

THE TRIBUNAL RESUMED ON THE 20TH OF JULY, 2009, AS FOLLOWS:

MR. COUGHLAN: May it please you, sir.

Over the next three days, the Tribunal will be hearing evidence from a small number of witnesses whose evidence will relate to different aspects of the inquiries which have been pursued by the Tribunal. The first of these witnesses is Mrs. Maureen Austin, who is the widow of the late Mr. David Austin (deceased).

It will be recalled that in 2001 the Tribunal heard evidence of a payment of $\text{€}150,000$ made by Mr. O'Brien to Mr. Austin in July of 1996 from an account opened by Mr. Aidan Phelan, Mr. O'Brien's then accountant, in Bank of Ireland (Isle of Man), which was a nominee account for Mr. O'Brien, and from which the sum of $\text{€}150,000$ was transferred in two tranches to an account opened by Mr. Austin in Bank of Ireland (Jersey), and of which $\text{€}147,000$ was subsequently transferred by Mr. Austin to an account in the name of Mr. Michael Lowry with Irish Nationwide (Isle of Man).

The funds were returned to Mr. Austin in February 1997 at the time of the appointment of the McCracken Tribunal. The Tribunal heard evidence that the payment of $\text{€}150,000$ made by Mr. O'Brien, through Mr. Aidan Phelan's nominee account in Bank of Ireland (Isle of Man) to Mr. Austin's offshore account with Bank of Ireland (Jersey), represented a payment by Mr. O'Brien to Mr. Austin for the purchase of a property in Spain, and that the onward transmission of

those funds by Mr. Austin to Mr. Lowry's account in Irish Nationwide (Isle of Man) represented the provision of a loan by Mr. Austin to Mr. Lowry.

Mrs. Austin assisted the Tribunal in 2001 in connection with its private investigative work. She provided the Tribunal with documentation and furnished the Tribunal with information. She informed the Tribunal that Mr. O'Brien had purchased the Spanish property in 1996, although she and her late husband continued in occupation of that property until after the Ryder Cup in the autumn of 1997.

She knew nothing of a loan of $\text{€}147,000$ by her late husband to Mr. Michael Lowry, although her husband had informed her that he intended to assist Mr. Lowry in connection with the acquisition of a property in Carysfort Avenue, Blackrock.

At the time, she would have imagined that such assistance might have been in the form of a guarantee.

The Tribunal did not call Mrs. Austin to give evidence in the course of its public sittings in 2001, as the information which she had provided was not information which could have impacted adversely on an affected person.

The Tribunal was willing to accept that information and thereby obviate the necessity of exposing Mrs. Austin to the giving of evidence at public sittings.

The Tribunal has recently been requested to hear evidence from Mrs. Austin by an affected person, and has acceded to that request and, accordingly, will now call her to give that evidence.

The second witness is Mr. Massimo Prezl Oltramonti. In 1995, at the time of the second GSM evaluation process, Mr. Prezl was Managing Director for Europe of Advent International Corporation. Advent International is a private equity firm which, in October 1994, invested funds in Communicorp Group Limited, Mr. Denis O'Brien's company. And at the time of the second GSM process, Advent International held 34% of the share capital of Communicorp. It will be recalled that the Esat Digifone bid documentation included a letter from Mr. Prezl addressed to Mr. Martin Brennan dated 10th July, 1995, in which Mr. Prezl had confirmed that Advent International had offered IR£30,000,000 to Communicorp to enable it to fund its equity obligations based on a 40% shareholding in Esat Digifone. That letter was issued on foot of an agreement dated 12th July, 1995, between Advent International, Communicorp and Mr. O'Brien, whereby in consideration of the issue of that letter, Advent International was entitled to 5% shareholding in Esat Digifone if the consortium won the licence.

The Tribunal heard evidence in relation to that letter and agreement in the course of its inquiries through 2003 and 2004 from a number of witnesses, including Mr. Denis O'Brien, Mr. Owen O'Connell, Mr. John Callaghan, Mr. Peter O'Donoghue, Mr. Knut Haga and Mr. Amund Bugge. Following completion of that evidence, the Tribunal received documentation from Advent International relating to the

letter and the agreement. It did not seem to the Tribunal that the documentation warranted further inquiry. However, the Tribunal has recently been requested by an affected person to hear evidence from Mr. Prelz, and has agreed to do so.

Mr. Prelz has informed the Tribunal that there was a binding, concluded, enforceable and irrevocable commitment by Advent to provide funding of IR£1/230,000,000 to Communicorp for the purpose of funding its 40% equity purchase in Esat Digifone Limited. And the Tribunal will wish to pursue inquiries with Mr. Prelz about that commitment and its legal basis.

The third witness from whom evidence will be heard is Mr. Hugh Garvey, who is a partner in the firm of LK Shields, Solicitors, who are solicitors for Westferry Limited, Mr. Denis O'Brien's company, and for Mr. Denis O'Brien Snr.. The Tribunal is calling Mr. Garvey at his own request and will wish to hear evidence from him in relation to certain limited aspects of the inquiries which it conducted in relation to the Doncaster Rovers property. In particular, the Tribunal will wish to make inquiries of Mr. Garvey about his knowledge of advice which had been given by Westferry's English solicitor, Ms. Ruth Collard of Messrs. Peter Carter-Ruck, at the time when he informed the Tribunal that the London Metropolitan Police had expressed a concern about the release to the Tribunal of material held by Messrs. Peter Carter-Ruck relating to the making of

a police complaint by Mr. Denis O'Brien Snr..

Another matter which the Tribunal will deal with at these sittings, if at all possible, is additional documentation which the Tribunal received from Mr. Aidan Phelan, Mr. Denis O'Brien's former accountant, following completion of the evidence of Mr. Christopher Vaughan, the English solicitor who acted in the Mansfield, Cheadle and Doncaster Rovers transactions and from whom the Tribunal has recently heard evidence.

It will be recalled that evidence was heard by the Tribunal in 2002 concerning what was then referred to as the long form and short form versions of correspondence passing between Mr. Christopher Vaughan and Mr. Kevin Phelan concerning property transactions to which Mr. Lowry was connected. This correspondence was examined in the course of other evidence since that date and most recently in the course of the evidence of Mr. Christopher Vaughan given on two occasions, commencing on the 21th April, 1999, and the 23rd June, 1999, respectively.

In the course of the evidence of Mr. Vaughan, further documentation came to light concerning his handling of the Mansfield and Cheadle property transactions. Furthermore, evidence was given in the course of those sittings that at one point his files relating to these property transactions were brought by him to Dublin for a meeting with Mr. Aidan Phelan, Mr. Michael Lowry and Mr. Kevin Phelan, and left by him in Dublin for some time following that meeting.

Evidence was also given that when his file was returned to him, it appeared to him to have been altered.

One of the lines of inquiry pursued with Mr. Vaughan in the course of his inquiries concerned correspondence between him and solicitors for Mr. Kevin Phelan, Messrs.

Woodcock's, in 2002. It will be recalled that part of that correspondence was examined in evidence. Not all of that correspondence was available in the course of the evidence, and it was only as the evidence proceeded further that portions of the correspondence became available. However, in the course of his evidence, Mr. Vaughan was examined concerning suggestions intimated by solicitors on behalf of Mr. Kevin Phelan, that certain documents produced to the Tribunal as constituting Mr. Christopher Vaughan's file were at variance with what Mr. Kevin Phelan's solicitors contended to be the true version of that correspondence.

At that time, Mr. Kevin Phelan was in dispute with a number of individuals, and through his solicitors, indicated that he had written to those individuals, including Mr. Aidan Phelan, Mr. Michael Lowry, Mr. Denis O'Brien and Mr. Denis O'Connor, in addition to Mr. Christopher Vaughan himself.

On the 22nd April, 2009, the Tribunal wrote to Mr. Lowry, Mr. O'Brien, Mr. Aidan Phelan and Mr. Denis O'Connor seeking copies of any correspondence received by them from Mr. Kevin Phelan concerning the matters alluded to in solicitors' letters to Mr. Christopher Vaughan.

Now, I will open this correspondence which the Tribunal

commenced.

And it commences with a letter to Mr. Aidan Phelan's solicitors dated the 22nd April, 2009. And it reads:-

"Dear Ms. Conroy,

"I refer to the above and, in particular, to the Tribunal's public sittings which took place on the 21st April, 2009.

I enclose for your attention a copy letter dated 28th

January, 2002, from Messrs. Woodcock & Sons to

Mr. Christopher Vaughan, which letter is contained in Tab 1

of the book of documentation entitled "Book 81B" and

provided to you under separate cover. You will note from

this letter that Messrs. Woodcock & Sons state inter alia

that they '...have been asked to advise their client

(Mr. Kevin Phelan) in relation to various issues that have

arisen out of joint ventures that parties had entered into

in relation to various projects.' Specifically we have

been instructed to advise in relation to breach of

agreement concerning the following:

- 1) Doncaster Rovers;
- 2) Altringham Football Club;
- 3) Mansfield;
- 4) Handforth (Cheadle)

"Messrs. Woodcock further state that they have corresponded

with all parties to the joint venture informing them of

their appointment and have been notified them of the

instructions that we (they) have received. The parties we

have corresponded with are as follows:

1. Aidan Phelan;
2. Denis O'Brien;
3. Michael Lowry
4. Denis O'Connor."

"The Tribunal would be grateful to receive copies of all correspondence which your firm and/or your clients have received from Messrs. Woodcock's in relation to this matter and/or any enclosures or ancillary documentation related thereto.

"Yours sincerely
Stuart Brady."

Now, with that, of course, went the enclosure which has already been opened, and I don't intend reading the whole matter out here again, sir. It was a document which was opened at the previous evidence.

A similar letter was written to Mr. Michael Kelly, solicitor for Mr. Lowry, and it's in similar terms, so there is no need to open that either, sir.

Now, Mr. Kelly initially responded on the 23rd April, 2009, and he referred to the Tribunal's letter dated the 22nd April, and he said:-

"Having checked his file, he can find no record of having received any such correspondence as referred to in our letter of the 22nd April, 2009. When the matter was mentioned at hearing on the 21st instant, Mr. Kelly had no recall of any such correspondence having been received."

He then wrote to the Tribunal, again, on the 17th July,

2009, where he informed the Tribunal that he refers to the Tribunal's letter of the 22nd April dealing with a letter dated the 22nd January, 2002, from Messrs. Woodcock & Sons to Mr. Christopher Vaughan, and he says:-

"As explained to you, I considered my letter to the Tribunal dated the 23rd April last as having dealt with this matter, but I see now that I was mistaken and apologise for the oversight. On behalf of Mr. Lowry and Mr. O'Connor, I can confirm that neither party have any record of having received any correspondence as referred to."

Now, the Tribunal wrote in similar terms to Mr. Denis O'Brien's solicitors, Mr. Paul Meagher of Meagher Solicitors, sent a reminder on the 22nd June, 2009, and received a response on the 30th June, 2009, from Mr. Meagher which reads:

"Dear Mr. Brady,
"Thank you for your letter dated 29th June enclosing copies of your letter dated 22nd April and 22nd June concerning a letter from Woodcock & Sons to Mr. Christopher Vaughan dated 28th January, 2009. We did not receive any correspondence from Woodcock & Sons."

Now, the Tribunal responded to that letter by letter dated 30th June, 2009:

"Dear Mr. Meagher,
"I refer to the above and, in particular, to your letter dated 30th June last replying to the Tribunal's letter of

the 29th June enclosing copies of the Tribunal's letters dated 22nd April and 22nd June last.

"The Tribunal notes that you '...did not receive any correspondence from Woodcock & Sons.' The Tribunal's letter of the 22nd April, 2009, indicated that the Tribunal would be 'grateful to receive copies of all correspondence which you or your clients have received from Messrs.

Woodcock in relation to this matter and/or any other enclosures or ancillary documentation related thereto.'

"In this regard the Tribunal would be grateful if you could please confirm whether your clients have received any of the correspondence or documentation referred to in the Tribunal's letter of the 22nd April last."

On the 9th July, the Tribunal, once again, wrote to Mr. Meagher in these terms:

"I refer to the above and, in particular, to the Tribunal's letter of the 29th June last, which referred to a request made by the Tribunal in its letter of the 22nd April last.

"You will recall that in its letter of the 30th June last, in response to your letter of the same date, the Tribunal, whilst noting that 'you did not receive any correspondence from Woodcock & Sons,' requested that you confirm whether your clients had received any of the correspondence or documentation referred to in the Tribunal's letter of the 22nd April last. In responding to this request the Tribunal would be grateful if you could please also confirm whether or not any of your client's advisors or former

advisors, be they legal or otherwise, received any of the correspondence or documentation referred to in the Tribunal's letter of the 22nd April last.

"The Tribunal would be grateful to hear from you by return in this regard."

On the 10th July, 2009, Mr. Meagher wrote to Mr. Brady in these terms.

"Dear Mr. Brady,

"Thank you for your letter dated 9th July in relation to the letter from Woodcock & Sons to Mr. Christopher Vaughan dated 28th January, 2002.

"As you are aware, we have already confirmed that we did not receive any correspondence from Woodcock & Sons.

Further to your letter dated 30th June, we have now received our client's further instructions. He does not recall ever receiving any correspondence or documentation from Woodcock & Sons.

"In relation to your request that we confirm '...whether or not any of our client's advisors or former advisors, be they legal or otherwise, received any of the correspondence or documentation referred to in the Tribunal's letter of the 22nd April last' we only have instructions to act for our client and nobody else, and we would therefore respectfully suggest that if you have not already done so, it is for you to write as you see fit to our client's 'advisors or former advisors, be they legal or otherwise.'"

The Tribunal responded on the 14th July, 2009, to

Mr. Meagher as follows:

"Dear Mr. Meagher,

"I refer to the above and, in particular, to your letter dated 10th July, 2009. I am instructed to respond as follows:-

"This letter was in response to the Tribunal's letter of the 9th July, 2009, concerning requests first made by the Tribunal in its letter of the 22nd April, 2009, for

'...copies of all correspondence which you or your clients have received from Messrs. Woodcock in relation to this matter (letter dated 28th January, 2002, from Messrs.

Woodcock & Sons to Mr. Christopher Vaughan) and/or any enclosures or ancillary documentation related thereto;

"The Tribunal notes that you state inter alia that you only have instructions to act for your client and nobody else and that you respectfully suggest that it is for the Tribunal to write as it sees fit to your client's former advisors, be they legal or otherwise. With respect, the Tribunal does not consider that suggestion to be helpful.

"The Tribunal's requests have been directed in the first instance to your client to include all his advisors or former advisors, whether legal or otherwise. Your client as principal is both legally and practically in the best position (in the first instance) to compel responses to the Tribunal's request.

"The Tribunal considers all documentation within the possession of your client's advisors or former advisors to

be within your client's power or procurement, and I am instructed to inform you that the Tribunal will, if necessary, make an Order for Production against your client in this regard. It has always been the Tribunal's preference to proceed on a voluntary basis, and the Tribunal notes that this has, to date, also been your client's preference. Therefore, the Tribunal would be grateful if you could please confirm by return that your client will assist, also by return, the Tribunal with regard to its requests as set out in the above mentioned correspondence."

Mr. Meagher responded by letter dated 14th July, 2009:-

"Dear Mr. Brady,

"Thank you for your letter dated today.

"Your letters dated 22nd April, 22nd June, 29th June and

30th June requested us to provide the Tribunal with

'...all relevant correspondence which you or your client

have received from Messrs. Woodcock Solicitors' (emphasis added).

"We have already replied to all of those letters on behalf of our client and this firm.

"On 9th July the Tribunal expanded its request by asking us to confirm '...whether or not any of your client's advisors or former advisors, be they legal or otherwise, received any of the correspondence or documentation referred to in the Tribunal's letter of 22nd April last.'

"The Tribunal asked us to reply to that letter dated 9th

July by return, which we did by letter dated 10th July. We were not trying to be unhelpful in that reply, but rather simply pointing out that apart from our client, we do not act for any of the other parties referred to in Woodcock & Sons' letter to Mr. Christopher Vaughan dated 28th January 2002. As far as we are aware, Oliver Roche and Sons act for Mr. Kevin Phelan, Ms. Caroline Preston, solicitor, acts for Aidan Phelan, and Michael Kelly of Kelly Noone & Company acts for Mr. Michael Lowry and Mr. Denis O'Connor.

"If we misinterpreted the request contained within your letter dated 9th July, then we apologise for that.

However, the reality is that all of those parties are separately represented and we honestly believed and continue to believe that we were adopting the correct course of action in requesting that you correspond directly with those parties as you see fit.

"If you still believe that we and our client have a role to play and can assist the Tribunal with its inquiries, then perhaps you would be kind enough to outline exactly whom you are referring to when you wrote to us on the 9th July requesting us to confirm '...whether or not any of your client's advisors or former advisors, be they legal or otherwise, received any of the correspondence or documentation referred to in the Tribunal's letter of the 22nd April last' (emphasis added).

"Having regard to the correspondence referred to above, we are surprised by the reference to an Order for Production.

However, we are pleased to note that the Tribunal accepts that it has always been its, and indeed, our client's preference to proceed on a voluntary basis.

"We look forward to hearing from you."

The Tribunal then responded by letter dated 15th July, 2009, to Mr. Meagher referring to his letter of the 14th July, 2009.

"The Tribunal's inquiries are directed to ascertaining whether your client received any of the correspondence or documentation referred to in its letter of the 22nd April last. The Tribunal also wishes to know whether any of your client's advisors, be they legal or otherwise, received any of the correspondence or documentation referred to in that letter. The Tribunal further wishes to know whether any of your client's former advisors, be they legal or otherwise, received any of the correspondence or documentation referred to in that letter.

"Your client is best placed to be able to identify his current or former advisors, legal or otherwise. The Tribunal is, naturally, aware that your firm acts as your client's current legal advisors. Your client, however, may have or have had other advisors, legal or otherwise, and the Tribunal is aware that Messrs. William Fry formerly advised your client.

"The Tribunal's request was directed to you in the first instance since your client will be in the best position, as has already been stated in the Tribunal's letter of the

14th July, 2009, both legally and practically, to compel responses to the Tribunal's request. Should you encounter difficulty in securing responses to the Tribunal's request from any of your client's current or former legal advisors, please let the Tribunal have the necessary details so it can take that matter up directly with those advisors."

Now, that's where the correspondence lies in respect of dealing with Mr. Denis O'Brien. And as the Tribunal acknowledges, and I think Mr. Meagher also, it is preferable that matters proceed on a voluntary basis.

Now, the Tribunal first wrote to Mr. Aidan Phelan on the 22nd April, 2009. And I have already opened that letter.

Now, a reply had not been received by Mr. Aidan Phelan's solicitors, so the Tribunal wrote a reminder on the 22nd June, 2009. It's addressed to Ms. Sarah Conroy of Messrs. A&L Goodbody, Solicitors.

"Dear Ms. Conroy,

"I refer to previous correspondence and, in particular, to the Tribunal's letter dated 22nd April, 2009, under cover of which it enclosed for your attention a copy letter dated 28th January, 2002, from Messrs. Woodcock & Sons to Mr. Christopher Vaughan contained in Tab 1 of the Tribunal book of documentation (Book 81B) and arising from which the Tribunal requested that you provide it with copies of all relevant correspondence which you or your client have received from Messrs. Woodcock, Solicitors.

"The Tribunal would be grateful if you could respond to

this letter as a matter of urgency."

By letter dated 25th June, 2009, the Tribunal received a response from Messrs. A&L Goodbody, solicitors on behalf of Mr. Aidan Phelan, and the response is as follows:

"Dear Mr. Brady,

"I refer to your letters of 22nd April, 2009, and 22nd June, 2009.

"I have now taken my client's instructions in relation to this I now enclose copies of the following letters:

1. Letter Woodcock & Sons to A&L Goodbody dated 26th January 2002.
2. Letter DLA to Woodcock & Sons dated 22th February, 2002.
3. Letter Woodcock & Sons to DLA dated 8th March, 2002.

"My client believes the enclosed correspondence to be vexatious and not relevant in any way to the issues the subject matter of the Tribunal's deliberations."

Now, Messrs. Woodcock & Sons, solicitors, represented Mr. Kevin Phelan in the correspondence and Messrs. A&L Goodbody of Dublin, solicitors, and DLA solicitors and now DLA Piper in Manchester represented Mr. Aidan Phelan.

Having reviewed the correspondence, the Tribunal is satisfied that whether it be vexatious or not, it is undoubtedly relevant to the issues the subject matter of the Tribunal's deliberations, and was germane to the inquiries being conducted by the Tribunal in 2002 concerning the long form/short form correspondence, to

matters being examined by the Tribunal since that date and, most specifically, to matters being canvassed in the course of the evidence of Mr. Christopher Vaughan both on the first occasion on which he intended to give evidence, that is on the 21st April, 2009, and on the second occasion of his giving evidence, on the 23rd June, 2009.

It was not until Mr. Vaughan completed his evidence that the documentation became available to the Tribunal. One of the letters forming part of the correspondence, dated the 8th March, 2002, contains a narrative account of Mr. Kevin Phelan's dealings with Mr. Michael Lowry, Mr. Aidan Phelan, Mr. Denis O'Connor and Mr. Christopher Vaughan concerning property transactions being examined by the Tribunal, namely at Mansfield, Cheadle and Doncaster. In the letter he refers to and attaches as enclosures copies of a number of letters. The letters referred to include a letter of the 12th November from Mr. Christopher Vaughan to Mr. Kevin Phelan.

The context in which the letters is referred makes it clear that Messrs. Woodcock are referring to what could only be the long form of this letter. This letter was not made available to the Tribunal until Mr. Christopher Vaughan came to give his evidence on the 23rd June, 2009.

Messrs. Woodcock, in their letter, also refer to a letter from Mr. Christopher Vaughan to Mr. Kevin Phelan dated the 9th August, 2000. From the context and the position of this letter quoted by Messrs. Woodcock, it is clear that

this is a letter which again was not made available to the Tribunal until Mr. Vaughan's most recent evidence.

Messrs. Woodcock Solicitors made reference to a number of other letters, none of which, to date, have been made available to the Tribunal. They include a letter of the 5th October, 1998, purporting to have been sent by Mr. Christopher Vaughan to Mr. Kevin Phelan. This letter referred to Mr. Michael Lowry's property dealings in England, to his dealings with Mr. Vaughan in the course of Mr. Lowry's attendance in England on the 23rd September, 1998, and the 24th September, 1998, matters to which considerable attention was devoted in the course of the Tribunal's inquiries over the last seven years.

The Tribunal formed the view that as the letters to which Messrs. Woodcock referred included a new letter which had only recently become the subject of inquiry in the course of the Tribunal's proceedings, and of which copies were only produced in the course of recent evidence, it was reasonable to suppose that the other letters mentioned had also come into existence and had been generated in the course of property transactions in England to which Mr. Lowry was connected.

Because Mr. Kevin Phelan has not made himself available to give evidence to the Tribunal, the narrative account of Mr. Kevin Phelan's dealings with Mr. Michael Lowry in these letters must be viewed with some caution. Mr. Kevin Phelan has failed, as he has on other occasions, to cooperate with

the Tribunal in this regard.

Following receipt of Messrs. A&L Goodbody's letter of the 25th June, 2009, the Tribunal entered into a course of correspondence with a view to obtaining copies of the enclosures, that is of the documents enclosed in the correspondence between Messrs. Woodcock's and solicitors for Mr. Aidan Phelan. The purpose of that correspondence was with a view to obtaining the file kept by Mr. Aidan Phelan's English solicitors, DLA, now DLA Piper, so as to enable the Tribunal to examine the letters and other enclosures referred to by Messrs. Woodcock's in their correspondence. The Tribunal, in particular, wished to obtain copies of documents which it was contended pertained to the Mansfield, Cheadle and Doncaster transactions to which reference was made by Messrs. Woodcock's but which had not been produced to the Tribunal in the course of its inquiries.

Apart from taking the matter up with solicitors for Mr. Aidan Phelan, the matter was also taken up with solicitors for Mr. Kevin Phelan. Mr. Kevin Phelan has not been prepared to provide the documentation sought by the Tribunal. His solicitors, in a letter to the Tribunal, have indicated that he is no longer prepared to stand over everything contained in his correspondence with Mr. Aidan Phelan.

The correspondence of Messrs. A&L Goodbody, solicitors, commenced, as I have already indicated, with the Tribunal's

letter of the 22nd April, 2009. Following the letter of the 25th June, 2009, the Tribunal wrote as follows, and I am now going to open the correspondence which the Tribunal had with...

CHAIRMAN: Does that include the rather lengthy letter from Mr. Kevin Phelan's solicitors at the time?

MR. COUGHLAN: No, sir, no, sir. Because that contains a narrative account, sir, I think that it would be inappropriate at this stage, in the course of an Opening Statement, and would be unfair to anyone who may be affected by it, in that by the time they came to give evidence, the matter might have gained some sort of currency in the public domain which would be inappropriate at this time, sir.

CHAIRMAN: Might it be an opportunity for me to mention the matter which doubtless is the concern of Mr. O'Donnell?

MR. COUGHLAN: Yes, sir.

CHAIRMAN: Mr. O'Donnell, in case of you, as I have no doubt you have other matters to attend to today, I should mention that further to what has been stated by Mr. Coughlan in relation to the intended witnesses being called this week, I have considered and deliberated over the matter raised by you, and supported by certain other representatives, in relation to the intended or volunteered testimony of Mr. Richard Nesbitt, your colleague.

I had, as emerged in the course of the hearing on a recent occasion, indicated some concerns or misgivings about the

unusual nature in which the proposed testimony came to be offered, but having considered all those matters and having had sight of a draft statement of intended evidence on behalf of Mr. Nesbitt, I am prepared to accept that the interests of justice, or my anxiety to ensure that there is no procedural unfairness to anyone, induce me to hear that testimony of Mr. Nesbitt. And whilst I certainly don't wish to take anyone short in view of the obvious time constraints that are on remaining hearings and the fact that the, if what one might call the Tribunal plant has been set in operation for this week, it had occurred to me that it might be appropriate if Mr. Nesbitt was available to hear his testimony on Wednesday.

MR. O'DONNELL: Mr. Coughlan informed me of the Tribunal's intentions in that regard and, firstly, Chairman, thank you for letting us know that today. We will liaise with Mr. Nesbitt, and I will liaise with Mr. Coughlan with a view to arranging a mutually convenient date and time. I note the Tribunal's commitment for today. We are here anyway for the evidence of Mr. Prelz, but I'll liaise with Mr. Coughlan in the course of the day with a view to arranging a suitable date for Mr. Nesbitt to give evidence and, of course, I'll liaise with Mr. Nesbitt.

CHAIRMAN: Very good. Thank you Mr. O'Donnell.

