

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 1ST JUNE

2001, AT 10.30AM:

CHAIRMAN: Mr. Healy, have you considered with other counsel what sequence might be more suitable?

MR. HEALY: I thought it might be preferable, seeing as we may still have time constraints, we don't have the time constraints we had yesterday, that if I were to finish with Mr. Johansen and then let the other counsel, if they wish, to take any other matters up with him. If there are other matters left over, they can be clarified. Rather than having too much volleying back and forth between various parties.

CONTINUATION OF EXAMINATION OF MR. JOHANSEN BY

MR. HEALY:

Q. MR. HEALY: I just want to deal with two matters at this stage, Mr. Johansen. Firstly, the information that has been given to the Tribunal by Mr. Denis O'Brien, and then after that, one or two more general queries arising out of the evidence that you have given yesterday and your own statements and the documentation you have provided to the Tribunal.

Now, do you have a copy of Mr. O'Brien's statement? I think you may have seen it?

A. No, not here.

Q. I'll give you

(Document handed to witness.)

I think you have seen that document before?

A. Yes.

Q. And if there is any part of it that you want to say something about that I don't draw to your attention, well then, you can mention it to me or if you don't, I am sure Mr. Fitzsimons will. I don't think the general introduction is particularly germane to what I want to talk to you about.

You will see that underneath that, Mr. O'Brien refers to a letter he received from the Tribunal concerning information that had been made available to the Tribunal by you involving your account of the initial approach, as you put it, by Mr. O'Brien to you for this donation, isn't that right? That's for the first black letter, or bolded statement the statement deals with. Mr. O'Brien's comments on that. I want to deal with his comments concerning his dealings with you at the time when this donation was first mentioned.

He said that he was telephoned, or that he recalls that he was telephoned by David Austin in late 1995, in respect of a forthcoming Fine Gael fundraising dinner at the 21 Restaurant in New York. Now, the dinner was held, I think, on the 9th November of 1995. So Mr. O'Brien's statement would seem to suggest that he was

telephoned by Mr. Austin prior to the 9th November of 1995. This dinner was to be attended by An Taoiseach, or the then-Taoiseach, Mr. John Bruton, TD, and David Austin indicated that ESAT Telecom might like to take two tables at the dinner. And he also indicated that \$50,000 was the suggested donation.

Now, there are two things I need to tell you about this, Mr. Johansen. Firstly, there was not a dinner at which there were to be tables taken by individual supporters of the political cause for which funds were being raised. This was, in fact, a dinner at which there was to be one table and a small group of people were to be invited to have dinner with the Taoiseach.

The donation of \$50,000 may have been suggested by Mr. Austin, but in any case, if it was connected with the dinner, it became or ultimately became the biggest donation at the dinner by a country mile.

Now, ESAT Telecom, being referred to here as Mr. O'Brien's own company, if I can use that shorthand, is that right?

A. Yes.

Q. Mr. O'Brien says that he indicated and this is an indication he gave to Mr. Austin, I think, according to his own statement that he indicated that neither he nor ESAT Telecom would consider participating or making

a donation. He says that he accepts that he mentioned Telenor, a partner in the mobile business of ESAT Digifone, to Mr. Austin, as a group that might be interested as they were keen to become more involved in Irish affairs. He said that he told Mr. Austin that he would discuss the event with Arvae Johansen of Telenor and ask him to contact David Austin. He says that he recalls phoning you soon after this conversation and telling you about the dinner and requesting you to contact David Austin, and he thinks that he gave you David Austin's phone number in the UK at the time.

Now, I think I will just go onto the next part of the statement before I ask you to comment.

Mr. O'Brien then says that on the 8th December of 1995, which was nearly a month after the dinner, he went to Oslo for the purpose of discussing with Telenor, Mr. Barry Maloney's employment terms with ESAT Digifone

Mr. Maloney travelled separately from the United States and he says that he recalls discussing, again, the David Austin approach in relation to the Fine Gael New York dinner while in Oslo, and he believes that the discussion took place at the end of the meeting while Mr. Maloney was not present. He says that he did phone you soon after returning from Oslo for the purpose of giving you David Austin's telephone number

in the UK. And he thinks that this may have followed a phone call to him from David Austin, but he is not certain.

Now, the first thing about Mr. O'Brien's recollection of this is that he recalls that he told you about this matter soon after his initial conversation with Mr. Austin, which was prior to the dinner. In other words, he says that he phoned you prior to November 9th, of 1995. What can you say to that?

A. No. I have no recollection of this thing, the dinner or the donation being ever mentioned before the meeting of the 8th December.

Q. So what you are saying is it was the meeting, part of which was attended by Mr. Barry Maloney, was the first time that this matter was mentioned?

A. Yes. As far as I can remember, yes.

Q. Now, if you were to be asked to attend a dinner, isn't it obvious that you would have been asked before the dinner was due to be held?

A. I was never asked to attend a dinner.

Q. I think you told me yesterday that you were aware from the beginning of a connection between this payment and a dinner in New York?

A. Yes. There was a connection and the money that had been promised had a connection with the dinner held for fundraising purposes in New York, but I also had the

understanding that the dinner was already over.

Q. Mr. O'Brien says that he told David Austin that the Telenor Group might be interested, as they were keen to become more involved in Irish affairs.

Now, at the conclusion of your evidence yesterday, I mentioned that you had stated that you never gave that impression to

A. That's correct.

Q. Mr. O'Brien.

A. Yeah, that's correct.

Q. Had you ever discussed any political contacts with Mr. O'Brien?

A. No.

Q. Had you ever met any member of the Irish government or any member of an Irish political party in connection with, or indeed otherwise than in connection with, the GSM licence prior to this date, other than the meeting that you had ultimately in connection with the handing over of the licence?

A. No.

Q. You never met any member of the Fine Gael Party? The Fianna Fail Party?

A. No.

Q. The Labour Party?

A. No.

Q. Any of the other parties?

A. No.

Q. Do you ever recall receiving an approach from any political party?

A. No.

Q. Were you ever aware of any approaches to ESAT Digifone or Mr. O'Brien or anyone else by a political party in connection with fundraising around this time, other than the David Austin approach?

A. No.

Q. As I am sure you are aware, it may be necessary, eventually, for the Tribunal to talk to you about dealings you had with government agencies in connection with the granting of the licence, I assume that in connection with the competition, you must have met civil servants and technical people associated with the competition?

A. Yes, I had several meetings with representatives of the department.

Q. But they never involved meetings with any political personalities?

A. No.

Q. Were you ever, or were you conscious or did you know whether any meetings took place involving other persons associated with your bid between them and political personalities?

A. Not that I am aware of.

Q. Nobody told you I have met so-and-so or so-and-so has approached me or anything like that?

A. No.

Q. Do you know what the expression "lobbying" means?

A. Yes.

Q. "Lobbying politicians." It needn't necessarily involve any corruption; it involves trying to persuade them to see things from your point of view. Were you aware of any lobbying taking place in connection with either this licence or with the Telecom business in general?

A. No. I was never involved in that, but I know I didn't know at that time, but I have seen afterwards that some consultants were hired, I think, for lobbying purposes.

Q. When you say you have seen since, where did you see this and how did you come across it?

A. I have seen some I haven't seen invoices, but I have seen in accounting that some consultants have been paid.

Q. So you have had to check accounts, presumably that you were going to have to pay all or part was in connection with the licence or in connection with activities of ESAT Digifone and they included payments to consultants for lobbying?

A. Yeah. They were in the start-up costs that were reconciled, some costs related to what I would say were consultants, and I don't know exactly the nature of the work they did but I would anticipate that some part of

that was lobbying.

Q. And you were saying that that's after May or June of 1996 you saw this?

A. I think I didn't see them until we really started the company formally in June 1996 or in May 1996 in connection with the reconciliation

Q. I don't necessarily want to go down this particular road at the moment. You can appreciate that we may need to revisit it at a later point.

You do recall a meeting on the 8th December of 1995 in Oslo, isn't that right? And you do recall that Mr. Maloney was in attendance at a meeting but he was not in attendance at the part of the meeting between you and Mr. O'Brien when this payment or this proposal was discussed?

A. That's right.

Q. So you are in agreement with Mr. O'Brien about that?

A. Yes.

Q. At that point, of course, the dinner was over and you say that following that meeting, you received a phone call, isn't that right, giving you Mr. David Austin's telephone number in Dublin?

A. That's correct.

Q. And you don't ever recall meeting him in the UK or ringing him in the UK, do you?

A. No. I definitely did not meet him. I never met the

person.

Q. Yes, that's my fault you don't recall ringing him in the UK?

A. I have no recollection of ever having called him in the UK.

Q. Now, Mr. O'Brien then says that he has a copy letter of the 14th December 1995 from David Austin sent to him by Telenor Invest on the 4th November of 1997, together with a copy invoice dated the 14th December 1995 from David Austin to Arvae Johansen, Telenor, for \$50,000

US. And that's the invoice and the covering letter that we were discussing yesterday. Mr. O'Brien is saying that he wished to make it clear that he did not discuss or agree with David Austin either that an invoice would be issued by David Austin to Arvae Johansen, as the method for making the payment, that such an invoice would be for consultancy work for the duration of 1995, or that ESAT Digifone should be invoiced as a management cost as suggested in the handwriting in the letter of the 14th December of 1995.

Mr. O'Brien believes that he did not see the above documents until they were sent to him on November of 1997. And he suggests that David Austin's reference to an agreement with Mr. O'Brien may have been an exaggeration of his role in putting Mr. Austin and Telenor in contact.

Now, I think in fairness to you, Mr. Johansen, I should

say that my impression from reading that statement, and I want to be careful in what I say about it because Mr. O'Brien will be giving evidence, is that it is not consistent with your statement that the payment you were making was an ESAT Digifone payment, and that you were merely facilitating ESAT Digifone by making a payment at that time. Is that a fair summary of what that part of the statement seems to suggest?

A. Yeah, that's how I see it too.

Q. I have also got to be fair to you and say that, at a later point in his statement, Mr. O'Brien did say that this payment was not referred to in the ESAT Telecom prospectus as it was considered that the payment was a legitimate political contribution by an affiliate company, ESAT Digifone. Have you seen those two statements in Mr. O'Brien's documents?

A. Which page are you on?

Q. For the moment, I am not going to take you through all of it. You can see that there appears to be a contradiction between those two statements.

A. Yes. And the latter one is much more in line with what I have explained here.

Q. As far as you were concerned, it is the latter statement that this was a legitimate political contribution by an affiliate company, ESAT Digifone, which is more consistent with your account

A. Absolutely.

Q. Or evidence as to what happened?

A. Absolutely.

Q. But can we go back to the other aspects of what Mr. O'Brien said about what happened in December of 1995. He says that he knew nothing about it; that he made no agreements whatsoever in relation to the raising of an invoice, what would be contained in the invoice, or that it would be put down to ESAT as a management cost. If we just leave the putting it down to ESAT out of it because there is a clear difference between you and there may be differences between the two statements Mr. O'Brien has made.

What about the question of the invoice? Mr. O'Brien says that he had no agreement that there would be an invoice; no agreement with you and he didn't discuss it with you.

A. You are now referring to the conversation with Denis O'Brien?

Q. Yes.

A. I think he asked me to make the arrangements with Austin, that the donation could be paid. And the idea of the invoice came up in that conversation.

Q. Well, let's be clear about this now, in fairness to Mr. O'Brien. He asked you to make the arrangements with Mr. Austin and the idea of the invoice came up in the course of that conversation. Do you mean the

conversation with Mr. O'Brien or the conversation with Mr. Austin?

A. Mr. Austin.

Q. Mr. Austin. So there was no discussion about an invoice in the conversation with Mr. O'Brien?

A. No. We talked about the donation.

Q. The subsequent we'll use the word that you have used for a moment 'confusion' that arose about the invoices was something that you weren't involved in on a day-to-day basis, isn't that right?

A. Yes.

Q. It occurred because of dealings the office staff in Oslo had with dealings they had with, presumably, staff in Dublin?

A. Yes.

Q. But there was one feature of whatever dealings took place, and it's this: At the Oslo end, Mr. Per Simonsen. Did know the complete background to these payments and that this was a payment you were making for ESAT Digifone to Mr. Austin on behalf of the Fine Gael Party? He knew that it was important to keep some record of what was actually happening, isn't that right, and although he agreed that the invoices would be altered to meet the requirements of the Dublin end, he did keep his own record of what happened in that he kept the documents that were not used, isn't that right?

A. Yeah. I mean, they were used but one of them was shredded in the Dublin end.

Q. One of them was shredded in the Dublin end.

A. Yes.

Q. The attachments to it seem to have been shredded as well. You were told not to send that invoice and not to send those attachments again?

A. Mmm.

Q. So somebody at the Dublin end had to decide that?

A. Yes.

Q. Now, I appreciate you were not at the Dublin end.

A. No.

Q. You were not at the Oslo end. But the person dealing with the Oslo end did know the whole background, the person with responsibility at the Oslo end, isn't that right, Mr. Simonsen?

A. He probably received the phone calls because he was in from day-to-day contact.

Q. In relation to these invoices, and the fact that invoices were changed in the way that we discussed yesterday, Mr. O'Brien says that at the material time, he was a non-executive Chairman of ESAT Digifone. ESAT Digifone had numerous day-to-day dealings with Telenor which did not involve its non-executive Chairman. The documentation referred to above would not have been and was not brought to his attention at the time that it was purported to have been written.

And he is not, therefore, in a position to comment on any of the above save and except to say that the documentation was sent to him by Telenor on the 4th November, 1997, and he says that that was the first time he became aware of it.

Now, do you remember discussing that documentation in November of 1997?

A. Yes. I mean, that was in context, in the context as we discussed, yes, with the IPO and meetings leading up to that, yeah.

Q. But my only interest in it at this stage is as to whether Mr. O'Brien was in any way surprised at that time at the references to a consultancy invoice having been sent by Mr. Austin.

A. I don't think he was surprised.

Q. At that time, did Mr. O'Brien say to you, look, I didn't agree that there would be any invoice here and I didn't agree that it would be for consultancy services?

A. Once again, please.

Q. In November of 1997, did Mr. O'Brien say to you, this is the first time I have ever heard of this, I never agreed to an invoice being raised by David Austin for consultancy services?

A. No, he said nothing to that effect.

Q. And he didn't express any surprise at the way it had been done?

A. No.

Q. And just a few final matters. The IPO has been mentioned a lot in the course of this evidence and I appreciate that you have quite understandable concerns about it and concerns about the extent to which it would be proper to mention it in evidence, and I acknowledge that Mr. Fitzsimons made a point in relation to it yesterday which I accept.

The IPO, as such, is of no interest to the Tribunal of Inquiry. I think you can see that, it has no interest in what was or was not going on at the time. What it did do, however, was it did focus the minds of certain people on certain events and on a number of issues that were causing concern to them and one of those issues was this payment, isn't that right?

A. Yes.

Q. And that's why the Tribunal is interested in it, because people who were involved in it had focused on it in a certain context in November of 1997.

Now, the concern that you had at the time of the IPO and the concern that you drew to the attention of the other directors of ESAT Digifone was the uncertainty that still remained concerning whether the money had actually gone to Fine Gael, isn't that right?

A. Yes.

Q. Prior to this, however, you had had other concerns about the payment, while initially you went along with

the payment for the reasons you have said yesterday, the unusual route that the payment took and the fact that this only unfolded in stages as you became more and more involved in it, was something of concern to you and that was something that, I think you said yesterday, would have made you refuse to go with it if you knew all about that circuitous route at the beginning.

A. Yes.

Q. Now, by the time of the IPO, you had the further concern about did the money, in going along this circuitous route, ever actually get to Fine Gael, and that concern was, to some extent, I think, dealt with. I think you said you received some additional comfort at the time of the IPO, would that be a fair way of putting what you said in evidence yesterday?

