

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 31ST MAY

2001, AT 11AM:

MR. HEALY: Today, Sir, the Tribunal intends to move into evidence relating to those parts of the Terms of Reference which deal with Mr. Michael Lowry and which deal with the one or two residual or peripheral matters that were mentioned in the Opening Statement, including, I think, Term of Reference (k), if I am right in my recollection of the Terms of Reference and of the Opening Statement.

Mr. Arvae Johansen, please.

MR. FITZSIMONS: I wonder, Chairman, if I could, at this stage, apply for representation on behalf of Telenor, I appear with Blathna Ruane, instructed by Kilroy Solicitors

CHAIRMAN: Thank you very much, Mr. Fitzsimons. Quite clearly your clients have an obvious concern in the particular aspect of this sitting that is being taken up today. On the usual basis I have intimated other such applications, that is to say, while intimating nothing as regards an adjudication as to costs, I am satisfied that an order for limited representation should be made in favour of Telenor. Thank you very much, Mr. Fitzsimons.

MR. O'CONNOR: I appear instructed by Mr. Kevin O'Higgins and I am with Mr. Charles Meenan. I am applying for limited representation on behalf of Fine Gael and its officers in respect of this part of the procedure.

CHAIRMAN: Again, subject to the same caveat. It is quite clear that Fine Gael have an interest in the matters that will be discussed over forthcoming days, and again I believe an order for limited representation will be granted.

ARVAE JOHANSEN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

CHAIRMAN: Thank you very much for your attendance, Mr. Johansen.

Q. MR. HEALY: Mr. Johansen, you have provided the Tribunal with a statement and with a significant amount of supporting documentation. And do you have a copy of that statement with you?

A. Yeah.

Q. And you have a copy of the supporting documentation?

A. Sure.

Q. And what I intend to do is go through your statement.

As we go through the statement, because it's a long one, I intend to go through the documents and I may raise one or two matters with you to clarify one or two

aspects of your statement as we go through it, and at the end there may be some other overall matters I want to take up with you in the context of the totality of what your statement imports.

You say that your name is Arvae Johansen; that you are an employee of Telenor; that you are the Chairman of Telenor Invest AS, now named Telenor Mobile Communications, having its seat of management at Oslo, Norway. You say that you were the senior member of operational management of Telenor who was involved in the co-venture with ESAT Telecom. This co-venture used ESAT Digifone Ltd. as the corporate vehicle in the bid for the second GSM mobile telephone licence in Ireland.

Now, I think what you mean by that is that you and another major partner joined together to make the bid and the vehicle you used to make the bid was called ESAT Digifone?

A. That's right.

Q. You go on to say, ESAT Digifone is a private limited company registered in Ireland. You give its registration number, 234895. It was incorporated on the 23rd June of 1995, but it was not properly capitalised, in the commercial sense, until shortly after the award of the second GSM licence to ESAT Digifone on the 16th May of 1996. The shareholders in

ESAT Digifone were: ESAT Telecom, 40%; Telenor, 40%; and IIU 20%. You say that Denis O'Brien was the major shareholder and Chairman of ESAT Telecom. You say he is also the Chairman of ESAT Digifone.

Now, Telenor, as the owner of 40% of ESAT Digifone, was at that time I think I am right in saying a Norwegian State company, is that right?

A. Yes, that's correct.

Q. That the Norwegian State owned 100% of the shares in the company?

A. Yes.

Q. I think you'd be familiar with semi-state companies in Ireland as they are called, like ESB and Iriann Road Eireann and companies like that, they are State companies owned entirely by the State. Is that the same with Telenor at that time?

A. Yes. Without knowing how it works here, I would say it's most likely exactly the same.

Q. The major shareholder in ESAT Telecom, which owned 40% of ESAT Digifone, was Mr. Denis O'Brien. And am I right in thinking that IIU was, in fact, a vehicle for the interests of Mr. Dermot Desmond, would that be right?

A. Yes. The information we had was that it was only for the interest of Dermot Desmond.

Q. Now, you refer to the date of the award of the licence as the 16th May of 1996. The decision to award the

licence was made at a much earlier date, isn't that

right?

A. Yes. The press conference where the winner of the

licence competition was announced, I think it was late

October, '95 I think, 25th October.

Q. And do I understand that there was much to be done in

the interval between the decision as to who won the

competition and the actual granting of the licence in

mid-1996?

A. Yes. Are you referring to what we needed to do to set

up the company and start rolling off the network or in

terms of formal matters concerning the licence document

itself?

Q. I am referring to both things. Both commercially you

had to do a lot of work to get your company up and

running and did you also have further conditions to

comply with in order to qualify, if you like, for

actually having the licence issued to you as opposed to

merely winning the competition entitling you to have it

issued to you?

A. The way I remember it, we concentrated heavily on

setting up the company, getting the people in place,

planning the network, vendor selection, etc., etc.

There was, of course, some activity also, so to speak,

in the back office on the formal document itself and

that was mainly handled by lawyers, and to me that

seemed like a relatively routine type of activity but

it took sometime.

Q. Now, the first section or section A of your statement is headed: "The donation". And you say:

"I refer to the donation of \$50,000 US made by Telenor on behalf of ESAT Digifone to the Fine Gael Party."

And you say the donation was made at the request of Denis O'Brien via a senior fundraiser for the Party, named David Austin. I think that's your basic statement in relation to that payment. And then the rest of your statement fleshes that out, isn't that right?

A. That is right.

Q. You then deal with what you call the lead up to a private meeting with Denis O'Brien, dated 8th December of 1995. And you say:

"Early on the morning of Friday, 8th December of 1995, Mr. Denis O'Brien of ESAT Telecom and Mr. Barry Maloney flew together from Stockholm to meet me in Oslo as arranged." You then refer to an extract copy from your calendar referring to the date of that meeting, and I think it's shown as an 8am entry, is that right?

A. Yes.

Q. You say the purpose of the meeting was to deal with the proposed future management of ESAT Digifone and the contract of employment of Mr. Maloney.

"Although Mr. Maloney was present, he was not present at any time during the discussions that Mr. O'Brien later had with me in relation to the donation. At the end of the meeting and at Mr. O'Brien's request, I had a private meeting with him."

In the next part of your statement, you describe that as the private meeting, dated 8th December of 1995.

At the private meeting you say that Mr. O'Brien requested that Telenor make a political donation of \$50,000 US to the Fine Gael Party in Ireland.

Mr. O'Brien, you say, said that it was to be a goodwill gesture. You say he then said he wanted to avoid making the donation himself, because previous political donations made by him had caused a fuss in the media in Ireland. You say that you immediately refused, stating that Telenor would not make such a donation.

You then go on to say that Mr. O'Brien repeated the request and you said there was no possibility that Telenor would make such a donation. You asked Mr. O'Brien, you say, why he was not using ESAT Digifone to make the donation if he personally wished to avoid making the donation. "As far as Telenor was concerned" this is your statement "this was an Irish matter and Mr. O'Brien ran the operation in Ireland." You say that Mr. O'Brien then said that ESAT Digifone would make the donation.

Now, in response to Mr. O'Brien's first request that Telenor made the donation, you said that Telenor would not make it and you said there was no possibility that it could make it or that it would make it.

Is there some or was there some provision of Norwegian law or some obligation or rule affecting the internal management of Telenor which would have precluded Telenor from making the donation?

A. I don't know of any particular law or rule for billing it, but I think it would have been very unusual and I don't think it has ever happened that Telenor has made a donation.

Q. Do you mean you don't think it has ever happened that Telenor has made a political donation in Norway or elsewhere?

A. I would say both.

Q. So you have never made political donations in Norway, perhaps understandably because you are a State company and you don't think you have ever made political donations anywhere else in the course of your other international activities?

A. That's my or my perception of it anyway.

Q. And do I take it, therefore, that you don't recall ever being asked for a political donation in the course of your other international activities?

A. That's a hard question to answer.



Q. Well, did you were you asked for political donations?

A. We have been asked in certain contexts to pay substantial amounts to people who have kind of said that that would guarantee us a licence number and it has always been refused.

Q. You say that Mr. O'Brien eventually agreed that ESAT Digifone would make the donation?

A. (Nods head up and down.)

Q. You go on to say: "As ESAT Digifone had not yet been capitalised in the commercial sense at this time in early December of 1995, Mr. O'Brien asked that Telenor pay the donation and that ESAT Digifone would reimburse Telenor when ESAT Digifone was in funds." You say you agreed that Telenor would facilitate ESAT Digifone by making the donation on its behalf. And Mr. O'Brien said he would telephone you later with the details.

So as far as you were concerned at that stage, this was ESAT's donation, not Telenor's donation, isn't that right?

A. That's right. And

Q. And you were simply providing the money to which ESAT, as you understand it, did not have ready access at that time?

A. Yeah, that's right. And the way we saw it was that this was an Irish matter and Denis O'Brien would be

able to judge what was proper to do in Ireland and that if ESAT wanted to do it and Denis went for it, we would not object to it.

Q. Did you have any concerns from the Telenor perspective, in particular in the context of some of the other approaches that had been made to you that you mentioned a moment ago, did you have any concerns that there was anything improper about this donation?

A. No. I think we still thought it was unusual, but as I have just said, if Denis O'Brien, who was, you know, for us, the kind of the guarantor for the Irish operations, considered it proper and correct to do it, it was hard for us to kind of overrule his judgement on that.

Q. Now, you say that no other aspects of the donation were discussed at that meeting. So the amount of the donation had been discussed and that was the only detailed feature of the donation that you were aware of at that stage?

A. Yes. There was some reference made also by Denis to the dinner in New York and he had been approached by the Party in connection with that dinner and that was the basis for the payment. And it was my understanding that some commitments had been made to make a donation. And I think, also, I had the understanding that the dinner had already taken place; that it was kind of an obligation to it.

Q. Are you sure that these references to the dinner were made at that time and that this isn't based on things you have learnt subsequently about what transpired in New York in 1995?

A. No, I am quite certain the dinner was mentioned at this time. But I am also quite certain it was the first time I heard about it.

Q. And you say that not only were you told about a dinner, you were told that it was over?

A. Yeah, that's my recollection, that it was already over, but that some promises had been given that some donation would be made which was related to that dinner.

Q. And is that why the reference was made to the payment being in US dollars?

A. Yes, yes.

Q. Did you think there was anything unusual about making a payment to an Irish political party in US dollars?

A. Well, I never had been dealing with these matters before. I think I was surprised on some aspects of it, but again, we didn't try to be the judge as to how one did go about, in the Irish context, about this . We basically left that up to the Irish people to decide what was right.

Q. At that time, what was Barry Maloney's role in ESAT Digifone?

A. Barry was not employed yet. I think he had quite a

good position with ^ Serrus in California. He had been

Q. Well, Mr. Maloney may be giving evidence at a later stage, I don't want to deal too much at this stage, to deal with his own affairs, but he wasn't, in any case, an employee at that time. The question of his becoming employed was being discussed?

A. That's right.

Q. I was wondering whether he'd have an input into this. But you are certain he wasn't an employee of the company at that point?

A. Yes.

Q. You say on the following Monday, the 11th December, 1995, Mr. O'Brien telephoned you and gave you the name of David Austin and his telephone number in Dublin and he asked you to telephone David Austin later that day, which you did. You say that you remember you were in Budapest at the time and that the telephone conversation took place at 4.30 Irish time approximately. Isn't that right?

A. Yeah.

Q. Now, since your statement was prepared, and since you have provided the supporting documentation to the Tribunal, you have now furnished the Tribunal with a further document which you have unearthed and which I think relates, according to your statement, to this telephone call?

A. (Nods head up and down.)

Q. The Tribunal has seen the original of the document.

It's a yellow sticky that you put on to your diary or  
on to your notebook, isn't that right?

A. That's correct.

Q. Or a post it.

A. Yeah.

Q. Maybe you'd just go through the document for me and  
tell me or the post it and tell me what it contains  
and what it means?

A. I mean, it's hard to interpret all the things you do in  
a telephone conversation six years later, but I  
interpreted that Denis called in the morning at 10;  
gave me the name of David Austin and the number in  
Dublin with an instruction or indication that I should  
ring David Austin between 3 and 4 o'clock. I flew out  
to Budapest

Q. If you just go a little more slowly so that we can be  
sure we understand every aspect of it.

A. The parenthesis is just between 4 and 5 Norwegian time.

Q. Between 3 and 4 Irish time?

A. Yeah.

Q. And the telephone number, 353-1-2696622, that, as you  
say, is a Dublin number. It is, in fact, one of the  
Jefferson Smurfit numbers in Dublin?

A. Yes.

Q. And the next line has got the Irish pound sign, is that

right?

A. Yeah. And I don't know exactly understand why that is put on it. It might be that in the conversation with David Austin, he began referring to Irish pounds and I asked, wasn't it dollars? Oh yes, he agreed it was dollars, so it might be why it's put there, but I have no clear recollection of why that was put on.

Q. The second part of the document then, where that Irish pounds sign is contained refers to the actual content of your telephone conversation with David Austin, isn't that right?

A. That's right.

Q. And again, you have firstly, the words T-E-L, meaning the telephone call. The date is the same day, 11th December of 1995. I think the next words in the brackets are "From Budapest." Is that right?

A. That's right.

Q. Underneath that you have I think what is the Norwegian for the time, 17:25 and in Norwegian the words local time?

A. Local time is the same time in Budapest and Oslo.

Q. In brackets, maybe you'd just clarify what's in brackets.

A. That's 4:25 Dublin.

Q. Then you have an arrow pointing down?

A. Yeah, that is probably referring to what was discussed in the conversation with David Austin.

Q. And maybe just go through that for me, please.

A. Yeah. I think he clarified that he would produce an invoice, I think I said I needed something to be able to advance the payment. And he said he would produce an invoice for consultancy work, and that's the latter part, 'sendes factura', that means sending invoice.

Q. That last word with the underlining is factura.

A. Yeah.

Q. That's Norwegian for send an invoice, is it sending invoice or sending an invoice?

A. Sending invoice.

Q. He would be sending you an invoice?

A. Yeah.

Q. Right.

A. Then I asked, well, if you send an invoice like that, how can this be recognised by the Party as a donation? And he said, well, that was absolutely no problem. He would see to it that it was acknowledged by the top people in the party. He mentioned John Bruton, he mentioned Michael Lowry. And there is some element of a connection here to Denis O'Brien, whether that was in connection with the recognition or whether it was that this was kind of agreed between Denis and John Bruton, I am not absolutely certain, but they had been mentioned in the context of this should be recognised as a donation to the party.

Q. What you have written down is "David FT Austin."

That's David Austin's full name, isn't that right?

A. Yeah.

Q. Is that

A. I think he must have said that, I would receive an invoice from David FT Austin because I had David Austin earlier on the note.

Q. Then you have written down John Bruton's name with a comma after it. Then Denis O'Brien. Then on a new line Michael Lowry with a comma. Then subsequently you must have put an arrow from John Bruton to Denis O'Brien. Would that seem right?

A. I am not capable, sorry, of drawing that conclusion.

But I cannot say really

Q. I understand. In any case, you can say or am I right that you can say that the note indicates that those three names were mentioned to you at that time:

Mr. Bruton, Mr. O'Brien and Mr. Lowry?

A. That's absolutely certain.

Q. Now, I am going to go onto the next part of your statement which deals also with the conversation you had with Mr. Austin.

You say: "When I spoke to David Austin on the 11th December 1995 he was expecting my telephone call.

David Austin already knew that the amount of the donation was for \$50,000 US and that the donation was agreed by Mr. O'Brien. I asked him how Telenor should pay the donation. I mentioned to him that Telenor



would need some piece of paper in order to make the payment. David Austin suggested that he could issue an invoice. I asked what he would put on the invoice and he said 'consultancy work' would be appropriate. I said that was acceptable. I asked David Austin to confirm that the donation would be paid into the party account and he said that it would."

Now, from that statement it would seem that you were the first person to suggest that you would need some piece of paper to make the payment, that you couldn't just pay money out of Telenor's account for no reason whatsoever.

A. Yeah, I think I asked him what kind of documentation we would get, yes.

Q. And then he said he could issue an invoice. And you asked him what it would contain and he said consultancy work.

Now, at this time now, at this point, as far as you were concerned, both from the point of view of what's stated here and from the point of view of what you can recall of your discussion when you examined this document, what you were doing was, you were giving Mr. Austin money that would be paid into the Fine Gael Party and he would merely be a conduit for passing that money to the party?

