

MORIARTY TRIBUNAL - DAY 145

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 19TH
OCTOBER, 2001 AT 10.30 AM:

CHAIRMAN: I understand as a result of correspondence and discussions between the various sets of legal advisers following upon matters that emerged in the course of yesterday's hearing, I understand, Mr. Healy, what is intended is that Mr. Thygesen should be recalled relatively briefly in relation to that particular matter or matters, and then the sitting will conclude today by resuming Mr. Simonsen's testimony.

MR. HEALY: That's correct.

MR. FITZSIMONS: If I could just make a couple of comments in relation to the context, Sir.

Mr. Thygesen came here to give evidence yesterday and gave his evidence. Yesterday evening at 11:30 pm, my solicitor happened to be in his office, and he received a letter from the Tribunal which indicated that the Tribunal had only yesterday well, by implication, yesterday afternoon managed to make contact with Mr. Colm Maloney and had obtained some information from him. The letter contained that information, some of which is directly relevant to Mr. Thygesen, and we had written to the Tribunal informing them that Mr. Thygesen wouldn't be here today. He had intended

to leave. He changed his mind, luckily stayed over.

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We managed to contact him this morning. He has postponed his flight and is very anxious to deal with these matters today. So I am obliged, Sir I mentioned this some minutes ago, when we arrived, to Mr. Coughlan and he has been kindly able to facilitate us.

CHAIRMAN: I am glad Mr. Thygesen is immediately available. It would obviously have been very unfortunate for everyone if he had returned back.

MR. FITZSIMONS: It would have been very unfair on Mr. Thygesen if there was any question of his having to come back to Ireland again, unfair and unjust to him if there was any question of his having to deal with these matters in relation to a document which was adduced in evidence before the Tribunal and given quite a lot of exposure three months ago.

CHAIRMAN: Yes. Well, Mr. Fitzsimons, I think you are probably aware that the task of fact-finding is a continuous one and has to be reassessed in the context of further, perhaps limited matters of evidence that come to the Tribunal's attention.

MR. FITZSIMONS: Absolutely, Sir. But you will recall,

yesterday Mr. Johansen was subjected to criticism for giving piecemeal information, and I am afraid he who casts the first stone.

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CHAIRMAN: I think we'll proceed and leave any matters of contention until a later stage.

MR. HEALY: Just one point of detail. Mr. Davis informs me that the letter was delivered at 6.20 last evening containing the information that's the subject of this evidence now.

MR. HEALY: Mr. Thygesen, please.

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MR. JAN EDVARD THYGESEN, PREVIOUSLY SWORN, WAS RECALLED AND EXAMINED AS FOLLOWS BY MS. O'BRIEN:

CHAIRMAN: Thanks for delaying your return to Norway. Of course you are already sworn, Mr. Thygesen.

Q. MS. O'BRIEN: Thank you, Mr. Thygesen. I wonder, do you have a copy of the letter of yesterday's date forwarded to your solicitors by the Tribunal last evening? Do you have of a copy of that in the witness-box?

A. Yes, I have.

Q. If I could just refer you to the information which came to the Tribunal's attention late last evening from Mr. Colm Maloney. And could I just establish before doing so, I think Mr. Colm Maloney was an accountant who worked for a short number of months in late 1995/early 1996 for ESAT Digifone, is that correct?

A. That's correct.

Q. And Mr. Maloney has informed the Tribunal that he was preparing accounts for a period up to December of 1995; that he was carrying out this exercise in the early part of 1996; that in the course of carrying out the exercise, he inquired of Mr. Thygesen as to the identity of the companies or entities to whom Digifone might be indebted; that as a result of the information he received from Mr. Thygesen, he made contact with an employee responsible for financial matters in Telenor and from that employee he received a communication /RS

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which he believes was by way of fax, and that it was from the contents of that fax that he abstracted the information with reference to Telenor Mobil, 31,600 re David Austin. In that, I think he is referring to the handwritten document which was on the overhead projector yesterday and which I raised with you in the course of your evidence. Perhaps if we could just have

a copy of that document on the screen.

Now he has informed the Tribunal that he showed the document that he had prepared to you and that you confirmed that the David Austin element was in order and that Mr. Maloney believes that you may have attributed this to public relations.

Mr. Maloney brought this to the attention to your attention because he knew from his general knowledge that Mr. Austin was involved in Jefferson Smurfit and that he assumed, in the circumstances, that he must have been engaged in some private consultancy to warrant his sending a bill to Telenor. And the Tribunal requested that you would advise the Tribunal as to whether you agreed with Mr. Maloney's account of the circumstances in which the document was generated, and if not, to furnish the Tribunal with your own account of those circumstances.

Now, arising out of that communication, Mr. Thygesen, the Tribunal requested that you be available. In fact you have made yourself available to deal with this

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matter today in evidence.

MR. FITZSIMONS: The Tribunal didn't request. We turned up this morning with Mr. Thygesen, luckily, and

we have asked that he be allowed to give evidence to deal with these matters.

CHAIRMAN: Well, he is here, Mr. Fitzsimons. I think that's

MR. FITZSIMONS: These things are important, Sir, for the record.

MS. O'BRIEN: Very good.

Q. Mr. Thygesen, could I just ask you about this information that's been brought to the attention of the Tribunal by Mr. Maloney. Do you recall that in late December or early January, that Mr. Thygesen inquired from you as to whom he should make contact with to ascertain what liabilities ESAT Digifone had at the time?

A. It would be natural for me to have a dialogue with Colm Maloney and how we organised in Telenor and who he could contact at Telenor, because it was a lot of seconded people from Telenor Mobil. And Invest was the other body of Telenor that was involved, so I probably have given him some explanation of that.

Q. I see. So in the ordinary course, you'd accept that it would have been natural for you to discuss with Mr. Maloney who he might contact to ascertain what the

/RS

liabilities were?

A. Yeah, probably that he could if he had some problems, that he could contact somebody in Telenor, I probably had discussed with him.

Q. I think what Mr. Maloney has informed the Tribunal that it wasn't so much a problem, that what he was trying to ascertain was what the extent of the ESAT Digifone liabilities were. Would you agree that that was an exercise which was conducted by ESAT Digifone at the time that you were Chief Executive?

A. We discussed at that time the price of the consultancy from Telenor Mobil. I mean, it was a lot of people over here, and I had we felt the conditions were too good, the per diem was too good, so it was too costly. So it was a matter of discussions of how much Telenor should invoice ESAT Digifone at that time.

Q. I see.

A. And I was involved in that because I was in fact I agreed it was too expensive. So I had to innovate, try to lower the prices.

Q. I see. So it would have been reasonable enough that Mr. Maloney would have been contacting Telenor to ascertain what liabilities were owed by ESAT Digifone. Do you accept that?

A. Yeah, yeah if he were in contact, I can't remember.

Q. You can't recall whether he was in contact, but if his evidence to the Tribunal is that he was in contact with

personnel in Telenor, would you accept that that might be the position?

A. Yeah.

/RS

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Q. Now, Mr. Maloney has informed the Tribunal that it was from information forwarded to him by fax that he abstracted the entry made in the handwritten document relating to intercompany liabilities as of the 31st December, 1995, and in particular, the entry "Telenor Mobil, re David Austin, 31,600." He has informed the Tribunal that he showed this document to you. Do you recall Mr. Maloney discussing these liabilities or showing this document to you?

A. No.

Q. You have no recollection of that at all?

A. No.

Q. Mr. Maloney further says that he confirmed with you that the David Austin element on that document was in order. You have no recollection of that?

A. No.

Q. He says further that you informed him that he might attribute that liability to public relations and that you have

MR. FITZSIMONS: I wonder, could Ms. O'Brien rephrase that in accordance with the letter. He does not say Mr. Thygesen informed him of anything

CHAIRMAN: Well, let's just take it in sequence again.

Q. MS. O'BRIEN: What Mr. Maloney has informed the Tribunal is that he showed the document that he had prepared to you. You say that you have no recollection of that, is that correct?

/RS

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A. That's right.

Q. He says that you confirmed that the David Austin element was in order, and you say you have no recollection of that?

A. That's right.

Q. He states that he believes that you may have attributed this element to public relations, and do you say you have no recollection of that either?

A. No.

Q. At the time you were in Dublin, and I think you indicated that you were in Dublin full-time as Chief Executive of ESAT Digifone, did you know at the time who David Austin was?

A. No, never heard about that name.

Q. You had never heard about Mr. Austin?

A. This is the person in question, isn't it?

Q. Yes.

A. No, I can't remember that name at all.

Q. You cannot recall him at all?

A. No.

Q. Had you any dealings at all with Jefferson Smurfit at the time that you were here?

A. No.

Q. Or the Jefferson Smurfit organisation?

A. No. This is the first time I hear of that name, I think.

Q. Thank you, Mr. Thygesen.

CHAIRMAN: I'd better give, obviously, opportunities to both Mr. McGonigal and Mr. Fitzsimons to raise anything /RS

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they feel.

MR. MCGONIGAL: Mr. Chairman, I am reluctant to ask any questions because of the fact I have only received it this morning. I haven't had a chance to run it past anyone. Subject to that, and bearing that in mind, there are one or two matters I'd just like to see if Mr. Thygesen could clarify in relation to what might or might not be evidence which will be given by Mr. Maloney or anyone else in relation to this issue at this stage.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. Thygesen, in relation to the letter which I have seen this morning, it says that "As a

result of the information he received from

Mr. Thygesen, he made contact with an employee responsible for financial matters in Telenor."

Who would be the employee responsible for financial matters in Telenor at that time?

A. I don't remember.

Q. Was it the Swedish person that has made some entry on some of the documents?

A. Swedish? Oh, Irina, yeah, could be, could be.

Q. Who else could it be?

A. I don't know.

Q. It certainly wouldn't have been Mr. Simonsen?

A. No, I don't think he was handling the account.

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Q. There is a name, Mr. Thygesen, and perhaps you can help me with it, in an invoice, if they would show it to you. It's the invoice of the 31st December, 1995, that's "innvoice", spelt with two Ns.

There is a machine down on your right-hand side, there, Mr. Thygesen, which may be easier for you to look at.

A. Yeah.

Q. The bit I just want well, first of all, that appears to be a note from Per to Svein. And can you just translate it for me.

A. "Could you please make a credit note on this with an"

"with an explanation" I am not sure if I can read

what's in this. In the parenthesis here

Q. It's the bit in the brackets that I am concerned about.

A. I can't read that.

Q. It's the next two words, I think is a name, but I am not a hundred percent sure.

A. There is no names here.

Q. It's not names?

A. No.

Q. Okay. But you can't interpret those two words for me?

A. In the brackets, "With explanation". Then it says

"feil" which in English is

Q. It's okay, Mr. Thygesen. I'll get Mr. Simonsen to explain it. If there isn't a name, it doesn't matter.

The other matter that I just wanted to ask you about was, it would appear Mr. Maloney showed you a document, and that was the handwritten document thanks,

/RS

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Mr. Thygesen.

