

A P P E A R A N C E S

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Mr. Jerry Healy, SC

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I N D E X

Witness: Examination: Question No.:

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 29TH
OCTOBER, 2003, AT 11 A.M.:

CONTINUATION OF EXAMINATION OF OWEN O'CONNELL BY
MR. COUGHLAN:

CHAIRMAN: Good morning Mr. O'Connell.

A. Thank you.

Q. MR. COUGHLAN: We will just take up first of all,
Mr. O'Connell, I think you brought to the attention of
the Tribunal when you gave evidence yesterday about
the draft of the letter from Mr. Haga to Mr. O'Brien,
that is the draft of the 19th September, 1995. You
made reference to the fact that there was a fax sheet
attached to that and you brought that to the attention
of the Tribunal this morning?

A. Yes, Mr. Coughlan.

Q. We will just put that up. And it seems to be a draft
to Mr. O'Brien from Per Simonsen "draft letter is
agreed", isn't that right?

A. Yes, and there is a strap line at the bottom, "the
21st".

Q. Yes. At the bottom. I think that is dated the

A. The 21st September.

Q. The 21st September. Turn it around, please yes. That
is the 21st September, 1995 at 13:38. It is a
Norwegian number I think, isn't that right?

A. Yes, I think so.

This isn't this wasn't to you, so it is not a matter I am going to take up with you. Mr. O'Brien can deal with it in due course. There is no fax banner note on that?

A. No, there isn't.

Q. There isn't?

A. No. The two sheets, though, were in that order on my file.

Q. On your file, the two sheets were in that order on your file?

A. Yes.

Q. Yes. Now, I think yesterday we had stopped at the document at Tab, I think it is 69, that is the letter returning Professor Walsh's letter to Denis O'Brien, isn't that correct?

A. Are we in Book 48?

Q. I beg your pardon, Book 48.

A. Yes, Tab 69.

Q. Tab 69. That is the letter to Mr. O'Brien returning Professor Walsh's letter, isn't that right, from Mr. Martin Brennan?

A. Yes.

Q. Now, I know yesterday you informed the Tribunal that notwithstanding that it was sent back, the view was that at least it was in the mind of, you believed, the writer, because they sent it back and must have read it?

A. Yes.

Q. And/or the Department?

A. Yes.

Q. Yes. Do you remember any discussion about the first paragraph that it seemed to be in breach of the conditions of the competition or the rules of the competition?

A. I am afraid I don't, Mr. Coughlan, no.

Q. Now, if we go to Tab No. 70, I think. This is Mr. O'Brien writing to Mr. Prelz. I think we may have touched on this, and he is telling Mr. Prelz that:

"As I explained to you at our meeting yesterday and telephone conversation last week, your letter to Telenor and to the Irish authorities did not satisfy them.

You know of my commitment to secure the second GSM licence, and the crucial importance of meeting the condition in relation to our financial standing.

This is why it was necessary to make alternative arrangements."

A. Yes, I think Mr. O'Brien had written earlier to Mr. Prelz as well, hadn't he, in

Q. Yes. In fact it looks as if there is a note at least that he had a meeting with Mr. Prelz on the 11th August I think perhaps as early as the 11th August, and at that stage had informed Mr. Prelz that Advent were in breach of the agreement in that Telenor hadn't

accepted the letter, I think

A. Yes, I think that followed the events around the 4th August when Telenor hadn't accepted the Advent letter and had threatened to prevent the bid going in.

Q. Yes. Yes. I think it is Tab 61, Ms. O'Brien refers me to, it is a letter of the Tab 61, sorry.

A. Yes.

Q. He is writing to Mr. Prelz then. He attached Telenor's letter, of course.

"Regardless of Telenor's position it is now clear that we will not be awarded the GSM Licence with the existing financing arrangement. We need something much stronger to have any chance of success. I am working on another avenue which could provide us with an answer, and at the same time, significantly strengthen our bid in other respects. I will explain in further detail when we meet."

Can you throw any light on that?

A. Well, clearly it follows the definitive Telenor rejection of the Advent letter

Q. That was one thing?

A. Of the 15th September.

Q. Of course, yes.

A. And presumably it is also written in the context of the imminent deal with IIU.

Q. Yes. But the Telenor letter is one thing which he says is self-explanatory. He is saying regardless of

that

A. Yes, I see that.

Q. He is saying we need something much stronger, regardless of that, whether that could be got over or not, I don't know, but regardless of that we need something much stronger to have a chance of success.

A. Yes, I see that. I can't throw any light on that, I am afraid.

Q. You can't throw any light on that?

A. No. Beyond, I suppose, a general view at that time that the Communicorp side was weak.

Q. Mm-hmm. Because on the 18th, when he, when Mr. O'Brien and Mr. Buckley came to see you

A. Yes.

Q. they said that they needed an underwriting letter for the Department?

A. Yes, they did.

Q. Isn't that right?

A. Yes.

Q. You don't know, or do you, what discussions Mr. O'Brien had with anyone in the Department, or the Minister?

A. No, he never mentioned any to me.

Q. He never mentioned any to you?

A. No.

Q. Now, I think Tab 71 is just the formal notification of Advent at its head office, isn't that right?

A. Yes.

Q. Now, if you go on well first of all, I suppose, Tab 72 first of all. Telenor are writing to Mr. O'Brien on the 6th October, 1995 and they want to know about Bottin, isn't that right?

A. Yes.

Q. And then if you go to Tab No. 73, these are attendances made by Mr. Moran of Matheson Ormsby Prentice, who by this time had become Telenor's solicitors, isn't that right?

A. Yes.

Q. And this is the 10th October, 1995, and there is "Shareholders Agreement, IIU" arrow "Dermot Desmond."

And then "37.5, 37.5, 25 - IIU part of Shareholders Agreement - IIU have written letter to the

Department." Then "joint venture", I presume that is a reference to the Joint Venture Agreement.

"In-house lawyer, William Fry, Gerry Halpenny.

98FM/Denis O'Brien" and an arrow to Communicorp.

That must be indicating that the radio business is in Communicorp?

A. Yes, possibly.

Q. "Complete agreements - award of licence - choose one for long-term cooperation, Communicorp.

"Finalise this within two weeks. Minister's decision within 2 to 3 weeks. His recommendation" and there is something indistinct.

"Roof on bid is 15 million ceiling so that Telecom Eireann have to have that for first licence." Then, "Business plan".

Now, if we just go to the next attendance of Mr. Moran's, which is at Tab 74?

A. Excuse me, Mr. Coughlan, could I ask you has any evidence been given on the phrase "choose one or long-term cooperation"? Has it become clear what that means?

Q. Not at the moment. There is no evidence about that.

A. I see, thank you.

Q. Well, it is something that we haven't even raised at the moment, so I won't ask you about it because you may want to say something about it and perhaps the best way to do that would be for you to inform the Tribunal when you are not in the witness-box, so that we can take it up with other people who it needs to be taken up with before you say anything about it?

A. Yes, thank you.

Q. If you go to the Tab No. 74, then. Again this is another attendance of Mr. Moran's. And it is also the 10th and it seems to be an attendance on Per Simonsen, I think, with Michael Irvine, we think.

"Esat Digifone bid to Department in writing and verbal proposal.

"Communicorp." Then to the right, "Michael Walsh, Dermot Desmond, Int. Investment will underwrite the

Irish part of the bid. Communicorp." Then it has
"political contacts, Motorola less jobs Shareholder
Agreement Telenor drafted William Fry, Gerry
Halpenny."

Then "1" the break up again, "Communicorp 37.5,
Telenor 37.5, IIU new party 25% + underwrite
Communicorp that is a dual role.

"IIU letter to Department and understanding between
Telenor and IIU. Complete and to negotiate agreement
on award of contract. You would talk to three firms
of lawyers. Schedule finalise agreement within two
weeks. Decision end of November 1995 " I think that
was the publicly stated position?

A. Yes.

Q. "In fact, decision two/three weeks.

Andersen Consulting Denmark.

EU procurement rules observed 15 million ceiling."

Now, do you have any recollection of any talk about
the decision being in advance of what had been
indicated in public, public statements by the
Department?

A. No, I don't, I am afraid.

Q. Can you assist the Tribunal or throw any light as to
why it was being indicated to Mr. Moran that the
decision was going to be sooner than had been
indicated?

A. No. The only thing which would be I have been

thinking about this the only thing which would be even remotely relevant, and I admit before saying it that it is not terribly relevant, is I do remember that on the Tuesday of the week in which the announcement was made, I think that would have been the 22nd, but I am not sure.

Q. Yes?

A. I was at a meeting with Denis O'Brien at which Communicorp's financial difficulties were being discussed and I even remember, I think Mr. O'Brien has given evidence on this before, but I even remember a discussion as to whether examinership might be a prospect and who the examiner might be. And then on the Friday the announcement was made and I think Mr. O'Brien was inundated with calls from bankers offering money and the gathering storm had dissipated. And I do remember thinking afterwards, by afterwards I mean when the whole issue of whether he knew and these Matheson Ormsby Prentice's notes and so forth came up, that it seemed to me he didn't know on the Tuesday that the announcement was that imminent, because if he had done, we would hardly have been having the meeting we did. But, as I say, that is very incidental, very indirect.

Q. Right.

A. It is all I can recall, I am afraid.

Q. You can't throw any particular light on this?

A. No.

Q. I don't know, but I suppose examinership would have presented insurmountable difficulties in terms of obtaining the licence?

A. Although it was quite a preliminary discussion, things hadn't come to that point.

Q. Now, if we go to, I suppose, the next tab, because I want to get the documents open. This is Tab No. 75.

This is Mr. Haga on behalf of Telenor writing to Mr. Walsh, isn't that right?

A. It is Mr. Digerud, I think.

Q. I beg your pardon, it is Mr. Digerud, you are quite right. And he copies to Mr. O'Brien, and he wrote:

"Dear Mr. Walsh,

"Although we have not yet had the chance to meet, let me take this opportunity to welcome you on board as a stakeholder in Esat Digifone Limited. We appreciate your underwriting of the Irish side of the bid and sincerely hope that this step will remove any doubt within the ministry about our consortium's financial capabilities and commitment in the race for the second GSM Licence.

"A matter of concern for Telenor is however, the side letter signed by Denis O'Brien and yourself on September 29th, especially Clause 2 assigning the Arrangement Agreement to Bottin International Investment Limited. In order to determine our

follow-up on this issue, we urgently need the

following information on Bottin:"

And then the particulars he seeks. Then he asked them

to forward the information to Mr. Haga or

Mr. Simonsen, or they could contact their legal

representatives in Dublin.

Then he goes on.

"As we intend to finalise the Shareholders Agreement

and Articles of Association within the next few weeks,

I will contact you within a short time to arrange for

the necessary meetings. I look forward to meeting you

soon."

It is signed by Mr. Digerud.

That is on the 12th October of 1995?

A. Yes.

Q. Now, the next document is Mr. Moran's advice to

Telenor. I don't think I should ask you to comment on

Mr. Moran's advice to Telenor

A. Okay.

Q. particularly. But I do want to draw attention to

the view being expressed by Mr. Moran at, on the

second page, the bottom item number 3. And then it

continued: "I have considered the contents of the

side letter dated the 29th September, 1995 which seems

to me clear evidence of a breach of good faith with

the Department. However, because it is not strictly

illegal I do not think that you can object to it on

legal grounds but rather on good faith grounds which I appreciate does not assist you in your discussions with Communicorp/IIU."

Now, because you had sight of the document and the drafts leading to the document, and you were aware that it was going to the Department I think, isn't that correct?

A. Yes.

Q. To you wish to make any comment yourself?

A. Just to say that I wouldn't agree with Mr. Moran.

Q. You wouldn't agree with Mr. Moran?

A. I felt, as I said yesterday, that the commitment had been given by IIU directly to the Department without mention of Bottin and I don't think there was any loss or breach of bad faith in respect of the Department. And indeed IIU and Telenor, months later, did enter into direct commitments to the Department, again without Bottin being involved.

Q. Yes, that's I was just going to come and ask you about that in due course. Where did Bottin go?

A. I think Bottin was never more than smoke. It is a personal opinion. Bottin came out of the woodwork periodically and disappeared back into it, but we never did track down exactly what Bottin was or what it was for. As I said yesterday, I always had the feeling that it was something to do with tax but no significant commitment which was expected of IIU was

never passed off to Bottin. IIU signed all the documentation and signed the Shareholders Agreement. It was referred to in all the board minutes. It signed the cheques. It signed the commitments to the Department underwriting Communicorp's position and so forth. IIU, despite its assignment of its obligations to Bottin on the 29th September, never actually acted in conformity with that assignment. It always stepped up and performed the consequences itself directly.

Q. I see. I appreciate that it performed them, but the assignment continued, didn't it?

A. Certainly the assignment was never, to my knowledge, revoked or reversed.

Q. Yes?

A. Yes.

Q. Now, I think at Tab No. 77 Mr. Digerud sent by fax to Mr. O'Brien a letter, isn't that correct?

A. Yes.

Q. Dated the, again, the 12th October.

"Dear Denis,

"Thank you for joining us at Telecom '95 in Geneva.

As you would have noticed, there is a great deal of attention an enthusiasm at all levels in Telenor regarding our joint GSM project in Ireland.

"We sincerely hope that the IIU underwriting will strengthen the financial credibility of the bid.

However, we were surprised by the side letter

agreement especially Clause 2" again this is making reference to Bottin?

A. Yes.

Q. And then it goes on: "Please also provide us (for our records) with a written statement that there exists no other agreements between any Communicorp Group company (or yourself) and any IIU controlled company (or Dermot Desmond/Michael Walsh) other than the two presented to us.

"We believe it would be a good idea to finalise the Shareholders Agreement and Articles of Association before the decision in the ministry is announced. We are prepared to do this either late next week or early November. Please notify us regarding what time would be most convenient for you."

Before I come back to that series of correspondence and in particular I am going to go back to Mr. Arve Johansen's memorandum, the one made after the meeting of the 3rd May where he makes reference to various matters which he says occurred around this time?

A. Yes.

Q. I want to bring you right on, in fairness, to deal with a memorandum made by Mr. Amund Bugge and it is at Divider 80A.

A. Yes, I see it.

Q. Now

A. This recently came to light, isn't that correct?

Q. Yes. And just explain to you as well, that just information provided to the Tribunal by Mr. Bugge in recent times by means of telephone communication and it hasn't been fully circulated yet. But I think Mr. Bugge if you just listen to me for a moment then we will go to the memorandum Mr. Bugge has informed the Tribunal that he was on vacation up to and including the 27th September, 1995, when he travelled back to Oslo. He returned to work on Thursday the 28th September, 1995. Now, he has informed sorry, in a memorandum prepared he says that by early on the morning of the 29th September, 1995, the Arrangement Agreement was signed by Denis O'Brien on behalf of Esat Digifone. Now, his solicitor has asked me to correct that to this extent, that it may have been on the evening on the 29th rather than early on the morning that it was signed by Mr. Denis O'Brien.

He has informed the Tribunal that this was a fait accompli. Denis O'Brien was all the time far ahead of Telenor in the process the quick signing of the Arrangement Agreement took Mr. Bugge by surprise. Mr. Bugge was not informed about a side letter assigning certain obligations to Bottin International Investment Limited until probably sometime in the following week. He is confident in his recollection that he was not told about Bottin International

Investment Limited on or before the 29th September, 1995. And he has informed the Tribunal that with the exception of certain inquiries for publicly available information about International Investment and Underwriting Limited and Bottin International Investment made by him probably sometime after the 29th September, 1995, he found no information because there was no information publicly available.