A. Yes.

Q. And, in fact, Telenor weren't passing any money to the party. They were merely doing something for ESAT, isn't that right?

A. That's absolutely correct.

Q. Why then did Telenor need a piece of paper from Mr. Austin?

A. Well, the way the accounting system works, I think it's very hard to pay out an amount without having such an invoice or a similar thing to use as a background for the payout. I don't think we can pay out money without anything.

Q. Of course, no company can pay out money without getting some goods in return or some services or some other explanation which is satisfactory from the point of view of the laws governing the company's accounting, isn't that right?

A. Mmm.

Q. You could presumably make a contribution to charity and that would have to be so described on the company's books, isn't that right?

A. I assume so, yeah.

Q. But in this case, what Mr. Austin was suggesting was that he himself, not the Fine Gael Party, or not ESAT Digifone would provide a piece of paper, but rather that he would provide it for consultancy work, that he would provide a false invoice, in other words?

A. Well, that's the way it happened, yes.

Q. Did you think that Mr. Austin was a member of the Fine Gael Party at this point?

A. I think my understanding or feeling was that he was a senior representative of the Party, yes.

Q. You say the telephone conversation was very short and Mr. Austin agreed to send you the invoice?

A. Yes.

Q. And you were happy to go along with that way of dealing with things?

A. I mean, we, as I said before, we didn't really take the position of being the judge here. We facilitated the payment on behalf of ESAT Digifone and we needed something to be able to do that and in that regard, this was what was needed to get the money advanced on behalf of Digifone.

Q. But, even at this early stage now, what was being represented to you initially as a straightforward political donation was not going to a political party. It was going to a man who answered a telephone call from you to Jefferson Smurfit in Dublin, isn't that right? As of that moment, that's what was happening and that man was giving you an invoice for consultancy work?

A. Yeah. I mean

Q. Nobody had told you that when you were first asked to make the donation?

A. The first incident was when we were discussing it on

the phone, and the next thing was that it should be done in this particular way.

Q. So then on the 14th December, I think you got a letter from Mr. Austin from an address in London, isn't that right?

A. Yeah.

Q. It's a letter from David FT Austin, 109 Flood Street, Chelsea, London, England, 14th December 1995, addressed to you, Mr. Arvae Johansen, Telenor International, in Oslo. It says:

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

Can you just tell me, what does the Norwegian manuscript, which is dated 20th December I think, say on the right-hand side of the document?

A. Well, it says, on the top there, a name, inside the company called 'Per'. And it's an instruction to Per. And it says, "This must be paid," on the first line; second line, "by us," and "further be invoiced" on the next line; and then: "As management cost to Digifone." It's a signature underneath, "D," which was the managing director of Telenor Invest.

Q. Is that Neut Digerund?

A. Yes.

Q. Did he also have an association with ESAT Digifone?

A. He was a board director from Telenor at this time.

Q. On the board of ESAT?

A. ESAT Digifone, yeah.

Q. Now, the letter was in accordance with your discussion.

It referred to consultancy work and it said "as agreed

with Mr. Denis O'Brien." Did that mean that the

consultancy work had been agreed with Mr. O'Brien or

that the payment had been agreed with Mr. O'Brien?

A. I think, you know, the conversation I had with David

Austin from Budapest, the agreement with Denis O'Brien

was referred to.

Q. An agreement for what? Was it an agreement to

describe this as consultancy work or was it an

agreement to pay \$50,000 US?

A. The \$50,000.

Q. The next document is the actual invoice itself. And

it came with the letter under cover of the letter,

isn't that right?

A. Yes.

Q. Again, it's from the same address in London. And it

says: "Invoice for consultancy work for 1995 as per

agreement, 14th December 1995." Addressed to you,

Telenor, with your telephone number. Then underneath

that, it has "amount \$50,000 US," and then I take it,

that's a conversion to Norwegian kronar, is that right?

A. That's right.

Q. And if we just can have the document up another bit.

It then says: "A bank draft can be made payable to David FT Austin and forwarded to account number 66064, Bank of Ireland, Jersey, PO Box 416, Templar House, Don Road, St. Helier, Jersey," and there is a post code after that. And then down on the bottom right-hand corner is what seems to be a computer file reference, is that right?

A. Yeah, I take it for that.

Q. Something that would have been, perhaps, automatically generated on a computer file dealing with items of the same nature, isn't that normally how these sort of legends appear on pieces of paper coming out of word processors, isn't that right?

A. I mean, most people do it that way.

Q. It says: "David FT Austin/FG/December of 1995." The words T-E-L is just a number that you have put on the document to describe it as your second invoice as your second document exhibited in your statement."

Can you just tell me what the manuscript writing on the document means, top left-hand side?

A. I think that top part of it is just an internal file reference, and probably the date when it has been dealt with. To the left there, it says the second part after thalluses is: "Shall be invoiced further." I have to try to figure out what the first word means.

I don't think I am capable of interpreting that first

word.

Q. Is it somebody's name, is it, maybe?

A. Yeah, maybe, maybe it's someone's name, but I don't recognise the name.

Q. If you can throw any further light on it at a later point, no doubt you'll come back to us.

Now, you have made a statement you have made a reference in your statement to receiving this invoice.

You say:

"I received an invoice dated 14th September enclosed with a covering letter from David Austin. The covering letter explained that this was" and you quote "as agreed with Denis O'Brien". The invoice contained the payment arrangements and designated an account with Bank of Ireland in Jersey. The covering letter was not date-stamped on receipt, but I believe that I received it either on the 18th December 1995 or the 19th December 1995." You say: "This is the first time that I became aware that the donation was to be paid into an offshore bank account."

Before I go into the details of the invoice, what did you make of the fact that although you had made a phone call to Jefferson Smurfit's offices in Dublin, you received an invoice from London?

A. I think those there were two elements that surprised me a little bit; one, that it was coming from London,

and number two, that because it was a Jersey account, an offshore account. But again, this wasn't really our thing. I mean, we were facilitating and we were advancing the payment. And things were, you know, revealed stagewise: First, we heard about the donation; secondly, it was through an intermediary; third, it's England, Jersey. At this point in time, we were kind of also committed to we had promised to Denis, we had promised to David Austin to do it, and now to back out I think would be more difficult. And again, we didn't think it was our task to be the judge.

Q. Even though you say you didn't think it was your task to be the judge, if you had been told at the very beginning that this payment was going to be made to somebody with an address in London and that it was going to be put into an offshore bank in Jersey, do you think you would have agreed to do it?

A. I doubt it.

Q. So you would have made a judgement at that stage?

A. If everything had been clear from the beginning, from the outset, I doubt that we would have agreed to it.

Q. So although, as you say, it was for ESAT to make the judgments about the Irish situation, if you had been told all of the incremental layers of, I suppose, unusual or irregular aspects of this at the beginning, you'd have made your own judgement. You would have overridden ESAT's judgement at that stage?



A. I guess, if everything had been clear from the beginning, we would have so many problems with it, that we would have rejected the idea.

Q. But what you are saying is that because all those problems appeared to come up stage by stage, you are saying that you felt committed?

A. Yeah. I mean, you get a little piece now, and then a little piece then. As more time goes by and more people are involved, you feel that, okay, maybe we have to do it anyway. But I think at this time, we were a little bit more reluctant about it, but we still let it go.

Q. Did you think at that point of contacting Denis O'Brien, even if only to get some comfort from him, who was, after all, the person whom you say you relied on to make judgments about the Irish situation, that this was an okay, this was a proper thing to do?

A. I have no clear recollection of any such discussions, but we have probably touched upon it in the course of the events and the time that went by, but I don't think we really had a discussion as to whether we should proceed or not.

Q. You then say: After returning to Oslo you gave an instruction to the accounts department of Telenor to pay the donation. You say you understand that a swift transfer that's a reference to a form of bank transfer of the donation from the account of Telenor

with Den Norske Bank to the bank account of David Austin in Jersey, Bank of Ireland Jersey, was later made. Telenor's account was duly debited. And then you refer to bank confirmation document dated 29th December 1995 with a reference number 50060442107, showing the transfer from Den Norske Bank of \$50,000 US to the account of David Austin.

And that's the document on the overhead projector. It's in Norwegian, but it shows, on the first box, a reference to US dollars, 50,000, and a Norwegian word, can you tell me I mean, above it I can see value date, 29/12/1992. Above that I can see a reference, and then a Norwegian word. Does that mean debit or it looks like "B E L O P"?

A. I don't quite follow you now.

Q. If you look at the first box on the document.

A. Okay.

Q. The first words refer to what you have already told me in your statement is a reference number, 50060442107?

A. No, that's Telenor's account.

Q. The next item I can make out for myself to mean the value date.

A. Yes.

Q. Then the next word, what does that mean?

A. Amount.

Q. And then there is another reference number, two further

reference numbers after that?

A. Yeah.

Q. And I don't think we need concern ourselves too much with the second box. In the third box then, we have firstly, the account number of David Austin. David FT Austin, with the address in London at the Bank of Ireland, Jersey, in the Channel Islands, isn't that right?

A. Yes.

Q. Underneath that we have a description of the amount as "consultancy work for 1995."

A. Yeah, it also tells you that we have used American bank to advance the dollars which was Union Bank in Europe and Telenor Invest was the client and then what it was all about, consultancy work, 1995. And the receiving country. And then also a message to the Norwegian National Bank, called the other services.

Q. Where is that? Where are those words?

A. On the right-hand side, the next to the bottom paragraph. It says: "Mailing to

Q. I see that.

A. Message to the Norwegian National Bank and other services.

Q. And do you see the last two lines in that box, you see "Jersey, Channel Islands," above that, what do those words mean?

A. Receiver's country.

Q. And what's the word above that then?

A. Consultancy services.

Q. I see. You go on in your statement then to describe a receipt that you received from David Austin on the 19th February of 1996. You say:

"Shortly after the 19th February 1996, I received an acknowledgment of payment from David Austin by letter dated 19th February, 1996."

Again, this comes, or appears to come from an address in London. And it's addressed to you in Norway at Telenor in Oslo. It says:

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

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

"Please be assured of their appreciation and thanks.

"Once again, my sincere apologies for my tardiness.

"Yours faithfully, David Austin."

Do you know what prompted this letter from David

Austin?

A. No, not exactly. I mean, we did not expect anything.

But in between this letter and the date of the actual payment, it was done already late December, I think I got a telephone call from Denis O'Brien where he had been in contact with David Austin and he had not recognised that the money had been paid into the account already, so we were asked why we hadn't paid it, and I told Denis it was already paid and that probably David Austin checked and found it had already gone into the account and he felt obliged to come with an apology for that.

Q. So after you sent the money to David Austin, you expected to get an invoice or a receipt of some kind?

A. No, that's not normally the case. We get an invoice. We pay the bank bill and that's it.

Q. Did you expect to get an invoice or receipt from the Fine Gael Party?

A. Not really. But, I was a little curious about how they would recognise the donation I was.

Q. And do you think it was Denis O'Brien drew it up with you or you drew it up with him?

A. Say again, please.

Q. Do you think it was Mr. Denis O'Brien who drew up this matter with you or did you draw it up with him? You said you were curious about how they would recognise the payment.

A. No, that was only my own thoughts.

MR. FITZSIMONS: I wonder, just for the purpose of clarity, the phrase Mr. Healy used there, did Mr. O'Brien draw it up with him? The witness has given evidence in English. And if Mr. Healy could rephrase the question and say: Was it Mr. O'Brien who brought it up, not drew it up

CHAIRMAN: It was left a little hanging, and although Mr. Johansen's English is excellent, I think in fairness it ought to be clarified.

MR. FITZSIMONS: Thank you.

Q. MR. HEALY: I think what you said was and what prompted my question was the following: "I think I got a telephone call from Denis O'Brien where he had been in contact with David Austin and he had not recognised that the money had been paid into the account already." Isn't that right?

A. Yeah.

Q. "So we were asked," does that mean that Mr. O'Brien asked you?

A. Yeah, exactly.

Q. "Why he hasn't paid it."

A. We, being Telenor in that case.

Q. And you say: "I told Denis it was already paid." And you then go on to say: Probably David Austin checked and found out it had already gone into the account and

he felt obliged to come to you with an apology for that.

A. Yeah.

Q. That would seem to suggest, from what you are saying, that Mr. O'Brien had been monitoring the situation in some way with Mr. Austin or vice versa?

A. Yeah, that's right.

Q. Now, you didn't get an apology for lateness in sending a receipt from the Fine Gael Party; you got it from Mr. Austin, isn't that right?

A. Yeah. I mean, as I said already, we were not expecting an acknowledgment letter as such at all. So this was something that David Austin just produced on his own behalf.

Q. But the document is written in a somewhat roundabout way, isn't it?

A. Yeah. I don't think I can comment on the way he wrote it. He just wrote it like that. I mean, I never asked for it.

Q. He says that: "You should be assured of the appreciation and thanks of the people who received payment".

A. I took that to mean the Party.

Q. Well, he didn't want to say the Party. He couldn't say the Party because, of course, the record had already been created to suggest that this was a consultancy payment, isn't that right?

A. Yeah, I am not in a position actually to comment on that.

Q. You go on then to deal with what you call the refund of the political donation by ESAT Digifone. You say:

"I was not personally involved in the processing of the reimbursement by ESAT Digifone to Telenor, but I have checked the position as set out hereinafter in the files and records of Telenor and by referring to the accounts department which processed the refund from ESAT Digifone."

Sorry, could I just go back one moment to that letter you got from David Austin. Did you tell Mr. O'Brien that you got a receipt from Mr. Austin recognising, as you put it, that the money had been paid?

A. Yeah, I believe so.

Q. After all, you say that it was he had contacted you?

A. Yeah.

Q. Did you consider sending him on a copy of Mr. Austin's letter or some other acknowledgment of the payment?

A. I have no clear recollection of that, but most likely I did.

Q. You say that the position in relation to the reimbursement is complicated by the fact that three invoices were issued by Telenor to ESAT Digifone.

Now, I think I'll read what you have to say about the three invoices first and then we can look at them.



"On the 3rd January 1996, Telenor issued to ESAT Digifone an invoice number 100050, dated 3rd January 1996 for 316,000 Norwegian kroner, which was the Norwegian equivalent of \$50,000 US. At the same time that the invoice was sent to ESAT Digifone, it was noticed that the name of David Austin was mentioned on the invoice. It was agreed that the invoice be destroyed and that a new invoice be sent to ESAT Digifone. As a result of this, a new invoice was issued omitting any reference to the name David Austin. This second invoice was issued under invoice number" the same invoice number again "100050 for \$50,000 US dated 31st December of 1995. The reason that the invoice was dated 31st December 1995 was to refer the expenditure to the 1995 year. This invoice should have been issued in Irish pounds. Therefore, Telenor sent to ESAT Digifone a credit note, reference 100071 in respect of this invoice. Finally, on the 27th March 1996, Telenor issued a third invoice 100084, dated 27th March, 1996 in the amount of ̳31,300 Irish being the Irish pounds equivalent of \$50,000 US at the then applicable exchange rate between US dollars and Irish pounds. This invoice was discharged by ESAT Digifone on or about the 30th June 1996 by a payment on account from ESAT Digifone included in a payment of 6,210,000 Norwegian kroner under voucher number

8300483."

And you then refer to the relevant documentation which you say has already been copied to the Tribunal and specifically the statement of account entitled, and I hope I am pronouncing it right, "kunde-transaksjoner," showing the credit to Telenor which included reimbursement of that particular invoice 100084 dated 27th March 1996. And then you say:

"Apart from the confusion with the invoices, the payment was processed in the usual way."

I think you prefaced your remarks about the invoices by saying you weren't involved with them but you have checked the paperwork and it's from the paperwork that you have come up with this explanation, is that correct?

A. Yes, and also trying to talk to people that were involved and tried to find the background for the different actions.

Q. The first document to which you have drawn the Tribunal is an invoice of the 3rd January of 1996. And as you said in your statement, this was an invoice which you sent to ESAT Digifone in Dublin with a payment due, the date of the 3/1/1996. And we have the invoice number which I have already referred to. Can you tell me why the invoice says "Payment due 3/1/1996"?

A. No, I have no specific explanation. You mean, you

should have a few days outstanding?

Q. You did this for ESAT in the middle of December, wasn't it

A. 29th December, yes.

Q. The end of December. And ESAT didn't have any money to do it. That was why you did it; as far as you were concerned, it was an ESAT payment and you were simply accommodating them?

