

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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Solicitor

FOR THE DEPARTMENT OF

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FOR DENIS O'BRIEN: Mr. Eoin McGonigal, SC

Mr. Gerry Kelly, SC

Mr. James O'Callaghan, BL

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FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Kelly Noone & Co.

Solicitors

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxton

I N D E X

Witness: Examination: Question No.:

Knut Haga Ms. O'Brien 1 - 371

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,  
3RD FEBRUARY, 2004 AT 11AM:

CHAIRMAN: Starting today with Mr. Knut Haga, the Tribunal will be hearing, over the next two weeks, evidence from a number of witnesses attached to Telenor at relevant times. Although these witnesses are generally proficient in the English language, not all are as proficient as, for example, Mr. Arve Johansen, who will be testifying, because of his travelling commitments, separately and without the aid of an interpreter at a later stage of the term.

Accordingly, in response to a request from the solicitors for Telenor, on the basis that since various relatively technical and intricate matters might be raised in evidence, it was desirable there be the assistance of interpretation. The Tribunal has arranged the attendance of a skilled interpreter. And I propose that we first of all swear that lady in in the usual manner. I do not envisage, from my knowledge of what is likely to transpire, that it will be necessary for the interpreter to relay all, by any means, of the content of evidence, certainly at least as regards the witness's own statement, which, on the usual basis, will be the initial portions of such testimony; but she will be available for any later occasions in the course of direct evidence or cross-examination in which assistance may be felt

desirable by the relevant witnesses. Thank you.

THE INTERPRETER WAS THEN SWORN.

MS. O'BRIEN: Mr. Knut Haga, please.

MR. KNUT HAGA, HAVING BEEN SWORN, WAS EXAMINED AS

FOLLOWS BY MS. O'BRIEN:

CHAIRMAN: Thank you very much for your attendance,

Mr. Haga. Please sit down.

You heard what I said at the outset. I take it you are reasonably happy with the basis upon which we proceed, that you will endeavour to answer questions in English, and if at any stage you need the assistance of the interpreter, we can pause to enable you to have that.

A. In general, yes.

Q. MS. O'BRIEN: Morning, Mr. Haga. Thank you very much.

You haven't given evidence to the Tribunal on any previous occasion, so I thought it might assist you in the first instance to indicate how I was going to propose to deal with your evidence.

A. Sorry, may you turn up the volume slightly?

Q. Yes, we certainly can. Is that better?

A. I think so.

Q. What I was going to propose doing is, firstly, taking you through the memoranda of evidence that you have furnished to the Tribunal. And that will involve me reading them out to you and asking you if you agree and confirm their contents. All right? And if, in

the course of me doing that, there is any aspect of your answers that you want to elaborate on or you want to clarify or you want to expand, you are perfectly at liberty to stop me and to do so. All right?

A. Yes.

Q. And then, having done that, what I would propose doing is returning to discuss with you some of the aspects of the material covered in your memoranda, and in doing that, I would intend to refer to some of the documents that have been brought to your attention.

Is that all right?

A. Yes.

Q. Now, what I want to do is to open the most recent memorandum that you furnished first. That's the memorandum of the 30th January last. Do you have a copy of that with you in the witness-box? Because it might assist you.

A. I have a copy provided by Kilroy's. I don't think I have the copy

Q. That's the copy we are working from.

A. This was the copy that was sent in.

Q. Yes. That's the one I am going to read.

A. Okay.

Q. You say "Memorandum of intended evidence of Knut Haga, consisting of replies to the Tribunal questions of the 7th, 11th and 26th June, 2002. And initially you deal with an introduction to your answers.

You have informed the Tribunal that your primary professional expertise was, at the time of your involvement in the Esat Digifone project, in the area of debt funding from financial institutions and third-party providers of project finance. You were formerly an employee of Telenor International AS, a holding company for Telenor's investments abroad. Your title was assistant director, and you worked within the area of Treasury and corporate finance. Because of a lack of resources and of project financing expertise within Telenor Invest AS, your services were temporarily allocated on a part-time basis as a financial adviser to Telenor Invest AS.

A key issue in this process was to position Esat Digifone Limited, which you are referring to as "the project", for third-party project financing.

A. I would like to add something to that.

Q. Yes, of course.

A. That I also acted as financial adviser to other units or subsidiaries of Telenor International, such as Telenor Satellite Services.

Q. I see. And that was at the same time that you were advising in relation to the Esat Digifone project?

A. Yes, at the same time.

Q. You state that during the course of the project your day to day involvement tended to be with Per Simonsen on the Telenor Invest side and with Peter O'Donoghue

on the Communicorp/Esat Digifone side. You found the project to be both difficult and challenging. It was never easy to establish a precise and definitive position in relation to matters as they evolved. You reported occasionally to Knut Digerud, who was the Chief Executive Officer of Telenor Invest AS until February, 1996.

You have informed the Tribunal that the events under inquiry by the Tribunal occurred over seven years ago, and in some cases, over eight years ago. You left the employment of Telenor International shortly after the project was completed, and it is only in recent times that you have been provided with access to the relevant documentation in the Tribunal books of documents, much of which you have no recollection of having previously seen.

Your replies below are based on a combination of your limited recollection some seven years after the events refreshed by sight of some of the documents, but it would be wrong for you to say that you have a full and clear recollection of these events at this late stage, or that your recollection is, in all cases, complete and reliable. Is that correct?

A. I would like to make one comment.

Q. Yes, of course.

A. The fact is that I have been introduced to this Tribunal, I think it was in summer of 2000, and I have

seen some documents from then and up to now, and sometimes it's difficult to decipher something I have seen already last 18, 20 months or if it's something I recollect from 1995 and that period.

Q. I think the Tribunal can fully appreciate your difficulty in that regard.

Now, firstly you have dealt with your replies to the questions of the 7th June, 2002. At Question 1, you were asked for the circumstances surrounding the establishment of a consortium by Telenor and Esat Telecom to bid for the second GSM licence, including firstly the manner in which the parties were introduced to each other; secondly the approximate date of their introduction; thirdly the initial proposal for the capital configuration of the bid company; and fourthly the date on which agreement was concluded between Telenor and Esat Telecom to establish a consortium.

And you have answered as follows: You say that you do not recall, but you understand that PA Shareholding introduced the parties to each other.

In relation to the date of the introduction, you state that you do not recall, but you understand that it was late April, 1995. In relation to the initial proposal for the capital configuration of the bid company, you state it was 50:50, Communicorp Group/Telenor Invest AS:Telenor. And finally you state that you do not

recall, but you were informed that a joint venture agreement was signed on the 2nd June, 1995, on behalf of Telenor and on the 5th June, 1995, on behalf of Communicorp.

And are your answers correct to that?

A. I think would I like to add a comment.

Q. Yes, of course.

A. I think I believe that Telenor was invited into an existing consortium through PA Consulting.

Q. I see. But you are happy that as far as you understand it, the introduction was through PA Consulting?

A. Yes, that's what I believe.

Q. That's very good.

The second question, you were asked for details of the negotiation of the joint venture agreement dated 2nd June, 1995, including details of any professional advice provided to Telenor in connection with the negotiation and finalisation of the joint venture agreement.

And you have answered that you did not participate in the negotiation of the joint venture agreement, but you understand that Amund Fougner Bugge of Telenor's internal legal department may have drafted the agreement. Before the negotiation of the joint venture agreement took place, you were asked by Telenor Invest to evaluate the financial position of



Communicorp. After a brief introduction it was agreed that you should visit Advent International and Mr. Massimo Prelz and Mr. Denis O'Brien on a day trip to London at Advent's premises at Victoria Station on the 16th May, 1995. Mr. Prelz introduced you to some Advent personnel. Advent seemed to have unlimited financial resources, as later stated in writing by Mr. Prelz. You also informed he also informed you about their current significant equity investment in Communicorp. Mr. Prelz also informed you about their keen interest in the investment opportunity relating to the second Irish GSM licence. He stated that they, as a committed long-term equity partner in Communicorp, would support Communicorp in their efforts to win the licence. This would have been normal this would not have been normal or expected, in your experience, as funds to local partners, non-PPT, or non-industrial partners normally would be provided only after award of licence.

Your personal opinion after this meeting was that Communicorp was not on a stand-alone basis at that time in a position to provide sufficient funds for its expected contribution to the project. Further capital injections were needed. Based on information given by and assurances by Mr. Prelz, you felt comfortable about Communicorp's future ability, supported by Advent, to fund its share of the project. Anyhow,

based on your experience, it would be in line with good practice to have such assurances in writing, and as you said in parenthesis, "Put your money where your mouth is." Therefore you advised Telenor to seek some formal financial commitment from an equity partner like Advent; that is, a formal commitment to invest in Communicorp. You took it for granted, following your meeting in London, that this would stem from Advent and should not be difficult to achieve. Is that correct?

A. Yes.

Q. Question 3, you were asked about three matters.

Firstly, the purpose for which the joint venture agreement provided for a guarantee by Esat Telecom of  $\text{€}1/25$  million.

Secondly, whether, and if so, when, such guarantee was actually provided.

And thirdly, the form of such guarantee.

And you answered as follows: You state that you were informed that the joint venture provided for a financial guarantee in respect of a sum of  $\text{€}1/25$  million plus 50% of the licence fee. You believe that it was intended to be a financial assurance that Communicorp would be in a position to meet its funding obligations under the bid by sourcing an appropriate level of finance from a third party. The financial guarantee could, in your view, be replaced with a formal

commitment to increase its equity participation in Communicorp, thus enabling Communicorp to participate in future equity increases in the project.

And just to clarify there, am I correct in thinking that the formal commitment that you refer to there was a commitment that you expected to come from Advent?

A. That was expected at that time, yes.

Q. Secondly

A. Sorry, that was my belief.

Q. That was your belief.

The requirement to obtain such a guarantee was, in your opinion, removed by the underwriting commitment given by International Investment and Underwriting Limited contained in its letter of the 29th September, 1995; is that correct? That was your view?

A. Yes.

Q. And just to clarify there, am I correct in thinking, therefore, from your answer, that the financial guarantee and the financial commitment hadn't been provided, as far as you understood, until the 29th September?

A. That is my opinion.

Q. And finally, you said that the letter was provided in the form of a letter from Professor Michael Walsh of International Investment and Underwriting Limited and related documentation.

Now, at paragraph 4, you were asked about Telenor's

involvement in or knowledge, direct or indirect, of the dealings of Mr. O'Brien/Esat Telecom or Esat Digifone or any other person on their behalf with J&E Davy for the purpose of securing the backing of financial investors.

You answer that you were not involved in that process; accordingly, you have no knowledge, direct or indirect, of the dealings of Mr. O'Brien, Esat Telecom or Esat Digifone or any person on their behalf with J&E Davy other than the letters of intent which were obtained from potential investors in the project. Is that correct?

A. Yes.

Q. Paragraph 5, you were asked for Telenor's understanding of the commitments provided by Advent International, Allied Irish Banks, Investment Bank of Ireland, and Standard Life to the funding of Esat Digifone.

And you answer that your understanding is that the letters of intent or comfort furnished by those institutions were not commitments. They were merely indicative letters of intent and were not intended to be binding, nor were they binding either on the institutions concerned or on the members of the Esat Digifone consortium. Is that correct?

A. I would like to add that I did not see or read the letters that were that's being referred to here.

Q. And I think it will become apparent when we read through your memorandum that you had no part in the preparation of the bid document itself.

A. That's right.

Q. Can I ask you, then, on what basis did you form the opinion that you have referred to there in your answer to Question 5?

A. I may have seen the letter to Advent, and I have now seen letters in error that are consistent or similar to the dealings we had with Advent or information we got from Advent.

Q. Are you basing that, therefore, on your assessment of the letter of the 10th July that was obtained from Advent?

A. Yes.

Q. Paragraph 6, you were asked for Telenor's involvement in or knowledge, direct or indirect, of approaches made to persons other than J&E Davy, Advent International, Allied Irish Banks, Bank of Ireland and Standard Life, proposing their involvement in or backing of the Esat Digifone consortium in the period prior to the 4th August, being the closing date of the receipt of applications. And you have indicated that you had no knowledge of such approaches.

A. That's right.

Q. Paragraph 7, you were asked for your understanding of the RFP document issued by the Department, and your

attention was drawn in particular to paragraphs 3, 9 and 19.

And you have replied that you were not involved in an analysis of the RFP document or in the drafting of the bid document. You were therefore unable to confirm any personal understanding or what Telenor's understanding was of any of those matters; is that correct?

A. Yes.

Q. Paragraph 8, you were asked for Telenor's specific understanding of the requirement that the Minister be satisfied as to the financial capability of the applicant as provided by paragraph 19, and in particular in the light of the information memorandum issued by the Department to applicants on the 28th April, 1995, and specifically that portion of the memorandum which responded in the following terms to a question posed by Esat Digifone as to how financial capability would be assessed and whether there were any specific criteria.

That was answered as follows in the answer by the Department: "Financial capability would be assessed by reference to the proposed financial structure of the company to which the licence would be awarded, if successful, the financial strength of the consortium members and the robustness of the projected business plan for the second GSM operation..."

And again you have stated that you were not involved in, nor did you deal with, and to the best of your recollection, you were not involved in either the question or the response from the Department. Is that correct?

A. Yes.

Q. Paragraph 9(i), you were asked for details of all steps taken by Telenor to satisfy itself as to the financial capability of the Esat Digifone consortium, and in particular, all inquiries made of Communicorp/Esat Telecom as to its financial status; and secondly, details of Telenor's view as to the financial strength or weakness of the Esat Digifone consortium, based on such inquiries or otherwise.

And you answered as follows: You state that with regard to the Esat Digifone consortium, Telenor was to be, and remained until the 12th or 13th April, 1996, a 50% shareholder. As such, you were completely satisfied in your capacity as an employee as to the financial capability of Telenor to meet its 50% obligation.

In relation to the Communicorp/Esat Telecom 50% holding, you became aware, following the execution of the joint venture agreement, that there were concerns within Telenor that Communicorp/Esat Telecom had an undeveloped balance sheet, in the sense that it was a company which had not been long established and had

not generated substantial revenues, certainly compared with that of Telenor and its group companies.

The request for a financial guarantee was not proposed by you. It seems to you that the objective and underlying reason for this guarantee was to achieve a formal and legally binding commitment from Advent. And can I just pause there for a moment. I think that was, in fact, what you had advised, was it not, after you had your meeting on the 16th May in London with Mr. Prelz and Mr. O'Brien?

A. Yes. And that's also in some drafts.

Q. Some of the early drafts

A. Yes, some early drafts.

Q. of the joint venture agreement.

You go on to say that consequently the financial guarantee could and would have been substituted by such a commitment. You presume that the financial guarantee was seen as an appropriate formulation in order to put pressure on the progress of the matter in the event the project was successful. You should mention that in your experience, it is not unusual to find that in international projects, the local partner may be less soundly asset-based than non-local partners.

You state that your own view was that any lack of financial strength relating to the 50% ownership of the Esat Digifone by the Communicorp Group was



compensated by the following facts: Firstly, Advent had invested and was a 30% shareholder in Communicorp. Secondly, Mr. Prelz, a senior officer of Advent, had, in a meeting, expressed his keen interest in and strong support for Communicorp. And thirdly, it appeared to you that Advent was undoubtedly able to fund Communicorp's involvement in Esat Digifone.

And can I just ask you there to clarify that the meeting you are referring to in the second point you make is again the meeting of the 16th May that you have told us about?

A. Yes.

Q. You state that in addition to this, Telenor's relative financial strength in respect of its 50% ownership made you feel very comfortable. You cannot say if other considerations may have been taken into account, such as, for example, the award of the GSM licence to the Esat Digifone consortium would have greatly enhanced its ability to raise the necessary debt and equity finance, but you believe that from the very outset, Telenor was fully committed to the Esat Digifone consortium and would have been willing to provide whatever financial assistance was required to make the project a success.

It was widely accepted within Telenor at the time that the project was an attractive opportunity to obtain a substantial stake in a GSM operator in an

English-speaking country within the European Union.

Up to then, Telenor had modest minority shareholdings, not exceeding 20%, in secondary operators. Is that correct?

