

MORIARTY TRIBUNAL - DAY 109

TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 17TH OCTOBER,
2001 AT 11 AM:

MR. COUGHLAN: Mr. Phelan.

AIDAN PHELAN PREVIOUSLY SWORN, EXAMINED AS FOLLOWS BY
MR. COUGHLAN:

CHAIRMAN: Thanks for making yourself available,
Mr. Phelan. You are, of course, already sworn.

Q. MR. COUGHLAN: Mr. Phelan, I think you have furnished
the Tribunal with a further statement which deals with
the question of instructions and the transfer of shares
out of the account of Mr. Austin in DLJ, that's ESAT
Telecom shares, isn't that correct?

A. That's correct.

Q. Before I take that up with you, could I just ask you if
you can assist the Tribunal just in relation to one or
two matters which Ms. Malone gave evidence about
yesterday and which you dealt with previously in the
course of your evidence, and those were documents which
were executed in respect of the transfer of the
property in Spain from Mr. David Austin to Walbrook
Trustees to hold on behalf of Mr. O'Brien.

If I could just ask you: I'll put them up on the
screen, and I'll give you a hard copy as well. And

this was a letter of indemnity, which is Helen Malone document number 6, and a deed of transfer which was /AP

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Helen Malone document number 7, both of which were executed by Mr. Austin on the 7th January, 1998. I'll just get you a copy.

(Document handed to witness.)

First of all, I take it, you do remember this?

Perhaps I'll just tell you what Ms. Malone said:

That she prepared the documents, having, I think, perhaps received drafts from Mr. Perera, but she drew up these particular documents, and you and she went to Mr. Austin's apartment in Monkstown, and that she didn't attend on Mr. Austin, because he was unwell, he had received chemotherapy; that you attended on him, and you brought the documents back signed by Mr. Austin, isn't that correct?

A. Yes.

Q. Could you be of any assistance to the Tribunal why Ms. Malone witnessed the documents the signature as opposed to you?

A. No, I couldn't.

Q. Does it seem unusual to you that you were the person who actually witnessed Mr. Austin signing the documents? Isn't that correct?

A. Correct, yes.

Q. It would be more usual all you were was acting as a witness to a signature, wouldn't that be correct, in the normal course of events?

A. Under the normal course of events, probably. In this case she witnessed it.

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Q. She wasn't present, she told us.

A. Correct.

Q. So she didn't actually I am not making a big issue in relation to Ms. Malone on this matter; what I am asking you is, was there anything unusual whereby you could just not have witnessed the signature yourself, and why you brought the documents back to allow Ms. Malone to purport to witness the signature, which of course she hadn't done. Is there any reason?

A. There is no reason. The only thing I can say is she was driving the documentation. She asked me to get them signed. I got them signed. I gave them back to her. Witnessing them didn't really occur to me.

Q. I take it you would have been aware, in a professional capacity, that what was required was the signature to be witnessed, wasn't it?

A. Correct. That's exactly what was required.

Q. And you knew that?

A. It didn't occur to me, but I know that witnessing a

signature is exactly what it says. You witness the applicant's signature.

Q. And Ms. Malone did not witness the signature, isn't that right?

A. Technically, no.

Q. Actually, no. She wasn't there?

A. Actually, no.

Q. Now, just one other matter with reference to the evidence given by Ms. Malone yesterday. She informed the Tribunal that in relation to signing the bank documentation on behalf of Catclause Limited as an /AP

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alternate director, that you had a discussion with her asking her whether this was possible, and she informed you that if there was a board resolution, that there was no difficulty about that, and that matters could subsequently be rectified by the board drawing up a minute to rectify that situation.

A. To ratify

Q. Or to ratify the situation.

A. Yes.

Q. Now, she said that after Christmas of that year, probably in January of early January, 2000, that she asked you about it, and you informed her that the company was no longer taking the loan and that it was all right. Do you remember a conversation in those

general terms?

A. In general terms, I think she approached me, and I said there was a problem. I think I came back to her later and said, you know, the company wasn't going to be used.

Q. Now, if I understand your evidence correctly yesterday, she seemed to be of the belief from that time on, until matters came to a head subsequently, that Catclouse were out of the picture in terms of being the borrowers?

A. Yes.

Q. Would that be correct? Did you say anything to her

A. Are you asking me is that what she understood?

Q. Yes.

A. Well, I believe, yes, she understood it to be out of the picture.

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Q. Because she had, she believes, some exposure having signed the documentation on behalf of Catclouse. She believed that was all finished as of January 2000, herself?

A. Yes.

Q. Would that be correct? You didn't say anything to her which would have given her any different impression?

A. No.

Q. Now, she said then that she became aware of some

matters around the time which would have been the end of February 2001, the beginning of March, when you had a meeting with Mr. Morland and Mr. Cullen and then your subsequent meeting with Mr. Cullen, that you would have given her some information around that time. Would that be correct?

A. Yes.

Q. And then she described attending a meeting first of all she described attending a meeting in August 2000, where yourself, Mr. Vaughan, and Mr. Lowry are present, but she was only present as a notetaker, is that correct?

A. Yes.

Q. You then spoke to her the end of February or the beginning of March of 2001, after your meetings with Mr. Morland and Mr. Cullen, and you indicated to her that there was some problem or some difficulty in relation to the matter, is that correct?

A. Yes.

Q. She attended a meeting, I think on the in March, at the Regency Airport Hotel, where Mr. Vaughan, yourself, /AP

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Mr. Lowry, Mr. Denis O'Connor, Mr. Lowry's accountant, were present, and Mr. Kevin Phelan may have been in another room; does that accord with your view of things?

A. It rings a bell, yes.

Q. And the purpose of that meeting, she said, was to brief Mr. O'Connor, who didn't know anything about the matter. Is that correct?

A. Yes. I think he had been away in America maybe. He came back.

Q. Now, she said that between the end of February and that meeting which Mr. O'Connor attended in the Regency Airport Hotel, there was a meeting at your office where Mr. Vaughan, Mr. Lowry and yourself and she was present, and the purpose of that meeting was that she was briefed on the whole situation, would that be correct?

A. She was briefed, yes, she was anxious to get to the bottom of it, of the whole situation. I had been contacted by the bank. We had been in Canada, and when I returned from Canada, the bank contacted me and said that the bank were referring the matter either to the Tribunal or to the Central Bank, I can't remember which, and suggested I take legal advice. The meeting followed that I mean, I got all these phone messages when I came back, and the meeting was to sort of get an understanding.

Q. But why was there a necessity to brief Ms. Malone? After all, Ms. Malone provided company secretarial services for you, isn't that correct?

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A. Yes.

Q. And even in your partnership with Ms. Malone, she provides company secretarial services, isn't that right?

A. Yes.

Q. And her only involvement in respect of this particular loan was merely to sign the bank documentation as secretary or a director of Catclause Limited, which she believed was now out of the picture, isn't that correct?

A. Yes.

Q. As the borrower?

A. Yeah.

Q. At the meeting in August of 2000, discussing the various properties in England, which was attended by yourself, Mr. Vaughan, Mr. Lowry, she only attended as a notetaker and nothing else, isn't that correct?

A. Yes.

Q. Why was there a necessity to brief Ms. Malone in March of 2001?

A. Because I explained to her, prior to going to Canada, I had written a letter which I believed clarified the position as I understood it in relation to the Catclause issue, and the bank were saying something different, which I regarded had an effect on her.

Q. And that was the purpose of it?

A. That was the purpose, yeah. And I said "I'd better make a statement clarifying this matter, and I'd like your assistance." We are partners, and I rely upon her advice, assistance.

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Q. And why was there a necessity for Mr. Vaughan and Mr. Lowry to be present for that briefing?

A. Well, the solicitor was the man who acted in the acquisition of the property, and I thought you know, given what the bank were saying, I thought it was useful to have Michael Lowry there.

Q. But at the time that you had this meeting this is the first meeting with Ms. Malone, Mr. Lowry, and Mr. Vaughan at your office you had furnished a letter to the bank which, on your evidence, was dictated by Ms. Cullen, or broadly dictated by Mr. Cullen?

A. Broadly dictated, yeah. We described some of the words in the letter. Broadly gave me the general text of the letter. There were pieces of the letter I remember specifically him asking me to put into the letter.

Q. And as far as you were concerned, that was where matters rested; and you believed that the bank were happy with that, isn't that right, at that time?

A. Yeah. I phoned the letter was directed to Tony

Morland, and I phoned him a number of times, roughly at the beginning of March, whenever you know I think the letter was the 5th March, and I phoned him I might have gone to Canada on the 6th. I certainly phoned him on the 5th and on the 6th to make sure they were happy, and I had no response from him.

Q. But you had no reason to believe they were unhappy?

A. No, I was happy it was a detail that I wanted to make sure was tidied up before I went away.

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Q. That's why I want to know, why was there a necessity for a meeting to brief Ms. Malone then after that?

A. As I said, what the bank were saying, when I came back from Canada she was with me on the trip; we were looking at a business opportunity there and when I came back, I understood that the bank were saying something that had an effect on her, a possible effect on her, albeit she was acting as an alternate. I thought she should be informed.

Q. But there was no question of her ever going to be involved on a personal level, was there? You would have ensured that, notwithstanding that she had signed the documents, she had signed the documents at your request?

A. Correct.

Q. Isn't that right?

A. Yes.

Q. Well, if the bank were happy, as you believe they were, when you went to Canada and while you were in Canada, they appeared to be happy on what you knew to be a less than frank description of what the true nature of the transaction had been, isn't that right, on the basis of the letter which you sent?

A. The letter which I sent was not a true reflection of the position because of the gap between the initial drawdown of the money. Effectively Catclaus were there for ten days, a week/ten days, whatever. So in effect, what I should have written in the letter would have been something different to reflect the situation. It was the letter they wanted. I saw it as a purely

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commercial issue, and I gave them the letter that they wanted from me.

Q. If the question were to be asked, Mr. Phelan, "Was not the purpose of the meeting where Ms. Malone was briefed, was not the purpose of that meeting to ensure that the story was got right between yourself, Mr. Vaughan and Mr. Lowry," what would your response be?

A. Are you asking me that question?

Q. Yes, on behalf of the public.

A. I would say that's not true.

Q. At that meeting, did you inform Mr. Lowry and Mr. Vaughan of the letter which had been sent to the bank which informed the bank that you had purchased the property, in effect, isn't that right?

A. Yes.

Q. Did you tell Mr. Vaughan and Mr. Lowry about that?

A. I can't recall whether I told I can only surmise I would have told them. I mean, if I could just add, in August of 2000, at that meeting, one of the items on the agenda was the strike-off of Catclause Limited, the limited company. I am just saying that that was done or certainly actioned in or around that time.

Q. Yes, that is correct, that was a proposed action arising from the meeting of August of 2000, isn't that correct? Yes.

If I might turn now, Mr. Phelan, for a moment I just want to, before I do move on, I just want to be clear about this. You know Mr. Cullen came back to give

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evidence about the letter which you sent to Mr. Morland in the bank?

A. Yes.

Q. And

A. I haven't seen what he said. I haven't seen his evidence.

Q. Well, I think he was asked to come back arising out of

evidence which you gave on the last occasion, whereby you said that it was dictated to you, the terms of the letter were dictated by Mr. Cullen. You remember you gave that evidence in broad terms?

A. I do, yes.

Q. And Mr. Cullen came back to give evidence about it and informed the Tribunal during his evidence that what he did was to indicate the headings or the areas he wished to have addressed in the letter.

A. Yeah. I mean, I used the word "dictated" the letter. Now, I would say certainly we could be dealing with semantics here. He described the content of the letter. Certainly I remember him saying, giving me the broad brush, you know. Whether he said you know, "Dear Sir, A, B, C"

Q. I understand that.

A. The four weeks, I remember there was a text. I particularly remember him saying, you know, "You'll come into the bank in four weeks and tidy up whatever outstanding documentation, security documentation," something like that. And he talked about my net worth, I think. Certainly I made some handwritten notes. Unfortunately I didn't keep them, at that meeting.

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Q. What I am trying to get clear for the Tribunal is this:
Mr. Cullen did not dictate the content of the letter

for you, is that correct?

A. He described the content of the letter.

Q. In broad terms?

A. No, in fairly specific terms.

Q. In very specific terms, you say?

A. Fairly you know, specific terms. It wasn't a big letter. I mean, I think it's two paragraphs long.

Q. And you made notes of that meeting with Mr. Cullen, is that correct?

A. Yes.

Q. Which you don't have now. And it was relying on the notes of that meeting that enabled you to draft the letter?

A. I would have drafted the letter more or less as soon as I got back to my office.

Q. Now, if I might turn to the matter you deal with in your further statement to the Tribunal, and that concerns the transfer of ESAT Telecom shares out of Mr. Austin's account in DLJ and into the account of Mr. Michael Walshe, isn't that correct?

A. Noel Walshe.

Q. I think the name Michael Walshe and Noel Walshe come up at different occasions.

A. Charles Walshe, Charles Noel Walshe, I think.

Q. I think when you gave evidence on the last occasion, it was brought to your attention that as of the date of Mr. Austin's death, which I think was the 1st November,

1998, that his account statement in DLJ showed these

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particular shares still in his account?

A. I think you showed me a statement two days before his death.

Q. And you informed the Tribunal that neither you nor any of the other executors of Mr. Austin or Mr. Walter Beatty, who was solicitor to the estate and a very close personal friend of Mr. and Mrs. Austin, gave any instructions to DLJ to transfer the shares, isn't that correct?

A. Yes, I did.

Q. Now, I think that since then, the Tribunal has obtained through Mr. Beatty, as solicitor to the estate and as one of the executors, further documentation from DLJ, isn't that correct?

A. Yes.

Q. And I think you have informed the Tribunal that perhaps I should you furnished a statement, but in the first instance, I suppose, we might look at a letter we obtained from Mr. Muldowney of DLJ, dated 7th September, 2001, and addressed to Mr. Beatty. And I think you have seen this letter, haven't you?

A. I just got it this morning, yeah. We got it just before we started, I think.

Q. And do you mean that you didn't see it as executor?

Mr. Beatty didn't show it to you?

A. I don't believe so, no, no.

Q. Well, anyway, do you have any difficulty? You don't have any difficulty dealing with it, do you?

A. No, no.

Q. It reads, "Dear Mr. Beatty.

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"We refer to your letters of the 28th June and the 21st August.

"1: The holding of 12,000 ESAT shares remained in David Austin's account until November 16th, 1998, when we received a letter of authorisation (copy enclosed, dated 13th October 1998) from David Austin to transfer shares to the account from which they were originally intended for which they were originally intended.

2. "The documents we sent are the records of all transactions on Mr. Austin's account, including share dealings, share transfers, and receipt disbursements of funds, and do not show supporting documentation authorising transfer on the account. When an error is discovered in an account, and particularly if some period of time has elapsed, we request a letter of authorisation from the account holder (copy enclosed) to permit us to rectify the error by transferring the shares to the proper account.

"3. As requested, we enclose copies of all documents held by DLJ in relation to the late Mr. Austin's account, including all share dealings on the account, including the transfer of any shares into or out of the account, the receipt of funds on the account, and the receipt of any instructions by or on behalf of Mr. Austin in relation to all share dealings.

"4. We enclose a copy of the trade confirmation for /AP

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the purchase of 12,000 ESAT shares in Mr. Austin's account and the letter of authorisation subsequently received from Mr. Austin to transfer the shares to the account for which they were originally intended. The error arose from a misunderstanding in a verbal instruction given by Mr. Denis O'Brien to DLJ to purchase 12,000 ESAT shares for his father-in-law, Charles Walshe. During the conversation both Mr. Austin and Mr. Walshe's name were mentioned, and in error, DLJ bought the stock in the wrong account.

"5. The 12,000 shares were transferred out of Mr. Austin's account on Mr. Austin's authority on November 16th, 1998. We requested and received a letter of authorisation from Mr. Austin (copy enclosed), dated the 13th October 1998, on the 16th

November 1998 to transfer the shares to the party for whom they were originally intended.

"Yours sincerely, Peter Muldowney."

Now, the letter which was enclosed is a letter of the what we have been supplied with is what appears to be a letter or a copy of a letter dated 13th October, 1998. It has no address on it; it's not headed in any way. And it's dated 13th October, 1998, and it's addressed to you at Orchard House, Clonskeagh Square, Clonskeagh, Dublin 14.

