

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, SC

Instructed by: Michael Heneghan

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES:

Mr. John O'Donnell, SC

Mr. Diarmuid Rossa Phelan, BL

Instructed by Matthew Shaw

Chief State Solicitors Office

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

Mr. Gerry Kelly, SC

Mr. James O'Callaghan, BL

Instructed by: Owen O'Sullivan

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Mr. Rossa Fanning,

Instructed by: Kelly Noone & Co.

Solicitors

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxton

I N D E X

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THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY,  
6TH FEBRUARY, 2004 AT 10.30AM:

CONTINUATION OF EXAMINATION OF PER SIMONSEN  
BY MR. HEALY:

Q. MR. HEALY: Mr. Simonsen, I just want to draw maybe  
five or six documents, maybe a little more than that,  
to your attention to see what you can what light  
you can throw on them. Could I ask you to look at  
Document or Tab 72 of Book 48.

A. Okay.

Q. That's a letter addressed to Mr. O'Brien by Knut Haga,  
do you see that, of the 6th October, 1995?

A. Yes.

Q. It says,

"Dear Mr. O'Brien,

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

IIU. Based on the content of this letter I would

kindly ask to you provide Telenor with the following

information on Bottin.

"Date of foundation.

"Owners.

"Board of directors.

"Balance sheet as of the 3 June 1995.

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

"Please send a copy of this information as soon as possible to both me and Per Simonsen."

Signed, Knut Haga.

You know that part of the letter of the 29th September, 1995, to which I am referring, is the part that described the assignment of all the rights of IIU and all the obligations of IIU to Bottin International?

A. Yes.

Q. And do you remember discussing that with Mr. Haga or anyone else at around this time?

A. Well, yes, I certainly discussed it with Mr. Haga, and probably some other colleagues as well.

Q. This wasn't the only this wasn't the only letter that Telenor wrote seeking this type of information concerning Bottin; isn't that right?

A. That's right.

Q. You never got any information about Bottin; isn't that right?

A. No, I didn't.

Q. Mr. Digerud we don't want to go into the details of the letter sent a similar letter, isn't that right, at a later date, maybe a week later, trying to get the

same information?

A. Mmm.

Q. And you never had information like this about IIU either; isn't that right?

A. I don't know the level of detail what we had from IIU, but I don't think we had this level of detail, no.

Q. You never asked for this level of detail but you were never given it, in any case; you couldn't have been given it, because we know that IIU had only been incorporated some short time earlier?

A. Mmm.

Q. It was a new business, effectively, at this stage?

A. Yes, we knew that afterwards, yes.

Q. Can I ask you to go to Tab 73 of Book 48.

A. Yes.

Q. This is an attendance note from Matheson Ormsby Prentice. It's not clear to the Tribunal who it was made by, but it seems to be related to the next document that I want to refer you to, which is Book 48, Tab 74, if you'd just look at that document for one moment.

You see it's the same date, and again it's an attendance note of the 10th October, 1995?

A. Yes. Now, I may come back to the Document 73, or Tab 73, in a moment, but if we could pass to Tab 74 first, because that clearly refers to an attendance with you. You'll see the top right-hand corner it has "Matheson

Ormsby Prentice". Then to the left of that there is a date, the 10th October; do you see that?

A. Yes.

Q. Then there is the initials "A.M." to the left of that, "Arthur Moran". Underneath that it says "Per Simonsen with MI" I think that's Mr. Michael Irvine; do you recall meeting him?

A. I met with Mr. Michael Irvine on one or two occasions, yes.

Q. You may not remember him being present on this occasion, but you know that he is a member of the firm of Matheson Ormsby Prentice?

A. Yes.

Q. And you know, I presume, from the amount of time you spent in Ireland, that the way solicitors operate is they keep a note of the instructions they receive and the information they receive from their compliance to enable them to, at a later point, do whatever work is required or give whatever advice is required; you understand that system?

A. Mmm.

Q. You may not have been here during the evidence of Mr. O'Connell, but you will have seen repeatedly, or you will have seen in the transcript, if you saw the transcript, repeated references to his attendances, where he would write down what his clients told him and go off and do whatever work he had to do or give

whatever advice he had to give.

CHAIRMAN: Mmm?

Q. MR. HEALY: This would have been one of your first, if not maybe your first meeting with Mr. Moran?

A. Yes, I think it would be the first meeting, actually.

Q. So am I right in thinking that the purpose of the meeting therefore was to brief Mr. Moran, to bring him into the loop, as it were, and to explain to him what you were doing here?

A. Right, that's correct.

Q. And to explain to him the stage or the steps that had been taken and the stage that you had reached in the GSM process?

A. Mmm.

Q. And underneath your name, the first reference is to Esat Digifone Limited; do you see that?

A. Yes.

Q. Then underneath that, "bid to Department in writing and verbal proposal".

A. Mmm.

Q. That was a reference to the written bid that had gone in and the subsequent presentation; isn't that right?

A. Mmm.

Q. Underneath that then you have "Communicorp", and underneath that, "Shareholders agreement Telenor drafted: William Fry (Gerry Halpenny)."

Do you see that?

A. Yes.

Q. Underneath that you have items numbered 1, 2 and 3 which are respectively Communicorp, Telenor, and then an asterisk for IIU, which is described as "new party"; do you see that?

A. Yes.

Q. And the figures given for the various interests are 37.5%, 37.5%, and then 25% for IIU, plus underwrite Communicorp, and then in brackets "I.e. a dual role." And that's a fair summary of the state of play as regards ownership interests in the consortium at that stage and as regards specifically the dual role of IIU; isn't that right?

A. Yes.

Q. Now, if you go just up to the top third of the document, again on the right-hand side, you see a note "Michael Walsh"; do you see that?

A. Mmm.

Q. And then "Dermot Desmond", and then an asterisk, "IIU"; do you see that?

A. Yes.

Q. Underneath that again it says "Will underwrite the Irish part of the bid."

A. Mmm.

Q. Now, I suppose that asterisk relates to the asterisk that's next to Item Number 3 in the three numbered items which refer to the interests of the various

parties; do you see that?

A. Yes, it looks

Q. So presumably that was noting who was involved in IIU, namely Michael Walsh and Dermot Desmond, and again, it indicates there is a reference to the underwriting of the Irish part of the bid.

A. Mmm.

Q. Then underneath that, on the same line as "Communicorp", it says "Political contacts". Then underneath that it says "Motorola less jobs"; do you see that?

A. Yes.

Q. Now, if you go back down to the portion of the letter underneath the three numbered items, there is a portion that reads "IIU letter to Department and understanding between Telenor and IIU"; do you see that?

A. Yes.

Q. I take it that the IIU letter to the Department portion of the note is a reference to the letter of the 29th?

A. Yes.

Q. What does "Understanding between Telenor and IIU" mean? Or do you know what that refers to?

A. No, not really.

Q. Underneath that it says "Complete and negotiate agreements"; is that right?



A. Yes.

Q. "On award of contract you would talk to 3 firms of lawyers."

A. Mmm.

Q. That's a reference to what it is you wanted the firm of solicitors to do, and explaining who they'd be involved with in doing it; is that right?

A. It's suggesting that they would do work for us now, and at the award of the licence, we would have a competitive process and select one out of the three lawyers.

Q. Oh, I see. So his first job was to complete and negotiate agreements; that would be the share agreement. Is that right?

A. Yes, share agreement.

Q. At that stage perhaps you thought you'd be doing that there and then and completing it even before any announcement of a result?

A. Yes.

Q. And then after that, the contract for Digifone would be awarded to somebody; is that right? Is that the point you are making?

A. The point is really that we are not promising them any scope of work outside the shareholders agreement. After that it would be a competition between other firms to determine who would help us afterwards.

Q. Underneath that you have the word "Schedule"; then it

has "Finalise agreement within 2 weeks." Is that a reference to finalising a shareholders agreement?

A. Yes.

Q. Then it says "Decision end November 1995 in fact decision 2/3 weeks."

A. Mmm.

Q. Underneath that it says "Andersen Consulting Denmark" which is clearly a reference to the consultants involved in the process?

A. Yes.

Q. Underneath that it says "EU procurement rules observe." A reference presumably to the impact of the EU procurement rules.

Underneath that, "15 million ceiling"; that's an a reference to the cap on the auction price. And near that it has "Fax Thursday a.m.", and it hasn't proved possible to decipher what's written underneath that, unless you can offer any assistance.

A. I am afraid not.

MR. FITZSIMONS: Chairman, perhaps we can provide assistance on that. It appears that Mr. Healy has not looked for a proper copy of the document. The final line reads "Search Bottin International Investments Limited is this a subsidiary?"

CHAIRMAN: "Is this a subsidiary?" Thanks very much, Mr. Fitzsimons.

Q. MR. HEALY: Maybe we'll just take that latter part of

the note first. You were drawing a picture of the main features of the activities you were involved in from Mr. Moran, and the last thing you mentioned to him was Bottin International, and that was presumably a reference to the assignment to Bottin International in the letter of the 29th September. Am I right in thinking that you would have given Mr. Moran all of the relevant documents at this stage?

A. Well, I am not sure whether he got it in the meeting, actually he was fairly quickly provided with all the relevant documents.

Q. You don't know if he had them at the meeting?

A. I am not sure whether he was handed over the documents in the meeting or if he got them straight after.

Q. If he didn't get them at the meeting, you must have brought this matter to his attention at the meeting?

A. Yes, yes, of course.

Q. And he was and one of the questions you asked or that he was toying with in his mind was, is this a subsidiary?

A. I think yeah, I mean, what was the status of Bottin International, what was the link between Bottin and IIU?

Q. A moment ago I mentioned that Mr. Digerud wrote to IIU on the I think it was the 12th October. This in fact is a document you'll find at if we just pass for one quick moment to Tab 75 of Book 48, you'll see

Mr. Digerud's letter to Mr. Michael Walsh, where again he is seeking to get some information on Bottin, and do you see the way where he says on the bottom of the second paragraph "In order to determine our follow-up on this, we urgently need the following information on Bottin:"

A. Yes.

Q. And this was not just your own view, but I presume it was advice you had received from your solicitors to follow up on this?

A. Well, this is quite similar to the letter that Mr. Knut Haga wrote.

Q. It is, yes.

A. I don't know the date of that letter; that was

Q. It was the 6th.

A. Yeah, so that was actually previous to the first meeting with

Q. It was previous to the meeting, so you yourselves were anxious to try to get to the bottom of it. Mr. Haga wrote; then a more senior member of the Telenor executive staff wrote?

A. Yes.

Q. And that was after you had been to the solicitors?

A. Yes.

Q. Does that mean that you had discussed it with Mr. Digerud in the meantime, do you think?

A. Probably this was the part I mean, we were we

wanted to get more information on Bottin, and I think we were trying to pursue this through different channels.

Q. In the first letter of the 6th October, Mr. Haga wrote simply referring to the letter of the 29th and said,

"Please, in light of the content of that letter, tell us who Bottin is". When Mr. Digerud wrote on the 12th October, he wrote saying, "A matter of concern for Telenor is, however, the side letter signed by Denis O'Brien and yourself assigning the arrangement to Bottin." And then it says "We urgently need the following information on Bottin".

So this is expressing a degree of concern and a degree of urgency on your part; isn't that right?

A. That's right.

Q. Because effectively you had a new party, not IIU, but Bottin; isn't that right?

A. Yes.

Q. And you still got no information on Bottin?

A. No.

Q. And you never got it, but you still went ahead?

A. Yes, but this was quite shortly before the announcement of the licence.

Q. It was. But you had given away 5% of the company as part you had given away in fact 25%, but certainly an additional 5%, half of it from your own intended equity, in order to bring this company, Bottin, in;

isn't that right?

A. Well, again, we were in agreement of doing that to bring IIU in. We were not familiar with the assignment to Bottin.

Q. But again it shows a high degree of confidence that this was the right thing to do, even though you weren't being given any information?

A. You have to look at the sequence of events. First, we agreed to the assignment to IIU. IIU was providing us with more solid wording on financial support.

Provided something that seemed to be a stronger security than what we were getting from other sources.

We accepted the pro rata dilution to 37.5% in order then Bottin came out. We were not at all happy with that, and we wanted to seek clarity in the Bottin matter.

Q. You did, and you weren't at all happy with it, but you did nothing about it. You acquiesced in that situation?

A. But I think you need to understand that after the announcement of the licence award, our key focus was get this operation up and running.

Q. After the licence award

A. The licence announcement, I meant to say.

Q. I see. Could we go back to Tab 74 of Book 48 for a moment.

You see the reference to the IIU letter to the

Department, and understanding between Telenor and IIU;

do you see that line?

A. Yes.

Q. That presumably reflected the information that you were providing concerning the letter of the 29th in which IIU indicated that they were going to underwrite circa 60% of the consortium; isn't that right?

A. Mmm.

Q. You don't make any reference at this point to the rejection of that letter.

A. No, I can see that from the notes now.

Q. Would that suggest that you didn't know, at this stage, that the letter had been rejected?

A. That's a possibility, but I don't really recollect when I knew that it was rejected.

Q. The rejection of the letter would have been a fairly important thing, wouldn't it?

A. Yes.

Q. And I suppose, if you did know about it, it's something you'd be telling your solicitor about at this point?

A. That would be logical, yes.

Q. So doesn't it seem likely that you didn't know about that and that nobody had brought it to your attention by this date?

A. Yes, that's a possibility. But I don't remember when I was that was brought to my attention that the

letter was rejected.

Q. Would I be right in thinking that the rejection of that letter was not brought to your attention before the 25th October, when the announcement of the award was made?

A. I am sorry, I am not really able to provide you with any assistance on when I was made aware of that.

Q. Can I provide you with some bit of assistance. I think I am right in saying that there is no note of any meeting with your solicitors in which you brought to their attention that you had been informed that the letter of the 29th had been rejected by the Department and that the Department had written a letter on the 2nd October refusing to consider it. So doesn't that seem to suggest that you hadn't received any information about the rejection of the letter by that stage?

A. By this stage?

Q. No, by the time the licence announcement award was made on the 25th October.

A. I am not really sure about that. That would only be speculation from my side, because I don't remember when I was told that the letter was rejected.

Q. The purpose of sending that letter was to reassure the Ministry and to hope that what was contained in that letter would persuade the Ministry that you were a sounder consortium than you appeared to be, is that



right a stronger consortium than you appeared to be?

A. "Not than we appeared to be", I don't really understand that.

Q. The purpose of the letter was to improve your application, wasn't it?

A. Yes.

Q. And in sending the letter, Telenor agreed to the painful step of diluting the equity; isn't that right?

A. Yes.

Q. They turned what was mainly a two-party consortium, with a number of other smaller groups involved, into a three-party consortium, all of which were quite big, isn't that right, 25%, 37.5, and 37.5?

A. But still, at this stage, IIU's role was to be as placers; they would not ultimately hold those shares themselves. So I don't think the overall idea of having financial investors, that the balance between ourselves and Esat was tilted; the difference was the 5%.

Q. Okay. But if you had been told on the 2nd October that the Department weren't going to consider this, wouldn't that mean that the whole basis upon which you had been persuaded to go along with it had disappeared?

A. No, I don't really agree to that, because still the underwriting element was in place.

Q. No, but the whole the primary basis upon which, according to Mr. Johansen's note, he had agreed to it nothing to do with underwriting the primary basis upon which he had been persuaded to agree with it, according to his memorandum of the 4th May 1996, had disappeared?

A. But as I said yesterday, I believe that there was at least a strong element of this was the underwriting, the picking up of the bid costs and all the things that Advent was not willing to do.

Q. That may have been a strong element. The other element was at least as important, if not more important?

A. Well, that's what you are drawing out of Mr. Johansen's memo; I think you should ask that question to him, because we were not discussing the content of that.

Q. What does the note "Communicorp" and then across on the right-hand side "Political contacts" mean?

A. I don't think I don't know that.

Q. Can you see it?

A. Yes, I can see it.

Q. What political contacts of Communicorp were you aware of?

A. I wasn't aware of any particular political contacts.

Q. Could this be a reference to the conversation you had had with Mr. O'Brien in which he was seeking,

according to you, to impress you with his contacts  
with the Minister?