A. (Nods head.)

Q. If they had no money at the end of December, presumably they weren't going to have any money by the 1st January, were they?

A. No, I don't think we expected to get it paid that day.

Q. I understand. It then goes on to describe the product as, or the product description as: "Consultant, David FT Austin, 316,000 Norwegian kronar". At the bottom of the document, it says: "This invoice is issued in Norwegian kronar." It says: "Please remit the above amount into our bank account," and gives the bank account number.

Now, could you tell me what is written in manuscript in Norwegian in the centre of the document?

A. Yes. It says, again to a person, Irna

Q. Who is that person?

A. That was a lady dealing with accounting in Telenor Invest. "This is now shredded with Receiver. A new

invoice should be sent for consultancy services from Telenor at US \$50,000 without any attachments or reference to David Austin." Then: "I would like to see the invoice before you send it," under it "Per".

Q. Who is that person?

A. That is also a person inside Telenor Invest who had been the project manager for the project in Ireland.

Q. So Per was giving an instruction, the project manager for the ESAT project in Ireland, was giving an instruction to another Telenor employee as to how this should be dealt with in the accounts of Telenor?

A. Yeah. This invoice was sent to ESAT Digifone, but and this is not quite clear how this came about, because I tried to check it several times, but Per's best recollection is that he got the information from the other end, that it was not acceptable and Per would be the natural contact since he had been the project leader. And that we needed to correct it. Here he is giving the instructions as to how it should look to be accepted in the other end.

Q. When you say that Per had got information from the other end, you mean that he had got information from ESAT Digifone in Dublin?

A. Yes.

Q. What rank in the management of Telenor did this gentleman, Per, hold? Was he a senior management employee or a middle management employee?

A. He was he was definitely not senior. I would call him a middle he was the project leader, so to speak, so he had did a lot of the ground work.

Q. He had a responsible position?

A. Yeah, I would say so, yeah.

Q. And it was as a result of something he had learned in the course of his dealings with Dublin, with ESAT in Dublin, that he gave this instruction?

A. Yeah.

Q. According to what you have been told?

A. Yeah, that's it.

Q. What he was told is that the invoice which had been sent to Dublin had been shredded?

A. Yeah.

Q. You didn't actually shred your copy of it?

A. No. I mean, to us, this was no big thing. We were not shy about the name David Austin or anything to us, it looked absolutely standard, that we put the reference to whom we got the invoice from.

Q. And as far as he was concerned, he needed an invoice which referred to \$50,000 US and which did not mention David Austin, his name anywhere?

A. Yes.

Q. And which would not have any attachments referring to David Austin?

A. Yes.

Q. Does that suggest that when the invoice was first sent

to Dublin, it contained attachments from David Austin?

A. Yeah. I don't know this exactly either, but my interpretation is the same as you are saying, that it might be that the name of David Austin was actually attached to the first one.

Q. Because it was clear that Dublin did not want either his name or any documents referring to him?

A. No.

Q. So as far as ESAT were concerned in Dublin, that invoice had not been sent. It had been shredded, it didn't exist and they wanted a new one, is that right?

A. Yes.

Q. And then we have the next invoice which you sent, dated 31st December 1995. If I could just come back to something you said in your statement for a moment.

Referring to the last invoice, document number 7, you say: "It was agreed that the invoice be destroyed and that a new invoice would be sent to ESAT Digifone."

What you mean by that, I take it, is that Per, in the course of his dealings with Dublin, agreed that this invoice, your one, would be destroyed as well or would cease to exist and that a new one would be sent?

A. Well, I think as I said, in our minds, this was nothing that we needed to hide in any way. So I think it referred more to what was happening here in Dublin, that it should be destroyed and a new one, which was more acceptable in terms of what should be on it,

should be sent to Digifone.

Q. So as far as you were concerned, you didn't mind what was written on the invoice, you didn't mind what attachments were sent with it, you were not shy about it

A. No.

Q. But do I understand you to be saying that on the ESAT side or at the other end in Dublin, there was a degree at least of shyness or concern that the document contained information that it shouldn't contain?

A. Yeah, that was the background for the changing of the text.

Q. And even though you knew that in Dublin they were not happy with the way in which the invoice, the way it looked, and wanted it destroyed, you didn't destroy your copies of it?

A. No. We had one on file.

Q. Did you hold on to your copies, because you were in any way concerned at this stage that a transaction was going to be described in one way in Dublin and in a different way in Norway?

A. I don't know, because I was not really dealing with this thing myself. It was done by other people.

Q. Well, what does it look to you?

A. I think we probably would like to have as much evidence of the real nature of the matter as possible, yes.

Q. Well, at least what you were keeping was as much

evidence of the real nature of the matter as you had been instructed to create first day, isn't that right? You had been instructed to go along with this procedure and create these documents, effectively, as a result of conversations you had with Mr. David Austin, isn't that right? They didn't, in fact, reflect the true underlying transaction which was not a payment to David Austin, but a payment to Fine Gael, isn't that correct?

A. I am not quite certain I understand you now.

Q. I think what you said is that: "We would probably like to have as much evidence of the real nature of the matter as possible." What you had was, and what you retained was certain evidence of the real nature of the matter. You kept the documentation that was generated as a result of your dealings with David Austin, isn't that right?

A. I am not getting you completely yet.

Q. What was the real nature of this transaction?

A. Okay. What I referred to in that was at least we had the covering letter from David Austin which referred to that this was agreed with Denis O'Brien and I think to be certain that we get it reimbursed from Digifone, such a statement, I think, would be the best guarantee or assertion from our side that we would actually get it reimbursed.

Q. You didn't want anyone saying to you at a later point, "I don't owe you that \$50,000." You wanted the



documentation to show that Denis O'Brien was involved and that the agreement was done with his approval and at his request?

A. Yeah, we wanted to relate it to Digifone so that we were certain we could get the money back.

Q. The next invoice is dated 31st December 1995, again.

It gives the same payment date, 31st January of 1996.

It's again addressed to ESAT. I think it has the same invoice number as the last document and it then has "Consultancy fee, Telenor invoice, \$50,000 US." Can you tell me what's in the highlighted box?

A. I cannot read that either, but it looks like it's just putting in a total or something, total \$50,000.

Q. You can see \$50,000 US on the right-hand side?

A. I think it's just the sum, the total.

Q. It looks like "total" on the left-hand side as well.

What's written in Norwegian on the bottom right hand of the document?

A. It's an instruction to a guy called Sven, "Can you make a credit note for this?" And in parenthesis, "With explanation from 'Peil Lantvret' and make a new one in Irish pounds which we will send out in four to six weeks." And I guess it's again Per, there is only part of it, it's probably the beginning of a P.

Q. It looks like the same handwriting anyway as on the previous document.

A. Yes.

Q. So now this invoice was sent as per the original request which Per had on the earlier document transmitted?

A. That's right.

Q. Contained no reference to David Austin and was for \$50,000 US. Would you have sent invoices to ESAT Digifone in different currencies around this time?

A. I don't know. I wasn't involved in that. No, so I don't know that you could probably see that from the account, currency

Q. Yes, which we can look at in a moment.

A. So, I don't know, but it looks like a system of

Q. It's something

A. It looks like the system can invoice in different currencies.

Q. This invoice was also not acceptable, isn't that right?

A. Yeah. That's the interpretation.

Q. It's as a result of some other contact with Dublin that Per was able to add this note to the bottom of the document and this resulted in the generation of a credit note reversing the transaction, is that right?

A. Yes.

Q. And that's the next document, document 7B, and I don't think we need to go into that in any real detail. It simply shows that it's an invoice for a negative amount, isn't that how you generate the credit?

A. That's how it works, yes.

Q. And then the next document is the invoice which was ultimately acceptable in Dublin?

A. Yes.

Q. And it's for it's dated 27th March of 1996 for consultancy fee Telenor Invest, i£1,300, and it says:

"This invoice is issued in Irish pounds."

Then, at some later point in 1996, there was some reconciliation of accounts between Telenor and ESAT Digifone and that's referred to in the next document, document number 9. And that document contains a reconciliation in what seems to be Norwegian kroner, is that right?

A. That's as far as I can see, Norwegian kronars, yes.

Q. One of the items on that document refers to the invoice in which the sum of i£1,300 Irish was invoiced to ESAT Digifone, that's invoice number 1000084, which I think is the sixth entry, sixth or seventh entry on that document, is that right?

A. Yes.

Q. Am I right in thinking that the other entries above that may include the credit note I am not an accountant if you look at the third entry.

A. The credit note is the third line from the top.

Q. And the other two entries above that, do they seem to be related to the same transaction?

A. It's the interim thing there called 'saldo', which

means balance.

Q. Well, do you see invoice number 1000050, 31/12/1995, that looks to be the first US dollar invoice, is that right?

A. Yeah.

Q. You have underneath that balance. Underneath that you have the credit note. Underneath that you have a balance of zero. Then you have a number of other items. Then you have the 27th March 1996 invoice for 316130?

A. Yes.

Q. Ultimately, what you received was not a payment of that amount, but a payment or a reconciliation of a much larger amount which included that amount, is that right?

A. That's correct.

Q. And I think it's the next balance underneath that. It says "Payment from ESAT Digifone on account, 6,210,000 kronar." That seems to bring the balance down to 2.28 million, isn't that correct?

A. Yes, that's correct.

Q. You have provided the Tribunal with a copy of what seems to be a running account which goes on for a much longer period right up until you had a nil balance in, I think it's sometime in the year 2000, would that be right, February 2000?

A. Yes.

Q. So that all of the various accounts between you had been reconciled and cleared off by that date?

A. Yes.

Q. In the final line of your statement dealing with these matters, what you said was: "Apart from the confusion with the invoices, the payment was processed in a routine way."

I am just not sure that that is what seems to follow from the documents, because all the references to the clues as to what the payment was about were ultimately removed?

A. What I meant by this was, it was handled by the ordinary people in the accounting department that handled all the invoices. It handled ESAT Digifone like any other expense or invoice or cost that we would advance to them. There was no attempt on the Telenor side to deal with this one in any particular way.

Q. Would you be able to tell me whether the people who handle this or the office work or paperwork in relation to this knew that this was a payment to a political party?

A. No. That was very few people that knew that.

Q. So it had to be the case that somebody who knew that approved the invoice which did not refer to a political party but which referred to David Austin, isn't that right?

A. Yeah, that's correct.

Q. And who were the people who would have known that?

A. It was myself, of course, and Neut Digerund and Per Simonsen

Q. I think, for the benefit of the stenographer, you are saying Neut Digerund, D I G E R U N D?

A. That's right.

Q. And the other person?

A. Per Simonsen, S I M O N S E N.

Q. And he is the man whose name is on the manuscript notes attached to the invoices?

A. Yeah.

Q. Anyone else?

A. Not that I can recall directly.

Q. So while it was handled in the office in a routine way, the people who were handling it in a routine way did not know, in fact, it was a cover for a different transaction altogether involving payment to a political party on behalf of ESAT Digifone?

A. Yeah, that's probably correct.

Q. Next section of your statement, which you call section C, you have headed: "My subsequent dealings with all persons in connection with the preparation of the IPO prospectus for ESAT," meaning the initial public offer.

You say in October 1997 the IPO of ESAT Telecom was using up a lot of management time and resources of ESAT Digifone. "Telenor had raised its concerns at

meetings of the board of directors of ESAT Digifone in relation to the burden being placed on the management of ESAT Digifone. Although I cannot be precise about the time period, I recollect that the solicitors for ESAT Digifone, McCann Fitzgerald, wished to ensure that neither ESAT Digifone nor any officers of the company would be exposed to any liability as a result of any statements in the IPO documentation of ESAT Telecom in relation to ESAT Digifone."

Maybe at this point it would be no harm if we dealt with the names of some of the companies. I am only learning the distinctions between them and what I'll do is indicate to you what I think the position is and you'll hopefully correct me if I am wrong.

What was happening at the end of 1997 was the issue of shares to the public in a company called ESAT Telecom plc, you were not a member of that company?

A. No. And I am not quite certain I have an absolutely clear picture myself, but I think it was a company called ESAT Telecom Holding plc. And underneath that holding company you have ESAT Telecom which was 100% owned, and you had I don't recall exactly whether it was 40 or 45 percent, I think it was 45% holding in ESAT Digifone at this time and maybe some other smaller assets, but I think that were the main assets anyway.

Q. Well, I think we may both be slightly wrong. I am

looking at a prospectus issued, it would appear, on November 7th of 1997 in respect of an offer of what are called 6 million American depositary shares representing 12 million ordinary shares in ESAT Telecom group plc?

A. Okay, that's what I refer to as holding.

Q. I don't want to get too bogged down in the slight differences between the names of the various companies with you. What was being offered to the public here was shares in a company which itself owned shares in ESAT Digifone?

A. That's correct.

Q. And am I right in thinking that most of the shares, or the shares in this company, which were being offered to the public, were mainly representing Mr. Denis O'Brien's shares in ESAT Digifone; ESAT Telecom group plc owned shares in ESAT Digifone?

A. Yeah, I think at this time, it was 45%.

Q. 45%?

A. I am not certain exactly that it was 45 at this stage, but I think it was.

Q. That company had other telecommunications interests, isn't that right, not connected with ESAT Digifone?

A. Yeah, there was another company which was held 100% by the ESAT Telecom Group, plc and that was a company named ESAT Telecom which was doing the fixed line business.



Q. So what was being offered to the public was an opportunity to buy shares in ESAT Telecom group and that group owned shares in a land-line company and in a cellphone company?

A. Yeah, 100% owned land-line company and 45 a 45% stake in a cellphone company.

Q. And Telenor had no shares in that company?

A. No shares neither in the land-line company at Telecom or in the holding company, ESAT Telecom Group.

Q. That prospectus refers to the various assets, if you like, that were being offered to the public and it referred to the ownership that that company had in 45% or thereabouts of ESAT Digifone. And it referred to one of the main assets ESAT Digifone had, which was the second GSM licence?

A. Yeah.

Q. In making an offer to the public of shares, it referred to the activities of ESAT Digifone, isn't that right?

A. Yes. It appeared that the initial valuations indicated that a substantial amount of the group ESAT Telecom Group value was in the 45% stake in Digifone and that's why that was given quite a prominent place in the prospectus.

Q. And you say that a lot of ESAT Digifone time was taken up dealing with this prospectus?

A. Since it got a prominent place in the prospectus, the advisers needed a lot of information from the

management to put into the prospectus, and this was kind of dumped on us since we were not really part of it, and also the management. So concern started to arise as to how much time it was going to take and also later as to what liabilities were there for the management and board of Digifone in this process.

Q. And one of the things that occurred at this time is that a statement was put into this prospectus which it was hoped would exclude any liability on the part of ESAT Digifone, isn't that right?

A. Yes.

Q. If we just go to it. It's not quite clear from what's on the overhead projector, but this statement headed "Disclaimer by ESAT Digifone" is, in fact, bolded in black type.

A. Mmm.

Q. To give it prominence on the page and prominence in the prospectus and it says: "Neither ESAT Digifone nor any of its officers, directors or employees in their respective capacities as officers, directors or employees of ESAT Digifone, has participated in the preparation of this prospectus. Neither ESAT Digifone nor any such officer, director or employee makes any representation whatsoever as to the accuracy or the completeness of the information contained herein or as to the opinions, analysis or expectations expressed herein.

Accordingly, neither ESAT Digifone nor any such officer, director or employee, shall be responsible in any respect for the information contained herein or for such opinions, analysis or expectations expressed herein."

Now, that statement, I think, is contained in a part of the prospectus which I think is described as it's a preliminary part of the prospectus and deals with enforceability of liabilities under US law, because here you had a company being floated on a US Stock Exchange which concerned assets which were in Ireland, so it has a fairly prominent position in the prospectus, isn't that right?

A. Are you referring to the Digifone story or to the disclaimer?

Q. Yes, the disclaimer.

A. I mean, this is all legal matters, you know. The prospectus is basically done by lawyers and definitely from my side, or the board of Digifone side, we saw that we had no real influence over it or what was in the prospectus, but in some respect we were afraid of being liable anyway. My reading of it's quite strong as it is, but the advice we got then later is, this is not enough.

Q. So even though this disclaimer was in there, you were still exposed?

A. That was the legal advice that we got, yeah.

Q. And did you receive that legal advice before the prospectus was issued?

A. Yeah, in the process of it, yeah.

Q. In the process of it?

A. Yeah.

Q. The prospectus disclaims in page 30 a list of what are called risk factors, these are things that are brought to the attention of investors so that they will understand that the shares they are investing in may be exposed to certain risks, isn't that right?