MR. FITZSIMONS: Just one question.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: You stated, Mr. Thygesen, that you can't remember any event such as that described by

Mr. Maloney. Now, Mr. Maloney says he believes that

you may have attributed this to public relations. Now you say you can't remember that.

Is there any possibility that you could have, if you were presented with this invoice and or ,sorry, this piece of paper and with this payment, that you would have said that "Telenor Mobil David Austin" was public relations?

A. If I was shown if I were asked that question, I would my natural reaction would be to, I think, try to find out what was the content of this, and I would call back to either Arve or Per or Knut to try to find out. And I checked this morning if they could remember any call from me, but they couldn't. So I mean, then I couldn't

Q. Yes, you have been in contact this morning with Mr. Digerud, who is in Bilbao now, and Mr. Johansen, who is in Oslo, and there is no question of you having contacted either of them?

A. No.

Q. So without contacting anyone to find out what the /RS

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particular payment was or a particular payment was, would you, on your own initiative, ascribe a basis for a payment?

A. No, not at all.

Q. Not at all. And did you ever hear of any public relations payment relevant to a David Austin at that time?

A. No, I can't remember.

Q. And in any event, can you confirm that Mr. Simonsen will deal with this, that the entry doesn't make sense because it associates David Austin with Telenor Mobil, and of course, the payment was associated with Telenor Invest, which was a completely different company?

A. That's right. I would have reacted on that at once.

Q. And would that have been apparent to you if you had seen the invoice that we have seen now at the time?

A. Could you please repeat?

Q. If you had been shown the Telenor the invoices that were raised, or any of them, whatever one was in existence at the supposed time that Mr. Maloney came in to see you. I think he seems to be suggesting that this happened in early the early part of 1996, before you left on the 19th February at least; would it have been apparent to you that Telenor Mobil had no association with these invoices?

A. No. I would have reacted on that, and if I had seen that statement, I would have phoned immediately, I think. Because, yeah, because I would understand that something was wrong here. Telenor Mobil would not invoice us directly.

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Q. Thank you very much.

CHAIRMAN: Thank you for your further evidence,

Mr. Thygesen.

THE WITNESS THEN WITHDREW.

CHAIRMAN: Mr. Simonsen, perhaps if you would be kind

enough to return to the witness-box, please.

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CONTINUATION OF EXAMINATION OF PER SIMONSEN BY

MR. HEALY:

Q. MR. HEALY: Thanks, Mr. Simonsen.

I think yesterday we when you left, we were talking about the second telephone call that you received by that you received from Mr. Denis O'Brien in which he asked you to remove any reference to to change the currency on the invoice, do you remember that?

A. Yes.

Q. Can you remember any discussion you had with Mr. O'Brien in the course of that telephone call?

A. Well, the discussion was on the issue to try to postpone the invoice for four to six weeks, and also that he preferred the currency to be Irish pounds.

Q. What difference did it make whether the currency was in

kroner, Irish pounds, or dollars?

A. To us it didn't really make a difference.

Q. Surely it couldn't make any difference at either end in terms of how much money Digifone had to pay to you?

A. That's true.

Q. The only point about it, I suppose, is that if it were in dollars, it might be linked to the original invoice from Mr. Austin, would that be right?

A. Yes, I would believe so, yes.

Q. And that if you removed any reference to dollars and changed the currency to Irish pounds, you would be removing another trace or another clue as to the underlying transaction, would that be right?

/RS

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A. Well, this wasn't a specific request from Mr. O'Brien in that context, but that could have been the underlying motive, yes.

Q. Seeing as there couldn't have been any difference in terms of how much money Digifone owed you, whether it was described in kroner, dollars, or punts?

A. Well, I mean, if you look aside from any currency risk, which is not very substantial in this case, you are right, yes.

Q. Now, it's something I touched on yesterday, but I just want to clarify one or two aspects about it. Do you remember Mr. Johansen gave evidence that sometime in

1996, I think it was, he received a phone call or he received a report of a phone call that had been made by Mr. Denis O'Brien, or some account of information that had been given by Denis O'Brien, to the effect that the money had not been paid to David Austin. Do you remember that evidence?

A. Yes.

Q. And Mr. Johansen, in his first evidence in June, thought that he had got a phone call directly from Mr. O'Brien to say that, but he says that he is not sure of that, and he thinks that it may be that somebody else was contacted and that that other person told him what Mr. O'Brien had said, do you remember that?

A. Yes.

Q. Now, you have said in your statement that you never, during this period, '95 and '96, discussed the processing of this payment with Mr. Johansen, isn't

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that right?

A. That's correct.

Q. And I think Mr. Johansen himself said that you couldn't have been the person who told him about any phone call from Denis O'Brien.

A. That's correct.

Q. But you had been receiving phone calls from

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

A. In relation to our invoice to ESAT Digifone, yes.

Q. You were the person who knew that that money had been paid, isn't that right, because you were involved in actually processing the payments? Isn't that correct?

A. Yes, I had asked the accounts department to do the payment, that's correct, yes.

Q. But in terms of the three people who were initially involved in carrying through this transaction yourself, Mr. Digerud and Mr. Johansen you were the person who actually put in train the payment to Mr. Austin and the recovery or reimbursement from Digifone, is that correct?

A. That's correct.

Q. So if Mr. Johansen wanted to find out what was happening, he'd have had to ask either you or Mr. Digerud; and according to you, you didn't discuss it with Mr. Johansen, is that right?

A. No, I don't remember discussing that with Mr. Johansen.

Q. Do you remember discussing it with Mr. Digerud?

A. No.

Q. Mr. Digerud didn't ask you, "Has this payment been made?"

/RS

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A. No, I cannot remember having discussed that with Mr. Digerud.

Q. Do you remember receiving any telephone call or any other communication from Mr. O'Brien asking you to make the payment, or to hurry it up, or telling you it hadn't been made when in fact it had been made?

A. No, I cannot remember that being a part of the conversation with Mr. O'Brien.

Q. You were the person with whom Mr. O'Brien was dealing in relation to this matter, isn't that right, at least in part in relation to this matter?

A. Yes, in part. But again, that was dealing with the invoice from Telenor to ESAT Digifone. I don't remember discussing the payment from Telenor to David Austin with Mr. O'Brien.

Q. In the course of your communications with Mr. O'Brien, in any case, there was no mention of a political contribution; your discussion with him, as I understand your evidence, was confined to the appearance of the invoices. Is that right?

A. Yes.

Q. Now, if we could have Mr. Maloney's manuscript document on the overhead projector, please.

Do you have a hard copy of that?

A. Yes, I have it, yes.

Q. You see the column of intercompanies payable amounts. ESAT Telecom, Communicorp, 98FM ESAT Telecom, Communicorp, 98FM, then "Telenor Mobil, re David Austin, 31,600."

/RS

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Now, that's Irish currency, to judge from the rest of the calculations on that page, and I think that's been confirmed. I think Mr. O'Donoghue indicated that they took 10 as a rough conversion factor between kroner and Irish pounds at that time in Digifone. That figure of 316,000 is the figure that was on the original invoice, 1000050, is that right?

A. The 1000050 was in Norwegian kroners, wasn't it?

Yeah, 1000050 was in Norwegian kroners, so the amount was 316,000.

Q. Sorry?

A. The first invoice 1000050 was in Norwegian kroners, 316,000.

Q. Yes. And Mr. O'Donoghue has given evidence, I think, that they used a rough conversion factor of 10 to 1; do you follow?

A. Okay.

Q. And that is the only invoice that referred to David Austin, isn't that right?

A. Correct.

Q. Now, as we find out from your evidence yesterday, that invoice was in the computer and was one of the computer-generated automatically generated invoices, and I think when I was wondering what happened to this

invoice after the copy in Dublin had been shredded, you suggested, I think, that it probably stayed in the computer; otherwise the numbering would be upset.

A. Well, at least you would not be able to generate a new invoice with the same number from the system, because /RS

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the number would have been occupied by this invoice.

Q. Yes.

A. But I am not aware to which extent the full content of the invoice is retained in the system or not.

Q. Well, if I could just pass for a moment to that, and maybe you could clarify this for me. The invoice that was ultimately sent, the one that was manually generated

A. Yes.

Q. was not made on the computer, obviously, and had to be filed some way separately, isn't that right?

A. Yes.

Q. But if somebody from Dublin rang up to get information from Telenor concerning invoices, and didn't know anything about the need to hide the details of this invoice, and they asked for details of an invoice, and somebody searched the computer, there is a possibility that the invoice the computer would have produced was the original 1000050 invoice with 316,000 kroner on it. Isn't that right?

A. Well, that's not what I am not sure about, since we only got this information this morning. I have been not been able to go back and check what type of information you would get out of the computer if you just entered the number 1000050. So I am not able to give you a full answer on that.

Q. Maybe you might just check it or conduct that exercise to see if that's what you'd get.

A. Yes.

Q. Ms. O'Brien reminds me of another point that I am not

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very sure about, because I am not an accountant myself, but it has been troubling me over the last day or so.

If the computer retains an invoice for 316,000 kroner and subsequently generates another invoice for that amount, shouldn't the balance be 732,000 kroner? Do you follow me?

I am not asking you for an answer. I am trying to give you my question, so that when you conduct your exercise or make your inquiries, you can get an answer to this question as well.

If the computer retains an invoice for 316,000 kroner, generates another invoice at a later point, as we know for equivalently the same amount, isn't that right, 31,300 Irish pounds, which again is roughly 316,000

kroner

A. Again, I would have to go back to give you the detailed answer. But what I would assume is it's possible to actually credit the amount, but you would still have the issue that the number is occupied. You cannot do anything to change the number.

Q. Am I right in thinking or as a non-accountant, do you agree with me that the first invoice for 316,000 kroner should also have been negated by a credit in the computer, even if a credit wasn't actually sent out? Do you follow me?

A. I would assume so, not being an accountant myself.

Q. Well, maybe you would just try to get the answer to that question as well when you go back, because I don't /RS

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understand it. There may be a perfectly simple explanation.

If you just bear with me for a minute, Mr. Simonsen, I think I seem to have mislaid the relevant transcript for the day on which Mr. O'Brien was cross-examined by Mr. Fitzsimons concerning his involvement in these invoices. I'll try to go over it as much as I can without having the transcript in front of me, and if needs be, we'll clarify the matters in a moment.

