

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY,
19 OCTOBER, 2001 AT 9.30 AM:

CHAIRMAN: Well, to maximise the available time, since we have to conclude rather early today, I would propose that we proceed to sometime shortly after half past eleven, take perhaps a twenty-minute break, and then resume until what effectively is our deadline of two o'clock.

Mr. Johansen? Do you mind coming back, please?

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

Q. MR. MCGONIGAL: Mr. Johansen, I want to go back to transcript 115, if you have it there.

A. No, I haven't.

Q. And if you go to page 26.

(Transcript handed to witness.)

Do you have that?

A. Yes.

Q. It's question 96, and what the Tribunal is dealing with here is the letter of the 19th February of 1996, do you see that?

A. Yes.

Q. And Mr. Healy read out the letter, and over the page, on page 27, we have your answer to the question,

"Do you know what prompted this letter from David Austin? And you say, "No, not exactly. I mean, we did not expect anything. But in between this letter and the date of the actual payment, it was done already late December, I think I got a telephone call from Denis O'Brien where he had been in contact with David Austin, and he had not recognised that the money had been paid into the account already, so we were asked why we hadn't paid it, and I told Denis it was already paid and that probably David Austin checked and found that it had already gone into the account and that he felt obliged to come with an apology for that.

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

"A: No, that's not normally the case. We get an invoice."

Now, as I understand it from things that you said yesterday, that is not necessarily your position now?

A. No. I am a little bit uncertain as to whether it was Denis directly who called me and informed that the money had been asked about or whether I got it some stage later, indirectly, from Per Simonsen.

Q. So can I take it from that answer that you no longer have a recollection of a phone call between yourself and Denis O'Brien?

A. No, I am a little bit uncertain whether it was directly

or indirectly.

Q. If it was indirect, from whom would it have been?

A. Then it would have been from Per Simonsen.

Q. Have you discussed this with Mr. Simonsen?

A. I asked him this morning, because he came in last night, and he doesn't have a clear recollection whether he informed me or not.

Q. Was this the first time you discussed it with him?

A. I believe so.

Q. You didn't discuss it in August/September, when you were discussing with him the rest of the material?

A. I might have touched upon it. I don't remember that.

Q. Going on to 111 sorry, before I go on to 111, I am going to go on to 101. Mr. Healy asked you,

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

"A: Yeah.

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

"A: Yeah, exactly.

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

"A: We, being Telenor in that case.

"Q: And you say: "I told Denis it was already paid."

And you then go on to say probably David Austin checked and found out it had already gone into the account and he felt obliged to come to you with an apology for that.

"A: Yeah.

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

"A: Yeah, that's right."

Now, am I right in saying, insofar as your recollection is now hazy, that that relates to the entire conversation which you gave evidence about in May of 2001?

A. Sorry, I lost your reference. Could you please

Q. You lost my reference. I was on page 28, at the bottom of the page, 101: "I think what you said was and what prompted my question was the following: "I think I got a telephone call from Denis O'Brien where he had been in contact with David Austin and he had not recognised that the money had been paid into the account already." Isn't that right?

"Answer: Yeah.

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

"Answer. Yeah, exactly.

"Question: "Why he hasn't paid it."

"Answer: We, being Telenor in that case.

"Question: And you say: "I told Denis it was already paid." And you then go on to say: Probably David Austin checked and found out it had already gone into the account and he felt obliged to come to you with an apology for that.

"Answer: Yeah."

In relation to that reported conversation, am I right in understanding now that you are uncertain as to whether that conversation took place?

A. Yes. This would be the same as we just talked about. I am a little bit uncertain as to whether it was me directly talking with Denis, or it was Per Simonsen, and that I got this information from Per Simonsen.

Q. Going on to page 30, 110. Now, the first part of 110 deals with a question which I am not concerned with, but the second paragraph begins: "Sorry, could I just go back one moment to that letter you got from David Austin. Did you tell Mr. O'Brien that you got a receipt from Mr. Austin recognising, as you put it, that the money had been paid?"

"A: Yeah, I believe so.

"Q: After all, you say that it was he that contacted you.

"A. Yes.

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

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

Am I right in understanding that so far as that is reported to be a conversation and a recollection, that you now are uncertain as to that?

A. I have no clear picture of that.

Q. No clear picture?

A. Whether I sent the acknowledgment letter or not, is that your question?

Q. No clear picture of whether you sent acknowledgment and no clear picture of whether you told Mr. O'Brien that you got a receipt from Mr. Austin?

A. No, I think I am almost certain I informed him about that. We had got the acknowledgment letter. But I am not certain that I sent a copy of it.

Q. When do you think you did that, informed him that you got a receipt of it?

A. That would have been in one of the meetings after I had got it.

Q. One of what meetings?

A. Most likely, or in connection with a board meeting, that was we didn't really have much contact between the board meetings.

Q. Well, the receipt letter is dated 19th February, '96. When do you think that you mentioned it to Mr. O'Brien? At which board meeting?

A. One of the following meetings.

Q. Sorry?

A. One of the following meetings.

Q. One of

A. Yes, I have no clear record of any specific date for that.

Q. So you have no specific date of a board meeting and no specific recollection of mentioning it at any particular board meeting?

A. Yes, I have no notes or memos or anything pointing to the fact that I had spoken with Denis, but we met, and we shared views on things, you know, in connection with meetings, and I am sure I mentioned it.

Q. Do you think that you would have mentioned it to Mr. O'Brien before or after the final invoice was created?

A. I think I mean, I have never seen those two in context. I was not involved in the processing of invoices, so nothing of my none of my conversations with Denis O'Brien would have been referring to Telenor invoices, because I was not part of that, so I wouldn't know dates or anything on invoices.

Q. So you have no idea as to when you mentioned it in relation to the final invoice?

A. Not at all.

Q. But you are aware that the final invoice came out after the letter of the 19th February of '96?

A. Yes, that's clear to me now. I didn't know that at the

time.

Q. You didn't know that at the time, and you say that you had no hand, act or part in that invoice?

A. That's correct.

Q. So the best you can put it is that you think you have a recollection of mentioning it to Mr. O'Brien at a board meeting subsequent to the 19th February?

A. Most likely.

Q. And it certainly wasn't a phone call?

A. I don't think I would consider it that important the acknowledgment letter was, as I said earlier, nothing that we put an emphasis on at all. It had come in, and we read it. We were a little bit surprised about the wording. But except for that, we just noted it. So I don't think I would have taken an extra round with Denis just to inform him about this one, but I would have mentioned it on an ordinary basis.

Q. So you didn't attach much weight or importance to the receipt of the 19th February?

A. We had not asked for the letter. We just noted it.

Q. Can I ask you to turn to page 37, question 139, and this is a continuation of discussion between yourself and Mr. Healy relating to invoices. And he asks you the question,

"Question: Well, what does it look to you?

"Answer: I think we probably would like to have as much evidence of the real nature of the matter as possible,

yes."

And he continues, and it goes over the page to 38.

Question 142: "What was the real nature of this transaction?"

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

What did you mean what do you mean by that, Mr. Johansen? Those two answers?

A. This was not a Telenor expense as such, but it was advanced by Telenor on behalf of the company. For the company also to acknowledge this, I think a reference to an agreement with the chairman was relevant for Digifone to pay out the money.

Q. So you are seeing it in terms of evidence which Telenor would have which would indicate some connection to ESAT Telecom/Denis O'Brien/Digifone?

A. Yes.

Q. And you felt that that was necessary to have in the company's possession?

A. I don't know whether "necessary" is the right word, but it's in case someone in the company should question it.

The agreement was with Denis O'Brien alone, and it had to be processed inside the company, inside in case someone inside the company should question it. At least we could refer to the Chairman.

Q. I am just wondering about that, Mr. Johansen; perhaps you could help me in relation to it. How or in what way could it have been questioned in the company?

A. Telenor invoices in general were, I would say, almost scrutinised by the ESAT Telecom people. They thought everything we produced was too expensive; that hourly rates were too high, travel expenses too high. It was kind of a bargaining invoice that we furnished.

Q. The only invoice that could possibly have been questioned by the company, am I not right in thinking, is the invoice of the 27th March of 1996?

A. Sorry, could you please repeat the question?

Q. Am I not right in thinking that the only invoice that could have been questioned, if any was questioned by the company, was the invoice of the 27th March of 1996?

A. I mean, I was not involved in the invoicing as such. And in my mind, it should have been only one invoice that would have gone out in January already.

Q. Can I put it to you ask you another question, Mr. Johansen, which is puzzling me: This money was paid by Telenor in December of 1995?

A. Correct.

Q. How would that have been entered in Telenor's books?

A. That would have been entered as payment to an external source, David Austin in this case, on behalf of ESAT Digifone and put on the account for ESAT Digifone.

Q. And are you saying that because that is the entry that you have seen in the books of the company, or are you speculating as that to be the entry?

A. That is I have seen it, of course, afterwards, but I was, as you know, not involved in it personally. But this was the way we handled projects and accounting in general, so all projects were handled this way.

Q. So there is an entry in Telenor's books for the end of December, 1995, which reflects an external payment by Telenor to David Austin?

A. Yes.

Q. Is the end of the accounting year for Telenor December?

A. Yes.

Q. So that would have been an outstanding payment carried on into '96?

A. Well, it's not really an outstanding I mean, I am not an accountant as such, but it would be put on the balance, so it would not be seen as an outstanding payment. It would be an outstanding payment until it was invoiced.

Q. So if that is so, when would it not have been an outstanding payment in March of '96 when an invoice was allegedly issued?

A. Correct.

Q. But the invoice which was allegedly issued in respect of this payment was a consultancy invoice to Telenor, and nothing to do with David Austin?

A. Are we now referring to the 27th March?

Q. Yes.

A. The way that one is I mean, the lead text on the invoice kind of indicates that this was related to Telenor cost and not to David Austin cost.

Q. So there is nothing in the books of '96 that would show a contra against the payment in '95 to David Austin?

A. No, because that was booked, I believe, 29th December, '95. So I don't think you would see it on the 1996 accounts.

Q. There is another matter I wonder if you can help me with, Mr. Johansen. I don't know if you have had an opportunity of seeing Mr. O'Donoghue's evidence?

A. Yes, I have seen it.

Q. Or the documents attached to his evidence?

A. If you tell me what that is, I might confirm it or not.

Q. I want you to look at the handwritten document.

A. Yes, I have seen that. Yes, I have it.

Q. Now, in relation to that document, that document apparently is a document which was prepared by a Mr. Maloney, who hasn't given evidence yet, in relation to some work that he may have been doing in January of '96. And the entry, the first entry which I want to draw your attention to and ask you about is the entry

Telenor Mobil, re David Austin, 31600. Do you see that entry?

A. Yes.

Q. In relation to Telenor Mobil, am I right in thinking that that is a Norwegian company, either a subsidiary of Telenor or whatever?

A. Correct.

Q. And the Norwegian spelling is M-O-B-I-L. The English way of spelling it would be M-O-B-I-L-E?

A. Yes.

Q. So that Mr. Maloney has written the Norwegian there, "Telenor Mobil"?

A. Yes.

Q. None of the invoices that have so far been produced refer to Telenor Mobil, isn't that right?

A. Yes, because most of the interaction was with another subsidiary called Telenor Invest, which was part of Telenor International Group, but a lot of the people seconded inside to the project in ESAT Digifone were actually from Telenor Mobil. And it was a big confusion inside, in Digifone, which entity who was who, and who was representing whom inside the company. So most of the people working for Digifone were actually from Telenor Mobil.

Q. That is most of the people working at that time?

A. At that time, we had maybe up to twenty people seconded to the project.

Q. This was

A. And most of them were from Telenor Mobil.

Q. This is at the time of the roll-out?

A. Yes, that started towards the end of '95 and continued into '96.

Q. And I think that Telenor had seconded a large number of people who used to come over the beginning of the week and go back at the end of the week, and they used to do work in connection with the business of the company's?

A. Some did that. Some actually stayed there.

Q. And they were being billed as Telenor Mobil?

A. I am not certain whether they were converted into a bill from Telenor Invest, who was kind of the management for this, or whether they came in as bills from Telenor Mobil directly. Because, again, I was not involved in this, so it could be either/or, but it's probably possible for some other people here today to answer that question.

Q. But whatever way it was being billed or whatever way it was being done, it was, at the time of the roll-out, what is called the roll-off or the roll-out?

A. Yes, but it was not particularly confined to that. I mean, it could happen any time.

Q. Yeah, I appreciate that.

Now, there doesn't appear to be any document that has so far been produced on Telenor Mobil documentation, or

Telenor documentation relating to Telenor Mobil, with David Austin on it. Isn't that right?

A. I have never seen anything else but this.

Q. The other thing that I want to ask you about, Mr. Johansen, is, do you see at the bottom of the page, "ESAT GSM Holdings credit repayments made by Digifone," and under that, "Bid costs re bill"?

A. Yes.

Q. And a sum of 2390089?

A. I see it.

Q. Now, I understand, correct me if I am wrong, I understand that once the bid had been successful, within a period of time after that, which may have been the 15th December, or in around that time, what were known as the bid costs were agreed and finalised between the two companies, so that no further bids no further bills could be put on the bid costs as opposed to any other costs?

A. Again, I was not involved in this process at all. So I cannot confirm dates or anything, but I think the procedure seems right.

Q. So that beyond the date and we'll take it as being the 15th December for the moment, because I accept that you are not certain, or not knowing these things beyond that date, any costs which had which were incurred would have to relate to roll-out costs?

A. I don't think roll-out cost was a thing very

specific. I mean, roll-out was part of the start-up costs that we now incurred.

You had to bear in mind that the company was not yet capitalised. It wasn't really fully incorporated and capitalised until May/June '96, so all costs in this phase, working capital, roll-out cost, general expenses, everything was, you know, kind of shared between the parties involved, and some parts of it advanced by a party, some other parts paid by the company, but some partial payment into the cash of the company. So there is nothing mysterious about the roll-out. It was one part of the costs incurred.

Q. I appreciate that, Mr. Johansen. What I am trying to badly get across is the fact that as of sort of December, mid-December or sometime in that period, the companies, for one reason or another, determined that the bid costs should be finalised, and a figure was agreed which was in or about the 2 million 1.99 plus VAT, which I think is 2.38, and that became the finalised bid costs as of that time. And that was referred to in the Shareholders' Agreement as the licence bid costs. Do you remember that?

A. Well, I think that's correct. Because when the award of the licence was announced in October '95, that kind of concluded one chapter in the company's history. And up to then, I think probably we accounted for that as a bid cost. After that, it was start-up cost associated

with the real company.