"Dear Aidan,

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"Re ESAT Telecom Group plc.

"Further to our recent conversation, I would be obliged if you would request DLJ in New York to transfer my holding of 12,000 ADRs" those are the shares, aren't they?

A. Yes, the same.

Q. "...in the above company to Mr. Noel Walshe."

We can take it that's the same person referred to in Mr. Muldowney's letter.

"...who I understand has an existing account" and the account number is given "with DLJ. Thank you

for your assistance.

"Yours sincerely, David Austin."

Then there is it looks like an account number underneath that, in manuscript.

And I think one other document was furnished by DLJ, and that is a letter, or copy of a letter, again unheaded. There is no address on it. Dated 8th October, 1998, and addressed to Donaldson Lufkin & Jenrette, and it reads: "Dear Sirs,

"Please transfer 6,600 ADSs of ESAT Telecom from my account to Maureen Austin's account at DLJ.

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I appreciate your prompt attention in this matter.

"Yours truly, David FT Austin."

Now, if I might return now to the statement you furnished to the Tribunal dealing with this matter, Mr. Phelan. You say that "At no time did the transaction under discussion have any particular impact on me, especially as the role which I played in relation to it was as facilitator only. The response which I made to the Tribunal regarding the giving of instructions is there, in my view, substantially correct, insofar as whereas I technically relayed the

instruction of David Austin by forwarding his letter of the 13th October, I had no substantial role with regard to those instructions and acted merely as a conduit.

"In relation to the 12,000 shares which were purchased in September, 1998, I arranged the transfer of the funds necessary to pay for the shares. The request would have been initiated from Donaldson Lufkin & Jenrette, and I would have obtained approval from Denis O'Brien to transfer the funds accordingly."

You say that you have no recollection of the error in the share purchase. Nobody ever told you there was an error in the share purchase, did they?

A. No.

Q. I think the Tribunal then asked you details of all dealings which you had with Mr. Denis O'Brien,

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Mr. Peter Muldowney, Donaldson Lufkin & Jenrette, and the late Mr. Austin regarding the initial purchase of shares in September 1998 and the subsequent transfer of those shares on the 16th November, 1998, out of the late Mr. Austin's account into the account of Mr. Noel Walshe.

And you have informed the Tribunal that you had no involvement with Denis O'Brien, Peter Muldowney or

David Austin in relation to the purchase of the shares,
isn't that correct?

A. Correct.

Q. You were then asked by the Tribunal for details of all
dealings which you had with the late Mr. David Austin
regarding the share transaction and including the
procurement, preparation and signing of a letter dated
13th October, 1998, from the late Mr. Austin addressed
to you.

And you say that you have no recall in relation to
receiving the letter of the 13th October, 1998. As
stated in evidence, your office was used by Mr. David
Austin as a mailing address for DLJ correspondence, and
you believe that the letter of the 13th October, 1998
addressed to your office was passed on to DLJ by your
secretary.

I think you were then asked for details of the recent
conversation that is mentioned in the letter of
Mr. Austin's details of recent conversation between

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you and the late Mr. Austin referred to in the letter
of the 13th October, 1998.

And you have informed the Tribunal that you have no
recall of a conversation in relation to the matter of
12,000 shares, but do recall discussing the possible

transfer of some shares by David Austin to his wife shortly before his death. I do not believe that these shares had anything to do with the 12,000 shares under discussion.

We can come back to deal with that, because that seems to be correct on the letter of the 8th of that month signed by Mr. David Austin as sent to DLJ, asking or giving instructions to transfer shares to his wife's account. In fact, that did not occur, isn't that correct, because all of Mr. Austin's shares in Telecom, or ESAT Telecom, with DLJ, are referred to in the Inland Revenue affidavit which was sworn by the executors after he died?

A. Yes.

Q. And I think you were then asked for details of all dealings which you had with Mr. Denis O'Brien or any other person whatsoever regarding the preparation, procurement or signing of the letter of the 13th October, 1998. And you have informed the Tribunal that you had no dealings with anyone regarding the letter of the 13th October, 1998, is that correct?

A. Yes.

Q. I think you were then asked for details of the

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circumstances in which the letter of the 13th October,

1998 did not reach DLJ until the 16th November, 1998,
and you have informed the Tribunal that you cannot help
the Tribunal as to why the letter, the instruction to
DLJ, was not acted upon until the 16th November, 1998.

Is that correct?

A. Yes.

Q. And then you were asked whether, to your knowledge,
direct or indirect, DLJ were aware that the late
Mr. Austin had died on the 1st November, 1998, some
fifteen days prior to the transfer of the shares out of
his account on the 16th November 1998. And you have
informed the Tribunal that given your extremely limited
role in this transaction, you have no idea what the
state of DLJ's knowledge was at the time, is that
correct?

A. Yes.

Q. I think you then say that at no time had you acted as
an agent for David Austin with DLJ or any other person,
is that correct?

A. Yes.

Q. You had not acted as Mr. Austin's agent?

A. No.

Q. The letter requesting DLJ to effect the transfer which
was addressed to you was passed on to DLJ, and they
were happy to rely on this letter as being an
instruction from David Austin, is that correct?

A. Yes.

Q. Now, do you can I take it that you have made inquiries in your office about this letter of the 13th /AP

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October, which was addressed to you?

A. Yes.

Q. And of your secretary?

A. Yeah. The setup I had in the office in Orchard House was we were renting like a serviced office with three or four girls that I could use, just a pool of people.

I made inquiries about the letter. I have no recollection of the letter.

Q. And did anybody else remember it?

A. I couldn't get anybody I couldn't get anybody to tell me whether they remembered the letter.

Q. And there certainly is no copy of that letter?

A. No.

Q. In your office?

A. No. I mean, I can just say, when giving evidence on this before, if that letter was put to me, I'd still have the same response today. And I did say to the Tribunal that DLJ would give I think I said in my evidence that DLJ would help the Tribunal in relation to this matter. I am just saying that if that letter was put to me then, I would I would have gone away and checked it out.

Q. No, but you have nonetheless checked it out. I am

just trying to get clarification.

A. Yes, I have checked it out.

Q. And you have no recollection of ever receiving this particular document?

A. No.

Q. And as a result of the inquiries you have made, nobody else seems to have any recollection of it either, isn't

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that correct?

A. Yes.

Q. And from the information which we have received from DLJ, they received this particular document on the 16th November, according to Mr. Muldowney's letter?

A. Yes, that's correct.

Q. And that is one month after the date which appears on the letter, or thereabouts?

A. Yes.

Q. And it was certainly received by them and acted on by them after Mr. Austin had died, isn't that right?

A. Yes.

Q. Now, they may not have known it, that he was dead, but the only ones who could have given any instruction to transfer any shares out Mr. Austin's account after his death were the executors, isn't that correct?

A. That's correct.

Q. And that did not happen?

A. No.

Q. From the inquiries you have made?

A. No, it did not happen.

Q. Now, I am just asking for your view in relation to the two letters which have been furnished by DLJ, the first one dated 8th October, which is addressed directly to DLJ, isn't that correct?

A. Yes.

Q. And it does not appear to have been addressed to your office at all. Wherein Mr. Austin is giving an instruction to transfer shares to his wife's account.

Now, that appears not to have been acted on?

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A. Until sometime after, yes.

Q. No, it was never acted on. Those particular shares we can actually see on the account the 12,000 shares went to the account of Mr. Walshe, but all of Mr. Austin's other shares remained in his account, and in the Inland Revenue affidavit which was sworn after his death, they are returned on it. So they never moved out of the account at all?

A. Yes.

Q. Do you know anything about that?

A. Sorry, what are you asking me?

Q. Well, it would appear, from the information available to the Tribunal at the moment, that DLJ did not act on

this particular letter dated 8th October, 1998 and

transfer shares to Mrs. Austin's account.

A. Yes.

Q. That would appear to be the position?

A. Yes.

Q. Now, I don't think we know when DLJ received this

particular letter dated 8th October, 1998, at the

moment, but a document which is addressed to you

referring to a conversation that Mr. Austin had with

you, of which you have no recollection, was in respect

of these particular 12,000 shares, asks you to request

DLJ to transfer the 12,000 shares to Mr. Walshe's

account, and that was acted on after Mr. Austin died,

isn't that right?

A. Yes.

Q. Did you see the state of his account after his death,

when the Inland Revenue affidavit was being sworn?

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A. I didn't examine the Inland Revenue affidavit. I

would have relied upon Walter Beatty. I would have

just signed whatever he asked me to sign.

Q. Yes, of course.

Looking at the letter of the 13th October, 1998, and

can I just ask you, on your reading of it, Mr. Austin

is asking you to request DLJ to transfer his holding of

12,000 ADRs, isn't that correct?

A. Yes.

Q. Would you agree that that gives the clear impression to any reader that Mr. Austin was saying that these were his shares?

A. I would agree.

Q. And if you had seen this letter at the time, it wouldn't have caused you any surprise, because you knew that you had sent funds to DLJ for the purchase of 12,000-odd shares, isn't that correct, about a month previously?

A. Yes.

Q. And that was the state of your knowledge, that they were Mr. Austin's shares?

A. Yes, ostensibly. I didn't inquire into it any more.

Q. Did you know the account number in DLJ of Mr. Noel Walshe?

A. No.

Q. And can I take it that like any other account number, that would be known to the account holder, the institution DLJ here and perhaps agents of both of those parties?

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A. Yes.

Q. Did you see Mr. Austin in this period, say between the middle and the end of October of 1998?

A. I can't recall.

Q. Was he not in hospital in London around this time?

A. I believe I think I in evidence before, I said I went to visit him shortly before he died. Certainly I can't recall when that would have been.

Q. Right. Well, I am just trying

A. I think it was quite he died on the 1st November; it would have been, like, within days, I think.

Q. Was he unwell during the month of October of 1998?

A. Certainly at that time he was very unwell.

Q. We have seen in the course of evidence at this Tribunal a number of communications from Mr. Austin; one, for example, being the letter he furnished to you, I think, about the political contribution, isn't that correct?

A. Yes.

Q. It was handwritten?

A. Yeah, it was handwritten, yeah.

Q. We have also seen in the course of evidence at this Tribunal a letter written to Irish Nationwide (Isle of Man), I think, from Mr. Austin, and again it appears to be handwritten?

A. I agree with you. I haven't seen that.

Q. It also appears to be the situation that and you could just confirm this, because you saw Mr. Austin sign the letter of indemnity and the deed of transfer in respect of the property in Spain, isn't that correct?

/AP

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A. Yes, I did.

Q. That Mr. Austin tended to sign himself "David FT Austin", isn't that correct?

A. Yes.

Q. On the letter of the 13th October, this particular document is just signed "David Austin", isn't that right?

A. Yes.

Q. In all the documents that the Tribunal has seen, where Mr. Austin's signature appears, apart from this particular document, he signs himself "David FT Austin". Was that your understanding of how he usually signed

A. It appears to be, yes.

Q. If you had received a request from Mr. Austin I am not saying an instruction to carry out a transaction on his behalf, can I take it that you would have done that?

A. I would have inquired into what the transaction was. In this matter, I wouldn't have seen the need for David to write a letter to me. I would have thought a phone call to DLJ would have probably done it, probably done it. Given what we know now, that O'Brien paid for the shares, it was clear that there was an error; DLJ said there was an error.

Q. No, sorry, just, yes, DLJ have informed us,

Mr. Muldowney has informed us in his letter that in the course of Mr. O'Brien giving instructions to purchase shares for his father-in-law, he had a conversation with Mr. Muldowney, and Mr. Austin's name came up in /AP

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the course of giving instructions to purchase shares for Mr. Walshe, and that this is how DLJ ended up in error, they say, if it be an error, in carrying out this particular transaction. Isn't that right?

That's what Mr. Muldowney tells us?

A. Muldowney says that, yeah, there was confusion in the course of a conversation with O'Brien where Austin and Walshe's names were mentioned. They said they bought the shares in error on the Austin account. That's my understanding of it.

Q. Did you hear that independently, or are you just getting that from the letter Mr. Muldowney sent?

A. I am getting it from the letter.

Q. Yes, that in the course of giving instructions to purchase shares for a Mr. Walshe, Mr. Austin's name was mentioned. To the best of your knowledge, knowing Mr. Austin, did he have any relationship with Mr. Walshe?

A. None, to my knowledge, none.

Q. And can I take it that you were completely unaware, until recent times when the matter was being discussed

at the Tribunal, that there was any suggestion that there had been an error in relation to the purchase of the shares for Mr. Walshe for which you had transferred the money?

A. I was unaware of this transaction, this 12,000 shares moving into until it became a Tribunal issue, I was unaware of it.

Q. You were unaware?

A. (Nods head.) I mean, there is a possibility that this /AP

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may have been mentioned to me. I certainly don't remember it.

Q. Right. Now, on the documents which were furnished by DLJ, there was a letter dated 8th October, signed by Mr. Austin, to give instructions to transfer shares to his wife's account. Would it strike you as unusual that Mr. Walshe would then send a letter to or Mr. Austin would send a letter to you a few days later to give instructions to transfer other shares out of his account?

A. It strikes me as unusual that he wrote to me at all. Forget about the days

Q. Yes, that he had to write to you at all?

A. that he wrote to me. I can't understand why he couldn't have spoken to DLJ and just said sorted it out verbally with them.

CHAIRMAN: One thing is not entirely clear in my note,
Mr. Phelan; you might be able to sort it out for me.

I think you said that understandably your recollection
of a very late meeting with Mr. Austin, when he was
plainly terminally ill in hospital, is quite blurred.

A. I beg your pardon?

CHAIRMAN: You had had a meeting in hospital some days
before Mr. Austin died, and I think your recollection
of that understandably, you said, was quite limited.

A. Yeah, I mean, that meeting was very much a mercy
mission.

/AP

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CHAIRMAN: I understand.

A. It was like there was no discussion. It's like
when you talk to somebody who is, you know, everybody
knows is going to be gone. You kind of talk about
everything except the illness, you know.

CHAIRMAN: Not such mundane

A. We certainly didn't talk about DLJ.

CHAIRMAN: Of course. My only concern was that I had
noted you saying earlier this morning that you thought
you recalled Mr. Austin saying something to you about
transferring some ESAT shares to his wife.

A. Absolutely. I'd say that was probably you know, I know he refers I am just thinking about the conversation in the letter of the 13th; he refers to a recent conversation. Now, I am speculating or surmising that that referred my only memory was that he did talk about moving his shares to Maureen Austin.

CHAIRMAN: But if there was any talk about mundane matters, that was all you can recall?

A. Yes.

CHAIRMAN: I see. Thank you.

MR. COUGHLAN: Thank you, Mr. Phelan.

CHAIRMAN: I don't think anything arises for you, Mr. Fitzsimons.

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Mr. Kelly? Mr. Gleeson?

Very good. Thanks for your further evidence,

Mr. Phelan.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Arve Johansen, please.

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ARVE JOHANSEN, PREVIOUSLY SWORN, WAS EXAMINED AS

FOLLOWS BY MR. HEALY:

CHAIRMAN: Mr. Johansen, I appreciate you are a busy person, but you could not be compelled to return to the Tribunal, so I appreciate you having made yourself available again. Please sit down. You are already of course sworn.

MR. HEALY: Thank you, Mr. Johansen.

Q. Now, when I made an Opening Statement to the Tribunal concerning some of the evidence to be given at these sittings last Friday, I didn't mention a statement of Mr. Per Simonsen, and I didn't mention that statement because it seemed to throw into fairly sharp profile some of the evidence given by Mr. O'Brien and indeed, you, to some extent concerning the question of the invoices that were generated by Telenor as part of its recoupment from ESAT Digifone of the money which it paid to Fine Gael through David Austin.

I didn't mention that at the time because the Tribunal had raised queries with Mr. O'Brien concerning it, and the Tribunal hasn't received a response to those inquiries. And in any case, since then, Mr. Simonsen's evidence has been mentioned by one witness and a number of parties. You are not aware of most of this, Mr. Johansen. So before I go into your evidence, I think it would make sense to mention, Sir, to mention

some of the gist and indeed some of the details of

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Mr. Simonsen's evidence, to which nobody other than the parties which have been put on notice are aware.