MR. COUGHLAN: On the 29th June, 2009, arising out of the documents or correspondence which had been provided by Messrs. A&L Goodbody on behalf of their client, Mr. Aidan

Phelan, the Tribunal wrote, on the 26th June, 2009, in the following terms:

"Dear Ms. Conroy,

"I refer to the above and, in particular, to your letter of the 25th June last.

"The Tribunal would be grateful to receive by return copies of the documentation/correspondence referred to in the letter from Messrs. Woodcock & Sons to DLA dated 8th March, 2002.

"If you have any queries in relation to the above, please do not hesitate to contact me."

By letter dated 29th June, 2009, Messrs. A&L Goodbody responded to the Tribunal:

"Dear Sirs,

"We refer to your letter of the 26th June, 2009, and to the telephone conversation between Sarah Conroy of this office and Stuart Brady of your office this morning. We have now had the opportunity to take our client's instructions in relation to this. As we indicated during the telephone conversation, we do not hold copies of the documentation/correspondence referred to in the letter from Woodcock & Son Solicitors to DLA dated 8th March, 2002. It appears from our file that a copy of this letter was sent to us by fax a number of weeks after it was received by DLA, but no enclosures were included with the copy letter.

"Our client is now liaising with DLA with a view to obtaining copies of the enclosures. It may take some time

before we are able to obtain copies of the enclosures. We will pass them on to you when they are received.

"Our client has asked us to point out that at all times he has cooperated with the Tribunal promptly and has sought to give it assistance when this has been required of him.

"We will come back to you as soon as we have received copies of the documents referred to in the letter.

Yours faithfully."

The Tribunal then wrote to Messrs. A&L Goodbody on the 30th June, 2009:

"Dear Ms. Conroy,

"I refer to your letter of yesterday's date in response to the Tribunal's letter of Friday last, 26th June, 2009, and also to our telephone conversation of yesterday morning.

"The Tribunal has noted that you do not hold copies of the enclosures referred to in the letter dated 8th March, 2002, from Woodcock & Sons, solicitors, to your client's English solicitors, DLA. You have indicated that your client is liaising with DLA with a view to obtaining copies of the enclosures and you have further stated that this may take 'some time'.

"Whilst the Tribunal appreciates that the enclosures are not held by you and must be obtained by your client from his English solicitors, it is concerned at your suggestion that it may take some time to obtain these documents.

"As the Tribunal must proceed with the balance of its inquiries without further delay, I am instructed to inform

you that you will need to receive copies of the enclosures before the end of this week."

Then on the 1st July, the Tribunal once again wrote to Messrs. A&L Goodbody.

"Dear Ms. Conroy,

"I refer to the correspondence produced by your client under cover of your letter dated 25th June, 2009, including in particular a letter dated 8th March, 2002, from Woodcock's Solicitors to Mr. Kevin Phelan, to your client's English solicitors, DLA. I am instructed to write to you as follows:-

"The Tribunal has now had an opportunity of revisiting its files regarding the Tribunal's dealings with your client dating from the year 2001. As you know, these dealings have at all times been on a voluntary footing, it was the Tribunal's understanding that your client wished to assist the Tribunal in its work.

"The Tribunal is reviewing all of the documentation produced by your client to date to ascertain whether the letters dated 26th January, 2002, and 27th February, 2002, were previously furnished, but it is quite clear that the letter dated 8th March, 2002, has never previously been provided to the Tribunal by your client.

"The Tribunal wishes to draw your attention, to the attention of your client and your firm the Tribunal's request for assistance dated 10th November, 2004, and the response received from your firm on behalf of your client

dated 16th November, 2004. Copies of that correspondence are appended for your assistance.

"In its letter dated 10th November, 2004, the Tribunal raised inquiries directed to a dispute between Mr. Kevin Phelan and your client both in his capacity as a representative of Westferry Limited, and on his own account. The Tribunal's inquiries were prompted by the contents of a letter dated 8th June, 2001, from Mr. Denis O'Connor, Mr. Michael Lowry's accountant, to your client, and a further letter dated 30th June, 2002, from Woodcock's to William Fry, solicitors for Westferry and Mr. Denis O'Brien.

"The Tribunal requested that your client would provide an account of his dealings with Mr. Denis O'Connor in connection with Mr. Kevin Phelan and including, in particular, all or any disputes with Mr. Kevin Phelan. The Tribunal also requested that "All documents in your client's power, possession or procurement relating to all such dealings with Mr. Denis O'Connor and/or with Mr. Kevin Phelan" be provided to the Tribunal.

"By letter dated 16th November, 2004, the Tribunal was provided with an account of dealings between your client and Mr. Kevin Phelan in 2001, including agreements concluded between Mr. Denis O'Connor and Mr. Kevin Phelan in September 2001. The Tribunal was further informed that your client received a letter from Mr. Kevin Phelan dated 3rd January, 2002, to which your firm responded on 9th

January, 2002. Copies of all relevant documents were also provided.

"In that letter, your firm and your client did not refer to the ongoing dispute between Mr. Kevin Phelan and your client, as evidenced by the exchange of correspondence provided under cover of your letter dated 26th June, 2009, and, in particular, the letter of 8th March, 2002, from Woodcock's to DLA, even though it seems from a reading of that correspondence, that it followed upon the letter dated 9th January, 2002, from your firm to Mr. Kevin Phelan which was furnished to the Tribunal in November 2004.

"The Tribunal wishes to extend to your client and to your firm an opportunity to comment on the omission of this material from the account furnished in your letter of the 16th November, 2004, and from the documents produced under cover of that letter.

"Yours sincerely
Stuart Brady."

Now, with that letter were a number of enclosures, which I don't intend opening at this stage.

Messrs. A&L Goodbody responded to that letter from the Tribunal by a letter dated the 3rd July, 2009.

"Dear Mr. Brady,

"I refer to your letter of the 30th June, 2009. As we have indicated previously, our client is keen to cooperate with the Tribunal and has at all stages cooperated with the Tribunal.

"He is endeavouring to obtain copies of the enclosures referred to in the letter dated 8th March, 2002, from Woodcock & Sons Solicitors to DLA. Our client has telephoned the solicitor with whom he dealt in DLA on two occasions this week, leaving a voice mail, and also forwarded an e-mail to him on Wednesday of this week. He has not received any response to his telephone calls or his e-mail. He will continue to follow up with DLA in this regard. Therefore, he is not yet in possession of the enclosures referred to in the letter dated 8th March, 2002.

"We will let you know as soon as these documents are received by him."

Also, by letter dated 3rd July, 2009, Messrs. A&L Goodbody wrote to the Tribunal as follows:

"I refer to your letter of the 1st July, 2009.

"We wish to point out that our client has always cooperated with the Tribunal and wishes to continue to cooperate with the Tribunal.

"As you are aware from the copies of the correspondence with you hold, this firm wrote to Kevin Phelan on the 9th January, 2002. On foot of this, it appears that a letter was received by this office on 26th January, 2002, from Woodcock Solicitors on behalf of Mr. Kevin Phelan. We sent a copy of this letter to our client by fax dated 29th January, 2002.

"Our client then informed us that DLA were handling this matter on his behalf. As we were not directly involved

and, on the instructions of our client, this correspondence was not considered relevant to the Tribunal's investigation, this firm did not correspond directly with Woodcock Solicitors at any stage.

"Our client instructs us that in his view, Kevin Phelan was endeavouring to extract spurious fees for services allegedly rendered. The correspondence from DLA speaks for itself in this regard. He instructs us that he took the view that he was not going to enter into correspondence with Mr. Phelan or his representatives and ignored his correspondence, save for the short reply from DLA on his behalf on 26th January, 2002.

"Our client also instructs us that Kevin Phelan was consorting with Messrs. Weaver and Richardson, who were the former owners of Doncaster Rovers Football Club. Our client took the view that they were also behind the letter from Woodcock Solicitors of 8th March, 2002. Given the identity of these individuals and the fact that they were liaising with the Persona consortium's legal advisors, our client took the view that he would not correspond with them.

"Our client also instructs us that he instructed DLA not to reply to the letter of the 8th March, 2002. Our client never heard anything further in relation to the letter, which reinforced his view that the correspondence was vexatious.

"Yours sincerely

Sarah Conroy."

On the 7th July, 2009, the Tribunal wrote to Messrs. A&L

Goodbody as follows:

"Dear Ms. Conroy,

"I refer to the above and, in particular, to both of your letters dated 3rd July last.

"You will recall that when the Tribunal wrote to you on the 1st July last, it extended to both your client and to your firm an opportunity to comment on their failure to provide to the Tribunal in their reply of the 16th November, 2004, the documentation which was ultimately forwarded by you under cover of your letter of the 26th June, 2009. In addition, the Tribunal extended to both your client and your firm an opportunity to comment on their failure to refer, in the account of your client's dealings furnished to the Tribunal on the 16th November, 2004, to the ongoing dispute between Mr. Kevin Phelan and your client, as evidenced by the exchange of correspondence provided by you under cover of your letter of the 26th June last.

"In this regard the Tribunal has noted that you have stated that 'Our client then informed us that DLA were handling this matter on his behalf. As we were not directly involved and on the instructions of our client this correspondence was not considered relevant to the Tribunal's investigation.'

"The Tribunal would be grateful if you could please confirm the identity of the person or persons in your firm who

considered and ultimately decided that 'This correspondence was not considered relevant to the Tribunal's investigation.' Please also confirm the basis upon which both your client and your firm decided that the letters provided by you under cover of your letter of the 26th June, 2009, and in particular the letter of the 8th March, 2002, were considered to be not '...relevant to the Tribunal's investigation.'

"Further, the Tribunal notes from your second letter of the 3rd July last that you have indicated that your client is endeavouring to obtain copies of the enclosures referred to in the letter dated 8th March, 2002, from Woodcock & Sons, solicitors, to DLA. For the avoidance of doubt, the Tribunal has compiled the list of attachments/enclosures referred to in the letter of the 8th March, 2002, and I enclose a copy for your attention.

"The Tribunal has, to date, dealt with your client on a voluntary basis, as it has understood that your client wished to assist the Tribunal. However, the Tribunal must now proceed with the balance of its inquiries without further delay and as such, in the event that the Tribunal does not receive a firm commitment from your client by the end of this week as to when it will receive the documentation requested, the Tribunal will have no option but to consider making an Order for Production against your client without further delay.

"The Tribunal hopes that it will not have to take this path

and as such looks forward to hearing you from by return."

On the 9th July, Messrs. A&L Goodbody wrote to this

Tribunal as follows:

"Dear Mr. Brady,

"We refer to the evidence given by Mr. Christopher Vaughan

to the Tribunal during its public sittings on the 23rd,

24th and 25th June, 2009. According to the transcript of

the evidence given by Mr. Vaughan on the 24th June last,

Mr. Vaughan indicated that he handed over a number of his

transaction files to Mr. Aidan Phelan during a meeting at

his office at Orchard House in Clonskeagh in February/March

2001, and that these files were not returned to him for a

number of weeks. It was insinuated by Christopher Vaughan

(although not expressly stated) that there were alterations

made to certain documents held on those files and that our

client may have played some part in the making of these

alterations.

"Our client was never alerted to this allegation in

advance, nor was he given the opportunity to cross-examine

Mr. Vaughan in connection with this very serious

allegation. Furthermore, our client moved his office from

Orchard House to Clanwilliam Court, Dublin 2, in or around

November 1999. Therefore, contrary to what was stated by

Mr. Vaughan in his evidence, no meeting could have taken

place at the Orchard House office in February/March 2001

between Mr. Vaughan and our client.

"Our client categorically rejects any allegation that such

files were ever handed over to him by Mr. Vaughan or that he amended or altered documentation on any such files. He has instructed us to make this point to the Tribunal in writing."

Also, by letter dated 9th July, 2009, Messrs. A&L Goodbody wrote to the Tribunal as follows:

"Dear Mr. Brady,

"I refer to your letter of the 7th July, 2009. As we indicated in our letter dated 3rd July, 2009, our client considered the correspondence from Woodcock & Sons Solicitors to be vexatious and not relevant to the Tribunal's investigations.

"The list which you referred to in your letter was not enclosed with the letter. Please forward a copy to us.

"Our client is continuing to follow up with DLA by e-mail and by telephone seeking copies of the enclosures to which you referred. However, he is not in a position to give firm commitments in this regard until he has made contact with the solicitor in DLA who is dealing with the matter and he receives copies of the enclosures."

The Tribunal wrote to Messrs. A&L Goodbody by letter dated 9th July, 2009, as follows:

"Dear Ms. Conroy,

"I refer to recent correspondence and to the Tribunal's request for documentation. I am instructed to write to you as follows: -

"The purpose of this letter is to draw to your attention

another matter with a view to requesting your client to provide further documentation and, if necessary, clarification. I attach a copy of your letter dated 24th February, 2005. In the final paragraph it is stated:

"Mr. Phelan has no further documents which can assist the Tribunal and has now furnished everything which he has ever had either to Westferry or to the Tribunal. He regrets he cannot assist the Tribunal further.'

"While in light of this statement, it is somewhat surprising that the documentation attached to your letter of the 25th June, 2009, was not sent to the Tribunal, the purpose of this letter is to inquire whether, as is stated in the paragraph quoted above, such documentation was sent to Westferry. Assuming that to be the case, please let me have the name and address of the person in Westferry to whom the documentation was furnished, together with any covering correspondence.

"The Tribunal would be grateful to hear from you in relation to the above by return."

Now, attached to that was a letter dated the 24th February, 2005, from Messrs. A&L Goodbody, Mr. Aidan Phelan's solicitors, to the Tribunal which very briefly stated:

"We refer to yours of the 14th January, 2005, and apologise for the delay in responding, but Mr. Phelan has been out of the country for some time.

"Mr. Phelan regrets that he cannot remember whether a copy of a fax dated 11th August, 1999, was within the

documentation furnished to Westferry when he ceased acting on behalf of it in relation to the DRFC project.

"Mr. Phelan has no recollection of what he understood Mr. Phelan to be referring to in paragraph 7 of the fax, if indeed, he ever saw it.

"No queries were ever raised with him by Westferry or anyone on his behalf in relation to this matter either in June, July or August 2002 or at any time.

"Mr. Phelan has no further documents which can assist the Tribunal and has furnished everything which he has ever had either to Westferry or to the Tribunal. He regrets he cannot assist the Tribunal further."

Now, on the 9th July, 2009, the Tribunal once again wrote to Messrs. A&L Goodbody.

"Dear Ms. Conroy,

"I refer to your letter of the 9th July, 2009. I am instructed to respond as follows: -

"The Tribunal notes the comments you have made concerning Mr. Vaughan's evidence.

"The Tribunal notes your reference to what you characterise as Mr. Vaughan's 'allegation' that 'there were alterations made to certain documents' held on Mr. Vaughan's files and 'that your client may have played some part in making these alterations'. You have asserted that your client was never alerted to this 'allegation' in advance, nor given the opportunity to cross-examine Mr. Vaughan in connection with it.

"From the Tribunal's records, it seems clear that your clients were notified in advance of Mr. Vaughan's attendance, both in April and in June of this year, and on each occasion your clients were served with the relevant Tribunal materials, in particular your clients were on each occasion served with a memorandum of Mr. Vaughan's intended evidence (in the form of his statement).

"Shortly before Mr. Vaughan commenced giving his evidence to the Tribunal on the 21st April, 2009, he provided the Tribunal with additional documentary material over and above that of which your client had already been given notice. This additional material was furnished to your client on the 22nd April, 2009. Notwithstanding advanced notice of Mr. Vaughan's attendance as a witness, your client chose not to be represented at the Tribunal's sittings between the 21st and the 24th April, 2009.

"Late in the afternoon of the 22nd June, 2009, in advance of the first day of Mr. Vaughan's second session of evidence, additional documents were again furnished by Mr. Vaughan to the Tribunal. Those documents were served on your client under cover of letter dated 22nd June, 2009. Once again, your client chose not to be represented at those sittings.

"Your client, therefore, had full notice of every aspect of Mr. Vaughan's evidence of which the Tribunal itself had advance notice. He also had every opportunity to cross-examine Mr. Vaughan. What you characterise as

Mr. Vaughan's 'very serious allegation' was something of which the Tribunal had no notice.

"If your client has any information concerning the above matters or any evidence he may be able to give in relation to them or any of the matters mentioned by Mr. Vaughan in the course of his evidence, please let me hear from you as a matter of urgency. Should it become necessary to hear your client's evidence, it will be taken over the next few weeks.

"Yours sincerely,
Stuart Brady."

Now, on the 10th July, 2009, Messrs. A&L Goodbody wrote to the Tribunal as follows:

"I refer to your letter of the 9th July, 2009, in relation to which I have taken my client's instructions.

"The letter from DLA to Woodcock's dated 27th February, 2002, provided that if Kevin Phelan had an issue in relation to Doncaster Rovers, he should take it up with Westferry Limited directly, as they owned the property. In circumstances where our client considered the documentation to be not relevant, he did not pass it to Westferry Limited. We trust that this answers your query."

Also, by letter dated 10th July, 2009, Messrs. A&L Goodbody informed the Tribunal as follows:

"Dear Mr. Brady,

"I refer to our letter of the 9th July, 2009, in relation to the enclosures contained in the letter from Woodcock's

Solicitors to DLA dated 8th March, 2002. Our client has now made contact with the solicitor in DLA who handled this matter on his behalf. We are instructed that the relevant files have been archived by that firm. The solicitor in question has informed our client that he should have the file in question early next week. As soon as he receives the file, he will review it and the enclosures in question will be passed to our client.

"We will let you know as soon as the enclosures have been received by our client."

The Tribunal wrote to Messrs. A&L Goodbody on the 14th July, 2009:

"Dear Ms. Conroy,

"I refer to your letter of the 10th of July concerning the transfer of documentation to Westferry Limited. With respect, your letter does not answer the Tribunal's query.

"It now appears that contrary to what is stated to the Tribunal in your firm's letter of the 24th February, 2005, your client did not transfer all of the material in question either to Westferry or the Tribunal. Moreover, it now appears to the Tribunal that before handing documentation over to Westferry (or presumably the Tribunal) your client examined the relevant documentation to determine, according to his own view, whether it was relevant. The Tribunal now wishes to know what other documentation, whether deemed to be relevant or not, connected in any way whatsoever with any of the English

property transactions in respect of which your client was dealing with Mr. Kevin Phelan, have been retained by him when sending documentation either to Westferry or to the Tribunal.

"The Tribunal would be grateful to hear from you by return."

The Tribunal also wrote on the 14th July to Messrs. A&L Goodbody as follows:

"Dear Ms. Conroy,

"Thank you for your letter of the 10th July concerning documents to be retrieved by Messrs. DLA Solicitors on behalf of your client. The Tribunal notes your statement that as soon as the file has been retrieved, the enclosures will be passed to your client. For the avoidance of doubt in relation to the matter, the Tribunal's request is that the enclosures in question be furnished forthwith to the Tribunal.

"I am also instructed to inform you that should confirmation to that effect not be received by the Tribunal before the close of business today, the Tribunal will instead be obliged to proceed by way of an Order for Production of the documents in question."

Messrs. A&L Goodbody responded on the 14th July, 2009:-

"Dear Mr. Brady,

"I refer to your letter of 14th July, 2009, in relation to the documents to be retrieved by Messrs. DLA on behalf of Mr. Aidan Phelan. Our client instructs us to confirm that

as soon as the file has been retrieved by DLA and the enclosures passed to our client, they will be sent to the Tribunal."

On the 15th July, Messrs. A&L Goodbody wrote to the Tribunal as follows:

"Dear Mr. Brady,

"I refer to our recent correspondence in relation to the enclosures contained in the letter of March 2002 from Woodcock Solicitors to DLA. DLA have taken up two files from archives which relate to our client but which do not relate to the Woodcock correspondence. DLA have now indicated that the file which relates to the Woodcock correspondence cannot be found by them. We attach a copy of their e-mail to our client. We do not believe that our client can provide any further assistance in relation to this matter."

Now, enclosed with that were a number of e-mails which flowed between Messrs. DLA and Mr. Aidan Phelan.

And I think all we need to do is put up this one, which is an e-mail dated 15th July, 2009, to Aidan Phelan.

"Dear Aidan,

"Apparently Martin has informed me that the two files which arrived from Manchester are not the files required.

Unfortunately, the third file, I was informed by our Manchester archiving, we no longer have."

On the 16th July, 2009, the Tribunal wrote to Messrs. A&L Goodbody:

"Dear Ms. Conroy,

"I refer to your letter of the 15th July, 2009, concerning the identification of documentation referred to in what has been called 'The Woodcock correspondence' and, in particular, your client's endeavours to obtain files from DLA. I am instructed to write to you as follows: -

"In light of the contents of your letter of the 25th June, 2009, (which letter was in response to the Tribunal's letter of the 22nd April, 2009) with which this exchange of correspondence commenced, and the enclosures referred to in that letter, the Tribunal takes the view that it is now a matter of urgency that the facts be ascertained, (or that it be established whether the facts can be ascertained), concerning the non-availability of the material being sought by the Tribunal.

"You will recall that in your letter of the 25th June last, enclosing three letters, part of the correspondence between Messrs. Woodcock & Sons on behalf of Mr. Kevin Phelan and DLA, on behalf of Mr. Aidan Phelan, you stated that your client believed the correspondence to be both vexatious and not relevant to the issues the subject matter of the Tribunal's deliberations. Whether or not your client is correct in his view that this correspondence is vexatious, can there be any doubt but that it was relevant to the matters into which the Tribunal had by that time, i.e. 2002, conducted inquiries? It was relevant to the material being examined by the Tribunal in the course of evidence

given in that year. It was moreover relevant to evidence that has been given since that time and more particularly to evidence given by Mr. Christopher Vaughan on each of the two occasions upon which he recently gave evidence to the Tribunal.

"While the Tribunal appreciates that Mr. Kevin Phelan has chosen not to give evidence to the Tribunal, and, as he is outside the jurisdiction, cannot be compelled to give evidence, the correspondence in question is nevertheless worthy of examination, having regard to the fact of its having been sent at the material time, to its contents, and to its enclosures. It is noteworthy that the letter of 8th March, 2002, from Messrs. Woodcock Solicitors, contained a lengthy narrative, wholly at variance with evidence both before and since that date and given to the Tribunal concerning the Doncaster, Mansfield and Cheadle transactions. Of course that narrative may be inconsistent with assertions since that time, and particularly in recent times, made to the Tribunal by Mr. Kevin Phelan. However, this document was centrally relevant to the Tribunal's inquiries into the long form/short form letters in 2002; to the Doncaster transaction inquiries conducted by the Tribunal since 2004 and to date; specifically the inquiries into correspondence appearing to link Mr. Michael Lowry to the Doncaster transaction; and further to the later evidence of Mr. Christopher Vaughan concerning all of those matters.

"It is moreover of significance that despite reminders, the correspondence enclosed with your letter of the 25th June last was not received by the Tribunal until after Mr. Vaughan had completed his evidence. It was, therefore, not available to the Tribunal at a time when either the contents of the letter or the enclosures could have been brought to his attention.

"Messrs. Woodcock's letter of the 8th March, 2002, which appears to be the final letter in the exchange of correspondence (at least to judge from what has been made available to the Tribunal to date) refers to a number of meetings between your client and Mr. Michael Lowry and Mr. Kevin Phelan in connection with English property transactions, none of which were brought to the Tribunal's attention, assuming that the accounts of how they transpired are correct. More importantly, the letter refers to, and attaches as enclosures, a number of documents which had not, by that time, been brought to the attention of the Tribunal. These documents include, but are not limited to the following: -

"1. A letter dated 12th November, 1999, from the long form of which, it now appears, the name 'Michael Lowry' was deleted. This letter, as you will no doubt be well aware, has since been examined, having only recently been produced in the course of the evidence of Mr. Christopher Vaughan commencing on the 23rd June, 2009.

"2. A letter dated 9th August, 2000, the contents of which appear to be inconsistent with evidence given by your client, and inconsistent with other documentation related to Mr. Michael Lowry's involvement in the Mansfield and Cheadle transactions. Again, this is a letter which only came to light in the course of Mr. Christopher Vaughan's evidence commencing on the 23rd June, 2009.

"3. A letter dated 5th October, 1998, from Mr. Christopher Vaughan to Mr. Kevin Phelan purporting to refer to discussions with Mr. Lowry at Mr. Paul May's house on 24th September, 1998, and subsequently on 25th September, 1998, in the course of a car journey to Leicester.

"There are also references to other discrepancies pertinent to evidence being given concerning the long form/short form letters, including references to alterations made to letters dated 27th August and 9th September, 1999, copies of which are enclosed as attachments to the Woodcock's letter. The Tribunal has only ever been provided with one version of these letters.

"The Tribunal wishes to take this matter up with your client, with his business partner, Ms Helen Malone, and with the relevant solicitor, whether partner or otherwise, of DLA Piper. From the documentation made available to the Tribunal, the relevant member of that firm appears to be Mr. Martin Griffiths. Please confirm that the Tribunal's

view in this connection is correct and if so, please let me have contact details for Mr. Griffiths so that the matter can be taken up with him today. Please ensure that the relevant waiver of confidentiality is furnished to Mr. Griffiths (or whichever other appropriate person is dealing with the matter) to enable a response to be provided to the Tribunal's inquiries.

"The Tribunal intends to examine this matter on Wednesday, 22nd July next, at 11 a.m.. I am instructed to inform you that Mr. Phelan should arrange to be available to give evidence on that date. Mr. Phelan should also arrange to make available to the Tribunal, prior to that date, all documents retained by him connected, however remotely, and whether deemed by him to be either vexatious or not relevant, to the Mansfield, Cheadle or Doncaster property transactions, or any matter related to those property transactions.

"In advance of giving evidence, your client should also provide the Tribunal with the following: -

" any evidence or information he has, concerning the matters deposed to by Mr. Christopher Vaughan in Mr. Vaughan's recent evidence to the Tribunal;

" an account of all dealings he had with any person connected with or in relation to the documentation the subject matter of this correspondence and specifically whether he, at any time, was requested to give, or did give instructions as to the destruction, or otherwise

as to disposal of this documentation;

" whether he received any copies of this documentation,
and if so, how such documentation was disposed of;

" whether he is aware of any other person having
received copies of this documentation.

"In the letter of the 8th March, 2002, Messrs. Woodcocks
referred to a number of meetings as follows: -

"(A) a meeting which it was contended was set up with your
client, Mr. Kevin Phelan, and Mr. Michael Lowry on the
12th December, 1997, at Orchard House.

"(B) a meeting at Mr. Michael Lowry's apartment with
Mr. Kevin Phelan and your client in March of 1998.

"Please let the Tribunal have details of your client's
attendance at such meetings, if any, and please provide any
documents relating to the same."

On the 17th July, 2009, the Tribunal wrote to Messrs. A&L
Goodbody.

"I refer to the above and, in particular, to my letter of
16th July, 2009.