In any case, in the course of the examination of

Mr. O'Brien, as I think I mentioned to you at the outset of your examination here, one of the points that was put to Mr. O'Brien was that there was a credibility issue between himself and Mr. Johansen about this whole invoice thing, who was telling the truth. And two points arose in the course of the cross-examination.

One was whether Mr. O'Brien was involved in or actually instructed anyone in connection with the shredding of an invoice, and the other related obviously related issue was whether he was involved in or had any part in the changing of the invoices.

Now, just in relation to the shredding, firstly. We know from your evidence that you were not speaking to Mr. O'Brien at the other end of the phone when you instructed somebody in Dublin to shred an invoice, isn't that right?

A. Yes.

/RS

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Q. And you hadn't had a discussion with Mr. O'Brien about the shredding of any invoice before you did that?

A. No.

Q. And you didn't ring him afterwards to tell him that you had instructed anyone to shred an invoice?

A. No, I don't think so.

Q. So unless somebody in Dublin told him about it, from your evidence, we don't know whether Mr. O'Brien knew

about the shredding of the invoice, is that right?

A. That's correct.

Q. And just one final thing to get that out of the way:

Do you know how anyone in Telenor got the impression

Mr. O'Brien may have been involved in shredding of

invoices?

A. I don't.

Q. You don't. You never mentioned to anyone he was

involved in shredding of invoices?

A. From my perspective he wasn't involved in shredding the

invoice.

Q. From your perspective he wasn't involved?

A. No, so I wouldn't have

Q. You wouldn't have told anyone?

A. No.

Q. And you have no idea how anyone in Telenor might have

or could have got that impression?

A. I don't know.

Q. Now, the other matter, the final matter just is this:

You were certainly involved where Mr. O'Brien was

concerned, in the changing of the invoices, and he was

fully au fait with everything do you understand that

/RS

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expression, "au fait"?

A. No.

Q. He was fully aware of all of the changes in the

invoices that were being discussed between isn't

that right?

A. Yes.

Q. He may not have had the invoice in front of him in the

course of your telephone conversations, but you were

discussing the same things with a view to achieving a

certain result in terms of the appearance of the

invoices, isn't that right?

A. Yes.

Q. And what you were seeking to achieve was to remove any

trace of David Austin, US dollars, or any connection

with any payment of \$50,000 to a particular party from

the Irish side of the records of this transaction,

would that be right?

A. Yes.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. Simonsen, I wonder if you could

take a look at your evidence yesterday. It's Book 144.

And it's page 105, and it's question 489.

Mr. Healy was discussing the question of payment, and

at question 489, he said: "You weren't concerned that

at the end of the day, someone might say to you on the

ESAT Digifone side, you don't know what this is about."

/RS

And your answer was: "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."

I was just wondering, Mr. Simonsen, what did you mean by that answer?

A. I think what I was trying to say is that since we had been asked by Mr. O'Brien to facilitate this payment, this would probably not be a payment that would be objected by him at any later stage.

Q. Now, just turning to another matter. I see, and I note from your statement, that you left Telenor Invest, or one or other of them, in February/March of '96?

A. Sorry, that's not correct. I left the project as such. I still worked in Telenor Invest after that.

Q. When you say you left the project in February/March '96?

A. Left full-time engagement in the project. I was still involved from time to time, but I spent less time on it.

Q. And you went to something else?

A. Yes.

Q. When was that? When you say "February/March", what do you mean by that?

A. I mean up to February/March, I had a very strong

engagement in the project and spent most of my time on it; but after that I spent radically less time on it and was working on projects in other countries which

/RS

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took up most of my time.

Q. So can I take it that in time terms, that it was either in late February or early March when that change took place?

A. Yes, but I mean, this was not a change from one day to another. It was a gradual change.

Q. I appreciate that. But it was a process which took place over the period from the end of February to early March, give or take?

A. From my recollection, yes.

Q. And the project or work that you then went to was work which took you out of the jurisdiction out of the country for large periods of time?

A. That's correct.

Q. Prior to that, the project which you had been engaged on was the project in relation to the bid process?

A. Sorry, prior to which project?

Q. In relation to the bid process for by ESAT for the licence.

A. I don't really understand the question, but

Q. What project had you been engaged in prior to that?

A. That was the ESAT Digifone bid project, yes.

Q. And that was something which was successful in October of '95?

A. Yes.

Q. And prior to the success of that bid process, you had certainly worked on that bid process with Mr. O'Brien fairly closely?

A. That's correct.

Q. Once the process had been successful, I think your /RS

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involvement with Mr. O'Brien did not continue on the same level?

A. That's also correct.

Q. In fact, Mr. O'Brien would say that the communication between you and him from roughly the end of October was virtually nonexistent?

A. Well, at least it was much more seldom than in the previous period, yes.

Q. So that the contact which you are talking about, if it took place in December/January of '95/'96, was something, in a sense, out of the blue?

A. Well, not completely out of the blue, but it was at the point when I had much fewer contacts with Mr. O'Brien than previously, yes.

Q. So far as your involvement in these invoices were concerned, finance wasn't your area of expertise?

A. That's correct.

Q. And Telenor had an accounts department?

A. Yes.

Q. And who ran that department?

A. The accounts department in Telenor Invest, which is the relevant vehicle, was headed up by the Swedish accountant that point.

Q. And in the normal course of events, invoices or credits would come in to Telenor International, or Telenor Invest, or whichever, and they would go straight to the accountancy department, where they would be dealt with?

A. Well, either they would go to the accountants department or to the person the invoice would be addressed to.

/RS

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Q. And if there was a particular person involved in them, he would normally send them on to the accounts department to be dealt with?

A. Yes.

Q. And that would be the Swedish gentleman you have spoken about?

A. Swedish lady.

Q. Lady, I beg your pardon. Now, in relation to this particular transaction, the persons in Telenor who seem to have been involved in it or known about it were Mr. Johansen, Mr. Digerud, and yourself?

A. Yes.

Q. And the line of communication appears to have been from Mr. Johansen to Mr. Digerud to you?

A. Yes.

Q. You don't seem to have had any direct communication with Mr. Johansen?

A. No. I got the instructions from Mr. Digerud.

Q. What did you see your role as being?

A. Well, I think this was an executional role; make sure that the payment was made and make sure that this was re-invoiced to ESAT Digifone so that we would recuperate the money we had lent out.

Q. Why was it necessary to bring you into this process?

A. I mean, there were a certain amount of work related to it; not very much, I must admit, but I think

Mr. Digerud felt that I was much closer to all expenses incurred in the ESAT Digifone project than he was himself, and I don't think he would have dealt with it directly with the accounts department, bypassing me,

/RS

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and then making me sort of lose track of payments in relation to ESAT Digifone, since I was the project manager of ESAT Digifone.

Q. But why was it necessary to for Mr. Digerud to bring you into a process which there was no problems about in the first place?

A. Well, again, I was the project manager of ESAT

Digifone. If an invoice was to be sent to ESAT

Digifone, it was the most natural thing that it would be done through me to make sure that I was involved.

Q. Well, are you saying, Mr. Simonsen, that no invoice went from Telenor to ESAT Digifone without going past you first?

A. Well, I cannot guarantee that I have seen all the invoices that have gone to ESAT Digifone. But normally, if you look at this, I mean, all the invoices from Telenor Invest, which was the corporate entity I was belonging to, would have been gone through me at that point in time.

Q. You see, Telenor have been telling us in evidence here, and you have too, that they had no difficulty with Mr. Austin being on the invoice, or the \$50,000, or anything in relation to the invoice. Isn't that right?

A. Yes, I have heard that from previous evidence.

Q. So in the normal course of events, one would have anticipated that that invoice from Mr. Austin would have gone straight to the accounts department to be dealt with by them?

A. I don't agree to that.

Q. Why not?

/RS

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A. Because if I am a project manager of a project) and I don't have the full oversight of what we are invoicing

or not, my role is being very unclear.

Q. But what has this to do with the project that you were involved in?

A. Well, it was a transaction related to the project.

Q. In what way? It was nothing whatever to do with your project, Mr. Simonsen.

A. Telenor Invest invoicing ESAT Digifone \$50,000 is, to me, part of the project I was involved in.

Q. Isn't that the point? The Telenor consultancy invoice has a relevance to you as a project manager, and that was the invoice which you were to produce on foot of Mr. Digerud's instructions, isn't that right?

A. I don't really understand the question, what relevance.

Q. You don't understand the relevance, or you don't understand the question?

A. No, I don't really understand the question.

Q. Well, let's look at it from a different point of view, then. Let's take the documents which have been produced, and we'll take Mr. Austin's documents of the 14th December of '95 and his invoice for the 14th December of '95. Do you have those there, Mr. Simonsen?

A. Yes.

Q. Now, the first is the letter of the 14th December of '95, and that is the document which has Mr. Digerud's instruction to you dated 20th December.

A. Yes.

Q. And the instruction to you on that is what?

/RS

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A. Do you want me to translate it? It says "Per, this has to be paid by us and invoiced as management costs to Digifone."

Q. Now, the second document is the invoice itself, and there appear to be two copies of that document. I wonder if we can just identify what is on them. Common to both documents is the handwriting of the Swedish accountant on the top left?

A. Yes.

Q. And that apparently means "Copy invoice further"?

A. Yes.

Q. On one copy there appears to be either an "OK" or a signature under the letter "F", and on the other copy there isn't such a signature. Is that a signature, or is it "OK"?

Do you see that, Mr. Simonsen?

A. It says "OK", yes, in my reading.

Q. Is that Mr. Digerud's writing, or is that someone else's writing?

A. I am not able to tell you whose writing that is.

Q. So it could be Mr. Digerud's or it could be somebody else's?

A. Yes.

Q. But insofar as it's "OK", it seems to be confirming

what the accountant, the Swedish accountant, has written there, authorising it, effectively, isn't that right?

A. It could be that, yes.

Q. On the right-hand side, there is a reference, "V52695", /RS

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and under that is the "22/12/95." Now, I understand that you don't recognise that writing.

A. That's correct.

Q. Do you have a copy of the Den Norske Bank document which was with those pages?

A. Yes, I have that copy.

Q. Now, what I want to draw your attention to here for the moment, Mr. Simonsen, is, do you see in the first rectangular box, the fifth word down, "Telebankrav"?