A. Yes.

Q. But the other concern was still outstanding, the concern about the circuitous route. I am not interested in that concern in the context of the IPO now, but it was still outstanding.

A. I think we thought at the time, I mean, we had no reasons to believe that anything unlawful or improper had actually been done. But we wanted to be absolutely certain because of the possible liability in the context of the IPO.

Q. I appreciate that. I am going to put that aside.

What I am saying is you got some satisfaction good, bad or indifferent, at the time of the IPO in relation to the actual arrival of the money, but the other concern that you had from the beginning was one that you continued to have. By the time that's right, isn't that right?

A. Well

Q. You must have it up to this day, the circuitous route?

A. We thought it was, as I called it yesterday, reassuring to see the handwritten note by David Austin. And we decided, anyway, to seek legal advice as to whether this was good enough or not and that's when we got the advice that we should seek confirmation from the party itself.

Q. I want to put that issue aside. Did the money arrive at Fine Gael? Put that out of your mind for the moment. The other concern about the route that that was taking was one that was there all the time, perhaps even there up to this day, that you wouldn't have done it if you had known at the beginning the route it was going to take and the form it was going to take.

Isn't that right?

A. Yes, I have confirmed that several times.

Q. Now, when you got to Fine Gael, and ultimately when you learned that the money had come in, but not as an ESAT payment, not as a Telenor payment, but as a David Austin payment, at least the money had got to Fine

Gael, isn't that right?

A. Yes.

Q. But Fine Gael had a concern about it, and they, like you, had a concern about the circuitous and somewhat covert route that the money had taken, isn't that right?

A. Yes.

Q. So much so, that they didn't want to take this payment from ESAT or from Telenor.

I think at the outset you said that in involving yourself in this co-venture in Ireland, the way you looked at the conduct of the venture was that Mr. O'Brien would handle the Irish affairs or the Irish side of it, and you'd involve yourself, I take it, in a lot of the technical aspects which was your particular strength, isn't that right?

A. That's correct.

Q. And you relied on Mr. O'Brien, you said, you relied on his judgement up to a point in any case, in relation to this payment and whether you should make it at all, isn't that right?

A. Yes.

Q. Whether you should become involved in making it, because Telenor were not prepared to make it. They were merely prepared to facilitate the making of it by ESAT Digifone. Now, from the point of view of ESAT

Digifone, did you see anything wrong by Norwegian standards, for a moment, in making a payment to a political party?

A. No. I thought that Denis O'Brien was in a position to approach that, whether it was right or wrong, and I accepted his assurance that it would be the right thing to do, so to speak.

Q. At the same time, when the invoice was suggested, what you got was an invoice for consultancy. Now, wouldn't it have been a simple thing at that time to have described this payment as a loan or some sort of accommodation or some other type of facility for ESAT?

A. Why would I do that?

Q. Because that's what you said you were doing. You were facilitating ESAT by providing them with the money to make a donation to Fine Gael. You weren't facilitating them by providing them with the money to pay money to Mr. Austin.

A. Yeah, okay. The way it was done in practice was that we were actually paying the bills and reconciled it afterwards. We didn't really advise it for Digifone to pay it, at least not in the beginning.

Q. Do I understand you to say that the way you dealt with the funding of these matters was you didn't make loans to ESAT Digifone; you simply paid the bills directly yourself and then the ultimate intention was that you'd recoup yourself from ESAT Digifone?

A. I think there were all ways of doing it, but some of it was done by Telenor paying something, ESAT Telecom paying something and it was reconciled afterwards. Some of it was also, as Digifone became bigger, paid by Digifone and we had to fund it to be able to settle those outstanding ones, yes.

Q. Was there any particular reason why this was paid by a direct payment rather than by a straightforward loan or rather than by a payment that was described in some more accurate way as a contribution to a political party?

A. Yeah, I think there was also this aspect that that way it should be more invisible in Ireland.

Q. I am going to come back to that answer you have given me, but I want to pass on to something else for a moment and it's related to the answer you have just given.

You mentioned yesterday that people had asked you for you certainly recalled one occasion when somebody asked you for money to guarantee a licence. If you had paid that money for the purpose of having the grant of the licence guaranteed to you, it would have been straightforward corruption, wouldn't it?

A. Yes.

Q. You refused to do it?

A. Yes.

Q. If somebody asked you to pay money if they gave you a

licence, that would also be corruption, wouldn't it?

A. In my mind, yes, this particular payment in this case was made in such a way as, you say, to make it invisible in Ireland. If I could use more simpler language, it was to hide it in Ireland. The way the discussion went between Denis and myself was that he had done donations in the past and I think he has done several times, and it had created a lot of fuss in the media and he didn't want that any more, so he was a bit annoyed about this and he wanted to keep it out of sight of the Irish press.

Q. I can understand that if somebody made a payment like this, they might feel that if it were to become visible, it could be open to being misconstrued. Isn't that a risk that might have been felt to have existed at this time in relation to this payment?

A. I didn't think so.

Q. You didn't think so?

A. No. In my mind, we got the licence already in October and we were working at full speed to establish a company and I never thought it could be related in any way.

Q. I understand that that's your position. You got the licence fair and square in the course of an independently conducted competition, as far as you were concerned?

A. Absolutely.

Q. Now, here was one of the people involved in the licence asking you to make a payment to the political party to which the Minister who had granted the licence belonged, isn't that right? And he didn't want that payment to be visible in Ireland. He wanted it to be invisible in Ireland because of the fuss it would create. And could I suggest that the fuss it would create, if everything that you say is right, the fuss it would create is because it would be misconstrued as being connected with the licence?

A. I didn't put all of that in it. I think it was generally he had also given donations to other parties and it always created fuss, regardless of what it was.

Q. Even so, the people involved in this payment went to considerable lengths to bury it from public view, didn't they? They put in place an arrangement whereby the money would go into an offshore account, a Channel Islands offshore account. That's going to some lengths to bury a payment. In fact, isn't it one of the traditional ways of burying money from public view, isn't it?

A. Again, I had no information no feeling as to how things were normally done. I thought it was strange.

Q. You thought it was?

A. Strange. And I also learned afterwards that political parties were not allowed to have offshore accounts.

But I didn't know that at the time.

Q. But you did think it was strange and it was one of a number of things that you began to see were strange?

A. I thought it was strange, but we had also seen that a lot of firms, a lot of private persons in Ireland both had onshore and offshore accounts. So in my mind I said, well, this is another one.

Q. But, having paid the money into an offshore account and having journalised it or described it as a payment for consultancy to Mr. David Austin, your firm was then told, we don't want any reference to David Austin in the documentation concerning this, isn't this right?

A. Yes.

Q. So this was a further attempt to make it even more invisible to remove Mr. Austin's name from it, Mr. Austin being the Fine Gael connection with the payment, isn't that right?

A. I was, myself, not aware of that, because that was handled as we talked about

Q. I appreciate you weren't aware of it.

A. I saw that afterwards.

Q. I am not involved in trying to fix you with any personal blame, Mr. Johansen. I am talking about Telenor. You are the witness here from Telenor. If necessary we'd have to get all the other witnesses, but hopefully we won't, but the individual who dealt with that aspect of the documentation was one of the few

individuals in Telenor who knew the true background to the documentation, isn't that right?

A. Yes.

Q. And he was asked to bury this payment even further?

A. In a way

Q. To put another layer of concealment over it. And by that time, you had, in fact, already reached the point where you were beginning to become concerned about layers of deception and you decided that you were too far in, you had to go along with it. But you wouldn't have gone along with it from the beginning. Could I suggest to you that the reason that you wouldn't have gone along with it from the beginning, is because there would have been a perception that something wrong or improper was going on? Even if there wasn't, there would have been a risk of a perception of something wrong going on?

A. Yes. I mean, the risk that I saw was that the arrangement might open up for such a possibility.

Q. Thank you very much, Mr. Johansen.

CHAIRMAN: I understood there were some questions to be asked.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MEENAN:

Q. MR. MEENAN: Mr. Johansen, I appear on behalf of the Fine Gael Party and there are a number of questions

which I wish your assistance on.

Firstly, you were asked by Mr. Healy yesterday as to whether you thought that Mr. Austin was a member of the Fine Gael Party, and this was in December of 1995. And you said that you thought that your understanding or feeling was that he was a senior representative of the Party.

Now, was that understanding or feeling as a result of Mr. O'Brien saying to you, contact Mr. Austin?

A. Yeah. I cannot exactly recall how much was said about his connection with the Fine Gael Party, but the clear understanding was that he was kind of officially representing the Party.

Q. And was that now as a result of anything Mr. Austin said to you?

A. No. That was kind of already established so we didn't really talk about that, except for this discussion about how the payment could be recognised as a donation.

Q. I understand that. But was that impression was that an impression which you got, Mr. Johansen, from talking to Mr. O'Brien?

A. No. I think both talking to Mr. O'Brien and talking to Mr. Austin.

Q. I see. Because in actual fact, Mr. Austin was neither a trustee nor an officer of the Party, but of course

you wouldn't be in a position to know that at the time.

A. Not at all.

Q. And going back then to your telephone conversation with Mr. Austin on the 11th December. You said in reply to a question asked by another party represented here, that he could have mentioned John Bruton and Denis O'Brien as having talked about a donation, a possible donation.

Now, again, that was information presumably conveyed to you by Mr. Austin?

A. Yes.

Q. And you, of course, would have no contact with Mr. Bruton?

A. Not at all.

Q. Or for that matter, any other person in Fine Gael at the time?

A. No.

Q. Now, I think you have become aware, Mr. Johansen, that Mr. Bruton first became aware of this possible donation in the course of a telephone conversation with Mr. Austin towards the end of February of 1996. I think you are aware of that now.

A. Yes, I read that.

Q. And I think you are also probably aware that in the course of that telephone conversation, Mr. Bruton indicated that this money should not be accepted by Fine Gael, and that Mr. Bruton didn't authorise

Mr. Austin to accept the money on behalf of Fine Gael.

And Mr. Bruton assumed that Mr. Austin would have explained that to the donor of the monies.

Now, I take it it's the case, Mr. Johansen, that the content of that telephone call was never conveyed to you by Mr. Austin?

A. No. I never heard about that.

Q. You never heard about that. And then so, therefore, the views of Mr. Bruton, logically, then you would have been unaware of them at the time regarding this donation since you weren't asked or informed of this telephone conversation?

A. Can you please repeat that?

Q. Yes, of course. I think it would follow from that, that in February of '96 when Mr. Bruton became aware of this, that you would, of course, would not have been aware of Mr. Bruton's views on this donation?

A. No, I never heard anything about that.

Q. Moving forward, I think you are also aware that in May of '97, Mr. Austin passed a donation onto the party by way of a personal donation. I think you are aware of that, that the \$50,000 as represented in Irish pounds was given to the Party by way of a personal donation by Mr. Austin.

A. Yeah, we cleared that up when we had those meetings.

Q. Indeed, I understand that.

Now, looking back on matters, and obviously there must

be a degree of hindsight about this, you never received a receipt from Fine Gael for the money, isn't that right?

A. Correct.

Q. And I think your evidence yesterday was that you think what you could fairly describe as you got what could be described as a somewhat cryptic receipt from David Austin in which, without mentioning the Fine Gael Party, he said the people for whom the money was intended were delighted and so on and very thankful.

Now, from what you know now, that would seem to be consistent with the way in which Mr. Austin passed that money onto the party?

A. I think that letter was from February '96.

Q. Yes.

A. And from what you are now informing me about, regarding the actual dealing with it inside the Party, it doesn't seem to be quite consistent.

Q. So in retrospect, looking back on it now, the fact that he didn't mention the Fine Gael Party is probably consistent with what, in fact, happened, that the money was passed by way of a personal donation by Mr. Austin?

A. I didn't read it that way. When I got that letter, I read "those persons" to mean the Party.

Q. Thank you very much, Mr. Johansen.

CHAIRMAN: Thanks, Mr. Meenan.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Mr. Johansen, before Telenor's involvement in the ESAT Digifone consortium, did you have much knowledge of Ireland?

A. No. I think that was just general knowledge.

Q. At the time when you came to know Mr. O'Brien, did you place great trust in him during the early period and in particular, during 1995?

A. Yes, absolutely. I mean, we looked upon him as a very successful businessman, an entrepreneur who had established himself in the telecom business. There was great talent in his team of people and I think, in a way, complemented what Telenor could bring to Ireland, which was more the technical aspect in a very good way.

Q. In terms of the respect of like Irish and Norwegian functions in 1995/1996, would it be fair to say that Telenor provided the technical expertise for most part, whereas the Irish end of the operation, Mr. O'Brien and ESAT employees, dealt with administration, marketing and contact or negotiations with the authorities in Ireland?

A. That's absolutely a correct picture.

Q. Did Telenor, apart from placing great trust in Mr. O'Brien, did they rely upon Mr. O'Brien to get things right in Ireland?

A. Yes. That's what we, in a way, needed an Irish partner for, was to see that we did things right in Ireland.

Q. Now, just to move on to a different matter.

There is the mention made of demands, you having the experience of demands for money being made in other situations. Was that in Ireland? Because I don't think it has been said yet.

A. No.

Q. No. Mr. Healy brought you through the two letters written to you by Mr. Michael Walsh on the 30th March 1998 and the 16th April 1998. And the first of those letters, Mr. Walsh stated that he had been handed the returned cheque by Mr. O'Brien. Why do you think Mr. Walsh was writing to you on these occasions and at whose behest?

A. I am quite certain that he wrote on the behest of Denis O'Brien. The words in the letter could never have been sent by Denis O'Brien.

Q. The words in the letter could not have been sent by Denis O'Brien. What words?

A. Referring to the not having the knowledge about the donation or heard about it before, etc., etc.

MR. FITZSIMONS: Chairman, Mr. Barniville asked a question yesterday. You felt it should be deferred to another occasion, the question of the witness's view as

to whether ESAT was the best

CHAIRMAN: I am prepared I've thought about it overnight and you are the witness's counsel and I am prepared to give you some latitude in that regard.

MR. FITZSIMONS: The witness would be quite happy to answer the question. With your permission, if that's in order

MR. COUGHLAN: Sorry, I don't know what the question is and this is an inquiry, Sir.

CHAIRMAN: Well, it is an inquiry. I am prepared to give you some latitude, Mr. Fitzsimons. I am merely concerned about the circumstances at the end of a very lengthy day and other aspects. I think with an opportunity to consult overnight and begin the procedures that I have adopted in this inquisitorial forum, I am prepared to give you some latitude in exploring that aspect.

MR. FITZSIMONS: Accepting, of course, that Mr. Johansen would have a partisan view on the issue. I accept that.

Q. From your viewpoint, Mr. Johansen, did ESAT Digifone deserve to get the licence?

A. Yes. There is absolutely no doubt whatsoever in my mind about that. I think we put together a very good

bid. We had a very young and enthusiastic bid team going. I think we had a more creative approach to the services, to the quality of the services, the coverage, the speed of roll out, the packages and the prices than anyone else. And there is also clear evidence in the rating of these bids that we were by far well ahead of the number 2 competition, and the preparations were done by professional people in the department and assisted by internationally well renowned consultancy firms, so I was never one time in doubt that it was a fair competition and we deserved to win. I think also the performance of the company afterwards shows that it was a fantastic good thing for Ireland. More than a hundred people working there. It's more than a quarter of the Irish population of customers, more than 1 million customers. And I think it has meant a lot to telecommunications in Ireland.

Q. Thank you, Mr. Johansen.

CHAIRMAN: Mr. Healy may have one or two matters in conclusion, I don't know if Mr. O'Donnell I was going to intimate to you or to your junior that if in any way you felt shut out as a result of my provisional ruling yesterday, I would look at the situation, perhaps if needs be, by having Mr. Healy ask any question.

