

A P P E A R A N C E S

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FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, SC

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I N D E X

Witness: Examination: Question No.:

Denis O'Brien Mr. Coughlan 1 - 242

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 9TH
DECEMBER, 2003 AT 2:00 P.M.:

CHAIRMAN: Thanks, Mr. O'Brien. I understand from
counsel that you have had a long day thus far with
board meetings, and that probably, understandably, you
may feel it's hard to give it your best for much over
two hours today. I'll fall in line with that. You
will appreciate, and I don't think you will quarrel
with me on this, Mr. O'Brien, I am very anxious that
we conclude your licence evidence in the course of the
sessions planned for this week, so we may seek to make
up some time lost over tomorrow and very good.

CONTINUATION OF EXAMINATION OF DENIS O'BRIEN BY
MR. COUGHLAN:

MR. COUGHLAN: Thank you, Mr. O'Brien.

Q. Mr. O'Brien, if we go back now to book number 49, and
I think we had dealt with Mr. McLaughlin's letter at
tab 91, that was the 22nd November, 1995, so I'll pass
on from that.

And then I think you'll see in the documents, there is
a lot of correspondence which takes place between
Baker McKenzie, Ms. Stroud of Baker McKenzie, and
Mr. Owen O'Connell, all about the agreement of the
12th July and the positions are being argued on both
sides. I don't intend opening those. I think you are

aware generally that that was going on?

A. Yes.

Q. Different positions were being adopted.

And now, I don't know if anything at all turns on it, but maybe you can just help us, document number 94; this is a document, or a letter which was sent to you by Paul Connolly and it had a number of tables attached to them. I don't intend opening each up of these tables, Mr. O'Brien. Could you just assist us as to what was Mr. Connolly was pointing out or advising you about here so that we can have some understanding of the tables.

A. Yeah, Mr. Connolly was very much involved in the CSFB financing.

Q. Right.

A. And I think here he is looking at I think this is his own initiative, various different options under how you could combine companies, how you could raise money on the combined entity, and nothing came out of this, but it was just something that he looked at and sent it to me in December, '95.

Q. So this was work Mr. Connolly did, sent it to you and said, you might have a look at these, this might be an attractive or a viable way of doing various things with CSFB?

A. Correct.

Q. That would be it. All right. I don't think we need

to go into them in any great detail.

A. It will become more prominent later when we talk about the 12.5, the 12.4

Q. Yes. Unless you want me to, I don't intend opening up these tables.

A. I don't think so, no.

Q. They are fairly lengthy.

Now, I think you can pass over the next tab. That's again Mr. O'Connell and Baker McKenzie. And then the next document is an Esat Digifone unaudited balance sheet. I am not going to look at that at the moment either.

A. No. I mean, all this correspondence relates to obviously Advent's solicitor Helen Stroud, trying to put forward her arguments for the crumbling of basically Clause 4.2, which is the condition precedent, but I mean, she did her best for her client, but really it never was going to succeed.

Q. Right. Well, we'll come to it and I am not going to open the full document. We come to a document eventually where there is an agreement with Advent, isn't that right? There is a memorandum?

A. Yes, yes.

Q. I am not going to open all of that document. I am going to just ask you if you agree with my general understanding of what the general nature of that agreement was in due course.

A. Yes.

Q. Right. Now, if you go to tab number 98, there is a document here which is described as it's a draft term sheet bridge loan dated 18th December, 1995, and it seems to come from Mr. Haga, if I'm correct, looking at do you see the bottom of the document, do you see the computer

A. Yes, K Haga.

Q. Does that indicate that it was or generated by Mr. Haga or

A. I believe it probably was, yes.

Q. And can you help us with that document? Are we to attach any great significance to it or

A. Well, I think you need to look at the date. First of all, it's April '94. So we are getting closer and closer to

Q. Sorry, this seems to be earlier.

A. I have one dated the 1th April.

Q. I see. There seems to be one of the 18th do you see the very bottom, does yours have K Haga, 18/12/95?

A. Yes, I do.

Q. That seems to be when it was generated?

A. Okay, sorry.

Q. This particular document. Was there some question of bridging or discussion about bridging at this stage with Telenor, with Mr. Haga, Mr. Johansen?

A. I always thought that this was happening a bit later

than this date, but I could be wrong. It's quite complicated but I'll paraphrase it.

Q. If you could please.

A. You had IIU underwriting 60%, or 65% of the consortium. It depends which way you look at it.

Q. All right.

A. Then Telenor stomping up their own money on which they had board approval dating back to, I believe, July 1995. I think Telenor were looking at the worst-case situation, that was that we would default, in other words, we wouldn't be able to raise the money to fund our 40%, and what they wanted to do is to make sure that they would participate in underwriting us and this was done via a bridge loan. Now, I mean, that's what I think this is all about, and from memory

Q. All right. It looks at least, if Mr. Haga is and we can take it, I suppose, that that's generated by the computer probably being the correct date; that at least there were some discussions going on it's clear that it's not being, to be taken as an offer or a commitment at this stage, but it looks as if there may have been some types of discussions going on about Telenor bridging Esat Holdings Limited. Isn't that what that that document appears to be

A. I don't know. I am not sure where this document, whether it came from my files or the company's files.

Q. Yeah, I'll just we can check that.

A. It seems a little bit early.

Q. I can't tell you just right now which particular file it came from?

A. I mean it's a very rough term sheet.

Q. Yes, I agree, but just that it looks as if there were we think it probably came from William Fry's documents.

A. It says 900,000.

Q. Yes. You are right there, the amount the maximum

A. If it was for more money I would have thought it was when they lent us money for a short period of time.

Q. Perhaps nothing turns on it. I'll just

A. Sorry, I can't help you. Because we would have funded we would have funded all of the costs on the licence application so we would have been in credit.

Now, I am not sure whether there was a cash call within Esat Digifone at that time.

Q. No, there wasn't. I don't think there was a cash call until

A. So we would have been I would have been surprised if they were in a debit situation.

Q. All right. Just go over the page, there is a thing called slide 1, I don't know what it means. You see Esat Digifone do you have that document?

A. I have it, yeah. I struggled when I was looking, trying to interpret.

Q. Yes, I can understand the arrow Esat Holding number 4 down on to Esat Digifone, I can understand Telenor 2 and 3 down into Esat Digifone, I can understand the IJU 1 into Esat Digifone, and the bank, that would be probably

A. AIB

Q. the debt financing. It's the do you see number 6, the arrow from Esat Holding?

A. I don't think we were lending them money at that time.

Q. You see that Esat Holdings down into Telenor, do you see that arrow number 6?

A. Yeah.

Q. I don't know. You can't help us with that?

A. I struggled when I saw that. I was trying to make unless it was, these this was not money, but it was maybe agreements.

Q. Right.

A. I think you'll have to ask Knut Haga.

Q. All right. Perhaps the next page may help in explaining it. I don't know what

A. That's probably it, yeah.

Q. It's something that you may have a better understanding than I would of. It doesn't

A. It doesn't really

Q. ring any bells with you?

A. I can't remember it raising 3 million it's a pretty small amount of money given the scale of the project,

at that early stage. But the number seems to relate,

now that I look at it, between the different

Q. The first table?

A. Yeah. I'm sure it's easily explained.

Q. All right, well, we can probably get that sorted out.

I was just wondering if you could help us with that.

The next document is just a document from Mr. Neville

O'Byrne, who was at that time, I think, acting for

IIU, to Mr. Gerry Halpenny. This is relating to the

shareholders agreement. I don't think we need look at

that.

Now, the next document, we think Mr. Owen O'Connell

thinks it seems to be generated in William Fry's,

all right, and it was probably, he thinks, generated

perhaps by Mr. Neville O'Byrne, who was the solicitor

acting for IIU.

A. I wonder does it? Because if you look at 4.

Q. Yeah, do you see the top it says: "File IIU"?

A. Yeah. That's my writing.

Q. Sorry, I beg your pardon, is it? Well, that's

helpful?

A. It's my writing, but I don't believe I generated this

document. I can't remember generating the document.

Q. Do you know where that would have come from "IIU"? Do

you think or

A. Well, I was reading just when you look at Clause 4:

"Recognise that whatever their shareholding, that

percentage, circa 25 million may be drawn down before Christmas when licence..." It looks as if it's not an IIU document when you read that.

Q. Right.

A. So it's neither

Q. You think it might be an Esat Holdings document?

A. Esat Digifone, Telenor or Holdings.

Q. We'll just read it out. The first number:

"1. Need to clarify IIU's involvement to Department, Telenor and prospective financiers of Esat."

That might indicate that it is perhaps a Holdings document, mightn't it or

A. It could be, yes.

Q. Probably not a Telenor.

"2. Need for IIU now to join Esat Holdings/Telenor in negotiating shareholders agreement.

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

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

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

"6. Political aspects.

1. Lowry has indicated 40:40:20 to Dail

2. As an offshore company, Bottin could present

problems to Lowry

3. Department will want to know soon who comprises the 20%, i.e. who are the IIU placees?

"7. Coordination with CSFB financing.

CSFB are currently arranging financing of 30 million for Communicorp/Esat. They are concerned that IIU's placing of its 20-25% should not cut across their marketing of their offer. Hence, need for full and close coordination between IIU, Communicorp/Esat and CSFB.

"8. Who will represent IIU in the shareholders agreement discussions? Contact point for other issues.

Who can be readily available to participate intensively in work programme over coming months."