A. Mmm.

Q. And opposite that is "V52695".

A. Yes.

Q. That would seem to correspond with the reference on the David Austin invoice, V52695?

A. It seems to be the same reference, yes.

Q. Is it possible, therefore, that that is a bank reference made by a person of the bank on the 22nd December, '95?

A. I am not sure about the date, but the reference is the same, so...

Q. It equally might have been made, I assume, by somebody in the accounts department copying from some document ?

A. I don't know how this reference was made or by who.

Q. Staying with the Austin invoice of the 14th December, which was on the screen, the box on the screen there, which is shown, that stamp: Whose stamp is that?

A. Well, that is, as far as I understand it, this is the accounts department in Telenor's stamp.

Q. So that was made by one of the personnel of the accounts department in Telenor?

/RS

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A. Yes.

Q. Now, the date on that stamp appears to be the 31st December, '95?

A. Yes.

Q. The signature, which is the signature of the person who filled this document out, I take it, is "Tillvist": Do you recognise that signature?

A. No, I don't directly recognise that signature.

Q. Could it be Mr. Malen?

A. I mean, it's the first three letters of his first name, so it could look like it's his that's the opportunity, but I cannot say that I recognise the signature as such.

Q. Now, below that, "Kondo"; what does "kondo" mean?

A. "Account".

Q. And 66281 refers presumably to a Telenor account? Or does it?

A. I believe that refers to a Telenor account.

Q. And opposite that, on the right-hand side, is the letter "D", which probably stands for "debit"?

A. Yes, I believe so.

Q. So that stamp in effect is saying that as of the 31st December, '95, there is to be debited from Telenor's account US \$50,000. Is that one way of interpreting that document?

A. Yes.

Q. Do you remember this, Mr. Simonsen?

A. I was not involved in anything with a stamp, and so I wasn't I haven't seen it with the stamp on at that point in time.

/RS

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Q. You weren't involved in any of the writing on that document?

A. That's correct.

Q. The only apart from the Swedish accountant, the only identifiable verification on that document is Mr. Digerud's?

A. That's correct.

Q. And that may be certainly is in one place and maybe is in two places?

A. It's certainly the "OK" by "K/D", yes.

Q. And it may also be the "OK" on the top, underneath the Swedish accountant's entry?

A. Yes, that I don't know, who that "OK" is belonging to.

Q. Going back to the Den Norske Bank document for a moment, Mr. Simonsen, that is a document dated the 28th December, 1995?

A. Yes.

Q. It also appears to have a date above that of the 29th Dec. 1995, which I take it is the 29th December, 1995, is that right?

A. Yes.

Q. Going again to the first rectangular box, it has a "valut a daeto" of the 29th December, 12th, 1995, which I presume is "value date".

A. Currency date.

Q. So that is the date upon which the \$50,000 was translated, is it no, no, that would be the date upon which the currency, the Norwegian currency was changed into the $\text{N} \frac{1}{2} 50,000$, is that right?

A. I assume that's right, from just reading that now.

/RS

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Q. Reading the rest of the document now, if you go to the bottom of the page, there is another of those rectangular boxes, which is another stamp, and it appears to be similar to the stamp on the first document that we looked at. And therefore, I take it

that this is a Telenor stamp?

A. Yes, it's a Telenor stamp.

Q. And that seems to have a date of the 4th January of '96?

A. Mmm.

Q. Is that right?

A. Yes.

Q. And again that seems to be signed by the same person who signed the original one, which is Mr. Malen may be Mr. Malen?

A. Yeah.

Q. Isn't that right?

A. Yes.

Q. Underneath that is "66281", which is the Telenor account, and there is a "D" opposite that, which is "debit"?

A. Mmm.

Q. Isn't that right?

A. Yeah.

Q. And below that seems to be another account number which may be 16205 and there may be another number missing, I don't know, but it doesn't look like it and that has a "K" opposite it, and that's "credit".

Isn't that right?

A. Yes.

/RS

Q. And those two, the debit and credit, have a "USD 6.32" beside it; the implication, I take it, being that the currency exchange rate between Norwegian kroner and US dollars was 6.32. Is that right?

A. Yes.

Q. What does that tell us what does that tell you, Mr. Simonsen, in relation to the transaction with which we are concerned?

A. Well, the stamps is dealing with how this was accounted for.

Q. Sorry?

A. The stamps are dealing with how this was accounted for, as I see it.

Q. So what does that mean? What do the stamps tell you?

A. To me, the stamps is how the accounts department has effectuated, technically, the transaction and bookkeeping of it.

Q. But this was nothing to do with you?

A. No.

Q. And you had no hand, act, or part in any of this?

A. No.

Q. And you know nothing about it?

A. No.

Q. The other document of the 14th December, '95, which was shown to us and which the Tribunal had been working on for a long time, is the one in our books, and I think you have a copy of that. That's the one without the

Telenor stamp. You have that?

A. Yes.

Q. Now, the only thing that I want to draw your attention

/RS

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to there, Mr. Simonsen, is that you will see at the

bottom of the page the amount \$50,000 by 6.32 equals

316,000 Norwegian kroner. Do you see that?

A. Yes, I see it.

Q. Now, whoever wrote that seems to have done the

calculation at 6.32, isn't that right?

A. Yes, that's right.

Q. Was that you?

A. No.

Q. In relation to the documents which were given to you,

Mr. Simonsen, by Mr. Digerud, what documents were given

to you?

A. From my recollection, it was the letter of the 14th

December and the invoice of the 14th December.

Q. Were they the originals?

A. I am not able to recall whether they were originals or
copies.

Q. Well, let's have a look at them, Mr. Simonsen, just to

see if we can help your memory. Do we have the

originals of those documents here?

While they are getting those documents, Mr. Simonsen,

can you help me as to what you did with them, whatever documents were given to you?

A. I took them to the accounts department and explained what the accounts department needed to do with them.

Q. To whom did you speak?

A. My recollection is that I spoke to Irina about it.

Q. Sorry?

A. My recollection is that I spoke to Irina, the Swedish

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accountant, about it.

Q. At the time that you spoke to her, presumably you gave her the documents that you had?

A. Yes.

Q. And these were the same documents that had been given to you by Mr. Digerud?

A. Yes.

Q. So when you left Irina's office, you had no documents?

A. Correct.

Q. So you didn't copy any of the documents that were given to you by Mr. Digerud?

A. I can't remember whether I took a copy or not, but no, I am not sure about that.

Q. You certainly have no recollection of copying them?

A. Correct.

Q. So insofar as they were copied, that may well have been done in the accounts department?

A. Yes.

Q. The instruction that you had been given by Mr. Digerud was to invoice this as management costs to Digifone?

A. (Nods head.)

Q. "Invoice management costs to Digifone"; what does that mean?

A. My interpretation of that, it was that this was going to be a Telenor cost that should be invoiced to Digifone. Telenor management cost to Telenor consultancy cost.

Q. Can I take it from that answer that you would have anticipated that when you requested that, that the invoice if an invoice was to be produced, that the /RS

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invoice that would be produced would be one which reflected a consultancy to Telenor?

A. Yes.

Q. And that was because you had been told to do that by Mr. Digerud?

A. Yes.

Q. And you believed that you had done that when you spoke to the accountant in the accountants' office?

A. Yes.

Q. Now, if you could just have a look at the originals, Mr. Simonsen.

(Documents handed to witness.)

Do you recognise those documents as being the documents which were given to you by Mr. Digerud?

A. I don't have a clear recollection of whether I got the original or the copies, but the most natural thing would be that I got the originals.

Q. So the position, Mr. Simonsen, when you left Irina's office, was that you believed that you had complied with Mr. Digerud's instructions in requesting an invoice in the consultancy Telenor terms, and it would then be issued?

A. Yes, that's correct.

Q. In relation to these documents, looking at the document with the telebank reference, "V52695, 22/12.95". Can you assist me at all as to what that could mean in terms of the bank?

A. I can only guess, and that is that this is the

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reference to the telebank payment which has been given by the bank to us.

Q. It is the date of the 22nd December that interests me, Mr. Simonsen. Can you help me in relation to that?

A. I am not an expert on how these things work, but if you want me to speculate, it could be that that was the first point of contact between us and the bank, and at the first point of contact, the bank gave a reference

number back which was noted then directly on the copy, and then the subsequent transaction took place on the 29th December.

Q. So that may indicate and I'll put it no further than that that may indicate that someone from the accountants department was talking to or in the bank on the 22nd December and discussing this particular invoice with them?

A. Yes, or ordering actually the currency to be able to make to be able to make the transaction, yes.

Q. And it may well be, again, that the "copy invoice further", it was clearly made either before or after the bank reference appears on it, but, might I suggest, possibly after the bank reference was put on it?

A. Before or after, I don't see why it should have been applied if it's a specific point that it was applied after or before, I don't know.

Q. Well, I was trying to understand, Mr. Simonsen, whether "Invoice further" referred "Copy invoice further" referred to making a further copy of that particular invoice or whether it related to creating the invoice which you had been asked to have created for sending to

/RS

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Digifone.

A. The way it is put, first part, "Copy on", simply means "copy". The next part, "Invoice further".

Q. I accept it isn't clear what it might mean, but it could be one of those two interpretations, which is all I am concerned with.

A. Could you repeat the two interpretations, please?

Q. It could either be a direction to copy this invoice again, which would explain why there were two copies of the invoice; or alternatively, it could be a direction to someone in relation to the invoice that you had asked Irina to have created to send to ESAT Digifone.

A. Well, it could also be the statement of the fact that the physical documentation was written on was the copy and not the original.

Q. Okay. So there is three possible alternatives?

A. It seems so, yes.

Q. Now, just a detail, Mr. Simonsen, which I want to get out of the way. When was it that you returned to Oslo after the 20th December?

A. I returned on the 22nd sorry, the 21st December.

Q. And when would you have got back to Oslo, so far as you can say?

A. I am not really sure when I landed, because I had several times indicated in the calendar suggesting that I was changing the time during that day, so I am not sure when I arrived on the 21st.

Q. Is it possible to say whether it was likely or more likely that you went into the office on the 21st or left it to the 22nd?

/RS

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A. I have no recollection on whether I was in the office on the 21st or not.

Q. Do you have a recollection of being in the office on the 22nd?

A. Yes.

Q. In relation to your instructions to Irina, did you anticipate or expect that the invoice would have been created on the day in which you gave the instructions?

A. No, I didn't particularly ask them to prepare it the same day, no.

Q. And was that because it was the last day before the Christmas break, as much as anything else?

A. Well, I wanted to get it out of my desk

Q. Sorry?

A. I wanted to get it out of my desk before leaving for Christmas, but I didn't specifically ask them to process it further before Christmas.

Q. Can I ask you, Mr. Simonsen, what is the break that Telenor gives its employees at that time, or on that year?

A. Lots of people are on vacation normally between Christmas and New Year.

Q. I know that. But does Telenor close down between, say, the 22nd and the New Year, or does it open on the 27th for a few days and then close again for the New Year?