MR. O'DONNELL: Well, Mr. Healy already has touched

tangentially on this issue by asking about lobbying in relation to the licence. Mr. Fitzsimons has properly asked questions. I would respectfully ask you, Sir, to be allowed ask a few questions to Mr. Johansen at this point in the same general vein in which the matter has already been dealt with. I think it is an important aspect of the matter even as we are now talking about it.

CHAIRMAN: I am not overall happy, Mr. O'Donnell, with the possible tennis-like consequences of succeeding examinations, but I think the exceptional context of perhaps your client, Mr. Lowry, facing considerable public attention and pressure in the context of this issue, I'll make an exception and give you what I hope will be a very limited exploration.

MR. O'DONNELL: Thank you, Sir. I am grateful for that.

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

Q. Mr. Johansen, I think you have told your own counsel, Mr. Fitzsimons, that you were quite satisfied that ESAT Digifone were the merited winners of the competition in relation to this licence. Can I just ask you very briefly, I think you will be familiar from Telenor's perspective of the manner in which mobile licences are granted in countries other than Ireland?

A. Yes.

Q. Have you, as your firm, participated in competitions in other jurisdictions both for the second mobile phone licences and indeed third mobile phone licences?

A. Yeah, that's correct.

Q. I think the scheme, the system that was adopted here, is something which has been adopted in other countries, that's a firm of international consultants devise a very complex and sophisticated system for analysing bids?

A. The process here was absolutely a well-run process, absolutely professional in all respects.

Q. And I think the consultants involved here were a firm of Danish consultants who had been involved in the running of such competitions in a number of other jurisdictions in Europe?

A. That is correct.

Q. Among the things that are considered, because the nature of this competition are matters which I think you made reference to, that's roll out requirements, prices, quality, service, coverage, requirements like that?

A. Yes.

Q. And those matters are broken down into minute subheadings and assessed on the individual bids assessed by the experts?

A. That's correct.

Q. And in the Irish context, the decision to have such a beauty contest, I think it's called, was made by the preceding government and was carried into effect by the particular government of which my client, Mr. Lowry, was a member. Were you aware of that?

A. No, I wasn't aware of that. But for us, we have, you know, participated in a lot of beauty contests, for instance, in Scandinavian countries, there's always been beauty contests.

Q. I think the outcome of this particular beauty contest is the end result of all the bids are assessed by these firm of consultants and in the end, they make a recommendation as to what is the best bid?

A. Correct.

Q. And in this case, the recommendation was that the ESAT Digifone bid, with which you were involved, was by far the outstanding bid?

A. Correct.

Q. And that that is a recommendation accepted without demur by the government?

A. Correct.

Q. And one of the features of the so-called beauty contest, as opposed to an auction procedure, is that it is designed to promote and stimulate competition within the market, isn't that right?

A. That's correct, because the criteria stimulates the quality of the service, the innovations and the

creativity and the good packages and prices.

Q. The concern is not just the benefits that would be given to the individual customers of the new licensee, but the knock-on effect of a new and aggressive licensee will have on the existing incumbents and forcing down prices for the general market and forcing up service and quality, isn't that right?

A. Yes, that's right.

Q. And in this case, I think you would say that that was precisely what was achieved?

A. I totally agree with that.

Q. But in any event, you have no doubt but that this was a competition run along well-established international lines, which the result of which was accepted by the government and a result from which you think from your experience, notwithstanding your partisan position, was entirely merited?

A. Yes.

Q. And from your entire experience of that and you were involved with the you were involved with the nuts and bolts of the bid that was evaluated and assessed and approved and found to be the vastly superior bid, there was no hint of anything improper or any impropriety in the manner in which that bid was either put by your firm or assessed

MR. COUGHLAN: This is what the inquiry is about.

CHAIRMAN: I have reservations about this,  
Mr. O'Donnell.

MR. O'DONNELL: It is exactly what the inquiry is  
about.

CHAIRMAN: There are other dimensions to which I think  
you will be made aware to which the Tribunal may have  
to turn its attention and I have some concerns of this  
being presented as a somewhat limited and simplistic  
assessment of the competition.

MR. O'DONNELL: Well, with respect

CHAIRMAN: There are matters such as weighting of  
criteria, Mr. O'Donnell, and it may well be that the  
Tribunal is going to have to turn its attention to that  
in due course.

MR. O'DONNELL: That may be. If that's the case, I'd  
be grateful to hear about it. There has been no hint  
of that to date and I think I am entitled to put to  
this witness this matter has been launched and  
discussed, and a certain amount of innuendo and  
subsequently public comment about the grant of licence.  
While this witness is here I'd like to have it

MR. HEALY: The witness will be back to deal with all  
of these matters in due course in a rather more, one  
hopes, controlled way. What we run the risk now is

generating further innuendo and stimulating further unhelpful public comment about an aspect of the Tribunal's work which is going to be dealt with at a later point.

MR. O'DONNELL: I asked in the last question, was there a hint of impropriety as far as this witness was concerned. Mr. Healy had asked, and asked a number of questions about the process and whether there had been lobbying going on, and I must be entitled at least to deal with that aspect and that was the only that was the last question I was going to ask this witness.

CHAIRMAN: I will certainly permit that, Mr. O'Donnell, once it's appreciated that the matter is going to have to be dealt with, inevitably, at a later stage.

MR. O'DONNELL: My client would be delighted if the matter is dealt with in any detail or as much depth as possible.

CHAIRMAN: So be it.

Q. MR. O'DONNELL: Mr. Johansen, can I take it that you were not aware of any hint of anything improper or impropriety in the manner in which the bid was either made by your firm or assessed on behalf of the government by the consultants?

A. No. I was not aware of anything of that fashion.

MR. O'DONNELL: Thank you, Mr. Johansen.

MR. HEALY: One small matter. I suppose to some extent it arises out of this. I hope I don't go opening up another seam.

THE WITNESS WAS EXAMINED FURTHER BY MR. HEALY:

Q. I'm impressed, Mr. Johansen, by your certainty that you were entitled to be the winner of this competition, that you put in the best bid, that you put in the best application, that you provided ultimately a good service. You feel you deserved to win it, your team deserved to win it. You were presumably proud that you won it, and that you beat off, you know, considerable opposition and so on, proud of yourself, proud of the way you conducted yourself in putting in the application?

A. I think we are very proud of the what we have achieved in Ireland in this regard. I think Digifone was one of the best performing second operators that has been established in any country. It has a whole set of talented people. Good management. And we are very proud of the company. In fact, we love the company so much, we tried to buy the whole thing. I am very sorry we didn't manage to outbid BT. So we have a desire to own it still.

Q. You can understand, therefore, why the Tribunal is inquiring into the circumstances of this payment, and I

don't mean the payment itself. I mean the circumstances of it. You had gone through an independent review process. You had won a competition. And yet, a political payment was being made that everybody wanted to conceal. Can you understand how that raises questions?

A. Well

Q. Can you understand that to be begin with?

A. I can understand that it raises questions.

Q. And one last point. You were dealing with the technical aspects of this competition. I presume you knew them inside out.

A. Yes.

Q. But you had no knowledge of the other side of the transaction except what was being relayed to you by other people, by the Irish end of it, if you like, is that right?

A. I mean, in the process of the bidding, of course, we went through all aspects of the bid document, as such, so we had full insight into what was offered.

Q. Yes, but you left certain aspects of the whole thing to Mr. O'Brien and his end and you allowed his judgement to dictate what should be done in relation to those things.

A. All the day-to-day operations, so that those matters, that is the way it was done.

Q. And you let him deal with this payment. And you left

it up to his judgement whether it should be made in this way?

A. That's correct.

CHAIRMAN: Mr. Johansen, thank you very much for your attendance today and yesterday, and I hope your plans for returning to Oslo before too late an hour tonight have not been put too much at risk. Thank you.

A. Thank you, Sir.

THE WITNESS THEN WITHDREW.

MR. HEALY: Sir, there may be a short break and I am sure some people may welcome it in any case because the next witness was requested not to be here until twelve o'clock.

CHAIRMAN: We will resume then as close as possible to twelve o'clock. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

MR. COUGHLAN: Mr. Denis O'Brien.

MR. McGONIGAL: While Mr. O'Brien is coming to the witness box, may I apply for limited representation on his behalf, instructed by William Fry & Company? The representation which I seek is limited to Mr. O'Brien in his personal capacity. He sees his function in

this Tribunal as a witness as to fact and he is not any longer associated with ESAT Telecom or ESAT Digifone, as you Chairman, will be aware, and so he is not I am not in any way representing their interests. I am merely seeking representation on Mr. O'Brien's personal behalf.

CHAIRMAN: Very good, Mr. McGonigal. There will be an order for limited representation in respect of yourself on behalf of Mr. O'Brien personally.

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

Q. MR. COUGHLAN: Now, Mr. O'Brien, I think for the assistance of the Tribunal, you have prepared a memorandum of proposed evidence, isn't that correct?

A. That's correct.

Q. And do you have that with you in the witness-box?

A. I do, Mr. Coughlan.

Q. And what I would propose doing is to take you through the memorandum, Mr. O'Brien, and to seek clarification in due course in relation to any matters which may arise.

I think that you say that you prepared the memorandum in response to various letters you received from the Tribunal, from the 10th April to the 23rd April, 2001?

A. That's correct.

Q. And I think you say that, first of all, in general terms, that David FT Austin and his family have been friends of the O'Brien family for very many years, is that correct?

A. That's correct.

Q. The O'Brien family, through Denis O'Brien senior, got to know the Austin family through Sandycove Swimming Club, swimming connections at Blackrock Baths, is that correct?

A. Yes.

Q. Both David Austin and Denis O'Brien senior and the children of both were regular users of the baths?

A. Yes, that's correct.

Q. I think you have informed the Tribunal that the first business contact which you had with David Austin, on your best recollection was in 1983, when as company secretary of the Sunday Tribune, you were part of a team negotiating a printing contract with a company that was part of the Smurfit Group of companies?

A. That is correct.

Q. You informed the Tribunal that you were not aware until late 1995 that David Austin was both a prominent figure within the Fine Gael Party and also a fundraiser for the Party for a number of years, is that correct?

A. That's correct.

Q. You only became aware of such when you were contacted by Mr. Austin in connection with his Fine Gael

fundraising activities as Chairman of the committee for the Fine Gael fundraising dinner in New York?

A. That's correct.

Q. Now, I think you then list the first query the Tribunal addressed to you in the letter of the 23rd April 2001.

Isn't that correct?

A. Yes.

Q. And I think you say that:

"The Tribunal of Inquiry in its letter of the 23rd April, has indicated that it has been informed by Telenor International that on the 8th December 1985, Denis O'Brien requested" 1995, I beg your pardon "Denis O'Brien requested a private meeting with Mr. Arvae Johansen, a director of Telenor. The Tribunal has also been informed that Denis O'Brien indicated his desire to make a donation of \$50,000 to the Fine Gael Party; that Denis O'Brien stated that it would not be appropriate for the donation to be made by ESAT Digifone, and that Denis O'Brien wanted this payment to be made by Telenor. The Tribunal has been informed that Denis O'Brien indicated that he would arrange to let Mr. Johansen have details of how the payment should be made.

"The letter indicates that the Tribunal has been informed that Denis O'Brien telephoned Mr. Johansen on the following Monday, furnished him with the name and

telephone number in Dublin of the late Mr. David Austin, and suggested that Mr. Johansen telephone Mr. Austin later that day. The Tribunal has been informed that Mr. Johansen had a short discussion with Mr. Austin and explained to Mr. Austin that Telenor would require an invoice for this payment and that Mr. Austin advised that he would have no difficulty in furnishing such an invoice.

"The Tribunal has been informed that Telenor received an invoice from Mr. Austin, dated 18th December 1995 for \$50,000 in respect of consultancy work in 1995.

The invoice included instructions that payment should be forwarded to an account of David Austin with Bank of Ireland, St. Helier, Jersey."

Now, I think in response to the query which you have set out in your memorandum, you comment as follows:

"Denis O'Brien's recollection is that he was telephoned by David Austin in late 1995 in respect of forthcoming Fine Gael fundraising dinner at the 21 Club restaurant in New York. This dinner was attended by An Taoiseach, John Bruton, TD. David Austin indicated that ESAT Telecom might like to take two tables at the dinner and David Austin indicated that \$50,000 was the suggested donation. Denis O'Brien indicated that neither he nor ESAT Telecom would consider participating or making a donation. Denis O'Brien

accepts that he mentioned Telenor, a partner in the mobile business of ESAT Digifone, to David Austin, as a group that might be interested as they were keen to become involved in Irish affairs. Denis O'Brien told David Austin that he would discuss the event with Arvae Johansen of Telenor and ask him to contact David Austin. Denis O'Brien's recollection is of phoning Arvae Johansen soon after his conversation with David Austin and telling him about the dinner and requesting him to contact David Austin. Denis O'Brien believes that he gave Arvae Johansen David Austin's phone number in the UK at the time."

Your memorandum continues: "On the 8th December, 1995, Denis O'Brien went to Oslo for the purpose of discussing with Telenor Barry Maloney's employment with ESAT Digifone. Barry Maloney travelled separately from the United States. Denis O'Brien recollects discussing, again, the David Austin approach, Fine Gael/New York dinner, while in Oslo, and believes that the discussion took place at the end of the dinner while Barry Maloney was not present.

"Denis O'Brien did phone Arvae Johansen soon after returning from Oslo for the purpose of giving him David Austin's telephone number in the UK. This may have followed a phone call to him from David Austin, but he is not certain."

I think you then inform the Tribunal that: "Denis O'Brien has a copy letter of the 14th December 1995, from David Austin sent to him by Telenor Invest on the 4th November 1997, together with a copy invoice dated 14th December 1995 from David Austin to Arvae Johansen, Telenor International, for \$50,000 US. The invoice is referenced David FT Austin/Fine Gael/December 1995."

I should say I'll come back to deal with the documents. I'll just go through your memorandum first and I'll come back to the documents.

"Denis O'Brien would wish to make it clear that he did not discuss or agree with David Austin either: A, that an invoice would be issued by David Austin to Arvae Johansen as the method for making the payment; B, that such an invoice would be for consultancy work for the duration of 1995; or C, that ESAT Digifone should be invoiced as a management cost as suggested in the handwriting in the letter of the 14th December 1995.

"Denis O'Brien believes that he did not see the above documents until sent to him on the 4th November 1997. He suggests that David Austin's reference to agreement with Mr. O'Brien may have been an exaggeration of his role in putting Mr. Austin and Telenor in contact. At this time, and without any records being available to him concerning the matter, Denis O'Brien believes that

his phone call with David Austin took place prior to the dinner at the 21 restaurant in New York. The dinner was held on the 9th November 1995. The reason he believes the phone call took place prior to the 9th November 1995 is because he has a recollection of the conversation with David Austin of discussing the possibility of him attending the dinner and David Austin indicating that he would have an opportunity of meeting the Taoiseach. He also has a recollection of indicating that he would not be able to attend the dinner. Denis O'Brien does not believe that conversation could have taken place if the dinner had already been held on the 9th November and is satisfied that his conversation with David Austin was prior to that event.

"Denis O'Brien is not aware of any invoice dated 18th December 1985. The only invoice sent to him on the 4th November 1997 in respect of December 1995 is the one referred to above. The invoice enclosed does include instructions that payment should be forwarded to an account of Mr. Austin with Bank of Ireland, St. Helier, Jersey."