Mr. Simonsen has, in his evidence, described himself as an employee of Telenor Mobile Communications, and he says that he has been requested to make a statement in connection with the issuing of invoices by Telenor to Digifone in respect of the reimbursing of the payment of \$50,000 to David FT Austin for a fundraising event.

He says the period of time to which the statement relates was one of frantic activity, and he says that he didn't keep notes or day-to-day records.

However, he goes on to say, based on his recollection, that sometime prior to the 20th December of 1995, Mr. Knut Digerud, the then chief executive of Telenor, told him that Telenor had been requested by Mr. Denis O'Brien to facilitate a payment in respect of a fundraising dinner and had agreed to do so. He says that shortly before Christmas, he received, by internal delivery from Mr. Digerud, the original of a letter dated 14th December, 1995 from David Austin.

That is the letter that was sent to you by David Austin enclosing an invoice for consultancy services, isn't

that right?

A. Yes.

Q. He says that he received the letter dated 14th December and the original of David Austin's invoice. He says,

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on the invoice, Mr. Digerud had endorsed "Okay," which passed the invoice for payment, and he says that

Mr. Digerud also gave him a handwritten instruction on the letter from David Austin which states in Norwegian, "This must be paid by us and invoiced as management cost to Digifone."

He then says that around that time, he received a telephone call from Mr. O'Brien concerning the invoice and the letter, and that Mr. O'Brien was concerned about David Austin's name being mentioned on the documentation from Telenor in respect of reimbursement of \$50,000.

Mr. Simonsen, in his statement, says: "Not mentioning David Austin's name presented no difficulty, as I understood the amount should be invoiced as a Telenor cost to Digifone." And he says that he did not refer back to Mr. Digerud on the matter.

He then gave the documentation to the accounts department, and he instructed payment to be made to David Austin, and that when the payment was made to

David Austin, he gave an instruction that an invoice was to be issued to Digifone for the same sum of money.

And he instructed that the invoice should be marked

"Telenor consultancy fee".

He thinks he gave that instruction on the last working day before the holiday break for Christmas. He

/AP

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returned to work on the 3rd January, and on that day, an individual in the accounts department came into his office and handed him a photocopy of the invoice from David Austin and of the invoice that was being raised by Telenor to Digifone by way of reimbursement.

He looked at the invoice raised by Telenor and saw the text "Consultant, David FT Austin." And he says that this was inconsistent with his instructions and that he asked one of his assistants if the invoice had yet been faxed. And on being told that it was, he then gave instructions he then rang Digifone and spoke to a person at the Dublin end of the venture. And while he says that he cannot remember the name of the person, he explained that the text in the invoice was incorrect, and he requested that the invoice be shredded. He, Mr. Simonsen, requested that it be shredded, and indicated that he would issue a new corrected invoice.

The person on the Dublin end agreed with him and told him that the invoice was shredded. He then issued an instruction to the accounts department to prepare a second invoice, omitting the name David FT Austin, for \$50,000, which was the currency he had requested that the original invoice be prepared in.

Some time after those events, he received another telephone call from Mr. O'Brien informing him that he did not wish the currency on the invoice to be in US dollars and that he would prefer the currency to be in /AP

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Irish punts. Mr. O'Brien also requested that the invoice be delayed for a period of four to six weeks. He said that he had no problem changing the currency and no problem with the delay. As that required a credit, he instructed that a credit be issued, and then he passed on Mr. O'Brien's request that a new invoice be issued in Irish pounds and that it be delayed for a period of four to six weeks.

He says that he never, at that stage, during that period, discussed the processing of the payment with you.

A. Correct.

Q. Now, you will recall that in the course of your evidence, we discussed the question of this invoice,

and in particular, we discussed how the invoice came, or the copy of the invoice which you have retained, came to contain the reference to the shredding of the invoice, isn't that right?

A. That's right.

Q. You gave certain evidence concerning that, and at the time, your evidence was, correct me if I am wrong, roughly to the effect that the invoice had been shredded at the Dublin end, would that be right?

A. Well, I was kind of led to some thinking around it and that led up to the conclusion that the instruction must have come from the Dublin end. And I think I said I do not have exact knowledge about this, but I would kind of come to the same conclusion and agree with that conclusion.

/AP

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Q. Well, I may be able to refer you to individual parts of your evidence in a minute. But I think what you are saying is that you agreed that from the evidence you were giving and from the information that you had, it must have been shredded in Dublin and not in Oslo?

A. That's correct.

Q. Mr. O'Brien was examined on that matter as well, on the basis of the evidence that you had given and the information available to the Tribunal at that time, is that right?

A. Once again, please?

Q. Pardon?

A. Can you please repeat the question?

Q. Mr. O'Brien was examined on these issues, and the examination of Mr. O'Brien was based on the evidence that had been given by you and the information that was available to the Tribunal, the upshot of which was that there appeared to have been a shredding in Dublin, would you agree with that? The Tribunal, in other words, proceeded on the basis of your evidence?

A. Okay. But I mean, I could only express what I knew. And when I was led to make kind of a conclusion, or a thinking around it, to me, it looked logical that it had been shredded on instructions from Dublin. And as I still see it, that appears to be the case. But the actual act was probably done directly on instructions from Per Simonsen.

Q. I simply want to set the context for the statements you have provided to the Tribunal since you last gave evidence, and I don't disagree with the way you have

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put it.

Now, you provided the Tribunal with a statement on the 19th June, 2001, with a statement, undated another statement mine is not dated, June June, 2001, a statement of the 11th June, 2001, and there is a later

statement on the 18th of September, 2001, is that

right?

A. Yes.

Q. Now, you have these statements in the following order:

Starting with the 11th; then the undated statement,

which I think the Tribunal received after the 11th;

then the statement of the 19th June; and then the

statement of the 18th September. Is that the sequence

in which you think they were prepared? Mr. Kilroy

will correct me, I am sure, if I am wrong.

A. I didn't quite understand the question. They are

prepared in the sequence that you received them. I

mean chronologically.

Q. One of the statements I have is undated, Mr. Johansen,

so

A. Okay.

Q. We can deal with it when you come to it. I am sure if

your solicitors

MR. FITZSIMONS: I can be of assistance. That is the

sequence.

CHAIRMAN: Very good, Mr. Fitzsimons. Thank you.

/AP

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Q. MR. HEALY: If we go then to your first supplemental

statement of 11th June, 2001.

You say: "This statement was made by me, Arve Johansen, and is supplemental to the statement that I have already delivered to the Tribunal of Inquiry.

This statement is not intended as a full response to the matters raised by Denis O'Brien in the evidence given by him to the Tribunal, and I confine this supplemental statement to only two of the issues in connection of which I contradict the evidence given by Mr. O'Brien."

And the first issue that you deal with is the shredding of invoice dated 3rd January 1996, invoice number 1000050, for 316,000 Norwegian kroner. That's the invoice on the overhead projector. Do you see that?

A. Yes.

Q. This is the invoice which contains the manuscript note from, I think we now all agree, Per Simonsen, to Irina, one of the employees in his office, informing her to shred that the invoice should be shredded and a new one issued. Is that a summary of what the Norwegian contains?

A. Not exactly. It says it's now being shredded at the Dublin end. But as you know, it was kept in the Oslo end.

Q. It was kept at the Oslo end. I understand that. Obviously we wouldn't know that otherwise. You say, "I instructed inquiries to be made of Jan Edvard Thygesen,

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who was the Chief Executive Officer of ESAT Digifone from early in November 1995 to the 19th February 1996.

Mr. Thygesen was replaced as Chief Executive Officer of ESAT Digifone Limited on the 19th February, 1996 when, due to prior family commitments, he had arranged to return to Norway.

"Mr. Thygesen's functions related to the initial start-up of the planning and design of the intended roll out of the network for the purpose of the second GSM mobile telephony licence. This involved the direction of various technical and logistical tasks to establish ESAT Digifone as a mobile telecommunications company with its own licenced GSM network.

Mr. Thygesen was not involved in matters relating to accounts. That was simply not his function.

"Mr. Thygesen was not involved in the processing of invoices. He never received or had sight of invoices dated 3rd January, 1996," and then the invoice number, the invoice that we have on the overhead projector, the one that was shredded, isn't that right?

A. Correct.

Q. "He was not involved in the reimbursement process.

Mr. Thygesen states that he is not aware of any Telenor seconded employee to ESAT Digifone being involved in the processing of invoices to ESAT

Digifone. To the best of his knowledge and belief, the invoice would have been processed in the accounts department of ESAT Digifone, which was managed by Peter /AP

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O'Donoghue, the then chief finance officer of ESAT Digifone. The accounts department was in place from the beginning and before the arrival of Mr. Thygesen. The accounts department was located in the Malt House office building, one floor below Mr. O'Brien's own offices in the Malt House. Mr. O'Brien regularly visited the accounts department, and he was on friendly terms with Mr. O'Donoghue. Mr. O'Donoghue had a direct line of reporting to Denis O'Brien, who, notwithstanding that he was Chairman of ESAT Digifone, involved himself in the day-to-day affairs of ESAT Digifone."

Is that based on something Mr. Thygesen said to you, or is it based on your own knowledge?

A. This is no, this is based on what he said to me.

Q. Based on what Mr. Thygesen said to you?

A. Yes. I was not here at the time, so he was asked about this.

Q. You go on to say, "Mr. Per Simonsen corroborates Mr. Thygesen's statements. Mr. Simonsen did not communicate with Mr. Thygesen in relation to the

invoice or any other invoice. Mr. Simonsen was not told or asked by Mr. Thygesen to withdraw the invoice or informed that the invoice would be destroyed or shredded."

You say that "Both Mr. Simonsen and Mr. Thygesen state that they had no recollection that there were any

Telenor seconded employees in the accounts department

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of ESAT Digifone, and both persons would be very, very surprised if in fact any Telenor employees were so

allocated."

Now, the next item you refer to in your statement is the question of the reimbursement of the donation by ESAT Digifone in the period April and May of 1986.

You say, "Negotiations between ESAT Telecom Limited for the purposes of concluding a Shareholders' Agreement were extremely intense and extremely difficult.

Telenor's negotiation team consisted of myself, our in-house counsel, Rolf Busch, and Knut Digerud, who assisted us. We were also assisted by Mr. Arthur Moran, solicitor of Matheson Ormsby Prentice, solicitors in Dublin, who then presented Telenor in Ireland."

You say you instructed inquiries to be made of

Mr. Busch, Mr. Digerud, and Mr. Moran, and you understand that contact had not by that date, which was the 11th June, been made with Mr. Digerud, who was no longer an employee of Telenor.

You then say: "Based on the inquiries that have been made, on the basis of my own recollection, the matter of reimbursement of the donation of US\$50,000 was never an issue in the negotiations of the Shareholders'

Agreement. The issues involved in the Shareholders' Agreement were issues of corporate governance and

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control, with Mr. O'Brien initially seeking a majority shareholding in ESAT Digifone through ESAT Telecom, and subsequently involving IIU Nominees Ltd in that process. In the final week of negotiations, Telenor was determined to maintain parity of shareholding with ESAT Telecom.

"I have no information whatsoever to indicate that the matter of the donation or its reimbursement was ever raised during the months of April and May of 1996, and I can certainly say that the reimbursement I can certainly say that the reimbursement of the donation was certainly never a 'deal-breaker' or a negotiating issue. Mr. O'Brien had made a firm commitment on the 8th December, 1995, that ESAT Digifone would reimburse the donation to Telenor. Consequently, if the matter

was raised at all during the course of shareholder negotiations leading up to the conclusion of the Shareholders' Agreement on the 16th May, 1996, this would have been for the purpose of reminding Mr. O'Brien, for the sake of good order, of that preexisting commitment.

"Based on my recollection, there was never any resistance or opposition or negativity on the part of Mr. O'Brien to the arrangement whereby ESAT Digifone was to reimburse Telenor for the donation.

"I have been unable to trace any record, file note or memorandum or any other written item referring to the

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matter of the donation during the shareholder negotiations. I have instructed Messrs. Kilroys solicitors to review the files held by Matheson Ormsby Prentice to see whether any documents may exist in relation to the conduct of the negotiations between the shareholders to see what reference, if any, was made to the donation and its reimbursement.

"I refer to the fax of Mr. Moran of Matheson Ormsby Prentice solicitors dated 6th June, 2001 which is attached to this statement, in which Mr. Moran says"

this is a letter addressed to Mr. Layng of Kilroy

Solicitors, your solicitors: "I refer to your fax

dated 5th June, 2001 and confirm that our instructions relating to the negotiation of Shareholders' Agreement and directly related issues.

"I have reviewed my files covering the period 1st March to 30th June, 1996, and cannot find any specific reference to a donation of US \$50,000 to Fine Gael via David FT Austin.

"As the parties to the joint venture had a number of other pressing and fundamental issues to resolve between them in the weeks leading up to the grant of the licence in the week of 16th May 1996, I cannot believe that a US \$50,000 donation could have been a material matter in the negotiations.

"I have asked my partner, William Prentice, who dealt

/AP

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with the banking aspects of the matter as well as the other proposed financing arrangements, to check his files, but I would not expect to find any reference to the donation on his file.

"Please let me know if I can be of any further assistance."

You say: "I deny that Telenor" I suppose that should be "employee" "or any members of the Telenor negotiating team at any time made or in any way

compelled ESAT Digifone to reimburse the donation.

"If Telenor wished to make the donation for its own purposes, and, as is wrongly asserted by Mr. O'Brien, wished to take an interest in Irish affairs, it would be entirely inconsistent of Telenor to have sought a reimbursement of the donation by ESAT Digifone."

As I don't want to spend too much time on this particular aspect of your statement, maybe I'll just try to dispose of it at this point. What you were referring to in that part of your statement was evidence given by Mr. O'Brien concerning what he suggested was a controversy that arose regarding the issue of reimbursement, is that right?

A. Yes, he referred to that. We don't agree with that at all.

Q. You say that in the period in question, in or around April or May of 1996, there were very intense
/AP

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negotiations going on between you regarding the Shareholders' Agreement.

Now, the Tribunal has been provided with documentation by your solicitors concerning this period and has also had access to other documentation concerning the period. And I don't want to go into it in detail at this stage, but these discussions reached a point of

considerable intensity, would that be fair?

A. That's fair.

Q. And the relationships between your side and Mr. O'Brien's side were almost at breaking point, is that right?

A. That's correct.

Q. And if there were any breaking points between you, they had nothing to do with this \$50,000 donation?

A. It never came up.

Q. It was never mentioned at all?

A. Never mentioned at all.

Q. Now, I should say, in case it's of any assistance to Mr. O'Brien's representatives, the Tribunal has been unable, in the information made available to it, to find any documentation referring to this question of the reimbursement of the \$50,000.

I now want to go on to your further supplemental statement, the second statement in the series of statements as I outlined them at the beginning.

I regard it as the undated statement. In my book it's /AP

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at least 3.2. It says June, but I don't know what date in June; probably sometime around the 12th, or 12th June, because it was faxed to the Tribunal on the 13th.

You say this statement is made by you, Arve Johansen,

as the second supplemental statement to the statement that you delivered to the Tribunal of Inquiry. The first thing you deal with is the Post-it note dated 11th December 1995. Again, I would hope to try to dispose of that matter without going back over it at a later point.

You say: "I refer to the Post-it note referring to conversations of the 11th December 1995 with Denis O'Brien and David Austin. I used the Post-it to take a note of David Austin's telephone number as furnished to me by Denis O'Brien. I believe that I did so because I was rushing to take a flight to Budapest, and I wanted to take the telephone number with me so that I could ring David Austin from Budapest. I recollect that I referred to the existence of the Post-it during a meeting of the 4th November 1997 in the offices of IIU in Dublin. I did so because I believed that the Post-it supported my account of what had transpired, namely that Denis O'Brien gave me David Austin's telephone number. The fact that the Post-it existed is confirmed by certain attendance notes of the meeting of the 4th November 1997 over which legal. Professional privilege has been claimed by Telenor."

/AP

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I think I can stop there and say

MR. FITZSIMONS: The

CHAIRMAN: You just referred to "the telephone number" generically, and obviously the point under consideration is whether it was the London or Dublin.