"I enclose for your attention a copy letter dated the 2nd
of July, 2009, from Messrs. Oliver Roche Solicitors for
Mr. Kevin Phelan which was omitted from the letter sent to
you yesterday afternoon."

Then, on the 17th July, 2009, Messrs. A&L Goodbody wrote to
the Tribunal:-

"Dear Mr. Brady,

"I refer to your letter of 16th July, 2009, and the

telephone conversation between Sarah Conroy of this office and Stuart Brady of your office yesterday. We have endeavoured to contact Ms. Malone. We understand that she is presently on holidays. We will continue to attempt to contact her. At this stage we do not yet have instructions as to whether we still act for Ms. Malone in relation to this matter. We are informed that Ms. Malone is on holidays next week and also may not be in a position to attend the Tribunal on the 22nd July next, as indicated by you in your letter. We will come back to you as soon as we have instructions from Ms. Malone in this regard."

They also wrote to the Tribunal concerning Mr. Aidan Phelan:-

"Dear Mr. Brady,

"I refer to your letter of 16th July, 2009. We have taken instructions in relation to the contents of your letter.

As we have informed you on previous occasions, our client does not reside in this jurisdiction and has not done so for many years. He is travelling on business next week and will not be available to give evidence on Wednesday 22nd July, 2009, or at any stage next week. As we have previously indicated, our client wishes to be of assistance to the Tribunal and at all stages has endeavoured to assist the Tribunal's investigations. He has instructed us that he would be available to give evidence to the Tribunal on Friday 31st July, 2009. Please let us know if this is suitable.

"You have sought other information and documents from our client in relation to a number of matters. You will appreciate that the events to which your letter refers occurred a number of years ago and our client will need to refresh his memory in relation to those. When he has done so, we will come back to you in relation to the information sought."

Now, the Tribunal also wrote a letter at this stage to Mr. Martin Griffiths of solicitors DLA Piper.

Dear Mr. Griffiths, I am the solicitor to the above Tribunal of Inquiry, and you will be aware of the Tribunal's interest in your client's dealings with Mr. Kevin Phelan and both your dealings and his dealings with Messrs. Woodcock & Sons, solicitors, on behalf of Mr. Kevin Phelan. Messrs. A&L Goodbody, solicitors, have provided the Tribunal with copies of an exchange of e-mails between a Ms. Lynn Cain of your firm and Mr. Aidan Phelan concerning this matter, and so that you will appreciate the Tribunal's inquiries, I am enclosing copies of the e-mails in question.

"From Ms. Cain's e-mail on the 15th July, 2009, it seems clear that your Manchester office, or Manchester archives, have a record of holding three files on behalf of Mr. Aidan Phelan. Apparently two of these files have been identified and retrieved from your archives. It is assumed that they do not contain the material in question or any related material. Please confirm that this is the case.

Ms. Cain's e-mail goes on to state "Unfortunately the third file I was informed by our Manchester archiving we no longer have."

"On the assumption that your firm operates either a destruction and/or a disposal regime of which there is an appropriate record, the Tribunal is anxious to ascertain the date of either destruction and/or disposal of this file, together with details of the person to whom it was passed or who authorized its destruction, if at all, or details of the basis upon which it was destroyed, specifically with reference to any consent from or notification to your client, Mr. Aidan Phelan, with respect to any destruction.

"As this is a matter of considerable urgency, I would be much obliged to hear from you as soon as possible."

Now, the Tribunal has endeavoured to take this matter up with a number of affected persons, but believes that, in the first instance, it is important to establish why this information was not brought to the attention of the Tribunal in 2002 or at any time since that date, and why it was not brought to the attention of the Tribunal when a request had been made for all documents referred to in the Woodcock letter until after the evidence of Mr. Christopher Vaughan was completed here.

Secondly, the Tribunal wish to inquire why copies of material, apparently forming part of Mr. Christopher Vaughan's file, now appear to have gone missing.

The Tribunal hopes to be able to pursue these inquiries, in the first instance, in the limited time now available with Mr. Aidan Phelan and, possibly, depending on her availability, with his business partner, Ms. Helen Malone. Now, as the correspondence has indicated, Mr. Phelan and Ms. Malone may not be available this week, but Mr. Phelan has indicated that he will be available on the 31st July, which is next week, and if that is the position, then the matter will be taken up with him and Ms. Malone at that time, sir.

CHAIRMAN: Well, I am anxious to facilitate the two witnesses who have travelled to testify today, so we'll proceed to Mrs. Austin's evidence. I understand you are examining her, Mr. McCullough?

MR. McCULLOUGH: Yes, sir. Mrs. Austin, please.

MR. O'CALLAGHAN: Chairman, while Mrs. Austin is coming to the witness-box, might I just mention in respect of the matter that was raised by Mr. Coughlan there. Obviously we haven't been furnished with any of the additional documentation that the Tribunal received from Aidan Phelan. And it makes it difficult for my team to respond to any issues that may not affect my client, but I was hoping that the Tribunal could furnish the documentation to my client, and obviously the other parties as well.

And just one other issue, sir. In the transcript, Mr. Mathews of DLA Piper has been frequently referred to as Mr. Meagher, and Mr. Meagher has just asked me to bring

that to the attention of the stenographer.

CHAIRMAN: I hadn't noted that, but if of course that's the case it should be rectified. And of course as regards documents, I think there will be no difficulty in seeing that they are furnished as quickly as possible.

MR. COUGHLAN: Yes, they will be. These documents were made available by Mr. Aidan Phelan's solicitors in June. The matters were taken up and they will be made available to everybody in due course. The Tribunal were continuing its inquiries attempting to obtain the enclosures which now appear to have gone missing.

CHAIRMAN: Very good. Thank you. Mr. Beatty, good morning.

MR. BEATTY: I represent Mrs. Maureen Austin.

CHAIRMAN: Very good, Mr. Beatty. I, of course, note your interest and the assistance you have already given to the Tribunal. I don't know if a formal order for limited representation is necessary. But if needs be, it can be made, and I'll note your interest in the first instance.

So perhaps Mrs. Austin, if you'd be kind enough to come up please.

MAUREEN AUSTIN, HAVING BEEN SWORN, WAS EXAMINED BY

MR. McCULLOUGH AS FOLLOWS:

CHAIRMAN: Thank you very much for your assistance, Mrs. Austin. Please be seated.

MR. McCULLOUGH: Thank you Mrs. Austin.

Q. Mrs. Austin, you have provided to the Tribunal a Memorandum

of Intended Evidence, and I wonder do you have a copy of that with you in the witness-box?

A. I think I do.

Q. It's a document with eight paragraphs. It's over two pages. It was prepared by the Tribunal, and approved, I think, by you through your solicitor. We can hand in a copy to you. Thank you.

(Document handed to witness.)

Now, Mrs. Austin, as you may be aware, the Tribunal has previously indicated that it accepts the information you have provided to the Tribunal. And this memorandum is comprised of the information provided by you during two meetings with the Tribunal team; private meetings on the 22nd May, 2001, and the second meeting on the 14th October, 2002. Now, in circumstances where the Tribunal has indicated that it accepts the information you provided, all I propose to do initially is simply to read this formally to you and ask you to agree its contents. You may then be asked questions by other legal representatives in the room, and it may be the case that if anything additional arises, I may wish to come back to you at the end.

A. All right.

Q. But initially, I am just going to confine it to the reading of the memorandum.

A. Okay.

Q. And that states as follows:

You have provided the Tribunal with the following

information:-

You and your late husband, Mr. David Austin (deceased), moved to London in 1993 when your husband, who was an executive with the Jefferson Smurfit Group, took up a new position in London. Some years earlier, you and your husband had purchased a townhouse at Alloa Pueblo, Callez de Larelle, Nueva, Andalucia, Marbella, Spain, which you used as a holiday home. Your late husband died in November 1998, and during the previous four years following his diagnosis, your principal focus was your husband's health and welfare, you paid little attention to other affairs.

You were unaware until after your husband's death that bank accounts held in Jersey were in your joint names.

In 1996, you and your husband made a decision to sell the townhouse in Marbella and to purchase a property in the south of France. It was sold in 1996 to Denis O'Brien, who you thought wished to purchase it for his parents' use.

The sale was not a direct sale from the Austins to Denis O'Brien, as the property was owned by a company, Tokey.

Whilst the property was sold in 1996, you and your husband continued to have access to it until after the Ryder Cup in 1997.

You recalled clearing your personal belongings from the property either before or after the Ryder Cup and you subsequently confirmed to the Tribunal that you did so in or about October 1997.

You were aware that your husband was involved in organising

a fundraising event for the Fine Gael party in New York in November 1996. You knew nothing more about the event, although it was possible that your husband may have informed you that it had been successful. You were unsure when your husband became friendly with Michael Lowry. You thought that they might have become acquainted either through attending race meetings or Fine Gael functions.

Your husband had been a close friend for very many years of the late Mr. Frank Conroy. You described your husband's friendship with Mr. Lowry as peripheral, although it was possible that they might have been close in a manner that you did not know of.

You knew that your husband intended to assist Mr. Lowry in connection with the acquisition of a property in Carysfort Avenue, Blackrock. You recall driving passed the property with your husband when he pointed it out to you and told you that he intended to help Mr. Lowry. You may have thought that your husband intended to assist him by providing some form of guarantee. You would not have thought that your husband intended to make a loan of €147,000 to Mr. Lowry.

Your husband's connection with Mr. O'Brien dated back many years. They had a close relationship and Mr. O'Brien would have visited your husband occasionally in later years, as did Mr. Lowry and the late Mr. Frank Conroy.

And I just wonder, Mrs. Austin, can you confirm that those details are correct?

A. Yes.

MR. McCULLOUGH: Thank you very much, Mrs. Austin.

CHAIRMAN: Well, as regards some other legal practitioners who may wish to ask you some questions, Mrs. Austin, I'll just check the position. There doesn't seem you have any connection at all, Mr. O'Donnell. Is there anything you want to raise Mr. Fitzsimons?

MR. FITZSIMONS: No.

CHAIRMAN: And Mr. Kelly?

MR. KELLY: I have a few questions, but I'll wait for my colleague first.

CHAIRMAN: Well, if you choose to yes, very good, Mr. O'Callaghan.

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

Q. MR. O'CALLAGHAN: Good morning, Mrs. Austin. My name is Jim O'Callaghan, Mrs. Austin, and I appear for Denis O'Brien. As Mr. McCullough mentioned to you, legal representatives have some questions for you.

First of all, Mrs. Austin, I'd like to thank you on behalf of my client for coming here to give evidence, and I don't know if you are aware, but the reason you are here, Mrs. Austin, is because my client asked the Tribunal to call you. Are you aware of that?

A. Yes.

Q. You are, very good. And I don't know to what extent you are aware of what the Tribunal is investigating, Mrs. Austin, but what I wanted to do was just very briefly

bring to your attention the reason you are here and explain to you what it is the Tribunal is investigating, and I think that may be of assistance to you in answering some of the questions I will have. So if that's okay with you, I'll proceed down that route?

A. Yes.

Q. You are aware, Mrs. Austin, that the Tribunal is inquiring into whether payments were made to the former Fine Gael Minister, Mr. Michael Lowry, are you aware of that?

A. Payments?

Q. Payments?

A. From my late husband?

Q. No, generally. The Tribunal has been set up by the Oireachtas to inquire

A. Yes.

Q. whether payments were made to Mr. Lowry.

A. Yes.

Q. You are aware of that?

A. Yes.

Q. And it is considering whether my client, Denis O'Brien, made payments to Mr. Lowry. Are you aware of that, Mrs. Austin?

A. Mm-hmm.

Q. And one of the areas the Tribunal is inquiring into is the purchase of a property that yourself and your husband, your late husband, Mr. David Austin, owned in Spain, and it was sold in 1996, isn't that correct?

A. Yes.

Q. And what the Tribunal is inquiring into, Mrs. Austin, is whether or not the sum of money that was paid by Denis O'Brien for the purchase of that property, namely $\frac{1}{2}$ 150,000, it's inquiring into whether or not that was in fact money for the purchase of your property or whether it was something else, namely a payment to Mr. Lowry. Are you aware of that?

A. Well, I am aware of that, but it was for the house.

Q. And what I want to do, Mrs. Austin, and I hope this isn't too much detail, but I wanted to just have a book, not simply for yourself, but just for the other practitioners, and particularly for the Chairman here, and I wanted to hand up a book of documentation which will be of assistance to us in me asking you questions. And with your permission, sir, my solicitor will just hand that up to Mrs. Austin and to yourself and to your team.

(Book handed to witness, Chairman and counsel.)

Mrs. Austin, on the 29th September, 2005, the Chairman issued a preliminary ruling in respect of a number of matters, and that's at Tab 1 in the book in front of you.

Can I briefly ask you to look at the second-last page of that document. Unfortunately, it isn't paginated, but there are paragraph numbers. And the paragraph to which I wish to refer you is paragraph 3.17. I don't know if you have that, Mrs. Austin?

A. Yes.

Q. It's the second-last page. And I just wanted to open up a section of the Chairman's ruling, so as just there is context as to the background in which you are being asked questions.

What the Chairman is referring to at paragraph 3.17,

Mrs. Austin, is money that had been transferred out of an account held by my client in Woodchester Bank. And if I could just ask you to look at seven lines from the bottom, there is a sentence that begins with the word "Amongst a number of allegations..." allocations, sorry, "Amongst a number allocations..." I don't know if you have spotted that, Mrs. Austin? I'll just read it out. It says:-

"Amongst a number of allocations from this account, the sum of $\pounds 50,000$ firstly, and secondly the sum of $\pounds 100,000$, were transmitted to an account opened by Mr. David Austin in the Channel Islands. Again, opened specifically for the purposes of receiving these monies. The Tribunal has been informed by Mr. Denis O'Brien that these monies were transmitted to Mr. David Austin in consideration of the sale by Mr. Austin of a townhouse he owned in Spain to Mr. O'Brien. These monies paid to Mr. Austin by Mr. O'Brien were then transmitted (in fact $\pounds 147,000$ of the funds, not the entire $\pounds 150,000$) to an undisclosed offshore account of Mr. Lowry in the Isle of Man, opened at a time when he was still a Minister, and apparently expressly for the purpose of receiving these funds. According to Mr. Lowry, these funds were to be used in the renovation of

his Carysfort Avenue property. However, sometime shortly after a contract was entered into for the renovation of that property the entire transaction was reversed, in fact on the day of the establishment of the McCracken Tribunal, by the retransfer of those monies back to the Channel Island account in the name of Mr. Austin, where they appear to have remained. One of the questions that arises in light of the remarks made by Mr. O'Brien in the course of the IPO inquisition, is whether the subsequent property transactions, namely Doncaster, Cheadle and Mansfield (and the related financial transactions) were intended as a substitution for the payment that 'Got stuck,' i.e. for the £147,000 payment that was reversed (if that is an appropriate conclusion to reach in relation to that payment); and/or whether all of those transactions from reversed Carysfort's transaction onwards were part of a train of transactions related to the conferral of a benefit on Mr. Michael Lowry."

Now, Mrs. Austin, I am not expecting you to understand fully the intricacies of what's contained within that paragraph, but it does indicate that one of the issues is the question-mark that the Tribunal think hangs over the payments of £150,000 by my client to you for the purchase of your Spanish property. So you are aware what the issue the Tribunal is looking at is?

A. I am aware, but I really didn't have very much to do with the way my husband handled his financial affairs.

Q. I understand that. Can I ask you some general background questions about the property in Spain, Mrs. Austin.

Can I ask you when it was that yourself and your husband purchased a property in Spain?

A. When we purchased it?

Q. Yes.

A. Oh, I think we had it for about ten years before.

Q. So you would have brought it sometime in around 1986, would that be correct?

A. '86/'87, yeah.

Q. And the property was in Marbella, isn't that so?

A. Yes, up in Alloa, up near the golf club.

Q. And it was used as a holiday home by yourself and your late husband?

A. Yes, always.

Q. And I think your late husband was a keen golfer, isn't that correct?

A. Yes.

Q. And that was part of the reason of the attraction of the house, because it was near a golf course, isn't that so?

A. Yes.

Q. And I think in 1993, as Mr. McCullough read out in your statement, yourself and your husband moved to London because of Mr. Austin's work, isn't that correct?

A. Yes.

Q. And from that date on, Mrs. Austin, was your late husband permanently resident outside of Ireland?

A. Yes.

Q. And unfortunately, I think around the time of 1995/1996, your husband's health deteriorated, isn't that so?

A. Yes.

Q. And I think at some stage in 1996 you decided to sell the property in Marbella, is that correct?

A. Yes. We got more involved with France because I have friends there, and I preferred it. So, David was also working in the Smurfit's office in Monaco, so it sort of made sense to buy a property in France.

Q. So it was more convenient for yourself and your late husband to live

A. Yes, I liked it better as well.

Q. The weather was better?

A. No, I liked the south of France better.

Q. That's a very important matter. So you were part of the decision, Mrs. Austin, to sell this property, would that be fair to say?

A. Yes, it's fair to say.

Q. And you moved subsequently. Did you actually buy a place subsequently in the south of France?

A. We bought a property in Moujean, on the golf course, on the 12th tee.

Q. Okay. When did you become aware, Mrs. Austin, that Denis O'Brien was interested in purchasing the Spanish property that yourself and your husband owned?

A. I'm not quite sure of the date, but I know that we were

anxious to get rid of it, and I think Denis said it would be a nice place for his parents.

Q. And your husband and Denis O'Brien were friends, isn't that correct?

A. Yes.

Q. And they knew each other, isn't that correct?

A. Very well.

Q. And can you say to this Tribunal that your husband said to you that Denis O'Brien was interested in purchasing the property?

A. Yes, mmm.

Q. And the reason you state is because he wished to purchase it for his parents, isn't that so?

A. Yes.

Q. Can I ask you, Mrs. Austin: Were you involved in any way in the negotiations in respect of the sale of the Spanish property?

A. None at all. I didn't really know anything about the monies.

Q. Is there anything you can say to the Tribunal in respect of what your husband was saying to you about his dealings with Denis O'Brien for the purchase of the property?

A. No.

Q. Did he indicate he had met him?

A. Well, no. I think David and Denis went and had a look at the property and that's when they Denis decided to buy it. But I am not sure of that date.

Q. And would it be correct to say, and I am not trying to tie you down to dates, but would you regard it as being sometime around 1996?

A. Yes, yes, oh, yes, but I don't know exactly when.

Q. Okay. I think one of the events that helps you to identify the time period, Mrs. Austin, was the Ryder Cup that was taking place in Spain?

A. Yes.

Q. Am I correct in saying that took place in 1997 in Spain?

A. Yes, David was very anxious to be there because he was organising the Smurfit's hospitality tent, but unfortunately he had a recurrence of cancer and he had to have more chemotherapy, so he was very, very unwell and therefore couldn't take up the apartment.

Q. Mrs. Austin, my client informed the Tribunal that the purchase price originally agreed was to be in the sum of $\text{€}165,000$ Irish, but that this was subsequently reduced to $\text{€}150,000$ because yourself and your husband were anxious to stay in the property

A. Yeah.

Q. until the Ryder Cup concluded?

A. Well, that was the plan, but unfortunately he got sick again.

Q. I am sorry to hear that. But in terms of the amount for the purchase of the property, does $\text{€}150,000$ Irish accord with what was your understanding of the price being paid for it?

A. Yes.

Q. And I think you recall I think you mention in your statement, that you recall moving your belongings, I think it was either before or after the Ryder Cup, which was I think October 1997, isn't that so?

A. Yes.

Q. And that was the end of your involvement with the Spanish property, isn't that correct?

A. Yes.

Q. And just in terms of a number of issues on which there is no doubt; you have no doubt, Mrs. Austin, but that your property was sold in 1996, although you didn't move out until 1997, isn't that correct?

A. Yes. I sort of had gone, I was gone, I was in another place and I was happy there, so... I had moved out of there.

Q. You have no doubt that Denis O'Brien purchased that property for his parents' use, isn't that correct?

A. No, I have no doubt.

Q. And you have no doubt that the price paid for it was in the sum of $\text{€}150,000$ Irish, is that correct?

A. Yes.

Q. And I don't know if you recall a gentleman who used to play a role in respect of the property in Marbella, his name was Mr. Perera, Mrs. Austin, do you recall that gentleman?

A. No.

Q. Could I ask you to look at Tab 7 of the book in front of

you, and in particular if you could look at Tab 7, the last page, I beg your pardon. And this is a note prepared by a man called MA Perera, who I think was involved in the management of your property in Marbella. His name may not be familiar to you. But this was a document that was previously produced to the Tribunal and which was referred to by my client in his evidence. I just want to open that document to you, Mrs. Austin, and then ask you a question or two.

And it's signed by MAP, which is a reference to Mr. Perera.

It's dated the 3rd July, 1996. And it's re: Tokey

Investments Limited. If I could just pause there,

Mrs. Austin, Tokey Investments Limited was the company that owned your property in Spain, isn't that so?

A. Yes.

Q. It was a company that your husband had set up for his own personal business uses?

A. Yes.

Q. And your Spanish property was held in that name, isn't that correct?

A. Yes.

Q. If I can just open the note to you, it says: "Telephone conversation with David Austin, who explained that due to ill health he was considering selling the property in Spain owned by Tokey by way of transfer of beneficial ownership in Tokey.

"At present he was still unsure as to the vehicle to be

used for the ownership, but he said he would keep me informed with developments.

"He said that the purchaser was a friend of his and that he would be staying on in the house for a while longer.

"He asked for details of the procedure to be followed, and I explained that he would have to return the Declarations of Trust which had been issued to him originally and that these would have to be cancelled and new ones issued to the new owners. A Deed of Transfer of Beneficial Ownership would also have to be executed.

"Mr. Austin said he could not remember where the Declarations of Trust were kept, but would try and locate them and would revert to me."

And that's signed by Mr. Perera.

And can I ask you, Mrs. Austin, in the manner in which that memorandum refers to the fact that the property was to be sold and it was being purchased by a friend of his, does that accord with your understanding at the time as to what happened?

A. Yes, mm-hmm.

Q. And you will note in the last two paragraphs of Mr. Perera's note, he refers to the issue of the Declarations of Trust and how the Declarations of Trust will have to be issued into the names of the new owners.

Were you aware, Mrs. Austin, that there was an issue about the Declarations of Trust not being sworn until 2001; that there was a delay in respect of that issue being dealt

with?

A. No.

Q. You may not have been?

A. No.

Q. But could I just ask you to look at Tab 12, and really I know you don't have expertise in respect of this, but I just wanted to bring it to your attention. And this is a letter from Deloitte and Touche, dated 19th October, 2001, addressed to a person in my client's office, and it concerns Tokey Investments Limited, the company which owned your property in Spain. And it says:-

"Dear Sandra,

"We can confirm that we received a letter from Valmet Corporate Services Limited in February 1998 enclosing original Declarations of Trust issued by their nominee companies, Finsbury Holdings Limited and Finsbury Nominees Limited, stating that they held respectively 99 shares and 1 share in Tokey Investments Limited to our order.

"Walbrook Trustees (IOM) Limited should have issued their own Declarations of Trust stating that these shares were in turn held to the order of Mr. Denis O'Brien, however due to an administrative oversight the declarations were not issued until May 2001."

Can I ask you, Mrs. Austin, were you aware that there had been an issue or there had been a problem with your husband locating the Declarations of Trust prior to his death?

A. I know he was looking for them and then because we had

moved from London from Dublin to London and then there was lots of papers that David did lose, and he was looking around for them on various occasions, but illness did come into it quite a bit, especially when he was having chemotherapy. He tended to put things off and then restart them again when the chemotherapy was furnished and he felt more like himself again. So he could have been looking and then he could have put it on the long finger.

Q. So, when you say, Mrs. Austin, he was looking for these documents, that indicates that for a period of time he couldn't locate them, isn't that correct?

A. Yeah.

Q. Okay.

A. But I don't then remember him finding them.

Q. Okay, okay. Can I now ask you, Mrs. Austin, about another matter that may be of concern to the Tribunal.

The Tribunal may very well accept that the property in Spain was purchased by Denis O'Brien from yourself and from your husband, but it may be of the view, or could consider that the monies that were transferred, namely the $\text{€}150,000$, wasn't in fact the payment price for the property. And in that regard can I ask you, Mrs. Austin, whether or not you are aware of any other amounts of money in the sum of $\text{€}150,000$ being paid by Denis O'Brien to you or your husband in respect of this property?

A. No.

Q. Is it likely that you or your husband, generous people no

doubt you are, would have given Denis O'Brien a property in Spain for free?

A. Oh, no, no.

Q. Are you aware of my client paying any other money to your husband at this time in 1996/1997 in respect of the purchase of the Spanish property?

A. No.

Q. Could I ask you now briefly to look at evidence which was given by my client, and it's at Tab 9 of the book,

Mrs. Austin. This is evidence that was given by my client on Day 122 before the Tribunal, and I just want to open parts of that evidence to see whether it generally correlates with your understanding of what happened,

Mrs. Austin.

And you will see at the beginning of Tab 9, and I'll work off the page numbering at the top of the page, there is a page 53, and question 37, just three lines down, do you see that, Mrs. Austin?

A. Yes.

Q. I just want to read this out to you and then at the end ask you a general question in respect of it.

It says:-

"Question: You had already authorised Mr. Phelan to make arrangements to transfer two payments to Mr. David Austin, isn't that correct, in respect of a house in Marbella, in the Marbella region?

Answer: This was the agreement to buy a house. I think

the agreement was in May and executed in June/July.

Question: That's just what I wanted to ask you about:

What was executed in June or July?

Answer: Well, I bought I agreed with I had a meeting

I think or I think it was a dinner with David. As far

as I remember it was in May 1996 and this was when he

raised issue about his properties and I agreed, sort of

informally, to buy his house, and obviously we had

subsequent discussions to the May conversation, and then we

actually did the deal as such. Now, I don't know what date

that was, but I remember meeting with him. He went through

the he showed me the deeds of the property and then I

agreed to buy the property from him when we struck the

price.

Question: So you believe that in May you had first of

all, it arose in the context of a social situation, I take

it?

Answer: Yeah, it could have been earlier than May, but

it's somewhere around that time.

Question: And you think that he showed you the deeds of

the property and you struck on a price, is that right?

Answer: At some stage he did. He took out a big folder

and showed me the original deeds and that of the house.

Question: And was this in a big folder?

Answer: Yes.

Question: And did that folder pertain to that particular

property or were there other properties?

Answer: Yeah, he described that he owned the company that owned the property.

Question: And that was the deed he showed you, was it?

Answer: Well, now, he, he showed me well, I can't remember precisely what he showed me, but he explained to me that the house was owned by a company called Tokey Investments and that there was a Deed of Trust there, and I now know that obviously this is a regular occurrence now, when people buy overseas property, they don't buy a house with deeds, but they do ultimately, but they normally buy a company which owns the property. So that's done for tax purposes and for planning.

