party for a considerable period of time and no longer holds that position in relation to Fine Gael?

A. That is correct, yes.

Q. And it's been a matter of record in national newspapers that there was something of a falling-out between Mr. FitzGerald and Fine Gael; isn't that the position? I mean, I have read it in the national newspapers.

A. Yes, those involved in Fine Gael certainly will agree, yes, that there is a disaffection.

Q. And none of these statements were made by Mr. FitzGerald until after that unfortunate falling-out; isn't that the position?

A. I notice that from the date on the statement, yes.

Q. And insofar, Mr. Lowry, as the Tribunal may have to make a judgement between your credibility and the credibility of Mr. FitzGerald, I do want to just point out to you a number of issues in relation to Mr. FitzGerald's credibility to see if you have any comment to make.

In the first instance, most promptly, Mr. FitzGerald's

account of his dealings with Mr. O'Brien in relation to the GSM licence is denied, and I think it's fair to say vociferously denied by Mr. O'Brien, who, through his counsel, Mr. McGonigal, has described Mr. FitzGerald's evidence as untrue, made up and lies. Are you aware of that?

A. I read it, yes.

Q. Mr. FitzGerald's recollection that he has put in evidence to the Tribunal, on oath, of speaking to Mr. Jim Miley, the General Secretary of Fine Gael, about the inappropriateness of Esat and Denis O'Brien being a sponsor of Golf Classic, is not in any way supported by Mr. Miley's evidence, who has no recollection of this at all. Are you aware of that?

A. Yes, I am aware that his evidence was very much contradicted by Jim Miley, who was a very careful note taker in relation to his dealings with every member of the Party.

Q. I see. Mr. FitzGerald's recollection of telephoning your programme manager, Mr. Colin McCrea, to check that the decision to award the second GSM licence was going to be a Government decision, is not supported by Mr. McCrea's evidence to the Tribunal or statements to the Tribunal. He has no recollection of any such contact. You are aware of that also, I think.

A. Yes. And I would have the utmost respect and regard for the evidence of Colin McCrea.

Q. Mr. Phil Hogan, who I think then I won't guess in

respect of the time line but he certainly was at all material stages a senior member of the Fine Gael party, and he was a front-bench spokesman, and is today. He felt that the Lloyds Brasserie meeting described by Mr. FitzGerald as having taken place on the 17th October, 1995, simply didn't take place. He qualified that by saying if he was wrong, he certainly didn't recall it; but his primary evidence to the Tribunal was he believed it didn't take place at all, contrary to Mr. FitzGerald's evidence. Are you aware of that?

A. I am aware of that from the evidence that Phil Hogan has given to the Tribunal, and I am also aware of it from Phil Hogan personally, that it is absolute in his mind that no such meeting ever took place.

Q. You have spoken to him about it?

A. Pardon?

Q. Are you suggesting you have spoken to him about it?

A. Yes, yes.

Q. And he has confirmed

A. He raised it with me in the course of conversation at a social event and said you know, confirmed that it was an illusion.

Q. Very good. And we know the late Jim Mitchell, we know, had no recollection of this meeting at Lloyd's Brasserie either, and he conveyed those instructions to his solicitor, Mr. O'Higgins, who informed the Tribunal of Mr. Mitchell's recollection before his demise. Are you aware

of that?

A. I am, absolutely, yes.

Q. So insofar as the Tribunal is in the unfortunate position of having to engage in a process whereby it adjudicates in respect of Mr. FitzGerald's credibility as against yours, I think you have noted in your evidence that quite apart from you, Mr. O'Brien, Mr. Miley, Mr. McCrea, Mr. Hogan and the late Mr. Mitchell see the world rather differently to Mr. FitzGerald; isn't that the position?

A. That is the position, according to the evidence that I have read.

Q. If I could return to a number of other issues, Mr. Lowry, the first of which is in relation to the protocol, as it's been described here, and the issue of how that related to you in terms of the appropriateness of you meeting applicants.

We looked yesterday at Maev Nic Lochlainn's minutes of the 6th March, 1995 that's the second GSM Project Group meeting and that's at Document 41/47, where, at paragraph 6 of those minutes, the procedure for dealing with potential bidders during the tender process was set out. And I just want to confirm that you are aware that there is no note in Ms. Nic Lochlainn's minutes to the effect that these procedures were agreed to apply to you; isn't that so?