A. No.

Q. Isn't that or is that the only time Mr. O'Brien  
mentioned political contacts to you?

A. I don't recollect that he mentioned political contacts  
to me on any other occasions, no.

Q. In the letter of the 22nd October, if we could just  
turn to it again for a moment; it's Book 48, Tab 68.

Go to the second page of that letter.

And the first paragraph, you say "Having said this, we  
still believe in the compatability in 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."

What did you mean by "lobbying" in that sentence?

A. Trying to create as positive image of the consortium  
as possible.

Q. Well, that's what "PR" means, doesn't it? But what  
does "lobbying" mean?

A. Well, I guess it means to make sure that that message  
comes across.

Q. Comes across to who?

A. I wouldn't draw such a distinct line between PR and  
lobbying as you are suggesting; sorry.

Q. I can understand you mightn't. My understanding of PR

is that it's public relations. It's putting your image into the public domain. But lobbying is usually a word reserved to describe bringing your activities and your qualities to the attention of the politicians. Are you familiar with that meaning of the term?

A. Yes, but I mean, we were always trying to create a favourable impression of this, and that was a part of the job, to try to sell this consortium. I don't indicate that there are strong political contacts in this or to be understood out of the sentence, because I didn't know of any such contacts, so...

Q. When you wrote this letter, you did know about the conversation that Mr. O'Brien claimed to have had with Mr. Lowry; isn't that right?

A. Yes.

Q. And once again, could you have been referring to that in your letter and in your meeting with Mr. Moran?

A. I don't think this is a reference back to that meeting, because as I said yesterday, I never believed in the content of that meeting.

Q. Mr. Moran has given his interpretation of this in a statement which he gave to the Tribunal dated the I don't have the date it's a recent statement. It will be in the books, but I will read out the relevant part of Mr. Moran's statement, where he says "Mr. Simonsen confirmed that IIU was a company which would

be represented by Michael Walsh and Dermot Desmond,  
and that as well as being a shareholder, it would  
underwrite the financing of the Irish part of the bid.  
Telenor had been told that IIU had political contacts  
in Ireland."

In other words, what Mr. Moran is saying is that the  
word "political contacts" relates to IIU and not  
Communicorp. If you look at the document again, it's  
on the same line as Communicorp, but it's under the  
side note on IIU?

A. I saw that.

Q. And is that a possibility?

A. It is, yes.

Q. And could that be connected with the discussion you  
had with Mr. O'Brien?

A. I still don't believe that, because I never put any  
weight to that.

Q. How do you think Mr. Moran is right, then, when he  
says that Telenor had been told, and therefore that  
you must have told him that Telenor had been told that  
IIU had political contacts?

A. That's likely.

Q. Who would have told you that IIU had political  
contacts?

A. I don't remember being told this directly myself,  
so again, they were presented as a strong Irish  
partner, and we believed that it would be important to

bring them in.

Q. But who could have told you, if you didn't know IIU yourself, you didn't know Mr. Walsh, you didn't know Mr. Desmond?

A. No.

Q. Who could have told you that IIU had strong political contacts? Think of the people that might have been able to tell you that.

A. Well, it might have been Denis O'Brien; it might have been Arve Johansen.

Q. And if it was Denis O'Brien, couldn't there have been a connection between that and the conversation you had with Mr. O'Brien when he said the Minister told him to get IIU in?

A. I think I have repeatedly stated that I never put any weight to that.

Q. I appreciate that, but isn't that a conversation in which a connection is made between IIU and political contacts?

A. Well, it's not just I wouldn't refer to it like you.

Q. If you go down through that memorandum to the third portion, we'll call the first portion the description of the parties. Then the next portion refers to the completion and negotiation of agreements and so on.

And then underneath that there is a note, "Decision end November in fact decision 2/3 weeks."

Do you see that?

A. Yes.

Q. Now, this was the 10th October, and the decision was announced on the 25th October, which was just a little over two weeks after the meeting; isn't that right?

A. Yes.

Q. So that in fact, the decision was made within two to three weeks.

Firstly, can you tell me, can you remember having any information to that effect at that time?

A. No, I had no specific knowledge of when decisions would be made or announced.

Q. Presumably any information that Mr. Moran got, he had to get from you?

A. Oh, yes, yes.

Q. And that must have been your information at that time?

A. Yes, but again this is I am referring to the decision at the end of the November. Next part of the sentence is suggesting that it may come earlier.

Q. Well, we know that the advertised date for the decision was the end of November.

A. Yes.

Q. And at the presentation, when Mr. O'Brien asked, I suppose as you might expect anyone to do, to see could he get a little more information, he was told end of November.

A. Mmm.

Q. What new information did you have that prompted you to think it could be earlier?

A. I didn't have any specific information. But there was a lot of discussion on this in the press at the moment or speculation, people were discussing when would it actually happen. And the reason why I think, after reflecting on it afterwards, as I knew I would be questioned on this, it's basically that I said this in order to put pressure on Mr. Moran to complete his work within two weeks.

Q. I can understand that.

So you were saying to Mr. Moran it is November, but hoping that if he thought it was two to three weeks, he would know that he'd have to get working very hard to get the shareholders agreement up and running within a fortnight or three weeks?

A. Yes.

Q. You felt there was that degree of urgency about it?

A. We wanted to get the things done, yes.

Q. Isn't it interesting that you never put that sort of pressure on after the I think it was the 12th October, to try to get to the bottom of the Bottin aspect of the arrangement?

A. I think you need to bear in mind that they are slightly different settings. Bottin was something we needed to research through our joint venture agreement partners. There is always a delicate balance in how



we deal with joint venture partners. There was a lawyer engaged by us ourselves, paid directly by us.

I think there is a difference between those two settings.

Q. Could I ask you to turn to

CHAIRMAN: I think, Mr. Simonsen, you had already told earlier in the memorandum, or in the attendance, you had already made it clear to Mr. Moran that he would have to work well if he was going to get the big job, because you were going to interview him along with two other firms.

A. That's correct.

CHAIRMAN: So he probably knew that he was going to have to work diligently and well.

A. Yes.

Q. MR. HEALY: Could I ask you to go to Tab 76 of Book 48.

A. Okay.

Q. This is a letter, a faxed letter from Matheson Ormsby Prentice, addressed to you, on the 12th October, 1995.

Do you see that letter? And it appears to follow on from the meeting of the 10th October; do you see that?

A. Yes.

Q. And Mr. Moran is confirming that he has read a number of documents at this stage?

A. Mmm.

Q. And he makes a number of points about the financing of

the company and so forth. A number of points about the arrangement agreement. And then if you go on to the that's the first five paragraphs. In the fifth of those five paragraphs he says, by the way, that he finds that no such company as Bottin International has been registered in Ireland. "I cannot therefore comment on whether it is a wholly-owned subsidiary of IIU or otherwise."

That would seem that the question about the subsidiary had been raised by you at the meeting?

A. Yes.

Q. It says "I have considered your draft shareholders agreement and would make the following general comments. I do not propose at present to deal in detail with the draft agreement. Clearly IIU or Bottin will have to be added as a party to the agreement and certain of the provisions of the arrangement agreement reflected in the agreement.

"2. Generally I think that the draft will need considerable work to remove some provisions which apply by operation of law and are therefore not required to be set out in the agreement; for example, Clause 7.3, 7.4 and 7.5. I consider the agreement should focus more on defining the restricted transaction, the actions which may be taken at shareholders meetings and defining the requirement majorities for certain sorts of decisions defining the

powers of the board, which are all touched upon in the draft but not in as great detail as I think necessary, particularly now that there are more than two shareholders.

"Please let me now how you wish to proceed with the drafting of the shareholders agreement, assuming that the draft which I have seen is the only draft in existence.

"I have considered the contents of the letter dated 29th September, 1995, which seems to me clear evidence of a breach of good faith with the Department.

However, because it is not strictly illegal, I do not think that you can object to it on legal grounds, but rather on good faith grounds, which I appreciate does not assist you in your discussions with Communicorp/IIU.

"I would be glad to hear from you as to how you wish me to proceed and whether in particular you wish me to draft the shareholders agreement."

Can I draw your attention to the last paragraph on that page, which begins "I have considered the contents of the side letter". Do you see that?

A. Yes.

Q. In which Mr. Moran is giving you his views and some advice in relation to, presumably, the reference to Bottin and the fact that party to take the agreement is now Bottin, or the party taking the rights under

the agreement is Bottin. And likewise, that Bottin is assuming the obligations under the agreement.

A. Mmm.

Q. I think we have to assume at this stage that once again, as I think I suggested a moment ago, you did not have any information about the rejection of that letter at that point; otherwise Mr. Moran would have referred to it. Doesn't that seem reasonable?

A. I don't want to go into speculation relating to when I knew about the letter.

Q. Doesn't it seem reasonable you didn't know about it by that date, by the 10th October? Surely you'd have brought it to Mr. Moran's attention that this whole arrangement had been rejected by the Department for consideration?

A. Well, rejected for consideration, yes, but again, I don't know when I was I knew about that.

Q. And what was your view of Mr. Moran's note that the letter of the the side letter of the 29th seemed clear evidence of a breach of good faith with the Department?

A. Of course that's worrying.

Q. You didn't bring that to the attention of any of your partners in the consortium, did you?

A. I think I just saw now that this was dated the same date as the next letter from Mr. Digerud was sent to Mr. Walsh, so

Q. A day or two later I think Mr. Digerud wrote, yeah.

Mr. Digerud wrote on the 12th; do you see that?

A. Yes, and this is the 12th as well.

Q. I beg your pardon; this is the 12th as well.

A. So at least I think that shows that we are trying to deal with the matter.

Q. You didn't say to Mr. O'Brien that "We are concerned that there could be a breach of good faith with the Department"?

A. Well, I haven't seen that in a letter, at least, no. I don't know what was I don't remember what was discussed apart from the letters.

Q. You received no letter from Mr. O'Brien in response to Mr. Digerud's letter and no letter in response to Mr. Haga's earlier similar letter; isn't that right?

A. That's right.

Q. So the question of a breach of good faith was still there; nothing else was done about it?

A. The question was still open, yes.

Q. You say you can't remember, I think, whether the question of the breach of good faith was discussed. Are you saying it was possible it was discussed?

A. I don't remember that, no.

Q. Now, around this time it would appear, from the Telenor files, that letters were prepared by Telenor to be sent to various interests in Ireland, to trade unions, but also that steps may have been taken to

arrange for the Norwegian Government to send a letter to Ireland. Are you familiar with those documents?

A. Yes, I am.

Q. Now, these documents don't have a number in the Tribunal's books because they have only been now brought into the proceedings of the Tribunal, but the document I am referring to is Number 44 in the Telenor books of Telenor legal documents. And I think you were aware that reference might be made to it, and I think you have a copy; is that right?

A. Yes.

Q. Very briefly, if we could just describe the three documents. One is a draft letter to Mr. David Begg, General Secretary of the Communications Workers Union, assuring him of Telenor's experience in operating in the telephone business and also of its record in industrial relations.

The other letter is a draft letter to Mr. Michael Lowry. That draft letter is signed by the Minister for Transport, Energy and Communications.

And the other document is a letter on the Ministry of Transport and Communications notepaper, and indeed on the Minister's own notepaper, and it has your name on the top of it, do you see that, in handwriting?

A. Yes.

Q. I don't know yet whether that letter was sent or not.

A. I believe it was.

Q. You think it was sent?

A. Yes.

Q. Because because the Tribunal hasn't found it in the Department files yet. That's not to say it's not there, but it certainly hasn't been found yet.

Can you tell me what role you had, if any, in sending those documents?

A. What role I had, sorry?

Q. If any, did you have any role in sending those documents?

A. Yes. I drafted the letter to Mr. David Begg. And I also drafted the Minister's letter.

Q. Right. And how did the Minister come to send it then?

A. I passed it on to somebody in Telenor who had the link towards the Ministry, and that was handled out well, I was not directly involved in handing it towards the Minister, and I was provided with a copy of it after it was sent.

Q. And this was the copy that was sent back to you?

A. Yes, I believe so, yes.

Q. Because it's not actually signed, the copy that you have?

A. No.

Q. I'll just very quickly go through the letter to the Minister, which is more or less in the same terms as you drafted it.

It says:

"Mr. Michael Lowry, TD, Minister for Transport, Energy and Communications, 44 Kildare Street, Dublin 2.

"Distinguished colleague,

"As you are aware of, Norwegian Telenor is one of two operating partners in the Esat Digifone consortium, one of the participants in the current competition for the second GSM licence in Ireland. Telenor is a limited company owned by the Norwegian Government, and I would like to take this opportunity to assure you that Telenor will make every effort to meet all your requirements for cellular competition in Ireland.

"Telenor has been in the business of mobile communications since the late sixties. The company introduced the world's first automatic mobile telephony system (NMT) in the early eighties and contributed significantly to the development and implementation of the GSM standard. Telenor's capability in the mobile field should be conclusively demonstrated by the fact that Norway today enjoys the higher cellular penetration in the world (23%), and Telenor as a company enjoys a world-leader level of penetration (18%).

"I would also like to draw your attention to the high standard of industrial and social relations enjoyed in Norway. As a shareholder in Esat Digifone, Telenor would always use its influence to promote good relations with the authorities and trade unions should



our consortium be awarded the licence.

"Please do not hesitate to contact me if you would like to discuss these matters (or any general aspects of cellular competition) in further detail.

"I wish you all the best in your effort to select the best possible second GSM operator for the Irish market."

Now, can you tell me, why did you or whose idea was it to send this letter?

A. It was basically my, or me and my colleagues' idea to send it.

Q. Well, what colleagues do you mean?

A. The other Telenor people.

Q. Do you mean Mr. Johansen, Mr. Digerud, Mr. Haga?

A. I don't really remember who I discussed it with, but this was fairly standard practice, to get letters like this.

Q. Would you do this in every country in which you were involved in a competition?

A. We have done it in several countries, yes.

Q. Could I just for a moment ask you to go back to Mr. Digerud's letter of the 12th October, 1995, which is on Tab 79 of Book 48.

Do you see where it's a letter to Mr. Walsh. It's similar to an earlier letter it's another Bottin letter. Do you have it?

A. Sorry

Q. It's what I call another Bottin letter, another letter looking for information about Bottin.

A. Sorry, 79 that's a fax

Q. Tab 79 of Book 48. Have you got that?

A. That's a fax to Gerry Halpenny from Denis O'Brien?

Q. Yes well, it's copied to Denis O'Brien, but it's a letter from Mr. Digerud to Mr. Walsh; do you see that?

A. No, sorry, I don't have that.

Q. Book 48, Tab 79?

A. That's a fax front page of Communicorp.

Q. There must be something wrong with my noting. I'll get you a copy of it.

CHAIRMAN: I think it's the one we have talked about a couple of times; it was after Mr. Haga's letter about Bottin hadn't got any response, and he then asked Mr. Digerud to follow it up.

Q. MR. HEALY: I am told it's Tab 75.

A. Okay. Thank you.

Q. Have you got that document?

A. Yes.

Q. It's what I call another Bottin letter. Mr. Digerud also wrote to Mr. O'Brien about Bottin. Mr. Haga wrote about Bottin, and Mr. Digerud is here writing to Mr. Walsh about it. We discussed it a moment ago. Do you remember you corrected me when I got the date wrong? It's the 12th October. It says:

"Dear Mr. Walsh,

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

A. Yes.

Q. I just want to make one small point about that. Again that would appear to clearly suggest that Mr. Digerud did not know at that time that the letter of the 2nd October had been refused. Do you see that that the letter of the 29th September had been refused; do you see that? Would you agree that's a reasonable conclusion, that you weren't told or Mr. Digerud hadn't been told or Mr. Haga hadn't been told that the letter of the 2nd October had been sent by the Department refusing to consider the letter of the 29th September?

A. It appears that way, but I don't want to be pinned down on when and where I knew about it, because I don't remember that, as I said.

Q. You may not wish to pin it down, but can we at least try to narrow the period in which you might have been informed. It would appear reasonable to suppose that you hadn't been informed by this date. In any case,

Mr. Digerud is welcoming Mr. Walsh aboard, and he is asking for some information.

A. Yes.

Q. If we just go back to your letter to the Ministry or your letter, I beg your pardon, the letter you drafted for the Ministry.