Question: And this was, you believe, sometime around May, that he showed you these documents?

Answer: In around May of 1996. That was in London.

Question: In London?

Answer: Yeah.

Question: And you believe then that the deal was completed, or to use your own expression, executed sometime in the summer; I am not fixing you to a particular time, June, July or August or 1996 of thereabouts?

Answer: It went through a number of iterations. I remember paying the money, paying a deposit and the deposit got delayed and then I paid him the 100, and then as part the deal he was allowed to keep the house until after the Ryder Cup, and then we took, obviously, possession of the house post the Ryder Cup, I think around October. And then

there was a matter of I mean, I wasn't involved in this, but he had lost parts of the documentation surrounding the Deed of Trust of the house. So all this was not handled by me, so I am looking back

Question: I understand and I appreciate that. Because I'll just take you through the documentation if you want to make any comment on do it, but who was it handled by?

Answer: It was handled by David, and it was also handled by David Phelan and Helen Malone

Question: Mrs. Malone being partner of Mr. Phelan, isn't that correct?

Answer: Yeah.

Question: Now, you believe that in London Mr. Austin had a file which contained a lot of documents, and among those documents was something he showed you concerning the deeds, and I know you are not a lawyer so I am not using it in a technical term, but showed you something about the property in Spain, is that right?

Answer: No, no, he was just describing to me how the property was held by him.

Question: But he had a document?

Answer: All he had was he showed me the original deed, some old document that he had when he bought the house originally.

Question: Very good. Now, I think as a result of the inquiries made through you by the Tribunal your solicitors have obtained certain documents pertaining to this

particular transaction, isn't that right?

Answer: Yeah, there was a file that we had sought.

Question: And I think that was a file, and I'll just go through the important documents, as we see it in a moment, in relation to the transaction. If there is anything else you wish to refer to, please do. But the file had to be obtained from a number of sources, isn't that correct?

From a Mr. Perera in Gibraltar, and then some information had to be obtained from the Isle of Man, isn't that correct?

Answer: Yeah. I mean, he is a fellow who is managing Finsbury Nominees."

I'll just pause there, Mrs. Austin, but thereafter counsel opened the note from Tokey Investments, which we have just looked at. And that evidence that was given by Denis O'Brien, in your opinion, is that an accurate account, from what you are aware of, Mrs. Austin, of what happened at the time in 1996 and 1997?

A. Yes. I wasn't there, but it seems to me more or less what happened. I know we had a problem looking for the documents but, yes, that sounds right.

Q. Could I ask you to look forward to page 66 of that section of Tab 9. The numbering is at the top of the page, Mrs. Austin. If I could ask you just to look at the second-last question, question 81 at the bottom of the page. Do you have that, Mrs. Austin?

A. Yes.

Q. It says:-

"Question: You had some discussion with Mr. Austin whereby it was informally agreed about you purchasing the property?

Answer: Yes. I mean, there was maybe three, four conversations.

Question: And on your side you took the step of paying €150,000 into an account for Mr. Austin, Mr. Austin specifying that he wished it to come from an offshore source?

Answer: That's right. Because this was an offshore property owned through a Gibraltar company and he wanted it offshore because he was offshore.

Question: And Mr. Austin was unwell at the time also, wasn't he?

Answer: I think that's part of the problem, Mr. Coughlan, is that the file looks as if there was a lot of gaps and delays, and I think it was because of David's illness, and I think there was a view not to hound him or hassle him."

If I could just stop there, Mrs. Austin, and ask you to confirm, that at this time your husband, he wasn't resident in Ireland, he was living effectively offshore, isn't that correct?

A. Yes.

Q. That would be the explanation, would you agree, why he was seeking the money to be paid offshore, since he resided offshore?

A. Yes.

Q. Could I now ask you to move forward and have a quick look at page 68 on the top of the page. And if you look at the bottom of that page, there is question 91, and I just want to read that and the next page and ask you a question about it.

Question 91, I think it's Mr. Coughlan who says:

"Question: Did you take any steps to use the property or have anyone use the property over the period?

Answer: Yeah, people used it, but then we rented it. We rented it intermittently. It's now in rent for the last two years.

Question: Did you use it after the money was paid?

Answer: Yes.

Question. When?

Answer: Not personally, but I gave it to a friend.

Question: When was that?

Answer: I don't know precisely, but somebody can find out. I don't know when.

Question: Well, was it between

Answer: It was after no, it was after the Ryder Cup.

Question: It was after the Ryder Cup?

Answer: Yeah.

Question: So can we take it that Mr. Austin did not vacate the property until after the Ryder Cup?

Answer: That was part of the deal with him, in that he would have the use of the property up until the Ryder Cup.

Question. So he didn't vacate the property until after the

Ryder Cup, is that correct?

Answer: I think that would be a fair assumption, yes.

Question: That was in September or October of 1997?

Answer: You know, I think there was a period after the Ryder Cup. Ultimately, he didn't even use it because he was too ill. I don't think he went to the Ryder Cup.

Question: I see. He may have, so...

Answer: Well, he may have, but he was very ill at the time.

Question: Did any member of your family use it between the time the money was paid and the Ryder Cup, for example?

Answer: Well, there was obviously you will have seen from my bank account, but, you know, I bought a place in Portugal and then I invested in a place called Quinta da Lago, so my family is now there because my father has a house as well, he is building a house. So, ultimately my father didn't use the house because we decided to go to Quinta instead."

Can I ask you, Mrs. Austin, just in respect of the evidence given there by Denis O'Brien in respect of the Ryder Cup and staying on there, does that correlate with your understanding of what happened?

A. Well, we didn't go to the Ryder Cup definitely, and we didn't go back to the house at all. So, I have no idea what happened to the house after we left it. So, that may very well what I have read is probably what happened.

Q. But it was your intention to go there for the Ryder Cup?

A. Oh, yes.

Q. But unfortunately your husband's illness precluded that?

A. Definitely we were going to go.

Q. Can I ask you some questions now, Mrs. Austin, about Fine Gael. Your husband was heavily involved in Fine Gael I think in the 1980s and 1990s, isn't that correct?

A. Yes.

Q. And his involvement with Fine Gael was completely separate to his friendship or involvement with Denis O'Brien, isn't that so?

A. Yes.

Q. And in fact, I think the friendship between Denis O'Brien and your husband went back as a family friendship, back to the Sandycove Swimming Club, isn't that correct, and the Blackrock baths, which we have heard about previously in this Tribunal?

A. Yes.

Q. But your husband helped to fundraise for Fine Gael, isn't that so?

A. Yes.

Q. And it's in that context that he became acquainted with Mr. Lowry, isn't that correct, or do you know?

A. Well, that and the racing; he was very interested in racing and so was Michael.

Q. You said at paragraph 7 of your statement which Mr. McCullough opened, that you are aware that your husband intended to assist Mr. Lowry in respect of acquiring a

property in Carysfort Avenue. Can you just tell the

Chairman how your awareness of that was created?

A. We were driving down Carysfort Avenue and we passed the house, we were in a traffic jam, and David pointed it out to me and said "That's the house Michael Lowry is going to live in and I am going to give him a hand with it," words to that effect.

Q. Is it possible for you to date that, Mrs. Austin?

A. No.

Q. Would it be at a time in '95, '96, '97, around that time period?

A. Probably that time, but I haven't got an exact date.

Q. Can I ask you to look at two documents, one is at Tab 14 of the book, Mrs. Austin. Now, I don't have many questions about this. Mr. Kelly, on behalf of Mr. Lowry, may wish to ask you questions about this. But for the sake of the Chairman, can you confirm, Mrs. Austin, that that handwritten note, at Tab 14, is in the handwriting of your late husband?

A. Yes, definitely.

Q. And I don't need to open it. I think the Chairman is aware of the content of it. And although it's a bad photocopy, Mrs. Austin, the signature at the bottom of the page, which is halved

A. Yes.

Q. does that look like the signature of your late husband?

It's hard to say, it's not a fair question to ask you

considering that it's an incomplete copy?

A. Yeah, it looks like it.

Q. It looks like it from the part that you can see?

A. Yes.

Q. And just the next tab, Mrs. Austin, Tab 15, is a letter dated 27th February, 1997, from your husband. Can you confirm to the Chairman that, as far as you were aware, that that is the handwriting of your late husband, Mr. David Austin?

A. Definitely, yes.

Q. Mrs. Austin, you are aware, obviously, that you are here because my client asked the Tribunal to call you to give evidence; you confirmed that earlier on this morning, isn't that so?

A. Yes.

Q. And obviously my client believes your evidence is very important in terms of the evidence you can give to the Chairman about the purchase of the Spanish property.

A. Mm-hmm.

Q. But for the benefit of the public, and this is a public inquiry, this is not some evidence that you have just recalled in the past number of weeks or number of months, isn't that so?

A. No, no.

Q. This is in fact something that you brought to the attention of the Tribunal, as Mr. Coughlan indicated, back in 2001, isn't that so?

A. Yes.

Q. And could I ask you in that regard, Mrs. Austin, if you could look at Tab 3 of the booklet?

A. Yeah.

Q. And Tab 3 begins, Mrs. Austin, with a letter from your solicitor, Mr. Beatty, dated the 12th March, 2007, to yourself, isn't that correct? Do you see at the top of the page it's addressed to Ms. Maureen Austin and your address is given?

A. Yes.

Q. It's dated 12th March, 2007. And if I can just identify and read out what Mr. Beatty says in the letter to you. He says:-

"Dear Maureen,

"I located my notes of the meeting which took place on the 22nd May, 2001, between yourself, myself, Jackie O'Brien and John Davis.

"I have now prepared a statement from my notes and I am enclosing, as well a copy of the notes which I have attached to the statement.

"The dinner referred to in page 1 of the notes spells out as Monagaspl. This is not in context. However, you may understand the reference. What I wrote down is not making sense to me.

"Kind regards.

Yours sincerely,

Walter"

And then following that, Mrs. Austin, there are two documents. If I can just tell you what they are first and then we can go back and have a look at them. the first is a two-paged typed document, do you see that, Mrs. Austin? It's in Tab 3, and the second page of Tab 3 is a document headed in capital letters "Transcription of handwritten notes of Walter Beatty."

A. Yes.

Q. That goes on for two pages, isn't that correct, those type-written notes?

A. Yes.

Q. And then after that there are four pages of handwritten notes, isn't that so?

A. Yes.

Q. And that is the writing of your solicitor, Mr. Beatty, isn't that correct?

A. Yes.

Q. And these are notes of a meeting taken by Mr. Beatty at a meeting that you attended with the Tribunal on the 22nd May 2001, isn't that correct?

A. Yes.

Q. And to explain to you and to the Tribunal what Mr. Beatty has done, is that obviously in 2007 he located the handwritten notes of his meeting in 2001, isn't that correct?

A. Yes.

Q. And then in 2007 he prepared this typed-written note which

records what's contained within the handwritten minutes,

okay?

A. Yes.

Q. So what I'll do is, I just wanted to read out the typed

version, which is an accurate reflection of what's

contained within the handwritten notes. I'll just read

that out to you now.

It says:-

"Transcription of handwritten notes of Walter Beatty

(prepared on 9th March, 2007) of the handwritten notes

taken by Walter Beatty on 22nd May, 2001, at a meeting

which took place in Dublin Castle between Jackie O'Brien

BL, John Davis, Solicitor to the Tribunal, Maureen Austin

and Walter Beatty.

"Jackie O'Brien raised David Austin's friendships with

Michael Lowry and Conroy.

"Maureen Austin said she was not sure when David and

Michael became friendly. It was a peripheral friendship.

Michael Lowry had said it was very close. They met at

dinner re Smurfit. They were friends, so was Conroy.

David was a longtime friend of Conroy. Swimming brought

about an old connection with Denis O'Brien in the years

1995 or 1996. Denis rang to know how David was. In Spain

it was Lowry and Conroy who came to see him. No mention

ever of dinner. I know nothing of New York fundraising

dinner or how it was organised. I was in London. David

brought back navy t-shirts. I do not remember anything in

detail. I was a corporate wife. I don't remember anything about Telenor payment. If he mentioned it, it would have gone in one ear and out the other. I know nothing about a joint account, except Baggot Street was there for running the house.

"Aidan Phelan was an accountant, got a good sense of humour met. Aidan Phelan was not as close as the other executives. David met Aidan through Denis O'Brien. Aidan was not part of the Michael Lowry set.

"Spain was acquired 13 years ago. David loved golf and I loved tennis. David went in August or September with the lads. It was very suitable for his personal requirements.

"Spain was sold in 1996. I know it was sold to Denis who wanted to buy it for his parents. There was a company who owned it, Tokey. There was a lawyer, Richard Powe, an American who went back. He looked after properties. The complex for our Spanish property was Alloa Peblo.

"In October 1996 David's health was okay. I don't recall any meeting with Michael Lowry. David was meticulous about dates and he may have spent time in September 1996. I didn't know about Michael Lowry buying the house, David didn't tell me. Somebody else mentioned a house in Carysfort Avenue. Never mentioned Irish Nationwide nor Michael Fingleton to me or any acquaintances there. In 1997 Ned Ryan in London mentioned Dr. Crown's treatment. A friend of yours told you about this treatment in August and

he had other treatment."

Then there is a reference to Haughton Fry.

Then: "In November 1997 (between 4 and 7 November) you wrote probably to Fry's recognising Telenor's 50,000.

He was a second cousin of Sean Bruton. He knew him. If John heard he wasn't well, he would ring him. There was never any long conversations.

"The lawyers for the Tribunal then said there is no point in calling Mrs. Austin and they thanked her for coming."

Can I ask you, Mrs. Austin, I know it's a long time ago, that meeting took place over eight years ago, but is that note kept by Mr. Beatty an accurate record of what happened at that meeting between yourself and the Tribunal?

A. Yes.

Q. And I think you had a subsequent meeting with the Tribunal as well, isn't that correct, Mrs. Austin?

A. Yes.

Q. And if I could ask you to look at Tab 5 of the book that I have handed up to you. And again, this is a letter that was sent by Mr. Beatty to you on the 1st March, 2007. And I'll just open it for the Tribunal, and it says:

"Dear Maureen,

"When we were talking yesterday you mentioned two attendances with the lawyers for the Tribunal. I only recollect one attendance, and I have only been able to turn up one, up to the moment, which thankfully is very detailed.

"I enclose a copy of this attendance, which would have been prepared immediately after the meeting on the 24th October, 2002. I am continuing to look for a second attendance."

And in fact, Mrs. Austin, the letter I just opened to you is the second attendance which Mr. Beatty subsequently discovered, but this letter that's in front of you indicates that you also had a meeting with the Tribunal on the 24th October, 2002, isn't that correct?

A. Yes.

Q. And I am not proposing to open all of this typed note which was kept by Mr. Austin, but could I ask you to look -

sorry, Mr. Beatty, I beg your pardon - but could I ask you to look at the third page of it. And you will see it's

signed "WBS," which I think is a reference to Mr. Beatty.

And if I could just open the two main paragraphs in the middle of that page, Mrs. Austin, the one beginning with

"Discussion then took place...", if I could just open that.

"Discussion then took place on the sale of the Spanish

apartment. Jackie O'Brien said that they were puzzled that

nothing happened until about January 1998. Maureen Austin

said 'As far as I know Denis O'Brien was paying all the

overheads and I cleared out my personal belongings I think

before the Ryder Cup. I know it was a cold day. It could

have been after the Ryder Cup, but I didn't want to leave

my clothes there for the Ryder Cup.' Jackie O'Brien said

Denis O'Brien had bought it for his parents, but they had

never gone there since he had bought it. Maureen said at

the time that Denis bought it, he was not that involved in Portugal. Maureen said she could let the Tribunal know when she cleared out her personal effects from the Spanish apartment. They asked her would she do this, and she said she would, and she is to send in that date to Vincent and Beatty.

"Jackie O'Brien then said to her was she aware of the loan from her husband to Michael Lowry. She said that she was aware of the transaction because they were driving down Carysfort Avenue one night and her husband David said to her 'That's the house that Michael Lowry wants. I am going to help him out.'

"She was shown the document that was signed by David, and Walter Beatty said he thought that was the document that had been put in evidence to Michael O'Leary. Counsel said it was. Maureen Austin read the document and said it was David's signature and it was David's handwriting, but she had never seen it before. She was asked was she told by David that he was going to lend Michael Lowry €147,000, and she said no, he didn't say that and in her own mind she probably thought he was going to guarantee Michael Lowry's commitment. She said it was all paid back. I gather and the Tribunal legal team confirmed it was. John Coughlan said that there was some very serious matters to be considered in relation to that transaction with Michael Lowry. Jackie O'Brien said was there a copy of the documents which David had signed and which was in his

handwriting on his file or amongst his papers when he died, and Maureen Austin said there was not."

Can I just ask you again, Mrs. Austin: Is that an accurate representation, as far as you were concerned, of what was said in that meeting that you had with the Tribunal on the 24th October, 2002?

A. Yes, it is.

Q. And then just following that, Mrs. Austin, are two pages of handwritten notes which I think are notes prepared by the Solicitor to the Tribunal, Mr. Davis, at the meeting. And you can see in the top left-hand corner there is the date 24th October, 2002, do you see that, Mrs. Austin? It's the handwritten note which is at the end.

A. Yes.

Q. And there are two pages of it, and if I could just simply look at the first page of it. And you'll see there is the reference to "Maureen Austin/Walter Beatty," do you see that

A. Yes.

Q. at the top of the page?

A. Yes.

Q. And then could I ask you to look at the next page, the second page, and just the fourth paragraph down in that handwriting, Mrs. Austin, there is the reference to "Sale of Spanish property?" Do you see that?

A. Yes.

Q. "Sale of Spanish property." And I think there is a record

of Mr. Davis at your meeting. It says:-

"Sale of Spanish property?

Recalls clearing the place out in December 1997? Not sure about this. (Can check this out.)

Thinks Denis O'Brien bought it for his parents."

As far as you are concerned, that's an accurate representation of what you said in that meeting in October 2002?

A. Yes.

Q. And having given that evidence or given that assistance to the Tribunal, Mrs. Austin, did you believe that you were going to be subsequently called as a witness?

A. No.

Q. And do you have any understanding as to why it was that you weren't called as a witness until Mr. O'Brien asked for you to be called?

A. I didn't give it much thought really. I thought I had answered the questions in the beginning and I didn't expect to be called again.

MR. O'CALLAGHAN: Thanks very much, Mrs. Austin.

CHAIRMAN: Mr. Kelly?

MR. KELLY: Chairman.

THE WITNESS WAS EXAMINED BY MR. KELLY AS FOLLOWS:

MR. KELLY: In the first instance, Chairman, I want to state that my counsel wasn't available this morning, and for that we apologise.

CHAIRMAN: Not at all, Mr. Kelly. I am sure you are well

able to deputise.

MR. KELLY: Monday was a particularly bad day for them with the commercial courts, etc..

Q. Mrs. Austin, just three or four things I want to mention to you. In the statement which was prepared by the Tribunal and after your attendance at the Tribunal some years ago, it's stated in the third-last paragraph that "She described her husband's friendship with Mr. Lowry as peripheral."

I understood from Mr. Lowry that he was first introduced to you, or to your husband by Mr. Sean Murray or Mr. Conroy, and that over the years he developed a very close relationship with your husband?

A. Well, they were racing pals; they went a lot to the races together. I very rarely went to the races unless it was something to do with Smurfit's. So they met, Mr. Conroy usually picked him up, or picked David up and they drove together. Michael, David and Frank all, and they were very good pals in that respect. But we didn't go to dinner in the evening because Michael probably went back to Tipperary or went somewhere else. But yeah, he was often in the apartment and we did have a good friendship, but let's say, I didn't have such a close friendship with him.

Q. In addition to going to race meetings, etc., he regularly visited your husband in your home when he was in Dublin?

A. Yeah, he'd call into the apartment.

Q. That's fair enough. The second thing I want to ask you about is the document of 24th October, '96, which was the

loan document?

A. Yes.

Q. You have seen that?

A. Yes.

Q. And there is an acknowledgment of repayment of a loan on the 25th February, '97?

A. Yeah.

Q. It was suggested when Mr. Lowry gave evidence before this Tribunal; I want to put it properly, it was implied at least, that that documentation was some way contrived as distinct from being reflective of what happened on those dates. To put it bluntly, it was suggested that Mr. Lowry and your husband together manufactured these documents after the event. Can you envisage your husband having any involvement in something like that?

A. No, not at all, no. I'd be shocked if no, definitely not.

Q. And the last thing I want to ask you is, that after Mr. Lowry repaid the loan, the monies were sent back from the Nationwide Building Society into Bank of Ireland in Jersey, and, Mr. Chairman, at the time of your rulings in '95, you stated that as far as you were concerned, the monies remained there, or words to that effect. And I assume it's accepted now that the monies were repatriated to an ACC bank account in Dublin so as to because, in fact, that had to be an oversight a couple of years earlier, in October 2001, the Tribunal effectively

confirmed to us that the monies had been repatriated from Jersey back to the ACC in Dublin.

CHAIRMAN: Well, if you just put, perhaps, Mr. Kelly, what you believe to be the position.

Q. MR. KELLY: Well, simply that, that the monies ultimately were repatriated from Bank of Ireland in Jersey into an account of ACC in Dublin?

A. Yes.

MR. KELLY: Thank you. No further questions.

CHAIRMAN: Mr. Beatty, are there any matters you'd like to take up with your client?

MR. BEATTY: No, thank you.

CHAIRMAN: Thanks. Anything in conclusion then, Mr. McCullough?

MR. McCULLOUGH: I have one or two questions. It may take me a few minutes. I wonder should

CHAIRMAN: Well, I am very anxious to maximise the time. I think we must finish Mrs. Austin.

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

Q. MR. McCULLOUGH: Mrs. Austin, I just want to go back over briefly one or two things. I think you indicated that around the time of the sale of the property in Spain, I got the impression from your evidence that you weren't there very often. Was it possible you were spending a lot of time in France at that stage?

A. Yes.

Q. And I think in fact, I don't want to unnecessarily open it, but I think you have, through your solicitor, confirmed that in fact you had purchased the house in France I think in '94 or '95, which would in fact be before 1996, which is

A. Well, we brought it off plan, so it was being built.

Q. So you hadn't moved in perhaps?

A. Yeah.

Q. But I think you also, in your answers to Mr. O'Callaghan, indicated that you wouldn't have had any involvement in the negotiations relating to the sale of the townhouse in Marbella, is that correct?

A. No, I wouldn't have had any financial

Q. And you wouldn't have had any knowledge of those negotiations or the details of those negotiations?

A. Not the details, no.

Q. And I am wondering, therefore, from where your understanding, if you like, of the purchase price comes, if you like, if you had no involvement at the time in those negotiations? Is it something your husband told you?

A. I remembered the price, but I didn't see it written down.

I just remember that it was reduced somewhat because of the Ryder Cup, that we were going to be in it. So the original price was lowered because we were going to occupy it then.

Q. And when you say you didn't see anything written down, it is, I think, the case that the Tribunal has never seen any document relating to the sale of this property which

contains reference to a purchase price or an agreed

reduction in a purchase price?

A. Well, I don't know that.

Q. But you are not aware of any documents that record that?

A. No, no. I know it was done

Q. And then I think you were asked by Mr. O'Callaghan if you were aware of any other payment relating to this property.

In other words, would it be possible that another amount

was paid at a different stage in relation to the property.

And you said that you weren't aware of any payments?

A. No.

Q. But am I also correct in saying that in fact you weren't

aware of the existence of the accounts in joint names in

Jersey into which this payment was made in the first place,

is that correct?

A. In my name and David's name?

Q. Yes.

A. I am quite sure I knew something about that, yeah.

Q. But I think you have told the Tribunal previously that you

weren't aware until after his death

A. Oh, until after his death, I knew that we had it.

Q. So you weren't, in fact, even aware, if you like, of the

nature of the actual payment of $\frac{1}{2}$ 150,000, because you

weren't aware of that account, isn't that correct, at the

time?

A. At the time.

Q. I think also Mr. O'Callaghan suggested to you that the

reason that the monies were paid into an offshore account was, as he says understandably, because your husband lived offshore?

A. Yes.

Q. And I think you agreed with that?

A. Yes.

Q. But one of the curious things, from the Tribunal's perspective, is that it was paid from an offshore account to an offshore account of your husband. And I think Mr. O'Brien, in his evidence, has indicated that that was at the request of your husband. And I wonder are you able to assist as to any reason he would require the payment to be made from on offshore account?

A. No.

Q. And your husband did, I think, have accounts in Ireland, isn't that correct?

A. He had one, because we had I had an apartment in, and still have the same apartment in Monkstown, so I came back occasionally. It had to be run, so it was an account, a household account.

Q. Can I just ask you then briefly, sorry, to turn to the loan agreement, it's at Tab 14, and I just want to ask you one thing quickly about that. I think you confirmed it was in your husband's handwriting?

A. Yes.

Q. And I just wonder could you look at the bottom where it says "Dated 24th October, 1996"?

A. Yes.

Q. That doesn't appear to be in your husband's handwriting, would you agree, the date? The word "Dated" may be, but I think the date itself perhaps appears to be in Mr. Lowry's handwriting?

A. I am unaware of that. I can't say one way or another. David has erratic handwriting.

Q. It seems to be different in any event to I think if you look, for example, on the third line down where it says where you have it written in your husband's handwriting "October 1996", and if you compare that with "October 1996" and the "Dated", it seems to be different handwriting?

A. I am not an expert, I don't know.

Q. Okay. Now, this document, the loan agreement, and then the document at Tab 15, which is again in your husband's handwriting, and is an acknowledgment of repayment of the loan, I think you were never aware of these documents, is that correct?

A. No, never really aware of them, no.

Q. And those documents weren't in, or copies of those documents weren't in your husband's papers after his death, isn't that correct? I think that's been confirmed?

A. Yes.

Q. And then can I just ask you to briefly go to Tab 3. And these are, I think, the handwritten notes prepared by your solicitor, Mr. Beatty sorry, they are handwritten, but then there is a typed version, and I think Mr. O'Callaghan

took you through the typed version?

A. Mm-hmm

Q. And I just want to draw your attention to one thing in that, the second page, the second paragraph: "In October 1996 David's health was okay. I don't recall any meeting with Michael Lowry. David was meticulous about dates and may have spent time in September 1996. I didn't know about Michael Lowry buying the house. David didn't tell me. Somebody else mentioned a house in Carysfort Avenue. Never mentioned Irish Nationwide nor Michael Fingleton to me." Now, in your later meeting with the Tribunal, and in fact it is reflected in your Memorandum of Intended Evidence, that's at Tab 5 if I could just ask you maybe to go to that quickly, which is a year later, I think. There you gave the Tribunal the information in relation to you said that you were aware it's in the third paragraph on the third page of the typed memorandum prepared by Mr. Beatty. And that's where you say that you were driving down Carysfort Avenue and your husband said to you "That's the house that Michael Lowry wants. I am going to help him out."

