

A P P E A R A N C E S

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I N D E X

Witness: Examination: Question No.:

Per Simonsen Mr. Healy 1 - 466

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 5TH
JANUARY, 2004 AT 11AM:

MR. HEALY: Mr. Per Simonsen, please.

PER SIMONSEN, PREVIOUSLY SWORN, WAS EXAMINED AS
FOLLOWS BY MR. HEALY:

CHAIRMAN: Good morning, Mr. Simonsen. Thank you for
your further attendance, and you are of course already
sworn from your earlier evidence here about two and a
half years ago.

My recollection is that you spoke very good English,
but just in case there is any little difficulty about
idiom, we do have beside you Ms. Bryn as interpreter
and translator, so please feel free to stop things and
check any matters with her in Norwegian that may be of
help to you. Thank you.

Q. MR. HEALY: You have provided the Tribunal with a
memorandum of intended evidence consisting of
responses to a large number of questions. You have
been able to provide information in relation to some
of them, but in respect of others, you have not been
able to provide any information; isn't that right?

A. Yes.

Q. Just before we go into it, because it's a somewhat
disjointed document, through no fault of yours, could
I just clarify one or two other things that we perhaps

did not discuss in any detail the last time you gave evidence.

Firstly, I'll just try to establish precisely what your role was in the second GSM project in Ireland, and in Telenor at that time.

A. Okay. I was, at that time, with Telenor Invest, I was a project manager. I was reporting to Sjur Malm, who was the project director, and Knut Digerud was the CEO of Telenor Invest at that time. So that's my standing inside Telenor Invest at that point in time.

Q. What was your own professional training, or did you have any professional qualifications at that time?

A. I have a bachelor in economics and a master in international economics and management.

Q. So your training is on the money side, on the financial side, rather than the technical side of the business?

A. I would say marketing and money side, yes.

Q. And at the time that you were working on the GSM2 project in Ireland, how much experience would you have had in business in general, not just in Telenor, but in business in general?

A. Well, I had I would say I had something like eight years of working experience previous to that, but in '95 I was quite fresh out of my master education, which I completed in '94.

Q. You were quite fresh out of your?

A. Master education.

Q. Had you had any experience outside Norway at that time?

A. Yes. I had been with if it's a general question, I had been with the Norwegian Trade Council in Paris.

Again, I had some of my education from abroad.

Previous to this project, I was working with a similar project in Hong Kong, so I had some international experience, yes.

Q. And was your role in the similar project in Hong Kong, was it a role of project coordinator or a similar role?

A. It was a similar role as this one, yes.

Q. Now, at that time, Telenor was a company a Government company, a company owned by the Norwegian State; isn't that right?

A. It was a shareholding company where a hundred percent of the shares were owned by the Norwegian State, yes.

Q. And I think the Norwegian State does not now own most of the company. It may still have some shares in it, does it?

A. They still hold the majority of the shares.

Q. They still hold the majority, and have the rest been floated?

A. Yes.

Q. I see.

Now, I want to go through your memorandum, and it will

be easier if I read out the questions and your answers; but don't hesitate to stop me at any time if you think you want to add something to any answer you have given or you want to qualify something.

Firstly you were asked for details of Telenor's interests, if any, in the second GSM licence competition prior to Telenor's introduction to Communicorp, including details of steps taken or inquiries made by Telenor in connection with the licence competition.

And your answer is, Telenor started evaluating the prospects of establishing a partnership to make a bid for the second GSM licence in Ireland. Inquiries were made of banks and others. In addition, Telenor initially approached Tele Danmark, but it was not receptive. On the 28th April, 1995, Telenor met with the ESB, but nothing resulted.

You were asked about inquiries made or steps taken by Telenor to investigate the potential market for mobile telephony in the Republic of Ireland.

And your answer is a special report was commissioned from the Norwegian Embassy in London. In addition, standard reports were obtained from the usual industry sources.

And you were asked in the second question for details of all approaches made to Telenor or any entity associated with it or any person on its behalf to join

or form a consortium to apply for the second GSM licence by any party other than Communicorp. And in each case you were asked to give certain details. And your response is, to the best of your recollection, the only approach received by Telenor was from PA Consulting proposing the consortium with Communicorp. PA was aware that Telenor was interested in participating in an Irish bid. Nick French of the London office of PA Consulting introduced Denis O'Brien/Communicorp as a potential local partner in Ireland.

You were asked for the identity of the party or parties to whom such an approach was made, and you mention Nick French of PA Consulting again. And you were asked for the date, and the date you give as April 1995. You were asked for details of the proposal made by such party or parties, and you say the proposal evolved over a short period of time commencing with a meeting in Dublin on the 28th April 1995. Sjur Malm and yourself met with Denis O'Brien and John Callaghan. You say a 50:50 partnership was envisaged in the beginning of the negotiations.

You were asked about what steps were taken on foot of such proposal, and you say eventually a draft memorandum of understanding was prepared. You do not recall if the memorandum of understanding was ever signed.

Now, I am not sure that the next question makes much sense, but I'll give the answer, which I think makes more sense. You say no actual proposals were made to Telenor except the proposal from Communicorp. You were asked about, in Question 3, you were asked about details of all approaches made by Telenor to parties other than Communicorp. And your response is that Telenor inquired of the banks, ESB, and Tele Danmark, but the only substantial discussions were with Communicorp.

Then you were asked, in Question 4, for the circumstances surrounding the establishment of a consortium by Telenor and Esat Telecom. And specifically you were asked about the manner in which the parties were introduced to each other, and again repeating your earlier answer, you say Nick French of PA Consulting introduced you. You were asked for the date of the introduction, and you say that the first introduction was on the 27th April 1995 at a meeting in Dublin with John Callaghan and Denis O'Brien. You were asked for the initial proposals for the capital configuration of the bid company, and you say only two shareholders, each of which was to have 50% of the issued share capital. You were asked for the date on which agreement was concluded between Telenor and Esat Telecom to establish a consortium, and you say a memorandum of understanding was agreed in outline form

on or around the 24th May 1995. It was not signed. A joint venture agreement was executed on behalf of Telenor on the 2nd June, 1995, and by Denis O'Brien on behalf of Communicorp on the 5th June, 1995.

Perhaps just to clarify some of this. I understand from documents made available by Telenor we can go through them in detail, but I doubt if that's going to be necessary that there was correspondence between Telenor and ESB, perhaps, maybe a number of banks in Ireland, with a view to trying to find a partner or trying to find out whether an Irish bank knew of somebody who might be interested in becoming a partner; would that be right?

A. Yes, that's correct.

Q. I think a number of meetings were planned for around the same time as the meeting with Communicorp, the 27th April. You were in Dublin, I think; maybe other people were in Dublin, and you were hoping to set up meetings with banks or with customers of banks.

Wasn't that it?

A. Well, banks, actually, yes.

Q. What you hoped was that the banks would have the customers that might be interested in dealing with you. And in any case, those various feelers came to nothing, except in the case of Communicorp; isn't that right?

A. Correct.

Q. And fairly soon after that meeting, during the month of May, you began to try to put together an understanding with Communicorp in the form of the document you describe as the memorandum of understanding?

A. Yes.

Q. And there seems to have been a lot of to-ing and fro-ing trying to put this document to bed, trying to get some concrete agreement; but it doesn't appear that anything concrete was eventually agreed, and you went on to sign a joint venture agreement in early June. Isn't that right?

A. Mmm.

Q. And up until that time, there had been no previous discussions between Communicorp and Telenor with a view to getting into the telecoms business in Ireland?

A. No.

Q. Just one small point, just to digress for a little. You were up against a fairly tight deadline at this point, weren't you?

A. Yes.

Q. Of the 23rd June. You were trying to get to know your prospective partner during May, trying to tie down a deal with him, and still you were trying to get your bid up and running; so between the time you signed your joint venture agreement and when the bid was finally signed, you had very little time?

A. Mmm.

Q. Can you tell me, were you working on the bid at the same time as you were working on a deal with Communicorp, if I can put it that way?

A. Yes, this went in parallel.

Q. I see. Initially it was just yourselves and Communicorp, isn't that right, at the time of these initial discussions?

A. Right.

Q. And you say it was a 50:50 arrangement. I think, ultimately, am I right in saying that came to be understood as not necessarily that you would each hold 50%, but as between yourselves and Communicorp, there would always be parity?

A. Yes, that's correct.

Q. Which would be 50:50 between you and Communicorp, although there might be other people involved in the consortium.

If you go to page 4, Query Number 5, you were asked for details of the negotiation of the joint venture agreement, and you say this was dealt with by Sjur Malm. It would appear that Telenor's internal legal department may have had some contribution. You were asked about the purpose for which the joint venture agreement provided for a guarantee by Esat Telecom of 5 million, and you said it was to ensure that Esat Telecom was able to cover the entire bid preparation

costs and in order to establish the financial

capability of Esat Telecom.

You were asked whether, and if so, when, such a guarantee was actually provided; and you say that as far as you were aware, it was not provided. And you indicated that Knut Haga would address that question, and to some extent he has.

Now, you were then asked for your involvement or knowledge, direct or indirect, of the dealings of Mr. Denis O'Brien/Esat Telecom or Esat Digifone or any other person on their behalf with J&E Davy for the purpose of securing the backing of institutional investors.

And you say that you have no knowledge.

You were asked for Telenor's understanding of the commitments provided by Advent International, Allied Irish Banks, Investment Bank of Ireland, and Standard Life to the funding of Esat Digifone. And you say in broad terms, your understanding was that the commitments provided by Advent and the other named proposed investors were not legally binding letters of commitment but were letters of intent or letters in principle to provide support.

Maybe if I just at this point clarify one aspect of that. You used the expression "to provide support".

I think at this point, the question is directed, and I want to be sure that your answer is also directed to

trying to find out not just about the support, but the involvement of these entities. I think would you agree that the letters you got were letters whereby the banks, anyway, agreed in principle to become involved in the project?

A. Yes, or they indicated an interest to become involved, yes.

Q. But they were aware that in indicating an interest, that interest was going to be communicated to the Irish Government; isn't that right?

A. Yes, that's my understanding, yes.

Q. So it wasn't just a casual expression of interest; it was an expression of interest which they knew was going to be relayed to the Government and was going to form a part of your bid. Isn't that right?

A. I assume that they were aware of that, yes.

Q. You were asked about your involvement in or knowledge, direct or indirect, of approaches made to persons other than J&E Davy, Advent International, Allied Irish Banks, Bank of Ireland, Standard Life, proposing their involvement in or backing of the Esat Digifone consortium in the period prior to the 4th August, 1995, being the closing date for the receipt of applications.

And you say you had no involvement in that process.

Can I just pause there for a moment and, again, try to explore with you what your day-to-day work was in the

project.

A. My day-to-day work was basically to handle Telenor's overall engagement, and that was ranging from dealing with the ownership issues, together with Denis and others, but also to coordinate people on the ground and make sure that we got the right people in on the ground and that they contributed in their parts of the bid document.

Q. Were you the, if you like, heading the Telenor contribution to this effort in Dublin at this time?

A. Yes, that's correct.

Q. So you were dealing with the Irish people in Dublin, and you were presumably liaising with the Norwegian people back in Oslo?

A. Yes.

Q. Now, at this time, am I right in my view that you had you would have had two main tasks, I suppose, or objectives: You had to get a relationship with Communicorp you had to tie down the ownership issues, as you put it and you also had to get the bid going?

A. Yes.

Q. Isn't that right?

A. Yes.

Q. You didn't deal with Advent yourself at all; isn't that right?

A. That's correct.

Q. You regarded that as a matter for Communicorp?

A. Yes.

Q. Now, you didn't deal with the banks either, or well, if you can call Standard Life a bank; it was a financial institution, an investment institution, but

A. All that was handled by our Irish partners.

Q. Right. But at that time, as far as you were concerned, did you believe there were any problems getting these banks on board?

A. No. I mean, just from judging of the letters that we obtained, it didn't seem to be a problem.

Q. And I think maybe, even to put it in context, or to give an overview of it, I just want to quote you something from a letter written by Mr. Johansen, just to see whether you agree with his overview, because we may be referring to this sort of overview of the whole thing from time to time.

This is a letter of the I think it's the 10th May of 1996, from Mr. Johansen to Mr. O'Brien. It's in Book 49, Leaf 136. I am not going to go through the whole letter. I think it will be easier for you if I put it on the overhead projector, but if you want at any point to go through the whole letter, I will do. 49(136).

MR. FITZSIMONS: Chairman, if the witness is being requested to comment upon Mr. Johansen's views as

expressed in a letter, he should be given the letter and be allowed to read the entirety of the letter so that he can properly comment, insofar as that can be viewed as relevant evidence.

CHAIRMAN: By all means, Mr. Fitzsimons.

Q. MR. HEALY: In giving a letter to Telenor's solicitors yesterday, the Tribunal would have informed you that there might be a reference to this letter. Are you aware of that, Mr. Simonsen?

A. Sorry, I was just finding the letter. Yes, I have it here in front of me. What was your question?

Q. In that letter, Mr. Johansen is writing to Mr. O'Brien and at this particular point, there are considerable tensions between Mr. O'Brien and Mr. Johansen, but Mr. Johansen is describing the evolution of the bid. And if you go to the fourth paragraph on the first page of the letter, he says: "The bid submitted by Communicorp and Telenor was based on commitments from the Allied Irish Banks and some other parties to be the institutional investors and Advent's commitment to invest \$30 million in Communicorp."

Do you see that?

A. Yes.

Q. Between the time that you first came to Ireland and the time that you completed the bid, would that be a fair description of how the proposal was going forward?

A. You mean this specific paragraph?

Q. Yes, that the bid as submitted by Communicorp and Telenor was based on commitments from Allied Irish Banks and some other parties to be the institutional investors and Advent's commitment to invest 30 million in Communicorp.

A. Yes.

Q. Now, in the next question, Question 10 on page 6 of your memorandum of intended evidence, you were asked about your understanding of the RFT document, paragraphs 3, 9 and 19. And they have been read out more than once; I won't need to read them out again.

And your response is that the document was self-explanatory and straightforward, and it was taken at face value. Isn't that right?

A. Yes.

Q. You say that the processing of the bid application was largely dealt with and coordinated by the Irish side of the bid preparation team. By that, do I take it that you mean the actual wording, phrasing and putting together of the document as opposed to putting the people together, putting the parties, putting the owners together to form the consortium?

A. This is relating to the bid application as such, and that was mainly coordinated by the Irish side.

Q. I see.

A. And we were providing some experts who were

participating in the writing of the bid, but the overall coordination I would say was mainly handled by the Irish side, yes.

Q. I see. Who did you identify as the Irish side at that time? Who were the main personal alternatives?

A. Well, in terms of the bid production, that was certainly the team from Esat Telecom.

Q. But who were you dealing with on the team? Who were the leaders in the team?

A. The leader of the bid production as such was actually Nick French from PA.

Q. Right.

A. And Denis was involved in reviewing the bid document.

And apart from that, it was quite a number of people from Esat.

Q. I see. You were asked in Question 11 for Telenor's specific understanding of the requirement that the Minister be satisfied as to the financial capability of the applicant as provided by paragraph 19, and in particular, in the light of the information memorandum issued by the Department to applicants on the 28th April 1995, and specifically that portion of the memorandum which responded in the following terms to a question posed by Esat Digifone as to how financial capability would be assessed and whether there were any specific criteria.