Mr. Bugge depended on sources of information inside Telenor. These sources were Per Simonsen, in particular, from whom most information was received, and also from Knut Haga and Knut Digerud.

Mr. Bugge had heard references from sources within Telenor, probably Per Simonsen, to Dermot Desmond being in some difficulty with Irish authorities, but then he had now been rehabilitated. We will see that coming up in the memorandum in a moment. That that matter, whatever else, had been resolved. He is unable to identify when he received this information but he is quite sure it must have been after the 29th September, 1995, probably sometime in early October. Now, I think I will open the memorandum and then continue to tell you what Mr. Bugge says because you see a reference here to Mr. Desmond in this particular memorandum and Mr. Desmond has been circulated with it. So I will go to the memorandum now. Just to bear in mind that Mr. Bugge says what he says about his

knowledge as of the 29th September?

A. Yes.

Q. I suppose that is the first thing I want to ask you to bear in mind.

Now, this is a memorandum prepared by Mr. Bugge and the place and date is Oslo, the 27th October, 1995.

And it is from Mr. Bugge, Telenor's legal Department, to Mr. Rolf Busch, whom we know to have been a more senior lawyer in the Telenor scheme of things?

A. Yes, I met him.

Q. Mr. Per Simonsen, whom we know to have been involved in the GSM bid here, and Mr. Knut Digerud. And the subject is "Status Ireland."

And it reads: "The Ireland project as per the 27th October 1995.

"My heart felt congratulations to Invest and Per Simonsen on the award from the Irish authorities.

"I have felt a need to go through the latest development in the case on the legal side and have summed up the situation as follows:

"1. The Licence.

The bid for the GSM II licence was delivered on 4 August 1995 in the name of the newly incorporated company Esat Digifone Limited (Esat). At that time Telenor Invest and Communicorp Group Limited each held 50% of the shares in Esat.

"On 25 October 1995, the Irish authorities announced

that the licence would be awarded to Esat. Before the licence formally can be awarded the authorities will complete a round of negotiations with Esat to clarify the conditions related to the licence in detail.

"2. The Shareholders Agreement.

"The Shareholders Agreement was almost finished before delivery of the bid, but disagreement on two or three issues prevented signature. The agreement has not been negotiated since, and the relationship between the parties is formally governed by the Joint Venture Agreement between Communicorp Group Limited (Communicorp) and Telenor Invest (Invest) of 3 June 1995 with the modifications described below.

"3. Financial Security for Communicorp's Obligation to Capitalise Esat.

"(A) The Problem.

"Communicorp has limited capital resources. At the time of the delivery of the bid a crucial point for Invest was to make sure that Communicorp will manage its obligation to capitalise Esat. The capital need of Esat is calculated to be in total IR£124 million, of which the equity shall represent £58.33 million. (The Irish pound is approximately Norwegian kronar 10). Considering that Communicorp's original owner share was 50%, the company would have to raise approximately IR£29 million. It was a presupposition that Communicorp's ownership should be reduced to 40%

and then to approximately 34%. Communicorp's financial contribution would still be significant in relation to the company's resources.

"(B) The Offer to Communicorp From Advent International plc.

"Invest principally wanted a bank guarantee for Communicorp's financial obligations, but had to accept security for a lower degree. Communicorp received an offer for financing from the fund Advent International plc, which owns 34% of the shares in Communicorp. Communicorp considered the offer to be unfavourable. The offer was not accepted by Communicorp, but Communicorp committed itself towards Telenor to accept it if financing on more favourable terms could not be achieved. We do not know whether the offer from Advent is in force today.

"(C) The Arrangement Agreement between International Investment and Underwriters Limited and Esat.

"After delivery of the bid, Communicorp has achieved financing from International Investment and Underwriting Limited of altogether 25% of the shares and the share capital. The financing obligation is in this case not towards Communicorp, but directly towards Esat. The Arrangement Agreement between Esat and IIU seems to give Telenor significantly better security for the capitalising of Esat than the above offer from Advent, and is as such relatively assuring.

The agreement was signed by Denis O'Brien (CEO of Communicorp and Chairman of Esat) on behalf of Esat, but Invest has accepted the agreement orally. IIU guarantees in the Arrangement Agreement to get hold of up to four shareholders who shall subscribe for the 25%. If IIU does not manage to find such subscribers, IIU will have to purchase/subscribe for the shares itself.

"As a consequence of IIU's underwriting for 25% of the shares, and the share capital, each of Invest and Communicorp have agreed to reduce its shareholding to 37.5%.

"Under the Arrangement Agreement IIU also guarantees for the 37.5% of the share capital which Communicorp shall raise. IIU's guarantee is limited to a total equity need in Esat of IRi½58.33 million. Under the Arrangement Agreement IIU thus guarantees for 25% plus 37.5% equal to 62.5% of the capital need in Esat, limited to an accumulated capital need for IRi½36.5 million. Invest has, as mentioned above, accepted this agreement.

"Is Communicorp obliged towards Invest to ensure financing of the same quality as the financing offer from Advent represented?

"(D) Two Points of Insecurity.

"Insecurity relates to particularly two circumstances.

"First, we have not obtained very much knowledge of

the guaranteeing party, IIU. The company was incorporated in 1995, and its credibility rests completely on its owner Dermot Desmond. He is a financier and has made his fortune on stockbroking and has, broadly speaking, been behaving well. He is said to have acted ill-loyally vis-a-vis the Irish authorities once before. This supposedly happened relatively long ago, so the authorities' confidence in him is now presumed to be relatively good.

"Second, insecurity has arisen with regard to the guarantee from IIU because of a so-called side letter to the Arrangement Agreement. This is an amendment agreement between Esat and IIU. The side letter was signed on behalf of Esat by Denis O'Brien. Under the side letter IIU assigns its position under the Arrangement Agreement to Bottin Investments Limited. (Bottin). According to O'Brien, Bottin is a wholly-owned subsidiary of IIU. Bottin is, however, not registered and it has proven difficult to find reliable information about this company.

"(E) Investigation from Invest about information.

"On 6 October this year Invest sent a letter to Denis O'Brien in which it asked for information of when Bottin was registered, the company's owners, the composition of the board, the balance as of 30 June, 1995, and the annual reports for the previous three years. In a letter from Invest to IIU of 12 October,

IIU was asked to present the same information. In addition, Invest asked O'Brien in a letter of 12 October of a confirmation in writing that there are no agreements between Communicorp or O'Brien on the one hand and any company controlled by IIU or Dermot Desmond/Michael Walsh on the other. Up until now, Invest has not had an answer to any of these letters. The representatives of Invest are not convinced that they will receive any of this information before they sit down to negotiate with IIU/Bottin and Communicorp.

"(F) Further Actions.

"If the assignment of IIU's contractual position to Bottin means that Invest in reality has no guarantee for the 62.5% of the capital of Esat, this will constitute a clear breach of Invest's premises for entering into the Arrangement Agreement.

"The worst scenario is that the guarantees are now without content. In such case, Invest may claim that Denis O'Brien was not entitled, on behalf of Esat, to assign Esat's contractual position (the Articles of Incorporation, Article 24 'borrowing powers'). Invest might, therefore, claim that Esat is not bound by the side letter.

"In addition, IIU has sent a letter to the Irish authorities in which IIU verifies the guarantees related to Esat. The transfer of the contractual position must at least constitute a breach of such

confirmation. According to the Irish lawyers engaged by Invest, the assignment may be considered as a breach of so-called good faith towards the authorities, but not a legal breach.

"The question is how strongly we shall react. Neither Invest nor Telenor wants to withdraw from the Ireland project now. If Invest does not soon receive acceptable answers from IIU or O'Brien, it seems correct at least to supplement the letters sent by Invest to IIU and O'Brien with stronger demands for information. As the licence has now been awarded to Esat, we must trust that it will show possible to obtain information from IIU and O'Brien by entering into direct negotiations with them.

"Invest is also under strong pressure from Communicorp and Denis O'Brien. He wants Invest to reduce its ownership in Esat. Invest refuses to do so, in part to keep its influence and in part to keep its part of the potential profit related to the shares in Esat as large as possible.

"The relationship between Telenor on the one hand and Communicorp and IIU on the other, may end in a deadlock situation either because of the discussion regarding the ownership shares or because of IIU's assignment of its contractual position to Bottin.

"It is of great importance that we now also obtain full clarity with regard to all financial obligations

and guarantees.

"4. Final Negotiations of the Shareholders Agreement.

"Invest has asked us when the Shareholders Agreement should be finally negotiated in light of the licence now having been awarded to Esat Digifone. I presume that the answer to this question must now be clear; the agreement must be negotiated and finalised as soon as possible. The task consists of clarifying the points which remain under the negotiations in August and to adjust the agreement to a three party agreement following IIU's entry to the consortium.

"Invest's Irish lawyers shall adjust the draft Shareholders Agreement to Irish law. It is also our intention that they shall join the final negotiations of the agreement.

"5. Practical Development of the Project.

"I have understood that Invest received a number of offers for deliveries of technical equipment within the deadline on Monday 23 October. Considering Esat's obligation to reach 80% of the GSM coverage in Ireland within one year, I assume the company should enter into the necessary and relevant agreements as soon as it has had an overview of the bids.

"Best regards on behalf of Telenor's legal Department.

"Amund Fougner Buggy."

I should also just bring to your attention, I think that Mr. Bugge has sent us his Practicing Certificate

as of March of 1995; I think he was a young lawyer?

A. Yes he was.

Q. Who had just a young in-house lawyer.

Now, I just want to bring that to your attention in the first instance. If you wish to make any comment at this stage, please do about anything in it, because I then want to go back to Mr. Johansen's memorandum prepared on the 3rd May, 1996, where he gives an account of events around September of 1995. Is there anything in particular, first of all, that you wish to address in that particular memorandum?

A. Yes, I think so, Mr. Coughlan, although this is I have a number of comments. My first most general one is really I suppose more a matter for the Tribunal itself than for me, but I would make the comment that I found it very difficult in researching my evidence of the past number of days, which has been based not generally on direct recollection but on the documentation I had, I found it very difficult to do so properly in the absence of much information from Telenor. It does seem to me, and it is a personal comment, that other parties have been much more forthcoming with information than has Telenor and it has been notable, in my view, that Telenor has tended to hold off until other parties have presented information before coming forward with their own and I would make the comment, that hasn't been helpful in

trying to assemble and understand a picture of this information in order to give evidence to the Tribunal.

On a more specific point, I would say that although obviously I accept that Mr. Bugge was on holidays, there is quite extensive correspondence, all of which has been furnished to the Tribunal, but not all of which is in this book, between the Communicorp side and the Telenor side, particularly in the period 23rd to 26th September.

Q. Yes, we certainly see the drafts. We see drafts

A. Yes, and comments back from Telenor. As I say, it is not all in this book but it has been provided.

Q. Yes.

A. So although Mr. Bugge may not have been fully informed, it is my view that Telenor, as a corporate entity, was fully informed in relation to the memo itself. There are a number of points with which I don't agree and which I think are mistaken. I mean, he talks about Telenor Invest and Communicorp each holding 50% of the shares in Esat at that time, meaning 4th August. In fact, Telenor Invest and Communicorp each owned 50% of the shares in Esat until April, 1996.

He talks about the Shareholders Agreement having been almost finished but disagreement on two or three issues preventing signature. I don't agree with that.

I think there was a great deal to be done on the

Shareholders Agreement at that time.

He talks about Communicorp's difficulties in financing, but I feel ignores what was already almost by this time becoming clear, that Communicorp would not have a financing difficulty because Communicorp did receive a number of calls from bankers immediately on and immediately after the 25th.

He talks about Invest principally wanting a bank guarantee for Communicorp's obligations but had to accept security of a lower degree. I would say that Telenor did not accept security of a lower degree, but persisted in seeking greater security.

He talks about the transfer of the contractual position constituting a breach of confirmation, that is confirmation to the Irish authorities we touched on that point a moment ago. I don't agree with his conclusion there.

Finally, really just having reviewed this as you went through it, but finally, he talks about the licence having now been awarded. Of course it hadn't been awarded. It wasn't to be awarded for another six or seven months after this memo was written. These are my immediate comments.

Q. I suppose the main issue is one that you did touch on there, that is that I want to review now, in light of this particular document, and in fairness, to a point that you had made, and I just want to tease it out.

He does go on to say that what is received now or what is in position now is of more security or comfort to determine?

A. Yes, it is.

Q. That is the point I want to bring to your attention.

But he does state that Telenor did want a guarantee?

A. Yes.

Q. But had to accept a security of a lesser quality, in effect, or comfort of a lesser quality, isn't that right?

A. I would say that he is wrong in that.

Q. That is an issue that I want to tease out with you there.

A. I see.

Q. Because there is no doubt that you have given evidence that there was certainly tensions between the parties up to and including the 4th August of 1995, when the bid went in?

A. Yes.

Q. Around that particular issue, isn't that right?

A. Yes.

Q. There may have been about many other issues as well, but around that issue anyway?

A. Yes.

Q. And Telenor was not happy with the offer, the offer from Advent, the letter from Advent, isn't that right?

A. The letter and the verbal offer as relayed to them.

Q. Yes. They were looking for, as you say, a guarantee or a commitment?

A. Yes.

Q. Nevertheless the bid went in?

A. Yes.

Q. And Telenor permitted the bid to go in?

A. Yes.

Q. I suppose it would be fair to say, and I am not getting into legal debate about this with you, but from a commercial point of view, that having happened, there was very little Telenor could do about it then, wasn't there?

A. I would not agree with that.

Q. You wouldn't agree with that?

A. I would contend that Telenor's position in some respects was strengthened at that point, not weakened.

Q. Right. Well, if you just bear with me for a moment and correct my thinking or line of inquiry at the moment. Telenor were the Norwegian were a Norwegian semi-state company, isn't that right?

A. Yes.

Q. In fact they were wholly owned by the Norwegian state, as far as I know, at that time?

A. I would understand the terms of semi-state in our context to mean

Q. The same as Telecom Eireann were or the ESB or any of those companies?

A. Yes.

Q. They had allowed themselves to be associated or be part of a bid which was being run by the Irish Government, isn't that right?

A. Yes.

Q. It would have been, I suggest to you, been extremely difficult and embarrassing for them, leave aside going to court and having a dispute with Communicorp, but it would have been extremely difficult and embarrassing for them to have pulled out of the bid, bearing in mind who they were and that this was a competition being run by a government of another state?

A. I am afraid I don't entirely agree.

Q. Right.

A. Nor would I leave aside, as you put it, the prospect of going after Communicorp. Telenor could, as I said in my letter of the 17th August, I simply said that regrettably their Irish partner had failed to perform the financial commitments it had undertaken in the Joint Venture Agreement and they would have no alternative but to pull out. I don't think that would have created undue embarrassment for Telenor. More to the point, I think Telenor could have sought to enforce the terms of the Joint Venture Agreement. And indeed, I think the principal fear which drove Denis O'Brien into the arms of IIU was precisely that, that Telenor would use Communicorp's failure to provide the

guarantee to which it had committed to take control of

Esat Digifone.

Q. I understand that point. Yes.

A. So I would say that once Telenor had permitted the bid to go in, because Communicorp no longer had the option, to the extent it however unrealistically had beforehand, to go without Telenor, Telenor's position in overall terms was commercially and legally strengthened because there was no waiver in their consent to the bid going in of their entitlement to the guarantee.

Q. Oh, yes. But they acquiesced, would be a fair way of putting it?

A. They acquiesced in the bid

Q. There is a letter from Mr. Johansen I should perhaps bring your attention to it. This is one that Mr. Johansen and Mr. O'Brien will have to give evidence about because there may be a disagreement as to who was responsible for the whole letter or portions of the letter. I'll leave that aside for the moment. That is not your concern.

