

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, SC

Instructed by: Michael Heneghan

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES: Mr. Richard Law Nesbitt, SC

Mr. John O'Donnell, SC

Mr. Diarmuid Rossa Phelan, BL

Instructed by Matthew Shaw

Chief State Solicitors Office

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

Mr. Gerry Kelly, SC

Mr. James O'Callaghan, BL

Instructed by: Owen O'Sullivan

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Mr. Rossa Fanning,

Instructed by: 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 - 213
Mr. McGonigal	214 - 349	
Mr. Fanning	350 - 363	
Mr. Fitzsimons	364 - 368	
Ms. O'Brien	369 - 392	

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,
4TH FEBRUARY, 2004 AT 11AM:

CONTINUATION OF EXAMINATION OF KNUT HAGA BY
MS. O'BRIEN:

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

A. Morning.

Q. I just want to refer you now to your letter of the
11th September to Mr. O'Brien, which is in the same
book we were working from; it's at Divider 39.

A. May I have some comments to yesterday's in relation
to yesterday, regarding a letter to Mr. Denis O'Brien,
where I stated this may jeopardise the whole project.

Q. Yes.

A. There are some interpretations to that that might be
different from basic or Norwegian way of expressing
yourself in writing is generally more direct than is
in English language. So the phrasing could should
perhaps be different compared to a Norwegian meaning
of what I really meant. So I think that you could
help me on this one or express my what I am trying
to say.

Q. Maybe if you tell the interpreter what you are trying to say in Norwegian, and perhaps she can interpret for me in English.

A. Okay.

A. THROUGH THE INTERPRETER: This entails a risk for everyone.

Q. MS. O'BRIEN: I see. That's what you meant; this entails a risk for everyone?

A. This yeah.

Q. Right. This is the letter of the 2nd August?

A. The way you address it seems to be very, perhaps to aggravate the concern than the underlying meaning.

Q. You are what you intended to say was that instead of saying please be aware of the fact that this situation may jeopardise the whole project; that this situation may give rise to a risk to all parties; is that correct?

A. Yeah, or this is something you need to focus on and try to solve. So get your act together or and that's apparently what happened.

Q. So would I be correct in saying that in writing that letter of the 2nd August, you weren't intending to say that unless this matter was put right by the 4th August, that Telenor wouldn't be proceeding with the bid?

A. Yes.

Q. Right. Can I refer you now just to your letter of the

11th, which I think I said was on behind Divider

38.

A. Binder?

Q. 38, in Book 48. Sorry, 39 in Book 48. Now that's dated the 11th September. It's addressed to Mr.

O'Brien.

You state that "As a financial adviser to Digifone and Telenor Invest AS, I would like to raise some of my

concerns related to the content of a letter from

Advent International Corporation to Mr. Martin J.

Brennan dated 10th July, 1995.

"Based on the content in Section 3 in this letter I have drawn the following conclusions:

"1. AIC has not committed itself to participate as an equity party.

"2. AIC's underlying statement is that they regard their position as having an option to participate with a 5% equity stake without any premium or obligation.

"3. There has not been made any formal or legal binding agreements between Digifone and AIC (correct me if I am wrong).

"On this basis, I would like to stress that Digifone must not enter into a position where it is obliged to bring in AIC as an equity partner.

"In any case, the terms and conditions for any other equity partner must, based on commercial issues, be determined between Esat and Telenor.

"Based on this fact I would like to stress that AIC's letter to Mr. Martin J. Brennan does not add any value to Digifone. Please take this fact into consideration when you are discussing alternative equity partners."

It's signed "Yours sincerely, Knut Haga."

Now, can I just ask you a little bit about what you meant by this letter. Firstly, am I correct in thinking that what you are addressing is the letter to Mr. Martin Brennan in the Department?

A. Yes, which we went through yesterday, which was quite similar to the one I received.

Q. The letter of the 10th July to Mr. Brennan, which we know went in with the bid

A. Yes.

Q. to the Department. Now, can you just explain to me firstly what you meant by the first bullet point, "AIC has not committed itself to participate as an equity partner"?

A. I think there it's through the phrasing; it says it intends to inject, which in my opinion is not a firm commitment.

Q. Then the second point, you say "AIC's underlining statement is that they regard their position as having an option to participate with a 5% equity stake (without any premium or obligation)."

A. That's drawn from further down, that "We are delighted to have the opportunity of investing directly." It's

in order to avoid misunderstandings or

Q. And then finally, the point you make is that "There has not been any formal or legal binding agreements between Digifone and AIC (correct me if I am wrong)"?

A. Yes.

Q. And that presumably arose from your dealings with Ms. Helen Stroud and your letter to Ms. Stroud where you had sought a copy of the agreement; is that correct?

A. Yes.

Q. You say then "On this basis I would like to stress that Digifone must not enter into a position where it is obliged to bring in AIC as an equity partner."

A. Yes.

Q. Would I be correct in thinking, therefore, that as of that date, you weren't aware of the contents of the agreement of the 12th July?

A. I was not aware of the content.

Q. I see. You say "In any case, the terms and conditions for any other equity partners must, based on commercial issues, be determined between Esat and Telenor." I think that's fair enough; nobody would disagree with that.

You then say "Based on this fact, I would like to stress that AIC's letter to Mr. Martin Brennan does not add any value to Digifone." Could you explain to me what you meant by that statement?

A. I believe I had been informed that or I must have

been informed that there was a letter, which I hadn't seen at that time, that had been addressed to Mr. Brennan, and that view was my view that that letter didn't add value, as such, to the process. The basic my basic interpretation was that if Advent supported Communicorp, then it would be fair or okay that they had a direct stake, and when they pulled out from the main investment, where they probably carried on some risk and shared some of the cost indirectly, then it was Telenor's view that they should not be entitled to have an option to invest directly.

Q. Just to clarify, would I be correct in thinking that the letter that you are referring to in the final paragraph of that letter is the letter referred to in the first letter; the letter of the 10th July?

Because I think that's the only one that we know of that went to Mr. Brennan as of the 11th September.

A. Yeah.

Q. So your assessment of the matter was that the letter from Advent which went in with the bid on the 4th August, addressed to Mr. Martin Brennan, added nothing to the value of the Esat Digifone bid because there was no financial commitment, as far as you could see, from Advent International?

A. That is subject to that Advent did not commit to invest in Communicorp. It was a combined commitment and pulling out one or do some cherry-picking and say

"This is what we want; we don't want the risk side",
then we felt that that was a 5% of in this matter,
I didn't regard that as adding value, as I have said.

Q. I understand the point you are making.

Now, can I just ask you, you are writing to Mr.

O'Brien on the 11th September in relation to a letter
that was furnished on the 10th July, two months
earlier, and had gone in with the bid on the 4th
August, about six weeks earlier; and can I ask you
what the purpose of this letter was, as you understood
it, on the 11th September?

A. It's I think it's it became apparent that there
could be a risk, or a potential commitment that we
had, that we didn't in the beginning or at an earlier
stage, perhaps, put so much focus on; that the 5%
actually could have been on a stand-alone basis. The
assumption was that this was a combined effort or a
combined bid, or combined commitment, Communicorp
investment and the 5%. And then this is some time
elapsed, and I was in and out, and it could be that
Peter O'Donoghue brought me to the attention or
brought this to my attention, or somebody else, that
we are aware of that we might have an issue here that
we should address.

Q. So would I be correct in thinking that it was the 5%
that Advent appeared to be entitled to that was your
concern when you wrote this letter?

A. That was my concern when I wrote this letter, yes.

Q. Now, I know that you weren't at the presentation on the 12th September; that was the following day. And I think in your memorandum you stated it was your understanding that Esat Digifone had performed well, but that Mr. O'Brien had concerns about Communicorp's lack of financial strength.

Now, can I ask you who you got that impression from?

A. I think it was more a general impression.

Q. But who were you speaking to who gave you that information?

A. That could have been Per Simonsen.

Q. Is there anybody else that you might have been speaking to around that time that could have given you that impression?

A. I doubt that. I was as I said yesterday, I was not much in Dublin in September and October, 1995, so the information could have been made available to me in Oslo or through an oral comment or

Q. Right. And although you have no direct recollection, you think the probability is that it was Mr. Simonsen?

A. It could be, but I also had my own view on it, so it could be I regarded Communicorp as not being as financially the partner, but there were commercial grounds for having such a partner.

Q. But you weren't at the presentation itself; you can't have known what impression was made.

A. No.

Q. Now, do you recall at all whether you were aware that there were any concerns in Telenor about anything that Mr. O'Brien had said at the presentation in relation to the funding available to him?

A. Not specifically.

Q. When you say "not specifically", does that indicate that you have any recollection at all?

A. Again, it can be a mixture of my interpretation of my personal view combined with comments, but I wouldn't say that I have a specific recollection of any person that stated or made that as a firm statement.

Q. Well, do you recall, did anybody tell you that Mr. O'Brien had said anything at the presentation about the Communicorp funding?

A. Excuse me?

Q. Do you recall whether anybody told you that Mr. O'Brien had said something at the presentation about the Communicorp funding?

A. No, I don't recall that.

Q. Now, can I refer you now to the letter of the 15th September, and you'll find that as an enclosure with a letter from Mr. O'Brien to Mr. Prelz, which is at Book 48, the same book we are working from; it's at Divider 61. That's dated the 15th September of 1995. It's addressed to Mr. O'Brien, re Esat Digifone Limited.

"Dear Mr. O'Brien,

"We refer to the letter of comfort written by Advent International Corporation in respect of the funding by you of your proposed equity participation in Esat Digifone Limited.

"We regret to inform you that we are not satisfied with the above mentioned letter. Our concern was further strengthened by our meeting with the Department this week. On this basis we consider the letter to have no significant value to Telenor or Esat Digifone.

"It is vital to our further cooperation that Communicorp Group immediately can provide another letter or agreement giving appropriate financial assurance in a form more acceptable to Telenor.

"We look forward to your instant response."

It's signed "Knut Haga, Assistant Director, Telenor International."

Now, in your memoranda that you furnished to the Tribunal, you have stated that you had no role in the drafting of this letter; isn't that right?

A. Yes.

Q. But as you understood it, this letter was drafted by Mr. O'Brien, William Fry Solicitors, and Telenor?

A. Yes.

Q. That you signed the letter, you think, either late on the 22nd September or shortly after that?

A. Yes. I stated yesterday I was on a day trip to

Copenhagen on the 22nd, so it's unlikely that it was on the 22nd, so probably it was Monday, the following or in the beginning of the following week.

Q. And you say that the letter was dated the 15th September, and that you were aware that the letter was to be used by Mr. O'Brien in his dealings with Advent; is that correct?