And the section of the memorandum is quoted or the

section dealing with the financial capability is quoted as follows: "Financial capability would be assessed by reference to the proposed financial structure of the company to which the licence would be awarded if successful. The financial strength of the consortium members and the robustness of the projected business plan for the second GSM operation."

And you say that you considered paragraph 19 of the information memorandum issued by the Department of Transport, Energy and Communications, and you say that an examination of Esat Telecom's financial capabilities and other matters was an ongoing process. To what extent would you have been involved in that, the examination of Esat Telecom's financial capabilities?

A. That was mainly the responsibility of Knut Haga, but of course we had, from time to time, discussions on the issue, yes.

Q. It was are you saying that it was Knut Haga's job to examine the financial capabilities, but what I want to know is whose job was it to see that that job was completed.

A. I was the project manager, so again it would be my responsibility.

Q. You have, to some extent, anticipated Question 12 in that answer, so I think we can pass on from it.

You were asked for your knowledge of all agreements

concluded between Communicorp, Esat Digifone, Mr.

O'Brien or any associated entity with Advent

International Corporation, and including, in

particular, an agreement whereby Advent provided a

facility for IRİİ 3.5 million to Communicorp or RINV or

any other entity associated with Mr. O'Brien. And you

said you were unaware of any such agreement.

One of the other agreements you were asked about was

an agreement dated 12th July, 1995, between Advent

International Corporation, Esat Digifone, Communicorp,

and Mr. O'Brien for the provision of letters of

comfort by Advent to the Department of Transport,

Energy and Communications and to Telenor. And you say

you were unaware of the existence of this agreement of

the 12th July 1995 until shown the question. You say

you had never seen a copy of the agreement, and you

believe that no one else in Telenor was aware of the

agreement or its provisions.

We may have to come back to that in a moment, as soon

as we have finished with this memorandum.

You were asked for Telenor's knowledge, direct or

indirect, of the precise terms of the "Offer" made by

Advent International to Communicorp of IRİİ 30 million

to fund Communicorp's equity participation in Esat

Digifone, as referred to in a letter dated 10th July

from Advent International addressed to the Department.

You say your only knowledge is based on the letter

from Advent which and you attach a copy for ease of identification. You say you were not involved in dealings between Advent and others.

Just to clarify that, the letter you refer to is one that has been mentioned repeatedly in the course of the evidence, of the 10th July from Advent to the Department, and a similar letter, are you aware of a similar letter sent by Advent to Knut Haga of the same date?

A. And the same content?

Q. More or less the same content, yes.

A. Yes.

Q. And were you aware of those letters at the time that they were sent well, certainly at the time that the one that you got was sent to Telenor?

A. Yes.

Q. You were asked for precise details of steps taken by or on behalf of Telenor to establish the terms of the offer made by Advent International to Communicorp and as referred to on the letter of the 10th July, 1995.

And you say this will be addressed by Knut Haga.

Now, I appreciate that it was sensible to give that response, because Mr. Knut Haga was dealing directly with people on the Esat side and also on the Advent side regarding the details of this, but I take it you're not suggesting that you weren't unaware of those activities on Mr. Haga's part?

A. No, I know that he was working on it, yes.

Q. And you were aware that he was trying to find out what this offer was on and what it meant; is that right?

A. Yes.

Q. And we may be anticipating some of your own answers, but did you ever find out what the offer was?

A. You mean the true

Q. Yes.

A. No.

Q. And I take it that you were aware that Mr. Haga was having certainly was having some difficulties in trying to find out what the offer was or meant; isn't that right?

A. That's correct.

Q. In the next question, you were asked for details of the obligations of Communicorp to provide Telenor with a letter of comfort from Advent regarding the offer by Advent to provide 30 million. And you were asked a number of detailed questions, but I think we can pass to your answer, which is as follows: The letter of comfort was not one of your direct functions, except for the possible obligations in the joint venture agreement of the 2nd/5th June 1995 and a letter dated 4th August 1995, from Denis O'Brien of Communicorp to Telenor in the person of Amund Fougner Bugge. You were not aware of any other obligations.

The next question asks again about the dealings

between Telenor and Communicorp regarding the letter of comfort, and you say that that was addressed or that would be addressed by Mr. Knut Haga. And he did deal with it yesterday, but again, I take it that you were familiar that he was involved in trying to get answers concerning his queries on this letter; is that right?

A. Yes, again, I knew that he was working on the issue, but I was not involved in all the details, yes.

Q. Question 18 asks for information about, again, a related aspect of the same matter, and again you say that it was addressed by Knut Haga. And I take it that again I can assume that you were aware that these things were happening, even if you were not directly involved in them yourself.

A. Yes.

Q. Specifically you say that you can only comment or Telenor can only comment based on its direct knowledge of its dealings with Advent as set out in the documents. And in particular, your memorandum says

PD I think that should say "PS", I presume was not aware of the telephone conversation of the 3rd August 1995 between Mr. O'Donoghue and Mr. Massimo Prelz referred to in a fax transmission to "from Mr. O'Donoghue", that should read to Mr. Owen O'Connell dated 3rd November 1995.

This is a fax transmission in which Mr. O'Donoghue

recorded that he and Mr. Massimo Prelz had some, I suppose, hard words about what it was or about the way in which Mr. O'Donoghue and the Esat side were interpreting Advent's actions; isn't that right? Or do you want to get the document before commenting on it?

A. Well, again, I was not I didn't see the document, and I was not

Q. I appreciate that, but you refer to it here in your statement, and I just want to be sure that we are both talking about the same document.

A. It's the same document, yes.

Q. You were asked for any information you had concerning Telenor's understanding as of the 4th August, 1995, of a number of matters; firstly, the status of Telenor's involvement as a party to the bid, having regard to the failure of Advent International to provide a letter of comfort acceptable to Telenor. And you say you did not advert to this or consider this issue in the way the Tribunal suggests.

As of the 4th August, Telenor had not provided the letter that Mr. Haga wanted and that presumably you knew he wanted Advent had not provided the letter that Mr. Haga wanted. And I think what the question is asking you is whether this affected Telenor's attitude to the joint venture or its appetite for the whole project.

A. Well, this was of course a difficulty for us, but we were still hoping that we would be able to resolve it.

So I think the the way the answer is written is to reflect that we didn't actually consider that the status as such had been changed.

Q. You regarded yourself as still being in partnership with Mr. O'Brien?

A. That's correct.

Q. Although you were aware that at that stage, you were not able to satisfy yourself as to his capacity to fund his end, if you like, of the project?

A. We were still not sufficient with the level of commitment that Advent had provided, no, that's correct.

Q. You were asked for your understanding of the funding available to Communicorp as of the 4th August to finance its 40% equity participation in Esat Digifone. And you say that you understood, or you understand that Telenor wanted Denis O'Brien to accept the offer from Advent unless a better commitment could be obtained.

Can you just clarify that for me? Do you recall saying to, or intimating to Mr. O'Brien or Mr. O'Brien's side that you didn't mind if he didn't accept Advent if another offer could be obtained?

A. I don't think I ever said that to Mr. O'Brien. I think this is reflecting the fact that we didn't have

a type of letter from Advent, and we had the fax from Communicorp stating that he would accept and pick up the Advent offer if not another offer with better conditions could be obtained. So that's the reasoning behind the answer.

Q. So do I take it that your attitude was that you were happy enough to proceed as long as the Advent offer was on the table and there was a fall-back offer in the event that another offer could not be obtained?

A. Again we were not completely satisfied, but we saw it as the best option to continue.

Q. Did you know about any other potential offers that might have been on the table at that stage?

A. No. I was not familiar with other offers.

Q. I think the next question again asks for a level of detail of the dealings between Advent and Communicorp and between Advent and Telenor and Communicorp and Telenor, that you say were handled by Mr. Knut Haga; isn't that right?

A. Yes.

Q. And the same thing applies in relation to Question 22. And you have already answered Question 23, which was whether you had any knowledge of any other approaches Mr. O'Brien was making to get finance. You weren't aware of those.

Question 24, you were asked for details of the progress which had been made in the preparation of the

Esat Digifone bid as of the 16th June, 1995, including details of all aspects of the bid which had yet to be finalised. That was the point, you will recall, at which I think the contest was suspended; do you remember that? And you say that you believe that at that point the bid documentation was substantially complete and the initial deadline would have been met. That's the initial deadline of the 23rd June, which was approximately a week later?

A. Yes.

Q. You were asked to indicate the precise level of licence fee which the Esat Digifone consortium intended to nominate in its application prior to the deferral of the evaluation process on the 16th June, and for any knowledge you have or any information you have concerning Telenor's knowledge, direct or indirect, of the steps taken by Communicorp to fund its contribution to the proposed licence fee, together with the source or sources of Telenor's knowledge.

And you say that no final decision had been made on the 16th June 1995, meaning that you hadn't arrived at a final decision as to what sum you might bid in what was then a contest containing a part auction element; isn't that right?

A. That's correct, yes.

Q. What steps were being taken to finalise an auction payment, as a matter of interest?

A. We were working on sensitivities in the business case, how much would the business case stand and to take that or what level of licence fee could actually be accepted, and that the business case would be maintained positive. And we were in agreement with Esat that the final decision must be made close up to the submission date in order to maintain the confidentiality.

Q. Of course.

A. So we would never have finalised our view on this until very close up to the deadline.

Q. I can understand that. And it's also a piece of information that would have been kept between a very small group of people; isn't that right?

A. That's correct.

Q. It's not that anyone would intentionally leak it, but one slip of the tongue and the information could get out?

A. Yes.

Q. Would you have been one of the people who would ultimately have been involved in deciding what the auction payment was going to be?

A. Yes.

Q. And had you any figure, any approximate figure in mind around this time?

A. We didn't have any fixed figures. We were looking at a number of figures.

Q. Can you remember what they were, approximately? I am not going to hold to you a specific figure.

A. No, I can't. I mean, again we were discussing a number of figures, and I don't want to point out any specific figure.

Q. When you say you were discussing a number of figures, were you discussing a number of figures to see which figure could be credibly put forward in the context of your business plan? Was that what you were anxious to achieve?

A. That's one of the aspects, and of course the other aspect is which figure would it take to make sure that it's a winning bid.

Q. Right. But of course you didn't have to have the highest figure to win the competition; isn't that right?

A. No, that's correct.

Q. Because it was just one of the elements in the competition?

A. Yes. But of course it's an element of tactic in such a process.

Q. It's a tactical element; is that what you said?

A. Yes.

Q. You were asked about a meeting in the Department on the 19th June, and you weren't at the meeting and you don't know if anyone else from Telenor was present.

This is a meeting at which the Department relayed to

Communicorp the state of play, if you like, concerning the process?

A. Sorry, which question are you on now?

Q. This is Question 26.

A. Okay.

Q. Your answer is that you weren't at this meeting. I just want to talk about the meeting for a minute.

This was a meeting at which the Department relayed to Esat Digifone representatives the state of play in relation to the process, how they were getting on, or what the next step might be in trying to resolve the difficulties they were having with Europe and where they were going. And I think they had similar meetings with all of the other potential applicants?

A. Mm-hmm.

Q. And you say you weren't at the meeting. And I think you are right, that there was no one else from Telenor present at it, but presumably you were aware that such a meeting you may not remember to this day the precise day that it took place, but were you aware that there was a briefing being given by the Department to Esat in relation to the state of play concerning the process?

A. Yes, I don't have a specific recollection of it, but I think it sounds reasonable. And I wouldn't really note it in particular.

Q. Presumably somebody told you what had happened,

because if you were the project coordinator, you'd have to have known roughly what the project or what way the project would be going over the following months; I am not querying that for a moment.

A. I think that at that point in time, sorry, it wasn't really clear how the process would go on, so we didn't have any specific information on the process as of that date.

Q. I am just wondering why no Telenor person went to that meeting.

A. I think this must be from a practical purpose. This was on the 19th, wasn't it?

Q. Yes.

A. And that was shortly after that, the initial deadline had been called off?

Q. Yes.

A. I think what happened then was basically most of the Telenor team went home. We were into we were prepared to finalise the bid for the initial deadline, and when the deadline was taken away, we saw no reason in keeping the people on the ground in Dublin. So we went back to Oslo, including myself.

Q. The next question, Question 27, again is concerned with that meeting, and I don't think, in light of your answer, I need to trouble you with it, except to this extent: The letter the question refers to a letter from Mr. Owen O'Connell to William Fry of Baker

McKenzie for Advent. At that time Mr. O'Connell was your solicitor, isn't that right, was the project solicitor?

A. It's in relation to the licence, yes.

Q. Would you have had regular contact with him at that time?

A. No.

Q. Not at all?

A. No.

Q. Had you met him at that time?

A. I don't remember.

Q. Question 28 asks for any information you have concerning Telenor's understanding as to the purpose for which the oral presentations by applicants were conducted by the Department.

And you say that you assume that the purpose of the presentation was to enable the bid assessment team to meet the applicants in person in order to get a direct impression of the consortium. You consider this to be a standard practice and to be a normal feature of bid processes.

You were asked for the names of all persons present at the presentation by Esat Digifone on the 12th September. And you say that on the Telenor side, there were present Arve Johansen, Chairman and CEO of Telenor International; Jan Edvard Thygesen, the intended CEO of Esat Digifone; Hans Myhre, a technical

expert and yourself.

You were asked for your views or your information as to Telenor's views as to the overall impression made by the Esat Digifone consortium in the course of presentation, and in particular any matters which appeared to Telenor to be problematic or areas of perceived weakness.

And you say the bid assessment team was neutral in its attitude that is, the assessors, the Department and Andersens were neutral, not displaying any partiality?

A. Mmm.

Q. You say that you cannot remember any identification of problematic areas or areas of perceived weakness.

You were asked in Question 29 for details of all queries raised by the Department in the course of the Esat Digifone presentation on the 12th September, 1995. And you say you were in attendance, but you were unable to recollect any of the questions asked.

You were asked for details of all queries, and you say raised by the Department regarding the commitments provided by the institutional investors in the Esat Digifone bid. And you say you are unable to recollect if any such queries were raised.

Are you aware that the tape recording of the presentation has been reduced into writing in the form of a document called a transcript of the presentations? Are you aware of that?

A. Yes, but that was not available when these answers were produced.

Q. I see. Can you remember whether after the presentation, there was any sort of post-mortem-type meeting?

Do you know what I mean by that?

THE INTERPRETER: He is asking, does "post mortem" have a negative connotation?

MR. HEALY: No. I'll rephrase it.

Q. Was there any discussion after any meeting after the presentation at which an assessment was made by the Esat Digifone team of how or of what impression they had created or how well or badly they had done?

A. I don't really recollect whether there was I mean, of course we spoke on the way out; I don't remember whether we sat down and had a physical meeting afterwards, but I think it was in general, we were content with how the presentation did go.

Q. And in the days following, you don't recall any being asked to attend any meetings or to meet somebody, even on a one-to-one basis, to discuss what somebody might have felt was a weakness in the presentation?

A. No, I don't recollect any such meetings, no.

Q. Are you familiar with Mr. O'hUiginn or Mr. Mara? Did you come across them in the course of your work on the project?

A. I heard the names, yes.

Q. Mr. PJ Mara?

A. Yes.

Q. Did you meet him at any time after the presentation to discuss the presentation?

A. No.

Q. Did you have any, how shall I put it, purely Telenor assessment after the presentation as to how it had how you had performed?