I think it is at Divider No. 68.

A. Yes, at 68 I have a press release document.

Q. Yes. I beg your pardon.

A. 69.

Q. Divider No. 68, I think, in Book 48, I think?

A. At 69 I have a letter of 2nd October, '95, from Mr.

Johansen to Mr. O'Brien.

Q. That's the it is a two-paged letter, isn't that right?

A. Yes.

Q. Yes. Very good. That is the letter which commences "Referring to our meeting Friday last and following phone conversations..."

A. Yes, the one on screen.

Q. Yes. Again, it is the fourth paragraph of that letter, I think we looked at it before but I just want to bring it to your attention.

"At an early stage of our collaboration, we made our concern clear regarding Communicorp's ability to fund Esat Digifone. After considerable pressure, Advent's comfort letter and your own acceptance letter was presented to us and the ministry. Even though the content of these letters were not very satisfactory, we decided to submit the bid due to the time constraints."

A. Yes.

Q. Now, we know about the Advent comfort letter, and we looked at another letter, one signed by Mr. O'Brien, which you were of the view, of a similar view to mine, that it could cause confusion as described here by Mr. Johansen as being "Your own acceptance letter were submitted to us and the Department." And notwithstanding that Telenor considered them

unsatisfactory, nevertheless they decided to submit

the bid due to the time constraints.

Now, wasn't that a complete acquiescence in the

situation which then prevailed by Telenor?

A. No, I don't think it was, Mr. Coughlan. I think that

Mr. O'Brien hoped that by acquiescing to the extent of

allowing the bid to go in

Q. Yes?

A. Telenor would make that, as you put it, a complete

acquiescence, in other words would acquiesce in the

non-production of the guarantee, but in fact they

didn't do so. And there are meetings and

correspondence subsequent to the 4th August when the

bid was submitted in which it was clear that Telenor

were continuing to press for the compliance by

Communicorp with its obligations under the June

agreement.

Q. I appreciate there may have been such disagreements

going on between the parties, Communicorp and Telenor.

What I am asking you or inquiring about at this stage

is what Telenor could in reality have done vis-a-vis

the Irish state. That is really the issue here.

Weren't Telenor and Mr. O'Connell, I suspect you

were probably of the view that once the bid went in,

Telenor were tied in?

A. I was of the view that there was very little upside

for Telenor in pulling out in the period between the

4th August and the announcement of the competition outcome.

Q. The competition?

A. Because they really had nothing to lose, in the sense that if Esat Digifone wasn't awarded the licence, then the absence of the guarantee was immaterial, there would be no requirement to spend the money guaranteed, and if Esat Digifone won the licence, then Telenor would have at almost no cost to that date

Q. Got in

A. a carried interest in the licence because Communicorp had spent more than they had on it. So I do agree that in the period between the 4th August and, as it turned out, the 25th of October, there was no logical reason why Telenor would pull out, but I also feel that Telenor never did and never intended to give up their entitlement to the guarantee, and had a guarantee not been, or a commitment, let's put it; had a commitment not been provided, then I believe that on the 25th October, Telenor would have sought to enforce against Communicorp its right to a guarantee, possibly in order to secure its own downside risk. Because whatever the ultimate benefits of the licence, as they since proved to be, at that time the winning consortium was looking at a massive capital cost, or perhaps as a way of inducing Communicorp to cede control, majority control of the project to Telenor.

So I believe the events of mid-September, 1995, were merely a case of Telenor perfecting its position vis-a-vis Communicorp in the event that the licence was won.

Q. Yes. So am I correct in understanding your view during this period, that is the period from the submission of the bid to the announcement of the result on the 25th October, that there was no benefit for Telenor in withdrawing?

A. Yes. I think that is what I would have concluded. I can't today remember thinking that then, but....

Q. In fact your letter of the

A. the 17th August

Q. the 17th August?

A. lays that out.

Q. lays that out?

A. Yes, it does, yes.

Q. And what you are effectively saying to them, look there is no downside at the moment for you and lay out the various scenarios?

A. Yes.

Q. It was clearly the thinking of somebody that there was the potential for massive instability inside in the consortium, is that right?

A. I am not clear what you mean.

Q. A massive instability which related to Communicorp's lack of access to funds?

A. Yes.

Q. And the effect of that could be that Telenor could exert enormous pressure once the competition was announced and in reality once the competition was announced and negotiations commenced, the longer it went on, the state were tied in as well?

A. I am not sure the state were tied in because Persona were very strong. I mean, the very first meeting we had with the state, they went to great lengths to emphasise the availability and eagerness of Persona well they didn't name Persona, they called them the second ranked consortium to come in.

Q. Of course.

A. I think the state had options all along. Now, whether those options were legally enforceable is another matter, but in practical terms they had options.

Q. That is the point I am making, yes. I am just trying to understand your thinking and I would have thought that that would be the type of thinking you would have had during that period.

So it wasn't anything that occurred on the 12th August or the 12th September, 1995, namely the presentation, and it wasn't any letter that was received from Telenor, whether it be a letter dated the 15th or a draft of the 19th, but the one that ultimately went to Advent on the 26th, which was the notification that they weren't happy with the offer or the letter of

comfort; it wasn't any of those things that prompted the involvement of Mr. Desmond, isn't that right?

A. Oh I think it was.

Q. The one thing that was going to be problematical, I suggest to you, was that if there was going to be any dispute or struggle between Telenor and Communicorp if the licence was, if the competition was won, was that the named financial institutions or similar type institutions would take a fairly neutral role in relation to a company like this, isn't that so?

A. They might or might not have done, but underlying that issue was the fact that by virtue of the Joint Venture Agreement if and to the extent that any of the named institutions didn't come in, Telenor, not Communicorp, had the legal right to name their substitutes.

Q. Yes. So I suggest to you that that was the motivation to exclude them?

A. No. The I am sorry, my understanding of the position, as I tried to explain it yesterday

Q. Yes?

A. Was that events of mid-September made it clear to Communicorp that Telenor were continuing to seek to enforce their right to a guarantee.

Q. What specifically do you refer to there? Was it a meeting on the 11th?

A. It was.

Q. This was the day before the presentation, I think you

said there may have been a bit of confusion?

A. It was the letter of the 11th.

Q. Yes?

A. It was the aftermath of the presentation on the 12th.

It was the letter of the 15th, but going back to it was the letter, it was the letter, sorry it was the meeting with Mr., I am getting tied up between August and September now, it was the events of the 11th August and Mr. Bugge's call to me seeking the opinion and my letter of the 17th. I will have to go back into my file but there were various events after the 4th August. They made it clear that Telenor were continuing to assert their right to a guarantee, a right which Communicorp could not vindicate.

Q. Yes?

A. That set up Communicorp for an assault by Telenor if and when the bid was successful. It put Communicorp in the position of being in the wrong position legally vis-a-vis Telenor. For that reason, in my view, Communicorp had to find and give a commitment. It was not to do with replacing AIB and indeed if AIB and the others had given legal commitments they would have been fine because that would have taken Communicorp out of its difficulty, but there was never any realistic prospect.

Q. How would that have taken Communicorp out of its difficulties as regard its requirement to

A. I meant if AIB and the others had given a commitment similar to what IIU had given.

Q. Sorry, I beg your pardon. But I will come to that in a moment.

A. Okay.

Q. Mr. O'Brien, according to Mr. Dermot Desmond, attended a football match with him in Glasgow on the 10th August?

A. Yes.

Q. And it was at that football match that discussions initially took place between Mr. O'Brien and Mr. Desmond?

A. Yes.

Q. This was before any of the events you have referred to?

A. No, it was after the, after the crisis of the 3rd and 4th.

Q. But am I not correct in understanding that the bid went in notwithstanding the unsatisfactory nature?

A. Yes.

Q. And as I understood your evidence to date, Mr. O'Brien hoped and believed that things had been sorted out or that the problem had gone away, if I could put it that way, until matters occurred on the 11th August?

A. I think

Q. That was the letter?

A. I think he hoped they had, I am not sure he believed

they had. I think he was just taking out insurance in the conversation with Dermot on the 10th, and in the outline agreement he sent on the 11th.

Q. Yes. So he told Mr. Desmond, according to Mr. Desmond anyway, that they had a good team, had made a good presentation I think that must relate to the bid, we will clarify that.

He had difficulty because of lack of commitment from the financial institutions, I think is what he told Mr. Desmond, or words to that effect?

A. I see.

Q. Now, there had never been an indication from the Department that there was a difficulty with the financial institutions, isn't that right?

A. Okay.

Q. You never heard it anyway?

A. I heard that there was a difficulty in terms of financial strength.

Q. No, I am asking specifically now about the financial institutions?

A. The financial institutions' letters.

Q. Had you ever heard or had anyone informed you that there was a difficulty inside the Department about those?

A. No.

Q. Now, the in any event, it was from the 10th on that matters evolved, and Mr. Desmond became involved in

the events, isn't that right?

A. As far as I am aware, yes.

Q. That is as far as I am aware at the moment anyway,
that is

A. Yes.

Q. There may have been some previous discussions earlier
between Mr. Walsh and Mr. O'Brien relating to some
financing of other businesses totally unconnected with
this, but we can put that aside.

And matters then proceeded and the presentations
occurred on the 12th September of 1995, isn't that
right?

A. Yes.

Q. Now, you weren't at the presentations?

A. No.

Q. What were you told was the financial or the
difficulties about the financial strength of
Communicorp as emerged from that presentation?

A. I can't recall anything specific, but I don't have the
sense, in general terms, that I was told there are
financial problems with Communicorp. I think I was
told there were financial problems with the bid,
probably that the Communicorp side was too weak and
possibly, although I don't know, that the letters from
the banks were non-binding. I am speculating now. I
don't recall

Q. I want

A. what I was told.

Q. I want you to be careful about this because we actually have the tapes of the presentation and we have listened to them. I want to be sure what you may have been told and the basis on which you acted.

A. Well then

Q. Because you are a solicitor, I just want to be very careful about this.

A. The strictly truthful answer is that I can not recall what I was told, but I have a general sense of having been told there was a view that there was too much financial weakness in the consortium. And that would have been bolstered subsequently by the letters from, the various letters flying around, both from Mr. O'Brien and from the Telenor side referring to such matters.

Q. I have to ask all those people about those letters because we know from listening to the tapes, which we listened to here in the Tribunal, and the transcript, that it was a very short portion of the presentation dealing with the financial position, and that what was sought was clarification about Advent's, Advent's money and Mr. O'Brien's statement that he had an agreement in respect of it. That's all. There was a bit of discussion with Mr. O'Donoghue, it was a technical matter, about solvency and the legal position, that the position was under the company's

position, whilst it might be in breach of company law, was being underwritten by the two parent that was the discussion. Were you ever told that?

A. I can't remember whether I was or not. I wasn't conscious of being told. I am not conscious now of having been told.

Q. Because listening to the tapes and hearing evidence from all the witnesses, nobody on the assessing side has indicated that that presented itself as a problem. There may have been a necessity to tie down whether Advent's increased share interest in Communicorp would not cede control of the company to them, but Mr. O'Brien indicated that that was all sorted out and that he, he would have, I can't remember what it was, a 2 to 1 voting right?

A. Yes, he often referred to that when questioned about his verbal offer from Advent.

Q. Yes. No, no, he was never asked about a verbal offer.

A. I am not saying he was asked at the presentation. I am saying that when, in discussions with Mr. O'Brien about his verbal offer from Advent, he would often refer to the voting arrangement that he had reached with Massimo Prelz.

Q. The voting arrangement?

A. Yes.

Q. Tell us about that verbal offer, as you know something about it. That is the first time we have heard about

it.

A. Oh, yes. As far as I recall, if you remember from my earlier evidence, Denis always asserted that as well as the comfort letter from Advent, he had a verbal arrangement or understanding or commitment, if you like, from Mr. Prelz in regard to the 30 million, and that is what he always said was the offer.

Q. Mm-hmm.

A. Now, he also said that as part of that offer, there was an arrangement between himself and Mr. Prelz, that irrespective of the valuation which was put on Communicorp for the purpose of the subscription of the 30 million he, Mr. O'Brien, would retain voting control of Communicorp.

Q. Mm-hmm.

A. A similar arrangement to what he later negotiated with the American institutions in the CSFB placing, I imagine.

Q. Now, you say that after the presentation there was unhappiness in Telenor about what had transpired at the presentation, isn't that right?

A. I think I said there was general unhappiness in Esat Digifone, which I presume would include Telenor.

Q. Sorry, so there was unhappiness well tell me who was unhappy.

A. I can't honestly remember now.

Q. Oh, Mr. O'Connell, now this is very serious matter.

You are a solicitor and a solicitor to the company at the time. This was a serious matter and are you saying you can't remember?

A. It was seven years ago, Mr. Coughlan.

Q. I understand that, Mr. O'Connell. You are a trained lawyer. Try. Who could have expressed unhappiness and what was that unhappiness?

A. Well any member of Esat Digifone consortium could have expressed unhappiness. As to which once did, I cannot now recall.

Q. All right. What was the unhappiness as expressed to you?

A. The unhappiness was that the bid was weak financially.

Q. That is not what you told us. You told us before, Mr. O'Connell, that there was unhappiness about what had been asserted by Mr. O'Brien that he had a commitment.

A. That is what I told you Telenor were unhappy about.

Q. Only Telenor?

A. I said I speculated that Telenor were unhappy about.

I said I didn't say I knew that Telenor were unhappy about it.

Q. Did anybody else in Esat Digifone express unhappiness to you about what had been asserted by Mr. O'Brien?

A. I can't recall.

Q. You can't recall.

Now, let's now look at Mr. Arve Johansen's memorandum.

Book 49, Tab 130.

Now, sorry you refer to this particular in your own document as well, but if we just look at it here for a moment.

This was made by Mr. Johansen on the 4th May of 1996,

I think, just to bear that in mind. It is a memo of shareholding in Esat Digifone. He says:

"I have below summarised a few points that have become clear to me over the last 24 hours as a consequence of the information acquired regarding Communicorp's attempt to buy back 12.5% of the IIU shares.

"1. Denis O'Brien came personally over to see me in Oslo probably sometime during September last year."

I think we can fix that date as being the 22nd September. Mr. O'Brien, in his diary you can take it that it was the 22nd September.

"He informed me that, based on information from various very important sources, it was necessary to strengthen the Irish profile of the bid and get on board people who would take a much more active role in fighting for Digifone than the 'neutral' banks who basically would like to keep a good relation to all consortia.

"I accepted Denis's word for the necessity for this new move. Note: Underwriting was never used as an explanation."

Now, if Mr. Johansen is correct that that is what

happened, did anybody inform you that there was information from some very important sources that it was necessary to strengthen the Irish profile of the bid and get on board people who would take a much more active role in fighting for Digifone than neutral banks?

A. Not that I can recall, no.

Q. "2. IIU should apparently be the ideal choice for this function. The only string attached being that they had demanded a 30% equity participation 'for the job'. Denis had managed to reduce this to 25%, but it was absolutely impossible to move them further down. This was a disappointment to us, since everything we had said and done up to then had been focused on at least 40% ownership for the principal shareholders at the time and the issuing of the licence. But not only that: Denis then pushed very hard for Telenor to swallow 15% of this and Communicorp only 10% to which I never agreed but I accepted the principle of 'sharing the pain' and maintaining equal partnership (37.5%/37.5%) and it was also said that a too high Telenor ownership stake would be seen as aggressive and could be inhibiting the award of a licence."

Now, can I take it that nobody ever suggested that to you or that you were of that view?

A. No. Although I was aware that Denis wanted to

increase his shareholding.