If you hadn't got the licence, of course, the bid cost would have been just an expense. In this case, it would be put on the balance sheet of the new company.

Q. It's referred to, Mr. Johansen, at number 3 of the Shareholders' Agreement. And what it says is: "The company has paid to ESAT GSM Holdings Limited the amount of 1999879 plus VAT Irish, in respect of costs incurred in the preparation and submissions of the bid for the licence."

And that, I am suggesting, is the figure which is referred to in Mr. Maloney's document as bid costs re bill 2390089, works out at roughly 199 plus VAT.

A. It seems right.

Q. One of the results of that, I think, Mr. Johansen, was that so far as Mr. Austin's bill was concerned, for consultancy work for 1995, insofar as that is a legitimate or valid document, it would relate back to costs incurred in relation to the bid, isn't that right?

A. If the

Q. Insofar as it is a valid document at all, it would relate to prior work

A. If you mean that if David Austin had been an ordinary consultant?

Q. Yeah.

A. And if the wording on his invoice had been correct, it would have been didn't say which period in '95, of course, but I think a general assumption would have been that it will have been periodically for the full 1995.

Q. Just in relation to the invoices, I want to be absolutely clear about this. So far as you are concerned, you are saying that in relation to none of the invoices did you have any involvement?

A. No.

Q. Either in relation to creating them, preparing them or giving directions as to what should happen to them?

A. No.

Q. Or as to whether they should be shredded, or credit notes go out, or not sent at all?

A. I had no involvement.

Q. You had no discussions that you can recollect, either directly or indirectly, with Mr. Digerud or Mr. Simonsen or Mr. Thygesen or anyone else in Telenor in relation to those invoices?

A. No, except for the first discussion with Mr. Digerud.

Q. So that as of the 19th December, the 20th December, you have no recollection of a direct involvement in relation to these issues?

A. I had no involvement.

Q. You feel there is a possibility that you might have had an involvement in or about the letter of the 19th

February, but other than that, you have no other

involvement?

A. That was not an involvement as such, but I informed

Denis O'Brien that a letter had been received at some

point of time.

Q. So far as Mr. Simonsen is concerned, am I right in

understanding that you didn't speak to him on any

occasion in connection with this matter?

A. Not about procedures, how to go about or anything like

that.

Q. And your contact point with Mr. Simonsen was

Mr. Digerud?

A. Well, in this matter it was kind of a one-off, yes,

with Mr. Digerud.

Q. Mr. Thygesen, I understand, his term as CEO finished on

the 19th February, the same day as the date of the

Austin letter, 19th February, 1996?

A. Yes.

Q. And he was replaced by Mr. Digerud and Mr. Maloney as

joint CEOs?

A. Correct.

Q. From that time?

A. I think it was, if not the same date, at least the same

time.

Q. Now, in relation to your recollection of the 19th/20th

December, first of all, you had no recollection of

those two days on the first day that you gave evidence?

A. I said yesterday that I had a relatively clear picture that I had informed Denis O'Brien about the invoices and the letter from David Austin. What I couldn't say in the first evidence was exactly when and how it happened.

Q. But certainly when you met Mr. Digerud in August/September, he recalled things to you, and as a result of that, you say your memory clarified?

A. Yes.

Q. If you just turn to page 24 of 115, question 83, the question was:

"Question: Did you think at that point" and this is in the context of the invoice dated 14th September, enclosed with a covering letter, and Mr. Healy was asking you: "Did you think at that point of contacting Denis O'Brien, even if only to get some comfort from him, who was, after all, the person whom you say you relied on to make judgments about the Irish situation, that this was an okay, this was a proper thing to do?"

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

"Question: You then say: "After returning to Oslo you gave an instruction to the accounts department of Telenor to pay the donation. You say that you

understand that a swift transfer" and you go on to deal with the details.

So that was your evidence in May of 2001, Mr. Johansen, in relation to this period of time.

A. Yes.

Q. And clearly, if you take answer 84, "After returning to Oslo you gave an instruction to the accounts department of Telenor to pay the donation"; is that now your recollection?

A. Well, as far as I can see, you are referring to the question.

Q. Sorry?

A. I think you referred to the question and not the answer.

Q. What Mr. Healy was asking you was, "You then say in your statement: "After returning to Oslo you gave an instruction to the accounts department in Telenor to pay the donation."

The answer: "I don't quite follow you now."

If you want to go over the page

A. Exactly, that was my answer.

Q. And quite right too.

If I can go back to my question: If you take your statement as provided to the Tribunal in May 2001, you appear to have said in that statement, after returning

to Oslo you gave an instruction to the accounts department of Telenor to pay the donation. Is that now your recollection?

A. No. The exact sequence is that I gave the letter to Knut Digerud, who instructed the accounts department, or Per Simonsen, who instructed the accounts department. But the effect of all this was the same but it's the sequence there. I instructed Knut Digerud, Knut Digerud instructed Per Simonsen, Per Simonsen instructed the accounts department.

Q. I appreciate, Mr. Johansen, the detail can be difficult. I just want to help myself to understand it. But I can take it from that that so far as you and the accounts department are concerned, you did not give the accounts department in Oslo any instructions?

A. No. I never spoke to them.

Q. Any instructions that you gave concerning this matter, you gave to Mr. Digerud?

A. Correct.

Q. And you gave those instructions to Mr. Digerud either at the meeting of the 20th December or on the plane on the way home?

A. It was most likely in the meeting.

Q. Sorry?

A. It was most likely in the meeting.

Q. Did you travel home with Mr. Digerud?

A. I believe so.

Q. But you think it was at the meeting?

A. Yes. Because I think I showed the letter to Denis and spoke with him and came back to my seat afterwards, and then I informed him about what had been sent, and I handed him the letter.

Q. Now, as I understand your recollection of this alleged conversation in the boardroom or at the board meeting, was that you showed the documents to Mr. O'Brien, and he was very relaxed about them?

A. Yes.

Q. And said "Okay."

A. Yes.

Q. And is that the height of it? Is that all that transpired between the two of you?

A. Yes, I informed him that we had received this letter and the invoice from David Austin, and whether he was still of the opinion that we should continue with the matter, and he said, "Yes, just fine, go ahead."

Q. And that was the end of it?

A. That was the end of it.

Q. And you had no further discussion with Mr. O'Brien?

A. No.

Q. None at all?

A. No.

Q. Absolutely certain?

A. Yes.

Q. How would Mr. O'Brien have known that Mr. Simonsen was

dealing with this matter?

A. Pardon?

Q. How would Mr. O'Brien have known that Mr. Simonsen was dealing with this matter?

A. Per Simonsen was the daily contact with the project.

Q. Sorry?

A. It was Per Simonsen who had the day-to-day contact with ESAT Digifone and was the project manager inside Telenor, and he would have the day-to-day management of all matters related to the ESAT Digifone.

Q. So far as you are concerned, am I right in understanding you do not know how Mr. O'Brien knew about Mr. Simonsen dealing with this, if he did, that you didn't tell Mr. O'Brien?

A. No, I am not certain whether that was mentioned in our short conversation, but

Q. Sorry?

A. I am not certain whether that was mentioned or not in our short conversation about the letter from David Austin. But Denis O'Brien would, anyway, have known that Per Simonsen was dealing with the most of the matters regarding ESAT Digifone on behalf of Telenor.

Q. I just want to be clear, Mr. Johansen. I understood you to indicate what you believed to be the conversation that you had with Mr. O'Brien. Are you actually now saying that there might have been more to that conversation, and in particular, that you might have

mentioned Mr. Simonsen's name?

A. I think when he said "Okay, just proceed, just process it normally," Per Simonsen's name could have just dropped out of it, but I am not certain about that, but that's what I have said in the statement as well.

Q. Would Mr. Digerud's name have come up?

A. No.

Q. No. Thanks, Mr. Johansen.

CHAIRMAN: Mr. Fitzsimons.

MR. FITZSIMONS: Just a couple of minor points

MR. MCGONIGAL: Sorry, just two small matters. Two very small matters. I apologise.

Q. Mr. Johansen, if you could go to Book 116 for me. 72, page 20, question 72, Mr. Healy was asking you,

"Question: If somebody asked you to pay money if they gave you a licence, that would also be corruption, wouldn't it?

"Answer: In my mind, yes.

"Question: This particular payment in this case was made in such a way, as you say, to make it invisible in Ireland. If I could use more simple language, it was to hide it in Ireland.

"Answer: The way the discussion went between Denis and myself is he had done donations in the past, and I think he had done several times, and it created a lot

of fuss in the media and he didn't want that any more.

So he was a bit annoyed about this, and he wanted to keep it out of sight of the Irish Press."

What I want to ask you about, Mr. Johansen, is that section there dealing with the donations in the past and that it created a fuss in the media. What were you referring to there?

A. What Denis O'Brien told me, when we had the discussion in Oslo on the 8th December, '95. He explained and this was the main reason for he wanted to do it, pay it outside of Ireland and keeping it invisible in Ireland that he had done quite a few donations, as I understood him, in the past, and it had been a lot of writing in the papers every time. And he was a bit tired of that, and he didn't want any more of it.

Q. You see, as I understand the position the Tribunal may have looked into this already, but as I understand the position, the significant donations which Mr. O'Brien has made and which was the subject of media fuss were made subsequent to these events, and there were no donations made by Mr. O'Brien prior to '95 which created a fuss that he is aware of. But you say that was part of a conversation which you had?

A. This conversation was, you know, at the very end of 1995, and he referred to it. I have no other evidence or proof of this. I have only his word for that.

Q. And the second thing I just wanted to ask you about

was, at 79, the question was page 22 "But you did think that it was strange, and it was one of a number of things that you began to see were strange.

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

What did you mean by that, a lot of persons, onshore and offshore accounts?

A. I mean, we saw companies and private persons; all of them typically would have both onshore and offshore accounts. So when this contribution came to light, and it was Bank of Ireland, but a Jersey account, we wondered about it, but it didn't seem or strike us as that unusual in the Irish context. But what I said also, just before this is, I have learned later that political parties could not have offshore accounts, but I didn't know that at the time.

Q. You see, I can understand that remark made at the present time, but I am a little puzzled as to what it meant in 95/'96, because it predated significant material which would have supported that assertion.

A. Sorry, I didn't understand that question.

Q. Sorry, I missed your last answer.

A. Sorry. Well, I didn't understand your question, so you will have to repeat it.

Q. It's not a very clear question, I accept that, Mr. Johansen, but I have been really trying to understand what you understood by what you were saying in relation to onshore and offshore accounts.

A. I had no specific things in mind, just that we saw that there were typically a double set of accounts in many correspondences. So it looked like it was quite official that people had both onshore and offshore accounts.

Q. The last thing I want to ask you about, Mr. Johansen, is in your supplemental statement of the 18th September. And in the second paragraph, you say you received by post on the 19th December, '95

A. Just one second; could you give me the reference once again, please?

Q. Yes. It's your statement of the 18th September, 2001, and it's the second paragraph.

A. Yes.

Q. And you say you received by post on the 19th December, 1995. Do you see that?

A. Yes.

Q. I just wanted to ask you, in relation to that sentence, do you have a record book of when post comes in?

A. No. No, we don't keep journals like that, so we have no specific record of that. And the letter was not stamped either with a specific date, so that is not established, but I know I had it on the 19th December.

Q. I accept that you may have had it on the 19th. I am just wondering whether it was on the 19th you received it, or it may have been before that.

A. I said in my previous, on or about the 19th December, but my best recollection is that it actually arrived that day.

Q. Thanks.

CHAIRMAN: Mr. Fitzsimons.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS.

Q. MR. FITZSIMONS: Just a couple of questions.

Dealing with the matter just raised by Mr. McGonigal about Mr. O'Brien's initial approach and the discussion about political contributions and Mr. O'Brien's previous problems with making them: What did you or Telenor personnel know about the Irish political scene at that time?

A. We knew almost nothing. I mean, we hardly knew a name in the politics. We didn't understand the difference between the parties, or had not tried to find out about it either.

Q. And what did you know about Mr. O'Brien's own involvement, to the extent that he has described it in evidence, in political parties or in political party sorry, his attendance at political party fundraising events?

A. Well, we knew nothing about that.

Q. And had you had any discussions with him about political contributions before that conversation?

A. No.

Q. And did you trust Mr. O'Brien at that time?

A. Yes.

Q. Upon whom were you relying in relation to gaining knowledge of how business operated in Ireland?

A. Clearly, Mr. O'Brien.

Q. Had you any reason for questioning his judgement in these matters at that time?

A. No.

Q. Were you this is within six weeks of the licence having been granted; would it be reasonable to say that there was almost a sense of euphoria surrounding the project at that time with the grant of the licence?

A. Correct.

Q. And from Telenor's point of view, did Mr. O'Brien carry a lot of the credit for having obtained the licence at that point in time?

A. Surely.

Q. Now, just to move on from that. Mr. Healy was critical of you in the course of your evidence in relation to the statements that were filed after your initial evidence to assist the Tribunal, statements dealing with individual matters prepared on a piecemeal basis, and you were criticised for submitting those statements

by implication and not a full and complete statement.

Now, would you care to comment on that, since you and the other Telenor witnesses are not compellable witnesses and did not have to attend here to give evidence and did not have to furnish any statements at all to the Tribunal? Would you please care to comment on that? How you feel about that?

A. Well, I felt a little sorry for that because in our minds and my mind, we have just tried to be helpful and furnish information, as other statements have come in and other evidence has come in which to some extent contradicts what we have said, and we have tried to be more specific and detailed. We are dealing with a lot of other matters, all of us. We have projects in twelve countries around the world, and we travel a lot, and we have a lot of things to do, and we do not not necessarily have a lot of time to sit together and compile all these things.

So we had done our utmost. We don't see that we have anything to gain from providing more information. It's just more an additional work for us. So I had hoped that the Tribunal will appreciate it to somewhat higher degree that we were trying to be helpful here.

Q. And I think when the final statement was your final statement and the additional statements, particularly that of Per Simonsen, were filed, you, Telenor, were

fully aware of the fact that the new information gave rise to some embarrassment?

A. We were.

Q. Why has Telenor cooperated to this extent with the Tribunal when it didn't have to at all? Why has it done so?

A. We think we have information that can help reconstructing the real history of what actually happened, and we have just tried to be as helpful as we can, but we have no other motive for this. In the Telenor sense, this story broke already in 1997, when we started the initial investigations around it, and so there is no secrets anywhere inside the company. And in the public domain, it broke this spring when we started to give statements and evidence to the Tribunal.