Just reading it now, and from what you just said, it looks as if it may be an Esat Holdings

A. It could well be, but I certainly didn't write it up.

Q. Right. Paragraph number 8 seemed to indicate that there was somebody involved on the legal or technical point of view.

A. I am a little confused about the date because, you know, the whole CSFB and then IIU not cutting across CSFB happened, I believe, April/May.

Q. You believe that happened later?

A. Much later. And then it says here, at point 5 it says "Before Christmas." Is that Christmas '96? I don't know.

Q. That's a fair point. First of all, I was thinking this was a discussion going on when it was anticipated the licence might have been earlier, but it's a fair point, it could be Christmas '96. Or could it be I first of all read it that it might be Christmas '95 you know

A. Yeah, but I don't think the whole matter of IIU placing shares in conflict to CSFB

Q. was something that arose at that time

A. I think it arose much later, so...

Q. You had been in some discussion with CSF you had been in discussion with CSFB, of course, and I think you said that after the announcement of the competition your interest was that direction?

A. Well, a lot of this a lot of these tabs and a lot of this documentation from October, '95 to May, I would have had a peripheral knowledge of what was going on, but my focus was CSFB, so but I don't recall that Dermot Desmond/IIU placing issue conflicting with CSFB arising at that early in the whole process.

Q. Who was the person just looking at this, Mr. O'Connell doesn't recognise it as being him, this particular document. Who would have been keeping an eye on things? Would it have been we know that Mr. O'Toole was involved in the negotiation with Advent, isn't that right? He was the one that was

A. Yeah, I mean

Q. Who was involved in negotiating the shareholders agreement?

A. Then there were people working internally on it in the finance area, and then Connolly

Q. Who would have been reporting who would have been the person most likely to be reporting to you?

A. On this?

Q. On how things were developing.

A. On the negotiations on the shareholders agreement, it would have been a mixture of people; it would have been, obviously, William Fry, but also Richard O'Toole. Maybe for parts of it, Peter O'Donoghue before he went full-time with Esat Digifone. Paul Connolly, I know, had some peripheral involvement in the shareholders agreement.

Q. But could we take it so that it would be the legal advisers, Mr. O'Toole and Mr. O'Donoghue primarily who might have been?

A. It might have been them, yeah. I mean, it's not a I mean, this is a document probably somebody was saying, look, here are the issues that we need to deal with and that person may not have known about each of the issues independently but there would have been a checklist of things as we tried to move forward to get to a situation where the shareholders agreement was settled and the bridge finance was coming into place,

the signing of the licence and ultimately the closing of CSFB, so...

Q. Now, there was, I suppose if we go back to item number 1, we know the question of need to clarify IIU involvement to Department, because that's taken up subsequently at point number 6 down below, do you see that? That the Minister had indicated 40:40:20 to Dail, the question of Bottin being an offshore company could present difficulties understandable there.

"3. Department want to know soon who comprises the 20%, i.e. who are the IIU placees" if you go back to number 1 again "Need to clarify IIU involvement to Department, Telenor and prospective financiers of Esat" which would seem to indicate, to me at least anyway, that IIU's the nature of their involvement had not yet been clarified to Telenor. Do you understand the question I am asking?

A. I mean, I don't well, if you look at the evidence, I'd look at the document, I mean, there is plenty of documentation surrounding the 29th September agreement to show that Telenor were involved and had approved the documentation. So I don't see how IIU's involvement would have to be clarified with Telenor. The Department knew from the 29th that IIU were involved in some shape in regard to the underwriting. And also the potential taking up of shares. And if you look here, point number 3: "Department will want

to know who comprises" I take that it they already

know. I'm trying to help you here

Q. "Need for IIU to join Esat Holdings and Telenor in the negotiating shareholders agreement," number 3 seems to indicate settle IIU shareholding, that seems to be, represents something around the type of discussions you were having in attempting to enlarge your shareholding?

A. On CSFB's prompting, yes. The consolidation, yes.

Q. All right.

A. I think this is later, but I couldn't be totally sure.

Q. Now, the next document is the minutes of the first board meeting of Esat Digifone, isn't that right?

A. Correct.

Q. And the meeting took place on the 20th December, 1996, and they were signed by you as Chairman on the 24th April, 1996, isn't that right?

A. That's what it appears like, yes.

Q. I don't see any point number 1, just on the appointment of directors, just to take up your point there, that it was: "Noted that representation from International Investment and Underwriting Limited was envisaged once IIU had confirmed its acceptance of the draft shareholders agreement." So it seems to have been at least an understanding or knowledge on the part of Telenor to some extent from this note of the meeting, isn't that right, that

A. Well, I would have said the full extent they knew exactly what was going on, so...

This was a period when the joint venture was 50/50 but we had a commitment to bring in a third party investor, so IJU was the chosen third party investor and it would be later on where we issued them shares.

Q. I just want to mark something now, and I'll come back to it when we deal with the question of the political donation, or the political subscriptions. I'll be dealing with those separately. I won't be dealing with them today.

A. Fine.

Q. This board meeting was on the 20th December 1996. It was 1996 20th December, 1995, sorry, I beg your pardon, of course, 1995.

A. Well I have '96 here.

Q. I know that, but I think it's wrong because it was the first board meeting. It had to be 1995. I think that's a mistake, it must be a mistake.

A. Otherwise we are dating them before they happened.

Q. Yes, because there are other minutes of other board meetings subsequent to that. And the minute and you can see the signature is dated April 1996. That may be taken from the incorrect date.

A. That's right. We got ahead of ourselves.

Q. It may be that the minutes were typed up in the new year.

A. Mmm.

Q. But just, the 20th December, 1995, but it was what, twelve days previously you had a meeting in Oslo with Mr. Johansen and this was I think it was the purpose of the meeting I think was Mr. Moloney, wasn't it, and that's when the issue arose about the \$50,000 donation. That was on the 8th December, of 1995. I am just bringing that to your attention, I'll come back to that.

A. Fine.

Q. Now, if we then go to tab 101; this is the memorandum of understanding between Advent and yourself. I am not going to read it out. Just I think, Mr. O'Connell and Mr. Callaghan have given evidence, in effect, what happened was that the radio interests were taken off sorry, there was a separation of the radio interests and the telephone interests, isn't that right?

A. Yeah.

Q. Advent came out of the radio interests company and they got an increased shareholding in the telephone company, that's and

A. This is all driven out of CSFB because they said, look, you should really be a pure play telecommunications company rather than a radio broadcasting company with a telecommunications business.

Q. But it was also the means whereby any rows that were going on about the agreement of the 12th July were resolved as a result of this particular agreement; that's how the whole thing was sorted out?

A. Yes, yeah. It was also a way of Advent getting more shares. They got a little bit more; they got 3.5%.

Q. They got 3.2%, I think?

A. Yeah.

Q. Now, the next document is, it's just an Owen O'Connell it's a meeting with Mr. O'Toole, and I think he is explaining "the concern re IIU, obstacle to getting things sorted.

Licence issue about to be raised again.

Acting as strategic operator/investor.

20% v 25% issue IIU not come in Esat and Telenor go ahead ...Calls re option to come in, but price goes up as..."

"Esat and Telenor go ahead make the capital calls option to come in, but price goes up as time goes on," I think?

A. Yeah, that's what he is saying here.

Q. Did you have any involvement or knowledge of this type of discussion that was going on at this time?

A. I mean, I would have been briefed by Richard O'Toole from time to time. I think generally in just reading the correspondence, IIU knew that it was taking much longer to execute the licence, and for that reason,

they saw no big rush to sign up the shareholders agreement because the company wouldn't go ahead with the really heavy capital commitments until the licence was signed. Otherwise you could have no licence and a beautiful network, and a lot of commitments.

Q. Yes.

A. So he had a greater concern than I did at the time, because he wanted to proactively get things tied down, but I think, you know, if you are going to sign a shareholders agreement for this kind of a project, you'll want to know what's in the licence, and IIU were probably right in waiting to see later drafts of the licence to know exactly what they were getting into.

Q. Now, do you know was Richard O'Toole canvassing the prospect, or a prospective movement along the lines that they'd come in later, that you'd go ahead on cash calls at this stage between yourselves and Telenor and then IIU would come in later?

A. That was

Q. They might have to pay more?

A. He was probably looking and so were probably Fry's looking at different alternatives, whether you do one agreement with two of the parties, the two the strategic partners, and then you bring in IIU subsequently, but that wouldn't be the most efficient way of doing it. I mean, when you sit down to

negotiate a shareholders agreement, it always takes months and months and months. If you do a quick agreement, it's a bad agreement, and because IJU were coming into a new venture, we were in a new venture, people took their time and they wanted to make sure that the licence terms were fairly well defined before they would sign it. So I think Richard was looking at different alternatives to move the process forward because he was in charge of an element of it.

Q. All right. Well, were they in or not in?

A. Oh, they were in, yeah.

Q. They were in?

A. Yeah. But they weren't an obstacle to getting anything sorted, in my view.

Q. Yes. Now, if you go to the next tab, 103, it's Mr. Halpenny writing a long letter to Mr. O'Toole, obviously dealing with the different options available, or suggesting different approaches. I don't think we need open it, because you have summarised what this was all about.

A. Yeah.

Q. Now, the next document is 104, it's from you to Michael Walsh, and it's subject to contract. It's dated 10th January, 1996. It's tab 104.

"Dear Michael,

"I refer to recent discussions and in particular to our conversation this afternoon. My proposal is that

IIU will place with Esat Holdings 12.4% of the 25% of Esat Digifone to which it is entitled. In return, Esat Holdings will pay subscription amounts due on the 12.4% remaining to IIU as they fall due, up to 6.448 million (12.4% of 52 million)." Was that the value you were putting on the company at the time yourself, roughly?