A. Yes.

Q. Now, when you were asked or not asked, in fact; when there was reference to a draft letter of the 19th September, you furnished a lengthy memorandum to the Tribunal in which you indicated that you had never seen it and that you had no role in preparing it. And can I refer you to that first, if you wouldn't mind. You'll find it in the same book we are working from, and it's at Divider 54.

A. Yes.

Q. And it's an enclosure with a letter to Mr. O'Connell from Mr. O'Brien dated 21st September, 1995, "1. Draft letter to be received from Telenor."

Now, do you have a copy of that there?

A. Yes.

Q. It says: "Dear Mr. O'Brien, we refer to the comfort letter provided by Advent International on July 10th. We regret to inform you that having considered the matter at length and taken into account William Fry's representation in their letter of August 17th, we

remain dissatisfied with the comfort letter and require appropriate financial assurances immediately.

"It is also clear from our meeting with the Department of Communications last week that there is considerable doubt within the Department regarding Communicorp's ability to fund 40% of Esat Digifone.

"In order to avoid any uncertainty at this critical stage, we urge you to take appropriate action immediately."

I think you made it clear in your memorandum that you had never seen this draft?

A. Yes.

Q. Now, you see the draft appears to be dated the 19th September you see the draft is dated 19th September?

A. Yes.

Q. And it was enclosed by Mr. O'Brien in a fax to Mr. O'Connell on the 21st September. Did you have any knowledge at that time, on the 19th, which I think would have been the Tuesday of that week, that there was any letter being prepared or drafted in Telenor that would be used by Mr. O'Brien in his dealings with Advent?

A. I think I knew that there was an ongoing process in relation to my letter of the 11th.

Q. You knew there was an ongoing process in relation to your letter of the 11th, but did you know that there

was a draft being prepared earlier in that week which ended on the 22nd?

A. I can't say yes or no to that. I won't say yes or no to that.

Q. I see. Well, let me show you now a draft of the 21st.

If you just go over the page to Divider 55, you will see that there is a letter from Mr. O'Connell to Mr.

O'Brien. I am not going to read it out, but he

enclosed three enclosures with it, and if you go over

the page, you will see that one of them is another

draft letter. Do you see that? Divider 55.

A. Yes.

Q. There is a letter from Mr. O'Connell to Mr. O'Brien,

and behind that letter, the first enclosure is a draft

letter headed "Notepaper of Telenor Invest AS". Date

appears on the right. It's addressed to Communicorp

Group Limited, re: Esat Digifone Limited.

"Dear Sirs,

"we refer to the letter of comfort written to you by

Advent International Corporation in respect of the

funding by you of your proposed equity participation

in Esat Digifone Limited. We regret that we are not

satisfied with the letter of comfort. Accordingly we

are unable to express our intention to proceed with

our participation in Esat Digifone unless you can

provide another letter or agreement giving appropriate

financial assurances in a form more acceptable to us.

"We look forward to hearing from you.

"Yours faithfully,

"Telenor Invest, AS."

Now, do you remember seeing that letter, or that draft letter?

A. No.

Q. That doesn't ring a bell with you at all?

A. No. And it doesn't have a name on it, either.

Q. No, it doesn't. Can I just show you, then, a version of the draft letter which is in the Telenor files, legal division files. If you go to Book 60, which is the smaller book. Do you have Book 60?

A. Yes, Book 60.

Q. If you go to Part A, Divider 2.

A. Yes.

Q. Now, you see this appears to be a copy of the same draft that was forwarded by Mr. O'Connell to Mr. O'Brien on which there are handwritten annotations, some in English and certainly one, if not more, in Norwegian. Do you see that?

A. Yes.

Q. Now, had you ever seen a copy of that document before?

A. Not before this process started.

Q. I see. Can you assist the Tribunal at all as to whose handwriting that is on the face of the draft?

A. Unfortunately not. I don't know the handwriting.

Q. You see up on the top right hand corner, below the

typewritten word "Date", if you look at the hard copy, there appears to be a notation in Norwegian. Could you just read that out for me in Norwegian.

A. "Notert" tidligere?.

Q. Could you tell me what that means in English?

A. It's immediate translation would be "noted earlier".

Q. Noted

A. The verb "to note".

Q. Yes. And the "noted" is in parenthesis?

A. Yeah.

Q. And there appears to be a question mark after the "earlier"?

A. Yes.

CHAIRMAN: I didn't catch the second word, Ms. O'Brien.

MS. O'BRIEN: "Earlier".

Q. And of course, given that we know this draft didn't come into existence until the 21st September, and given that we know that the letter that was signed by you is dated the 15th September, that would be consistent, wouldn't it, with what actually occurred?

A. Sorry...

Q. I'll just go through it slowly with you.

A. Sorry.

Q. We know that this draft, that the typed draft appears to have been prepared by Mr. O'Connell and forwarded to Mr. O'Brien on the 21st September?

A. Okay.

Q. Right. We know that you didn't sign the final letter until either late on the 22nd September or some day subsequent to that; all right?

A. Yes.

Q. So, in fact, the annotation there, "'notert" tidligire', was consistent with what happened, in that the letter which you signed was in fact backdated; isn't that correct?

A. When I signed it, I signed it yeah, as we concluded the beginning of week number yeah, the week starting 25th September, I was travelling in Africa the week starting on the 11th September until Sunday the 17th. So in my view, this letter could have been produced on the 15th and been prepared for signing or put up for signing at the later stage.

Q. Why do you say that, when we know that this draft here on the legal division files didn't come into existence before the 21st?

A. No, but I didn't know about the process you are referring to here. I was not part of that process.

Q. I see.

A. I was presented to a letter that had a date, the 15th September, and I wouldn't necessarily expect that it was backdated when I signed that letter.

Q. I see your point. I understand the point you are making. When it was presented to you, it was dated

the 15th September; and you had no idea, when the drafts were prepared, when it was finalised?

A. That's right.

Q. Now, if I just go back to the letter that you actually signed on the 15th September. Do you have it there, the letter you actually signed?

A. Yes, Binder 61 or Tab 61?

Q. Yes, I think that's correct; it's behind Tab 61 in your book, yes.

You say that when this was given to you to sign, it was already dated the 15th September?

A. Yes.

Q. Now, can you tell me who presented the letter to you to sign?

A. I don't recall specifically, but it could have been a secretary, perhaps Arve Johansen's secretary.

Q. A secretary?

A. A secretary, yes. I didn't have a personal secretary.

Q. I see. So it could have been a secretary that you shared amongst a number of executives; is that right?

A. Yes.

Q. Now, you say in your statement that you were aware that this was going to be used by Mr. O'Brien in his dealings with Advent?

A. I think we adjusted that "might be" or the statement yesterday

Q. "Might be", yes.

A. to "could be".

Q. Yes, "could be". Well, on what basis did you have that impression, that it could be used by Mr. O'Brien in his dealings with Advent?

A. I think it must have been a feedback from the letter of the 11th.

Q. Yes, but did anybody tell you?

A. I wanted to achieve something by the letter of the 11th, and it could be that there was feedback that it might be the case that we have a common interest, or there are issues with Advent that we can address in a joint effort in order to achieve the either the exclusion or, let's say, the option, or as it's stated here, get them in on a firm basis which kept the opportunity is kept open, so...

Q. And who would have given you that feedback?

A. That could have been Mr. Peter O'Donoghue or perhaps Per Simonsen.

Q. I see. I take it that as an Assistant Director in Telenor, with your expertise in project finance, it wasn't usual that your letters would be drafted for you, was it?

A. No.

Q. You said in your memorandum that, as you understood it, that this letter was prepared by a collaboration between Mr. O'Brien, William Fry Solicitors, and Telenor. Now, on what basis did you have that

knowledge?

A. I think that was presented to me when I signed it, but as you see in the drafts, there are no names to it.

So it could have meant that when it was drafted, somebody else could have signed it at the end, Knut Digerud, Per Simonsen.

Q. Well, do you think Mr. Simonsen was the one who would have told you that?

A. I don't have a specific recollection of that.

Q. Did it ever occur to you to ask why it wasn't signed by Mr. Simonsen, or indeed by Mr. Digerud, and why you were being asked to sign this letter?

A. Because I dealt with Advent in the first place, and I also had a direct contact with the Advent representative, Helen Stroud.

Q. And was that explained to you at the time that that was why you were being asked to sign this letter?

A. No.

Q. So that's your speculation or your surmise?

A. Sorry?

Q. That's your speculation?

A. That?

Q. You are speculating that that's why you were asked to sign it?

A. Sorry, I don't understand, but the reason the question before that, please, or what was

Q. I asked you did somebody explain to you that the

reason you were being asked to sign it was because it was you who had had the relationship with Advent?

A. Yes. And I took some initiative on the 11th September as well.

Q. Yes, you did. Yes.

A. So it would probably be the most natural thing that I followed up on that letter.

Q. I see.

Did you have any feedback from anyone as to what the outcome of that letter was? Did you receive any feedback?

A. No, I did not.

Q. You would have known ultimately, though, that Advent went out; they didn't get their 5%?

A. Yeah, that I learned later in the process, yes.

Q. When you signed this letter well, firstly, when you came back to your office on the 22nd September, you had been in Copenhagen on the day trip and then subsequently signed that letter; did anybody tell you about the meeting that Mr. O'Brien attended with Mr. Johansen on that Friday, the 22nd September?

A. I have learned about that meeting, but whether that was which day I learned about it, I can't recollect.

Q. What did you learn about it?

A. I learned that or heard that there had been a meeting between Denis O'Brien and Arve Johansen.

Q. And what did you understand was the purpose of that meeting?

A. I think there were some issues regarding ownership and ownership structure, but that's my vague recollection.

Q. I see. Did anybody mention to you at that stage that Mr. Desmond was going to come in and underwrite Communicorp's financial participation?

A. Not at that date, no.

Q. Is that not surprising, that you weren't told that, given that you were the person dealing on the project finance side?

A. Well, it's shareholder issues, and a mixture of shareholders was not my responsibility, and it was not an issue that was discussed on a frequent basis or regular basis. And my link to Advent was mostly focused on Advent's support of the Communicorp Group, not Advent as a direct investor.

Q. I see. Can I just refer you now to the letter of the 29th September; that's at Divider 64 of the book we are working from. And it's from Professor Michael Walsh of IIU to the Department of Transport, attention Mr. Martin Brennan, re Esat Digifone Limited.

"Dear Sirs,

"We refer to the recent oral presentation made by the consortium to the Department in relation to their proposal for the second GSM cellular mobile phone

licence. During the course of the presentation, there was a detailed discussion in relation to the availability of equity finance to the consortium from Communicorp and a number of institutions.

"We confirm that we have arranged underwriting on behalf of the consortium for all of the equity (i.e. circa 60%) not intended to be subscribed for by Telenor. In aggregate, the consortium now has available equity finance in excess of $\text{N} \frac{1}{2}$ 58 million.

"We do not foresee any additional need for equity; however, we are confident that if such equity is required, we will not have a difficulty arranging it.