Q. Has Telenor anything to gain by attending here, giving evidence, providing total cooperation to the Tribunal and

A. No, it's almost to the contrary. The more we participate here, the more publicity we get in Norway.

Q. Now, just a couple of little points arising out of the evidence. In relation to the piecemeal statements that were filed in June last after Mr. O'Brien's first day and a half of evidence, who prepared those statements?

A. Can you please repeat the question?

Q. The statements of the 11th, 13th and 19th June that

were filed on your behalf, your statements approved by you, of course who actually prepared them?

A. Yes, in this case they were prepared by Kilroy's Solicitors.

When I came back from my evidence on the 31st May, we had the Pentecost weekend, and I started working again on the 4th June. I left Norway again on the 15th June, so I had, like, nine days of working before I went away for three weeks. And in that period, I also was away from the office two and a half days, so I spent six and a half days in the office.

And I had a lot of things to do before I went on the big break, and I asked Kilroy's Solicitors, and most particularly Tony Layng, who did most of the work here, and he interacted with Jan Edvard Thygesen and Per Simonsen on this.

Q. He made contact with them directly?

A. Yes.

Q. You have told us you went away on your holidays on the 15th June. When did you return?

A. I returned in the middle of July.

Q. And where did you go?

A. I went to America.

Q. To the United States. Now, when you came back in mid-July, I think Mr. Simonsen was away on paternity leave, and then he had his holidays for August, isn't

that so?

A. Per Simonsen was out of the office for the full month of July and the full month of August.

Q. But nonetheless, he returned in early August, when it was decided to address fully the issues, and in view of the fact that he would be giving evidence?

A. Yeah, we managed to get him back for that session.

Q. And Mr. Digerud I think attended also?

A. Correct.

Q. And flowing from that, we have them here, and we have their statements?

A. Yes.

Q. And I think it was the Tribunal who wished to have Mr. Simonsen and Mr. Thygesen and Mr. Digerud, isn't that correct?

A. Absolutely correct.

Q. And they are here voluntarily to assist the Tribunal?

A. Correct.

Q. Even though they are not compellable witnesses.

Thank you, Mr. Johansen.

CHAIRMAN: Anything in conclusion, Mr. Healy?

THE WITNESS WAS EXAMINED FURTHER BY MR. HEALY.

Q. MR. HEALY: Just one matter: The identity of people who may have been aware of what was agreed and what was to be done in relation to these invoices and this

payment of \$50,000.

Mr. Johansen, I think you said to me that you thought that it was only Mr. Simonsen and Mr. Digerud who were aware of the underlying nature of this transaction. Are you sure there was no one else who knew of the underlying nature of the transaction?

A. Inside Telenor, no one else.

Q. Mr. Thygesen didn't know?

A. No.

Q. And as we know from the discussion that you had, or the questions that you were asked by Mr. McGonigal a moment ago, after your meeting with Mr. O'Brien on, I think, 20th December of 1995, you instructed Mr. Digerud to process the payment of the invoice to Mr. Austin and the recoupment or the reimbursement of Telenor by Digifone, is that right?

A. Correct.

Q. Did you tell Mr. O'Brien who would be handling the matter at the Telenor end?

A. No. The only that would not be I mean, we didn't deal with that in any detail, I am sure, but it might have been that Per Simonsen's name came up in the discussion with Denis O'Brien. But even if that didn't happen, Per Simonsen was the ordinary day-to-day contact.

Q. But who told Per Simonsen of the underlying nature of the transaction?

A. Either Knut Digerud or myself. I think it most likely was Knut Digerud.

Q. Mr. O'Brien, you say wanted to make sure the whole thing was kept invisible in Ireland, is that right?

A. Correct.

Q. According to your evidence, he knew that the way it was being handled was by the raising of an invoice for consultancy work, isn't that right?

A. Yes.

Q. And he knew that this was the way it was going to be kept invisible, if you like, isn't that right, by putting this smokescreen of consultancy services over it?

A. Yes.

Q. So he had to be sure that the person he was talking to in Telenor knew all of that, isn't that right?

A. Yes.

Q. After you spoke to Mr. Digerud at the meeting of the 20th December, you say that your next am I right in thinking that your next dealing in connection with this matter was the communication, whether it was by telephone or at a meeting or otherwise, was Denis O'Brien regarding the letter of receipt, if I can call it that? Is that right?

A. Yes, I had no contact with the process as such in between those letters.

Q. Unless you spoke to him in the period following the

payment but during which Mr. Austin appears to have been complaining that it hadn't been made, is that right?

A. Correct.

Q. And that piece of information, if it didn't come from Mr. O'Brien himself, but if it came indirectly, had to have come then from only Mr. Simonsen or Mr. Digerud, isn't that right?

A. I believe Mr. Simonsen.

Q. Mr. Simonsen?

A. Yes.

Q. Thanks very much.

CHAIRMAN: Well, Mr. Johansen, once you did come here, you were an important witness, and I think there was no way out but to ask you quite a lot of questions from different points of view. But at the same time, I appreciate you are a very busy person; you did not have to come here, and you have gone to quite a considerable amount of trouble with your colleagues, and I am very grateful for that. Thank you.

A. Thank you, Mr. Chairman.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Knut Digerud.

KNUT DIGERUD, HAVING BEEN SWORN, WAS EXAMINED AS

FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Could I just explain, Mr. Digerud, the procedures at the Tribunal, because I am slightly disturbed by a question that was put by counsel asking for Telenor, suggesting that the Tribunal criticises anybody.

The Tribunal is carrying out an inquiry, and the function of the Tribunal in carrying out that inquiry is to examine every aspect of the matter from all sides. So whilst I may put questions to you which might appear to be critical, that is not the intention. It is to try and get at the truth from all sides. Do you understand that, Mr. Digerud?

A. I do.

Q. Now, I think you provided a statement for the assistance of the Tribunal, isn't that correct?

A. That's correct.

Q. And my intention is to go through that statement with you, to lead you through it, and then to come back and maybe ask you one or two questions to clarify, and then, if necessary, to put the position of Mr. Denis O'Brien, who is also assisting the Tribunal in its inquiries. Do you understand that?

A. Yes.

Q. Now, you have informed the Tribunal that you are Knut Digerud, former Chief Executive Officer of ESAT Digifone Limited; that you were the sole Chief

Executive Officer of Digifone from the 23rd February, 1996, until the 13th May, 1996; and you were joint Chief Executive Officer with Barry Maloney from the 13th May, 1996, until the 1st July, 1997, when Barry Maloney became the sole Chief Executive Officer of Digifone. Is that correct?

A. That's correct.

Q. I think you have informed the Tribunal that you remember that Denis O'Brien requested a private meeting with Arve Johansen in Telenor's office in Oslo on the 8th December, 1995, is that correct?

A. Yes.

Q. After that private meeting, Mr. Johansen confirmed that he had agreed, at the request of Mr. O'Brien, that Telenor would facilitate a political donation to a political party in Ireland. "I cannot remember if the name of the political party was mentioned." Is that correct?

A. That's correct.

Q. I think you have informed the Tribunal that you were informed, as the then Chief Executive Officer of Telenor Invest AS, that although Telenor would fund the donation, Telenor would be reimbursed by Digifone: "I was informed that the arrangements were to enable the donation to be kept confidential in Ireland." Is that correct?

A. Yes.

Q. That's what you were informed.

Now, I think you have informed the Tribunal that you were with Mr. Johansen in his office in Oslo on the afternoon or the evening of the 19th December, 1995, for a meeting to prepare for the first board meeting of Digifone, which was to be held the next day in Dublin.

Is that correct?

A. Yes.

Q. I think the first board meeting in fact was on the 20th December, 1995, isn't that correct?

A. Yes, that's correct.

Q. Mr. Johansen had the originals of a letter dated 14th December, 1995, and an invoice of the same date which he said that he had received from David Austin, a fundraiser. Mr. Johansen showed you the two documents and told you what they were. At the end of the meeting, you saw Mr. Johansen collect these documents and put them in his briefcase, presumably to bring them to Dublin, is that correct?

A. Yes.

Q. I think you have informed the Tribunal that Mr. Johansen and you travelled to Dublin early on the morning of the 20th December for a board meeting of Digifone on the same day. Both of you attended the board meeting, which was held in the Malt House, Grand Canal Quay, Dublin. The approval of Mr. Johansen and

of yourself as directors of Digifone was noted at the board meeting following your nomination to the board of Digifone by Telenor. I think that's correct, is that right?

A. Yes.

Q. At some point during a break in the board meeting, Mr. Johansen showed the original letter and the invoice to Mr. O'Brien. You recognised the documents as the documents that Mr. Johansen had shown you the previous day. You did not participate in the discussion, and you were unable to say what was discussed. Is that correct?

A. Yes.

Q. After the discussion, Mr. Johansen handed the original documents to you with instructions to process the payment and the reimbursement, is that correct?

A. Yes.

Q. You then wrote an instruction in Norwegian on the original letter dated 14th December, 1996, from David Austin. And I think if we just look if you look on the screen in front of you, is that your handwriting?

A. That's my handwriting, yes.

Q. I'll come back to it in a moment and just ask you to translate, but I'll complete your statement for the moment.

The instruction was addressed to Per Simonsen, the project manager of the ESAT Digifone project, as to

what to do. You marked "Okay" on the original invoice in order to approve it for payment by the accounts department of Telenor.

I think you say that on the following day, the 21st December, 1995, you returned to Oslo. You gave instructions on that day to your secretary to arrange for internal delivery of the invoice and letter with your handwritten instructions endorsed on it to Mr. Simonsen. You were on the same floor, and you expect that Mr. Simonsen received the document either on the same day, the evening of the 21st December, or early on the following day, the 22nd December, 1995.

"I think you have informed the Tribunal that you were informed by Telenor's Irish solicitors in November 1997 that three invoices and one credit note were issued by Telenor to Digifone in connection with the reimbursement. You were also informed that the third invoice and final invoice was dated 27th March, 1996, and was issued in Irish pounds.

"On the basis of the preceding paragraph, the first two invoices could not have been processed for payment by Digifone. I understand that the third invoice was approved for payment as part of a group expenditures, which were credited to Telenor as part of Telenor's contribution to Digifone's start-up costs.

"The approval of this invoice for payment was not a matter of negotiation between the shareholders in the lead-up to the Shareholders' Agreement on the 16th May 1996."

You informed the Tribunal that you were not involved in the approval by Digifone of Telenor invoices. The processing and approval of invoices was dealt with by the accounts department of Digifone. If the invoice of the 27th March, 1996 was referred to you for special approval, and you firmly believe it was not, I am sure that I would remember it. "I have absolutely no recollection of seeing the invoice or being consulted about it."

I think that completes your statement, isn't that correct, Mr. Digerud?

A. Yes, that's right.

Q. I think, if I could ask you first of all about the question of how this particular sum of money was ultimately dealt with. I think there is no doubt but that it was dealt with on the reconciliation of a running account between Telenor and ESAT Digifone, and it was Telenor were reimbursed by ESAT Digifone for this particular sum, isn't that correct? That's how it was ultimately dealt with?

A. That's correct.

Q. Did you participate in the negotiation of the

Shareholders' Agreement?

A. Yes, I did.

Q. I just want to clarify this. Was this particular sum of money discussed at the share at the negotiations leading to the Shareholders' Agreement?

A. No, absolutely not.

Q. Did you or do you recollect any member of Telenor, staff, or any advisers to Telenor putting any pressure or coercing Mr. O'Brien or any of the people associated with his side of the business or any of their advisers, coercing them into paying this sum of money?

A. No, I did not.

Q. It didn't arise as an issue?

A. No it did not arise as an issue.

Q. Now, if I could go back to the commencement of this particular matter. You say that you can remember Mr. O'Brien and Mr. Arve Johansen having a private meeting in Telenor's office on the 8th December, 1995, is that correct?

A. Yes, that's correct. And the reason is that the meeting was held in my office well, not the meeting with Denis O'Brien, but Denis O'Brien came to Oslo to introduce Barry Maloney. And they came into my office, and we had a meeting, and then it was pause or a break, and then Denis took Arve aside. And then they talked about this issue.

Q. And did Mr. Johansen then tell you what had occurred

between himself and Mr. O'Brien?

A. Yes. Directly after that break, then he came to me and talked to me about this issue.

Q. And what did to the best of your recollection, what did he say to you?

A. Well, he said that Denis had requested to participate in a fundraising for a party.

Q. For a political party?

A. Yeah.

Q. You can't remember whether the name of the party was mentioned or not, but that's unimportant. Or it may not be unimportant. Were you informed whether or not that political party was the main party in a coalition government in Ireland?

A. No, no, it was not. My understanding, that this was a normal fundraising issue which were very normal in Ireland.

Q. Right. Now, Telenor was wholly-owned by the Norwegian government, isn't that correct, at that time?

A. At that time, absolutely, yes.

Q. And Telenor would not have been in the business of making political contributions in Norway, I take it?

A. No, in Norway the State are funding the political parties. So it's not a fundraising issue coming on.

Q. To your knowledge, at that time, had Telenor ever made political contributions to anyone?

A. Not to my knowledge.

Q. So this was unique?

A. It was unique for this purpose, and it was a new country for us. We had other business in other countries, but this was a major event, and this request came from the Chairman, or Mr. O'Brien, who was very taking the whole initiative in talking to us the first time. So we had trust in what he considered to be the right thing to do in Ireland.

Q. Well, what I am really trying to ascertain at this stage, Mr. Digerud: This was a unique event, so can I take it that it's something that you would have a memory of, the conversation Mr. Johansen had with you on 8th December of 1995?

A. Oh yeah, absolutely.

Q. And I think then you can remember the day before the first board meeting of ESAT Digifone, which occurred on the 20th December, 1995, in Dublin, isn't that correct?

A. Yeah. That came up when we had I was called in for the meeting this year, and when I again saw the documents, because I had seen it also in '97 when it all appeared, then I saw the date, and I remember well that the 20th December was the first board meeting.

Q. And the previous day you and Mr. Johansen were preparing for that, isn't that correct?

A. Yes. We agree that we had planned to sit together and go through all the documents we had before we were travelling to Dublin.

Q. Now, you say that on the 19th December, that Mr. Johansen had the originals of a letter dated 14th December, 1995, and an invoice of the same date which he said he had received from Mr. David Austin, the fundraiser, isn't that correct?

A. Yes, that's correct. He showed me and told me that now the invoice, or a document has come from the fundraiser, and we had to follow up on that. And he wanted to bring it to Dublin to talk to Denis about it.

Q. Very good. Now, if we go back to the 8th December, when Mr. Johansen first told you of the agreement to facilitate a payment on behalf of Mr. O'Brien and Digifone, no mention was made of a fundraiser or David Austin to you at that stage, was it?