A. Mmm.

Q. There seems to be a bit of an inconsistency between the two, in the sense that in the first meeting you said that it wasn't David who told you about it, it was somebody else, and then in the second meeting you are able to recall a specific incident where you were driving down Carysfort

Avenue and David did tell you that Michael Lowry was going to buy the house. And I'm just wondering is that because your recollection came to you between the two meetings, if you like, and that you didn't recall it at the first meeting?

A. No, I always knew about the house from David.

Q. From David?

A. Yeah.

Q. So perhaps it's an error in the first meeting?

A. Yeah, I don't know why I said that because I just the first time I heard about the house was that incident I have referred to in Carysfort Avenue.

Q. And I wonder could I just ask you one final thing: Did your husband ever tell you that the money he had received in respect into the account in respect of the sale of the property in Marbella, that he was going to use almost all of that money, in fact it was $\frac{1}{2}$ 150,000, and it was $\frac{1}{2}$ 147,000 that he loaned to Michael Lowry, but it was from that precise sum, some two months later, did he ever inform you that he was going to use the same money to help Michael Lowry?

A. No.

Q. He never discussed that with you?

A. No.

Q. And at this time when your husband when you were, and your husband were selling this property, would I be correct in saying that perhaps you were organising your affairs in

the knowledge that unfortunately your husband was going to be passing away at some point in the near future, and you weren't aware that he had subsequently, your husband, had lent this money to Michael Lowry, being pretty much all of the proceeds of the sale apparently of this, the house in Marbella, isn't that correct?

A. I wasn't aware. I was more concerned about David's health than I was with any financial agreements between

Q. Understandably.

A. Yes.

Q. But wasn't the effect of the loan, according to the handwritten agreement we have seen, that he was in effect tying up or potentially tying up $\frac{1}{2}$ 147,000 as a loan to Michael Lowry which wouldn't involve regular installment repayments, but rather repayment at the end with accumulated interest for a period of some five years?

A. David was very optimistic. He went for very radical treatment in Nice, which was actually against the wishes of his oncologist in London, but he always thought he was going to live longer.

Q. But he never told you about it at the time?

A. Mm-hmm.

Q. And he never provided you with evidence of the loan or evidence of a loan agreement?

A. No.

MR. McCULLOUGH: Thank you, Mrs. Austin.

CHAIRMAN: Thank you very much for your attendance today,

Mrs. Austin. We needn't trouble you after lunch.

In view of the urgency of Mr. Prelz's commitment, we'll just take the bare hour and resume promptly at ten past two. Thank you.

THE TRIBUNAL ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MS. O'BRIEN: Mr. Massimo Prelz Oltramonti, please.

MASSIMO PRELZ, HAVING AFFIRMED, WAS EXAMINED BY MS. O'BRIEN AS FOLLOWS:

Q. MS. O'BRIEN: Thank you, Mr. Prelz. I think you do go by the name Mr. Prelz, isn't that right, rather than Mr. Prelz Oltramonti, so if you don't mind I'll call you Mr. Prelz in the course of my examination?

A. That's okay.

MS. O'BRIEN: I think, sir, just in terms of the arrangements for the afternoon. I think you are intending to sit until 3.30, isn't that right, and then to take a short break and to sit again through then maybe, depending on the notetaker, till five o'clock, is that right?

CHAIRMAN: It seems the most sensible way of trying to conclude Mr. Prelz.

Q. MS. O'BRIEN: If that's all right?

A. That's fine.

Q. I wonder do you have the book that was sent to you in relation to these sittings?

A. I have it in my bag, if I could pick it up?

Q. We can hand a copy up to you. And I know you haven't been

at the Tribunal before, so I just want to outline to you how I propose approaching your evidence. And what I intend to do, Mr. Prelz, is just to read your Memorandum of Intended Evidence out, if that's all right, and ask you to confirm its contents, and then I'll go on and discuss one or two matters with you, and I'll maybe refer you to some of the documents with which you were furnished in the course of that last week, is that all right with you?

A. Fine.

Q. Now, you have informed the Tribunal that you are a partner in the firm of GMT Communications Partners Limited Liability Partnership (GMT) a leading London-based private equities firm which focuses on investments in the European communications and media industries. You joined GMT in 2004. You presently hold directorships of numerous companies active in the communications and media industries, including seats on the Boards of Directors of Melita plc and Big Point GNBH.

You hold a Masters of Business Administration from the Wharton School of Finance at the University of Pennsylvania. You have very extensive experience in venture capital investments, in the fields of communications and media, both in Europe and in the United States.

You have informed the Tribunal that you previously held the position of Managing Director for Europe at Advent International Corporation (Advent), one of the world's

foremost and private equity funds. As Managing Director for Europe you were primarily responsible for building and positioning Advent's European presence through investments in the burgeoning telecommunications and media sector.

You have informed the Tribunal that during the period when you were Advent's Managing Director for Europe, you were primarily responsible for the instigation and management of Advent's investment in Communicorp Group Limited (Communicorp.)

You have informed the Tribunal that Advent was a significant investor in Communicorp. In October 1994, Advent invested US\$10 million for a 34% stake in Communicorp Group. And you joined the Board of Communicorp representing Advent. You were a Director of Communicorp Group Limited from the 7th October, 1994, until the 1st January, 2002. You were also a Director of Esat Telecom Group plc from the 7th October, 1994, until April 2000, when it was sold to BT (British Telecom.)

You say that Advent's investment was based on your desire to increase your involvement in the radio and fixed line telecommunications sectors. A further very significant factor in this initial investment in Communicorp was the distinct possibility of becoming involved in the developing mobile wireless telecommunications market in Ireland. It was understood at this time by both Communicorp and Advent that there was a strong possibility that Communicorp would become involved in the mobile phone business, and it was

understood that Advent would be financially supportive of that venture. At that time, Communicorp was the holding company for Classic Hits, 98FM, Esat Telecom and Radio Investments NV. It was clearly understood and envisaged by both Advent and Communicorp that Communicorp would require significant further investment, particularly in respect of Communicorp's envisaged involvement in the mobile phone services sector.

You were intimately involved in all aspects of Communicorp's financing and management. This naturally included an in-depth knowledge of Communicorp's equity and funding requirements throughout the relevant period. You gained this intimate knowledge of Communicorp's financing and equity requirements through your role within Advent as the person with primary responsibility for Advent's investment in Communicorp, but also by virtue of your seat on the Board of Directors of Communicorp.

In particular, you were intimately involved in and aware of the financing requirements of Communicorp pursuant to its involvement in the competitive bid process for the second Irish mobile phone licence, which took place in 1995.

Communicorp was one of two primary partners and a significant shareholder in the entity which bid for the licence Esat Digifone Limited.

Esat Digifone Limited was awarded the second Irish mobile phone licence on the 16th May, 1996, and began offering mobile phone services to the Irish public in 1997.

You have been aware since in or about late 2002 that the Tribunal of Inquiry Into Payments to Messrs. Charles J. Haughey and Michael Lowry, the Moriarty Tribunal, has been inquiring into the process leading to the awarding of the second mobile phone licence to Esat Digifone Limited on the 16th May, 1996. You were aware that the Moriarty Tribunal has conducted extensive private and public inquiries into Advent's role in the process and, in particular, in relation to Advent's financial commitments to Communicorp in support of Communicorp's involvements in Esat Digifone Limited throughout the bid process. In particular, you were aware that the Moriarty Tribunal has publicly examined a number of witnesses, including Mr. John Callaghan, Mr. Peter O'Donoghue and Mr. Denis O'Brien in relation to their dealings with you regarding Advent's financial commitments to Communicorp in support of Communicorp's involvement in Esat Digifone Limited throughout the bid process, without affording you an opportunity to give evidence in relation to that evidence.

You have informed the Tribunal that you have, at all times, been willing and available to assist the Moriarty Tribunal with its inquiries publicly and/or privately. You have never indicated to the Moriarty Tribunal or to any person associated with the Moriarty Tribunal that there would be any difficulty whatsoever in you being available to attend to give evidence under oath at public sittings of the Moriarty Tribunal in Dublin. Indeed, considering the

apparent extent to which the Tribunal inquired into the role of Advent in the licence process, such inquiries being widely reported upon over a lengthy period throughout the international media, the fact that you conducted the negotiations on behalf of Advent and the fact that you conducted those negotiations exclusively with Mr. Denis O'Brien, it was your very strong impression that you would be contacted by the Moriarty Tribunal with a view towards giving evidence.

In the event, no such contact was ever forthcoming. You have never received any request from the Moriarty Tribunal to give evidence publicly, nor, to the best of your knowledge, has any person involved in Advent been so approached by the Moriarty Tribunal. This complete lack of contact is a matter of some considerable surprise to you, given the nature and extent of the Tribunal's inquiries since late 2002.

You are aware that the solicitor to the Moriarty Tribunal wrote to Advent in or about mid-2004 seeking documentation and information relating to the matters being inquired into. All of the documentation sought by the Moriarty Tribunal was furnished by Advent without any difficulty or delay. Whilst the documentation sought by the Moriarty Tribunal and provided by Advent was voluminous, and was clearly germane to the matters being inquired into at length publicly by the Moriarty Tribunal, to the best of your knowledge no further inquiry was ever received by

Advent International from the Moriarty Tribunal. In particular, absolutely no inquiry was made of you regarding your availability and willingness to attend in Dublin to give evidence before the Moriarty Tribunal.

You have informed the Tribunal, for the avoidance of any doubt, you have at all times

A. Sorry, I have been made aware since submitting this memorandum of evidence, that the Tribunal has approached Advent again last week, or two weeks ago.

Q. That's correct.

At paragraph 11 you informed the Tribunal, for the avoidance of any doubt, you have, at all times, been willing and available to assist the Moriarty Tribunal by attending to give evidence under oath as required in Dublin. You are aware that you are not automatically compellable as a witness before the Moriarty Tribunal.

However, you have at all times been willing and available to attend on a voluntary basis to give evidence under oath in public. No such request or related inquiry was ever received by you from the Moriarty Tribunal.

Now, you have informed the Tribunal that it is absolutely the case that Advent, through you, made an irrevocable commitment to Communicorp Group Limited in the amount of IR£1/230,000,000 to fund Communicorp's share of the equity required for Esat Digifone Limited. From your personal perspective, as a very experienced venture capitalist, and indeed, from the perspective of Advent International as an

entity, there was absolutely no question but that Advent had made an irrevocable commitment to Communicorp in the order of R1;½30,000,000. This commitment was negotiated with Communicorp, placed before the relevant Investment Committee within Advent and properly authorised and approved by Advent, as required by the internal structures of Advent. All of these stages would have been processed in accordance with Advent's rigid internal policies and procedures.

You beg to refer to the licence bid application of Esat Digifone Limited as submitted to the Department of Transport, Energy and Communications on 4th August, 1995.

You understand and recall that the complete Esat Digifone bid was quite voluminous and encompassed several lever-arch folders. You are advised that a full copy of the bid application has been in possession of the Tribunal for some considerable time. You will only, therefore, refer to the extracts from the bid application which are germane to the Tribunal's inquiries.

You have informed the Tribunal that Chapter 2 of the Executive Summary of the Esat Digifone bid application is entitled "A Strong Ownership Structure." Section 2.5 of Chapter 2, which is at page 4, is entitled "Financial Strength". And the relevant extracts from this section read as follows, and you quote as follows:-

"Esat Digifone's partners have sufficient financial capacity to meet and exceed all their financial commitments

to the company. Communicorp has strong financial backing from Advent International, one of the leading international development capital investors in telecommunications, media and information technology industries. In addition to its current investment of $\text{€}12$ million in Communicorp, Advent has offered up to a further $\text{€}30$ million to fund Communicorp's equity participation in Esat Digifone. This sum exceeds Communicorp's share of the licence fee and equity commitment."

You go on to state that you believe that these statements are true and accurate in all respects.

You further inform the Tribunal that Chapter 6 of the Executive Summary of the Esat Digifone bid application, which was entitled "A Robust Business Plan," Section 6.5 of Chapter 2, page 18, was entitled "Financing", and the relevant extract from that section reads as follows, and again you quote the passage that you are referring to, and it commences:

"The peak funding required is approximately $\text{€}24$ million.

The debt/equity ratio will be maintained at 40:60:40. Each partner has ample capacity to finance its equity share.

Communicorp's investment is backed by Advent International."

You inform the Tribunal that you believe this statement to be true and accurate in all respects.

You inform the Tribunal that a separate and distinct section of the licence bid was entitled "Financial" and

covered some 60 pages. Four appendices, A to D were also provided with the financial section. Chapter 8 of the financial section, commencing on page 21, was entitled "Financing", and Section 8.4 of that section was entitled "Equity". And the relevant extract from that section reads as follows, and again you quote:

"Communicorp has strong financial backing from Advent International, one of the leading international development capital investors in telecommunications, media and information technology industries. In addition to its current investment of $\text{€}12$ million in Communicorp, Advent has offered up to a further $\text{€}30$ million to fund Communicorp's equity participation in Esat Digifone. This sum exceeds Communicorp's share of the licence fee and equity commitment."

And again you have informed the Tribunal that you believe those statements to be true and accurate in all respects.

You state that you also wish to make the obvious point, that statements made by Esat Digifone Limited in its own right and as the consortium bidding for the second mobile phone licence, cannot possibly be attributed to Mr. O'Brien personally.

You inform the Tribunal that in summary it is your belief that the statements made in the Esat Digifone bid application in respect of the nature and extent of binding financial support available to Communicorp, particularly in relation to Advent's commitment in respect thereof, were

true and accurate in all respects.

Now, you say that you have also reviewed and considered the relevant extracts of the transcript of the oral presentation by Esat Digifone Limited given on the 12th September, 1995, insofar as they relate specifically to Mr. O'Brien's comments regarding the matter of the nature and extent of Advent's financial support to Communicorp Group Limited in the context of the Esat Digifone bid.

And I think we actually have a copy of that transcript. It might be easier to put it on the monitor while I am reading it, Mr. Prelz, so that people can follow it. This is just a copy of the actual transcript from which you have quoted, and I think it just might be easier for people to follow it.

You say that the relevant extract from the oral presentation begins with a question being posed by Michael Andersen at page 100 of the transcript. For ease of convenience, you have set out what you believe to be the extracts which are germane to and directly of direct application to the matters which were under inquiry by the Tribunal.

And it begins at page 100 with Mr. Michael Andersen, and we can see it just there:

"So, okay, you have assurances that you will not go bankrupt. Thank you for that. We will now move on to the next question, which is a combined financial and management question, and it will be posed by Billy Riordan from the

Department of Finance.

"Mr. Billy Riordan: Sorry, this question relates to the letters of financial support and particularly the ones from Advent."

Then it moves on to page 101. I think our page numbers are actually different. In any event, I'll continue reading the extract that you have referred to.

"Then really as a follow-on from that was that Advent have said that they are providing up to $\frac{1}{2}$ 30 million to Communicorp.

"Mr. Denis O'Brien: 30 million, I think it's pounds.

"Mr. Billy Riordan: Sorry, you were right, $\frac{1}{2}$ 30 million. I am wondering in what form will that funding be put into Communicorp? Will it be loans or will it be equity?

"Mr. Denis O'Brien: It will be equity. That's what we have negotiated on. So, in other words, at the moment, Advent will probably go up to about 47, 48 percent if we win the licence so the business will be remain Irish controlled."

Then at page 104:-

"Mr. Michael Andersen: I'd just like you to repeat for me Advent's interest in Communicorp. You say that's going to be up, was it 37 percent voting power-wise?

"Mr. Denis O'Brien: Equity is going to go up to 47 percent equity, but in terms of voting, the other 53 percent has three times the votes of Advent, so we, you know, the Irish shareholders in Communicorp will always have control of

Communicorp.

"Mr. Michael Andersen: Okay. But that also means that if you have what they have right now, up to 46, and that is escalates up to $\frac{1}{2}$ 30 million, then you have some other capital in from some other sides as far as I can see.

"Mr. Denis O'Brien: No, no, because the final capital requirement for the investment is initially 21.6, I think it is, plus a line up to 30, so we have said day one, they are guaranteeing $\frac{1}{2}$ 30 million.

"Mr. Billy Riordan: So you have a little bit of fat in that. You have, in fact, from the point of view, you have about 8,500,000 pounds of fat in that particular commitment?

"Mr. Denis O'Brien: Yes, but it's an irrevocable commitment of fat, if you know what I mean.

"Mr. Billy Riordan: I used the term first.

"Speaker: Sorry, just one question on that. Denis, do I understand that there is already an agreement in place between Communicorp and Advent on that?

"Mr. Denis O'Brien: Yes.

"Mr. Martin Brennan: That is not the same as the Letter of Commitment we have seen in the application?

"Mr. Denis O'Brien: Well, we thought that you'd want to hear that directly from Advent, hence they wrote you a letter to say that.

"Mr. Michael Andersen: Okay. I think that that's all for the financial part, okay."

And you have informed the Tribunal that the statements as attributed to Mr. O'Brien as set out above and as addressed in the relevant section of the transcript of the oral presentation, at pages 100 to 106 thereof, are true and accurate in all respects insofar as they relate to the nature and extent of Advent's commitment to Communicorp in the context of Communicorp's funding requirements relating to Esat Digifone Limited.

You have informed the Tribunal that the nature of Advent's $\text{€}120$ million commitment to Communicorp in respect of Communicorp's funding of its share of the equity within Esat Digifone is unequivocally evident from the letter dated the 10th July, 1995, signed by you on behalf of Advent, and addressed to Mr. Martin J Brennan of the Department of Transport, Energy and Communications. This letter was included as one of the letters of financial support submitted as Appendix C to the finance section to the Esat Digifone licence bid.

You have informed the Tribunal that you signed this letter, the approval of the execution and issuing of same having been granted by the five member Investment Committee of Advent. It was understood by you and by all of your colleagues on the Investment Committee at all material times that this letter represented a binding irrevocable commitment for up to $\text{€}120$ million to Communicorp in order to fund Communicorp's share of the equity of Esat Digifone.

There was simply no question or suggestion otherwise. You

would not, and indeed, could not have signed such a significant letter without the full support, approval and authorisation of the relevant Investment Committee within Advent. You did not have authorisation to sign any such letters or to enter into any such binding commitments without the full and proper approval of the Investment Committee. It is simply inconceivable that you would have signed any letter confirming such a commitment otherwise. You would also like to point out the commercial reality that Advent would not have sent this letter to Mr. Martin J Brennan of the Department of Transport, Energy and Communications if there was not a binding commitment to invest.

You inform the Tribunal that the internal consideration in Communicorp of the proposed $\text{£}1/230$ million commitment to Communicorp is evident from a Deal Qualifying Memorandum prepared by you with the assistance of your colleague in Advent, Mr. Bob Shanfield, dated the 8th June of 1995.

You have informed the Tribunal that this internal memorandum, on its cover page, refers to a "Commitment" of $\text{£}1/230$ million on the part of Advent. The document ultimately concludes with your strong recommendation that "We proceed with the investment." This recommendation for a $\text{£}1/230$ million binding and irrevocable commitment was authorised and approved by Advent in line with your strong recommendation.

You have informed the Tribunal that the binding and

irrevocable nature of Advent's £30 million commitment to Communicorp was unequivocally underscored by an agreement entered into between Advent International Corporation, Communicorp and Mr. Denis O'Brien, dated the 12th July, 1995. This agreement was executed on behalf of Advent by Janet Hennessy, Vice-President of Advent. Ms. Hennessy was the Treasurer of Advent at that time and was based at Advent's headquarters in Boston. Although Ms. Hennessy was a senior officer of Advent, she was not a member of the Investment Committee. Ms. Hennessy could only have executed this agreement on behalf of Advent with the express authorisation and approval of Advent's Investment Committee in accordance with Advent's internal controls and procedures.

You have informed the Tribunal that quite apart from the unequivocal nature of the letter of the 10th July, 1995, and the agreement of the 12th July, 1995, it would have been absolutely clear to both Advent and to Denis O'Brien, from discussions between yourself and Mr. O'Brien, and from oral confirmations, that Advent was entering into a fully binding and irrevocable commitment to Communicorp for £30 million to fund Communicorp's share of the equity in Esat Digifone. You believe that there is absolutely no question but that there existed, as of the 10th July, 1995, a fully binding, concluded and enforceable agreement between Advent and Communicorp, such that Advent would advance a sum of £30 million to fund Communicorp's shares

of the equity in Esat Digifone.

Given the nature and extent of the approval and authorisation procedures internally within Advent, the existence of such an irrevocable and enforceable agreement with Communicorp could not have been in any doubt.

Ultimately, Communicorp did not draw on the binding and irrevocable commitment provided by Advent, as it obtained finance elsewhere.

You understand that the Moriarty Tribunal has placed considerable emphasis on the fact that Advent did not provide a bank guarantee. In 1995 private equity was an infant business and Advent did not have a facility to give a bank guarantee. What Advent did give was a binding irrevocable commitment that it would advance a sum of $\text{£}1230$ million to fund Communicorp's share of the equity in Esat Digifone. You wish to point out that had Advent reneged on this commitment, the consequences for Advent would have been disastrous.

And I think that completes your Memorandum of Intended Evidence, Mr. Prelz. And if you could just confirm that its contents are correct?

A. The contents are correct.

Q. Now, Mr. Prelz, I just want to start off by discussing with you a little bit of background information, if that's all right. Now, firstly Advent International Corporation, I think you describe it in your memorandum as a private equity house, isn't that so?

A. Private equity?

Q. A private equity house is, I think, how you described Advent?

A. In the sense Advent is a manager of private equity funds.

Q. Yes. So it has funds under management, isn't that right?

A. Correct.

Q. And those would be funds that investors might subscribe to or pension funds might subscribe to, is that correct?

A. Correct.

Q. And Advent was based in the United States, isn't that right, Advent Corporation?

A. Advent's headquarters was based in New York. We had offices at the time in Europe, in London, Milan and Frankfurt, and we had at the time, I think there was also an office on the west coast in the United States.

Q. And you were Managing Director of Advent Europe, isn't that right?

A. That's correct.

Q. Again, I am putting this very simplistically to you, but am I correct in understanding that the business of a venture capitalist is to provide capital to a business, to a company that is in need of capital, and in exchange for that capital, the venture capitalist takes a shareholding in the company?

A. That is correct.

Q. Would that be a reasonable way of describing it?

A. Yes.

Q. Would it also be reasonable, and here correct me if I am wrong, to suggest that the venture capitalist doesn't have a long-term interest in the business of that company, but that its objective is to get a profit, if you like, out of selling the shares of the company?

A. Long-term depends on the periods. When I started doing venture capital, and then private equity, we had a time-frame of five to seven years. In the later stage, and the industry has changed substantially since the facts here involved, that period has shortened and has become a very short time investment period until last year. We don't know what is in store for the future. But our time arising in the case of Esat, at the time, was around five years.

Q. Around five years. What you weren't interested in was getting a profit out of running a telecommunications company, isn't that right?

A. No, no.

Q. Okay. Now, I think, as you said, you were Managing Director for Europe, and you were based in London, is that right?

A. Correct.

Q. And I think you ceased to be involved with Advent yourself in about 1999, is that right?

A. Correct, July September, 1999.

Q. About ten years ago?

A. Yes.

Q. Now, again, I just want to trace with you briefly the

involvement of Advent with Communicorp, I think the Tribunal is interested in that, just to put matters into context.

Now, am I correct in thinking that that relationship commenced formally in October of 1994?

A. Yes. That's when we made our first investment, around October 1994. 1994, I can confirm.

Q. And that was a sizable investment of \$10 million, isn't that right?

A. Correct.

Q. And that was on foot of we haven't seen it, but we understand from various references made to it, that there would have been a fairly comprehensive and lengthy development contract between you and Communicorp?

A. I would say it was very, very complex, yes.

Q. We don't want to refer to it.

A. As everything negotiated with Denis, between Denis and myself has not been straightforward.

Q. And I presume as well that your solicitors, Baker & McKenzie, and Mr. O'Brien's solicitor, Mr. O'Connell in William Fry, would have been involved in formalising that arrangement?

A. Correct, yes.

Q. And in exchange for that $\frac{1}{2}$ \$10 million, you took a 34% interest in Communicorp, isn't that right?

A. Correct.

Q. And Communicorp at that time was the holding company for

all of Mr. O'Brien's ventures, both his radio business interests and his telecommunications interests, isn't that right?

A. Yes.

Q. And they were all operated through subsidiaries of Communicorp?

A. Correct.

Q. So, your investment was in the overall holding company, and you got a 34% shareholding for that investment?

A. Correct.

Q. And you also got, I think, two seats on the Board of Directors, isn't that right?

A. I think so, yes, definitely. I was on the Board and I had one of my junior associates with me.

Q. I think a Mr. Garau

A. Mr. Garau.

Q. was also on the Board of Directors. And those shares that you held, the 34% shareholding that you had, that didn't carry with it equal voting to the shares held by Mr. O'Brien, isn't that right?

A. At the time that I recall, and I haven't seen the documents ever since 1997, 1998, those were convertible preference shares. I believe I don't remember the voting situation.

Q. I think well, I think you can take it from me, we'll look at it in one of these Deal Qualifying Memoranda which you refer to, I think your 34% interest gave you 25% voting

power?

A. Yes.

Q. So, I think I worked it out at some stage that

Mr. O'Brien's shares had about one and a half times of the voting power of your shares?

A. Okay.

Q. And again, it seems to me, certainly from reading the documents and, in fact, in your memorandum as well, your principal interest and what was attracting you to

Communicorp as a venture capitalist was not the radio business, but the telecommunications side of the business, isn't that right?

A. Well, that is true in the sense of interest, but the way we structure our investment exactly because our shares were preference shares, was to be protected by the cash flow of the radio business on the downside, while the money we put in would be used to fund the Telecom business, which represented the upside, and we thought that the interests of the telecommunications business at the time as the market was starting to regulate, even if it was very late in Ireland, was to participate not only in the fixed line but, in particular, as an upside, the real kicker was the potential to get GSM licence.

Q. The potential of the GSM licence. The potential of that licence in a duopoly, isn't that right?

A. At the time there were only duopoly, there was not another licence at the time. It sounds like a century ago.

Q. So that was 1994, and you had invested your 1/210 million?

A. Correct.

Q. And you took up your seat on the Board of Directors in October. And I think you said your time-line in that investment was about five years?

A. Correct.

Q. Then, in 1995, the following year, there were two further agreements, isn't that right?

A. There was, yeah, additional commitment of funding, because to continue to fund the development of the fixed-line business, and then there was the issue of financing the GSM licence, two separate events.