A. That is the factual position.

Q. There is also a document scripted by Martin Brennan, who

took a note of the meeting, and that document is at 41/48.

I don't think we need to look at it. The circulation list for that document included Mr. Loughrey, the Secretary of the Department; Mr. Fitzgerald, the Assistant Secretary; Mr. McMahon, and Mr. McQuaid. But the circulation list on that document it's Document 41/48 did not include you. Do you recall receiving a copy of that document at the time?

A. I never did receive a copy of it at that time or at any other time.

Q. I see. Mr. Brennan agreed in evidence, in response to a question that I posed to him on his most recent visit to the Tribunal, on Day 306, at Questions 38 and 39 and the answers provided thereto, that the protocol was for the Project Group and not for the Minister. Was that your understanding of the position?

A. Most definitely, yes.

Q. At the meeting of the Project Group on the 14th September, 1995 that's the 11th meeting of the GSM Project Group there is a reference to the question of whether the protocol applied to you.

And I am hoping we can put that document up on the screen.

I had a word with Mr. McCullough about it earlier on. If it's possible, I'd like to do so, because it hasn't been put to you in the course of your evidence. The page I am interested in is the second page of this document, which is the 11th meeting of the GSM Project Group minutes, the

report of the meeting of Thursday 14th September, 1995.

It's the second page I am looking for, I think.

Now, there is a paragraph, I suppose about two-thirds of the way down as it appears on the screen there, beginning:

"Mr. Brennan also stated and the group agreed that no further contact between the Evaluation Team and the applicants was possible, although access to the Minister could not be stopped."

I have to suggest to you that that suggests that the group were aware that the protocol didn't apply to you, and were aware that a different position pertained in terms of contacts, vis-a-vis applicants and you; and that's clearly borne out by that minute. Isn't that the position?

A. That is the position.

Q. And your evidence to the Tribunal has been that Mr. Loughrey discussed the process with you, and it was agreed by you with him that you would take a hands-off approach to the process generally; isn't that so?

A. That was the agreement between us.

Q. And you recall that your discussion with Mr. Loughrey was to the effect that it was preferable that you didn't meet with applicants, but that he accepted, in fact, having discussed the matter with you, that it was inevitable that this would happen, and that the counsel of prudence in such cases was you ought not to get into any level of detail with them if you did meet them. Is that a fair summation of your dealings with Mr. Loughrey on this issue?

A. That is the accurate position, yes, most definitely.

Q. So it isn't really a position of you disregarding official advice, as some elements of the media reported your evidence as indicating yesterday; it was actually a question of you coming to some sort of understanding with the Secretary General and finding what I would call a via media or a compromised solution to the conflicting demands upon you as Minister; isn't that so?

A. Yes. As usual, I have to say I was appalled at the coverage of my evidence in relation to yesterday with a heading "Secret Meetings." My position is as you have exactly outlined it.

Q. Yes. Because you believed that at a political level, you had a responsibility to meet with people as a courtesy on behalf of the Department, but that the purpose of any such meetings was really just to thank the applicants for their interest, to explain to them the way the process was being run by an independent Project Team advised by international consultants, and you would have stressed at all stages that you were not involved in the competition process yourself; isn't that so?

A. That is correct.

Q. And in any event, you simply weren't in a position at any stage, in respect of any of the meetings that we discussed yesterday, to impart any information of significance to any of the applicants that you met; isn't that the position?

A. That is correct, because I didn't have any information.

Q. And in fairness, even to Mr. Boyle, who gave evidence, he makes no such accusation in relation to the meeting that took place in Killiney Castle Hotel; isn't that right?

A. That is true.

Q. And in these circumstances, you reject any suggestion that you behaved inappropriately in meeting Mr. Boyle in the Killiney Castle Hotel, or, for that matter, in your discussion with Mr. O'Brien in Hartigan's; isn't that the position?