A. At that stage, I can't recall any names.

Q. Did it seem in any way surprising to you on the evening of the 19th December, when you saw this documentation, that there was no reference to a political party?

A. I didn't read the document carefully at that time.

Q. So how do you know that these were the documents you were shown on that day?

A. The reason was that it was a coloured document.

Q. It was what, I beg your pardon?

A. I think it was a yellow/brown-ish paper.

Q. When did you last see the original of these documents?

A. The last time I saw these documents?

Q. The originals. I take it the evening of the 19th

December of 1995 you saw the original letter and invoice as received by Mr. Johansen from Mr. Austin?

A. Yes. The sequence of events was I saw the documents in my office on the 19th. He gave it after the break and the talks in Dublin in the board meeting, in the boardroom, or the room where the board was held. He gave it to me, I signed it, or I put these notes on, dated it 20th December, and I okayed the physical that was just before the board meeting was starting up again.

Q. If I could take it slowly, Mr. Digerud. The documents that you saw on the 19th December, you say, were the same documents you saw Mr. Johansen put documents into his briefcase on the 19th?

A. Correct.

Q. You came to Dublin, and there was the board meeting; there was a break in the board meeting?

A. Yeah.

Q. You saw Mr. Johansen have a discussion with Mr. O'Brien, is that correct?

A. That's correct.

Q. Did you see him show Mr. O'Brien the documents?

A. I had the documents in hand.

Q. And were these the same coloured documents that you had seen the evening before?

A. That was the same document. And when he came back from that talk, he gave it straight to me.

Q. He had them in his hand?

A. In his hand, gave it to me.

Q. Gave it to you?

A. Yes.

Q. And told you to process these?

A. Yes, and I put it immediately these wordings on the document.

Q. Now, have you seen those original documents of recent times?

A. I have seen this when I had a meeting in Telenor's offices in August, and I saw the documents also in the autumn of '97, when this came up as a part of the discussions we had here in Dublin.

Q. And those are the same original documents?

A. It's exactly the same documents.

Q. Now, if I could just put up the letter with your handwriting. It's the letter to Mr. Austin from Mr. Austin which encloses the invoice for consultancy work, isn't that correct? That's your handwriting?

A. That's my handwriting, yes.

Q. Could you just translate it for us, please?

A. Yeah. It's "Per", underlined. "This has to be paid by us and invoiced as management cost to Digifone. And 20th December. Knut D."

Q. That's your initials?

A. That's my initials, yeah.

Q. And did you put that on that letter in Dublin?

A. In Dublin, just after I got it from Arve. And I put it out in my briefcase.

Q. Now, on the invoice itself, then, there is some handwriting, but I think you can identify on the right-hand corner of the invoice, "Okay, KD." That's your entry also?

A. That's mine.

Q. Now, you can see, if you look at the top of the document, there is other writing in Norwegian on the documents. Do you know who would have put those on?

A. I think it will be the Swedish accountant we have, because it's written in Swedish.

Q. I see. I see. What does it say, do you know?

A. It's "Copied," then it's "Invoicing further."

Q. "Invoicing further"?

A. Yeah. I am not quite sure if it's the right translation.

Q. Do you know what that means?

A. Well, it should be invoiced onwards.

Q. And there is a reference, do you see that, "V526"?

A. Yes.

Q. Is that a Telenor or is it a further invoice on reference, do you know?

A. I don't know. But I would think it is a reference in our books.

Q. In your books, you think. You may have heard Mr. McGonigal, acting on behalf of Mr. O'Brien, asking

Mr. Johansen how this was dealt with in the accounts of in Telenor's accounts?

A. Yes.

Q. Do you know if that invoice, or that reference would be of any assistance in getting to the bottom of that?

A. Well, I can't tell, but maybe it will be a number of reference to the numbering system in the accounts.

And the date certainly is two days later than my signatures.

Q. Now, I think you had possession of these two documents from the time of the board meeting in Dublin on the 20th December when Mr. Johansen handed them to you, isn't that correct?

A. That's correct.

Q. You brought them back to Norway?

A. Correct.

Q. And you handed them to Mr. Simonsen?

A. Yes.

Q. Or you had your secretary give them?

A. Yes. Per was working for me as a project manager for this project, just to have that clear, and Mr. Johansen was the Chairman of Telenor Invest, sitting in another building.

Q. Just to be clear about this, Per Simonsen was the project manager, isn't that correct?

A. Yes, correct.

Q. And did you see or have any dealings with these

particular invoices after that?

A. No. Then it went into accounts, and Per took care of it.

Q. It became an issue again for you in 1997 when other matters arose, isn't that correct?

A. Yes. Then it became clear to me that something could have happened. And I was in Dublin, I had been in Dublin since early '96, so certainly this made me a little well, made me frustrated that we did not have or I did not have information to what extent this money had come to the right place.

Q. Just to be clear about it as well. You have given evidence that you did not sign off on these particular on this particular invoice as Chief Executive Officer of Digifone?

A. I cannot recall that I did that, no.

Q. I don't think that it is important to establish that at the moment, Mr. Digerud, because of the evidence which Mr. O'Donoghue has given; but you have no recollection of signing off on this particular invoice, either as sole Chief Executive Officer or joint Chief Executive officer?

A. No.

Q. Now, when you gave the documents to Mr. Simonsen, did you tell Mr. Simonsen what this was about?

A. I think I told Per actually before that, between the 8th, when Denis O'Brien and Mr. Maloney came to Oslo, I

think I told Per that we would

Q. You would be facilitating

A. That we would prepare for a facility of \$50,000. So I can't recall that I told Per more about this invoice when it came, when it went by hand from the secretary to Per's desk.

Q. Maybe I am wrong, but it seems that only three people in Telenor knew what the true nature of this transaction was, isn't that correct?

A. Yes, and we were a small company. Telenor Invest was an investment management company for investments abroad, and as also has been explained, that the people who came to Dublin to work for Digifone came out of Telenor Mobil company, so we actually then took the people from them and gave them the necessary instructions, go to Dublin. And they did the work, and we were the management company owning physically the shares of Digifone.

Q. Of

A. Of ESAT Digifone.

Q. The staff that came out of Telenor Mobil were the technical staff, would that be correct?

A. Were mainly technical staff, but some people into marketing and management yeah, management as well, technical management. And Jan Edvard Thygesen, who was the first one, came out of Telenor Mobil.

Q. Can you remember if you had any discussions with

Mr. Simonsen after you either handed him the documents or arranged for your secretary to get the documents to him?

A. I cannot recall that I talked with Per about this any more. For us, it was a pure transfer of money.

Q. Now, I don't want to go you to deal in any great detail with this matter, but there has been a lot of evidence at this Tribunal about various meetings which occurred involving representatives of shareholders of ESAT Digifone and the board of ESAT Digifone around the time of the IPO of ESAT Telecom?

A. Yes.

Q. You attended some of those meetings, isn't that correct?

A. Yes, I did.

Q. And you are recorded in some of the notes that we have seen of that meeting as expressing a view that you felt that the IPO was taking place prematurely in light of information which was coming to hand which required to be examined, isn't that correct?

A. That's correct.

Q. Could you assist the Tribunal in, as best you can, giving us some evidence of your state of mind as to why you felt that there was insufficient time to carry out what you considered to be appropriate inquiries before the IPO proceeded?

A. Yes, I will.

First of all, I felt that the way we, by being a shareholder in Digifone, were pulled into the discussion of an IPO of, I'll call it an affiliate company, by using and we knew that Digifone was a major part of that IPO, but in many cases, we were just given a set of documents a few days after. And that was equally for the fundraising which has occurred a couple of times before the IPO as well, to establish what was said about Digifone. And also when this IPO came about, and when these events by Barry Maloney explaining what he had heard, it struck my mind definitely at that time, what about our \$50,000? What sort of security do we have of understanding and knowing that this money had gone to the right places?

And I was the one who was responsible, sitting in Dublin on behalf of Telenor. And in '97 I was out of the physical administration of the company, but I was sitting here heading up what we call Telenor Ireland. We had a couple of other companies also in Ireland. So I felt particularly strong about understanding I wanted to understand and find out, because if we were going in an IPO in the US and we being indirectly involved, we were liable for being sued in the US, and I didn't like that.

So I certainly talked also to my colleagues. And I think, probably, as I have seen Arve's statements now,

that him writing to Digifone about insurance systems for board members was an issue, because I felt we were pulled into the situation dramatically. And when it came about, this, as I said, Barry Maloney informing us about the other story, then I wanted to find out more about this case as well.

And from the meeting on the 4th and 5th November, then that was the first time I heard about that this, as I say, confirmation letter from Mr. Austin; that was the first time I heard about that. Arve has had that, but he didn't think that was too much an issue. That gave a little, little comfort, but not enough.

But I felt, and I was told that in no way could we or I or anyone in Digifone stop the IPO, because we were not the IPO. And we had not time enough to get hold of the necessary information, and going we didn't know, I didn't know where to go, actually. But I had to express myself that I was uncomfortable. That's what I did.

Q. Thank you, Mr. Digerud.

CHAIRMAN: Mr. McGonigal, it's relatively close to the time I projected taking a break. I don't want to interrupt you I mean, if you think you will be less than fifteen minutes.

MR. MCGONIGAL: I think I have one or two very small

questions, if even that.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. Digerud, I wanted clarification, really, in relation to the letter from Mr. Austin, where you have written a direction to Per; that's the letter of the 14th December. And I understand that to mean in part that this was to be invoiced as a management cost, is that right?

A. Yeah, I put it that management cost, thinking of this was just in the break, and we were about to start up the meeting again. And for me, putting management cost versus anything else I didn't read through the details, and to be honest, I saw the that it was an England address, Chelsea address. And later on I found out that it was a Jersey account, but that didn't occur to me at all. But the management cost, as such, was that this was an agreement on management level.

Q. I may be the only question I was asking you, Mr. Digerud, was, am I right in understanding that you have written "Management cost" there?

A. Yes, it's a shorthand for management cost.

Q. The second question I wanted to ask you is: What did you mean by "Management cost" when you wrote "Management cost"?

A. That this was an agreement on the management level.

Q. How did you invoice a management cost at that time in Telenor?

A. We could invoice it as just saying "Management cost" or "Consultancy cost" or whatever. It means more or less the same. I am using the different words.

Q. So what kind of an invoice did you anticipate would be issued following your direction?

A. That it would be an invoice on Telenor Invest's paper. And whether or not it was management cost or consultancy cost, I didn't think about that at all.

Q. And did you give any instructions in relation to the payment of the 50,000?

A. Not myself, no.

Q. No?

A. No. All my instructions went to Per, for him to deal

Q. But the only instruction you gave to Per was this instruction?

A. Was this instruction, and I okayed that it was the 50,000.

Q. Now, the writing on the second document, as I understand it, the only written material which you claim credit for is the "Okay" and the signature?

A. Yes.

Q. So far as the translation at the bottom of the page into 316,000 Norwegian, that is not your writing?

A. That's not my writings, no, absolutely not.

Q. And the reference at the top is not your reference?

A. That's not my reference either, no.

Q. That apparently may have been put there by a Swedish accountant employed by Telenor?

A. On the top one, there were maybe others who were putting the references and the dates on that in the accounts department.

Q. That's the accounts department where the Swedish accountant worked?

A. Yes.

Q. And he obviously had some input into that?

A. She was in charge of the accounts department.

Q. And the reference there might be either a reference, a file reference within Telenor, or it may be a bank reference?

A. It could be either/or.

Q. Is that right?

A. It could be either/or.

Q. It could be either/or, and you have no idea?

A. No idea.

Q. I understand that the original documents are in fact here, is that right?

A. The original document?

Q. Yes, the original documents being the letter of the 14th December and the invoice?

A. Yes, these are the two pages

Q. I understand that your solicitor has them here, is that

right?

A. The originals?

Q. Yes.

A. I don't know.

MR. FITZSIMONS: If Mr. McGonigal is calling for the originals, having seen them across the desk, they are here, yes, Sir, and I was going to produce them to the witness so that he could demonstrate the colour of them to you, Chairman.

MR. MCGONIGAL: I'll leave that to Mr. Fitzsimons.

Q. In relation to an invoice, Mr. Digerud, during the time that you were joint CEO, when it came into ESAT Digifone's office in Dublin, I understand that there was a sorting area for post on the ground floor of the building, or somewhere there, and then the post was delivered to the various companies throughout the Malt House, is that right?

A. Yes. I remember it was a reception, and it was a small room beside the reception, and the post were dealt with there.

Q. And it was separated and then sent to the various companies?

A. That's my understanding.

Q. So that any documents which came for ESAT Digifone would have gone to the offices of ESAT Digifone, wherever they were?

A. Yeah, we were sitting spread, but maybe in that early phase, Mr. Thygesen when I came, we were sitting at least over two floors, and Peter O'Donoghue had double offices, one on the top floor, and he had a desk with us, so

Q. And that post, when it arrived in ESAT Digifone, was it opened at that stage, or had it been opened down below?

A. I can't recall. It was names on it; I presume it went directly to individuals. Whether or not it was in the start-up early days when we came to Baggot Street and we started up a real post system

Q. Let me try it this way, Mr. Digerud. If you had been sent a letter which arrived in the Malt House at this time, when it arrived at your desk, would it have been opened by someone prior to you getting it, or would you have received it opened?

A. I can't recall the procedures, to be honest. Sorry.

Q. But it would definitely have gone to you, either opened or unopened?

A. I didn't receive much documents directly, because it was either technical documents to the technical director, was financial coming to that, I got it from them so to say, it was very few documents which came to me as a CEO, straight in.

Q. In respect of documents which were not addressed to anyone, what would happen to them?

A. The majority of the documents in the early phase went

to Peter O'Donoghue or the administration or whoever was at that time, I am not sure.

Q. They would then be disbursed by him if they weren't necessarily for him?

A. Yes, he was the conduit of the company, yes.

Q. But certainly in respect of invoices and documents of that kind, they would have stayed with Peter O'Donoghue or his office?

A. Yeah.

Q. Would those invoices have gone on occasion to either yourself or Mr. Maloney?

A. No, not directly.

Q. Not directly?

A. No.

Q. Indirectly?

A. If it was named, our names, but certainly for myself, I would have gone straight sent it into the accounts department.

Q. In relation to faxes, what was the procedure?

A. I would assume it went the same way, that those who had any responsibility for the fax did the same.

Q. Thanks, Mr. Digerud.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

MR. FITZSIMONS: One question.

Q. Could you please, Mr. Digerud, identify look at these documents. And my question is, are these the

originals of the David Austin letter and invoice? And there is another document attached, and their colour is I think you described it as yellowy brown?