A. Yes.

Q. Now, Question 10(i), you were asked for Telenor's understanding of the purpose for which oral presentations by applicants were conducted by the Department.

You have answered that you were not present at or involved in the preparations for the oral presentation of the 12th September, 1995; you don't have any particular understanding as to the purpose for which oral presentations by applicants were conducted by the Department, but you assume that it was to aid the evaluation process by meeting the applicants on a face-to-face basis. Is that correct?

A. Yes.

Q. Secondly, you were asked for the names of all persons present at the oral presentation by the Esat Digifone consortium on the 12th September, 1995.

You state that you understand that has been answered by a person who was present at the oral presentation.

That's one of the other Telenor executives.

A. Yes.

Q. Do I take it, therefore, that you didn't know at the time what Telenor personnel were attending the

presentation?

A. I don't specifically recall, but maybe, maybe not, I don't know.

Q. And at subparagraph 3, you were asked for Telenor's views as to the overall impression made by the Esat Digifone consortium in the course of the presentation and, in particular, any matters which appeared to Telenor to be problematic or areas of perceived weakness.

You state that you are unable to remember precisely when or in what circumstances or from whom you received the impression, but you believe that there was an understanding or perception that the Esat Digifone consortium had performed well at the oral presentation, but that Mr. Denis O'Brien may have had concerns in relation to Communicorp's lack of financial strength.

Can I just pause there for a moment and ask you, was it your understanding that it was only Mr. O'Brien who had those concerns about Communicorp's financial strength, or was that concern also shared by Telenor personnel?

A. I had some concerns at that time.

Q. I appreciate that you personally had concerns at the time. But in terms of the impression made at the presentation, is it your recollection that there were other Telenor personnel that had concerns about the

impression made at the presentation in terms of

Communicorp's financial strength?

A. That, I can't recollect.

Q. I see. You stated that at this long remove, you were unable to distinguish between your own evolving concern in September, 1995, and whether or not others shared your concern about the weakness of Advent's support for Communicorp independently of any overall impression made in the course of the presentation.

You and, you believe, other Telenor executives had your own reservations or concerns in relation to Communicorp's inability to provide convincing evidence of its ability to source the required capital for its share of the project.

The lack of Advent's proven support for Communicorp turned out to be an area which caused some tension, you understand, in the lead-up to the lodgment of the bid on the 4th August, 1995.

You state that you were informed by Peter O'Donoghue that an agreement had been entered into between Advent and Communicorp in respect of a commitment of up to IRi½30 million in the event that Esat Digifone was successful in its bid for the licence. It appears that you were advised on or about the 2nd August, 1995, by Helen Stroud of Baker McKenzie Solicitors, that there were no agreements between Advent and Communicorp in relation to the said i½30 million.

When further clarification was sought by you in relation to this issue from both Advent and Communicorp, it was confirmed by each of Advent and Communicorp that Advent had offered sufficient funding to enable Communicorp to perform its obligations in respect of the bid. Notwithstanding the submission of the bid, Telenor, in accordance with their rights under the joint venture agreement, sought clarification with regard to the financial assurance from Advent. In September 1995 you continued to press your concerns in relation to this issue, and you refer the Tribunal to your letter of the 11th September of 1995; is that correct?

A. Yes.

Q. Now, at paragraph 11, you were asked for the purpose of the meeting between Mr. Denis O'Brien and Mr. Arve Johansen in Oslo on the 22nd September 1995 and, in particular, firstly, the date on which the meeting was arranged; secondly, the person by whom the meeting was requested; thirdly, the names of all persons present at the meeting; fourthly, details of the precise information provided by Mr. O'Brien as to the Department's assessment of the Esat Digifone application; fifthly, Telenor's understanding as to the source of such information; sixthly, details of the precise information provided by Mr. O'Brien as to the potential involvement of IIU, the purpose and

status of IIU's involvement, and the association of IIU with Mr. Dermot Desmond; and finally, you were asked whether Mr. O'Brien informed Telenor of any other facilities to be provided by IIU, and in particular, whether he disclosed to Telenor that IIU had agreed to underwrite Esat Telecom's obligations to contribute to the capital of Esat Digifone.

You state that you were not present at the meeting in Oslo on the 22nd September, 1995. You do not have any recollection of having been informed of the meeting or what transpired at the meeting, but as far as you can remember, you were informed of the proposed involvement of IIU, which was considered to be synonymous with Mr. Dermot Desmond, sometime in late September, 1995. You believe, although you cannot be certain, that you may have seen some documentation relating to IIU's prospective involvement in a potential future shareholding in the Esat Digifone consortium sometime in early October, 1995.

You state that you have a vague recollection of a day in late September, 1995, when you were aware that Mr. Denis O'Brien was meeting with Mr. Arve Johansen, and you believe that this may have been the meeting of the 22nd September, 1995, to which the Tribunal referred.

You can recall no specifics other than this, except that you may have signed a letter to Mr. Denis O'Brien on this date which you think may have been the letter

which has the date 15th September, 1995. Is that

correct?

A. I would like to comment on that.

Q. Yes, of course.

A. I have gone through my diary thoroughly, and I believe

that I was on a business day trip to Copenhagen on the

22nd September, 1995. I didn't recollect I didn't

have the diary when this was written.

Q. So that confirms, in your view, that you weren't at

the meeting itself?

A. Yes.

Q. Can I just ask you to clarify one matter arising out

of your answer to that question. You state that you

were that following that meeting, effectively, you

were informed of the proposed involvement of IIU; can

you recall by whom you were informed of IIU's proposed

involvement?

A. Not exactly, but I believe it was Per Simonsen or Arve

Johansen.

Q. I see. So it would have been Mr. Simonsen or Mr.

Johansen?

A. Yes, I think so.

Q. You have actually referred to that letter dated the

15th September on three, I think, other occasions in

your memorandum. We'll be coming to that, and

obviously in due course, we'll refer to the letter

itself.

A. Yes.

Q. Paragraph 12, you were asked for details of all further contacts between Mr. O'Brien, Mr. John Callaghan or any other person whatsoever with Mr. Johansen or any other Telenor official subsequent to the meeting in Oslo on the 22nd October, 1995, and prior to Mr. Johansen's letter to Mr. O'Brien dated 2nd October 1995.

And you have informed the Tribunal that you have no recollection whatsoever in that regard, and you are unable to assist the Tribunal. Is that correct?

A. Yes.

Q. Paragraph 13, you were asked for the date on which and circumstances in which Telenor was first informed of or became aware that IIU had agreed to underwrite the equity participation of Esat Telecom in Esat Digifone.

And you have answered that you were unable to identify the day or date on which Telenor was first informed or became aware of this, but you believe it would have been aware of this sometime in early October, 1995, probably in the first week. Is that correct?

A. Yes.

Q. Your belief there, I take it, is based solely on your own knowledge at the time; would that be correct?

A. Yes.

Q. Paragraph 14, you were asked for the date on which and circumstances in which Telenor had sight of or



otherwise became aware of the contents of a letter dated 29th September, 1995, from Mr. Michael Walsh addressed to Mr. Martin Brennan of the Department.

You say that you are informed that a draft of this letter may have been sent to Telenor's internal legal department. You cannot say on what date or in what circumstances you first became aware of the letter, but you believe that you were aware of it sometime in early October, 1995. Is that correct?

A. Yes.

Q. And can I just ask you there, you have stated that you were informed that a draft of the letter may have been sent to Telenor's internal legal department. Could you just tell me, by whom you were informed of that matter?

A. That would most likely be Per Simonsen.

Q. And would you have been informed at the time, back in 1995, or is that something of which you have only been informed recently?

A. I would assume sometime in I would assume sometime in 1995, but at a later stage in the process.

Q. At a later stage in the process?

A. Yes, not hands-on or first line.

Q. Then you were asked for the date on which and circumstances in which Telenor was first informed of or otherwise became aware that the Department had refused to consider the contents of the letter of the

29th September, 1995.

You state that you were unable to remember this, but you think there may have been some discussion about this at a meeting in the offices of Matheson Ormsby Prentice on the 9th November, 1995, to which your attention has been drawn; is that correct?

A. Yes.

Q. And again there, in answering that question, your answer is based on your own personal knowledge?

A. Yes.

Q. Paragraph 16, you were asked for the date on which and circumstances in which Telenor first had sight or otherwise became aware of the contents of a letter dated 2nd October, 1995, from the Department to Mr. Denis O'Brien returning to Mr. O'Brien the letter of the 29th September from Mr. Michael Walsh.

And you have stated that other than the reference to this matter in the attendance note of Matheson Ormsby Prentice dated 9th November, 1995, to which your attention has been drawn, you are unable to provide any other information or recollection. Is that correct?

A. Yes.

Q. Paragraph 17, you were asked for Telenor's involvement in or knowledge, direct or indirect, of the circumstances in which or terms on which J&E Davy, Advent International, Allied Irish Banks, Investment

Bank of Ireland and Standard Life agreed to withdraw from involvement in the consortium.

You have answered that you had no involvement in or knowledge, direct or indirect, of the circumstances in question, and you have no memory of anyone else in Telenor having been involved. You should say that to the best of your knowledge, the institution's only involvement was the furnishing of the letters of intent or comfort. Is that correct?

A. Yes.

Q. Now, in the next three questions, you were asked about further matters relating to dealings with Davys and Mr. Kyran McLaughlin at the end of November, and you have indicated in each instance that you had no involvement or knowledge of them. So if you are agreeable, I propose moving directly on to Question 21. It's just over the page.

Now, Question 21, you were asked for details of all matters which prompted Telenor to engage solicitors in this jurisdiction in early October, 1995.

And you have stated that you did not deal with the retention by Telenor of solicitors in Ireland, but you vaguely recollect that inquiries had been continuing for a period of time in order to locate Irish solicitors who were not involved with any other consortia. Is that correct?

A. Yes.

Q. Paragraph 22, you were asked for the date on which and circumstances in which Telenor or any of its officers, servants or agents became aware that the Minister intended to announce the winner of the competition in two to three weeks of the 10th October, 1995, including the source or sources of such knowledge.

And you have answered that you were unable to remember having ever been aware of Minister's intentions in that regard. Your vague recollection at this stage was that the sudden timing of the announcement of the decision came as a surprise to you, as it did to other Telenor executives at the time. Is that correct?

A. Yes.

Q. Can I just ask you then, in October of 1995, can you recall, were you here in Dublin, or were you in Oslo?

A. When the announcement was made, or

Q. Were you here present in Dublin at the time, working on the project, or were you in Norway?

A. I was the whole October, or

Q. Say around the 8th or the 10th October.

A. I was in Stockholm on the 10th, I believe. Let me see may I check my diary?

Q. Yes, of course.

CHAIRMAN: I think his reply, Ms. O'Brien, alludes to his hearing only from a colleague by mobile telephone in Stockholm of the favourable outcome.

MS. O'BRIEN: I think it does.

You can check it, if you like, at lunchtime, and we can come back to it.

A. Okay.

At that time I travelled a lot to various European countries, and I also was in Africa so I had extensive business travel activities on behalf of Telenor.

Q. Can I just ask you, was Mr. Simonsen primarily based here in Dublin during that time, do you recall?

A. I wouldn't say that either Per Simonsen and myself were based in Dublin.

Q. Were not based in Dublin?

A. Were not based in Dublin. I was not based in Dublin, but I came in and out one night or two nights and then left again.

Q. Now, at Question 23, you were asked for Telenor's knowledge, direct or indirect, regarding the ownership, incorporation and financial standing of Bottin International Investments Limited, including the source of such knowledge, and in particular, whether such knowledge was gleaned in response to a letter dated 12th October, 1995, from Mr. Knut Digerud of Telenor to Mr. Michael Walsh of IIU Limited. You were also asked to indicate whether a written response was received to the letter of the 12th October, 1995, and if so, you were asked to furnish a copy of such response.

You answer that you are unable to say precisely when

you first heard about Bottin International Investments Limited. You remember that you were immediately concerned and upset about this development. You had no idea who or what Bottin was. You wrote a letter to Mr. Denis O'Brien on the 6th October, 1995, requesting information. When you received no reply to that letter, you spoke to Mr. Knut Digerud, the CEO of Telenor Invest, and he agreed to incorporate your queries the queries in your letter of the 6th October, 1995, into his letter of the 12th October, 1995. You note that you did not, at any time, receive a response to your letter of the 6th October, 1995, and if Mr. Digerud had received a reply to his letter of the 12th October, 1995, you would have expected him to have informed you of the replies. As far as you are concerned, you received no replies. Is that correct?

A. Yes.

Q. I think we'll look at that correspondence when we are looking at the documents.

Paragraph 24, you were asked to please indicate the precise matter to which Telenor's solicitor was referring in the penultimate paragraph of a faxed letter dated 12th October, 1995, in which he stated as follows: "I have considered the content of the side letter dated 29th September, 1995, which seems to me clear evidence of a breach of good faith with the

Department."

You have answered, "I am told that the Bottin issue was brought to the attention of Telenor's Irish solicitors because it was of concern to Telenor. It seems to me that this query can most readily be answered by the author of the faxed letter," but your understanding is that the concern over the content of the side letter was because of the proposed involvement of Bottin. You cannot be certain, but you think it was Telenor's impression that the Department was unaware of the role or involvement of Bottin and that this was the information which should be disclosed to the Department by Communicorp/Esat Telecom/Mr. Denis O'Brien, who had negotiated and concluded the arrangement agreement with IIU. Is that correct?

A. Yes.

Q. Now, at paragraph 25, you were asked for the date on which and circumstances in which Telenor first became aware that Esat Digifone had won the licence competition and the source of such knowledge.

You state that you believe that you were in Stockholm when you received a telephone call to your mobile from Per Simonsen, who told you that he had received a telephone call from Dublin advising him of the successful outcome. You believe that this was late on the 25th October 1995, and your impression was that

Telenor had no senior executives present in Dublin at that time. Is that correct?

A. Yes.

Q. Paragraph 26, you were asked for precise details of Telenor's understanding of the following:

1. The composition of the Esat Digifone consortium as of 4th August, 1995, being the date on which the Esat Digifone application was lodged with the Department.

2. The composition of the Esat Digifone consortium as of 25th October, 1995, being the date on which the consortium won the licence competition.

3. The capital configuration and beneficial ownership of the shares of Esat Digifone Limited as of the 12th April, 1995, being the date of the board meeting at which the full complement of shares was issued in Esat Digifone.

4. The capital configuration of the issued capital and the beneficial ownership of the shares of Esat Digifone as of the 16th May 1996, being the date of issue of the GSM licence to Esat Digifone.

And in each instance you were asked to also identify the source or sources of your or of Telenor's understanding.

And in relation to the first date, which was the date of the bid, it was your understanding it was 50% Communicorp, 50% Telenor Invest AS.

Secondly, as of the 25th October, it was your



understanding that it was 50% Communicorp and 50%

Telenor Invest.

On the 12th April, it was your understanding that it was 37.5% Communicorp, 37.5% Telenor, and 25% IIU.

And fourthly, on the 16th May, it was your understanding that it was 40% Communicorp, 40% Telenor Invest AS and 20% IIU.

You state that these shareholding matters were handled by other persons within the Telenor Group. And you wish to emphasise that your understanding of the above is based on information from the company office file of Esat Digifone which you have been recently informed of by Telenor's solicitors.

You cannot recollect your understanding of what the composition of the shareholdings of Esat Digifone was on the relevant dates back in 1995 and 1996. Is that correct?

A. Yes.

Q. So I just want to clarify a few matters arising out of your answer. I think you have clearly stated that you cannot recollect what your understanding was of the composition of the shareholding of Esat Digifone back in 1995 and 1996; you can't recollect your understanding as of that date. Is that correct?

A. That's correct.

Q. So that in answering that question, you are relying solely on the records in the Companies Registration

Office?

A. Yes.

Q. And they were brought to your attention by Telenor's solicitors here in Dublin; is that correct?

A. Yes.

I'd like to comment that in the beginning, I knew it was 50:50; that, I recollect. When it comes to later stages, I don't recollect.

