

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, SC

Instructed by: Michael Heneghan

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES:

Mr. Richard Law Nesbitt, SC

Mr. Diarmuid Rossa Phelan, BL

Instructed by Matthew Shaw

Chief State Solicitors Office

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

Mr. Gerry Kelly, SC

Mr. James O'Callaghan, BL

Instructed by: Owen O'Sullivan

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Mr. Rossa Fanning,

Instructed by: Kelly Noone & Co.

Solicitors

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxton

I N D E X

Witness: Examination: Question No.:

Knut Digerud Mr. Healy 1 - 258

Mr. Nesbitt 259 - 330

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,

10TH FEBRUARY, 2004 AT 11AM:

KNUT DIGERUD, PREVIOUSLY SWORN, WAS EXAMINED AS

FOLLOWS BY MR. HEALY:

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

You gave evidence before, so you are already sworn; do you understand that?

A. Yes.

Q. And if any difficulty should arise in the course of the examination, you can refer to the interpreter to help you along. Do you understand that?

A. Yes, I do.

Q. Now, the Tribunal has just received a memorandum of your intended evidence, and prior to this, the Tribunal had an earlier statement from you. I think what I propose to do is to go through your memorandum of intended evidence first, and then I'll go through the earlier memorandum after I finish this long memorandum. Do you have a copy of this memorandum?

A. I have.

Q. I am just going to read out the questions, and where you have been able to give answers, I am going to refer to those answers. Otherwise I am going to skip over both the questions and the answers except maybe

in one or two places. Can you follow that?

A. Yes.

Q. This is the memorandum of intended evidence of Knut Digerud. Questions attached this the Tribunal's letter of the 7th June, 2002. And the queries are as follows:

Firstly, as to your knowledge concerning the circumstances surrounding the establishment of a consortium by Telenor and Esat Telecom to bid for the second GSM licence including, firstly, the manner in which the parties were introduced to each other.

Secondly, the approximate date of their introduction.

Thirdly, the initial proposal for the capital configuration of the bid company.

Fourthly the date on which agreement was concluded between Telenor and Esat Telecom to establish a consortium.

And your answers are as follows:

Firstly, you say you are only aware that the introduction of Telenor and Esat Telecom was effected through PA Consulting. As to the date, you say "I cannot remember the date, but Denis O'Brien and Peter O'Donoghue came to Oslo, and they met with me and with Sjern Malm. This was probably in April '95. I have been informed that there was a meeting in Dublin on the 27th April, 1995".

You were asked as to the initial proposal for the

capital configuration of the bid company. And that was 50:50.

You were then asked as to the date on which an agreement was concluded to form a consortium, and you say "I understand that there was an initial memorandum of understanding, and later a joint venture was signed on behalf of Telenor on the 7th June 1995, and on the 5th June 1995 on behalf of Communicorp by Denis O'Brien".

You were then asked for details of the negotiation of the joint venture agreement. And you say "I was not involved either in the negotiation or in the drafting of the joint venture agreement. To the best of my knowledge, Telenor may have obtained the assistance of a junior lawyer in Telenor's legal department named Amund Fougner Bugge. No Irish legal advice was obtained".

I suppose, in fairness to Mr. Bugge, who is not here, things were being done at quite a hectic pace at this point; isn't that right?

A. That's right.

Q. And the bid had to be in by the 23rd June at that point?

A. That's correct.

Q. You remember that the closing date was subsequently changed to the 4th August.

A. That's correct.

Q. But at that point you had to try to get everything up and running, get your deal done with Esat Telecom/Communicorp, and at the same time prepare the bid; isn't that right?

A. That's correct.

Q. You were then asked about a guarantee referred to in the joint venture, and you say that you weren't involved in the guarantee.

You were asked about dealings between Mr. O'Brien/Esat Telecom or Esat Digifone or any person on their behalf with J&E Davy for the purpose of securing the backing of financial investors. And you say you had no personal involvement, and you believe that no other Telenor executive had any such involvement.

You were asked for Telenor's understanding of the commitments provided by Advent International, Allied Irish Banks, Investment Bank of Ireland and Standard Life to the funding of Esat Digifone. And you say, "At no time did I see any of the documents or draft documents in connection with the preparation of the bid which was lodged with the Irish Department of Transport, Energy and communications on the 4th August 1995. In the last year I have been shown copies of the letters from Advent International, Allied Irish Investment Bank. Investment Bank of Ireland and Standard Life Ireland. I believe they were indicative letters expressing interest but not in the form of an

actual commitment. I do not recollect that this was ever agreed that these institutions would definitely become shareholders in Esat Digifone.