Q. I appreciate that. And I can see Mr. O'Brien's but nobody had ever indicated to you, nor was there any currency attaching to a proposition in Dublin that too high a Telenor ownership would in any way jeopardise the bid?

A. No, I don't think so. There would have been a general understanding that Irish ownership was a good thing, but nothing beyond that.

Q. Yes. So can I take it that it was always, or was it, to your knowledge, always to be that Mr. O'Brien wanted to increase his shareholding?

A. I don't know about always, but it was certainly a frequent theme.

Q. As and from when?

A. I can't recall exactly. Quite early on. Certainly the CSFB financing lent impetus to it because they did want to be able to consolidate the Esat Digifone's result, but that was later.

Q. Well, there was negotiation with CSFB from May or June of that year, isn't that right?

A. I wouldn't have known when CSFB first raised the point. I wasn't in direct dealing with them.

Q. Right. Right. Now, I don't think I need to go into the rest of this at this stage, but just there, Mr.

Johansen is outlining how the events unfolded, that

Mr. O'Brien came to him and told him from very high,

or from very important sources. There is no indication there that Telenor were looking for a guarantee at this stage or otherwise that they were going to pull the plug?

A. No, but this is May; it was long passed it. He is writing this in May, 1996. The question of the guarantee was long gone.

Q. Yes. But as to the reason for the involvement of IIU; the reason for the involvement of IIU is that Denis O'Brien had informed him, this is according to Mr. Johansen, that very important sources, I think in his statement Mr. Johansen might refer to ministry source or words to that effect, but very important sources

A. Yes.

Q. had told or informed or got a message to Mr. O'Brien that they needed to strengthen the Irish profile and to get on board people who would take a more active role in fighting for Digifone than the neutral banks. You never heard of anything like that?

A. No.

Q. But that appears to be the reason why Mr. Johansen is being asked to take on board IIU and to effect a reduction of Telenor's interest in the project?

A. That's the reason which Mr. Johansen records eight months later as having been told to him by Mr. O'Brien.

Q. All right. Now, if we look at the letter of the 29th

which went to the Department. Sorry, first of all,
perhaps we would go to your attendance of the 18th?

A. Are we in Book 48 now?

Q. Book 48, I beg your pardon, Mr. O'Connell, Book 48.

Sorry, I suppose another point, just the point I made
about Mr. O'Brien and Mr. Desmond meeting in Glasgow
on the 10th August. Mr. Desmond hasn't informed the
Tribunal that there was any discussion around the
necessity to provide a guarantee to Communicorp to
Telenor?

A. I see.

Q. And I have attempted to review all of the Memoranda of
Proposed Evidence of other Esat personnel, Communicorp
personnel.

A. Yes.

Q. Nobody else has informed the Tribunal that that was a
reason why IIU were to become involved.

A. I see.

Q. Now, your own attendance on the 18th is at Tab No. 42.

And what it records is that "Dermot Desmond is going
ahead with the financing transaction. Need
underwriting letter for Department because finances
are seen as the weakness." This is where you have
been informed that finances are seen as a weakness?

A. Yes.

Q. You are not being, at that stage, being informed that
there was a necessity to get a letter, a strong letter

of comfort or a letter of guarantee for Telenor?

A. No.

Q. And we know the letter of the 29th then went to the Department and that it came back. And that in subsequent references by both Mr. Haga and by Mr. Johansen in that letter we just looked at on the 2nd October of 1995, all references are to strengthening the financial position, isn't that right?

A. Yes.

Q. In terms of perceived weakness. And there doesn't appear to be any reference to it being in the form of a guarantee satisfactory to Telenor?

A. No.

Q. And I want to be just clear about this; are you merely speculating that this was the reason for it, in other words, that it was a guarantee for Telenor to satisfy Telenor or can you point to some fact which would assist the Tribunal in coming to a view on it?

A. Excuse me, as I made clear when I was discussing this or giving evidence on this yesterday, it is largely a matter of speculation on my part. It is a conclusion I reached from a reading of the documentation. So far as there are facts and correspondence relevant to it, I believe I drew the Tribunal's attention to most of them yesterday.

Q. Fair enough. I think you also drew the Tribunal's

attention to something yesterday which is something we will have to go into in a little bit more detail, not necessarily with you, but with other witnesses as well. This we know from the documentation and from your evidence, that Mr. Dermot Desmond was coming into 25%, whether he was going to hold them all or place them with other people was a matter that you were unclear or may have been clear of but are not clear about now, isn't that right?

A. Yes.

Q. IIU provided the underwriting?

A. Sorry, I was certainly of the clear understanding that he was going to place them on.

Q. With whom?

A. With investors.

Q. With whom?

A. You mean were they named?

Q. Do you know who they were?

A. No, I don't. We simply provided that they couldn't be telecommunications competitors.

Q. Yes. But your firm was acting for IIU, isn't that right?

A. My partner Mr. O'Byrne was.

Q. William Fry Solicitors were acting?

A. Yes, William Fry were acting.

Q. Now, IIU furnished the underwriting letter, isn't that right?

A. Yes.

Q. And entered into the underwriting agreement?

A. The Arrangement Agreement, yes.

Q. The Arrangement Agreement, I beg your pardon. And I

think you very correctly corrected a statement you made last week, that IIU were regulated by the Central Bank and as and from, I think you said, was it February or March 1996?

A. Yes, and I have actually dug out the note that I was referring to. And in fact, the particulars I have for which I can't vouch, obviously an IIU witness would be possibly able to do so. In fact, I was told that from the 1st September, 1995, IIU was authorised by the Central Bank as a broker, trader, funds manager and asset financier. And that from the 8th February, '96, it was authorised to carry on investment business services under Section 10 of the Act.

Q. And Section 10 of the Act, that is what date did you say in 1996?

A. The 8th February in '96, or the 1st of September in '95.

Q. This is the Investments and Intermediaries Act of 1995, isn't it?

A. Yes.

Q. And Section 10; Section 10 authorisation authorises to carry on an investment business?

A. I think Section 10 is the one that, I would have to

check it, Mr. Coughlan, but I think Section 10 is the one

Q. It is fairly lengthy, and it is not what you would describe as bedtime reading either, Mr. O'Connell.

A. No, I think Section 10 deals with advising others.

Q. Yes. Well, one of the things that would appear to be authorised under Section 10 is, in fact, authorisation to carry on an investment business. And then when one looks at the definitions, what is permitted or authorised or among the matters authorised under Section 10 would be "E" in the definition:

"Underwriting in respect of issue of one or more investment instruments or the placing of such issues or both."

A. Yes.

Q. So that is what is authorised under Section 10, isn't that right?

A. I take your word for it, I don't have it in front of me.

Q. Whether you were more familiar with the Act considering that you practice in the area of commercial law.

So that is what IIU were authorised to carry on as and from February of 1996, is that right?

A. I think that is correct, yes.

Q. But we have to check all of that, but that appears to be the position?

A. I should stress

Q. As far as your note goes anyway?

A. I can't vouch for this.

Q. Yes. Very good. Who told you that or what is that note?

A. Well, this is actually a much more recent note.

Q. I see, I see. Who told you that?

A. Michael Walsh.

Q. Michael Walsh told you that. When did he tell you that?

A. Well, I think I have a general recollection of having a conversation with him back around the time, but this note is of this year, it is only February of this year.

Q. Only February.

A. And I wanted to check with him what he told me back at the time or what he would have told me back at the time.

Q. Did you ask him whether they were authorised to carry on the, or to whether they were authorised to underwrite in respect of the issue of one or more investment instruments or the placement or issue of both as of September or October or November or December or January

A. No

Q. of 1995/1996?

A. No, I don't remember asking him that.

Q. You have informed the Tribunal that you were of the knowledge at different times, and of the view, perhaps over a period of time, that Mr. O'Brien wanted to increase his interest or increase his shareholding in the GSM company, isn't that right?

A. Yes.

Q. He wanted control of it, did he?

A. I think he wanted 50% to consolidate. Whether he wanted control, probably he did. He certainly wanted to increase his strength. I think he may have wanted to be the biggest shareholder.

Q. Was this the reason for the involvement of Mr. Desmond and IIU?

A. I don't see why it would have been. I can't read his mind, obviously. I am not sure how that would follow.

Q. We will come to it, perhaps, after lunch, but he certainly got very active trying to take another 12 and-a-half percent out didn't he?

A. Yes he did, in May particularly.

Q. But he had been at it for or at least attempting to do it anyway?

A. I think he did sporadically but it came to a head in May.

Q. It came to a head in May. But you expressed the view yesterday that in fact all of this negotiation, entering into agreements and matters of that nature surrounding the involvement of IIU and the letter to

the Department, maybe not the letter to the Department, had no commercial reality in any event, as far as you were concerned; that once the licence was got

A. What I said really was that the, or at least what I meant was that the, so far as these concerns were actually or allegedly driven by the fear that Communicorp would be unable to finance its stake, I felt they had no commercial reality because I believed, as did others at the time who perhaps had more grounds to believe it, that Communicorp would not have a difficulty raising the money, given the interest, particularly in the United States, in telecoms projects and particularly in mobile telecoms projects at that time.

Q. Yes. Did you so advise to the best of your knowledge?

A. No, I don't think I would have done. I was a legal rather than a financial advisor.

Q. It certainly introduced complications, the involvement of IIU, didn't it?

A. Yes.

Q. Which, in your view, may have been unnecessary bearing in mind commercial reality?

A. Possibly.

Q. Would you ever even have discussed that with Mr. O'Brien?

A. I can't remember. I may well have done.

Q. Yes.

A. I tended to discuss more legal issues than commercial issues with him.

Q. I understand that, but you were or are a commercial lawyer, so I take it that you bear in mind commercial matters as well when you are offering legal advice?

A. Yes, to some degree.

Q. And can you remember whether there was any response, 'Why? Why? Why cause complications?'?

A. I can't even remember having a discussion, so I certainly can't remember a response, I am afraid.

Q. All right. All right.

CHAIRMAN: I think your letter to Mr. O'Brien in which you effectively told him to be very careful about burning any of his bridges before he had nailed down an alternative, perhaps alluded to this possibility?

A. I suppose yes, Chairman, that was the nearest it would have come.

Q. MR. COUGHLAN: Now, do you know anything about I know you cautioned Mr. O'Brien about sending the letter to Mr. Kyran McLaughlin. I take it, I think you have told us that you were not aware that Mr. Callaghan went to see Mr. McLaughlin on the 29th September?

A. I certainly read it in proceedings of the Tribunal. I may have no, I think John Callaghan actually told me sometime around the time of his evidence that he

had actually been sitting in Kyran McLaughlin's waiting room when he got a call, or something like that.

Q. When he got a call from?

A. From Denis O'Brien.

Q. From Denis O'Brien?

A. I think so, he said something along those lines to me.

This would be now in the last year or so, not back then.

Q. Yes. Yes.

If we just go on to Book 49 now. Perhaps just for a moment, if I could just jump ahead and if you would look at Tab No. 91. This is a letter from Mr. McLaughlin, Mr. Kyran McLaughlin of Davys to Mr. O'Brien. And he wrote:

"Dear Denis,

"Further to our telephone conversation last Friday"

this was on the 22nd November, 1995 "last Friday and the subsequent announcement on Saturday's newspapers concerning the involvement of Dermot Desmond's company International Investment and Underwriters Limited (IIU) in the financing of Esat Digifone, I thought I would write to you setting out my understanding of some of the issues which have been raised.

"John Callaghan and yourself asked me last April if Davys could get some institutional investment interest

to support your application. I said it would be difficult as the eventual financial terms of the licence were unknown and it would be difficult to put a precise financial proposal to potential investors."

Of course at that time we were in an open-ended licence offer situation, isn't that right?

A. Yes.

Q. "However, Tom Byrne and Paul Connolly prepared an information memorandum and an investment proposal and we secured three institutional investors prepared to commit $\frac{1}{2}$ 8.5 million in support of your licence application in early June. The commitment was conditional on your consortium acquiring the licence on financial terms acceptable to the institutions but this condition was not seen by yourselves at the time as one which could make your application financially unacceptable. As you are aware, a large number of financial issues were not finalised when the institutions made their commitment, in particular the size of the bid by your consortium and the consequent debt/equity ratio of the consortium. Therefore it was difficult to get a firm, unqualified commitment in early June from the investing group.

"When John came to see me on Friday 29th September, he told me that you had been advised that the financial element of your package was not sufficiently strong to allow Esat Digifone to be awarded the licence and that

you were negotiating with a financing party who could provide the stronger financial backing necessary to be awarded the contract. He did not tell me who had provided this advice nor the identity of the stronger financial party. He asked me if I would ask the three institutions who had made the previous commitment if they would step aside so that the 20% to which they would have been entitled would be available to the investor who was prepared to provide firmer financial support.

"Even though we both recognised that this was embarrassing, I did notify each of the three parties that you were asking them to step aside to make way for a financial party which was prepared to put forward a stronger financial commitment. It has now emerged that this investor was IIU which appears also to have been appointed to handle the sale of the 20% stake.

"A number of questions are likely to arise from the institutions who had made a commitment to Esat Digifone in June:

"A. Why were the original investor group not asked to make a stronger financial commitment along the lines of that offered by IIU if that was necessary, given that by the 29th September, a maximum price of £15 million had been established for the licence and discussions on the application had already taken place

with the Department and possibly the assessors.

"B. Was information available to IIU that was not available to the original investor group at the time they were asked to step aside?

"C. At what stage were the Department of Communications and the assessors told of the changes in the institutions providing finance to the consortium?

"In addition, the news media have asked us why Davys is not involved in raising funds as it is common knowledge that Davys were involved in the original application. I do not discuss our clients with the media but you will appreciate that the current media presentation may be damaging to our reputation. I believe it is important to reassure the financial institutions that made the original commitment that they were treated fairly. They will be particularly concerned if the 20% stake is resold to other investors with a significant profit over a short period of time.

"It would be helpful to me if you could let me know your response to the issues raised above so that I can provide them with reassurances.

Yours sincerely."

Now, were you ever informed by Mr. O'Brien that he had received this letter from Mr. Kyran McLaughlin?

A. No, I don't think so.

Q. You don't think so?

A. I don't think so.

Q. It is an important letter, isn't it, coming from somebody like Mr. McLaughlin?

A. Yes.

Q. And it, if I might say, it is a fairly clear letter, and it raises pertinent issues?

A. Yes.

Q. Now, Mr. McLaughlin has informed the Tribunal that this letter wasn't replied to, but that is perhaps a matter we should take up with Mr. O'Brien; it wasn't brought to your attention?

A. No, I don't recall it being brought to my attention.

Q. Now, if I come back then to

CHAIRMAN: It is probably a suitable time to break.

We will rise until five past two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF OWEN O'CONNELL BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Sorry, Mr. O'Connell. Now, it's Book 49, and it's Tab 84, I think. It's an attendance of yours. And it's dated the 3rd November, 1995. And it's an attendance at your office, I think, on Denis O'Brien, Leslie Buckley, Paul Connolly, I presume, is that right?

A. Yes, I think so.

Q. And John Callaghan, perhaps.

"IIU issue bullet points for press release." Was there some discussion at that time about a press release, do you think?

A. I think this is somebody, possibly me, being asked to prepare some points that might be put into a press release concerning IIU's involvement.

Q. Right. And then it continues: "Problem re material change in shareholders against bid." Is that somebody saying to you

A. It's me noting the existence of a problem, either because there is or in the event there was held or determined to be a material change in the shareholders.

Q. There was?

A. Yes. There was a change, whether it was material was another matter.

Q. "Group of institutional and other investors to be"

A. "Located."

Q. "...by underwriters IIU had to upgrade financing arrangements. Primary criterion from comfort to underwriting."

What does that mean, do you think?