Q. I see.

You weren't involved, I think you have told us earlier, in the preparation of the bid; isn't that correct?

A. No, I was not.

Q. And you weren't at the presentation to the Department on the 12th September?

A. I was not.

Q. Very good.

Question 27, you were asked for Telenor's understanding of the Department's knowledge of, 1, the composition of the Esat Digifone consortium as of the 4th August, 1995; secondly, the composition of the Esat Digifone consortium as of the 25th October, 1995; thirdly, the capital configuration and beneficial ownership of the shares in Esat Digifone Limited as of the 12th April, 1996; and finally, the capital configuration of the shares issued and beneficial ownership as of the 16th May 1996. And again you were

asked to identify Telenor's understanding of the

Department's source of knowledge.

And you have stated that these matters were handled by

others persons within the Telenor Group, but you do

not remember forming, at any time, an understanding of

the Department's knowledge about the composition of

the shareholdings as of different dates or what the

source of the Department's knowledge would have been.

Your general impression was that the Irish side of the

Esat Digifone consortium, and in particular Mr. Denis

O'Brien and Mr. Owen O'Connell, tended to deal with

communications with the Department. You regret that

you are unable to speculate on what the Department's

knowledge was at the relevant dates. Is that correct?

A. Yes.

Q. 28, you were asked for Telenor's knowledge, direct or

indirect, of the queries and issues raised by the

Department regarding the ownership of the Esat

Digifone consortium and the information furnished to

the Department by or on behalf of Esat Digifone

regarding these issues and queries, including a letter

dated 17th April, 1996 from Mr. Owen O'Connell,

solicitor, addressed to Ms. Regina Finn of the

Department.

You have answered, you cannot remember having been

involved in that communication or having seen the

letter of the 17th April, 1996, and you have no

knowledge of it. Is that correct?

A. Yes.

Q. Paragraph 29, you were asked for details of all dealings and discussions which Telenor had with Mr. Denis O'Brien, any servant or agent of Communicorp, Mr. Dermot Desmond, Mr. Michael Walsh, any servant or agent of IIU or any adviser of Communicorp or IIU Limited in relation to the issues and queries raised by the Department regarding the capital configuration of Esat Digifone and the beneficial ownership of the issued shares.

You have answered, to the best of your knowledge and recollection, there were a lot of meetings, oral and written contact between the above-mentioned persons.

You met Mr. Michael Walsh and Mr. Richard O'Toole, representing IIU, on a few occasions. You can confirm that you never met Mr. Dermot Desmond. You do not recall details of the meetings, but the outcome would obviously be final agreements to which the Tribunal had access to. Is that correct?

A. Yes.

Q. Now, in the next question raised by the Tribunal, you were asked about a meeting of the 3rd May, 1996, and I think you have indicated in your answer that you were no longer active in the Esat Digifone project as of that date. And I think all of the remainder of the questions in this portion of your memorandum, which

was your replies to the first set of questions raised by the Tribunal, relate to events when you ceased to be active in the Esat Digifone project.

So what I propose doing now is moving directly on to page 27 of this document. And this deals with your replies to questions of the 11th June, contained in a supplemental schedule. Do you have that? It's just page 27 of the same document.

A. 25th June?

Q. Page 27 of the same document, replies to questions of the 11th June. You have it now.

Paragraph 1, Question 1, you were asked for details of all matters which prompted the renegotiation of the underwriting arrangements between the members of the consortium and, in particular: firstly, the release of IIU from its obligations on foot of the agreements of the 29th September, 1995, to underwrite the entire of Communicorp/Esat Telecom's equity participation in Esat Digifone Limited.

Secondly, the assumption by Telenor of an obligation to share with IIU in the underwriting of Communicorp/Esat Digifone's (sic) equity participation in Esat Digifone on a 2:1 ratio.

Thirdly, details of the precise terms on which Telenor provided funding to Esat Telecom to finance its obligations to contribute to the licence fee of IRi<sub>ç</sub>½15 million paid by Esat Digifone to the Department on the

issue of the GSM licence to Esat Digifone on the 16th May, 1996.

And fourthly, precise details of the funding arrangements between IIU, Esat Telecom and Telenor regarding all aspects of the funding of Esat Digifone Limited.

And you have answered as follows: "I do not recall being actively involved in this process. I assume the final outcome is materialised through agreements available to the Tribunal. As I have described, at that time my main objective was to establish proper project financing alternatives, including the raising of debt finance from the banks, such as ABN-AMRO and AIB".

You cannot recollect any discussion in relation to the renegotiation of the underwriting arrangements.

Perhaps, if there was such a renegotiation, it would have taken place in the context of the revisions to the shareholders agreement. The agreement went through a considerable number of drafts between the first draft in late 1995 until the agreement was finalised on the 16th May, 1996. Subject to that, you have replied as follows:

Firstly, your understanding is that the shareholders agreement of the 16th May, 1996, replaced any underwriting obligations of IIU as contained in the 29th September, 1995, letter, but you do not remember

any discussion or any reasons given by any person for IIU's release of its obligations.

Secondly, Telenor, at all times, was wholly committed to the success of the Esat Digifone project and was willing to undertake any underwriting obligation that was necessary in order to ensure the success of Esat Digifone.

Thirdly, you cannot recollect those terms in the absence of documentation, but you believe that a bridging finance facility was provided because Esat Telecom was short of liquid funds. The agreement itself will give the required details.

And finally, fourthly, you state that as you have previously mentioned, you dealt with loan and project finance issues; equity capital funding would have been a separate matter in which you were not involved. Is that correct?

A. Yes.

Q. In fact, when we come to look at the documents, I think there are some documents relating to the bridging finance agreement, and I think in particular, a memorandum of understanding that you appear to have signed on behalf of Telenor dating from I think January of 1996. And we'll look at that when we come to deal with the documents.

At the second question, you were asked for your understanding of the purpose for which the Department

required the following: There were then listed a whole series of letters dated 7th May, 9th May and the 15th May. And you state that you were not involved in the process and you were unable to comment. Isn't that correct?

A. Yes.

Q. And then finally in that series of questions, you were asked for details of all meetings or discussions between Telenor, Esat Digifone, any member of the consortium or any person acting directly or indirectly on their behalf with any of the following:

1. Mr. Michael Lowry. You state that you never met Mr. Lowry either publicly or privately. Is that correct?

A. Yes.

Q. Secondly, Mr. John Loughrey. Again you state you never met Mr. Loughrey either publicly or privately. Is that correct?

A. Yes.

Q. Thirdly, Mr. Martin Brennan. And again you state that you have never met Mr. Brennan either publicly or privately; is that correct?

A. Yes.

Q. Fourthly, Mr. Fintan Towey, and again you confirm that you never met Mr. Towey either publicly or privately. Is that correct?

A. Yes.



Q. Fifthly, Mr. Michael Andersen or any member of the Andersen Management International team. And you state that you never met Michael Andersen or any member of the AMI in 1995 or in 1996. Is that correct?

A. Yes.

Q. Had you met Mr. Andersen before 1995 or subsequently to 1996?

A. No.

Q. No. Sixthly, any official or any Government of any government department. And you state that you never met any official of any Irish government department.

Is that correct?

A. Yes.

Q. Any member of the Government, and again you confirmed that you never met any member of the Irish Government.

Is that correct?

A. Yes.

Q. And finally, any public official. And you state that you never met any Irish public official in the context of the second GSM licence.

A. Yes.

Q. Had you met any other public official in any other context?

A. No.

Q. Now, the next set of replies are your replies to questions of the 25th June, 2002, contained in supplemental memorandum of information sought from

Telenor witnesses. And they are your third and final set of answers.

Firstly you were asked of details of Telenor's interest, if any, in the second GSM licence competition prior to Telenor's introduction to Communicorp, including details of the following:

Firstly, steps taken or inquiries made by Telenor in connection with the licence competition. Secondly, inquiries made or steps taken by Telenor to investigate the potential market for mobile telephony in the Republic of Ireland.

And you have answered, firstly, that you were not personally involved in, but you believe that Telenor may have communicated with representatives of Tele Danmark with a view to examining prospects of forming a consortium.

Secondly, you state that you have no first-hand knowledge, but you believe that Telenor may have requested some background economic information on Ireland on matters such as demographics and so forth from the Norwegian Embassy in London. Is that correct?

A. Yes.

Q. Secondly, you were asked for details of all approaches made to Telenor or to any entity associated with it or any person on its behalf to join or form a consortium to apply for the second GSM licence by any party other

than Communicorp. And in each instance you were asked to indicate firstly, the identity of the party or parties, to whom such approach was made; secondly, the approximate date; thirdly, the proposal made; fourthly, the steps taken, if any; and fifthly the reason or reasons that such proposal, if any, did not proceed.

You answer that you were not aware of any approaches made to Telenor to form a consortium, but Telenor may have entered into preliminary discussions with Tele Danmark, or vice versa, with a view to examining the prospect of establishing a consortium. You were not involved in those discussions, and you were unable to comment further. Is that correct?

A. Yes.

Q. Thirdly, you were asked for details of all approaches made by Telenor or any associated entity or any person on its behalf to any party other than Communicorp to form a consortium to apply for the second GSM licence; and in each instance, you were asked to indicate the identity of the party or parties, the approximate date, the proposal made, the steps taken, if any, and the reason or reasons that such a proposal, if any, did not proceed.

You state that as referred to above, you believe that it was Telenor which may have made an approach to Tele Danmark to explore the possibility of establishing a

consortium, but whether Tele Danmark was involved or other consortia or otherwise, the proposals did not proceed. You were not involved in those discussions, and you are unable to provide any information. Is that correct?

A. Yes.

Q. Paragraph 4, you were asked for Telenor's knowledge, direct or indirect, of all agreements concluded between Communicorp, Esat Digifone, Mr. O'Brien, or any associated entity with Advent International Corporation and including, in particular, firstly, an agreement whereby Advent provided a facility of IRi½3.5 million to Communicorp or RINV or any other entity associated with Mr. O'Brien.

Secondly, an agreement dated 12th July, 1995, between Advent International Corporation, Esat Digifone, Communicorp and Mr. O'Brien, for the provision of letters of comfort by Advent to the Department of Transport, Energy and Communications and to Telenor.

Firstly you state that you have no knowledge of the agreement for the i½3.5 million facility. And you state that Mr. O'Brien did not have the habit of sharing or showing such type of information.

Secondly, you state in relation to the agreement of the 12th July that despite attempts to clarify the position with Ms. Helen L. Stroud of Baker McKenzie, solicitors, you were never able to obtain a copy of

the agreement dated 12th July, 1995, between Advent International and others or to have its terms properly clarified.

This gave rise to your handwritten comment "no", which you understand the Tribunal has already examined, and also to your letter of the 11th September, 1995. You were aware of the letter of comfort from Advent to the Department of Transport, Energy and Communications dated 10th July 1995, and you believe there is correspondence in the possession of the Tribunal to show that you consider the letter to be completely unsatisfactory, firstly, in the context of Communicorp's obligations under the joint venture agreement; and secondly, in the context of statements made by Mr. Prelz on behalf of Advent on May 16th, 1995. Is that correct?

A. Yes.

Q. We'll come back and look at all of those letters and correspondence in more detail.

Paragraph 5, you were asked about Telenor's knowledge, direct or indirect, of the precise terms of the offer made by Advent International to Communicorp of IRi<sub>1/2</sub>30 million to fund Communicorp's equity participation in Esat Digifone as referred to in a letter dated 10th July, 1995, from Advent International addressed to the Department.

And you have answered, the Tribunal will be aware of

Telenor's concerns in relation to the letter of the 10th July, 1995, from Advent and of your inability to establish or clarify the position. With regard to your letter of the 11th September, 1995, you were still of the belief that an agreement between Advent and Communicorp might possibly have been made, thus the open question "If any?" related to the issue; is that correct?

A. Yes.

Q. So can I take it, therefore, that even though Ms. Stroud had told you, I think, on the 2nd August, that there was no agreement for the provision of the  $\frac{1}{2}$ 30 million, that you were still, nonetheless, prepared to give Communicorp the benefit of the doubt as of the 11th September, when you wrote that letter?

A. Sorry, can you yes, that's right.

Q. Yes, you were.

Now, at Question 6, on page 34, you were asked for precise details of all steps taken by or on behalf of Telenor to establish the terms of the offer made by Advent International to Communicorp and as referred to in the letter of the 10th July, 1995.

A. Sorry, I just the last question can be interpreted in two ways, perhaps, or my answer. Just to clarify, I believe that there might be a situation where Communicorp had an open offer or had an offer to provide. That's what I answer?

Q. Yes.

A. Okay, just to clarify.

Q. Yes, that's what you answered. You said that yes, you were still prepared to give them the benefit of the doubt, even though Ms. Helen Stroud had told you on the 2nd August that there was no agreement in place.

A. Okay.

Q. Now, Question 6 on page 34, you were asked for precise details of all steps taken by or on behalf of Telenor to establish the terms of the offer made by Advent International to Communicorp and as referred to in the letter of the 10th July, 1995.

You have answered that so long after the events, you cannot recollect precisely what you did, but you telephoned Helen Stroud of Baker McKenzie, and you tried to clarify the position with Peter O'Donoghue.

Thereafter, you followed up with a letter on the 11th September, 1995. Later you received the impression that no further clarification or enhancement of Advent's support for Communicorp would be obtained.

At that point, Telenor's interest coincided with those of Communicorp, and a final letter was signed by you and passed on to Mr. Denis O'Brien sometime on or about the 22nd September, 1995, probably on that date, although the letter itself is incorrectly dated the 15th September, 1995. Is that correct?

A. Yes.

Q. Could you just explain to me what you mean there when you say that at that point, Telenor's interests coincided with those of Communicorp?

A. Peter O'Donoghue had, from what I have seen, but also I have been informed by Peter O'Donoghue, that Advent believed they had I would call an option or they are in a position where they could call on a 5% stake in the consortium. That could be of disadvantage to future that could be of a disadvantage.

Q. Yes. In what way would that be of a disadvantage?

A. Because they were not committed. They had an option, so we didn't know for sure whether they would come in or not. And they were believed to have that option at par value. And we had put a lot of effort and money into the project at that time.

Q. Yes. Maybe we'll look at that a little further when we read your letter of the 11th September.

Now, at Paragraph 7 you were asked for precise details of the obligations of Communicorp to provide Telenor with a letter of comfort from Advent regarding the offer by Advent to provide Communicorp with IRi½30 million to fund its equity participation. If such obligation arose on foot of a contract between Telenor and Communicorp, you were asked to identify the contract and provide the following particulars:

Firstly, whether such contract was made orally or in writing. Secondly, if in writing, you were asked to



provide a copy; or if no copy is available, an explanation as to when a copy was last available and as to when and why it ceased to be available.

Thirdly, if such contract was made orally, you were asked to specify the date and place of the contract and the identity of the persons who negotiated and concluded such contract on behalf of both parties.

And you answer that you have no knowledge of any obligation of any kind of Communicorp to provide Telenor with a letter of comfort from Advent regarding the offer by Advent to provide Communicorp with IRi<sub>g</sub> 1/230 million to fund its equity participation in the project. You believe that Telenor was willing to substitute the financial guarantee with an investment obligation from Advent of IRi<sub>g</sub> 1/230 million.

Unfortunately, and to your surprise, it became increasingly obvious that Advent was unwilling to provide the support which Telenor originally believed it would do.

A. Yes.

Q. Now, at paragraph 8, you were asked for precise details of all dealings between Telenor and Communicorp in the period 12th July, 1995, to 4th August, 1995, in relation to the furnishing of a letter of comfort in terms acceptable to Telenor.

And you have answered that other than the documentation already in the possession of the

Tribunal, you were unable to add any further details or particulars. You believe that Amund Fougner Bugge of Telenor's internal legal department also had dealings in relation to this Department, particularly on the 3rd and 4th August, 1995, when Mr. Bugge was in Dublin for this purpose; is that correct?

A. Yes.

Q. Can I just ask you, on the 4th August of 1995, when the bid was the date the bid was submitted, were you also here in Dublin, can you recall?