Q. And the bridging, I think it was a bridging finance agreement, there was a further, I think, \$5 million went in on that, and that was around July of 1995?

A. Correct.

Q. So that would have brought your total investment at that stage up to around \$15,000,000?

A. I don't remember the exact number.

Q. There or thereabouts. I think you can take it from me that it was. You had the separate agreement then of the 12th July, and we'll come and look at that.

Then, that was 1995, the competition proceeded and Esat Digifone won the competition in, I think it was announced in late October of that year.

A. Mm-hmm.

Q. And then, in May of 1996, the licence was actually issued,

isn't that correct?

A. Correct.

Q. And then ultimately Communicorp's equity participation in Esat Digifone had to be funded, isn't that right?

A. Correct.

Q. And that was actually funded through a private placement through CS First Boston, isn't that right?

A. Well, raised by, yeah, raised by CS First Boston. CS First Boston were new investor into the investment alongside ourselves, yes, that's correct.

Q. And you actually made a further subscription in 1996

A. Correct.

Q. in the context of that private placement, isn't that right?

A. Yes.

Q. I think that was about $\frac{1}{2}$ 4.5 million that you took up?

A. Yes.

Q. So that would have been around, I suppose, about 15% of the funding that was raised. I think \$45,000,000 was raised at the time?

A. Yes.

Q. Then, in 1997, in, I think it was November of 1997, there was an initial public offer of the shares in Esat Telecom, isn't that right?

A. Correct.

Q. And by that stage, in fact earlier than that, I think

Mr. O'Brien had reorganised the structure of the companies

within the group, isn't that right?

A. As part of the financing, organised by CSB, we reorganised jointly the capital structure of Esat and Communicorp.

Advent exited Communicorp the radio interest and got in exchange shares in Esat Telecom only.

Q. And

A. Which at that point had the licence I mean was the bidder, was awarded the licence, had been awarded the licence.

Q. And in 1997, then, as I said there was the initial public offering, the IPO, and I think it was at that juncture that Advent actually exited its interest, isn't that right, in Esat Telecom?

A. It was over time, not all at once. It started selling shares in the IPO, but it distributed he held shares until substantially later.

Q. No, I am not talking about Mr. O'Brien now, I am talking about Advent?

A. Advent, yes.

Q. Advent sold shares at the IPO?

A. But not all its holdings, it sold shares over time.

Q. And do you recall when Advent had disposed of all of its shareholdings?

A. I believe it was by the end of 1999.

Q. 1999?

A. Just long before the bid by Telenor.

Q. And by then, you had also left Advent yourself, is that

right?

A. That's correct.

Q. And that brought the relationship between Advent and Communicorp to an end?

A. Basically, yes. I stayed on the Board of Esat

Q. Yes, I saw that.

A. later. And of Communicorp.

Q. And in total, then, Advent had put in what, just something in excess of about \$20,000,000 into Communicorp/Esat, isn't that right?

A. Correct.

Q. And can you tell me, I take it it was a profitable investment?

A. We made four and a half times return on the money with an IRR of 59%.

Q. I see. So can you put that into round sums for me?

A. We got we put in 20 million.

Q. You got back about 100,000,000, is that right?

A. We took out 90, yes.

Q. So it was a good investment?

A. Absolutely. Not my best, but...

Q. Now, you sat on the Board of Directors

A. Correct.

Q. of Communicorp. We'll call it Communicorp all the way through rather than Communicorp/Esat Telecom, because it gets terribly confusing. But you were on the Board of Directors anyway from October of 1994, isn't that right?

A. Correct.

Q. And as you said in your Memorandum of Intended Evidence, through your seat on the Board of Directors and because you were, if you like, a point of contact between Mr. O'Brien and Advent, you had a very intimate knowledge of Communicorp's business, isn't that right?

A. That's correct.

Q. And I think

A. At least from the financial and strategic point. No from the operational point.

Q. I understand that, but from the financial side. And I think you set about or you initiated some changes in the organisation of Communicorp's business, isn't that right, in the personnel who were involved in the business?

A. I didn't no, I don't think that is correct. In the sense, as I said I was not operational. I did

Q. No, I appreciate that.

A. Well

Q. I appreciate

A. I advised Denis on certain changes that I felt were positive in terms of A) the head of the Telecom business, which was, his name now escapes me, the original, who left the company, and we brought in some more professional management. He was a very good guy from the United States who but was a more start-up guy.

Q. Was that Mr. Goldschmidt?

A. No, Mr. Goldschmidt left basically at the time we made the

investment. After him there was another gentleman. It's

funny because I met him afterwards.

Q. I don't think a lot turns on it.

A. I mean, I did not make any changes in management. I advised Denis, and Denis made the choices and the decisions about it.

Q. They were something that you would have encouraged?

A. Sure.

Q. And I think one of those things that you encouraged was the retention of Mr. Peter O'Donoghue as a financial director, isn't that right?

A. That's correct.

Q. And also in terms of the composition of the Board of Communicorp itself, as you said you didn't make decisions, but you might have encouraged them. I think you would have been supportive of the appointment of Mr. John Callaghan, isn't that right?

A. I don't know John Callaghan before he joined the Board. I interviewed him and I gave my blessing, but I didn't know him before and he joined the Board invited by Denis.

Q. And I think, looking at one of your qualifying investment qualifying memoranda, I think you felt that Mr. Callaghan, and possibly also, I think, a Mr. Gadar, who had had quite a lot of experience in telecommunications in Canada, I think you felt that they brought a professional approach to the Board, isn't that right?

A. Correct. Mike Gadar is I think

Q. I think you were also quite involved, were you not, initially in meetings with prospective partners to form a consortium to apply for the second GSM licence, isn't that right?

A. That is correct.

Q. And I think Mr. Callaghan, the same Mr. Callaghan, who was appointed to the Board, I think in his evidence he had told the Tribunal that you travelled with him and Mr. O'Brien to Paris in April of 1995 and you met with representatives of France Telecom?

A. Absolutely.

Q. And we know, of course, that didn't come to anything?

A. No, because in the meantime the only group we met was France Telecom. We didn't meet Telenor before we made the investment. And we also discussed deals with some US firms, Southwestern Bell. I felt that France Telecom, who have all the technology of this world, was not an appropriate partner due to its bureaucracy, and I advised Denis. And Denis came up with Telenor, which I thought was a much better partner, particularly because the Scandinavian countries had been, at the time, way ahead of any other country in the world in terms of user mobile, both in terms of technology and marketing.

Q. And I think, in fact, you did meet, didn't you, one of the representatives of Telenor in London in, I think May of 1996, Mr. Haga. Do you remember meeting him? I think he gave evidence to the Tribunal that I think it was the 16th

of May he came with Mr. O'Brien to London and was introduced to you in Advent's offices, do you remember that?

A. I don't remember that frankly. It's possible. I remember meeting him afterwards as we were negotiating an exit, but not at the moment of the entrance.

Q. And I think ultimately, it would be fair to say that your association, Advent's association and your association with Communicorp would have been a successful association, wouldn't that be fair to say?

A. I would describe it as a mutual success.

Q. Yeah. And I think in fact, Mr. O'Brien, in fairness to you, when he was giving evidence, he said that you had made such a good contribution, that when Advent actually exited and, in his terms, he got rid of his venture capitalists, he nonetheless invited you to remain on the Board of Directors, isn't that right?

A. That's correct. I stayed until the acquisition by BT.

Q. And in fact, I think he said that in addition to that, that he awarded you share options?

A. That's correct.

Q. Now, you remained on as a Director of Esat Telecom until the BT acquisition, that was in 2000, and I think you say in your memorandum that you remained on as a Director of Communicorp until 2002?

A. Yeah, but that was very passive.

Q. It was very passive?

A. Yeah.

Q. And what was it that prompted you to resign from the Board of Communicorp in January 2002, do you remember?

A. I think that that was after the failed takeover of Eircom.

Q. I see.

A. At that point we didn't have any more business to do together and so I resigned and I moved on and did other things.

Q. Okay. Now, those share options that Mr. O'Brien awarded you, do you remember when it was that you were given those shares options?

A. When I joined the Board as a personal when Advent exited and he asked me to remain on the Board, then he treated me as an independent, which at that point I was, and he awarded me some stock options.

Q. Some share options. And was it just at that point you were awarded the share options or were you awarded further share options then in 2000, after 1999? Was it just a one-off award of share options or were there subsequent awards?

A. Frankly, I don't remember. I believe there was only one.

Q. Now, presumably, you would have exercised those share options at some stage prior to the buyout by BT, would that be correct?

A. No, we all exercised I think most of the Directors and the personnel exercised the share option at the moment of the buyout.

Q. At the moment of the buyout. So you never actually had to

pay for these shares?

A. The reality is that because of the time they were awarded to me, and to a number of other people that were more or less in the same category, the vesting did not occur, would not have occurred until later. But, as is often the case in share options of this nature, there is an acceleration of vesting in the case of takeover.

Q. So it all happened simultaneously?

A. Yeah.

Q. And do you mind me asking you what kind of profit did you make on that transaction personally?

A. I do not remember. But I mean, it is a public record. I think it was in the press, but I haven't got back to check it.

Q. Well, can you give me some indication of the region of profit that you made?

A. 600,000. I believe between some number I think $\frac{1}{2}$ 600,000, yes. At the time it was pounds.

Q. Now, I just want to talk to you a little, first of all, Mr. Prelz, if you wouldn't mind, about the bridging finance agreement. That was the agreement, the first of the two agreements in 1995 where Advent provided the further \$5 million. You remember that agreement? And from looking at the documents, the negotiations of that seem to have commenced around May of 1995. Do you recall those?

A. I have seen the documents that Advent had provided to you.

Q. And initially what seemed to have been mooted and seemed to

be under discussion was an agreement where that \$5 million, what was the equivalent of I think about $\frac{1}{2}$ 3.2 million, but it would be provided for a term of five years, and that after the five years, at the option of Communicorp, it could be converted into 20% of the radio division. Do you remember that?

A. Yes.

Q. And those were the terms that were initially under discussion, isn't that right?

A. With the idea that we would not have to convert it, because in the meantime we would be repaid through refinancing, yes. There was sort of a guarantee.

Q. Yes, I realise that. But from Communicorp's point of view, those were the terms that were originally under negotiation?

A. Yes.

Q. And that was in May of 1995?

A. Mm-hmm.

Q. Now, we know that that didn't come to fruition, and we have heard evidence about that from Mr. Callaghan and from Mr. O'Brien himself and from Mr. O'Donoghue. And what you ultimately agreed then was a straight bridging finance arrangement where the \$5 million would be made available for one year at a coupon of 30%, do you remember that?

A. Yes, I remember that.

Q. And I think it was roughly on those terms that you came to agreement in the end, isn't that right?

A. Yes.

Q. And there was a fair bit of, I suppose, to-ing and fro-ing, would be a fair way to describe it, wouldn't it?

A. Absolutely. And also, there was a moving target, because in the meantime we were bidding for the licence, we were looking for the addition of financing, so it was not clear how much money we would need or want to put

Q. You were subject to a number of constraints at the time?

A. Yes.

Q. Now, can I just refer you to one of the Deal Qualifying Memoranda that's in that book that the Tribunal sent you, and I think it relates to the bridging finance arrangement. And it's at Divider B2 of that book.

A. Yes.

Q. Have you found it there, Mr. Prelz?

A. Yes.

Q. Okay. I am just going to put it up on the overhead projector. You needn't be concerned, I am not going to read out this entire document at all.

A. Thanks.

Q. But I just want to refer you to some of the salient features of it, and also I think the Tribunal is curious and wants to understand what the internal procedures in Advent were, and I think this document, looking at it, might be of assistance.

Now, you see the first page of it seems first of all, it's headed "Deal Qualifying Memorandum." And it's from

you to Distribution, and it's dated the 23rd May of 1995.

You see that?

A. Yeah.

Q. Now, can you just explain to me what the purpose of a Deal Qualifying Memorandum was in terms of Advent procedure?

A. The procedure is the following: The person in charge of the deal, whether existing or new, did a certain amount of analysis. Over time, presented it to the Investment Committee. And finally, once the things had advanced to a stage of making a commitment, we would issue the Deal Qualifying Memo.

Q. We would issue the, I'am sorry?

A. The Deal Qualifying Memorandum to be approved, accepted and approved by the Investment Committee. After that, since the structure was the legal structure, again going back to the legal structure, Advent was based in the United States. The funds resided in the United States. The general partners of the fund was AIC, Advent International Corporation. Advent International plc, the English entity, was an advisor to the corporation. So we would make our recommendation. The Investment Committee would sign-off. There were five members, as I recall. And then we would send our recommendation to Boston, who would be the only person legally able to buy, to sign a binding agreement.

Q. Right.

A. In reality, our recommendations were accepted around a hundred percent of the time.

Q. Right. Just so that I understand exactly what it was. The person, if you like, the executive in London who is responsible for the relationship with the venture or the business would prepare a Deal Qualifying Memorandum?

A. Yes.

Q. And that Deal Qualifying Memorandum would really be your proposal to the investment company?

A. Correct.

Q. Would that be correct?

A. Yes.

Q. That would then be considered by the five-man, or five-woman, investment committee in London, is that right?

A. That's correct.

Q. And they would sign-off on their approval?

A. Right.

Q. Is that correct?

A. Yes.

Q. And that approval, together with the Deal Qualifying Memorandum, would then go to the United States to the Board of Advent International Corporation?

A. Correct.

Q. Is that right? They being the entity that control the funds, and they would then have to approve it as well?

A. Yes.

Q. So it was a two-stage approval?

A. Yes.

Q. Is that correct?

A. However, as I said, the probability, through my period of residence there, nine years, was a hundred percent that they would approve what we had recommended.

Q. Okay, I understand that. Now, just looking at this Deal Qualifying Memorandum. This is to Distribution; I take it that this means all of the members of the Investment Committee in London, is that right?

A. Correct.

Q. And on the first page, sensibly enough, there is an investment summary, isn't that right?

A. Correct.

Q. And it starts off:-

"Business: Radio and long-distance Telecom.

Location: Dublin Ireland.

Stage/status: Early Revenue.

Source: Internal.

Sponsor: MP."

I think that's you, would that be right?

A. Correct.

Q. "Assist" is that assistant?

A. Assistant.

Q. "MG." Would that be Mr. Garau?

A. Yes.

Q. Then below that:-

"Total deal amount: £3.2 million (\$5 million).

Advent portion: £3.2 million.

Advent Funds" does that signify the funds that were

going to contribute to making this advance?

A. Yes.

Q. Then:

"Type of security: Redeemable preferred/loan stock."

And then below that you have:-

"Proposed valuation: See deals detail.

Money in to date: \$10 million."

That records how much you had invested prior to this proposal, would that be correct?

A. Mm-hmm, yes.

Q. Below that:

"investors: Advent International.

BOD" - I take it that means Board of Directors - "seat:

Two - MPO" - I think that must refer to you - "and MG", your assistant.

And then:-

"Proposed exit: IPO - trade sales.

Closing timing: June."

Then below that you have:-

"Reason to do the deal" and these are kind of in headline points.

"Continuing to fund growth of performing portfolio company.

Improving management situation.

Industries we like.

Downside protection on the new money."

And then below that:-

"Key issues: Deal return.

Capital requirement of existing business.

Timing."

And that was really the summary of the salient matters that the Committee would have to consider, and that they could go and look at and then go and consult the main body of the memorandum, isn't that so?

A. Yes.

Q. If we just go over the page, I am just going to open on this page the Executive Summary. That's the top of page 2.

"Communicorp acquisition of minority interest in the Dublin radio (per se a positive development) as well as higher than expected burn in the launch of Stockholm have forced the company to need to raise more money ahead of schedule, at a time when the company has not yet achieved a situation to raise substantial bank debt, when is difficult for outsiders to evaluate the company and when Denis O'Brien should be 100% focused on the GSM bid. We had discussions with Apax, which had visited the company in the past, but negotiations were very difficult, not so much on valuation as on preference and dividend yield.

"Compared with the plan presented for the original investment, the existing radio are roughly on plan.

Stockholm is proving slower to develop (but the fundamentals of the investment are still there) and Esat Telecom is ahead of plan and is becoming a reality. In terms of organisational development, we have added a CFO, two very solid Board members, and a search is on for a

Managing Director of the radio group.

"We believe that the company has come a long way from where it was six months ago, and while this round comes a bit too early (and too suddenly) we still believe it is worth to fund the Development Plan. It is clearly very difficult to evaluate the company at such a short interval and - dealing with Denis - we are going the "easy" way of a 30% all-in instrument, keeping in mind that we get anyway 35% of whatever additional value is created, and that it is pretty well protected by the underlying equity value."

Then you outline on the lower part of that page, the use of the funds to date. And then, on page 3, you continue with that and you set out, in page 3, the use to which the funds that you were proposing should be advanced would be put if it was approved, do you see that?

And then below that you have another subheading, and you address developments to date in the different operations, and you outline how the radio stations have been doing in Dublin and Prague. And over the page, at page 4, you refer to the radio business in Stockholm, and then again in Prague. And then halfway down that page, you refer to, I think, a proposed investment in Italia network, and you come then to the telecommunications business, do you see that, at the bottom of page 4?

A. Yes.

Q. And then if you go over that, that continues over on to page 5, when you talk about the management, managerial

resources that were concentrated the concentration of managerial resources on the GSM bid. And then you refer to the organisation, and you say that: "From the point of view of the organisation (and of 'managing' Denis) we have accomplished a few significant steps. The first is the hiring of Peter O'Donoghue as Finance Director; he is well qualified, brings to the company a new professional (as opposed to entrepreneurial) approach, and he also seems to be able to stand up to Denis. Second, Denis has attracted on the Board of Esat two very solid persons, John Callaghan, a retired partner of KPMG Corporate Finance; and Michael Gadar, former founder and CEO of Callnet (now Sprint Canada) the Canadian second carrier. Both of them are working hard to help Denis focus on the main issues and to balance his entrepreneurial drive with a more thorough thought out business approach.

"Finally, a search is on (fully supported by Denis) for a Managing Director of the radio group. However, this position does not seem easy to fill given the lack of experienced people (and the process has been somewhat slowed down by the GSM bid)."

And they were the changes, if you like, in the organisation and personnel that you had supported.

And then you go on to deal with the company valuation and deal structure. And on the final paragraph on that fifth page you actually address the need for this funding, and you say:-

"Communicorp finds itself short of cash earlier than expected and not in a good position to raise money from outside sources. Also, we are a few months away to be in a position to do a bank deal, and I do not want to distract Denis from looking for the GSM licence."

And then over the page you say:-

"Denis has asked for a bridge. My proposal is to loan to Communicorp redeemable after five years with an all-in 30% IRR (with prepayment penalties minimum 2 X for the first two years). If not redeemed at the end of five years, we can convert into 20% of the radio group.

"Whilst not ideal, I think is a deal we can live with (after we are redeemed, we will still keep 35% of the upside) and it avoids protracted negotiations while the company has better things to do. Also, the conversion into radio shares is based on Apax's valuation, so there should not be much disagreement since. In order to get to the company valuation today, we discount future results at 40%. It is clear that by financing the company at 30%, we also increase the value of our underlying equity."

And that concludes the body of the deal qualifying memorandum, and it's clear, isn't it, Mr. Prelz, from the terms of what you are proposing there, that that related to the first deal that was under discussion in May of 1995, isn't that right?

A. Correct.

Q. The five-year deal that was convertible to 20% of the radio

division after five years, isn't that right?

A. Correct.

Q. Now, just looking at the structure of this document again, there are a whole series of attachments that I am not going to bother you with. I think they are consolidated profit and loss accounts, they are balance sheets, and they are cash flow requirements.

If I can just bring you straight on then to the last portion of that document, which is headed "Advent Investment Approval Sheet," do you see that?

A. Yes.

Q. We'll just get it up on the monitor. It's page 1 of Advent International Investment approval sheet version date 5/23/95.

And this seems to be the portion of the document that records the approval of the Investment Committee, would that be correct?

A. This is the one which the Investment Committee signed to send to Boston as a recommendation. And if Boston will approve, as you can see, CFO approval for the fund, that would be signed then in Boston.

Q. I just want to have a look at it. The first page just sets out the detail, the company, the address, the company contacts, then a description of the business, and you have ticked "Stage: Revenue:

Sector: Service.

Principal region: Western Europe."

And the base of it there, that's all been filled in. AIC

Investment Manager is you. "A Board seat: Yes." And that's held by you.

Then over the page again, the second page of it, page 2, it just records the anticipated closing date, the valuation, and the total sum that you are providing, which is the 5 million "Total this round," do you see that?

A. Yes.

Q. Below that there seems to be a breakdown, would I be correct, of the contributions to be made to this, by the various funds under management, would that be correct?

A. That is correct.

Q. I don't need to bother you with that. And then below that again, then, there is the Investment Committee, Advisory Committee approval, and it's signed by you, by Mr. Schmidt, by Mr. Brown, by Mr. Sheldon and by Mr. Walker, correct? Then below that: "CFO approval to release funds." That's not completed, and I just wonder what does that relate to?

A. The CFO is the person in Boston

Q. The person in Boston?

A. that would be signing before releasing the funds.

Q. I see, before the funds are released.

A. Tony Armstrong was also based in Boston, whilst he was on the committee, and I assume that this was the sheet, the approval sheet as prepared in London, because it doesn't have the signature of Tom Armstrong and of Janet Hennessy,

so this is what we would submit to Boston and Boston would complete it.

Q. If we go over the page, page 3, I think that none of these items that would require completion were actually applicable to the deal that you were proposing or that was being approved by the Investment Committee, would that be right?

A. Yes. I mean, this is by exception, if there was an exception.

Q. And then we go over to page 4, to paragraph 10: "Advent International LP is:" And it's ticked "Included in the deal."

A. That's right.

Q. What does that signify?

A. That signifies that there was some money by the partners, including it's a small amount. If you go before, you can see that Advent International Investor LP 2 and 3 had a total of \$11,000.

Q. I see. And then below that: "Override deal credit: Dealmaker". There is you, Massimo Prelz 75% and Mike Garau 25%. And again, what does all that signify?

A. That is a share of that is a bonus that is the share of the profit, a little bit of the share of the profit that was allocated directly to the people doing the deals on this proportion.

Q. And that would be the breakdown of the bonus between you and Mr. Garau?

A. I don't remember what the percentage. I think it was 1% of the profit was shared, or something like that. I don't remember the number.

Q. Then it's: "Recommended by:" you?

A. Yes.

Q. And there is a space below that: "Approved by DRB:" And that hadn't been completed?

A. Yeah, I don't know why. I mean, probably you got the one before it was signed off.

Q. I see.

A. "DRB" was Brown.

Q. Mr. Brown signed on behalf of the Investment Committee?

A. Which at the time was the head of Europe.

Q. Okay. Page 5 I think is just, I suppose it's

A. That is the list of the people who had to sign off for the investment approval.

Q. I see. And then you have "Schedule A," which has details, I think, of a Kauffman Foundation Board of Directors?

A. That is because the Kauffman Foundation was an investor, we needed to give them a considerable amount of information.

Q. Okay. I think the final page of that document is headed "Communicorp Group Refinancing Term Sheet." And that would just be a summary of the deal, would that be right?

A. Yes.

Q. A summary of the terms?

A. Yes.

Q. And there that records again "Security: 3.2 million would

be in redeemable preference shares or loan stock if more favourable to the parties.

"Term: Five years.

"The coupon was 8%."

Then you have the redemption premium. Then the provisions that were to apply in the event of early redemption, and the draw-down.

A. Correct.

Q. Okay. And this was the Deal Qualifying Memorandum in relation to the matter that was that you had proposed and recommended, but that had been under negotiation in May, isn't that right?

A. Correct.

Q. Now, we know, Mr. Prelz, that although you had recommended this deal, and it had been signed off by the Investment Committee, it seems to have been one of those one in a hundred that wasn't approved by the Board of Directors, isn't that right?

A. No, it's not that. In this case, we put the money in on different terms, because after once the money, the investment was approved, the manager in charge of the investment, particularly if he was a senior member of the team, had some leeway to renegotiate the deal, and the thing which we couldn't do was to put in money without approval. Once the approval was given, the term of the money, the way it went in could be varied

Q. Yes, I understand that.

A. on a much for informal basis.

Q. If it was more favourable, presumably?

A. Either if it was more favourable or if we had good reason to do it in a different way, which is exactly what happened in this case, where we'd move it to just a bridge facility, one year.

Q. Right. Well, just I don't quite understand that, Mr. Prelz, because from everything we have seen, it seems to be the case that you had told Mr. O'Brien that you couldn't get Board approval for this deal?

A. Where?

Q. Well, I'll refer you to it, Mr. Prelz.

A. That's not

Q. Certainly that's the evidence that we have heard, and in fact I can refer you to an exchange of faxes on the 29th June of 1995. I'll just refer you to them now. If you start off on Divider 9, A9, Mr. Prelz. I just want to put this into context for you, Mr. Prelz, because the Tribunal heard evidence that on the 15th June, you, Mr. Callaghan, Mr. O'Donoghue and Mr. O'Brien renegotiated this deal, because you had told them that you couldn't get Board approval for it and that you could only offer them a straight deal, a straight financing deal at a coupon of 30%, and that you got together on the 15th June and that you renegotiated the bridge finance, and at the same time you renegotiated the Letter of Comfort and the 5%. And the matter was then referred to your solicitors and to William

Fry, and there seemed to be some tension over whether those two agreements were collected or intertwined, do you recall that?

A. That is correct.

Q. And there was also a problem about the 5%, whether you were to get it at par or you weren't to get it at par, and it was ultimately all resolved. But what I want to refer you to now are the exchange of faxes on the 29th June, 1995. And the first of those appears to have been sent to you by Mr. O'Brien at 11 a.m. in the morning, and that's at Divider A9, and a copy of it is on the overhead projector monitor. And I am just going to refer you to all three of them, Mr. Prelz, and then I'll ask you to comment on them.

It's to: "Massimo Prelz, Advent International.

From: Denis O'Brien.

Date: 29 June 1995.

Re: Esat and loan facility agreements.

"I have received a facsimile from Helen Stroud" I should just pause there, I think Ms. Stroud was your solicitor in Baker McKenzie, isn't that right?

A. Correct.

Q. "...responding to my memos of the 28th June, 1995. I have set out below Communicorp's response to the points raised.

"1. Advent's view that the Esat deal and the RINV are one package is wrong. This was not agreed at our meeting of the 15th June, 1995, and John Callaghan has also confirmed this. By interlinking the two agreements

Advent have introduced a new condition to the loan agreement which is now preventing the Communicorp Group from drawing down the bridging facility and consequently Advent are putting the Group's development in jeopardy.

"It was agreed that Advent is being given the right to participate directly in 5% of the equity of Digifone in exchange for a letter satisfying Telenor in relation to Communicorp's credit standing in respect of the GSM project. We will not accept any change to this provision.