MR. HEALY: I will read the sentence again: You refer to the existence of the Post-it during the 4th November meeting. You say that you did so because you believe that the Post-it supported your account of what had transpired, namely that Denis O'Brien gave you David Austin's Dublin telephone number. And you say that it's confirmed by certain attendance notes over which professional privilege has been claimed.

I think I was about to say that that issue has now been overtaken by events, and we have had access to those notes, and they have been referred to in evidence, and they do make reference to the Post-it.

Can I just ask you one question at this point. You say that you referred to it because you believed that it supported your account of what had transpired, namely, that Denis O'Brien gave you David Austin's Dublin telephone number. Are you saying that that was the reason you referred to it at the meeting on the 4th November, or the reason that you referred to it in evidence?

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A. I think both, because I think Mr. O'Brien, in his evidence, said that it was a London number. And I think

Q. Well, we can dispose of that quickly. Your Post-it definitely refers to a Dublin number. Mr. O'Brien says that when he spoke to you and he says that he spoke to you sometime prior to the dinner, in fact, which is is something you don't agree with?

A. That's not correct.

Q. And he says that he spoke to you, and he gave you a London number. Now, in evidence, you have said, "No, that's not true. I got a Dublin number, and here is the Post-it that I took the number down on and the Post-it that I used to ring Mr. Austin from," isn't that right?

A. Correct.

Q. What I want to know is, was there any issue like that at the meeting of the 4th November, 1997?

A. I think the issue at the 4th November was that I think all the other directors of ESAT Telecom kind of, were a little bit jumping on me and accusing myself and Telenor for being responsible for the donation. And I needed to defend myself, and I said that I had somewhere, in my file, some more evidence as to the real nature of the donation, how the setup was done and

why the money went the way it went.

Q. When you say the other directors were jumping on you, did that include Mr. Denis O'Brien?

A. Denis O'Brien was on the 4th November, on telephone, and I was on telephone. There was a previous meeting /AP

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on the 23rd October where he was present. It was not so much him, himself, as his fellow directors from ESAT Telecom.

Q. Can you remember which directors?

A. It was well, not only the Telecom, but also IIU, I would say, but from ESAT Telecom, the other directors were John Callaghan and Leslie Buckley, and from IIU, it was Michael Walshe and Dermot Desmond.

Q. And when you say "the other directors," you say all of those people were putting you under pressure in some way, suggesting that you were responsible for this fine mess that you had got into?

A. Not all of them were present at all times, but I felt like they they took a side without knowing the full story.

Q. You go on to the next paragraph of your statement. You say, "I received a copy of the memorandum of Denis O'Brien on the 22nd May, 2001. When I read the memorandum, I noticed that Denis O'Brien referred to a London telephone number for David Austin. This was in

conflict with my recollection that I had telephoned David Austin in Dublin. I then remembered that I had at one time a yellow Post-it which supported my recollection. I searched some files, and I then searched my notebook for the period in question. The Post-it was affixed to a page in my notebook for December 1995. I immediately telephoned Kilroy Solicitors. I was advised that I should bring the Post-it with me the following day, 29th May, 2001, to Ireland for inspection and for production to the /AP

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Tribunal. Almost immediately after my arrival in the offices of Kilroy Solicitors on the 29th May 2001, I produced the Post-it. Kilroy Solicitors immediately telephoned the Tribunal to reveal the existence of the Post-it. The Tribunal immediately requested a copy of the Post-it by fax. The original Post-it was delivered personally by the Tribunal shortly after 6 p.m. on the same day, 29th May 2001, being the day immediately prior to my giving evidence to the Tribunal.

The Post-it is a contemporaneous note of the information given to me by Denis O'Brien and David Austin on the 11th December, 1995. It is the only contemporaneous note or record that I have of my telephone conversations with both of these persons on that date."

Now, again you refer a second time to this question of, or this suggestion that was being made that there was a controversy between your company, Telenor, and the Denis O'Brien side, if you like, regarding the reimbursement by ESAT Digifone of the \$50,000 donation.

And you say: "I am satisfied that a thorough inquiry has been made of Telenor employees and Telenor lawyers, both in Oslo and in Dublin. As a result I state, without qualification or reservation, that neither I nor any Telenor representative ever "made," "pushed", "forced" or "coerced" Denis O'Brien or ESAT Telecom to agree that ESAT Digifone Limited would reimburse Telenor for the donation. Denis O'Brien has agreed on

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the 8th of December, 1995, that ESAT Digifone Limited would reimburse the donation to Telenor. If the matter was raised at all in April or May 1996, it would have been to remind Denis O'Brien of this commitment."

That's essentially a repetition of what you have already said.

The words that you refer to in quotation marks are references to suggestions made in the evidence of Mr. O'Brien that his company was pushed or compelled or pressurised to make the payment, is that right?

A. Correct.

Q. Now, you are again referring to a passage in Mr. O'Brien's evidence, and I don't think we need to go into it in great detail. You are referring to your letter of the 28th 24th May, 1998, to Denis O'Brien, Chairman of ESAT Digifone Limited. It's on the overhead projector.

Now, just to put this letter in context, this letter was written after you had pursued your concerns regarding the donation with the Fine Gael Party and had had, through your solicitors, a meeting with the secretary general of the Party, isn't that right?

A. Correct.

Q. And on the 24th March, 1991, you wrote a letter to Denis O'Brien 1998 you wrote a letter to Denis O'Brien in his capacity as Chairman of ESAT Digifone. I think you gave evidence already that as far as you /AP

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were concerned, Mr. O'Brien, as the Chairman of the company, was the person to whom an issue like this should be addressed, so that he, as the Chairman, could or could not decide how the board would deal with it or how it could be put on the agenda, is that right?

A. Correct.

Q. You say, "Dear Denis.

"I 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 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 Limited.

"This donation has now been returned to us by the Fine Gael Party, and as we have already been reimbursed by ESAT Digifone Limited, we have endorsed the cheque over in favour of ESAT Digifone Limited. The payment is in Irish pounds and is for $\text{€}123,000$. Accordingly, we enclose a cheque in the sum of $\text{€}123,000$ from the Fine Gael Party endorsed in favour of ESAT Digifone for lodging in the company's bank account."

Then you sign off, "Yours sincerely, Arve Johansen."

Do I understand, if I can recollect, that you actually handed that letter to Mr. O'Brien, did you?

A. Yes. I think we had a board meeting of ESAT Digifone on the same day, and I gave him the letter in an

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envelope.

Q. Now, Mr. O'Brien, in his evidence, drew attention to the fact that in that letter, you refer to a request Mr. O'Brien made to you on behalf of ESAT Digifone Limited to contribute to the Fine Gael Party in

November, 1995. Mr. O'Brien drew attention to this because he says that it shows that his discussions with you took place before the dinner. Is that right?

A. Not correct.

Q. But is that why he has drawn it to the attention of the Tribunal?

A. Yeah, but that's not correct.

Q. I understand that, but isn't that the interpretation he has put on it? If you don't agree

A. I cannot agree to comment on what he has

Q. That's the evidence he has given, isn't that right?

A. Okay.

Q. You don't agree with it, because I know that from what I am about to read out now. I want to put what you are saying in context.

Mr. O'Brien says that that letter suggests that the dealings he had with you took place before the dinner.

A. Well, he is absolutely unfounded.

Q. I know that, but that's what he says, isn't that right

MR. FITZSIMONS: If Mr. Healy could tell the witness what Mr. O'Brien said, that may be a way of resolving it.

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MR. HEALY: I am reading out what the witness says.

A. I have not gone over the transcript of what Mr. Denis O'Brien has said or not said.

Q. It's your statement I'm going by. You say: "I have been informed that Denis O'Brien has sought to interpret the first paragraph of my letter of the 24th March, 1998, addressed to Denis O'Brien as Chairman of ESAT Digifone, as in some way corroborating his assertion that he contacted me about the donation prior to the 8th December of 1995."

Do you see that?

A. Sure.

Q. "I am certain in my recollection that the request for the donation was made by Denis O'Brien to me on the 8th December, 1995. He did not do so before that date.

"The reference to "November, 1995" in the first paragraph of my letter, is to the date of the Fine Gael Party dinner in the 21 Club in New York." Is that right?

A. Correct.

Q. When did you become aware that the dinner was fixed for November 1995?

A. I think that in the discussions in some of these meetings, there were more references to the actual timing of this dinner, but I cannot say exactly when I got that knowledge, but I had the feeling already in Oslo on the 8th December in '95 that the dinner had

actually already been held.

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Q. I appreciate that. You have already given evidence to the effect that you understood that a commitment had been given to pay money and that the dinner was over?

A. Yes.

Q. But I don't think in your earlier evidence that you said that you were aware that the dinner was being held had been held in November?

A. No, I was not I have not I myself have not had any specific information or invitation or programme for that dinner, so I had only other people's version that the dinner was held. But I think in the course of those meetings in at the end of October '97 and beginning of November '97, that November came up.

Q. The next part of your statement refers then to what prompted you to go to Fine Gael in 1998. And you say:

"I understand that Denis O'Brien has explained the reference to the words "Due diligence" in the handwritten notes of Jim Miley as a reference to the due diligence in the merger of Telenor and Telia. If this is so, Denis O'Brien is incorrect. Merger talks between Telenor and Telia commenced on the 20th January, 1999.

"The due diligence process in the merger between

Telenor and Telia commenced in March 1999, approximately one year after the period referred to in Jim Miley's notes.

"It is for Mr. Miley to explain his notes, but the reference to "due diligence" can only have referred to /AP

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the due diligence of the ESAT Telecom IPO, which resulted in the obtaining of a letter from David Austin. It will be noted that immediately following the reference to "due diligence", there is the following phrase: "David Austin gave letter to say he had received money + paid it in to Party". This explains the context of due diligence."

I think it's on the overhead projector, and if you look at the top right-hand side: "Telenor has due diligence." Is that the

A. We have definitely no clue what that means, because there was definitely no due diligence process inside Telenor or Telenor/Telia in 1998. Everything took place in 1999.

Q. And your evidence to the Tribunal is that it was nothing to do with any outside scrutiny of Telenor by Telia in connection with any proposals Telia had that you went to Fine Gael?

A. Not at all.

Q. And you stand by your earlier evidence that you went to it because you wanted to pursue these inquiries. I think you went as far as to get legal advice to know what you had to do to establish that the money had gone to Fine Gael?

A. Absolutely.

Q. The next statement you made is dated 19th June, 2001

CHAIRMAN: I think we are moving on to what is very much the most substantial of Mr. Johansen's

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supplementary statements, so it is probably sensible to now recess until five to two.

We will resume your evidence then, Mr. Johansen. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

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THE TRIBUNAL RESUMED AS FOLLOWS AT 2 p.m.:

CONTINUATION OF EXAMINATION OF MR. JOHANSEN BY MR.

HEALY:

Q. MR. HEALY: Mr. Johansen, we had got as far as your statement of the 19th June, 2001. This was a statement prepared by you in response to a request that you

provide a memorandum/statement of your intended evidence in relation to discussions which took place in October/November 1997. These discussions considered the Telenor/ESAT payment and the further payments which were reported by Mr. Barry Maloney. The Tribunal's letter dated 13th June, 2001, paragraph 3, page 2, refers:

You say: "It should be noted that although I had discussions with Mr. Maloney in late October of 1997, I did not take a note of the times, dates or contents of these discussions. Therefore, much of this statement is based on matters of unsupported recollection and is not based on contemporaneous notes or records because I have none. Despite this, I am reasonably content of the accuracy of what I say but not the precise dates."

Once again, you say: "This statement is made subject to and without prejudice to Telenor's claim for legal privilege in respect of all or any attendance notes or other documentation in respect of meetings or other communications held for the purpose of or in connection
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with the obtaining of legal advice."

And again, that qualification has effectively been overtaken by events because we have had access to the relevant notes.

You say: "This statement deals separately with two matters, being first the donation of \$50,000" the donation "to Fine Gael", in other words "made by David Austin, and second, certain matters apparently communicated by Mr. Denis O'Brien to Mr. Maloney, which you refer to hereinafter as "the Other Matter."

Firstly and we are going back again to the donation to Fine Gael you say: "To the best of my recollection, and I cannot be precise about the particular date, I believe I may have met with Mr. Maloney or discussed with Mr. Maloney over the telephone in the last week in October, 1997, the fact that Telenor had made a party political donation on behalf of ESAT Digifone Limited to the Party at the request of Mr. Denis O'Brien. The donation was paid by Telenor via David Austin, and I informed Mr. Maloney that this donation was subsequently reimbursed by ESAT Digifone.

"I cannot be certain about the date of the discussion, but I believe that it took place in the last week of October, 1997. I believe that it was more likely to have been a meeting and not a telephone call, because I

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gave to Mr. Maloney a copy of the relevant Telenor

invoices and the credit note, which documents I have already furnished to the Tribunal. It is likely therefore that the information I gave to Mr. Maloney was after the board meeting held on the 30th October, 1997, in Dublin, but I cannot discount the possibility that I may have given Mr. Maloney information during a telephone conversation a few days prior to this meeting.

"I mentioned the donation to Mr. Maloney in the context of the IPO of ESAT Telecom, and because I was unsure if Mr. Maloney was aware of the donation. If he did not already know about it, I thought that as director on the board of ESAT Digifone, Mr. Maloney should be made aware of the donation. I explained to Mr. Maloney that the donation was a party political donation to the Party and that this had been done at the request of Denis O'Brien. I realised that by informing Mr. Maloney of the donation, I was initiating a process that was likely to result in a full disclosure of the donation, not only to the entire board of ESAT Digifone but also to the Board of ESAT Telecom and to the various professional advisers.

"Because Telenor had acted at the request of Mr. Denis O'Brien, I had no concerns about disclosing the matter on a formal basis to all persons concerned. At the time, I believed that it was possible that the IPO

process of ESAT Telecom might require a disclosure to

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be made in relation to the donation in the Prospectus.

"I was later informed that a meeting had been convened for the 4th November, 1997, not a board meeting, but a meeting of the directors and the various legal advisers in order to consider the implications of this information in the context of the IPO of ESAT Telecom and what disclosures, if any, might require to be made in the Prospectus in connection with the donation.

"I believe that the relevant Telenor invoice documentation, credit note, and letter from David Austin, dated 14th December, 1995, were also faxed by Telenor on the 4th November, 1997, to Kilroy's, and I know that copies were then sent to William Fry Solicitors by Kilroy's, but I cannot clarify the precise timing. Certainly, copies of the relevant invoices were available to all persons for the meeting of the 5th November, 1997. The only document that was not then furnished, as a result of an oversight, was David Austin's unsolicited letter of acknowledgment dated 19th February, 1996. I believe that a copy of this letter was sent by Kilroy Solicitors to William Fry Solicitors and to McCann Fitzgerald Solicitors on the afternoon of the 6th November, 1997.

A meeting of the 4th November 1997, held in the office of IJU, was urgently convened at very short notice.

Details of the attendees at that meeting have already been provided by our solicitors to the Tribunal."

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Then you refer to the privilege issue.

You say: "Unless and until the issue of legal professional privilege is clarified and specifically the waiver of any such privilege is resolved, it would be inappropriate for me to deal with precisely what transpired at that meeting. Without waiving the claim for privilege, I can say I made a full disclosure to the persons present at the meeting, at which I was present by way of telephone conference, of the role of Telenor in relation to the donation and also the role of Mr. Denis O'Brien. I recollect that there was considerable discussion on the donation because although the donation appeared to have been paid to the Party, and consequently the donation was legal and ethical, there was documentary evidence to examine.

"At the meeting of the 4th November, 1997, I was asked a number of questions in relation to my involvement in the donation. I did not take any notes of what I said, and I do not have a specific and detailed recollection

of what I said at the meeting. I would be happy to review any attendances and notes that were taken of that meeting and express a view on whether I believe these notes represent a fair and true account of what I said and what information I furnished. I have no reason to believe that my account is not accurately stated.

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"I made it clear to the meeting that Telenor agreed to do what it had been asked to do by Mr. Denis O'Brien, that is to make a political donation to the Party and to do so through David Austin as an intermediary. I recollect that I informed the persons present at the meeting that Mr. Denis O'Brien had agreed that ESAT Digifone would later reimburse the donation to Telenor.

"Mr. O'Brien was also examined in relation to his role in the donation.