It says this is the 17th October, 1995. It says:

"Distinguished colleague,

"As you are aware of, Norwegian Telenor is one of two operating partners in the Esat Digifone consortium, one of the participants in the current competition for the second GSM licence."

Were you making a distinction there between operating partners and other partners?

A. No, I don't think so. Sorry, I mean, the operating partners were clearly Esat and Telenor, yes.

Q. You didn't mention IIU?

A. Well, this is a letter of introduction for Telenor; we didn't mention any other shareholder, I believe.

Q. Well, at least could I take it that if you weren't seeking to avoid mentioning IIU, by this date, the 17th October, you still hadn't been informed that the letter had been rejected by the Department?

A. I don't think that would change the content of this letter.

Q. Did you discuss with anyone on the Esat Digifone side the sending of this letter?

A. I think I informed them that we would send such a letter.

Q. I think you told me that communications with the I am sorry, I said "did you discuss this with anyone on the Esat Digifone side?" Maybe I should be more specific.

Did you discuss this with anyone on the Communicorp or IIU side that you were going to send this letter?

A. I may have told some of the people in on the Esat side that we were going to send this letter, or that we had sent this letter, yes, but we didn't discuss the content of it or anything. It was a Telenor initiative.

Q. I understood that Telenor normally left this type or this type of activity or this side of the business to the local partner.

A. Yeah, but still, I mean, of course if there was anything we could do to introduce or make a reference for Telenor from a good source, of course we would use that opportunity.

Q. Do you recall doing this in each of the other countries that you had operated in?

A. I recall having done it on more than one other occasion.

Q. Would that be in Hong Kong?

A. No, in Hong Kong, I don't think I think we did it in Italy and maybe some of the central Eastern

European countries.

Q. You didn't do it in Hong Kong, but you did in Italy and central European countries?

A. That's from my recollection.

Q. And were there competitions in each of those countries as well?

A. Yes.

Q. And did you send those letters in the middle of the competitions?

A. I would have to go back and look into the archives to answer that.

Q. You were in the middle of the competition here; isn't that right?

A. Yes.

Q. Do you think that the Norwegian Minister knew that in this competition, no further material was to be sent in to the Department after the application went in and after the presentation was held?

A. I don't think he had any more information than the content of this letter. Maybe some briefing around it, but not any specific details. He was not a party to the competition himself either.

Q. The Minister was the head of the Department; he was the man making the decision at the end of the day. Isn't that right?

A. I mean the Norwegian Minister.

Q. I beg your pardon. The Norwegian Minister was of

course nominally the shareholder who owned Telenor;

isn't that right?

A. Yes.

Q. Nominally?

A. Sorry?

Q. Nominally, he was the shareholder who owned Telenor?

A. He was the shareholders meeting of Telenor, if you like.

Q. Yes, he was the shareholders meeting, it was the Government or the State, but he was the individual with the responsibility; isn't that correct?

A. That's correct.

Q. When you were sending this letter, did you have any concern that if what Mr. O'Brien told you about his meeting with the Minister was true, some link might be made between what Mr. O'Brien had told you and this letter?

A. No, I never thought about that, no.

Q. You were certainly getting involved in political lobbying to some degree in arranging for this letter to be sent, weren't you?

A. Yes, I mean, you may say that. I think this is a quite soft letter. It's if you read the last part of it: "I wish you all the best in your efforts to select the best possible GSM operator for the Irish market." It's a letter of reference, I think, for Telenor.

Q. What was the reason for sending it?

A. Well, to make sure that the qualities of Telenor was known to the Minister.

Q. Over and above what was stated in the application?

CHAIRMAN: Did you check with your colleague who had the contact with the Minister in Oslo as to whether there was any reply or acknowledgment from Mr. Lowry or the Department?

A. I never heard more, actually, so I don't know if anything more happened?

Q. MR. HEALY: Just to get back to something I asked you a moment ago, and you will forgive me if can't quite remember the answer. I think you said that you may have told the people on the Communicorp or IIU side about this, either before you did it or after the letter had been sent.

A. Yes.

Q. Does that mean that you would have spoken to Mr. O'Brien or Mr. Walsh or someone like that about it?

A. I don't remember exactly who I spoke to about it, but

Q. Was that because you just had a casual conversation, or because you felt it was important to draw to their attention that you were having that you had taken this step, or were about to take?

A. That was more a part of a casual conversation. I never saw this as a very important step.



Q. Do you now know that around this time, Mr. Lowry's party, the Fine Gael Party, were holding what they call a Golf Classic, which is a sort of an invitation golf competition, set up for political funders and purposes, just outside Dublin?

A. I heard about a Golf Classic, yes.

Q. And the Golf Classic was held on the 16th October of 1995?

A. Okay, I didn't know.

Q. You may not have known the date.

A. No.

Q. Did you know about that Golf Classic and about Esat Digifone's involvement in it at that time?

A. I heard mentioning about the Golf Classic, but I was not present, and I don't know the exact linkage between Esat and the event.

Q. When you say you heard mention of the Golf Classic, do you mean you heard mention of it in the course of your involvement with this process, or are you saying that you heard mention of it either around the time that it happened or at some time after it happened before you left Ireland?

A. I may have heard it back then, but I didn't have any role in it.

Q. Are you aware that the Tribunal addressed a number of queries to Telenor concerning the authorisation of the signing of a cheque and the drawing of  $\text{€}24,000$ -odd in

connection with making an Esat Digifone contribution

to the Golf Classic?

A. Yeah, I think I heard about that.

Q. You are aware of those queries?

A. Yes.

Q. Are you aware that the queries were directed to ascertaining whether Mr. Myhre, whose name appears on,

I think, the cheque used to purchase a draft for

€1/24,000 as a contribution to the Golf Classic? Are you

aware of that?

A. That

Q. That the queries were directed to ascertaining whether

Mr. Myhre, whose name appears on the cheque used to

purchase the draft, was aware that he was authorising

a payment to a political party?

A. I remember, from some time back, questions were raised relating to that.

Q. Mr. Myhre has said that he has no recollection of ever

having authorised a withdrawal for the purposes of

political donation, and he says that he would have

refused to authorise a withdrawal for the purposes of

a political donation from the Esat Digifone joint

venture account, and he said that he had no authority

to permit or authorise a withdrawal for that purpose.

Would that have been your view as to how to proceed in

a situation like that, as well, if you had been asked

to authorise a withdrawal like that?

A. Broadly speaking, yes.

Q. Do you remember when you last gave evidence in these proceedings? It's a good while ago now; it was at a time when the Tribunal was inquiring into a \$50,000 payment that, according to Telenor evidence, was made by Telenor on behalf of Esat Digifone.

A. Yes.

Q. And you remember the evidence given by I think yourself and Mr. Johansen concerning the attitude Telenor had to the making of such a payment?

A. Mmm.

Q. That it wouldn't be something Telenor would do in the ordinary way?

A. Yeah.

Q. And do you recall the evidence that this payment was made in such a way as to hide the traces of the payment? Do you remember that?

A. Yes, I remember that we made a payment on behalf of

Q. Yes, you made a payment. You didn't make a payment to the political party. You made a payment to a Mr. David Austin.

A. Yes.

Q. And that payment was sent to an offshore bank in the Channel Islands; do you remember that?

A. Yes.

Q. And then on foot of an invoice, not referring to the political donation but referring to consultancy

services that were never in fact delivered, a false invoice; do you remember that?

A. Mmm.

Q. And then after the payment had been made on foot of that invoice, and when you sought to recoup the money from Esat Digifone, all traces of the reference to the consultancy payment, or to Mr. David Austin, or to the offshore account, or to the currency being dollars, was removed; do you remember that?

A. When you said the traces were being removed, I am not really sure if that's in line with the statement as it was. I would have to go back and consult my statement.

Q. Well, I'll try to find the relevant part for you.

MR. FITZSIMONS: Chairman, I am not objecting to this loin of examination, but quite obviously the witness had no idea whatsoever that this area was going to be explored by Mr. Healy and has no refreshing of his memory

CHAIRMAN: I'll make full allowance for that, Mr. Fitzsimons. But quite plainly, there is no intention of asking Mr. Simonsen to come back a third time, so it makes sense

MR. FITZSIMONS: I agree, Chairman. I just want to make that point.

CHAIRMAN: I am fully mindful of that.

MR. FITZSIMONS: Thank you.

MR. HEALY: I have the relevant copy of the transcript, Mr. Simonsen, but I don't think you have it, or there isn't a copy available for you at the moment. So I'll give the reference, and we may have to come back to it. It's Day 144, page 110 and page 111.

Q. If it's necessary, we can get the whole of that transcript in a moment, but maybe if I can just put it in context with you. I don't think you'll have any difficulty remembering, firstly, that there was a \$50,000 payment; that Telenor needed some piece of paper, I think the word is the word that was used, to justify making that; that the paper that was produced was an invoice from Mr. Austin. Do you remember that? You remember that the payment was to be made into an offshore account, and you got an account number; isn't that right?

A. Yes.

Q. Now, I'm asking you about the second stage of that process, which is the recording of that. And the recording of that took place in two places: Firstly in Esat Digifone in Dublin, and in Telenor in Norway. Telenor wanted to record it for a number of reasons, one of which was that you wanted to be able to recoup the money; isn't that right?

A. Yes.

Q. So you needed a record of that?

A. Mmm.

Q. If I could just draw your attention to these two pages, and if you need any more to refresh your memory, we can get those as well.

If you go to Question 518 on page 110:

"Question: So you had a very strong impression that this document shouldn't even exist in Dublin; isn't that right?

"Answer: Yes.

"Question: So much so that you didn't instruct anyone to ring up Dublin; you rang up yourself?

"Answer: Mm-hmm.

"Question: Why did you have that very, very strong feeling that the document shouldn't even exist and that no trace of it should exist in Dublin, it was from your conversation with Mr. O'Brien?

"Answer: Yes. I knew that he was concerned about David Austin's name being on the invoices coming into Esat Digifone.

"Question: Would I be right in thinking that you must have formed the impression that he was extremely concerned about it?

"Answer: He was concerned. If it was extremely concerned or not, I don't know.

"Question: Well, concerned enough to make you direct somebody in Dublin to destroy a document. Concerned enough to make you

"Answer: Well, destroy a faxed copy of a document.

"Question: I understand that, but to destroy it. You might have said ignore it, forget it, you could have corrected it, couldn't you? It would have been a simple matter to issue a credit note and start all over again, wouldn't it?

"Answer: Yes.

"Question: The point of you issuing the instruction was to remove

"Answer: The trace of it.

"Question: The trace of it?

"Answer: That's right.

"Question: You gave the instruction, as I said a moment ago, for the new invoice, and sometime after this you received another telephone call from Mr. O'Brien informing that you he did not wish the currency on the invoice to be in US dollars and that he would prefer the currency to be in Irish pounds. He also requested that the invoice be delayed for a period of four to six weeks. Can you tell me about that telephone conversation?"

And you go on.

Now, to be fair to you, Mr. Simonsen, I think what you were talking about there when you were referring to removing the trace of it, you meant the traces in Dublin.

A. Yes.

Q. There were always documents in Norway?

A. Yes.

Q. Isn't that right?

A. Yes.

Q. What was to be done was to remove any traces in Dublin of what this transaction was really about; isn't that right?

A. Yes.

Q. In Norway you had some information, information that would enable to you recoup the \$50,000, but you had no information in Norway that this was a political donation; none of your documents refer to that?

A. I mean, that was there was an invoice to David Austin, that's correct; it's not classified as a political donation, if that's what you mean.

Q. Yes, and it wasn't so classified in Norway, is my point.

A. No.

Q. But there was documentation in Norway, some documentation referring to Mr. Austin, referring to a consultancy, referring to an offshore bank and referring to \$50,000.

A. Yes.

Q. But you didn't even have that documentation in Dublin. Nothing at all to link it to Mr. Austin?

A. You mean who didn't have those documents? Sorry, I got lost in



Q. Okay. I think I am going to I am borrowing to some extent, I think, from the evidence of Mr. Johansen.

The purpose of the contacts that you had around the time referred to in this evidence was to make this transaction invisible in Dublin.

A. Okay, yes.

Q. It was visible in Norway, but in Norway it was still described as a payment for consultancy; it wasn't described as a political donation.

A. No, the invoice was for consultancy, that's correct. But it wasn't hidden from or the traces weren't removed in Norway, as I thought your first question was implying.

Q. No, the traces were not removed in Norway. The traces were removed in Dublin.

A. Okay.

Q. But even in Norway, there was no description of the true nature of the transaction; isn't that right?

A. But I don't really understand in what context that would be relevant. I mean, we didn't classify invoices in any such way.

Q. It wasn't an invoice for a consultancy?

A. No, but any invoice you get, you don't classify them according to what type of

Q. Well, you got an invoice?

A. Yes.

Q. Of course, when you get an invoice, you decide whether

you pay it or not?

A. What I am trying to say is that it wouldn't be natural to classify it as anything.

Q. If you get an invoice, you decide whether you should or should not pay it?

A. That's correct.

Q. But ultimately it has to go into some pigeonhole in your accounts, doesn't it?

A. As an expense.

Q. If it's a payment for consultancy engineering services, it might go into consultancy services engineering or it might go into general consultancy services, isn't that right?

A. You'd have to go back again and look at the classification on the accounts.

Q. There was no evidence, Mr. Simonsen, that anyone classified this as a political donation.

A. But there was no attempt to hide it either.

Q. There was no attempt to hide it as a payment to Mr. Austin; you are quite correct.

A. That's correct.

Q. But there were in fact no services rendered by Mr. Austin as far as I am aware, anyway. And there was no attempt to describe it as a political donation to Fine Gael.

You see, what I want to ask you, Mr. Simonsen, is this: Here you were, a Government company which had

written to an Irish Government Minister informing him that sorry, you were a Government company, and your Government had written to the Irish Government and to the relevant Minister telling him about some of the high standards of industrial and social relations enjoyed in Norway, and at the same time you were being asked to make a political payment on behalf of the company that had won the licence in Ireland to the Minister who had or to the Party of the Minister who had granted that licence and to hide that political payment. Isn't that right? Aren't those

A. I think it's a broad question; I think it would be easier for me to answer if you narrowed it down a bit.

Q. If you want me to go more slowly, I will.

It's not disputed you were a Government company?

A. We were a Government-owned company, to be precise.

Q. A Government-owned company; I beg your pardon.

The Minister, the representative of the shareholder in that company, had written to the Irish Minister extolling the virtues of Telenor in general?

A. Yes.

Q. The Minister to whom he wrote was Mr. Michael Lowry, who was responsible for the Irish telecommunications GSM2 process?

A. His colleague, yes.

Q. That process was underway at the time that that letter was written; you were in the middle of that process?

A. Mmm.

Q. Subsequently your consortium won the competition?

A. Yes.

Q. A short time after that, your company was asked by Mr.

Denis O'Brien to provide \$50,000 by way of a donation

to the political party of which the Minister was a

member, and Telenor refused. In fact I should

qualify that; it's not fair to Mr. O'Brien he

suggested you make it, and Telenor refused the

suggestion, or rejected the suggestion. Then Mr.

O'Brien asked you to facilitate the making of that

payment by Digifone, pointing out that Digifone didn't

have any money, and asking that Telenor would make the

money available and that Telenor would make the

payment; isn't that right?

A. Yes.

Q. And up to that point, Mr. Johansen, who was the first

contact, not you, I think said in his evidence that he

went along with this. The other elements of the

proposition then came into view. Firstly, there was

to be an invoice, a false invoice, for consultancy.

Secondly, there was to be a payment to an offshore

bank; isn't that right? Mr. Johansen's evidence, you

may recall, was that he began to get concerned at this

point.

A. Mmm.

Q. Subsequently, when you became involved, you were asked

to remove the traces of this transaction in Ireland,  
in Dublin; isn't that right?

A. No, I wasn't again, if you want really to go  
through this, I think we should do it in full detail,  
because I don't remember now every aspect of the  
transcripts. And if you want my recollection, I think  
I should be entitled to prepare for it.

Q. Mm-hmm. Well, do you want to go through this  
transcript again, or do you want to go through a  
longer part of the transcript? Which part of what I  
said to you is not clear to you?