A. Well, at that point, it wasn't closing down.

Q. Sorry?

A. I mean, if you are asking how the practice was in '95?

It was not normal to close down. It's become more normal after that.

/RS

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Q. I see, I understand. So the probability is that there were people there may have been people in the accounts department after the 27th and before the New Year?

A. I don't know whether they were there or not.

Q. I appreciate that, but it was certainly a possibility?

A. There was a possibility, yes.

Q. And certainly it would appear, so far as the banks are concerned, that they were open and doing your business, or at least Telenor's business, on the 28th and 29th?

A. Yes, that's correct.

Q. You yourself didn't come back to work until the 3rd?

A. From my recollection, I had my first day after Christmas was the 3rd, yes.

Q. And the document that was produced at some stage to you on that date was a document dated 3rd January of '96, which has become known as the first invoice?

A. Yes.

Q. Now, in relation to the payments, they would have come out of Telenor's bank account prior to the 31st

December, because that's clear from the instructions on the banks?

A. Yes.

Q. And that would therefore have come before the year 31st December, '95?

A. Yes.

Q. The invoice which was produced to you by Irina was not the invoice that you had asked her to produce?

A. Right.

Q. And was not the invoice which Mr. Digerud had asked you /RS

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to produce?

A. Yes.

Q. So it was important that that be corrected immediately?

A. Yes.

Q. In relation to the correction of that invoice, you gave an instruction to Irina?

A. Yes, I wrote an instruction on to Irina, yes.

Q. And I take it that or am I right in this, that when she brought you in the invoice, and you saw it, did you then and there give her the instruction to change it?

A. You are still talking about the first invoice, aren't you?

Q. Yes.

A. My first concern when I saw that invoice was to make sure that it or to try to find out whether it has

been sent through or not, so that was the first part of it. I didn't give her a new instruction until I had made sure that it was stopped.

Q. Now, in relation to just touching on that for a moment, Mr. Simonsen, in relation to the accounts department in ESAT, were you familiar with the fact that Mr. Peter O'Donoghue was involved in that section?

A. Yes.

Q. And did you know Mr. O'Donoghue?

A. Yes.

Q. And did you know Mr. Maloney?

A. No.

Q. When you say that you heard that a fax had been sent to ESAT, why did you not simply ring Peter O'Donoghue and talk to him about it?

/RS

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A. I am not really sure that Peter was in that office.

Q. In which office?

A. In the office in ESAT Digifone, because he was both in ESAT Telecom and in ESAT Digifone, so he was not necessarily close to the fax.

Q. But he was the person, surely, whom the fax would go to, because he was the accounts department?

A. The fax would go to the accounts department, but when you said why didn't I simply call Peter O'Donoghue, one explanation could be that I didn't think that he was

close to the fax.

Q. I see. So what did Irina say to you concerning the fax?

A. I asked her when I got the copy of the invoice, I asked her whether the fax had been sent through, and she confirmed that the fax had been sent through, that she'd put it through on the fax machine.

Q. When? When did she say the fax had gone through?

A. When I asked her the question when I got the copy.

Q. I know that. But did that all happen simultaneously?

A. Yes.

Q. I see. Why did she send the fax?

A. Well, lots of the invoices were sent by fax before they were sent by letter sorry, before they were sent by mail.

Q. And who decided whether they went by fax or by letter?

A. I don't know.

Q. Is it normal to follow up the fax with a hard copy and a letter?

A. Yes.

/RS

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Q. And would you expect that to have been done in all cases?

A. Yes.

Q. So presumably, having sent the fax, or at the time that she sent the fax, there was also a letter drafted to be

signed sending a copy of the invoice?

A. Yes.

Q. Do you remember that?

A. I don't remember seeing a copy to be sent in the mail, no, I don't remember.

Q. But you expect it would have been there?

A. Yes.

Q. You didn't give any instructions to Irina to shred any documents?

A. I expected that the fax was coming before the mailed version of the invoice. Immediately after I stopped the fax, I wrote this note that this was shredded at the receiver's end. And it's quite obvious from that that we shouldn't send the same document as a letter.

Q. But if a letter had been prepared in relation to that fax, and she had it, it would have been unlikely to have been destroyed?

A. No, I think it's likely that it would have been destroyed.

Q. Do you?

A. Yes.

Q. Why?

A. Because it was very clear from this that the document should not end up in ESAT Digifone. I think that's very clear from the instruction I wrote on the invoice.

/RS

Q. But wouldn't the letter have simply been a letter saying "We enclose herewith invoice 1000050 in respect of the above matter for your information or for your files"? Isn't that right?

A. It could have gone out, but I do not expect it to have gone out, since it was so clear that this document should not end up in ESAT Digifone.

Q. But wouldn't it have been going with the second invoice, Mr. Simonsen?

A. Which document are you referring to?

Q. The covering letter.

A. From Mr. Austin or I am confused about which covering letter you are talking about.

Q. The second invoice which was prepared on the 3rd January, '96, which was also faxed, there would have been a covering letter for that to send the copy to ESAT Digifone, isn't that right?

A. To my knowledge, the invoice of the 3rd January is the first invoice we are talking about.

Q. We are now moving to the second one, which was created subsequent to your instruction, by Irina.

A. Yes, and that was dated the 31st December, yes.

Q. But that was created on the 3rd January?

A. Or immediately after or at least after, on or after the 3rd January, yes.

Q. And that presumably was faxed as well? Or was it?

A. I don't know whether it was faxed or faxed and mailed.

Q. If it was mailed, there would have been a covering letter?

A. I don't know.

/RS

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Q. Well, put this way: No covering letter has so far turned up?

A. That's correct.

Q. For either invoice?

A. Except for the credit note, yes.

Q. Absolutely. Not only that, if I understood you a moment ago, Mr. Simonsen, you are not even sure that the second invoice, dated December, '95, was faxed?

A. No, I am not sure about that.

Q. This was the business that you had been asked to do by Mr. Digerud, and you didn't know whether the second invoice was faxed or posted, and therefore you don't know whether it was sent at all?

A. I had no reasons to not believe that the accounts department wouldn't take care of that, make sure that the invoice was sent in the proper way.

Q. I wonder if you'd just take a look at the second invoice, Mr. Simonsen, and help me with it.

A. Yeah.

Q. The instruction which you had given to Irina was to create a new invoice to Telenor for US \$50,000, isn't that right?

A. To ESAT Digifone, yes.

Q. To ESAT Digifone. Isn't that right? And to leave out David Austin?

A. Yes.

Q. Isn't that right?

A. Yes, that's right.

Q. Now, if she had followed that instruction, that instruction again would have been in accordance with

/RS

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your instructions from Mr. Digerud?

A. Yes.

Q. You did not give her any instructions in relation to the date of the second invoice?

A. I can't remember that, no.

Q. So you may have said to her, "Put a date of the 31/12/95"?

A. I may have done that, but I don't remember doing it.

Q. Have you spoken to Irina before preparing your statement for the Tribunal?

A. Yes.

Q. And did you discuss these matters with her?

A. Yes, and she has no recollection at all.

Q. She has no recollection of this document?

A. No.

Q. Why was it necessary, Mr. Simonsen, to create an invoice which was supposed to be similar to the first

invoice?

A. I don't really understand the question. It was necessary to send an invoice to make sure that the payment was proceeded.

Q. So why not get a new invoice, 1000051?

A. Well, the second invoice had the same number, yes.

Q. Why?

A. Because if not, you would have an internal problem in the accounting system, or in the invoicing system.

Q. But why? Why would you have any problem?

A. Because we would have a payment or you would have an invoice with no matching payment. If the invoice was sent out

/RS

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Q. Let's look at that, Mr. Simonsen. You had the payment out of US \$50,000 in December '95?

A. Yes.

Q. The second invoice which was created would have been a contra to that for December, '95?

A. Well, the first invoice was 3rd January, '96.

Q. No, the second invoice, Mr. Simonsen, the payment was in December '95. The second invoice was for December '95, and they would have been matching, isn't that right?

A. Matching in what sense?

Q. Matching in the accountant sense.

A. Yes, that's correct.

Q. So the end-of-year accounts would have shown outgoing 50,000 and invoiced for 50,000?

A. Yes.

Q. So the invoice that was created following the alleged shredding of the first invoice in Dublin was it did two things: It first of all acknowledged the instructions which you had been given by Mr. Digerud, and it backdated the invoice to the year ending December '95?

A. Correct.

Q. And if I understand some of your computer evidence, Mr. Simonsen, if I punched into the computer that number, I am either going to get two invoices or one invoice, isn't that right?

A. Yes, I would assume you would only get one invoice, but

Q. Which invoice would I get?

/RS

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A. The one that the computer generated in the first place, but again as I said earlier this morning, I am not sure what will happen if you enter that number into the computer.

Q. So that means a third thing had occurred in the production of this invoice, isn't that right,

Mr. Simonsen? First of all, it changed the consultancy

from Mr. Austin to Telenor in accordance with Mr. Digerud's instructions. Secondly, it created a 50,000 balance to the 50,000 that had been paid out in December, '95 and thirdly, having dealt with that having dealt with the accounts in '95, the only document left in Telenor's books was an invoice of the 3rd January, '96, showing a consultant David Austin, isn't that right?

A. But I have to specify again that I am not sure what will happen if you enter the 1000050 on the system, if it's the first or the second invoice that comes up.

Q. But in anticipation of what you'll find when you go back, that is what you expect to find?

A. Yes.

Q. And each of those matters which I have discussed in relation to that invoice were important to Telenor, isn't that right?

A. The only thing that was important to Telenor was to make sure that the transaction took place. I mean, this was technical difficulties which occurred in the process.

Q. Important in the sense I use that word, Mr. Simonsen, important in the sense that it was what /RS

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Mr. Digerud wanted done in relation to the management cost?

A. Yes.

Q. And therefore, it was what Mr. Johansen presumably wanted, him being in the chain of command?

A. Yes, this was based on the instruction I got from Mr. Digerud, yes.

Q. And the balance of the matters may have been an accountancy resolution or may not?

A. Yes.

Q. In relation to Mr. O'Brien, Mr. Simonsen, when do you say it was when he rang you?

A. The first time or the second time?

Q. The first time.

A. As I said in my evidence yesterday, I cannot specify the time exactly, but it was around the time when I was processing the first invoice.

Q. Are you saying, then, that since the 22nd was the day that you appear to have been processing the invoices, that it was on the 22nd?