A. Nothing formal, but I am sure that we discussed it in the team.

Q. Okay, so you might have discussed it, as you say yourself, on the way out, or over a coffee, if you went off and had a coffee afterwards?

A. Yes.

Q. But I suppose if you had drawn up a list of problems, you'd have remembered it, would you?

A. Yes.

Q. So you don't recall any identification of problems by the team as a whole, and you don't recall any identification by Telenor of any problems, either on the Telenor side or on the O'Brien side?

A. There were issues in the presentation, of course, that we were not that content with, but I don't remember any meetings or any documents being produced to reflect those concerns, no.

Q. Right. Can you say what those concerns were, or what

those issues were that you had concerns about?

A. Well, of course, the we were always concerned about the whether the financing would be questioned and how it would be perceived.

Q. It was questioned; you have seen that from the presentation transcript, haven't you?

A. I have seen that in the transcript afterwards, yes.

Q. The financing that was questioned was the financing of Communicorp; isn't that right?

A. Yes.

Q. If we just take it maybe in stages. You don't recall anybody questioning or making any raising any difficulties concerning Telenor's finances?

A. No.

Q. There were no questions about the institutions?

A. I would have to look at the transcript to give you an exact answer to that.

Q. You can look at them over lunch if you like, but I don't think you recall anyone you can't recall coming out and saying, "There is a problem with the institutions"?

A. No, that's correct.

Q. We can look at the presentation in the afternoon, but I think there was a question asked about how much money Advent were going to be putting in, because there was some difficulty in arithmetic concerning the 30 million mentioned there was 30 million mentioned

in the letter of the 10th July; do you remember that?

A. Yes.

Q. And I think it was a number of questions were addressed to Mr. O'Brien and Mr. O'Donoghue, or at least were responded to by Mr. O'Brien and Mr.

O'Donoghue, concerning precisely how much money was involved in the Advent relationship with Communicorp; do you remember that?

A. I have seen that from the transcript, yes.

Q. Apart from that, was any other issue raised?

A. Well I'd have to go back to the transcript to look at that, but

Q. All right, we can go back to the transcript later.

If you go on to Question 30, you were asked for whatever information you had concerning the purpose of the meeting between Mr. Denis O'Brien and Mr. Arve Johansen in Oslo on the 22nd September, 1995.

And then a number of particular questions; firstly, the date on which the meeting was arranged. And you say you have no recollection of this meeting. You do not deny that there may have been such a meeting, but you are unable to provide any assistance.

And then all of the other questions concerning the meeting, you say, would be attended to or addressed by Mr. Johansen; is that right?

A. Yes.

Q. Before I ask you anything else about whether you were

at the meeting or not, were you aware that there had been such a meeting between Mr. Johansen and Mr. O'Brien at which, as we now know, ownership issues were discussed?

A. You mean at the time, or when?

Q. At that time maybe not on that day, but around that time were you aware of that?

A. Well, since I don't recollect the meeting, I don't really recollect in what connection I was becoming aware of it. But clearly there was a meeting, yes.

Q. Well, we know there was a meeting; I think that's not denied on any side. We know that at that meeting, it seems that Mr. Johansen agreed with Mr. O'Brien a new ownership structure which would involve bringing in IIU/Mr. Dermot Desmond; is that right?

A. That's what I understood, yes.

Q. What I want to try to find out firstly is, when did you become aware that those new proposals were now going to take effect?

A. I don't know exactly when I was made aware of that.

Q. Presumably somebody must have made you aware of it, because you were involved in dealing with IIU, isn't that right, and in dealing with Mr. O'Brien concerning IIU; isn't that correct?

A. Yes.

Q. And you were the project coordinator; you were the person who would be responsible for putting these new

proposals in place. Isn't that right?

A. I am not saying that I was not made aware of the meeting. I am saying that I am not able to recollect when I was made aware of the meeting.

Q. Right. One thing is clear: It was an important meeting, wasn't it?

A. Yes.

Q. And the consequences of the meeting were very important, because there was going to be a change in the percentages of the various partners in the project; isn't that right?

A. Yes.

Q. And therefore, it was something that you would have to be brought up to speed on; isn't that right?

A. Yes.

Q. Up to the time that you were told by whoever told you that this proposal had now been agreed to, did you know anything about it, even in general terms?

A. You mean the proposal for the new shareholding structure?

Q. Yes.

A. No, I didn't.

Q. So the first time you were told about this was when it had been agreed or after it had been agreed; I beg your pardon.

A. If you are asking about the agreement on percentages, that's correct, yes.

Q. Am I right that you knew nothing about IIU or about the fact that they were getting 25% until after Mr. Johansen had agreed with Mr. O'Brien on the 22nd?

A. I may have heard about that prior to the meeting, but

Q. That's what I am trying to get at.

A. Sorry?

Q. That's what I'm trying to establish. You think you may have known about IIU prior to the meeting?

A. Yes, that's possible.

Q. So prior to the meeting, did you have an idea that Mr. O'Brien wanted to introduce a new partner, and he was going to meet with Mr. Johansen maybe not on the 22nd, but at some point to discuss it?

A. Again, I am not really able to recollect when I first heard about IIU, but it was on or around this time that I heard about IIU.

Q. I see. Can you recall who told you about it, even if you can't remember precisely when you were told?

A. No, I am sorry, I am not able to recollect that.

Q. To whom did you normally report in relation to this whole project?

A. From the beginning it was Sjur Malm, but later in the process, it was more Knut Digerud and Arve Johansen.

Q. And from whom did you normally get your instructions or any direction in relation to the project?

A. From the same two people.

Q. From Mr. Digerud or Mr. Johansen?

A. Primarily from Mr. Digerud, yes.

Q. I see. Now you say that you can't recollect you have no recollection of this meeting. You are aware that Mr. O'Brien has said in a letter that you joined the meeting. Are you aware of that?

A. Yes, I am aware of that, yes.

Q. Did that in any way stimulate your memory in relation to the meeting?

A. I mean, as long as I am not really able to recollect or remember the meeting, I think all types of stimulation is not really that helpful, to be honest.

Q. If you go on to Query Number 31.

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

There is obviously a typographical error there. That should be subsequent to the meeting on the 22nd September and prior to Mr. Johansen's letter to Mr. O'Brien dated 2nd October.

And you say Mr. Johansen will address this issue. You do not recollect any discussion with Denis O'Brien between the 22nd September 1995 and the 2nd October 1995 regarding IIU.

Query Number 32, you were asked for the date on which and the circumstances in which Telenor was first informed of or became aware of that IIU had agreed to underwrite the equity participation of Esat Telecom in Esat Digifone. And you say that you believe that it was probably shortly before the 22nd September 1995, based on documents made available from Telenor's legal department on the 21st September 1995; a fax of a draft Deed of Covenant was received by the Telenor legal department. Mr. Bugge, the person dealing with the matter, was on holidays at the time. The draft Deed of Covenant mentioned IIU as party. It seemed likely to you that some explanation would have been offered to Telenor before submission of this document to Telenor, but you have no recollection.

Now, we'll be looking at the documents in more detail later, but could I just for a moment refer you to Mr. Johansen's letter of the 2nd October. If you want to see it, we can call it up, but the question I want to ask you is this: Would you have been aware of that letter at the time that it was written?

A. Yes.

Q. Would it have been copied to you, in other words? I don't think it says copied to you, but I will find it, just so we can be sure about that.

A. Can you please give the reference to the document?

Q. I'll just pull it up here and see if it's the copy

I have doesn't say that it was CCed or copied to you, but apart from formally sending it to you, can you recall, in any case, whether you received it or a copy of it?

A. I just want to make sure that we are talking about the same letter.

Q. It's Document 48(68)

A. Yes, I knew about this letter, yes.

Q. Did you know about it after it was written, or were you in any way involved in the drafting or writing of it?

A. I was involved in drafting it, yes.

Q. What can you tell me about the drafting of it?

A. It must be based on a discussion I had with Mr. Johansen on the content of it.

Q. So presumably Mr. Johansen must have filled you in on his meeting

A. Yes.

Q. between the 22nd September and the 2nd October?

A. Whether Mr. Johansen or somebody else.

Q. Mr. Johansen or somebody else who was present at the meeting?

A. Yes.

Q. Do you know who else was present at the meeting besides Mr. Johansen and Mr. O'Brien, if anyone?

A. Well, I have seen afterwards that Mr. Malm was present from the Telenor side, yes.

Q. Would you have drafted this letter for Mr. Johansen's signature, do you think?

A. I drafted a part of it, and it was changed after my drafting, so some of the wording is mine and some of the wording is not mine.

Q. Can you remember today which wording is yours and which wording is not yours?

A. I would have to examine

Q. Do you want to go if you like, we can go through it paragraph by paragraph; it might be of assistance.

It's addressed to Mr. Denis O'Brien.

"Dear Denis,

"Referring to our meeting on Friday last and our following phone conversations and my conversation with John Callaghan, I will take this opportunity to elaborate on Telenor's view on our equity participation in Esat Digifone Limited.

"Telenor was invited to participate on an equal term basis (as stated in our joint venture agreement), and all work has been carried out on this basis. Our drafted shareholders agreement clearly lines out how a pro rata reduction of ownership will take place down to 34% ownership each.

"At the moment, Telenor has put substantial financial and human resources, including some of our best mobile expertise, in preparing the bid as well as conducting the necessary follow-up work. Site work has

explicitly been kept apart from our cooperation, as stated in the said joint venture agreement. All other bid costs were to be split on an equal basis (including a possible trade-off between advertising costs and Telenor Mobil staff costs).

"At an early stage of our collaboration we made our concern clear regarding Communicorp's ability to fund Esat Digifone. After considerable pressure, Advent's comfort letter and your own acceptance letter was presented to us and the Ministry. Even though the content of these letters were not very satisfactory, we decided to submit the bid due to the time constraints.

"It was clear from our meeting with the Ministry that both the lack of commitment from the institutions, as well as the uncertainty in the Advent/Communicorp relationship, created a lack of confidence in the Irish side of the consortium's capacity to raise the necessary funding.

"In order to reassure the Ministry and give an even stronger signal to the Irish community in general, we are pleased with the plan to have another solid Irish underwriter.

"Apparently this requires us to accept a dilution of about 5% in total. For Telenor, it is definitely very hard to give up ownership stake at all on the basis of supporting Communicorp's and the Irish institutions'

capabilities to raise the necessary funding. But on basis of the joint venture and draft shareholders agreement we feel obliged, and accept a pro rata dilution to 37.5%. Any further dilution would be in conflict with the principles of our participation and the board resolution of Telenor AS.

"Having said this, we still believe in the compatibility of our partnership. We sincerely appreciate the efforts you have put in both on actual ground work on sites, distributors and bid work, as well as your tremendous efforts in PR and lobbying. However, we believe Telenor's substantial efforts, mobile operating experience and reputation is equally vital both for winning the licence and establishing the network within the proposed time-frame.

"You have indicated to me that bid costs are running much higher than anticipated when entering into the joint venture agreement. We believe that Telenor, based on the agreement, will absorb its equitable share of these costs. If, however, you feel that Communicorp for some reason is not fully compensated, we are willing to discuss this problem in further detail.

"I once again want to thank you personally for the tremendous effort you and your Communicorp team put in place to help Esat Digifone win the licence. I will also assure you that the whole Telenor team has

enjoyed working with you all and promise support in any way we can as the race moves into the finals.

"Looking forward to our common success, I remain

"yours sincerely, for Telenor Invest AS,

Arve Johansen."

Now, can you try to recall

A. Well, I am not really able to point out which exact

phrase I drafted or not, but in general I would say I

drafted the first part of the letter, or the first

part of the letter is as I drafted it, and when it's

discussing the equity participation, etc., that's not

my wording. And then towards the end, maybe the last

phrase or something is what I put in.

So in general, I drafted the first part and maybe the

very last.

Q. Maybe you can just help me. When you say "first

part"

A. At least down to the first five down to "In

order".

Q. Down to "In order"; I see.

A. Then after that, there has been made changes in my

initial wording, yes.

Q. And maybe yours again at the end; is that right?

A. Yes.

Q. Where would that be?

A. "I once again want to thank you personally", etc.

Q. I see. And apart from you, who else was contributing

to the letter?

A. I don't know.

Q. Pardon?

A. I don't know. It could have been Mr. Johansen himself, or it could have been somebody else. I don't know.

Q. I see. And all of the content that you put in was based either on your own knowledge of the project and/or on what Mr. Johansen or somebody else who was at the meeting told you?

A. That's correct.

Q. That would have been Sjur Malm or Mr. Johansen, if not Mr. Johansen himself?

A. Probably, yes.

Q. Now, could you look at the paragraph before the paragraph that begins "In order," the one that begins "It was quite clear"; do you see that?

A. Yes.

Q. "It was quite clear from our meeting with the Ministry that both the lack of commitment from the institutions, as well as the uncertainty in the Advent/Communicorp relationship, created a lack of confidence in the Irish side of the consortium's capacity to raise the necessary funding."

Is that your view, or was that a view that was relayed to you by somebody else?

A. I would say that that's consistent with my view, yes.

Q. That was your view?

A. Yes, at the time.

Q. You had a view that the Irish Department of Transport, Energy and Communications team was not confident, or was dissatisfied in some way with the lack of commitment from the institutions; would that be right?

A. Not so much the institutions as I think from the second part of the paragraph, no.

Q. Okay. "The uncertainty in the Advent/Communicorp relationship", you think that?

A. Well, at least that was questioned during the oral presentation.

Q. Okay. Well, let's take it step by step.

You don't recall you don't think that and I think I am right in saying, am I, that nothing at the presentation suggested that the lack of commitment from the institutions was a problem, but you are saying that the second passage was a problem?

A. Yes.

Q. Okay. Well, we'll come back to this letter and to that part of the letter when you have had a chance to look at the presentation again. We'll just go on with the narrative, I think, and try to get that out of the way altogether.

A. Okay.

CHAIRMAN: Could I just raise one matter, Mr.

Simonsen, before Mr. Healy moves on. You have told us

that the basis of reporting was that in the early days you reported to Mr. Malm, and then at a later stage, you reported to Mr. Digerud and Mr. Johansen; that's correct?

A. Well, formally I was always reported to Mr. Sjur Malm; but since he was he was engaged in a lot of other projects, I also reported directly to Mr. Digerud.

CHAIRMAN: When the decision was made to proceed with putting in the bid even though you have said you were not entirely happy with the Advent commitment, we were told two days ago by Mr. Haga that there was board approval for deciding to go ahead. Do you remember Mr. Haga discussing it with you and it being spoken of further up the line?

A. Well, the board approval we had gave us room to submit the bid as it was, yes.

CHAIRMAN: Mr. Haga told us, in effect, that it was largely a commercial decision, because the money you had spent and the time you had put in would not have been got back if you had pulled out of the consortium, or indeed if you had lost the licence competition. Does that reflect your view, or would you add anything to it?

A. No, that's reflecting my view. And again it was also inside the scope of the board decision as we viewed it.

Q. MR. HEALY: If you go to Question 33 on page 20, Mr. Simonsen, you were asked for the date on which and the circumstances in which Telenor had sight of or otherwise became aware of the contents of a letter dated 29th September 1995 from Mr. Michael Walsh of IIU addressed to Mr. Martin Brennan of the Department. You say you do not remember seeing the letter at that time. Inquiries are being made to ascertain if a copy of the letter or a draft of the letter was sent to you.