MR. FITZSIMONS: Now, Chairman, I don't want another  
argument between a Tribunal counsel and a Telenor  
witness. Extensive preparations have been made to  
have Telenor witnesses here for this hearing. The  
Telenor witnesses have all prepared and done a lot of  
work to assist the Tribunal. All of this work on this  
line of questioning could have been done if basic  
information could have been provided by the Tribunal.

Mr. Healy now wants to effectively give out to the  
witness for not being able to deal with the matter and  
effectively ask threatening him that he'd have to  
be back again by saying "Do you want to read longer  
transcripts?" This

MR. HEALY: I object the suggestion that I was  
threatening the witness. I never threatened a  
witness.

MR. FITZSIMONS: Mr. Healy has just by implication threatened the witness, and I won't withdraw that remark.

CHAIRMAN: I don't think it's threatening, Mr. Fitzsimons. I fully take your point that this examination was to focus on the matters that have been dealt with in the correspondence and documents that have been exchanged with your solicitors, and as I indicated, I am fully prepared to make all due allowances for the fact that in the course of two and a half years, it's natural that Mr. Simonsen does not recall all the circumstances of the quite convoluted transaction relating to the \$50,000. And I don't think it's necessary that we have any reversion in chapter and verse to all the circumstances, and I think matters will suffice if I simply now put it to Mr. Simonsen the general thrust of Mr. Healy's inquiry.

In other words, Mr. Simonsen, what Mr. Healy is saying to you is that at a quite late stage in the competition, this letter was written between the respective Ministers for Telecommunications following on an idea that was probably yours; and Mr. Healy has brought to your attention, without necessarily going into all the details of it, that shortly after the award of the the favourable decision on the competition, that the payment was made of which

mention has been made in circumstances which could, on one view, be looked on as having aspects of being a little covert or underhand.

And perhaps it suffices if I ask you to comment on do you see any difficulty or any incompatibility?

A. No, I didn't.

Q. MR. HEALY: You knew that Mr. O'Brien was the person who had instituted the arrangements to make that payment; isn't that right?

A. Yes.

Q. Did you, at that stage, at all begin to wonder whether there wasn't a connection between that request from Mr. O'Brien and the conversation you had with him in which he said he had met the Minister in a public house?

A. No.

Q. You made no connection between those two things?

A. No.

Q. You didn't feel in any way uncomfortable, when you were changing these documents at Mr. O'Brien's request, that there might have been a connection?

A. No, I never made that I never thought there was a connection, no.

Q. Could I ask you to turn to Document to Book 49, Tab 82. This is another attendance of Mr. Moran of the 31st October, 1995; do you see that?

A. Yes.

Q. "Per Simonsen,

"1. Your fax of today.

"2. Re ESB threatened action. Expressed the view that from my knowledge of the facts there is not a godd cause of action against the consortium whatever about against Esat itself. It would of course be damaging if there were to be any comment in relation to IIU and the side letter although it is hard to see how it would become public."

Do you remember having that discussion with Arthur Moran?

A. I don't really recollect the specific discussion, sorry.

Q. It seems to convey some advice Mr. Moran gave you at the time.

A. Mm-hmm.

Q. One of the things that interests me is that Mr. Moran is saying that it is hard to see how the side letter or references to IIU could become public. Do you see that?

A. Yes.

Q. Would I be right in understanding from that, that there had been no public references to IIU at this point?

A. Well, there had been the letters to the Ministry, of course.

Q. There had been no public references?



A. I don't really remember.

Q. Although there is no doubt that IIU was aboard, as Mr. Digerud put it, at that point; isn't that right?

A. Well, formally, you know, they were not, but they were intended to be on board, yes.

Q. They were aboard. Maybe we should get rid of this problem at this point. Were they a member of the team or not?

MR. FITZSIMONS: The witness has just answered the question, and the facts are, in that regard, as Mr.

Healy well knows, that under the arrangement agreement, IIU only came "on board" in the broadest sense of the term, once the licence was awarded. Not before that time.

CHAIRMAN: Well, we'll proceed on that base.

Q. MR. HEALY: I think maybe we could reach a compromise by saying they had a stake in the consortium at that stage; would that be right?

A. Formally, I guess they did not have that, no.

CHAIRMAN: I suppose, as Mr. Callaghan said to us a week or so ago, he wouldn't like to have had to tell Mr. Desmond that he had no interest in the consortium at this time.

A. That is right.

CHAIRMAN: I don't think anyone would have.

A. But they were intended to be in the consortium, that's correct.

Q. MR. HEALY: Could I ask you to look at Book 49, Tab 86, please.

This is another attendance note of Mr. Arthur Moran's of the 9th November, 1995; do you see that?

A. Yes.

Q. Knut Haga was present, you were present and Knut Digerud.

A. Yeah.

Q. And there seems to be some technical discussion about votes, "When transfer notice issued or deemed should.

"Share subscriptions when how funded?

"Breach what penalty applies."

I think we now know what the reference on the right-hand side is to the hotel.

Underneath that, "Peter O'Donoghue and Richard O'Toole and Gerry Halpenny."

Peter O'Donoghue and Richard O'Toole were associated with Esat Digifone. And Gerry Halpenny was advising them; isn't that right?

A. Yes.

Q. Underneath that, "Communicorp/or Esat Telecom". This was a reference to whether Communicorp itself or Esat Telecom would be taking up that particular part of the consortium; isn't that right? The Mr. O'Brien portion of the consortium?

A. Mm-hmm.

Q. Whether it was going to be Communicorp or Esat Telecom

was a subject of some discussion, but it was eventually resolved in favour of Esat Telecom; isn't that right?

A. Yes.

Q. Even though Communicorp was strictly speaking the, as you put it, formally the party entitled; isn't that right?

On the right-hand side it says "Requested not conceded.

"88% Communicorp.

"12% executives of Communicorp and Esat" I think that's a reference to the shareholding configuration of Esat Telecom.

Underneath that, "IIU are Department aware?"

Underneath that, "Yes 19/9/95 letter to

Department. Department replied that letter was taken into account copy to be supplied to us."

Now, that suggests that at that point you certainly hadn't received the Department's letter, but that you were aware at that point that the Department had replied that the letter would not be taken into account; is that right?

A. Yes.

Q. Underneath that, a reference to the business plan.

I think the rest of it is mainly technical. I don't want to draw your attention to it. And the same goes for the next page.

You see where it says "IIU are Department aware?"

And then "Yes, 29/9/95 letter to Department"?

A. Yeah.

Q. Did you understand that at this point the Department were aware that IIU was a member of the consortium?

A. Well, I think they were aware, as they have seen the letter, and yes.

Q. If we could get the letter on the overhead projector for a moment, please.

You see where the letter says, in the second paragraph, "We confirm that we have averaged underwriting on behalf of the consortium for all of the equity (i.e. circa 60%) not intended to be subscribed for by Telenor. In the aggregate the consortium now has available equity finance in excess of 58 million".

Do you see that paragraph?

A. Yes.

Q. Now, I think what was actually being arranged was a situation in which IIU took over 25% of the shareholding, isn't that right, either itself or through placees? Isn't that right?

A. Yes.

Q. And that it underwrote the rest of the Irish portion of the consortium?

A. Yes.

Q. Does that make it clear that IIU were actually going

to take up 25% themselves or through their placees?

A. No, but I think still that content is reflecting the situation.

Q. It's reflecting what situation?

A. If the concern was the financing, here's their guarantee to provide security that the Irish side of the consortium would be financed, the underwriting part was.

Q. If the concern was financing. But nobody had asked for there was no concern about the financing of the institutions; isn't that right? I thought we agreed that. There was no concern about the financing of the institutions?

A. No.

Q. We agreed that, hadn't we?

A. That's okay, yes. That's not the point I was trying to raise.

Q. What I am trying to find out is, what is meant by "Are Department aware?" The Department could only have been aware of what was contained in that letter if they were aware of anything, isn't that right, unless somebody gave them the arrangement agreement?

A. Yes.

Q. And they were not given the arrangement agreement?

A. I believe not.

Q. Could you just go to Book, for a moment, to Book 43, Tab 150. You may not need to go to it if I can tell

you the question you want to ask, and you can determine whether you need the book or not. I want to refer to the meeting on the 9th November, 1995, in the Department, which was the initial meeting concerning the licence, which was attended by a large group of people from the Department and a large group from the consortium side; do you see that?

A. Yes.

Q. And you are noted as having been present?

A. Correct.

Q. There is no mention in that meeting of the involvement of IIU?

A. No.

Q. Did you regard it strange that no attempt was made at that point to make it clear that although the letter had been refused, IIU were still on board?

A. Well, if you look at what the agenda is, I am not really sure that this will be the right meeting to raise ownership issues. This was a technical meeting to determine licence conditions.

Q. I think it was the first post announcement of the winner contact, the first formal contact with the Department; isn't that right?

A. It could have been, yes.

Q. And wouldn't that have been the obvious place to sort out the difficulty that had developed over the letter of the 29th September, 1995, and the letter rejecting

it of the 2nd October of 1995?

A. Well, that could be an occasion, but the agenda for the meeting was set by the Ministry, and it was to deal with how the licence should be formed.

Q. You had gone to considerable trouble in the course of the competition, even though you had been told not to write to the Department, to send them a letter improving your application. You had no agenda to do that. Could I suggest to you that this was a reasonable time to do that, no matter what the agenda was?

You don't agree?

A. No, I don't agree.

Q. And could I suggest to you that it would be reasonable to conclude that you didn't want to mention this for the same reason that you were concerned that it might go public, that there was some embarrassment about it?

A. I wasn't really involved in any discussions on how that should be made public, or when, or in what instance.

Q. Weren't you in a discussion with your solicitor in which he indicated it could be damaging if the side letter or the reference to IIU became public just a day before this meeting? In fact, I think the day of this meeting. Maybe I am wrong about the day of the meeting; I better be careful about that.

Sorry, shortly before the meeting, just over a week

before the meeting.

A. I am not really sure whether his reference was made to IIU or Bottin in that instance. If it was IIU per se or if it was Bottin, it would be damaging.

Q. It could have been either would have been damaging, either IIU or Bottin; I can understand your point.

The Department didn't even know about Bottin at this point; isn't that right?

A. No, I don't think they knew about Bottin.

Q. Did anyone ever tell the Department about Bottin?

A. I don't know.

Q. Was there some sensitivity about telling them about Bottin?

A. We didn't have any dealings directly with the Department, so I don't know.

Q. Again, would I be reasonable in concluding that one interpretation of that is that there was a sensitivity about bringing that matter to the attention of the Department?

A. It could have been, but we were not involved in that.

Q. Could I ask you to go to Tab 105 at Book 49.

A. Okay.

Q. That's another attendance of Mr. Arthur Moran, this time of the 10th January, 1996.

A. Yes.

Q. It seems to have been at William Fry, that note in the first line of the attendance.



A. Mmm.

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

A. Okay.

Q. And then there is a reference to "14.2 still difficult". That must be a term of the shareholders agreement.

"Chief Executive matter

" IIU points."

These were obviously IIU issues on it looks again like the shareholders agreement, doesn't it?

A. Yes.

Q. Then if you go down a good few lines underneath that, you'll see "Department still believes in 40:40:20 split." Do you see that?

A. Yes.

Q. So as far as the meeting was concerned, both the Esat Digifone and the Communicorp sorry, the Telenor and the Communicorp people present believed that the Department were still under the impression that this was a 40:40:20 split?

A. That's reasonable, yes.

Q. So nobody had told the Department that the true situation was that Telenor only had 37.5%?

A. Only would have.

Q. Would have?

A. 37.5%.

Q. Would have 37.5%.

Was there some, again, some sensitivity about drawing this to the attention of the Department?

A. You mean the percentage split or the participation?

Q. The percentage split or the participation.

A. No, I don't really remember that.

Q. Look at the next line, next line: "Cash call likely soon 12 million 20/1/96".

Underneath that it says "Michael Walsh, John Bateson, NOB" a reference to Neville O'Byrne "and Sonya Price." I think that would seem to suggest that those people had joined the meeting; would I be right in that?

A. I am sorry, I wouldn't know that now.

Q. Mr. O'Byrne represented IIU. Michael Walsh was a director of IIU. Do you see that?

A. Yes.

Q. It would look like at some point in the meeting, all of the stakeholders, or partners, whatever you want to call it, were present?

A. Okay.

Q. Then it says "Recital E on whose behalf are IIU acting?"

And then underneath that, it says "IIU Nominees Limited need to talk to Department."

A. Okay.

Q. Does that suggest that the meeting were saying, "This

information has to be conveyed to the Department"?

A. It looks like that, yes.

Q. Did it ever occur to you that there might be some connection between the well, maybe I should go back a step first and ask you this question: Would you agree with me that certainly up to this date, there seems to have been no anxiety to put the true facts concerning the consortium before the Department?

A. Well, there seems to be an anxiety here, I think, yes.

Q. Somebody was certainly saying at this point, but up to that point?

A. No I haven't seen anything in writing which is suggesting that, but I don't remember the sentiment, if that's what you are asking about.

Q. Is there some reason that you were aware of that would have made it embarrassing or damaging to have drawn to the Department's notice the involvement of IIU or Bottin?

A. Well, we were never happy with Bottin, as you know, so it could have been an embarrassment there. Relating to IIU, I don't really now recollect why that should be embarrassing.

Q. Could I ask you to look at Document 88A, Book 49: Have you had an opportunity, before giving evidence, of reading this letter?

A. Yes, I am reading it now, okay.

Q. This is a letter which is in draft form and appears to

have been prepared in William Fry's by Mr. Owen O'Connell on the instructions of Mr. Denis O'Brien. It's a letter purporting to be written to or intended, but as far as the Tribunal is aware, in any case, not sent to Mr. Martin Brennan on the 17th November, 1995, saying "I am writing to confirm our conversation of today concerning shareholdings in Esat Digifone.

"Esat Digifone is, and will continue to be, owned and controlled by Esat and Telenor. Esat is in turn owned mainly by myself and Advent International. It is likely that in the course of funding the GSM project we will introduce new institutional finance, and indeed we are already negotiating this with CS First Boston. Telenor is, of course, the Norwegian national telecom operator.

"Our bid made it clear that Esat Digifone would also seek minority financing by public and institutional investors. In preparing for this financing, we have been advised by International Investment & Underwriting Limited, who have also agreed to underwrite the finance, i.e. to locate investors on behalf of Esat Digifone and itself, to take up any shortfall.

"Given the fact that IIU is publicly identified with Dermot Desmond, some publicity may ensue. I thought it important that the facts of this matter should be

made clear, of which the most important seem to me to be firstly that Esat Digifone comprises and is controlled by Esat and Telenor, and secondly that IIU are its advisers and underwriters.

"If you would like any further details, please let me know. In any event our ongoing licence discussions will, as you have made clear, cover the question of present and future control of Esat Digifone."

Did you know anything about this letter, or the content of it, even, or the proposal contained in it, before it was drawn to your attention by the Tribunal?

A. No.

Q. Were you aware or would you have been consulted about letters like this written on behalf of Digifone?

A. No, I don't think so.

Q. Why not?

A. This was a matter dealt with by the Esat side.

Q. This is something I find hard to understand in light of some of things we have seen today, including the letter from the Ministry. Why would something like this be dealt with by the Esat side?

A. Exactly, the letter from the Minister was dealt with by the Telenor side. This was dealt with by the Esat side.

Q. Anything coming from Norway was dealt with by the Telenor side; anything, if you like, more Irish-based was coming from the Esat side?

A. To a certain extent, yes.

Q. But I understood that the distinction was that the Irish side would deal with things like marketing, PR, and so forth, but that the Norwegian side would deal more with the technical things. That wasn't an absolutely clear division then; is that right? Were the Norwegian side in fact dealing with some lobbying and PR side of the thing?

A. Well, the PR activity was conducted by the Irish side. The letter from the Norwegian Minister was dealt with by us. But all distinctions, or there wasn't really any necessarily that clear division of everything.

Q. Did you yourself feel that the Department were entitled to be made aware of the change in the proposed shareholdings?

A. I think that would be a good idea, yes.

Q. Do you think it was wrong not to have informed them precisely of the change in the proposed shareholdings before the licence was granted, or the licence the competition was awarded now this was before October 25th, in other words?

A. Well, I don't think that really constituted such a big change. We had reserved 25% for financial investors. The real change was actually the 5%, if you like. I don't think replacing the other financial investors with IIU was a very dramatic change; even with the

change of percentages, Esat and Telenor remained the key shareholders of the consortium. It's the 5% that we are talking about.