A. That is correct.

Q. Do you find it ironic, Mr. Lowry, can I just ask you this, that Persona, the consortium who are now seeking to challenge the process by which the second GSM licence was awarded to Esat, was itself happy to avail of the opportunity to meet you, both through Mr. Boyle of Sigma and Mr. Tookey of Motorola, and one of the flaws that is now being examined by the Tribunal is a flaw that seemed to operate to their benefit at the time to the extent it was a flaw, do you find that an ironic turn of events?

A. To say the least, it is.

Q. And of course you reject any possibility that you would even have been capable of debriefing Mr. O'Reilly at Galmoy on the 15th September, 1995, much less the suggestion that you in fact did so?

A. That is correct.

Q. Now, just in relation to the Tricot Marine conversation with Mr. Towey, as I'll describe it. Your evidence

yesterday was to the effect that your telephone call was prompted by your recollection of Colin McCrea, your programme manager, raising rumours that the outcome of the GSM process had in fact been effectively determined by this stage; isn't that so?

A. That's correct.

Q. And you think you had that conversation with Colin McCrea earlier in day in question, and it prompted you to make an inquiry of civil servants in the state of the GSM competition?

A. Yes.

Q. And your recollection is you may have sought Martin Brennan, but in default you were put through to Fintan Towey in his absence, and that's the way you came to speak to Mr. Towey in this context. Is that the position?

A. That is the position.

Q. And Mr. Towey explained to you that the competition was still very much alive; and in fairness to him, he didn't expand very much beyond this. He has given evidence that he said to you that it would be to your advantage not to have knowledge as to how the evaluation was proceeding. Are you aware of that?

A. I am, yes.

Q. And you certainly obtained no information from Mr. Towey about the state of progress of the competition, other than that it was ongoing and that there were several strong contenders?

A. I didn't seek any information, nor did I get any.

Q. So, in real terms, you were given precious little information by Mr. Towey about the process on this occasion?

A. Very slim, other than a general query.

Q. Therefore, it's impossible to see, either on his account of the conversation, or on yours, how it could have had any influence on the outcome of the competition at all; isn't that right?

A. That would be correct, yes.

Q. I'll just turn now to the issue that's arisen in respect of Mr. McMahon's notes of a meeting on the 3rd October, 2005. Those are the notes contained in Tribunal Document 42/116. This is the "Minister wants to accelerate process" note. And you are familiar with that, and Mr. Coughlan asked you some questions about it?

A. Yes.

Q. You have given evidence yesterday that you never requested that the process be accelerated, and that you don't believe you ever had any discussions with any official that could have caused this impression to be created; isn't that the position?

A. That is my position, yes.

Q. Now, can I just break that point down, Mr. Lowry. You never at any stage indicated that the process should be foreshortened or compressed in some way, did you?

A. Absolutely not.

Q. You never at any stage suggested that steps in the process should be omitted in order to produce an end result any quicker?

A. No, I did not.

Q. Quite frankly, Mr. Lowry, did you have any control over the timetable that the GSM Project Group were working to?

A. No. That was an internal matter to the Project Team.

Q. Was there any way open to you to either accelerate or decelerate the process?

A. No.

Q. And accelerating the process, as a concept, suggests some outside interference with the manner of the running of the process by the Project Team; isn't that so?

A. That was the only way it could happen, yes.

Q. And you absolutely reject that?

A. It never did happen.

Q. You referred in evidence yesterday to a letter that we didn't have put on the screen, and I am hoping it might be put on the screen now. And that's a letter of the 14th September, 1995, from Martin Brennan, the Chairman of the Project Team, to Michael Andersen. And this is a letter that the Tribunal's legal team and the Chairman will be familiar with, and we don't need to open it in full.

In short, one of the issues in the letter was the amount of money that the Department were paying Mr. Andersen and his company for their services. That's not of significance now, but at the second page of the letter, there is a

paragraph that I want to refer to, if that can be put up.

And it's the first full paragraph. You will see there is a

bullet point, and the paragraph begins: "The final

evaluation report shall take account of comments..."

Do you see that paragraph?

A. Yes.

Q. If I can take you to the final sentence, that's the final

three and a half lines of the paragraph, where it states:

"The final evaluation report taking into the account the

views of the GSM Project Group shall be submitted to the

Department by AMI by 25 October, 1995, unless an

alternative date is expressly approved by the Department

prior to the said date."