We can come back to that again when we look at some of the documents later on, unless you want to add anything at this point.

You don't?

A. No.

Q. You were asked for any information you had concerning Telenor's understanding of the purpose for which the letter of the 29th September, 1995, from IIU, addressed to Mr. Martin Brennan of the Department, was sent and all matters of consideration which prompted the furnishing of the letter, together with the source or sources of Telenor's understanding.

You say that the letter itself was the only source of information you had. The draft letter had not been discussed before it was sent. You were not informed of the matters or considerations which prompted the furnishing of the letter.

You were asked for the date on which and the circumstances in which Telenor was first informed or otherwise became aware of that the Department had refused to consider the contents of the letter of the 29th September.

You say you cannot remember when or by whom or in what circumstances you were told this. You believe that you were told this. You refer to the attendance note of Mr. Arthur Moran of Messrs. Matheson Ormsby Prentice dated 9th November 1995, and on that basis you believe you were told that the letter had been rejected.

That is a reference in Mr. Moran's note, which we'll come to later, to the letter having been refused; isn't that right?

A. I didn't understand the question.

Q. I am only trying to see are we ad idem when it comes to what's stated in your answer here. You say you cannot remember when or by whom or in what circumstances you were told that the Department had refused to consider the contents of the letter of the 29th, but you believe that you were told that?

A. Yes.

Q. And your belief is based I hope I am right in paraphrasing your statement on a document which is an attendance note or memorandum made by Mr. Arthur Moran on the 9th November; is that right?

A. Correct, yes.

Q. You were asked, in the next question, about when you first had sight of or became aware of the contents of what I'll call the rejection letter, the letter dated 2nd October 1995, from the Department to Mr. Denis O'Brien, returning to Mr. O'Brien the letter of the 29th September from Mr. Michael Walsh. And you say "See reply to the above question".

There is just one tiny aspect of that I want to clarify with you. You said that you became aware that the Department wrote back to Mr. O'Brien refusing to consider the letter. I just want to clarify whether you saw the letter from the Department or saw a copy of the letter from the Department.

MR. FITZSIMONS: I am sorry, Chairman, Mr. Healy hasn't yet read out the second sentence in the answer to Question 35, just that the record might show that the witness had therefore seen the letter before it was made available to Telenor by the Tribunal.

CHAIRMAN: We'll certainly take it carefully if there is any ambiguity, of course.

Q. MR. HEALY: Mr. Fitzsimons is quite right when he draws my attention to the fact that you say you didn't see the letter until after a copy was made available to Telenor by the Tribunal. And that was, as far as you were concerned, sometime after the 24th April, 2002?

A. Yes.

Q. Was that a surprise to you when you saw it?

A. No, I don't think that was a big surprise, no.

Q. Is it surprising that you didn't that you hadn't ever received a copy of that letter? Would you not agree with me, it's surprising that you hadn't ever received a copy of that letter in your role as project coordinator?

A. Again, this matter was primarily handled by the Irish side. Everything about this letter and the I wasn't really in the loop, to put it that way.

Q. Can you recall, now even, from whom you may have been told that the letter of the 29th September had been, as it were, refused and sent back?

A. No.

Q. If you weren't in the loop, does that mean that you only learnt about the refusal of the letter casually?

A. Certainly I was told about it, but I don't know under which circumstances or by whom.

Q. Can you recall whether you were told about it from the Telenor side or from the Esat Telecom/Communicorp side, or from IIU?

A. Well, again, this will be since I don't have a recollection, I would only be speculating. Most likely not from the IIU side. Most likely not from Telenor side.

Q. So as a matter of probability, if you had to choose

any one of the three of them, it would have been from the Communicorp side?

A. Yes.

Q. Question 37, you were asked for your knowledge of Telenor's understanding of the precise obligations and entitlements of Esat Digifone and of Communicorp on foot of the agreements of the 29th September, 1995, between Esat Digifone and IIU and between Communicorp and IIU, together with the source or sources of Telenor's understanding.

And you say that you can only remember carrying out an initial analysis of the draft arrangement agreement and sending a fax dated on or about the 28th September, 1995, containing your initial comments on this draft to Gerry Halpenny of William Fry's. This was subject to the draft being reviewed by Telenor's legal department. The arrangement agreement was signed without Telenor's prior approval before such a legal review was carried out. To the best of the recollection and understanding of yourself, IIU was obliged and permitted to arrange for 25% of the shares to be purchased by investors. You were not shown and were not aware of the side letter of the 29th September, 1995, until after it was signed.

And we'll come back to that side letter later.

You are not aware of any obligation or entitlements between Communicorp and IIU, and based on your

understanding, you believe that Esat Digifone was obliged to permit IIU to seek investors for 25% of the shares in Esat Digifone.

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

And you say you do not know of any agreement between Communicorp and IIU in relation to Esat Digifone. You repeat that IIU was obliged to seek investors for 25% of the shares in Esat Digifone, and IIU was also obliged to underwrite the provision of Irish capital amounting to 62.5% of the capital requirement of Esat Digifone.

You were asked for your knowledge of Telenor's involvement and the circumstances in which or the terms on which J&E Davy, Advent International, Allied Irish Banks, Investment Bank of Ireland and Standard Life agreed to withdraw from involvement in the consortium. And you say you have no knowledge.

You were asked for your knowledge of a letter dated 22nd November 1995 from Mr. Kyran McLaughlin of J&E Davy to Mr. Denis O'Brien in which Mr. McLaughlin requested Mr. O'Brien to provide information regarding three matters raised by Mr. McLaughlin in his letter.

And you say that you had no knowledge.

You were asked about any dealings or discussions to which Telenor was a party or of which Telenor had knowledge in relation to those queries. And you say again you have no knowledge and you have no knowledge in relation to the manner in which Mr. O'Brien dealt with the matters raised by Mr. McLaughlin.

Then you were asked for details of all matters which prompted Telenor to engage solicitors in this jurisdiction in early October, 1995, and you say for some time Telenor had been endeavouring to retain Irish solicitors. The formal shareholders agreement involving an Irish legal entity, Esat Digifone Limited, would have rendered the obtaining of Irish legal advice to be prudent. Owing to the conflicts of interest, because of the number of consortium members already represented by other firms of solicitors, Telenor was unable to identify acceptable Irish solicitors until early October, 1995. Telenor would have preferred to have retained Irish solicitors from a much earlier point.

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

And you say you had the general impression that the

end of October was the expected timing of the decision, and you had no concrete or definite information about this.

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

And just to put that in context: do you recall the reference to Bottin International?

A. Yes, I recall the reference to Bottin International being in circuit, yes.

Q. Bottin International, under the terms of a side letter, became entitled to all of the rights of IIU under the arrangement agreement?

A. Yes.

Q. And undertook all of the obligations of IIU under that agreement as well; isn't that right?

A. Yes.

Q. So that the obligations and the rights that you have already referred to, including the obligation to get

investors for 25% and to underwrite the provision of Irish capital up to 62.5%, was being transferred to Bottin; isn't that right?

A. Yes.

Q. And you say that you were aware that Telenor issued two letters seeking information in relation to Bottin International Investments Limited. The first was a letter from Knut Haga dated 6th October, 1995; the second was Knut Digerud's letter of the 12th October 1995. And you are not aware of any response to either of those two Telenor letters.

And I take it that since this document was provided, you still are not aware, from any documentation you might have seen, of any response to those two letters?

A. That's correct.

Q. The next document refers to the paragraph of a letter dated 12th of a fax letter dated 12th October 1995, I think from your solicitor, referring to the side letter, and in particular, I think, referring to the reference to Bottin. And we'll be looking at this in detail, so I'll just go through the question and answer quickly.

The passage of the letter is as follows: "I have considered the content of the side letter dated 29th September 1995, which seems to me clear evidence of a breach of good faith with the Department".

That was advice contained in a letter from Mr. Arthur

Moran, your then solicitors; isn't that right?

A. Yes.

Q. You say that you believe that this question should be directed to the author of the letter, who was the person giving his advice to Telenor. We'll come back to that letter later.

You were asked about the date on which and the circumstances in which you first became aware that Esat Digifone had won the licence competition, and the source of your knowledge. And you say that Hans Myhre and yourself were together in Oslo when you received news of the announcement by telephone call from Denis O'Brien.

Then you were asked for details of Telenor's understanding of the following:

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

And you say the composition had not yet been established, but it was intended that there would be a 40:40:20 split comprising equal 40% shareholdings for Communicorp or other appropriate Denis O'Brien corporate vehicle, 40% for Telenor and 20% for institutional investors.

Next

A. Sorry, at that point in time the composition was

50:50.

Q. Yes, you say it hadn't been established, but it had been intended; do you see that?

A. Yes, but when reading the question again, "the composition ... as of the 4th August," the correct answer would be 50:50. And then the intention is referring to the future.

Q. Yes. I think you had an ownership proposal that was put in the bid, as in the presentation, based on 40:40:20?

A. Yes, that's correct.

Q. The consortium vehicle was Esat Digifone; isn't that right?

A. Yes.

Q. But in your application, you made clear how it was you proposed to operate afterwards?

A. Yes.

Q. On a 40:40:20 basis, going down ultimately, I think, to much lower percentage; isn't that right? Aren't I right in thinking, by the way, that the percentage never went down; they always went up, didn't they?

A. Sorry

Q. Telenor and Mr. O'Brien's vehicles always increased their percentage interests in the consortium as time passed?

A. Well, we were down to 37.5, weren't we?

Q. But then you started going up from there; isn't that

right?

A. Yes, that's correct.

Q. The composition of Esat Digifone consortium as of the 25th October, 1995, being the date on which the consortium won the licence competition. The composition had not yet been established at that point, but it was now intended that the shareholdings be divided as to 37.5% to Communicorp, 37.5% to Telenor, and 25% to IIU.

And again, shareholdings to that effect may not have actually been created, but that was the agreement between the three parties; isn't that right?

A. It was still 50:50 at that stage, yes. But the intention was to bring it to 37.5.

Q. But there was no doubt you only had 37.5 percent at that stage, and Mr. O'Brien only had 37.5%?

A. We would only have those percentages, yes.

Q. And IIU only had 25%?

A. Yes.

Q. You were asked about the capital configuration and beneficial ownership of the shares of Esat Digifone as of the 12th April

MR. FITZSIMONS: Sorry, Chairman, I just want to interrupt: Mr. Healy has after the witness gave his answer Mr. Healy said "but there was no doubt you only had 37.5% at that stage and Mr. O'Brien only had 37.5%." That of course was not the position at that

stage, as a matter of fact. Mr. Healy shouldn't put the incorrect facts to the witness, in my respectful submission. The witness has already said a number of times, quite categorically, in writing and otherwise, that that was the intention at that time; not that it was the fact at that time. Mr. Healy knows that.

CHAIRMAN: Well, I have already noted the submission, Mr. Fitzsimons, that you addressed in that regard.

And it can, of course, be considered and assessed as a matter of law in due course, but I think, nonetheless, it's not unreasonable that what was clearly conveyed to the presentation and what was contained in the bid be set forth, and we can fully debate the actual legal phenomenon

MR. FITZSIMONS: Yes, Mr. Chairman. I am not at this stage talking about the law. I am talking about the facts, and the witness has given evidence of the facts through the witness, again like the witness yesterday, is giving evidence in English. It's not his day-to-day language. He has been subjected to rapid-fire questioning. He is giving his answers carefully. He gave his answer. Mr. Healy then put a proposition to him that was quite different from the answer he had just given. The witness said yes. Now, Mr. Healy's question, in my submission, was unfair. Mr. Healy seems to wish that for the record, but the record shows otherwise, on the basis of the

witness's written and verbal evidence here. And again, I object to the manner in which Mr. Healy sought to put that point on the record in the knowledge that the witness has expressly given different evidence.

CHAIRMAN: Well, Mr. Fitzsimons, I don't see anything objectionable in the general tenor of the examination.

I think the first matter that arose was that Mr. Healy put the replies that were contained in the full considered statement, and the witness then sought to make certain clarifications or variations. And as I understand it, Mr. Healy was seeking to elicit what was the net position.

But we'll certainly pause to ensure that this aspect is adequately covered.

Q. MR. HEALY: I think you were then asked for the capital configuration and beneficial ownership of the shares of Esat Digifone as of the 12th April 1996, being the date of the board meeting at which the full complement of shares was issued in Esat Digifone. And you say you were not in attendance at the board meetings and that this would be addressed by Mr. Johansen. And you give a similar answer to a question concerning capital configuration as of the 16th May 1996; isn't that right?

A. Yes.

Q. You were then asked for any information you had

concerning Telenor's understanding of the Department's knowledge of the composition of the consortium at various times, and you say you are unable to comment on the Department's knowledge. Do you see that? You were then asked for your knowledge or for any information you had concerning Telenor's knowledge, direct or indirect, of all contacts between the Esat Digifone consortium or any member of the consortium or any person on their behalf and the Department regarding the involvement of IIU Limited as a member of the consortium, and in particular, the Department's attitude to such membership as recorded in an attendance of Mr. Gerry Halpenny of Messrs. William Fry Solicitors dated 21st November, 1995.

You say that you have no knowledge, and that you had not seen or been informed of the contents of the attendance. We can come back to it later on when we look at some documents.

You were asked in Question 51 about the date on which and the circumstances in which and the manner in which Telenor was informed or otherwise became aware that Communicorp/Esat Telecom did not intend to fund its equity participation in Esat Digifone by drawing on finance to be provided by Advent International but intended to fund its participation by placements through CS First Boston, including details of the precise information provided to Telenor and the source

of such information.

And you say you are unable to recollect the precise date or circumstances in which it became that

Communicorp/Esat Telecom did not intend to avail of the finance to be provided by Advent International.

You believe that Telenor was provided with no specific information I presume that should mean I think we'll stop there; I don't know what the rest of that sentence means. And I don't blame you for it.

CHAIRMAN: I think it should probably be a comma instead of a period.

MR. HEALY: Yes, I'll read it "You believe that Telenor was provided with no specific information or proposals or otherwise in relation to this".

The next two questions the next question, sorry, at question 52, again concerns the funding of the Esat Telecom or Communicorp/Esat Telecom end of the consortium. And you say that you had no knowledge.

The next question, question 53, concerns Telenor's knowledge, direct or indirect, of the queries and issues raised by the Department regarding the ownership of the Esat Digifone consortium and the information furnished to the Department by or on behalf of Esat Digifone regarding these issues and queries, including a letter dated 17th April, 1996, from Mr. Owen O'Connell, solicitor, addressed to Ms. Regina Finn of the Department. And you say you were

not involved in this.

Do you know what letter is being referred to? Because I'll come back to it later on if you want. You may not remember it at this point, and I'll remind you of it later.

CHAIRMAN: I think it's probably feasible to finish the statement before we rise, because there is a lot, and the witness indicates he is not in a position

Q. MR. HEALY: I think the next, in fact, set of queries, from 53 right up to 62, are matters in respect of which you say you have no knowledge; isn't that right?

A. Yes.

Q. Question 63, again, is a similar question. It relates to a matter that you have no knowledge of and you were not involved in.