A. I don't think so, but I can check it.

Q. Right. You can check it over lunch, maybe.

Now, paragraph 9, you were asked for details of all dealings between Telenor or any person on its behalf and Advent International or any person on behalf of Advent, including its solicitors, Baker McKenzie, regarding the provision of a letter of comfort by Advent in terms acceptable to Telenor.

You state, although you cannot state it with certainty, you believe the documentation in possession of the Tribunal and contained in the relevant books of documents represents a full account. You know of no other documentation or dealings. Is that correct?

A. Yes.

Q. Question 10, you were asked about Telenor's knowledge, direct or indirect, of all dealings between Communicorp, Esat Digifone, Mr. Denis O'Brien or any

person on their behalf and Advent International, in the period from 12th July 1995 to 4th August 1995, regarding the provision by Advent of a letter of comfort acceptable to Telenor and in particular, a telephone conversation of 3rd August 1995 between Mr. Peter O'Donoghue and Mr. Massimo Prelz, as referred to in a faxed transmission from Mr. O'Donoghue to Mr. Owen O'Connell dated 3rd November 1995, together with the source or sources of Telenor's knowledge.

And you answered that it is a long time ago, but you believe that you and Telenor had no knowledge of the dealings by person or persons other than Telenor with Advent International, and in particular, your first knowledge of the telephone conversation on the 3rd August, 1995, was when the relevant document in the Tribunal's booklets was drawn to your attention. Is that correct?

A. Yes.

Q. Paragraph 11, you were asked for Telenor's understanding as of 4th August, 1995, of the following: Firstly, the status of Telenor's involvement as a party to the bid, having regard to the failure of Advent International to provide a letter of comfort acceptable to Telenor. And secondly, the funding available to Communicorp as of 4th August, 1995, to finance its 40% equity participation in Esat Digifone Limited.

You state:

1. You understand that a decision was made on the 4th August, 1995, to allow the bid to proceed which necessarily involved Telenor's continuing involvement as a party to the bid. This was as a result of Mr. Denis O'Brien's letter to Mr. Amund Fougner Bugge of the 4th August, 1995. Telenor still was entitled to continue to demand compliance by Communicorp of its obligation to provide a financial guarantee as set out in the joint venture agreement on the 3rd June, 1995, or an acceptable alternative. From a commercial point of view, the bid costs would have been sunk costs if you lost the bid or if you decided not to send in the bid. You felt comfortable about the bid and the project's capability to raise funds in the event that the licence was awarded. In the event that you won, you expected Advent to enter the scene again.

Paragraph 2: You state that you cannot comment on what funding was available to Communicorp as of the 4th August, 1995, because you cannot say whether or not Communicorp would have been able to raise alternative sources of funding. Although your recollection is very vague at this far remove, you believe that you are correct in your recollection that there was a general sense of disappointment on the part of Telenor that Communicorp, through Advent, had not complied with its obligation as set out in the

joint venture agreement. There was still a possibility of substantial funding from Advent to Communicorp, especially having regard to the fact that it would have been potentially in Advent's commercial interests to have provided such funding and support because of the substantial benefit to Communicorp of its shareholding in Esat Digifone in the event that the GSM licence bid was successful. As a substantial shareholder in Communicorp, Advent had the potential to derive substantial benefit.

From the documents now available, it seems that the basis of Telenor's decision to proceed with the lodgment of the bid on the 4th August, 1995, was that firstly, follow-up letters would be furnished by Communicorp following the lodgment of the bid, and secondly, William Fry Solicitors would furnish an opinion relating to the Advent offer of funding. Is that correct?

A. Yes.

Q. Can I just ask you there, in your answer to that question you state that it's your understanding that a decision was made on the 4th August, 1995, to allow the bid to proceed. Would I be correct in thinking that that was a decision that would have been made at the highest executive level in Telenor?

A. I think firstly I comment that as stated later, you could say that it was a commercial decision.

Q. Yes.

A. And it's my it's an assumption that it was approved at a high level in Telenor.

Q. It's certainly not a decision that either you or Mr. Bugge, who we believe was in Dublin, would have made on behalf of Telenor?

A. Certainly not.

Q. Now, at paragraph 12, you were asked for Telenor's understanding of each and every respect in which it was considered that the terms offered by Advent International to fund Communicorp's equity participation in Esat Digifone were unfavourable to Communicorp, as asserted in a letter dated 4th August from Communicorp to Telenor, together with the source or sources of Telenor's knowledge.

You have answered that you believe that either Amund Fougner Bugge, other Telenor executives and perhaps even yourself may have been generally under the impression that Mr. Denis O'Brien considered that Advent's terms were commercially unfavourable and that he preferred to obtain more favourable terms elsewhere. Is that correct?

A. Yes.

Q. From whom would you have got that impression about the Advent offer?

A. I believe that was conveyed through Peter O'Donoghue, and I think there are some faxes or memos that shows

that.

Q. So it would have been Peter O'Donoghue who would have been the primary source of your personal understanding; is that correct?

A. Yes.

Q. Paragraph 13, you were asked for details of all dealings between Telenor or any person or entity on its behalf and Communicorp, Esat Digifone, Mr. Denis O'Brien, or any person or entity on their behalf, subsequent to 4th August, 1995, in relation to the following:

Firstly, the provision of a letter of comfort by Advent to Telenor in terms acceptable to Telenor.

2. The entitlement of Advent International to 5% of the equity in Esat Digifone, including the manner in which the issues between Communicorp, Esat Digifone, Mr. O'Brien and Advent were ultimately resolved.

And you have answered, firstly, you believe that the correspondence held by the Tribunal reflects the full position. After the absence of any response to your letter of the 11th September, 1995, it gradually became clear to you that it was highly unlikely that Advent would be willing to provide a letter the terms of which were acceptable to Telenor. Is that correct?

A. Yes.

Q. Secondly, you say that because you did not have a copy of the agreement of the 12th July, 1995, you did not

know the precise nature of Advent's entitlement to 5% of equity in Esat Digifone. You believe that you were aware that Advent claimed that it had an option to take 5% in Esat Digifone, and that this option was subject to Telenor being satisfied with Advent's letter of the 10th July. From Telenor's perspective, there was no advantage in conceding 5% in the equity of Esat Digifone to Advent for the letter of the 10th July, 1995. This letter was an indicative letter, or a letter of intent, which Advent could not be forced to fulfil.

And did you consider just to clarify there that the letter of the 10th July was both indicative in terms of both Advent's 5% shareholding and the provision of the i;1/230 million? Was that your view of it?

A. Yes, but I would like to see that letter, just to be certain.

Q. Yes, I'll refer it to you. We can leave it over to when we are looking at the documents.

You state that although you were not aware of the detail, Telenor and you were broadly aware that Telenor's dissatisfaction with Advent's letter could be used for the purposes of preventing Advent from claiming a 5% interest in Esat Digifone. You believe that this was achieved as a result of a letter incorrectly dated the 15th September, 1995. This



letter was based on a collective process between Mr. Denis O'Brien, William Fry Solicitors, and Telenor in order to produce a letter from Telenor. You merely signed the letter, and as far as you can now remember, you had no role in its drafting. Is that correct?

A. Yes.

Q. You say that of course in cooperating in the provision of such a letter, Telenor had its own legitimate and independent commercial interest in so doing, because Telenor had never agreed to Advent's 5% option in Esat Digifone Limited. Telenor did not believe that it was commercially sensible for Advent to receive an option to subscribe for 5% in Esat Digifone in return for a letter which contained no real assurance of financial support for Communicorp's obligations. Is that correct?

A. Yes.

Q. And that's the way you saw the letter of the 10th July; that it contained no legal assurance of financial support for Communicorp's obligations?

A. Yes.

Q. Can I just again ask you, can I clarify one or two matters you have referred to.

You have stated that you believe that you were aware that Advent claimed an option to 5%, and that that was in some way dependent on Telenor being satisfied with the letter of Advent. Can you recall from whom and

when you had that impression?

A. I don't think I had that impression. Sorry, where was which statement was that?

Q. Just here in your if I refer you to Point 2 on page 40. Do you see that?

A. Yeah.

Q. You state: "Because I did not have a copy of the agreement of the 12th July, I did not know the precise nature of Advent's entitlement to 5% of the equity in Esat Digifone." You state that you believe that you were aware that Advent claimed that it had an option to take 5% in Esat Digifone and that this option was subject to Telenor being satisfied with Advent's letter of the 10th July.

And all I want to clarify is: from whom do you think you received that impression or understanding?

A. I believe that that information had been revealed to me at a later stage. And I made a reference to the 5%, I believe there is a fax which links the 30 million investment to a 5% investment

Q. At a later stage, you think

A. I may have mixed up with information that I had at a later stage.

Q. Well, I'll tell you what we'll do: We'll look at it when we are looking at the documents, because it may assist you further when we are looking at the documents

Now, paragraph 14, you were asked for Telenor's knowledge, direct or indirect, of all steps taken by or on behalf of Mr. O'Brien, Communicorp, Esat Digifone or any person on their behalf to secure funding for Communicorp's equity participation in Esat Digifone from any source other than Advent International, including in particular, the following:

The identity of all parties to whom approaches were made; secondly, the person by whom such approaches were made; thirdly, the date of such approach or approaches; fourthly, the outcome of such approach or approaches; fifthly, the precise terms of all offers of funding made available to Communicorp, including the dates of such offers; and finally, each and every matter or consideration which caused or prompted Communicorp to refuse such offers, if any. And you were asked to indicate the source or sources of Telenor's knowledge.

And you state that you had no knowledge, direct or indirect, of all steps taken by or on behalf of Mr. O'Brien or others to secure funding for Communicorp's equity participation, and you do not believe that Mr. O'Brien kept Telenor or anyone in Telenor informed of such steps. Mr. O'Brien was not the sort of person to be open about any difficulties or challenges he was encountering or how he was resolving them. The only information which you have is that sometime on or

about the 22nd September, 1995, you became aware that Mr. O'Brien had obtained an offer of support from a prominent Irish financier named Mr. Dermot Desmond.

As far as you were aware, everyone in Telenor was favourably impressed, and you thought that this was the solution to Communicorp's lack of financial strength, as well as having other advantages, the most important of which was an understanding that Mr. Dermot Desmond's role would increase the Irish profile of Esat Digifone. Is that correct?

A. Yes. But I would like to comment that okay, yes.

Q. So just to clarify there; Mr. Desmond was welcomed by Telenor as being, firstly, the solution to Communicorp's funding problem, and secondly, as somebody who would increase the Irish profile of Esat Digifone; is that correct?

A. Yeah.

Q. 15, you were asked for details of the progress which had been made in the preparation of the Esat Digifone bid as of the 16th June, 1995, including details of all aspects of the bid which had yet to be finalised.

You answered, you were not involved in any extensive way in the bid preparation, but you did work with Per Simonsen from time to time. Your general impression was that all aspects of the bid were prepared as of the 16th June, 1995, and that the only matter outstanding was to agree the amount of the fee to be

bid for the licence. Is that correct?

A. Yes.

Q. Paragraph 16, you were asked to indicate the precise

level of licence fee which the Esat Digifone

consortium intended to nominate in its application

prior to the deferral of the evaluation process on the

16th June, 1995, and Telenor's knowledge, direct or

indirect, of the steps taken by Communicorp to fund

its contribution to the proposed licence fee, together

with the source or sources of Telenor's knowledge.

You have answered that at that point, the process for

the licence was an option, and the precise level of

the proposed licence fee would have been treated as a

matter of the utmost confidentiality and on a strictly

need-to-know basis. You cannot even say, at this far

remove and because you were not involved in this

process, whether the precise level of a licence fee

was even fixed and agreed before news was received of

the deferral of the evaluation process. Is that

correct?

A. Yes.

Q. Paragraph 17, you were asked about your knowledge of a

meeting in the Department on the 19th June, 1995,

between Mr. O'Brien and Mr. Kelly and Mr. Brennan and

Mr. Towey.

And you state that you were unaware of the meeting or

of its purpose. You do not believe that it would have

been likely that you would have been informed of that meeting. Is that correct?

A. Yes.

Q. Question 18, you were asked for Telenor's knowledge, direct or indirect, of the source of the information contained in a letter dated 20th June, 1995 from Mr. Owen O'Connell of William Fry to Baker McKenzie, solicitors for Advent International, and in particular, the source of the information comprised in the following statement:

1. The Commission has objected primarily to the auction concept inherent in the proposals for grant of a second GSM licence. Accordingly, the terms of the application are to be revised with either no up-front payment required or a maximum cap placed thereon. It is expected that the timetable will be extended by about two months".

And you have answered that Telenor's solicitors have communicated the information to you, and you understand that they in turn were informed of this information by the Tribunal. You cannot remember having had this information or knowledge at the time, but most aspects of the bid were dealt with on the Communicorp side of the consortium and were coordinated and directed by Mr. Denis O'Brien and by Communicorp. Is that correct?

A. Yes.

Q. Paragraph 19, you were asked for details of all queries raised by the Department in the course of the Esat Digifone presentation on the 12th September, and secondly, precise details of all queries raised by the Department regarding the commitments provided by the institutional investors in Esat Digifone.

You have answered that you were not involved either in the preparation for or in attending of the Esat Digifone presentation. You were informed by Telenor's solicitors that an audio tape of the presentation has now been made available; and in relation to the queries on commitments by institutional investors, you say that these details should be available from the audio tape of the presentation and that you are not in a position to assist the Tribunal. Is that correct?

A. Yes.

Q. You were then asked for your understanding of the precise obligations and entitlements of Esat Digifone and of Communicorp on foot of the agreements of the 29th September 1995, between Esat Digifone and IIU, and between Communicorp and IIU, together with the source or sources of Telenor's understanding.

And you have informed the Tribunal that you do not recall the content of the agreements of the 29th September, 1995. Is that correct?

A. Yes.

Q. Paragraph 21, you were asked for Telenor's

understanding of the obligations and entitlements of IIU on foot of those same agreements.

And again your answer is the same as to the previous question. Is that correct?

A. Yes.

Q. Paragraph 22, you were asked for Telenor's understanding of the purpose for which the letter of the 29th September, 1995, from IIU, addressed to Mr. Martin Brennan of the Department of Transport, Energy and Communications was sent, and all matters or considerations which prompted the furnishing of the letter, together with the source or sources of Telenor's understanding.

And you state that you were not involved with the drafting of that letter, but your understanding at the time was that this was a matter seen as appropriate by Mr. Denis O'Brien and by the Communicorp side of the consortium. You, I think meaning Telenor, saw it as a local partner issue. Is that correct?

A. Yes.

Q. Maybe when we're looking we'll look at the letter, and we'll discuss that further.

Paragraph 23, you were asked for Telenor's knowledge, direct or indirect, of all contacts between the Esat Digifone consortium or any member of the consortium or any person on their behalf and the Department regarding the involvement of IIU Limited as a member



of the consortium, and in particular, the Department's attitude to such membership as recorded in an attendance of Mr. Gerry Halpenny of William Fry Solicitors dated 21st November, 1995.

And you state that you were not involved in any way in any of these contacts, and you have no knowledge of these matters. Is that correct?

A. Yes.

Q. Paragraph 24, you were asked for the date on which and circumstances in which and manner in which Telenor was informed or otherwise became aware that

Communicorp/Esat Telecom did not intend to fund its equity participation in Esat Digifone by drawing on finance to be provided by Advent International, but intended to fund its participation by placements through CS First Boston, including details of precise information provided to Telenor and the source of such information.

And you answered that you have been unable to trace the relevant documentation, and you were unable, through unaided recollection, to provide a date and circumstance in which Telenor was informed of this.

Your general impression was that this was an evolving matter, and that Mr. Peter O'Donoghue may have mentioned the possibility of securing equity through a bond-raising exercise in the United States. As you have stated before, your focus was on project finance

and debt funding issues. The raising of equity through the capital markets was not an area in which you had any direct experience at the time. You have requested that Telenor solicitors carry out an extensive review of the documentation to see if there are any documents which might assist in triggering your recollection. But you believe that the CS First Boston was mooted as a potential source of finance at a very early stage, but you cannot be certain in the absence of documentation.

When you say there that CS First Boston was mooted at a very early stage, I presume you mean at a very early stage of your involvement in the Esat Digifone project?