In addition, we would point out that we have already agreed with Telenor on Advent's right to participate directly in the 5% of Digifone's equity.

"2. As has been explained to Helen Stroud, it was always the intention that Esat Telecom would invest in Digifone. However, as we are currently in litigation with one of the minorities in Esat Telecom, it has been decided that Communicorp invest directly in Digifone. When the minority situation in Esat Telecom is resolved, their participation rights through Esat Telecom would be reinstated. We can not override the rights of minorities. I trust this clarifies the situation.

"3. Under Clause 5 of the original Investment Agreement the amount of the loan stock to be made available by Advent is directly related to the level of investment that Communicorp Group has in Digifone. As the Esat

Telecom agreement preserves Advent's rights to participate in Digifone, independent of Communicorp's direct investment, it therefore follows that the redeemable loan stock should be available to Communicorp regardless of Communicorp's direct investment in Digifone.

"We must reiterate that this was never agreed that these two agreements would be interlinked and Advent's insistence to do so is now putting the whole Group at risk."

Now, your response to that, Mr. Prelz, which I don't think the Tribunal had ever seen before, I don't think it had been produced to the Tribunal until the Tribunal received the Advent documents, is at Divider B6. If I can take you to that next.

A. This is when I told Denis to go to hell, in a nice way.

Q. Divider 6. Do you have it there?

A. Yes.

Q. It's: "To: Denis O'Brien.

From: Massimo Prelz."

Dated the same date. "Number of pages 1, including cover sheet.

"With reference to point 1 of your fax dated 29th June, 1995, I remind you I came to Dublin on June 15th with a deal agreed between you, me and John Callaghan about a financing with a minimum period of 2 years, just to hear you say that was never agreed, and you added very smartly that 'nothing is agreed before it is agreed.' Also, since

my visit, your position on the price we have to pay on the 5% of Esat Digifone has moved quite substantially before coming back to where we started. Unfortunately, under these circumstances, I tend to be a bit more careful of what I generally am, and I think I am entitled to know what my position is.

"Denis, I do not like this way of doing business and I believe that it is your inability to complete a transaction such as this one, purely in order to satisfy your need to always have the last word, that is seriously damaging the prospects of Communicorp. Advent is not putting the Group development in jeopardy; our funds have been available for a long time, and will be transferred as soon as we have legal documentation.

"Regarding point 2: I cannot agree. Regarding point 3: I have the strong impression we are saying the same thing, and in fact, by counting Advent direct investment in Esat Digifone as part of the Communicorp share, we are giving you a better deal of what was agreed.

"Denis, come down from your high horse and the whole Group will not have to be at risk.

"Regards

Massimo Prelz."

Now, Mr. O'Brien responded to that on the same afternoon, at 4.45 p.m., and you will find that, Mr. Prelz I am sorry, it's at the other end of the documents, it's at A2.

Do you have that?

A. Yeah.

Q. You will see it was faxed at 4.45 p.m..

"To: Massimo Prelz.

From: Denis O'Brien.

"On the 19th May, 1995, Advent agreed to give the Communicorp Group a loan of \$5 million convertible after five years into 20% of the radio division. This agreement was reached at a meeting in Esat's boardroom attended by Bob Shenfield, yourself and myself."

I think Mr. Shenfield is an Advent executive, isn't that right?

A. That's right.

Q. "On the following Saturday, 20th May, 1995, the terms of the agreement were confirmed to John Callaghan, when John and I spoke to you on the phone from his house.

"Subsequent to this agreement, you attended a meeting with me at Woodchester Bank and confirmed to them that the loan was being made available.

"On Tuesday, the 30th May, 1995, you spoke to me in Norway and informed me that your Board had not approved our agreement and that you were now offering a straight five-year loan with an annual coupon of 30% and specific terms relating to early repayments. Communicorp never accepted this offer. On the 15th June, John Callaghan, Peter O'Donoghue, yourself and myself met in our GSM offices in Jenkinson House. We reached agreement on the terms of the bridging finance, and these were documented by

John Callaghan, an independent director, a copy of which are attached.

"Can you please confirm to me whether Advent are going to adhere to the agreement reached on bridging finance at our meeting of the 15th June? If Advent are not going to do so, I need to inform the Directors at the Board meetings scheduled for tomorrow. In addition, we would also need to hold a Board meeting of Communicorp Group Limited immediately to discuss the financing needs of the Group.

"The outstanding issues in relation to the Esat/GSM agreement can be resolved later."

Now, you see that exchange of faxes?

A. Yes.

Q. Certainly Mr. O'Brien seems to have been under the impression there, and that accorded with the evidence heard from Mr. Callaghan and Mr. O'Donoghue, that you had informed them that you couldn't get Board approval for the five-year convertible deal?

A. I do not this being 14 years ago, plus some weeks, I do not exactly recall the all the stages. I remember going to the Woodchester Bank. I remember meeting with Denis and discussing several times. The deal changed consistently over time, particularly because in this time was also when Denis was talking to us about the GSM and asking for the other side, and, you know, we continued to negotiate until the last day. In fact, we never put in the 30 million which we were committed to, we put in the 5 million which

we might not have committed to, and so on and so forth.

That is the way things develop when you have a very dynamic situation, highly moving pieces, and that's where I mean, at the time the industry was pretty entrepreneurial, our industry, the private equity industry, and we had once you had commitment to have money available for investment, you pretty much negotiated with the entrepreneur up to the last moment.

Q. I see, I see. In any event, whether you can remember it or not, it does seem that it was Mr. O'Brien's understanding on the 29th June, 1995, that you couldn't get Board approval?

A. I don't know whether that is because I don't remember that, frankly. And I don't know that, whether that is because in the meantime we were in the process of drafting our agreement on the 30 million, and that and our Investment Committee, being requested for another 30 million, wanted to put all that into one package. That could be the case, but I don't recall that.

Q. I see. Okay.

CHAIRMAN: I suppose it might be an appropriate time to take a ten-minute break now. Thanks, Mr. Prelz.

THE TRIBUNAL ADJOURNED AND RESUMED AS FOLLOWS:

Q. MS. O'BRIEN: Thank you, Mr. Prelz. Before we come to the agreement of the 12th July, Mr. Prelz, I just want to be clear as to exactly what your evidence is in relation to the commitment.

Now, I think in paragraph 28 of your Memorandum of Intended Evidence, you have informed the Tribunal that the nature of the Advent commitment, that's to the 30 million, was unequivocally evident from the letter of the 10th July, isn't that correct?

A. That is correct.

Q. And at paragraph 29, you have informed the Tribunal that the letter of the 10th July was understood by you and by the five-member Investment Committee of Advent, that's the advisory committee, as representing a binding irrevocable commitment for up to $\frac{1}{2}$ 30 million, isn't that right?

A. That is correct.

Q. And at paragraph 32 of your memorandum, your evidence is that the binding and irrevocable nature of Advent's $\frac{1}{2}$ 30 million commitment to Communicorp was unequivocally underscored by the agreement entered into between Advent, Mr. O'Brien and Communicorp on the 12th July of 1995?

A. Correct.

Q. That's your evidence, isn't it?

A. Yes.

Q. And then at paragraph 33, you say that quite apart from the unequivocal nature of the letter of the 10th July and the agreement of the 12th July, it would have been absolutely clear to both Advent and to Mr. O'Brien, from firstly discussions between you, and secondly, from oral confirmations, that Advent was entering into a fully binding and irrevocable commitment to Communicorp for the

1/230 million, and that's your evidence there, isn't that correct?

A. Yes.

Q. But what you are telling the Tribunal is that there was a commitment and a concluded agreement, isn't that correct?

A. Yes.

Q. And you are telling the Tribunal that it was binding on Advent, isn't that right?

A. That's correct.

Q. That it was enforceable against Advent, isn't that right?

A. I believe so.

Q. Sorry?

A. I believe so.

Q. You believe so. And that it is irrevocable as far as Advent were concerned?

A. That's correct.

Q. Okay. Now, can I refer you now to the agreement of the 12th July first, if you wouldn't mind. And you will find that at Divider A11. Have you been able to turn that up?

A. Yes.

Q. And we have it there on the monitor. I am not, again, going to open it all, Mr. Prelz, because there is parts of it really that are very technical, but I am going to refer you to the salient portions of it.

And again, if you could just confirm for the Tribunal, and again the Tribunal has heard evidence of this, that this formal agreement was finalised as a result of negotiations

between Baker McKenzie, your London-based solicitors, and William Fry, who were solicitors for Mr. O'Brien and Communicorp here in Dublin, isn't that correct?

A. Correct.

Q. And is it from you that Ms. Stroud would have taken instructions on this agreement?

A. Yes.

Q. Now, it's a three-way agreement between Advent International Corporation, Communicorp Group Limited and Denis O'Brien?

A. Yes.

Q. And I want to refer you firstly to the recitals.

"(A) Each of Communicorp and Telenor Invest AS (Telenor) currently hold 50% of the issued share capital of Esat Digifone Limited (Digifone).

"(B) Digifone proposes to make an application (the application) to the Minister for Transport, Energy and Communications to be granted the licence to operate the second GSM cellular system throughout Ireland (the GSM licence)

"(C) In connection with the application, AIC, on behalf of the Advent Funds (as hereinafter defined) has written to the Minister and to Telenor confirming its offer to provide financing of up to IR $\frac{1}{2}$ 30 million to enable Communicorp to fund its equity participation in Digifone which will be required should the GSM licence be granted to Digifone (the comfort letters)."

And copies of those are attached at Schedule 1.

"(D) In consideration of the issue of the comfort letters by AIC, Communicorp has agreed, subject to a fulfillment of the conditions hereinafter set out, to procure that certain of the Advent Funds will be entitled to such number of shares in Digifone as is equal to 5% of its fully diluted share capital (as hereinafter defined) and to give the Advent Funds a right to participate in the funding of Digifone in connection with the GSM licence as more specifically set out herein."

Then over the page the final recital:

"(E) DOB is a party to this agreement to record his consent to the amendment to the investment agreement referred to in Clause 6."

Do you see that?

A. Mm-hmm.

Q. So they were the recitals to the agreement to effectively contextualise the agreement and to put in place how the agreement arises, isn't that right?

A. Correct.

Q. Then there is a whole series of definitions of terms. I am just going to refer you to the third of those, unless there is any other term that you want me to refer to. And you will see there the third definition is "Comfort Letters".

And that has the meaning referred to in Recital (C). And in Recital (C) there is a further more full reference to

the letters of the 10th July, isn't that right?

A. Correct.

Q. Now, if you go over to Clause 2 of the agreement proper

I am only going to refer you to Clause 2.1.

Clause 2.1: "In consideration of the issue of the Comfort

Letters by AIC and subject only to fulfillment of the

conditions set out in Clause 4 by the dates specified

therein, Communicorp agrees within seven days after such

conditions have been fulfilled (completion date):-

"(i) To use its reasonable endeavours to cause Digifone to

issue such number of shares or

"(ii) In the event that Communicorp is not able to procure

the issue of new shares by Digifone, to transfer at

par such number of the shares held by it in Digifone;

"As will in either case ensure that the Advent Funds

nominated to Communicorp by AIC (the relevant funds),

receive in aggregate 5% of the fully diluted share capital

of Digifone at that date. AIC agrees to procure that the

relevant funds will subscribe for or accept the transfer of

(as the case may be) such number of shares (in the

proportions to be notified by AIC to Digifone) at par and

otherwise on no less favourable terms and conditions than

each of the investors specified in the application (or any

replacements of such investors), in accordance with their

respective Letters of Commitment to Communicorp."

Do you see that?

A. Yes.

Q. And that's the central, if you like, obligation imposed on Communicorp under the terms of this agreement, isn't that right?

A. That's correct.

Q. So either Communicorp is to procure Digifone to provide 5% of par or, if it's unable to do so, having used its best endeavours, Communicorp itself is to make available to Advent the equivalent of 5% of the fully diluted share capital of Digifone, isn't that right?

A. Correct.

Q. Now, the subsequent subclauses of Clause 2, they really make provision for various events that might arise, and they aren't of any application, or nor do they seem to me to be material, so I am not going to open them, but if you wish me to refer to them, I am happy to do so.

Now, if you go over to page 6, the marginal heading of Clause 3 is "Right of First Refusal" and it provides:-

"Subject only to fulfillment of the conditions set out in Clause 4 by the date specified therein, Communicorp hereby grants to the Advent Funds the right to provide the relevant proportion of the aggregate monies raised from time to time by Digifone or by any member of the Communicorp Group for subscription in, whether direct or indirect, or lending to Digifone..." And then there is a whole series of provisos. Do you see that?

A. Mm-hmm.

Q. And Clause 3.3: "The terms upon which the Advent Funds

shall be entitled to provide monies to the aforesaid shall be no less favourable than the terms and conditions as are applicable to other providers thereof."

Do you see that?

A. Yes.

Q. And then Clause 3.4 is just the mechanics of how the right to participate, the right of first refusal are going to be put into place, do you see that?

A. Yes.

Q. Then Clause 4 deals with the conditions. Clause 4.1: "The rights and obligations of AIC and the Advent Funds under this agreement are conditional upon the following matters being fulfilled by no later than 31st December, 1995:-

"4.1.1: The GSM licence being awarded to Digifone; and

"4.1.2: The other providers of loan/equity financing detailed in the application (or any replacements of such providers) having made fully available the funds committed by them on the terms and conditions set out in the application."

And then Clause 4.2, which I think became quite a crucial clause in subsequent dealings between Advent and Communicorp, isn't that right?

A. Yes.

Q. It provided: "The obligations of Communicorp under Clause 3 of this agreement" that's the right of first refusal clause "are conditional upon Telenor having been satisfied with the comfort letter issued to it, and on the

basis thereof, having resolved to proceed with its participation in Digifone and the application provided that Communicorp will use all reasonable endeavours to ensure fulfillment of this condition."

And 4.3 just relates to waiver on the part of Advent.

4.4, waiver on the part of Communicorp.

And then 4.5 just makes provision for what is to happen in the event that the conditions set out in Clause 4.1 were not satisfied.

And then Clause 5 is just a guarantee, again some protection for Advent; it's a guarantee by Communicorp in the that Digifone would perform its obligations, isn't that right?

A. Yes.

Q. And Clause 6 is the redeemable loan stock provision, which I think deals with a variation of the original investment agreement, isn't that right?

A. I believe so.

Q. And I think it's for that reason that Mr. O'Brien was actually made a party to this agreement, isn't that right?

A. Yes.

Q. And then on the on page 10, Clause 7 just deals with confidentiality of the terms of the agreement. I don't think there is anything particularly significant in that that we need to comment on.

Clause 8 just relates to the costs, that either party should bear their own.

And Clause 9 is a choice of law, governing law clause applying the law of the Republic of Ireland, isn't that right?

A. Yes.

Q. And then we see over the page that it was signed by Janet Hennessy, Vice-President on behalf of Advent; by Mr. Paul Connolly on behalf of Communicorp; and by Mr. O'Brien on his own part.

Now, Mr. Prelz, all of the witnesses from whom the Tribunal has heard evidence, including Mr. O'Brien, that's Mr. Callaghan, Mr. Peter O'Donoghue, Mr. Owen O'Connell, who was Mr. O'Brien's solicitor, each and every one of those witnesses agreed, and I take it that you would also, that this agreement did not impose any obligation on Advent to subscribe for any funds whatsoever in Communicorp, do you agree with that?

A. Well, we had committed to the Ministry in the recital. It's "We have committed to subscribe funds..."

Q. Well, just leaving the letter aside for the moment, I am not trying to catch you out in any way, I am going to come to the letter, but at the moment I am just looking at this agreement. This agreement didn't impose any obligation on Advent to subscribe for any funds, isn't that right?

A. The way it's written, yeah, I agree.

Q. You agree. In fact, what this agreement did, all it did was confer privileges on Advent, isn't that right? A privilege to 5% of the shares in Esat Digifone, and a

privilege whereby Advent would have an entitlement, but not an obligation to subscribe for funds in Esat, isn't that right?

A. That is not correct. That is not my interpretation, it may be your interpretation.

Q. What is your interpretation?

A. My interpretation is that I have a commitment. In exchange for that I have already made a commitment to the Ministry, not even to Denis O'Brien.

Q. That's under the letter, isn't that right?

A. Well, that is a quid pro quo for the 5%.

Q. If you can just bear with me for a moment, Mr. Prelz. I am not trying to catch you out in any way.

A. I am not a lawyer, I am a businessman.

Q. Of course you are. You don't need to be a lawyer, Mr. Prelz, to understand this agreement.

A. No, what I am saying is that I have, I have made an agreement with Denis O'Brien whereby I commit to guaranteeing certain financing. In exchange for that I get something. However that is phrased in this agreement, it doesn't matter. I had a commitment, I had not only, but I also have a commitment to a public entity, which is the Irish Government, to make funding if so required. So that to me is a commitment.

Q. As I said, Mr. Prelz, we'll come to that. But what I am simply trying to draw your attention to is that this agreement did not impose any obligation on Advent to

subscribe for $\frac{1}{2}$ 30 million in funding, or indeed, for any funding. As I said, I am not trying to catch you out, I am just looking at the ordinary and natural meaning of the agreement.

A. Legally I don't see I don't think that you can see this agreement in isolation from the fact that we have made a commitment, because we have in exchange for what is in the agreement.

Q. You are saying to me that the consideration for the commitment that you made was this agreement, is that right?

A. Yeah.

Q. Okay. So because you had issued that agreement that letter to the Department, this agreement was entered into by Communicorp, is that it?

A. Correct.

Q. Okay. Now, I am going to refer you to the letter. In fact, just one thing, before I come to the letter, if I can just ask you about one other document, if you don't mind.

It's just over the page at the next flag, A12.

A. Sorry, page?

Q. A12, just the next divider, Mr. Prelz, after the agreement,

A12. It's a letter of the 14th July of 1995. I wonder could you locate it, and it's there on the monitor beside you, if that's of assistance. It's addressed to you from Mr. O'Brien.

"Dear Massimo,

"I refer to our agreement dated the 12th July in regard to

the GSM bid to be made by Esat Digifone Limited.

"As you are aware, you have written to the Minister for Transport, Energy and Communications and to Telenor Invest AS stating that you have offered Communicorp Group Limited $\text{€}1230$ million in respect of their equity participation in the bid.

"We would like to confirm acceptance of our agreement dated the 12th July.

"Yours sincerely
Denis O'Brien."

Do you see that letter?

A. Yes.

Q. In fact a copy of that letter was submitted to the Department with the application, the bid of Esat Digifone, but there is no copy of that letter in the files of Advent that were produced to the Tribunal. And I wonder, maybe you don't at this remove, but do you recall ever receiving that letter?

A. No, I don't. I have seen it now in your folder, but...

Q. Now, can I refer you to the letter

A. I don't know whether he had not received a signed copy of the agreement which we have just discussed.

Q. Mr. O'Brien?

A. Mr. O'Brien.

Q. Well, I think Mr. O'Brien signed the agreement, Mr. Prelz, so I don't think

A. Yeah, so I don't understand if there was a timing issue.

Q. I don't understand it either because it's dated the 14th July, and it seems to be agreeing to something which Mr. O'Brien had already agreed to by signing the formal agreement.

A. Yes. So I don't know

Q. Anyway, you hadn't seen it before?

A. No, I don't remember it.

Q. Now, can I refer you now to the letter of the 10th July, 1995, and it's at Divider A10?

A. Yes.

Q. This is the one to Mr. Brennan. There was also one to Telenor, but it was pretty much in identical terms. So it's the one to Mr. Brennan that I am going to open to you, but obviously if there is anything you want to refer to in the Telenor one, I'd be happy to do so as well.

"Dear Mr. Brennan,

"We refer to the application made to you today by Esat Digifone Limited in connection with the grant by you of a licence to operate the second GSM cellular system throughout Ireland.

"Introduction to Advent International:

"Advent International Corporation is a leading international private equity provider. With funds under management in excess of 1.4 billion dollars and offices in North America, Europe and Asia, Advent International has provided development capital and private equity to over 200 companies, giving entrepreneurs adequate financial

resources to develop independent businesses.

"Advent International's investment strategy is to focus on a selective number of industrial sectors which experience an above average level of growth. In particular, our funds have made significant investments in media and telecommunications companies in Europe and have developed a good understanding of the telecommunications business and a strong interest in investing in the same.

"Advent's investment in the Communicorp Group:

"In 1994 certain of the funds managed by Advent International invested a total of approximately 10 million dollars in Communicorp Group Limited (Communicorp) in return for just over 25% of the voting share capital.

Communicorp is the holder of 50% issued share capital of Esat Digifone Limited (Digifone).

"These funds have committed to invest an additional 9.5 million dollars to further develop the Group's activities.

"Advent's commitment to the GSM licence application:

"We have reviewed the business plan prepared by Digifone in connection with its application for the second GSM licence and consider its operation of the second GSM cellular system in Ireland to be an attractive and viable project.

The application to you by Communicorp sets out how it is intended to inject new equity into Digifone on the licence being granted to it and shows the Advent Funds as 5% shareholders, participating in the 20% holding which has been allocated to institutional investors. We are

delighted to have the opportunity of investing directly in Digifone as well as our indirect investment in the company through Communicorp and Esat Telecom.

"The said application also shows Communicorp Group remaining as a 40% shareholder in Digifone and being required to provide up to 30 million Irish punts to fund that 40% equity participation. We can confirm that we have offered that amount to Communicorp to enable it to fund its obligations.

"Please do not hesitate to contact Massimo Prelz Oltramonti on" - and you give your telephone number - "should you have any queries on the information in this letter."

And that's signed by you on behalf of Advent International Corporation. And you identify the office that you hold of Senior Vice-President and Managing Director Europe. You see that letter?

Now, that's the commitment that you said

A. That's correct.

Q. that you had made to the Department and to the Minister, is that right?

A. That's correct.

Q. Now, can you point me to where in that letter you made a commitment to the Department and to the Minister?

A. "We can confirm that we have offered that amount to Communicorp to enable it to fund its obligations."

Q. What you have said what that says, Mr. Prelz, I have to suggest you, is no more than an historical statement

"Advent have offered." Now, you do not need to be a lawyer, Mr. Prelz, to know that an offer does not give rise to an obligation until that offer is translated into a binding agreement, isn't that right?

A. An offer to this letter has been signed let's assume the other way around, that we had that Digifone had been offered had been awarded the licence. We had not backed we would find ourselves in breach of an undertaking to a national Government. Do you believe that I would do that?

Q. I don't know, Mr. Prelz. It's not for me to believe one way or the other.

A. I don't think that we are talking about business here.

Q. I see. Can you show me where you have given an undertaking to a national Government?

A. This letter has been signed by Martin J. Brennan, Principal of the Radio and Development Division. And I signed that as Communicorp we stand behind Communicorp to fund this investment.

Q. No, Mr. Prelz, that's not what you said in the letter, you said: "We can confirm that we have offered that amount to Communicorp to enable it to fund its obligations." That's what you said in the letter.

A. An open offer.

Q. Yes.

A. Which can be taken at any time. It is an open offer to Communicorp, that Communicorp could have enforced on us at

any time.

Q. I see. Where does it say in the letter that it's an open offer?

A. "We have offered....", we didn't put a term. We don't say we offered and that it has not been accepted; that has to be accepted by such a time. This is a letter that we submitted to the Department for a bid, and you are saying that this is not an offer to fund the business.

Q. I am not saying anything, Mr. Prelz. I am just asking you to indicate to me in the letter where you have given an undertaking to the Irish Government that you were furnishing an open offer to Communicorp?

A. It is an open offer.

Q. I see. Now, you say in your memorandum that the nature of the commitment was unequivocally evident from the terms of the letter. Can you indicate to me where in that letter the nature of the commitment was evident unequivocally or otherwise?

A. The nature of the commitment is that we have provided we have offered to provide the funding of $\frac{1}{2}$ 30 million, which is required which is what in the frame of the licence application is what is required.

Q. You agree with me

A. You seem to be taking the document in isolation

Q. I see.

A. as opposed to looking at these as being part of an application which had been submitted, which had a

requirement for certain equity and an offer from or part to fund the proper amount of the equity.

Q. So it has to be taken in context then, is that it? The letter has to be taken in context, is that what you are saying?

A. Yes.

Q. Just looking at it at the moment, and I am not, again, trying to catch you out. I understand you saying that it has to be taken in context, but at the moment what I want you to do is to bear with me and to look at what's written in the letter, because that's all that the Department was given, this letter, and a letter in the same terms is all that Telenor was given. So I just want to be clear what you are saying.

Do you agree with me that there is no reference to any terms in that letter?

A. In this letter there is no terms.

Q. Do you agree with me that there is no reference to any terms of repayment in that letter?

A. That is correct.

Q. Do you agree with me that there is no reference to the price for the offer in terms of shareholding or otherwise in the letter?

A. I am not going to talk to the Minister about my deals with Denis O'Brien. That's why I said this can not be taken in isolation, but may be seen in the context of the agreement of July 12th as well as the application, the whole of the

application to the Minister of Telecommunications.

Q. You see, Mr. Prelz

A. Sorry, one more thing.

Q. Yes, of course.

A. You must not disregard the fact that we were 35% shareholders in this company, and it was in our interest to fund the bid for the GSM licence. In fact, it was one of the main reasons why we did the investment in the first place.

Q. Of course. But, Mr. Prelz, we have got to be realistic here. Didn't you know that as of the 10th July Mr. O'Brien had engaged CS First Boston for a private placement?

A. We did not necessarily want to make investment.

Q. No you didn't.

A. We were very happy with investing 20 million and taking 19 million out. We wanted also I mean, here it refers to, both documents refer to 5% of the 20% was to the investor. We agreed with Denis O'Brien shortly thereafter that it was in the best interests of the company not to pursue that structure, but to have Desmond coming in for 20%, IIU. That was the first change that occurred just after we signed off those documents. Things move very rapid in those times.

Q. I see that. We'll come back to all that, Mr. Prelz. You needn't be concerned, I will come back to all of that.

A. But the question is; no, we didn't say to the Government, to the Irish Government how many shares and what the coupon

would be, because we discussed that in a separate document.

Q. You see, Mr. Prelz, apart from Mr. O'Brien, nobody else that's Mr. John Callaghan who was the former managing partner of KPMG, whose appointment to the Board you supported; Mr. Peter O'Donoghue, whose retention as Financial Director you actively encouraged and supported; and Mr. Owen O'Connell, who was a exceedingly experienced commercial lawyer, not one of them, Mr. Prelz, considered that this letter constituted a commitment by Advent?

A. I beg to disagree. I thought that I had a commitment and that Denis had the funding by Advent to pursue this licence. I would not otherwise have personally signed the letter to a Government saying that we stand behind him in his investment. On a personal basis, I would not have done that.