The same for question 64, I think, and 65. And 66.

I think at this point it might be helpful if I were to ask you whether you can recall the extent of your involvement in the process leading up to the actual formal granting of the licence on the 16th May, 1996, because I think you have informed the Tribunal that you ceased to have a role as project coordinator sometime in '96; is that right?

A. Yes. I gradually took less and less part in the process in the spring of '95, and I was not involved.

Q. I think you probably mean the spring of '96?

A. Sorry, the spring of '96.

Q. Did you remain formally the project coordinator on the Telenor side?

A. It was a different situation, because it was it constituted a board, it was an operation running, so the need for a project coordinator was not any longer. I mean, my job was really to hand over what's been done in the bid process.

Q. Do you mean

A. Towards the operational and line management of the company and the board of the company.

Q. So a management was being put in place, and therefore you were handing over to that?

A. Yes.

Q. Does your diary or any other documents you have seen assist you in any way in putting a final sort of date on when you ceased to have any involvement?

A. Well, I may have been consulted from time to time even into March/April, but in reality, I was working on other projects then, so I was very little involved.

Q. If you go on to Question 69, you were asked for details of all meetings or discussions between Telenor, Esat Digifone, any member of the consortium or any person acting directly or indirectly on their behalf and any one of a number of individuals.

And you say you can only answer in respect of the period of your own involvement, from 27th April 1995 until April 1996, when you ceased involvement.

Following the establishment of the operation of Esat Digifone in November 1995, your involvement in the project began to diminish. You say it should be noted that a similar question is asked at Question 32, dated 25th June, 2002, although that question is limited to Telenor and persons acting on their behalf, but in any case, in relation to a number of specific individuals.

Firstly you say, in relation to Michael Lowry, you say you saw the Minister at the press conference which you attended. By "press conference", do you mean the press conference after the announcement of the winner of the licence competition?

A. Yes.

Q. In relation to Mr. John Loughrey, you say you are not aware of any such meetings.

In relation to Mr. Martin Brennan, you say you may have seen Mr. Brennan at the press conference and at the oral presentation, but you have no specific recollection of those occasions.

In relation to Mr. Fintan Towey, you say you are aware only of the oral presentation on the 12th September, 1995.

In relation to Mr. Michael Andersen or any member of Andersen Management International, you say that executives of AMI were present at the oral presentation, but you are not sure whether Michael Andersen himself was present. This was not a meeting

or discussion as such.

And you were asked about any official of any government department. And you say that you believe that officials from another government department, perhaps the Department of Finance, may have been present at the oral presentation on the 12th September, 1995, but you cannot say with certainty.

And with regard to any member of Government, you say you have no knowledge, or any public official, you have no knowledge.

Question 70, you were asked for your knowledge, direct or indirect, of all meetings, discussions, dealings or contacts of whatsoever nature between Mr. Denis O'Brien or any other person on his behalf, and the Minister or the Department at any time from the first involvement of Telenor in the Esat Digifone consortium to the date of issue of the licence on the 16th May, 1996.

And your response is, you have no actual knowledge, direct or indirect, of any meetings or discussions, dealings or contacts between Mr. O'Brien or any other person on his behalf with the Minister or the Department other than the oral presentation of the 12th September, 1995, and the press conference on or about the 26th October of 1995. You say that Mr. O'Brien informed you in or about the last two weeks of September, 1995, that he [Mr. O'Brien] had happened to

meet the Minister in a public house. You say you have no knowledge as to whether a meeting actually took place. Mr. O'Brien informed you that the Minister suggested that IIU should be informed in the consortium.

Now, I think we'll

CHAIRMAN: That concludes the statement. So it's a convenient time for us to adjourn for lunch. If it suits you, we'll take up your further evidence at ten past two. Thank you very much.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF PER SIMONSEN

BY MR. HEALY:

Q. MR. HEALY: Thank you, Mr. Simonsen.

Now, just before lunch, Mr. Simonsen, we were looking at the letter of the 10th May sorry, I am looking at the wrong letter; we were looking at the letter of the 2nd October, 1995, from Mr. Johansen to Mr. O'Brien. It's at Book 48, Tab 68.

Do you have a copy of it?

A. Yes, I have it, thanks.

Q. And as I recall, your recollection was that your wording is contained in paras, 1, 2, 3, 4 and 5 on the first page, in any case; is that right?

A. Yes, again I have as I said, it's difficult to draw the exact line, but that's yeah, I believe that's

the four paragraphs, yes, correct.

Q. Well, it was in light of some of the evidence that you gave me this morning that I was asking you about the fifth paragraph, the one which says "It was quite clear from our meeting with the Ministry that both the lack of commitment from the institutions as well as the uncertainty in the Advent/Communicorp relationship created a lack of confidence in the Irish side of the consortium's capacity to raise the necessary funding."

And the part of that sentence I think that we were about to deal with was the portion that effectively says, "It was quite clear from our meeting with the Ministry that there was uncertainty," or that uncertainty in the Advent/Communicorp relationship created a lack of confidence in the Irish side of the consortium's capacity to raise the necessary funding.

And I wanted to know where you got the impression that this was clear from the meeting with the Ministry; was it your own impression, or was it relayed to you by somebody else?

A. It was my own impression.

Q. And do you remember I reminded you that you told me that you thought the meeting had gone quite well, and that there were no problems at the meeting?

A. Yes. I still believe that.

Q. Well

A. Again, just to let me when I said earlier also,

there were questions raised, I didn't say that evolved into any problematic issues. I think the questions were dealt with at the oral presentation, and the matters were, to a certain extent, clarified; but the mere fact that questions were raised is the basis for this concern.

Q. Right. I think what you said was it was quite clear from the meeting with the Ministry.

Now, can we look at the I have pulled out the relevant portion of the transcript of the presentation. We can have a look at it.

The pagination is difficult for me to identify, but I think it's page 100. You have the few pages in front of you, Mr. Simonsen; do you see them? I think the first page you have is page 100, in fact.

It's very hard to decipher.

A. Yeah.

Q. At the top of that page, the speaker is Mr. Billy Riordan; do you see that?

A. Yes.

Q. And then if you go down to the next speaker is Mr. Peter O'Donoghue; the next speaker is Mr. Michael Andersen. Do you see that?

A. Yes.

Q. And then the next speaker is Mr. Billy Riordan again; do you see that?

A. Mmm.

Q. Now, I think that this is the only portion of the transcript in which a question is raised concerning Advent. And it says "Sorry, this question relates really to the letters of financial support and particularly the ones from Advent. Advent, in that letter, say that they have invested $\frac{1}{2}$ 10 million for 25 percent of the company, and then at some stage in the proposal it says that they have $\frac{1}{2}$ 19.5 million invested for 34 percent." Do you see that?

A. Yes.

Q. Maybe if we could look at the letter for a moment. If we just put the letter on the overhead projector for a minute the letter of the 10th. If you look at the monitor, or at the overhead projector, whichever, you'll recognise the letter?

A. Yes.

Q. And if we go down through the letter for a moment, you'll see there "Advent's investment in the Communicorp Group" seems to be a reference to Advent's historical investment in the group. It says "In 1994 certain of the funds managed by Advent International invested a total of approximately \$10 million in Communicorp Group Limited in return for just over 25% of the voting share capital. Communicorp is the holder of 50% of the issued share capital in Esat Digifone Limited."

So Mr. Riordan is saying, Advent in that letter say

they have invested 10 million for 25% of the company,
do you see that, where he says that in the transcript?

A. Mmm.

Q. And then he says "And then at some stage in the
proposal" meaning the whole bid "it says that
they have invested 19.5 million for 34 percent.

I just want to clarify, have they, in the interim,
invested an extra 9.5 million for the extra 9 percent
equity?"

And then Mr. O'Brien answers: "They have invested a
total of 19.5 million since last October, which is
completely apart from this new investment which will
come and is guaranteed if we receive this licence."

Now, do you see what Mr. O'Brien is saying, that the
19.5 has nothing to do with the 30 million; do you
understand? And on the next page, then, you see Mr.
Riordan says "Okay. The reason that was throwing me
off was the letter said something different. That was
a letter that was addressed to Martin on the 10th
July. And it says that certainly the funds managed by
Advent International invested a total approximately of
10 million in Communicorp, and it leaves it at that.

They are committed to investing an extra 9.5 million.

Then Mr. O'Brien says: "They have actually done it".

Then Mr. Riordan says: "That's the clarification I
was looking for, really."

Do you see that?

A. Yes.

Q. So Mr. Riordan appears to have satisfied himself that the 19.5 million was separate from the 30 million.

And then he goes on: "Then really a follow-on from that was that Advent have said they are providing up to 30 million to Communicorp".

Mr. Denis O'Brien: "30 million, I think it's pounds".

Mr. Riordan: "Sorry, you are right, IR $\frac{1}{2}$ 30 million.

I am wondering in what form will that funding be put into Communicorp? Will it be loans or will it be equity?"

Mr. O'Brien said: "It will be equity. That's what we have negotiated on. So in other words, at the moment, Advent will probably go up to about 47, 48 percent if we win the licence. So the business will be remain Irish controlled. There is also a second thing, and that is that there is a three-to-one voting ratio to the Irish investors".

Mr. Riordan: "So every one of their shares is worth three of yours"

Denis O'Brien: "No. In fact the Irish content, we have three times their votes. It's three to one, and that really protects the Irish content, and that has been there from the very, very beginning of the relationship with Advent."

Then there are a number of other questions clarifying the percentage of Advent. And if you go to the

second-last page of the extract, which is near the end of that discussion, I think it's page 105, you will see Mr. Riordan says: "So you have a little bit of fat in that. You have, in fact, from the point of view you have about 8.5 million of fat in that particular commitment".

Mr. Denis O'Brien: "Yes, but it's an irrevocable commitment of fat, if you know what I mean".

Mr. Riordan: "I used the term first".

Then it says "Speaker"; that in fact is Mr. McMahon.

It says: "Sorry, just one question on that, Denis.

Do I understand that there is already an agreement in place between Communicorp and Advent on that"?

Mr. O'Brien: "Yes".

Mr. Brennan says: "That is not the same as the letter of the commitment that we have seen in the application?"

Mr. O'Brien: "Well, we thought that you'd want to hear that directly from Advent, hence they wrote you a letter to say that".

Mr. Andersen: "Okay. I think that's all for the financial part, okay."

Now, can you tell me, how did you draw the conclusion from that that there was uncertainty in the Advent/Communicorp relationship?

A. Because there were questions asked about that topic.

Q. Yes. And were they answered?

A. They were answered, yes. But again, I think the mere fact that the questions were asked is a basis to say that there was an uncertainty.

Q. Were the questions correctly answered, or not?

A. To my knowledge, they seemed to be answered correctly.

But I would like to draw your attention to one thing, and the transcript from the oral presentation was not available at that point in time when I wrote this letter. This was from my recollection of events.

Q. So that was your recollection at the time?

A. Yes.

Q. And had you discussed that with anyone else until the time it you came to write this letter?

A. No.

Q. So the first time you decided to frame this in terms of a sentence was around this time?

A. Yes.

Q. And were you the only person who had this view?

A. Again, as I we discussed this morning, I may have discussed this with some of my colleagues, but I don't know exactly what the positions of the others were.

Q. What prompted you to say that "The uncertainty in the relationship created a lack of confidence in the Irish side of the consortium's capacity to raise the necessary funding"?

A. I can only refer to my previous answer. The mere fact that these questions were asked and dealt with at some

length in the oral presentation indicated to me that this was a weak point.

Q. I think you told me a moment ago that you were satisfied that the answers that had been given were correct answers; isn't that right?

A. Yes.

Q. Well, then

A. Well, listen, I do not want to underwrite the correctness of the answers; is that what you are looking for?

Q. Yes no, I am saying were the answers correct, as far as you were concerned?

A. Yes, I mean, some of these answers were issues I didn't have first-hand knowledge to, but they seemed okay, that's what I said.

Q. But if you were satisfied that the answers seemed okay, why would you have to introduce a wholly new person into the consortium and perhaps create a little more problems for the Department?

A. Well, we were not satisfied with the guarantee that had been provided by Advent at this point. We were looking for additional security.

Q. You were not satisfied with the letter from Advent?

A. We were not satisfied with the letter from Advent. We didn't see a sufficient commitment from

Q. Were you satisfied that the answers given at the presentation were correct?

A. They seemed correct.

Q. Is it not the case that you were not able to put together a letter or to put together material which would have supported or sustained what had been stated at the presentation concerning the relationship between Communicorp and Advent?

A. I don't really understand the question.

Q. Well, what was stated at the presentation was that Advent had already invested 19.5 million in the company, which was a fairly strong statement of confidence; isn't that right?

A. Yes.

Q. And then it went on to say that Advent had guaranteed another 30 million if the licence was granted?

A. That's correct.

Q. Which is a strong statement of confidence. And it went on further to say that there was agreement to that effect; isn't that right?

A. Yes.

Q. Not just a letter but an actual agreement. Now, if there was any lack of confidence on the part of the Ministry, as you put it, concerning those matters, wouldn't it have been a simple thing to do, simply to send in the agreement or to send in some more material which would have copper-fastened the statement that Advent had invested 19.5 million?

A. I am not I was not thinking about the Advent

investment into Communicorp. I was thinking about the guarantee for the 30 million, and as you know, we were not satisfied with the content of that guarantee at that point in time.

Q. I know you weren't satisfied with the guarantee.

Before you went into the presentation, in fact, you had not been given any evidence of any proper guarantee or any other equivalent security; isn't that right?

A. Well, we have seen the letter from Advent, and we have seen the fax from Communicorp where Denis O'Brien is accepting to take up the offer from Advent if he is not able to get a better offer on better conditions elsewhere.

Q. But you didn't have any such offer. You didn't have any opinion from a lawyer in relation to any such offer. You had no sight of any such offer, notwithstanding Mr. Haga's requests for them; isn't that right?

A. Yes, that's right.

Q. And Ms. Helen Stroud had told Mr. Haga, I think in a telephone conversation, that there was no agreement; isn't that right?

A. I wasn't aware of that at that point in time.

Q. So you see, either you had all these problems before you went into the presentation, or you didn't?

A. I don't think really the presentation is demarcation

line. I mean, we were continuously trying to get a strong commitment; that was a process which was going on.

Q. But you were making a presentation to the Irish Government?

A. Yes.

Q. You were present, Mr. Johansen was present while Mr. O'Brien described a situation as completely satisfactory which you didn't think was satisfactory at all; isn't that right?

A. We wanted to see a stronger commitment.

Q. You knew that you had an obligation, going into the presentation, to state in good faith what the strengths of your consortium were; isn't that right?

A. Yes.

Q. Nobody was asking you to advertise its weaknesses, but as far as you were concerned, from what you now tell me, you had serious concerns about the relationship between Advent and Communicorp and about Communicorp's capacity to raise the necessary funding, and you must have had those concerns before you went into the presentation; isn't that right?

A. Yes, we had concerns relating to Advent's commitment, that's correct.

Q. But what happened at the presentation was that assertions which were completely at variance with what you believed to be the truth were made on behalf of

the Esat Digifone consortium; isn't that right?

A. No, I wouldn't put it that way. I think the letter from Advent, combined with the fax from Denis O'Brien, can be said to back what was said at the oral presentation. But since the conditions were not that good, apparently, there was always the possibility that another partner than Advent would be chosen, I think we realised that all the time.