You were asked about Telenor's involvement in or knowledge, direct or indirect, of approaches made to persons other than Davys, Advent International and the bank: You say you have no knowledge and you are not aware of any other Telenor executive having any such knowledge.

You were then asked for your knowledge of the RFP document, which was the Department's request for proposals or for bids, if you like. And you say that you did not personally deal with that or any of the related documentation. You say that the process was conducted in and from Ireland. As far as you were aware, Telenor relied on the interpretations and explanations received from the bid team in Dublin.

You were asked for your specific understanding of the requirement that the Minister be satisfied as to the financial capability of the applicant as provided by paragraph 19. And again you say you were not briefed with or furnished with copies of these documents and that therefore you are not in a position to form any view.

You were then asked for details of all steps taken by Telenor to satisfy itself as to the financial capability of the Esat Digifone consortium, and in

particular all inquiries made of Communicorp/Esat Telecom as to its financial status and details of Telenor's views as to the financial strength or weakness of the Esat Digifone consortium based on such inquiries or otherwise.

And your response is that "To the best of my knowledge, any inquiries made would have been delegated to Knut Haga, who had been seconded to Telenor Invest from Telenor International, another Telenor company". And you say that you personally formed no such view at the time, and you believe that Knut Haga dealt with this aspect.

You were then asked for your understanding as to the purpose for which oral presentations by applicants were conducted by the Department, as to the names of all persons present at the oral presentation by Esat Digifone consortium on the 12th September, and as to Telenor's views as to the overall impression made by the Esat Digifone consortium in the course of the presentation, and in particular, any matters which appeared to Telenor to be problematic or areas of perceived weakness.

And you say did you not attend at the oral presentation. You assume that the purpose of such oral presentations is to interview the applicant. You say that you were informed that the Telenor executives present were Mr. Johansen, Mr. Myhre, Mr. Thygesen,

Mr. Simonsen. Mr. O'Brien and other persons from Communicorp were present, but you say that you have no precise information or details.

You were asked about your overall impression or what overall impression was formed by Telenor. And you say, "I am not exactly sure when I was told this, but I understand that the representatives in attendance at the oral presentation were happy that a good presentation had been made. I do not remember any discussion of any problematic areas or areas of perceived weakness, but I was not involved in the project at that level of detail (Esat Digifone, although an important project, was just one of many projects and activities in which Telenor was involved at the time in 1995)".

You were asked in Query Number 11 for your knowledge of the purpose of the meeting between Mr. Denis O'Brien and Mr. Arve Johansen in Oslo on the 22nd September, 1995. And you say that you were asked a number of other queries about the meeting, and you say you were not present at the time of the meeting in Oslo and that you are not in a position to comment.

You say you were travelling in connection with other projects at the time.

You were then asked for your knowledge of details of other contacts between Mr. O'Brien and Mr. Callaghan with Mr. Johansen. Again you say you are unable to



provide any information.

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

And you say "I do not have sufficient records or recollection to be able to identify when or in what circumstances I first became aware that IIU agreed to underwrite the equity participation of Esat Telecom in Esat Digifone. I believe that I was probably aware of this sometime in October of 1995, probably early October, because I believe I must have had this information when I signed a letter dated the 12th October, 1995, to Michael Walsh."

You were asked about the date on which and the circumstances in which Telenor became aware of or had sight of the contents of a letter of the 29th September, 1995, from Mr. Walsh addressed to Mr. Martin Brennan of the Department. And you say that you were probably made aware of this letter sometime in early October, 1995. You cannot remember if you were simply shown the letter or if it was copied to you. You can't be more precise than that.

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

you say you have "no recollection of when and in what circumstances I was informed of the Department's refusal to consider the contents of the letter".

You were then asked for the date on which and the circumstances in which Telenor first had sight or otherwise became aware of the contents of the letter

of the 2nd October returning to Mr. O'Brien the

earlier letter of the 29th from Mr. Walsh to Mr.

Brennan. And you say, "I believe that at no time did

I ever see or was I ever shown or was I aware of the

specific content of the letter of the 2nd October from

the Department to Mr. O'Brien returning to Mr. O'Brien

the letter of the 29th September from Mr. Michael

Walsh. I first saw this letter in April 2002, when

Telenor's solicitors drew it to my attention. I note

the reference in the Matheson Ormsby Prentice

attendance note of the 9th November, 1995, but I do

not believe that I was ever furnished with a copy of

the letter of rejection".