A. That's either the share capital or the value of the licence, I am not sure.

Q. All right.

"I would also require your support in negotiating a satisfactory shareholders agreement to include effective board control for Esat Holdings. As part of the arrangement Esat Holdings would have to procure the release of IIU's underwriting obligations.

"The proposal is conditional on the following:

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

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

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

"4. Such other consents being obtained as Esat Holdings feel are necessary to be incorporated as

conditions in the contract at 1 above.

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

Now, I can see what you're proposing here. There had been some discussions, obviously, so, with Mr. Walsh?

A. Yes, it would have arisen from CSFB and they were saying, look, it's going to be easier to do the placing if you could consolidate it from an accounting point of view, but I knew quite clearly that you'd have to go and get agreement from IIU and Telenor and in particular, Telenor would be keen because they were negotiating in parallel a shareholders agreement, so they would have to approve this potential purchase of equity from IIU; and secondly, the release of the IIU underwriting, that also would impact them. So it was very conditional and

Q. I suppose we can see later from Mr. Johansen's memo, I suppose, Telenor seem somewhat aggrieved that these discussions were going on without them knowing about it at that time?

A. Well

Q. We'll come to Mr. Johansen's memorandum

A. Well, I mean I wrote letters and had conversations with Mr. Digerud so, you know, I think the memorandum that was written, what we call is the conspiracy memorandum Tab 130 I think it is shows that

maybe, you know, the file wasn't considered in writing that memorandum, and sometimes that can happen if people are busy.

Q. All right.

A. There is the follow-on letters then redrafts and more explicit terms later on including Advent's approval.

Q. Well, if we just go to document 106; this is the key points re IIU holding in Esat Digifone and the position is that the current position is set out there, that you were 37.5, Telenor 37.5 and IIU 25.

And then there was a revised proposal and main conditions. IIU's agreement is totally conditional on Telenor confirming directly to DFD." I think this is coming from IIU, this document, isn't it " They are happy with the revised proposal". And then it deals with sorry, I should have gone back for a moment, I beg your pardon. The previous document, at document number 105. It's just this is the

A. Handwritten note.

Q. It may help to date this is a document, this is Mr. Mr. Neville O'Byrne on the 10th January, 1996 at William Fry Solicitors. He is there with Gerry Halpenny, Peter O'Donoghue, Richard O'Toole, Per Simonsen .

A. I think that would have been a MOPS would be Arthur Moran.

Q. Yes, Arthur Moran. It's an MOP attendance. Do you

see that?

A. Yes.

Q. It seems to be "At William Fry" and he lists then who was present. "Gerry Halpenny, Peter O'Donoghue, Richard O'Toole with Per Simonsen, Knut Haga." And you can see

A. Where do you see that?

Q. Do you see up at the top?

A. I have a bad copy, but if those people were there, they were there, okay.

Q. He notes them as being present. Then he is dealing with certain points in the agreement. And if you come down, coming down about two thirds of the way

A. Just is that I have one page, is there

Q. Two pages.

A. Sorry, I have only the one page if you don't mind.

Q. I'll get it for you. It's only the first page I think.

A. I'll read it off this thing.

(Document handed to witness.)

I missed the first page, sorry.

Q. In fact I have a typed version

A. It's okay. All right. The writing is good.

Q. It's at William Fry's and then the people who were there. "14.2. Still difficult, Chief Executive matter." That must be some discussion going on around Barry Moloney.

"IIU points.

"1.6 they can have budget later.

"8.5 board to decide the delegation to management and shall decide on the appropriate level if delegate authority to management."

"11.1.3," that's dealt with. Do you see the next

note: "Department still believe in 40:40:20 split."

Can we take it that that was your understanding of the Department's belief at that time as well?

A. I only went to one meeting, I think that was in November, the 9th, 10th, 11th so there may have been other meetings.

Q. We don't see any other record, but anyway I'll move on.

A. The Department may have taken it from the 29th letter.

Q. "It was anticipated that there would be a cash call soon." That's the end, 20th January, 1996. "Michael Walsh, John Bateson." Would that be correct?

A. Bateson.

Q. "Neville O'Byrne, Sonia Price recite belief. On whose behalf were IIU acting? IIU Nominees listed, need to talk to Department." Then the rest of the note is illegible there.

Then you go over the page: "Gerry, debt ratio, define what is meant. E.g. are leases included? Technical matters. Distinguish operational were financial shareholder."

"Commercial points to be discussed ASAP." And then:

"Will he draft the agreement."

"Participation in Digifone 37.5, 37.5, 25." Then

under that "40:40:20".

"Wednesday" is the final note.

You can't remember, or throw any light about any discussions about January of 1996 and what the state of knowledge of the Department was about the position in the consortium?

A. I can't, but I mean, I believe the Department, from the 29th September letter, would have known what the position was, or believed what the position was in relation to the shareholding.

Q. Well, I am not going to go over all of that again with you. We have opened the letter, and

A. I only had the second sheet of this, but it's their

Q. Would you agree that whoever somebody, or the people attending that meeting or one or other of them didn't seem to be of the same view as yourself in that the Department still believes in 40:40:20 split, that somebody must have been of that view at that meeting on the 10th January 1996 at least?

A. I don't know. You see, there would have been hundreds of meetings between October and May realistically on the shareholders agreement, the financing, pertaining only to Esat Digifone. So you know, this is one of those meetings, and I wasn't at it and it looks as if

it's solely between Esat Holdings and Telenor because, unless I am mistaken, I don't believe Neville O'Byrne or Michael Walsh were at this meeting.

Q. No.

A. So, I don't know what hangs on this.

Q. Well, the view expressed by you about the Department's state of knowledge. I am just at this meeting there is Peter O'Donoghue is there, Per Simonsen, Knut Haga, the Telenor people, and Richard O'Toole, who was negotiating with the shareholders agreement I think, isn't that right, or was very much involved in the negotiation of the shareholders agreement?

A. Yeah.

Q. There seems to be a view noted, at least, that the Department still believes in 40:40:20 split?

A. But realistically, and obviously I don't want you to take that I am not being serious about this, but we did not have that big a concern about that 5%. I mean, that's, and I am not being glib about it, it wasn't top-of-the-mind big issue for us.

Q. All right.

A. The more important thing was really getting the right terms in the licence and there is plenty of correspondence there with the Department to show how concerned we were about certain elements that were put in the licence.

Q. Now, the only thing is that do you know that note that

we looked at earlier which you had written "File IIU"?

A. Mm-hmm.

Q. I think somebody had noted that the Minister had indicated to the Dail that the split was 40:40:20, I think in that note?

A. Yeah, which I don't know who the author of that note is, so...

Q. All right. If we go then to tab 106, that 52 million we saw referred to in your proposal to Michael Walsh when you were seeking to get 12.6% of their interest in the consortium, I think just, you mention there that the 52 million may have been the value of the licence as opposed to the value of the company. If we just look at this note?

A. I think it may have been the share capital.

Q. If you just

A. Okay.

Q. If you just look at 106, it may assist you.

A. Okay.

Q. And this is a, I believe, an IIU document but I'm not sure about that. Perhaps you can help us. But do you see the various bullet points?

A. It says: "The revised proposal

Q. "has been based on evaluation of the licence of 52 million Irish pounds."

A. Ironically that number is very close to the first share capital of the company, so

Q. Right, well, whatever. "CS First Boston to confirm this valuation." That seems to indicate it's coming from IIU doesn't it?

A. I mean, we

Q. "Should this evaluation be revised upwards IIU will expect to receive proportionate recompense to be paid by the end of December 1996."

A. Yes, and this is part of the historical thing going back to Advent. We were always going to get somebody to give a note to say what was the licence value so we could work out the dilution.

Q. In fact, if you go onto the next bullet point: "The agreed capital subscriptions to be made by the parties are 52 million." Do you see that?

A. Yes, so that's...

It looks as if the licence was valued at par.

Q. Right.

A. And then we were buying equity at par and contributing them on a free carry. That was the proposal.

Q. All right.

A. In other words, there is the first initial letter. Then there was this document, and I think we move on to another couple of documents that there was a sort of a trend here of trying to satisfy CSFB on this consolidation issue and also try and bring Telenor with us, because we knew that they had to agree to it for it to happen.

Q. Yes. If you perhaps go to tab 107 then. This is Peter O'Donoghue sending something to Gerry Halpenny at William Fry's, three sheets, and the sheets appear to be heads of terms relating to equity investment in Esat Digifone between Telenor and Communicorp. Do you see that document?

A. Yeah, this is the bridge.

Q. This is the bridge, is it?

A. Yeah.

Q. Right.

A. Just to explain. This is a very important point. Is that we were trying to close the licence and fund on the same day. In other words, that we, in an ideal world, would have raised our Credit Suisse First Boston placee money on the same day that we closed the licence. But realistically, that was never going to happen, and everybody knew that, and for this reason, we needed a short term bridge of which ultimately was for only three weeks, where we signed the licence, we then went back to the five institutions, said we have signed the licence, here's the licence, we want to complete the placing. So they were all ready to go but they just wanted to see its licence.

Q. Can I take it like any financial institution, they wouldn't do it without the licence, would that be fair to say?

A. Yes.

Q. Fine. I understand. Right.

A. So, I mean, it would have been just extraordinary to have CSFB close on the same day as signing the licence. And this was getting ready for this, so this is January, middle of January, 1996, where we were getting ready for that eventuality, but we didn't know at that time that it would be a further four and a half, five months before we closed.