Q. At the presentation, what Mr. O'Brien said was I am just trying to find the relevant passage so that we can be sure about it he says: "Advent have invested 19.5 million since last October, which is completely apart from this new investment which will come in and is guaranteed if we get the licence." Now, I think you knew that that was not the case, isn't that right, as far as you were concerned?

A. No, I didn't know.

Q. You were not happy with the evidence that had been given to you by Mr. O'Brien's side concerning this 30 million?

A. Yes, but are you sure that that's relating to the 30 million?

Q. Yes. Will I read it again?

A. Okay, sorry you may read it again.

Q. Mr. O'Brien says, if you look at the first page of the extract, it's the last four lines. Mr. O'Brien says "They" that means Advent "have invested a total

of 19.5 million since last October, which is completely apart from this new investment which will come and is guaranteed if we receive this licence."

A. Okay.

Q. You couldn't obtain any evidence from Advent to that effect prior to the 4th August, and you couldn't obtain any evidence from Advent to that effect prior to the 12th September; isn't that right? You tried, Mr. Haga tried, but you couldn't get any evidence of that?

A. We did not get the wording we wanted, no, that's correct.

Q. And Mr. O'Brien's solicitor would not provide an opinion on this agreement, isn't that right, if it existed; do you remember that?

A. Yes, I remember the well, at least I have seen it afterwards, yes.

Q. Okay. I can understand you may not have been involved in the details of this; Mr. Haga was doing it. But one must assume that at some stage Mr. Haga told you, would I not be right, "But look, we can't get an opinion on this, so we are going nowhere with it"?

A. I don't think Mr. Haga was involved in the opinion drafting, actually.

Q. Yeah, Mr. Bugge was actually trying to get the opinion, but presumably he must have been working in tandem with Mr. Haga; wouldn't that be right?

A. They were at least working for the same purpose, yes.

Q. And Mr. O'Brien was asked, on page 105, if you go to that page, and do you see in the middle of the page where there is an asterisk, line 19, and the word "Speaker"; do you see that?

A. Mmm.

Q. We know that that speaker is in fact Mr. McMahon. It says "Just one question on that, Denis, do I understand there is already an agreement in place between Communicorp and Advent on that?"

Mr. Denis O'Brien: "Yes."

You couldn't get that agreement ever; isn't that right?

A. Well, I was not in a position to know whether that agreement was in place or not.

Q. Every attempt you had made to get it was in vain; isn't that right?

A. We were trying to obtain evidence from Advent that they were behind the 30 million.

Q. They told you they had no agreement; that's what they said to you?

A. I was not aware of that at that point.

Q. I now want to refer you to another part of the presentation for a moment. It's at pages 114, 115, and I'll get you a copy: If you just go to the bottom of that page, I think it's near the end of the presentation, and Mr. Brennan says "Thank you very

much. I have consulted with my colleagues. The time is more than up, but they have no critical questions that crucially need to be addressed now. We have had, I believe, quite a good exchange. Thank you for coming along. As I think I said at the beginning, any future communications should be at our initiative rather than yours, in the sense that if we need further information we'll ask for it in writing, and that's the way we'd like to leave it".

Mr. O'Brien says, "Do you think that the process, I mean, what is the process between now and when you make your decision? I know we are not communicating with you. So well sorry, we are not going to send in any further material for to you review, so..."

Mr. Brennan says: "Simply we will complete the evaluation, and the Minister has a political commitment to produce a result by the end of November, and I can't say any more".

Mr. Denis O'Brien: "Okay, all right, thank you."

Does that ring a bell for you?

A. Yes, I am sure that that's a correct transcript.

Q. So at the end of the presentation, Mr. Brennan was I think chairing the process, said, "Thank you very much; if there is anything else we require, we'll ask for it. We don't want to you send us anything in. Anything that we need to review, we'll write to you for it". And Mr. O'Brien said, "Well, we are not

going to send in any further material".

Now I want you to look at the next paragraph in your letter, where you say "In order to reassure the Ministry and give an even stronger signal to the Irish community in general, we are pleased with the plan to have another solid Irish underwriter". Now, you think that that wasn't your wording; is that right?

A. I am not sure whether that's my wording or not.

Q. Is it that it's not your wording, or that that particular sentence or a sentence to that effect wasn't in your draft?

Do you understand the question?

A. Yes. Well, I am not able to remember that.

Q. What was contemplated by this, am I not right in thinking, was that material would be sent to the Department to reassure the Department about the Advent/Communicorp relationship and what you perceived to be a lack of confidence in the Irish side of the consortium's capacity to raise the necessary funding?

Isn't that right?

A. I don't think it spells out that things that were immaterial will be sent to the Ministry.

Q. How were you going to reassure the Ministry?

A. I don't know.

Q. Did you believe, when you read the letter, whether you wrote that portion or not, that there was some way that the Ministry could be reassured?

A. Well, again, I think we had a weak point. And I don't really have a problem, actually, with the content in the letter as it is. I think it's reasonable, the way it's drafted. And looking now at the transcript, of course I can see that the Chairman, that's Mr.

Brennan, was very specific that they didn't need any further information.

But I would like to remind you that this is at the end of a quite lengthy oral presentation. Things were being wrapped up. I am not really sure that I noted his comment at that point in time. It's much easier when you have a transcript in front of you.

Q. Do you see where Mr. O'Brien went further and said "We are not going to send in any further material for you to review"? Do you see that?

A. Yes, I can see that.

Q. Can I suggest to you, Mr. Simonsen, that a reasonable interpretation to put on the paragraph I just read out is that it was intended in some way to communicate to the Irish Department the plan to have another solid Irish underwriter?

A. Yes.

Q. This was, after all, only I think about just over a month, is that right sorry, it's October, this is the 2nd October, about two weeks, I am sorry, isn't that right, maybe three weeks from the time of the presentation?

A. Something like that, yes.

Q. And during those three weeks, you hadn't, yourself, decided at any point to try and communicate with the Department; isn't that right?

A. We had not had any communication, no.

Q. And you had no discussion with Mr. O'Brien about trying to communicate with the Department?

A. No.

Q. And you had no discussion amongst yourselves about what you might do to shore up what you saw to be a weakness in the application?

A. We may have discussed it; I don't know.

Q. You don't remember discussing it?

A. Well, again, the way you phrased the question, you can the ongoing work and getting a better commitment from Advent would be part of that, and we may have discussed that; that's what I meant.

Q. I see. If we just go and look at getting the commitment from Advent now for a moment.

I want you to look now at Document Number 12A in Book 48. I'll give you a copy of it.

A. I have it.

Q. This is a fax memorandum from Mr. Haga to Mr. O'Donoghue in Esat Telecom with a copy to you. Do you see that?

A. Yes.

Q. And it says "Per fax" and gives a fax number, 28th

June, 1995, "Re issues related to financial

guarantees/security package:

"Re Advent.

"Which legal body is Advent?

"Statement from a lawyer and auditor stating the

validity of the offer and Advent's capability to

fulfil its commitment towards Communicorp.

"The content of the offer, restrictions, conditions.

"Re: Communicorp.

"Acceptance of the offer from Advent, the validity of

the accept, legal opinion related to board resolution,

general assembly, shareholders agreement.

"Routines accepted by Advent and Communicorp related

to a direct routing of the capital injection directly

from Advent to Digifone.

"Re: Digifone.

"The above mentioned must be coordinated with the

(proposed) shareholders agreement.

"These are my instant reflections related to the

proposed structure. Please note that this is not to

be regarded as a general acceptance of your proposed

arrangement. I hope you understand that Telenor must

have a complete picture of the arrangement before we

can accept it.

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

of directors?"

Now, I have just picked out that letter to give an

indication of the sort of questions that were being asked by Telenor with a view to accepting the nature of the relationship between Communicorp and Advent. I think, as we agreed a moment ago, you never got a really satisfactory answer to a lot of those questions; isn't that right?

A. We still had remaining questions, even though we were we had Advent's letter of a bit later date, I think, which was better than what we had before.

Q. Aren't I right in saying that at one point you got a lot of information about Advent itself from Baker McKenzie? Isn't that right?

A. I was not involved in that, but I have seen, from documentation, that they got that.

Q. I think the letter in fact was addressed to you, but presumably you handed it over to Mr. Haga. It's a letter of the 13th July, 1995, Book 48, Tab 22A.

A. Yeah. It's addressed to me, but it's related to a question made by Mr. Haga.

Q. Yes. I am not going to go into the detail of it, but the letter enclosed material from accountants, published material on Advent, and accountancy material, isn't that right, financial information?

A. Yes.

Q. So you were getting a lot of information about Advent itself; isn't that correct? But the other questions that were being raised by Mr. Haga were not really

being satisfactorily answered, according to Telenor;

isn't that right?

A. Which other questions, sorry?

Q. Well, for instance, you couldn't get a question of the validity you couldn't get an answer to the question of the validity of the offer from Advent; isn't that right?

A. Mmm.

Q. I'll come on to a memorandum which might summarise to some extent the state of play between Telenor and Communicorp on the 2nd August of 1995, which is at Book 48, Tab 26.

A. Yeah.

Q. Have you got that document?

A. Yes, I have it.

Q. It's from Knut Haga to Mr. Denis O'Brien, but it's copied to you; do you see that?

A. Yes.

Q. "Dear Denis,

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

"Based on the letter from Peter I required a similar statement from Advent International through Baker McKenzie. Ms. Helen Stroud called this afternoon and told me that there were not made any agreements

between Advent and Communicorp related to the said

IRi½30 million." Do you see that?

A. Yes.

Q. I want to be clear about this now. At that point, as

far as you were concerned, the Telenor side, Advent

were telling you there is no agreement; isn't that

right?

A. Baker McKenzie is telling us that, yes.

Q. Well, Baker McKenzie were Advent's solicitors.

A. Yes.

Q. Do you think that they couldn't be relied upon?

A. I think they could be relied upon, yes.

Q. Now, I want you to go to Document Book 48, Tab 39.

A. Yeah.

Q. This is a letter to Telecom from Knut Haga of the 11th

September, 1995 that is one day before the

presentation where he says

"Dear Mr. O'Brien,

"As financial adviser to Digifone and Telenor Invest,

I would like to raise some of my concerns related to

the content of a letter from Advent International

Corporation (AIC) 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:

"AIC has not committed itself to participate as an

equity partner.

"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. There has not been made any formal or legally binding agreements between Digifone and Advent; 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 Advent 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 Martin J. Brennan does not add any value to Digifone. Please take this fact into consideration when you are discussing alternative equity partners."

Now, Mr. Haga was, in this letter, stating, as far as he was concerned, the Telenor position, that there was no agreement, legally binding or formal agreement, between Digifone and Advent; do you see that? And this is one day before the presentation. That's a fair summary of the state of knowledge of Telenor as of that day; isn't that right?

A. Of his knowledge, yes.

Q. And nothing happened on the following day to change that state of knowledge or those facts; isn't that right? Isn't that correct? There was no change in

that position overnight?

A. No, but again you are saying this is Telenor's position. This is what Knut Haga communicated in a letter to Denis O'Brien.

Q. But it is Telenor's position, wasn't it, there was no agreement?

A. I mean, we didn't believe there was an agreement, or he didn't believe there was an agreement.

Q. Did you believe there was an agreement?

A. I didn't have any reason to believe anything else than what Knut Haga had said. As I said, we were not communicating on this issue in the days before the oral presentation.

Q. So while you might not have seen this letter, your view was the same as of that day?

A. I was not focused on the

Q. No, but your view would have been same as of that day?

A. Excuse me?

Q. I think what you said was, "I did not have any reason to believe anything else than what Knut Haga had said".

MR. FITZSIMONS: The witness was trying to give an answer when he was cut across by Mr. Healy. The witness was saying he was not focused on something. Perhaps he could be permitted to finish his answer before another question is asked.

CHAIRMAN: Thank you, Mr. Fitzsimons.

Did you want to complete that answer, Mr. Simonsen?

A. Yes. I said that I was not focusing on these issues.

We were more than busy in preparing the presentation for the Ministry.

Q. MR. HEALY: I just want to clarify something you said a moment ago. According to the transcript, I asked you, did you believe there was an agreement? And you said "I didn't have any reason to believe anything else than what Knut Haga had said". Is that right?

A. Yes, but again, I was not focusing on the matter at that point in time, okay.

Q. Yes. Did you focus on the matter in the course of the presentation on the following day?

A. I was not active in the presentation.

Q. How did you form the impression that we have just been discussing in the letter of the 2nd October if you weren't focusing on this matter in the course of the presentation or on the day prior to the presentation?

A. Well, then you are coming into a sort of discussion of what "focusing" means in this sense, and of course I was present at the entire presentation and reflected upon everything which was said there.

Q. Now, I want to ask you about a letter, and I have a number of questions to ask you about it. It's dated the 15th September, 1995, and you'll find it at Tab 61, Book 48.

A. Yes.

Q. Are you familiar with this letter?

A. You mean the cover letter or the Telenor letter?

Q. The letter, the Telenor letter.

A. Well, now I am familiar with it. This was something which was handled by Knut Haga at that time. I was not involved in the handling of the letter at that point.

Q. Knut Haga recalls signing the letter, but he said he didn't have anything to do with drafting it. Did you have anything to do with drafting it?

A. No, I don't remember having anything to do with drafting it.

Q. Did you know that around this time, letters, or a letter like this, was being drafted in Telenor in Telenor, indicating that Telenor were not satisfied with the funding from Advent?

A. I know it was a process but we were also willing to try to get the support we were wanting to have, yes

Q. To get the I didn't pick up the last few words.

A. To get sufficient financial backing. I knew there was a process going on, yes.

Q. Are you aware now, you may not have been aware at the time, that in the documents made available to the Tribunal, there is a document I think it's at Book 48, I think it's at Book 48, Tab 39, a document, namely a fax from Esat Telecom from Mr. Denis O'Brien to Mr. Owen O'Connell, referring to a draft letter to

be received from Telenor?

A. Sorry, which tab is that?

Q. I want to make sure that if necessary, I'll have to hand it up to you. Sorry, I don't want to confuse you in relation to the numbering, Mr. Simonsen. I think these documents were referred to in the course of the evidence of Mr. Haga.

MR. FITZSIMONS: 54.

Q. MR. HEALY: Thanks, Mr. Fitzsimons. That's Book 48, Tab 54.

A. Yes.

Q. Have you got that document?

A. Yes, I have it.

Q. You see where it refers to "A draft letter to be received from Telenor"?

A. Mm-hmm.

Q. The first item. The second item was a document that was circulated to the institutions. And on the next page is a document headed "Draft"; do you see that?

A. Yes.

Q. Dated 19th September and purporting to be a letter from Mr. Knut Haga.

Was this document, the fax from Mr. O'Brien to Mr. O'Connell, brought to your attention in the course of preparing for the Tribunal?

A. Yes.

Q. Had you ever seen it before then?

A. No.

Q. That document had attached to it, or sorry, had with it the draft, purporting to be from Telenor, of the 19th; do you see that?

A. Yes.

Q. And that draft is not the same as, but is very similar to, the letter of the 15th September that I mentioned earlier; do you see that?