A. I recall that it was mentioned when Peter O'Donoghue had offices in Malt House, and that's my belief is that it was an ongoing process that continued for quite a long period, and consequently it started relatively early.

Q. By "relatively early", would you mean prior to the bid being submitted?

A. Yes.

Q. Right.

25, you were asked for Telenor's knowledge, direct or indirect, of the date on which and the manner in which the Minister or the Department was informed by Mr. O'Brien, Esat Telecom, Esat Digifone or any person on

their behalf that Communicorp/Esat Telecom did not intend to fund its equity participation in Esat Digifone by drawing on finance to be provided by Advent International, but intended to fund its participation by placements through CS First Boston, including details of precise information provided to the Minister or the Department together with the source or sources of Telenor's knowledge.

And you say that you are unable to provide this information, and you do not believe that you or anyone else in Telenor would have been given any precise information about this at the time. Is that correct?

A. Yes.

Q. Paragraph 16, you were asked for details of all matters which prompted the renegotiation of the underwriting arrangements between members of the consortium and in particular, one, the release of IIU from its obligations on foot of the agreements of the 29th September, 1995, to underwrite the entire of Communicorp/Esat Telecom's equity participation in Esat Digifone Limited. And secondly, the assumption by Telenor of an obligation to share with IIU in the underwriting of Communicorp/Esat Telecom's equity participation in Esat Digifone on a 2:1 ratio.

And you state that you were only involved in limited aspects of the negotiations in relation to the various drafts of the shareholders agreement, but you were not

sure as to what extent you or indeed any other Telenor executive focused on the fact that IIU was being released from its underwriting obligations.

And in relation to Question 2, which was the assumption by Telenor of an underwriting obligation, you have answered that you cannot say you have no direct or indirect knowledge as to when precisely Telenor became aware. You may have had secondhand information that there was a question mark over IIU's ability or willingness to provide the required capital for the 16th May 1996. You can only assume that Telenor, being aware that the priority was to obtain the licence, was willing to make up for any insufficiency of equity of any other parties and to make bridging facilities available. Obtaining the issue of the licence was the business priority. Is that correct?

A. Yes.

Q. You say there that you might have received that information secondhand. Who is it likely that you would have received that information from?

A. That would be most likely Per Simonsen or perhaps Knut Digerud.

Q. So it would have been Per Simonsen or possibly Mr. Digerud?

A. Yes.

Q. Now, 27, one, you were asked for details of the

precise terms on which Telenor/IIU provided funding to Esat Telecom to finance its obligation to contribute to the licence fee of IR£1/215 million paid by Esat Digifone to the Department on the issue of the GSM licence to Esat Digifone on the 16th May 1996.

And secondly, precise details of the funding arrangements between Telenor, IIU and Esat Telecom regarding all aspects of the funding of Esat Digifone Limited.

Your reply to (i) is that your best recollection is that this was the subject matter of a fairly standard bridging finance agreement and that the relevant documentation was prepared by a solicitor in Matheson Ormsby Prentice. You suggest reference should be made to that documentation, which should contain the precise terms.

Secondly, you state that apart from the shareholders agreement and any bridging facility provided by Telenor to Esat Telecom, you are not aware of any other funding arrangements other than IIU allowing Esat Telecom a period of grace in order to pay for its purchase of 2.5% in Esat Digifone Limited held by IIU in May, 1996. Is that correct?

A. Yes.

Q. Then at Question 28, you were asked for Telenor's understanding of the purpose for which the Department required the same series of letters referred to

before, and you are not in a position to assist the

Tribunal on that matter. Is that correct?

A. Yes.

Q. Paragraph 29, you were asked for Telenor's knowledge,

direct or indirect, of the underwriting arranged by

IIU of Communicorp/Esat Telecom's obligations to

participate in the equity of Esat Digifone on foot of

the agreements of the 29th September that should be

1995 and as referred to in the letter of the 9th

May 1996 from KPMG addressed to the Department,

together with the source or sources of Telenor's

knowledge.

And you say that you are not in a position to comment

on the content of the letter of the 9th May from KPMG.

It appears to you that this would have been a letter

prepared between Communicorp and its auditors; is that

correct?

A. Yes.

Q. Then I am proposing that we skip on to page 52,

Question 32, because the additional matters you have

been asked about, you are not in a position to assist

the Tribunal on, because I don't think you were

actively involved at that stage. And in fact at

Question 32

CHAIRMAN: He dealt with

MS. O'BRIEN: I was about to say that. It had been

dealt with already in the previous sets of replies.

So I am proposing that you move on to page 53 and the addendum to your statement.

CHAIRMAN: It's just near five to one, Ms. O'Brien.

We are near the end of the statement, but I think it's probably an appropriate time to adjourn until five past two.

MS. O'BRIEN: Very good, Sir.

CHAIRMAN: Thank you very much.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF KNUT HAGA BY

MS. O'BRIEN:

Q. MS. O'BRIEN: Thank you, Mr. Haga. We were just finishing off your lengthy memorandum. We were at page 53 before lunch. And I am just going to deal with the portion of your memorandum which is headed "Addendum"; do you have that with you in the witness-box?

A. Page 53?

Q. Yes.

A. Okay, sure.

Q. You state that at some stage in 1995 and you think it was probably either late September or perhaps October, 1995; you have no way of establishing even the approximate date Per Simonsen, whom you knew very well, mentioned to you that whilst he was discussing other matters with Mr. Denis O'Brien, he

had been told by Mr. Denis O'Brien that Mr. Denis O'Brien had met Michael Lowry in a public house. Your immediate reaction, and it continues to be your reaction, is that it seemed farfetched that the Minister with the responsibility for the licence process would have spoken to a member of one of the consortia. You cannot remember what reply you gave, but your general impression was that Mr. Denis O'Brien was attempting to compensate for lack of financial strength of Communicorp by trying to impress Per Simonsen and/or Telenor with his apparent usefulness to the consortium. His efforts were counterproductive, because it only influenced you to think that Mr. Denis O'Brien was trying too hard to impress Telenor. Although you now understand the controversy raised by this matter, at the time it was considered by you, and you believe also by Mr. Simonsen, as a colourful story which was mildly entertaining but not deserving of any serious consideration. When Mr. Simonsen raised the matter with you, he did not appear to have any concerns. You certainly had no concerns about the matter following that conversation.

Now, can I just ask you one or two small matters in relation to what's in your addendum. You say that this conversation with Mr. Simonsen occurred, you think, in late September or early October, but that



you can't pinpoint the date or the time when it occurred. Do you remember at all where you were when Mr. Simonsen told you about this meeting?

A. I'm not a hundred percent sure, but I may have been at the Davenport Hotel, and it could have happened in the bar or the piano bar there, so it was not through a formal meeting but through an informal discussion over a pint or yeah, a pint of lager or something like that. So it was not addressed as a formal issue. It was just more like a remark or a comment, "by the way".

Q. So you think you were here in Dublin having that conversation in the Davenport Hotel?

A. That is my recollection, yes.

Q. Do you recall, did Mr. Simonsen tell you what he was discussing with Mr. O'Brien at the time?

A. No, not to my recollection.

Q. And apart from what you have stated in the addendum, did Mr. Simonsen tell you anything more of what Mr. O'Brien had related to him about Mr. O'Brien's meeting with the Minister?

A. No.

Q. Do you recall, did you mention the matter to anybody else?

A. No, not that I can think of.

Q. Now, that completes your principal memorandum, and then there is only a short one-page memorandum I

don't know if you have a copy of that with you in the witness-box and that was furnished at an earlier date. And it relates to a draft letter of the 19th September and also the letter of the 15th September, which you have referred to, I think, in three separate places in your principal memorandum. Yes, that's the one.

Now, it states, paragraph 1, "Mr. Haga is certain that he did not draft the letter of the 19th September, 1995.

Paragraph 2. "Mr. Haga does not recognise the draft letter and is unfamiliar with it.

Paragraph 3. "Mr. Haga is unable to recollect such a draft letter being finalised and converted into a final letter.

Paragraph 4. "In particular, Mr. Haga disclaims any responsibility for the content of the second paragraph of the draft letter. Mr. Haga was not present at the 'meeting with the Department of Communications last week', whether this was the oral presentation or any other meeting. Furthermore, Mr. Haga was not informed by anyone in Telenor and has no recollection of being informed that any doubt had been expressed by any Department officials concerning Communicorp's ability to fund 40% of its required capital contribution to Esat Digifone".

Is that correct?

A. Yes.

Q. You did, of course, state in your memorandum that it was your impression, following the presentation, that Mr. O'Brien had doubts about Communicorp's ability to fund its capital contribution; isn't that correct?

A. Yes.

Q. Paragraph 5. You state that "Mr. Haga was not in his office on the 19th or 20th September, 1995. He returned to his office late on the 21st September, 1995, from Stockholm. He has no recollection whatsoever of being involved in any way in the production, approval or issue of a letter based on this draft letter, and this draft letter has come as a complete surprise to him".

Is that correct?

A. I need to make some adjustment to that because of the dates are not accurate.

Q. Yes, of course.

A. So I have my diary here. Let's see...

I went to Stockholm Tuesday 19th, in the morning, and I believe I returned around noon on the 20th, Wednesday, the 20th September. And I believe I went on a day trip according to my diary, I had a day trip, Copenhagen, leaving at eight o'clock in the morning and returning 3.20 in the afternoon. And then the following week, I was in the office the whole week from starting from Monday the 25th.

Q. Now, that day trip that you went to Copenhagen, was that the 21st September, or the 22nd September?

A. That was Friday, the 22nd.

Q. Friday, the 22nd. Did you want to add anything further to that portion of your memorandum, or is that all that you wish to add?

A. I think that will be the substitution.

Q. Now, paragraph 6, you state that "Although Mr. Haga accepts that he signed the letter of the 15th September, 1995, he does not believe that the Department officials communicated any doubts as referred to. Mr. Haga was not at the meeting, oral presentation. The letter and the reference to doubt was made in order to accommodate Mr. O'Brien in his dealings with Advent. Mr. Haga was aware that this letter would be copied to Advent, but he cannot remember who told him or in what circumstances he was told this".

Is that correct?

A. I think we could substitute "would be" with "could".

Q. "Would be", you want to substitute the words "could be"; that is it?

A. Yes, instead of "would", because I didn't have control over Mr. O'Brien's actions.

Q. Yes. You say you can't remember who told you that it could be copied to Advent; who do you think it might have been who could have told you that?

A. I expected it to be passed on to Advent, but I wasn't sure about it.

Q. But on what basis did you expect that to be the position?

A. Because they were involved in the whole in the process of making the statement.

Q. Maybe what we'll do is, when we are actually looking at the letters themselves, we can discuss it a little further.

A. Yes.

Q. Okay. And that completes your memoranda.

A. There were two follow-ups on dates sorry, are you coming back to those?

Q. Yes, you could deal with them now if it's convenient.

A. I think we had the 4th August first, 1995. I was that's a Friday, and the week starting on July 31st until Friday the 4th, I believe I was in the office every day through that week. I was not in Dublin on the 3rd or 4th August.

Q. So you were not in Dublin between Monday the 31st and Friday the 4th; you were in your office in Oslo. Is that right?

A. Yes.

Q. And then the second date I think you were going to clarify.

A. Yeah, that was more general about October.

Q. Yes.

A. And as far as I can see I did not visit Dublin any time through October. I had lots of other or other travelling activities, but not to Dublin.

Q. But not to Dublin in October?

A. Not at all.

Q. Can you tell us at all from your diary when you could have been in the Davenport Hotel with Mr. Simonsen in either late September or early October?

A. It would be in early phase we used to stay there, and I stayed there many nights so I don't have any specific recollection of it would be for a long period, in and out, so I don't have any specific recollection of a date.

Q. All right.

A. And I think I believe you had one adjustment or comment on the dates. And that was, I was in Stockholm, and Per Simonsen called me on my mobile and informed me about the successful outcome of the licence, of the bid. And I was in Stockholm on the 26th, so the call I received the call and was informed in the evening on the 26th. It was it was dark outside, so it was must have been after four o'clock.

Q. Right. So you were in Stockholm?

A. I was in Stockholm. I was invited to a party and I couldn't attend.

Q. Now, just before we look at any documents, I just want

to discuss a few things with you quite generally.

Now, I think you said in your memorandum that in 1995,

you were an Assistant Director with Telenor

International. Is that right?

A. Yes.

Q. And at that stage your area of expertise was in

corporate finance and project finance?

A. Yes, and Treasury.

Q. And?

A. Treasury, in-house finance.

Q. And Treasury. Can you tell me, when did you join

Telenor International? When did you first join the

company?

A. In November/December 1994.

Q. So you had only very recently joined Telenor when your

involvement in the Esat project commenced?

A. Well, Telenor International was established around

October/November end of 1995, I used to

work before that I used to work for other units

within the Telenor Group.

Q. I see.

A. And at that time, Telenor Group was PTT, but I worked

in the areas that were set up as limited liabilities,

company subsidiaries of the PTT.

Q. When did you join first join any of those Telenor

Group companies?

A. That was in 1991.

Q. 1991. And did you join the Telenor Group of companies directly from University or from your third-level education?

A. No, I had ten years' working experience before I joined Telenor.

Q. I see. And was that in the area of project finance and corporate finance?

A. That, as well. I have a mixed background. I am an engineer and I have additional financial education, so I worked both as engineer, but mainly within areas of finance.

Q. I see. And I think you said in your memorandum that you were seconded to Telenor Invest to assist in the Esat Digifone project; is that correct?

A. Yes. Yeah, in addition to other types of

Q. It was only a part-time involvement for you?

A. It was only part-time involvement, yes.

Q. I think you said that your main point of contact on the Telenor side was with Mr. Per Simonsen, and that your main point of contact on the Communicorp side was with Mr. Denis O'Brien?

A. That's right.

Q. And I think we can gather from what you have stated in the course of your memorandum that you came in and out of Dublin as the need arose, but that you weren't in Dublin for any lengthy or prolonged period of time; is that correct?



A. That's correct.

Q. I think you have told us that you ceased to be actively involved in the Esat Digifone project prior to the actual completion of the project; is that correct?

MR. FITZSIMONS: Chairman, I wonder, there just may be an oversight, but lest there is any confusion caused later Ms. O'Brien put it to the witness that his main contact in Dublin was Denis O'Brien. But of course the witness has already stated in his written evidence that his main contact was Mr. O'Donoghue. I am sure

CHAIRMAN: It occurred to me, Mr. Fitzsimons

MR. FITZSIMONS: Just to help you, Sir.

Q. MS. O'BRIEN: Just to clarify it, your main contact in Dublin on the Communicorp side, was it Mr. Peter O'Donoghue or Mr. Denis O'Brien?

A. In the beginning I met with Denis O'Brien a couple of times. But as we came to a more developed phase, Peter O'Donoghue was the main contact. And I would say I met Denis O'Brien, in the beginning, three times, and that was not in Dublin; that was Oslo and London in the very early phase, where Telenor was invited in.

Q. Now, I think I had been asking you about when you ceased to be actively involved in the Esat Digifone project. I think you have indicated in your

memorandum that you ceased to be involved prior to the actual completion of the project, which would have been the 16th May, there or thereabouts, for Telenor?

A. 16th May, '96?

Q. Yes.

A. I changed position end of 1995. I started to work for another unit within Telenor International that's named Telenor Satellite Services, but there was a transition or a gradual build-down and build-up so I assisted on this project in order to have a seamless transition to other resources.

Q. And then I think you said that you ceased to be employed by Telenor shortly after the completion of that project?

A. Not the Telenor Group as such, but Telenor International.

Q. You transferred from Telenor International to another Telenor company; is that right?

A. A subsidiary of Telenor International, where I was the head of several assignments.

Q. And how long were you then with that subsidiary of Telenor International?

A. I left the Telenor Group in June, 2000.

Q. June, 2000?

A. Yes.

Q. Now, I think you have told us that weren't involved in the initial negotiations or meetings with Mr. O'Brien,

but that you were asked to come in and to look at the project finance area, and I think in particular, you were asked to review Communicorp to ascertain whether it had the financial capability to meet its contributions to the capital of Esat Digifone. And I think you told us in your memorandum that you attended a meeting in London on the 16th May of 1995 with Mr. O'Brien and Mr. Prelz, and that you were introduced to some other Advent personnel; is that correct?