"Yours faithfully, Professor Michael Walsh, managing director."

I think you said in your memo Communicorp thought it was appropriate to send this letter to the Department?

A. That Communicorp thought

Q. Thought it was appropriate; that's what you said in your memorandum.

A. Yes.

Q. Now, what did you mean by that?

A. I think at that time I was or around that time I was informed by I believe it was Knut Digerud, but it might have been others, that Communicorp had entered the scene and they would take the responsibility of underwriting.

Q. Yes.

A. And that that was seen the impression I got from Telenor internals was that it was seen as a positive move compared to the deadlock or the situation with Advent.

Q. I see. Did you know about this letter in advance of the 29th September?

A. Not that I can recall, no.

Q. Did you ever see it in any draft form?

A. Definitely not in a draft form. Perhaps as an original at a later stage, but I don't believe that either.

Q. Now, I think you say that it wasn't until sometime later that you learned that the letter had been returned

MR. FITZSIMONS: Sorry, Chairman, just to assist everyone and to avoid any confusion on anyone's part, because it's gone on the record. The witness referred to Communicorp at line 17 of the transcript; Ms.

O'Brien didn't pick him up on that. I wonder, would she just look at that line and see if

CHAIRMAN: In other words, that Communicorp were transposed for IIU.

MR. FITZSIMONS: Yes.

CHAIRMAN: I think we can clearly make that amendment.

You are quite right, Mr. Fitzsimons. Obviously it was a mere slip of the tongue. Of course.

Q. MS. O'BRIEN: I think you indicated that you learnt

about that sometime later, sometime after it was

returned; is that correct?

A. Yes.

Q. I think in your memorandum you have also stated that you believe you may have seen or that you did see some of the documents in relation to the IIU involvement in early October; isn't that correct?

A. Yes.

Q. And that you had a concern at the reference to Bottin International in those documents?

A. The reference to Bottin caused us concerns, yes.

Q. And would I be right in thinking that your concern in relation to Bottin International arose from the provisions of and contents of one of the side letters signed by Communicorp and IIU?

A. Yes.

Q. And I think I am not going to open it unless you wish me to but I think under the terms of one of those side letters, IIU assigned all of its rights and obligations under the agreements to Bottin International; isn't that right?

A. Yes.

Q. And you wrote to Mr. O'Brien on the 6th October of 1995 in relation to that matter, and you'll find that at Divider 72 of the same book that we are working from.

Just before I open that to you, can I take it that you

would have shared your concerns in relation to Bottin with the other Telenor executives with whom you were working on the Esat Digifone project?

A. Yes.

Q. Who, in particular, would you have shared it with?

A. Per Simonsen and Knut Digerud.

Q. Now, it's addressed to Mr. O'Brien. It's headed "Confidential. Communicorp Group Limited. Re Bottin International Investment Limited". Dated 6th October.

"Dear Mr. O'Brien,

"We refer to the letter dated 29th September 1995 from

IIU. Based on the content of this letter I would

kindly ask you to provide Telenor with the following

information on Bottin:

"Date of foundation.

"Owners.

"Board of directors.

"Balance sheet as of 30th June, 1995.

"Annual report for the last 3 years (if any).

"Please send a copy of this information as soon as

possible to both me" you give your fax number

"and Per Simonsen". And you sign it "Yours

faithfully, Knut Haga".

I think you said you got no response to this letter?

A. Yes.

Q. I think you also said you discussed the matter with

Mr. Digerud?

A. Yes.

Q. And that Mr. Digerud agreed to incorporate it into a letter which he intended to send directly to Mr.

Michael Walsh of IIU?

A. Yes.

Q. Now, I'll just refer to you that letter. It's at Divider 75, again in the same book. Do you have it there?

A. Yes.

Q. It's dated the 12th October, 1995. It's addressed to Mr. Michael Walsh.

"Dear Mr. Walsh,

"Although we have not yet had the chance to meet, let me take this opportunity to welcome you aboard as stakeholder in Esat Digifone Limited. We appreciate your underwriting of the Irish side of the bid and sincerely hope that this step will remove any doubt within the Ministry about our consortium's financial capabilities and commitment in the race for the second GSM licence.

"A matter of concern for Telenor is, however, the side letter signed by Denis O'Brien and yourself on the September 29th, especially clause 2, assigning the arrangement agreement to Bottin International Investments Limited. In order to determine our follow-up on this issue, we urgently need the following information on Bottin."

Again he lists the same information you sought in your letter of the 6th October, and again he asked him to forward such information to you and Mr. Simonsen; that he could also contact your legal representative in Dublin, Mr. Michael Irvine or Mr. Arthur Moran of Matheson Ormsby Prentice.

And finally he concludes: "As we intend to finalise the shareholders agreement and articles of association within the next few weeks, I will contact you within short to arrange for the necessary meetings. I look forward to meeting you soon.

"Yours sincerely, Knut Digerud."

And it's CC'd Denis O'Brien, Communicorp Group Limited.

I take it you were aware that that letter was sent?

A. Yes.

Q. Do you know what response was received to that letter?

A. No.

Q. Sorry?

A. I do not know what kind of response was received.

Q. Do you know whether Telenor ever received the information that you were looking for initially in your letter of the 6th October, and then Mr. Digerud in his letter of the 12th October?

A. No. I do not know that.

Q. You didn't receive it; isn't that correct?

A. I didn't receive it.

Q. And to your knowledge, nobody else in Telenor received it?

A. I doubt that anyone received any responses.

Q. I see.

If I could just take you on now to the next book; it's Book 49.

Now, I know you told us, from checking your diary yesterday, that you weren't in Dublin in October of 1995, but it looks as if you were in Dublin and attended a number of meetings in November of 1995; isn't that correct?

A. Yes.

Q. Now, if I can take you to the first meeting that I want to refer you to. That's at Divider 86 in the book we are working from, and that's an attendance of Mr. Arthur Moran of meetings which took place on the 9th November, 1995. And it looks as if he initially met with yourself, Mr. Simonsen and Mr. Digerud, and then you were joined by Mr. O'Donoghue, Mr. O'Toole and Mr. Gerry Halpenny of William Fry in the Davenport Hotel. And that's the handwritten attendance, and we have a typed version of the handwritten attendance, just for ease of reference, behind it. So I'll just take you directly to that.

Do you see at the top it's "Knut Haga/Per Simonsen/Knut Digerud.

Votes when Transfer Notice issued or deemed

issued.

Share subscriptions when? how funded?

Breach - what penalty applies?"

Then on the right-hand side it records "Davenport 126.

Peter O'Donoghue and Richard O'Toole and Gerry

Halpenny.

Communicorp/? or Esat Telecom requested not

conceded.

Funding how secured? 88% Communicorp

12% Executives - C& Esat

IIU are Department aware?

Yes, 29/9/95 letter to Department. Department replied

that letter not taken into account copy to be

supplied to us.

Business plan: is it that submitted to the Department

or the next one to be adopted? Budget to be adopted

at the directors meeting.

CEO will after 2 years there be a Deputy CEO? Board

Existing Debts - incurred by Esat or joint venture

account.

Use of capital contributions licence fee."

Then you went on, I think, to deal with various

articles in the articles of association and the

proposed shareholders agreement; isn't that right?

A. Yes.

Q. Now, do you recall the discussion here surrounding the

Department's awareness of IIU?

A. I do not recall any specific the specifics of that discussion.

Q. I see. You can see clearly that Mr. Moran has recorded that there was a question raised over whether the Department were aware of IIU's involvement, can't you?

A. Yes.

Q. And having raised the question, it appears that someone at the meeting has said yes, the 29th September, 1995 letter to the Department that's the one we just referred to; do you see that?

A. Yes.

Q. Then it says "Department replied that letter not taken into account copy to be supplied to us."

A. Yes.

Q. Now, do you recall that discussion, at the meeting about the letter of the 29th September, the fact that the Department hadn't taken it into account, that it had been returned, and that you presumably Telenor were looking for a copy of the letter by which the letter of the 29th was returned?

A. Bringing this to my awareness through this process, I may have some recollection of such a discussion, but I can't recall any specific details.

Q. Do you remember that being a matter that you and Telenor executives were conscious of at that time?

A. Yes, I believe that. But I think or Per Simonsen

and Knut Digerud dealt, as representatives for Telenor

Invest, dealt with these issues more than I did, or

they were in charge of these issues.

Q. And you would have known that one of the issues that they were dealing with was the Department's awareness of the IIU involvement?

A. Yeah, according to this.

Q. Well, of your own recollection as well?

A. I don't have any specific recollections of actions being taken in that regard because, as I said yesterday, this was more local issue. We felt that the local partner was the right one to address such issues.

Q. In what way would that be an issue for the local partner to address?

A. Sorry?

Q. In what way or why would that be an issue for the local partner to address?

A. I think it can be viewed from a general view that it would be a bit strange, perhaps, that a Norwegian company addressed the Department when we had a local partner that should know the how to address a Department or officials or

Q. But Telenor were equal partners in this with Communicorp; isn't that right?

A. Yes. But we focused mainly on the technical side. We were the industrial partner.

Q. But Telenor were in exactly the same position as Communicorp regarding what was in the bid document; isn't that right?

A. Yes. But these are matters that Per Simonsen and Knut Digerud dealt with.

Q. I see. Well, I suppose what I was really trying to ask you and get at is, while I appreciate that Mr. Digerud and Mr. Simonsen would have dealt with them, did you know that this was one of the issues they were dealing with?

A. Yes, I was present, so I must have been aware of that, yes.

Q. Did you know how the or how it was intended that the local partner would deal with this issue?

A. No.

Q. You didn't?

A. No.

Q. Did you discuss it at all with Mr. Simonsen or Mr. Digerud?

A. Probably.

Q. Probably you did?

A. In general terms, but again, it's

Q. This was an important issue. It was an issue that you were discussing at this meeting with Matheson Ormsby Prentice, and you are saying that it was a matter that would be left to the local partner to deal with.

Surely you would have wanted to know how it was going

to be dealt with?

A. No. Again, Per Simonsen and Knut Digerud dealt with that. But yeah I didn't

Q. As far as you were concerned, how did they deal with it?

A. I don't have any specific recollection.

Q. You have no recollection at all?

A. Well, I may have been in other meetings where this has been addressed dealt with by Per Simonsen and Knut Digerud and perhaps some assistance from Arthur Moran.

Q. Well, you were at other meetings, and we'll come and look at them, and maybe when we look at those, it might assist your recollection of what was happening at the time.

Can I just draw your attention to below that. It says: "Existing debts incurred by Esat or joint venture account."

Now, can you tell me what that was about?

A. I would say that I would assume that this related to cost linked to the project as of that day paid by the account that was defined in the joint venture agreement, and I would assume that that's Esat Telecom or Esat Holdings or something like that, not Esat Digifone.