You were then asked for your knowledge of or your

involvement in the circumstances in which J&E Davy and

the Advent International and the banks agreed to

withdraw from the involvement in the consortium. You

say you had no such knowledge. Likewise you had no

knowledge of a letter from Mr. Kyran McLaughlin to Mr.

O'Brien in which Mr. McLaughlin requested Mr. O'Brien

to provide information regarding the fact that these

institutions were asked to withdraw from their

involvement.

And you say you have no such knowledge, as I said.

The next two queries, Queries 18 and 19 sorry, 19 and 20, are related to a similar matter, and again you say you have no knowledge.

You were asked for details of all matters which prompted Telenor to engage solicitors in this jurisdiction in early October of 1995. And you say that you think you were generally aware of the delay in retaining Irish solicitors, perhaps owing to the fact that many commercial law firms in Dublin were conflicted as a result of representing members of other consortia. The internal legal department of Telenor handled the retention of local lawyers. They would know more than you did. You vaguely recollect that Matheson Ormsby Prentice was identified as a firm that represented another large Norwegian company.

You were asked for your knowledge of the date on which and the circumstances in which Telenor became aware that the Minister intended to announce the winner of the competition in two to three weeks of the 10th October, 1995, including the source or sources of such knowledge. And you say you have no you had no such knowledge, and you are unable to comment on when other Telenor executives might have become aware of this.

You were then asked for Telenor's knowledge, direct or

indirect, regarding the ownership, incorporation and financial standing of Bottin International Investments Limited, including the source of such knowledge, and in particular, whether such knowledge was gleaned in response to a letter dated 12th October 1995 from Mr. Knut Digerud of Telenor to Mr. Michael Walsh of IIU Limited. You were asked to indicate whether a written response was received to the letter of the 12th October and if so, to furnish a copy of such response. You say shortly before the 12th October 1995, you were approached by Mr. Simonsen and by Mr. Haga. They were both very concerned about a reference to the assignment of the benefit and obligations of an arrangement agreement to a company named Bottin International Investments Limited. You believe that either Mr. Simonsen or Mr. Haga later established that this did not seem to be an Irish company. You were also concerned at this development. Rather than immediately objecting that you knew nothing about Bottin, you decided that you needed to repeat the request for information about Bottin and to express this as "Urgent". The letter of the 12th October was prepared in consultation with Mr. Simonsen and Mr. Haga. You note that your letter incorporates and repeats the items of information sought by Mr. Haga, and you were relying on his expertise. You believe that Telenor received no written response to the

letter of the 12th October.

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

And your response is that you do not remember that you were shown the Matheson Ormsby Prentice faxed letter of the 12th October, 1995, at the time, and that it is only your interpretation, but that perhaps the author of the letter was commenting on the non-disclosure of the involvement of Bottin to the Department.

You were then asked about the date on which and the circumstances in which Telenor first became aware that Esat Digifone had won the licence competition. And you say you were in the United States of America with Arve Johansen and that you received a telephone call on the 25th, most likely from Per Simonsen.

You were then asked for your understanding or any information you had concerning Telenor's understanding of a number of matters, as follows:

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

the Department.

Secondly, composition of the consortium as of the 25th October, 1995.

Thirdly, the capital configuration and beneficial ownership of the shares as of the 12th April, 1996.

Fourthly, the capital configuration of the issued capital and the beneficial ownership of the shares as of the 16th May, 1996.

And you were asked for the source or sources of Telenor's knowledge.

And you say that you had not seen the documentation concerning the composition of the consortium as of the 4th August, 1995, but your understanding was that Communicorp had 50% in Esat Digifone and Telenor and the other 50%.

With regard to the 25th October 1995, you say that you believe that it was similar to the position on the 4th August, but there was an intention to issue 25% to IIU based on certain conditions, and you are now informed of this by Telenor's solicitors, but you cannot say what you understood at the time.

With regard to the 12 April 1996, you say that as a result of the allotments on both of two dates mentioned I think there must be some confusion, but you say that in any case, I think the thrust of what you are saying is that as of the 12th April, 1996, as a result of allotments on two days around

that time, the shareholding was 37.5%, 37.5% and 25%.

And then you were asked for your understanding as of the 16th May, and you say you believe that the shareholding was 40:40:20.

You say that your above understanding is at present understanding based on information you received from Telenor's Irish solicitors. You can not identify any particular source or sources of understanding at the time, and it would be wrong of you to say that you fully understood the position at the time.