Q. And this was a provision of bridging finance so and terms being worked out between yourselves and Telenor?

A. Yeah, I mean, this was a document that was work in progress because ultimately it was superseded by a more detailed document.

Q. Yes. But they agreed or the agreement was for bridging, what, of 9 million

A. Yes.

Q. Irish pounds?

A. Yes. That's what it was in January.

Q. In January. I suppose I'd just make the point here, I should, on behalf of Telenor, it seemed to indicate that Telenor were not behaving in a predatory manner towards you at this time?

A. Not at that time, no.

Q. Now, the next document I'd like you to look at is 109, please. This is document from Richard O'Toole to you.

And this is Richard O'Toole and he wrote:

"Denis,

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

"1. Conclude the shareholders agreement between Esat Holdings and Telenor on a 50/50 basis and inform IIU that we will do so while leaving open the possibility for IIU to sign up at any time on the basis of the agreed Telenor/Esat Holdings draft. We probably should have an early combined Communicorp/Esat Telecom board meeting to approve the terms of the agreement and to assign Communicorp/Esat Telecommunications interests to Esat Holdings. We would then proceed to conclude discussions with the Department on the GSM licence on the basis of this agreement. It would also be desirable to resolve quickly with Telenor the outstanding management issues replacement of Jan Edward Thygesen, Barry Maloney etc. We would also proceed to document the Telenor bridge facility on a binding basis."

Well, that particular proposal didn't run in any event?

A. So the document that we just opened a minute ago about the bridging facility

Q. No, no, that yourselves and Telenor would complete it on a 50/50 basis and the possibility of IIU coming in

later, that wasn't a runner?

A. This is a memorandum really that is giving me an update of where we are, on what his recommendations were. His absolute goal at that time was to sign a shareholders agreement. And he was driving for that.

I felt that maybe we are getting ahead of ourselves; that we should wait a little while and time it all together and get and I think probably Telenor were in a quite a hurry to sign it. I didn't have much of a hurry to sign it.

Q. All right. Go on to

A. Because when you signed, there was probably going to be a cash call immediately.

Q. I understand entirely. I understand entirely the reasoning, there would probably be a cash call, that could have presented difficulties for you at that time?

A. Well, we would have got it from them, but, you know, it was just a matter of waiting for the right timing.

Q. All right.

"2. Continue (assuming IIU does not sign up immediately to become a party to the Telenor/Esat Holdings draft shareholders agreement) to negotiate in good faith with IIU in parallel with the discussions with the Department, to conclude a satisfactory (trilateral) shareholders agreement on the basis of the 37.5:37.5:25 ratio. We would inform the

Department that we are in discussions with IIU and that we would envisage that IIU would subscribe for up to 20% plus a further 5% that we would allocate also to IIU (line worked out by Owen O'Connell and Padraig O'hUiginn to be consistent with bid document) and that this could entail revisions to the shareholders agreement in order to accommodate IIU's participation. As capital calls become necessary, each party would be required to subscribe its share. IIU would face the choice of subscribing its proportionate share (with or without protection of the shareholders agreement) or else permit itself to be diluted progressively."

Now, you see there the point that Mr. O'Toole is making, that he is saying that "We would inform the Department that we are in discussions with IIU and we envisage that IIU would subscribe for up to 20% plus a further 5% that we would allocate also to IIU". That is a 5% out of the intended 12% which was going to be floated sometime within three years after the licence was issued. And that was a line that Mr. O'Connell and Mr. O'hUiginn and Mr. O'Connell told us perhaps Mr. Jarlath Burke was involved in, as he said, providing a rationalisation for the position. There was the agreement of the 29th September, isn't that right?

A. Yeah, I mean, there was 40:40:20, and then IIU wanted that extra 5%. As I explained before, I always

believed that that would cause difficulties in the minds of the Department and that IIU would have to put that back into the whole equation at some stage which ultimately they did, but what they were saying here, this is probably another alternative way of doing it where you

Q. Of explaining it?

A. Well, doing it and explaining it.

Q. It was done, wasn't it?

A. Well, it depends which way you look at it because this still was Esat Digifone was still a 50/50 joint venture at this time. But what they were trying to do was work out a way that would, what they thought might be acceptable to the Department, and that is to have IIU with 20% but give them an option over another 5% at sometime in the future.

Q. I see the point you are making, yes.

A. And I would have thought that would have been one solution. Ultimately we arrived at a different solution where IIU sold the 5 back to us.

Q. I see the point you're making, but the distinction here, it's slightly different to Mr. O'Connell's letter of the 17th April which I'll come to in due course. I see the point you are making there in respect of that; that it would indicate to the Department that you were in discussions, that they had 20% and that you would allocate in due course 5% to

them, that was

A. Yeah, because I think in the bid we said we'd lay aside share options for management as well, so...

Q. Now, does that seem to indicate that at least from Mr. O'Toole's perspective, from what he has written here, we would inform the Department, that at least Mr. O'Toole seemed to be of the view that there had nobody had informed the Department of the position?

A. Well, I mean, it's clear the Department was 40:40:20, they knew a third party was in for 20, in that case it was IIU as per the 29th September letter. The 5 was a floating 5 which ultimately we knew we had to deal with because we felt that, although you could make very strong arguments and rational arguments for allowing 20 to go to 25 because it is, in reality, de minimus in the overall scheme of things out of 100%, that may be the easiest way would be for us to buy in the 5%, which we did for I think we made 1.3 million each, approximately, much later.

Q. Yeah. When you say de minimus, you mean 5% in the context of 100% was de minimus but 5% in the context of being added to 20% of the 100% would hardly be viewed as de minimus would it in terms of control or

A. I know you'll find this difficult to understand, but the 5% was never that big an issue for me because I

just knew that I'd seen other circumstances with other licences where shareholdings had changed and had been tweaked and I always felt that the Department were always looking to the industry partners, that it was Telenor for mobile and ourselves from sort of Irish telecoms to drive the project, and this was not going to be that big of a problem.

Q. I suppose the point Mr. O'Toole is making here and it's not on the commerciality point at all, but that the explanation or the information which would be given to the Department would be so that it would be consistent with the bid document, that he had an understanding of the importance of things being consistent with the bid document?

A. That's where we ultimately ended up at 40:40:20. I mean, we had a right to negotiate and we knew that this was part of maybe the 40 or 50 sort of areas that would need to be negotiated.

Q. Well, if you said that's where you ultimately ended up. As of this time, the position of the consortium appears not to have been consistent with the bid document, isn't that correct?

A. I think it was consistent because, you know, I always felt the 5% was de minimus and, you know, there was a third party investor there and the two industry partners held the majority.

Q. I know that's a rationalisation that has been proposed

by Mr. O'Connell.

A. Mmm.

Q. But in real terms, and I know this from Mr.

Fitzsimons examined Mr. John Callaghan here last week,

and he was putting various positions to him based on

legal propositions, but I think in response to one

situation where it was suggested to him that

Mr. Desmond really didn't have any interest at all; I

think Mr. Callaghan's response to that was, well, he

said, we did have the agreement of the 29th September

and I would not like to have been telling Dermot

Desmond, he said, that he didn't have 25%?

A. Precisely.

Q. Would that be your own view?

A. Yeah, I mean, I think if you were to look at it purely

on legal terms, you might have one view. But as the

person who was spear-heading this up, with other

people working on it as well, we felt that the 5%,

rightly or wrongly, was never going to be a critical,

critical issue in the granting of the licence and the

signing of the licence.

Q. All right. Now, the rest of Mr. O'Toole's note is

dealing with various positions. I don't think I

need

A. It's a good synopsis of where we were.

Q. I don't think I need to open all of those at this

stage.

Now, the next document, document 110; this is Owen O'Connell's note, and it may well be, I think, "Denis O'Brien," it may be a telephone communication. I think it's: "Read Neville O'Byrne letter to Gerry Halpenny re." And then: "Advent is crossed out, AIB crossed out and "IIU. Wants view as to what is realistic. Word with Neville O'Byrne? Some over the top e.g. 25.1%.

"IIU not an industry partner merely an institution."

Then there is a telephone number.

Do you have any recollection of any discussion about what that's about?

A. No, I actually don't, but it's probably, as you say, a telephone conversation.

Q. Right. Then the next document, 111, is an Owen O'Connell note to file, dated 8th February, 1996.

"Neville and Michael Walsh, Denis O'Brien, Owen O'Connell. Michael Walsh talked" "DD" I presume that's Dermot Desmond "does not want to sell out fully. Happy with convertible structure.

Uncomfortable about shareholding in multiple companies. Some discussion of DD co-investing with CSFB

A. "Cooperating."

Q. Sorry?

A. I think coercion, cooperation.

Q. Is it cooperating?

A. Yes.

Q. It looked like co-investing, but anyway, I'll just continue "With CSFB, but this very tentative. Current position: IIU will go to 12.4%. Will resolve 5% problem by convertible 'Same effect as share.' See Michael Walsh memorandum. A lot of difficult points. Problem for IIU in coming up with capital in interim. Owen O'Connell draft convertible preference share. Conversion subject to Minister's consents. Convertible debenture." Do you remember such a meeting or a discussion?

A. I am down for being at that meeting. I think the 5% convertible relates to the Padraig O'hUiginn/Jarlath/Owen O'Connell idea of 20 plus a convertible option, Owen O'Connell?