A. Yes, I can see that.

Q. And I want to pass on to another document which is again mentioned to Mr. Haga. It's a letter of the 21st September, 1995, from Mr. William Fry to Mr. Denis O'Brien by fax. It should be close to that document you have just turned up. Book 48, Number 55.

A. Yes.

Q. You see where Mr. O'Connell says

"Dear Denis,

"Further to our telephone conversation of this afternoon I enclose three draft letters. I would intend that the letter to Kyran McLaughlin would be accompanied by a more informal and friendly cover note from you".

Do you see that?

A. Yes.

Q. You go on to the next page, the end of the letter, and then after that you see a draft letter with no date, headed "Notepaper of Telenor Invest, a draft letter to

Communicorp"?

A. Mmm.

Q. Again in similar they are not quite the same terms as the letter of the 15th.

Then after that, a draft letter from Communicorp to Advent; do you see that?

A. Yes.

Q. And on the next page, then, I think it should be on the next page in your documents, there is a draft letter similar to the one that Mr. O'Connell sent to Mr. O'Brien

A. Sorry, the previous was the last in my book.

Q. Sorry, it's the letter that has some handwriting on it which appeared to have been put on it in Norway, and some Norwegian writing; have you got that one?

MR. FITZSIMONS: Book 60A(2).

MR. HEALY: I am much obliged. Book 60A(2).

A. Yeah.

Q. MR. HEALY: Have you ever seen that letter before?

A. No.

Q. And that letter, again it's in the same terms as the draft letter that Mr. O'Brien received from Mr. O'Connell, and it is similar in its wording to the letter of the 15th September of 1995, which was signed by Mr. Haga.

A. Okay.

Q. Mr. Haga's evidence, I think, was that he may have

signed that letter after the 22nd September of 1995.

A. Okay.

Q. Have you any recollection of the generation of these letters around that time or of contact between Telenor and Mr. O'Brien with a view to generating these letters?

A. No.

MR. FITZSIMONS: Sorry, lest there is confusion, Mr. Healy refers to "that letter". Mr. Healy is referring to the letter at Book 48(68), namely the letter that's on the screen in his last question. Not the letter at Book 60A(2) at which the witness is looking at this moment. Just so the witness knows what letter Mr. Healy is talking

Q. MR. HEALY: You see the letter of the 15th September, 1995, doesn't appear to have been signed on that day?

A. Mm-hmm.

Q. But according to Mr. Haga, it was presented to him for signature, and according to him, was not drafted by him. But the documentation to which I have referred you could, on one interpretation, I suggest, mean that the letter was the result of a joint effort between Telenor and Mr. O'Brien; would you agree with that?

A. That's speculation, yes.

Q. Would you agree that it's reasonable speculation?

A. I was not involved in this at all, so it's hard for me to qualify that.

Q. Could you look at the letter with the handwriting on it.

A. Yes.

Q. Do you have that in front of you?

A. Yes, I have it.

Q. Do you recognise that handwriting?

A. No.

Q. I now want to ask you to look at a memorandum prepared by Mr. Johansen in 1996. I think it's Book 49, 130.

Have you got that document?

A. Yes.

Q. Do you is that document familiar to you?

A. It's been brought to my attention recently.

Q. Had you seen it before then?

A. No.

Q. It wasn't a memo to you then?

A. No.

Q. Is any of the content of the memorandum familiar to you, from your dealings with Mr. Johansen?

A. Well, the first part of it is within the period when I was working on the project, and later it deals with matters which occurred later.

Q. Certainly most of the first page, I suppose, deals with the period when you were dealing with the project?

A. Right.

Q. Mr. Johansen says, "I have below summarised a few

points that has become clear to me over the last 24 hours as a consequence of the information acquired regarding Communicorp's attempt to buy back 12.5% of the IIU shares.

"1. Denis O'Brien came personally over to see me in Oslo probably sometime during September last year. He informed me that, based on information from various very important sources, it was necessary to strengthen the Irish profile of the bid and get on board people who would take a much more active role in fighting for Digifone than the "neutral" banks who basically would like to keep a good relation to all consortia.

"I accepted Denis's word for the necessity for this new move. Note: Underwriting was never used as an explanation.

"2. IIU should apparently be the ideal choice for this function, the only string attached being that they had demanded a 30% equity participation 'for the job'. Denis had managed to reduce this to 25%, but it was absolutely impossible to move them further down. This was a disappointment to us, since everything we had said and done up to then had been focused on at least 40% ownership for the principal shareholders at the time of the issuing of the licence. But not only that, Denis then pushed very hard for Telenor to swallow 15% of this and Communicorp only 10% to which I never agreed but I accepted the principle

of "sharing the pain" and maintaining equal partnership (37.5%:37.5%.) It was also said that a too-high Telenor ownership stake would be seen as aggressive and could be inhibiting the award of the licence.

"This was the first time I experienced real hard and very unpleasant push from Denis.

"3. Some days later the nature of the agreement with IIU comes clearer into the light, as an underwriting agreement to guarantee for Communicorp's timely payment of its share of the capital into Digifone, and including the right to place the shares with up to four nominees. This was unwillingly accepted by Telenor (since we understood it to be the right steps to be taken from an 'official Irish standpoint' to secure the licence).

"The agreement was drafted by Fry's/OO'C and signed in a hurry (basically in draft form) by Denis O'Brien alone on behalf of Communicorp and Digifone (even though we in the JV agreement have made it clear that two authorised signatories are required one from each party)."

Now, can you tell me whether any of the content of that was known to you from your dealings with Mr. Johansen at any time in 1995, late 1995?

A. Well, I think the content is quite familiar, yes.

Q. Do you see in the first paragraph where Mr. O'Brien

says or, sorry, Mr. Johansen says: "Denis O'Brien came over to see me ... based on information from various very important sources he informed Mr. Johansen that it was necessary to strengthen the Irish profile of the bid." Do you see that?

A. Yes.

Q. And then the next sentence, Mr. Johansen says: "I accepted Denis's word for the necessity for this move." Do you see that?

A. Yes.

Q. In the letter that you wrote after the meeting on the 22nd September, I think you suggested that the meeting with the Ministry that you had an impression that the meeting with the Ministry in some way made this move necessary; isn't that right?

A. Mm-hmm.

Q. But that's not what Mr. Johansen is saying here in this memorandum.

A. Are you referring to my, or the letter Mr. Johansen said on the 2nd October?

Q. Yes. Isn't there a difference? In the letter what you said was "It was quite clear from our meeting with the Ministry that both the lack of commitment from the institutions as well as uncertainty in the Advent/Communicorp relationship created a lack of confidence in the Irish side of the consortium's capacity to raise the necessary funding."

Whereas what Mr. Johansen is saying here is he had to accept Denis's word for the necessity for the new move; isn't that right?

A. Yes, and if you read the subsequent paragraph in the first letter, it says: "In order to reassure the Ministry and give an even stronger signal to the Irish community in general, we are pleased with the plan to have another solid Irish underwriter."

Q. Yes?

A. I would say that those two are in line.

Q. I don't think Mr. Johansen is suggesting that he himself saw the necessity for this move. He is saying that he accepted Mr. O'Brien's word for the necessity for that move, whereas you're saying that it was your own view that it was clear from the Ministry that there were problems clear from the meeting with the Ministry that there were problems. Isn't there a difference?

A. I think there is actually two issues dealing with same things there. One thing is the financial capacity of the consortium in which we had a concern. The other is the Irish profile, which I guess the concern is primarily raised by Denis O'Brien, and we we were not really questioning his judgement of what the necessity of an Irish profile was. That's a matter for them. That was not our part of the game.

Q. I just want there was two aspects of what you said

to me there just now, Mr. Simonsen. What the memorandum says is not that Mr. O'Brien made a judgement, but that himself but that his judgement was based on information from various very important sources; do you see that?

A. Yes.

Q. And that that would necessitate a new move. Up to that time, I don't think you contemplated any move; is that right?

A. You mean up to the meeting in September?

Q. Yes.

A. No, up to that meeting we were pursuing the track of strengthening the Advent commitment, yes.

Q. That's as may be, but you didn't contemplate this new move to bring in somebody new into the consortium?

A. No, that was an initiative from Denis O'Brien.

Q. If you go down to the third paragraph, what Mr. Johansen says in the memorandum, he says "Some days later the nature of the agreement with IIU comes clearer into the light as an underwriting agreement to guarantee for Communicorp's timely payment of its share of the capital into Digifone, and including the right to place the shares with up to four nominees.

This was unwillingly accepted by Telenor."

Sure doesn't that give a completely different impression to what is contained in the letter of the 2nd October, even where the question of a guarantee is

concerned, because it suggests that what Mr. O'Brien was proposing was unwillingly accepted by Telenor; isn't that right?

A. But I think the unwillingness part is I would assume, but you would have to ask Mr. Arve Johansen is primarily linked to the fact that we would have to reduce our shareholding. We weren't pleased with that.

Q. Do you remember Telenor being unwilling?

A. We were not willing to let first of all, we were in general unwilling to reduce our shareholding; secondly, we were not accepting any disproportionate reduction of shareholding as suggested by Mr. O'Brien.

Q. But you were only willing to do it because you were told that it was the right thing to do from "an official Irish standpoint"; isn't that right?

A. Again, this is Mr. Johansen's word. I think you should ask him about that.

Q. Do you have any understanding as to what it might mean?

A. Well, I think it was my interpretation would be that Mr. Johansen left it to Mr. O'Brien to judge which would be the appropriate Irish partners to have in the consortium.

Q. I don't think that's what the word "from an official standpoint" means, wouldn't you think? Isn't that a reference to the Department or the Ministry?

A. Well, again you are asking me to comment on the content in a memo made by Arve Johansen, which I have been not been involved in at all. But to me it looks like he is quoting what Mr. O'Brien has told him. So, again, it's Mr. O'Brien who is reasoning that it would be sound to introduce this new partner into the consortium, and he is accepting Mr. O'Brien's judgement on that.

Q. But would you not agree with me that that is more likely to be what prompted Telenor to go ahead with this new move, and not any impression that you had from the meeting of the 12th September?

A. No, I would disagree with that.

Q. Can I now ask you to go to the last page of your statement, please. I want to refer to your part of your statement where you say that Denis O'Brien informed you in or about the last two weeks of September, 1995, that he had happened to meet the Minister in a public house. You say you had no knowledge as to whether a meeting actually took place. And you say that Mr. O'Brien informed you that the Minister had suggested that IIU should be involved in the consortium.

Can you remember where you were when that conversation took place?

A. No.

Q. But wherever you were, it is a conversation you

remember in fact taking place?

A. Yes.

Q. And you have no doubt about that?

A. No.

Q. Now, you know that Mr. O'Brien denies that he ever had such a conversation with you?

A. Yes.

Q. And you know that he denies that he ever had such a conversation with the Minister?

A. Mmm.

Q. And the Minister denies that he ever had such a conversation with Mr. O'Brien, but they do not deny that they met in a public house?

A. Mmm.

Q. And they do not deny that they had a conversation in a public house about telephones; they say it was about land lines.

A. Yes.

Q. What impression did that remark by Mr. O'Brien have on you?

A. Well, it didn't have a very strong impression, I must say. If the purpose was to impress me, I wasn't too impressed; put it that way.

Q. You say you think it happened sometime in the last two weeks of September. Do I take it that it was sometime around the matters that Mr. Johansen is referring to in his memorandum, and that you refer to in the letter

of the 2nd October?

A. That's my best recollection, but I am not able to pin down exactly when I heard this.

Q. I think I may have mentioned to you this morning that Mr. O'Brien does record you as having come into the meeting with Mr. Johansen and I think Mr. Sjur Malm on the 22nd?

A. Yes.

Q. You don't remember being at that meeting; isn't that right?

A. No.

Q. Is that an occasion upon which this might have taken place?

A. It might, yes.

Q. Do you remember if you discussed

A. Sorry, not in the meeting.

Q. Not in the meeting?

A. No.

Q. Right. But at some time on the same day, maybe after the meeting?

A. Again, this is pure speculation. You said if it might have been an occasion on which it could have taken place, and I said yes, but not inside the meeting, okay.

Q. All right, okay. Is that the only thing you remember from that conversation, or were other things being discussed between you and Mr. O'Brien?

A. No, I don't well no, I don't recollect which other matters which may have been discussed, no.

Q. You said you weren't too impressed by it as a statement.

A. I didn't believe it.

Q. You didn't believe it. So you believed that Mr. O'Brien was making this up; it was a lie?

A. Well, it was an exaggeration, at least.

Q. Why would he have been exaggerating? To impress you?

A. Again, this is speculation, but of course it would be a convenient argument when he at the same time was trying to make us accept to dilute our own shareholding to accommodate for IIU.

Q. If he wanted you to dilute your own shareholding to accommodate IIU, you are saying that he might have hoped to impress you by saying the Minister had told him to get IIU in?

A. That's a possibility, yes.

Q. Did you discuss this with anyone else?

A. At some point in time I told other people in Telenor about the incident, but I don't know when and where.

Q. Are you familiar with Mr. Johansen's statement in which he refers to this matter?

A. No, not exactly.

Q. Maybe I'll just read out to you Mr. Johansen's response to Query 69 in his statement. I'll get you a copy of the relevant portion as well.

(Document handed to witness.)

Q. MR. HEALY: The question that Mr. Johansen was asked was as to Telenor knowledge, direct or indirect, of all meetings, discussions, dealings or contacts of whatsoever nature between Mr. Denis O'Brien or any person on his behalf and the Minister or the Department at any time from the first involvement of Telenor in the Esat Digifone consortium to the issue of the licence on the 16th May, 1996.

And Mr. Johansen or the response is, Mr. Johansen has no direct knowledge of any meetings or discussions, dealings or contacts between Denis O'Brien or any person on his behalf with the Minister or with the Department. Mr. Johansen cannot remember the date, but he believes that it was sometime in September, 1995, when Per Simonsen informed him that Per Simonsen had been told by Denis O'Brien of an encounter between Denis O'Brien and the Minister in a public house. Arve Johansen cannot remember exactly what he was told by Per Simonsen, but it was to the effect that Denis O'Brien had told Per Simonsen that the Minister had suggested to Denis O'Brien that the involvement of IIU would be helpful. Arve Johansen attached no importance to this. Sometime on or about the 23rd October, 1997, at a meeting in IIU's offices, Mr. Johansen asked, in the context of the IPO investigation and the story that Mr. O'Brien had made

two payments of $\frac{1}{2}$ 100,000, if anyone had heard of the story of the meeting in the public house. Arve Johansen asked this question either towards the very end of the meeting or just after it was over. No one responded for a while, and then John Callaghan said he had heard of a meeting on a plane. The impression Arve Johansen formed was that no one else had been told this story and that this was not taken seriously.

Arve Johansen does not remember any note being taken of this question. He cannot say who would have heard him ask the question, and the only response he received was from John Callaghan.

Now, maybe we'll just deal with one matter first. Did you have any involvement in the IPO?

A. No.

Q. You had no dealings on Telenor's side in relation to the flotation of Esat Telecom in 1997?

A. Not at all.

Q. We can forget any involvement you had in that period.

Now, Mr. Johansen said that his recollection is that you spoke to him sometime in September of 1995.

A. Mmm.

Q. Again, that would be around the same time that you recall Mr. O'Brien mentions this matter to you?

A. Yes.

Q. After Mr. O'Brien persuaded you to take IIU on board, things moved fairly quickly; isn't that right?

A. Yes, it was quite a short time until the licence announcement was made.

Q. Well, it was also a short time between then and when an agreement was entered into with IIU to bring them on board; isn't that right?