A. Yes.

Q. And one of the items mentioned in the list of risk factors concerns ESAT Digifone and the licence. It says "Importance of ESAT Digifone licence. ESAT Digifone offers cellular service in Ireland pursuant to a GSM licence award in May of 1996. The Irish government has established a Tribunal of Inquiry to investigate certain decisions made under the auspices of certain Government Ministers, one of whom is the former Minister for Transport Energy and Communications, Michael Lowry. The decisions to be investigated will include the award by Mr. Lowry of the GSM licence to ESAT Digifone. Allegations have been made of improprieties in the award of the GSM licence. Revocation or modification of the GSM licence would have a material adverse effect on the company. While there can be no assurances, the company does not expect

that the Tribunal will recommend that the award of the GSM licence should be revoked or otherwise modified."

Now, the company, in fairness to you, that is referred to there is ESAT Telecom Group plc, isn't that right?

A. Yes.

Q. So it's the ESAT Telecom Group and its advisers who were drawing that risk factor to the attention of investors?

A. Yes.

Q. I'll just go through the part of your statement that deals with this. You say:

"At an early point a disclaimer of liability was included in the draft prospectus stating that either ESAT Digifone or any of its officers had participated in the preparation of prospectus." You say: "We were advised that such a purported disclaimer was not absolute. As a result it was suggested by someone, I cannot remember who it was, that specific reference should be made to the impact of the Moriarty Tribunal which was investigating payments to Charles Haughey and Michael Lowry. The view of the Telenor nominees on the board of ESAT Digifone, was that some reference or qualifications should be included in the prospectus in relation to any speculation concerning the award of the licence to ESAT Digifone. Eventually, the concerns became more focused. To the best of my recollection,

both Mr. Maloney, the then CEO of ESAT Digifone"

this was Mr. Barry Maloney whom you have mentioned earlier?

A. That's correct.

Q. "And ESAT Digifone solicitors initiated the idea of a meeting for the directors of ESAT Digifone to discuss the concerns relating to the prospectus and any possible consequences for the directors of ESAT Digifone. It was then agreed to convene a meeting of the directors of ESAT Digifone but not as a board meeting and with solicitors present, in order to consider the matter. A meeting was then held on the 4th November 1997 in the offices of IIU, in the Irish Financial Services Centre."

CHAIRMAN: I think, Mr. Healy, as we come to that, we are at approximately the half-way point of Mr. Johansen's statement and it's probably appropriate that we now adjourn for lunch. Merely by way of arrangements in the afternoon, it may well be the case that counsel on behalf of other interested persons may have questions to ask when Mr. Healy has concluded his initial examination of Mr. Johansen. I can't see, Mr. Connolly, that your master battalions have any great input into matters today, but I believe you have an opportunity, if you wish to become involved. Thereafter, the normal way will be observed whereby

Mr. Fitzsimons will be last of interested counsel; and as to the priorities between counsel for Fine Gael and for Mr. Lowry, I'll leave that as a matter to be discussed between counsel in the first instance, if a sequence can be agreed. If not, I will decide what needs to be done and we'll resume at ten past two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2.10PM:

CONTINUATION OF EXAMINATION OF MR. JOHANSEN BY MR. HEALY:

Q. MR. HEALY: Now, just before lunch we had reached the point in your statement where you were referring to the meeting that was held on the 4th November of 1997 in the offices of IIU in the Irish Financial Services Centre. I am just going to read once again the part of your statement where you refer to the convening or organisation of the meeting. You say at page 9 of your statement:

"Because of the concern in relation to the liability of ESAT Digifone, and of the directors of ESAT Digifone for any misstatement or lack of full disclosure in the prospectus of ESAT Telecom relating in any way to ESAT Digifone would have agreed that all the parties would be legally represented. Consequently, ESAT Digifone was represented by the company's solicitors, McCann

Fitzgerald. ESAT Telecom and ESAT Telecom's nominees on the board of directors of ESAT Digifone and IIU and its nominees on the board of ESAT Digifone were all represented by William Fry solicitors. Telenor and its nominee directors on the board of ESAT Digifone were represented by Kilroy solicitors." Could I just clarify the attendance at the meeting. ESAT Digifone, the company, was represented at the meeting?

A. Yes.

Q. By McCann Fitzgerald solicitors?

A. Yes.

Q. Was there any individual representing ESAT Digifone at the meeting?

A. Well, I don't have any attendance notes with me here, so I cannot really confirm there was some there.

If there was someone it would have been Barry Maloney but I am not quite sure.

Q. I see. ESAT Telecom, which is essentially the company that was being floated, isn't that right?

A. ESAT Telecom Group, to be precise.

Q. Yes, at this meeting we were talking about the ESAT Telecom or, if you like, Denis O'Brien side of the arrangement, isn't that right?

A. Yes.

Q. And ESAT Telecom's nominees on the Board of Directors of ESAT Digifone were represented by William Fry solicitors?



A. Yes.

Q. And IIU, which is the company vehicle used by Mr. Dermot Desmond for his interest, was represented by William Fry solicitors?

A. Yes.

Q. And the two nominees of IIU on the board of ESAT Digifone were also represented by William Fry solicitors?

A. Yes.

Q. And both your company and your nominee directors on the board of ESAT Digifone were represented by Kilroy solicitors?

A. Yeah.

Q. Now, as I am sure you know, it may be necessary to come back to aspects of this meeting in another context at a later date, and at this stage I want to limit, to some extent, the attention that is devoted to it. But this was a meeting at which, am I right in saying, all the directors of ESAT Digifone were present?

A. I mean

Q. Either present or in attendance on the telephone or whatever?

A. In the case of myself, I was on the telephone, and in the case of Denis O'Brien, he was also on the telephone. I think mainly, the remaining directors were present physically, but I am not certain about Dermot Desmond.

Q. Was he a director of the company?

A. Yes.

Q. So when you say IIU and its nominees were all represented by William Fry solicitors, were one of IIU's nominees Mr. Dermot Desmond?

A. Yes.

Q. And the other one was Mr. Walsh?

A. Yes, Michael Walsh, yes.

Q. And were, though, both present at sometime for any part of the meeting?

A. You see, I was not there physically either, so I would have to have my notes

Q. We'll come back to it at a later point if we need to. But it was not a board meeting?

A. No.

Q. And did you find it strange that it looked like all the directors of the company were there but it was not a board meeting?

A. No. This was arranged because there was a deadline for the prospectus to be ready for the IPO and this was considered to be the most effective way to get everything done in one go.

Q. But the concern of the meeting was that because of what was contained in this prospectus some director of ESAT Digifone might be exposed to some liability for any misstatement or nondisclosure, isn't that right?

A. Yeah.

Q. And there was also a concern that ESAT Digifone could be exposed to a liability, the company?

A. That's correct.

Q. So was there any decision made by the company and its board concerning the statement or statements or the absence of any statements in the prospectus?

A. No. As I said before, this was not really a Digifone matter, but Digifone got a very prominent place in it.

Q. You see, I am concerned, Mr. Johansen, that a distinction is being made here between a board meeting, which is a meeting of the directors of the company, and therefore, effectively, any action taken is the action of the company, isn't that right?

A. Mmm.

Q. And a meeting of people who happen to be directors of the company, do you understand me?

A. Yes.

Q. And that distinction is being made in your statement, and I think has been made in correspondence and I don't want to pursue it unnecessarily at this point, but what I want to say to you is that ESAT Digifone, as a company, and therefore, its board, as a board, had a role to play, didn't they?

A. Yes. And we dealt with the prospectus also in board meetings, formal board meetings, which are probably minuted, but this was not a board meeting.

Q. Okay, all right. Was this matter ever mentioned at a

board meeting, the matter that was mentioned at the meeting of the directors?

A. No.

Q. It wasn't, okay. Well, that's something we may have to come back to.

Now, you say it was agreed that the meeting was confidential in order that there could be discussion by all the parties involved. "It was also agreed that because the issues in question raised matters of concern in relation to potential legal liability about the content of the IPO prospectus, the meeting was legally professionally privileged because legal advices were required."

Now, I think you are aware that the Tribunal's lawyers have been in touch with your lawyers and while they may not share your view that it could be agreed that a meeting would be professionally privileged, this matter is going to be tackled, hopefully, in a way that does not ultimately cause any difficulty in gaining access to documents, isn't that right?

A. That's right.

Q. At this point we'll simply agree to differ on it and pass on. You say: "Without waiving Telenor's claim to legal professional privilege in relation to what was discussed at the meeting, I can say that the matter of litigation was expressly referred to. The matter of

liability for the prospectus was discussed, and the matter of legal professional privilege applying to the meeting was also referred to."

You say: "I was unable physically to attend the meeting which was held at short notice, but I participated by teleconference. Mr. O'Brien was not present at the meeting and he also participated via teleconference. The meeting discussed a number of issues including the donation," meaning the \$50,000 payment.

"It was agreed to seek a letter from David Austin so as to obtain written confirmation from him that the donation to the general fund of the Party was, in fact, paid to the party and was not paid to any other person. William Fry solicitors offered to contact David Austin to obtain the required letter. Such a letter was subsequently obtained and copies distributed to the directors of ESAT Digifone together with a notarised affidavit of Mr. O'Brien."

We'll come back to those documents in a moment.

"There was a meeting on the 5th November 1997 in order to address what communications should be made to the underwriters of the IPO and I understand that such communication was sent. I was also unable to attend that meeting, but I was available for a short time by

tele-conference facility. That meeting was also legally professionally privileged because legal advices continued to be obtained."

Again, I won't go into what differences of opinion we may have in relation to that point.

Now, it may be that a number of matters were discussed at this meeting or similar meetings, but it's only some of the matters discussed at that meeting which are of interest to the Tribunal. And at this point in time, although we may come back to other aspects of the meeting later on in the next week or two, we are only concerned with one item, and that is the item that's the subject of today's sittings, the \$50,000 payment.

And just to go back over what the concern was: It was a concern that the company, ESAT Digifone, or its directors, could be liable for any misstatement or lack of full disclosure in the prospectus of ESAT Telecom relating in any way to ESAT Digifone. Now, at this point, which was around the 4th November, I take it that the prospectus was actually in more or less its final form?

A. Yes, I think it was completed within a few days after that.

Q. From a printing point of view, and a circulation or dissemination point of view, it would have been

impossible, presumably, to issue it by the 7th or on the 7th, had it not, in fact, been in existence in final form around the 4th or the 5th?

A. Yes, it would be one of the final drafts.

Q. Now, as a result of the meeting, am I right in thinking that nothing extra was put into the prospectus?

A. Yeah. As far as I can see and remember, the prospectus was not changed.

Q. So it was in the form and contained the two statements which I referred to in the overhead projector earlier at the time of the discussion and those statements were not changed afterwards?

A. Yeah. As far as we can see, they were not changed but again, we didn't control the document. It was in other people's hands.

Q. I understand that. Now, the concern you had, presumably, was whether there should have been disclosure or some intimation in the prospectus of the matters that you were aware of concerning the \$50,000 payment, or whether a failure to disclose that exposed you in any way to liability, would that be right?

A. I think our concern was, I think at this time also this Tribunal was about to come about, and that was the first time we heard about any possible improper payments being done to the people in question, including Mr. Lowry, and thinking in hindsight, in that sequence of payments, I think we wanted to be

absolutely certain that nothing improper had ever happened and that the payment had gone into the Party as we had anticipated. I don't think we, at this point in time, required this to be put into the prospectus. But

Q. Let me put it this way: If somebody had told you on that day that the money had not gone into the Fine Gael Party, then not to have disclosed that could have exposed you; so, therefore, you wanted to know had this money gone to the Fine Gael Party. Would that be a fair way of putting it?

A. Yeah, I think that's relatively accurate.

Q. After all, wouldn't that be the problem you'd have, that you would have been aware, if those were the facts of something that was or potentially was improper and you would not have brought that to the attention of the underwriters so you set about establishing the true position as you saw it, in relation to whether this money had actually gone to Fine Gael as you were led to believe, according to your evidence, it had done, is that right?

A. Yes.

Q. Now, I don't want to go in, at this stage, into the details of who said what or who agreed to do what, but it was decided that somebody, you think it was Messrs. William Fry, who I think were, at that time, the solicitors for ESAT Telecom and IIU, that would be the



Dermot Desmond and Denis O'Brien interests, that they would get a letter confirming that the money was, in fact, paid to the Party and not to any other person?

A. Yes.

Q. And at that stage, you understood that that letter would be obtained from David Austin?

A. Yeah. That's the way it was proposed and I think it was proposed by Fry's themselves, to obtain that letter.

Q. I see. Now, what you are saying is that you wanted or it was agreed that a letter would be obtained from David Austin to confirm that the donation, the ESAT donation now, would that be right?

A. The ESAT Digifone donation would be right.

Q. The ESAT Digifone donation was, in fact, paid to the Party, not to any other person. And then a letter was obtained and we can put it on the overhead projector. Do you have a hard copy?

A. Yes.

Q. This is a letter which says it's in manuscript. It says: "From David FT Austin." It's headed: "To whom it concerns," and it's signed "David Austin."

Now, I can see this on the overhead projector even better than you can see it in your photocopy, but the letter seems to come from Mougat in France, is that right, can you see that? You see the words "Innifax service"?

A. Yeah, area where it came from actually. I just had copies of it myself.

Q. Well, the Tribunal understands from other information that at the time Mr. Austin was in France and, in fact, was quite ill, very ill, suffering from terminal cancer from which he ultimately died. In the document, what it says is:

"I confirm that as Chairman of the fundraising committee for a dinner held in the 21 Club in New York in December 1995 for the purpose of raising money for the Fine Gael Party, I received a contribution from Telenor AS for the amount of \$50,000 US. I duly forwarded these funds to the Fine Gael Party."

Now, you say there was a meeting on the 5th November in order to address what communication should be made to the underwriters of the IPO and you understood that such communication was sent.

Do you mean that this document was sent to the underwriters?

A. I don't know, because we did not communicate with the underwriters ourselves.

Q. I understand. It was obviously a matter for the company?

A. It was ESAT Telecom party and we were never directly in contact with the underwriters.

Q. Can I take it that you were informed whatever communications were appropriate to be made were being made to the underwriters?

A. Yes.

Q. Now, you did examine this document when you saw it, I take it?

A. Yeah.

Q. And when you got this document, did it satisfy you that the money had gone to the Fine Gael Party?

A. Yes. I mean, we had no reasons to believe that it was not passed onto the party and with this as well, we were more or less absolutely certain that it had been passed onto the party.

Q. Now, the payment you had made to Mr. David Austin for onward transmission to the Fine Gael Party was made in December, late December of 1995.

A. Yes.

Q. You had no receipt from the Fine Gael Party, isn't that right?

A. That's correct.

Q. You had, what I think I could fairly describe as a somewhat cryptic receipt from David Austin, in which, without mentioning the Fine Gael Party, he said that the people for whom the money was intended, were, you know, delighted and so on and very thankful for having got it, isn't that right?

A. That's right.

Q. But nobody was up front about it, if I can put it in that simple way? He didn't write and say, "Dear Mr. Johansen, Fine Gael are delighted to receive €1/250,000. Thank you very much."

A. No, we never got such a letter.

Q. Prior to getting this letter, you felt that you were satisfied the money had gone to Fine Gael and that Mr. Austin had done so. Didn't you, in fact, according to the evidence you have just given, already know everything that was contained in this letter?

A. Well, maybe I thought it was a little bit reassuring that, yes.

Q. I'd agree with that, it's perhaps a little bit reassuring. Could I just ask you to look at one or two parts of the document now, one or two of the detailed parts. It refers to a dinner held in the 21 Club in New York in December of 1995. Now, I think you are now aware that there was no dinner in New York in December of 1995, isn't that right? There was a dinner in November of 1995?

A. I mean, I have only the information that we later got from the Party

Q. I understand that. I am simply saying that is a fact?

A. To me that sounds correct or it seems to be the fact that it was actually in November and not December.

Q. It refers to a contribution received from Telenor. Now, what you have told the Tribunal is that you always

understood this to have been a contribution of ESAT Digifone that you were making to Mr. Austin, purely because ESAT Digifone was not commercially capitalised.

A. Nodding.

Q. Now, did it concern you that this issue was cropping up again here in what was supposed to be a document intended to resolve a problem?