Q. Yes.

A. And the discussion you know I think that is cooperating with CSFB.

Q. All right.

A. I think we were unsure whether Dermot was placing the shares or some of them or holding them.

Q. In fact, I think in fairness, I think Mr. O'Connell said it was "Co-investing" I think.

A. I can't see the context for co-investing, but...

Q. Right. But you could be right. It could be cooperating.

A. It's in relation to the placing the potential

placing which he had an entitlement to do of shares
and there is no point in somebody in New York placing
shares if there was another institution in Dublin
placing shares at the same time, so

Q. There was only going to be one chance to do

A. Well, yeah, just it would be fairly chaotic if you are
going to the same people.

Q. Do you remember a discussion about, just at that time,
problem for IIU coming up with capital in interim?

A. No.

Q. All right.

A. I am not there is never any question of that. I
was reading that last night and I think what they
wanted to do is put in their capital when they knew
the licence was signed and they were on risk. I mean,
they didn't want to put in their share capital and
have no licence signed. So I think that's what
they're probably referring to. In other words, in the
interim, they didn't want to put in money that into
a company that still hadn't signed the licence. But I
am sure IIU or somebody, whoever, somebody can help
you with that.

Q. All right. Now, the next note is a note, it's at Tab
112, it's Richard O'Toole to you and it's dated the
20th February 1996. And he attaches a draft letter to
IIU for your consideration. And he said that:

"You should now need to send such a letter to Michael

Walsh in order (i) to expedite conclusion of the shareholders agreement, (ii) to prepare IIU for the imminence of a capital for Esat Digifone.

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

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

"I should also mention that I had a brief word with Knut Digerud yesterday on the shareholders agreement.

Although he did not commit himself definitively, I believe that as a result of the discussion that Telenor will now agree to the deletion of two clauses you were worried about on the transfer of shares."

Then he encloses the draft letter for Michael Walsh.

Is this again Mr. O'Toole perhaps being more anxious than you to tie down the shareholders agreement?

A. Yeah, I mean, if you look at this process, we had, you know, people raising money in New York for us, we had an investment bank, we had an adviser, we had somebody doing the project finance in Dublin, somebody trying to get continue to work on, you know, planning permissions and a whole pile of start-up items and then you have Richard O'Toole in charge of the shareholders agreement. Now, in that context, I was standing back and I could see everything that was happening all in one go. And he, obviously, is doing his job because he is informing me, look, the way to get this moving is write this letter, but I believe that I didn't send this letter, unless I am totally wrong, because I haven't seen it in the documentation.

Q. I don't think you did.

A. And I probably would have rung Michael or Dermot and said, look, can we get moving on the shareholders agreement? And don't forget, we are at this now maybe

two months, so I'd say Richard is frustrated, but I wasn't going to send a letter like that because it could upset IIU. What's the point when you are negotiating a shareholders agreement with them? But I probably would have phoned Michael, and said: "Michael, can we get down and try and nail this shareholders agreement down quickly."

Q. Right. The next document at 115 is a letter from you to Knut Digerud dated 27th February, 1996, in which you say: "I want to thank you for getting back to me promptly on the suggestion which I put to Telenor Invest, to you and to IIU through Michael Walsh at our meeting on the 9th February that you might consider selling a portion of your share in Esat Digifone to Esat Holdings. I have noted your response that Telenor Invest has no interest in reducing its shareholding in Esat Digifone at this time.

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

would also be acceptable to the Department of Communications. Accordingly, I will pursue the matter further with Michael Walsh of IIU and I will keep you informed if it should emerge that IIU might be willing to do an acceptable deal with Holdings"?

A. This is tab 13?

Q. Yes, tab 10.

A. Okay.

Q. You are writing to Knut Digerud. I think you are asking Telenor, I suppose, would they let you have some of their shares. You probably didn't think there was much prospect of that. You are informing him of your approach to IIU, to Michael Walsh and you say that you'll keep them informed if Michael Walsh or IIU are interested, and you are informing him also that the reason for this is you have been advised by CSFB that this would be the best way to proceed if you had more than 50% of the mobile company. And that you believed that such an adjustment would be acceptable to the Department.

Could I just ask you, I can understand the position as regards CSFB, and of course it would have been very attractive if you had over 50% of the mobile company for the purpose of the placing in the United States in Holdings. Why did you believe that it would be acceptable to the Department that you'd achieve such a position?

A. I believe that they really wouldn't have too much a concern, whether Telenor took 50.1 or ourselves taking 50.1, as long as the two technical partners stayed in the consortium. I think

Q. Well, Telenor getting 50.1 at that stage

A. No, either them or us. I mean hypothetically.

Q. From your point of view, the advice you were receiving from CSFB was

A. Try and get 50.1.

Q. Try and get over 50%, isn't that right?

A. Yes. And negotiate with IIU. We then we informed, obviously, Telenor because they were critical to this

Q. But you are informing Mr. Digerud that you believed that, we'll take your position that you got 50.1, would be acceptable to the Department?

A. I believe that they wouldn't care at the time.

Q. Had you any discussion with anybody which

A. No.

Q. led you to form that view?

A. No. I mean, I felt that the Department wouldn't mind if it was us or Telenor at 50.1, as long as the two of us were still in the consortium.

Q. Now, I think the next document, at Tab 114, it's not one which you would have seen, but it's Mr. Moran writing to Mr. Simonsen. And this, I suppose, the fourth paragraph really, or the fifth, he is dealing

with your letter:

"In relation to the letter from Denis O'Brien dated 27 February 1996 I believe that that letter is putting you on notice of the fact that Holdings wishes to increase its interest in Digifone above the previously agreed figures. I believe that Telenor must respond to the letter to remind Holdings of the fundamental understanding that Holdings and Telenor would hold equal interests and that you would require to retain an option at all times of achieving that objective. That would, of course, mean that Holdings cannot have more than 50% without your agreement to take rather less than 50%."

Then he goes on to deal with:

"In relation to IIU and Dermot Desmond I expect that you are aware that Mr. Dermot Desmond at all times is a dealer and accordingly if the price is right he will be quite happy to deal with Denis O'Brien and indeed it is not inconceivable that there is already an understanding in place as to what would constitute an acceptable deal."

"For that reason I think it extremely important that in the articles of association of Digifone we provide that it will amount to a transfer of shares of Digifone if the beneficial interest of any shares registered in the name of IIU Nominees changes so that we should require IIU Nominees to let us know the

parties on behalf of whom they hold shares and how many shares they hold for each such party to ensure that there is no build up of shares in any person (especially Holdings) which is not known to us. I will consider whether this point should also be put in the shareholders agreement as well as in the articles.

"Yours sincerely, Arthur Moran."

So, you, of course, wouldn't have known that they were receiving this advice, but it probably reflects the view of Telenor as was probably known to you, that they were never going to allow the situation of equality between yourselves and themselves be disturbed if they could help it?

A. It was very simple: CSFB asked us to see if we could do this. We spoke to IIU, spoke to Telenor, wrote to people, and ultimately it wasn't acceptable.

Q. Now, the next document is 115, and it's

A. Arve to Michael Walsh.

Q. And behind that it's Arve to you, do you see that?

A. Yes.

Q. The one to Michael Walsh is:

"Dear Michael,

"Please find attached a letter to Denis O'Brien stating that an equal basis is the principle behind our participation in and development of Esat Digifone to secure all investors' interests, it is vital to maintain this balance between the operating partners.

"Should part of your 25% stake be available currently, I feel confident that we will be offered such shares on a pro rata basis. Please do not hesitate to contact me should you wish to discuss this in further detail."

Then if you go to his letter to you.

"Dear Denis,

"I refer to your letter to Knut Digerud on the 27th February of which I have received a copy.

"We appreciate your effort with respect to finding the best possible financing solution for Esat Telecom Holdings. However, I must emphasise our strong need for participating in the GSM project on an equal basis with Esat Telecom Holdings. This has always been Telenor's basis for participation, both in the bid joint venture as well as in the establishment of Esat Digifone.

"As we recognise that Esat Holdings may obtain financing at more favourable conditions with a higher ownership stake in Esat Digifone, we would be willing to look at a solution with a proportional increase of both Esat and Telenor's stake.

"Until this can be agreed I fully support your proposal on continuing working on the basis of your current shareholding proportions."

Now, again, I think what Mr. Johansen appears to be saying here is just asserting here what had always

been the position from the time of the joint venture agreement, isn't that right?

A. And we said that we were obviously going to stick to that.

Q. He is also, again, here, indicating, look, I can understand if you had a higher shareholding in the mobile company it could ease your fundraising, and they were prepared to look at that, that is looking at the Dermot Desmond/IUU shareholding, and arrive at a position where you would both take, in equal amounts, from

A. That's what happened between 1996 and 1999 on a gradual basis *pari passu*.

Q. That's what he is offering here at this stage?

A. He is, yeah.

Q. It doesn't seem to be indicating that he is behaving in any sort of predatory manner towards you?

A. I would hope that the documentation also says that I wasn't either. I mean everybody was

Q. I am only pointing these matters out to you because of your view at the time of the bid that Telenor were trying to behave in a maybe predatory is too strong a term, but

A. You go through periods when you have partners and you sometimes think that they are being predatory, sometimes they are being very reasonable and certainly in this spell, all three partners were being very

reasonable.

Q. Now, if you just go to the next note, it's at it's an Owen O'Connell note, it's at Tab 116. And this is a meeting between yourself and Telenor.

"DOB, Michael Walsh, Neville O'Byrne and Owen O'Connell.

"Tell have written to IIU want to have equal number of shares.