"As a result of the meeting, it was clear that Telenor would not have made the donation on behalf of ESAT Digifone if Mr. Denis O'Brien had not promoted the donation. At no time during the meeting did Mr. O'Brien seek to assert in any way or imply that he or ESAT Telecom or ESAT Digifone had been made or pushed into agreeing that ESAT Digifone would reimburse the donation. Mr. Denis O'Brien did not present the

donation as a "solo run" by Telenor.

"I am reminded that the attendance notes of the meeting of the 4th November, 1997 refer to a Post-it," and again you refer to the Post-it, and I don't think we need to go over that.

You then go on to what you call "the other matter," namely statements by Denis O'Brien to Barry Maloney concerning the making of certain payments.

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"I now know that the Other Matter was brought to the attention of solicitors for ESAT Telecom on the 22nd October 1997, but it was not at the time revealed to Telenor by ESAT Telecom or by its professional advisers. I understand that the basis upon which the matter was not immediately revealed to Telenor was because there was an apprehension" which you say is totally unfounded "that Telenor would leak this information to the newspapers. There was no substance to this concern.

"Telenor was concerned by the demands being made by the IPO process of ESAT Telecom on the management and resources of ESAT Digifone. In addition, Telenor was concerned about the potential for liability of the directors and officers of ESAT Digifone as a result of

the IPO process of ESAT Telecom.

"Consequently, and without being aware of the Other Matter," you say that you wrote to Mr. Maloney of ESAT Digifone on the 27th October 1997 raising the issue of board members' insurance; that is, for directors and officers. You wanted to obtain this information for the board meeting on Thursday, 30th October, 1997 in Dublin.

"Although I cannot now be certain, I believe that the first information that I received about the Other Matter was either very shortly before or at the board meeting of the 30th October 1997. I remember that I /AP

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consulted with Mr. Knut Digerud of ESAT Digifone at the time. We were both concerned that the IPO process of ESAT Telecom was proceeding, notwithstanding the existence of a matter which we considered to be of an extremely serious nature, if true. We were concerned as to how sufficient inquiry could be made in a very short time period of a few days that was available. I am aware that my colleague, Mr. Digerud, thought that the IPO should have been immediately suspended.

"In relation to the Other Matter, it was my impression at the time and it is still my recollection that the

concern in relation to this Other Matter arose in relation to ESAT Telecom group and the fixed line business.

"At that point, in the period leading up to and shortly before the meeting, I believe that I became aware that William Fry Solicitors and McCann Fitzgerald Solicitors were cooperating with each other to deal with these very serious issues and their potentially serious impact on the IPO.

"The meeting of the 4th November, 1997 was convened at short notice, perhaps two or three days' notice, and I remember that I was unable to travel to Ireland to attend the meeting. Instead a telephone conference facility was arranged and I believe that Mr. Denis O'Brien also was unable to attend the meeting because he was in the United States in connection with the /AP

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roadshow involved in the IPO of ESAT Telecom.

"I instructed Kilroys Solicitors to attend the meeting in order to provide legal advice to Mr. Digerud, Mr. Fortune, and myself and to Telenor in connection with the donation and any matters arising therefrom. Kilroys did not participate in any questioning of Mr. Denis O'Brien in relation to what was or what was not said by Mr. O'Brien to Mr. Maloney. The inquiry as

to the other matter was primarily allocated to a solicitor, a McCann Fitzgerald solicitor, although all of the other directors present were permitted to ask such questions as they considered appropriate. I do not believe that any of the Telenor directors on the board of ESAT Digifone present at that meeting asked any questions in connection with the Other Matter. We, the Telenor directors on the board of ESAT Digifone, left the Other Matter to ESAT Telecom, the ESAT Telecom directors on the board of ESAT Digifone and to their respective professional advisers.

"Without waiving privilege in respect of what was communicated at the meeting of the 4th November, 1997 for the purpose of obtaining legal advice, I can say in the strongest possible terms that neither I nor my fellow Telenor directors on the board of ESAT Digifone were aware of or suspected in any way at any time that Mr. Denis O'Brien made any payments of any kind, whether before, during, or after the bid for the second GSM mobile telephony licence in connection with the /AP

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granting of the licence.

"Our understanding from what transpired at the meeting was that the Other Matter related to bravado remarks made by Mr. O'Brien in the context of ESAT Telecom

group, although Mr. Denis O'Brien says that he intended to use the other matter to persuade Mr. Maloney to pay success fees.

"In the event that acceptable arrangements can be made for the waiver of privilege in relation to the attendance notes of the meetings of the 4th and 5th November, I reserve the right to make a further statement dealing with matters the subject of those meetings of the 4th and 5th November, 1997. Presently, I am constrained in what I can say as a result of Telenor's claim for legal privilege in respect of the meetings of the 4th and 5th November.

"Following the meetings of the 4th and 5th November, I understand that a number of inquiries were made by or on behalf of ESAT Telecom, including inquiries in relation to whether Mr. O'Brien had any other accounts.

A notarised affidavit was also obtained from Mr. O'Brien in the United States. A report from the auditors to ESAT Telecom was also furnished. In addition, I understand that certain confirmations were obtained from Aidan Phelan, Mr. O'Brien's accountant.

I was not involved in the process, but I do remember that a copy of Mr. O'Brien's affidavit was produced

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and, in addition, a handwritten letter was obtained

from David Austin, I do not know by whom, but I do know that that letter was faxed to William Fry Solicitors, who distributed the letter to the other parties present.

"As a result of the foregoing inquiries it was concluded that there was no objection to the IPO on the part of the ESAT Digifone or any of the directors of ESAT Digifone. However, this was on the basis that the responsibility for the decision as to whether or not to proceed with the IPO vested in ESAT Telecom group. It was a matter for ESAT Telecom and its directors to make the decision whether or not to proceed with the IPO.

"I am unable to provide any assistance or clarification as to whether or not there was any substance to the statements made by Mr. O'Brien to Mr. Maloney. All I can say is that I am not aware of and I have never received any information, records, or other evidence to substantiate Mr. Denis O'Brien's assertions to Mr. Maloney that he made a payment of $\text{€}100,000$ to Michael Lowry and $\text{€}100,000$ to another party. If any such payments were made, they were made without the knowledge of Telenor or its directors on the board of ESAT Digifone."

Now, before going over aspects of that statement, I think I'll get your final statement out of the way,

which is the statement of the 18th September, 2001.

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You say: "This statement deals with matters that I have recently been reminded of by Knut Digerud." You say: "I received by post on the 19th December, 1995, a letter and invoice from David FT Austin dated 14th December. I have referred to and exhibited these documents in an earlier statement made to the Tribunal. Later on the same day, the 19th December, I had a meeting with Knut Digerud so as to prepare for a board meeting of ESAT Digifone Limited the following day in Dublin. I showed Mr. Digerud the letter and invoice and explained what they were. At the end of the meeting, I put the letter and invoice in my briefcase to bring with me to Dublin in order to show them to Denis O'Brien for his approval.

"I travelled to Dublin from Oslo early on the 20th December, 1995, for the board meeting of Digifone, which was held later on the same day.

I travelled over with Knut Digerud. The meeting was held in the Malt House, Grand Canal Quay, Dublin, in the afternoon. This is the meeting at which the appointment of Knut Digerud and myself as directors of Digifone was noted.

"At some point shortly before or during a break in the

board meeting, I had a discussion with Mr. O'Brien in the room in which the board meeting was held. Knut Digerud was there, but he did not participate. During that discussion, I showed Mr. O'Brien the original

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letter and invoice that I had received from Mr. David FT Austin. I informed Mr. O'Brien that I would arrange for Telenor to facilitate the payment of US\$50,000 as Mr. O'Brien had requested. I said that Telenor would then invoice Digifone for an equivalent sum by way of reimbursement, as agreed. I cannot remember whether I specifically mentioned that Per Simonsen, the Telenor project manager, would be handling the reimbursement process. Although I cannot recall the details of our discussion, I do remember Mr. O'Brien agreed to the payment of the David FT Austin invoice and its reimbursement by Digifone to Telenor as a Telenor expense.

"After this, at some point before the conclusion of the same board meeting, I handed Knut Digerud the David FT Austin original invoice and letter. I asked him to arrange for the processing of the payment of the invoice and the reimbursement of the monies by Digifone to Telenor.

"I had no further dealings with Mr. O'Brien, and I had

no communication with per Simonsen in connection with the donation or its reimbursement, and I had no involvement in the subsequent invoicing arrangements between Telenor and Digifone."

Now, just dealing firstly with what's contained in that statement. The major new piece of information you have provided the Tribunal with arising from this statement

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is that you had a meeting with Mr. O'Brien in Dublin on the 20th December, and that at that meeting, you showed him the David Austin correspondence, which is the letter and the invoice. And the second piece of information is that you are reminded of that by Knut Digerud?

A. Correct.

Q. You say that you had a discussion with Mr. O'Brien in the room in which the board meeting was held, and that it was during the discussion you showed the invoice to Mr. O'Brien?

A. That's correct.

Q. Can you remember what you discussed?

A. Not in any details, but you know, I had just received the invoice and the covering letter from David Austin.

The money was not yet paid. The arrangement was already agreed, but I wanted to make certain that this

was in the form and fashion that Denis thought was okay.

Q. You wanted this in a formal fashion that I didn't get the last word.

A. No, I wanted to ensure that this way that David Austin had handled it was okayed by Denis O'Brien as kind of an endorsement, since he had asked for it, and I think I wanted that insurance before we actually paid the money.

Q. When you talk about the way that David Austin was dealing with it, do you mean to refer to the fact that he was giving you an invoice for consultancy and the money to be paid in the way he described, offshore?

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Is that what you are talking about?

A. Yes.

Q. You wanted to be sure that if you paid on foot of an invoice for consultancy work and paid the money into an offshore account, Digifone would still repay you?

A. Yes.

Q. So you must, presumably, have discussed your conversation that you had had with David Austin with Mr. O'Brien, did you?

A. Yes. And this was not going into any details, but I believe Mr. O'Brien already knew that before the meeting on the 20th, the conversation with David Austin

was on the 11th, and I believe we had exchanged some words about the conversation had taken place.

Q. Is it as a result of something Denis O'Brien said to you at the meeting on the 20th that you believed he was aware of the contents of your conversation with Mr. Austin?

A. I don't think he was aware of the details of the correspondence with David Austin. But I had it with me physically, and I showed it to him.

Q. Did you leave it with him?

A. Pardon?

Q. Did you leave it with him?

A. No.

Q. You took it away

A. He took a very relaxed approach to the whole thing.

Just looked briefly at them and said, "This is okay; just go ahead," and gave them back to me.

Q. When you say he looked briefly at them and said "This /AP

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is okay, go ahead," you are certain that you nevertheless wanted to be sure that he understood that you were paying for what was supposed to be a consultancy payment?

A. That was understood.

Q. Was that understood as a result of something you said to him, or just as a result of showing him the document

casually?

A. I think that was said to him already earlier.

Q. So now on the basis of what you have testified to, and on your evidence therefore, on the 20th, Mr. O'Brien was fully aware of the arrangements that you were going to follow to make this payment?

A. Yes.

Q. And he was aware that they involved an invoice for consultancy payments?

A. Yes.

Q. At that meeting, did you have any discussion with Mr. O'Brien of how you proposed to describe the transaction in the invoice that you intended to raise in Telenor, to get your reimbursement?

A. No. As I said, he seemed very relaxed. "You just go ahead and process it." I cannot recollect any specific concern or restrictions that he said to me about this.

Q. Now, I think you gave evidence already that Mr. O'Brien made contact with you by telephone concerning this \$50,000 payment sometime shortly after you had actually okayed the payment in Oslo, isn't that right?

A. Yes. I am not quite certain how that information came to me, whether it was coming from Denis O'Brien

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directly or from someone else. I now tend to believe that the information came to me somewhat later and that

it came from Per Simonsen.

Q. Can we just clarify that. I think that in the evidence you gave to the Tribunal on the 31st May last, Book 115, at page 27, line I think it was line 19 to be sure I am not mixing it up I think I was asking you, "What do you think had prompted the letter that you got in February containing the cryptic receipt which you have described in these statements as an unsolicited letter?" And I asked you, "Do you know what prompted this letter?"

And you said, "No, not exactly. I mean, we did not expect anything, but in between this letter and the date of the actual payment, it was already done in 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 that 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."

So that was your explanation as to what possibly or probably prompted the letter containing the so-called receipt?

A. Yes, there is no doubt that David Austin had gone back to Denis O'Brien and asked for the money to be paid,

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because he hadn't recognised the payment. What I am a little bit uncertain about is whether Denis called me directly and said it or whether I heard it from somewhere else.

Q. So you are not certain whether it was Mr. O'Brien rang you or whether it was somebody else told you Mr. O'Brien had rung them, is that it?

A. Yes.

Q. And did you tell me, the last day that you were giving evidence, that the only other people who knew the true nature of these transactions were Mr. Simonsen and Mr. Digerud?

A. Correct.

Q. Therefore, the only other two people from whom you could have heard this, as a matter of probability, were Mr. Simonsen and Mr. Digerud?

A. That's correct.

Q. Mr. Simonsen, you know, has provided a statement to the Tribunal, the one I read out this morning to put your up-to-date evidence in context, in which he says that he dealt with Mr. O'Brien in relation to this transaction on two occasions, isn't that right?

A. Yes.

Q. Firstly in relation to the removal of the reference to David Austin from the invoice, and secondly in relation

to the change in the currency?

A. Correct.

Q. Now, on the assumption on the basis of the evidence

that you have given to the Tribunal, and if what

Mr. Simonsen says is correct, it would appear that

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Mr. O'Brien certainly saw the original invoice from

David Austin; was aware of the correspondence from

David Austin; hadn't had some knowledge of the

subsequent invoices; would that be right?

A. Yeah, yes, I agree with that.

Q. And also, if your evidence is correct and I

shouldn't say that to you on the basis of your

evidence, and if what Mr. Simonsen says is correct,

Mr. O'Brien was involved in making a change to one of

the invoices

A. Yes.

Q. would that be right?

Now, Mr. O'Brien has said in evidence that he knew

nothing about these invoices until November of 1997.

Do you recall him saying words to that effect?

A. I have seen that, yes.

Q. And he also said in evidence and as this is

something I want to mention specifically, I'll refer to

the place in the evidence. It's Book 116 sorry,

it's day 116, page 90, line 19. When he said that he

had "no hand, act or part in invoices being changed, shredded or whatever."

Now, it would appear that there is no evidence from anybody now that he may have had any part in shredding an invoice. I don't know anything about that. He'll have to be asked about it in light of the new evidence.

But it would appear, on the basis of your evidence and what Mr. Simonsen said, that what you are now saying is

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what Telenor are saying, is that he was involved in changing invoices?

A. Yes.

Q. I think Mr. O'Brien has said at various places in the evidence, then, that he had nothing to do with the invoices and no knowledge of them until he was shown invoices at the IPO discussions in November of 1997.

MR. McGONIGAL: I think it's perhaps even earlier than that in his evidence, Mr. Chairman.

MR. HEALY: In fairness to Mr. McGonigal, I am not saying it was stated at the point I mentioned it.

MR. McGONIGAL: In fact, it was May '96 that he said he became aware of it.

CHAIRMAN: Very good.

Q. MR. HEALY: Just to correct that. Mr. McGonigal informs me that at day 116, on page 84, there was a discussion concerning what knowledge Mr. O'Brien had of invoicing. Now, I do want to make a distinction between knowledge of invoicing and knowledge of invoices.

A. Okay.

Q. I.e., of the contents of invoices. But, Mr. O'Brien was asked,

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

"A: I was not aware until much, much later.

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"Q: When do you think you became aware?

"A: Prior to the signing of the Shareholders' Agreement and the licence for ESAT Telecom.

"Q: Prior to May of 1996.

"A: Yes, 1996, correct, and even then this ring-a-rosie of different invoices coming in and out, I wasn't aware of.

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

"A: In regard to the dinner, yes.

"Q: Anything they did as far as you were concerned was

just their business?

"A: Correct.

"Q: Of course you were in Ireland, and had an understanding of Irish business and perhaps, in general terms, of Irish political life and culture, isn't that correct, in general terms?

"Answer: Yes, I would, yeah."

If you'll just bear with me for a minute, Mr. Johansen, I am just going on to see if there is any other more specific reference.