You were then asked for any information you had concerning Telenor's understanding of the Department's knowledge of the composition of the consortium as of those same dates.

And your response is that you don't know what the Department's knowledge was, and that you regret to say that you are unable to say precisely what information was given to the Department and when. You say that you have been informed that a letter of the 17th April 1996 was sent by Owen O'Connell of William Fry Solicitors to Ms. Regina Finn of the Department. You say that it is possible that you may have seen a draft of this letter. Looking at the letter now, you say it seems a highly technical and legal matter, that you were not involved in the arrangements and documentation relating to this back in September of 1995, and that you were totally reliant on the

knowledge and expertise of Owen O'Connell, Esat

Digifone's corporate solicitor.

You were then asked for your knowledge or for any information you had concerning Telenor's knowledge of the queries raised by the Department regarding the ownership of the Esat Digifone consortium which led ultimately to the letter of the 17th April 1996 from Mr. O'Connell. And again you say that you believe that you may have been shown a draft of the letter of the 17th April, but that the letter was too technical and legal for to you make any meaningful comment on it.

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

And you say that you have no note or record of any such dealings or discussions. You were the CEO of Esat Digifone at the time.

Perhaps just to clarify that answer: Do I understand you to be saying that as far as you were concerned, your responsibility was to run a company, not to



involve yourself in shareholder matters; is that it?

A. In general terms, absolutely.

Q. You were then asked for details of the meeting which took place at the Department on the 3rd May '96, attended by Mr. Knut Digerud, Mr. Arve Johansen, Mr. Peter O'Donoghue, Mr. Michael Walsh, Mr. Paul Connolly, Mr. Owen O'Connell, and in particular then, you were asked to address a number of queries as to the purpose for which the meeting was held, the matters discussed, the queries or issues raised by the Department, the requirements made by the Department, the requested made by the Department to Telenor to underwrite the entire of the equity and operational expenses of Esat Digifone, and Telenor's understanding of the reasons for such request.

And you say that you have a vague recollection as to the meeting which took place at the Department on the 3rd May, 1996. Subject to that, your comments are as follows:

Firstly, you believe that the Department wanted a meeting to deal with issues relating to outstanding requirements in connection with issue of the licence.

You cannot now identify the specific matters discussed. You simply cannot remember what specific queries were issued or raised by the Department. You have no recollection of the requirements of the Department. You say that the vague impression which

you had, and you are not sure if this was as a result of your own inference or whether it was conveyed to you by anybody else, was that the Department officials were uncertain as to IIU's financial capacity and possibly, as a precaution, wanted Telenor to underwrite the entire venture.

Query Number 31, you were asked for the date on which and the circumstances in which Telenor became aware that the Department had requested that the configuration of the issued share capital should be restored to the capital configuration of the consortium which applied for the licence, i.e. restored to 40:40:20, together with the source or sources of such knowledge. And you said that you were unable to identify the precise date or circumstances when you were made aware that the Department wanted the configuration to be 40:40:20. You think this was in early May of 1996.

And I don't think we need trouble you with the next query.

You were then asked for details of all dealings, discussions and negotiations between Telenor, IIU Limited and Communicorp regarding the request made by the Department that the capital configuration of Esat Digifone should be restored to 40:40:20, and including all matters which prompted the agreement of IIU Limited to transfer 5% of the shares of Esat Digifone

to Communicorp and Telenor; secondly, all negotiations regarding the valuation of the 5% shareholding of IIU at IRi½2.75 million and the agreement of Telenor and Communicorp to accept such valuation; and thirdly, the manner in which the evaluation of the 5% shareholding of IIU was fixed at IRi½2.75 million.

And your response is that to the best of your recollection, there was no extensive course of dealings, discussions or negotiations. Your best recollection is that Dermot Desmond was reluctant to sell any shareholding and that he then specified a non-negotiable price of IRi½2.75 million.

You say that you are unable to comment as to what prompted IIU to transfer the shares, but you speculate that there was a general awareness that this was an obstacle to the issue of the licence.

With regard to the question of negotiations, you say that there were no such negotiations, and with regard to the manner in which the price was fixed, you say the price was determined by Dermot Desmond.

At Query 34, you were asked for details of the meeting which took place at the Department on the 13th May, 1996, attended by yourself, by Mr. Owen O'Connell, Mr. Martin Brennan, and Mr. Fintan Towey. And in particular, as to the purpose for which the meeting was held, the matters under discussion, the request made by the Department that Esat Digifone identify key

issues likely to be raised at the press conference to announce the issue of the licence, to draft answers to such questions, and to explain to the Department the reasons for such answers. And as to the request made by the Department that a meeting be arranged between the Minister and yourself, together with one or two others, at which the press conference would be discussed/rehearsed.