"IIU don't want to enter into a conditional agreement.

Happy to transfer 12.6% to Denis O'Brien provided Telenor agree."

And then "NB: Release of underwriting agreement."

So, they are saying, or IIU are saying to you at that stage, if Telenor agree, we don't mind, we will release 12.6, but it must be with the consent of Telenor, isn't that right?

A. Yeah.

Q. What's that about "Release of underwriting agreement"?

Is that in the event of

A. If we were buying 12.6, they wanted to be released of that commitment. But again

Q. Of the whole underwriting agreement, is it, do you think?

A. No, I think it was part of the negotiation, and I'm not quite sure whether it was for their 25% or their 40.

Q. Right.

A. I don't know. But ultimately we didn't release them until Telenor and ourselves and IIU agreed on the bridge loan.

Q. The next document I think is the I don't need it, it's the main terms of the shareholders agreement.

Then the next document is the summary of the bridging agreement, isn't that right?

A. Yes. I mean, there is nothing in the shareholders agreement it's fairly turgid stuff.

Q. Is there anything specific in the bridging agreement? I don't think so either?

A. I don't think so, no. You understand the 1 P and the 99 P issue?

Q. No, please explain that to me.

A. I think basically the bridging agreement, they had to lend it for tax reasons to Esat Digifone on our behalf because they had approvals in Norway on the basis

Q. They couldn't lend money to

A. Yeah.

Q. Yes, I understand that.

A. It's a Fry's document.

Q. Yes. Now, if you go to Tab 120 A. Now, you can see this is a note of Mr. O'Connell's, and I think he explained it's divided into two parts. And there is the first seems to be some meeting with Knut Digerud and

A. Peter O'Donoghue.

Q. Peter O'Donoghue, is that right?

A. Yes.

Q. "Department apparently under pressure re licence.

Bank apparently willing to go along with no mortgage

over licence. Confidentiality of licence terms?" Then

he explains then he went to the Department and this is

his note of the Department with Regina Finn and

Fintan.

"They have letter of 3 April." I am not going to open

that. That was Mr. Digerud's letter, you know,

Mr. Digerud's letter of the 3rd April where he wrote

in and there was a complaint being made about the

delay in issuing the licence.

A. Yeah, I think we were saying that we were going to be

forced into signing a licence that we weren't happy

with, which they rejected.

Q. Yes. Now, the note: "They have letter 3 April. Will

respond before close of business today," which they

did.

"Will not go into issue today.

"Meeting scheduled for next witness to go through

licence on article by article basis. We will give

explicit provision allowing mortgage over assets of

company not licence." That's all been explained to us

by Mr. O'Connell. I don't think we need to go into it

in any detail.

"Eircell will be granted a licence by Department on

'level playing field' terms.

"Don't accept duress as a result of Department's act or omission. Note concern with significant problem with negotiations after signing licence. Confirm acceptance of licence; representations subsequently to be made that right to accept suggestion or reject."

They had big problem with duress.

"Principles contained in the licence." This is dealing with your letter signed by Mr. Digerud of the 3rd April. They responded to it in due course and rejected what was being asserted in it. And I think that resolved itself between Digifone and the Department?

A. It did, yeah.

CHAIRMAN: That was the litigation planning letter

MR. COUGHLAN: That was Mr. Brennan's litigation planning, the letter. Mr. O'Connell rejected that suggestion.

A. Very unfair of Mr. Brennan to say that.

I think, Chairman, everybody was, like, under the kosh to really try and get this licence signed because it had been, you know, much discussed in the media for about five and a half months, so we were trying to get our financing closing, we were trying to finalise the bridging finance, and we wanted to try and make the Christmas season, which ultimately we missed.

Q. Now, we then go to the next two documents, and there

is the board meeting of Esat Digifone Limited on the 12th April, 1996, where the it was resolved that the share capital of the company be increased by 998 shares to 1,000 $\frac{1}{2}$ shares and that contribution be made in accordance with following amounts, and then there was 374 to Holdings, 374 to Telenor, 250 to IIU Nominees Limited.

And then the second resolution was: "Subject to the signing of the shareholders agreement between IIU Nominees Limited, Esat Telecom Holdings Limited and Telenor Invest and Digifone Limited a further increase of the share capital be made to 2,999,000 shares of $\frac{1}{2}$ each and their contribution be made in accordance with the following amounts:"

Then you can see that again it represents the 37.5:37.5:25, isn't that correct? And that was signed by you then on the 24th?

A. Of April.

Q. And then you can see then that there is a minute of another board meeting on the 13th April, where you in fact did increase the shareholding to the 3 million and allocated them on that basis. Can you just help us about that.

Mr. O'Connell thought that that might have been a requirement of the debt financiers, the banks, that they'd want the money in the form of equity because it would be harder for you to get it out rather than

holding off and having it by way of debt coming in?

A. I believe this is something to do with the bridge finance the interim financing that we were getting from AIB and ABN. I mean, we were committing as little amount of money in building the network but we had to commit ourselves to some of the initial capital, particularly the long lead time items.

Q. Could I just ask you: How far had the network progressed at this stage, in rough terms? If you can't help right now

A. I don't think we were pouring concrete.

Q. You weren't?

A. I don't think so, but again, this is meeting number 8, if you saw the minutes I'd be able to

Q. This is April. It's about a month before the licence is signed off on, there or thereabouts.

A. But, I would have to look that's meeting number 8 and the first meeting I think was December '95.

Q. That's right.

A. I'd have to read them and I will if you want, overnight, read them and give you a better flavour, but it doesn't take long to put up towers, but it does take, like, a long, long time to get planning permissions, and to sign up licences to build on people's property, so I'd say our focus was really on getting them and also what are known as the backbone towers. You have small towers for the radio network

and then you have larger towers which carry the calls around the country, so if somebody is making a call in Galway, it's on a small tower but then it's bounced back to Dublin across a whole pile of larger, what's known as SDH backbone towers to the switch to be switched, so I'm not so sure we had actually poured concrete at that stage.

Q. All right. Okay. On the 16th April I think there was a, I think it was a telephone conversation between Ms. Regina Finn and Mr. Owen O'Connell and I think that that was the occasion when IIU's 25% was indicated to the Department, and that was followed by a letter from Mr. O'Connell to Ms. Finn on the 17th April. I think you know

A. Is that in a tab, is it?

Q. It is in a tab. It's not in this particular book here.

A. Is it not? If I could just have a quick look at it.

Q. I'll get them for you as well. We might get it on the screen.

CHAIRMAN: Well, I think the letter is up now, Mr. O'Brien, if it's not too difficult for you to see, it's the reasonably detailed letter that Mr. O'Connell wrote the day after his conversation with Ms. Finn.

A. "I refer

Q. MR. COUGHLAN: Yes, "I refer to our telephone conversation." And then he sets out the position Esat

Digifone Limited. The position is as follows:

"There are 3 million ordinary shares of £1 each in issue in this company. They are held as to 1,125,000 shares to be each of Esat Telecommunications Holdings Limited and Telenor Invest and as to 750,000 shares by IIU Nominees Limited.

"It is intended that by the time notification is received from you that the second GSM licence is available for issue, the issued share capital will have increased by 15 million to 18 million (all comprising shares of £1 each) held as to the" and then the proportions.

"The 25% of Esat Digifone Limited held by IIU Nominees Limited effectively represents the institutional and investor shareholding referred to in the Esat Digifone's bid for the licence. You will recall that this referred to an immediate institutional/investor holding of 20%, with a further 12% in short and medium term stages. Of the anticipated 12%, 5% has been pre-placed with IIU Nominees Limited. It is understood that most or all of the shares held by IIU Nominees Limited will be in due course disposed of by it, probably to private and institutional investors."

Now, I think the company is owned either directly or indirectly, and it sets out the whole position of Holdings there then. Then it sets out other group companies, but this is the first time that the

Department were informed of the 25% of IIU, isn't that right, the previous day in the telephone conversation of the 25?

A. Yes, this deals with an explanation going from 20 to 25.

Q. Were you aware that this letter was going at the time, do you know or did you see it at the time?

A. I actually don't remember it. I have seen this letter subsequently, because it was in some of the documents I looked at some months ago, but...

Q. I think in fairness, Mr. O'Connell has said that the paragraph dealing with IIU and the 5%, he said effectively represents a rationalisation of the position and I put it to him that it was less than frank. Would you agree he didn't agree that it was less than frank, I should hasten to add.

A. I think I think it's a rationalisation. I don't think we were trying to be too clever here really. I mean, we are describing, first of all, that it is 25 instead of 20. And we are giving them a justification that we were always going to dilute to other institutions. And this is effectively what happened a little bit earlier.

Q. Well, I suppose I could approach it this way: If you look at the letter of the 29th September, the underwriting letter, would you agree with me, it's certainly in different terms to the contents of that

paragraph?

A. Well, it doesn't go into the describe that it's a pre-placing and it doesn't mention 25. I know this is exercising a lot, you know, a lot on your mind, but I have to go back to the point that really, certainly I didn't believe that this was going to be any sort of a show stopper in the issue of the licence. That either the Department agreed with 25 or they didn't agree. If they didn't agree, well then it would have to go back to 20, and that's because I had seen in other licences, maybe this was a bigger licence than it was, but I had seen in other licences that the State had granted were where, you know, small amounts of shareholdings did change, they went up or down or new people came in, ultimately in some cases. It happened with a national radio licence. So rightly or wrongly it didn't concern me too much, Mr. Coughlan.