If you go on to you don't have this, but I am going on to page 88 of day 116, question 357. Mr. Coughlan is examining Mr. O'Brien, and he says:

"Q: Mr. O'Brien, I am not concerned about the IPO and what you people were looking for or the steps you took

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in that regard at the moment; what I am concerned to know is, were you surprised in 1997 when you saw this?

"A: I don't recall.

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

"A: That's what I see here, yes.

"Q: And you knew that in November of 1997?

"A: Yes.

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

"A: Well, I knew that there was the Tel that Telenor were invoicing the company

"Q: Yes, I know that.

"A: in around I think about May, 1996.

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

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

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

Then the questioning went on.

In any case, the position is that Mr. O'Brien is suggesting that he was not aware of and could not /AP

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recall any of these invoices until 1997, the David Austin invoices. He seems to suggest that he was aware of invoicing by Telenor in 1996, but I am sure I'll be corrected if I am wrong. He knew nothing about any confusion or ring-a-rosie or roundabout invoicing in

early 1996, isn't that right?

A. That appears to be the case.

Q. And your evidence is more or less directly to the contrary of all of that, and the evidence of

Mr. Simonsen will be to the same effect, isn't that right?

A. That's correct.

Q. There is a serious divergence or conflict, then, between what the Telenor witnesses are saying and what Mr. O'Brien is saying about this whole donation: How it came about, who did what in relation to it, and what invoicing was involved, isn't that right?

A. Yes.

Q. And if your evidence and the evidence of Mr. Simonsen and Mr. Digerud is accepted, then Mr. O'Brien has, in one way or another, misinformed the Tribunal as to the correct position, isn't that right?

A. In my opinion, yes.

Q. At the same time, in Mr. O'Brien's favour, isn't it the case that nothing was said to the Tribunal about this matter when you were giving evidence in June of 2001?

A. Are you referring specifically to the showing of the invoice in December '95?

Q. Yes.

A. Yes, I was asked whether I thought that we had given

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knowledge about these invoices to Mr. O'Brien earlier, and I said "Yes, I believe so." I was not capable of exactly there and then to recoup and recap exactly how and when that was done, but I had a clear memory that it had been done. But it was when we managed to get in contact with Mr. Digerud, and we put some pieces together, and he prompted a few things. I have a very clear picture of what happened.

Q. Can we just divide it into two pieces: Mr. Simonsen has made a statement and will be giving evidence concerning the ring-a-rosie of invoices, isn't that right?

A. Yes.

Q. So that's nothing to do with you, on your own evidence. You were not involved in that, isn't that right?

A. That's correct.

Q. However, you were centrally involved; you were the person who was actually showing Mr. O'Brien the David Austin invoices in Dublin, isn't that right?

A. Correct.

Q. Why did you need Mr. Digerud to remind you of that?

A. We had when we prepared my statement not really got into any details here, and I hadn't gone back and checked my calendar and things, and I did not have a clear enough exact information about the thing that I could give directly from the witness-box last time. But I was quite certain that it had been shown to him.

Q. I can understand that people don't always remember everything in the witness-box, and frequently after they have left the witness-box they may remember /AP

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something which they should have remembered in the witness-box. But in this case, you did, after all, provide the Tribunal with a number of other statements, which I assume were carefully checked by your lawyers, in or around the 11th or 12th or 13th June, and none of those statements make any reference to this meeting between you and Mr. O'Brien, even though I think by that stage, Mr. O'Brien had given some evidence, isn't that right?

A. I am not quite certain about the dates of Mr. O'Brien's evidence

Q. Well, your statements refer to his evidence.

A. But anyway, I had not prepared the details around this and probably did not expect it to be questioned by Mr. O'Brien to the extent that it has been.

Q. I understand all of that, that you might not have expected it to have been questioned by Mr. O'Brien to the extent that it has been. But you have now stated a direct contradiction of the evidence, or at least of the impression that he has created, and yet up to the up to and including the 19th June, when you gave another statement to the Tribunal, you never mentioned

this very important piece of information that involved you personally; it didn't involve any information you got from anyone else. Isn't that right?

A. That's correct.

Q. And the Tribunal has to be satisfied that you had no improper reason for not bringing that to its attention until recently?

A. Not at all.

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Q. And how did it come that Mr. Digerud reminded you of it? What was it that you were discussing that prompted him to remind you of this meeting that you had in Dublin?

A. Well, we went over diaries and looked at things, and I was, in my own mind, kind of wondering whether it was this meeting or another meeting. But then Knut had the missing pieces and said that he was remembering it was this meeting.

Q. I want to now pass to the second aspect of the invoices, which is the changing of the invoices and the instruction or the request for the shredding of one of the invoices.

In your statement of the 11th June, you discuss the shredding of the invoice, and you say that you instructed inquiries to be made of Jan Edvard Thygesen, and I think the response was that Mr. Thygesen had

nothing to do with this. And then you say, "I think you also caused Mr. Simonsen to be questioned about the matter." Is that right?

A. Yes.

Q. Did you personally talk to Mr. Simonsen?

A. Yes. I talked to him, but even more so, our solicitors.

Q. Mr. Simonsen says that there was no communication between him and Mr. Thygesen in relation to the invoices, isn't that right?

A. Correct.

Q. It's Mr. Simonsen who has now provided the Tribunal in /AP

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his statement concerning how these invoices came to be changed, and how, according to his statement, Mr. O'Brien played a part in that, isn't that right?

A. Correct.

Q. Again, that that involved a very serious contradiction with the evidence already given by Mr. O'Brien, isn't that right?

A. Correct.

Q. And were you surprised that Mr. Simonsen wasn't able to give you any assistance in relation to that when this matter was raised with him in June of 2001?

A. I think I don't think I was, you know, surprised. I had maybe hoped that he could have been clearer on the

point from the outset. Per had partly a paternity
is that the word, paternity leave and partly holidays.
He was not so easy to get hold of, and he really didn't
go deeply into the matter until now after the summer
break.

Q. Can you understand that I am surprised, and I imagine
that a lot of people listening to the evidence, if they
followed it, would be surprised that you were able to
refer to discussions you had with Mr. Simonsen and
Mr. Thygesen last year, or last summer, before the
summer; and would you not agree with me that or
would you not agree that it's not unreasonable for me
to be surprised that you were not then told by
Mr. Simonsen about the detail of his dealings with
Mr. O'Brien?

A. I don't know whether I am surprised, but I would have
hoped that I could have had that information earlier.

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Q. You'd have preferred to have got all the information at
that time?

A. Yes.

Q. It's a little unsatisfactory that you have provided a
statement based on a discussion with Mr. Simonsen in
which reference is made to the shredding, and we now
know that the true facts, according to Mr. Simonsen,
are quite different, isn't that right?

A. At least much more precise.

Q. The evidence that was given about this matter on the last occasion, at least some of it, is contained in day 115.

And at page 34, you were referring to this issue, and you say, "Yeah, this invoice was sent to ESAT Digifone." This is the one now that has caused all the trouble, the shredding. "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."

Now, this was a reference to what, in his new statement, or rather in his first statement, he now says was his contact with Mr. Denis O'Brien when Mr. Denis O'Brien indicated that the contents of the invoice were not acceptable and that references to David Austin should be removed, isn't that right?

A. Yes.

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Q. And he says: "Per's best recollection, he got the information from the other end that it was not acceptable."

Now, it's the fact that at that time, you were under the impression that Per got this from the other end; and "the other end" simply meant some employee of Telenor or employee of Digifone in Dublin, when in fact, according to Mr. Simonsen, the other end was none other than Denis O'Brien, isn't that right?

A. That appears to be right.

Q. Are you not surprised that Per Simonsen did not say to you at that time, "Look, sure, this is clear why we had to change the affidavit. Wasn't it Denis O'Brien himself who told me that it was unacceptable?"

A. Well, in this case, I was trying to cover all of Telenor's involvement in the process, and I hadn't been personally involved in all of this. We didn't know at the time that also other Telenor persons will be called as witnesses, so I think I tried to cover it. I tried to be careful not to say anything wrong, and that's probably why it appears to be a little vague.

Q. Are you saying you were being vague because you didn't want to mention Mr. O'Brien, or you say you were being vague because you didn't know? Which?

A. No, my personal understanding and opinion was that it was clearly Mr. O'Brien, but I didn't want to say that without being sure.

Q. But it has taken you until now, until September, to draw the Tribunal's attention to the fact that the

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other end was Mr. Denis O'Brien?

A. Yes.

Q. I want to just come to one or two aspects of your I think it's your 19th June, 2000 statement, just to clarify one or two matters.

You say that you brought the question of the donation of Mr. Barry Maloney it's in the second page of your statement.

A. Yes, I have it.

Q. And you think that that was in the last week of October?

A. At least in the second part of October.

Q. And you yourself were not informed about the other matter, as you call it, about the statements made by Mr. O'Brien, until I think the end of October, around the 30th October, is that right?

A. No, it was somewhat earlier. It was at least before this meeting on the 23rd October.

Q. Very shortly before or at the meeting of the 30th October, is that right?

A. Yes, but I think our recollection here has a little bit of a weakness in dates and times because we were in the process hereof changing solicitors. So up to November, we had MOP, Matheson Ormsby Prentice, and November we had Kilroys Solicitors. So exactly the dates in this section is a little more unprecise.

Q. Can we just clarify it, then, because we have been through all the dates before. We don't want to get them mixed up again.

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A. I was present at the meeting on the 23rd October where the other matters were discussed, and I was informed about the topics of that meeting in a telephone call just before that.

Q. Well, if we just correct, then, one aspect of this statement. I think if you go to page 7 and you look at the fourth paragraph: "Although I cannot now be certain, I believe that the first information that I received about the other matter was either very shortly before or at the board meeting of the 30th October."

You don't think that's correct; you think that in fact you knew by the 23rd?

A. It should be 23rd, just before the 23rd October.

Q. And how long before that meeting was it that you told Mr. Barry Maloney about the \$50,000 donation?

A. I think it was just about the same timeframe. If not the same day, probably at the same time.

Q. When you told him about one matter, he told you about the other matter?

A. Yes.

Q. In your statement, at page 2, you say: "I cannot be

certain about the date of the discussion, but I believe that it took place in the last week of October. I believe that it was more likely to have been a meeting and not a telephone call, because I gave to Mr. Maloney a copy of the relevant Telenor invoices and the credit note, which documents you have already furnished to the Tribunal."

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At that stage, are you referring to just the Telenor invoices, or the Telenor invoices and the David Austin invoice?

A. I think I provided copies of what I had, which would include both.

Q. Both the David Austin and the Telenor invoices?

A. Yes.

Q. You say that you believed that it was possible that the IPO process of ESAT Telecom might require a disclosure to be made in relation to the donation in the Prospectus. Can you tell me what prompted you to form that belief?

A. This was can you please repeat where in the statement you are?

Q. It's at page 3, third paragraph. You needn't worry too much about the statement. What caused you to form the impression that this was something that was relevant to the IPO?

A. I think the difficult part for us here was that the donation that had gone through seen in context with the other matter, if I can call it that, where there were talks about two payments of $\frac{1}{2}$ 100,000 and people were talking about an intermediary. In that light, the donation that had gone definitely to an intermediary, we started to get worried whether actually it could have been something else other than a donation, and maybe part of the "Payments" that Denis was talking about.

Q. Could I just go back to what you said a moment ago about how you first brought this to the attention of /AP

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Barry Maloney. Do you think it was because of something Barry Maloney said to you about the two payments that you mentioned the donation to him?

A. I think that's when I started to be worried.

Q. You had a clear idea of what role you would have to play in the IPO, that it was a very secondary, if you like, peripheral, remote role; that any judgements that were to be exercised were judgements to be made by ESAT Telecom directors?

A. Yeah, absolutely correct.

Q. But nevertheless, as you say, you began to become worried about this, and you were, as I think you have indicated on another occasion, anxious to know what had

happened, what was going on?

A. Exactly.

Q. And you had, as we know from the documentation, which we won't have to refer to in detail, become aware of the fact that there had been reference in relation to the two payments of $i\frac{1}{2}$ 100,000, to the involvement of an intermediary.

A. Correct.

Q. You have already given evidence about Mr. Austin's role as a conduit in relation to your payment?

A. Yes.

Q. There was a lot of discussion on the 23rd, and as we know it, other meetings right up to the 4th, and at meetings at which you weren't present, in fact, right up I think to the 6th November.

Referring to the meeting of the 4th November, you say:

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"There was considerable discussion on the donation, because although the donation appeared to have been paid to the Party and consequently the donation was legal and ethical, there was documentary evidence to examine."

I don't quite understand that statement. Maybe you'd just explain it to me.

A. I think that refers to that we had only this receipt

from David Austin. We had no strict or concrete evidence that the Party had received the money.

Q. Well, let's just be clear about one thing. You are saying the donation appeared to have been paid to the Party, and consequently the donation was legal and ethical. And as I understand it, you were leaving all these judgements initially to Mr. O'Brien, isn't that right?

A. Yes.

Q. It was the subsequent, I suppose, unusual elements of the whole thing, the involvement of Mr. Austin, the fact that there was consultancy payments, the fact that there was an offshore bank account; those are the things that caused you concern, isn't that right?

A. Yes. And

Q. Those were the things which, if you had known them the first day, you would have rejected the whole idea?

A. That's correct.

Q. Now you have another concern: You had the potential involvement of an intermediary, maybe Mr. Austin, in something else. You couldn't be sure that these

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payments were legal and ethical, could you?

A. Well, I had no information to the contrary, anyway.

Q. I accept that may be true. You had no information to the contrary. That's a different thing to saying that

they were legal and ethical, isn't that right? You had concerns about them, real concerns?

A. But believing that the money had gone to the Party, they were legal and ethical.

Q. Well, we have been over that ground before. The only confirmation that it had gone to the Party that you had was this cryptic response you got from Mr. Austin, apologising, effectively, for having contacted you through Mr. O'Brien, is that right? That's the only document you had?

A. Yeah, he apologised for having contacted Mr. O'Brien, but that was the all the evidence we had.

Q. I think the way you described it to me on the last occasion you gave evidence was that it was by way of a making up for, or an apology for having suggested that you hadn't made the payment?

A. That's correct.

Q. At this meeting on the 4th November, there was no discussion, as we now know, of what is contained in Mr. Simonsen's statement. There was no discussion, in other words, that Mr. O'Brien was involved, according to Mr. Simonsen, in changing the invoices, isn't that right?

A. That topic never cropped up.

Q. Had that topic arisen, it would have caused even more problems than you had already, isn't that right?

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A. I think from our perspective, it would have made our case stronger because

Q. What was your perspective?

A. Because there was definitely, you know, two fronts in the meeting, kind of the Denis O'Brien side and the Telenor side. And the other side, as we saw it, tried to discredit Telenor and try to make it a Telenor donation, whereas we, all the time, had acted in good faith and done it on behalf of ESAT Digifone.

Q. But don't we know, from evidence you have given here and from what Mr. Simonsen has said in his statement, that Mr. O'Brien's involvement was calculated to hide this payment in Ireland, isn't that right? To make it invisible?

A. That was one of the objects of the whole arrangement.

Q. And if that discussion had taken place at the meeting of the 4th November or the 23rd October, could I suggest to you that if all those facts had come out, it would have made the meetings a lot more a lot livelier, wouldn't that be right?

A. I don't know. It was lively enough.

Q. Wouldn't it have suggested that Mr. O'Brien was a person who was trying to hide these payments that he was now trying to foist onto you, isn't that right?

A. Yes.

Q. We know that Mr. Digerud was already, according to your

statement, concerned that there wasn't enough time to investigate these matters; and certainly that's one fact that didn't come out in your investigation, the efforts that were made to hide this payment, other than /AP

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the ones where it was described as a consultancy, isn't that right?

A. Yes, that was not discussed.

Q. Now, you formed the impression, according to what's contained in page 8 of your statement, that the two $\frac{1}{2}$ 100,000 payments arose in relation to ESAT Telecom group and the fixed line business?

A. That's my clear impression.

Q. Is that still your impression?

A. Absolutely.

Q. You are aware that that discussion is one which we are told arose in the context of Mr. O'Brien putting pressure on Mr. Maloney to pay success fees, isn't that right?