A. No, I am not saying that.

Q. What are you saying?

A. I am saying it was around that time.

Q. Could you be more precise?

A. Well, since I do not know the date or the time of the call, it's very hard to be very more precise.

Q. Well, you seem to have a good recollection, Mr. Simonsen, in relation to other details like the sending of the fax and when it took place.

A. Because that's a record which I can go back and check,

/RS

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yes.

Q. Can I take it, then, that you have no clear
recollection of receiving a call on the 22nd?

A. I have no clear recollection of when the call took
place.

Q. You have no clear recollection of receiving a call on
the 21st?

A. I have no clear recollection of when the telephone call
from Denis O'Brien was actually happened, or I
cannot pin down a date or a time for when it happened,
but it was around the time when I was dealing with the
first invoice.

Q. You don't remember you don't know where this alleged
call was made from?

A. No.

Q. Do you know where you were when you received the call?

A. From my recollection, I was in my office.

Q. Does that help you in relation to when you may have got
the call?

A. It makes it more probable that it was on the 22nd, but
I am still not sure.

Q. Why is that, Mr. Simonsen?

A. Because I am not sure yet whether I was in the office
on the 21st or not.

Q. Is it that, or were you not sure where Mr. O'Brien was on the 22nd?

A. No, you were asking me where I was.

Q. I was.

As I understand it what was discussed in this

/RS

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alleged phone call?

A. Was that a question?

Q. Yes.

A. Okay. The discussion in the phone call was on how we would label the invoice that would be proceeded to ESAT Digifone.

Q. And as I understand, what you were saying in evidence yesterday was that Mr. O'Brien didn't want Mr. Austin's name on it either.

A. He was concerned about having David Austin's name on it, yes.

Q. And what did you say to him?

A. Well, to me this wasn't really a big issue, because my instruction from Mr. Digerud was to invoice this as a Telenor cost. So from the outset, I wasn't planning to put David Austin's name on the invoice.

Q. I only asked you, Mr. Simonsen, what did you say to Mr. O'Brien?

A. I think you are confusing me a bit. I didn't pick that from your previous question.

Q. No, the question was okay. What I want to know is, what did you say to Mr. O'Brien on the telephone when he asked you to do this?

A. I said that this wouldn't be a problem.

Q. Is that all you said?

A. From my recollection, that was all I said.

Q. You didn't say to him, you know, "There is no problem about this; this is what Mr. Digerud has told me to do"?

A. No, I didn't say that.

/RS

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Q. Just to be clear, lest you be in any doubt, Mr. Simonsen, Mr. O'Brien has no recollection of ringing you in Oslo on either the 21st or the 22nd December. So I am now asking you again, can you be more precise as to when you say this phone call is alleged to have taken place?

A. No.

Q. Following this phone call from Mr. O'Brien and this instruction from Mr. Digerud, when you came back on the 3rd January, or even indeed when you were speaking to Irina on the 22nd, why did you not fax a copy of the invoice to Mr. O'Brien directly for his attention?

A. He never asked for that.

Q. And you didn't think of doing it?

A. No.

Q. It would appear, Mr. Simonsen, from Mr. O'Brien's diary, as handed to the Tribunal, that he wasn't in the office on the 22nd December. Were you aware of that?

A. I have no idea where he was when he made the phone call.

Q. And you don't know whether he was on a mobile or whether he rang on a hand phone?

A. No, I don't know that.

Q. And you have no recollection of receiving the call during the course of the 21st or the 22nd?

A. I cannot pin down exactly when I received the call.

Q. Can you help me with this, Mr. Simonsen: In relation to that phone call, did it occur before or after you had spoken to Irina?

A. I am not sure whether it happened before or after I

/RS

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spoke to Irina. But if I can elaborate on that, I wasn't too concerned, because I never intended having David Austin's name on the invoice.

Q. In relation to the second telephone call, Mr. Simonsen, when did that take place?

A. Again, I am not able to give you a specific date, but the only thing I know is that it must have happened before I wrote the instruction on the second invoice.

And as we know that the instruction I wrote on the second invoice led to an execution date of the 24th

January, the phone call would have had to take place before or at latest on the 24th January.

Q. In relation to that instruction this is the instruction, Mr. Simonsen, which you have written on the invoice of the 31/12/95

A. Yes, that's correct.

Q. where did you get that from?

A. I got the copy I must have gotten a copy of the invoice from the accounts department.

Q. And in what circumstances did that happen?

A. Either I got it in my hand or by mail. I cannot recollect exactly how I received the physical document.

Q. Well, did it mean was there a file in the accountants department?

A. They had a file, but from recollection, I did not go and search the document in the file. I was provided with a copy.

Q. So it wasn't something that was in your own office?

A. Not until I collected it, no.

Q. And whom did you ask to fetch it for you? Was it Irina /RS

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again?

A. I don't remember who I got it from, but since I have written an instruction to Svein, that indicates that it was Svein that was in the office at that point in time.

Q. Well, the person that got the invoice for you,

Mr. Simonsen, would he have known that this

invoice existed, isn't that right?

A. That's correct, yes.

Q. Because normally, if you were looking for an invoice, you'd go to the computer and press a button, isn't that right?

A. Yes.

Q. And this invoice may not have been on the computer?

A. It wasn't on the physical computer, it wasn't on the physical computer, but it was shown in the files, yes.

Q. Because this was a manually put together invoice, isn't that right?

A. Yes.

Q. So do you know now whether it was kept in a file or what the position was in relation to it?

A. It was surely kept in the file, yes.

Q. Did you see that file?

A. Not at that point in time, no.

Q. When you were discussing with Irina these matters recently, did you see the file then?

A. Not in connection to my discussion with Irina. She has left the company quite some time ago. I had a separate discussion with Irina on the phone, but I have been seeing this in the file at another point in time.

Q. When?

/RS

A. When we were looking into this matter earlier this summer.

Q. When?

A. I don't know when I first saw it this year, if that's your question.

Q. Was it August? Was it September?

A. I am not sure.

Q. Did you seek it in connection with the making of your statement?

A. Yes.

Q. What was on the file, apart from this invoice?

A. Well, I found all three invoices.

Q. Did you find anything else?

A. The three invoices and the credit invoice, yes.

Q. Did you find anything else?

A. Well, I also found David Austin's invoice.

Q. And presumably there was the covering letter which Mr. Malen had created for the credit note?

A. Yes.

Q. So there were three invoices on the file?

A. Yes.

Q. Mr. Austin's invoice and letter, presumably?

A. Mmm.

Q. And Mr. Malen's

A. Cover letter.

Q. cover letter, is that right?

A. Yes.

Q. And that was all?

A. That was all that was relevant that I found, yes.

Q. So there were no other covering letters, for example?

/RS

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A. No, I didn't find any other covering letter.

Q. Not even for the invoice of the 27th March of 1996?

A. No.

Q. Now, in relation to this instruction, did you speak to Mr. Malen about it since in preparing your statement?

A. No, I had not spoken to Mr. Malen.

Q. Is he still in the company?

A. Not in the branches of Telenor that I'm working in. He may be in other parts of the group, but not to my knowledge, no.

Q. But he is in the company somewhere?

A. I don't know.

Q. You don't know. But he would certainly have been in a position possibly to help you as to when you might have given him an instruction in relation to the credit note?

A. If he can remember it, yes.

Q. The credit note was issued on the 24th January.

A. Yes.

Q. And what happened to that? That credit note was being set against what document?

A. The credit note was referring to the invoice 1000050, dated 31st December, '95.

Q. Well, so far as the invoice is concerned, leaving the covering note aside for a second, Mr. Simonsen, the invoice itself which is in the computer is showing for the year '96 a credit of US \$50,000?

A. Yes.

Q. And the only other document relating to '96, for the /RS

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'96 year, is the first invoice, if it's still there, of 316,000 kroner, isn't that right?

A. Yes.

Q. Do you know whether that document was faxed?

A. No.

Q. Clearly it was sent by Mr. Malen?

A. According

Q. It was sent by somebody Mr. Malen, yes, Mr. Malen.

A. I don't know who physically sent it, and the routines were to send it, at least to send it by mail.

Q. But it was Mr. Malen who did the covering letter?

A. Yes, and presumably also the credit note as such.

Q. Now, am I right or wrong in thinking that that really brought to an end your involvement in this whole transaction?

A. You are right in that.

Q. You had nothing to do you weren't involved at the

time that the invoice in March of '96 was created?

A. That's correct.

Q. And in fact, it appears to have been created at a time outside the period when you wanted to have it created.

In other words, it was longer than the six weeks?

A. Yes.

Q. I wonder, Mr. Simonsen, do you have before you the documents, the financial documents, reconciliations or whatever they are called? Do you have those?

A. If you just wait a second, I'll see if I can find them.

Q. We'll give you a copy.

(Documents handed to witness.)

/RS

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?

A. Yeah, I have it.

Q. Mr. Simonsen, I want to draw your attention, first of all, this appears to cover the period 1/1995 to 3/2001?

A. Yes.

Q. I interpret that as meaning January 1995 to March 2001?

A. Yes.

Q. The only entries for 1995 on this document appear to be the two the transaction of December '95 and January '96. Isn't that right?

A. Well, the only '95 reference is the first, yes.

Q. And the invoice that is there referred to in this

printout, 31/12/95, is the second invoice?

A. Yes.

Q. So it would appear, if we were to follow that correctly, that the other invoice may not be on the computer?

A. Not on this, no.

Q. And presumably this would produce everything that was there?

A. I am not sure if this is necessarily the same system as the system which is generating the invoices.

Q. I see, okay.

Now, the other matter that I want to ask you about is, do you see there the 27th March, 1996?

A. Yes.

Q. There appear to have been three invoices on that day.

A. Yes.

Q. One was 1000083 for 10,185,678.30?

/RS

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A. Mmm.

Q. One for 1000084 being for 316,130,000?

A. Mm-hmm.

Q. And one being 1000085 for 2,604,523.56?

A. Yes.

Q. In relation to those invoices, can I draw a probability from that that all of those invoices would have been sent at the same time?

A. It looks like that, yes.

Q. So the invoice for 316,000 was included with invoices for 12,700-odd thousand?

A. It's clearly separate invoices, so I don't know what you mean by "included".

Q. Insofar as they are separate, what I am curious about, Mr. Simonsen, and I don't know that you can help me, is whether they would have gone in one envelope or three separate envelopes.

A. I cannot answer to that. I wouldn't know.

Q. The other just passing query which you may be able to help me with, Mr. Simonsen, on that document is, although it refers to the period January '95, how is it that the only entries the only entry for '95 is the 31/12/95? Does that mean that between January and December of '95, there were no other invoices between Telenor and this company?

A. I would have to look more in detail into that, but it could be interpreted as that, yes. It was also a change of system going on at this period in time, so I am not a hundred percent sure how to interpret it.