Your response is that although you attended with Mr. O'Connell, it was Mr. O'Connell who took the primary role. You cannot now remember the specific purpose of the meeting, other than that all of these meetings were seen by you as meetings with the Department officials to resolve any outstanding requirements or difficulties in relation to the issue of the licence.

You say that at this point meaning, I presume, at that time an enormous investment of time and money had been made and there was an anxiety to obtain the licence without delay.

To the purpose of the meeting, you say that it was in order to resolve outstanding issues holding up the issue of the licence. As to the matters under discussion, you refer to Mr. O'Connell's draft minutes. Likewise, as to the request from the Department that Esat Digifone identify key issues.

With regard to the request by the Department that a meeting be arranged between the Minister and yourself

and one or two others, you say that you assume that this was to deal with any press queries or other issues which might be raised. You say that you are aware you were aware that there was also a feeling that the losing consortia were trying to stir up trouble and that the media might be prompted to ask questions. You say you do not believe that you had any active involvement in this process and you felt, generally speaking, that these issues should be addressed by the shareholders where necessary.

With regard to the identification of key questions and draft answers in preparation for the press conference, you say that you were not actually involved in the process and that that process was dealt with by Owen O'Connell and Eileen Gleeson.

You were asked for your knowledge of details of all meetings, discussions or "contacts", I suppose that should be of whatsoever nature between Esat Digifone and the Minister or the Department in connection with the key questions, and you say that that was handled by others.

I think in light of your earlier answer, we don't need to look at Query 36.

Query 38 is as to Telenor's knowledge, direct or indirect, of all meetings, discussions, dealings or contacts of whatsoever nature between Mr. Denis O'Brien or any other person on his behalf and the

Minister or the Department at any time from the first involvement of Telenor in the Esat Digifone consortium to the date of issue of the licence on the 16th May, 1996.

And you say you have no direct knowledge of any meeting between Mr. O'Brien and the Minister. You go on to say that you were informed, but cannot remember when, probably by Per Simonsen or Knut Haga, but you cannot be sure which, of a pub meeting between Denis O'Brien and Michael Lowry.

Now, I am then going on to a supplemental schedule of replies to other queries posed on the 11th June, 2002, and the first query is as to the details of all matters which prompted the renegotiation of the underwriting arrangements between the members of the consortium, and in particular, the release of IIU from its obligation on foot of the agreement of the 29th September to underwrite the entire Communicorp/Esat Telecom equity participation in Esat Digifone.

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

Thirdly, details of the precise terms on which Telenor provided funding to Esat Telecom to finance its obligations to contribute to the licence fee of 15 million paid by Esat Digifone to the Department on the

issue of the licence on the 16th May.

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

And you say you were not involved in the renegotiation of the underwriting arrangements, but you believe that this happened as a result of the shareholders agreement of the 16th May.

With regard to Query Number 2, you say you are not quite sure of the financial position, but you thought that the bridging finance was contributed to on a 2:1 ratio, and this was because Communicorp was not immediately able to fund its equity participation.

With regard to the other two queries, you say that you were not involved in those aspects of the arrangements between the shareholders.

You were then asked for your understanding of the purpose for which the Department required a number of documents. Firstly a letter dated 7th May, 1996, from Chris McHugh, company secretary of IIU Limited. And you say that you assumed that the Department was pursuing its inquiries to establish further information about IIU.

Secondly, a letter dated the 7th May, 1996, from Farrell Grant Sparks, auditors to Mr. Desmond. Again you say you assume that the Department was pursuing its inquiries to establish further information about

IIIU.

Thirdly, a letter dated 9th May 1996, from KPMG, auditors to Communicorp Limited, and again you say that that was because you assumed that the Department was pursuing its inquiries to establish further information. I take it that you mean further information about Communicorp.

Fourthly, a letter dated 15th May, 1996, from Farrell Grant Sparks. And you say that you can only assume that the initial information from Farrell Grant Sparks was perceived as inadequate and that the Department wanted further information.

You were asked for details of all meetings or discussions between Telenor, Esat Digifone any member of the consortium or any person acting directly or indirectly on their behalf with any of the following:

Firstly, Mr. Michael Lowry. And you say that you believe that you met with Mr. Lowry on or about the 8th May 1996, and that you were also present at the press conference on the 16th May, 1996. You say you were invited by the Norwegian Embassy to attend one of the Dail debates, after which you were briefly introduced to Michael Lowry by the Embassy Secretary.