A. I think this is what's being done here is that points for a press release are, or possible points are being set out. The first to say that a group of institutional and other investors were to be located

by IIU as underwriters. The second that

Q. Yes, I see the point, yes. "IIU willing to give underwriting commitment and did so. Clearly gave control of 20% to underwriter. Understanding that underwriter will be placing shares with investors and institutions."

What's that, do you think?

A. I think I think it's another point, that the understanding is that the underwriter will be placing the shares given to it with investors, including institutions.

Q. But they were given control of more than 25%, were they?

A. Yes, 25.

Q. And then, "Michael Walsh call?" Is that, 'Should we give Michael Walsh a call?' do you think?

A. It could be, I am not sure.

Q. "Financing options confidential at present; will be revealed in due course when finalised"?

A. I checked that this morning, it's institutional financial options.

Q. Very good. Institutional financial options. Yes, I can see that. What's that? Is that relating to project financing or

A. It's another point yes, possibly, yeah. It could be project financing or it could be the institutions with whom the underwriter will place the shares,

something like that.

Q. Yes. So, it would appear that around this time in early November there was some discussion about the problem of the change of shareholder against the bid?

A. Yes.

Q. And how that might be presented in a press release?

A. Yes. There is a document which is somewhere else, maybe not even in this book, which I think may be the document I had prepared as a result of this meeting, a typed document with no header or footer.

Q. It's in Book 48, and this might be a good time to look at it now. Because

A. It's document Tab 67, I think.

Q. Yes, you are right.

A. I should say that I am not certain this is something I prepared on foot of this meeting.

Q. That's why I just wanted to tell you, because I am not holding you to anything, that you did prepare it or I think we found this in the IIU files?

A. I see.

Q. Now, you see there "Michael Walsh phone call?", there could have been a communication?

A. Yes, there could have been.

Q. There could have been a communication, but just looking at that document for a moment, and what may have prompted you to form the view that it was prepared by you. We see, in the second paragraph I

think, how matters are set out, but if we just deal with it at the moment.

"Esat Digifone's licence submission envisaged Communicorp Group and Telenor Invest AS initially holding 100% of Esat Digifone, declining to 80% in the period leading up to the award of the second GSM licence, and to 68% within three years after launch of the GSM service. The shareholdings of Communicorp and Telenor would dilute equally at each stage, but of course they would jointly retain control of Esat Digifone. The new shares would be taken up by both public and institutional investors. A number of financial institutions who had expressed willingness to take up shares in Esat Digifone were identified in the submission, and letters of comfort or intent were enclosed.

"Following the submission of Esat Digifone's bid, it was felt desirable to enhance the financial strength of Esat Digifone by upgrading the arrangements with financial institutions from letters of comfort or intent to legally binding underwriting arrangements. Accordingly, a legal agreement was entered into with International Investment and Underwriting Limited whereby IIU was given a responsibility for taking up and placing with institutional and other investors the 20% of Esat Digifone intended to be issued prior to the second GSM licence, in return for which IIU

underwrote the issue, guaranteeing the payment to Esat Digifone of equity funds.

"In addition to its guarantee, IIU agreed to subscribe for an additional 5% of Esat Digifone, which will be allocated from the 12% destined for further public and institutional investment (thus accelerating its access to those resources)."

Sorry, that's that paragraph I meant to refer to.

"Further particulars to this and the proposed additional institutional and public financing to be arranged over the next three years are presently confidential, but will be the subject of further announcements in due course."

Now, I wanted you to be aware that we found this in IIU documents, I believe. Is there anything about it in terms of, apart from the third paragraph and the point being made in the third paragraph; is there anything about the style or the language used that would prompt you to believe that it's your drafting?

A. I suppose the style is generally similar to the style I'd adopt. It's grammatically quite careful. I think it's not unlikely that I either prepared it or had a hand in preparing it.

Q. Or participated in it, yes. Now, of course, and I'll come to deal with this whole question of the 5% in due course when we come on to the letter of the 17th April, but again, what had in fact happened was that

IIIU sorry, Mr. Desmond, but it was placed in IIU,
got 25% interest in the company for giving the letter
of undertaking, isn't that right? That's what
happened?

A. He got 25% of the company, yes, but he was promised
25 he didn't actually get it until the following
year, but he was promised it, yes.

Q. Now, his participation didn't leave him under any
obligation to dispose of his shares to third parties,
sure it didn't?

A. No.

Q. And it didn't subject him to any obligation to bring
in investors, if he didn't want to?

A. No.

Q. And it didn't oblige him to dispose of his shares
within a short time or to retain them for a long
period of time?

A. No.

Q. He'd a free hand effectively?

A. Yes. In fact, he had a freer hand than the other
shareholders because he had the one free transfer.

Q. Exactly.

A. But that was intended to facilitate a placing.

Q. I understand that. But you make the point, and it's a
point we wondered about, he did have a freer hand than
the others because he had the one free placing, or he
had the one fee

A. The one free transfer.

Q. The one free transfer.

A. The reason for that was because it was certainly our understanding and his averred intention that he would place the shares, i.e. transfer them on. That's how underwriters frequently handle the mechanics of the underwriting, but generally speaking, there is no obligation on an underwriter to dispose of the shares. If it chooses to hold them itself, it is entirely free to do so.

Q. And that is in relation to the underwriting as well?

A. I am not sure what you mean by "as well".

Q. That is in relation to his underwriting of the 37.5% to Communicorp as well?

A. Oh, yes.

Q. He could have held on to those if he so wished?

A. Yes, he could. If he'd ever got them.

Q. If he'd ever got them he could have placed them, he could have he had a free hand, in effect?

A. Subject to the Minister.

Q. Subject to the Minister. But he had a free hand as far as the company was concerned?

A. Yes, yes, he had, but remember, he couldn't demand those shares. He would only have got them if Communicorp had first defaulted it.

Q. Something had to trigger it?

A. Yes.

Q. Communicorp had to default and they had to have four months grace I think, isn't that right?

A. Yes, correct.

Q. We might just return now to Book 49. I think if we go on to Tab 87, I think this is a note of your colleague, Mr. Halpenny's, isn't it?

A. My sorry, it's 87A?

Q. I beg your pardon, Tab 87.

A. At 87 I have a Matheson Ormsby Prentice attendance, but at 87A, I have an attendance by Mr. Halpenny.

Q. Right. I have at 87A an attendance of yours, but perhaps they are all together. We can work along.

You have it?

A. It's dated the 9th of something, 1999.

Q. That's 9/11/'95, I think.

A. Okay.

Q. It seems to be an attendance on Mr. O'Donoghue, Mr. O'Toole, Mr. Digerud, Mr. Haga, Mr. Simonsen, Mr. Moran, and I can't make out

A. My copy is quite poor.

Q. Or sorry, Gerry Halpenny, I think. And "Esat Telecom rather than Communicorp," that seems to be some discussion about

"Bottin IIU appearance" or is that

"appearance" or

A. It looks like "appearance", I think.

Q. "Telenor unhappy re Bottin letter for the

Department re IIU.

"Affiliate clear up.

"1.6 business plan. Actually incur by Digi will

buy in those cost" I don't think the rest of it is

of any

A. I think those are references to clause numbers in the Shareholders Agreement, but I am only guessing.

Q. Yes, 4.4, 4.5, yes. Now, was there some discussion taking place, to your knowledge, of preparing a letter for the Department about IIU?

A. Well, there appears from this to have been, but I don't have recall of such a thing, yes.

Q. Because I was just wondering, your draft letter, you know the one we discussed

A. Yes, indeed.

Q. of the 17th was after that?

A. Yes, a little over a week.

Q. And it's at 88A.

A. I am sorry, we seem to have got crossed wires again.

I have it at 89.

Q. All right. Now, this was the letter, the draft which you sent to Denis O'Brien. And it's to be sent by Denis O'Brien I think, isn't it

A. Yes.

Q. to Martin Brennan.

"Dear Martin,

"I am writing to confirm or conversation of today

concerning shareholdings of Esat Digifone.

"Esat Digifone is, and will continue to be, owned and controlled by Esat and Telenor. Esat is in turn owned mainly by myself and Advent International. It is likely that in the course of funding the GSM project we will introduce new institutional finance, and indeed we are already negotiating this with CS First Boston. Telenor is of course the Norwegian national telecom operator.

"Our bid made it clear that Esat Digifone would also seek minority financing by public and institutional investors. In preparing for this financing, we have been advised by International Investment and Underwriting Limited, who have also agreed to underwrite the finance i.e. to locate investors on behalf of Esat Digifone and itself to take up any shortfall.

"Given the fact that IIU is publicly identified with Dermot Desmond, some publicity may ensue. I thought it important that the facts of the matter should be made clear, of which the most important seems to me to be, firstly, that Esat Digifone comprises and is controlled by Esat and Telenor, and secondly, that IIU are its advisers and underwriters.

"If you would like any further details, let me know.

In any event, our ongoing licence discussions will, as you have made clear, cover the question of present and

future control of Esat Digifone.

"Yours sincerely."

Now, could that have been prepared arising out of whatever discussions or views which were being expressed as of the 9th November that needed to prepare a letter for the Department about IIU?

A. Yes, it could. As I said

Q. I know you have explained that there was something Mr. O'Brien had been contacted by RTE I think, and believed that something may have, may be going to go out on television that night?

A. No, I think it went out it went out on the radio news, I think, at 5 o'clock.

Q. The radio news I think, yes.

A. Yes. But in answer to your question, yes, it certainly could have been prepared in response to the meeting a week earlier. I was going to say, in my memorandum dealing with this I said I didn't have a direct recollection, but from a reconstruction of events

Q. You were speculating, in fact, as to the

A. Yes. When I checked it in response to the Tribunal's letter asking me to deal with it, I noticed that there was a radio broadcast that afternoon dealing with the subject, and that's what caused me to write the memorandum.

Q. Very good. Very good. But you believe that it could

be a draft prepared in response to discussions taking place about the necessity for doing so?

A. Yes, or it could have been both. The discussions could have been held the week earlier and then RTE gave a story and somebody may have said 'Well, we better get on with this'.

Q. Now, if it was as a result of the discussions, or a combination of both, it was an opportunity to put the Department into the full picture

A. Yes.

Q. about Mr. Desmond and IIU, isn't that right?

A. Yes.

Q. This draft doesn't do that?

A. No.

Q. Do you know if there were any discussions between I know you speculated again that the first paragraph where it states "I am writing to confirm our conversation of today", could have been prepared on the basis that before the letter will be sent, that Mr. O'Brien would get on to Martin Brennan and say, 'Look, there is a letter coming and this is broadly what it's about.' But do you know if there was a conversation between Mr. O'Brien and Mr. Brennan?

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

Q. Do you know if there was any discussion whereby it was decided not to send this letter?

A. No, I don't, or at least I can't recall.

Q. You can't recall. You can't recall?

A. I can't recall, no. And I have no record of the letter being sent, but then it wouldn't have gone out of my office, it would have come from Mr. O'Brien's office.

Q. Yes. If we then go to Tab 90. This is another Gerry Halpenny memo or attendance?

A. Yes, 21 November?

Q. 21 November, '95.

A. Yes, I have it.

Q. It's Richard O'Toole, Peter O'Donoghue, Knut Haga, Per Simonsen, Arthur Moran, Gerry Halpenny, and then it

continues: "Position re the Department IIU

not a problem for M. Brennan and the

Department main concern that DOB and TN mainly

involved on the operational side.

Present the agreement to IIU as soon as possible.

CSFB position."

And I don't think there is anything else it's all

technical matters.

A. Well, there is "40:40:20 issue should not be a problem."

Q. I beg your pardon, yes, you are right. "Carve out radio division." That may be some reference to Advent or?

A. I think that's the impending reorganisation.

Q. Yes. "40:40:20 issue should not be a problem"

A. Then "Telenor party"

Q. "Could be Telenor Invest or new Irish

company letter of support/comfort.

Esat Holding."

I think that's as much as is perhaps relevant to the matter we are discussing now, unless you see anything else?

A. I think that's it, yes.

Q. What was your state of knowledge as of this time, because looking at this sorry, first of all commencing with Mr. Halpenny's memorandum when there is a discussion taking place about preparing a letter for the Department or then there is a draft, which makes reference to a telephone conversation. We don't know whether that took place or not. And then there is this note of Mr. Halpenny's, "Position re the Department and IIU." So he seems to be receiving information from somebody, isn't that right?

A. Yes.

Q. And somebody has told him, "Not a problem for Martin Brennan and the Department. Main concern that Denis O'Brien and Telenor mainly involved on the operational side." And then you go down, as if some information is coming back, "40:40:20 issue should not be a problem"; that there may have been, perhaps, a discussion with somebody about the 25%?

A. It's possible. Yes, it's possible.

Q. Do you have any recollection of a communication taking place with the Department or with Mr. Brennan in the Department along these lines?

A. No, I don't. I had had my first meeting with the Department just before this.

Q. That was the meeting on the?

A. I think it was the 9th.

Q. The 9th.

A. And I don't think I was in touch with them again for a while, so certainly I had no contact with the Department.

Q. I accept that.

A. And had I done so, it would have been probably on some of the more technical issues raised in my memo, rather than on this issue.

Q. I accept that, and I don't think there is a suggestion here that Mr. Halpenny had contact with the Department either?

A. I think that would have been more unlikely.

Q. Yes, but somebody seems to be telling Mr. Halpenny, because he is a solicitor and he is noting down information he had received from somebody, I presume?

A. The strange thing is, I am not sure that any of the people at that meeting were particularly in contact with the Department.

Q. Probably not. But they could be privy to the information?

A. Yes, that's true. I am afraid I am not aware of contact with the Department. I don't have any recall of being told of one.

Q. Right. Now, the meeting of the 9th November, as you correctly stated, you were present at the Department, and that's at Tab 87A in my book. Now, I know it may be slightly out of sync in your book.

A. Okay. I have my handwritten notes at 87A, yes.

Q. This was the first licence meeting, the initial licence meeting, or the preliminary licence meeting?

A. Yes.

Q. And can I take it that because you have a fairly lengthy note, as you said yourself, it would be in proportion to your participation in the meeting?

A. Yes, I think I do come in at one point, but only one.

Q. And you kept a note. I think that present were Mr. Brennan, Mr. O'Callaghan, Mr. McMahan, Mr. Thygesen, I think?

A. Yes.

Q. And Andersen, Mr. Michael Andersen?

A. Yes.

Q. Maev Nic Lochlainn, who was acting kind of as secretary, I suppose, to the meeting?

A. Yes, I think so.

Q. John McQuaid on the technical side, and Fintan. That must be Mr. Towey?

A. Yes, sorry, I didn't get his surname. I think I

didn't get everyone. I jotted them down as quickly as I could, but you can't always get pronunciations and things.

Q. We have a minute from the Department.

A. Yes.

Q. Now, the one thing that you have noted, and it isn't in the Department note, and that's not a criticism

I'll just find it for a moment. Yes, I am just looking through for your handwritten note now. If you go after your reference to Michael Andersen in the handwritten note.

A. Yes.

Q. " they will want incorporated in licence from our application." And then, "Minor issues; for example, date, fee, applicant description, financial liability, equity requirements, formulation not decided, at least 40% cash requirement to be equity.

" Financial strength of Communicorp will want to go into control of Communicorp. Also, financial strength may not be a licence itself, but merely greater clarity. Further documents to be forward by us."

That's by you, I presume?