Q. Where does the letter of the 29th say that the investors are to be replaced by IIU?

A. Sorry, which letter?

Q. The letter of the 29th to the Department. We had it you have a copy there. The letter from IIU to the Department of the 29th September, 1995, where does that say that the investors are to be replaced by IIU?

A. First of all, the four financial institutions weren't investors in the consortium at that time. They had stated interest in becoming investors; okay?

Q. Okay.

A. So they weren't replaced in that sense.

Q. I think I just want to quote from your own evidence. You say, "... if you like. I don't think replacing the other financial investors with IIU was a very dramatic change".

A. Okay.

Q. I am just using your language.

A. Okay, if I may rephrase that. Their intention to become investors.

Q. Okay. Where does the letter say that they were being replaced?

A. It doesn't.

Q. It doesn't, exactly. Isn't that it? It doesn't say

that.

A. No. But again they were in general at that time, so "replacement" is probably not the right word to be used, sorry.

Q. Is that your answer?

MR. FITZSIMONS: What does Mr. Healy mean by that remark to the witness? Mr. Healy has been told by the Supreme Court to behave with good manners to witnesses who are coming here, particularly witnesses who are coming not under compulsion and voluntarily. And I object to his treating the witness in this manner.

MR. HEALY: I resent a suggestion that these witnesses haven't been treated with anything but courtesy and a recognition of the fact that they that English is not their first language.

MR. FITZSIMONS: Well, then, please leave out comments like "Is that your answer? The sort of comment one might expect to hear in a personal injuries answer in the Circuit Court.

MR. HEALY: I am asking the question, and I am prepared to persist with it.

Q. Is that your answer to the question? That's all I want to ask.

CHAIRMAN: All right, Mr. Simonsen, on that matter that was last raised, you are content that you have answered the question to the best of your ability; there is nothing you'd like to add?



A. Well, I understand that the word "replacement" caused a difficulty. I never suggested that the four financial institutions at that point were investors. In that sense, I don't think it's correct to say that they were replaced as investors, okay? It was an intention to have financial investors. We had four institutions who had expressed an interest. The replacement of their interest, if you would like, with another interest did not occur to me as dramatic change.

That's what I tried to say. I am sorry if I was being unclear.

Q. MR. HEALY: Maybe I'll just rephrase it, then. Are you saying can I just ask you, does that letter in any part of it indicate that the prospective financial investors were being replaced with IIU?

A. Okay, you may say that.

Q. Pardon?

A. "Prospective", is that the word you were using?

Q. I am sorry, I was trying to use your words, Mr. Simonsen. Does that letter anywhere say that the prospective financial investors, AIB, IBI, Standard Life and Advent were being replaced by IIU?

A. Thinking about it, I don't like this notion of replacement at all, because there were nothing more than an interest shown from these parties, and a commitment we had never committed to take them on

board, and I think the word "replacement" is not is bringing confusion into this matter.

Q. I see. Is that a personal opinion of yours, or do you think it's the opinion of everybody in Telenor?

A. I am sure that you have something that you would like to read out, maybe, before I say that.

Q. Yes, I certainly would. I am reading out a portion of the presentation. Page 9 of the presentation, in which Mr. Johansen stated, at line 15: "Esat Digifone is an Irish company. It's evidenced first of all by Communicorp Group holding 40% as we get going, and we have institutional investors holding 20% and they are Allied Irish Bank, the Investment Bank of Ireland, Standard Life Ireland, and Advent International. In addition, we have Telenor, through its subsidiary, Telenor Invest, and Telenor is the major telecommunications operating company in Norway, having last year an operating revenue of 1.8 billion and a profit of 190 million."

And it goes on to say "We already have the funding in place. The total funding requirements seen from the business plan is 124 million". And so on.

Now, could I be forgiven for thinking that the bid, to use Mr. Johansen's words, was based on the involvement of, and I won't put it any higher than that, the involvement of Telenor, Communicorp, Allied Irish Bank, Investment Bank of Ireland, Standard Life and

Advent International?

A. The key word here is "as we get going" okay?

Q. Mm-hmm.

A. I think as you know, there were no contractual obligations with the financial investors. They had shown strong support and interest. They had to commit well, you can classify it as support, and it gave us, or at least it I think it demonstrated that it wouldn't be any problem for us to fill those 20% with financial investors.

Q. It gave you credibility, didn't it?

A. Yes.

Q. Because you had four you had three strong Irish institutions and one strong foreign institution; isn't that right?

A. Right.

Q. And it made clear that your bid was based on their involvement or support, if I can put it that way, one or the other. Certainly their support, to use your word?

A. Their support, yes.

Q. And at that point they were gone, isn't that right, the point of that letter, the 29th September, 1995?

A. Yes, but again, we are not saying who was being who is actually going to be the ultimate shareholders in this context. These are acting as placers, okay.

Q. Thank you, Mr. Simonsen.

CHAIRMAN: Well, we'll leave the questioning by other counsel until the afternoon.

In the context of what I said, Mr. Simonsen, no doubt you are a little bit anxious about your departure plans. We will truncate lunch to half an hour.

Whilst I will revert the initial order, if you wish, gentlemen, but it seems to me perhaps, Mr. O'Donnell, it might be a more logical sequence if I were to offer you the first opportunity before coming to Mr. McGonigal after lunch, then Mr. Fanning, Mr. Fitzsimons.

Very good, then, we'll resume at a quarter to two.

Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'DONNELL:

Q. MR. O'DONNELL: Mr. Simonsen, I appear for the Department of Transport, Energy and Communications. I just want to ask you two or three questions relating to a couple of issues that you raised.

The first issue I think relates to your feeling after the presentation before the Project Team in the Department in September. I think you said you don't remember any formal round-table discussion between the entirety of the Digifone group, but you may have discussed it with your colleagues after the presentation; is that right?

A. Yes, yes.

Q. And I think you have also indicated that the while you felt you had done well on the technical and marketing areas, you felt that there were concerns over the financial issues and, in particular, the commitment of Advent.

A. Yes.

Q. And I think you have indicated that that was something that was a concern to you almost immediately after the presentation which took place on the 12th September?

A. Mm-hmm.

Q. And I think the concern you had was that the Department might feel that Advent's commitment to invest the monies in question might not necessarily be as strong as it had been suggested at the presentation?

A. Yes, you can say that, yes.

Q. And I think that point is precisely the point that is raised in the Appendix 10 of the final report compiled by the Project Team, because at Appendix 10 there is a specific reference made to the extent of the commitment by Advent, and the departmental officials who drew up this report refer to the fact that the letter of commitment does not clearly state what the price would be if the commitment would be brought into life; but they continue: "The legal basis for this commitment has not been included as part of the

application's supporting material."

And they continue: "Taking into account the very high proportion of Communicorp's intangible assets (most of this is goodwill) the risk of a dispute about share ratio between O'Brien and Advent seems evident. This may result in a situation of instability or a situation where the control of Communicorp is transferred to Advent. It could also lead to a situation where the commitment of Advent cannot be fulfilled."

So does that reflect the kind of concerns that you thought the Department had at the time of the presentation?

A. Yes, I haven't I haven't really seen that document before, but it sounds like that's sort of if you take it all the way down the road, that's ultimately what would happen, yes.

Q. So your concerns, certainly some of the concerns you had appear to be concerns on the minds of the Department when they were writing that report.

A. Mmm.

Q. Now, I think if we the other issue, I suppose, in relation to the finances is when you first decided that you would need to introduce new finance into the Esat Digifone project. And I think at 48(61) Book 48, Tab 61 there is a letter of the 15th September of 1995.

Now, that letter is from Telenor to Mr. O'Brien, and it's signed by Knut Haga. And I think the evidence is that Mr. Haga recalls signing the letter, but he didn't have anything to do with the drafting of it. And I think your evidence is that you don't recall drafting it either.

A. That's correct.

Q. But it came from Telenor, and it was signed by Mr. Haga?

A. Mmm, yes.

Q. And it is clear that in the second paragraph, it says: "We regret to inform you that we are not satisfied with the above-mentioned letter. Our concern was further strengthened by our meeting with the Department this week."

A. Mmm.

Q. Now, I think that is the presentation "the meeting this week" is of course the preparation which took place on the 12th?

A. Yes.

Q. This letter is drafted on the 15th or it's certainly dated the 15th; it may have been drafted earlier than that but it's certainly dated the 15th September?

A. Yes.

Q. So before any meeting took place between Mr. O'Brien and Mr. Lowry, as a result of your concerns, and in

particular, as a result of your concerns following the meeting with the Department on the 12th, you, in Telenor, felt that you were unhappy with the level of commitment given by Advent, a concern which the Department also had when drafting the appendices to the final report?

A. Yes.

Q. Now, can I just ask you to look again at the letter that was sent by the that you referred to as having been drafted by you for the Ministry of Transport and Communications.

A. Yes.

Q. Now, there is firstly a draft letter which is dated the 17th October, and there is then what appears to be a letter back, on Ministry-headed notepaper; isn't that right?

A. Yes.

Q. Now, you sent presumably you sent the draft letter to the Ministry sometime on or after the 17th October, because that's the date on which it's drafted.

A. Well, I didn't send it personally. I handed it over to somebody in Telenor who sent it. And I don't know who that person was.

Q. Do you have that date that was sent on? Because we don't are a record of that.

A. No.

Q. But what we know is that the letter was amended



slightly, your draft was amended slightly. I think

the

A. Yes.

Q. I think the third line in your draft says: "Telenor is a limited company owned by the Norwegian Government, and I take this opportunity to assure you that Telenor will make every effort to meet all your requirements."

A. Mmm.

Q. I think what appears to have happened is that it was you gave it to somebody in your office. That person sent it to the Ministry.

A. Yes.

Q. And somebody in the Ministry then decided to change it and to alter it, because the line now reads: "Telenor is a limited company owned by the Norwegian Government, and I would like to take this opportunity to assure you"; in other words, it's perhaps put in politer language, or somebody, anyway, has looked at this, presumably some civil servant within the Ministry of Transport and Communications?

A. Yes.

Q. And it then appears to have been sent back to you by fax or to your firm, I should say by fax, because there is a fax banner on the 25th October?

A. Yes.

Q. And am I correct in thinking that the letters "SAMF

min KTR" refer or indicate that this fax came from the Ministry of Transport and Communications?

A. Yes, that's correct.

Q. So this is the draft as amended by them that was sent back to you on the 25th October of 1995, or to your to Telenor, I should say?

A. Yes.

Q. But we don't know, because your Ministry never told you, whether the letter was actually sent?

A. That's true.

Q. And of course, by the 25th October, on the 25th October the result was announced, so sending it after the 25th October wouldn't have made any sense.

A. No.

Q. Further, I think it's clear that there is you may or may not be aware of this, but I should put it to you that there is no evidence, despite a search of the files within the Department, a search which is ongoing, of that document having been received. I think you accept that to be the position?

A. Okay.

Q. And there is no evidence that the document, even if it had been received, was ever passed on to any other Department official, and in particular, to any member of the Project Team?

A. Mmm.

Q. And you certainly didn't give it to any Department

official or to any other person who was a member of the Project Team?

A. No.

Q. And therefore, as far as you are concerned, it had no effect on the decision made by the Project Team in relation to the award of the licence?

A. That's correct.

Q. Sorry, just one other issue I should raise, I beg your pardon. In relation to IIU, I think the letter of the 29th September was a letter that was sent to the Department you had not seen the letter in advance?

A. No, I don't believe I saw the letter in advance.

Q. The letter the evidence has been that the letter was opened by Mr. Fintan Towey, who was the only person who saw the contents of it, and it was then decided to be sent back.

A. Mm-hmm.

Q. And no other member of the Project Team saw it, and Mr. Towey says that he put the contents of it out of his mind. In those circumstances, it has been described in the past as an attempt to inform the Department of the involvement of IIU, an attempt which failed; would you agree with that as a description?

A. That sounds reasonable, yes.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. McGONIGAL:

Q. MR. McGONIGAL: Mr. Simonsen, I appear for Mr. Denis

O'Brien, and there are just a few matters that I want to try and get your assistance on.

First of all, just by way of understanding; during the period July/August, were you in Oslo at that time?

A. Let me see. I was on I think I can be pretty precise on this. I think I left Dublin on around the 24th June. I believe I was in Oslo for the following few weeks, and I was on holidays in Norway the last few weeks of July. And I returned to Dublin on the 25th July.

Q. The 25th July?

A. Yes.

Q. Just in relation to your holidays, Mr. Haga was explaining the other day that during July he was on his holidays, I think virtually for the whole of July.

Just can you identify for me which period of July you say that you were away in July?

A. I was at least away from the 12th until the 25th, yes.

Q. So just in relation to that, then, I wonder if you could have a look at a document which seems to have been sent around the 13th July to you from Baker McKenzie, which is at Tab 22A, I think, in Book 60, possibly. 48 Book 48.

A. Yes.

Q. Now, that document is appears to be a document from Baker McKenzie sent to you in or about the 13th July, and concerns the Communicorp, but it specifically is

information from Helen Stroud on Advent International?

A. Yes.

Q. And you see that it was sent with enclosing documents?

A. Mmm.

Q. Do you recollect seeing this letter and those documents?

A. I don't have any specific recollection. I have seen it now when I am going through the material again, but

Q. You see, I am just curious, Mr. Simonsen; you would have come back on the 25th, so this would have been one of the numerous documents, presumably, which would be in your in tray when you went into the office and one which you would have had to deal with?

A. Mmm.

Q. Now, the project at that stage was becoming crucial?

A. But it's a small piece of information. When I returned from holidays the new deadline was established, so I immediately had to leave the office to go to Dublin. So I think I left almost the same afternoon as I came into the office, so I didn't have much time to go through my mail or anything at that point.

Q. So you may not have had time to see it?

A. I may not have seen it at that point.

Q. Or else alternatively, it may be that you passed the enclosures or arranged for the enclosures to be passed

to Mr. Haga, because he got a copy of the letter,

apparently, without the enclosures.

A. And this would be a matter that Mr. Haga would deal with anyway.

Q. I take it that's a possibility?

A. Yes.

Q. You then went to Dublin, and did you stay in Dublin until after the bid document was lodged?

A. I was actually home from Saturday to Sunday, 29 to 30.

I was back again in Dublin on the 1st, and then throughout the deadline, yes, process of the deadline on the 4th.

Q. So I just want to then go through very briefly the documents in or around the 3rd/4th August.

A. Okay.

Q. This is in Book 48, Tab really beginning at Tab

26A. Sorry, 26.

A. Yes.

Q. Do you have those?

A. 26 or 26A, sorry?

Q. 26.

A. Yes, okay.

Q. This is the this is a letter from Knut to for the attention of Denis O'Brien in relation to the financial guarantees. And it's dated the 2nd August, and it was copied to you. Do you see that?

A. Yes, I see that.

Q. And it seems to have been copied to you in Dublin?

A. Yes.

Q. So you were within the loop in relation to this aspect of the matter at this time?

A. I was in the loop, but I wasn't primarily dealing with it.

Q. No, Mr. Haga was primarily dealing with it from Oslo, but seems to have come out of the loop, so to speak, after the 2nd August; do you remember that?

A. That Mr. Haga came out of the loop?

Q. In the sense that he remained in Oslo while the documentation appears to have been dealt with in Dublin on the 3rd and 4th.

MR. FITZSIMONS: Is it possible Mr. Simonsen might not be familiar with the idiom "in the loop" or "out of the loop"? I wonder, could Mr. McGonigal rephrase his question?

MR. MCGONIGAL: I know Mr. Fitzsimons has forgotten, but it was one Mr. Simonsen used himself.

CHAIRMAN: I think he did.

Q. MR. MCGONIGAL: But really, within the circle do you understand "the loop"? Do you understand the expression "the loop"?

A. Yes, I understand the expression "the loop".

Q. Do you remember these documents? We'll run through them you see at Tab 26A the document of the 2nd August from Massimo to Knut in relation to Advent, and

the one I suppose which is of importance is paragraph 3: "As we wrote to you in our letter dated 10th July, we confirm that we have offered to finance the amount required to fund Communicorp's 40% participation in Digifone."