A. Yeah, and I think you are right, it was not this was not the best document from our perspective and it was not obtained by us either.

Q. I understand. The last two lines of the document say:

"I duly forwarded these funds to the Fine Gael Party."

Now, I think you know from facts which have subsequently been brought to your attention, that it is true that these funds were forwarded to the Fine Gael Party but not indeed until some considerable time had elapsed after you had made your payment, isn't that right?

A. Yeah, that's what we learned afterwards when we contacted the Party.

Q. So while it is perhaps true to say that the monies were forwarded to the Fine Gael Party, I don't think they were forwarded right away, they weren't forwarded till sometime in early 1987 May of 1997, I am sorry?

A. I learned about it later.

Q. So I think that payment is, to say the least, somewhat optimistic in having described a payment as having been

duly forwarded when it wasn't forwarded until much, much later.

A. Yeah, we didn't know that at that time.

Q. Wasn't there, in fact, one very, very simple way of checking what it is you wanted to check. You wanted to check did Fine Gael get a political contribution.

I am asking you now to use the knowledge you may have learnt about politics in this country since all these events, but wouldn't it have been a simple matter to have written to the political party and said, without drawing attention to any problems you had with IPOs or anything, "We urgently, for our accounts, need a receipt for the  $\frac{1}{2}$ 50,000 payment that we sent \$50,000 payment that we sent in December of 1995." Wouldn't that have been a simple way of doing it?

A. It might. I mean, we I don't know. We sought legal advice here all the way as to what was proper and what was right. We had to think about the implications and the consequences for our party, for our fellow investors in the company; doing anything wrong could have dramatic effects for ESAT Telecom and their IPO, so we had to review it very carefully and not do something that could have a detrimental effect on anyone. So we sought legal advice. We did all the way, as you will see later, every step that we thought it was possible to do in an ordinary manner and assure ourselves as much as possible that

everything here had been in good order.

Q. I understand the position you were coming from, but this was a matter that had caused you concern. You were so concerned that you wanted to talk to your other partners, can I put it that way, in ESAT Digifone three days off the issue of the prospectus in this ESAT Telecom IPO. These were presumably very highly pressurised times and this was a potentially serious matter which you wanted clarified.

Now, can I look at the actual facts at that moment and see whether we agree about what the actual facts were.

It is, as we now know, it would appear that the late Mr. David Austin had forwarded the funds to Fine Gael, but it would appear that they had been forwarded as a contribution made by Mr. David Austin himself.

Therefore, if somebody had made contact with Fine Gael on the 4th November of 1997, and asked a simple query, such as you might ask any other commercial person you were dealing with, "Could I have a receipt for my \$50,000 payment," you would have been told, "We have no record of a \$50,000 payment from Telenor or ESAT Digifone." Because there was no record of it.

Now, that was the actual situation as at that moment.

A. I don't know whether that would have been feasible or not. I am not used to dealing with parties. I don't know how much you know, disclosure there of

contributions and things, but anyway, that idea, it never cropped up as a possible way forward.

Q. Well, that's what I want to come to and I am somewhat apprehensive to go into all the details of this meeting, but that idea, that simple idea of simply asking for a copy receipt never cropped up?

A. Not that I am aware of.

Q. And if you were dealing in this type of situation with, we'll say, a problem that arose in relation to a simple commercial transaction, wouldn't I be right in saying that if the accountants or the other people were screaming for proof of the details of a particular payment, that somebody would have said, just get a copy receipt. Isn't that right in an ordinary commercial context?

A. I mean, nothing here was, in a way, easy for us to judge, because we didn't know about I mean, talking from my own perspective and Telenor's perspective, we didn't know how this operated. We didn't know how much secrecy there were around the contributions. To us it looked like it was a very secret thing, and whether or not a foreign party would at all be replied if it put forward such a question to them, I have no idea.

Q. But it wasn't a payment by a foreign party. It was a payment by an Irish party, ESAT Digifone, by an Irish company. Isn't that right? You were simply making it on behalf of an Irish company. So according to the



conversation you had with Mr. Austin, Mr. Lowry, Mr. Bruton, and Mr. O'Brien were all aware of this.

I am not trying to trap you at this point, Mr. Johansen, because you know and I know that we are coming to a portion of your statement where you are going to indicate that you actually took that step, isn't that right? You took the step of going to Fine Gael?

A. We took the step of the form you are suggesting and I don't know whether it had worked or not.

Q. Could you answer my questions firstly so that we can distinguish between the type of relationship a company might have with a political party and the type of relationship it had with another commercial concern.

Am I right in saying that if an issue like this arose concerning a commercial transaction that somebody would simply ask for a duplicate receipt?

A. Yeah, but I mean

Q. Is that true or not? Let's just deal with that simple proposition to begin with. There is 1 million pounds here. We don't appear to have any receipt from, we'll say, some big supplier of hardware could you ever just get it for me wouldn't somebody just simply say, we'll write-off and I am sure they'll give us a receipt marked duplicate?

A. I don't think this was as simple as that.

Q. I understand that. But can we just deal with that.

That is what would happen in a simple situation?

A. Well

Q. Is it or is it not?

A. In a way we had a receipt, we had it from Austin instead of the Party and what we tried to establish was that it had really gone to the Party.

Q. But you didn't, because Austin simply told, you I gave it to the Party, and you had no reason to believe that he hadn't given it to the Party?

A. Well, as you have already pointed, we did the steps afterwards.

Q. The other document you refer to in your statement was a notarised affidavit made by Mr. Denis O'Brien and sworn on the 6th November of 1997. Now, did you associate this document with the issue that gave rise to the David Austin letter?

A. In some respects, but it was probably not the main purpose of this affidavit.

Q. I see. Well, I don't want to go into it in detail because, as you are aware, we may have to come back to it.

A. Yeah.

Q. Would I be fair in saying that insofar as it had any connection with the David Austin matter, it seems more appropriate to deal with it when we come to it in the context of other matters at a later point, would that

be right?

A. I think it would, to some extent, be applicable to the David Austin thing as well.

Q. It's to some extent you know, I don't want to mention any other matters at this point.

A. But in the context of the donation and producing evidence that it had actually gone to the Party, I think our mind-set, from Telenor's point of view, was that the other parties had the evidence that we needed and you can see that that's probably why Fry's were active in producing this evidence from David Austin.

Q. I see. Well, maybe then I'll just very briefly go to the what I think is the part of this document which I think you may be referring. And I don't think too much arises or will arise for further clarification at this point.

It's an affidavit of Mr. Denis O'Brien. He says in the second paragraph: "I am the Chairman and chief executive of ESAT Telecom and I am the Chairman of ESAT Digifone. I caused the initiation of a project whereby ESAT Telecom, in conjunction with its co-shareholders in ESAT Digifone, Telenor Invest and IIU Nominees Limited, sought the grant to ESAT Digifone of the licence pursuant to a competitive process conducted by the Irish government.

"I was involved extensively throughout the said project

up to and including the announcement in October of 1995 that ESAT Digifone's bid had been accepted and the grant to ESAT Digifone of the licence in May of 1996.

"I am aware of allegations and innuendo surrounding the grant of the licence and that they have caused concerns in the context of the imminent initial public offering of ESAT Telecom. In order to allay such concerns, I hereby aver and confirm that I have not at any time, either directly or indirectly, made or procured there to be made by myself or by or through or in conjunction with any person, corporation, political party, bank, or other entity or intermediary acting on my behalf or at my direction, any payment, fee or reward to or for the account or benefit of directly or indirectly, any government, political party, public official or minister, or public body or to any person connected in any way with such government, political party, public official or minister or public body, in connection with or as an inducement, reward or otherwise on account of their doing or forbearing to do anything in respect of the licence and that I am not aware of any other person having made or procured any such payment, fee or reward as aforesaid in respect of the licence.

"For the purposes of aforesaid, I hereby further aver and confirm that I have not done any Amnesty Act or thing in respect of the grant of the licence which

would constitute an improper or unlawful Amnesty Act or which would be likely to imperil the licence."

Now, the \$50,000 payment did come into this document in that it was obviously a payment to a political party.

Isn't that right?

A. Yeah, I think we found it reassuring as well.

Q. So what Mr. O'Brien was telling you was that as far as you were concerned, he was providing evidence that while this was a payment to a political party, it was not in connection with or as an inducement, reward or otherwise on account of anything done in respect of the licence, would that be a fair summary?

A. Yes.

Q. Next, you go on to deal in section D of your statement with what you call the Tribunal of Inquiry.

You say:

"Although the IPO issue had been resolved, our Irish solicitors advised us that the letter from David Austin might need to be reconsidered in the context of the Tribunal and the scope of its inquiry. As a result of this exercise, Telenor decided it would be prudent to obtain the formal opinion of an Irish Senior Counsel.

Telenor instructed its Irish solicitors to prepare a case for counsel to advise. Detailed instructions were given and a draft case for counsel prepared by our Irish solicitors. Telenor approved that draft case

for counsel in early 1998. I understand that on the 12th January 1998, the case for counsel to advise was submitted to Senior Counsel. I understand that there was later a consultation with senior counsel on the 30th January 1998. Senior Counsel issued an opinion on the 4th February 1998 in respect of which legal professional privilege is asserted by Telenor.

Without waiving the legal professional privilege in respect of such advices, Telenor concluded from the advices given that the handwritten letter from David Austin might not be considered to be a sufficient confirmation or proof that the Party had received the donation, and that it would be advisable to obtain the direct confirmation by the Party itself that it had received the donation."

You say that the IPO issue had been resolved, but that your solicitors still advised you that the letter might need to be reconsidered in the context of the Tribunal and the scope of its inquiry.

You, I presume by this time, had become aware through your solicitors, that the Tribunal was concerned with payments inter alia, to Michael Lowry, isn't that right?

A. Yes.

Q. And you were, therefore, or they advised you, that there was a concern that it hadn't been established

satisfactorily that this payment had gone to the Fine Gael Party and not possibly to Michael Lowry or someone else?

A. I think it's the missing link that you pointed to earlier. I mean, we didn't have the confirmation from the party itself.

Q. Well, now, that brings me back, sorry to have to go over it again, to the earlier period in November of '97. How could you be satisfied that the IPO issue had been resolved, if the missing link wasn't there?

A. I think in our minds everything that was ever initiated, everything that was ever done in this context in Ireland was under the control of Denis O'Brien and after us, we had gotten that affidavit, we felt that in context of liability and disclosures in the prospectus, that we had sufficient evidence that, seen from our perspective, we left it up to the underwriters and advisers of ESAT Telecom to decide whether they could let it go or not go and they decided to let it go.

Q. Would I be right in thinking that at the time of the IPO, you had an affidavit from Mr. O'Brien and he had provided, through his solicitors, a document from David Austin and you were prepared to rely on that as long as you had his affidavit, because then, you could say, well, look, we relied on what you told us, would that be a fair way of putting it from a legal point of view?

A. Yes.

Q. So while Mr. O'Brien had, if you like, in your mind, undertaken the burden of this problem, as a matter of fact, there was still a niggling doubt in your mind, is that right? Independently of any rights you had against Mr. O'Brien?

A. I think in this thinking around this, we, very much relied on our advisers and the professional legal advice that we got. And I am not quite certain myself as to when the Terms of Reference were, this Tribunal was aired out but I think in the light of all that

Q. Before the IPO.

A. Okay. Anyway, everything was seen in the big picture. What is being stated here is what we did to secure that everything still was being done.

Q. Your solicitors told you either that they were concerned that there was a missing link, but in any case, your counsel advised you that this missing link had to be closed off and that was what prompted you to go to Fine Gael?

A. Yeah. I think why we went to the legal advisers and why they sought Senior Counsel opinion again was to get Senior Counsel opinion as to whether or not this documentation that we had was good enough or not.

Q. You say that: "As a result it was decided by Telenor on the 9th February 1998 that the Fine Gael Party should be contacted so as to establish that the



donation had been received for general party funds purposes. One of the Telenor directors on the board of ESAT Digifone was instructed to notify Telenor fellow shareholders in ESAT Digifone of Telenor's decision to contact the Party for such confirmation. This was in accordance with Telenor's duty of good faith to its fellow shareholders in ESAT Digifone. That notification was duly made on or about the 11th or 12th February of 1998. Following such notification, it was agreed that a representative of Telenor's Irish solicitors and a representative of Drury Communications would meet as soon as possible with the representatives of the Party. Contact was made with the Party and they agreed to meet. I am informed the meeting was held in the offices of the Party at Upper Mount Street on the 13th February 1998. It was agreed that the meeting was to be held for the purposes of each party to be able to obtain more information which it required for the purposes of obtaining legal advice and that the meeting was to be legally professionally privilege."

Again, we may need to come back to that approach to professional privilege later on.

A representative of Kilroy's and a representative of Drury Communications met with the then-General Secretary of the Party and the solicitor for the Party. As a result of the meeting, it was decided that the

Party would check its records and clarify the position.

Based on the legal advice, Telenor decided that only if the Party could confirm that it had received the monies into its general funds, did the matter not fall within the scope of the Tribunal. It was confirmed

by" sorry, before I go on to that, these meetings occurred this meeting occurred on the 13th February of 1998. Prior to that time around the 11th or 12th February, you had informed your fellow shareholders in ESAT Digifone that you intended to take this course, meaning that you had informed Mr. O'Brien and Mr. Desmond, would that be right?

A. It was not me personally, but my fellow directors from Telenor informed him.

Q. And do you recall whether any of those other shareholders indicated that they could get the same information from Fine Gael or did they have any view at all on what you were doing?

A. As I said, I was not really dealing with the matter. I was not in Ireland at the time. So I only have other people's, you know, picture of what happened.

Q. Was it Mr. Fortune was dealing with these directors at this time?

A. Yeah.

Q. I may have reason to refer to Mr. Fortune's or to the information he has given the Tribunal at a later point, but in any case, would I be right in saying that he met

a certain amount of resistance but decided to go ahead and inform Fine Gael?

A. That's my understanding. The idea was not really welcomed by the other parties.

Q. You then got confirmation by letter of the 2nd March 1998 from the solicitors for the Fine Gael Party by letter from Mr. Kevin O'Higgins, which I think is on the overhead projector now. Fine Gael, writing to Mr. Kevin O'Brien of Kilroy & Company solicitors, said:

"Dear Sirs, we refer to our meeting on the 13th February, when your clients brought certain information to our client's attention concerning a political contribution then believed to have been made.

"Jim Miley, the General Secretary of the Party, noted that your client had presented information not previously known by him. Mr. Miley has now completed his examination of the matters raised and can verify that a donation amounting to  $\text{€}233,000$  was received by the Party on the 6th May, 1997 from David Austin who had supported Fine Gael in various ways in the past.

This contribution was drawn on the personal account of Mr. Austin at the Baggot Street branch of the Bank of Ireland, and appeared to our clients to have been a contribution from Mr. Austin himself.

"As a result of your meeting with us, the General

Secretary has spoken with Mr. Austin and has been informed by him that a donation of \$50,000 US had been received by him in January of 1996. You indicated to us that the contribution in question had been provided on foot of an invoice from Mr. Austin for consultancy services. Mr. Austin has now confirmed your account to us, that the contribution was made in respect of fundraising activities for Fine Gael in which he had been involved. We are informed by Mr. Austin that the monies were then lodged by him into an account with Bank of Ireland controlled exclusively by him and in respect of which he was the sole and beneficial owner.

"As a result of your intervention, Fine Gael is now aware for the first time as to the origin and mechanism by which the contribution in the name of David Austin was made. Had the totality of information been available to the Party, namely, the circuitous manner by which the contribution was routed, then such contribution would not have been acceptable to Fine Gael.

"Subject to normal ethical contributions, it is Fine Gael policy to accept contributions directly from donors or where contributions are made through intermediaries, only where the Party has established clearly the identity of the true donor at the time of receipt of the contribution. As a result of the

information given to us by your client, Fine Gael is now aware that these conditions were not met in the case of this donation.

"If a contribution had been offered directly by Telenor/ESAT, then Fine Gael, having considered the circumstances applicable, if any, would then have had to decide whether to accept the contribution or to decline it at that time. However, in light of circumstances prevailing in the case of this contribution, we are returning the donation and enclose cheque payable to Telenor in the amount of €233,000.

When you requested a meeting with us on the 13th February last, you made it clear that you expected absolute confidentiality. Apart from what was necessitated by the inquiries which you requested us to make, we continue to respect that confidentiality on the basis that it will be reciprocated by your client, its servants or agents and by all those whom you have consulted in this matter."