Q. Well, we know under the joint venture agreement that the joint venture account was opened, and that required a signature from both Telenor and from

Communicorp, and there were particular people deputised to sign on their behalf. What other debts could you be referring to there existing debts incurred by Esat?

A. I think this was a project issue, operational cost incurred so far in the process, and I did not deal with the accounts of the project.

Q. Can I ask you who it was who dealt with the accounts of the project on the Telenor side?

A. I would assume that that was Telenor Invest that had injected money into the joint venture account, and then there was a separate account for the joint venture account.

Q. Yes, but when you came to conclude the shareholders agreement and you had to decide what expenses were legitimate expenses for the purposes of the project, we know that I think it was Mr. O'Donoghue who dealt with it on behalf of Communicorp. Who was it who dealt with those on behalf of Telenor?

A. According to the joint venture agreement, which we saw yesterday, I believe it was Per Simonsen. But I didn't have any hands-on or any didn't have anything to do with the accounts of the joint venture.

Q. I see.

Can I just ask you to go over the page at Divider 87. That's Mr. Halpenny's note of what appears to be the same meeting, and I just want to draw your attention

to the first top part of that note. Do you see it?

Again he records Mr. O'Donoghue, Mr. O'Toole, Mr. Digerud, yourself and Mr. Simonsen in attendance with both Mr. Moran and himself.

He says: "Esat Telecom rather than Communicorp.

"Bottin IIU appearance?

" Telenor unhappy re Bottin

"'Letter either from or for the Department' we are uncertain until Mr. Halpenny can confirm it.

"Re IIU."

Now, you were the one who was returning with the Bottin issue; isn't that right?

A. I was asked to take some or write the letter to Denis O'Brien in relation to the Bottin issue. I was not asked to follow up on the Bottin issue as I was on the Advent issue. So I was asked to take initiative to try to get some information or clarify who and what Bottin was.

I believe that when Knut Digerud addressed the same issue at a later stage, he took over that responsibility. I was not asked to follow up on that after his letter.

Q. So it passed to Mr. Digerud?

A. Yes.

Q. Now, Mr. Digerud was at the meeting, and you were discussing Bottin IIU, and then arrow "Appearance?"

What does that record? Do you think I am

told can I just check something for a moment, if
you bear with me.

No, there is no question mark in the original, so you
can ignore the question mark, but it says

"Bottin IIU appearance.

"Telenor unhappy re Bottin."

Can you explain what that reference to "appearance"
means there?

A. No.

Q. You can't?

A. No, I can't.

Q. And then below that

A. I could speculate that it has something to do with the
letter, the appearance: Does it exist? Does the
company appear? But that's my it's just that's
something I could speculate on here and now, because,
as you said, we hadn't received any answers, and there
could be a question: Does it exist? Or what is it?

And a remark like that, and that could be the outcome,
but this is a lawyer's note on the other side, so...

Q. I suppose if you weren't getting the information you
were looking for, it might be reasonable for you to
raise that question at this stage?

A. Yes.

Q. Then it records below that, "Letter"; we are not sure
whether it's a "for" or "from" "the Department re
IIU".

Can you assist the Tribunal at all as to what was being discussed that might have prompted Mr. Halpenny to record that entry or to make that entry?

A. I think no, again the note is from another person.

It relates fairly well to the notes that we read from Arthur Moran.

Q. Okay. Can I ask you to turn to Divider 90 in the same book. And that's a note of Mr. Halpenny of a meeting on the 21st November of 1995 which you also attended. And again we have a typed version of these handwritten notes, and it's just behind the handwritten notes. I think it will probably be easier for you to read.

Okay?

A. Yes.

Q. Again, I am just going to deal with the first page of the attendance, because the rest relates, I think, to technicalities of shareholder negotiations.

It records that Mr. O'Toole, Mr. O'Donoghue, yourself, Mr. Simonsen were present. So it's exactly the same people as were present on the last occasion, but Mr. Digerud isn't there on this occasion. And also Mr. Moran and Mr. Halpenny.

"Position re the Department IIU.

"Not a problem for M. Brennan in the Department.

"Main concern that DOB and TN (Telenor) mainly involved in the operational side.

"Present the agreement to IIU ASAP.

"CSFB position paper was being marketed good reaction so far.

"Replace position between DOB Advent with new" there is a word we can't make out "cleaner agreement all round.

"Carve out the radio division.

"40:40:20 issue should not be a problem, arrow.

"Telenor party could be Telenor Invest or new Irish company, arrow, letter of support/comfort."

Now, you see there that the involvement of IIU is again being discussed at that meeting; do you see that? Do you recall this meeting?

A. Not specifically. We had several, or a few meetings, and many issues were discussed through these meetings.

Q. You see, not alone is the IIU issue being discussed at this meeting, but somebody at that meeting was able to tell the meeting that the involvement of IIU was not a problem for Martin Brennan in the Department, main concern that Denis O'Brien and Telenor mainly involved on the operational side.

Now, can you tell the Tribunal who it was at that meeting was in a position and told the meeting that information?

A. That, I cannot recall, but I would expect that it was from the other side. Whether it was yeah who it was, I can't

Q. From the other side, do you mean

A. Communicorp, Fry's.

Q. Mr. O'Toole or Mr. O'Donoghue?

A. Most likely, yes.

Q. Could it not have been Mr. Simonsen?

A. No. He didn't well, I wouldn't assume it to be him. He didn't deal directly with the Department, as far as I recall it. No, it would have I am quite sure that I am fairly sure that it's been addressed by Richard O'Toole or Peter O'Donoghue, most likely Richard O'Toole, an adviser to Denis O'Brien, I believe he was at that time. But again, it's not I don't recollect the details.

Q. You don't recollect it, but you say that you don't believe it could have been Mr. Simonsen?

A. No.

Q. That's solely because you didn't think he had any dealings with the Department; is that it?

A. Yes.

Q. Now, below that you will see "CSFB position paper was being marketed". Do you see that?

A. Yes.

Q. I think you told us that at an early stage, you were aware that Mr. O'Brien wanted to place on the US market?

A. Yes.

Q. So now, not only were you aware, but you are being told that the paper was actually being marketed by

CSFB?

A. Yes.

Q. So it was quite clear to Telenor, at that stage, that Advent weren't coming up with the 30 million; isn't that right?

A. Yes.

Q. You will see below that, then, "Carve out the radio division". I think that was the restructuring of Mr. O'Brien's radio and telecommunications interests. And then "40:40:20 issue arrow should not be a problem."

Now, what issue was that that was being discussed?

A. It seems to be related to the shareholders distribution of shares.

Q. Didn't you know at the time that in the bid, the Department had been told that the capital configuration of the licence company would be 40% Telenor, 40% Communicorp and 20% institutional investors?

A. That, I knew, yes.

Q. And you knew at that stage as well that the institutional investors were gone, and the capital configuration was now 37.5:37.5:25; isn't that right?

A. That, I am not sure I was aware of.

Q. Well, you were at this meeting, and it's quite clear that at the meeting there was discussion about whether that issue would give rise to a problem; so isn't the

likelihood that you knew at that stage that Mr.

Desmond was in for 25% ?

A. Sorry, that who went in for 25% ?

Q. 25% Mr. Desmond was going to get 25% of the shares?

A. Okay. You are saying so, but as far as I can recall and from what I have seen, it's IIU.

Q. Well, IIU/Mr. Desmond, whatever?

A. In my terms it's not the same.

Q. All right. Well Mr. Desmond/IIU, or if you want to call it IIU, that's fine. But you must have known at this stage that what was being sought and what they were going to get was 25%, not 20%.

MR. FITZSIMONS: I am sorry, Chairman, the witness is giving his evidence. I object to him being effectively heckled by Ms. O'Brien. If you want to call it what are the words "If you want to call it IIU or whatever" I mean, the witness is giving his evidence. Calling it IIU, that is the evidence before the Tribunal for a long time. The fact that Ms. O'Brien might prefer to use "Dermot Desmond" is of no import to your inquiry.

The witness is doing his best to answer questions in a foreign language; there is an interpreter there. And it's a very simple thing to ask ordinary questions without getting into an argument with the witness.

CHAIRMAN: Well, I know a number of witnesses have used the phrases "IIU" and "Dermot Desmond" as

effectively interchangeable, which I accept is not correct in law, but I think we'll just proceed with the inquiry.

And perhaps, Mr. Haga, I was just going to ask you in any event, do I have a correct picture of your evidence that you had regarded yourself as being very closely connected with dealing with Advent International in relation to its being a possible funder of the consortium?

A. Yes, I was asked to follow, address and follow up on the Advent issue, and that was a specific, you could call it, task, that I felt I ran the line and did the work on that.

CHAIRMAN: And as you have said, you took a certain initiative yourself?

A. Yes.

CHAIRMAN: And do I understand your evidence correctly that your role was less active in relation to dealing with whether it be IIU or Mr. Dermot Desmond as a possible partner?

A. That's right, Sir.

CHAIRMAN: That you have said that you were specifically asked to address a query in relation to Bottin International because they had had certain dealings on foot of the side letter and that you had pursued that?

A. That's right, Sir.

CHAIRMAN: But you say that you were less active as regards the Telenor participation in dealings with IIU and that these were mostly dealt with by Mr. Simonsen and Mr. Digerud?

A. That's correct, Sir.

CHAIRMAN: All right.

Q. MS. O'BRIEN: Now, can I just refer you to the document behind Divider 98. And this is a document that you created yourself, based on what is printed on the letter, left-hand side.

It says "K. Haga, 18th December, 1995", and is headed "Term sheet bridge loan."

Do you see that?

A. Yes.

Q. And I think this is one of the matters that you were working on, isn't that right, the bridging loan between Telenor and Communicorp/Esat Telecom?

A. As far as I recall, there were no loan agreements made between Telenor and Esat Telecom.

Q. Well, there was a bridging loan advanced, wasn't there?

A. There was a process. I am not sure whether it led to a final

Q. I see, all right. But you weren't involved in the finalisation of the agreement, if there was an agreement concluded?

A. I don't does it exist, that agreement?

Q. We haven't been able to find an agreement, but as we understand, there were funds made available on a bridging basis by Telenor to Esat Telecom, as it then was. But we haven't been able to find an agreement, but we know I don't think there is any dispute that there were funds provided by way of a bridging loan.

A. This is a long time ago, but I believe it was a process that ended up led to an agreement between Telenor and Esat Digifone.

Q. Can I just refer to you this document, then, very briefly.

The lender was to be Telenor Invest.

The borrower: Esat Telecom.

Subsidiary: Esat Telecom Limited.

Amount: Maximum $\frac{1}{2}$ IR900,000.

"Purpose: Bridge financing related to committed share capital injections to Esat Digifone. The bridge financing will be repaid when the ongoing private placement of shares in Esat Holdings Limited through CS First Boston."