Do you recollect seeing that at the time?

A. Yes.

Q. And Mr. Haga indicated that as a result of a communication which he had with Helen Stroud, that he was trying to get the guarantee from Advent in relation to the funding?

A. Yes.

Q. And I think you see there, then, at 27, which you may not have seen, a document of the 3rd August from Peter O'Donoghue to Massimo Prelz: "Telenor have requested us to provide them with a slightly reworded financial guarantee from yourselves. And I attach the requested wording. I do not believe the attached is any more onerous than you have previously provided us with, and I would be grateful if you would prepare a letter addressed to Telenor along the lines of the attached."

Now, in relation to that, do you recollect having any involvement in preparing the document which was enclosed?

A. No, I was not involved in that.

Q. Sorry?

A. I was not involved in that, no.



Q. Well, who would it have been that Peter O'Donoghue got assistance from in that document?

A. I think it could have been, if it was not Knut Haga, it could have been Amund Fougner Bugge, because I believe he was on the ground in Dublin at that point.

Q. So it may well have been Amund Bugge, but it wasn't you?

A. It wasn't me, no.

Q. Now, the next document I just want you to have a look at is Tab 29, and that's the 4th August from Peter O'Donoghue to Massimo, and that's "I attached a copy of revised letter that Telenor have requested. They wish to establish the offer referred to in your letter of the 12th will remain valid for a period of 60 days."

Do you remember that?

A. Yes, I remember the letter, but I was not involved in drafting that either.

Q. You see it was copied to you?

A. Yes.

Q. But you don't recollect being involved in that at all?

A. No, I think this was actually dealt with by Mr. Bugge.

Q. Who was in Dublin?

A. At this point, yes.

Q. So it was Mr. Bugge, Mr. O'Donoghue and Mr. Massimo Prelz who were

A. That was the loop, yes.

Q. The circle, so to speak?

A. Yes.

Q. And you were being copied, and presumably being consulted in relation to some of these things, by Mr. Bugge?

A. But the issue at these times, you have to remember that at noon was the submission date; I think this must have been one of the most hectic 48 hours. We didn't really have much time to go through this. It was mainly handled by Knut Haga and Amund, and I was not personally involved in it.

Q. And that was something that, in a sense, Mr. Simonsen, we lose here, we don't appreciate the very hectic and frantic action that was taking place at that time.

A. Mmm.

Q. But it certainly was hectic and it was frantic?

A. Yes.

Q. And people were trying to get documents completed to each of their satisfaction?

A. Yes.

Q. And at a certain moment in time, it was clear that that documentation was not going to be completed to the satisfaction of Telenor?

A. That's true.

Q. And Telenor had to make up their minds whether they were going to go with this bid or not go with this bid?

A. Yes.

Q. And they decided to go with it?

A. Yes.

Q. And that was partly based on the documentation which had been created in July and also partly on the letter from Mr. O'Brien to Amund Bugge on the 4th August confirming that we have received an offer from Advent?

A. Yes.

Q. And indicating that alternative sources of funds, because of the terms, would be considered?

A. Yes.

Q. And it was on that basis that Telenor then go into the competition?

A. Yes.

Q. Without their guarantee?

A. Yeah, that's correct.

Q. But they didn't drop the guarantee; they continued looking for the guarantee after the bid documents had gone in?

A. Yes.

Q. Because they felt that was in their interests?

A. Yes.

Q. Even though, from Communicorp's point of view, they felt that what they had done was sufficient, and they were trying to see if there were alternative methods of funding?

A. Yes.

Q. Now, just moving on from there a wee bit on to the 11th September. I just want to go back very briefly over this correspondence of the 11th September onwards.

You remember the letter of the 11th. It's at 39. Do you remember that letter?

A. Yes.

Q. Now, that was a letter sent by Mr. Haga to Mr. O'Brien on the 11th. The presentation took place on the 12th, and shortly after that we have a letter which is dated the 15th September, '95, which Mr. O'Donnell asked you a number of questions about.

Now, Mr. Haga, although he signed this letter, has no recollection of being involved in its drafting.

A. Mm-hmm.

Q. And am I right in understanding that your position is similar; that you don't recollect having any hand in drafting this letter?

A. No, I don't recollect being involved in that.

Q. Now, the interesting thing, Mr. Simonsen, is that Mr. Haga was in Africa between the 11th and the 17th September.

A. Mmm.

Q. Did you get a chance to read his evidence, by any chance? Perhaps not in detail?

A. Not in that detail, no.

Q. That's okay. But he was away between the 11th and the

17th, and he doesn't have a clear recollection of signing this, although he accepts it's his signature.

Now, he was in the office on the 18th September, and the 21st September, I think it was. So if that letter had been prepared at that time, those were two possible dates when it could have been signed and sent out?

A. Mm-hmm.

Q. Isn't that right?

A. Yes.

Q. Now, following that, there was a letter of the 19th September, a draft letter of the 19th; do you remember that letter?

A. Which tab is that, sorry?

Q. 54.

A. Yes.

Q. Do you remember that letter?

A. Yes, I remember the letter. I don't know when I saw it first, but I remember it, yes.

Q. And I think you remember it because you drafted it, did you?

A. No, I don't think I drafted it.

Q. Well, what do you recollect about the letter?

A. Well, it was one in a series of letters to get more support out of Advent.

Q. As far as I can make out, and the evidence appears to be so far, that this letter was never sent.

A. Okay.

Q. And I am just trying to understand that in the context of the letter of the 15th September yes, the 15th September.

A. The 15th, or the 11th?

Q. No, the 15th.

A. Okay.

Q. Okay?

A. Yes.

Q. Because it must be a possibility that the letter of the 15th went out or was signed and went out on either the 18th or the 21st, unknown to you or anyone else involved with this letter. Do you see what I'm getting at?

A. You mean that the two letters were I don't really I don't think I really understand the question.

Q. I see. Well, what I am trying to understand, Mr. Simonsen, is, we have a letter of the 15th September which was signed by Mr. Haga.

A. Yes.

Q. Although and we also have a letter of the 19th September, a draft of a letter of the 19th September. Now, they are in similar terms, but they are not the same.

A. Mmm.

Q. Now, the letter of the 15th was signed by Mr. Haga in

some circumstance?

A. Okay.

Q. The letter of the 19th does not appear to have been signed.

A. Mmm.

Q. And doesn't appear to have been sent out.

A. Okay.

Q. Now, this is the letter that you have some recollection of; isn't that right?

A. Yes.

Q. And in fact, it appears to be a letter which you faxed to Mr. O'Brien on the 21st September. If you go to Tab Book 48, Tab 54.

A. Yes.

Q. Do you see there, there is a fax from Denis O'Brien to Owen O'Connell?

A. Yeah.

Q. "Draft letter to be received from Telenor".

"Document that was circulated to the institutions."

Do you see that?

A. Yes.

Q. Now, there is a fax which was referred to in evidence by Mr. O'Connell on 243 at page 54, and I'm not sure what tab number this is, but it is a fax, Denis O'Brien from Per S, telephone number 6616039, "Draft letter as agreed" is the first page. What I am putting up on the screen, Mr. Simonsen, is the copy of

the fax document as I have it. And if you go to the bottom of it, please, for the legend of the sending of it, it's upside down, but you will see, and I think you can see that was the 21st September, '95, 13.38, Telenor Invest"?

A. Yes.

Q. So that seems to be you sending a fax to Denis O'Brien in relation to a draft letter as agreed?

A. Yes.

Q. And I am assuming that that draft letter as agreed was or to be the letter of the 19th; do you see what I mean?

A. Yes, I understand.

Q. But for some reason, it wasn't sent. And the reason I am saying it wasn't sent is because the letter of the 15th had gone before that. Do you understand?

A. So you mean it wasn't sent to Denis O'Brien, or it wasn't sent to

Q. No, it wasn't sent. It wasn't sent as an official letter, if you like. Do you understand what I mean?

A. But it was faxed.

Q. It was faxed as a draft letter as agreed without being signed. But the official letter, and the one which was subsequently relied on, was the letter of the 15th September, '95. You can't help me in relation to it?

A. Sorry about that, I don't really remember which letter that was faxed. I haven't seen that cover page until



now. So but it could be the letter, yes.

Q. I see. Well, I mean, if something occurs to you in relation to it, you can let us know, but I just want to draw to your attention you see, if you go to Mr. O'Brien's letter to Mr. Johansen of the 12th May of 1996, which is 51(78) and if you go to the second page of that, you see there: "I have received a letter dated 15th September from Knut Haga stating that Advent's letter of financial support", etc.

A. Sorry, where is that on the page?

Q. It's the top of the second page.

A. Yes, I see it, yes.

Q. So it seems to be the letter of the 15th September, which seems to be a letter so far which nobody is claiming drafting responsibility for, and is different to the letter of the 19th, which was the letter which appears to have been agreed by you and sent back to Denis O'Brien but not relied on; do you see what I mean?

A. Yes.

Q. But you can't help me any further in relation to that?

A. No, I am sorry.

Q. Okay. Now, that's the 21st September, and clearly you were in Oslo at that time. And the next matter is the 22nd September, and it's clear that Mr. O'Brien came to Oslo on the 22nd and had a meeting there.

A. Yes.

Q. Now, as I understand it, you have no recollection at all of that meeting?

A. No, that's true.

Q. Now, when you say am I right to understand from that that you don't recollect being at the meeting?

A. Yes.

Q. In other words, you are not saying you were at the meeting; you are not saying you weren't at the meeting. You are simply saying you have no recollection?

A. That's correct.

Q. I just want to ask you something about which you said yesterday in evidence which puzzled me a wee bit, Mr. Simonsen. I don't know if you have a transcript of your evidence yesterday.

A. No, unfortunately, I don't have that.

Q. We'll get you one.

(Transcript provided to witness)

Now, if you go to page 106. Just at the bottom of page 106, Question 362,

"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. Sjurn Malm on the 22nd

"Answer: Yes.

"Question: You don't remember being at that meeting; isn't that right?

"Answer: No.

"Question: Is that an occasion upon which this might have taken place?

"Answer: It might. Yes.

"Question: Do you remember if you discussed

"Answer: Sorry, not in the meeting.

"Question: Not in the meeting?

"Answer: No.

"Question: Right. But at some time on the same day, maybe after the meeting."

Now, as I understand, what you seem to be saying there is that whenever it was said, it wasn't said at the meeting.

A. Yes.

Q. I am just curious as to how you are able to say that if you don't recollect whether you were at the meeting or not.

A. Because it was in the context where it was only Denis and me present. In a meeting there would be several of people.

Q. Yes, but as I understand it, you have no recollection of a meeting with Denis and yourself.

A. Sorry?

Q. You have no recollection of a meeting with Denis and yourself?

A. No.

Q. Isn't that right?

A. That's right.

Q. So if you have no recollection of the meeting with Denis and Arve, and you have no recollection of a meeting between Denis and yourself, how can you say so assertively that it didn't happen in the meeting which Denis described?

A. Because I remember the context was a context where there were no other people present. But I don't remember when it took place.

Q. Well, when you say "a lot of people", as I understand it, the only people that were present at the meeting which Denis has referred to is himself, Arve, possibly Sjern Malm, and you at a later stage?

A. Yes.

Q. That's four people. That's not a lot of people in the context of this kind of thing?

A. No, but again, I believe that Denis told me this, this was only himself and me present.

Q. But that's identifying a particular meeting, so I am going to press you, Mr. Simonsen. When did that take place?

A. I don't know.

Q. You don't know?

A. No.

Q. No idea?

A. I believe it was in the last two weeks of September.

Q. The last two weeks in September?

A. Yes.

Q. So it could have been any time from the 22nd September onwards; is that right or, sorry, I'll put that differently, in fairness to you.

The meeting between Denis and the Minister took place on the 17th?

A. Okay.

Q. So it had to take place sometime after that?

A. Yes.

Q. The only time that Mr. O'Brien has been able to identify as having possibly been in your company was on the 22nd?

A. Yes.

Q. And that was at a meeting with Arve, possibly Sjern Malm, and at a later stage, you?

A. Yes.

Q. He is not able to identify, and neither are you, any other occasion in September when a meeting could have taken place?

A. No.

Q. You realise that?

A. Yes.

Q. So what are you saying about this meeting?

A. I was saying that I don't know when it took place. It could have taken place before the meeting with Arve started.

Q. Well, let's look at it slightly differently, Mr.

Simonsen. What we know as a fact is that there was that Mr. O'Brien was in Oslo on the 22nd September.

A. Yes.

Q. That from his diary, we know that he had a meeting at approximately 2.30, according to his diary, with Mr. Johansen plus you, okay?

A. Yeah.

Q. We know from his letter of the 12th May of '96 that he refers to the meeting on the 22nd as being Mr. Johansen, Mr. Malm, and you coming in at a later stage.

A. Yes.

Q. Isn't that right?

A. Yes.

Q. We know that there was a meeting of the Minister, with the Minister, on the 17th.

A. Mmm.

Q. We know that a discussion took place between Mr. O'Brien and the Minister.

A. Mm-hmm.

Q. Now, all of those, in a sense, are facts which can't be controverted.

A. Yes.

Q. Equally, we know that there was a discussion between you and Mr. Johansen after the meeting of the 22nd, which included a discussion about this.

A. About the meeting?

Q. The meeting with the Minister.

A. I am not really sure whether that was discussed on that occasion.

Q. Sorry?

A. I don't remember when it was discussed with Mr. Johansen, but we may have established that.

Q. No, no, but what we can establish, leaving aside where it took place, we can establish that there was a discussion between you and Mr. Johansen in relation to this alleged conversation; isn't that right? Whether it took place in the offices or in someone's house or in Oslo or somewhere else is a different matter, but just there was a discussion between you and Mr. Johansen?

A. You are raising that on his note?

Q. Raising that on what he says.

A. Sorry?

Q. On what Mr. Johansen has said.

A. Yes.

Q. Are you disagreeing with him, or are you agreeing?

A. I am not disagreeing, but I am just trying to establish in memory what happened, yes.

Q. And do you have a recollection of discussing it with Mr. Johansen?

A. No.

Q. Are you saying that you may not have, and therefore

have no recollection of it?

A. I certainly discussed it with Mr. Johansen at that point in time. If he is able to pin down the date, that's fine. I have no reason to disbelieve that.

Q. So we can take it as a fact, then, that you and Mr. Johansen did discuss it at some point in time?

A. Yes.

Q. Where you disagree, or where there is disagreement, you say you had a discussion with Mr. O'Brien personally?

A. Yes.

Q. Mr. O'Brien says no, that is incorrect, that the only discussion that he had was at the meeting with Mr. Johansen, and insofar as that discussion was concerned, he indicated that there had been a meeting with the Minister in a pub in connection with the DDI/DDOs?

A. Sorry, that he

Q. That he had referred to the

A. In the meeting with the Minister

Q. In connection with the DDI/DDOs.

A. That he referred to that in the meeting with Mr. Johansen?

Q. Yes, that was Mr. O'Brien's evidence, as I recollect.

A. Okay.

Q. "I may have mentioned it to Mr. Arve Johansen generally, he would have known about some of the



concerns I had about Telenor at the time, so he may have talked about how things were going, and I probably would have told him pretty da-da-da that on the DDI front.

"And you would have told him that you met the Minister in the pub.

"Answer: I may have mentioned it to him, yes. I can't actually remember whether I did or not.

"Chairman: But in the context of the DDIs is the essence of what you are saying.

"Answer: Absolutely, Chairman."

That was Mr. O'Brien's evidence?

A. Okay.

Q. But that took place in the meeting, he says, in Oslo on the 22nd with Mr. Johansen and possibly Mr. Malm, with you coming in at a later stage.

A. Mm-hmm, okay.

Q. Now, if you came in at a later stage, I suppose it is a possibility that you were not there when this discussion took place this conversation took place between Mr. Johansen and Mr. O'Brien; that would be a possibility?

A. Yes, that's a possibility.

Q. And if that had happened, that might also help to explain a conversation between Mr. Johansen and yourself in discussing this; isn't that right?

A. So you are suggesting that Mr. Johansen told me about

it, not Mr. O'Brien?

Q. Yes.

A. Well, my recollection is that I heard it from Mr. O'Brien.

Q. Well, if we look at, then, what you say Mr. O'Brien is alleged to have said, that he had a meeting in the pub with the Minister and the Minister had suggested that IIU should be brought into the loop; isn't that right?