Now, you were now in the difficult situation that Fine Gael were not having this contribution, isn't that right? They didn't want it.

A. Yeah, apparently, they didn't want it, yes.

Q. As far as they were saying, it's not our money?

A. Well, they wanted to return it anyway.

Q. You say that they they gave two reasons, or at least

it's not entirely clear from their letter, but they certainly gave one reason why the contribution would not have been acceptable to them. And that was the circuitous route which the contribution had made before it eventually ended up in their accounts. Isn't that right?

A. Yes.

Q. And isn't that an aspect of the whole thing that was worrying you all the time as well, but you felt that you had to go along with it, it developed stage by stage, it was an incremental process, by the time you knew the full story and the roundabout way that this money was going to Fine Gael, you felt that you had committed yourself and you were going to leave it to the judgement of Denis O'Brien, although you would have overridden that judgement if you had known about all of this at the beginning?

A. Most likely, yes.

Q. So it was hardly a surprise to you that Fine Gael were taking the same view?

A. The information was contained in this letter was kind of new to us as well at this point in time, so

Q. I understand

A. so to some extent it came as a surprise that it would be treated also inside the Party in such a manner that it was not possible for them to receive it.

Q. I appreciate that, but at this point, up to this point,

you didn't know the true facts and you were also somewhat ignorant of the conventions that applied to political contributions in Ireland, would that be a fair way of describing your approach?

A. Yes.

Q. Or your attitude. But now you find that all the concerns that you had were shared by the political party, so the conventions that the political party in this case would have followed, were the same conventions that you would have followed. The concerns the political party had were the same concerns that you had. Do you understand me?

A. Yeah, it appears to be the situation, yes.

Q. You say you then refer to getting the cheque back. Telenor assumes that the difference between  $\text{€}31,300$  the Irish equivalent at the date of the donation of \$50,000 and  $\text{€}33,000$  was attributable to either currency fluctuations or interest or a combination of both. We will just put on the overhead projector the cheque that was sent back by Fine Gael which was for  $\text{€}33,000$ .

You go on to say: "Because we had explained that the donation had been made on behalf of ESAT Digifone, we were surprised that the cheque had been made payable to Telenor, but we concluded that the Party was relying on Telenor to pass on the donation to ESAT Digifone on

whose behalf Telenor had made the donation in the first place. Accordingly, Telenor instructed its Irish solicitors to write to the solicitors for the Party to confirm that Telenor was returning these monies to ESAT Digifone, the owner thereof. In order to avoid any ambiguity, Telenor's Irish solicitors stated in its letter of the 6th March 1998 as follows:

"Our client regards your letter of the 2nd of March as confirming that the contribution was received and went into the Fine Gael general party fund through accounts owned and controlled by David T Austin."

I think I'll just put this letter on the overhead projector and quickly go through it. It's your response to the letter from Fine Gael returning the cheque for i£1/233,000. Written by your solicitors. 6th March 1998. And they say:

"We refer to your letter of the 2nd March 1998 with enclosed cheque in the sum of i£1/233,000 payable to Telenor.

"We confirm that our clients are returning these monies to ESAT Digifone the owner thereof.

"Our clients have no comments to make on your letter, as being a non-Irish company, they are not familiar with the protocol relating to political donations to Irish political parties. They were, however, informed



that David FT Austin was Chairman of the Fundraising Committee on behalf of the Fine Gael Party. Our clients were asked to make the donation on behalf of ESAT Digifone Limited for two tables at a Fine Gael fundraising event at the 21 Club in New York. Our clients contacted you through our offices in the context of the Moriarty Tribunal. Our clients regard your letter of the 2nd March as confirming that the contribution was received by and went into the Fine Gael Party general fund through accounts owned and controlled by David FT Austin.

"Our clients also need you to confirm that Mr. Michael Lowry was not a named account holder of any of the Fine Gael accounts into which these monies were paid. On the basis that your clients can confirm this, our clients believe that the donation does not fall within the Terms of Reference of the Moriarty Tribunal of Inquiry.

"On the question of confidentiality, our clients fully recognise and endorse your concern that this matter be kept confidential and should not be revealed unless our clients are compelled to do so by law."

So, at this stage, you were at the point where Fine Gael had returned the money to you, but you had said it's ESAT Digifone money, we are going to return it to them, and then you still sought that further

confirmation to enable you to be sure that the money did not go into any account of which Michael Lowry might have been an account holder, isn't that right?

A. Yes, and this was on the basis of the advice that we were getting.

Q. So you were taking the matter a step further at this stage. You wanted to be sure that it went to Fine Gael for general Party fund purposes, and you wanted to be sure, in addition, that it did not go into an account of which Michael Lowry was a named account holder, and that is clearly a reference to a part of the Terms of Reference, isn't that right?

A. Yeah.

Q. And that was explained to you by your solicitors, that the Terms of Reference applied to payments to accounts in the name of or for the benefit of Mr. Michael Lowry?

A. Yes, that was explained.

Q. You got a response from the solicitors for Fine Gael on the 20th March which said:

"Thank you for your letter of the 6th inst.

"As to the matter raised by you, and relating to Mr. Michael Lowry, our clients confirm that as at the time when your client's contribution was paid over to the Party, Mr. Lowry was not a named account holder, and at that time, had neither authority nor signing capacity in relation to the same."

Now, we now know, and of course you would have known at that stage as well, that the money did not go to Fine Gael until May of 1997 by which time Mr. Lowry had resigned as a member of the government and resigned as a member of Fine Gael and ceased to hold any office in Fine Gael, whether in fundraising or as a trustee or otherwise. So what Fine Gael were saying was, as of that moment, Mr. Lowry had no authority or signing capacity in relation to any Fine Gael account.

You did not receive any confirmation from Fine Gael that as at the time, when the payment was made, the money had gone into an account over which Mr. Lowry had neither authority nor signing capacity nor in respect of which he was a named account holder, isn't that right?

A. I mean, you are probably right in what you are saying, but at this point in time, this was, you know, more or less a legal matter. I was not personally involved anymore in this.

Q. But you'd agree with me that that is, in fact, the case, that it only applied to the time it went to Fine Gael, not to the time that you sent it to Fine Gael?

A. The way it's worded there, I think you are right.

Q. There is a little chink, maybe not a link, but some little chink still not closed, isn't that right?

A. It might be closed, it might be not, I don't know.

Q. The next part of your statement you simply refer to that letter. You say that:

"Telenor, by letter of the 24th March 1998, handed to Mr. O'Brien, the Chairman of ESAT Digifone, on the same date, delivered the endorsed cheque for i;½33,000 to ESAT Digifone." Where were you when you handed this letter over to Mr. O'Brien?

A. I was in Dublin.

Q. And was it for some business purpose that you were in Dublin, do you recall?

A. My recollection is that we had a board meeting that day and I handed it over to him personally sometime during the morning.

Q. Did you tell him what you were giving him? Was it a closed envelope or did you tell him what prompted you to be handing this document over to him?

A. It was a closed envelope and I gave it to him and he took it with him as he went.

Q. You say, this is a letter from Telenor, from you, directly to Mr. Denis O'Brien.

"Dear Denis, refer to the donation of US \$50,000 which you requested us to make on behalf of ESAT Digifone limited to the Fine Gael Party in November of 1995 for two tables at a Fine Gael fundraising event at the 21 Club in New York. The donation was reimbursed to us by ESAT Digifone.

"This donation has now been returned to us by the Fine Gael Party, and as we have already been reimbursed by ESAT Digifone, we have endorsed the cheque over in favour of ESAT Digifone Limited. The payment is in Irish pounds and is for €33,000 Irish. Accordingly, we enclose cheque in the sum of €33,000 Irish from the Fine Gael Party endorsed in favour of ESAT Digifone for lodging to the company's bank account."

Now, at the time that you wrote that letter to Mr.

O'Brien, he was the Chairman of the ESAT Digifone?

A. Yeah, he was also the Chairman he was also a member of the board.

Q. And you were a director, were you?

A. Yes.

Q. Is there any reason why you didn't bring the contents of this letter, at that time, to the notice of the other or to the attention of the other directors of ESAT Digifone?

A. No particular reason, but it's quite normal, when you deal with matters, that you that's really a board matter that you press it to the Chairman and the Chairman in time, if he thinks it's relevant to the rest of the board, deals with it in the proper way.

Q. So although you were giving it to Mr. O'Brien, you were giving it to him as Chairman; so, therefore, you were giving it to ESAT Digifone as such and it was a matter

for ESAT Digifone as to how to deal with it?

A. Yeah. And definitely we thought Denis O'Brien was the right person as well since he had been the initiator of the whole thing.

Q. You say: "Mr. O'Brien has never responded to this letter." Did he ever bring the matter of the letter to the board of ESAT Digifone?

A. No.

Q. Did it surprise you that it was never brought to the board?

A. I don't really

Q. Well, it was important enough at one point in November of 1997 to cause a flurry of activity in the context of the issuing of the prospectus in the ESAT Telecom plc, IPO. It was important enough to warrant producing an affidavit from Mr. O'Brien. Somebody took the trouble to get a letter from a sick and dying man in France.

Were you not surprised that this new development was not brought to the attention of the entire board of ESAT Digifone?

A. Well, I didn't really think of it that way. I thought it was, in a way, something that Denis needed to sort out in a way, and yeah, it was an historic thing, not really relevant to the company's business these days, so I didn't really reflect too much about that.

Q. Well, can I just put this in context: At this point, you had now found out a number of things about this

payment. You knew it had taken a circuitous route yourself. You knew that there were a number of features of the payment which would have caused you to override Mr. O'Brien's judgement about making it, isn't that right? You already knew those things before you ever went to Fine Gael, isn't that right?

A. Yes.

Q. You then went to Fine Gael and you learnt another few things about the payment. You learnt that it had rested in a bank account for sometime, you don't know how long, but certainly up until in or about May of 1997, under the control, probably, of Mr. David Austin; that it had then been paid to Fine Gael with a different label on it altogether. There was no mention of Telenor; no mention of ESAT Digifone. This was a personal contribution of David Austin. Now, this was another fact that you had learned, which was, I would suggest, even more worrying than what you knew yourself before you went to Fine Gael. Surely you would have wanted to bring that additional information to the notice of people other than Mr. O'Brien merely?

A. Well, we left it with Mr. O'Brien to deal with the matter since he had been the initiator of it. The money was back. And we left it with him.

Q. It was you brought the original concern about this payment to the attention of the directors at the meeting that was held of all the directors of ESAT

Digifone but which was not a board meeting, isn't that right?

A. Yes.

Q. And it was you had the residual niggling doubts about the payment afterwards that prompted your solicitors to take further steps. Did you not think you should go back to the people to whom you first brought this to their attention and say, look, more facts have come to light about it?

A. Well, it was definitely not on the agenda for the meeting on the 24th March. We left it with the Chairman and that's normally how we deal with board matters. We leave it to the Chairman to deal with at meetings.

Q. Do you remember you told me a moment ago that you think, or am I right in saying that you think that the November 1997 concern you had was mentioned at an ESAT Digifone board meeting? Am I right in thinking that you said that? My colleagues tell me that they think I am wrong in that, that in November of 1997, there was never an ESAT board meeting at which this matter was discussed?

A. Exactly.

Q. There was just a meeting of the people who basically represented the owners of the company?

A. Yeah.

Q. This may be an extraordinary distinction, but



nevertheless, there was such a meeting. Now, even though new information had come to hand about the very selfsame thing, and I would suggest worrying information, your response was to tell Mr. O'Brien about this, and not at that point to try to put it on the agenda, if you like?

A. Yes, our responsibility was to give it to the Chairman who was responsible for the thing at the beginning, and leave it up to him to decide what to do with it.

Q. Did it give you any reason to doubt any of the contents of Mr. O'Brien's affidavit?

A. No, I had no reasons to doubt that.

Q. Well, Mr. O'Brien said that no payment to a political party was in any way connected with the licence and at the time that that affidavit was sworn, that money had not gone to the political party as an ESAT Digifone or Telenor contribution, but as a contribution from somebody else. Isn't that a worrying feature of the events which might have made you look a second time at Mr. O'Brien's affidavit?

A. What we tried to establish was that it had, in fact, gone to the Party and not to Michael Lowry. And we thought we got evidence from the Party as to that effect.

Q. Well, it hadn't got to the Party. The Party got it under false pretences and they said, we don't want it now. We want it to go back. The Party didn't want

it. This was an orphaned payment at this stage.

A. Well, the money was back, and

Q. It wasn't back. Fine Gael said we don't want it, they

put it in an envelope or whatever and said, here, you

can have it back. We don't want to touch it. It's

been going back and forth since, hasn't it?

A. Yeah, I think you will find some explanations as to how

the cheque has gone back and forth, yes.

MR. FITZSIMONS: I think perhaps Mr. Healy might remind

the witness that the cheque went to Fine Gael on the

29th May, 1998, I think 1997, and remained there

until some weeks ago. So

MR. HEALY: I accept that. Mr. Fitzsimons is quite

correct about that.

Q. But at that time, according to the evidence, Fine Gael

did not know that it was a cheque that had initiated

with a payment out of your company, isn't that right,

according to the evidence?

A. At what time?

Q. Fine Gael got the cheque in May of 1997.

A. Yeah.

Q. From the letters that we have just seen on the overhead

projector and from the contents of the meetings that

you had with Fine Gael, it would appear that at that

time, Fine Gael got what they understood to be a cheque

for  $\text{€}233,000$  from Mr. David Austin as a personal

contribution from him. You understand that?

A. Yes.

Q. When they learned the true facts, they didn't want anything to do with the payment. And they gave it back to you and you gave it to ESAT.

A. Yes.

Q. If you had known in November of 1997 that this payment had not, in fact, gone directly to Fine Gael, if you had known that it had been outside of the Party, wherever or in what location, we'll forget about for the moment, and that it was not given to the Party until May of 1997 by David Austin as a personal contribution, and that Fine Gael wished to reject it on learning of the true circumstances, would you have been happy to see the IPO go ahead?

A. I think it is a hypothetical assumption

Q. It is hypothetical in that I am asking you to look at a situation in 1997 and to put you in a position with knowledge that you only got subsequently, but none of the facts that I am putting to you are hypothetical. They, in fact, reflect more or less the true position.

MR. FITZSIMONS: Sir, I wonder are we straying into an investigation of the IPO here? The witness is being invited to speculate in areas that are very commercial

CHAIRMAN: I have some concerns, Mr. Healy

MR. HEALY: Sir, this is an absolute circumstance payment. It's a circumstance if the payment was one which the Tribunal knew nothing about except the circumstances in which it was made, that it went by a circuitous route, that it had the wrong label on it, that it lay in accounts other than nominal accounts of Fine Gael between December of 1995 or January of 1996 and May of 1997 and that ultimately, when the Party knew the true facts, they rejected it, those are the circumstances that the Tribunal has to look into and the Tribunal has to look at what was what facts were operating on the minds of the people involved in making this payment at the various, if you like, pivotal times. We have canvassed Mr. Johansen's thought about the payment when it was first brought to his attention. He said, no, it is not possible for Telenor to make this payment. He then was persuaded that ESAT Digifone could make the payment. He said that's all right. He was asked he agreed to actually accommodate ESAT Digifone by making the payment on its behalf. He agreed to do that. He then learned that the payment would have to be made to Mr. David Austin, that he would have to contact him in Dublin, that the payment would have to go to an offshore bank. He himself became involved in raising an invoice in relation to it. At this point, there were further circumstances which began to make the witness somewhat

edgy. He then learns that much later, he learns that there were concerns about the generalisation or description of the invoice. ESAT, the Dublin end were not happy to have an invoice which contained any reference to Mr. David Austin. They were not happy to have an invoice which contained any reference to US \$50,000. In the meantime, Mr. David Austin had provided a somewhat cryptic receipt in which no reference whatsoever was made to Fine Gael.

It's those circumstances, and what the witness thought of the various circumstances at various times in the somewhat circuitous route this money took between December of 1995 and today, right up to today, in fact, we do not know there are circumstances that require to be examined up to the minute in relation to this payment, because we are concerned about, I think there is a real concern that all of the circumstances surrounding the payment and why people were prompted to, how shall I put it, tailor the inquiries they wish to make about the payment at certain times, did certain things or didn't do certain things.