Q. You see, the only document, Mr. Simonsen, that Telenor /RS

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can actually show as having been sent to ESAT Digifone is the credit note of January '96.

A. Why?

Q. What other evidence is there that any documents were received by ESAT?

A. I am not familiar with which documents was received by ESAT or has been produced by ESAT.

Q. Well, the person that you rang up to shred the document that you say was faxed, who was that person?

A. Well, as I said yesterday, I knew quite a few people there. It could have been quite a few people to choose between, and I am I don't remember exactly. This was a very brief phone call. I did not go into any details relating to the invoice. Maybe it took place in 30 seconds, maybe. I am not really sure who the person I spoke to about that was.

Q. I just want to get an image of that Mr. Simonsen. You ring up ESAT Digifone?

A. Yes.

Q. And you speak to someone for 30 seconds. You tell them who you are and what you want done?

A. Someone I knew, yes.

Q. It was someone you knew?

A. Yes.

Q. Who was it?

A. I am not sure.

Q. You must have a range of people?

A. Yes, I have alternative people, yes.

Q. And I presume you have given these names to the Tribunal?

/RS

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A. No.

Q. Why not?

A. Because as long as I cannot pinpoint one specific person, I don't feel it's right to speculate on a number of persons.

Q. But it's important, Mr. Simonsen. Isn't it?

A. The person I spoke to in the other end had no wish of what the matter was about. He was tearing a piece a piece of paper, because I said it was a mistake, and that it would be replaced by a new piece of paper. The person had no knowledge about any of the contents or anything like that.

Q. So far as you are concerned, Mr. Simonsen, you are saying you don't know who it is, you knew them, and you are not prepared to speculate?

A. Yes.

Q. Mr. Simonsen, just in relation to a matter which Mr. Johansen gave evidence about, do you remember him contacting you prior to May, 2001?

A. In relation to what, sorry?

Q. In relation to his statement in Tribunal business.

A. We may have touched upon it very briefly before that, but not in any detail.

Q. Well, it was based on your based that was part of the inquiries that he made at that time, Mr. Simonsen.

And at question 121 on page I'll just get the proper reference now. It's day 115; it's page 34

A. Sorry, I don't have that reference.

Q. Yes, we'll give it to you now.

/RS

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The answer, Mr. Simonsen, which I am drawing your attention to, is the question to question 121, where Mr. Johansen says: "This invoice was sent to ESAT Digifone, but this is not quite clear how this came about, because I tried to check it several times, but Per's best recollection is that he got the information from the other end, that it was not acceptable, and that Per would be the natural contact since he had been the project leader and that we needed to correct it."

Do you see that?

A. Yes.

Q. And it would appear that he gave that answer after speaking to you about it?

A. Yes.

Q. Do you recollect that?

A. Yes, I recollect speaking to him, brief moments, about his preparation for the process, yes.

Q. But clearly, from that, one could draw the probability that you did not you certainly did not tell

Mr. Johansen about Mr. O'Brien?

A. Well, is this about the shredding, or what's the context? I mean, it's a bit hard when I am only presented with a very brief statement.

Q. Well, let us go back, then. This relates to the he was dealing with the invoice where you have given the instruction to Irina that this is now shredded and with the receiver, it's the invoice of the 3rd January, '96, this is now shredded. A new invoice should be sent for consultancy services. So he is talking about

/RS

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that invoice, okay?

A. Yes, okay.

Q. And he seems to have he was being asked questions in relation to that, and he, in his answer, is relying on information which you appear to have given him. And all I am saying is that it appears that in whatever conversations took place at that time, you did not draw to his attention then that there had been communication between you and Mr. O'Brien?

A. No, that's correct.

Q. But I am sure that you or would you, or did you tell him that the invoice that you had been asked to create by Mr. Digerud was one which didn't comply with the 3rd January, '96?

A. Sorry, can you repeat that question?

Q. Would you have told him in those conversations that the

invoice, the 3rd January, '96, did not comply with the instruction which you had got from Mr. Digerud?

A. I cannot remember whether I said that or not.

Q. You cannot remember. Just one other small point, Mr. Simonsen; in relation to the alleged faxing of the first invoice to Telenor, sorry, to Digifone, you don't know whether appendices were attached with that invoice?

A. I am not sure whether appendices were attached or not.

Q. Certainly the conversation that you had with the person in ESAT Digifone, you discussed the shredding did you discuss the shredding of the document, or did you discuss the shredding of the documents?

A. I discussed the shredding of the fax.

/RS

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Q. In relation to the material which came to us this morning, Mr. Simonsen, from Mr. Maloney, can you help me as to who he might have been speaking to and who would have faxed him information upon which he relied upon?

A. No, I do not know who he spoke to. He did not speak to me. He could have, of course, spoken to somebody in the accounts department.

Q. But clearly, as a result of that conversation, a fax appears to have been sent to ESAT?

A. That's what he stating, yes, but we haven't seen that

fax.

Q. And the sending of that fax appears to have been, from this letter of the 18th October, 2001, in the early part of '96, isn't that right?

A. It appears so from the letter, yes.

Q. And may well have been in the early part of January, having regard to other evidence, isn't that right?

A. You can read that out of it, yes.

Q. At the time that that fax was sent, it first of all will be material to know when he did up the handwritten document, isn't that right?

A. Well, I don't know about this fax, or the alleged fax, where it has been sent or what the content was, so...

Q. What I want to ask you about, I want to say that assuming it was early January, there are, I suggest, three possible documents that might have been sent to him. One is the invoice from David Austin of the 14th December, isn't that right, because that would have been on the file, as we have already discovered?

/RS

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A. Mmm.

Q. Secondly was the invoice of the 3rd January of '96?

A. Mmm.

Q. And thirdly was the fax of the 29th December of '96?

A. The 31st

Q. Sorry, the 31st December, '95.

A. Yes.

Q. So those are three possible documents which could have been sent to him if it was early January, isn't that right?

A. If somebody sent those documents, then yes, those were the ones that were produced at that point in time, yes.

Q. Now, none of those documents refer to Telenor Mobil?

A. That's correct.

Q. Is there a possibility, Mr. Simonsen, that you are confusing that fax with the fax that you think might have been sent on the 31st January, '96?

A. Which fax was sent on the 31st January, '96?

Q. Whichever one you say you sent, Mr. Simonsen.

A. I never said

Q. Sorry, I beg your pardon, you are quite right, the 3rd January, '96. I beg your pardon.

A. No, I am not no.

Q. Do you understand my question?

A. My understanding of your question is you are asking whether I am confusing the invoice dated 3rd

Q. No, what I am asking what I am trying to ask, Mr. Simonsen, is whether there is a possibility that the fax which you are speaking about and the fax which was sent to Mr. Maloney are one and the same fax.

/RS

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A. No, I don't believe that's the same fax.

Q. Thank you, Mr. Simonsen.

CHAIRMAN: Normally, Mr. Fitzsimons, I'd rise for the normal hour. Now it occurs to me that some allowance may be made for the fact that obviously the witness is keen to get away. I don't want to impose an overlong sitting, but what I am proposing is that we might somewhat truncate the lunch break.

MR. FITZSIMONS: I am obliged to you, Sir. I will be quite short, and the witness does have a plane to catch at three o'clock.

CHAIRMAN: I think we should go ahead and just check, in fairness

MR. FITZSIMONS: I will be five minutes.

CHAIRMAN: Then I don't think it's asking too much of those providing the stenography service. We will proceed.

MR. FITZSIMONS: I am very much obliged, Sir.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Firstly, Mr. Simonsen, could you just look at the letter of the 24th January, 1996, from Mr. Svein Malen enclosing the credit note of that date?

/RS

A. Yes.

Q. You have that there. You will see that that letter is headed "Re invoice number 1000050" and says "Enclosed you will a credit note for this invoice. The consultancy fee was by a mistake debited on your account.

We are sorry for any inconvenience that this may have caused you."

So that letter, would you agree, links invoice number 1000050 to the credit note invoice 1000071?

A. Yes.

Q. Now, you mentioned that in Oslo you inspected a file where there were this series of invoices we are talking about, and this letter. Did you find on that file any letter from ESAT Digifone saying something to the effect, "Dear Mr. Malen, we have received your letter of the 24th January. We do not know what this invoice 1000050 is. We have not received it", and asking, "Why are you giving us this credit?"

Was there any letter to that effect at all?

A. No.

Q. Now, if we can go to the balancing document, the konda transaction that was examined some moments ago?

A. Yeah.

Q. Mr. McGonigal suggested to you that the first item on

that list, at the very top, I think he suggested to you
it must have been the second invoice; am I correct in
/RS

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that? Well, now, will you look at the due date; the
due date on that shown on this document is 3/1/96,
isn't that correct?

A. Yes.

Q. Though, of course, the date of the invoice is stated to
be the 31st December, 1995. Well, the second invoice,
if one examines it, shows the due date as the 31st
January, 1996, whilst the first invoice shows the due
date as the 3rd January, 1996. So this entry appears
to have married the first and second invoices?

A. Yes.

Q. We have the date of the second invoice, the due date of
the first invoice. Just for accuracy's sake.

Now, just moving on to Mr. Maloney's evidence, the
Tribunal letter of the 18th October, 2001. And it
appears that Mr. Maloney is going to say that he
received a fax and no doubt, hopefully, maybe that
fax can be traced at ESAT and it was from the
contents of that fax that he abstracted the information
with reference to Telenor Mobil, 31,600 re David
Austin.

Now, as Mr. McGonigal has pointed out, there is no

reference to Telenor Mobil on any of the invoices or documents we have gone through.

Now, if we could go now to Mr. Maloney's document, and we see he has written out "Telenor Mobil, re David Austin, 31,600." Then below that, "Telenor Invest, /RS

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½100,000."

Now, the liability for 31,600 belonged to what company?

A. To Telenor Invest.

Q. Invest. So the reference to Telenor Mobil there, is it correct or incorrect?

A. It's wrong.

Q. If that document was correct, should there not be a single entry, Telenor Invest, ½131,600? Doesn't that follow?

A. Yes.

Q. Now, just one little point arising out of your evidence yesterday, day 144, question 462, at page 102, I think it is sorry, 468 I am sorry, I beg your pardon, 462, page 100.

You were asked the question: "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?"

"Answer: No."

Then you say, "I can't remember that. I don't think I did."

Now, your latter two comments leave open the possibility that you might have been involved at some stage in such a transaction. Have you thought over that answer again?

A. Yes. I think it's more correct, a firm "no" is my /RS

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correct answer to that question.

Q. A firm "no". Thank you very much indeed.

CHAIRMAN: Thanks, Mr. Fitzsimons.