A. Yes.

(Documents handed to witness.)

Yes, it's exactly the same. This is my handwriting.

MR. FITZSIMONS: If the Chairman could be shown the originals.

(Documents handed to Chairman.)

MR. FITZSIMONS: Well, Mr. Coughlan has made a request for them. There was no request for the originals before now, and we certainly had not attached any significance to the colour before now, and photocopies were furnished in the belief that that was enough.

But I believe

CHAIRMAN: I think it's probably desirable that the primary source be made the actual substantive exhibit.

MR. FITZSIMONS: No request was made for the primary exhibit.

CHAIRMAN: I understand.

Nothing in conclusion Mr. Coughlan?

Thank you very much for your assistance, Mr. Digerud.

THE WITNESS THEN WITHDREW.

CHAIRMAN: I think that brings us roughly to the projected time of breaking. It would seem likely that we may manage to conclude the various witnesses who have attended from Norway, so we will resume at five to twelve. Thank you.

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

MS. O'BRIEN: Mr. Jan Edvard Thygesen, please.

JAN EDVARD THYGESEN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MS. O'BRIEN:

Q. MS. O'BRIEN: Thank you, Mr. Thygesen.

Mr. Thygesen, I think you are an executive vice-president of Telenor, and you are president and Chief Executive Officer of Telenor Telecom Solutions?

A. That's right.

Q. And I think you furnished the Tribunal with a statement of the evidence that you are in a position to give regarding the matters which the Tribunal is inquiring into, and I wonder if you have a copy of that statement with you in the witness-box?

A. Yes, I have a copy.

Q. And what I propose doing is taking through that statement, Mr. Thygesen, and there may be one or two

matters which I might wish to clarify with you.

A. Yes.

Q. You say in your statement that you are Jan Edvard Thygesen, an executive vice-president of Telenor and president and CEO of Telenor Telecom Solutions AS. You say that you were the Chief Executive Officer of ESAT Digifone Limited from the first week in November, 1995, until the 19th February, 1996, is that correct?

A. That's right.

Q. You say that with reference to the donation of US \$50,000 to the Fine Gael Party and the three reimbursement invoices under inquiry by the Tribunal, at no time did you ever process, approve or have any involvement of any kind with any of the three invoices from Telenor to Digifone, is that correct?

A. That's correct.

Q. You say you did not have any communication with Per Simonsen or any other Telenor employee in relation to these three invoices, is that correct?

A. That's correct.

Q. You say you refer to the evidence of Mr. O'Brien in which he stated in answer to question 313 on day 116, the question being as follows: "Who would have dealt with invoices coming in?"

And here you quote from Mr. O'Brien's evidence: "The acting CEO would have dealt with that, who was a fellow called Peter O'Donoghue, but I suspect, because these

were Telenor invoices, they would have gone to the CEO."

You state that Mr. O'Brien then names you as the CEO, and you give the reference to the transcript day, page, and question number, and you deny that any of the three Telenor invoices were sent to you for approval, is that correct?

A. That's correct.

Q. You state that you did not shred any invoice or request or instruct any other party to shred an invoice, is that correct?

A. That's correct.

Q. You state that you have examined the time period in which these invoices were furnished. You state that based on information recently supplied to you, you were informed that the first invoice was dated the 3rd January, 1996. You state that this invoice was shredded. You state that this was done without your knowledge. You state that it is clear that this invoice was never approved for payment. And I take it that all of that is correct?

A. That's right.

Q. You state that you have been informed that the second invoice was negated with a credit note, and therefore it was never approved for payment. You state that you could not have approved either of the first two

invoices for payment, because these invoices were never approved for payment. You state that you understand that the third invoice was dated the 27th March, 1996, that this would have been received by Digifone more than a month after your return home to Norway, and that you had nothing to do with this invoice, and that you have only recently been aware of it. And is that correct?

A. That's correct.

Q. You state that you were not involved in the matter of the donation of \$50,000 to the Fine Gael Party, and you did not know of the donation either when it was made or when it was later reimbursed by Digifone to Telenor, and that I think is apart from stating in conclusion that you know nothing whatsoever about any of the matters under inquiry.

I think that completes your statement?

A. Mmm, that's correct.

Q. I think you have stated in your statement that you were appointed as CEO in November of 1995 and that you ceased to be CEO on the 19th February, 1996. And can I take it that during those months, you would have been based solely in Dublin?

A. Yeah, I was in Dublin all the time.

Q. I think then Mr. Digerud was appointed Chief Executive Officer to replace you?

A. Yeah, that's right.

Q. I think in your statement you say that you didn't process or approve or have any involvement of any kind with the three invoices from Telenor to Digifone, and that you had no communications with Mr. Simonsen or any other Telenor employee in relation to those three invoices; and I take it that that includes Mr. Digerud, Mr. Simonsen, and Mr. Johansen?

A. Mmm, that's right.

Q. Can I take it also that you had no other contact with any other ESAT Digifone employee in relation to the invoices?

A. No, I didn't know about the invoices.

Q. Can I just refer you to the first of the invoices, Mr. Thygesen; that's the invoice dated 3rd January of 1996 for 316,000 Norwegian kroner. You state that the shredding of this invoice was done without your knowledge.

A. Yes.

Q. Now, I think you may have noticed earlier on that there was a handwritten document on the screen, and perhaps we could just put that on the screen, which shows the intercompany balances between ESAT and Telenor as of the 31st December of 1995. I don't know if you prefer to have a hard copy of that document; we can hand that up to you.

A. I have seen it this morning.

Q. You have seen it. That document, I think we know, was

prepared in Dublin?

A. Yeah, I understand that.

Q. As Chief Executive Officer at the time, would you not have been aware of the contents of this document, or would it not have come to your attention?

A. I cannot remember this paper.

Q. You have no recollection of this

A. No.

Q. document?

A. No.

Q. In the ordinary course of your duties as Chief Executive, would it be usual for these kind of, I suppose we could call them nominal ledgers or balances would be brought to your attention, say, at month's end, when you are overviewing the finances of the company?

A. I got the estimated costs for this operation each month, but I can't remember any handwritten

Q. You have no recollection at all of this document?

A. No, no.

Q. You heard from Mr. Digerud's evidence this morning that he was referring to the meeting of the board of directors of ESAT Digifone on the 20th December of 1995 which was held here in Dublin in Malt House. Were you present at that meeting, Mr. Thygesen, either as Chief Executive Officer or in any other capacity?

A. Yes, I prepared an agenda for that meeting.

Q. Were you present throughout that meeting on the 20th December?

A. I was present at the meeting, yes.

Q. And were you present in the room at the time that the break was taken that Mr. Digerud referred to?

A. Yeah, probably we had a break. I can't remember the details, but it was a lot of cases on the agenda, so we probably had a break.

Q. Do you recall at all the incident that Mr. Digerud has referred to when he observed Mr. Johansen handing documents to Mr. O'Brien during the course of a break in that meeting?

A. No.

Q. You have no recollection of that?

A. No.

Q. Are you surprised, Mr. Thygesen, that as Chief Executive Officer of ESAT Digifone, that bearing in mind the arrangement that had been reached, that this payment of \$50,000 would be reimbursed by ESAT Digifone, that effectively, you were kept in the dark completely as regards this arrangement?

A. I don't want to speculate on that.

Q. Can you tell me can I just, maybe I can approach it like this: When did you first become aware of this matter?

A. Probably when it was some internal discussions of this in '97 I heard about it.

Q. In 1997?

A. Yeah.

Q. At that stage, did you have any role in ESAT Digifone in 1997?

A. No.

Q. And what position did you hold in 1997 within the Telenor organisation?

A. In '97 I hold two position. I was when I went back to Norway, I took over as the Chief Executive of Telenor Invest, and Digerud came here and took my position. During '97, because the same reason why I couldn't be stationed abroad, because my family position, I had to have a position at home. So I went and became the Chief Executive of the fixed network in Norway.

Q. I see. And in November 1997, would have been Chief Executive of Telenor Invest?

A. No. That I did on the 1st October I think, '97.

Q. And do you recall in what context or how it arose that you might have become aware of this issue after you had returned to Norway and had ceased to have any involvement in ESAT Digifone?

A. Could you repeat the question, please?

Q. Do you recall that after you left Dublin and you returned to Norway, I think you indicated in evidence that you became aware of this issue sometime in 1997, and do you recall how it was you became aware of it?

A. No. I just heard it it could be no, I can't remember.

Q. You can't recall?

A. No. And I was not involved in the internal discussions about this.

Q. I see. At the time you were Chief Executive Officer, though, of ESAT Digifone, were you not, and you were the most senior person in a managerial position in ESAT Digifone?

A. Yes.

Q. In the ordinary course, would you have not expected that you would have been informed that ESAT Digifone was assuming a liability of \$50,000 to Telenor?

A. No, that was not a big amount in this type of operation. This type of invoices goes to the accountant department and the CFO, and I was planning working with planning the new network, the new operation, setting up the station, preparing for a new house where we can go into, where we should have our customer service. And it was really to build up a big organisation in nine months, because that was the licence condition, to be ready for operation after nine months.

Q. I understand all of that, Mr. Thygesen, but this was the only liability which ESAT ever assumed to reimburse what was a political donation, so this liability was a liability that was entirely different from the usual

run-of-the-mill liabilities that might arise in the set-up of a business. Isn't that correct?

A. I can't say anything. I didn't know about this, so

Q. Can I just refer you finally to the intercompany account between the two companies. That's the typewritten document which sets out the liabilities between January and May of 1996. I think you have probably seen this document, have you?

A. No.

(Document handed to witness.)

Q. This, I think, is a Telenor document, and I think a hard copy of it is being handed up to you.

I think this is a document which would have been produced at the Telenor end, and it shows the intercompany liabilities between Telenor and ESAT Digifone. And do you see there, the first entry on that intercompany account is dated 31st December, 1995, for 316,000 Norwegian crowns, I think it is. And then the next entry, 24th January, 1996, appears to be the credit note for that amount.

A. Mmm.

Q. And do you see both of those entries?

A. Mmm.

Q. And I think that first entry represents what was comprised in the second invoice raised by Telenor, and

the second entry represents the credit note that was then issued. You see those two entries?

A. Yeah.

Q. You see that they were the very first entries on the intercompany account between Telenor and ESAT Digifone?

A. Yes, I see that.

Q. Can you tell me, was a similar document which mirrored that produced in Dublin at the ESAT Digifone end?

A. Yeah, probably, but I can't remember I have seen such a document.

Q. And again, in the ordinary course, would that document not have come to your attention as Chief Executive Officer?

A. No, not necessarily, because this is this specified the invoices. I would see the P and L, but not to the specific invoices in that.

Q. Well, if this document or a document like it had come to your attention, would you not have seen these entries, for these sizable-enough sums of money, which are the very first entries on the account?

A. I haven't seen it, so I can't remember these figures these figures doesn't give me any I can't remember I have seen this typical figures here.

Q. I see. Just to come back, I suppose, to my initial question again, Mr. Thygesen, I suppose I have to suggest to you that from the point of view of a member of the public, it might seem surprising that you as

Chief Executive Officer of ESAT Digifone, and a Telenor nominee, was kept completely in the dark.

MR. FITZSIMONS: I must object. That's the second time that Ms. O'Brien has said that. To put a question like that to the witness, that question contains a comment and a conclusion in relation to the evidence of Mr. Johansen in relation to the evidence of Mr. Digerud and in relation to the anticipated evidence of Mr. Simonsen. It implies that Mr. Thygesen was intentionally that information was intentionally withheld from Mr. Thygesen.

Now, I would ask Ms. O'Brien to withdraw the question and simply ask the witness, was he surprised that he was not told of this matter, and leave it at that. But to suggest that he was kept in the dark indicates some deliberate intent on the part of others not to provide information.

CHAIRMAN: I don't think it's necessary, Mr. Fitzsimons, that we become embroiled in controversy over this. I did not interpret Ms. O'Brien's questioning as importing some sinister internal machinations within Telenor to see that the witness was kept uninformed on this aspect, but it is a pertinent question on the bare facts of it. And in fact, I have already inferred somewhat, from the general mode of answering of Mr. Thygesen, that he was generally

somewhat unamused that the controversy arose.

MR. FITZSIMONS: I have no difficulty about the purpose of the question, Sir, but at the present time in the High Court, Dail deputies are being criticised for framing questions in that matter before Dail committees, and I simply ask Ms. O'Brien not to frame the question in a manner that is pejorative to other witnesses who have given evidence and in relation to a matter which you have yet to decide.

CHAIRMAN: Well, Mr. Fitzsimons, I think the phrase "Being kept in the dark" can simply mean no more than not being told through any of a considerable variety of circumstances.

And I think perhaps, Mr. Thygesen, you might just answer this question: Looking back on all the facts now, and bearing in mind that inevitably there has been some embarrassment for Telenor over this political contribution issue, are you surprised that perhaps you were not specifically told by your colleagues? Not because of the amount of money, but because of the nature of the payment.

A. No, I don't want to comment that. I mean, if I was surprised or not. I registered that I was not informed.

CHAIRMAN: You'd rather it hadn't arisen?

A. Pardon?

CHAIRMAN: You'd rather it never happened?

A. I have been informed that it happened, but I am not surprised or I just registered that I was not informed. That's all.

CHAIRMAN: All right.

MS. O'BRIEN: Thank you, Mr. Thygesen.

MR. MCGONIGAL: Just one matter, Mr. Chairman.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. Thygesen, in your statement on the second page, in the second line, you say: "I am informed that the second invoice was negatived with a credit note, and therefore it was never approved for payment. I could not have approved either of the first two invoices for payment because these invoices were never approved for payment."

Could I ask you, what do you mean by "Approved for payment"?

A. Well, if I should approve something for payment, it would have my signature on it.

Q. Do I take it from that that an invoice you would expect to see an invoice being approved before it was paid?

A. At that time, it was we were not really in operation; it was the very early stage of ESAT Digifone's life, and the invoices had an amount that was natural that that was handled by the CFO.

Q. But am I right in understanding that an invoice had to have a signature, whether it was CEO or CFO, or somebody, before payment?

A. Yes, that would be the normal procedure.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Mr. Thygesen, your short period in Dublin, was it an extremely busy time?

A. Yes.

Q. The word "hectic" has been used by other witnesses to describe it.

A. Pardon?

Q. Hectic, that it was hectic.

A. Yeah, it was very hectic, because in the licence condition, we should be up in operation in nine months.

Q. How many hours a day were you working at that time?

A. How many hours?

Q. Per day?

A. 16 hours or something.

Q. In relation to the question of the donation and the arrangements made, have you any reason to believe that this information was deliberately held withheld from you in any way?