Now, that letter speaks for itself, and you are not a party

to the letter. But I just want to ask you this. Doesn't

it appear from the letter that in fact, six weeks before

the 25th October 1995, that date was seen as the date

whereby the final evaluation report would be submitted?

A. Yes, and that's why I brought attention to this letter

myself yesterday, because I can't understand why I'm asked

questions about acceleration with the presence and the

existence of that letter.

Q. And it's quite inconsistent with any suggestion, that

letter is, that the final date was as a result of pressure

from you for any acceleration of the process; isn't that

the position?

A. Absolutely.

Q. It's important to point out in this regard, and the tenor of this point has been put to you by Mr. O'Donnell, that neither Mr. Brennan nor Mr. Loughrey give any evidence, nor did any civil servants, to sustain any suggestion that you sought an acceleration in the process. You are aware of that, I think?

A. I am aware that nobody has made any inference from within the Project Team or the Department that I did anything to accelerate the process, yes.

Q. If I could turn now to the note of Margaret O'Keeffe of the 9th October, 2005. That's Document 42/121. And there were two quotes that have been of interest to the Tribunal, in particular, that are contained in that note.

The first of them is: "Minister knows shape of evaluation and order of top two. Minister does not want the report to undermine itself, e.g. either a project is bankable."

Now, in the first instance it was put to you yesterday that this note represents comments made to the group by Martin Brennan, the Chairman of the group. You believe, I think, and you have already given this evidence, that you may have known the identity of the top two but not the order of the top two at this time; isn't that so?

A. That is correct, yes.

Q. But whatever your precise state of knowledge, you believe that it must have derived from a very general conversation that you had with Mr. Brennan, who was informing you of the progress of the Project Group at a very late stage in its

work; isn't that the position?

A. That would be the position, yes.

Q. Mr. Lowry, Mr. Coughlan put it to you yesterday that this memorandum effectively demonstrated political interference with the deliberations of the Project Group. Do you agree with that?

A. I was taken aback by that suggestion. I wasn't expecting anyone to put that to me, and I totally disagree with it.

It just simply didn't happen.

Q. At worst, Mr. Lowry, doesn't it indicate that you were given minimal information about a process that you were powerless to influence or control in any way? Isn't that the position?

A. True.

Q. And you never sought to interfere politically with the work of the Project Group in terms of applying pressure upon it to reconsider any of its decisions or deliberations; isn't that so?

A. Never. Not at any stage in the process.

Q. And specifically, you never suggested, nor is there any suggestion that you ever suggested to any member of the Project Team that you had a preference or a favourite for one application over the other; isn't that the position?

A. I never favoured or hindered any applicant; that is correct.

Q. And you understood the process to be constructed in such a way where even if you had said such a thing, it would have

had no impact or effect on the process, good, bad or indifferent; isn't that right?

A. That is right. That is correct.

Q. You gave evidence yesterday to the effect that you would not have personally used the language that you didn't want the report to undermine itself; it didn't sound like your language, and it might have been Mr. Brennan paraphrasing your discussion with him. Isn't that so?

A. Yes. I have considered that since yesterday, and I have no doubt that that is reflects the position as it was then.

Q. You might have said something to Mr. Brennan along the lines that you didn't want a report that wouldn't stand up to scrutiny, or would have flaws in it?

A. Yes, or leave me in a political dilemma.

Q. And Mr. Brennan may have paraphrased that by saying the Minister doesn't want a report to undermine itself, and you don't criticise the language. In many ways it does sum up your view; isn't that so?

A. Yes.

Q. Now, can I just ask you this, because Mr. Coughlan put it to you in such a way yesterday that suggests that the Tribunal have a concern about you making this representation to Mr. Brennan.

What Minister or Government do you think would ever want to make the decision on foot of a report that would undermine itself?

A. No Government or Minister would like to be put in that

position.

Q. Indeed. So doesn't it verge on the self-evident, then, to say that nobody would want to base any decision, much less an important decision, on a report that would undermine itself? Isn't that self-evident?

A. Self evident, yes, it is indeed.

Q. So, wasn't a comment, whatever way you must have precisely made it to Mr. Brennan, was really no more than a statement of something that would have been obvious to any sensible person that considered the matter?