Now, I think you then set out the second query which the Tribunal raised with you, and the query was this:

"The Tribunal, in their letter of the 23rd April 2001,

say that they have been informed that the payment was made on the 28th December 1985, by a transfer from Telenor's bank, Den Norske Bank, to Mr. Austin's bank at the Bank of Ireland, Jersey. The Tribunal has been informed that Telenor then proceeded to invoice ESAT Digifone for the payment. It appears that an initial invoice was issued on the 3rd January 1996 for 316,000 kronar in respect of what was described as "Consultant, David FT Austin". The Tribunal has been informed that ESAT requested that a revised invoice should be forwarded for \$50,000 and that such invoice should omit any reference to Mr. Austin. An amended invoice was then issued which was dated 31st December 1995, for \$50,000, which was described as being in respect of consultancy fee, Telenor Invest, AS.

"Receipt of this second invoice, it appears that ESAT, again, contacted Telenor and requested Telenor to issue a credit note for that invoice and to issue a new invoice for Irish pounds and to defer the invoice for a further four to six weeks. The Tribunal understands that this was done. A credit note was issued in respect of the invoice dated 31st December 1995 and a third invoice was issued on the 23rd March 1996 for i¼31,300 Irish. The Tribunal has been informed that this invoice was charged to a running account operating between Telenor and ESAT and was discharged in due course."

I think that ends the query.

And your comment on that is that: "Denis O'Brien, at the material time, was non-executive Chairman of ESAT Digifone. ESAT Digifone had numerous day-to-day dealings with Telenor which did not involve its non-executive Chairman. The documentation referred to above would not have been and was not brought to his attention at the time that it was purported to have been written and he is not, therefore, in a position to comment on any of the above, save and except to say that copy documentation was sent to him by Telenor Invest on the 4th November 1997.

I think the next query which the Tribunal raised with you was:

"The Tribunal has been informed that the payment made by Telenor to David Austin in the Bank of Ireland, St. Helier, Jersey, was not remitted to the Fine Gael Party until May 1997 when contact between Mr. Austin and Mr. Jim Miley, then General Secretary of the Party, was informed that David Austin wished to make a personal donation of  $\text{€}233,000$ . The payment was made by cheque drawn on Mr. Austin's personal account at Bank of Ireland, Lower Baggot Street, which cheque was made payable to Mr. Frank Conroy, who endorsed the cheque and transmitted it to Fine Gael. The proceeds of the

cheque were lodged to Fine Gael's No. 2 account on the 9th May 1997.

And I think your comment in respect of that query is:

"Denis O'Brien was not aware of any of the above matters until they were made public recently." Is that correct?

A. That's correct.

Q. I think the next query which the Tribunal raised with you in respect of these matters is that:

"The Tribunal has been informed by Telenor that in November 1997, in the course of the preparation of a prospectus for the IPO of ESAT Telecom, there was a review of payments made by ESAT Digifone and that a query arose over the payment by Telenor of the invoice for 1/231,300. In this connection, Mr. David Austin provided a handwritten confirmation that as Chairman of the fundraising committee for a dinner held in New York in December 1995, for the purpose of raising funds for the Fine Gael Party, he had received a contribution from Telenor AS for the amount of \$50,000 which he duly forwarded to the Fine Gael Party. The Tribunal understands that the payment was not referred to in the ESAT Telecom prospectus as it was considered that the payment was a legitimate political contribution."

I think your comment on that is that Denis O'Brien

agrees with the above statement insofar as they relate to ESAT Telecom or ESAT Digifone. And in particular, would emphasise that the payment was not referred to in the ESAT Telecom prospectus as it was considered that the payment was a legitimate political contribution by an affiliate company, ESAT Digifone.

Now, I think the next query which the Tribunal raised was that:

"The Tribunal has been informed, in February 1998, Telenor brought this payment of \$50,000, including the manner and circumstances in which it was made, to the attention of the Fine Gael Party. The Tribunal understands that Denis O'Brien was informed by Telenor of its intention prior to the approach being made to Fine Gael. The Tribunal has been informed that solicitors for the Fine Gael Party wrote to Telenor and indicated that having regard to the circumstances of the payment, the trustees of the Party had determined that the funds should be returned and a cheque for i;½33,000 was enclosed.

"The Tribunal has been informed by Telenor that as Telenor had been reimbursed by ESAT for the payment, the cheque was endorsed to Denis O'Brien and was hand delivered by Mr. Johansen to Denis O'Brien under cover of letter dated 24th March 1998. The Tribunal has been informed that on the 29th May 1998, Denis O'Brien

returned the cheque to Fine Gael and that the General Secretary of Fine Gael was informed by Denis O'Brien that he did not consider it appropriate to accept the payment as this might suggest the original payment was wrong. The Tribunal understands that Fine Gael has recently forwarded a bank draft to Telenor for  $\text{€}233,000$  in a further effort to return the original donation."

I think your comment on that is: "Denis O'Brien has no recollection of being informed by Telenor of its intention to bring the matter to the attention of the Fine Gael Party. Denis O'Brien is not aware when Telenor brought this to the attention of the Fine Gael Party. Denis O'Brien, as Chairman of ESAT Digifone, was approached by Jim Miley, General Secretary of Fine Gael, on the 27th February 1998, and subsequently met with him. At that meeting, Denis O'Brien was requested to accept back a cheque for  $\text{€}233,000$  from Fine Gael. Denis O'Brien refused. Denis O'Brien believes that in March of 1998, Fine Gael sent a cheque for  $\text{€}233,000$  to Telenor and that Telenor wrote to Denis O'Brien as Chairman of ESAT Digifone on the 24th March 1998 enclosing the cheque which Telenor have endorsed in favour of ESAT Digifone and saying that they did so because the original donation had been reimbursed to Telenor by ESAT Digifone.

"Denis O'Brien and Michael Walsh of IIU, representing

two other shareholders in ESAT Digifone, discussed the matter following receipt of the cheque, and determined that it should not be accepted by ESAT Digifone as it would create the impression that the original donation had in some way been wrongful. Denis O'Brien believes that the cheque was returned to Telenor by letter dated 30th March 1998. Denis O'Brien is not aware of whether or not a bank draft was sent by Telenor to ESAT Digifone."

And I think that is the portion of your memorandum dealing with this matter we are dealing with at this phase in the Tribunal's business?

A. That's correct.

Q. Now, I think just to be clear and in fairness to you, Mr. O'Brien, you yourself have no contact and no involvement with ESAT Telecom or ESAT Digifone now, isn't that correct?

A. I resigned my position in September last year.

Q. And you have no access to any of the documentation of those companies?

A. Not at the moment.

Q. And I think it's correct to say that both you and the Tribunal may wish to deal with further matters in relation to this particular payment or donation, if and when further documentation becomes available, isn't that correct?

A. That's right, Mr. Coughlan.

Q. As and when in fact, we are told it will be coming available, as and when it becomes available.

Now, if I might just, first of all, return to the first comment made by you in respect of the queries raised by the Tribunal. Do you have a recollection of Mr. Austin approaching you to make a donation?

A. Yes, I do.

Q. Can you assist the Tribunal as to the circumstances of that particular approach?

A. He telephoned me one day. I believe it was in early November, 2nd, 3rd, 4th November, about a Fine Gael fundraising dinner in the 21 Club, where An Taoiseach would be present and he asked me whether I would take two tables.

Q. And that was you, it was Denis O'Brien?

A. No, no, it was ESAT.

Q. ESAT?

A. ESAT Telecom. ESAT Telecom was the fixed-line business that owned, at that time, 37.5% of ESAT Digifone.

Q. Do you remember Mr. Austin asking you specifically that the donation would be made by ESAT Telecom?

A. He was ringing me in my capacity as Chairman or Chief Executive of ESAT Telecom. That's my understanding, my recollection.

Q. Why is that your recollection?

A. Because it wasn't he was calling me in my capacity as Chairman of ESAT Telecom. That's what I recall. He didn't say, Mr. O'Brien, or Denis, will you make a donation personally? He said, would ESAT make a donation?

Q. Now, if you just bear with me for a moment to explore this, Mr. O'Brien, because ESAT Telecom was effectively a company of which you were the substantial or major shareholder, isn't that correct?

A. I was one of many shareholders. But I had a significant stake in the company at the time at that time.

Q. You had a significant stake in ESAT Telecom?

A. Yes.

Q. And I am not asking you to commit yourself for all times to the answer to this, but roughly, could you say what percentage your holding was in the company at that time?

A. At that time, about two-thirds, but that changed pretty dramatically within a couple of months.

Q. Upwards or downwards?

A. Downwards. We needed to raise money.

Q. You had to raise money. Now, ESAT Digifone was a separate company, isn't that correct?

A. That is correct.

Q. And it was through the vehicle of ESAT Digifone eventually the licence, which had which was awarded,

was taken, isn't that correct?

A. ESAT Digifone was the licensed operator, yes.

Q. As far as the world was concerned at that time, was it known that ESAT Telecom and ESAT Digifone were two separate entities?

A. I am not sure what the perception would be, but we saw them as two distinct companies.

Q. I understand that. Of course, you were involved in the company. But would Mr. Austin have known that?

A. He would have known that ESAT Telecom was different to ESAT Digifone.

Q. How do you think he would have known that?

A. Because he was in business and he would probably read the papers and he would have an understanding of these matters.

Q. So it seems to be your recollection, so, that when Mr. Austin spoke to you, that ESAT Telecom was mentioned?

A. My recollection is that he asked whether ESAT, and he just used the word "ESAT," would make, you know, buy two tables for a dinner in New York where An Taoiseach was going to be in attendance.

Q. I suppose the rest of us would always have just used a generic term, ESAT, without understanding necessarily the distinction between the various companies in the group?

A. I think insiders would know the difference, ESAT

Telecom, and somebody would have referred to ESAT

Digifone as well.

Q. So it's your understanding that Mr. Austin understood

this distinction at the time the donation was sought?

A. Yes. He knew that we were a participant in a

consortium in a company called ESAT Digifone.

Q. Now, the dinner was on the so, do you think that

Mr. Austin used the word "ESAT" or used the words "ESAT

Telecom"?

A. It's difficult to recollect fully. My understanding

of the conversation was that he used the word "ESAT."

Q. Now, the dinner was on the 9th November, I think,

subject to verification, but I think that's right?

A. That's correct.

Q. And you think that Mr. Austin approached you prior to

the dinner

A. I have a clear recollection of that.

Q. And do you think it was just a few days before the

dinner or could it have been a few weeks before the

dinner, do you know?

A. No, the dinner was imminent. It would have been a

week, maybe a little bit less.

Q. And did he inform you that he was the Chairman of the

fundraising committee for the dinner?

A. He said that he was involved in it and that he was

heading up the fundraising. I don't know whether he

was Chairman or not, but

Q. But that he was heading up or he gave an impression to you at least that he had a significant role?

A. That's right.

Q. Did he tell you anything more about the event other than that the Taoiseach would be present?

A. He just said that there would be a lot of conditions there, all the usual people that would go to these kinds of dinners. He mentioned a few names, I can't remember what names they were, but...

Q. And he asked you would you take two tables? That's your recollection?

A. That's right.

Q. And he mentioned \$50,000 as being the tariff for that?

A. That was the donation, yes.

Q. He mentioned \$50,000?

A. Yes.

Q. When you say you believe that it was in early November, because it had to pre-date the dinner, could it have been late October?

A. No. Because my clear recollection is that it was imminent, in other words, four or five days before the dinner. It was short notice.

Q. Now, I think you have informed the Tribunal that you told Mr. Austin that ESAT Telecom would not participate in it, is that correct?

A. That's correct.

Q. What did you say to him?

A. I just said that we would not participate in the dinner.

Q. Did he appear disappointed or anything like that?

A. It's hard to know when you are in the middle of a telephone conversation, but I assume he was a bit disappointed.

Q. And why did you decide that ESAT Telecom would not participate in the dinner?

A. I just felt that it wasn't appropriate for us to go to the dinner.

Q. To go to the dinner?

A. Or make a donation.

Q. Or make a donation. And why did you think it wasn't appropriate?

A. I just felt that it wasn't the right my instincts told me it wasn't the right thing to do.

Q. Why instinctively do you form that view, Mr. O'Brien?

A. I know I have instincts and I follow my instincts.

Q. But would it not have been appropriate?

A. One reason would be that it was it close proximity to the recent award of a licence to a consortium that we were involved in. That's just one reason.

Q. I can understand that. The decision in relation to the licence, I think, had been announced on the 23rd October of 1995, isn't that right?

A. It was either the 23rd or the 25th, I think, Mr. Coughlan.

Q. Either the 23rd or the 25th October 1995. And when you say that your instinct indicated to you that it wouldn't be appropriate, is it because it might have caused people to jump to the wrong conclusion in relation to the announcement of the award of the licence?

A. There was a lot of controversy at the time because there were a lot of disappointed people when they didn't win the licence and there was a lot of media comment.

Q. I can understand that, that people who were disappointed and people in the media might have expressed surprise and maybe some people were being critical of the award of the licence.

A. Some people were also praising us for winning it.

Q. I appreciate that, but was that your concern, that people would comment further?

A. Well, it was a private function in New York with An Taoiseach, so I don't know whether that would have been in the public domain or not subsequently.

Q. But from the point of view of the Fine Gael Party, one must assume that they would have been keeping a proper account in relation to these matters so as far as they were concerned, if you were approached on their behalf, it must have appeared to you that the Fine Gael Party and the Taoiseach himself would not have had any great difficulty about it?

A. Probably not, no. We were approached by Fine Gael to go to this function.

Q. Through Mr. Austin?

A. Yeah.

Q. But notwithstanding that it was your understanding that the approach was made by Fine Gael, your instinct was that it would be inappropriate or could be misconstrued, is that correct?

A. I viewed it as inappropriate.

Q. Inappropriate. So it would have been inappropriate to go to the dinner or to make a donation and that's on behalf of ESAT Telecom, is that correct?

A. That's correct.

Q. And when you say inappropriate, you mean inappropriate on the part of the company and did you also consider it would have been inappropriate on the part of Fine Gael?

A. I was just viewing it from our point of view, from the company's point of view.

Q. Just from your point of view?

A. Not from Fine Gael's point of view because they had obviously thought it was okay, if they were asking me.

Q. Now, the term "inappropriate," and again you may not be using it as a term of art here, Mr. O'Brien, but the term "inappropriate," what exactly do you mean by that?

A. Not the right thing to do at that particular time.

Q. And one could, I suppose, break that up into two particular categories then: A, it could be

inappropriate because it would suggest that some wrongdoing had occurred which, of course, you would not agree with; or B, that it would send some sort of a wrong signal out, isn't that correct?

A. I don't think that a wrongdoing would describe making a political donation to a dinner in New York. I just felt at the time it was inappropriate for me to do it.

There was no wrongdoing, Mr. Coughlan.

Q. I know you're not suggesting that at all, Mr. O'Brien, nor am I.

What I am asking you is for your understanding of inappropriate means; that it could be at one end of the scale, a suggestion of a wrongdoing, which of course you would not accept at all. And then you come down the scale that it could send a wrong signal out to the public.

A. The public weren't involved.

Q. But if it became known, Mr. O'Brien.

A. This was a private dinner in New York with An Taoiseach.

Q. So even in the context of something being totally private and confidential, you, nonetheless, would have considered it inappropriate?

A. At that time, yes.

Q. Perhaps I'll come back to it at a later stage, Mr. O'Brien.

Nevertheless, the conversation seemed to continue between yourself and Mr. Austin when you declined on behalf of ESAT Telecom to make a donation or go to the dinner?

A. Mmm.

Q. What did you say to him?

A. I mentioned that maybe Telenor might be interested in going to the dinner. And, you know, I said that they were interested in developing their business in Ireland and that was really it.

Q. Now, why did you mention Telenor?

A. Because I had known for a while that Telenor wanted to get, you know, get involved in Irish affairs and Telenor were, you know, the first people that sprung to mind.