A. Yes.

Q. Now, do you recall, was there anybody else from Communicorp at that meeting?

A. Not from Communicorp. As far as I can recall, it was only Denis O'Brien.

Q. Was there anybody else other than Advent personnel at the meeting?

A. No, not to my recollection.

Q. So do I take it that you attended on your own to represent Telenor?

A. Yes, I was, yeah.

Q. And I think you told us in your memorandum that at that meeting, Mr. Prelz told you that as a long-term equity partner in Communicorp, that Advent would support Communicorp in its bid for the licence; isn't that right?

A. Yes.

Q. And in your memorandum you have also said that after

that meeting, it was your advice to Telenor Invest

that they should get a firm financial commitment from

Advent; isn't that correct?

A. That would be the implication, but I asked for a firm commitment from Communicorp.

Q. From Communicorp?

A. That they had somebody supporting them.

Q. I see.

A. Because the agreement was within, or potential agreement, was between Telenor Invest and Communicorp.

Q. So you felt that the finances on the Communicorp side needed to be firmed up and formalised?

A. Yes.

Q. Now, I think during May or late June, you were also involved in a consideration of how best to structure the consortium in terms of making the bid to the Irish authorities, and can I just refer you to a memorandum which you sent to Telenor Invest dated 1st June, 1995.

That's in it's a recent book that the Tribunal have compiled. It's Book 60. It's behind Divider B, and it's in turn behind Divider 4. Book 60, B, 4, and it's there on the overhead projector, to your right, as well, and on the monitor.

You will see that that's a memo from you to Telenor Invest AS, Sjern Malm and Per Simonsen. You see, CC to Rolf Busch, who I think was in the legal division; is that right?

A. Yeah.

Q. And it's "Re partner risk connected to bid of GSM2 licence in Ireland". It's dated the 1st June, 1995.

You say "I refer to our dialogue and today's conversation with Rolf Busch which concluded with the following:

"Telenor Invest AS (or other parties) will not be legally bound by the delivered bid for GSM2 in Ireland if this is made in the form of a joint venture agreement with one or more partners. In other words, if one or more other parties withdraw and this results that the partners want to withdraw, the authorities cannot demand any economic compensation from any of the parties in the consortium.

"It will be the limited liability company (under incorporation) which will be awarded the licence and therefore liable for the delivered bid. The liability will not be in force before the licence is awarded and the licence conditions are signed by both parties.

"Telenor's liability in the period from the licence has been notified to it is signed by both parties is somewhat unclear. This is, however, a relatively short period estimated to 1-2 weeks.

"On the background of the above we are of the opinion that a joint venture should be preferred to incorporate a company with limited liability.

"Appendix: Copy of two pages from the bid documents."

Now, can you explain to me there what your concern and Telenor's concern was in terms of being bound to the Department, legally bound to the Department for the bid as delivered?

A. I think this expresses that I am of a different opinion; that Mr. Rolf Busch, it was my belief, that we were that Telenor was committed if they were a part of a joint venture. So it's merely an academic approach where you may say I challenge the legal department.

Q. It is an academic approach, I accept that, but what was your concern arising from Telenor's delivery of a bid?

A. My concern as an advisor to Telenor International Invest, sorry, was that the reason for this memo was based on a discussion with Amund Fougner Bugge, and my concern was that he did not see the implications of various ways of solving dealing with the issue of a joint venture versus a limited liability company.

Q. And what were the implications of which you were concerned? That's what I am trying to get at. What were the implications that were concerning you to the delivery of a bid?

A. I think, again, my recollection is this my concern was that the legal, internal legal adviser was not fully up to speed of what was what might be the legal implications of various outcomes of the setup of

a joint venture versus a limited liability company.

Q. Well, can I just refer to you what you have said in the second paragraph, because that might assist us in understanding.

You have said: "Telenor Invest (or other parties) will not be legally bound by the delivered bid for GSM2 in Ireland if this is made in the form of a joint venture agreement with one or more partners. In other words, if one or more other parties withdraw and this results that the partners want to withdraw, the authorities cannot demand any economic compensation from any of the parties in the consortium."

That appears to be the net point would you agree with me, that you are making?

A. I'd agree, that was the outcome of an an interpreted outcome of Rolf Busch's conclusions, which I personally disagreed to.

Q. But your concern was that Telenor would be liable for economic compensation if one or other partners in the consortium withdrew; wasn't that the reason that you were furnishing that advice?

A. On a general level, I would my anticipation was that the joint venture was could be regarded as an unlimited liability setup, at least in a Norwegian environment.

Q. But apart from it being unlimited liability, am I correct in thinking that your concern was that if

Communicorp pulled out, that Telenor wouldn't have to face an exposure to compensate the Irish authorities?

Was that what was primarily concerning you?

A. My assumption, without seeking any legal advice outside the internal legal department, was that if it was set up a joint venture and local partners pulled out, Telenor would probably have to pay or may have to, in general terms, pay the cost if they wanted to keep their reputation. And that was actually one of the issues in the discussion, whether that was a reason for the reputation of Telenor name.

Q. So that was a matter that was of concern to you and was of concern within Telenor, both their reputation and a possible exposure to compensating the Department?

A. Yes.

Q. In fact, we can see, if we just go over the page to the memorandum of Mr. Busch of the 4th June of 1995, I think Mr. Busch was the senior lawyer in the legal division; is that correct?

A. Yes.

Q. He says: "I refer to memo of 1 June 1995 from Knut Haga in which he refers to a conversation with me regarding partner risk connected to the bid for GSM2 licence in Ireland.

"To avoid possible misunderstandings, I will emphasise the following:



"Telenor Invest's responsibility and risk connected to business in Ireland will not only depend on corporate structure (joint venture/limited liability company) but also and in particular on actual agreements and guarantee obligations.

"Knut asserts in his memo that Telenor Invest will not be legally bound by the delivered bid if this is made by a joint venture. This is not correct. For Telenor Invest, delivering such a bid, will incur evident obligations and responsibilities. I assume this will apply without regard to corporate structure, which one can assume that the authorities will not take as serious a bid which is not based on actual obligations.

"Knut further asserts that if one party withdraws from a joint venture agreement, then the other parties can also do that without the authorities having opportunity to demand economic compensation from any of the parties to the consortium. He concludes, in part based on this assumption, that a joint venture is to prefer to a limited liability company. The reasoning is wrong or at least unclear. The responsibility one undertakes by delivering a bid will and must be in general be determined based on the agreements between the parties and by the terms and conditions related to the bid. In addition, the formal liabilities must be determined in light of the

parties' creditworthiness and possible guarantees.

The corporate structure (joint venture or limited liability company) has in this connection limited implications, however not without implications. It is important to make these assessments in relation to the actual obligations undertaken.

"The corporate structure may also be of significant for the authorities' evaluation of the different bids.

"Whether to choose a joint venture to incorporating a separate company in relation to the bid is generally a practical question, and it is wrong to deduce liabilities and risks on the basis of this. The advantage of a joint venture is in this relation in particular that it is less formal, easier to establish and easier to wind up if one is not awarded a licence. One also avoids the costs related to incorporating and winding-up of the company.

"I have understood that our Irish partner, Communicorp, has recommended that a company is incorporated prior to delivery of the bid. There are of course no reasons for us to resist this."

Now, while Mr. Busch didn't necessarily agree that a joint venture would protect Telenor from liability, he was nonetheless also recording his belief that delivery of the bid would expose Telenor to obligations and would also expose Telenor in terms of its reputation; isn't that right?

A. Yes.

Q. So this is something that of which Telenor, you and clearly the legal division were very conscious at this time in late May, 1st June, 4th June?

A. I regarded this to some degree like a legal opinion.

It's in very general terms, and no agreements had been made, and this could be applied in joint ventures throughout the world, basically, and I felt it was important that our assistant also had the same Amund Bugge had the same view on this issue.

Q. But this was something that Telenor and Telenor's legal division were conscious of at the time?

A. Yes.

Q. I know you said in your memorandum that you weren't involved in the negotiation of the joint venture agreement, but could I refer you to it, if you wouldn't mind. It's in Book 48, behind Divider 7. Do you have it?

A. Yes, joint venture agreement.

Q. Yes. Now, I know you weren't involved in the negotiation of it or perhaps in the drafting of it, but I take it you were aware that this agreement was being negotiated and was being concluded. Is that right?

A. I believe I gave some input to the process, but I didn't do the negotiations, and I was not present when it was signed or anything.

Q. Could you tell me what input you gave into the process of the joint venture agreement?

A. The financial security part, mainly. As I can recall.

Q. Well, if we look just very briefly through it, I just want to draw your attention to one or two paragraphs of it. Maybe you could indicate to me where you think you had the input into it; all right?

Now, it's a straightforward agreement between Telenor Invest and Communicorp. Paragraph 1 just deals with the purpose. I'll move on. Paragraph 2, financial guarantee.

"Within June 16th, 1995, Communicorp shall provide Telenor with a financial guarantee satisfactory to Telenor. The guarantee shall amount to  $\text{€}1\frac{1}{2}$  million Irish plus 50% of the licence fee.

"The guarantee period shall be from the day this agreement is signed until:

"A: Provided the company is awarded the licence, six months after the licence is awarded or

"B: Three months after this agreement is terminated in accordance with clause 10(b) or 10(c)."

Now, would you have had an input into that part of the agreement, which does deal with the financial guarantee?

A. I believe I gave input that is that I had also seen from other documents, but the fashion is a bit different.

Q. By "the fashion", do you mean the wording?

A. Like wording, yes.

Q. Would I be correct in thinking that this financial guarantee was incorporated following your advice after the meeting on the 16th May that you needed a firm financial commitment from Communicorp?

A. Yes.

Q. Could I just ask you to look, in passing, at Clause 3.

Can you assist the Tribunal at all as to whether this financial guarantee, or your advice that there be a firm financial commitment from Communicorp, was discussed with Communicorp?

A. In advance, or throughout?

Q. In advance of the 2nd June.

A. I did not participate in negotiations, so I do not have a recollection of that. I gave input into the process.

Q. You don't know from anybody else in Telenor whether this was discussed with Communicorp, do you?

A. No.

Q. Clause 3 provided for board approval. It says: "The submission of the bid is subject to both Telenor and Communicorp's board approval.

"Telenor's board approval will be granted only if and when the board accepts the guarantee as satisfactory."

Now, do you recall, did you have any input into that clause?

A. No.

Q. You told me this morning that on the 4th August, when a decision was taken to progress and proceed with the bid, that it would have been taken at the highest executive level in Telenor; isn't that right?

A. Yes.

Q. And you would have presumed that board approval was obtained?

A. Yes, I would assume so.

Q. Now, if you just go over the page, there is a provision there for Clause 4 then deals with distribution of liability. 5, distribution of costs and expenses. That's just dealing with the costs and expenses that were incurred.

6, bank account: "The parties agree to open a bank account in Bank of Ireland on behalf of joint venture controlled jointly by the two parties. All disbursements from this account will require an authorised signature from each of the two parties.

"Mr. Peter O'Donoghue is authorised to sign in the name and for the account of Communicorp Group Limited, and Mr. Per Simonsen is authorised to sign in the name and for the account of Telenor Invest AS.

"By signing this agreement, each party agrees within two working days to deposit  $\frac{1}{2}$ 200,000 in the account to defray costs and expenses as specified in clause 5B.

"Provided board approvals are given according to

clause 3 each party agrees within two working days of latest of said approvals to deposit a further €200,000. Costs and expenses specified in clause 5A and B can be disbursed from the account."

Now, that I suppose deals with governing certain financial arrangements between Communicorp and Telenor. Would you have any input into the agreement or the drafting of that clause?

A. Not that I can recollect.

Q. Did you know there was a joint account opened in the name of Telenor and Communicorp here in Dublin in Bank of Ireland?

A. Yes. It would be natural.

Q. Well, did you know purely because it would be natural, or did somebody tell you it had been opened?

A. I think Per told me that there was a joint account for a project.

Q. 7: "The parties' obligations during the bidding process".

Over the page, 8 deals with incorporation of the company.

Then 9 provides for breach. It provides that "If any party fails to observe or perform any of its obligations under this agreement and such failure, if capable of remedy, is not remedied, or if not capable of remedy, is not waived, in either case within 30 days, it constitutes a breach." Do you see that?

A. Yes.

Q. That wouldn't have been a matter that you would have had an input into, would it?

A. I would regard that to be the lawyers

Q. Yes, to be a legal provision?

A. A legal provision, yes.

Q. Did you know that provision was in the joint venture agreement?

A. Not specifically.

Q. Did anybody at all mention it to you in the context of Telenor's efforts to obtain a financial guarantee from Communicorp?

A. I read some memos over the last days that expression has been used, but I cannot recollect that breach was the thing that was raised frequently or discussed. I know there was yeah, I have seen a document which Arthur Moran has made some comments on, and also a memo from Amund Bugge, from Amund Bugge, but I didn't at that time, and I haven't read this clause over the last days either, so it was not my within my mandate to call a breach or not to call a breach.

Q. Of course not. Of course not. But I was just wondering if, at that time in July and we'll come to it again when we are looking at your efforts to get firmer commitments and more information, whether in your discussions with anyone in Telenor there was any



mention that this constituted a breach under or could potentially constitute a breach under the joint venture agreement?

A. I did not give input to this clause.

Q. Right. And then just 10, "Duration and termination of the agreement.

"This agreement will come into force at the time of the signature and will terminate

"A. At the time of incorporation of the company. Or

"B. At the time it became evident that the company would not be awarded the licence

"C. If the submission of the bid is not within June 23rd 1995 obtain the necessary board approvals in accordance with Clause 3.

"D. When a party is in breach according to clause 9."

Obviously that would have been a lawyer's matter as well.

11 just deals with non-competition.

12, confidentiality.

And 13 contains a choice-of-law clause to the Republic of Ireland. We see then it was just signed by Mr.

O'Brien, and it was signed on behalf of Telenor. And that was the joint venture agreement.

Now, looking at the documents and from your memorandum, it appears that your principal focus at that time was trying to firm up on the Communicorp financial commitment in relation to its funding in

Esat Digifone; isn't that right?

A. Yes.

Q. Now, can I just refer you to two documents at Divider 12A in the book that we are looking at at the moment.

And you see that the first document is a memo from you to Peter O'Donoghue, and you have also CC-ed it to Per Simonsen. Do you see that?

A. Yes.

Q. And it's "Re issues related to financial guarantees/security package.

"Re: Advent.

"Which legal body is Advent?

"Statement from a lawyer and auditor stating the validity of the offer and Advent's capability to fulfil its commitment towards Communicorp.

"The content of the offer, restrictions, conditions.

"Re Communicorp:

"Acceptance of the offer from Advent, the validity of the accept, legal opinion related to board resolution, general assembly, shareholders agreement.

"Routines accepted by Advent and Communicorp related to a direct routing of the capital injection directly from Advent to Digifone.

"Re Digifone:

"The above mentioned must be coordinated with the (proposed) shareholders agreement.

"These are my instant reflections related to the

proposed structure. Please" I think that should be  
"note" "note that this is not to be regarded as a  
general acceptance of your proposed arrangement. I  
hope you understand that Telenor must have a complete  
picture of the arrangement before we can accept it.

"PS: Has the bid been accepted by Communicorp's board  
of directors?"

And that's a memo that you were sending to Peter  
O'Donoghue on the 28th June of 1995.

A. Yes.

Q. Now, would I be correct in thinking that at that  
stage, what you were being offered by Communicorp was  
some form of letter of support or guarantee from  
Advent?

A. Yes, that was what I expected.

Q. Can I just ask you, diverting for a moment, did Mr.  
O'Donoghue or anybody else ever mention to you getting  
a guarantee or a letter of commitment from anybody  
other than Advent?