A. Yes.

Q. Those success fees were success fees to do with the second GSM licence, isn't that right?

A. That was some invoices, as I understand, that Barry Maloney was presented with.

Q. But the success fees were to do with the second GSM licence. They weren't to do with anything else?

A. But these are different people and different invoices.

Q. I fully understand that.

A. And even those invoices that you refer to, Barry Maloney refused to pay, and that was at least was very reluctant to pay them, and that was the basis for, as I understand it, Denis making these other statements.

Q. He was reluctant to pay them because he didn't have sufficient documentary evidence to justify paying them, /AP

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isn't that right?

A. That's my understanding.

Q. Did he not ultimately make a number of payments?

A. I believe so.

Q. But it was in the context of payments that were ultimately made in relation to the second GSM licence that this these statements were supposed to have been made, isn't that right?

A. I don't think you get that right, putting it that way.

Q. We'd better be clear about it, because we haven't heard any evidence just hold on, so that we are not at cross-purposes as I understand, all of the evidence that has been given is that the success fees were to do with the second GSM licence. Are you clear about that, or do you disagree with me on it?

A. I have never seen these invoices, so I don't know, and

I don't know the persons involved in them. Whether it was success fee, or having helped in the securing of a licence as such, or whether they worked in connection with the start-up of the company, or whatever, I don't know that.

But what I have a clear view on is that anything related to ESAT Digifone would be presented to Mr. Barry Maloney. And if Denis was bragging about other possible payments, I think Barry Maloney stated very clearly it could not be related to ESAT Digifone. And I am absolutely convinced about that myself. And you just have to bear in mind that if an invoice could be presented to ESAT Digifone, Denis O'Brien would

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effectively share the cost with other people and only pay 40% of it, whereas if it was an ESAT Telecom issue, he would have to pay 100% of it, or a personal Denis O'Brien issue, he would have to pay 100% of it.

Q. I think you are dealing with two matters there. I think you are saying that if the $\frac{1}{2}$ 100,000 payments had been in connection with ESAT Digifone and the second GSM licence, you would have been asked to pay half of it, isn't that what you are saying?

A. Correct.

Q. Or 40% of it anyway?

A. Yes.

Q. So therefore, you are saying it couldn't have been to do with ESAT Digifone on that basis?

A. No way it could have been anything to do with ESAT Digifone.

Q. I'll come back to that later on. What I am concerned with for a moment is to look at it from another point of view. The success fees forget about the 100,000 the success fees that were being discussed were, according to Mr. Maloney and I have heard no other evidence to the contrary to do with ESAT Digifone. Now, that's what the evidence to date is in relation to, the success fees. Nobody has suggested that they were not anything other than ESAT Digifone success fees.

A. I cannot I cannot agree with you there. I cannot see that that is correct.

Q. Well, I have to tell you that no evidence has been given here to the contrary. In fact, if you only look

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at the word "Success fees," it was obviously to do with the success of the co-venture

A. I know no more about this than any other of you here.

I have never been part of these discussions. I have never heard what words were used. I am only

Q. That's why I am asking you to accept my word for it

that the evidence that has been given was that the success fees was to do with the ESAT Digifone licence.

That is the evidence to date. If that is the case

A. Are you referring to the success fees that Barry Maloney actually ended up paying?

Q. Yes.

A. Okay. Well, I agree with you. I thought you were referring to what Denis O'Brien had talked about.

Q. That's what I am saying to you. Forget about what Denis O'Brien spoke about for the moment, and let's look at the context.

A. Then I have no problem with it.

Q. The context was success fees and ESAT Digifone, isn't that right?

A. That's correct.

Q. Now, if the $\frac{1}{2}$ 100,000 was mentioned in that context, isn't it reasonable you may not agree with me, but isn't it reasonable to conclude that it must have had something to do with the same business, i.e., ESAT Digifone?

A. No.

Q. You say there couldn't be it would be unreasonable to make a connection between them?

A. Yes. I think Denis O'Brien clearly was talking about

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other aspects of his business.

Q. I see. Now, Mr. Maloney was so concerned about this that he brought it to the attention of ESAT Digifone shareholders and directors, isn't that right?

A. Yes.

Q. And his concern was heightened because of the involvement of an intermediary, isn't that right?

A. That's what I understand.

Q. Now, those concerns were brought up in the context of ESAT Digifone, isn't that right?

A. I don't know whether that was the only reason for Barry bringing it up. But in the process of I think he had several concerns. I mean, the Moriarty Tribunal was established and everything, and I think he was concerned about that, having this information, and he was concerned about whether or not a payment had been made or not been made.

Q. Did you agree with his concerns when he brought them to you first day?

A. They sounded to me absolutely incredible.

Q. Did you agree that you were concerned about them?

A. Of course, as we say, if this was right, it was very serious; and even though we believed that it had nothing to do with our company, but in the IPO process, our company, Digifone, was a major part, and anything that affected the whole group as such would indirectly affect us. And what we tried to do all the time here was get this ball in the other courtyard, in the other

yard, where it belonged, in our minds, to the ESAT Telecom board and the advisers and professionals /AP

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helping on the IPO.

So we were always trying to make them make full disclosures to everyone involved in the IPO process, take the time necessary to get to the bottom of all this and not proceed until we had been a hundred percent satisfied that nothing improper ever happened.

Q. And were you 100% satisfied?

A. This other matter we did not consider our problem. We just wanted to make sure that since we had gotten the information, which we never asked for in the first place, that the proper and the right people dealt with it, and in our minds, that was all the professionals dealing with the IPO of the Telecom group, of the ESAT Telecom group.

Q. Mr. Digerud, of his own opinion, thought there wasn't enough time to do it?

A. We wanted full disclosure to those professionals so that they could judge whether they had time enough

Q. Did you share Mr. Digerud's opinion that there wasn't enough time?

A. I don't think I had a very clear view as to whether it was enough time or too short time, but I definitely shared his view that this should be fully disclosed and

investigated by the professionals.

Q. Mm-hmm. You know now that a lot of the information that would have formed part of that investigation did not come out at the time, isn't that right?

Mr. Simonsen's statement, to begin with, in relation to the \$50,000. And we now know that there were payments

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involving Mr. Austin that were above the threshold of the payments that were being inquired into by the solicitors, isn't that right?

A. We learned that later, yes.

Q. And wouldn't that suggest that perhaps, through no fault of any of the solicitors involved but because of the time constraints, and there may be other reasons that needn't concern us now, a very two very vital pieces of information did not come to hand?

A. I guess it's important. Whether it changed the schedule or not, I couldn't say.

Q. You agree they were very vital and important pieces of information?

A. I don't think the Per Simonsen information around the details of the shredding was that important. But the other aspect, I think, could have been more detail investigated.

Q. Do you mean the changing of the invoices?

A. No.

Q. The 150,000 payment?

A. Yes.

Q. Why don't you think the changing of the invoices would have been important? I thought you agreed with me that it was, after all, indicative of Mr. O'Brien's desire to hide the payment, to make it invisible in Ireland.

A. Yeah, but the main reason for the wish to hide it was to avoid publicity.

Q. I don't understand you. What publicity would there have been?

A. Denis O'Brien had made political contributions in the /AP

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past, and every time it was a big coverage in the press and a lot of speculations and things. And that was the main thing that he said to us he wanted to avoid.

Q. How would any references to US dollars or David Austin draw attention publicly to these payments in the accounts of a private company?

A. I don't think they could be any direct connection, but of course, if more people could maybe get worried about it, and maybe some information could get out. But I mean, this was never my concern or any Telenor employee concern, so for our sake, because we could have advertised it

MR. FITZSIMONS: I think, Sir, Mr. Healy in that

context should remind the witness that at the time,

Mr. Austin was a fundraiser for the Fine Gael Party.

MR. HEALY: Certainly some people believe that, but

there is been no evidence of that.

CHAIRMAN: I'll leave you to put that, Mr. Fitzsimons,

in your own examination in due course.

Q. MR. HEALY: Do you remember Mr. Miley giving evidence?

I think you yourself say that you are not responsible

for interpretations Mr. Miley put on things in his

evidence. You must have remembered some of his

evidence.

A. No, I had

Q. Did you read his evidence?

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A. No, I haven't.

Q. I think you made a statement in which you refer to his

evidence.

CHAIRMAN: I think it's the due diligence connotation.

A. No, that was only a minor part, that I was made aware

of, that he, in his handwritten thing in connection

with the meeting wrote down "due diligence," so that

was the only aspect of it that I addressed.

MR. HEALY: I am just reminding you. It may be taken

up by your own counsel. I don't think Mr. Miley gave

any evidence to the effect that Mr. Austin was a fundraiser for Fine Gael.

MR. FITZSIMONS: I am sorry ,Sir, the evidence established fairly and squarely that Mr. Austin was the organiser of the Fine Gael dinner in New York.

Mr. Frank Conroy also gave evidence indicating he was aware that Mr. Austin acted, from time to time, as a fundraiser for Fine Gael.

Now, this witness has stated, as he stated on the previous occasion, that the purpose of Mr. O'Brien's seeking the hiding of this contribution was to avoid publicity because of earlier publicity that he did not like. This was confirmed by Mr. John Bruton in his evidence. And that's the answer that Mr. Healy has got, and to be looking for something else from this witness, in my submission, is unfair to the witness.

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MR. HEALY: I am not looking for anything from the witness. I am just trying to

CHAIRMAN: I think we can pass from that aspect, Mr. Healy. Let's proceed.

Q. MR. HEALY: You wouldn't have been concerned about hiding this payment at all?

A. No.

Q. It would have meant you would have had no problem in disclosing it fully?

A. Yes.

Q. In your accounts, however, am I right in thinking it is not referred to anywhere as a payment by Telenor on behalf of ESAT Digifone to Fine Gael, a political party?

A. No. We have no other records than what has been shown here.

Q. Am not I right in thinking that in your accounts, if someone were to examine your accounts, they would see no reference to a facilitation by Telenor of a political payment by Digifone to a political party?

A. Correct.

Q. So your company was not broadcasting the fact that it had made a political that it facilitated a political payment by an Irish company which wanted to keep that payment quiet or invisible for publicity reasons?

A. No, that's clear. Telenor, as such, you know, as I have mentioned before, would not have done it.

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Q. Telenor was, at the time, a wholly-owned Norwegian State company and was facilitating the hiding of a political payment to the governing party in another country, is that right?

A. We

Q. I am only using your words.

A. Telenor advanced the money on behalf of ESAT Digifone, and it was a political donation to the Fine Gael Party.

Q. Yes, but nowhere in your accounts does it say that.

A. We shouldn't. It was an advancement to advance payment to ESAT Digifone.

Q. I have been over this ground with you before, Mr. Johansen, but nowhere in your accounts is it described as a mere advance to Digifone. It is described as a consultancy payment, initially for David Austin, subsequently as a result of an intervention by somebody else, a straightforward Telenor consultancy.

A. That's correct.

Q. The paperwork that your company generated was calculated to hide this payment, and it was hidden not just in the Digifone books, but in your books as well?

A. Well, that was maybe a side effect, but it was not the intention.

Q. In fact, in your company, only three people knew that the funds of your company were being used to facilitate a political payment in another jurisdiction:

Yourself, Mr. Digerud and Mr. Simonsen. Isn't that right?

A. At that time, yes.

Q. And there was no record of that information that would

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have enabled any auditor, any accountant, any inspector appointed under any of Norway's laws to discern those facts, isn't that right?

A. Correct.

Q. So what I am suggesting to you is that there was a clear concerted action all around to hide this payment from view, and that your company was just as interested in covering it as Mr. O'Brien's as Mr. O'Brien was interested that Digifone should cover it, cover it from view.

A. I don't agree.

Q. Well, can you tell me or can you point to any document that would show a third party those true facts, the true nature of the transaction?

A. I tried to explain this before, but in our minds it was a request from Denis O'Brien to advance this payment and facilitate it on behalf of ESAT Digifone, and we let Mr. O'Brien have the judgement as to what was correct or not correct to do in Ireland, and we did not interfere with that.

Q. Well, that's your answer.

A. It's the truth.

CHAIRMAN: Well, what you are saying, Mr. Johansen, is that the idea of the payment was not yours but Mr. O'Brien's, and that the somewhat misleading form of it as consultancy payments was not your idea but was

Mr. Austin's, but you accept that you did nothing to rectify those impressions in the documents that were created.

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A. That's correct, Mr. Chairman.

MR. HEALY: Now, you say that neither you nor any of your fellow Telenor directors were aware of or suspected in any way at any time that Mr. Denis O'Brien made any payments of any kind, whether before, during, or after the bid for the second mobile telephony licence in connection with the granting of the licence. Our understanding from what transpired at the meeting was that the other matter related to bravado remarks in connection with ESAT Telecom group.

So you are making two statements there, two points. You are saying firstly that you are not aware of anything, and you didn't suspect that Mr. O'Brien made any payments of any kind in connection with the second GSM licence. And you go on to say that in any case, you think those statements were merely bravado remarks.

A. It appeared to me that that must have been the case, because no one else said they believed him. Denis O'Brien said he didn't pay them. Barry Maloney says himself that he didn't believe it, so we had no other view on that.

Q. You were aware that there was a concern on the part of Mr. Maloney and maybe other people too, I am not sure that Mr. O'Brien may have taken some steps towards making a payment, isn't that right?

A. Yeah, I have heard that, or that knowledge has been given to me from what was unveiled in these meetings and later documentation.

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Q. That's how the intermediary came up, isn't that right?

A. Yes.

Q. You can't say one way or another whether you are aware of you can't say one way or another that money didn't go to an intermediary?

A. Can you please repeat the question?

Q. You, yourself, you have no knowledge one way or another whether money did go to an intermediary or not?

A. And you are referring to Denis O'Brien money?

Q. Yes.

A. Yes, I have no knowledge whatsoever.

Q. And at the time that you were making that statement, you were basing that statement on what Mr. O'Brien had said at a meeting, isn't that right, on the 4th November, and what other people had said at the meeting?

A. Correct.

Q. But at the time that you made that statement, which was

around the 19th June, you were also aware, or within a short time afterwards, by September, you were aware that Mr. O'Brien was saying things about matters with which you were directly concerned that you don't agree with, in very, very strong terms, isn't that right?

A. Regarding the donation, that's correct.

Q. Anything any view you formed about the $\frac{1}{2}$ 100,000 is really based on believing Mr. O'Brien, isn't it?

A. Our position was to get this over to the people

Q. I understand that, but you have expressed a view here, Mr. Johansen. I just want to know what you based it on.

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A. Yes, we had absolutely no foundation for another belief that what Mr. Barry Maloney had, who had been in the central role, and what Mr. Denis O'Brien told us, and what he later confirmed in an affidavit, and what everyone else from the ESAT Telecom side and IIU side also did agree, or did believe.

Q. Did you believe what Mr. Maloney said about the involvement, or the statements made about the involvement of an intermediary? You believed Mr. Maloney's account of that statement?

A. Yes, I believe fully in what Barry Maloney is telling.

Q. Of course at that time you did not know about Mr. Austin's involvement in other transactions that

involved Mr. O'Brien's money, isn't that right?

A. Absolutely right.

Q. Just one final matter. You said in evidence today that

when you first gave evidence about these matters, and

in particular when you gave evidence concerning what

you call "the other end," you weren't absolutely clear

of all the details, but you believe the other end was

Mr. Denis O'Brien, isn't that right?

A. Yes.

Q. And at the time that you gave that evidence, you had

the assistance of a very large and skilful team of

lawyers, isn't that right?

A. What do you refer to now?

Q. All your lawyers. You had the benefit

MR. FITZSIMONS: Sorry, is Mr. Healy going to suggest

to the witness that we were helping the witness as to

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facts? Because that appears to be the import of that

comment the comment that is contained in the

question, My Lord; I'd appreciate if Mr. Healy would

withdraw it and just simply ask the question.

CHAIRMAN: I certainly didn't take that inference from

it, Mr. Fitzsimons. I think merely what was being put

was that on Mr. Johansen's initial appearance, he had

had an opportunity to discuss matters fully with an

appropriately senior and qualified legal team.

Q. MR. HEALY: That's what I am driving at, Mr. Johansen.

You knew, following giving your first bit of evidence at these sittings, that there was a very significant conflict between yourself and Mr. O'Brien, that there was indeed a credibility issue between you, isn't that right?