Q. Well, in any event, the 20-25% issue did become an issue, isn't that right?

A. Yeah, I think the Department expressed a view that they would have been happier with the 40:40:20 relationship and

Q. It seems, from the note which Mr. O'Connell made of receiving a communication from Fintan Towey, it seemed to be a view that was being expressed by the Minister that he would prefer it to be 40:40:20, and in fact he had, on a number of occasions, addressed, or addressed

questions in Dail Eireann where he had approached it on the basis that it was 40:40:20, isn't that right?

A. Yeah, I mean, he was operating on 40:40:20, and it would have been communicated to us via his civil servants that it was the Minister's wish to keep it at 40:40:20, which ultimately meant that IIU reduced its shareholding from 25 to 20 and left a fair amount of value on the table by doing so.

Q. Well, I suppose we should just explain, when you say reduced; they sold their interest, their 5%?

A. I think it would have been in IIU's interest to hold onto the shareholding because it was going to go up in value it's most likely to go up in value than down in value and they were being fair that they felt that they didn't want to be cause any difficulties on this issue and that they would sell in equal amounts 2.5% for 1.37 million, or something like that, each.

Q. Do you know if IIU had subscribed any capital at that stage?

A. I'd have to go, really, and go through everything.

Q. Remember the previous share allotments and the call?

A. I'd have to check that now.

Q. All right. Were you aware that the Minister had, and I may come to it tomorrow if you think that I need to, but that the Minister, on the 30th April, had made a speech in Dail Eireann, and again the whole issue of the licence arose, and there was questioning, and a

question was asked of him about Mr. Dermot Desmond, and the Minister said at the time that that was entirely a matter for Esat Digifone or whoever the company were, and that if they were happy with Dermot Desmond, he was happy with them, or words to that effect? Do you remember that particular matter arising in the Dail around this time, soon before the sign-off of the licence?

A. I am aware that the Minister was handling questions in the Dail at various times and I think at one stage there was a debate, but in terms of that particular point, I don't really remember that, no.

Q. Do you remember having any discussions with anybody or anyone seeking any information from you to enable the Minister to address matters in the Dail?

A. No. I mean, he would have his civil servants would have given him information.

Q. I understand that, but do you remember if anyone asked you for any information?

A. I don't recall anybody saying having a need to ask me for information surrounding this, unless the Department made an inquiry to our side seeking information.

Q. Yes. Now, how the Tribunal I'd ask you to go to Tab 130; this is Mr. Johansen's tab in Book 49 Mr. Johansen's memorandum of the 4th. Because it was when the Tribunal received this particular

document that the Tribunal first became aware that there had been a series of meetings in May leading up to the signing off of the licence. There is no record of these meetings in the Department at all, or no minute was kept of them in the Department at all. And it was when we made inquiries then of Mr. O'Connell in William Fry's, that we had made available to us Mr. O'Connell's memoranda of the various meetings. So that's how the Tribunal became aware of these matters.

A. Okay.

Q. Now, I think we have dealt with the first number of paragraphs of his memorandum. I think we had gone as far as paragraph number 5, where he says:

"In hindsight it's quite clear that we benefited from this arrangement. I had good reason to believe that the terms put forward by Advent for investing in Communicorp did not suit Denis O'Brien, that the above arrangements that he orchestrated for all other sorts of reasons he has actually achieved to bolster his Communicorp balance sheet and pay for it with Digifone shares at the cost of Telenor. He has done this in an atmosphere of trust where Telenor even has agreed to bridge finance Communicorp while he raises funds through a private placement in the US."

Now, you responded to that already, that particular paragraph?

A. It makes no sense.

Q. "6. As we go along we learn more, but it all serves to disclose more details which again more and more prove the above scenario.

"In the meeting with the Department of Communications, Friday May 3rd, it became evidently clear that IIU was not a favourable name from an "Irish public" point of view. On the contrary, the Ministry basically asked for help for how to explain why we had substituted Advent, Davy Stockbrokers and other recognised named institutional investors in the bid (AIB, investment Bank of Ireland, Standard Life Ireland).

"Eventually, the project coordinator from the Ministry, Mr. Martin Brennan, actually appealed (off the record) to Telenor to write a letter of comfort that we would serve as a last resort for the Digifone company for funds and operational support. My feeling was that if Telenor had owned it alone, he would have been more comfortable than with the current shareholders."

Now, I'll just pause there for a moment. Do you remember this meeting being reported to you by anybody?

A. No.

Q. Do you remember anyone indicating to you that, I suppose, if you read this particular paragraph, would you say that, well, it's close to all hell breaking loose in the Department, isn't it, as described here?

A. First of all, you know, this is his note to file or his note to his boss.

Q. But this is being made now the day after the meeting, this portion of it, or it relates to an event the previous day.

A. I think that Mr. I explained that Mr. Johansen was under pressure. There are so many inaccuracies in this memorandum that I actually don't know, you know, what is true and what is not true at this stage, because you know, I can remember no report back to say that the Department were unhappy with IIU, or there was any problem with IIU coming on board.

Q. To replace, or that there was any question arose as to why are you replacing these people?

A. I mean, departments can be very black and white. If they were really unhappy they would never have signed the licence.

Q. I beg your pardon?

A. They would never have ultimately signed the licence if they were unhappy with one of the partners in the licence. So it's you know, I think you'd have to address this, in all fairness, to Mr. Johansen, to see what was on his mind at the time.

Q. Right.

A. Because he makes a number of they are not allegations, but he is making statements there that are not true and maybe he didn't have the benefit of

going through his file and looking at the correspondence from his executives. It's something that you'd have to ask him.

Q. Well, what he is describing there is, I think, recording something that was said to him by the Department or the Ministry as he describes them, isn't that right?

A. Yeah, I never got that feedback, so but there again, I wasn't at I don't believe I was at that meeting, but I couldn't imagine a civil servant saying about somebody was not a favourable name.

Q. Do you ever remember for an explanation being sought as to why Advent and the other institutional investors were being replaced?

A. No. Once again, I mean, I wasn't at the meeting, so, or I think my earlier meeting was November, I don't remember, apart from before the press conference in the licensing, going to another meeting on the licence, I may have been going to the Department talking about auto-dialers, but I don't believe I was involved.

Q. All right. Well, the minute continues: "I think it would be a very prudent thing for Telenor to do, especially since we then effectively underwrite the whole project. Both Communicorp and IIU after already having made Communicorp's price for the first underwriting which now appears to be useless."

"7. But the story doesn't end there. Two days ago I was informed by Denis that he had entered into an agreement with IIU to buy back 12.5% of the shares now held by IIU. I found it absolutely unbelievable and made it clear that Telenor would not accept anything but equal partnership, either we buy 6.25% of the IIU held shares each or Telenor should take the other 12.5% of the IIU held shares.

"I have also now seen the letter of agreement between Communicorp and IIU which strongly supports the scenario outlined above.

"IIU has apparently (or very little at least) money and cannot afford more than 12.5%. The price agreed is a little cryptic, but it looks as though any advance IIU has to make for the disposed 12.5% before the transaction's effective date (31 May 1996) is seen as cost(???). It will, if this is the case, serve as a moving target for IIU's eventual gain on the transaction putting immense pressure on Communicorp to delay capital calls on Digifone until the US placement is finalised. The return favour from Communicorp is to release IIU from all its underwriting obligations in Digifone. Does Digifone have an opinion on this? And what about Telenor? This effectively gives Communicorp back its 12.5% of the shares at par (or close to), releases IIU from all its underwriting liability (which Digifone "paid" 25% for), and IIU

ends up having delivered absolutely nothing, having done nothing but complicated the award of the licence (if we get it at all) but with (some cash?) and 12.5% of the shares of Digifone which effectively have deprived from Telenor, and at the same time as the Department and our honoured partners gently ask us to underwrite the whole project.

"Fortunately, IIU is at least realistic enough to see that this cannot take place unless Telenor continues to support the project. This fact, the time limit and the cooperative spirit known (by disclosing the letter) may signal a hope for a sensible solution to this mess."

And it's signed by Mr. Johansen. It certainly gives the impression of being annoyed with you anyway, doesn't it, this particular note?

A. Like he is saying only two days before I told him. Then we have opened up earlier this afternoon other correspondence to show that there is a paper trail to show that we weren't doing anything without informing them, and I think he probably might have written this on a plane or something, and maybe his emotion got ahead of him and probably didn't have his files with him to actually look through, but there are so many inaccuracies in this minute. I think you also need to look at my letter to him.

Q. Ah yes, that's in response to a letter he wrote. I'll

deal with that and I think I should

A. Because it proves at that time that a lot of this is not

Q. I don't know if, I think it may have been done here, he must have been here around he was here of course, he was here for the meeting of the 3rd, and he gave this to Matheson Ormsby Prentice?