Anything in conclusion?

MR. HEALY: Just one or two small matters.

THE WITNESS WAS EXAMINED FURTHER BY MR. HEALY AS FOLLOWS:

Q. MR. HEALY: What you said to me yesterday, Mr. Simonsen, is that you couldn't remember, you don't think you did 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. And you say, "No, I can't remember that. I

don't think I did." And then I think I asked you about that, again and again and again, for a few minutes.

MR. FITZSIMONS: I am sorry.

MR. HEALY: I'll go through the whole thing.

I went on to say, "Surely, if you had ever done something like that, you'd remember whether you did or didn't do it."

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And your answer was,

"Answer: I have been involved in very many projects, so...

"Question: I know you have been involved in a lot of projects. I know you may have paid things, not very frequently, that were invoiced as something else. I am moving on from that, Mr. Simonsen. 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. That last part, sorry, was which number?

Q. That was question 464. You say: "I cannot remember having done that, no." I said, "For a moment we'll press on; we may have to come back to this."

Now, you say, "No, I cannot remember." You were asked that question at least twice. And you said you couldn't remember whether you had ever been involved in such a transaction. And you now say, today you say that the answer to that question is a firm "no"; isn't that right?

A. Yes.

Q. What has caused you to give a different answer today?

A. I don't think it's a really different answer, but to be honest, I think the question was a bit complicated.

Q. The first question I asked you wasn't very complicated.

The second time, I had to make myself clearer. What has caused you to give what your own counsel,

/RS

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Mr. Fitzsimons, says is a firm "no" to that question?

Did you discuss it with somebody overnight?

A. I read through this statement again, and when I read it sorry, I read the transcript.

Q. When did you read it?

A. Last night.

Q. Right. Yes?

A. And when reading the question, I believe that the right answer to the question is "no", yes.

Q. So in fact, you never ever took part in a transaction involving a payment to a political party or a political

contribution of any kind that was described as something else?

A. Yes.

Q. Did you ever take part in a transaction involving a political contribution that was described as a political contribution?

A. No, I can't remember having done that either.

Q. Well, now, is this a firm "no" or a not so firm "no"?

Which is it? Did you or did you not ever take part in the payment of a political contribution which was so described, as a political contribution?

A. I cannot remember having taken part in any political contribution.

CHAIRMAN: Well, there will be no question of, if you do remember any such matter, of you being asked to state where or who it related to. It's merely a point that the Tribunal is interested in. Can you say definitely that in all your time with Telenor, you have

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never had occasion to be involved in any payment in any country that may have involved giving money to some political party or political figure?

A. Yes, I can say that.

Q. MR. HEALY: Are you aware of any official employee or executive of Telenor ever being involved in making a

political contribution to a political party in Norway,
or in any country, in the course of Telenor business?

A. I am not aware of it, no.

Q. Sorry?

A. I am not personally aware of political contributions
having been made by Telenor.

Q. Except this one, obviously?

A. Yes.

Q. Now, just to clarify one or two small what I'd call
housekeeping matters. A lot of confusion has been
caused, and I don't imagine its anyone's fault, by the
fact that we appear to have a number of different
copies of various invoices, and that the originals
appear to contain stamps on them of which the Tribunal
weren't aware, maybe you weren't aware, until
yesterday. And I am sure in due course we can get some
explanation for it.

What I want to know is whether you know where the
documents that the Tribunal got the copies of the
invoices that came from David Austin, the copies of the
letter that came from David Austin, and the copies of
the invoices that went to Digifone do you know where

/RS

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they came from?

A. No.

Q. When you first saw them, was it the lawyers brought

them to your attention or Telenor employees who brought them to your attention?

A. It was the lawyers.

Q. The lawyers. And it was, therefore, from the lawyers' files that they were brought to your attention?

A. From my recollection, it was from the lawyers' files, yes.

Q. I understood you to say a moment ago, when you first saw one of these invoices in the file, it was earlier this summer, I think you were talking to you were responding to a question from Mr. McGonigal. I'll get the exact question I think what Mr. McGonigal said was this he was asking you about the invoice that wasn't on the computer.

A. Yes.

Q. The second invoice which we are calling ten thousand and fifty, in fact one million and fifty, but I think it's easier to say ten thousand and fifty.

Mr. McGonigal said: "And this invoice may not have been on the computer?" And you answered, "It wasn't on the physical it wasn't on the physical computer, but it was" and then there is some word which I can't pick up in the files.

Mr. McGonigal asked, "Because this was a manually put together invoice, isn't that right?"

/RS

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"Answer: Yes.

"Question: So do you know now whether it was kept in a file or what the position was in relation to it?

"Answer: It was surely kept in a file, yes.

"Question: Did you see that file?

"Answer: Not at that point in time, no.

"Question: When you were discussing with Irina these matters recently, did you see the file then?

"Answer: Not in connection to my discussion with Irina. She has left the company quite some time ago. I had a separate discussion with Irina on the phone, but I have been seeing this in the file at another point in time."

You were then asked, "When?" You said, "When we were looking into this matter earlier this summer." And you weren't sure whether this was August or September.

Now, what file was that that you were looking at at that time?

A. The file of the accounts department.

Q. Was it a folder? You know, a physical file; not a computer file, a physical file?

A. It was a physical file.

Q. And do you know what the entire file contained? Not every document, but what was it a file of? What was the name of the file?

A. It was a file of transactions having taken place at that point in time.

Q. Between who and who?

/RS

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A. Well, between Telenor Invest and everybody.

Q. Do you think it contained between Telenor Invest and everybody?

A. Yes, it was not

Q. Surely, hardly one file surely you wouldn't have one file for all of that?

A. The file I was looking into was assorted first of all, the physical file was in a box, because this had belonged to the previous office. It was a moving box. In that box the file was organised according to dates, transactions having been made out, in and out of Telenor Invest. So it was to and from everybody.

Q. So it was the entire Telenor Invest invoice file for the relevant period, January, February, March of 1996?

A. Yes.

Q. I understand. And within that there were other files?

A. Yes.

Q. And was there a separate file within that box which contained this file?

A. No.

Q. I think you went on to say that this was the only relevant document that you found

A. Yes.

Q. in that file.

What do you mean by "the only relevant document"?

A. The only documents which were relating to this transactions, or this transaction.

Q. Were the other invoices in it as well, the ones that were automatically generated by the computer?

/RS

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A. You mean the other invoices in the file?

Q. Was the original 1000050 in it, the computer-generated one? The manually generated 1000050? The credit notes, 1000071, and then it was it was 1000084, is it?

A. Yes.

Q. They were all in it?

A. Yes.

Q. And when you say you looked at that file earlier this summer, was that in preparation for your own evidence or in preparation for all of the Telenor evidence?

A. In preparation for my own evidence.

Q. Did anyone ask you to look into this prior to Mr. Johansen giving his evidence? In other words, prior to the 11th June, I think no, in fact, prior to May of this year?

A. Well, as I said, I saw the documents at an earlier point in time, but I cannot remember exactly when I saw

the documents the first time this year.

Q. Well, can you remember what the occasion was on which you first saw the documents?

A. From my recollection, it was when I was going to prepare my statement that I started really to look into these documents. I cannot I could have been asked at an earlier point to try to find the document, but I haven't examined the documents before I was going to prepare my own statement.

Q. So you only looked at the documents once, then, you think, in connection with the evidence you are giving here today and yesterday?

A. Well

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Q. When I say "once", you may have looked at them ten times in the last two weeks, but I mean, you looked at them now, maybe yesterday, the night before, and so on; and prior to that, you looked at them in connection with the statement that was prepared in August, is that right?

A. That was when I looked in the file for the documents, yes.

Q. And that was the first time you looked at the documents in connection with this inquiry?

A. No, as I said earlier, you asked me when did I first see the documents. I saw the documents when the

solicitors had them.

Q. looked for them, would that be before May of this year?

A. I don't think so. I wasn't at that point I can't recall having discussed this matter.

Q. Can you see what I am trying to work out? I want to know whether you looked at those documents, whether in the file or in the solicitors or anywhere, before Mr. Johansen gave his evidence.

A. I may have seen them before that, but it wasn't a big issue.

Q. I see. Did you discuss them before Mr. Johansen gave his evidence?

A. Are you talking about Mr. Johansen's first evidence?

Q. Yes.

A. No, I can't remember I am not really sure whether we discussed them or not before that, but again, this was not an important issue at that point in time. I didn't

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understand this to be very important for Mr. Johansen's evidence, so I don't think this was a big issue in any discussions about this.

Q. In answer to Mr. McGonigal, you say that you are not sure who it was spoke to you at the other end of the phone when you requested Digifone in Dublin to shred the first invoice 1000050. I think you said it was a

male; you said it was "he"?

A. Yes.

Q. You said it was a number of people, a range of people.

I am not asking you to give the Tribunal their names now, but the Tribunal will be asking you in private, initially, to make available the names of the people it could be. Will you be able to do that?

A. Yes.

Q. The last thing I want to just draw to your attention is the credit note, 24th January 1996, to ESAT Digifone sorry, the covering letter, 24th January, 1996, invoice number 1000050: "Enclosed you will find a credit note for this invoice. The consultancy fee was by a mistake debited on your account. We are sorry for any inconvenience this may have caused you."

The debiting of the consultancy fee wasn't a mistake; the mistake was the currency in which it was described, isn't that right?

A. If you look at my instruction on, what I asked Svein Malen about was to delay the invoice for four to six weeks and to change the currency.

Q. But it is a fact that there was no problem in invoicing

/RS

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the consultancy fee. The problem, as a result of Mr. O'Brien's conversation with you, was that it contained a clue to the underlying transaction by

referring to the currency, isn't that right?

A. Yes.

Q. Thanks.

MR. MCGONIGAL: I think it's only right, Mr. Chairman, just in relation to that last answer, that of course neither Mr. O'Brien nor Mr. Simonsen wrote that letter, and the only person that can comment on what is in it is Mr. Malen.

CHAIRMAN: Well, I'll consider that in due course, Mr. McGonigal. Inevitably the absolute strict rules of adversarial evidence law fall to be relaxed on occasions, but where crucial conflicts emerge, of course I'll have regard to aspects of primary evidence.

In any event, thank you very much for travelling and for the rather lengthy journey you have had in the witness-box. Have a safe trip back. Thank you.

Mr. Coughlan, when

MR. HEALY: There are no further witnesses for today, Sir.

MR. COUGHLAN: Monday morning, Sir. Eleven o'clock on Monday.

/RS

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The Tribunal then adjourned until Monday, 22nd October,

2001 at 11 am.

/RS