Q. When you say "get involved in Irish affairs," they were involved with you through the vehicle of ESAT Digifone in respect of the second GSM licence?

A. They were our partner in that licence, effectively, one of two other partners.

Q. And when you say "get involved in Irish affairs," do you mean business affairs?

A. Yes, and to become more involved in Ireland.

Q. Now, you considered it inappropriate for ESAT Telecom to make a donation or to go to the dinner, I take it you would also have considered it inappropriate for ESAT Digifone, who had just been announced as having

won the competition for the licence, to have attended the dinner also, or to make a donation?

A. It didn't even cross my mind, Mr. Coughlan, to be honest with you.

Q. Why not, Mr. O'Brien?

A. If it wasn't appropriate for ESAT Telecom, well then it certainly you know, I didn't even think that suggesting ESAT Digifone

Q. It would have been, in your mind at least, equally inappropriate for ESAT Digifone to go to the dinner or make a donation?

A. Well, Mr. Coughlan, ESAT Digifone was just a project at that stage, it hadn't been capitalised. It hadn't any staff. It had only people who worked on the licence.

Q. And I understand that, Mr. O'Brien, it was, as you say, a project, maybe a few people working around it at that time, would that be correct?

A. This was two weeks or so after winning the licence, so there was a lot of chaos.

Q. And I accept that it didn't enter your mind at that stage to view ESAT Digifone as a separate entity for the purpose of taking up the invitation or request from Mr. Austin, but can I take it that if it was inappropriate for ESAT Telecom in your mind, it would have been equally inappropriate for ESAT Digifone to attend the dinner or make a donation?

A. I didn't give any thought to it at the time.

Q. I am asking you to give some thought to it now.

A. It's hard to relate the circumstances of six years ago, Mr. Coughlan, in the context of ESAT Digifone.

Q. I am just asking you, Mr. O'Brien, you were a significant participant in ESAT Digifone, holding, at that stage, through ESAT Telecom, what, 40% of the shares?

A. 37 and a half.

Q. 37 and a half. And I am asking you to look at it now, Mr. O'Brien, and if your view was this was just a project, but nevertheless a separate company?

A. I couldn't make a commitment on behalf of ESAT Digifone because I had other shareholders.

Q. If you had been asked on behalf of ESAT Digifone, would you have considered it appropriate or inappropriate to go to the dinner and make a donation?

A. I would have to go and consult with my two other partners.

Q. I am asking what your view is, Mr. O'Brien.

A. It's difficult to relate a view six years ago as I have already said, Mr. Coughlan.

Q. Looking at it now, Mr. O'Brien, you had the view that it was inappropriate for ESAT Telecom to either go to the dinner or make a donation. Would it have been appropriate for ESAT Digifone to go to the dinner or make a donation?

A. I am not prepared to speculate what I would have though

or would not have thought. I think it's an unfair question.

Q. Let's go back to the use of your word "inappropriate" and get a clearer understanding of what you mean by that, Mr. O'Brien. What do you mean by it?

A. As I have described already, I felt that it was inappropriate for us to go to a dinner in New York, given that we had just won a licence.

Q. Yes. And it was ESAT Digifone which had just won the licence, isn't that correct?

A. ESAT Digifone.

Q. Which had just won the licence?

A. Yes.

Q. So applying that particular criterion, do you accept that it follows that it would have been inappropriate for ESAT Digifone to go to the dinner as well, because they were the ones who had won the licence?

A. I'd have to talk I would have spoken to my partners to see if they wanted but my opinion, my personal opinion was it was inappropriate.

Q. All I am asking is your view, Mr. O'Brien.

A. Okay.

Q. Now, you mentioned Telenor to Mr. Austin as somebody who might be interested, as you were of the view, or you have stated that they were keen to become involved in Irish affairs, that's what you told Mr. Austin, is that correct?

A. That's right.

Q. Now, when you after the conversation with Mr. Austin, I think you have informed the Tribunal that you believed that you contacted Mr. Arvae Johansen by phone, is that correct?

A. Yes.

Q. Would that have been before the dinner?

A. Yes, definitely.

Q. And can you remember the conversation, in general terms even?

A. In general, yes.

Q. And what was the conversation you had with Mr. Johansen on that occasion?

A. Just, I explained to him that I had an approach from Fine Gael to go to a dinner. I said that it was inappropriate for ESAT Telecom to do it, and that maybe if they wanted to do it, it would give them an opportunity for them to meet the Taoiseach and that's how I left it with him.

Q. Did you offer him any advice that the reason why you considered it inappropriate, that this was potentially a hot potato?

A. No, I didn't offer him any advice. It was up to Telenor to make up their own mind whether they wanted to make a donation or not.

Q. And I think is it your understanding that you gave Mr. Johansen Mr. Austin's telephone number on that

occasion?

A. Yes.

Q. Do you know, to the best of your ability now, whether it was an Irish number or an English number you gave?

A. I always related that he was working in the UK, or in Windsor. But he could have been in headquarters at certain times.

Q. Now, I intend moving on now, Sir, to the meeting of the 8th December

CHAIRMAN: Seeing as it's five to one, it's probably an appropriate time for us to adjourn to lunch. So we will resume then at ten past two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2.10PM:

CONTINUATION OF EXAMINATION OF MR. O'BRIEN BY MR. COUGHLAN:

Q. MR. COUGHLAN: Now, I think, Mr. O'Brien, we were moving onto the meeting in Oslo on the 8th December 1995, and I think the purpose of that meeting was to discuss the terms of employment of Mr. Barry Maloney as Chief Executive of ESAT Digifone, isn't that correct?

A. That is my recollection, yes.

Q. And I think Mr. Maloney came from the United States and you met him in Oslo and you had this meeting with

Mr. Johansen in Oslo.

A. That's right.

Q. And I think at that stage, Mr. Maloney was still working in the United States, is that correct?

A. Yes, he was working for Xerox.

Q. Now, I think following on your discussions with Mr. Johansen and Mr. Maloney, I think you recollect having a discussion with Mr. Johansen after Barry Maloney left the meeting, is that right?

A. That's right.

Q. And can you remember, in general terms again of course, what was said at that discussion?

A. Well, it's difficult to recollect precisely word for word

Q. Yes, of course

A. But the just of our conversation was, first of all, covering certain issues relating to our partnership in ESAT Digifone. We talked also about the management structure of ESAT Digifone and then the matter of the donation for the dinner arose.

Q. And who brought it up?

A. I don't know whether it was myself or Mr. Johansen.

But certainly we spoke about it.

Q. You spoke about it. And can you remember was anything decided between you at that meeting?

A. Well, it wasn't for me to decide. It was his decision what he was going to do, but the impression he gave me

is that he was very happy to make the donation to Fine Gael.

Q. He was very happy to make the donation to Fine Gael?

A. Yes.

Q. And that it was Telenor were to make the donation to Fine Gael?

A. It was a Telenor donation, yes.

Q. Did you, in the course of your discussion, advise him that you considered it inappropriate for you personally or for ESAT Telecom or for Digifone to make the donation?

A. I am not sure was it at that conversation or my telephone conversation when I was originally contacted by Mr. Austin. I just felt I had told him it was inappropriate for us and he then made his own decision as to what he would do.

Q. Now, I take it that at this stage you knew, everyone must have known that the dinner was over, isn't that correct?

A. Well, I knew it was over and he did definitely.

Q. That was on the 8th December

A. Yes.

Q. of 1995. So the question of the appropriateness of attending the dinner didn't arise because the dinner was passed, but the inappropriateness still pertained, as far as you were concerned, for ESAT Telecom and ESAT Digifone to make the donation?

A. For ESAT Telecom.

Q. I think you agreed with me that you would have had to include ESAT Digifone in that

A. In a personal capacity I gave an opinion.

Q. Yes. So now it was reducing itself to just a question of a donation, is that correct?

A. Well, it related to the original request.

Q. For the dinner?

A. For the dinner, which the dinner was a donation, so he didn't go to the dinner it's my understanding that these dinners sometimes people don't go but they make a donation.

Q. And now so it's your understanding that you left that meeting, leaving Mr. Johansen to make his mind up, or Telenor to make its mind up, about whether it would make a donation?

A. Absolutely.

Q. And can you remember did you inform him that you would get somebody to contact him?

A. I said that I would talk to him on the Monday and give him David Austin's contact number.

Q. Right. And did you do that?

A. To the best of my recollection, yes, I did. I called him on the Monday.

Q. And can you remember whether it was Mr. Austin's number in Dublin or in London you gave him?

A. It certainly was a Smurfit number.

Q. It was a Smurfit number?

A. Whether it was his office number, because he worked for the Smurfit Group.

Q. Mr. Johansen had a little note on a post-it, or a piece of paper, and I just wonder if we could just look at it, and it was his evidence I'll give you a hard copy (Document handed to witness) I think on the 11th December of '95, would that seem correct?

A. That's a Monday I think, yes.

Q. And he has just noted: "Denis O'Brien, David Austin, a telephone number." And I can confirm that is a Smurfit number. It would be where Mr. Austin's office it's a general number it's a Clonskeagh number as we can see. And that he made that note, that is the top part of the the top half of the note when he spoke to you on the phone. Would that accord with your recollection of the type of information you would have given him?

A. Without sitting beside him, I wouldn't know when he wrote that.

Q. Yes, I am not talking about when he wrote it. But do you agree that the information that you gave him on the telephone, when you rang him, was the name David Austin, a telephone number, which is the Smurfit number, ring Monday and perhaps a time? Would you agree

A. I don't know about the time, but I know I did convey a

number to him.

Q. Now, before you did that, had you had any contact with Mr. Austin?

A. Not that I can recollect. I arranged to talk to Arvae on the Monday from my Friday meeting, to give him the number, and that's all I can remember at this stage.

Q. Well, do you remember talking to Mr. Austin over the weekend?

A. No.

Q. Well, just to be clear about this now, and I am not trying to trick you, but I think in your statement you felt that this may have followed a phone call from David Austin?

A. Could you just help me with that, Mr. Coughlan? What page is that on?

Q. If you go back to page 3.

A. Yes.

Q. And if you go to the top of the page, that you recollect discussing, again, the David Austin/Fine Gael/New York dinner approach while in Oslo and believed that the discussion took place at the end of the meeting while Barry Maloney was not present. And you did phone Mr. Johansen soon after returning from Oslo for the purpose of giving him David Austin's number in the UK, was your understanding?

A. It was the normal I know that he worked in the UK, so I assumed that it was the UK.

Q. Perhaps nothing turns on that, but you then said: This may have followed a phone call from David Austin but you are not certain.

A. No.

Q. Well, can I take it that you believed, you understood anyway, you knew Mr. Austin or your family knew him well?

A. Yes.

Q. That his time was divided between London and Dublin, perhaps in terms of work, no?

A. No, my understanding was that he was UK-based, so... If he was to phone me, he would leave a UK number would be the normal.

Q. Would it seem likely, so, if you gave Mr. Johansen a Dublin number, that you must have had some contact with Mr. Austin to know that he was contactable in Dublin?

A. Well, if you ring the Smurfit Group, they will transfer you to Windsor.

Q. Will they? I didn't know that. I don't think for a moment you are suggesting that this note wasn't written by Mr. Johansen at the time he received the phone call, are you?

A. Sorry, could you repeat the question?

Q. I don't think you are making a suggestion that Mr. Johansen didn't make the note at the time he received the telephone call from you?

A. I don't really know. I wouldn't have the information.

I mean, I have seen this this morning in the paper, and just now, so I don't know when it was written, but you could say that it was written at the time, but nobody really knows except for Mr. Johansen.

Q. Well, that's the sworn evidence he has given. I take it you accept that, would you?

A. I don't have the knowledge to know whether this is his or not.

Q. Well, I am just asking you now, I am telling you that Mr. Johansen gave sworn evidence here yesterday that this is a note that he made at the time he was talking to you on the phone. I am asking you, is there anything that you know of which would cast any doubt on that?

A. Not to my knowledge, but I wouldn't agree with necessarily all of the things that Mr. Johansen has said in his evidence.

Q. Yes, I accept that, and we'll come to that in due course. I am just asking you about this particular document, that he says that he made it at the time.

You have no reason to doubt that?

A. No.

Q. Now, I'll deal with some documents now, if I may, Mr. O'Brien, and I know that you have given evidence this morning that your knowledge of these documents perhaps only goes back to the 4th November of 1997, or thereabouts, isn't that correct?

A. Could you just help me, Mr. Coughlan, where you see this in the statement?

Q. Yes indeed. If you go to the next paragraph from the one we were just dealing with. I am now going to deal with David Austin's letter to Arvae Johansen, the various invoices, and you received you certainly received this documentation in November of 1997, around the time of the IPO, isn't that correct?

A. That is correct, yes, the 4th November.

Q. And am I correct in my understanding of your evidence that you have no recollection of these documents prior to that date, is that correct?

A. I didn't see them until the 4th November.

Q. Very good. Well, I'll just deal with them so.

Now, the first document is a letter from Mr. Austin to Mr. Johansen and it's dated 14th December 1995.

A. I have that.

Q. You have the letter. And it reads it's addressed to Mr. Johansen. It's from Mr. Austin in London.

And it reads:

"Dear Mr. Johansen, please find invoice for consultancy work for the duration of 1995 as agreed with Mr. Denis O'Brien. I hope that you will find this in order.  
Yours sincerely."

And it contained then an enclosure which was an invoice, which we'll just put up and we see again the

invoice is from Mr. Austin in London. "Invoice for consultancy work for 1995 as per agreement." Date 14th December 1995 to Arvae Johansen at Telenor. The amount is \$50,000. And then there is a manuscript of a conversion of that to Norwegian kronar, which was not put on it by Mr. Austin. It was put on it by somebody in Telenor's office.

A. Do you know what that means?

Q. Which?

A. This Norwegian.

Q. At the top?

A. There is something it says per

Q. I'll come to deal with the correspondence in a minute, yes, I will of course, yes. But I just wanted to go through this document. The conversion in manuscript to Norwegian kronar was put on by somebody in the accounts department in Telenor.

And then if we just push the document up. A bank draft can be made payable to David FT Austin and forwarded to account number is given Bank of Ireland, Jersey, Limited, and the address is given in Jersey.

Down at the bottom right-hand corner is what appears to be, anyway, and I don't know whether you would agree that that's what it appears to be, some form of computer file reference, "David FT Austin/Fine Gael/December '95." Down at the bottom of the invoice.

I think you can see that?

A. I haven't got it in mine, but I recall seeing that in evidence, yes.

Q. That's what it appears to be anyway at least, everybody that has looked at that has formed that view.

A. It's a way of identifying a letter on file, yes.

Q. If we just go back now to the letter. Mr. Johansen if we go back to the letter now, and the Norwegian manuscript on it.

Now, Mr. Johansen has translated this for us yesterday and he said, first of all, it appears to be an instruction to somebody called Per. That's on the top.

A. I know the gentleman.

Q. And it's an instruction to Per and it says: "This must be paid," that's what it says on the first line. The second line reads: "By us and further to be invoiced."

And then the next line reads: "As management cost to Digifone." Then there is a signature underneath, D, which is, he believes, the signature of the managing director of Telenor Invest, Neut Digerund, would that be correct?

A. He was the chief executive of ESAT Digifone.

Q. Sorry, I beg your pardon, ESAT Digifone?

A. Mm-hmm. Maybe he hasn't taken up that position

Q. He may still have been in Telenor?

A. He could have been a Telenor employee.

Q. It seems to read: "This must be paid by us, further to be invoiced as management cost to Digifone." That's what it reads, or that's how it was translated anyway by Mr. Johansen.

Now, I think the copy that's on the projector we may have obtained from you. Did you have that at the time, perhaps, in 1987? And there is something written in English on the I beg your pardon in 1997, in November, and there seems to be some stab at a translation on it anyway at the left side. It seems to be the same?