You then dealt with security, due date, margin, currency, up-front fee, costs, drawdown, restrictions and conditions precedent. And "NB, this term sheet draft does not represent an offer or commitment to lend money to the borrower."

I suppose all I wanted to draw your attention to in that document was that it appears that it was clear to

you, anyway, as of the 18th December, which was the date you created this document, that Esat Telecom/Communicorp was not going to have funding available until after the completion of the placement by CS First Boston; isn't that right?

A. I think it's not right to draw the conclusion that they didn't have any other options because that, I don't know.

Q. Absolutely.

A. But this was a process where we were trying to achieve some objectives.

Q. No, I accept that.

A. And this was part of a of this effort.

Q. I accept that. But you have recorded that the bridging finance will be repaid when the ongoing private placement of shares in Esat Holdings Limited through CS First Boston.

A. Yes.

Q. So the repayment of this loan that was under negotiation, or in respect of which there was a process, as you call it, was subject to the private placement of the shares?

A. As I said no, it was a process going, and there could be this process or other processes. CS First Boston, I think it's not right to make or it's conclusions drawn on a draft, or a process in the middle of a process. I think the final outcome is

where you can draw the conclusions.

Q. Right. We'll look at the heads of agreement that you ultimately concluded with them, but just before doing so, I want to refer you to another attendance of a meeting that you attended. And that's at Divider 105, and that's on the 10th January of 1996. Do you see that? Do you have that before you?

A. Yes.

Q. If you look at the typed version?

A. Yeah, 105, a handwritten

Q. There is a typed version behind it.

A. Yeah.

Q. And this is a meeting of the same people.

A. Yes.

Q. "At William Fry: Gerry Halpenny, Peter O'Donoghue, Richard O'Toole with Per Simonsen, Knut Haga.

"14.2 still difficult

Chief Executive matter.

" IIU points.

"1.6 they can have budget later

1.8.

8.5 board to decide the delegation to Management

shall decide on the appropriate level if delegate

authority to management.

"11.1.3

"T, arrow, lends to Esat D

Esat D issues to Esat on 1p paid basis

"Department still believes in 40:40:20 split.

"Cash call likely soon = i½12 million 20/1/96.

"Michael Walsh, N. O'Byrne, Sonya Price.

"Recital E on whose behalf are IIU acting!

"IIU Nominees listed. Need to talk to the

Department."

And then you went on to discuss, I think, further

aspects of the shareholders agreement.

Now, do you remember that meeting?

A. Again, this is only a sequence of meetings with the

issues where, as we can see, often the same, so one

meeting or another, it was a series of meetings

throughout November, 1995. So I cannot specifically

remember, in general, this is this meeting, this is

that meeting; but you can draw my attention to issues

being discussed which I can recall were discussed

throughout that period.

Q. And it was the same issues being discussed at this

meeting, wasn't it, between the same people?

A. Yes.

Q. The 40:40:20 split. I think the possibility there,

again, of a loan by Telenor to Esat Digifone.

Somebody seemed to be suggesting that there could be a

cash call of 20 million as early as the 20th January.

And again, the IIU question, both in terms, I think,

of the draft shareholders agreement, recital, on whose

behalf are IIU acting, and then below that "IIU

Nominees listed need to talk to the Department."

Do you see that?

A. Yes.

Q. Can I just ask you, given that you say that you weren't involved in the IIU matter and you weren't involved in the capital configuration matter, what was it that you were bringing to this meeting that took place on the 11th January the 10th January?

A. In general, I was in also these meetings, but I would like to draw the attention to 11.1.3, "T lends to Esat D", where I was asked to assist. And you saw a previous draft, and I would like to highlight that it now states "Esat D", who I would assume is Esat Digifone, so there had been a change between an ongoing process and that I probably assisted at least assisted on that matter.

Q. So it would have been on the finance or the bridging finance?

A. Yes

Q. That would have been your involvement.

If I can just ask you, then, to look behind proceed in the book and look behind Divider 107, there is a fax from Peter O'Donoghue to Gerry Halpenny of William Fry's; it's dated the 11th January, 1996. "Could you please call me later if you get a chance."

And enclosed with that is a document headed "Heads of terms related to equity investments in Esat Digifone

Limited between Telenor Invest and Communicorp Group

Limited."

Do you see that document?

A. Yes.

Q. If you just go over the page, you'll see that in fact you signed, or you appear to have signed it on behalf of Telenor; do you see that?

A. Yes.

Q. And Mr. O'Brien appears to have signed it on behalf of Communicorp?

A. Yes.

Q. And this also relates, doesn't it, to the proposed finance of up to \$1/29 million?

A. Yes.

Q. It says

A. I would like to highlight the last two sentences on page 1. It's not a binding commitment.

Q. Yes, I know, yes.

A. Because they were not entitled to.

Q. No, it wasn't a binding commitment. It was effectively heads of agreement.

A. Part of a process, yes.

Q. It says "The parties are shareholders" I don't think I need to read it all. It refers to "The parties hereby agree that they will endeavour to negotiate and agree the terms applicable to a bridging loan to be made by Telenor Invest to Digifone on terms

and conditions acceptable to all relevant parties involved in Digifone on the basis of the following indicative terms.

"Amount: i£½9 million.

"Up-front fee: i£½10,000. Payable by Communicorp.

50% due within seven days of the signing of these terms (non-refundable even if loan is not agreed or utilised)

"Interest rate: 2.5% above one or three months DIBOR payable by Communicorp rather than Digifone.

"Costs: Communicorp will be responsible for all out-of-pocket expenses other than legal fees incurred by Telenor not exceeding i£½IR2,500 and for all legal fees incurred by Telenor not exceeding i£½6,500 and VAT.

"It is intended that Communicorp will promote the incorporation of an affiliated company, to be known as Esat Holdings Limited, to carry out the private placement and to make its investment in Digifone. On the incorporation of that company, it is agreed that Esat Holdings Limited shall be entitled to take over the obligations of Communicorp under these heads of terms.

"These heads of terms do not represent a binding commitment on the part of Telenor Invest to lend money to any of Communicorp, Esat Holdings Limited or Digifone."

It was dated the 11th January 1996, and in fact both

of you initialled the foot of that page as well to signify your agreement. Do you see that?

A. Yes.

Q. So what you were contemplating there was a negotiation of a loan of up to \$29 million which would be structured in as a loan to Esat Digifone?

A. Yes.

Q. But, aren't I correct in stating, and correct me if I am wrong, that the purpose of this letter was to meet Communicorp's financing obligations to Esat Digifone?

A. I think the purpose of this loan was to ensure that Esat Digifone had the financial capabilities to meet the requirements when the licence was issued, which could be issued at any time, and

Q. Aren't I right in thinking just bear with me for a moment I am correct in thinking, aren't I, that Telenor had no deficiency in money; it could have paid any call that was made at any time. Isn't that right?

A. Yes, that would be well, on a commercial basis, yes, based on proper internal procedure.

Q. It was Communicorp who had the shortage of money, wasn't it?

A. No. Well, I think it's one issue I would raise, because Telenor had provided a lot of resources into Esat Digifone at that stage, three engineers travelling back and forth, and they were they were resources that were billed from Telenor to Esat

Digifone. So at that time I would assume there was an imbalance, or an overdue payments that were overdue in the joint venture, and a way of solving that was to switch overdue payments into a formal legal or a loan agreement.

Q. I see. A loan agreement by Telenor to Esat Digifone?

A. In the accounts the exposure wouldn't necessarily change Telenor's position.

Q. You wouldn't know anything about how this progressed, do you?

A. You may see that I have been active later, I don't think so, but I assisted on you will see that many of the terms are similar to what was in the proposal, so it's been an ongoing process with assistance with probably lawyers from both sides.

Q. Now, can I ask to you look at the document behind Divider 113. Do you see that? It's a letter to Mr. Digerud from Mr. O'Brien. Do you see that? Do you have it before you?

A. Yes.

Q. "Dear Knut,

"I want to thank you for getting back to me so promptly on the suggestion which I put to Telenor Invest through you and to IIU through Michael Walsh at our meeting on the 9th February that you might consider selling a portion of your share in Esat Digifone to Esat Telecom Holdings. I have noted your

response that Telenor Invest has no interest in reducing its shareholding in Esat Digifone at this time.

"As I mentioned when I talked with you and Michael Walsh, our financial advisers, CS First Boston have told me that prospective investors in Holdings would be more attracted to our current private placement offer if Holdings could consolidate its investment in Esat Digifone on the basis that it would own more than 50% of the company. This has been confirmed to me even more strongly during my current meetings with prospective investors in the course of our roadshow in the United States. I believe that such an adjustment would also be acceptable to the Department of Communications. Accordingly, I will pursue the matter further with Michael Walsh of IIU, and I will keep you informed if it should emerge that IIU might be willing to do an acceptable deal with Holdings to this effect.

"In the meantime we shall continue to work with Telenor Invest and IIU on the basis of the existing shareholding proportions.

"Yours sincerely,
Denis O'Brien."

What I want to ask you about that is, did you know anything about Communicorp's efforts to secure an additional 12.5% shareholding in Esat Digifone?

A. I knew there were efforts being made that Esat, or

Communicorp/East Telecom at that time, or Mr. Denis O'Brien was eager to get in a better position, or have a majority shareholdings in Esat Digifone or a higher, or a bigger voting power, and that's been a general understanding within Telenor for a while at that time.

Q. So that would have been prior to the 27th February, 1996?

A. Yes.

Q. Do you recall when you first became aware that Mr. O'Brien was endeavouring to improve his position or to increase his shareholding?

A. What I stated was just a general feeling or assumption internally. In February, 1996, I wasn't that actively involved, and I was moving on with other projects within Telenor, so it was just could have been in the corridors; I didn't attend or participate in these types of discussions.

Q. I see. Who would have been your source of information on the Telenor side in relation to these kind of discussions?

A. I must admit, at this time my focus was elsewhere. I finished my tasks, my main tasks. It could have been that I was called upon there could be issues later, but in general, this wasn't my main focus at that time.

Q. I know it wasn't your main focus, but you did say that

you could have been in the corridors, you didn't attend or participate in these type of discussions, but that there was a general in view in Telenor that Mr. O'Brien was trying to improve his position; and all I asked you is, who would have been your source of information on the Telenor side?

A. That could have been Knut Digerud. I think what we saw in the letter of the 22nd September shows some initiative in the same respect.

Q. I just wonder what letter of the 22nd September that you were referring to there.

A. We can

Q. You said "We saw in the letter of the 22nd September"

A. Yeah, you showed me a letter. It's just from my memory from yesterday, but or was it today?

Q. Maybe you could just

A. Sorry, the 22nd, the meeting you referred to

Q. Oh, the meeting of the 22nd?

A. Yeah, the meeting, I'm sorry, there was a follow-up letter, perhaps. Again, it's a letter from Denis O'Brien to Knut Digerud. I've never seen a copy of this letter.