A. True.

Q. And isn't it normal, reasonable and understandable that any Minister in your position would have been anxious that the report into this particular matter would have been clear and robust, precisely because the recommendation to be contained within it would have been potentially controversial?

A. That would reflect any Minister's position, I think, in those circumstances.

Q. And such a view could be expressed by you as Minister on an absolutely content-neutral basis; nothing to do with who was winning the report or who was winning the competition in the report, but simply you wanted a report that would stand up and be capable of being defended?

A. It was a general request that I would have had that whatever report you get would be clear, unambiguous and wouldn't lead to debate, yes.

Q. Now, Mr. Coughlan further suggested to you yesterday that this, cumulatively, must have constituted a breach of the sealed process. Now, we have a difficulty up here, in that nobody has ever, I think, defined what constitutes a breach of the sealed process. Mr. Loughrey used the imagery of the hose above the waterline and below the waterline, and perhaps somebody, before the Tribunal is over, will explain to us what constitutes a breach of the sealed process.

Can I just ask you this for the moment. To the extent that it is suggested that your conversation with Mr. Brennan constituted a breach of a sealed process, it was Mr. Brennan who conveyed the information to you; isn't that so?

A. That's correct.

Q. Because he was inside the tent of information and you were outside the tent of information; isn't that so?

A. Yes.

Q. So there was no action or conduct on your part that constituted a breach of the sealed process, as far as you are concerned; isn't that the position?

A. Absolutely none.

Q. I see. Now, if I could turn to the result of the competition. We have seen the briefing note that was prepared for you in evidence this morning, and I think very fairly you have conceded to Mr. Coughlan that you are not sure exactly when you saw that briefing note.

A. Correct.

Q. This was the briefing note that you asked to be put up on the screen this morning. I think we all know the briefing note we are talking about. But leaving that aside, the conclusion in the briefing note which states:

"Recommendation: The GSM Project Group is therefore unanimous in its recommendation that the Minister should enter into licence negotiations with the A5 consortium."

It's totally unambiguous?

A. Absolutely.

Q. And it conveyed to you, whenever you got it, as Minister, in plain English, that the unanimous winner was A5, which we now know was the Esat Digifone consortium?

A. It couldn't have been clearer.

Q. And what we do know for sure, because Mr. Loughrey has given clear evidence on the fact, is that he informed you of the result on the 25th October, 1995; isn't that the position?

A. That is the position.

Q. And he furnished a written memorandum to you, quite apart from orally informing you of the result, and we have seen that memorandum this morning, and perhaps we could have it put up again, if possible. It's Document 43/141. And I'm not sure how many times we can read it out, but it seems to me a document of the utmost significance in analysing your role around this time.

It states that "The process in selecting the most qualified application for exclusive negotiation with the intention of

awarding a second licence for mobile phone operation is now complete.

"I am fully satisfied that the process in selecting the potential holder of this licence was carried out in a scrupulously fair and professional way.

"The process was cleared with the EU Commission, and the independent Danish consultants acted at all times with expert professionalism and disinterest.

"The project steering group comprised senior officials of this Department and the Department of Finance. Their selection was unanimous.

John Loughrey,

Secretary,

25th October 1995."

This memo clearly demonstrates you were informed that the recommendation was unanimous; isn't that so?

A. Yes, written by the Secretary General of the Department which I was in, a long-serving civil servant, senior civil servant.

Q. And whenever you received the briefing note, it's fair to say that that document is entirely consistent with the briefing note, isn't it?

A. The short document is a synopsis of the briefing note, yes.

Q. Let me tell you this, Mr. Lowry. The Tribunal has made it its business to spend a considerable period of time investigating the views and concerns held by two members of the Project Team, Mr. McMahon and Mr. O'Callaghan, who may

or may not have had a slightly different view of the world on the 25th October, 1995. There is a suggestion that they wanted more time and that they didn't think that the Project Team had finished their work.

Now, can I just say this to you: If they held that view, were you aware of it on the 25th October?

A. No, I was not aware of it until the Tribunal started.

Q. I see. So the information that you were given as Minister by Mr. Loughrey, your Secretary General, was entirely unambiguous; isn't that the position?