In 1997 the inquiries were tailored, as far as we can see, they were designed or an inquiry was devised whereby Mr. Austin would produce a letter which, on its face, seemed to be correct but which did not really advance the position. This witness continued to be

concerned. It's his concerns I am exploring, his continuing concerns. And then I am trying to read them back into the true facts as we now read the true facts as we now know them back into the various pivotal stages back to November 1997, and ultimately I suppose back to the day he made the payment.

CHAIRMAN: Well, I have noted all those concerns, Mr. Healy, and I have noted that the witness's own responses, that on a partial appreciation of certain of the initial circumstances, ambivalence, he has already replied that he would probably, in retrospect, not have been prepared to have proceeded with the transaction at all. It seems to me that a fortiori, in the context of what further information had been acquired at the period approaching on the actual flotation, that a similar response seems likely. I have some concerns about the actual form of the question, would it be fair to have allowed the IPO to proceed? I am conscious that there is other information to be obtained. I am conscious there are other matters upon which it may be necessary to hear more about that meeting and I think it may be somewhat premature to actually put that question to the witness. It's not something that was raised in his proof of evidence. I am conscious that you have a wider ranging assignment than simply taking him through that, but whilst I am not in toto

disallowing such a question, I believe that it is perhaps a little premature and I think that in fairness to the witness, we ought to deal with some responses from his own counsel and he ought to be given an opportunity, which I think may be likely to arise, to refer further to other aspects that you have alluded to of the particular matter, and I may well be interested in hearing his overall view at a later stage.

MR. HEALY: We can, if it becomes necessary, we will revisit it, but we'll pass on from it.

A. If I may, Chairman, it was not our call to decide for the IPO, that was left completely with the advisers and the legal people on the ESAT Telecom side. So it was not our call at all.

Number 2, as far as I know, nothing unlawful or illegal has ever happened in this regard, so still to this day, I don't see why the IPO should not proceed.

Q. MR. HEALY: If we just go on in your statement. You say that: "On the 30th March of 1998, Mr. Michael Walsh of IIU sent me a letter confirming that Mr. O'Brien had passed to him the cheque for 1/233,000 payable to Telenor. I replied to that letter on the 14th April 1998 in which I disputed the points raised by Mr. Walsh of IIU and concluded that since the donation was made under the original direction of Denis O'Brien, may I suggest that the cheque be dealt with by

ESAT Digifone Limited in accordance with the instructions of Denis O'Brien as Chairman of the company and the original promoter of the donation.

IIU replied on the 16th April and I replied to that letter by letter of the 28th April."

Now, if we could look at the letter you received on the 30th March of 1998. Now, at this point, although you had not received any response from Mr. O'Brien and although this matter had never been, and I take it, has never been, in your experience, on a board agenda, you did receive a letter from one of your partners in the ESAT Digifone project, IIU, concerning the matter, in which Mr. Michael Walsh of IIU said:

"Dear Arvae, Denis O'Brien has passed to me a cheque for  $\text{€}233,000$  made payable to Telenor from the Fine Gael No. 2 account. This cheque is crossed "account payee only" and consequently can only legally be lodged to the account of Telenor.

I am particularly concerned as to the detail and background in relation to the said payment. We had no knowledge of the payment of \$50,000 by Telenor to Fine Gael prior to your disclosure of it in late October of 1997, some two years after we had been induced to underwrite ESAT Digifone Limited. When you disclosed the contribution paid by Telenor to Fine Gael, you appeared satisfied that this was appropriate, provided



the money had gone to Fine Gael.

"Fine Gael has now sent the money back to you.

Without more detailed knowledge of the conversations and correspondence between Telenor and Fine Gael, I can only assume that either Telenor or Fine Gael or both feel that they have been guilty of impropriety. If Telenor do not believe they are guilty of improper behaviour, given that Telenor was happy to make the political contribution in November of 1995, the cheque should be returned to Fine Gael.

"I refer you to the assurance you provided to me by letter on November 6th, 1997, where you confirmed that Telenor had taken no action which could, in any way, jeopardize ESAT Digifone mobile licence. I wish to put you on notice that if Telenor have taken any action before or since the issue of that letter which damages the ESAT Digifone licence and in particular, our investment, then we will hold Telenor fully liable.

"In the interim I would appreciate copies of all correspondence and minutes held by Telenor and/or its representatives with Fine Gael and its representatives."

Just in relation to that letter, Mr. Walsh said that he was concerned as to the detail and background as to the detail and background in relation to the said

payment. And then he refers to the fact that it was your disclosure of the payment in late October of 1997 that first brought it to their attention.

You replied by letter of the 14th April 1998 as follows:

"Dear Michael, I acknowledge your letter of the 30th March in the above. The cheque is capable of being endorsed and lodged to the account of ESAT Digifone Limited. (It is only if the words "not negotiable" appear on the cheque that it cannot be endorsed over.) This view has been confirmed by our lawyers."

Now, this was a reference to the first paragraph of Mr. Michael Walsh's letter when he said the cheque was crossed and couldn't be legally lodged to the account of Telenor and could only be legally lodged to the account of Telenor. This was a correspondence between two, effectively between two of the shareholders in the company, isn't that right?

A. Yes, effectively it was.

Q. The company itself didn't seem to have expressed any view at this stage as to whether the cheque was or was not acceptable, isn't that right?

A. Yeah, I don't think it was brought to any attention of the company. So I think it was dealt with at board level.

Q. So the people who were dealing with this at this stage were the same people who had been dealing with it in November of 1997, the individual shareholders and their representatives?

A. Yeah.

Q. Even though you had given it to Mr. O'Brien as the Chairman of ESAT Digifone, you were giving it to ESAT, as far as you were concerned, not to Mr. O'Brien simply as a shareholder of the company?

A. Yeah, we were giving it to the Party who had paid ESAT Digifone, but also to Denis O'Brien who was the Chairman of that company and the real sponsor of the whole thing.

Q. Am I right in thinking that you don't have any letter from ESAT about this ESAT Digifone?

A. I don't think we have any letters from neither ESAT Digifone or ESAT Telecom in this regard.

Q. So Mr. O'Brien doesn't seem to have processed this inquiry or letter from you through Digifone, but rather simply brought it to the attention of another shareholder?

A. That's the way it appears and probably the way it was done, yes.

Q. At the time did you have any concern about that, because you didn't write any letter about it, isn't that right?

A. What do you mean?

Q. You had written a letter. You have already stated yourself that Mr. O'Brien had never responded to the letter. ESAT never responded to the letter. All you got was a letter from another shareholder?

A. Yeah.

Q. Did you ever write back and say that this was a matter for ESAT, why can't I get a reply from ESAT?

A. No, we never responded in such a way.

Q. Mr. Walsh was a very small shareholder in ESAT compared to you or Mr. O'Brien, wasn't he?

A. Yes.

Q. Mr. Walsh, meaning IIU, Dermot Desmond. I think by March of 1998, would he have been down to 10% or 1%?

A. In '98, I guess 10%.

Q. 10%?

A. Yeah.

Q. In any case, your response was, after you dealt with the question of the cheque: "You seem somewhat confused as to the details of this political donation and I am surprised that this, given the fact that the matter was fully aired in October of 1997 prior to the IPO, at that stage, the Chairman clarified and confirmed that the donation in question came from ESAT Digifone Limited. It is also perfectly clear that at the Chairman's request, we facilitated the payment on behalf of ESAT Digifone and were subsequently reimbursed. Now that Fine Gael has decided to return

the donation, we are obliged to return it to ESAT Digifone as the money belongs to that company.

"I cannot understand why you raise the issue of impropriety in the context of Telenor. Our company has clearly done nothing improper.

"I do not understand your reference to, 'After we had been induced to underwrite ESAT Digifone limited.' If this is referring to your shareholding in the company, Telenor is not aware of any such inducement and was not involved in IIU becoming a shareholder in the company.

The correspondence and minutes of meetings held by Telenor and/or its representatives with Fine Gael and/or its representatives were on the express basis of confidentiality. Accordingly, and having taken legal advice, Telenor declines any further communication with you on this issue.

"Since the donation was made under the original direction of Denis O'Brien, may I suggest that the cheque be dealt with by ESAT Digifone Limited in accordance with the instructions of Denis O'Brien as Chairman of the company and the original promoter of the donation."

In the second paragraph of your letter, you refer to the details of the matter and you say: "Referring back to 1997, at that stage the Chairman clarified and confirmed that the donation in question came from ESAT

Digifone Limited." That's a reference to Mr. Denis O'Brien, is that right?

A. Yes.

Q. You say: "It's also perfectly clear that at the Chairman's request, we facilitated the payment on behalf of ESAT Digifone and were subsequently reimbursed." Is that again a reference to what was discussed or explained at the time of the IPO?

A. Yes.

Q. You then got a reply from Mr. Walsh on behalf of IIU in which he says, on the 16th April 1998:

"Dear Arvae, following my letter of the 30th March 1998 I tried to contact you a number of times but without success. However, I am in receipt of your letter dated 14th April 1998.

"Regardless of the circumstances which gave rise to the initial payment, it is clear that the current situation is one which stands on its own. In relation to Telenor's recent contacts with Fine Gael, neither you nor your representatives were authorised by ESAT Digifone Limited to enter into any discussions with Fine Gael on behalf of ESAT Digifone Limited. Equally, it is clear that you were not authorised by ESAT Digifone Limited to seek or receive any payment from Fine Gael for ESAT Digifone. We would not have given you such authorisation if you had requested it

and we would have refused to anticipate a payment from Fine Gael. Accordingly, I believe it would be wrong for ESAT Digifone Limited to lodge the cheque made payable to Telenor to the ESAT Digifone account.

"I am concerned that you feel you are not in a position to provide details of Telenor and/or its advisers on contacts with Fine Gael. It is of even greater concern that you are taking serious actions which may affect ESAT Digifone without prior agreement. If your actions ultimately cause damage, you must accept the responsibility."

Here you had a letter from Mr. Walsh and I am not asking you to comment on what Mr. Walsh meant by his letter but it is clear he was asserting a position on behalf of ESAT Digifone, isn't that right?

A. Yes, it certainly appears that way.

Q. You were not authorised by ESAT Digifone to do this, or that or the other, isn't that right?

A. Yes.

Q. And again, you had received no letter from ESAT Digifone saying any of this to you?

A. No, and in context, this is a little bit extraordinary, because all matters relating to Digifone in the past, specially board matters, had been handled by Denis O'Brien himself.

Q. But this was a letter in which, although Mr. Walsh was

purporting to say you have no authority to take certain actions, he was doing so on IIU notepaper and merely as another director of the company, isn't that right ESAT Digifone?

A. He was just an ordinary director, a non-executive.

Q. Did you have any meetings with Mr. Michael Walsh in relation to the contents of these letters?

A. No, not that I can recall.

Q. Is the full extent of your dealings then contained in the letters?

A. Yes, I believe so.

Q. You wrote back to him on the 22nd April, 1998 saying:

"I acknowledge your letter of the 16th inst. in the above, Telenor did not make contact with the Fine Gael Party on behalf of ESAT Digifone Limited. Telenor is acting entirely on its own behalf in seeking clarification of certain issues which caused us concern.

"We informed the other members of ESAT Digifone that we were doing this. The Fine Gael Party carried out its own investigations into the circumstances surrounding the payment and it has now decided to return the monies.

"This was never requested by Telenor and is a decision made by the Fine Gael Party entirely on its own behalf and was outside Telenor's control. The cheque was



made payable to Telenor as we had been the facilitator of the original payment and as we had already been reimbursed for facilitating ESAT Digifone, we were obliged to see that the monies were returned to ESAT Digifone.

"You will appreciate that our discussion with the representatives of Fine Gael were conducted on a confidential basis. The final sentence of your letter is unhelpful. I cannot see how our actions can cause any damage when their sole purpose was to clarify something which happened some years ago."

You go on to say that: "Telenor received no other communication in connection with the matter, but understands from media reports that Mr. O'Brien subsequently returned the cheque to the Party and that the cheque was retained in a safe in the party offices for sometime. Telenor did not know that the cheque had been returned to the Party by Mr. O'Brien until February 2001, when the donation was disclosed in the Sunday Tribune. The matter rested with the party for some years from 1998 until 2001. As a result of the media attention in late February of 2001, the Party delivered, by hand to Telenor's Irish solicitors, on the 7th March 2001, a covering letter from the Party enclosing the bank draft for i£1/233,000. Our Irish solicitors acknowledged receipt of the bank draft on

behalf of Telenor on the 9th March 2001. Telenor then sent the bank draft with the covering letter to ESAT Digifone on the 14th March 2001."

You say that: "By letter of the 21st March 2001, the company secretary of ESAT Digifone refused to accept the bank draft and returned it because it was marked 'account payee.' Telenor did not accept that this constituted a valid reason for refusing the bank draft. Accordingly, Telenor responded by returning the bank draft to ESAT Digifone with a letter dated 10th April 2001 explaining the position and waiving any adverse claim in relation to the bank draft so as to facilitate ESAT Digifone in banking the donation.

"In its letter dated 4th March 2001, ESAT Digifone again returned the bank draft this time citing accounting and tax issues and seeking a credit note in respect of the reduced payment of i¼31,300. Telenor partly accepted that proposal by issuing a credit note showing the sum of i¼31,300 as originally refunded and attributing the balance of 1,700 making a total of 33,000 as being due to currency fluctuations and interest.

"The original bank draft together with a credit note and covering letter dated 14th May 2001 are now being sent to ESAT Digifone."

Now, I'll just go over this series of letters as quickly as I can.

The first letter I want to mention is item number 20.

It's from Mr. Tom Curran, General Secretary Fine Gael, to Mr. Kevin O'Brien at Kilroy's & Company, your solicitors. It says: "Re Telenor's donation to Fine Gael."

"Kevin, we note that you act for Telenor in this jurisdiction. Arising from the present controversy, I am directed by Michael Noonan TD, of Fine Gael, to transmit a bank draft in your client's favour in the amount of €33,000. We should be grateful if you/your clients would be good enough to acknowledge safe receipt."

Then the next document, simply a photocopy of the bank draft. At this stage, Fine Gael were presumably of the view that by sending a bank draft, there could be no question of their not returning the actual money, isn't that right?

A. Yeah.

Q. That's presumably what their thinking was.

Mr. O'Brien of Kilroy's, on behalf of Telenor, replied, on the 9th March, saying:

"Dear Tom, I acknowledge receipt of your letter of the 7th inst. Enclosing bank draft in favour of Telenor in

the amount of €33,000. The bank draft represents the return of the donation made to Fine Gael by Telenor on behalf of ESAT Digifone Limited.

"Telenor has already been reimbursed by ESAT Digifone for this donation and we are, therefore, arranging to forward the bank draft on to ESAT Digifone."

You then, by letter of the 14th March 2001 wrote to Mr. John O'Rourke, who was the secretary of ESAT Digifone Limited. Now, at this stage, I think you were still a director of ESAT Digifone, would that be right?

A. Which date was this?

Q. March 2001.

A. No.

Q. I am just looking at a piece of notepaper dated 21st March 2001

A. No, I was not anymore.

Q. You think that's a mistake, is it? You are described as a director in a letter of the 21st March 2001.

A. I think it was probably not completely updated, because it's since probably the beginning of the year.

Q. In the beginning of this year you ceased to be a director?

A. Yeah.

Q. I see. So in your letter of the 14th March 2001, you were writing this time directly to ESAT Digifone, to

the secretary of the company.

A. Excuse me, I might have been directorship in April or March

Q. You may have been still a director at this point?

A. I may be, the shift came just before BT took completely over.

Q. And who was the Chairman of the company at this time before BT took it completely over?

A. Before BT took over?

Q. Yes.

A. It was, in this period, BT with effectively 50.5% and Telenor 49.5%

Q. Well, yes, BT had control, but before they took over everything?

A. I am not certain, I think it was I thought it was Peter he was chairing the meetings anyway

Q. You can't be absolutely sure, but it wasn't Mr. Denis O'Brien in any case?

A. No, no, Denis O'Brien stepped down, he sold it to BT in, I think, effectively April 2000.

Q. But at this point, you didn't write to the Chairman of the company. You wrote to the secretary of the company as representing the company itself, isn't that right?

A. Yeah. Well, that is the way you hand it to the company secretary. There is nothing particular about that.

Q. It's just it's different from the approach you adopted some years earlier when you handed your letter to Mr. Denis O'Brien.

A. Yeah, I mean, it's another way of doing it.

Q. Is it the reason you didn't deal with the secretary on that occasion is that Mr. Denis O'Brien was so intimately involved with the actual transaction itself, is that right?