Q. Now, I just want to ask you about one final matter. If you turn to Divider 121, you'll see a minute there of a meeting of the board of directors on the 12th April, 1996 and Mr. O'Brien, Mr. Digerud, Mr. Walsh

and Mr. Johansen were present, and you and Mr. O'Donoghue and Ms. Catriona Beatty were in attendance. And the purpose of that meeting was to issue and allot an additional 998 shares, and to allot them as to 374 and 374 to Esat and Telenor and 250 to IIU Nominees Limited.

What I want to draw your attention to is just the final point, 2, in the minute. It says: "Subject to the signing of the shareholders agreement between IIU Nominees Limited, Esat Telecom Holdings, Telenor Invest and Esat Digifone, a further increase in the share capital be made to 2,999,000 shares at $i_{\frac{1}{2}}1$ each and that the contributions be made in accordance with the following amounts", and it sets out the proposed allotment of increased share issue. Do you see that?

A. Yes.

Q. Now, do you see that was subject to the signing of the shareholders agreement? Do you see that? It's recorded there in the minute.

A. Yes.

Q. Now, if you just go over the following page I know you weren't at the meeting on the 13th, but if you just go over the following page, you'll see there was another meeting of the directors on the 13th and another minute kept. And on the 13th, they proceeded with the issue an allotment of the additional 2,999,000 shares; do you see that?

A. Yes.

Q. I think we all know there was no shareholders agreement concluded between the 12th and the 13th April, and I wonder, can you assist at all as to why the company proceeded with the issue and allotment of the shares in the absence of an executed shareholders agreement, which it was recorded on the 12th April would be a condition precedent to the issue and allotment of the shares?

A. I don't have any explanation for that.

Q. You don't have any explanation; okay.

Thank you very much, Mr. Haga.

CHAIRMAN: I am aware, Mr. Haga, that you are very anxious to catch a flight later this evening, and I don't think there will be any difficulty about that, but there may be some of the other lawyers, including Mr. Fitzsimons, your own adviser, who may have some questions to ask you. I think, for continuity, it's probably satisfactory it's probably preferable if we defer all of the remaining questions until the afternoon, but we'll start to ensure that Mr. Haga is safely out of the premises to catch his flight, we'll start sharp at five to two.

Very good. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CHAIRMAN: Thanks, Mr. Haga.

Mr. McGonigal?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. McGONIGAL:

Q. MR. McGONIGAL: Mr. Haga, I appear for Denis O'Brien, and there are a couple of matters that I just want to ask you about.

A. Can you raise the volume, please?

Q. First of all I just want to try and understand your position within Telenor at the time. You have described yourself as an Assistant Director. Within Telenor, what did that mean?

A. It's within a holding company, Telenor International, I had one person that I reported to, that again reported to Mr. Arve Johansen, that was the CEO of Telenor International.

Q. And who was the person that you reported to?

A. His name is Ove Eren.

Q. Sorry?

A. O-V-E, E-R-E-N.

Q. So he was your immediate boss?

A. Yes.

Q. And whatever work that you were given to do within the company, the result of that work, presumably, was reported to him in the first instance?

A. Not on a project basis, but on carrying out my regular job in the position as Assistant Director of Telenor International.

Q. So in general terms, where you weren't concerned with

a specific project, you would report to this

gentleman?

A. Yes.

Q. But when you were on a specific project, then there might be a different chain of command?

A. Yes.

Q. And in this particular instance, dealing with the GSM licence, who was the person to whom you were immediately reporting?

A. In the initial phase it was Telenor Invest, and the managers of Telenor Invest that asked me to carry out some research, and then when the project was based, I reported to the project. That's in general terms.

Q. And precisely to whom did you report on the project?

A. It was Per Simonsen was in charge of the project, Esat.

Q. So Mr. Simonsen was, so far as you were concerned, your boss in relation to this project?

A. Yeah, you may say "boss", but "boss" is

Q. Sorry, the next in line?

A. The next level

Q. The next level?

A. of information.

Q. And just to try and fully understand it, would he then report, or his next level be Mr. Johansen?

A. No, this is my recollection, but this was Telenor Invest, so the next level would be either in the

early phase, not Knut Digerud, but the other one, that signed one of the

Q. Sjur Malm?

A. Sjur Malm, yes, sorry. And ultimately Knut Digerud.

Q. I see. And then Mr. Johansen?

A. Yes.

Q. Eventually it gets to him?

A. But the right person to answer these questions is Per Simonsen.

Q. That's okay. I am just trying to get a general flavour. I am not trying to hold anyone to anything, necessarily.

Now, just in relation to you yourself, you have very usefully brought your diary with you, I understand, and I just want to try and get clear in my own mind various dates as to where you say you might have been, and I am particularly concerned with July, August, September and October. Do you have your diary there?

A. Yes.

Q. Now, as I understand it, if we take July, July you were on your holidays?

A. That's right.

Q. And you returned from them and went in to work, as I understand it, on the 31st July?

A. Yes.

Q. And that presumably was what, a Monday or a Tuesday or

A. Monday, the 31st July.

Q. Now, am I also right in understanding that you stayed that week in Oslo?

A. Yes.

Q. And didn't go to Dublin?

A. I did not go to Dublin.

Q. It's a very small point, Mr. Haga, but I am just curious about it, but Mr. O'Brien, in evidence, has a recollection on the day of the bid, putting in the bid papers, and you and Mr. Bugge, he inviting the two of you to go down, and the two of you went down, and that was his recollection as people who may have been in Dublin at the time. But you're satisfied from your diary that you weren't in Dublin on that day; is that right?

A. I am a hundred percent certain.

Q. Sorry?

A. I am a hundred percent certain.

Q. So that your diary is fairly accurate?

A. Yes.

Q. So that am I right in understanding that when you travel, you make those entries into your diary?

A. In general, yes.

Q. In general. But

A. I would like to make one comment why Mr. O'Brien might be of the perception that I was around, because there was, at an earlier phase, a get-together/party in the

project where I attended, and there were some

Riverdancing and good fun.

Q. I think that was

A. I think he mixed that with his recollection. But you

will

Q. It was that night or the next day, I think, but

whenever it was, you were in Dublin for that?

A. Sorry?

Q. You were in Dublin for that party; am I right?

A. Yes. Sorry, I was in Dublin when that party was held.

I was not in there to participate in order to

participate in a party. It was not planned.

Q. And is your recollection that that was after the bid

went in or after the result of the competition being

announced, or can you recollect?

A. I think I believe it was at an early stage.

Q. Going on, then, from the 4th August towards September,

were you in Dublin during the rest of August?

A. Not according to my diary.

Q. Not as far as you can see?

A. Not as far as I can see.

Q. Okay. So we come to September, then, and looking at

September, first of all I understand that from the

11th to the 17th September, you were in Africa?

A. Yes. According to my diary I left in the evening on

the 11th and returned on Sunday the 17th.

Q. And prior to that, between the 1st and the 11th, were

you in Dublin, can you say?

A. According to my diary, I was in Czecha from the 5th, 6th to 7th September.

Q. You were in where?

A. Czecha Czechoslovakia.

Q. I see. Thank you. So it doesn't look as if you were in Dublin then either?

A. No.

Q. And then when you came back from Africa, as I understand it, you were in Stockholm, was it, on the 18th/19th?

A. It was on the 19th and 20th.

Q. And you were in Oslo, then, on the 18th?

A. On the 18th, yes.

Q. In your office, presumably. And then on the were you in your office on the 21st?

A. Yes, according to my diary.

Q. And then on the 22nd you were in Copenhagen for the day?

A. Yes.

Q. So that and then after that, I think from the 25th September the 22nd was a Friday, if I remember rightly; from then on, you were in Oslo the rest of September and all of October?

A. I was in Oslo for the week 25th to the 29th. And I was in Copenhagen on the 2nd. But you are referring to me being in Dublin, I guess?

Q. Yes. You weren't in Dublin in October, can I put it that way, I think is what you said.

A. I'll just run through it one more time. According to my diary, I was not in Dublin any time through October.

Q. That's what I thought. That's what you said earlier. Just as a matter of interest, can you tell me what you have in your diary for the 9th November?

A. 9th November, from 7th to 9th, I have noted that I was in Dublin. And I left Dublin the 9th, in the evening, a quarter past six sorry, a quarter to five. There are two flights: there is one BA flight and one SAS flight, I don't recall which one.

Q. The quarter-to-five flight was the one you were chasing. In relation to the 21st November, can you help me in relation to that

A. In sorry, in relation to?

Q. 21st November.

A. According to my diary, I left Oslo on Monday morning, the 20th, for Dublin and met with banks. I believe I left Dublin early Wednesday morning for Hungary.

Q. Was that the day after the 21st?

A. Yes.

Q. The 22nd. So you arrived on the morning of the 21st and left on the 22nd; is that right?

A. I arrived at around noon and stayed the whole 21st, yes.

Q. Thanks very much.

Now, I want to go back just for a second, Mr. Haga, to the documents that Ms. O'Brien took you through in relation to August of 1995, and in particular, I just want to seek clarification from you in relation to the document of the 2nd August of 1995, which is a document from Massimo Prelz to Mr. Haga. And I am not sure what number it was given, because it was handed to us. 24A, I think it may be.

It's 48, 26A. Do you have a copy of that? Do you have that document, Mr. Haga?

A. Yes.

Q. Now, I got the impression when you were being asked about this by Ms. O'Brien that your initial reaction was that you didn't recollect seeing that letter, and I am wondering, can you help me; do you have a recollection of seeing that letter?

A. I may or may have not seen it. I don't have any specific recollection.

Q. I just wonder if you could help me in relation to it. You'll see on the right-hand side, the top right-hand side, "Telenor Invest AS", and then there is something underneath that, "Korr Kode: 3401"?

A. Yeah.

Q. What's that? What is that? What does that mean?

A. It's part of Telenor Invest AS internal filing system, probably. It could mean "correction code" or

Q. It wouldn't have anything to do

A. I am not familiar, really

MR. FITZSIMONS: Perhaps, Chairman, if I could assist on that particular point. Those markings on some of the Telenor documents are archive record markings made long after the event for archive purposes. Those are my instructions. The witness has left Telenor and may not be aware of that fact.

CHAIRMAN: And on your instructions, Mr. Fitzsimons, you believe that applies to this document?

MR. FITZSIMONS: This document, yes, yes, those are my instructions. And there are quite a number of documents with those markings on them, and that's, I'm instructed, the significance.

MR. MCGONIGAL: That's very helpful, Mr. Fitzsimons; thank you very much.

Q. One of the things I am curious about, perhaps you can help me in relation to this, Mr. Haga, is that it would appear that that fax, wherever it was sent to, seems to have been sent around about 3.30, I think it is. It's on the very top left, 3.15 15.15, 2nd August, '95; do you see that?