A. Completely and totally unambiguous. It was crystal clear. There was no ambiguity whatsoever about it.

Q. And just by way of context, on the same day Mr. Jimmy McMeel, who was another member of the Project Team, reported back to his Minister, who was the Minister for Finance and I might just ask for that document to be put up on the screen for a moment also. That's document 43/138.

And I'm not suggesting that you would have seen this document, because it was a document that Mr. McMeel prepared for his Minister; but it's a document of the same date. And you have given evidence that you had a conversation, and that the view of Mr. Quinn, the then Minister for Finance, was ascertained. And you'll see this document, which again is dated the 25th October, 1995, and it sets out, in the middle of the page, a ranking. Do you see that ranking?

A. Yes.

Q. And Esat Digifone have, according to that ranking, 432 points; the runner-up consortium is Persona, and they seem to score 410 points. Isn't that so?

A. Yes.

Q. So Mr. McMeel, who was part of the same Project Team that Mr. Brennan was, was reporting back to his Minister independently and simultaneously that the competition was over, the marks were in, and Esat Digifone were the winner; isn't that so?

A. Very clear.

Q. Now, Mr. Loughrey is adamant that the result he gave you was unconditional, and that there was no health warning attached to it, to use a phrase that appeared in evidence today. Are you aware of that?

A. I am very conscious of that, and was at the time.

Q. I don't know if it's possible to put some of Mr. Loughrey's evidence up on the screen at this moment in time, but if it was possible, Day 187, page 101 would be of assistance. I am simply not sure if that's technically possible. If it's not possible, I'll simply read out the passage. Day 187, page 101. There may be a difficulty in doing that immediately, so I propose to simply read out the passage.

CHAIRMAN: It will suffice if you read it, Mr. Fanning.

MR. FANNING: This is Mr. Loughrey's evidence. He said:

"I didn't see qualifications per se, because if there were qualifications, it would have been a conditional approval.

The group did not come to a conditional approval. The group came to a clear approval of the winner. It also noted that the second and third were well qualified to be the recipients of the licence, but no qualifications. I did see, however, that in the context of weaknesses, that these would have to be addressed during the licence negotiations; but that, to me, wasn't a qualification or a reserve. That just was prudence to address matters that should be addressed in licence negotiations."

So you have heard now that passage of Mr. Loughrey's evidence. Doesn't that demonstrate that the view he took at the time was that the result was an unconditional result?

A. Yes.

Q. Is it your recollection, Mr. Lowry, that you were advised by both Mr. Loughrey, and indeed Mr. Jennings, who was the Departmental Secretary, who have both given evidence on the point, that it was preferable to make the announcement immediately to prevent rumour and any attempt or insinuation of political interference with the result?

A. There was a very strong recommendation to me.

Q. Mr. Loughrey has given evidence to the Tribunal, and again I quote from Day 187 "My advice was clearly to go for the quickest possible route to formal decision". Does that tally with your recollection?

A. Absolutely.

Q. When Mr. Loughrey was challenged by Mr. Coughlan as to

whether some further consideration ought to have been given, he replied as follows, at page 109 of Day 187: "It wasn't a document that anybody could exercise any discretion over, Mr. Coughlan, as I saw it, whatsoever. So in that event I didn't see the point in waiting."

And, again, does that tally with the dealings you had with Mr. Loughrey and the advice he gave you?

A. Yes, it does.

Q. Mr. Loughrey doesn't recall any particular reaction on your part when he informed you of the result. He feels that your reaction would have been encapsulated in the phrase "Let's get the show on the road". Is that a fair assessment of how you would have reacted?

A. Yes, I was glad that we had a winner and we could get on with it.

Q. Even in terms of the issue of how to announce and how quickly to announce, we know that Mr. Loughrey provided you with written advice on the spot, as it were, on this precise point, and we saw that document on the screen this morning. He seems to have been a man with an extraordinarily helpful facility for generating documents that recorded matters that might subsequently be of importance.

And that document, which is at 43/141 A, if we could put that up for a moment. If we can just look at the second paragraph of the document.

"There might well be considerable merit in getting

agreement of the Minister for Finance, and of course the Party leaders, that you are announcing the decision immediately following the meeting at 4 o'clock."