A. No. I just registered that I didn't get that information, and that's all.

Q. Thank you.

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

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Per Simonsen, please.

PER SIMONSEN, HAVING BEEN SWORN, EXAMINED AS FOLLOWS BY

MR. HEALY:

CHAIRMAN: Thanks for your attendance, Mr. Simonsen.

MR. HEALY: You have provided the Tribunal with a statement through the solicitors for Telenor, Kilroy's, and I think you have heard some of the evidence this morning, is that right?

A. Yes.

Q. Were you here yesterday?

A. No, I was not.

Q. What I would propose to do is to take you through your statement first simply, as it were, to read it into the record, and then maybe to talk about some aspects of the statement and some other aspects of the evidence that has been given both in the last day or so, and indeed before the summer. You understand?

A. Okay.

Q. You say that you are an employee of Telenor Mobil Communications. You say Telenor was formerly known as Telenor Invest AS from May 1995 until February/March 1996 sorry, I think I have read that wrong. I will just go over it again, because it may have some relevance. You are an employee of Telenor Mobil Communications?

A. Yes.

Q. You are calling that company "Telenor", that's what you now know as Telenor, is that right?

A. Yes.

Q. You say that company was formerly known as Telenor Invest. From May of 1995 until February/March of 1996, you were the project manager of the ESAT Digifone project. You say you ceased to be involved in the project when ESAT Digifone Limited became established as a separately managed company.

You say: "I have been requested to make a statement in connection with the issuing of invoices by Telenor to Digifone in respect of the reimbursement of the payment of US \$50,000 to David FT Austin for a fundraising event. The period of time to which this statement relates was one of frantic activity, and I, as project manager, and many other personnel in Telenor were operating under enormous time pressure to establish the infrastructure of Digifone. There were numerous telephone calls both to and from Telenor and Digifone

every day. I did not have the time to take any notes or keep any records of what I was doing at this time. Therefore, much of my recollection as set out in this statement is based on my best recollection of the events.

You say: "Sometime prior to the 20th December, 1995, Knut Digerud, the then Chief Executive Officer of Telenor Invest, told me 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. I do not remember being informed as to what the purpose of the fundraising event was. Shortly before Christmas, I received by internal delivery, from Mr. Digerud, the original of a letter dated 14th December, 1995, from David Austin, the letter and the original of David Austin's invoice dated 14th December, 1995, for US \$50,000.

"On the invoice, Mr. Digerud had endorsed "Okay," which passed the invoice for payment, and he had also given me 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.' Around this time, I received a telephone call from Mr. O'Brien concerning the invoice and the letter.

Mr. O'Brien was concerned about David Austin's name being mentioned on the documentation from Telenor in

respect of the reimbursement of the \$50,000. Not mentioning David Austin's name presented no difficulty, as I understood that the amount should be invoiced as a Telenor cost to Digifone. I did not refer back to Mr. Digerud on this matter.

"I gave the documentation to the accounts department in Telenor which was located close to my office. We were all on the same floor. I handed the invoice and the letter to the responsible person in the accounts department, and I explained that this invoice had been approved for payment by Mr. Digerud. I instructed the payment to be made to David Austin and that, when that payment was made, to prepare and issue an invoice to Digifone in respect of the same sum of money. I instructed that the invoice should be marked 'Telenor consultancy fee'. I believe that this instruction was given by me on the last working day before the Christmas holiday break.

"From recollection, I returned to work on the 3rd January, 1996. Sometime that day, a person named Irina in the accounts department came into my office and handed me a photocopy of the invoice from David Austin and the invoice being raised by Telenor to Digifone by way of reimbursement of the payment to David Austin. As I had requested the issuing of the invoice, it was natural to provide me with a photocopy of the fax. I

look at the invoice which was raised by Telenor to ESAT and immediately saw the text "Consultant David FT Austin". This was inconsistent with my instructions before Christmas. I asked Irina if the invoice had yet been faxed out to Digifone. She told me she had already given instructions for the invoice to be faxed to Digifone. I went out to the fax machine and the fax had already been sent through to Digifone. I immediately rang Digifone and spoke to a person on the Dublin end. While I cannot recall the name of the person to whom I spoke, I am certain that it was not a Telenor employee. I explained that the text on the invoice was incorrect and requested that the invoice be shredded and I would issue a new corrected invoice in its place. The person on the Dublin end agreed and told me that the invoice was shredded. I then issued an instruction to the accounts department to prepare a second invoice, omitting the name 'David FT Austin' from it, for US \$50,000, which was the currency I had requested that the original invoice be prepared in. This was prepared by Irina in the accounts department and faxed to Digifone.

Sometime after this I received another telephone call from Mr. O'Brien informing me 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 Irish pounds. He

also requested that the invoice be delayed for a period of four to six weeks. I had no problems with changing the currency or with the delay. The cancelling of this second invoice required a credit note, which was issued by the accounts department in Telenor. This is the document number 100071 dated 24th January, 1996. I passed on Mr. O'Brien's request to Svein Malen in the accounts department that a new invoice be issued in Irish pounds and that it be delayed for a period of four to six weeks.

My full-time involvement in the ESAT Digifone project ceased in February/March 1996. My dealings concerning the contents of the invoices were with Mr. O'Brien, save for the original instruction from Mr. Digerud. At no time had I any dealings with any Telenor personnel in Digifone in Dublin. Jan Edvard Thygesen was the Chief Executive Officer of Digifone until 9th February 1996, but I am certain that I never had any communication or discussions with him concerning the invoices. Neither did I have any discussions with Mr. Digerud concerning these invoices save for the original instruction received from Mr. Digerud concerning the processing of the payment. I never at any stage during this period discussed the processing of the payment with Mr. Arve Johansen."

Now, Mr. Simonsen, you have been an employee of one or

other of the Telenor companies since 1995, if not earlier, is that right?

A. That's correct.

Q. And can I take it that you were aware of the Telenor participation in the bid for the second GSM licence in Ireland from the inception of that bid?

A. Yes.

Q. Were you part of the team that worked on the making of the bid?

A. Yes.

Q. And I take it, therefore, that you were aware that a certain amount of political controversy developed concerning the award of the licence to ESAT Digifone?

A. Yes, I saw that from the papers, yes.

Q. And that controversy persisted, I think, from in or about the time that the award was announced in October of 1995 onwards, isn't that right?

A. Yes.

Q. What the Tribunal is examining at this point is a payment of \$50,000 which the Tribunal has been told was a political contribution made to the political party that was in government at the time that this licence was awarded. You understand that?

A. Yes.

Q. And that contribution was, in fact, made some time shortly after the announcement of the winner of the competition. You understand that?

A. (Nods head.)

Q. And the political contribution was in fact, so the evidence goes, we are told, made through Telenor so as not to attract any publicity, isn't that right?

A. Yes, that's right.

Q. Evidence has been given by Mr. Johansen, and by Mr. Denis O'Brien, who were, if you like, the two main personalities involved in the bid, at least in its earliest stages isn't that right? They were the two main personalities, Mr. Johansen on the Telenor side, Mr. O'Brien on the ESAT Telecom side, isn't that right?

A. Yes.

Q. Eventually, Mr. Desmond became involved on behalf of IIU, would that be right?

A. Okay.

Q. Mr. Johansen has given evidence that he was asked to make this contribution on behalf of ESAT Digifone. He was asked to facilitate he was asked that Telenor should facilitate the payment of US \$50,000 to this political party, and he arranged to do that as a result of a communication he received from Mr. David Austin. And he arranged to do it in accordance with the instructions given to him by David Austin, which involved describing the payment as consultancy fee and sending it to an offshore bank. You understand that?

A. Yes.

Q. Now, there has been controversy in the evidence given

to this Tribunal concerning the handling of the invoices dealing with this matter, and it has been suggested that that controversy involves significant credibility issues between the Telenor side and the ESAT Telecom or Mr. O'Brien side. Do you understand what I mean by that?

A. Yes.

Q. And it is in that context that your evidence has become relevant, or the evidence the Tribunal hopes you will give has become relevant. You understand the importance of your evidence?

A. (Nods head.)

Q. Now, before I go into the details of your evidence, I want to just make sure that we understand all of the documents and the dating of them.

If you look at the documents that are probably attached to your statement, do you have a

A. Yes, if it's the invoices you are referring to, I have them, yes.

Q. Yes. Well, in fact, I want to go back a step earlier. I want to go back to include the invoices raised by Mr. David Austin. Do you have those as well?

A. I have them, yes.

Q. You have those as well, do you?

A. Yes.

Q. What I want to try to establish is the rough sequence in which you became aware of the existence of, or the

involvement you had in the generation of all of these documents.

The first document I want you to talk to me about is the letter of David Austin from the 14th December, 1995. You will see it on the screen to your right.

You see that document?

A. Yes.

Q. You recognise it. And can you tell me when you first became aware of that document?

A. The first time I saw the document was when it was delivered to me on the shortly before Christmas period.

Q. You see that the document has handwriting on it, which the Tribunal has been informed in evidence is the writing of Mr. Knut Digerud?

A. Yes.

Q. It says "Per"; then there is instruction to you to pay this, or "This must be paid by us," I think, "and invoiced as management cost to Digifone."

A. Yes.

Q. Is that a correct translation of the Norwegian?

A. I believe so, yes, roughly.

Q. And underneath that is a date, the 20/12, Knut Digerud.

Mr. Digerud says he put that on it on that day, put that note on it on that day. He was in Dublin on that day, and you were in Oslo; would that be right?

A. No. I was in Dublin as well.

Q. You were in Dublin as well; I see.

A. Yeah.

Q. And when do you think you would have received it?

A. Most likely the 21st or 22nd December.

Q. If you go onto the next document, which is the actual invoice, it has a manuscript "Okay," signed "KD", meaning "Knut Digerud", in manuscript on it. And Mr. Digerud said "This okayed the document for payment," or "the invoice for payment", isn't that right?

A. Yes, the "Okay" signature from Knut.

Q. There has been some we have had some difficulty in understanding the other manuscript marks on this document. If you look at the writing on the top, which we are told is in Swedish, is that correct?

A. That's correct, yes.

Q. Can you throw any light on that manuscript mark on the document?

A. Not apart from what's been said earlier this morning.

It says "Copy to be invoiced further", and then there is a reference, and I don't know what the reference is specifically made to.

Q. The reference seems to be in seems to be, in any case, to be in a different handwriting; maybe it's not, but it seems to be in different handwriting, and it's dated the 22/12/1995?

A. Yes.

Q. It's not your handwriting, and you don't recognise it?

A. I don't recognise the handwriting on the right side.

The handwriting on the left is probably the handwriting of the Swedish accountant.

Q. Now, the Tribunal has been shown the originals of these documents this morning, and they have some other marks on them. And perhaps you'd just explain to me I am sure there is some simple explanation for why they contain other marks.

I am just handing you a photocopy of the original documents that were handed to the Tribunal this morning. I can, if necessary, give you the originals.

(Documents handed to witness.)

Now, this is a copy, a photocopy this is the actual on the overhead projector is a projection of the actual original invoice, and it has a stamp on it, and the stamp contains a certain amount of information.

Can you just throw any light on what the entries on the stamp mean?

A. Well, I mean, the date is obvious, if you look at the first entry on the left upper corner.

Q. Yes.

A. The second column is labelled "Tillvist", which roughly translates into "approved". There is a signature in that, and I don't know who that signature belongs to.

And on the columns further down it says "account", and there is account number written into that. It says "AVD", which basically I assume is an abbreviation of the English, translates into "Department". And that's 1-0, or 10.

Q. What department is that, or do you know?

A. No, I don't know.

The third column is "Project", and this is then the project number which was attached probably to this project to be able to reconcile on the project basis. Then there is a far right column, and I am not really sure what the heading on that column is.

Q. It says "Belop", I think. The words, B-E-L-O-P

A. Sorry, yeah, that's on the that column says, that means "amount", but it seems to be a column even further right.

Q. I see, and there seems to be either a "1" or a "D", it's not clear.

A. Yes.

Q. Do you know what this stamp is?

A. I assume this has been put on by the accounts department after I saw it to make sure that this is accounted for in the right way.

Q. I think the right-hand column, the one with what looks like a "D" or a "1" in it, "D/K", does that assist you in any way?

A. Sorry, "D/K"?

Q. Yes, if you look at I have given you a copy of another document; have I given you a copy of this document? I think you should have a copy, if you look at the set of copy documents you have. There is a similar stamp.

A. This would be pure speculation from my side. Maybe it could be "debit/credit". I don't know.

Q. I see. In other words, the purpose of it is to I'll come to that document in a moment. You are saying the "D/K" probably means "debit/credit"; and if you look at the way that document is treated, there is a debit of 50,000 and a credit of 50,000, isn't that right?

A. This is only speculation from my side, but this is one possible explanation, I guess.

Q. We can take that document down now for a moment.

Is it your evidence that that stamp was put on the document after you saw it?

A. I cannot remember seeing the stamp on the document when I got it, and also, since I just remember from looking at it now, it seems like the stamp was put on after Knut Digerud has okayed it, if you look at the position of "Okayed it" compared to the stamp.

Q. Have you ever seen stamps like that in the course of your work with Telenor?

A. Yes.

Q. You have?

A. Yes.

Q. I am simply trying to find out how it is that we have copies of the document that don't have the stamp on it and that the original does appear to have the stamp on it. So with your knowledge of how these stamps are used in Telenor, perhaps you could explain that to me.

A. I assume that these stamps have been put on by the accountants department for the processing of the invoices.

Q. So does that mean that the original of the document goes to the accounts department, but that a copy is taken somewhere else?

A. Well, I mean, when I had the document, the stamp did not necessarily need to have been applied on the document.

Q. And the copies that were given to the Tribunal did not have those stamps on them; do you understand me? The first I saw of this stamp was this morning.

A. Okay.

Q. I have had copies of these documents available to me for some months, and they don't have the stamp. So that must mean, surely, that somebody, some other department of Telenor, keeps a copy of the document after the original goes to the accounts department.

Would that be right?

A. I don't know.

Q. You have no explanation as to how the document

A. Again, I am not deeply familiar with the routine, so the accountancy and the

Q. Maybe then we can get an explanation from Telenor in due course.

The next document I want to come to is the Telenor invoice number 1000050. This is the invoice for 316,000 Norwegian kroner. Do you have that invoice?

A. Yes, I have it.

Q. Now, that document has a date on the top right-hand side of the 3rd January of 1996.

A. Yes.

Q. Does that indicate that that is the date on which the document was issued by Telenor?

A. That seems to be the date it was issued by Telenor, yes.

Q. Underneath that there is a reference to the amount and a description of the product. The product description is "Consultant David FT Austin." Then underneath that there is a manuscript which we have been informed in evidence is your writing and contains an instruction from you to Irina, is that right?