A. Yeah, he arrived over with his Chief Executive, Thormon Harmonsens, and he was clearly under ferocious pressure.

Q. What was the pressure? That's what I am trying to understand. Because you see, he makes a point here, doesn't he, he said, look, whatever his view about what dealings he thought that you might have been engaging in to try and get 12.6% or something

A. I mean, I was up front

Q. Sorry, I'm not saying at the moment anything about that.

A. Sorry.

Q. I'm saying whatever his view about that may have been, obviously this memorandum indicates a certain annoyance, the way one would normally read it, that the

A. I'll help you by describing what I think this it is about.

Q. I'll ask about he refers to you as his honoured partners.

A. Maybe he was with a solicitor when he wrote this, but not to be you know, I think we need to put this in the right context. Here is a man who suddenly has his boss looking over his shoulder. There has been a huge delay of more than six months since the licence was awarded. There were complications in relation to trying to get the drafts of the licence, to get the finance in place and the project was under extreme difficulty. And in some ways, you know, he is writing a file note to himself, giving his view of the world, and maybe this could have gone to his boss, I don't know. But sometimes, in that case, you may not have the time to reflect and actually look at documentation, because there is no doubt in my mind, his executives, Knut Digerud, Haga, all these gentlemen, were all knew what was going on every step of the way because they were part of the team negotiating the licence, but also involved in the funding of it, and the IIU issue. So I think you have got to put that and take it in that kind of context, that the guy probably never before has his boss, because they are a very light touch, the way they would manage their businesses; you know, to have the Chief Executive follow you around Dublin for two days and go around, see everybody and look over your shoulder probably made him feel very, very threatened.

Q. Well, I think just in relation to that, and I can

perhaps refer to it in a little bit greater detail

some of this was the big boss man from Telenor

A. I mean

Q. who came some days later, I think, with the trade

Minister, is that right, on some sort of a trade

mission, an official visit?

A. I remember

Q. That's my understanding.

A. I remember meeting Thormon Harmonsens and they rang me

that morning to say that they were in Dublin. So I

don't know whether he was over on a trade mission or

not.

Q. I think the Norwegian Trade Minister. I'll just have

to get chapter and verse on it and I can refer you to

it in the morning.

A. In industry terms it would be considered to be a very

long period between the award of the licence and

signing the licence. Normally it's only two to three

months.

Q. Could I just ask you this. If you take the memorandum

as a whole and leave aside your views about certain

inaccuracies in it, but concerning asking the

question, he was saying IIU got 25% and what have they

brought to the table? That seems to be what he is

asking there, isn't that right?

A. Well, yeah, he also goes on to say that it was our

shares but we always were going to give 20% to

somebody.

Q. I understand that. He is saying they got 25%. They are going to get out of their underwriting obligations?

A. That's because they wanted it.

Q. Yes, but

A. Telenor wanted it because they felt that there was a danger, in a very, and of it a minimal danger in real terms, that if we didn't conclude our placing and raise equity capital, well then they would they could end up with 60% and place the shares anywhere and they could have a new partner.

Q. Well, he said they were going to get out of this, what have they brought to the party is what he is asking, or introducing, in his view, a complication because of something he said he heard at the Ministry. Now, he said the reason they came in in the first place was because you came to see him and told him that it would be better to get them in in place of, I think, the neutral banks or words to that effect

A. Well, the reason why all this happened is that Telenor wouldn't accept Advent. I mean, we really have to look at this very carefully, because Advent didn't satisfy Telenor. We then moved on to plan B, which was IIU. So in some ways, they were all they were all part and parcel

Q. Are you saying they are really the author of their own

misfortune if they be viewed as misfortune?

A. I think this memo is not a misfortune. I think it is a little bit of a rant where somebody gets excited.

Q. Now, the next document is or sorry, if you wouldn't mind just going back to page 128. This is Mr. Owen O'Connell's note of the same meeting, this is the 3rd May and there may be a typed copy there in yours as well. You can see there, there is Knut Digerud, Peter O'Donoghue, Arve Johansen, Michael Walsh. The first time Michael Walsh has attended do you have it, I wonder? Paul Connolly, Owen O'Connell, at Department of Communications and then from the civil service side were Martin Brennan, Fintan Towey, Regina Finn and there is an Eanna O'Conghaile, the name isn't completed. Then:

"Clear a political football.

"Identity of each shareholder legal and beneficial ownership. Esat Digifone changes relative to bid."

So there must be some sort of discussion going on.

"Change in institutional investment replacement of Advent and Davys by IIU.

"Need detailed information/quality about IIU.

"Confirmation that Telenor is same as at bid date.

"Difference (in detail) as to expertise and asset strength between Communicorp and Esat Telecom Holdings.

"Numbers re IIU.

"Telenor 'backdrop' statement as operator as last resort. AJ that's the way we see it anyway.

'We'll never abandon this one'. Not requesting statement but would be helpful per MB.

"Project finance ... Peter O'Donoghue Donal Buggy, Billy Riordan, maybe Andersen.

"Better than 50% chance that the Commission" that's the Persona complaint.

As you can see there, certainly there was discussions going on about the types of matter that Mr. Johansen refers to in his memorandum, I think it would be fair to say.

In any event, you weren't at the meeting. I just bring it to your attention

A. No. As things went on, I mean May became quite frenetic and I think there was more and more meetings with the Department leading up to the signing of the licence.

Q. Then Tab 131 this is the one Mr. O'Connell received a phone call from Mr. Towey:

"Minister's strong preference 40:40:20 at time of licence but I understand need for flexibility" that's where the 40:40:20 comes in.

Now, you see there is a note, a Matheson Ormsby Prentice note at 132, the 8th May, 1996, Arthur Moran. He is with Knut Digerud.

"Licence likely to be ready Friday. EU has considered

Persona." I am not concerned about that.

"Can we unravel the IIU involvement? How we attack the arrangement agreement?"

"KD"

So there seems to be some concern and it may relate back to the views that may have been expressed to Mr. Johansen at the meeting on the 3rd May.

A. I don't know what an arrangement agreement is, but anyway, maybe it's

Q. "Minister plus Department seeking the support of Telenor by way of letter of comfort?"

Again, maybe it is some suggestion of some support for what Mr. Johansen is stating in his memorandum of being asked off the record by Martin Brennan to be the

A. Nothing unusual in that support letter. I mean, we have had to write those letters in the last couple of years where other investors and you write a letter to the Government that you are going to stick with the investment.

Q. And "Tie down shareholders and provide for Telenor to increase shareholding in the event of default by Esat/Communicorp/IIU". That's but again, it seems to be in a similar theme

A. To be fair on Mr. Digerud though, Knut would have not had a lot of experience of negotiating licences or shareholders agreements, so this is probably his

first, so he would probably be a little bit more jumpy than somebody who had a lot of experience in this area.

Q. If you go to Tab 135 now, please

CHAIRMAN: Well, we'll make this the last document because we are fairly close to the two hours.

Q. MR. COUGHLAN: There can be little doubt that at the time that there were a lot of meetings with the Department, there was also a fair amount of tension between the shareholders, isn't that right, around these couple of days?

A. It was like the night before an opening night of a theatre play.

Q. But apart from the dealings with the Department, there was some fairly hard talking going on

A. You know, everybody was fighting for their position.

Q. Anyway, this is a note, you can see that, of the 9th May, 1996.

"Paul Connolly, Leslie Buckley, Owen O'Connell" I can't see the other name "Gerry Halpenny.

"Telenor bridge dependent on the 12.5%. Knut Digerud calls to the Department to say that no cash available immediately.

"Denis O'Brien phone call:

"Minister of the opinion that cash not available call by KD to Martin Brennan.

DOB to call Knut Digerud."

Do you know what that's about?

A. I don't, no. I was just reading that I actually don't know what that is.

Q. You don't know what that's about?

A. Because the bridge, I don't know how the bridge could be dependent on 12.5. The 12.5 argument was over and done with at that stage.

Q. Then if you go over the page, there is only one other thing I wanted to ask you about because it sort of links into ultimately, I suppose, the your letter to Mr. Johansen, but do you see the note there:

"CSFB call by Knut Digerud re the 12.5%."? You don't

A. No. I mean, I see there is a reference to Norway not being an EU state. Non-what I think the context is that they didn't want Telenor to go above a certain level, maybe, and the 12.5, I thought that was done and dusted at that stage, that we all agreed that it was not going to happen.

Q. It was not going to happen, mmm. In any event, you can't throw any light on that?

A. I am sorry, I can't. Unless there is something back here.

Q. All right. I am now going to go on to a document which might take a little time, and this was a draft of a letter which was sent to you by Mr. Owen O'Connell, and I might ask you to look at this

overnight, because there was a draft prepared and then the letter which was ultimately sent, and I think you may be aware of the general terms, was different to this particular draft. So that's what I'll be coming back to.

MR. FANNING: Chairman, I beg your pardon, before you rise, I'd like to place on the record a formal objection I have to a question that Mr. Coughlan asked some 20 minutes ago. I didn't intervene at that point but on reflection I do feel I should mention it to the Tribunal. I don't think anything turns on it because Mr. O'Brien gave a noncommittal answer. He was asked the tenure of the questions he was asked was whether or not he recalled giving any information that formed part of Mr. Lowry's answer to the Dail to a question that he was asked on the 30th April, 1996 about the involvement of Mr. Desmond in the consortium.

As I say, I don't think anything turns on it, but in my respectful submission, we are in a constitutionally surreal situation when Mr. Coughlan, on behalf of a Tribunal established by the Oireachtas, is examining a witness, Mr. O'Brien, to try and go behind the statement of a minister made to the Oireachtas. In my respectful submission, it is illegitimate and it is not a proper part of this inquiry. I am simply placing my concern to that extent on the record.

CHAIRMAN: I am somewhat concerned as to your observations on legitimacy or illegitimacy. I thought it was a pertinent question that Mr. Coughlan inquired of Mr. O'Brien who answered readily to the effect in the context as to whether there had been any communication between him and the Department which necessarily imports the connectivity of the Minister and his supporting civil servants. I fail to see the gravamen of the objection. I see no reason to take any particular account of it.

Eleven o'clock in the morning. Thank you very much.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
WEDNESDAY, 10TH DECEMBER, 2003 AT 11AM.