A. Yes.

Q. And regardless of whether you believed it or not, or regardless of whether you thought it was an exaggeration, it appears to be your view that he was saying this to you for the purpose of encouraging Telenor to bring in IIU?

A. Yes.

Q. Is that it? Am I right in understanding what was your thought process at that time?

A. Yes, that's correct.

Q. You see, it would seem to me if that was so, that the more likely series of events, if Mr. O'Brien was considering using that tactic, that he would do the exaggeration bit with Mr. Johansen, who was the most important person to be persuaded in relation to IIU; isn't that right?

A. Well, in a way; but in another way, maybe he knew me better, so it would be more easy to say such a thing to me.

Q. But if you weren't at the meeting, Mr. Simonsen, he had no guarantee that you would turn up. Therefore it would seem logical, if there had been a meeting with the Minister and he wanted to use that as a pressure point, that he would, in the first instance, say it to the person who he was speaking to; isn't that right?

A. That's one possibility, yes.

Q. You see, it seems a little unrealistic to suggest that he would have a meeting with Mr. Johansen and have a discussion about IIU and then suddenly go out and have a conversation with you whereby he told you about this for the purposes of trying to encourage Telenor to bring IIU into the fold. Isn't that right?

A. Yes.

Q. It does seem slightly unrealistic?

A. Mmm.

Q. And I want to suggest to you, therefore, that with the best will in the world, would you acknowledge there is a possibility that your recollection may be in error?

A. Meaning that I did not hear it from Mr. O'Brien but from Mr. Johansen, or meaning that

Q. Meaning simply, Mr. Simonsen, that your recollection in relation to these matters may be in error.

A. I understand that my recollection to the time and place and everything is vague yeah

Q. I am not quite sure whether you are agreeing with me or disagree with me, Mr. Simonsen. I understand, but

what I am concerned about is that in trying to establish any facts, one is trying to marry a number of different sequences or incidents together.

A. Mm-hmm.

Q. To make them become, if you like, a logical whole, okay? And I want to suggest to you that the scenario which I have put to you is in fact one that appears to fit a lot of the matters that we know about; isn't that right?

A. Okay.

Q. And insofar as one can put it, there is more logic to the sequence that I am giving you than leaving a conversation out in mid-air with no structure?

A. I would say that there is a logic to the structure you are proposing, but I'm not sure that that's the only logic.

Q. I see. Can you give me another one?

A. Sorry?

Q. Could you give me another one?

A. It could have taken place in a break. It could have been a reason to tell me instead of telling Mr. Johansen because maybe it was easier to say such a thing to me.

Q. But you see, that

A. Sorry, it could have been pre-meeting, before the actual meeting took place with Mr. Johansen. There is many, many instances, and I am not able to recollect

exactly when it took place.

Q. Absolutely. But all that presupposes that you were there for the meeting.

A. Or that I had a dialogue with Mr. Johansen.

Q. And that you had a dialogue and/or that you had a dialogue with Mr. Johansen. But in the first instance, it must presuppose that you were at the meeting, or in or about the meeting?

A. Yes.

Q. And Mr. O'Brien, in his letter, written at a time when this was not a major issue, says that his recollection in 1996, which was very close to the events, was that you came in late.

A. Yes.

Q. Now, if that is true, it opens up possibilities which you were not aware was in relation to the things that were by Mr. O'Brien. Isn't that right?

A. Sorry, that I was not aware of I didn't get what I was not aware of.

Q. In the sense that whatever was said in the period that you weren't

A. That's correct, that's true.

Q. Because clearly one thing is clear as night follows day: that it would be Mr. Johansen who would be making the decision in relation to IIU, or sort of putting it forward if it became a major issue with Telenor; isn't that right?

A. Yes.

Q. So the logical person that Mr. O'Brien had to convince was Mr. Johansen?

A. Mm-hmm.

Q. And with all due respect, while your persuasion would be relevant, he was the more important person?

A. He was the more important person, yes.

Q. You see, sort of finally, in a way, Mr. Simonsen, one of the things assuming that your thought process is right in relation to the reason why, for a moment, Mr. O'Brien might have said what you're saying that he said, if the purpose of it was to add weight to persuading Telenor to take in IIU.

A. Mmm.

Q. In an odd sort of a way, you would anticipate that he would have said it, if you weren't at the meeting and came in at a later stage, or if you met him outside the meeting, that he would have said it to both of you.

A. Mmm.

Q. Isn't that right?

A. I could be wrong, yes.

Q. That's all I want you to agree with me, that there is a possibility that your recollection is in error.

A. Yes.

Q. I am not saying deliberately. I am just saying your recollection is in error. Clearly, seven, eight, nine

years is a long time.

A. I am saying that my statement is based on my best recollection, but I could be wrong, yes.

Q. I accept that; I understand.

The other thing that I just want to ask you about for some assistance, Mr. Simonsen, is in relation to the 2nd October letter.

A. Okay.

Q. And I'll get it for you now. It's at 48, Tab 68.

A. Yes, I have got it.

Q. Now, I just want to try and understand the sequence of this letter, if you like, from this point of view:

that this letter was dated the 2nd October, but it appears to have been written probably the Thursday or Friday before the 2nd October.

A. Okay.

Q. And my reason for suggesting that is this: that if you go to the first paragraph, it says "Referring to our meeting on Friday last". That, I presume, is referring to the meeting on the 22nd?

A. Yes.

Q. Now, that being so, since this is dated the 2nd, the probability is that or at least this letter was drafted towards the end of the week of the 24th?

A. Yes.

Q. Now, what I'm curious about, Mr. Simonsen, and I understand your evidence in relation to this letter,

that your recollection is that you wrote the first you may have been responsible drafting the first five paragraphs. Why did Mr. Johansen ask you to do this letter?

A. I don't really recollect why, but based on the content of the letter, it's to sort of accept that we that we jointly get diluted by 5%.

Q. You see, one of the and I am putting this forward as a possible explanation. One of the reasons why he might have got you to draft it was because he realised that you were extremely familiar with everything in relation to the contents of that letter. Isn't that right?

A. Yes. I mean, I was familiar with most of it, but I was not familiar with the details of the phone conversations, of course, he had.

Q. Yes. Well, that actually is what I wanted to ask you about. Because this was written on the 2nd October, which was sort of ten, eleven days after the 22nd; and at that stage, everything would have been fresh in your mind?

A. Yes.

Q. Particularly any conversation which you had with Mr. O'Brien or which Mr. Johansen had with you?

A. Mm-hmm.

Q. But in the body of the letter, the phrase that you use, you refer back to "our meeting with the



Ministry". And that is clearly referring back to the presentation?

A. Yes.

Q. And in the next paragraph, "In order to reassure the Ministry" is referring, presumably, to the same Ministry?

A. Yes.

Q. So that as of the 2nd October, in a sense when the first opportunity presented itself, there is no mention of any discussion with the Minister involving bringing IIU into the equation?

A. No.

Q. Isn't that right?

A. That's right.

Q. And insofar as there can be straws in the wind, that is a straw which, I suggest, blows in favour of Mr. O'Brien, of his version of a conversation possibly being correct; but no more than a straw. Would you agree with that?

A. Do you mean the meeting with the Minister is not mentioned in the letter?

Q. Yeah. It's not conclusive, I accept, but it is a straw in the wind?

A. A straw in the wind, okay.

Q. Now, just in relation to the paragraph concerning the Ministry and your meeting with the Ministry. First of all, it is correct to say that after the bid documents

went in, Telenor were still seeking the guarantee?

A. Yes.

Q. Equally, it would appear that the Irish side were concerned about the or had a lack of confidence, if you like, in relation to the ability to raise the necessary finance?

A. Mmm.

Q. And at this stage, actively were pursuing alternative bidders, which had been signalled in the document of the 4th August; isn't that right?

A. Yes.

Q. So that there was, throughout a long period, a concern in relation to the financial side of things?

A. Yes.

Q. And I think the way you put it was that the introduction of IIU, from Telenor's point of view, was something that, because of the commitment which they were giving, was the most important thing that you saw and acted towards?

A. Yes.

Q. You wanted a strong financial group there who were in a position to undertake any commitment which Communicorp had?

A. Yes.

Q. Presumably or did you, did Telenor make their own inquiries outside of Baker McKenzie in relation to IIU?

A. Not at that point, no.

Q. Not at that point. But later?

A. Yes.

Q. The other document that I just want to have a quick I don't want to delay you too long, Mr.

Simonsen. The other document I just want you to turn to for a second is at Tab 74. It's the meeting of the 10th October of '95.

A. Okay.

Q. Do you have that?

A. Yes.

Q. Now, I wanted to ask you about political contacts. And I wanted to ask you against the background of the letter which we received this morning, which was drafted by you for the Minister. This was a meeting between you and your lawyer?

A. Yes.

Q. And just as a possibility, it occurred to me over lunch, I wondered over lunch whether in fact "political contacts" there were unrelated to IIU, unrelated to Communicorp, but were reflecting something that you had in your mind or Telenor had in their mind in relation to getting their Minister to write to our Minister.

A. I do not think that we believe that we had very strong political contacts, no.

Q. I just wanted to inquire, Mr. Simonsen, because it's

better to ask than not to ask at all on some occasions.

The last thing I just wanted to ask you in relation to that letter from one Minister to another, bearing in mind that it was drafted by you, and bearing in mind that you may have had a recollection at this time of a conversation between yourself and Mr. O'Brien, again from a drafter's point of view, it occurred to me that if you wanted to attract the attention of the Minister, one of the obvious ways of doing it, from your Minister's point of view, would have been to mention IUU within the letter. You don't that wasn't done, clearly?

A. No.

Q. But it was it would have been an interesting thing to have mentioned to attract his attention, if that conversation had taken place?

A. Yes, it could be.

Q. Thanks very much, Mr. Simonsen.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FANNING:

Q. MR. FANNING: Mr. Simonsen, I appear for Mr. Lowry, the former Minister. If I could initially address my questions to the same letters that were produced this morning in the Tribunal.

A. Okay.

Q. And there is the draft letter on the ministerial letterhead. There is the earlier draft, and there is

the draft letter to Mr. Begg also.

A. Yes.

Q. Can I just ask you in the first instance, I am not entirely clear why these letters were produced today and not at an earlier stage.

MR. HEALY: In fairness to Mr. Simonsen, that wasn't Mr. Simonsen's fault. The Tribunal re-examined an amount of Telenor material over the last week, and it's the Tribunal brought them to the attention of the witness today.

MR. FANNING: I am grateful to Mr. Healy for that.

Q. Can I then say, you drafted this letter to Mr. Lowry; we're agreed on that. What do you say, Mr. Simonsen, as the drafter of the letter, is the purpose or significance of it?

A. I would say the purpose is to it's a letter of reference, where the Minister has an opportunity to tell his colleague that Telenor is a good corporate citizen and a trustworthy company.

Q. Yes. Well, I suppose in the context that you were drafting a letter to Mr. Begg also on the same day, can I ask you, what was the significance of the intention to write to Mr. Begg also?

A. To make sure that he understood that Telenor were respected

A. THE INTERPRETER: Trade union rights.

A. Good working relations with trade unions, etc.

Q. MR. FANNING: That would explain why you wrote to Mr.

Begg, who was at the time a well-known trade union

official; but what was Mr. Begg's role in the

decision-making process as to the award of the second

GSM licence?

A. None whatsoever, I believe.

Q. Yet he was coupled with the Minister in the decision

to write letters at this time?

A. Well, I don't think there is a couple between him and  
the Minister, sorry.

Q. Were they the only two people who you drafted letters  
to on this day?

A. Well, according to my recollection, yes.

Q. In this connection, obviously?

A. Yes.

Q. The letter to Mr. Begg was clearly just a letter for  
good PR purposes; is that fair?

A. Yes, following a meeting I had with him, and I have a  
recollection subsequent of that, yes.

Q. And nobody could ever suggest, presumably, that the  
letter to Mr. Begg would ever have anything to do with  
the decision-making process?

A. No.

Q. I want to suggest to you, then, that equally the  
letter to the Minister, it was intended more as a PR  
gesture than anything else?

A. Yes.

Q. And you, certainly, as the drafter of the letter, are giving evidence today that it was never intended to interfere with the decision-making process?

A. No, that's clear.

Q. Now, just in terms of the rather net issue as to whether the letter was actually ever sent

A. I didn't understand that word.

Q. Just in terms of the rather net issue

A. Nesh?

Q. The rather small issue, or the rather precise issue of whether the letter was ever actually sent to the

Minister, Mr. O'Donnell asked you a number of questions some time earlier about the fax banner at the top of the copy on the Ministerial letterhead.

And it would appear that it was faxed to you in this form on the 25th October; am I correct in that?

A. Yes.

Q. And clearly the form in which it was faxed to you was an unsigned form?

A. Mmm.

Q. And can I ask you this perhaps you can't answer the question would you imagine, if the letter had been sent by the Norwegian Ministry by the 25th October, that there would have been a retained signed copy on their file?

A. Well, I don't really know the processes within the Ministry, whether they distribute signed copies or

not. I guess that's a part of their protocol, how they handle that. But I was under the assumption that the letter was sent, but I didn't have any evidence of it.

Q. Would you expect, if the letter was sent, that the line that appears at the bottom of your draft under the gentleman's name "Minister for Transport and Communications," which does not appear at the bottom of the first page, would you expect that that line would have been included on any version that was sent?

A. If the letter from the Ministry is actually saying the Minister at the top of it, I don't know. I did not remove it. Maybe somebody in the Ministry removed it because it seemed to be superfluous, given the letterhead.

Q. You see, what I am really wondering is whether the version that was faxed back to you on the 25th of the 10th had or had not in fact been sent by that time.

A. Okay.

Q. Why would they have been faxing an unsigned copy back to you on that date?

A. Well, I don't know. I don't think it was intended to have a discussion around the draft at least. I saw this as a final letter and I assume that it had been sent.

Q. Did anyone tell you that it had been sent?

A. I don't remember that, no.



Q. Was there a fax cover sheet accompanying this? We don't seem to have anything of that nature confirming that this was the letter that had been sent. You are not aware of anything of that effect?

A. I don't think this was faxed directly back to me. It was probably faxed to the person who sent it to the Ministry and then subsequently sent to me internally in Telenor. So it wouldn't be faxed directly from the Ministry to me, no.

Q. Can I suggest to you, and I can't put it higher than a possibility, but isn't it possible that if the intention was to fax you back a confirmation copy of a letter that was sent to the Minister, they would have faxed a copy of a signed version?

A. Well, I don't know the procedures inside the Ministry for that, so...

It could also be possible that they wouldn't actually distribute copies of the signed version, but that the signed version would be reserved for the recipient.

Q. Is it possible that this fax was sent on the 25th purely for discussion purposes again?

A. I don't believe that there was any drafting at least I was not involved in any drafting discussions. I provided the initial draft, and after that I was not involved in any discussions relating to drafting.

Q. Well, Mr. O'Donnell has pointed out that there was a small amendment in the body of this letter from the

initial draft. Is it possible that this fax was sent, perhaps, to somebody else from Telenor for a discussion before a final version was sent and signed?

A. Well, there is a possibility, but again, I was not in the loop. My assumption was that it was sent, but

Q. That was your assumption, but you can't say that for a fact?

A. No, that's true.

Q. And you do accept that after the 25th October, it would have been pointless and needless to send any such letter?

A. That's correct.

Q. Now, if the letter was sent and I can't establish the answer to that question any more than you can, Mr. Simonsen at this point in time, Mr. Lowry, the intended recipient, will say that he has no recollection of ever receiving this letter, but given the lapse of time, he can't rule out the possibility.

A. Okay.

Q. Mr. Lowry, though, is categorical, and I just want to know what your reaction to this is, if he did receive such a letter, he never acted on foot of it, either by telephoning the Minister or by writing a substantive reply to the Minister. He is quite categorical on that. Do you have any reason to disbelieve him?

A. No.

Q. Mr. Lowry has no recollection of ever coming under any

pressure of any sort from his Norwegian counterpart,  
and you don't suggest anything contrary to that,  
obviously?

A. No.

Q. And I want to suggest to you, then, in relation to  
this letter, if it was ultimately received by the  
Department, that ultimately it was a fairly innocuous  
letter?