A. Yeah, I think it was much more relevant to address it to the Chairman when it still was Denis O'Brien, yes.

Q. You then you informed him that you'd received a bank draft from Fine Gael and you again stated that as you had been reimbursed, you were endorsing it in favour of ESAT. You gave them the cheque endorsed.

You then got a letter on the 21st March from Mr. John M O'Rourke, secretary of ESAT Digifone, in which he said that:

"I must, pending a full examination of this matter, reserve fully our company's position with regard to the characterisation of events which is expressed in the first sentence of your letter.

"So far as our company's accounting records go, the only expenditure item which appears to relate, although it is not exactly equivalent to the amount of  $\text{€}1/233,000$ , would appear to be that covered by invoice number

100084 dated 27th March 1996, a copy of which is enclosed and which reference is a consultancy fee for Telenor AS.

"The draft enclosed with your letter is marked 'account payee' and as a result it cannot be lodged to the bank account of ESAT Digifone Limited. I, therefore, return it.

"In the circumstances, if you wish to remit the amount of the draft to ESAT Digifone Limited, you may consider it appropriate to raise a credit note in favour of ESAT Digifone Limited in respect of invoice number 1000084, which may then be followed by a direct payment of that sum by Telenor AS or set-off of the same amount."

I think it's safe to say, isn't it, that at this stage, the correspondence between ESAT and you was getting extremely technical, wasn't it?

A. Yeah, I mean, I am sorry for the confusion about the board and thing. But we had, as BT had bought the majority of the company, Telenor was very much becoming more and more passive in it. We actually, in February, decided to sell it to BT, so effectively, we stepped down in February, that's why I said I was not on the board in March, but it might be effectuated, legally or formally, by the closing of the whole thing happening in April. So that was that confusion.

On your on the question regarding the technicality,

I think we, at this point in time, felt that we were

more and more distant to the company

Q. Where is the money now?

A. As far as I know, it's somewhere in the company or, I

mean, the draft is somewhere in the company, as far as

I know.

Q. Somewhere in which company?

A. Digifone.

Q. Digifone has the draft?

A. Yeah. That's what's the latest information I have

anyway.

Q. So there was it was going back and forth and back

and forth and finally, the last letter that you have

given the Tribunal is a letter of the 14th May 2001, in

which you say:

"Dear John" this is a letter addressed to company

secretary of ESAT Digifone "Thank you for your

letter of 4th May 2001 which was received in our office

on the 7th May 2001. I note that you have returned

the bank draft. You will appreciate that because

Telenor has validly and properly endorsed the bank

draft in favour of ESAT Digifone, Telenor has no

authority or entitlement to deal with the bank draft in

any way other than to return it to your company.

"I have adapted in part your proposal, and accordingly,



I now return the bank draft to you with a credit note for i\_1/233,000, broken down into i\_1/231,300 in respect of invoice 100084 for consultancies and stating that this is in respect of the political donation and the sum of i\_1/21,700 being the excess of that sum attributable to currency fluctuations and interest."

Could you just clarify for me now what that means.

That you are returning a draft for i\_1/233,000 to ESAT Digifone together with a credit note for i\_1/231,000? So if that credit note is accepted, does it do away with a payment by an earlier payment by ESAT Digifone to you?

If my understanding of this is faulty, maybe you'd explain to me what this letter means in terms of the up-to-date position concerning the relationship between Telenor and Digifone, where this money is concerned?

A. This might be technical, but, or accounting technical, but in my mind, the credit note actually should reverse the payment made by ESAT Digifone and in that regard, they should be kind of reimbursed by Telenor for the expense they had had in the 1996 timeframe.

Q. So what you were doing was you were putting the entire balancing transaction that we discussed earlier into reverse and instead you were handing over a draft for the same amount of money to ESAT, is that right?

A. Not instead

Q. I think perhaps that's what you are telling me.

A. Yes, the repayment, so to speak.

Q. So does that mean and you have never got this money back from ESAT Digifone?

A. The draft was my latest information is that the draft rests with ESAT Digifone, I haven't seen it for a while.

Q. I don't think there may be one or two matters

CHAIRMAN: I am certainly not remotely contemplating asking Mr. Johansen to face questions from anyone else, Mr. Healy, so I think it may be more satisfactory to leave it to recap, if you think something arises, of course you have entitlement at the end of examination

MR. HEALY: I think I should also, perhaps, in fairness to Mr. Johansen, there was one part of his statement which I should mention at this point, and while I would wish to come back to it in the context of one or two other things I need to put to him, I think I should say in fairness to him that he has stated that Telenor reiterates that at all times in making the donation, Telenor acted in accordance with the instructions of Mr. O'Brien, the then-Chairman of ESAT Digifone, isn't that right?

A. Yes.

Q. MR. HEALY: And you also state Telenor denies that it ever wished to develop political contacts independently of ESAT as asserted by Mr. O'Brien in his Public

Statements.

A. Yes.

CHAIRMAN: Very good. Well, I'll have to trouble you, I think, Mr. Johansen, if it's convenient

MR. FITZSIMONS: Mr. Johansen was hoping to get away tomorrow morning, if it was possible. I did mention that to Tribunal counsel.

CHAIRMAN: I am always anxious to facilitate witnesses, Mr. Fitzsimons, particularly people who have come salutarily out of the jurisdiction. I am only thinking of the various considerations of the very considerable volume of other business that the Tribunal have to attend to. Documents are coming in from other persons, I hasten to say at the last minute. Meetings are having to be held at a very much extemporised basis. I don't want to impose huge difficulties on Mr. Johansen, but how much time is likely to be involved?

MR. FITZSIMONS: There is not very much from our end. I don't know Mr. Healy may have to come back.

MR. HEALY: I certainly I don't know how many other people are going to be taking up matters with Mr. Johansen, but maybe maybe it would be better if

MR. FITZSIMONS: If it's of any assistance, I have six

relatively short questions. I am not sure what counsel for Fine Gael and Mr. Lowry, I don't know what the position is.

CHAIRMAN: I don't want to use more time discussing the issue, gentlemen. We might, Mr. Barniville, Mr. O'Connor?

MR. BARNIVILLE: Sir, would I imagine I would be about five minutes, five to ten minutes at most with Mr. Johansen, but I think no more than that.

MR. O'CONNOR: Similar.

MR. HEALY: I think that the Tribunal may have some other matters it may wish to take up. It might be faster to do it all in the morning. I don't know when Mr. Johansen has to leave in the morning, it might be more sensible to arrange an earlier start in the morning so as to allow Mr. Johansen to get away earlier than to try to drag things OUT in an unsatisfactory basis at this time in the afternoon and I can discuss that with Mr. Fitzsimons, if we could facilitate his client in the morning.

MR. FITZSIMONS: We are in your hands, Sir. I mean, if it's impossible to deal with it now, it's impossible.

CHAIRMAN: Mr. Healy, there is still a lot of other things to do. I think I will press on for some

fifteen minutes and see if we are at or close to completion.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. BARNIVILLE:

MR. BARNIVILLE: I have spoken with Mr. O'Connor and we agreed I might go first.

Q. Mr. Johansen, I appear for Mr. Michael Lowry and I just have a couple of questions for you. Just to put your meeting with Mr. O'Brien on the 8th December 1995 in context. I think that meeting took place after it had been publicly announced that ESAT Digifone was successful in the competition for the second GSM licence, isn't that correct?

A. Yes, that's correct. As we mentioned already this morning, the announcement was made in a press conference, I think, on the 25th October already.

Q. I think it's the case, Mr. Johansen, that you indicated in your evidence that between that date and the date of the grant of the licence, which I think was in May of 1996, that you were attending to practical and logistical matters and also to certain legal matters, isn't that right?

A. Yes. I mean, we were definitely building up the company at high speed. We were doing the planning, we were procuring equipment and we were in the midst of selection and site findings. So we were already in

full speed working towards the service.

Q. The decision had, in fact, been taken and publicly announced by that stage, by the time you had your meeting with Mr. O'Brien?

A. Sorry?

Q. I just wanted to confirm that the decision had been taken and it was publicly announced that ESAT Digifone had obtained the licence?

A. No doubt about that.

Q. Now, I think just to make it clear that in your conversation with Mr. O'Brien, Mr. O'Brien made it clear, Mr. Johansen, that the donation that he was requesting was for the Fine Gael Party and not for any individual, isn't that correct?

A. That's absolutely correct. It was never ever mentioned anything but an ordinary donation to the Party.

Q. And lest there be any misapprehension or misunderstanding, there was no question whatsoever, was there, Mr. Johansen, of you being requested to make any donation to an individual and in particular, to Mr. Lowry?

A. Never.

Q. And I also take it, Mr. Johansen, from the evidence that you gave, of requests that you had received in other countries for the payment of substantial sums of money to guarantee the grant of licences, that there

was no question of this request for donation being made in those circumstances?

A. Not at all. In our minds the licence was already granted.

Q. Now, just turning to your telephone conversation with Mr. O'Brien, and subsequently with Mr. Austin, on the 11th December. When you prepared your statement, Mr. Johansen, you didn't have any recollection of preparing of making the notes on the yellow post-it, isn't that right? I think you had no recollection of having

A. No, that's something you note, when you are talking on the phone, you know, so how exactly they came about, I cannot confirm.

Q. And can I just clarify, that in relation to that post-it, it seems to have been prepared, if you like, the first half was prepared, as I understand it, in Oslo, and the second half was prepared in Budapest?

A. That's correct.

Q. And did you take the post-it with you to Budapest?

A. Yeah.

Q. And Mr. O'Brien, I think, gave you Mr. Austin's telephone number, and you then telephoned Mr. Austin?

A. Yes.

Q. Am I right in saying that the impression that you gave in your direct evidence or your evidence that Mr. Healy led you through, that your recollection of that

conversation is not particularly good, would that be correct?

A. No. I don't think that is correct. I think I have a pretty good recollection of the conversation.

Q. Well, the only reason I ask you that, Mr. Johansen, is that in your statement you made no reference to Mr. Bruton or Mr. Lowry being mentioned in the conversation that you had with Mr. Austin.

A. No. That's right. Because it was mentioned only in the context how it could be recognised by the Party. So my question was how is it recognised by the Party, and I said it was absolutely going to be recognised by the Party.

Q. I just want to come to that in a moment. But the way that you remembered Mr. Bruton's name and Mr. Lowry's name came up was because you saw it on your post-it, isn't that correct?

A. That's correct.

Q. And that's the only, if you like, the source of your recollection of Mr. Bruton's name and Mr. Lowry's name coming up at that meeting?

A. Yeah, that's correct.

Q. When you say that Mr. Bruton and Mr. Lowry's name came up, I think what you said is that you'd like to know, you said to Mr. Austin, you'd like to know how the payment would be recognised? I think that's the word you used. Mr. Austin said to you that it would be



acknowledged by the top people in the party. And it was in that context that Mr. Bruton and Mr. Lowry's name came up, isn't that right?

A. That's correct.

Q. Can you just confirm something for me. Mr. Austin did not, in fact, say to you, as I think Mr. Healy may have mistakenly unintentionally indicated to you in your direct evidence, Mr. sorry, Mr. Austin did not say that Mr. Lowry or Mr. Bruton were, in fact, aware of the donation at that time?

A. No. I don't think he said that. I think and I am not absolutely certain, but I think maybe he could have mentioned John Bruton and Denis O'Brien as having talked about a donation, a possible, possible donation.

Q. But not Mr. Lowry?

A. But not Mr. Lowry.

Q. And when you say that Mr. Austin indicated that it would be acknowledged by the top people in the party, I think it's the case that you, in fact, received no acknowledgment from any of the top people in the Fine Gael Party, isn't that right?

A. Once again, please.

Q. Pardon me?

A. Can you please repeat.

Q. Sorry, that when you say that Mr. Austin indicated that you would that the donation would be acknowledged by the top people in the Fine Gael Party, you did not

receive any acknowledgment from any of the top people in the Fine Gael Party, isn't that right?

A. That's correct.

Q. And I think the only acknowledgment, in fact, that you received was from Mr. Austin with his letter of the 19th February, isn't that correct?

A. That's correct.

Q. And I think, in fact, you didn't have any further conversation with Mr. Austin after your telephone conversation of the 11th December 1995?

A. Yes, that's my recollection.

Q. And I take it that you didn't make any contact yourself with Mr. Bruton in relation to the donation?

A. No, I never met him.

Q. And the same applies to Mr. Lowry?

A. Yeah, I never met Lowry either, except for on the 16th May in connection with the press conference when we had gotten the formal licence.

Q. And I take it that you never had any discussion whatsoever with Mr. Lowry in relation to the donation?

A. Never.

Q. You may be aware, from material that the Tribunal has furnished to you, that it's Mr. Lowry's position that he had no knowledge whatsoever of this donation until the matter was published in the press earlier this year.

A. (Nods head.)

Q. You have no reason to disbelieve that.

A. No, I have no different information about that.

MR. BARNIVILLE: Sir, there is just one question that you may feel that this is not the appropriate time to ask this question, and I am subject to your direction, Sir, in relation to this. I am going to ask Mr.

Johansen whether in his opinion, there was anything improper whatsoever in relation to the application by ESAT Digifone for the licence in the procedure applied for the grant of the licence and in the grant of the licence itself. And the reason I was going to ask Mr.

Johansen this question is because I wasn't clear whether Mr. Johansen would be coming back to the Tribunal, and as you are aware Sir, this is a matter that has attracted an inordinate amount of publicity in the press since the matter was opened recently before the Tribunal, and I wanted to ask this witness, who is a director of ESAT Digifone, what his opinion was in relation to those matters is.

CHAIRMAN: My disposition, I think, Mr. Barniville, having already expressed a view to Mr. Healy, is to feel that since I think it is reasonably clear that Mr. Johansen, that he has been very cooperative, may be asked to return again, that I think those matters are preferably deferred until the conclusion of evidence, in particular, where it may be that some other evidence

has been canvassed with him.

MR. BARNIVILLE: I entirely accept that ruling and perhaps it can be left then to the appropriate time to ask those questions.

MR. HEALY: I am not sure this can finish at all today, because I do have an obligation to put to this witness all of Mr. O'Brien's material. So I see little prospect of this matter finishing with any reasonable time scale.

CHAIRMAN: Mr. Johansen. I appreciate you have come very co-operatively from Norway to assist the Tribunal. Does it pose particularly huge problems for you if I were to ask you to try to conclude your evidence tomorrow?

A. Well, I appreciate that you are trying, and is it possible then, Chairman, to try to do it as early as possible?

MR. COUGHLAN: If Mr. Johansen or Mr. Fitzsimons would indicate what time Mr. Johansen's flight is at, that might be of some assistance.

MR. FITZSIMONS: It's at eleven a.m. It's a direct flight to Oslo. There is no direct flight on Saturday.

MR. COUGHLAN: It's not possible, Sir. I suppose Mr. Johansen will just have to come back another day,

so, in those circumstances.

MR. FITZSIMONS: Well, I think we would like to get this segment finished. Perhaps we could consult.

MR. COUGHLAN: Perhaps Mr. Fitzsimons and myself could discuss the matter, we'll put it on the Internet then what time we are starting at in the morning. We'll put it on our website.

MR. O'CONNOR: I'd like to clarify whether I'd be given the opportunity on behalf of Fine Gael to cross-examine Mr. Johansen tomorrow or another day.

CHAIRMAN: I can appreciate, Mr. O'Connor, you are anxious to be heard in that regard. My concern is that, Mr. Coughlan, that even if it leaves unfinished business, that I think if people are particularly anxious to make some contribution by way of examination, they should not be closed out for any period.

MR. COUGHLAN: Oh absolutely not, Sir, but the Tribunal does have an obligation. It's an inquiry, not an adversarial system, I think I have explained before, as Mr. O'Brien is not here at the moment. The Tribunal does have an obligation to put Mr. O'Brien's position to Mr. Johansen. Mr. O'Brien has to give evidence as well, Sir, and I appreciate the difficulties and appreciate the assistance Mr. Johansen

has given the Tribunal, but it is a Tribunal of Inquiry, Sir. And unfortunately, issues like this cannot be rushed. The Tribunal has to inquire into all aspects of the matters.

CHAIRMAN: All right, I'll rise and I'll hear what may have transpired in discussions between counsel with a view to the time and the form of resumption in the morning. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
FRIDAY, 1ST JUNE 2001.