A. Yes, that's correct.

Q. No more than seven days?

A. Mmm, correct.

Q. You didn't conduct any scrutiny of IIU; isn't that right?

A. Not to any detail, no.

Q. You didn't know how big, small or whatever they were, isn't that right?

A. We made some informal inquiries, and I think we were at least we were given a list of properties or assets held by IIU was mentioned to us, so we had some insight into what they owned, but we had no insight into their financial capability.

Q. Because at that time, in fact, they had no track record, having been just set up; isn't that right?

A. Apparently, yes.

Q. But compared to the scrutiny you conducted into Advent, you conducted no such scrutiny into IIU; isn't that correct?

A. Yes, that's well, we conducted little scrutiny into IIU, that's correct.

Q. Who did you informally ask about IIU?

A. Arthur Moran.

Q. Did you have Arthur Moran on board in September of 1995? Am I not right in thinking you didn't get him on board until October?

A. Yes, it was in the beginning of October; that's when we asked him a question, yes.

Q. So you may have asked him questions about IIU, but that would have been after you had completed the arrangements to take IIU on board?

A. We didn't make oh, now I understand your question. We did not make any inquiries relating to IIU previous to the arrangement agreement being entered into.

Q. Is that possibly because whatever Mr. O'Brien told you convinced you to go with IIU without making any inquiries?

A. Well, on this matter we had to rely on him.

Q. You had to rely on what he said about very important sources and an official Irish standpoint; isn't that right?

A. I am sure that he also provided information on IIU.

Q. But you didn't conduct any independent scrutiny of your own?

A. We did not. We didn't have time for that.

Q. Why didn't you have time for that?

A. Because apparently it was necessary to enter into this agreement within quite a short time.

Q. Why was it necessary to do it within a short time?

A. I don't know.

Q. Is that because you had to get a letter in to the Department quickly?

A. I don't know.

Q. Doesn't it look like that?

A. That could be a reason.

Q. When you say Denis O'Brien was exaggerating or may have been exaggerating sorry, you believed that he was exaggerating when he told you about his conversation with the Minister, was that at a time when Mr. O'Brien was trying to convince you to go along with this proposal?

A. I believe so, yes.

Q. If what Mr. O'Brien told you was true, and it could have quite serious implications, couldn't it?

A. Yes, but again, we never believed it.

Q. But you did believe the other things he told you?

A. Which other things, sorry?

Q. It had to be done quickly?

A. Yes.

Q. It was necessary because from an Irish official standpoint, and very important sources, it said it should be done?

A. Well, now, again, sorry, you are relating back to a memo that Arve Johansen produced years later. There was no discussion relating to official sources in Ireland wanting IIU to get in at that point in time.

Q. Could I ask you to look at the letter of the 2nd October again, Book 48, Tab 68. Do you have it?

A. Yes.

Q. I want to read out again the sentence you don't think you wrote: "In order to reassure the Ministry and give an even stronger signal to the Irish community in general, we are pleased with the plan to have another solid Irish underwriter."

Doesn't that sentence seem to suggest that Mr. O'Brien was telling you that if you got IIU in, the Ministry would be reassured?

A. Yeah, that's indicating that it would be strengthening the bid; that would be perceived favourable in Ireland.

Q. But in order to get you to take a dilution in shareholding, is it likely that he went further and told you that he had met the Minister and the Minister had told him to get IIU in?

A. That was what I referred to in the pub from the pub meeting, yes. But there is one thing, piece of information I think which is not being looked into yet, and IIU was actually willing to commit the financial support that we had not been able to see from Advent. I think that was the key positive aspect from our point of view.

Q. But you didn't know what financial support IIU had?

A. No, but again, maybe we were naive, but we thought it

would be a stronger party than or at least there was somebody willing to commit the amount.

Q. But IIU were going to take the place of a number of banks and were going to take the place of Advent in supporting Communicorp, isn't that right, they were going to underwrite Communicorp; isn't that it?

A. That's right.

Q. That means they would have had to come up with in or around $\frac{1}{2}$ 30 million; isn't that right?

A. Yes.

Q. To support Communicorp?

A. Yeah.

Q. Otherwise Communicorp would have had to get the money somewhere else?

A. Well, yes.

Q. You knew that Advent had the money, didn't you?

A. Yes.

Q. You had checked that out. It was easy to check it out, anyway. They gave you certain financial material, and you could check them out in published sources, couldn't you?

A. Yes.

Q. But you had no idea and no way of knowing what kind of money IIU had. Didn't you have to depend on what you were told by Mr. O'Brien?

A. Yes, and again I am sure that he presented IIU in a favourable way.

Q. But doesn't it look, from Mr. Johansen's memorandum, that Mr. O'Brien was referring to information he had from some important sources in Ireland, and also to the impact this would have from an official Irish point of view, as much as anything he was telling you about IIU's finances?

A. From reading his memo, it looks that way, but we never discussed I never had such a discussion with Arve Johansen, and I don't know what happened in the meeting on the 22nd September which would suggest that.

Q. Did you have worry, even just a little, that whatever Mr. O'Brien had said might be true?

A. No.

Q. You never worried? You had no belief in it at all?

A. No.

Q. And if it was true, however, it would have very serious implications; isn't that right?

A. Yes, obviously.

Q. Mr. Haga said that he regarded the information you gave him as far-fetched; isn't that right?

A. Yes.

Q. As far-fetched, isn't that right?

A. Yes.

Q. And I think, I hope I am right in this, he said you may have thought that as well?

A. Mm-hmm.

Q. "Far-fetched" is slightly different to telling a lie, isn't it?

A. Well, again, I used the word I never used the word "lie".

Q. I see. You wouldn't use the word "lie"?

A. Well, you were suggesting that he was lying. I said that he was exaggerating.

Q. I see. "Exaggerating" is inflating something or making a little more out of something?

A. Well, if you look at it in hindsight, it turned out it was right that he met the Minister in a pub.

Q. When you spoke to Mr. Haga, you only told him about the meeting in the pub; isn't that right?

A. Yes.

Q. And he thought that was far-fetched, but of course he was wrong; isn't that right?

A. He was?

Q. He thought that was far-fetched, but he was wrong?

A. Why?

Q. Because there was a meeting in a pub.

A. If okay, I don't know if his statement was relating to the meeting as such or the idea that they were exchanging information. But if you ask me what I believe, I believe that when he told me, I believe both the meeting and the fact that he said such a thing in such a meeting were both far-fetched.

Q. Well, let's just clarify it. He certainly said that

you only told him about the fact of there having been a meeting.

A. Okay.

Q. But he didn't know anything about the content.

A. Okay.

Q. Would that be would you be in agreement with that?

A. I don't remember exactly what I told him.

Q. I see. When you told Mr. Johansen about this, I presume you must have felt it was important enough to draw it to his attention?

A. Yes.

Q. At around the same time that you were doing that this deal was going on?

A. Mmm.

Q. Does that mean that you felt that there was something in what you were being told?

A. No.

Q. If it was an exaggeration, wasn't there a risk, therefore, that there had been that there had been an exchange of information between Mr. O'Brien and the Minister that might have been improper?

A. Well, that's I wouldn't know anything about that.

Q. I just want to clarify one thing that Mr. Coughlan reminds me of. From your letter of the 2nd October, Mr. Johansen's letter, the one that you were involved in drafting, it would appear, if we go to the top of the letter we won't need to look at it in hard text

if we go to the very top of the letter, it would appear that there was some phone conversations following the meeting?

A. Yes.

Q. Do you see that?

A. Yes.

Q. And a discussion with John Callaghan. That would seem to suggest that the deal, if you like, or the agreement with Telenor wasn't made on the 22nd at the meeting; that it was sometime later before it was concluded; would that be right?

A. That's one way of reading it, yes.

Q. Well, you see, if there were phone conversations between Mr. O'Brien and Mr. Johansen, then I suppose they must have occurred after Mr. O'Brien left?

A. You mean between Mr. Callaghan and Mr. Johansen?

Q. "Referring to our meeting on Friday and our following phone conversations"; do you see that?

A. Okay, yeah.

Q. And then he refers to also a conversation with John Callaghan.

A. Mmm.

Q. That would suggest that the finalisation of the deal wasn't done till later; do you see that?

A. Okay.

Q. And Mr. Callaghan I think was ringing, according to his evidence, to try to get Telenor to take a greater

dilution than they agreed to take?

A. Mmm.

Q. If the discussion you had with Mr. O'Brien took place at the end of the meeting, no deal had yet been done, isn't that right, with Telenor? Even if it wasn't part of the meeting, the discussion you had with Mr. O'Brien took place before the deal was concluded?

A. Yes. Again, I don't know what stage the deal was in at the end of the meeting on Friday and what happened in subsequent phone calls; I was not involved in that.

Q. When you went back to Dublin, and I think you did go back to Dublin after the 22nd, didn't you? I may be wrong in saying that you went back to Dublin. Am I not right in thinking, in any case, that you had some role in concluding the arrangements to bring IIU on board, leading up to the agreement of the 29/9/1995?

A. I was in Oslo, yes.

Q. I see. It was done by phone or by letter or by fax?

A. Yes.

Q. Could I ask you to look at Book 48, Tab 62.

A. Okay.

Q. A fax document; do you see that?

A. Yeah.

Q. From William Fry Solicitors, from Mr. Gerry Halpenny, to Mr. Michael Walsh of IIU?

A. Mm-hmm.

Q. And it's re Esat Digifone. If you go on to the second page, you will see that a copy was sent to you and a copy was sent to Mr. O'Brien; do you see that?

A. Yes.

Q. And I think what it does is it conveys some of Mr. Halpenny's thinking on the proposals that he was trying to elaborate to conclude an agreement with Mr. Walsh on behalf of IIU?

A. Mm-hmm.

Q. And he said "Further to my conversation with you earlier this morning, I enclose revised draft of the Deed of Covenant marked to show the amendments made from the Invest draft.

"As mentioned to you, I am uncomfortable with the idea of signing the letter as drafted by you with the agreement to be entered into later on. Given the consequences of the issue of the letter to the Department, I feel strongly that the Deed of Covenant should be executed before that letter is issued.

"I have tried to incorporate all the points in your letter into the agreement, and hopefully it will be possible to agree the document very quickly. The two outstanding issues are probably the transfer provisions and the requirement of Telenor regarding the number of places.

"In relation to the transfer provisions we discussed on Sunday, the replacement of the words "is likely to"

with the words "has stated an intention to", I will put this wording to Telenor for their views. I should also point out that I have added Esat Telecommunications Limited in the fifth line from the end of paragraph 5, D2" I am not going to trouble you with these details. I am just reading them so you will understand the letter in its totality.

"I am also talking to Telenor regarding the number of places. As I understand it, you are happy to have the number of places limited to four, as long as one of those places is a nominee who may hold the interest of a number of other investors. Your particular concern in this regard is should your underwriting obligations be called upon, you would wish to have the ability to seek investment from a larger number of parties.

"On the basis of the Deed of Covenant being agreed, your letter to Esat would then I think be reduced to the last two paragraphs, 6 and 7, as it is not appropriate to cover those in the Deed of Covenant.

The introductory paragraph then should simply refer to the fact that the Deed of Covenant has been signed and that it is on that basis that the attached letter to the Department is to be issued.

"I am also sending a copy of this letter to Per Simonsen of Telenor by way of asking him to comment on the revised draft of the Deed of Covenant and in

particular the two points mentioned above."

Now, if you go on to the next document, which is Book 48, Tab 63, you will see that you are now writing to Mr. Halpenny on the 28th September, which is just the day before the documents were concluded. You say:

"Dear Gerard,

"Referring to your draft arrangement agreement of Thursday night, we have the following comments."

Again, I don't think we need to go into the details of all these, but if you look at page 3, Clause 4, I think it says: "Such shall represent not less than 37.5% of every 'tranche'" that's in quotation marks "should be left in to clearly demonstrate that 100% is underwritten and that the agreement is in accordance with the proposed letter from IIU to the Department."

Now, on the following day, a letter was written to the Department by IIU. At that point, had you seen or had any part in the drafting of that letter?

Do you want me to turn to the letter so that you will

A. Yes, please.

Q. It's the letter of the 29th September.

A. I see it.

Q. 1995.

A. Yes, I see it.

Q. Do you have it?

A. Yes.

Q. It's on the overhead projector as well.

A. Okay.

Q. Am I right in thinking from these two letters, the one from Mr. Halpenny copied to you and the one from you to Mr. Halpenny, that you were aware that what was proposed was that an arrangement would be entered into, and that based on that arrangement, a letter would be sent to the Department?

A. Yes.

Q. Were you involved in the drafting of that letter to the Department?

A. No.

Q. Are you aware that that letter was being drafted for some considerable time prior to the 29th? I think as far back maybe as the 19th September?

A. Well, it says "I am referring to it in my fax". I may have seen previous drafts, but I don't really recollect whether I have seen one or several drafts.

Q. Of that letter?

A. Yes.

Q. You think you may have seen several drafts?

A. No, I am saying I don't recollect whether

Q. I see. I am sorry, I beg your pardon.

If we can just go through the letter for a moment. It says "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 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 in arranging it."

I just want to ask you about one small point. Do you see there is a reference to circa 60% not intended to be subscribed for by Telenor?

A. Mmm.

Q. That's not accurate, sure it's not?

A. 60.5 should be the correct figure, yes.

Q. Those two .5% would have been fairly important to Telenor, wouldn't they?

A. I mean, we would prefer still to be 40:40:20, so...

Q. I appreciate that, but is there any reason why the correct figure wasn't put in that letter?

A. I don't know.

Q. Do you recall noticing it at the time?

A. No.

Q. Am I right in thinking that on the Telenor documentation, there are no drafts of that letter?

A. Again, as I said before, I may have seen previous drafts, but I was not involved in drafting the letter.

Q. I see.

CHAIRMAN: It's a bit after 4:00, Mr. Healy. I am just wondering, in the context of flights and the like, is there any merit in my saying half ten?

MR. HEALY: Oh, half ten, certainly.

MR. FITZSIMONS: If it would assist the Tribunal, we would be quite happy to go on until 5:00pm today. Mr. Simonsen is here just for these two days, as arranged, and we understood from an earlier meeting with the Tribunal that his evidence would only take one and a half days. But there are a lot of documents yet to be gone through, so we do have some anxiety in relation to finishing his evidence. Now, we don't know what Mr. Healy

MR. HEALY: I can tell Mr. Fitzsimons there aren't a lot of documents.

CHAIRMAN: I will do all I can to facilitate the witness.

What do you say, Mr. Healy?

MR. HEALY: There aren't that many documents left, and certainly I think, if we had a half ten start. There is a problem if we were to go on this afternoon,

certainly a problem for myself and Mr. Coughlan in any case.

CHAIRMAN: Yes. Well, if we start at half ten sharp, Mr. Fitzsimons, we may marginally abridge lunch, and it seems to me our best endeavours should enable the witness to be able to catch whatever flight he has designs on tomorrow evening.

MR. FITZSIMONS: Thank you, Chairman.

CHAIRMAN: All right, half ten in the morning. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
FRIDAY, 6TH FEBRUARY, 2004 AT 10.30AM.