A. That's again a word I need help on. Yes.

Q. And in fact it's kind of typical of a letter that  
would be sent by a Government on behalf of its  
domestic business interests when they compete abroad?

A. Yes.

CHAIRMAN: I think you described it yourself as "soft"  
before lunch.

A. Yes.

Q. MR. FANNING: Now, very briefly, just in relation to  
the issue Mr. McGonigal asked you some questions  
about. Your recollection has been probed now by  
Mr. McGonigal, and I don't want to revisit that, of  
discussion you had with Mr. O'Brien. But just moving  
one step back down the road, it is the case that you  
never took seriously any suggestion that Mr. Lowry  
recommended to Mr. O'Brien that IIU become involved in  
the Esat consortium?

A. That's correct.

Q. You, effectively, disbelieved the suggestion that Mr.

Lowry would have made such a suggestion?

A. Yes.

Q. And you are now aware that Mr. Lowry categorically denies ever making such a suggestion?

A. Mmm.

Q. And you have clearly no reason, then, to doubt him?

A. No.

Q. And you are aware, I suppose, also of Mr. O'Brien's evidence that Mr. Desmond and IIU had been in the frame from the 10th August, 1995, some five weeks prior to the meeting in Hartigan's on the 17th September?

A. Mmm.

Q. And you have no reason to doubt Mr. O'Brien on that?

A. No.

Q. And finally, just in terms of your dealings with Mr. Lowry, I think you told Mr. Healy yesterday that you simply saw him at the press conference that announced the winner of the competition.

A. Yes.

Q. Am I to take it from that that you had never any further or other dealings with Mr. Lowry?

A. That's correct.

Q. And you never spoke to him on the telephone or anything of that sort?

A. No.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Just a couple of questions, Mr. Simonsen. Firstly, the oral presentation, and this question of further communications with the Department.

The transcript of the oral presentation indicates that Mr. Brennan stated before or at the outset that the Department would prefer if there were no further communications from bidders. That's at page 3. And then at the end, page 115: "Any future communications should be at our initiative rather than yours."

So is it reasonable to suggest that anyone listening to Mr. Brennan would not have gone away from that presentation feeling that there was an absolute total ban or bar on any communications coming from interviewees?

A. Yes, I think that's reasonable.

Q. Now, I want to bring you to the letters that Mr. Fanning has just asked you about. These are the letters that you drafted, dated the 17th October, 1995, one to Mr. Begg, and then copy or draft of one to Mr. Lowry from the Norwegian Minister, and then the document, similar copy, sent to you by the Norwegian Minister's office.

These documents were retained on Telenor's files; isn't that correct?

A. Yes.

Q. And they were furnished to the Tribunal two years ago; isn't that correct?

A. Yes.

Q. Approximately two years ago?

A. Approximately.

Q. Now, in relation to the letter that may or may not have been sent by the Norwegian Minister to Mr. Lowry and of course the Tribunal can check that by writing, at this stage, to the Norwegian Minister's office for the purposes of seeing whether or not such a letter was sent and whether it was replied to.

I want to bring you through that letter. Do you have a copy of it there, please?

A. Yes.

Q. "Distinguished colleague,  
"As you are aware of, Norwegian Telenor is one of two operating partners in the Esat Digifone consortium, one of the participants in the current competition, the second GSM licence in Ireland."

Now, isn't it correct that that information was contained in the bid document?

A. Yes.

Q. Second sentence: "Telenor is a limited company owned by the Norwegian Government." Isn't it correct that that information was contained in the bid document?

A. Yes.

Q. That sentence continues: "And I would like to take

this opportunity to assure you that Telenor will make every effort to meet all your requirements for cellular competition in Ireland." Wasn't that a condition of the bid that all participants in the process had to meet?

A. I would say so, yes.

Q. Second paragraph: "Telenor has been in the business of mobile communications since the late sixties."

That information was in the bid document?

A. Yes.

Q. "The company introduced the world's first automatic mobile telephony system (NMT) in the early eighties and contributed significantly to the development and implementation of the GSM standard." That was in the bid document?

A. Yes.

Q. "Telenor's capability in the mobile field should be conclusively demonstrated by the fact that Norway today enjoys the highest cellular penetration in the world (23%) and Telenor as a company enjoys a world-leader level of penetration (18%)." That information was in the bid document?

A. Yes.

Q. "I would also like to draw your attention to the high standard of industrial and social relations enjoyed in Norway."

Now, that sentence, whilst it was not in the bid

document, is in fact a presumption that Mr. Lowry would know of this fact, that everyone in Europe would know about; isn't that correct?

A. Yes.

Q. Indeed, in your letter to Mr. Begg, you say in the third paragraph: "As you would be aware of, Norway enjoys a high standard of industrial and social relations."

A. Mmm.

Q. Isn't that correct?

A. Yes.

Q. Now, the second sentence in that paragraph: "As a shareholder in Esat Digifone, Telenor would always use its influence to promote good relations with the authorities and trade unions, should our consortium be awarded the licence."

Isn't it a reasonable comment that whoever was awarded the licence would have to promote good relations with the authorities and trade unions to operate and to survive successfully? Isn't that correct?

A. Yes.

Q. And isn't it reasonable that every candidate for the licence would have had this same intention, and the Department would have proceeded on that assumption?

A. Mmm.

Q. And then you go on in the next paragraph: "Please do not hesitate to contact me if you would like to



discuss these matters (or any general aspects of cellular competition) in further detail.

"I wish you all the best in your efforts to select the best possible second GSM operator for the Irish market."

So, in fact, there is no new information there is nothing in this letter that could be said to constitute new information or content that would have a bearing on any decision relating to the licence?

A. That's correct.

Q. And of course, having regard to the process, and we have been through this in detail before, you came to give evidence. It's perfectly clear that this letter could not have been taken into account in any event?

A. Mmm.

Q. And there is no indication that any of the civil servants involved or other persons involved in the process, including the consultants, would have had any knowledge of this letter; isn't that correct?

A. That's correct.

Q. And are you aware of the fact that on the basis of the evidence that we have heard, that by this point in time, the licence process had effectively terminated, and the Minister had effectively or at least a decision had effectively been made internally to award the licence to the consortium?

A. Yes.

Q. Thank you.

CHAIRMAN: Thanks, Mr. Fitzsimons.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY MR.

HEALY:

Q. MR. HEALY: Just a few small matters, Mr. Simonsen.

And maybe I didn't make it clear this morning because of a little controversy that developed. What I was trying to probe in relation to this document, and the main thing certainly I was trying to probe was not whether it was being used to interfere with the process, but whether, having written or rather whether, having initiated the writing of a letter like that on the 17th October, you might have felt uncomfortable in December and January in facilitating a political donation being made by the winner of the competition to the political party of the Minister to whom the letter was written.

Do you understand?

A. I don't really agree with the assumption, because it was a legal donation; I don't really see the problem.

Q. I just wondered whether you felt a little uncomfortable in the circumstances in which the donation was being made offshore and in a surreptitious way.

A. I don't remember how I felt in relation to that, no.

Q. Would you agree with me, and you don't have to agree with me, that it is somewhat uncomfortable that,

having initiated the writing of a letter like that to Mr. Lowry, your company was subsequently involved in facilitating the making of a political donation by a very roundabout and surreptitious route?

A. No, I wouldn't agree.

Q. Okay.

Just two other small things.

Maybe this is something I should have asked you this morning. The letter of the 2nd October 1995 that you were charged with putting together, even if you didn't put the finishing touches to it.

A. Okay.

Q. And I was reminded of this by something Mr. McGonigal asked you, and it's as to why the letter was written.

Maybe I'll just put my sort of thought process in context for you.

Would I be right in thinking that on the 22nd October, or the night of the 22nd October, or the following day or whatever 22nd September, sorry, or the following day or whatever, the deal was done over IIU? Or would that be wrong, and was the deal not in fact done until this letter was written?

Do you understand me?

A. Well, yes, I understand what you mean. I think there is a reference made to the meeting, following phone conversations, and "my conversation with John Callaghan," meaning that there has been a process

going on for at least more than the Friday, it seems.

And I don't know whether what the conclusion of the last phone conversation was, but to me this seems to, again, accept the dilution of 5% in total, but it's then also qualifying that we are not exactly happy about it.

Q. Would I be right in thinking that that was your written signification of your approval of the deal?

A. Yes. Again, this is also the part that Mr. Johansen injected. So that may be what he put into it, but I think that should be addressed to him.

Q. Do you know was it he asked you to do it, or was it the Irish side asked you to send this? Can you recall?

A. The letter?

Q. Yes.

A. No, it was initiated from our side, yes.

Q. I see. But it was certainly, as far as you were concerned, Mr. Johansen asked you to do it?

A. Yes, or yes, from a discussion, we must have had a discussion around this, and then subsequently I wrote the letter, yes.

Q. Okay. He did sign it?

A. Yes.

Q. Maybe I should take this up with him. Maybe he'll know more about it than you do, but can you recall, did you draft it soon after the meeting or closer to

the 2nd October 1995?

A. I think it was drafted close to the I believe the 2nd was a Monday. So I believe it was drafted mainly before that, before that weekend.

Q. Maybe on the Friday or something like that?

A. Yes.

Q. I see. I have another question about it, but I think it might be more usefully answered by Mr. Johansen.

Just one other point in relation to some of the matters being raised with you by Mr. McGonigal, and I think by Mr. Fanning as well. You weren't impressed by the conversation you had, according to your own evidence, with Mr. O'Brien?

A. That's correct.

Q. You thought it a bit of exaggeration?

A. Mmm.

Q. He was the one looking for the 5% dilution?

A. Yes.

Q. If you thought that was an exaggeration, and assuming he said anything similar to Mr. Johansen, wouldn't that have been disclosing a weakness on his part? I will put it another way: If Mr. O'Brien was driven to telling you that you should take a certain course of action because he had had a conversation with the Minister in which the Minister said IUU should come in, then if you believe that to be an exaggeration, wouldn't it have indicated that you must have felt Mr.

O'Brien was very weak in his position?

A. Well, I understand your point of view, but in hindsight it may look that way, but I don't think we experienced that way at the time.

Q. Okay.

Now, just one further point, and I am not sure you can throw any light on this. Certainly from what you said to me yesterday I didn't think you could throw any light on it.

This sequence of letters, the 15th, the 19th and so on, you know the letters that I am talking about that Mr. Haga doesn't remember signing but which he says contains his signature but he doesn't know very much else about except that he thought it was a joint effort.

A. Mmm.

Q. I just want to ask you two things about that. The tension between Telenor and Communicorp up to the 4th August arose from the fact that Telenor were not happy with the Advent letter; isn't that right?

A. Yes.

Q. Advent were getting 5% in Esat Digifone in return for this letter; isn't that right?

A. Advent?

Q. Yes. Were to get 5% in Esat Digifone. It was Advent, and then the other three institutions.

A. Yes, but I don't know whether that was in return for

the letter.

Q. Well, that's the evidence we have heard, in any case.

Wasn't the purpose of producing the letter from Telenor signifying dissatisfaction with the Advent proposal to enable Communicorp to turn around to Advent and say, Communicorp are not satisfied, therefore or Telenor are not satisfied, therefore we are no longer obliged to give you the 5%?

A. I don't really remember the reasoning behind this. I haven't seen the fax cover page before today.

Q. You haven't seen the fax cover page Mr. McGonigal showed you a while ago, is it?

A. No.

Q. Maybe it's a matter for submissions. I don't necessarily want to press you too much on it. Is that sequence of documents that you know a lot about from your own personal knowledge, or is it something that you are offering evidence about based on the theories that are being put to you?

A. Could you rephrase the question, please? I didn't get it.

Q. I will. If you know very little about these sequence of letters and can't help me about the facts

A. No.

Q. and I think it's a matter of trying to work out which theory most logically represents what actually happened.

A. Okay.

Q. If that's the only contribution you can make, well, then, I'll leave it there. If you had an involvement in any of these letters, any one of them at all, or in that controversy, I want to press it with you.

A. I can't recollect having involvement in the letters, no.

Q. It was mainly Mr. Haga's affair?

A. Yes.

Q. And you didn't draft any one of them, is that are you absolutely clear about that?

A. I don't remember drafting any of those letters, no.

MR. FANNING: Chairman, before you rise, if I may just intervene briefly at this stage. When I examined Mr. Simonsen a few minutes ago, I was under the misapprehension that the documents on which I principally examined him upon had been produced today at the instance of Telenor. Mr. Healy then rose to correct me, very fairly, from the perspective of the witness, to inform me that the documents had in fact been produced by the Tribunal.

And on reflection, Chairman, I must say that it causes me no small amount of concern that two years after receiving these documents from Telenor, the Tribunal produced these documents this morning, without any notification to my client, or indeed, apparently, to any of the other parties appearing before the



Tribunal. The documents were led in evidence with Mr. Simonsen, and they were, at the very least, capable of highly pejorative connotations and implications for my client, none of which, I hope, after the questioning and the answers from Mr. Simonsen, stand any ground.

But I was put in a position, Chairman, where I was obliged to take instructions on an urgent basis over lunch to contact my client directly. Fortunately I was in a position to do so, and I was able to put the position of my client to this witness. But for logistical reasons, I may not have been in a position to do so. I am simply rising at this at this stage to say that the situation that arose was most unsatisfactory from the perspective of my client, and indeed from the perspective of any party appearing before the Tribunal, how documents that had been in the possession of the Tribunal for two years were was produced this morning out of the hat, as it were, and led in evidence without any notification to the parties.

CHAIRMAN: It's I think inaccurate to say, Mr. Fanning, that any documents were produced out of a hat. Reference was made by me and by Mr. Coughlan in the opening, on many occasions, to the vast multiplicity of documentation. It is inevitable that on occasions, as tribunals or unfolding matter are constantly changing position, that documents may have

to be visited or revisited that may attain a limited degree of relevance.

I think it is correct to say that while notification was given to a number of persons, it may have been overlooked giving it to you. Insofar as that is so, I regret that that was an oversight. Had it been that you were taken short, you would of course not have been required to adopt a position, and of course any deferral that may have been necessary would have been readily acceded to by me.

In any event, I propose to comment briefly in concluding matters with Mr. Simonsen about this particular aspect.

Mr. Simonsen, just before we rise, and at least you are now, I hope, in a position to make your flight comfortably, I think you concluded your long examination by saying to Mr. McGonigal that you could be wrong, having noted the matters he has put to you, but that your statement was based on your best recollection at the time, but it's not impossible that you could be wrong.

A. Yes, that's correct.

CHAIRMAN: And can you give me any assistance as to the probability one way or the other, since I have to consider these aspects?

MR. MCGONIGAL: I wonder if that's a fair question, Mr. Chairman.

CHAIRMAN: I am trying not to lead him. I deliberately Mr. McGonigal, I ultimately have to write a report. I am certainly not trying to tilt him one way or the other.

MR. MCGONIGAL: It sounded like a tilting question, and I wonder if it's more appropriate to have to leave it with you, rather than to ask the witness to measure what is an answer which he gave after careful consideration.

CHAIRMAN: All right, Mr. McGonigal. I'll do that, but I certainly wasn't trying to switch the balance.

MR. MCGONIGAL: I am not saying that pejoratively. I am saying that as it is your function to have to make some of these decisions. Some of them will be difficult. But I don't think it's fair to necessarily say to a witness, are you going to go 50:50, 60:40, 70:30. That's best left to lawyers, and unfortunately, in your position, to you.

CHAIRMAN: All right.

Lastly, then, Mr. Simonsen, in the context of the letter between the Ministers, whether it actually reached the Department or Mr. Lowry or not, I think it's right for me to say that in the context of its fairly innocuous content, and in the context that it seems unlikely, on what we have heard today, that it had any influence on events, I think it is unlikely that I will be paying a great deal of attention to it.

The only observation I might ask you about briefly is, might it not have been preferable if a similar type of communication was adopted in central European competitions, might it not been preferable that such a letter be sent at the very early stages of a competition, rather than when a result is just about to be decided upon?

A. Yes.

CHAIRMAN: Thank you for your assistance and preparation over these last couple of days.

Resumption, then, Tuesday at 11 o'clock. Very good.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY,  
10TH FEBRUARY, 2004 AT 11AM.