So that's written confirmation, as you saw it, advises, that a quick announcement was a good idea?

A. Absolutely conformed with the oral advice that he had previously given me.

Q. And in fact, you did seek the approval of the Minister for Finance, and you briefed the leaders of the Government parties, starting with Mr. Bruton, and we have had that evidence this morning. And the result was announced that evening following your discussion with the Taoiseach; isn't that right?

A. That's correct.

Q. And this is just a vital point, and I am afraid it was lost, or I am afraid that it might have been lost in this morning's evidence.

Mr. Bruton, the Taoiseach, approved of the decision to announce the result of the competition on the 25th October; isn't that so?

A. Yes, he did indeed.

Q. So, to the extent that anybody wants to criticise the decision to announce the result on the 25th October, it's not just a question of criticising you; it's a question of criticising the Taoiseach?

A. And the Minister for Finance and the Minister for Social Welfare and the Tanaiste.

Q. And Minister for Foreign Affairs, as Mr. Spring would have been at the time?

A. Yes.

Q. And we needn't cover the ground again, but it's clear from this morning's evidence that you reject any suggestion that you attempted to in any way prejudice the discussion that you had with the Taoiseach on this issue?

A. That's an outrageous suggestion. It just didn't happen.

Q. And we have demonstrated that the information you were being fed by your civil servants and your departmental officials, through Mr. Loughrey, was entirely unambiguous and didn't require any such intervention on your part; isn't that so?

A. That's correct.

Q. Finally, Mr. Lowry, if I can turn, then, to the issuing of the licence in the April/May period of 1996. There were effectively two issues, as far as I can see, that are canvassed with you in this regard.

And they are, if I can call them the 40:40:20 issue vis-a-vis 37.5:37.5:25; and secondly, the IIU replacement for the Davys arranged institutions. And we know that two of these things were issues of controversy between the winning consortium and the Department in the period from the 25th October through to the 16th May.

Now, can I just ask you this: Insofar as your role goes, is it basically the position that you relied on the advice of Mr. Loughrey at this time through to the award of the

licence?

A. I totally relied upon him, yes.

Q. You were prompted by him in your actions?

A. Absolutely.

Q. You took your lead from him?

A. Correct.

Q. And there is a passage from Mr. Loughrey's evidence that I want to read out to you in this regard. At Day 189, page 53, Mr. Loughrey just to set tone, was firm in his evidence that you never did anything other than follow the advice of the civil service in relation to the April/May period of 1996 when the licence was being issued. And he said as follows:

"He didn't" "He" is you "He didn't, to my recall.

Now, it is easy to recall when a Minister opposes civil service advice on something that is significant. I have no recall whatsoever of any involvement other than saying almost what I might call his preoccupation with results, can we not sort this out as quickly as possible, but never interfering on how it might be sorted out, let me put it that way."

That's a direct quote from Mr. Loughrey's evidence. Does that encapsulate your understanding of the role you played in April and May 1996?

A. Very well indeed.

Q. And did you have any concern or motivation other than simply issuing the licence to fulfil an announcement that

had been made six months previously at that stage?

A. None whatsoever.

Q. Thank you.

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

Q. MR. COUGHLAN: Just one question, sir, and it's just, I suppose, some clarification, a question asked of you by Mr. McGonigal. And I think you were asked specifically whether any of the decisions that you made in respect of the competition for the award of the second mobile licence were in return for or on account of any payments you received. So dealing with in return for or on account of payments received.

Now, just to clarify that: Or in respect of any promise or any expectation of any benefit in the future, no matter how?

A. Absolutely not.

Q. Or by any suggestion that might be made that you might have that you might have made that you were owed something for doing anything?

A. Never made such a suggestion.

Q. Okay.

CHAIRMAN: Very good.

Mr. Lowry, thank you for your assistance. We have managed to conclude within the two days, and we can conclude, therefore, at this stage.

There is, I think, at 11 o'clock tomorrow, further sitting

in regard to a matter on Thursday in fact, because we have gone that little bit more quickly in relation to an unrelated matter.

11 o'clock on Thursday then. Thanks very much.

THE TRIBUNAL ADJOURNED UNTIL THE 15TH DECEMBER, 2005.