A. I have identified it now, yes.

Q. Now, I think that you must have understood the translation in 1997 sorry, not understood the Norwegian, but somebody must have translated it for you in 1997, would you agree, in November?

A. Probably, yes.

Q. Now, as of December, 1995, were you aware that this was to be charged as management cost to Digifone?

A. No.

Q. And would it have surprised you if somebody had told you that at the time?

A. Yes.

Q. And if somebody had suggested that this should happen in December of 1995, what would your response have been?

A. That it was never agreed.

Q. And you would have refused it, would you?

A. Yes.

Q. Now, there is a reference in the letter from Mr. Austin to Mr. Johansen saying that: "Please find invoice for consultancy work for the duration of 1995 as agreed with Mr. Denis O'Brien." Do you know why Mr. Austin should have made any reference to you in the letter?

A. I actually don't know what this means because I agreed absolutely nothing.

Q. Now, as you told us earlier, Mr. Austin was an experienced businessman, wasn't he?

A. Yes, he was, yes.

Q. And he was also a close family friend of your family's, he was a very close friend of your father's and the families were very close, isn't that correct?

A. That's correct, yes.

Q. You would have no reason to believe that Mr. Austin would have gone off on some frolic of his own using your name, would you?

A. Well, it depends what context you were trying to put this into, Mr. Coughlan. Maybe it was dictated by somebody else and he wrote this letter then subsequent to that. He was given the wording. I said in my statement that it may have been an exaggeration of my role in putting Mr. Austin and Telenor together in context.

Q. Well, as far as you knew, the only ones who knew about you, Telenor and any donation for Fine Gael was Mr. Austin, isn't that correct?

A. That's right, yes.

Q. Mr. Austin did not know the Telenor people, isn't that correct?

A. Well, he had spoken to them.

Q. Yes, on the phone.

A. Yeah.

Q. He didn't know he didn't know Mr. Johansen. I take it he had never met Mr. Johansen previously?

A. The problem here, Mr. Coughlan, is that I was not part of the discussion. I was not part of the invoice, I didn't know about this invoice. So it's very difficult for me to speculate.

Q. Now, unfortunately of course, Mr. Austin is dead and we can't get clarification from him in this regard. But on the face of it, the document would appear to be suggesting that there was some agreement between you, Telenor, and him in relation to this donation?

A. I agreed nothing, Mr. Coughlan.

Q. Now, Mr. Johansen has told us that the next thing that happened was that an invoice number 1000050 was raised by Telenor, sent to ESAT Digifone, dated 3rd January 1996 and it was in respect of consultant, David FT Austin, and the price was given as Norwegian kronar at 316,000. Did you know anything about that particular

invoice being received by ESAT Digifone at the beginning of 1996?

A. Definitely not.

Q. Now, from the evidence of Mr. Johansen, that invoice contained enclosures and the enclosures appear to be the letter from Mr. Austin dated 14th December 1995 and addressed to Mr. Johansen, and the invoice which Mr. Austin sent to Telenor?

A. Just let me understand what you are saying. Are you saying that the letter of the 14th

Q. And Mr. Austin's invoice to Telenor

A. Was all a part of the one?

Q. Appeared to have accompanied this letter that was sent to

A. So there is two pieces of paper, a letter and an invoice.

Q. Three-pieces. The Telenor invoice.

A. Yes.

Q. Mr. Austin's letter of the 14th December 1995, and Mr. Austin's invoice to Telenor of the same date, which had accompanied the letter. So it's Mr. Johansen's understanding that the three documents would have gone to ESAT Digifone, that is their invoice, Mr. Austin's letter and Mr. Austin's invoice. Did anyone bring that to your attention?

A. No.

Q. Had Mr. Barry Maloney taken up his post at ESAT

Digifone by this time?

A. No. Not for many months.

Q. Not at that time?

A. (Shakes head.)

Q. Can I take it that ESAT Digifone was still just moving from a project into becoming a working company, if I can describe it as that?

A. It actually had a Chief Executive.

Q. It had a Chief Executive?

A. Yes. The Chief Executive at the time was Jan Edward Tiegelson, was a Telenor nominee.

Q. And how many people were employed by ESAT Digifone at that time?

A. I am speculating here, but approximately 60 to 70 people. Maybe up to 100.

Q. By ESAT Digifone?

A. ESAT Digifone.

Q. Right. In offices in Dublin?

A. In offices in Dublin. There is maybe 40 people seconded from Telenor including then two or three of the senior executives.

Q. And who was handling the accounts side of things? Who would have dealt with invoices coming in?

A. The acting CEO would have dealt with that, who was a fellow called Peter O'Donoghue, but I suspect because these were Telenor invoices, they would have gone to the CEO.

Q. Who was that?

A. That was Jan Edward Tiegelson.

Q. Very good. But who do you believe dealt with invoices?

A. Of this nature?

Q. Of any nature.

A. Normal invoices would go to the finance department, or the accounts department, I don't know what it was called. But where there was a shareholder issue, it would be dealt with by the Chief Executive; where bills from shareholders would come in, would be handled by the Chief Executive, that's my recollection.

Q. Now, the Norwegian, which is in manuscript, and this is Telenor's copy of the invoice that was sent

A. Would I be given this?

Q. I just sorry, have I not just given it to you now?

It's perhaps attached to Mr. Johansen's statement which was sent to you, but if there is any difficulty, I will give it to you.

A. Could you direct me, Mr. Coughlan?

Q. Yes, I can. Perhaps the easiest thing, Mr. O'Brien, is if I could just give you a hard copy of it. It's on the screen. Now, you can see that it's a Telenor invoice to ESAT Digifone.

A. Yes.

Q. And you can see what it's for. It's for consultancy service of David Austin, and the amount. And then written in Norwegian on it and this was written in

Oslo, having received a phone call from Dublin, and it's at the bottom, you see, it's from this man Per, I think you know this Per Simonsen. It's addressed to Irna, who is somebody in their accounts department or finance department, and it reads: "This is now shredded with Receiver. A new invoice should be sent for consultancy services from Telenor at \$50,000 without any attachments or reference to David Austin.

I would like to see the invoice before you send it.

Per." That's what that is translated as. So it would appear that the invoice, and the enclosures were shredded in Dublin.

A. I have no knowledge of that, Mr. Coughlan, or any of these invoices, so I am just taking, obviously, the evidence.

Q. Did you know anything about it at that time?

A. No. I didn't have an executive role, I should point out, in ESAT Digifone.

Q. Now, the next thing that happened was that a fresh invoice, being the same invoice number, was issued by Telenor, and we'll put it on the screen.

A. That one?

Q. Yes. And it was addressed to ESAT Digifone again.

And it is for consultancy fees, Telenor Invest, and

it's for \$50,000. Now, we can't really make out

what's in the highlighted portion there. Then it

says: "Please remit the above-mentioned amount in our

bank account," and they give that information. Then you can see there is something written in Norwegian again on the right-hand bottom corner. And I think Mr. Johansen has told us that that is Per, Per Simonsen, who is writing again. And it's to somebody in the company called Sven. It reads:

"Can you make a credit note for this? He says in parenthesis: "With explanation from Peil Lantvret , and make a new one in Irish pounds which we will send out in 4 to 6 weeks."

According to Mr. Johansen, this again wasn't acceptable back in Dublin and what happened then was a credit note was issued which reversed this invoice. And then subsequently an invoice number 1000084 dated 23rd March 1996 was sent from Telenor to ESAT Digifone and it was for the consultancy fees for Telenor Invest i, 1/2 31,300, which was the Irish equivalent of the \$50,000 and that this was accepted by ESAT Digifone. Did you know anything about that back in 1996?

A. None whatsoever.

Q. Now, can I take it, Mr. O'Brien, that if you had known in 1995 that Mr. Austin had furnished an invoice to Telenor for consultancy services and directed that the payment was to go into an account in Jersey, that you would you have had nothing whatsoever to do with that?

A. Well, I didn't know anything about it at the time. So

I can only speculate six years ago.

Q. Yes, I am asking you that if you had known back in 1995, as far as you were concerned, all you had ever done was say to Telenor, look, you may be interested in making a political donation. It wouldn't be appropriate for me or for my side of things to do it, and I take it that as far as you were concerned, a political donation would follow a fairly straight route, wouldn't it?

A. Well, I think you need to break it into parts, Mr. Coughlan. So if we could deal with the first thing is, one is, making the donation. That was between Telenor. It was ultimately their decision. The second thing is how it got paid: I have no idea. I wasn't aware that there was an invoice for it. All I can surmise is that

Q. Thirdly, you were not aware that ESAT Digifone had been invoiced for it by Telenor?

A. No, I wasn't aware until much, much later.

Q. When do you think you became aware?

A. Prior to the signing of the shareholders' agreement and the licence for ESAT Digifone.

Q. Prior to

A. Prior to

Q. May of 1996?

A. 1996, correct. And even then, the this ring-a-ring-a-rosy of different invoices coming in and

out, I wasn't aware of.

Q. Now, we'll break it up, so, and we'll deal with it slowly. As far as you were concerned, all you had done was made an introduction between Mr. Austin on behalf of Fine Gael, and Telenor, isn't that right?

A. In regard to the dinner, yes.

Q. Anything they did, as far as you were concerned, was just their business?

A. Correct.

Q. Now, of course you were in Ireland and you had an understanding of Irish Business and perhaps in general terms, of Irish political life and culture, isn't that correct, in general terms?

A. Yes, I would, yeah.

Q. Now, I just want to deal with, first of all, if you had been told that a donation was being made by a fellow shareholder of yours, or let's start off, by anyone, to an Irish political party, and it was being paid into an offshore account on the basis of an invoice which did not reflect, even in broad terms, the true nature of what was happening

A. Can we break it up. The first thing is

Q. Okay, into an offshore account, first of all.

A. First of all, if the event was in another country, by its nature, people would pay into some account somewhere outside of Ireland. So I don't know whether that would be normal, but it would seem to me that if

it's an American fundraiser or a UK fundraiser, money would go into some account for a specific purpose.

Q. Absolutely, and I'll stay with you there on that, because we will have evidence from Fine Gael that in relation to this particular dinner, an account was opened, a dollar account in New York, appropriately, and that the proceeds were received into that account.

That would seem normal, wouldn't it, how you'd conduct business in a country?

A. Yes, well, on face value it does, but I wasn't aware of how Fine Gael wanted to be paid for the dinner.

Q. I am just asking you. Everyone

A. In some ways Fine Gael should have sent an invoice to Telenor. They should have paid it and that was the end of it.

Q. One can understand if one was having a function in another country and you were asking people to make contributions there, that it would be appropriate to open an account there for the purpose of receiving them and then transferring them back of course.

A. Yes.

Q. Now, you knew that you introduced Mr. Austin and Mr. Johansen and that it related to an event in New York, isn't that correct?

A. Yes.

Q. If you had been told, at the time, that this was received into a Jersey bank account of Mr. David

Austin's, would you have been surprised?

A. How can I speculate, Mr. Coughlan?

Q. I am not asking you to speculate. I am asking you, does it surprise you now?

A. Can I ask a question, the rhetorical question is, did all the other people pay for their dinner or donation into a Jersey bank account for that New York fundraiser?

Q. Absolutely not.

A. Okay. I don't know that. You are putting things to me that I have no knowledge of, Mr. Coughlan.

Q. Absolutely not, Mr. O'Brien.

A. Sorry, I didn't know are you saying that I did know or didn't know?

Q. I am saying they didn't. I said the people did not, let's be clear about that.

Now, if I may pursue that though. Are you surprised now, Mr. O'Brien, that what was to be a donation to Fine Gael went into a Jersey bank account?

A. I am not I don't know whether that was the account used for that particular dinner, whether other money went into the same account.

Q. I am just telling you it's not, it wasn't?

A. It wasn't?

Q. It wasn't.

A. Okay.

Q. Are you surprised?

A. It seems unusual that a donation would go into an account, but there again, if it arrived in Fine Gael's account ultimately

Q. Mr. O'Brien, I am looking at the circumstances surrounding this. I am not engaged in the end exercise yet.

A. But you are asking me to speculate.

Q. I am not. I am asking you to look at the circumstances.

A. A few minutes ago you did. You asked me if this happened, if that happened.

Q. It did happen

A. It's a little bit difficult for me to give an opinion.

Q. Mr. O'Brien, it did happen and you reviewed all this in November of 1997.

A. That is correct.

Q. That is correct?

A. Yes.

Q. Right.

A. That's why we have got confirmation from Fine Gael that they received the money, Mr. Coughlan.

Q. Did you review all of this in 1997, Mr. O'Brien?

A. I was on a road show, Mr. Coughlan, at the time.

Q. I'll come to that, Mr. O'Brien. I'll come to it.

You now know that this went into a Jersey bank account, don't you?

A. Today I do.

Q. You knew it in 1997, Mr. O'Brien.

A. Yes, that's right.

Q. Did you express any concern or surprise about it in 1997?

A. What we wanted, Mr. Coughlan, was confirmation that Fine Gael ultimately received the donation from Telenor.

Q. Mr. O'Brien, I am not concerned about the IPO and what you people were looking for or the steps you took in that regard at the moment. What I am concerned to know is were you surprised in 1997 when you saw this?

A. I don't recall.

Q. You don't recall. We'll take the next step, so, Mr. O'Brien. This money was paid into a Jersey bank account in the name of Mr. Austin on foot of an invoice which Mr. Austin had furnished to Telenor for consultancy services, isn't that correct?

A. As what I see here, yes.

Q. And you knew that in November of 1997?

A. Yes.

Q. That's the first time you knew about the David Austin aspect of the invoice, is that correct? You didn't know about that?

A. Well, I knew that there was the tell that Telenor were invoicing the company.

Q. Yes, I know that.

A. In, I think, roundabout May, 1996.

Q. I know that, but specifically, that David Austin had raised an invoice with Telenor for consultancy services, you say you did not know that in 1996, is that correct?

A. I learned that in 1997, to the best of my recollection.

Q. Yes, all right. Were you surprised by that?

A. I was actually in the middle of a road show. I may have seen this, I may not have seen it. I certainly didn't examine it. I was on the west coast of America on a phone line.

Q. So are you saying that you saw it or you saw it briefly and didn't pay much attention to it, or what?

A. I don't recall whether I saw it. I knew that we had sought a confirmation, but I may have seen it when I returned back to Ireland, but I don't remember getting faxes with copies of invoices.

Q. Did your legal advisers see it?

A. Yes, I am sure they did.

Q. Did any of your financial advisers see it?

A. I don't know.

Q. Did you know, in November of 1997, that this particular invoice had been shredded in Dublin?

A. Not personally, no, I didn't, no.

Q. And nobody brought that to your attention?

A. I mean, these invoices have appeared in recent weeks as part of evidence. I have looked at them in that context. But I wasn't aware that there was invoices

being shredded in Dublin in January, February, March of 1996.

Q. Only in January, 1996, this particular

A. Sorry, which invoice are you referring to now?

Q. I am talking about the first invoice from Telenor referring to the consultancy services of David Austin, the letter of David Austin which enclosed his invoice to Telenor, those three documents.

A. I wasn't aware of them in the first quarter of 1996.

Q. You weren't aware

A. I mean, it seems to me that the invoicing is chaotic for whatever reason.

Q. You may be correct, Mr. O'Brien. That's what it may be, it may be chaotic, but it may be something else.

A. All I can confirm to you, Mr. Coughlan, is I had no hand, act or part in invoices being changed, shredded or whatever, or changed.

Q. Well, if you knew that this had been going on you now know it was going on in ESAT Digifone, what's your view now?

A. I would have questioned what was going on, as a non-executive Chairman, if it was brought to my attention, I would have said, what is going on here?