A. No.

Q. Never mentioned any dealings with Anglo Irish Bank  
here in Dublin?

A. No.

Q. So when you sent this fax on the 28th June, it was  
your understanding that whatever guarantee or  
commitment was coming, was coming from Advent?

A. Sorry, I one more time, please.

Q. As of the 28th June, when you wrote this, it was your understanding that the financial guarantee or the commitment that Telenor was looking for was going to come from Advent; is that right?

A. Yes.

Q. And you were listing here precisely what you'd need in order to satisfy yourself of the validity of that commitment; is that correct?

A. I think it's more regarded as a basic information to be reviewed by lawyers. And it was to get things moving, in order to get things moving forward. It's a memo, but it could perhaps have a different layout or but it's in order not to lose time.

Q. So this was the information that the lawyers were going to need in order to advise whether this was a sufficient and valid commitment; is that right?

A. Yes. I referred to our legal opinion.

Q. Yes. So what you were looking for there was, you were looking for information about Advent; you were looking for a statement from a lawyer and auditor stating the validity of the offer and Advent's capability to fulfil its commitment; you were looking for information that the content of the offer, restrictions and conditions. And regarding Communicorp, you were looking for information regarding the acceptance of the offer from Advent, the validity of the acceptance. You wanted a legal

opinion relating to board resolution, general assembly, shareholders agreement, and you wanted routines accepted by Advent and Communicorp related to a direct routing of the capital injection directly from Advent to Digifone.

A. Yes.

Q. And you also CC'd you also sent a copy of this fax to Per Simonsen?

A. Yes.

Q. Would it have been Per Simonsen that you were primarily liaising with when you were doing this work and making these inquiries?

A. Yes. I believe that Per Simonsen passed it on to Amund Bugge.

Q. To Amund Bugge in the legal division?

A. In the legal division, yes.

Q. Would you have also discussed these matters with Mr. Digerud?

A. I could have done that. I am not sure.

Q. Now, if you just turn over the page here as well, I don't know if it's reached your book, but it's at 12B; there is a memo, a fax from Peter O'Donoghue to you dated 29th June, 1995.

Do you have that? We just distributed it this morning. Do you see that?

A. Yes.

Q. It says "To Knut Haga from Peter O'Donoghue. 29th

June 1995.

"Further to our telephone conversation today I now attach a draft of Advent's letter received from them today.

"I would be grateful if you would review the letter and fax me a list of any additional requirements you may have. I will discuss these with Advent and hopefully should be in a position to finalise the attached letter in the very near future."

You see this is a letter, a draft letter dated the 27th June, addressed to you. Do you see that?

A. Yes.

Q. It says "Dear Mr. Haga,

"We refer to the application to be made by Esat Digifone Limited in connection with the grant of the licence to operate the second GSM cellular system throughout Ireland."

Then there is a heading, "Introduction to Advent International.

"Advent International Corporation is a leading international private equity provider.

"With funds under management in excess of \$1.4 billion and offices in North America, Europe and Asia, Advent International has provided development capital and private equity to over 200 companies, giving entrepreneurs adequate financial resources to develop independent businesses.

"Advent International investment strategy is to focus on a selective number of industrial sectors which experience an above-average level of growth. In particular, our funds have made significant investments in media and telecommunications companies in Europe and have developed a good understanding of the telecommunications business and a strong interest in investing in the same.

"Advent's investment in the Communicorp Group:

"In 1994 certain of the funds managed by Advent International invested a total of approximately \$10 million in Communicorp Group Limited (Communicorp) in return for just over 25% of the voting share capital.

Communicorp is the holder of 50% of the issued share capital of Esat Digifone Limited (Digifone).

"These funds have committed to invest an additional \$9.5 million to further develop the group's activities.

"Advent's commitment to the GSM licence application:

"We have reviewed the business plan prepared by Digifone in connection with its application for the second GSM licence and consider its operation of the second GSM cellular system in Ireland to be an attractive and viable project. The licence application sets out how Communicorp intends to inject new equity into Digifone on the licence being granted to it and shows the Advent Funds as 5% shareholders,

participating in the 20% holding which has been allocated to institutional investors. We are delighted to have the opportunity of investing directly in Digifone as well as our indirect investment in the company through Communicorp and Esat Telecom.

"The said application also shows Communicorp Group remaining as a 40% shareholder in Digifone and being required to provide up to 30 million Irish punts to fund that 40% equity participation. We can confirm that we have offered that amount to Communicorp to enable it to fund its obligations.

"Please do not hesitate to contact Massimo Prelz Oltramonti on" gives his number "should you have any queries on the information in this letter."

Do you see that?

A. Yes.

Q. Is that the first time, do you recall, that you received a draft of what we refer to as the Advent letter of comfort that was ultimately dated the 10th July?

A. Yes.

Q. I think under the third heading you have is that your writing where you have underlined various words in the draft?

A. Yeah sorry, are they?

Q. I was asking you, is that your handwriting? Are they



your markings on the draft letter?

A. That could be.

Q. Well, the letter

A. It depends on where it stems from. It could also be Peter O'Donoghue's marks based on a conversation we had on the phone.

Q. Yes

A. So I am not sure the source of

Q. I suppose whether they are your markings or Mr. O'Donoghue's markings, what they infer is that you were having a discussion about those particular portions of the letter that you have underlined?

A. Yes.

Q. Now, Mr. O'Donoghue asked you to review the letter and to fax you a list of any additional requirements you may have. Do you see that in the memo sorry, in the fax cover sheet. Do you see, he asked you to review it and to fax you a list of any additional requirements you may have. That's in his fax cover sheet?

A. Yes.

Q. Now, did you firstly, do you remember, did you discuss this development with anyone in Telenor?

A. I believe I discussed this issue with other people in Telenor. It could be that I tried to bring it a bit further before I brought it to other persons' attention, but it could also be that I addressed the

issue at this stage. I am not sure which time it was, what time it was addressed to other colleagues.

Q. Who was it that you discussed it with in Telenor, whether it be at this stage or at a later stage?

A. It would be most likely Per Simonsen.

Q. Per Simonsen.

A. And/or Knut Digerud, but most likely Per Simonsen.

Q. Now, we haven't been able to find a fax from you or a letter from you to Mr. Simonsen setting out your requirements in response to this fax. And I am just wondering, could it be that sorry, a response from you to Mr. O'Donoghue setting out your requirements, and I wonder, can you recall whether you sent him a fax following receipt of this?

A. It's that could be the case, but we should bear in mind that July is holiday month in Norway, so there could be a slightly stand-still on the progress on the matter. I think I was away the whole of July that year. I left for holiday on Monday the 3rd July, and I was abroad for I think almost two weeks, and then I think I started work again on the 31st July, Monday.

Q. So you were away, effectively, for the entire month of July. Could you tell me, in your absence, who would have taken over from you in relation to the provision of the guarantee and these finance matters?

A. I would assume that Per Simonsen looked after the

matter, but I am not sure when he was available at that time.

Q. Right. Now, when you returned from holidays, then, on the 31st July, is that right 31st July, presumably you were told that what was available in terms of a financial commitment or a financial guarantee was the letter of Advent of the 10th July?

A. Yes, that was the outcome of the discussion I had with Peter O'Donoghue.

Q. Well, I know that you had discussions with Peter O'Donoghue on the 31st, because we can see those referred to in that fax. But would you not have been brought up to date by somebody in Telenor as to what had happened?

A. No. That would have been unlikely during that period.

Q. Nobody would have told you what happened?

A. Not before I was back.

Q. No, when you got back.

A. Oh, when I got back.

Q. Would you not have been

A. Probably, and I'll just scan I assume I was I would have been must have been introduced to the status through my first week after holiday, or back from holiday.

Q. And who would have told you what had happened?

A. Most likely Per Simonsen.

Q. Most likely Per Simonsen.

A. If he was around.

Q. Okay. So what you had when you came back from holidays on the 31st July was the letter of the 10th July; is that right?

A. Yeah.

Q. Okay. And it's fair to say, isn't it, that you didn't consider that that was an acceptable or satisfactory commitment?

A. That's right.

Q. Now, can I just refer you to that letter firstly. It's at Divider 21 of the same book that we are working on. I am not going to read it again, because I think it's identical to the draft.

CHAIRMAN: It's almost identical. Yes.

Q. MS. O'BRIEN: Now, if I take you to the final section of it which deals with the commitment. Do you see it?

A. Yes, I have it that's the one to Martin Brennan?

Q. Yes. Can you tell me in what respects you considered that to be insufficient for your purposes?

A. I think it's the word "intended" that I would like to draw to your attention that the text in the letter provided to me is slightly different from the text provided to Mr. Brennan. There is a letter on the 10th addressed to me. There is a letter on the 10th addressed to Martin Brennan.

Q. Yes.

A. And the wording in that what you are referring to

is slightly different from what

Q. Well, for the moment, can you read me out the wording of the letter that you have there?

A. The wording of the letter I received?

Q. Exactly.

A. I did not receive the letter to Mr. Brennan.

Q. I see. You only received the letter addressed to you?

A. Yes.

Q. You never saw a copy of the letter that went to Mr. Brennan?

A. Not so far as I can recall.

Q. But can you read me out what's said in the letter that was sent to you, in the third section, "Advent's commitment to the GSM licence"?

A. Read what it says?

Q. No, can you just tell me in what way it is different to the letter that was sent to Mr. Brennan. And I am going to try and get a copy of it myself at the same time.

A. If I read it do we have it here?

Q. We'll get a copy of it.

A. I think they are very similar, but there is slightly different phrasing, which I believe the phrasing I received is less committing.

Q. We'll put it up on the overhead projector, and we can read it out.

It says: "We have reviewed the business plan prepared

by Digifone in connection with its application for the second GSM licence and consider its operation of the second GSM cellular system in Ireland to be an attractive and viable project. The licence application by Communicorp shows the Advent Funds as 5% shareholders, participating in the 20% holding which has been allocated to institutional investors. We are delighted to have the opportunity of investing directly in Digifone as well as our indirect investment in the company through Communicorp and Esat Telecom.

"The said application also shows Communicorp Group remaining as a 40% shareholder in Digifone and being required to provide up to 30 million Irish punts to fund that 40% equity participation. We can confirm that we have offered that amount to Communicorp to enable it to fund its obligations."

Okay. Now, I can see the slight differences between that one and the one to Mr. Brennan, but effectively, the letter is telling you two things: firstly, that Advent will take a 5% shareholding, and secondly, in relation to the offer of  $\frac{1}{2}$ 30 million; isn't that right?

A. I think the way I interpreted it was "We are delighted to have the opportunity of investing". It's not a commitment to invest. But they regarded that as an opportunity which they will consider, perhaps, at a

later stage. And then in the next, I felt that a fairly that's a very acceptable commitment at that time, but I wanted further assurance at a later stage, and I contacted Helen Stroud.

Q. Because what they say is that they have offered that amount to Communicorp; that's all they are saying, aren't they, in the letter?

A. Yes.

Q. And in fact, as regards both their statement that they are delighted to have the opportunity of investing directly in Digifone and their statement of confirmation that they had offered the amount of  $i\frac{1}{2}$ 30 million to Communicorp, both letters to you and to the Department were identical, weren't they?

A. Yes.

Q. So that was, if you like, on your desk on the 31st July?

A. In the beginning of August.

Q. Yes. Had you received or did you have sight of a letter of the 14th July from Mr. O'Brien to Mr. Prelz, which is at Divider 23 of the book that we're working on.

A. No.

Q. You didn't see that?

A. I have seen it during this process, but not at that time.

Q. So you didn't see it at any time through 1995 or 1996?

A. No, I hadn't seen it.

Q. If you go over the page now to Divider 24, there is a copy of a fax from Peter O'Donoghue to you dated 31st July, 1995. Do you see that?

A. Yes.

Q. "Further our conversation today, I confirm that Advent International Corporation and Communicorp Group Limited have formally entered an agreement whereby Advent have committed up to  $\text{€}1230$  million to the Communicorp Group in the event that Esat Digifone is successful in its bid for the second GSM licence in Ireland. In consideration of Advent making these funds available, Communicorp has agreed that Advent will be entitled to participate in up to 5% of the equity capital of Digifone Limited. Denis O'Brien is also a signatory to this agreement.

"Accordingly, as the above parties represent 100% of the shareholders of the Communicorp Group, they have given their consent to the increase of capital required in Communicorp to facilitate the investment of Esat Digifone.

"I hope the above will assist you in finalising your outstanding issues."

And you received that from Mr. O'Donoghue on the 31st July?

A. Yes.

Q. And is that what he told you in the conversation that



he refers to in his fax?

A. Yes. The marks, handwritten marks are mine, on the left side, so I think "Advent: Confirm please" and then plus "copy", which is probably a request for a copy of the agreement.

Q. So that can I just ask you first of all, that's on another copy of the same fax that we found in what appears to be your handwriting in the margin, and if we just put that up there.

A. That's my handwriting.

Q. You have "Advent: Confirm please and copy". So that's what you were looking at having been told by Mr. O'Donoghue of the existence of this agreement?

A. Yeah, I think it's it could be viewed as a follow-up on the memo I wrote in late June to Peter O'Donoghue.

Q. Yes.

A. Where I asked

Q. Where you asked for various items. But here what you are looking for is you want confirmation from Advent and you want a copy of the agreement that Mr. O'Donoghue was referring to?

A. Yes.

Q. Did you ask Mr. O'Donoghue for the agreement?

A. Yes, I would assume so.

Q. And what was his response?

A. I don't specifically recall, but I might have been

advised to contact Helen Stroud directly, the legal

adviser of Advent.

Q. What's clear is you never got a copy of the agreement, did you?

A. I never had a copy of the agreement.

Q. Other than what Mr. Mr. O'Donoghue told you in this fax on the 31st July, did Mr. O'Donoghue or anybody else tell you anything more about the agreement?

A. No, I was not introduced to the agreement or the content of it.

Q. Right.

A. Apart from the amounts that's been mentioned earlier.

Q. Yes, now, if you go on Divider 26, there is a fax from you to Mr. Denis O'Brien.

"Dear Denis,

"With reference to joint venture agreement dialogue with Peter O'Donoghue and facsimile letter from Peter 31 July (enclosure) I would like to express my concern related to the issue of financial guarantees.

"Based on the letter from Peter, I required a similar statement from Advent International through Baker McKenzie. Ms. Helen L. Stroud called this afternoon and told me that there were not made any agreements between Advent and Communicorp related to the said  $\frac{1}{2}$ 30 million.

"If this information is correct I believe we may have serious problem related to establishing an acceptable

level of financial comfort.

"Please be aware of the fact that this situation may jeopardise the whole project."

And that was the fax that you sent to Mr. O'Brien two days later, on the 2nd August, and with that you enclosed a fax of the 1st August which you sent to Ms. Helen Stroud. Do you see that?

A. Yes.

Q. Can I just ask you there, had you been in touch with Ms. Stroud before the 1st August? I know you referred to a letter of hers of the 13th July, but that appears to have been a letter to Per Simonsen simply enclosing financial information about Advent. But I wonder, had you been in contact directly with Ms. Stroud or with Baker McKenzie prior to the 1st August?

A. I don't believe so. The letter was dated when I was on holiday.

Q. Yes, the one of the 13th July?

A. Yes.

Q. I take it that you wouldn't have proceeded to contact Helen Stroud, Advent's solicitors, unless Communicorp or Advent themselves had told you that it was in order for you to do so?

A. That's right.

Q. You said:

"Dear Ms. Stroud,

"Thank you for your letter of July 13th. Based on the

received information, I would kindly ask you to provide Telenor with some statements from AIC confirming the following:

"1. That the forwarded financial information (enclosure with your letter dated 13 July) related to various funds as of the 31/12/94 is correct. Please make references to each specific fund.

"2. That no material changes have occurred since 31 December 1994 please make references to each specific fund.

"3. That an agreement between Advent and Communicorp Group has been signed and that the agreement is related to an equity increase in Communicorp due to an award of a GSM2 licence in Ireland to Digifone.

"4. That investing in the Communicorp Group is within AIC mandate as the general partner of the funds mentioned.

"The statements should be faxed and mailed (address below) to Telenor International, CC Knut Haga" and you give your fax number.