A. Well, our side, yes, the Digifone side.

Q. Then you go down, there is a reference to "Change of ownership." I think that must be a Clause 8 issue?

A. Yes, I think so.

Q. Now, I know you have given evidence that you would

have been surprised at that meeting if anyone had expressed surprise about an IIU involvement, isn't that right? Because you knew that the letter had gone to the Department on the 29th, and you knew that it had been sent back to Mr. Denis O'Brien under cover of a letter signed by Mr. O'Brien?

A. I suppose I wouldn't have been so surprised if someone other than Martin Brennan had expressed surprise. We are sort of getting into too many surprises now. But if Martin Brennan had, I would have been surprised, yes.

Q. But even if the letter had been read and taken in by Mr. Brennan, all that it would have informed him was about the underwriting, isn't that right?

A. Yes.

Q. And at this meeting, when Mr. Andersen was talking about going into Communicorp and its financial strength and matters of that nature, nobody on your side informed the people present from the Department or Mr. Andersen about the true position as regards IIU/Mr. Desmond?

A. No, they didn't. This was a very formal meeting. It was in a big conference room in the Department, there were big oval I think there were a series of tables arranged in the oval. The Department team sat on one side, we sat on the other side. It was very certainly the opening of the meeting and for

quite a long time, it was Martin Brennan delivering the ground rules, laying things out. Nobody else spoke. Then I think Denis O'Brien responded. Then Martin invited somebody else, it may have been Michael Andersen or somebody else, to come in. It was an extremely controlled structured meeting, and they were setting out how it was going to happen. And I certainly came out of it with the overriding impression that we had been well and truly put in our place, and there was to be no negotiation, and we were to take what we were given

Q. They were telling you, 'We'll give you a licence'?

A. Absolutely. And it wasn't a discursive meeting. It wasn't one in which one would swap information or chat or anything like that. It was extremely controlled.

Q. No, but I understand that. But it was an opportunity to inform the Department, wasn't it?

A. Yes. Then again, they were saying that the opportunity would arise again. They were listing out the issues which would have to be looked at, including ownership.

Q. Well, were they talking about ownership or was it a general discussion about Clause 8 really?

A. Oh no, there was no general discussion of Clause 8. This was an agenda-setting meeting. They were saying 'These are the things that are going to have to dealt with over the next period'.

Q. All right. Now, I think the next document I'd like to refer you to, I think most the intervening documents are to do with Baker McKenzie and the Advent issue?

A. Yes.

Q. 99A.

A. Headed "IIU Issues"?

Q. Yes. And do you see written up on the corner, "File IIU"? I don't know it's in your files, it's in Fry's files.

A. Is it? Okay. That's not my writing.

Q. Now, it could be that somebody was saying, 'File this in the IIU' maybe, maybe not...

A. Generally that would be well, if that was my writing, which it isn't, that would be me writing for the benefit of my secretary, the file on which it's to be put.

Q. Oh, I understand that. I understand that.

A. So that it may even be from the Neville O'Byrne side, and I wouldn't have had any knowledge of that. I was very strictly kept away from that.

Q. Now, these were in I'll just tell you as I understand it. This document was in the Fry's files as furnished on behalf of Mr. O'Brien or Esat?

A. I see, okay.

Q. And the first bullet point is: "Need to clarify IIU involvement to Department, Telenor and prospective financiers of Esat.

"2. Need for IIU now to join Esat Holdings/Telenor in negotiating Shareholders Agreement.

"3. Settle IIU shareholding: 25%, 20% or 12.5%.

"4. Recognise that whatever their shareholding, that percentage of circa $\frac{1}{25}$ million may have to be drawn down before Christmas when licence could be awarded."

This is why we have it in our books in this period.

It seems to be a reference before Christmas, so it must be between the 29th September, anyway, and Christmas.

Now, sorry, and we come along further then:-

"5. In addition, IIU underwriting of Communicorp/Esat Holdings of 37.5% will have to be confirmed, again portion of this commitment may have to be drawn down before Christmas.

"6. Political Aspects:

"(i) Lowry has indicated 40:40:20 to Dail.

"(ii). As an offshore company, Bottin could present problems to Lowry.

"(iii) Department will want to know soon who comprises the 20%, i.e. who are the IIU Places?

"7. Coordination with CSFB financing: CSFB are currently arranging financing of $\frac{1}{30}$ million for Communicorp/Esat. They are concerned that IIU placing of its 25-25% should not cut across their marketing of their offer, hence need for full and close coordination between IIU, Communicorp/Esat and CSFB.

"8. Who will represent IIU in Shareholders Agreement discussions? Contact point for other issues. Who can be readily available to participate in intensive work programme over coming months?"

Now, do you know who prepared this document?

A. No, I have no idea, I am afraid. Almost every line of it, certainly well, from point 4 down, it seems to be written entirely from an IIU perspective. It's identifying IIU problems and issues and questions.

Q. Do you think so?

A. Yes.

Q. I was just wondering, is it not identifying, for example, at 7, a Communicorp problem, that IIU could cut across the fundraising that CSFB were to carry out on behalf of Communicorp

A. It's identifying a common problem, but it seems to me to be doing it from the IIU perspective. Also, point 8 is very much an IIU point. Point 6(ii), I don't think I even knew Bottin was an offshore company, I am not sure I didn't, I don't think I did. They are talking about the need for money, that they'll have to come up with money, in points 4 and 5. It strikes me as quite an IIU document. I don't think it's a William Fry document. It's not in our typeface. I am speculating; I would guess it's something prepared within IIU.

Q. I see.

A. The date is a bit puzzling because the 12.5% thing. I didn't think that had come up that early.

Q. Well...

A. I mean, to say that it's settling the shareholding would imply that it's before the 29th September.

Q. Well, it can't be because

A. I know.

Q. the speech made it makes reference to what Mr. Lowry said in the Dail, which we know was in November, November the 22nd. So it seems to be sometime between November 22nd of 1995 and Christmas, anyway.

A. I see. I confess I find it a puzzling document. I can't offer you any more insight into it, I am afraid.

Q. That's why I am just wondering, when we go back to the memo where there was reference to the "40:40:20 should be okay," did that arise because of something the Minister had said or was about to say? Do you understand the point?

A. I don't, I am afraid, no.

Q. So it's your belief anyway that this is an IIU document, or an IIU-generated document?

A. That's only from the tone.

Q. From the tone, but that's your belief for that reason?

A. And I suppose a lesser reason, that it doesn't seem to be in a William Fry typeface, so it appears to be generated outside William Fry.

Q. Yes, that's fair enough.

At 102, Tab 102, there is another note of Mr. Halpenny's.

A. Yes.

Q. Where this is an attendance on Mr. O'Toole I think, is that correct?

A. Yes.

Q. What role did Mr. O'Toole have?

A. Mr. O'Toole was he was an adviser to Communicorp.

Q. He was an adviser to Communicorp?

A. Yes. I think the date on this should be 8/1/'96, or I assume it should be.

Q. Yes, I think you're right, yes.

A. I think at this time he was engaged in, about this time anyway, was engaged in settling issues with Advent. That was what Mr. O'Toole was doing at this time, I think. Because I have a vague recollection of being told that he had settled outstanding issues with Advent during a ski trip or something, there was something about a ski trip, and I think it would have been about this time.

Q. Just, he was an adviser to Communicorp. I understand that he had been involved in resolving the difficulties with Advent?

A. Yes, he was a former he was formerly in GPA I think, and he had been recruited. The various events had occurred there and he had been recruited out of

there as a man who was good at corporate dealing and advice and resolving issues generally.

Q. Yes, I understand that. But there is a note here,

"Concern re IIU obstacle to getting things sorted.

Licence issues about to be raised again.

Acting as strategic operator/investor.

20% vs 25% issue IIU not come in"

A. Yeah, I think so.

Q. " Esat and Telenor go ahead make the capital

calls

option to come in, but price goes up as this goes

on."

A. Sorry, I just remembered what this is about. I think

I have that last note reminded me. I think at this

time, I wasn't really involved in it, but I remember

being told, they were trying to negotiate the

Shareholders Agreement, and I think they were having

difficulty with IIU because IIU were looking for more

rights than the other two felt they were entitled to,

partly because they had less shares and partly because

they had a less critical role in the consortium. And

that's what acting as strategic, I think "strategic

investor" really means. They are getting they are

only an investor, they are not they don't bring

anything else to the consortium. And the bit, "IIU

not come Esat and Telenor go ahead make the

capital calls option to come in, but price goes up

as time goes on." There was a proposal that if IIU continued to be obstructive in relation to the Shareholders Agreement, then Esat and Telenor would simply sign the Shareholders Agreement without them, go ahead and make the calls for money as it was required to progress the project. The call will be made to IIU as well, they could come into the Shareholders Agreement whenever they wanted, they could put up the money for the shares whenever they wanted, but unless they did so promptly, the price would go up. I think that's what this is about.

Q. Yes. There is further correspondence, we will see now, where I think it's the following document, where there is a lengthy letter from Mr. Halpenny to Mr O'Toole, isn't that right?

A. Yes.

Q. About this matter.

"Dear Richard,

"I refer to my telephone conversation with you yesterday, and set out hereunder a summary of my views on the current position, given the somewhat slow progress with IIU. As the meeting with IIU has been rescheduled for Wednesday afternoon, hopefully it will not be necessary to consider taking any of the steps set out below.

"I have reviewed again the agreement executed on the 29 September, 1995, and the letter from IIU to Denis

O'Brien in connection therewith. As you will be aware, under the agreement, IIU are agreed to underwrite the obligations of Communicorp and to take up and share which Communicorp fail to take up under any issue of shares by Digifone. In consideration of having undertaken this obligation, IIU has been granted the right to take up 25% of each tranche of shares issued by Digifone, subject of course to its obligation to procure that payment is made for such shares.

"There is a condition stated in the agreement in Clause 1(a), but this has been satisfied. In addition, there are conditions stated in the letter, one of which is that Communicorp, Telenor and IIU shall have signed a shareholders agreement containing protections in favour of IIU which would be reasonable for a shareholder subscribing for 25% of a private company.

"You questioned whether Communicorp and Telenor could simply proceed on the basis that the company was owned as to 50% each by each of them and having initial issue of shares to which they alone would subscribe.

In that case, IIU would be given the option to participate in further issues, but upon terms which might not be as favourable as those attaching to the first issue. I would have to say that the structure of the agreement at the moment would not allow

Communicorp and Telenor to proceed in that way, but there is a relatively slight variation to your suggestion which would have the effect of achieving a similar result."

And then he sets out the various

A. Yes.

Q. That was the issue there, is that correct, that IIU were slow about participating in the

A. No, I don't think that it was they were slow in participating. It was that they were looking for more rights than the others were willing to give them under the Shareholders Agreement.

Q. What type of rights?

A. I don't know I am afraid, I wasn't involved in the negotiation.

Q. Right. At the end of the day, they got a fairly substantial involvement in the company, isn't that right?

A. Yes. Well, they were always going to have substantial involvement, but I think it was down to the kind of things we have been skipping over today and yesterday, where they were negotiating it on a clause by clause basis, and IIU were just looking for more, I think.

Q. Yes, all right.

A. I didn't do that negotiation, though.

Q. I don't think we need open the rest that's the issue that was involved there?

A. Yes, I think so.

Q. I think we might go to 105, Document 105. This is Mr. Moran's attendance, I think, at William Fry's.

Gerry Halpenny, Peter O'Donoghue, Richard O'Toole, with Per Simonsen and Knut Haga.

"14.2 still difficult.

Chief Executive matter.

" IIU points.

"They can have budget later. Board to decide the delegation to management. They shall decide on the appropriate level of delegation authority to management."

Then: "11.1.3 Telenor lends to Esat Digifone.

Esat Digifone issues to Esat on 1p paid basis.

"Department still believes in 40:40:20 split.

Cash-call likely soon $\frac{1}{2}$ 12m. Michael Walsh, John Bateson, Neville O'Byrne, Sonia Price recite level.

On whose behalf are IIU acting? IIU Nominees still listed, need to talk to Department."

A. I can't make out what's under that.

Q. "We have gearing ratio debt, define what is meant, e.g. are leases etc. included?"

I don't think there is anything, but

A. There is something under the "IIU Nominees to talk to Department" line, which I can't make out. It seems to be crossed out

Q. Yes, that is illegible; it's crossed out.

Was it your understanding that the Department were still of the view that there was a 40:40:20 split at this time?

A. I think they probably did, yes, because I can't think I have been trying to think of any event or document or conversation of which I was aware

Q. That you were aware?

A. by which they wouldn't have known that, and I can't think of anything, because certainly the 29th September letter wouldn't have given it to them. So at this time I wouldn't have been aware of any communication with the Department by which they would have known otherwise.

Q. Yes.

A. And probably the first time I did know that they knew otherwise was when I wrote, or when I spoke to Regina Finn, but that wasn't until April, was it?

Q. April, that's right.

Because, I just want to go to the memorandum of yours in January of 1996. It's Document 3 in your third memorandum, I think. Sorry, it's Document 3 to your second memorandum, I beg your pardon.

A. A letter from Telenor to Denis O'Brien?

Q. Oh sorry, I beg your pardon. It's, in fact technically it's your third memorandum. It's the second one in the book. It's your third memorandum, I beg your pardon. It's notes dated 26th January, 1996.

Do you see do you have that?

A. Yes, I do. My copy is very faint, but I have it, yes.

Q. Now, I think it commences it's to file and it's from you, isn't that correct?

A. Yes.

Q. And it's the the client is Esat Digifone, and the matter under discussion is GSM licence.

A. Yes.

Q. And it records: "Attendance at Esat. Tactical discussions; awaiting direction."

Do you see that?

A. Yes.

Q. So I take it that means that you were at Esat

A. Esat office.

Q. Esat office. And there was some discussions and awaiting direction?

A. Yes.

Q. And then it continues: "Then Department Communications."

A. Meaning we went there.

Q. Meaning is that what it meant? That's what I understood you to mean. Then it records something you must be getting from them. "They finding drafting licence more difficult than expected lot of work done/legal delay, their lawyers not present.

Their response to our commentary, summary re licence."

A. Yes.

Q. Now, the note doesn't record who was at the meeting at Esat, and it doesn't record who was at the meeting at the Department of Telecommunications can you assist us?

A. I am afraid I can't, no.

Q. Because, to the best of our knowledge, there is no record of this meeting at the Department of Telecommunications in the Department's files.

A. Right. I can't help you beyond saying it is likely that Knut Digerud and Peter O'Donoghue would have been the Esat Digifone people. Knut I think, was in by now as Chief Executive, and was taking a very hands-on role, particularly as regards dealings with the Department. Peter, generally, was involved as well. I dealt with the two of them mostly when I was dealing with Esat Digifone matters, which this was.

On the Department side, I am afraid I have no recollection of who was there, no, unless there is

Q. Well, if we just go through

A. No, I was just looking at my handwritten at the same time I wrote in the margins of the previous document

Q. Well, if we come to where you start numbering matters under the heading "licence". You can see that?

A. Yes, I do.

Q. And you come down, these are just matters

"Head of Articles:

- "1. Interpretation,
2. Scope.
3. Commencement and duration.
4. Amendment of licence.
5. Interconnection.
6. Numbering.
7. Tariffs.
8. Service and quality.
9. Ownership/management and operation of service.

Owner not to be diluted below base amount."

Fairly technical stuff.

"Management and operation to be managed and operated

by Esat Digifone 'as we know them'. No

subcontracting, out-sourcing. At 10, "Inspectors on provision of information"?

A. Mr. Coughlan, it's interesting there at 9 we are being asked to comment on the base level below which Esat and Telenor won't go. Just a comment.

Q. Yes.

A. In the first paragraph of 9.

Q. Yes, I see that, yes.

"11. Interference other radio systems.