Q. And can I take it that if it was brought to your attention now that you know what was going on, and what it related to, what is your view of it now?

A. I can only believe that Telenor Telenor's accounts

department and the Chief Executive of ESAT Digifone at that time, and this is not Barry Maloney to be fair, but it was a Telenor appointee, they had problems.

Q. Problems?

A. Well, they'd send an invoice. Then somebody said give a credit note. Then send another one and somebody said delete somebody's name off. Send another one saying this is Irish pounds. Another one saying this is kronar. So I am sure it was very confusing for everybody.

Q. Well, all the instructions seem to be followed carefully. It's not at all confusing, because what it does is it removes any reference to David Austin or to dollars or to a suggested consultancy on the part of David Austin. But what it does is, it removes David Austin from the equation. That's what it does, would you agree?

A. On face evidence, it does.

Q. I'll come back to that later.

If you, as a responsible businessman, in the position of a Chairman or even in the position of a chief executive of a company, if you, as you now know, that an invoice was submitted to Telenor for something that didn't happen, namely Mr. David Austin's consultancy, and that this was invoiced to ESAT Digifone, what would your view on that be?

A. I'd question it.

Q. Well, when you were told that this was for a political donation, what would your view have been?

A. Mr. Coughlan, I didn't know about this being this invoice, these invoices or whatever we call them, credit notes, being in existence until just recently.

But I do know

Q. I am asking for your view as of now.

A. I would say that it's unusual and it should have been looked at and brought to the attention of somebody.

Q. Unusual is how you would describe it, is it?

A. Well, it's unusual to see so many invoices being withdrawn, changed, credit notes appearing, and then different currencies appearing, but I am not an accountant. But as a business person, I would say, it's unusual.

Q. Well, Telenor did not receive any consultancy service from David Austin, isn't that correct?

A. Absolutely not.

Q. ESAT didn't receive any consultancy services I mean, ESAT Digifone did not receive any consultancy service from David Austin, did it?

A. No.

Q. ESAT Digifone did not receive any consultancy service from Telenor in respect of 316,000 Norwegian kroner, did it?

A. Well, it did have consultancy arrangements of a large

nature.

Q. This wasn't one of them?

A. But, Mr. Coughlan, why don't you direct this question at Telenor, because I can't answer the question that you are asking me.

Q. We have, and they have given the answer, Mr. O'Brien.

A. Could you tell me what that answer is?

Q. Yes. The answer was this was done at your behest, that this was to be charged as a management fee, the donation to Fine Gael, and that when they set about invoicing in relation to it, this is the response they got at the Dublin end and that is how the documentation got into the state it did?

A. That's not true, Mr. Coughlan, as far as I am concerned.

Q. That's not true? And that the transaction was to be invisible, the purpose of it was to ensure that the transaction was to be invisible on the Irish side?

A. Not true, Mr. Coughlan.

Q. Not true.

A. It was a Telenor donation.

Q. It was a Telenor donation. You are adamant in that?

A. Absolutely.

Q. And always was?

A. Always was.

Q. And still is a Telenor donation?

A. Well, it became ESAT it was transferred Telenor

made the company pay for the donation at the time of the signing of the shareholders agreement.

Q. What do you mean by that?

A. In other words, they said this is an ESAT Digifone expense.

Q. Mr. O'Brien, I'll come to that in a moment, and I'd ask you to reflect before you respond, because we are in the world of serious business people now.

A. Mm-hmm.

Q. And not school children and somebody making somebody do something else. And I am going to ask you, what did Telenor do to make ESAT Digifone accept that payment?

A. They sat around a table before the shareholders' agreement was signed. There were maybe ten or fifteen issues put on the table and that they, at that stage, wanted the company to pay for the donation. And that's the first time that we, that I did anyway, learn of this that they wanted the company to pay for it. That I wasn't aware of these invoices.

Q. What did they do to make ESAT Digifone pay it? Why didn't you say, under no circumstances?

A. There were wider disagreements, Mr. Coughlan, bigger issues to discuss. And this was one of maybe ten or fifteen ones.

Q. This is something now I have to take up with Telenor in due course, but I want you to identify to me the pressure that Telenor brought to bear on ESAT Digifone

to pay this particular amount of money?

A. It was part of a wide discussion of various things that we had to reach agreement on before we signed the shareholders' agreement, which ultimately allowed us to sign for the licence.

Q. You said that they made you made ESAT Digifone

A. The company, not me.

Q. Made ESAT Digifone. Was this at a board meeting of ESAT Digifone?

A. No. It was between both sides in negotiations on the shareholders' agreement.

Q. On the shareholders' agreement. Now, when did you realise this was the situation, that you were made to pick this up for the purpose of entering the shareholders' agreement?

A. In or around May, April/May, 1996.

Q. It is the first time you have brought that to the attention of the Tribunal, is it?

A. I am not sure what you mean by that.

Q. It's not contained in your statement, in any communications you have had with the Tribunal. You have never informed the Tribunal that you were, effectively, made I won't go so far as to use the term, coerced, but that you were made sorry, ESAT Digifone was made pay this sum by Telenor before the shareholders' agreement was entered into?

A. We agreed nobody makes any nobody can force

anybody to do anything, Mr. Coughlan.

Q. Absolutely.

A. But you agree certain things and say, okay, we will do that. We'll allow that to happen.

Q. Had there been any discussion of it before the shareholders' agreement or before the meeting

A. Can I go back on one issue, Mr. Coughlan?

Q. Yes indeed.

A. You are saying I never raised this.

Q. Yes.

A. In a private meeting between myself and your colleagues and we spoke about this and you said about the payment and I described it that ultimately ESAT Digifone had to pay it in their respective amounts because they were shareholders in the company. So

Q. When did you ever say that you were made to do that by Telenor, Mr. O'Brien?

A. I never said made.

Q. Mr. O'Brien, you have just given sworn evidence to that effect.

A. Well, we were it was agreed between the parties.

Q. Now, may I say this to you, Mr. O'Brien. You are not sitting around in a meeting now. You are giving sworn evidence. So I'd ask you to be careful in the language you choose in response to questions, please.

A. Mr. Coughlan, I am well aware of the oath that I took two hours ago.

Q. All I am asking you to do is be careful in the language you use. I am not suggesting that you are not telling the truth.

A. You are trying to put words into my mouth, Mr. Coughlan.

Q. I never used the word "made," Mr. O'Brien, you did.

Had there been any discussion about this particular item prior to that meeting when you say ESAT Digifone picked it up?

A. It was raised at negotiations, the negotiations went on for maybe two or three weeks.

Q. Was it identified what it was?

A. No. What it was described was that Telenor wanted ESAT Digifone to pick-up the or pay the  $\frac{1}{2}$ 32,000 donation to Fine Gael or get the company to pay it instead of Telenor.

Q. It was discussed it was discussed as early as that that a donation had been made to Fine Gael?

A. It was raised, yeah.

Q. So you knew it as of that time, is that correct?

A. Yes.

Q. And it was described by whom as being that?

A. It was described by Telenor, that they wanted to make sure that this was part of the accounting for people's entry level equity into the business.

Q. You were an equal shareholder, or you had equal strength in terms of shareholding in ESAT Digifone as

Telenor, didn't you?

A. ESAT Telecom did.

Q. When I use that, I mean ESAT Telecom?

A. Yeah.

Q. You were in a position to say to Telenor, no, ESAT

Digifone will not pick-up this sum, because that is a

Telenor personal donation to Fine Gael. I have

already informed you, Mr. Johansen, that it was

inappropriate for ESAT Telecom or me, Denis O'Brien, or

me, ESAT Digifone, to make such a donation. Isn't

that correct? That was your view?

A. It was my view, but Mr. Coughlan, we were in the middle

of a €160 million project, an investment of that scale.

There were countless issues that were of greater

importance than a political donation at that time to

Fine Gael.

Q. You considered it inappropriate.

A. That's right.

Q. Did you say that at this meeting, that it was

inappropriate for ESAT Digifone or me or ESAT Telecom

to make such a donation?

A. My representatives, and I believe myself, objected to

it.

Q. What did you say? First of all, identify the

representatives, please.

A. Well, myself, our lawyer.

Q. Who was that?

A. Owen O'Connell from William Fry.

Q. And both of you objected to it, is that what you are saying?

A. Yeah.

Q. What words were used?

A. That it is not an ESAT Digifone expense and shouldn't be treated as an expense. And that we didn't believe that it should be included as such.

Q. Were there minutes kept of this meeting?

A. Of negotiations?

Q. Yes.

A. I doubt it.

Q. Who else was at the meeting?

A. I am not sure who was representing Telenor at the time.

Q. You were present at the meeting.

A. I came in and out of meetings. I left it to other people to negotiate it, but I wasn't there for every piece of negotiation.

Q. Well, for the time that you were in and out, who was there?

A. Certainly Owen O'Connell would have been there and maybe his partner, Gerard Halpenny.

Q. And can I take it that what you were negotiating were financial liabilities at this stage?

A. No. Well, we were negotiating the terms of the shareholders' agreement and we were negotiating corporate governance, all the things that you would be

negotiating on if you were going into business with somebody.

Q. Who else was at the meeting? What interests were at the meeting, I mean, first of all?

A. Just Telenor and ourselves.

Q. Where were IIU?

A. IIU, I think, came in later.

Q. What date was this?

A. This would have been weeks before the Shareholders' Agreement was actually signed.

Q. Were IIU shareholders at that stage?

A. They were going to become a shareholder when we signed the licence.

Q. The Shareholders' Agreement was dated the 16th May, 1996?

A. So it would have been in the weeks before that.

Q. The weeks before that. Who was there for Telenor?

A. I actually don't remember. I mean, there was so many there were 30 or 40 Telenor people at the time.

I honestly don't remember who was there.

Q. None of the invoices were produced at the meeting, were they?

A. Not that I can recall, no.

Q. Was David Austin's name mentioned at the meeting?

A. No.

Q. How did Telenor convince you that ESAT Digifone should make this payment?

A. It was this may sound simplistic, Mr. Coughlan, but there were maybe ten to fifteen issues, and we agreed one issue, they agreed another one, and it was a matter of to-ing and fro-ing, negotiating all these different items, it was a pressurised environment for everybody concerned.

Q. Did you know, at that time, that Mr. Austin was the vehicle whereby this payment was supposed to have been made to Fine Gael?

A. All I knew is that Mr. Austin was collecting the money for the dinner on behalf of Fine Gael.

Q. So correct me if I am wrong, that your reason for accepting that ESAT Digifone should carry the cost of this particular donation, notwithstanding your view of the inappropriateness of it, was because there were so many other issues going on and this was only one of many issues?

A. We were trying to get a Shareholders' Agreement signed. It was in that context.

Q. Am I correct that if it had been a stand-alone issue, you would have taken the stand and refused it?

A. Yes.

Q. Because it was inappropriate?

A. For ESAT Digifone, yes, but not for Telenor.

Q. I am just asking, it was inappropriate for ESAT Digifone?

A. Correct.

Q. This is a matter we'll have to return to, Mr. O'Brien, because I do not think it fair or appropriate that I should question you at this stage as to why the details of this meeting have not been brought to the attention of the Tribunal, but we will return to it.

MR. MCGONIGAL: One matter, Mr. Chairman. I am not quite sure of the significance of it and I have no difficulty with Mr. Coughlan coming back to it. Obviously, I will discuss it. But as to whether or not or when it was brought to the attention of the Tribunal, I am not clear as to the status of private meetings, but perhaps that is a matter which I should discuss, because my note would be that it was brought, certainly at that stage, to the attention of the Tribunal.

MR. COUGHLAN: That's a matter I'll take up with My Friend.

A. That's my recollection as well.

CHAIRMAN: Certainly it's my preference not to get into that, Mr. McGonigal. If it transpires that there is an error, it can be resolved in your favour.

MR. MCGONIGAL: I am not trying to make a big issue of it. I am simply trying to clarify the situation.

CHAIRMAN: I think the ruling I made is what goes on at

private meetings is absolutely confidential on both sides unless and until I, as Sole Member, take the view that somebody must go public. That can be deferred if needs be.

Q. MR. COUGHLAN: In any event, reconciliation was achieved on the running account between Telenor and you in respect of this particular sum, isn't that correct?

You can take it from me, that's so, you needn't worry about that.

A. Okay.

Q. Did you have continuous contact with Mr. David Austin in a social context?

A. Yes.

Q. Did he ever mention anything to you about receiving anything from Telenor?

A. Not that I can recall. I mean, it was a matter of just putting Mr. Austin in touch and then he dealt with Mr. Johansen.

Q. Did he ever say thanks very much for putting me in contact there, I did all right, or any words to that effect?

A. He could have, but I actually don't remember him saying that.

Q. Now, Mr. Johansen, at one stage, received a letter from Mr. Austin and that was dated, I think, the 13th February, of 1996, which he the term cryptic has been attributed?

A. Is this part of Mr. Johansen's statement then is it?

Q. Yes, it is, I'll get you the letter now. It's a letter dated 19th February, I beg your pardon, 1996, I'll put it up on the screen now.

A. I have it.

Q. It's addressed to Mr. Johansen, and it reads:

"My sincere thanks for the payment of the invoice in relation to consultancy carried out for 1995. Please forgive the total oversight on my part for not acknowledging receipt of payment and indeed passing on my thanks.

"This was certainly not something taken lightly on my part and not from those who have received payment.

"Please be assured of their appreciation and thanks.

"Once again, my sincere apologies for my tardiness.

Yours faithfully,

David FT Austin."

Now, Mr. Johansen's understanding is that before he received this letter, that you had been in contact with him once again inquiring on behalf of Mr. Austin, he believes, as to why the payment had not been made or received and that he told you that it had, that it had been paid into Mr. Austin's or an account in Jersey and following that, he received this letter from Mr. Austin and he believes that a copy of this was sent to either you or ESAT Digifone.

A. I never received a copy of this letter.

Q. Did you have any contact with Mr. Austin when he made any suggestion that money hadn't arrived?

A. I don't recall talking to Mr. Austin about whether the money had arrived or not.

Q. And do you recall talking to Mr. Johansen, passing on any information from Mr. Austin concerning money not having arrived?

A. No. I mean, I put the two of them together and they communicated together.

Q. In November of 1997, prior to the IPO, this became quite an issue, didn't it?

A. Yes, it was discussed.

Q. It was an issue. It was a significant issue?

A. It was an issue and the question was, you know, did Fine Gael get the money?

Q. Who said that was the issue?

A. Pardon?

Q. Who said that was the issue?

A. Well, I would have thought that was one of the issues.

Q. One of the issues?

A. Yeah.

Q. But the issue was over and above that, wasn't it?

A. I am not sure what you mean by that, Mr. Coughlan.

Q. I am not talking about other issues now, I am leaving I know that the other matters, many matters that would arise on the IPO.

You were asked by the Tribunal, at query number 4, the Tribunal asked you about the prospectus and the IPO and

A. Can I just dig that out if you don't mind?

Q. Indeed. It's at page 5 of your statement. You see query number 4:

"The Tribunal has been informed by Telenor that in November 1997, in the course of preparation of a prospectus for the IPO of ESAT Telecom, there was a review of the payments made by ESAT Digifone and that a query arose over the payment by Telenor of the invoice for €31,300. In this connection, Mr. David Austin provided a handwritten confirmation that as Chairman of a fundraising committee for a dinner held in New York in December 1995, for the purpose of raising funds for the Fine Gael Party, he had received a contribution from Telenor AS for the amount \$50,000 which he duly forwarded to the Fine Gael Party. The Tribunal understands that the payment was not referred to an ESAT Telecom prospectus as it was considered that the payment was a legitimate political contribution."