A. Yes, that's right.

Q. This has been translated by a number of other people. Perhaps, as it's your writing, you should translate it for us at this point.

A. Okay. It says "Irina, this has now been shredded in

the receiver's end. It shall be sent a new invoice on or relating to consultancy services from Telenor in the amount of \$50,000 without appendices or references to D Austin".

Q. Could you just say that again? "Without appendices", is it?

A. Yes, "appendices or references to D Austin. I would like to see invoices before it's being sent."

Q. So what you were saying was, "Please send out a new invoice. Do not mention David Austin, and do not include any attachments which might refer to David Austin." Would that be right?

A. Yes, and of course, the currency.

Q. Yes. And do I take it that by "attachments", you meant the letter and invoice from David Austin?

A. That's correct.

Q. Could I then ask you to go to the next document, which is an invoice, again number 1000050, for US \$50,000.

It says "Consultancy fee Telenor Invest AS, US \$50,000." And it's dated the 31st December of 1995.

Do you see that?

A. Yes, I see it.

Q. Can you just explain to me why that document is dated 31st December '95, and the document which it replaced is dated the 3rd January of 1996?

A. I can only speculate on the reasons for that. I don't have a firm explanation for it.

Q. Maybe you could just speculate.

A. One explanation could be to align the cost incurred with this invoice so that we would get everything on the '95 accounts.

Q. I see.

The next document is dated it's an invoice, this time, a new number, invoice number 1000084, from Telenor to ESAT Digifone, again in respect of a consultancy fee, Telenor Invest, but this time the price is expressed in Irish pounds and not in either US dollars or Norwegian kroner, is that right?

A. Yes, that's right.

Q. Now, in addition to those invoices, because the second invoice number 1000050 was in the wrong currency, but had already been issued, you directed that a credit note be issued to negative that debit of US \$50,000, isn't that right?

A. Yes.

Q. And that is that was sent by letter of the 24th January, 1996, signed by Svein Malen, the individual you mentioned in your statement, is that right?

A. Yeah.

Q. And the that's dated the 24th and shows the negative amount of \$50,000 being credited in Telenor's accounts in favour of ESAT Digifone.

I now want to come to your statement and just to

clarify a number of aspects of it. You say that sometime prior to the 20th December, 1995, Mr. Digerud told you that Telenor had been requested by Denis O'Brien to facilitate a payment in respect of a fundraising dinner and had agreed to do so. You do not remember being informed as to what the purpose of the fundraising event was.

At that time, was Mr. Digerud in Dublin, or did he communicate this to you by telephone?

A. I am not certain whether he called me or whether we spoke. I mean, we had various communications both on phone and physically, so I don't know where he was.

Q. Can you tell me whether at that stage you knew whether the fundraising event was political?

A. I didn't know what type of fundraising it was, no.

Q. What was the purpose of his contacting you to inform you about this matter?

A. I think it was to explain to me that I would have to process or make sure that the payment was processed and that it was invoiced to ESAT Digifone.

Q. Well, can I just clarify this: What you said is that you were simply asked to facilitate a payment. That's the first thing. There was no mention of invoices at this point now, isn't that right?

A. No, that's true, that's right.

Q. So you were simply asked to facilitate a payment?

A. Yes.

Q. Would it be usual for Mr. Digerud to ask you to facilitate payments of one kind or another?

A. Not particularly, no.

Q. Was this, therefore, an unusual communication, for him to say to you, "I want you to facilitate a payment of US \$50,000"?

A. I didn't consider it to be unusual in any way.

Q. Well, that's what I am trying to understand. You didn't consider this to be unusual?

A. I mean okay, what I can say is that I didn't get many of this type of requests from Mr. Digerud, but it didn't raise my attention in any way, this type of request either.

Q. If you were asked to pay \$50,000 in connection with the work that you were involved in at the time, you would presumably have wanted to know what the payment was for, how it could be justified, isn't that right?

A. No, I don't think that's right.

Q. If Mr. Digerud had told you to pay \$50,000 to a politician as a bribe, what would you have said?

A. He never told me that.

Q. He wouldn't have, but you wouldn't have paid it, isn't that right?

A. This is only speculation. I was never asked about that.

Q. Did you have to did you have to have any basis or justification for making any payment on behalf of

Telenor or ESAT Digifone?

A. Sorry, can you repeat the question?

Q. Can I put it another way? I am maybe I am not making myself clear.

You were asked to facilitate a payment in respect of a fundraising dinner?

A. Yes.

Q. And you were told nothing else about the fundraising dinner, and yet you were prepared to facilitate the payment, is that right?

A. Yes.

Q. At this time, you were involved, as I said, in fairly frantic activity trying to get this company up and running, isn't that right?

A. Yes.

Q. Fundraising dinners surely had nothing to do with the business that you were involved in?

A. No, that's true.

Q. What type of fundraising did you think Mr. Digerud had in mind at the time that he first contacted you?

A. I didn't specifically think about what type of fundraising it was.

Q. Did you think it was political, charitable, cultural, or what?

A. I didn't think about it.

Q. But it must have been a somewhat unusual request to

receive, to pay \$50,000 for a fundraising dinner that you knew absolutely nothing about; you didn't speculate about it? That must have been very unusual.

A. As long as the instruction came from my superior, I didn't think it was any purpose of speculating too much about it.

Q. You say that shortly before Christmas, you received by internal delivery from Mr. Digerud the original of a letter dated 14th December, 1995, from David Austin, and the original of David Austin's invoice dated 14th December for US \$50,000. On the invoice Mr. Digerud had endorsed "okay", which passed the invoice for payment and he had also given me a handwritten instruction on the letter from David Austin which states "this must be paid by us and invoiced as management cost to Digifone."

So when you received that, those two documents, all you had in front of you was the documents, but no covering letter or any other explanation other than the manuscript note we have seen, to inform you as to what was involved, is that right?

A. Yes, that is correct.

Q. So, at that point in time, you had been asked to facilitate a payment of $\frac{1}{2}$ \$50,000 to a fundraising dinner, which you were prepared to do?

A. Mmm.

Q. And then just before Christmas, you get two documents

with an invoice endorsed "okay for payment" for \$50,000 to a Mr. David Austin, isn't that right, for consultancy services?

A. Yes.

Q. Did you connect those two things?

A. Yes.

Q. How did you connect them?

A. Well, to me it was obvious this could be only it could only be this matter that it was referring to. I didn't see any other

Q. Can you tell me what made it obvious that it was only what made the connection between these two things obvious?

A. Well, I mean, I don't know whether the amount was touched upon in the first conversation I had with Mr. Digerud. It could be that the amount was touched upon in the first

Q. The amount certainly is something that might ring a bell, US \$50,000.

A. Yes.

Q. Mr. Digerud is the other common factor, isn't that right?

A. That's correct. And also this looks like a facilitation of a payment, if you look at the instruction.

Q. Yes. But this has nothing to do with fundraising dinners, does it?

A. Now, no, but I mean, I understood from the context of facilitation that this would be the way to do it.

Q. Do you agree with me that this document says nothing about fundraising, the invoice?

A. Yes, I agree to that.

Q. And looking at it on the face of it, there is no way that you could connect consultancy services with a fundraising dinner, isn't that right?

A. On the face of it, yes.

Q. At that time, did you know the true underlying nature of this entire transaction?

A. I knew it was a fundraising

Q. Yes, you knew it was fundraising. You knew that you had been asked to facilitate a \$50,000 payment for fundraising, but these documents didn't have anything to do with fundraising on the face of it. If it was fundraising, it was being described in a different way in these documents, isn't that right?

A. That's probably right, yes.

Q. You know that evidence has been given that what was involved here was the payment of a contribution to a political party, isn't that right?

A. Yes.

Q. And it was to be paid in this covert way. You know what the word "covert" means?

A. I can imagine what it means.

Q. "Hidden".

A. Okay.

Q. Did anybody tell you that at the time you were asked to deal with, firstly, the request from Mr. Digerud and secondly, the two documents that we have just been discussing?

A. Sorry, can you repeat the question?

Q. Yes. At the time that you were asked to deal with these two documents and to make this payment of \$50,000 and to invoice it to Telenor for to Digifone for reimbursement, at that time, did anybody say to you, "This is a political payment which Telenor is making to facilitate Digifone"?

A. No.

Q. When did you first become aware that this was a payment of \$50,000 to facilitate a political contribution?

A. I am not able to give you a specific date on that, but that must have been much later.

Q. Much later?

A. Yes.

Q. Would it have been in 1997, when a controversy blew up about it at the time of the IPO?

A. It could have been.

Q. If that's correct, at that time were you told that were you told the full details of the fact that this was a political contribution to the Fine Gael Party?

A. I think my understanding of it being a political

donation came in that time.

Q. I see. And who told you at that time about this being a political donation?

A. I don't remember.

Q. If we look at the people who were involved in the controversy, there were heated discussion that took place in 1997; it seemed that Mr. Johansen was involved, Mr. Digerud was involved. Would it have been one of those people?

A. I don't have any recollection of who told me that.

Q. Is it possible that you didn't learn that this was a political contribution in 1997, and that you only became aware of the political nature of the payment at the time this Tribunal began its work?

A. No, I think it was in the time around '97.

Q. You see, Mr. Johansen has informed this Tribunal that only you and Mr. Digerud knew the true underlying nature of this transaction.

A. Yes.

Q. That is correct. You may now know it, and you may have been the only person apart from Mr. Digerud and Mr. Johansen who knew about it around 1997, but you didn't know the true underlying nature of this transaction in 1995 or 1996, is that right?

A. Well, as I told you, I certainly didn't know it at the time this when the invoices were issued. My best recollection is that I learned about it in the process

around '97.

Q. In the ordinary way, in the course of the audits that were carried out on your company from year to year, would you be obliged to explain debits to the company's accounts?

A. No.

Q. Who would be responsible for dealing with queries from the auditors as to what debits from the company's accounts were for?

A. I was working in the project department, as a project manager, and I assume that this would be the people handling the accounts, maybe the CEO.

Q. Would I be right in thinking that was your job mainly technical, rather than financial?

A. No, my job was projects. I was working on the projects side.

Q. Are you technically qualified, or are you a person with business or financial experience and training?

A. Business.

Q. So is it your job to get a project up and running from a financial point of view, and to keep it going, and to make it hit its targets?

A. My job at this point in time was to make sure that we did everything we could in order to succeed in winning the licence and to handle a smooth transition over to the people who would handle it from operational point of view afterwards.

Q. And as part of the work that you were doing at that time, if one of your superiors said to you or instructed you to do something, you would have done it?

A. Yes.

Q. And you wouldn't have questioned the details; you'd simply have gone ahead and carried out the instruction you were given to carry out?

A. Yes.

Q. Did it strike you as in any way odd that you were now instructing more junior staff in Telenor to make a payment of \$50,000 to Mr. David Austin which you thought to be for a fundraising dinner? Did that strike you as in any way odd or unsatisfactory?

A. No, not really.

Q. The documentation that was being produced to justify this payment did not disclose what you knew to be the true facts, according to what Mr. Digerud had told you, isn't that right?

A. I didn't really capture, I think, the essence of your question.

Q. You were asked, and you gave an instruction

A. Yes.

Q. to pay out \$50,000 on foot of an invoice for consultancy services?

A. Yes.

Q. And you connected that with a request from Mr. Digerud to pay \$50,000 for a fundraising dinner?

A. Yes.

Q. So the documentation that was being retained in Telenor to explain this did not reflect the true facts?

A. That's true, yes.

Q. Did you feel in any way unhappy about that?

A. No, I can't say that.

Q. Was it unusual that you would be asked to give an instruction to pay \$50,000 for something, but to describe it as something else?

A. Yes, that would be unusual, yes, I'd say.

Q. Was this the only time that you were asked, or involved in a substantial payment, which you knew or understood to be one thing but which was described as something else?

A. I cannot remember.

Q. You can't remember any other transaction like this, then?

A. Well, I cannot remember the content of all the transactions I have been involved in, and whether any of those actually were labelled something else than they should be.

Q. What I am trying to get at, Mr. Simonsen, is whether this is something that you would have done frequently or something that you don't think you'd ever have done before. I am only asking you to try to remember as best you can.

A. It did not occur frequently.

Q. Did you ever take part in a transaction which involved making a payment by way of a political contribution, which you knew to be a political contribution, but which was being described as something else?

A. No, I can't remember that. I don't think I did.

Q. Surely, if you had ever done something like that, you'd remember whether you did or you didn't do it?

A. I have been involved in very many projects, so...

Q. I know you have been involved in a lot of projects. I know you may have paid things not very frequently that were described as something else. I am moving on from that, Mr. Simonsen, and I am asking you to remember have you ever, even once, agreed to or taken part in a transaction which involved paying money to a political party or making any kind of political contribution where you described or agreed to the description of the payment as something else?

A. I cannot remember having done that, no.

Q. For a moment we'll press on. We may have to come back to this.

After you received the letter and the invoice that had come from David Austin, and after they had been given to you by Mr. Digerud, you say that around this time you received a telephone call from Mr. O'Brien concerning the invoice and the letter. "Mr. O'Brien was concerned about Mr. David Austin's name being

mentioned on the documentation from Telenor in respect of the reimbursement of the US \$50,000. Not mentioning David Austin's name presented no difficulty, as I understood that the amount should be invoiced as a Telenor cost to Digifone. I did not refer back to Mr. Digerud on the matter."

Can you tell me about this telephone call that you received? Can you remember where Mr. or do you know where Mr. O'Brien was telephoning from?

A. No, I don't know that.

Q. You say that Mr. O'Brien telephoned you concerning the invoice and the letter. Can you remember what he said, or even approximately what he said?

A. I am not able to quote what he said, but he was concerned about how the invoice would look like.

Q. Was he concerned about how a particular invoice would look like, having regard to what was contained on Mr. Austin's letter and invoice to you, or was he simply discussing the matter in general? Do you understand me?

A. He was not too specific. He was concerned about the invoice that would end up in ESAT Digifone.

Q. Yes. What you said in your statement, and I don't want to keep you to the precise words of your statement, but you say that you got a telephone call from Mr. O'Brien concerning the invoice and the letter. Did Mr. O'Brien mention to you, in the course of that telephone call,

the letter from David Austin and the invoice from David Austin?

A. I cannot remember whether he did that or not.

Q. In the course of that telephone call, did he appear to you, from what he said to you, to know what the contents of the invoice from David Austin were?