A. Yeah.

Q. Now, the reason I am asking, because I wondered whether you had in fact seen that was because, if you go to the document which I think is before that, which is

A. I just would like to make a comment on that, please.

Q. Absolutely.

A. Its time and date was probably the time and date it was sent from AI plc.

Q. Absolutely.

A. And if it was addressed to Telenor Invest, that was not where I had my office, and it could also be it's a drafted letter, like I don't know the source well, I see the source is Telenor Invest.

Q. I appreciate that, and that's sort of the point I was trying to make. I am just curious as to whether you could have seen that, because if you turn to your letter of the same date from you to Denis O'Brien, Per Simonsen, which is 48(026)

A. Yes.

Q. Do you have that?

A. The fax memo with "Urgent" on the top?

Q. Yes. That appears to have been sent, according to the fax, sometime after 4. And I am getting that from the second page of the document which was a Helen Stroud document, and if you turn it upside down, you'll see it was sent on the 2nd August, 16.00, from Telenor International; do you see that?

A. Yeah.

Q. And in fact, even on your own one, it actually shows it as well. So if that legend is correct, it would suggest that your letter to Mr. O'Brien was sent at 4

o'clock, and yet within that letter you make no reference to Mr. Prelz's letter to you which was faxed which may have been faxed to you at 3.15. Do you understand what I mean?

A. I think we should I should bring you to the attention that Norway is a different time zone. So 4 o'clock in Oslo would, I guess be, 3 o'clock

Q. That may have some effect as well; I don't know. But what the point I am making initially is, first of all, it would appear that when you wrote to Mr. O'Brien, that you hadn't seen Mr. Prelz's fax. Do you understand that?

A. I am a bit uncertain how you can draw that conclusion, but

Q. Well, I'll tell you why, Mr. Haga. The reason I am drawing that conclusion is because in your letter to Mr. O'Brien, you make no reference to the fax from Mr. Prelz. You, in fact, refer to the call from Ms. Helen Stroud.

A. Yes.

Q. And one might have thought, but I am only putting this forward as a possibility, that had you received Mr. Prelz's fax before communicating with Mr. O'Brien, that you would have referred to it, because he would be more important, in a sense, than Helen Stroud. Do you understand?

A. How I would interpret it, if it went according to the

time on the faxes, is that I was sent something 3 o'clock Irish time. At a later stage, I may have or may not have received something, i.e. a quarter past three, Irish time as a reply to my fax.

Q. Do you see, to put it another way, Mr. Haga: You don't if you received and I don't know whether you received it if you received Mr. Prelz's fax, you don't seem to have done anything on foot of having received it. Do you see what I mean?

A. Sorry, I was reading, excuse me, sorry.

Q. That's okay.

If you received Mr. Prelz's fax, and I don't know whether you did or not or if you saw it, I don't know whether you did or not or when you saw it, I am simply saying that you don't appear to have done anything on foot of it; it's not a criticism, it's a fact.

A. Yes, but reading the fax from Mr. Prelz, and it's not signed, I can't see that it brings any new facts on the table compared to what's been

Q. It may not it doesn't matter whether it did or not.

I am simply saying that if you received it, you have given no indication, good, bad or indifferent, that you had received it. You neither mentioned it to Mr. O'Brien nor did you respond to it to Mr. Prelz, nor do you appear to have responded to Ms. Stroud.

A. Okay, I may not have seen the fax from Mr. Prelz at the time I sent the fax to Denis O'Brien.

Q. Now, the other thing that appears to come out of this period, if I understand it correctly, is that from the 2nd August, virtually from the moment that you sent this letter to Mr. O'Brien, the centre of operation in relation to what was happening to get the bid documents in was clearly in Dublin?

A. Yes.

Q. And am I right in understanding, or do you know as a fact, was Mr. Simonsen in Dublin at this time?

A. According to my knowledge, yes, he was.

Q. So the probability is that he, and further up the line, Mr. Johansen, would have been dealing with this aspect of the project at that time?

A. They could have.

Q. And that would explain, to some extent, why you were in Oslo and they were in Dublin?

A. Well, the reason for me being in Oslo is, is that the sorry, can you

Q. To be absolutely blunt, Mr. Haga, the reason you were in Oslo is you weren't needed in Dublin?

A. You can put it that way.

Q. Absolutely. I am not trying to be rude. It just is the situation. It appears to be the situation.

A. Yes.

Q. Now, the other matter that I just wanted to clarify relates to September. And I am just curious again, and seeking clarification in relation to the document

of the 15th September, and I'll try and turn it up for you here now. It appears to be 48(61). Do you have that letter?

A. It's a letter to

Q. 15th September. This is again to Mr. O'Brien.

A. That's a letter of 26th September, I have on Tab 61?

Q. Yeah, that's the first one; but if you turn over the page, there is the one of the 15th September. Do you have that?

A. Yes.

Q. And that's the one which you signed?

A. Yes.

Q. Now, as I understand it, you have very little recollection in relation to this letter?

A. Yes.

Q. You have no recollection of drafting it; no recollection of being involved in the drafting of it; you are satisfied that you signed it?

A. Yes.

Q. But you don't know when you signed it?

A. No.

Q. Arguably, the potential dates would include the dates that you were in Oslo after the 15th?

A. Yes.

Q. And that would you include both the 21st and the 18th?

A. Yes.

Q. So that if that letter was on your desk for signing

when you came back from Africa or Copenhagen, you would have signed it as one of a number of letters to be signed, and it would have gone out?

A. That could be the case, yes.

Q. Or would have been dealt with. But so far as you are concerned, and your evidence is concerned, you have absolutely no recollection in relation to this letter at all?

A. I believe I commented that or I have used as a follow-up on my letter of the 11th September, and the content doesn't the core of the content doesn't vary that much from my first letter.

Q. So it seems to be a sort of a continuous follow-up letter, to use that expression?

A. Yes, you may say that.

Q. Well, you wouldn't disagree with me saying that?

A. I wouldn't disagree with you saying that.

Q. Thank you. And but that is the best recollection, the best explanation you can give us in relation to helping us with that letter?

A. Yes.

Q. Now, the last matter that I just want to clarify, Mr. Haga, is in relation to your addendum. That is the last page of your document to the Tribunal. Do you have that?

A. Yes.

Q. Now, I have to confess to being somewhat puzzled by

this. But let's take it as it's there initially.

"At some stage in 1995, I think it was probably either late September or perhaps October '95, Per Simonsen, whom I knew very well, mentioned to me that whilst he was discussing other matters with Denis O'Brien, he had been told by Mr. O'Brien that Mr. O'Brien had met Michael Lowry in a public house." Let me stop there for a second.

How did this addendum come about? How did it come to be drafted?

A. It was a consequence of the answers given and the documentation provided and the process related to this issue.

Q. There doesn't seem to be there isn't a question which leads in to this answer, if you like.

A. I believe there is a question at an early stage whether I have any recollection of persons being involved or heard of or some questions that were answered at an early stage.

Q. Well, if you

A. But I would just like to comment on this one because in Norway I ran through and I spent a lot of time in my diary, running through my diary, it is I would say it's not unlikely that this was mentioned, perhaps, as late as in November, because we had meetings at the said hotel in I think that was 7th/8th November, and I was not that much involved in

them September/October sorry, in Dublin.

Q. This is what worries me a wee bit, Mr. Haga. What you are trying to do here is to reconstruct.

A. No. I tried to express my recollection.

Q. But that let's be honest is what you were trying to do when you put out the addendum; isn't that right?

A. Yes.

Q. And at the time that you made the addendum, your recollection was that this conversation, if it took place, took place in late September/October?

A. Yes.

Q. And it is abundantly clear that if it took place in the Davenport, it didn't take place in late September or October?

A. Most likely not.

Q. Well, definitely not, because you weren't in Dublin during that period.

A. Definitely not.

Q. So in the preparation of this addendum, I am just curious as to how, when you were approaching this bit of it, how you came to do that.

A. It's again part of a general reply, and I think at an early stage I may have said that I didn't have any such recollection if I was asked about it. But considering it, and as time elapsed and I I remembered that something was mentioned about such a meeting.

Q. You see, that, again, is partly what is concerning me.

If you say that "at some stage part of a general reply and I think at an early stage I may have said that I didn't have any such recollection if I was asked about it"; what was it that actually jogged your mind to make you believe that it did happen?

A. It was contact with Per Simonsen.

Q. I see. So in the first instance, this is not a recollection of yours; it is a recollection brought about as a result of something that Mr. Simonsen said to you?

A. As a consequence of this process, yes.

Q. And as part of what he said to you, what did he say to you?

A. He said that he believed he had heard something from Mr. O'Brien related to a pub meeting, or not necessarily a meeting, but with Mr. Lowry.

Q. And when did Mr. Simonsen contact you and say this to you?

A. He didn't contact me; that was part of the process, that we met to have some and run through there was a lot of documents that were brought to our attention.

Q. I see. So it was at a meeting?

A. Yes.

Q. And where was the meeting?

A. That was outside Oslo.

Q. Sorry?

A. Outside Oslo, our Telenor premises.

Q. I see. But in Norway?

A. In Norway, yes.

Q. And apart from yourself and Mr. Simonsen, who else was there?

A. A Telenor lawyer, two persons from Kilroy's, and I believe Knut Digerud.

Q. And before you went into that meeting, the position is that you had no recollection of this event?

A. I think I had a vague recollection, but not a very specific recollection.

Q. And what was said at the meeting?

A. Per had a recollection of such a comment, and I recall that I was informed about that back in '95.

Q. What was it that Per said?

A. Sorry?

Q. What was it that Per said?

A. I don't recall the specific words or phrasing.

Q. You don't recall?

A. Not his specific phrasing, no.

Q. Well, did he remind you of a conversation which he had with you about this?

A. No. I would rather say that he mentioned that he had it brought to his attention, and then I recalled that he had given me some information about it.

Q. And did you discuss it with him?

A. Yes.

Q. At that meeting?

A. Yes.

Q. And did the discussion include both the time when this alleged meeting was to have taken place and the place where this meeting was supposed to have taken place?

A. No.

Q. So when did that come into your mind?

A. Sorry, the time that he brought it to my attention in Dublin or the time that Mr. O'Brien had the meeting?

Q. The time that you say he first mentioned it to you in September/October, was that discussed at the meeting?

A. That was not discussed at the meeting.

Q. And was the Davenport discussed at the meeting?

A. No.

Q. So what was discussed at the meeting?

A. He mentioned that he, as I said, he had a recollection, and that triggered something, so I had a recollection that I believe I heard that story at the Davenport.

Q. And then was it after that that you added, to try and give it some certainty, the Davenport and September/October?

A. I don't think I mentioned Davenport before yesterday.

Q. When did you do this addendum? The 30th January; did you only do this last week?

A. Yeah. It appeared through this process, and then I

believe that the Davenport was the place where it was mentioned.