Q. Now, Mr. Prelz, I want to go back, if you don't mind, to the 15th June, when you had the meeting with Mr. Callaghan, Mr. O'Donoghue, Mr. O'Brien and yourself in Jenkinson House. That was the meeting that arose, if you like, as a result of the fact that, for whatever reason, you couldn't deliver on the 5 million bridging finance on the terms that had initially been agreed with you. Do you remember that meeting on the 15th June in Dublin?

A. I remember visiting once Jenkinson House, because there was a very secret location, even for the Board of Directors of Esat. I don't remember exactly what we discussed then. In fact I don't remember that we had I remember there was a

visit, but it was more and, you know, visiting with the facility of our secret project more than any business discussion.

Q. Well, Mr. O'Brien and Mr. Callaghan considered it to be a very significant meeting, because I think it was at that meeting that they felt that you finally tied down and pinned down the terms of these two agreements that you entered into in July. And it was that meeting to which Mr. O'Brien referred to in his second fax of the 29th June, the one I have just referred you to, you remember that?

A. Yes.

Q. Now, Mr. Callaghan kept a note of what was agreed at that meeting, and in fact that was appended to Mr. O'Brien's second fax to you of the 29th June. And you will find that as an attachment to that fax, and that's at Divider A2. I ask you to turn that up, if you don't mind?

A. Yes.

Q. And Mr. Callaghan gave evidence in relation to the keeping of this note and he confirmed, in evidence, the terms that he had recorded in it. And I am going to refer you now in a moment to some of the evidence that he gave.

And you will see that at the top of the page he has "[3.2]" million in a square bracket, "Bridging finance" underlined, and then he has four bullet points.

" 1 year bridging facility (draw-down - 1.2 million, 1 million, 1 million as required).

30% interest/charge for year's use of facility drawn.

Denis O'Brien 600,000 treated the same."

And I think that related to a $\frac{1}{2}$ 600,000 investment that

Mr. O'Brien was also going to make in Communicorp?

A. That is correct.

Q. And then the final bullet point: "If refinancing takes place, look favourably at taking out Advent and paying the year's charge."

And that, if you like, were the headline terms that

Mr. Callaghan had recorded of the agreement that you concluded on that day regarding the bridging finance?

A. Correct.

Q. Now, below that there is another marginal heading:

"5% equity in GSM company:

Advent to invest in 5% of the 20% institution shareholding (at par).

Advent to give letter to satisfy Telenor and requirements of GSM bid.

(Strong letter but cannot be a 'commitment' to invest)

Advent to have opportunity to participate in the financing arrangements for Group and/or GSM company if money is raised directly for GSM company.

If GSM licence is secured, the contingent payment is deemed to be 3.6 (originally 4 million for 50%)."

And that, again, was Mr. Callaghan's record of the headline terms that were agreed and which, according to his evidence, ultimately culminated in the agreement of the 12th July, do you see that?

A. I do not agree with that.

Q. You don't agree with it?

A. In the sense that there is I don't understand point 4, bullet point 4 of the second "If GSM licence is secured, the contingent payment is deemed to be 3.6 (originally 4 million for 50%)." I don't remember what that is in regard. But I think there is a clear misunderstanding on point 2, "Advent International to give letter to satisfy Telenor and requirements of GSM bid (strong letter but cannot be a commitment to invest)." That is not correct. That could not be a bank guarantee, because under our internal procedures and, at the time, as I said, the industry was still in its infancy; to have a bank guarantee for that was not was very difficult for us. It would require us drawing down funds and quite complicated, which is the discussion that ensued afterwards between me and Denis about the letter. There is some reference to letters from Telenor saying we don't like, we want a guarantee. And we said a commitment for us, you know, our word is our bond, we have made a commitment, we don't need any more than that. And that is, I think, a misunderstanding from Callaghan.

Q. I see. I'll just refer you to Mr. Callaghan's evidence, Mr. Prelz. It was on Day 254 of the Tribunal's public sittings, which was on the 4th December, 2003, and we'll get a copy of it there on the monitor for you so that we can be able to follow it. It commences at page 60.

"Question: If I could just ask you to turn over the page, you will see a copy of your handwritten notes, and I take it you recognise those as your own?"

Answer: I do.

Question: You see that you have made two separate headings on the page. At the top you have 'bridging finance with' a bracket, '3.2 million', and halfway down the page you have '5% equity in GSM company.'

And in relation to bridging finance you have four bullet points."

And the four bullet points are read, we have referred to them already. And it goes on:-

"Question: I take it these are the principal headline terms that were agreed in relation to the bridging finance:

It was 3.2 million, it was a 30% coupon, that if Communicorp were able to refinance, that they would look favourably at taking Advent out before the year was up?

Answer: Correct.

Question: And that Mr. O'Brien did not think unreasonably that the $\frac{1}{2}$ €600,000 that was coming up would also be treated in the same way?

Answer: Correct.

Question: Then you have a separate rate heading '5% equity in GSM company.' First bullet point: 'Advent to invest in 5% of the 20% institutional investment (at par).' Do I take it that that means that Advent International weren't to pay any premium for the 5%?

Answer: Yeah, I think the main thing here was whether 'at par' is the right expression; that they wanted to be keen, that they would be coming in on exactly the same terms as everybody else. That was really the point.

Question: They weren't to pay anything more?

Answer: Yeah.

Question: Secondly, 'Advent was to give letter to satisfy Telenor and requirements of GSM bid (Advent).' In bracket below that you have 'Strong letter that cannot be a commitment to invest.'

Can I just ask you about that. You have in quotes 'commitment to invest.' Does that in any way signify that perhaps that was the word that Mr. Prelz used at the time?

Answer: Yes, yes, I mean I can't remember exactly, but the point we were making here was that Massimo was saying he would give us the letter but he could not give an absolute commitment. That was the point he was trying to make.

Question: He couldn't give you a commitment?

Answer "

A. Sorry, can I stop you here?

Q. Can I just finish the extract, Mr. Prelz, and then you can say whatever you like.

"Question: What was obviously a very significant point because you were noting that and, in fact, you placed those words in parenthesis?

Answer: Correct."

Now, did you want to comment on it, Mr. Prelz?

A. Yes, I would like to comment on line 7. "Yes, yes, I mean I can't remember exactly, but the point we were making here was that Massimo was saying he would give us a letter but he could not give us an absolute commitment." That is not correct, I could not give him a bank guarantee.

Q. And that's your evidence, that Mr. Callaghan got it wrong, he didn't understand? You weren't saying that you couldn't give a commitment, what you were saying is that you couldn't give a bank guarantee?

A. I would appreciate you again reading line 7. "Yes, yes, I mean I can't remember exactly..."

Q. Of course.

A. I can remember, because for us to create a bank guarantee would have required to, at the time, since we didn't have in place bank facilities as we have now in any private equity fund, it would have required for us to make a special draw-down of funds, deposit them into the bank so the bank could give us a back-to-back guarantee. That would have cost us money, which would have been totally inefficient and very damaging to our IRR.

Q. I see.

A. That's why we couldn't give them a bank guarantee, but we could give them a commitment.

Q. So that's what you say was Mr. Callaghan's misunderstanding?

A. Yes.

Q. I see. Now, I think in your Memorandum of Intended

Evidence you say that the consideration of this $\frac{1}{2}$ 30 million commitment is evident from the Deal Qualifying Memorandum, is that right?

A. Yes yeah, from when we signed the agreement.

Q. That's at Divider B4. If I could ask you just to turn to that, Mr. Prelz. And we are just going to have a look at that. We'll be able to put it on the monitor.

And, again, it's in the same format as the one we were dealing with earlier.

It's: "To: Distribution.

From: Massimo Prelz, Bob Shanfield.

Date: 8 June 1995."

Do you see that?

A. Yes.

Q. And that predated your meeting with Mr. Callaghan, Mr. O'Brien and Mr. O'Donoghue, do you see that?

A. Yes.

Q. Okay. And then there is the subject is: "Esat GSM."

And the investment summary, again it sets out that it's the "GSM mobile telephony.

Location: Ireland.

Stage/status: Bid/build out.

Source: Direct/internal."

Then:-

"Total deal amount: $\frac{1}{2}$ 120 million, US \$192 million. (50% debt-50% equity)

Advent portion: $\frac{1}{2}$ 30 million, US \$48 million" and below

that that's "Commitment".

And then below that:-

"i;½12 million, US \$90 million.

Expected investment: Advent fund" and then you identify the funds which would contribute towards this deal.

And then the type of security, TBD.

"Proposed valuation (pre-): i;½120,000,000, US \$192 million.

Lead: Advent, Esat, Telenor.

BOD seat: Yes.

Proposed exit: Trade sale or IPO.

Closing timing: Commitment required 16 June, 1995, funding November, 1995."

Then there is a financial summary there, and again you have highlighted the reasons to do the deal and the key issues.

Do you see all of that?

A. Correct.

Q. Now, if you go to the next page, they are numbered, page 2, and you have a marginal heading "Background", and you set out, then, the background to the proposal to which the document relates, isn't that right?

A. Yes.

Q. And then you have another marginal heading "The deal."

You say:-

"A preliminary term sheet which outlines the basic terms of the deal is attached as Exhibit 1. The details of the shareholders agreement including governance, share sale rights/restrictions and the like are being negotiated."

Do you see that?

A. Yes.

Q. So that would suggest, would you agree with me, that this matter is at a preliminary stage and that the terms of it are being negotiated, is that right?

A. Yes.

Q. That's what you have said?

A. On the 8th, yes, on the 8th June, yes.

Q. Then over the page you say that: "In brief, the proposed deal involves Advent committing to fund up to $\frac{1}{2}$ 30 million of the required equity for the build out and operation of the GSM network. This commitment, combined with the funding provided directly by Communicorp (funds emanating from our existing deal), constitutes a 50% underwriting of the entire equity need. Telenor will commit to providing the other 50%."

So you can see there that this is being described by you as a proposed deal, you see that?

A. Yes.

Q. Then you go on to say:-

"It is agreed and will be allowed that after the submission of the bid, an investment bank will be engaged to prepare the placement of 20% of the equity with Irish institutional investors. Assuming the bid is won, this placement will be effected as soon as possible, ratably diminishing the investment opportunity/requirement of Advent and Telenor. Any 'promote' realised in such a placement would benefit

each of the original shareholders."

You go on to state:-

"Furthermore, it will agreed that if Communicorp is, as it expects, able to waive additional equity on better terms after the award of the licence but prior to the funding, it will be allowed to displace up to 50% of the Advent commitment with this new source. Again reducing our opportunity/requirement to invest the full amount of our initial commitment, but improving our economics as a 35% Esat shareholder.

"While committing 30 million initially if the private placement and other fundraising efforts go as planned, Advent will ultimately be investing 12 million in the GSM business."

A. This is a response to your question about whether I knew that Credit Suisse was involved, yes.

Q. You did. Then there is a marginal note "Industry" and you explain about the GSM telephone industry.

Then over the page, at 4, you address the Irish market.

Then further down that page there is another marginal heading "The bid", and you outline what the bid is.

And then over the page, at 5, you refer to the evaluation process to be conducted by the Department, isn't that right

A. Correct.

Q. as you understood it at the time. And you say:-

"As to the process the Ministry has appointed Andersen

Consulting, not Arthur Andersen, as its evaluator. The Ministry has articulated and prioritised eight categories by which the proposals will be judged. These are established upfront in order to make the process as transparent as possible and minimise the inevitable accusations of political favouritism from the sore losers.

What is not disclosed are the exact weightings of each category and the detailed methods of evaluation within each. As put forward, the items are in order of priority."

And then you list the evaluation criteria from 1 to 8.

And then you go on to say:-

"Ultimately, this information is really only important in understanding the process. The simple fact is that only the winner need worry about actually executing. The primary objective of each bidder is at this point to position itself as the compelling choice."

Isn't that right?

A. Yes.

Q. Then you proceed to address what you regarded as Esat's unique attributes, and you set those out. And then you proceed, in the final paragraph, to say:-

"With the fee being in the middle of a pack, there is some expectation that this will not be a significant swing factor and thus the bidders will not go crazy. Again, however, this is only a concern for the winner. Esat has taken the point of view that it will try to advantage its proposal as strongly as possible in the other areas and be

competitive, but not foolhardy, in its financial bid. It should be noted that, as compared to the strong resources of the competitors, Esat is potentially disadvantaged with respect to its financial credibility. Thus the importance of the equity commitments prior to the bid."

And then if you go to the final page of the narrative, at 8, you have your conclusion.

"The deal is difficult to analyse because we are looking more at market comparables than real economic projections.

The financing commitment is also very large compared to our average deal.

"Esat GSM should be considered a separate investment from Communicorp because:

The activity is self-contained and has only limited synergy with Communicorp;

The risk profile is different;

The shareholders syndicate is different, with Telenor and institutions participating.

"In proposing and strongly supporting the deal, there are two key considerations taken into account:

" We are getting into a GSM syndicate at the ground floor, retaining for ourselves the value increase that the market has historically recognised for the oligopoly position (i.e. value per pop)

The entrance "fee" is in the form of a guarantee.

Given the opportunity, the financing of the Esat portion should not be a problem.

"In addition, this is not an additional investment in Communicorp, with all the concerns related to Denis O'Brien. We are co-investing with Telenor and Irish financial institutions, which reduces the management risk issue.

"While it is difficult to establish a return analysis, there is a clear opportunity on the downside to make at least three times our money in three to four years with more upside potential. Therefore, it is strongly recommended that we proceed with the investment."

Do you see that?

A. Yes.

Q. And clearly what that document is addressed to, I have to suggest to you, Mr. Prelz, is a deal in the form of a guarantee, isn't that right?

A. Sorry, the deal

Q. In the form of a guarantee, that's how you have described it yourself?

A. The deal is a financing of the company. The fact that we don't put the money down on day one is because on day one there is no need for the money. A guarantee to a deal, a commitment to make a deal. It's not a guarantee, it's a commitment.

Q. Mr. Prelz. You have referred to it in your own conclusion as the "entrance fee is in the form of a guarantee"?

A. But the request to my committee is for an investment, it's not for a fee, it's not for a guarantee.

Q. I see. Let's go and look, then, at Exhibit 1, which you describe as a Preliminary Term Sheet.

"Term sheet for the guarantee and funding of Communicorp Group portion of the Esat GSM financing." You see that's the word you have used yourself, Mr. Prelz. Do you see that?

A. "Guarantee and funding."

Q. You have used both?

A. "Guarantee and funding." The guarantee is preliminary to the funding, because the funding will come once the licence is issued and the guarantee is expected before.

Q. Yes, I understand that entirely. I think we are maybe at cross-purposes. I understand that entirely.

A. No, sorry, we are not. You are trying to separate the two things. You are trying to portray these as a guarantee.

We are not a bank, we don't make guarantee. As a private equity group we make investments.

Q. Yes, I understand that, Mr. Prelz, you don't need to be concerned about that. I know fully that as a private equity house, you do not provide banking guarantees. But you provide underwriting, don't you?

A. We provide?

Q. Underwriting?

A. Underwriting, yes.

Q. Underwriting.

A. In the sense not underwriting in view of a further placement as investment banks do. We provide underwriting

is because we expect to put the money in and to take it in our books. That's the differential between an investor banker and a private equity group.

Q. I see. Now, what your Preliminary Term Sheet recorded was that:-

"1. Advent will guarantee that Esat/Communicorp is in a position to fund their 50% share of Esat GSM up to i;1/230 million."

Isn't that right?

A. Yes.

Q. "2. In exchange for guaranteeing the full amount of the Esat portion of the funding requirements of Esat GSM, Advent will fund 50% of the required investment and will receive a 50% equity interest in the Esat holding of Esat GSM shares.

"This means that AI will invest in an instrument issued by Esat an amount equal to 50% of the total funding provided by Esat to Esat GSM (whether by way of equity, loans or loan guarantee) and it will receive in exchange 50% of the value of all distributions (loan reimbursement, dividends, interests and capital gain) paid by Esat GSM to Esat or generated by Esat's sale of Esat GSM shares."

Do you see that?

A. Yes.

Q. So and I think the balance of those terms really relates to the mechanics of that 50% interest and how it would be realised, isn't that right?

A. At the time we were not aware of how the structure would be, whether it would be a partnership, whether it would be a limited company, would it would be loans funded, capital commitment, whatever.

Q. I understand that. In your preliminary terms you would have had to make provision for whatever eventuality might arise, I understand that, and that probably is the complexity probably results from that, because you didn't you had no idea how this was going to go?

A. Yes.

Q. But that was the deal, if you like, that was under consideration in this memorandum, isn't that right?

A. Correct.

Q. That you would provide funding of up to 30 million, and the price of that funding would be a 50% interest in Communicorp?

A. That is correct.

Q. Or in whichever

A. No, 50% in the shares of Esat Digifone obtained by Esat Telecom.

Q. In whatever company is going to hold the shares in Esat Digifone?

A. Correct.

Q. There is then some further exhibits that I am not going to refer you to, because I think they were probably kind of backup material that might have been considered?

A. As you can see from the 8th to the 12th, this is the

investment the qualifying memo which was signed by the Investment Committee. Between the 6th which was proposed to the Investment Committee. Between the 8th and the 12th, that has evolved into the deal that was signed by Janet Hennessy in Boston.

Q. On the 12th July?

A. 12th July. So

Q. Which is a very different deal

A. Absolutely.

Q. to this?

A. Absolutely.

Q. It bears no relation to it whatsoever, does it?

A. Well, there is the same guarantee. At the time we had moved from the fact of having a 20% divided in four times 5%, the initial investor has been more substantiated.

We had identified who those people would possibly be, and yeah, the deal had changed substantially.

Q. Yes, it had, hadn't it? You weren't going to get 50% of Communicorp or whatever company held the shares in the mobile licence company, were you?

A. We were going to invest through Esat Telecom at that point.

Q. Yes, but you weren't going to get 50%, isn't that right?

A. No, we were going to get whatever the value was at that point.

Q. You were going to get a 5% direct investment in Esat Digifone and you were going to have a right of first refusal to invest as and when funds were raised, isn't that

right?

A. Correct.

Q. Now, perhaps you can assist me on this, Mr. Prelz, because I can't see any evidence of this particular Deal Qualifying Memorandum firstly ever having ever gone to the Investment Committee, much less having been ever approved by it?

A. I don't know. I do not have files at my home about deals done in 1995 in Advent.

Q. It's just

A. If you don't have it from Advent, there is a question of time, you know. I suppose things would have been available in two, four, five years later as opposed to 15 years later.

Q. I see. Now, I understand from what you said that you and Mr. O'Brien made an agreement?

A. Mm-hmm.

Q. And that it would have been clear to Advent and to Mr. O'Brien from those agreements and oral confirmations that you had a binding commitment to provide $\frac{1}{2}$ 30 million, isn't that right?

A. Correct.

Q. Now, can you tell me when those discussions took place?

A. Those discussions took place between June, July, before we signed the letter. Without a commitment, without an agreement with Denis, I would not have signed a letter to the Ministry.

Q. I am just asking you about the discussions at the moment,

Mr. Prelz.

A. The discussions were ongoing, June that's why I submit the QM before July 12th, it must have been.

Q. Maybe I can help you on it. We know you had a discussion on the 15th June?

A. Yes.

Q. Because that's documented. Mr. Callaghan's record it was, and, as you say, Mr. Callaghan was mistaken in the record that he kept on that date when he said that you would provide a strong letter of support but not a commitment, isn't that right?

A. That's his mistake, yes.

Q. And we know that you signed the letter on the 10th July, maybe it was dated the 10th July, maybe you didn't sign it until after the 12th July, but certainly the matter had been determined by the 12th July, isn't that right?

A. Yes.

Q. So it must have been at sometime between the 15th June and the 12th July. Now, do you recall where those discussions took place?

A. No.

Q. You don't?

A. I was in Dublin at the time every other week more or less.

I don't have my schedule for 1995 again is I don't collect these things. I have moved since then.

Q. I see.

A. But I know that I was regularly in Dublin, that Denis was

regularly in London, that we travelled, you know you

point out we were together in Paris, which I recall.

Q. Well, that was in April now?

A. But I mean, there are a number of places where

Q. This was a very, very intensely busy time for Mr. O'Brien?

A. Absolutely.

Q. Because I don't know if you recall it, but the GSM competition initially had a closing date of the 23rd June, and it was postponed ultimately to the 4th August, but it was postponed due to a European, an EU intervention in relation to the structure of the competition. Do you remember that?

A. Now that you mention it, yes, I do remember that.

Q. It was an intensely busy time for Mr. O'Brien, isn't that right?

A. Yes.

Q. Now, can you tell me how often did the Board of Communicorp meet?

A. The Board of Communicorp the Board itself met once a month.

Q. Once a month?

A. Regularly. I don't remember whether in that period there were the same meetings that occurred normally, but it was a monthly Board meeting.

Q. But the likelihood is that between the 15th June and the 10th July, there probably would have been a Board meeting of Communicorp, would there?

A. Yes.

Q. And you would have attended that?

A. Yes.

Q. And your colleague, Mr. Garau, presumably would have attended that as well with you?

A. Yes, probably.

Q. And is it possible that you could have had these discussions after or on the margins or before one of these Board meetings?

A. It could be, but as I said, at that time, because of the importance of all this issue, I remember being in Dublin between Board meetings.

Q. I see.

A. Also because, you know, I flew over many times when I was required on a day trip.

Q. And there was nobody else present when you had those discussions, is that right?

A. Generally not.

Q. Mr. Callaghan wasn't there?

A. Not regularly.

Q. Wasn't it given that Mr. Callaghan and Mr. O'Donoghue were both there when you were discussing the headline terms on the 15th June, you remember that, don't you?

A. Yes.

Q. Is it not surprising to you when you were discussing something so very important, the actual funding of the Communicorp equity participation in Esat Digifone which was

required for the licence, that neither of them was in attendance at those meetings?

A. You should know Denis. Denis does very often compartmentalise things and he doesn't necessarily want to let everyone know about everything he is doing.

Q. I see.

A. So there has been meetings where we were together. There was meetings where I was alone with John Callaghan because Denis was playing good guy or bad guy, depending on the days. And John Callaghan was much better at playing good guy and leaving Denis as being the bad guy and vice versa.

But so it's not it was not a very good format in certain times. In the certain cases it was Paul Connolly who would have some instructions from Denis to me. It was not a regular Board meeting, regular session, lawyers and things like that.

Q. Right. Now, can you tell us what the terms were of the agreement that you concluded with Mr. O'Brien?

A. Originally that we would original terms of the agreement was the one signed in July 12th.

Q. Yes, we have seen that agreement?

A. But it was very clear that it was more important to us that we won the licence as opposed to exactly the terms of the agreement.

Q. I see.

A. And that's why and as I said, things were moving quite rapidly. And the idea of the institutional investor was

discarded within two weeks from signing the agreement, and that's when also the monies switched from being a direct investment by Advent into an additional ownership interest in Esat.

Q. This is the 5% interest?

A. Yeah.

Q. And what was the commitment that you made to Mr. O'Brien?

A. That we would fund up to 30 million the development of Esat Digifone.

Q. And again, that was a commitment and an agreement that you made directly with Mr. O'Brien and there was nobody else present?

A. Other than the Minister, other than I mean, other than a few witnesses.

Q. I am talking about your actual conversations, Mr. Prelz?

A. The conversation

Q. I am talking about your conversations with Mr. O'Brien, was nobody else was present at those, isn't that right?

A. I don't believe there was anyone else present.

Q. And apart from your letter to the Minister and your letter to Telenor, you didn't confirm that commitment, did you, in writing?

A. Well, we have the July 12th.

Q. I see. You say that Advent would have known that that was binding on the commitment you had made?

A. Yeah.

Q. How do you say that, Mr. Prelz? On what basis do you say

it?

A. On the basis that Advent I didn't sign this letter without Advent's approval, and that Advent has signed off on investing up to 30 million on the basis of the agreement that I had with Denis to develop the GSM licence.

Q. Right. I just want to be clear about one thing, because I understand what your evidence is, I am not trying to catch you out in any way, but am I correct in thinking that there is no other Deal Qualifying Memorandum signed by the Investment Committee, other than the one we have seen?

A. Sorry, I don't know whether after the in terms of the QM, no. What I have not found in this folder is the sign-off sheet, because following the investment summary of June 8th, or with your review afterwards, there should be a sign-off equal to the one that you have seen for May.

Q. Well, you see, there isn't, Mr. Prelz.

A. Well, I don't know why, because we ended up writing the fact that we sent the letter and we signed the agreement on July 12th should have been proceeding. Janet Hennessy is not going to sign a letter like that in agreement without an approval for Investment Committee. Janet Hennessy is still the CFO of Advent, has not been fired in the meantime, so she would not take the liberty to sign an agreement committing Advent without proper communication.

Q. You see, Mr. Prelz, she wasn't signing a letter that committed Advent in any way, she was signing exactly what you agreed to give on the 15th June, which was a strong

Letter of Comfort and not a commitment and, similarly, when she signed the agreement of the 12th July, she was not obliging Advent to provide any funding to Esat, rather she was accepting privileges that were being conferred by Esat on Advent, namely 5% participation in Esat Digifone at par and a right of first refusal in relation to the subscription of capital, but with no obligation?

A. It's unfortunately that Advent doesn't think that way. In a letter sent to you last week, Advent confirmed that that was a binding commitment.

Q. You needn't be concerned, Mr. Prelz, I'll refer you to that letter.

A. Good.

MS. O'BRIEN: I think, sir, we are not going to be able to make much progress beyond that because I am going on to quite a lengthy topic now.

CHAIRMAN: Well, there is simply no option then but to defer, and I'll ask people to communicate the most appropriate...

MS. O'BRIEN: I don't know if Mr. Prelz would be available to come back tomorrow. Perhaps we could have a word afterwards with Mr. O'Callaghan.

MR. O'CALLAGHAN: I don't know what Mr. Prelz's arrangements are, sir.

A. Unfortunately I cannot be back tomorrow.

MS. O'BRIEN: Right, we'll just have to see what further arrangements can be made. Sir.

CHAIRMAN: I'll ask that perhaps the legal representatives do confer with Mr. Prelz and we'll seek your base is, as you have said in your statement, in Picadilly.

A. I am based in Picadilly, yes.

CHAIRMAN: Perhaps it would be possible that the individuals involved confer with a view to seeing what would be the soonest possible stage. I think we will conclude your evidence, but it probably will need a day because there is some remaining matters that Ms. O'Brien has to discuss with you on behalf of the Tribunal and there will, undoubtedly, be matters from the other legal representatives for other persons involved. So, I'd be grateful for your assistance in trying to provide a date at the very earliest vantage point. Thank you, Mr. Prelz.
What time tomorrow?

MS. O'BRIEN: Eleven o'clock, sir.

THE TRIBUNAL ADJOURNED UNTIL THE FOLLOWING DAY, THE 21ST OF JULY, 2009, AT 11 A.M..