"Please note that the information must be available on Thursday, 3rd August, and that the statements should be duly signed by Mr. Massimo Prelz Oltramonti".

And you CC that to Per Simonsen, Peter O'Donoghue, and Massimo Prelz. Do you see that?

A. Yes.

Q. Now, you appear to have received a response from Ms.

Stroud the following day, the 2nd August. Do you have a copy of that there? It's behind Divider 26A.

A. I have it.

Q. Do you have it there?

A. Yes.

Q. "Dear Mr. Knut Haga,

"Ref: your letter dated August 1, 1995 re the

Communicorp Group.

"Let me answer to the different points in your letter one by one.

"1. We have sent you information regarding the following funds." She then sets out the funds, and she confirms that "All the financial information supplied to you has been audited by a leading firm of accountants and are correct to the best of our knowledge".

And 2, she also gives you the confirmation that you had sought.

3, she says: "As we wrote to you in our letter dated July 10th 1995, we confirm that we have offered to finance the amount required to fund Communicorp Group 40% participation in Digifone.

"4. The investment in Communicorp Group falls within the charter of the funds.

"I hope this satisfies your requirements. Please feel free to contact me directly if you need any further information.

"Best regards" and it's CC'd, I think, to Massimo

Prelz and to Peter O'Donoghue sorry, it's signed

"Massimo Prelz," and it's CC'd to Peter O'Donoghue.

Now, you see there is some markings at paragraph 3 in that copy document?

A. Yes.

Q. Is that your handwriting?

A. No.

Q. Can you identify whose handwriting it is?

A. No, I can't identify that.

Q. Presumably you received that fax on the 2nd August; it was in response to your questions of the 1st August?

A. It's I am not sure whether I received it or not.

This copy is from Telenor Invest's files.

Q. It is, yes. Well, it's likely you received it, because it was addressed to you, wasn't it?

A. I might have. It's likely that I received it, yes.

Q. At paragraph 3, you didn't get the confirmation you were looking for, did you?

A. No.

Q. Now, if you go back to your fax of the 1st to Ms. Stroud, you see you have written there the word "No".

Can I take it that that's your writing? I think you said in your memorandum that it was.

A. That's my "No," yes.

Q. I think you spoke to Ms. Stroud as well; is that right?

A. Yes.

Q. Can you tell us when that was?

A. That was likely there is a clue here. The 2nd August, because on the memo to Denis O'Brien, I said "Ms. Helen Stroud called this afternoon and told me".

So actually she took the initiative here, and that was came as a surprise to me.

Q. She told you there wasn't any agreement

A. Yes.

Q. to provide  $\frac{1}{2}$ 30 million in funding to Communicorp; isn't that right?

A. Yes.

Q. And I take it it was that which prompted you to write directly to Denis O'Brien on the 2nd August?

A. Yes.

Q. Now, in that letter you said: "If this information is correct, I believe we may have a serious problem related to establishing an acceptable level of financial comfort. Please be aware of the fact that this situation may jeopardise the whole project."

Now, that was a fairly serious letter to be writing, wasn't it

A. Yes.

Q. to Mr. O'Brien?

A. Yes.

Q. And I take it that you wouldn't have written that letter without first discussing it with your superiors

in Telenor?

A. I discussed it at least with Per Simonsen, and I would say that the level of financial comfort is related to Telenor's level of financial comfort. Not necessarily the project.

Q. But in the letter, you did say: "Please be aware of the fact that this situation may jeopardise the whole project."

A. Yes.

Q. And having discussed it with Per Simonsen, you would assume that if he needed to discuss it with anybody more senior, he would have done so?

A. Well, not necessarily, because it's a commercial decision. What I am highlighting is we don't have a or there wasn't an acceptable level of financial comfort that I would recommend that we have what we asked for in an earlier stage, that what could be the outcome was that others viewed it as a total, on an overall basis that we could live with the situation, but according to the initial agreements, it didn't meet the initial recommendations, or requirements, sorry.

Q. But the ultimate decision as to whether you would or would not proceed with the project wasn't one for you or Mr. Simonsen?

A. No, and the meaning, I believe, interpretation of the last sentence of this is that this is serious, so you



better do something with it. I was not in a position

to terminate or call a default or

Q. No. Now, do you recall whether you received a

response from Mr. O'Brien or what happened next?

Because this was now only two days; it was the

Wednesday; the bid was due in on the Friday. And do

you remember what happened?

A. Sorry, on Friday?

Q. Friday the 4th, the day the bid was due in, you wrote

to Mr. O'Brien on the Wednesday saying that this could

jeopardise the whole project. So you only had two

days to go, so this was now fairly urgent, and do you

recall what happened? Did Mr. O'Brien contact you?

A. I don't think so. I don't recall that.

Q. Well, do you recall what happened next?

A. I need some guidance from the faxes that I don't

have it off the top of my head.

Q. That's fair enough. I'll refer you over the page to

the document behind Divider 27. That's a fax from

Peter O'Donoghue to Massimo Prelz dated 3rd August.

"Telenor have requested us to provide them with a

slightly reworded financial guarantee from yourselves.

I attach the requested wording. I do not believe the

attached is any more onerous than what you had

previously provided us with, and I would be grateful

if you could prepare a letter addressed to Telenor

along the lines of the attached.

"As you are aware, the bid is due for submission tomorrow, the 4th August, and we would require this letter today.

"I am not in the office, but I am contactable on my mobile no." and he gives it "I would be grateful if you could call me when you receive the attached."

You see that was faxed at 3.45 in the afternoon. And if you go over the page, you see there is a draft letter addressed to Per Simonsen to be provided by Advent.

"Dear Per,

"Advent International plc hereby"

A. Sorry, which one

Q. It's just the next document, the enclosure with the fax of the 3rd August. It's dated the 3rd August.

Sorry.

"Advent International plc hereby guarantee Telenor AS that it will offer  $\frac{1}{2}$ 30 million to Communicorp Group Limited for the necessary equity increase in Esat Digifone Limited to establish and operate a GSM network in Ireland. This offer is true and valid until 60 days after the Ministry of Transport, Energy and Communications have awarded the licence to Esat Digifone Limited. Telenor AS can call this guarantee. Yours sincerely."

Now, do you remember discussing that draft letter?

A. No, I don't remember that.

Q. Do you remember preparing or drafting that letter?

A. I don't think I participated in drafting that letter.

Q. Do you think it was drafted or prepared on the Telenor side?

A. I don't think so.

Q. So do you think this was a letter that was prepared by Mr. O'Donoghue?

A. That's my assumption, yes.

Q. Do you remember discussing matters with Mr. O'Donoghue on the 3rd August? Because you see, in his fax, he says: "Telenor have requested us to provide them with a slightly reworded financial guarantee from yourselves."

A. I think that's not my that's Peter O'Donoghue's phrasing. I don't think I was actively involved after that letter of the 2nd, was it?

Q. Yes.

A. Where I said that it might jeopardise the whole project. And I expected them to take action, which it seems to me now that it led to some activity.

Q. But you don't think you were actively involved in the request for this letter of guarantee or the preparation of it?

A. I could have discussed it with Peter O'Donoghue, because the phrasing is more similar to what we requested from the in the early days.

Q. Yes, yes, you think the phrasing of that was similar

to the kind of commitment or guarantee you had been looking for at an earlier date; is that right?

A. Yeah, a firm commitment; that was what we were looking for.

Q. Did you know on the 3rd August that Communicorp were trying to get this letter of guarantee for you?

A. I think they worked on the case. They tried to accommodate all our requests.

Q. Right. You think Communicorp were trying to accommodate your requests?

A. Yes.

Q. Now, that guarantee wasn't forthcoming; isn't that right?

A. That's true.

Q. Now, if you go over to 29, Divider 29, there is another letter from Mr. O'Donoghue to Mr. Prelz. He tried again when he didn't get the letter in the form that he was looking for on the 3rd, and on the 4th he wrote to Mr. Prelz, "Re GSM bid".

"I attach a copy of a revised letter that Telenor have requested Advent to provide to Communicorp Group Limited. They wish to establish that the offer referred to in your letter to them on the 12th of July 1995 will remain valid for a period of 60 days after the GSM licence is awarded.

"If you have any queries concerning the attached, please contact either Denis or myself."

And if you go over the page to the fourth to the closure behind the same divider, you will see another draft letter of the 4th August:

"Dear Sirs,

"Advent International plc, on behalf of its funds under management, confirms that it has offered  $\text{€}120$  million to Communicorp Group Limited for the necessary equity increase in Communicorp Group Limited to establish and operate a GSM network in Ireland.

"This offer is true and valid until 60 days after the Ministry of Transport, Energy and Communications has awarded the licence to Esat Digifone Limited.

Yours sincerely.

"CC Telenor AS, attention Per Simonsen."

Do you see that draft?

A. It looks to be an internal draft which I didn't participate in.

Q. Did you know on the 4th August, the day that the bid was due to be progressed and to be submitted, that Mr. O'Donoghue was still looking for another letter for you from Advent?

A. I was not in Dublin at that time, but I will assume that they worked on the case, but I will also assume that Per Simonsen was around, having more first-hand experience with the progress, because I am not sure whether this would have been a part of the bid, but I think Per Simonsen handled the issue at that time. I

was not around.

Q. Was Per Simonsen here in Dublin on the 2nd and 3rd August?

A. That, I don't know.

Q. But is it your belief that this matter was then taken up by Mr. Simonsen after you wrote your letter to Mr. O'Brien of the 2nd August?

A. I believe that time was of an essence and it was CC Telenor attention Per Simonsen, but I don't know specifically, or I don't recall.

Q. Okay. If you go over the page again, there is a letter dated 4th August. This is addressed to Mr. Bugge of Telenor, corporate legal department, Esat Digifone.

"Dear Sirs,

"We wish to confirm that we have received an offer from Advent International Corporation Limited of funds sufficient to perform our obligations in respect of the bid. We wish, however, to seek alternative sources of funds because the terms of Advent's offer are unfavourable to us.

"We are aware of your concern to ensure that Communicorp has access to sufficient funds to perform its bid obligations and accordingly agree that if we fail to raise sufficient third-party funding in time to provide Esat Digifone with funds as anticipated by the bid, we will accept and conclude Advent's offer of

funding."

And that's dated the 4th August, and it's addressed to Mr. Bugge of the legal department, and in fact, it looks as if it might have been given to him at a meeting in William Fry Solicitors here in Dublin that he attended on the 4th August. Do you remember seeing that on the 4th August or being aware of it?

A. No, I can't recall that.

Q. Now, we know that the bid was lodged on the 4th August. And in your memo you said that a commercial decision was made by Telenor to allow the bid to go in notwithstanding the fact that you didn't have the financial commitment that you were looking for and you didn't have the financial guarantee; isn't that right?

A. In my view we didn't have it in the fashion that was described in the joint venture agreement.

Q. As far as you were concerned, that decision was made at the most senior level in Telenor?

A. As I recall, I did not give any recommendation or advice regarding this.

Q. Were you consulted at all by the senior people in Telenor as to what your view was on the financial comfort that you were getting from Communicorp?

A. I don't think at that time, because then it was handled through Telenor Invest and Per Simonsen and Knut Digerud.

Q. So, in effect, you had you gave no advice, you gave

no recommendation, and you weren't a party to the decision to allow the bid to proceed?

A. I think I gave my view of the situation without concluding on the outcome, or conclude on what to do or not to do.

Q. Well, when did you give your view on the situation?

A. I assume that on the 3rd, 4th August.

Q. And who did you give it to?

A. I can't recall a specific conversation, but I assume that I had daily phone conversations with Per Simonsen.

Q. Well, Mr. Simonsen was hardly making the decision, was he? I mean, you said

A. Probably not, but it's information slots, not a decision process.

Q. And the bid went ahead on the 4th August?

A. Yes.

Q. You are not in a position to indicate what considerations had been made by the decision-makers, or what their considerations were, are you?

A. No.

Q. You can just assume that it was a commercial decision?

A. Yes, that's my assumption.

Q. Okay. Now, can I ask you to look on to Divider 37.

This was a fairly lengthy letter that was received from Mr. Owen O'Connell, dated the 17th August. Do you have it?



A. Yes.

Q. Do you remember seeing this letter when it came to Telenor?

A. No.

Q. Do you remember discussing it with anybody?

A. I do not remember so, no.

Q. You don't remember it?

A. I don't remember.

Q. Can I just refer you to a document in this new book here, Book 60; it's I think the very last document in the book. It's part B, Divider 9 sorry, Divider 10.

Do you have that document? If I can ask you to go to page 3 of that document. It's a set of translations of various internal legal division memos. If you go to page 3, and roughly halfway down the page, you'll see a heading: "Number 27: Fax 17 August 1995 (front page) from Amund Fougner Bugge to Per Simonsen and Knut Digerud, Telenor Invest:

"Date, time: 17 August 1995".

The time is 13 hundred hours; do you see that?

A. Yes.

Q. It says "Subject: Ireland.

"I have been in contact with Denis and with Communicorp's lawyers (William Fry) to accelerate the follow-up of the letters I submitted to them the 4 August. Today I have received this letter from

William Fry. I have some understanding of their standpoint in this case, that is to say we are not receiving further financial assurances from Advent or a legal opinion from William Fry.

"We should discuss this possibly with Knut Haga and Rolf Busch. Please contact me."

Do you see that?

A. Yes.

Q. Do you remember anybody discussing this with you, either Mr. Busch or Mr. Bugge or anybody else in the legal division, or anyone else within Telenor?

A. Not specifically, no.

Q. Do you remember it at all?

A. No, actually not.

Q. No?

A. No.

Q. Okay. Can I refer you just to another memo in this book as well. It's at 60B (6). It's just a few documents behind the one we have been looking at.

It's the 23rd August, 1995. From Amund Fougner Bugge to Knut Digerud, Per Simonsen, re shareholders agreement Ireland.

A. B6?

Q. Yes, B6. It's a memo of the 23rd August, 1995, from Amund Bugge to Knut Digerud, Per Simonsen, re shareholders agreement Ireland.

"Based on discussions between me and Rolf Busch, legal

department proposes the following total solution for the Ireland project:

"1. We accept the financing arrangement they have proposed and the letters we have received as sufficient, but demand that offer from Advent remains in force at least 30 days after the licence is awarded.

"2. We accept to delete second paragraph of the shareholders agreement article 5.3.

"3. In return we want the following arrangement reflected in the shareholders agreement, article 14.1.

"In case of breach as described the other party may after 30 days demand to purchase half of the shares of the party in breach at lowest of cost and market price.

"After 120 days of breach the other party shall be entitled to the second half of the shares of the party in breach at 90% of the market value.

"The motivation for the first provision. In case of breach it is important for both parties and their financial burden of the party in breach is eased as fast as possible, in order for Esat Digifone to continue business. When the obligations are reduced to half, the situation must be remedied. Therefore, the clause takes care of our primary need to ensure sufficient financing. If this shows difficult, we may consider to reduce the fraction which can be redeemed

after only 30 days.

"We would be happy for your swift response to the proposal.

"Best regards on behalf of the legal division.

"Amund Fougner Bugge."

Now, do you remember seeing or being told about the contents of that memo?

A. Which binder? I missed

Q. Oh, it's binder 60B.

A. 6 zero B?

Q. Book 60, B6. Do you see it now? I am sorry, I thought you had it.

A. As a remark, I would say I was not in the primary loop of memos from Amund Fougner Bugge, and no, at that time I was busy with other projects.

Q. Would Mr. Simonsen not have discussed that with you?

Because that seems to suggest that what the legal division were recommending was that they accept the financing arrangement, but they look for a confirmation that it remained in force for 30 days.

Would it not have been natural for them to discuss that with you, given that you were the person who was dealing with the corporate finance and the project finance for this?

A. Not necessarily.

Q. I see.

I am just go to move on to something else, Sir. I

don't know if you want to

CHAIRMAN: Well, at five to four, very good.

We expect to conclude your evidence tomorrow, Mr.

Haga. At eleven o'clock, we'll resume it, if that's

convenient to you. Thank you for your assistance

today.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

WEDNESDAY, 4TH FEBRUARY, 2004 AT 11AM.