Q. Would it be fair for me to say to you, Mr. Haga, that had it not been for Mr. Simonsen bringing it to the meeting or mentioning it at the meeting, that you would not have recollected or put into your statement anything about this alleged conversation?

A. That could have been the case, yes.

Q. Even now, I think it's right to say that we can say with certainty that it didn't happen in September, it didn't happen in October, and the best you can do is that it might have happened in November; and if it did, it must have been the 9th or the 21st, because you know that those were dates when you were in Dublin?

A. Yes.

Q. But you actually, in reality, have no recollection of it?

A. Not of the specific date, no.

Q. I just want to clarify, Mr. Haga, in relation to what was said at the meeting with all the lawyers and all the solicitor/lawyers and Mr. Simonsen outside Oslo in Telenor's premises. Can you give me any detail at all of what was said?

A. It was a meeting that lasted

Q. Just in relation to this aspect of it. I don't want to go into other details of it. If you can't, just

say you can't.

A. No, I don't have any I don't recall the specific phrasing, no.

Q. You see, it is an argument leaving aside whatever Mr. Simonsen's evidence might be, you clearly, because of the lapse of time, are having difficulty in recollecting a huge amount?

A. Of that conversation, or?

Q. In relation to your evidence generally, apart from the detail.

A. Well, without any insight in the documents from those days, I don't recall that much of the process.

Q. I mean, that's as I understand it. If you were left without the documents, your recollection of events would be very poor. What you have tried to do is to look at the documents, and to a certain extent, try and recollect and reconstruct from those documents what you believe may have happened at the time; is that fair?

A. Yeah, that's how I viewed this process, and that's right.

Q. Just one small matter. I understand it's not a major point, Mr. Haga, but I understand that you may have been involved in the bridging finance with AIB and/or ABN-AMRO in late '96?

A. Yes.

Q. So that your involvement, in a sense, seems to have

been sort of in and out, if you like?

A. Yes.

Q. And although a major part of your work was clearly directed to other projects, there were occasions when you came back to assist in relation to this project, including the bridging finance with those companies?

A. Yes.

Q. The other matter, Mr. Haga, it's another detail: Do you have a clear recollection of Helen Stroud contacting you in August of 1995?

A. I recall that she called me, yes.

Q. You do?

A. Yes.

Q. Thank you, Mr. Haga.

CHAIRMAN: Mr. Nesbitt?

MR. NESBITT: No questions, Chairman.

CHAIRMAN: Mr. Fanning?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FANNING:

Q. MR. FANNING: Mr. Haga, it might be helpful I'll be very brief with you it might be very helpful at this stage if I told you at the outset that the Tribunal is not in fact concerned with the award of the second licence to Esat per se, but is in fact focusing its inquiry on the behaviour

A. Sorry, I didn't hear. Can you start from the beginning again.

Q. I beg your pardon. I'll begin again.

The Tribunal is not necessarily concerned with the award of the licence to Esat per se. The Tribunal is really concerned with the behaviour of the Minister who was in office at that time, and that's the connection between your presence here today and the terms of reference of the inquiry. We are concerned with the Ministerial office of Mr. Lowry, who is my client. And you have given evidence that you never met Mr. Lowry?

A. I never met him.

Q. And you didn't speak to him on the telephone either?

A. Never.

Q. And you didn't have any direct contact with him in any other way?

A. Never.

Q. Now, picking up on a kind of natural sequence from the last issue that Mr. McGonigal was asking you questions about, I do have some concerns about your evidence in relation to the conversation you may have had with Mr. Simonsen that Mr. McGonigal has just been asking you questions about. And I think you have now qualified your evidence, and you have said that you have a vague and not very specific recollection of your conversation with Mr. Simonsen?

A. I have such a recollection.

Q. This is a conversation that you had with Mr. Simonsen about a conversation Mr. Simonsen says he had with Mr.

O'Brien; isn't that so?

A. Yes.

Q. Now, I think it's probably fair to say that Mr. McGonigal's concern is perhaps in respect of the conversation that took place between Mr. O'Brien and Mr. Simonsen. And I think you are aware that there is a dispute in relation to Mr. Simonsen and Mr. O'Brien in relation to that conversation?

A. That, I have been aware of over the past weeks or months, yes.

Q. What I just want to say to you is in fact my concerns are really one further link down the chain. What I am concerned about is the nature of the conversation that Mr. O'Brien did or did not have with Mr. Lowry in the first instance; do you understand that?

A. Yes.

Q. And you are aware that both Mr. O'Brien and Mr. Lowry absolutely deny that they had a conversation along the lines that Mr. Simonsen says that Mr. O'Brien informed him?

A. That, I have been made aware of.

Q. And in fact, your addendum, which you confirmed in oral evidence to Ms. O'Brien yesterday, seems to suggest that you have no reason to doubt their denials, because your reaction when you heard the story was not to believe the truth of it; isn't that so?

A. Yes.

Q. You regarded it as farfetched and very unlikely?

A. Yes.

Q. And your recollection, insofar as it goes, is that when you heard this suggestion, you didn't take it particularly seriously?

A. No.

Q. And you don't believe Per Simonsen took it very seriously either?

A. No.

Q. Thank you.

CHAIRMAN: Mr. Fitzsimons?

MR. FITZSIMONS: Just one question, Sir.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Mr. Haga, the letter of the 15th September, Mr. McGonigal asked you some questions in relation to it. And he put it to you that you could have signed this letter on either the 18th or the 21st September 1995, as you were in Oslo on both of those dates?

A. Yes.

Q. But of course, that could be so provided the letter was prepared before the 18th September; isn't that so?

A. That's correct, yes.

Q. And if the letter was not prepared until after the letters from Denis O'Brien and Owen O'Connell on the 21st September sending draft letters for signature by

you, and which you never saw, of course, then you could not have signed that letter on either the 18th or the 21st September?

A. I would agree to that, yes.

Q. And it must therefore have been signed by you after the 22nd September?

A. If that is or was the case, yes.

Q. Thank you.

MS. O'BRIEN: Just a few short matters, Sir.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY

MS. O'BRIEN:

Q. MS. O'BRIEN: Mr. Haga, you described to Mr. McGonigal a meeting that you had with Mr. Simonsen, I think house lawyers from Telenor and lawyers from Kilroys; can I ask you one thing about that meeting. Can you tell me when that meeting took place?

A. Sorry, which meeting?

Q. The meeting you had with Mr. Simonsen in the course of the process when Mr. Simonsen assisted your recollection. Could you tell me when that meeting was?

A. Okay. It was I believe there were some June last year.

Q. Is that June of 2003 that you are talking about?

A. 2003 sorry the first meetings were in two thousand and I believe we had two meetings in Oslo, and I may have some assistance on this one from the

solicitors, but I think the first one was in

spring/summer, 2002.

Q. 2002 was the first meeting?

A. Yeah. And the second one was summer, 2003.

Q. Right. Now, at which of those meetings did Mr.

Simonsen assist you in your recollection?

A. That must have been in the first meeting.

Q. The first meeting in

A. 2002.

Q. Spring/summer 2002?

A. Yes.

Q. Now, when you were replying to Mr. McGonigal, you said

"At an early stage I may have said I didn't have any

recollection if asked about it"?

A. Yeah.

Q. Now, can you tell me what you were referring to when

you said that in reply to Mr. McGonigal?

A. I think the meeting with Per at the first occasion

brought this issue to my attention, and that was an

early stage of this process.

Q. So are you saying that it was at that early meeting in

spring/summer, that first meeting, that you would have

said

A. Yes.

Q. that you didn't have any recollection if asked

about it?

A. Yes.

Q. Was there any discussion at the second meeting that you had in June, 2003, then, about this matter?

A. No, I can't say that.

Q. Well, just to clarify, so I understand, are you saying no, there wasn't?

A. May or may not, but it was not I don't think that was on the agenda, and I can't specifically recall that that was discussed.

Q. So your recollection is that it was in the June/July meeting of 2002?

A. Yes.

Q. But you can't recall it being discussed in the June 2003 meeting?

A. That's correct.

Q. Now, I think you have said now that you have a general recollection of Mr. Simonsen telling you this, and that you recall it was in the Davenport Hotel?

A. Yes.

Q. And you are now saying it could be in November?

A. Yes, 1995.

Q. Okay. Now, in your addendum here, you said "I cannot remember what reply I gave, but my 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."

Do you recall having that impression at the time?

A. I think back in '95, it was like name-dropping; that was the impression.

Q. But you said to me just now you only have a very general recollection.

A. Yes.

Q. Which was prompted by and assisted by what Mr. Simonsen said to you. And then you remembered the Davenport. And are you sure that you have a recollection that that was your impression at the time?

A. Yes, because we had a little laugh about it.

Q. At that meeting that you had where you discussed it in May or June 2002, or June and July 2002, did Mr. Simonsen indicate what he had thought at the time?

A. No.

Q. You go on to say there: "Although I now understand the controversy raised by this matter, at the time was considered by me, and I 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 me, he did not appear to have any concerns. I certainly had no concerns about the matter following that conversation."

Now, that seems to be an awful lot of detail in terms of something of which you have only a very general recollection. Are you certain that that was your

belief at the time?

A. Yes.

Q. Are you certain that that was how you considered the matter at the time?

A. Yes.

Q. Okay. Thank you, Mr. Haga.

CHAIRMAN: Just in conclusion on that matter, Mr.

Haga, obviously you have told us as much as you remember of the conversation that you think you had with Mr. Simonsen?

A. Yes.

CHAIRMAN: And all that you remember that he may have said to you was that he had met the Minister, Mr.

Lowry, in a public house?

A. Yes, that's correct.

CHAIRMAN: He didn't go into anything about whether the conversation was on anything to do with the licence or on anything to do with other telephone matters?

A. No, we did not.

CHAIRMAN: Very good. Thank you very much for your attendance and your time.

MR. FITZSIMONS: Sorry, Mr. Chairman, just arising out of that. Again, I hope I am not being pedantic, but you, in your exchange with the witness, you described the conversation as being Per Simonsen telling the witness that he had met Mr. Lowry in a public house.

That's not the witness's evidence. The witness's

evidence is that Denis O'Brien

CHAIRMAN: Sorry, yes, yes.

MR. FITZSIMONS: I am sorry if I am being pedantic.

CHAIRMAN: You are quite right, Mr. Fitzsimons. I was jumping a bit.

MR. FITZSIMONS: I don't want to take any chances.

CHAIRMAN: You will make your flight. Thank you for your help today and yesterday.

Is it the position, then, that the next Telenor witness effectively will be available at 11 tomorrow?

We won't start him with the limited time available today.

Very good. 11 tomorrow.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 5TH FEBRUARY, 2004 AT 11AM.