A. That was my opinion.

Q. And isn't it clear from the statements that you made in June, right up to the 19th June, you were anxious to deal with certain matters mentioned by Mr. O'Brien to say they were not right, that what Mr. O'Brien was saying was incorrect and that what you were saying was correct, isn't that right? Those are the statements I opened at the beginning of this session.

A. Well, I dealt with a matter that I did not have directly involvement myself. I am sorry for repeating myself now, and I didn't want to say something I wasn't 100 percent certain about.

Q. But why didn't you tell your lawyers, "Look, there is /AP

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some very important aspect of this, some very important piece of evidence that goes to the issue of credibility"? Why didn't you bring that to the attention of your lawyers?

MR. FITZSIMONS: Sorry, Sir, I am sorry to keep interrupting. But I know Mr. Healy seeks to be fair to the witness, but it's important that the witness is given the full picture when he is asked a question.

Now, Mr. Denis O'Brien gave evidence on day 116, question 136 to 554. He gave evidence on day 117, question 1 to question 297. He failed to appear then on the 15th June. The next day upon which he gave evidence was on the 25th June. Now, all our statements, the June statements were well in by then. He then gave evidence for five full days, day 120 to day 124 inclusive.

And Mr. Healy is putting to the witness that there is something wrong about his not having recollected the subject matter of his statement of September before Mr. O'Brien had given five full days of his evidence, most of his evidence. Now, if the witness was to consider all conflicts between his evidence and Mr. O'Brien's evidence, that exercise would obviously take place when all of Mr. O'Brien's evidence would be terminated.

So I think Mr. Healy should really just try and frame

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things in a manner that, in my submission, would be

fair to the witness. I know he is trying to do that and doing his best, and it's difficult. He has got a huge burden on his shoulders conducting this inquiry. But this witness is here, has come in voluntarily to help, doing his best, and the additional statement that has been given is a statement that has been given fully in the knowledge that it's at variance with evidence previously given and indicates Telenor's total cooperation with the Tribunal and its wish and its willingness to put all of the true facts before the Tribunal. And for this witness to be criticised somehow on this account

CHAIRMAN: Mr. Fitzsimons, I'll fully bear in mind that sequence, just as I will fully have regard to any questions you may have in due course of your own witness. But I think it is to be remembered that the format of this Tribunal is not a strictly adversarial one. I don't of course need to lecture you on this implicit taxing duty on Mr. Healy that he has to put before the Tribunal in public sessions as full statements made by Mr. Johansen, but whilst not cutting out either yourself or Mr. McGonigal from cross-examination on the model of Tribunals that has been adopted here, he then has to put things from Mr. O'Brien's standpoint. And you may be assured that when the converse process took place, Mr. O'Brien was examined quite sternly from the viewpoint of many

Telenor matters.

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And I think this is the balance that one has to try to maintain in this, that apart from leading the evidence of the witness, it is necessary, whilst not cutting off entirely cross-examination by counsel appearing, it is necessary to put contrary views. And this is what, in the course of the overall effort of probing for the truth of matters, Mr. Healy is doing.

MR. FITZSIMONS: Yes, I accept that, and I accept that Mr. Healy must put the case against Telenor, so to speak. But in putting that case, vis-a-vis any conflict between his evidence and that of Denis O'Brien, in putting that case to the witness and in suggesting that the June statements were made by the witness in the full knowledge of that conflict, he should remind the witness that Mr. O'Brien had only given a tiny portion of his evidence when those additional June statements were made to assist the Tribunal. And presumably, when all of the evidence was given over the summer, Mr. Simonsen had come back, as the witness has stated, from his holidays and paternity leave, that his evidence could be clarified and the additional statement made.

CHAIRMAN: I certainly won't neglect that sequence, but it is a matter that we do have to look into.

Q. MR. HEALY: Mr. Johansen, the reason I bring this up is not in fact solely because of what's contained in your /AP

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statements. Mr. Simonsen may be able to help us out in relation to some of this because of the time-lag caused by his being out on paternity.

The reason I bring it up is because of something you have said in the witness-box today, this afternoon. Because you have confirmed to me in the witness-box today that at the time that you gave your evidence, the very first time you gave your evidence here, when you were referring to the other end of discussions about the invoices between Oslo and Dublin, you were referring to Mr. Denis O'Brien you believe that it was Mr. Denis O'Brien, and you wanted to be clear about it. You didn't want to say it until you were clear about it.

What I am suggesting to you is that that was something that should have been investigated by you and your, as we can see, skilful team of lawyers, immediately. Why has it taken until now?

A. Well, we have been working on it, but Per Simonsen was not available for a long period.

Q. He wasn't available in June, was he?

A. He was on paternity leave and vacation.

Q. Just to clarify, then, one final matter. Did you speak to him on the phone in June, or did you speak to him personally? In your evidence in June, you referred to having spoken to him.

A. Yes. I think I spoke to him on the phone, basically.

Q. Will he be able to deal with this in his evidence, the /AP

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extent of the discussions you had with him?

A. I don't see why not.

Q. Did you mention to him that you had a vague idea that the person at the other end was Mr. Denis O'Brien?

A. No.

Q. So you didn't discuss that with him?

A. No, I left that completely up to him, but I know for sure that I had not instructed him. I have learnt that Knut Digerud is also absolutely certain he has not instructed him, and we were the only people

Q. I think you are misunderstanding, Mr. Johansen. I am not suggesting for one moment you instructed him. I am saying, isn't it strange you wouldn't have contacted him by telephone and said, "Look, I think the person I was dealing with at the other end of this was Mr. O'Brien. Who were you dealing with when you were writing when you were changing the invoices?"

A. I didn't say that.

Q. You didn't have any discussion with him about it?

A. No. I left that completely up to him to come up with the firm answer to that.

Q. Thanks, Mr. Johansen.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. Johansen, I wonder if you could turn to transcript 115, question 117. I don't know if you have a transcript.

A. I don't have that, so you will have to read it for me.

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(Transcript handed to witness.)

Q. MR. MCGONIGAL: It's page 31, Mr. Johansen. It starts at page 31. Do you have that?

A. Which question is it?

Q. It's 113.

A. Yeah I have, it.

Q. And the question was "To say the ... in relation to the reimbursement was ... by the fact that three invoices ... ESAT Digifone." Then Mr. Healy goes into the invoices on the balance of that page. And on page 32, he deals with a bit of the documentation in the second paragraph. And then the third paragraph from the bottom, he says, "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?

And your answer was, "Yes. And also trying to talk to people that were involved and tried to find the background for the different actions."

Now, that was your answer in relation to the invoices on the 31st May, 2001. Just in relation to that answer, Mr. Johansen, can you clarify for me the persons whom you spoke to prior to making giving that evidence?

A. I think we had to contact, in addition to the people, the key people that we have mentioned here, we had to /AP

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go back to the accounts department and search also some of them have been named on the instructions, on the invoices and things and ask them about what had actually happened and the sequence of events. So it was a few more people than the main people.

Q. Well, the key people that would have been involved, apart from yourself, would have been Mr. Digerud and Mr. Simonsen?

A. Correct.

Q. And can I take it that in that answer, or at the time

that you gave that answer, that Mr. Simonsen was one of the persons who you had spoken to?

A. Yes.

Q. And can I also take it that Mr. Digerud was one of the persons that you had spoken to?

A. I am not absolutely certain, because Knut Digerud worked for another firm in the States, so I am not certain about that.

Q. Again at question 121, if you turn to page 34 Mr. Healy has already drawn your attention to this, but it's 120, "Who is that person? That is also a person in Telenor Invest who had been the project manager for the project in Ireland, 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.

Your answer, "Yes. This invoice was sent to ESAT Digifone but and this is not quite clear how this

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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."

Now "Because I tried to check it several times, but Per's best recollection is that he got the information from the other end."

It would appear clear from that that certainly, before you gave that answer, you had a clear conversation with Mr. Simonsen?

A. Yes.

Q. And that his best recollection, and what he told you at that time, resulted in the evidence that you gave in May of 2001?

A. Yes.

Q. A statement has now come to light of the 18th September; did you speak to Mr. Simonsen before that statement was made?

A. Yes, when we managed to get Per back, we had we did discuss the matter, yes.

Q. When was that?

A. Sometime in August. I don't have the exact date.

Q. And it was at that stage that his recollection changed from May 2001 to his statement of September 2001?

A. I wouldn't say changed. But he was clearer as to the sequence of events.

Q. I see. At that at that stage, had he seen, do you

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know, the evidence from the Tribunal, and particularly,

Mr. O'Brien's?

A. I think he had been given transcripts then, yes.

Q. Now, at the time that you gave evidence in May of 2001, you indicated that you had a recollection of a conversation, a telephone conversation between yourself and Mr. O'Brien, prior to the 19th February of 1996.

Do you remember that evidence?

A. Yes.

Q. Am I right in understanding from your evidence today that that may not now be your recollection?

A. I said today that whether it was directly from Denis O'Brien or whether I got it indirectly, I am a little vague on that, but I had information that Denis O'Brien had asked for asked about the payment.

Q. But as to how that came about, you are not saying that you recollect a telephone conversation with Denis O'Brien?

A. No. I am a little bit uncertain whether I got it directly or not.

Q. If you didn't get it direct, then the indirect communication, presumably, how would that have been?

A. That would have been Per also.

Q. Sorry?

A. That would have been from Per Simonsen.

Q. From Mr. Simonsen?

A. Yes.

Q. At the time that you gave evidence in May 2001, you had

no recollection at that time of the events that took place, that are alleged to have taken place on the 20th /AP

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December?

A. I had a clear view that I had informed Denis O'Brien about the invoices, but I had not gone over it in sufficient detail when and how it happened. So I was not in a position to say exactly how and when.

Q. But I want to be clear about this, Mr. Johansen, in relation to your evidence: You, at the time that you gave evidence in May, had no recollection at that time of speaking to Mr. O'Brien at a board meeting on the 20th December?

A. I had no recollection clear recollection that it was exactly that meeting.

Q. And you had no recollection at that time of showing Mr. O'Brien the Austin invoice and letter at that board meeting?

A. No, that's what I am saying. At that point in time, I was not exactly certain about the time and date for this, but

Q. And that recollection only came to you as a result of Mr. Digerud saying something to you?

A. Yes, and putting also what the pieces that I was missing together with what Knut Digerud remembered, it was clear that it was the 20th December meeting.

Q. And when was that that Mr. Digerud spoke to you?

A. That was in August.

Q. Now, Mr. Digerud was not party to any discussion between any alleged discussion between yourself and Mr. O'Brien?

A. No. Knut Digerud was basically informed by me afterwards.

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Q. In relation to that board meeting, can you assist me as to when you would have arrived in Dublin for that meeting?

A. We took the seven o'clock plane from Norway, and it has a stop in Copenhagen and continues at nine. We would have been here landing shortly after ten in the morning, so we would have arrived in the city around about eleven or so.

Q. And when was the board meeting?

A. The board meeting basically started around noon.

Q. Sorry?

A. Around noon.

Q. Could the board meeting have started later, at approximately four o'clock?

A. It could, because you know, what was a formal start-up time of a board meeting, and we had also business review meetings, so to speak, in connection with that, and the main topic this day was basically the selection

of vendor for the backbone network and the switching network and the pay stations. And that was the first topics that we dealt with, and whether or not that was part of the formal board meeting or the business review is a little bit hard to tell, so maybe the formal board meeting was set for four o'clock.

Q. This was what I was wondering, Mr. Johansen, whether in fact the board meeting started at approximately four o'clock but you may have had a meeting with Mr. O'Brien earlier, starting at approximately 11:30?

A. It was not the the business review meeting that I referred to was basically the same people, but we would

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have more management people coming in and presenting their cases.

Q. I don't want us to be unclear as to what each of us are saying. But what I am suggesting I am asking you is, was there a meeting at 11:30 in give or take in the Malt House which Mr. O'Brien and yourself and others may have been at, but the formal board meeting didn't start until approximately 4 o'clock ,or the board meeting didn't start until 4 o'clock?

A. I don't think there was a separate meeting between myself and Mr. O'Brien, but we dealt with matters that could have been part of the business review.

Q. Well, when I say a separate meeting, what I mean is it wasn't the board meeting starting at 11:30. The board meeting started at 4, but you were in the Malt House with Mr. O'Brien at a meeting, which others may have been at, from 11:30 onwards. Have you a recollection of that, or do you know?

A. Yes, that is correct.

Q. And you say that it was in the course of that day that you showed Mr. O'Brien the letter and invoice and had a discussion with him about it?

A. Correct.

Q. But that you forgot that when you were giving evidence the last time?

A. I didn't say I forgot it, but I didn't have the clear date and meeting in the previous evidence.

Q. Mr. O'Brien has no recollection of such of being shown any documents or any discussion on the \$50,000 /AP

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donation on that day. You disagree with him on that?

A. Absolutely.

Q. In relation to the letter of the 24th March of 1998, Mr. Johansen, where you wrote to Mr. O'Brien concerning the \$50,000, do you remember that letter?

A. Sure.

Q. Where you say that "I refer to the donation of \$50,000 which you requested us to make on behalf of ESAT

Digifone Limited to the Fine Gael Party in November 1995 for two tables at a Fine Gael fundraising event at the 21 Club in New York."

Do you accept that an interpretation of that sentence could be that you were referring to the request as having taken place in November '95?

A. I can see that the sequence of words is not good, but that was not the meaning with the letter. And there is it's not correct to interpret the letter that way.

Q. I want you to have a look, Mr. Johansen, at page 23, day 115, question 79. Mr. Healy, at this stage, was asking you about the appropriateness or wisdom or judgement of making the payment to someone with an address in London that was going to and the question was:

"Q: Even though you say you didn't, 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 someone with an address in London and that it was going to be put into an offshore bank in Jersey, do you think /AP

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you would have agreed to do it?

"A: I doubt it.

"Q: So you would have made the judgement at that stage, if everything had been clear from the beginning, from

the outset.

"A: I doubt that we would have agreed to it."

Do you remember that answer?

A. Yes.

Q. In the light of looking at Mr. Austin's letter and his invoice, which was very clear as to what was to be done, particularly after your own discussion with him on the telephone, do you still say that that would be your answer?

A. Yes. Because you know, this built up the status, so to speak. We got one new piece of information every time the case developed, so and we had agreed to do it, we had agreed for Denis to do it first, and then we had agreed with David Austin to do it. It wasn't that easy to stop the process after it had started. But I still believe that if everything had been clear on day one, we would have big doubts whether or not we would proceed with it.

Q. If I can just ask you, Mr. Johansen, to turn to the invoice, the final invoice of the 27th March of 1996, which is Telenor 8 exhibit

MR. HEALY: I think Mr. McGonigal has indicated that he may be some more time, and the Tribunal does have an arrangement to meet with people later on this

/AP

afternoon.

CHAIRMAN: Yes. Well, I don't want to interrupt you inconveniently, Mr. McGonigal, but certainly I don't see much feasibility, even with the stenographer and the witness, going more than five minutes.

MR. MCGONIGAL: I fully accept that. I am quite happy to resume in the morning at nine.

CHAIRMAN: Well, I think, Mr. Fitzsimons, I don't think you were present. We have an unavoidable situation of a very large government conference here, with all sorts of security repercussions, tomorrow afternoon, and the only basis we can own the public sitting, which we plainly need to, with your witnesses in attendance from Scandinavia, is by making a half nine start.

So half nine in the morning.

MR. FITZSIMONS: We'd be happy to attend at an early an hour, as Your Lordship dictates.

CHAIRMAN: I am glad that your disposition accords with that of your clients, Mr. Fitzsimons.

MR. MCGONIGAL: Just one other matter, Mr. Chairman, that I just want to draw the Tribunal's attention to in the light of remarks which were made this morning, and draw the Tribunal's attention to the letter of the 14th December, 1995, and also the letter of the 19th

/AP

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February, 1995, particularly the letter of the 14th

December, and the signature of that letter, which

appears to be simply David Austin.

In the light of remarks which were made this morning, I

think it's proper that the Tribunal's attention should

be drawn to it at this time.

CHAIRMAN: I'll have regard to that.

9.30 tomorrow.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

THURSDAY, 28TH OCTOBER, 2001 AT 9.30 AM.

/AP