A. To me, it seemed like he knew about the content of the invoices from David Austin.

Q. So that would I be right in thinking that he wasn't talking about the whole question of how you do this invoice in general; he was specifically talking about references to David Austin's invoice or to similar wording appearing on your invoice?

A. Again, he didn't make specific references to the invoices from David Austin. He was, in general, concerned about how the invoice that we would send to ESAT Digifone would look like.

Q. I just want to jump on for a moment to something which may be of relevance at this point. Do you remember that eventually you gave an instruction to Irina to issue an invoice with no reference to David Austin's name and none of the appendices or attachments? Do you remember that?

A. Yes.

Q. Do you know, can you be sure whether those appendices or attachments would have gone with the first invoice?

A. I cannot be sure, no.

Q. Why did how did Mr. O'Brien bring this matter up in the course of his telephone conversation with you? If I can put it another way: How did he know that you would know about it?

A. I cannot be sure how he would know that I would know about it. I think he felt that he knew me quite well.

That could be one reason for why he called me.

Q. Would you have many discussions with Mr. O'Brien concerning invoices or intercompany matters?

A. At an earlier stage than this, we had many discussions relating to everything, yes.

Q. I can understand that; I suppose you'd have had lots of discussions as the Telenor project manager and he, as I suppose, being the driving force behind many aspects of the application in Ireland, but would you have had many discussions with him about hard cash, if you know what I mean, about money, about money that you were paying out to third parties and hoped to go get back from Digifone, those types of discussions?

A. No, not many.

Q. Not many. Would this be one of few such discussions?

A. Yes, in the context you described it, yes.

Q. Would the other discussions be about bigger issues, or technical issues, or management issues, or whatever, not pure I'll call detailed money issues?

A. Yes.

Q. Would you be the sort of person on the Telenor side, if

you like, to whom Mr. O'Brien would address a question about a detailed money issue in the ordinary way?

A. Not ordinarily, no, I don't think so.

Q. Ordinarily, who would have dealt with detailed money issues on the Telenor side?

A. You mean can you specify the question a bit more?

I am not really sure

Q. Let me put it this way: Let's say Mr. O'Brien was ringing up about some other invoice from Telenor, or Mr. O'Brien had some query regarding some other invoice from Telenor in connection with some intercompany cost or set-up cost; would he address that to you, or would he

A. I don't think he actually would deal with it himself.

He would probably let Peter O'Donoghue or somebody else deal with it.

Q. And in any case, this was a discussion about details of the appearance of the transaction, not details concerning amounts, isn't that right?

A. That's right, yes.

Q. Had you ever had a discussion with Mr. O'Brien concerning the way in which a transaction would be described in the course of the entire period that you worked with him?

A. No, I can't remember having other types of discussions like or other discussions like that with him.

Q. You say that not mentioning David Austin's name

presented no difficulty as you understood that the amount should be invoiced as a Telenor cost to Digifone, and you did not refer back to Mr. Digerud on the matter.

A. Yes.

Q. But ultimately, wouldn't the description of this transaction have an impact on intercompany accounts if it wasn't properly described?

A. The way I interpreted Mr. Digerud's instruction was that this was to be labelled a Telenor management cost or a Telenor consultancy cost. That was a clear instruction from my superior, and I executed according to that.

Q. From your superior; your superior said, "Pay this, this is a David Austin consultancy fee, pay it and invoice as a management cost to ESAT Digifone"?

A. Yes.

Q. And ultimately, you would expect to get it back?

A. Correct.

Q. But now you were being asked to change the description on the invoice that you were sending to ESAT Digifone, isn't that correct?

A. Not necessarily change it, but make sure that David Austin's name would never appear on it.

Q. But could that not give rise to difficulties, or did you not think that that might give rise to difficulties in getting the money back at the end of the day?

A. No. I didn't, actually.

Q. You weren't concerned that at the end of day somebody might say to you on the ESAT Digifone side, "We don't know what this is about"?

A. I mean, since we had been asked to facilitate this payment, and this would actually be a payment I don't think we would be very concerned about whether we would get refunded or not.

Q. At the time that you had that agreement with Mr. O'Brien, or that you made that agreement with Mr. O'Brien, you still thought it was a fundraising dinner of some general kind, was that right?

A. Well, I didn't know what type of fundraising it was.

Q. You didn't know it was political?

A. I didn't know what type of fundraising it was.

Q. Do you agree with me, do you know it was political or didn't you know it was political?

A. No, I didn't know it was political.

Q. Do you know, did Digifone or Telenor, when you were with them, ever pay \$50,000 for any fundraising event of any kind?

A. If I knew about any fundraising event apart from this, you mean?

Q. Yes.

A. No, I don't have any recollection of fundraising events, specific fundraising events, no. I didn't have full insight in all the payments that ESAT Digifone

made either.

Q. I accept that. You'd be more familiar, I suppose, over the years that you had been working there, with Telenor's activities. Can you ever remember Telenor, when you were involved in Telenor, can you ever remember making a \$50,000 payment for a fundraising event?

A. I can't remember being personally involved in making a \$50,000 fundraising event apart from this, no.

Q. And just to be clear about it, would Telenor ever have become involved in sponsoring cultural or charitable events?

A. I don't know.

Q. When you were with Telenor during all the years you had been with them, is it a feature of Norwegian life that large companies sponsor cultural or charitable causes?

A. Yeah, I mean, cultural causes obviously. Sponsoring cultural causes, I don't think that is something that is controversial in any way.

Q. I am not saying it's in the least bit controversial. But is it something that would happen, is it part of Norwegian commercial life that large companies do it, just as it would be here in Ireland or in England or most countries in Europe?

A. Yes, I think it's quite normal, yes.

Q. But these things would be done with a lot of publicity and fanfare, isn't that right?

A. I have not been very much involved in any cultural sponsoring, so I am not in a position to say anything about that.

Q. You gave your instructions, you think, on the last working day before the Christmas holiday break. Can you let me know what day that was?

A. I think it was on the 22nd that I gave that instruction, yes.

Q. Do I understand from your evidence that the instruction wasn't carried through on that day?

A. What do you mean by "carried through"?

Q. The

A. The physical payment wasn't made on that date, that's true.

Q. And the reimbursement invoice wasn't issued on that day?

A. No, that's true.

Q. You say "From recollection you returned to work on the 3rd January, 1996. Sometime that day a person named Irina in the accounts department came into my office and handed me a photocopy of the invoice from David FT Austin and the invoice being raised by Telenor to Digifone by way of reimbursement of the payment to David Austin." You say you looked at the invoice and realised it wasn't in the form in which you had been told in which you had instructed that it be issued.

So now, when you realised a mistake had been made, you gave Irina a new instruction and you asked her to show you the new invoice before it went out, isn't that right?

A. Yes, that's correct.

Q. You got on to Dublin and you told somebody in Dublin to shred the first invoice 1000050, is that right?

A. Yes, that's right.

Q. How did the invoices get their numbers in Telenor? Are they automatically generated?

A. The numbers are automatically generated, yes.

Q. They don't have to be stamped on?

A. No, the numbers are generated from the system .

Q. I see. So if somebody in Dublin was shredding invoice 1000050, how did you issue a new invoice 1000050 in Telenor in Oslo?

A. This was handled by the accountants department, and the way I understood or I have learned that it has been handled was that it was manually word-processed with the same number that the system would have generated.

Q. And is that why the two documents look different?

A. Yes, that's correct.

Q. The first document, the one that's on the overhead projector, is issued in the normal official Telenor way, presumably out of some word processor which automatically generates invoices?

A. Yes.

Q. And the second invoice, the 31/12/1995, is a manually generated invoice where somebody, as we see, typed in the word "Invoice", isn't that right, and in fact made a spelling mistake? Isn't that correct?

A. Mmm.

Q. What happened on your computer to the original record of the original invoice 1000050, do you know?

A. You mean on the computer that issued the invoice?

Q. The computer must have issued and generated it. It's all very well to make a new manual copy, but how did the computer deal with the problem of having already issued an invoice?

A. To my knowledge, the first invoice remained in the system as 1000050. It remained in the yes.

Q. So you okayed the second invoice, and it went out?

A. Yes.

Q. With a date in 1995?

A. Yes.

Q. Now, in relation to the first invoice, why did you request that it would be shredded?

A. Because I understood that the name David Austin should not have been on it.

Q. But you were now going to considerable lengths, weren't you, to bury this transaction? You didn't just simply say, "Ignore that invoice; I'll give you a credit note, and we'll start again." You said "Shred it, destroy it", isn't that right?

A. That's correct, yes.

Q. So you had a very strong impression that this document shouldn't even exist in Dublin, is that right?

A. Yes.

Q. So much so that you didn't instruct anyone to ring up Dublin; you rang up yourself?

A. Mmm.

Q. Why did you have that very, very strong feeling that the document shouldn't even exist and that no trace of it should exist in Dublin? Was it from your conversation with Mr. O'Brien?

A. Yes, I knew that he was concerned about David Austin's name being on invoices coming into ESAT Digifone.

Q. Would I be right in thinking that you must have formed the impression that he was extremely concerned about it?

A. He was concerned. If it was extremely concerned or not, I don't know.

Q. Well, concerned enough to make you direct somebody in Dublin to destroy a document. Concerned enough to make you

A. Well, destroy a faxed copy of a document.

Q. I understand that, but to destroy it. You might have said "Ignore it, forget it." You could have corrected it, couldn't you? It would have been a simple matter to issue a credit and start all over again; wouldn't that be right?

A. Yes.

Q. The point of you issuing the instruction was to remove

A. The trace of it.

Q. the trace of it?

A. That's right.

Q. You gave the instruction, as I said a moment ago, for the new invoice, and you say that sometime after this you received another telephone call from Mr. O'Brien informing you 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 Irish pounds. He also requested that the invoice be delayed for a period of four to six weeks. Can you tell me about that telephone conversation?

A. Well, I mean, the basic content of it is what is encompassed in my note to Svein, that he would like to wait four to six weeks before receiving any invoice, and he also requested the currency to be in Irish pounds instead of US dollars.

Q. Can you tell me, how long was it after you sent the US dollar invoice that you received the telephone call from Mr. O'Brien?

A. I mean, the interim would have to be then sometime between the 3rd and the 24th January.

Q. Well, I can understand that, because you are saying that's the date of the credit note, letter, isn't that

right?

A. Yes.

Q. But can you remember, yourself, was it days, weeks, hours?

A. I think it was closer to the 24th than to the 3rd, put it that way.

Q. I see. And when he spoke to you, Mr. O'Brien must, by this time, have become aware of the full contents of the new invoice, isn't that right?

A. Yes, he must have seen or heard about the new invoice, yes.

Q. At that stage, had you had or did you have any discussion with him about the earlier invoice that had been shredded?

A. No.

Q. You didn't explain to him that a previous problem had arisen?

A. No, I don't remember any at least I cannot remember discussing that with him.

Q. It would have been a sort of natural thing you would have discussed "There was a problem with this last week; we sorted it out"?

A. It could be, but I don't have a clear remembrance of discussing the shredding specifically with him.

Q. With regard to the instruction you gave to Dublin, you say you don't know the identity of the person you spoke to, but you think it was not a Telenor employee, is

that right?

A. Yes, that's right.

Q. You would presumably well, can you just tell me first, who did you ring in Dublin? What number did you ring? What office did you ring?

A. I don't remember which number I rang.

Q. Well, what office? I mean

A. They were basically all on the same floor.

Q. Well, did you ring Digifone? Did you ring ESAT Telecom?

A. No, I rang someone in the ESAT Digifone, where the fax was, yes.

Q. And at that stage, you would presumably have phoned a lot of the staff in Dublin, wouldn't you?

A. Yes, because I spent a lot of time in Dublin myself, especially after the bid submission and the announcement of the licence, so I knew a lot of the people, yes.

Q. You don't remember who you spoke to, isn't that right? That's what you said?

A. That's correct, yes.

Q. Did you ever have any other discussion with any other person in the office concerning that episode?

A. You mean other people in my office in Oslo, or in the office in Dublin?

Q. In Dublin.

A. No, I don't think I discussed this with anyone in

Dublin.

Q. How soon after this episode did you next go back to Dublin?

A. I would have to go back and confirm in my diary. I don't have

Q. Was it before your telephone conversation with Denis O'Brien, or after it?

A. I don't know.

Q. How many people would have been working in the office that you contacted with the instruction or the request to shred the invoice?

A. I don't know the detailed numbers, but it must have been maybe between 50 and 100.

Q. Between 50 and 100?

A. That's my guess, but I guess the question should be addressed to Mr. Thygesen if you want an exact answer.

Q. You must have rung through to some particular section, some particular part?

A. I probably rang an individual, yes.

Q. You probably rang an individual?

A. Yes.

Q. And asked for an individual, do you think?

A. I could have rang directly on mobile phones; I mean, all the people have mobile phones.

Q. You were ringing up and asking somebody to shred an invoice. Did you tell why you wanted the invoice shredded?

A. No.

Q. You simply said, "Shred the invoice"?

A. I just asked somebody to tear up the document coming out of the fax, and I didn't discuss anything about the content of the document as such. I said that it was wrong, and that they would get a new document, so

Q. That's all you said?

A. Yes.

Q. You didn't say why?

A. No.

Q. If you had said why, it might have left another trace of the reference to David Austin, isn't that right?

A. Yes, that's right.

MR. HEALY: I don't think I am going to finish with Mr. Simonsen, Sir, and it's close to two o'clock.

CHAIRMAN: I don't feel, in view of the very significant government meeting, I can take liberties with that particular time-lag. If I really thought there was only a matter of some twenty minutes, I wouldn't detain the witness; I'd even consider reconvening the public sitting in part of the Tribunal premises. But it seems to me you will be some time more.

May I take it, Mr. McGonigal and Mr. Fitzsimons, you will at least have some questions?

MR. MCGONIGAL: Yes, Sir.

CHAIRMAN: So I think it's a significant portion of evidence, and it would be wrong to try and rush it or devise any unsuitable format for the balance of it and we'll take the conclusion of it, if that suits you, in the morning, Mr. Simonsen and you will undoubtedly finish it in the course of tomorrow morning.

A. Okay. Thank you.

CHAIRMAN: I think I should make some inquiry, Mr. Fitzsimons, have you any particular flight you are very anxious to catch Mr. Simonsen, tomorrow?

A. Well, I have a reservation at 11.45, but if it's necessary, I can spend more time.

CHAIRMAN: Will I say half ten or eleven?

MR. HEALY: Half ten.

CHAIRMAN: Half ten tomorrow morning.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
FRIDAY, 19TH OCTOBER, 2001 AT 10.30 AM.