And your response is: "Denis O'Brien agrees with the above statement insofar as they relate to ESAT Telecom or ESAT Digifone and in particular would emphasise that the payment was not referred to in the ESAT Telecom

prospectus and it was considered that the payment was a legitimate political contribution by an affiliate company, ESAT Digifone.

Now, I want to ask you about, first of all, the note, Mr. Austin's note which we have had evidence of yesterday. It's a handwritten note. I think at this time, Mr. Austin was living in France and was very ill, wasn't he?

A. Very ill, yes.

Q. Very ill.

A. I think he was particularly ill at that time.

Q. Around that time. In fact, the unfortunate man had cancer and died the following year?

A. He was getting aggressive treatment at that time.

Q. He was getting quite aggressive chemotherapy and surgical treatment. Now, the note reads:

"To whom it may concern, I confirm that as Chairman of the fundraising committee for a dinner held in the 21 Club in New York in December 1995, for the purposes of raising monies for the Fine Gael Party, I received a contribution from Telenor AS for the amount of \$50,000. I duly forwarded these funds to the Fine Gael Party. Yours sincerely, David FT Austin."

Do you remember seeing that particular note around that time?

A. I knew that he had written giving confirmation, but I

don't think it was faxed to me.

Q. Who got the note?

A. Aidan Phelan and Paul Connolly, or Paul Connolly, one or the other.

Q. Who asked them to get the note?

A. It would have arisen in the meeting on the 4th November.

Q. Who asked them to get the note?

A. The people present at that meeting. I don't know who specifically.

Q. You were present by teleconference?

A. Yes.

Q. Mr. Johansen was present by teleconference?

A. I don't know whether he was or not.

Q. That's the evidence he gave?

A. His evidence, fine.

Q. Were you informed who else was at the meeting?

A. There was a roll call of people, yes.

Q. Who were they?

A. Solicitors, advisers.

Q. Who were they?

A. Name them?

Q. Yes, please.

A. There would have been there was probably Michael Walsh, Arvae Johansen by teleconference, Neut Digerund was on the board at this time. Leslie Buckley, John Callaghan, would have been the directors that were

present. Then there would be legal people as well, solicitors.

Q. Who were they?

A. They were, I believe, Kilroy's solicitors, William Fry solicitors representing with different partners, IIU and then ESAT Telecom Limited and then I think the solicitors representing the company were there as well, which would have been McCann Fitzgerald's. I am surmising. I can't be I would have to go and look.

Q. Yes, of course.

A. To be sure.

Q. Yes. Was Aidan Phelan at that meeting?

A. No, not that I remember.

Q. Was Aidan Phelan in Dublin?

A. He came in and out of the road show. So I can't remember whether he was or not.

Q. It's our understanding that Mr. Phelan was, in fact, in the United States of America would that be correct?

A. For part of the road show. We were there for two weeks.

Q. Where were you?

A. I was in California, it was two o'clock in the morning.

Q. Did anyone come to see you in California around this time?

A. No.

Q. Or anywhere in the United States?

A. Yes, I would have had a visit from our solicitor.

Q. Was it about this, this issue?

A. It was it could have been about that, but there were other matters at the time of the IPO.

Q. Was this one of the issues?

A. I think this was a last minute one that was, that arose, that somebody said look, we should find out for sure that Fine Gael got the money and then somebody was despatched to contact David Austin.

Q. Who knew David Austin best of all?

A. Me.

Q. Did you contact him?

A. No.

Q. Why not?

A. Because Mr. Coughlan, I don't know if you know about road shows, but you do ten sales calls a day and you are shunted in from a car, you go in, you go out, you could be in any city, I hadn't time to bless myself at the time. You'd eat on the move basically, making pitches to institutions, so all of these things were going on in the background while I was on a road show.

Q. The solicitor came out to the United States of America to you. These were important issues. This affected the IPO and the prospectus, isn't that right?

A. It was just one of many different elements that needed to be discussed.

Q. Yes. You can have all the road shows in the world, if you can't issue your prospectus or have your IPO, the

road shows aren't worth much, are they?

A. Well, every company that does an IPO, it's frenetic.

Q. I accept that. I don't know anything about it, but I accept it.

A. The underwriters want confirmation of it; lawyers on the issuing side want confirmation of it, so there is many things going on at one time.

Q. Who would have contacted Aidan Phelan to ask him to get this particular statement or note?

A. It would have been one of the people present at that meeting on the 4th November, so it could have been one of the solicitors.

Q. Who would have known that Aidan Phelan could have made contact with David Austin?

A. Well, certainly I could have said at the time I don't recall saying this, but I could have said Aidan, would you contact David Austin, if it was on a conference call, with all these things being discussed at one time.

Q. Aidan Phelan wasn't at the meeting, either by conference call or personally, you told us?

A. I am not sure whether he was or not, but he was asked to go and do it.

Q. I want to know who asked him?

A. I don't know. I mean, it could have been me, it could have been our solicitor, it could have been somebody at the meeting, I don't know.

Q. Now, as you said, Mr. Austin was particularly ill at this time.

A. That's right.

Q. He had just come out, I think, of very aggressive treatment, isn't that right?

A. In France, yes.

Q. And it was significant enough to disturb a very ill man to get this note, wasn't it?

A. Unfortunately, it was, Mr. Coughlan.

Q. Very significant?

A. (Nods head.)

Q. Why didn't somebody pick up the phone and ring the Fine Gael office and ask them the question?

A. I have no idea.

Q. Here you were, involved in this issue; you knew that Mr. Austin was very, very sick. Wouldn't the simple solution have been to pick up the phone and say to Fine Gael, did you receive a donation from Telenor, ESAT, whatever way you were going to describe it?

A. Sometimes people don't do the obvious thing, Mr. Coughlan. And I am not being smart. I am being dead serious.

Q. I know, and this is very serious and the questions I am asking are very serious about this.

A. And I agree with you.

Q. Because people went half-way around the world to disturb a very ill man to get this note, when a phone

call to Fine Gael would have just had somebody ringing up, making an innocuous inquiry, did you receive Telenor themselves even, or you, or somebody did you get a donation from us? Or could we have a copy receipt, or whatever the situation is?

We are in an IPO, look, this is the accountants causing us a bit of annoyance about an item on the accounts, could we just tick that one off?

A. Would it not be the practical thing to go to the person that initially approached, on behalf of Fine Gael, and ask them? I mean, it could be either or.

Q. It could be either or, but do you see, would you agree, Mr. O'Brien, that if anyone approached Fine Gael at this time and said to them, did you receive  $\text{€}1/250,000$  or the Irish equivalent from Telenor or ESAT, ESAT Digifone, and Fine Gael consulted their records, as of that time, the answer would have been no. Isn't that right?

A. I am not sure now. I would have to go back and look at the statement of Mr. Miley when he received the money. Could you help me there? Because I would like to see that.

Q. What Mr. Miley did was that he received in, I think, May of 1997, a personal donation from David Austin and recorded it as such.

A. But this was in November 1997.

Q. Absolutely.

A. So it was after that.

Q. Yes. It was recorded by Fine Gael as a personal donation from David Austin.

A. How would I know that?

Q. Mr. O'Brien

A. I mean

Q. I am asking the questions, because I have to look at this from all aspects in the course of an inquiry.

What I am asking you is that if a phone call had been made by Telenor, ESAT Digifone, ESAT Telecom, to Fine Gael and they were asked, did you receive a donation from us for \$50,000 in December '95, January, or just a donation from us for \$50,000, the answer they would have got from Fine Gael, who would have consulted their records, would have been no, we didn't. Isn't that right?

A. That's one version, yes.

Q. Sure, it's the only one. They had no record of receiving anything from Telenor or ESAT?

A. Look, if somebody comes to you on behalf of a party, and asks you for a donation and then subsequently you wanted confirmation that the Party did receive the donation

Q. You get a receipt from the party.

A. Well, that would be one way, but you'd go back to the person and say look, did Fine Gael definitely receive

this money?

Q. Come here, Mr. O'Brien, now, let me tell you this, you are involved in business and you know that accountants want receipts and documentation to back things, don't they? That's the way they do their business, boring as it may seem, but that's what they want.

A. Generally, yes.

Q. And the best evidence that an accountant would have, or a lawyer would have that a donation was made to Fine Gael here, as was being represented, would have been to receive an acknowledgment from Fine Gael, isn't that right?

A. Not always, Mr. Coughlan.

Q. I see. I see.

A. If I go to a lunch, okay, I buy a table for a political party, I don't necessarily get a receipt.

Q. But, Mr. O'Brien, you have made donations to political parties and you have received receipts, haven't you, from political parties?

A. I would have to look in my file, but in maybe one or two cases, no, I didn't.

Q. I see. You didn't?

A. No.

Q. Were these I won't go into that for the moment, but you made some very publicised donations in recent times, like in the recent past?

A. Since my windfall 18 months ago.

Q. Can I take it you received acknowledgment from political parties in respect of those, those who accepted them?

A. I'd have to check whether I got receipts though, Mr. Coughlan.

Q. Did anyone, anyone come up with a simple suggestion that rather than bother poor Mr. Austin who was very ill, just get on to Fine Gael and see if it went through?

A. First port of call, logically, was Mr. Austin.

Q. I see.

A. And if he couldn't give us a confirmation, well then, we would have got on to Fine Gael.

Q. If he couldn't give you confirmation, you were scuppered, weren't you? It hasn't gone anywhere?

A. We always believed it went to Fine Gael.

Q. Why did you believe that?

A. Because Mr. Austin was collecting money on behalf of Fine Gael. We had no reason to believe that he would not give money to Fine Gael, that he was collecting.

Q. So why did the issue arise?

A. That it was just dotting the Is and crossing the Ts.

Q. That's all it was?

A. Yes.

Q. That's all it was?

A. As far as I can recollect, that's what it was for.

Q. All right, we'll come back to it so.

Who drafted this particular document? Who gave

Mr. Austin those words?

A. I don't know whether somebody drafted that or whether

Mr. Austin came up with those words.

Q. Somebody must have told him what they were looking for.

A. Well, you are going back to the original question, who approached him? And to the best of my memory, I told you who the people that could have approached him are.

Q. And how would they know what to look for?

A. They would have been told, get confirmation that Fine Gael received the Telenor donation.

Q. This was just a simple issue, so, as far as you were concerned, just dotting the Is and crossing the Ts?

A. It was I was in the middle of a road show, I keep coming back to this and it's probably boring for you.

But I was in the middle of a road show where everybody else was working on the actual prospectus and making sure that we dotted all the Is and crossed the Ts.

Q. Mm-hmm. What does it prove? Or what were you told it proved?

A. It proved that Fine Gael received the donation.

Q. Does it?

A. Well, I am trying to read it on the screen, which is not great, but I'll have another go if I could get an original.

Q. It causes a bigger problem really, doesn't it?

A. What are you referring to?

Q. Well, what is said is:

"To whom it concerns, I confirm that as Chairman of the fundraising committee for a dinner held in the 21 Club in New York in December 1995..."

A. Mm-hmm.

Q. There was no dinner in December of 1995 and you knew that, of course, yourself beforehand?

A. Pardon?

Q. You knew that there was no dinner in December of 1995.

A. I would never I mean, I wouldn't have known whether it was November or December in 1997, but at the time in question, when you opened my evidence today, I knew that the dinner was on the 9th November. Obviously, this is a mistake on Mr. Austin's part.

Q. Or on what somebody was telling him?

A. Well, I don't know whether Mr. Austin was given the words to put on a piece of paper, Mr. Coughlan.

Q. And if we just move it along again, it states that: "I duly forwarded these funds to the Fine Gael Party."

A. That's right.

Q. Anyone reading that in the normal course of events would be, perhaps, entitled to be of the view that what Mr. Austin was saying here, that he passed on the Telenor donation to the Fine Gael Party.

A. That's what it looks like.

Q. And also, that the people who received it would know?

A. Again, I don't know how Fine Gael accounted for donations, whether I mean, I know now that apparently that this was viewed as a David Austin donation. But at the time, we didn't know that.

Q. Now, you have told us that in May of 1996, prior to the Shareholders' Agreement being concluded, you agreed, as a shareholder in ESAT Digifone, to be charged with an inappropriate donation, isn't that correct?

A. In the context of all the other issues that we had and disagreements on a Shareholders' Agreement, yes.

Q. Okay. When this issue arose again on the question of the IPO, this was an ESAT Digifone issue, isn't that correct?

A. No, it wasn't ESAT Digifone that were floating. It was ESAT Telecom.

Q. I understand ESAT Telecom were floating, but the issue was an ESAT Digifone issue, this particular donation or contribution. It was ESAT Digifone had accepted responsibility when they picked up the payment themselves, isn't that right?

A. Well, this would never have arisen in terms of getting a letter. It was only because we were doing an IPO.

Q. And it was brought to the attention of the directors, isn't that correct, of ESAT Digifone by one of the shareholders, Telenor?

A. Yes, that's my recollection.

Q. And they still had a concern about it. Sorry, they

had a concern about it. It was they brought it to the attention of the directors.

A. Yes, they did, they raised it.

Q. Can I take it that you have some idea what their concern was?

A. Well, their concern was, let's make sure that Fine Gael actually received the donation. That was the concern, from what I can remember.

Q. So their concern was not directed to the appropriateness or otherwise of it. Their concern was directed, as you understand it, to whether it had got to Fine Gael?

A. Well, we were very clear, Mr. Coughlan, that we did nothing. There was no illegality in making a political donation. And that's why it was put into the prospectus.

Q. No, I wasn't talking about it being illegal to make a contribution to a political party at all, Mr. O'Brien. You yourself used the term "inappropriate."

A. At the outset, yes.

Q. Which would mean not all contributions were inappropriate of course, but that inappropriate might mean improper in the circumstances, for example, and you related it to the proximity of the donation to the announcement of the award of the licence, isn't that correct?

A. What's your question, Mr. Coughlan?

Q. Isn't that what you did in you said it was inappropriate because of the proximity of the donation to the award or the announcement of the award of the licence?

A. I said it was inappropriate, yes, at the time. I believed it to be inappropriate.

Q. And you still believe it?

A. Yes, I do.

Q. Now, in November of 1997, either by yourself or through your agents, the documentation that we have been discussing here today was brought to your attention?

A. When you say by myself, how do you mean by that?

Q. You saw it or somebody told you the content of it?

A. Somebody told me the content of it, probably more likely.

Q. And all of the documentation was available at that stage, isn't that correct? All of the invoices we have been discussing today?

A. That, I do not remember.

Q. Well, perhaps we'll come back to it when we ascertain whether that was so. But now, when you see all of the invoices that we have been discussing here today, do you have any further view about it?

A. Other than what I have explained to you in the course of my evidence today, no.

Q. I just want to, because Mr. O'Brien, unfortunately, I won't finish today and we won't be sitting, I think,

Sir, until Tuesday the 12th again, whether it might be appropriate at this stage, because I was going to move on to something else.

CHAIRMAN: Well, it seems, even as regards concluding the immediate phase and affording other counsel an opportunity to ask any questions that arise, it's going to take us some considerable time further, having regard to the length of the day, the commitments for our stenographer who has no relief, I don't think a great deal can be achieved in proceeding further today.

I think, Mr. Coughlan, it is the situation, we have explored the possibility of sitting through next week.

A number of interested persons have indicated that their legal advisers are simply not available and while the Tribunal will be working all next week, it's not feasible, having considered it, to hold public sittings. So Tuesday week will be the earliest resumption.

There are a considerable number of other matters that will be canvassed over that period, including steps I propose to see that the Irish Nationwide Building Society provide appropriate evidence to indicate what, at present, appears to be a less than adequate response in relation to the operation of their offshore subsidiary regarding a client who was furnished with correspondence. These and other matters will be taken up, so we are adjourned until that date.

Thank you very much, Mr. O'Brien.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 12TH JUNE  
2001, AT 10.30AM.