"12. Security.

"13. Essential priority communications.

"14. Fees and levies.

"15. Condition of service to customers.

"16. Emergency services.

"17. Relations with Regulator.

"18. Access to licence network.

"19. National roaming.

"20. International roaming.

"21. Safety measures.

"22. Initial roll-out of service.

"23. Windfall gains.

"24. Cessation of licence operation."

And then under that is written:

"Martin Brennan exclusivity query not in
licence side letter."

Would that seem to indicate that Mr. Brennan was at
that meeting?

A. It would seem to indicate that, yes, unless someone
was relaying a query he had raised, but more likely
it's that he was there.

Q. Right. Now, I asked you about that, I think, in your
direct evidence, about this question of exclusivity.

This was more the five-year period, isn't that right?

A. I think so, yes; that there'd be no other licensee.

Q. You weren't able to throw any particular light, or
didn't think there was any significance as to why it
shouldn't be in the licence as opposed to being in the
side letter?

A. Except I suppose insofar as it was a contractual
commitment to us. Nearly everything in the licence
would have been things we have to do, obligations

imposed on us. This was the reverse; it was a right or an obligation imposed on the Department, and it may be that the, that a statutory instrument wouldn't have been the appropriate instrument to impose an obligation on the State. I don't know for sure, though.

This meeting I think, was mostly them, "them" being the Department, saying, 'We know we'd said we'd have the licence for you now, before now, and we are sorry we don't, but the best we can do for you is tell you what it's going to contain.' So when I was taking all these notes, this wasn't discussion really; this was them going, whoever was there, I think, going through saying, 'This is what will be in the licence. Clause 1 will be this, Clause 2 will be that, and Clause 3 will be the other.' And where they come across the point where they did in ownership, for example, where they want us to put a proposal to them, I'd have noted that down by saying "our comments". So this wasn't particularly a negotiating or a discussion meeting, it was them notifying us of something.

Q. Of what because it's the next matter that you then begin a numbering system again, isn't that correct?

A. In the schedules.

Q. "1. Name of licensee and shareholding details as notified to Minister."

A. Yes.

Q. What's that?

A. This is you see, if you go back to the previous page, it's headed "Schedules" "a lot of detail here, 8 or 9 or 10 or 11", meaning he is telling me that the schedules to the licence will have to contain a lot of information, and there will be between 8 and 11 schedules. And then he goes on to tell me what each schedule will contain. So he is telling me that Schedule 1 will be expected to contain the name of the licensee and its shareholding details, as notified to the Minister.

Q. What's that about?

A. In other words, that the licence would contain a statement as to who the licensee was, Esat Digifone Limited presumably, and the shareholding, who owned the licensee, who had shares in it, which would have to be notified to the Minister.

Q. No, no, that's not what it says, Mr. O'Connell.

A. "Name of licensee and shareholding details"

Q. "As notified"?

A. "as notified"

Q. "as notified to the Minister"?

A. Yes.

Q. It's not "as would be notified to Minister", it's "as notified", "as notified"?

A. Yes, "as notified".

Q. Doesn't that, or does it not, give an indication that

something had been notified to the Minister?

A. Well, perhaps I am sorry, I didn't read it that way at all. I read it that the licence would have a schedule from which anyone dealing with the licensee would be able to see who the licensee was in terms of its specific identity, its number of incorporation and so forth, and also who owned it. Not that the sorry, I do see your point, now that you have raised it, but my understanding on reading these notes years later, admittedly, was that what I was being told was that one of the numerous schedules to the licence would contain particulars of the licensee, and another would contain interconnection rates and so forth. I didn't think they were making any negotiating point or any point as to the previous July or August, whatever it was when the bid went in, I didn't have that understanding at all.

Q. I am not reading as indicating any negotiating point, but it is a note that "name of licensee and shareholding details as notified to Minister."

A. Yes.

Q. That well, my ordinary reading of it, and you're a lawyer, a careful solicitor; you have a note here where one would, in the ordinary reading of it, form the view, would you not agree, that this had been notified to the Minister "As notified."

A. I am perfectly prepared to take your interpretation of

it, Mr. Coughlan. It isn't mine. Mine I suppose

in mine it would be necessary to tack the phrase "from time to time" to read the way I should say it would.

But that's how I would have understood it.

Q. All right. Just again if we go down, we have 2, 3, 4, 5, and then under 5 you have a note, "Per Martin Brennan"; would that seem to indicate that Mr. Brennan was at the meeting or, again, you were being notified of something he had said?

A. That's usually the way I would note that would mean, in my normal way of taking notes, that Martin Brennan had said this. So it would indicate he was probably there.

Q. Right.

A. He says, "Telecom Eireann were consulted about the competition documents before publication." Yes, I would think that's Martin Brennan saying that.

Q. Now, I am going back to Book 49 now again, Mr. O'Connell.

A. Okay.

Q. I think whatever about what appears to be the IIU document we looked at a few moments ago, if you go to 104 in the first instance, you see that Mr. O'Brien sent a letter to Mr. Walsh?

A. Yes.

Q. "Subject: Contract.

"Dear Michael,

"I refer to recent discussions, and in particular, our conversation of this afternoon. My proposal is that IIU will place with Esat Holdings 12.6% of the 25% of Esat Digifone to which it is entitled. In return, Esat Holdings will pay subscription amount due on the 12.4 remaining to IIU as they fall due up to 6.448 million (12.4% of 52 million). I would also require your support in negotiating a satisfactory Shareholders Agreement to include effective Board control for Esat Holdings. As part of the arrangement, Esat Holdings would have to procure the release of IIU's underwriting obligations.

"The proposal is conditional on the following:

"1. A satisfactory contract for the above, and a satisfactory shareholders agreement being negotiated and settled.

"2. Government consent, or at least satisfactory assurances that the proposal will have no adverse impact on the GSM licence.

"3. Satisfactory conclusion of the CS First Boston financing of Esat Holdings, and consequently the actual receipt of funds thereunder.

"4. Such other consent being obtained as Esat Holdings feels are necessary to be incorporated as conditions in the contract at 1 above.

"If all this is acceptable in principle, please let me know and I will begin to make arrangements for

drafting and implementation."

Of course that wasn't drafted by you?

A. I don't think so. I couldn't be sure it wasn't, but I don't think so.

Q. Well, at the time you were acting in your capacity as solicitor to Esat Digifone?

A. Possibly Gerry Halpenny did it.

Q. And this was an example or a case of Mr. O'Brien seeking to gain control of the GSM company, isn't that right?

A. Yes.

Q. I think at this stage that this was happening unknown to Telenor, this initial proposal. I know IIU took it

A. Yes, I think it probably was.

Q. I think there are a number of copies of that with handwriting on them, but it's unlikely these are matters that you were involved in.

A. Certainly the one I have, the handwriting, which begins up at the top "bridging" isn't my handwriting.

Q. No.

Now, at Document No. 106: "Key points re IIU Nominees ("IIU") holding in Esat Digifone ("Digifone")"

A. Sorry, Mr. Coughlan, is this a Matheson Ormsby Prentice attendance?

Q. No, if you move on from the Matheson Ormsby Prentice just

A. I see it, sorry. That's 107 in mine. Yes, I see it.

Q. Do you know anything about this particular document?

A. I am just having a quick look at it. Off the top of my head, I don't. I should explain that I tried to get three weeks' research time ahead of my appearance here, and didn't quite get that long, so I had to skip some of my reading, and I skipped what I regarded as the less important period, which was roughly from November to March. So I am not as well briefed on this period as I am on others.

Q. All right. But what it was was, there was these negotiations, or whether they were negotiations, but in effect, what Mr. O'Brien was doing was that he was trying to get a bigger shareholding, isn't that correct?

A. Yes.

Q. And he was trying to get it from IIU?

A. Yes.

Q. And Telenor didn't know about it in the first instance, I think, would be a fair way of putting it, and IIU, perhaps to jog Mr. O'Brien along, they agreed that they would dispose of shares to Mr. O'Brien, but only if Telenor consented; that was the broad thrust of what was going on?

A. Yes. I think IIU

Q. They were probably of the view that Telenor would never consent to that?

A. Possibly, yes. I think also IIU were always sellers of shares, but they may not have thought this was a very likely one to go ahead. My general recollection would be that Michael Walsh nearly always wanted to sell and Dermot Desmond was never quite so sure.

Q. Now, if we go to Tab 108, because what these are described as "Note of Owen O'Connell's comments on IIU key points. Note of January 12, 1996."

Do you see that?

A. Yes.

Q. And it continues: "Until the transaction is concluded, IIU must fulfil its equity and other funding obligations (including its share of funds required to pay the licence fee) if it wishes to retain its rights under the underwriting agreement. Consequently, it is not appropriate that IIU funds should be categorised as a loan prior to completion."

This comes up, of course, at the end.

"This point might be rephrased to read 'Prior to the completion of the transaction IIU will fund 25% of the equity and other capital contributions required by Esat Digifone'. Upon the completion of the transaction, EH will refund these amounts to IIU."

What was that about, do you know?

A. First of all, this isn't my document. This is somebody else, I think

Q. Oh, I see.

A. recording my views.

Q. I see.

A. I think probably somebody gave me the key points document we have just looked at, and asked me, probably from an Esat Digifone perspective, what I thought of it, and is here recording the comments, probably verbal comments, which I made. That's the construction I can give. Certainly this document that we are looking at now, 108 in your tab, 109 in mine, isn't my document. I didn't prepare it.

Q. All right. No, it's just the reference to you. That was the only

A. Generally my comments and points seem to be mainly from an Esat Digifone point of view.

Q. Yes. Now, the next document is Document 109. And that's a memorandum from Mr. Richard O'Toole to Mr. O'Brien, but it's copied to you and to Paul Connolly, isn't that right?

A. Yes.

Q. And it's dated the 16th January. And it reads:

"Dear Denis, following a discussion yesterday afternoon with Owen O'Connell and Gerry Halpenny on how we might handle the Shareholders Agreement in the light of the current position vis-a-vis Telenor and IIU, I propose that we now proceed as follows:

"1. Conclude the Shareholders Agreement between Esat Holdings and Telenor on a 50/50 basis and inform IIU

that it will do so while leaving open the possibility for IIU to sign up at any time on the basis of the agreed Telenor/Esat Holdings draft. We probably should have an early combined Communicorp/Esat Telecom board meeting to approve the terms of the agreement and to assign Communicorp/Esat Telecom's interest to Esat Holdings. We would then proceed to conclude discussions with the Department on the GSM licence on the basis of this agreement.

"It would also be desirable to resolve quickly with Telenor the outstanding management issues (replacement of Jan Edward Thygesen, Barry Maloney, etc.). We would also proceed to document the Telenor bridge facility on a binding basis.

"2. Continue (assuming IIU does not sign up immediately to become a party to the Telenor/Esat draft Shareholders Agreement) to negotiate in good faith with IIU in parallel with the discussions with the Department to conclude a satisfactory bilateral Shareholders Agreement on the basis of a 37.5:37.5:25 ratio. We would inform the Department that we are in discussions with IIU, and that we envisage that IIU would subscribe for up to 20% of Esat Digifone, plus a further 5% that we would allocate also to IIU (line worked out by Owen O'Connell and Padraig O'hUiginn to be consistent with bid document) and that this could entail revisions to the Shareholders Agreement in

order to accommodate IIU participation. As capital calls become necessary, each party will be required to subscribe its share. IIU would face the choice of subscribing its proportionate share (with or without the protection of the shareholders agreement) or else permit itself to be diluted progressively.

"3. Sound out Telenor as soon as you judge it appropriate on the proposal to transfer 12.6% of IIU's 25% stake to Esat Holdings and pursue discussions with IIU in the light of the Telenor reaction."

Then he refers to actually, those attached notes must be his?

A. I think so, yes.

Q. "Since IIU have made Telenor's agreement a fundamental condition of the proposed deal, if we wish to pursue this transaction we will have to broach the issue with Telenor. It must be seriously open to question, however, whether Telenor will agree to deal, particularly given the control implications, and even raising it with them is likely to cause considerable concern within Telenor. And since the proposal is contingent upon prior fulfillment of many conditions other than Telenor's consent, including the award of the licence and completion of the CSFB financing, we should, in any event, in order to safeguard the project, proceed with steps 1 and 2 pending completion of the discussions with IIU and Telenor.

"The advantage of proceeding in this way are as

follows:

"We will have a definite Shareholders Agreement. We

need a Shareholders Agreement in order to conclude:

(a) Discussion with the Department on the licence and

(b) The project finance with ABN/AIB.

"Maintenance of the licence must be the first

priority, since if it is not awarded, all parties lose

value. None of the parties can afford to jeopardise

the award of the licence by a failure to agree on

matters that the Department will consider essential

prior to the award.

"We will lock in the respective rights and obligations

of Esat Holdings and Telenor under the Shareholders

Agreement. Third parties, (the Department, project

finance, banks, equipment providers etc.) will assign

considerable value to the credibility of a

harmoniously consolidated Esat Holdings/Telenor

relationship at the operational level, which they will

regard as essential in order to make the GSM network

fully functional and to meet the roll-out timetable

promised in the bid.

"We can also maintain the advantages (including the

requirement for IIU to provide its equity share in

other capital contributions, as well as its

underwriting obligation) of our existing relationship

with IIU pending resolution of:

(1) IIU's difficulties with the existing draft of the Shareholders Agreement.

(2) The various conditions to be fulfilled under the 12.6% proposal."

Then he deals with the possible disadvantages of proceeding as proposed.

"It could be argued that conclusion of the Shareholders Agreement with Telenor might reduce our leverage with Telenor in regard to the 12.6 proposal and other matters such as management control, including the Barry Moloney issue. It would also strengthen Telenor's position in regard to Esat Digifone's relationship with IIU. In addition, if for any reason the CSFB transaction does not close or is delayed, or IIU does not underwrite our share and we cannot find funds elsewhere, Telenor will have clear rights both under the Shareholders Agreement and the bridge facility to take up our shares of any capital calls, thereby increasing its relative ownership share. However, loss of dilution of Esat Holdings' rights to some other party is an inevitable reality if for any reason we can not provide our share of the capital required.

"It leaves unresolved the final IIU participation in Esat Digifone pending completion of discussion with Telenor and IIU on the 12.6% proposal. However, as capital calls are made, IIU's ultimate position will

progressively resolve itself, and by going ahead with the 50:50 Shareholders Agreement with Telenor we will be providing IIU with every incentive to subscribe on the basis of the current Esat Holdings/Telenor draft."

Now, it looks from this here, that the discussion that was taking place was the need to get a Shareholders Agreement concluded to get the licence, to deal with the difficulties with IIU as they were perceived to be at the time in the future, if necessary, and advantages and disadvantages were being considered in relation to those. But as of this time, this is

January of 1996, Mr. O'Toole was in a position to inform Mr. O'Brien that you and Mr. O'hUiginn had worked out a line about the 5% over the 20% to make it consistent with the bid document, isn't that right?

A. Yes.

Q. When did you and Mr. O'hUiginn work out that line?

A. I think that was the, what we referred to earlier, as the press release document.

Q. Yes. This is the one before Christmas?

A. Yes. I think that was that. That Padraig O'hUiginn and myself, but I think others as well, he is referring only to me and Padraig O'hUiginn, but I think, as I said yesterday, there were others involved, were trying to conform or rationalise the shareholding situation vis-a-vis the bid, and the way we did so was to present the additional 5% as a

pre-placement as part of the 12.

Q. Yes, I understand that, but I am just trying to understand, it must have been before Christmas, you think?

A. I think so. I think this is a reference to the, to that press release document.

Q. Yes. So likely to be around November, you think?

A. I would think so.

Q. That period?

A. I would think so, yes. And I think I did meet Mr. O'hUiginn and others about it.

Q. Now, I think the next at Divider 110 is another note of yours undated, I think. It's some contact with Mr. O'Brien. It doesn't say whether it's by phone or in person I think?

A. Mmm.

Q. What's that?

A. "Read NOB."

Q. "Neville O'Byrne letter to Gerry Halpenny re IIU," I think. Is that right?

A. Yes.

Q. "Wants view as to what is realistic.

Word with Neville O'Byrne?

Some over the top, e.g. 25.1%.

IIU not an industry partner merely an institution."

And there is a number. Do you know what that's about?

A. I don't, I am afraid, no.

Q. Or when it was? I know it must have been around the time when these when there was to-ing and fro-ing on this question of the Shareholders Agreement, it would appear, wouldn't it?

A. Possibly, yes. I am afraid I can't shed much light on that. What would throw light on it, if it could be located, is whatever letter Neville O'Byrne wrote to Gerry Halpenny regarding IIU.

Q. Fair point, yes.

A. He is obviously asking me about that.

Q. Yes, all right.

A. But in the absence of it, it's difficult. I am sorry, I can't be much help on that.

Q. All right. Now, the next document is Document 111. And again, it's a note of yours. And it's a meeting between Neville O'Byrne, Michael Walsh, Denis O'Brien and you, isn't that correct?

A. Yes.

Q. The note reads: "Michael Walsh talked. DD does not want to sell out fully. Happy with convertible structure. Uncomfortable about the shareholding in multiple companies. Some discussion of DD co-investing with CSFB, but this very tentative. Current position IIU will go to 12.4%. Will resolve 5% problem by convertible 'same effect as shares'.

See Michael Walsh memorandum lot of difficult

points.

Problem for IIU coming up with capital in interim.

Owen O'Connell draft convertible preference share.

(Conversion subject to Ministerial consent).

Convertible debenture?"

Now

CHAIRMAN: For the record, Mr. Coughlan, I think

that's the 8th February.

MR. COUGHLAN: Sorry, the 8th February, 1996, Sir.

A. Yes. I should add that we have just passed, in the time line, we have just passed quite a significant point, which is the 31st January, and the 31st January was the 180th day. And at this point, the Department had moved into something of a legal limbo, because the bid document required the bidder to maintain as valid the information in its bid document for 180 days after the closing date for receipt of bids. And presumably, the Department expected that within that period, it would have granted a licence and thereby bound the successful bidder to the terms of the licence. But in fact of course, that hadn't happened. So as of this point, the week before this memo, Esat Digifone had become free to some degree, to order its affairs much more as it saw fit. It was no longer subject to the requirement in the bid document that it maintain its bid information as valid.

Q. Are you seriously putting forward that as a

proposition as a solicitor, Mr. O'Connell? You are?

A. I am putting that forward as a legal statement.

Q. You are putting that forward. Are you seriously putting that forward?

A. I am just stating the fact, Mr. Coughlan. I am not putting anything forward.

Q. Very good. Well, we'll take it on board.

A. I just thought I'd mention it to you that it was a significant point that had been passed. But everything I say, I say seriously.

Q. Yes. As I say, we'll take it on board.

A. Thank you.

Q. I'd now like you to address this document, if you wouldn't mind, please.

A. Yes.

Q. What was the meeting about?

A. It seems to have been about a possible sale by IIU of shares.

Q. To?

A. Presumably to Esat Telecom.

Q. And also some tentative discussion that Mr. Desmond might invest on the same basis as CSFB, isn't that right?

A. In Esat Telecom.

Q. What's the reference to, "Will resolve 5% problem by convertible same effect as share"?

A. I think that's a reference to the possibility that,

insofar as there was a problem by virtue of IIU having 25% instead of 20%, IIU would subscribe an amount of money equivalent to the cost of 5% of shares for some form of convertible instrument, whether it was a convertible preference share or a convertible debenture. I referred to this in my memorandum dealing with the draft letter of 17th April. As I said, in that memorandum, it never in fact occurred, but I think that's what the reference is. And the conversion would have been subject to the Minister's consent.

Q. Then it continues: "See Michael Walsh memorandum."

That's the one, I suppose, we had looked at before.

"A lot of difficult points"?

A. I presume so.

Q. Then, what's the next line?

A. "Problem for IIU in coming up with capital in interim."

Q. That's something you are being told, isn't that right?

A. It looks like it, yes.

Q. And the only person that could have told you that was whom?

A. Presumably Michael Walsh, or Neville O'Byrne.

Q. Mm-hmm. What was that about? That they didn't have the money?

A. Possibly, or didn't have the cash, yes.

Q. What period are we talking about there?

A. I don't know. Obviously sometime after the 8th February, but I don't know what the "interim" refers to. I don't know what the other end of the interim period was.

Q. Mm-hmm. So can we take it that, from this note, you were being informed that IIU had a problem in coming up with the capital, definitely in this period, the 8th February, 1996, isn't that right?

A. That seems to be the case, yes.

Q. And for some other period, perhaps?

A. Some future period, yes. Some period into the future.

Q. Now, I suppose if that be the case, and you were so informed, it must have brought it home to you that it was unlikely that they were going to place any shares because if they were going to place them, they could have come up with the capital, isn't that right?

A. Not necessarily. It may have taken them time to place them. I think this is more about timing than about absolute ability. But I don't know that for sure.

Q. I appreciate that point. I appreciate the point.

A. At this time, Esat was becoming increasingly concerned about the delay in the licence, and everyone was behaving all the time as if the licence was going to be granted within the next week, because it had to be granted in the next week. We were now beginning to run up against difficulties associated with launch in time for the following Christmas market. So everyone

was behaving on the basis that the licence was imminent, and I think what's being said here, and I am extrapolating, that if we were suddenly called for the money, we won't have it, possibly because, for all I know, that a placing exercise was one way and it wouldn't have been completed, or something.

Q. Well, and I take on board the point you make about the 31st January, but there was one thing for certain, wasn't there, that in the period up to the 31st January, and as of the 8th February of 1996, Communicorp/Esat Holdings couldn't have subscribed for anything; they hadn't got the money?

A. Whatever possibility they had of doing so, they couldn't have done it at short notice.

Q. They didn't have the money in May, isn't that right?

A. That's correct, yes.

Q. So in this period, they couldn't have taken up the licence?

A. Yes.

Q. And you were being informed, as of the 8th February, 1996, that IIU, who were in their own capacity as having a 25% interest, and also under the arrangement agreement, had an obligation to underwrite Esat Holdings 37.5%; that they would have difficulty coming up with capital in the interim?

A. Yes.

Q. So as of this time, you were being informed, or you

knew that there was no possibility of coming up with the capital in respect of 62.5% of the shares, or of the call?

A. At least in the short-term.

Q. In the short-term, of the call?

A. Yes. The capital there I think is the 52 million.

Q. Yes.

A. Or the relevant percentage of 52 million.

Q. The relevant percentage. Well, we talk about calls first in the first instance. The first call was going to be there was a call of about 3 million operating, I think, expenses or something like that?

A. Yes, and then another one at 15.

Q. Fairly small. But the big one was going to be the 15 million to pay for the licence?

A. The first big one, yes.

Q. The first big one, that was the first big one?

A. Yes.

Q. Now, if you go to the next document, which is dated the 20th February, and it's from Mr. O'Toole to Mr. O'Brien, and he says: "Attached is a draft letter to IIU for your consideration. I believe that we now need to send such a letter to Michael Walsh in order to expedite conclusion of the Shareholders Agreement, to prepare IIU for the imminence of a capital call by Esat Digifone.

"I am concerned at the delay in finalising the

Shareholders Agreement with IIU. It is dangerous to leave it until the last moment, and this is a matter which we should be able to tidy away now. The Department is bound to ask us shortly to deliver the agreement to them. If we delay, you can be sure that the Department will use this as a further excuse to delay the licence. In addition, the project finance banks need to see the agreement and will require signature by the parties before they start funding. In short, we need to get IIU to focus seriously on the agreement and reach rapid agreement between ourselves and Telenor.

"The draft letter also puts Michael Walsh on notice that IIU will have to fund its 25% share soon, since Esat Digifone now needs working capital from all of its shareholders. The sooner IIU puts in money the better, since Esat and Telenor are investing actively in the business, with IIU getting a free carry for no risk whatsoever; when IIU have money in they will become much more focused. And if they fail to fund, then their entitlement to equity may cease to exist because they could be in breach of the agreement giving them that right.

"I should also mention that I had a brief word with Knut Digerud yesterday on the Shareholders Agreement. Although he did not commit himself definitively, I believe as a result of the discussion that Telenor

will now agree to the deletion of the two clauses you were worried about on the transfer of shares."

That's neither here nor there.

And there was included a draft letter with that.

Do you know anything about that?

A. No I don't, I am afraid. Nothing at all.

Q. Perhaps it was just something happening in parallel to information which you and Mr. O'Brien had about IIU and its position, do you think?

A. Well, just as I read, on the face of the memo, it's that Mr. O'Toole is concerned that IIU are being slow about agreeing some outstanding issues in the Shareholders Agreement and wants to gee them up. Meanwhile, he wants to let them know they are going to be called on for money fairly soon. But Gerry Halpenny was doing the negotiation of the Shareholders Agreement with Mr. O'Toole, not me. So I don't really know what this is about.

Q. Fair enough. Just going back to the meeting on the 8th February, 1996; I take it you were in attendance there as solicitor to Esat Digifone, is that correct?

A. Yes, probably.

Q. Well, could you be there in any other capacity?

A. Well, at this time I was very much solicitor to Esat Telecom, although I didn't generally act for Esat Telecom in Esat Digifone-related matters, but I did act for Esat Telecom in non-Esat Digifone-related

matters.

Q. But this was an Esat Digifone matter?

A. Yes, so logically I would have been here for Esat Digifone. But you asked could I have been here in any other capacity? I said probably not.

Q. Sorry, I beg your pardon, I understand that distinction. Was the other shareholder in Esat Digifone, that is Telenor, kept abreast of the state of affairs by you as of the 8th February, 1996?

A. I can't recall, but I certainly haven't seen a letter from me to them.

Q. Is that surprising, Mr. O'Connell? You, as solicitor to the company, were in possession of information that if there was a call for capital at that time, that there was a potential difficulty in the short-term in relation to 62.5% of that call, isn't that right?

A. Well, I didn't handle shareholder relations for Esat Digifone. Remember, Mr. O'Brien was Chairman of Esat Digifone.

Q. Right. And who was the Chief Executive?

A. Knut Digerud.

Q. I don't know, but would it more usual for the solicitor to report directly to the Chief Executive of a company?

A. At this time I was reporting to both of them, and indeed to Mr. O'Donoghue, who was Finance Director.

Q. Now, I think there is correspondence between

Mr. Digerud and Mr. O'Brien, I take it. Did you have any involvement in that or

A. I am just looking

Q. It's at Divider No. 113.

A. I think I was aware of that 50% point, but I don't think I was involved in the correspondence directly.

Q. Right. Well, just, there is one matter, I suppose, and this is from Mr. O'Brien. It's a letter dated 27th February, 1996.

"I want to thank you for getting back to me so promptly on the suggestion which I put to Telenor Invest through you, and to IIU through Michael Walsh, at our meeting on the 9th February, that you might consider selling a portion of your share in Esat Digifone to Esat Telecom Holdings Limited. I have noted your response, that Telenor Invest has no interest in reducing its sharing in Esat Digifone at this time.

"As I mentioned when I talked with you and Michael Walsh, our financial advisers, CS First Boston have told me that prospective investors in Holdings would be more attracted to our current private placement offer if Holdings could consolidate its investment in Esat Digifone on the basis that it would own more than 50% of the company. This has been confirmed to me even more strongly during my current meetings with prospective investors in the course of our roadshow in

the United States. I believe that such an adjustment would also be acceptable to the Department of Communications. Accordingly, I will pursue the matter further with Michael Walsh of IIU, and I will keep you informed if it should emerge that IIU might be willing to do an acceptable dealing with Holdings to this effect."

Now, do you know what Mr. O'Brien is referring to there when he says that he believes that the adjustment will be acceptable to the Department of Communications?

A. No, I don't.

Q. I think the next document is advice by Mr. Moran to Telenor. And I don't believe it's necessarily a matter for you to deal with.

There is a document at 116. It's a memorandum of yours. And attending Denis O'Brien, ML, Michael Walsh, Neville O'Byrne, Owen O'Connell.

"Telenor have written to IIU want to take equal number of shares.

IIU don't want to enter into conditional agreement.

Happy to transfer 12.6 to Denis O'Brien, provided Telenor agree.

NB: Release of underwriting agreement."

What's that about?

A. I think it's just recounting the current state of play in regard to the matters we have been talking about,

essentially that IIU will transfer the shares, but only if Telenor agree and Telenor want to take an equal number.

Q. But "release" sorry, I don't just the reference to "release of underwriting agreement".

A. As far as I can recall, and when I say "recall", I mean from this afternoon, wasn't there a reference in Mr. O'Brien's letter dealing with this transaction, in which he said that the, that IIU would be released from their underwriting commitments as part of the consideration for selling their shares? I think there was something in an earlier letter about that.

Q. But the underwriting agreement obliged them was an obligation in respect of Esat Digifone, isn't that right?

A. Yes.

Q. Not Communicorp?

A. Yes.

Q. Or Esat Holdings or whatever Mr. O'Brien's vehicle was?

A. Yes.

Q. How could such an offer be made to IIU or to Mr. Desmond?

A. Well, it could the offer could be made, I suppose, but it could only be performed by Esat Digifone.

Q. It could only be performed by Esat Digifone?

A. And arguably even the Department, although that would

be very arguable.

Q. Yes. What Esat Digifone business was being conducted at this meeting, or were you there in that capacity?

A. I suspect I was probably just being kept informed of developments, because there doesn't seem to have been anything for me to do.

Q. Would you agree that one might be forgiven for having a view, looking at these documents, that there was a lot of discussion going on between the Communicorp side, or Mr. O'Brien in particular, and IIU, but that Telenor were being excluded on these documents at least?

A. Well, the document we have just read, which is Mr. O'Brien writing to

Q. That he had a meeting with him on the 9th February, I think?

A. I am talking about Mr. O'Brien's letter to Mr. Digerud.

Q. Yes.

A. I don't think one could say that Telenor were being excluded. They are being told there what's happening.

In fact, I think that's also a good example I think of how different people at different times operated in different capacities, because although when

Mr. O'Brien wrote his letter of the 27th February to

Mr. Digerud, Mr. Digerud was the Chief Executive of Esat Digifone, he received the letter in his capacity

as Managing Director of Telenor Invest. So I think on the basis of that, Telenor were being informed.

Q. All right. Well, apart from that particular document, and I suppose we'll have to check with Mr. Digerud about that, but there were negotiations of some sort or other, and they looked significant enough, as and from January up to that period, in which it would appear, from the documents at least anyway, that Telenor were not being kept abreast of things?

A. I'm not sure I'd agree. There is Mr. Moran's letter then where he says, "in relation to IIU and Dermot Desmond, I expect you are aware that Mr. Desmond is at all times a dealer and if the price is right we'll be quite happy to deal with Denis O'Brien' and so forth. I do think Telenor were aware that these discussions were going on. I would add that in my view there was a certain air of unreality to them because I never thought it was likely that Telenor would agree to

Q. I think that's a fair point. That's a fair point. I think perhaps I'll stop there for today so.

CHAIRMAN: 11 o'clock. Thank you very much.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 30TH OCTOBER, 2003, AT 11AM