You were asked about dealings or meetings with Mr. John Loughrey. You say you vaguely recollect a courtesy visit to John Loughrey in the spring of 1996.

With regard to Martin Brennan, you say only as



discussed in the documentation.

With regard to Mr. Fintan Towey, you say that Mr. Fintan Towey was at some, if not all, of the meetings which you attended with Mr. Brennan.

With regard to Michael Andersen or any member of Andersen Management International, you say that you never met Mr. Andersen or any member of Andersen Management International.

A. Can I comment on that one?

Q. Pardon?

A. Can I comment on that one?

Q. Of course.

A. I recollect that in one meeting with the Department, that was probably one of the first meetings I had with them, or the team had with them, because it was in November, I think, then Andersen was a part of the Department's team.

Q. I see.

A. That's the only time.

Q. Would that have been after the licence was after the competition result was announced?

A. Yeah.

Q. Because I think there is a reference to your attending a meeting on the 9th November, which would have been

A. That's most likely would be the meeting, yeah.

Q. meetings with Government officials.

You say that you don't believe that you had any meetings with any other officials or any government department other than those disclosed in the documentation furnished to the Tribunal.

With regard to meetings with any member of the Government, you say you don't recollect having ever met any member of the Government other than Mr. Lowry.

With regard to meeting with any public officials, you say that you believe that you met the Director of Communications Regulation in Ireland, but you are unable to recollect the date or the circumstances.

There is another set of queries attached to the Tribunal's letter of the 25th June, 2002, and you were asked for your knowledge of details of Telenor's interest, if any, in the second GSM licence competition prior to Telenor's introduction to Communicorp, including steps taken or inquiries made by Telenor in connection with the licence competition.

You say you were not involved in that aspect, but you were aware of some general inquiries from banks and from Tele Danmark/ESB.

You were asked about inquiries made or steps taken by Telenor to investigate the potential market for mobile telephony in the Republic of Ireland. You say it would be standard for Telenor to commission inquiries and investigations, and you have a vague recollection that Telenor may have made an inquiry from the

Norwegian Embassy to London at some point regarding the mobile telephony market in the Republic of Ireland.

You were then asked about approaches made by Telenor to any entities associated with by any entities to persuade Telenor to join or form a consortium to apply for the licence. And you say other than the fact that an approach was made to Telenor by PA Consulting, you are unable to provide any information.

You were then asked for your knowledge of agreements between Communicorp, Esat Digifone, Mr. O'Brien or any associated entity with Advent International. And you say you have no knowledge. You were not involved in that aspect of the matter.

Likewise, you say that you were not involved in any of the matters which related to the terms of an offer made by Advent International to Communicorp of IRi;½30 million to fund Communicorp's equity participation in Esat Digifone.

You say that that and related matters were dealt with by Mr. Knut Haga.

And I think we needn't trouble ourselves with Query Number 7.

In relation to Query Number 8, which is a related matter, you say that once again you were not involved in dealings between Telenor and Communicorp in relation to the furnishing of a letter of comfort in

acceptable terms to Telenor, but you were informed that such dealings primarily involved Knut Haga and to a lesser degree, Amund Fougner Bugge of Telenor's internal legal department.

Number 9 is a similar query and you give a similar answer.

Number 10 relates to a related matter and again you say that you have no knowledge.

At Query Number 11 you say that you were asked as to Telenor's understanding as of the 4th August of a number of matters including firstly, the status of the Telenor's involvement as a party to the bid, having regard to the failure of Advent International to provide a letter of comfort acceptable to Telenor.

And you say that you do not believe that the status of the Telenor's involvement as a party to the bid was ever the subject matter of discussion. You do not believe at the time that you were copied with all of the correspondence between Knut Haga and other parties.

With regard to Telenor's understanding of the funding available to Communicorp as of 4th August to finance its 40% equity participation in Esat Digifone, you say that while this is a matter of inference, you believe that the support of Advent would have been immediately available if a favourable decision was made to award the licence to Esat Digifone.

You were asked for Telenor's understanding of each and every aspect in which it was considered that the terms offered by Advent International to fund Communicorp's equity participation were unfavourable to Communicorp.

And you say that you were told that the terms were not commercially attractive to Denis O'Brien/Communicorp.

Queries Numbers 13 and 14 relate, again, to dealings between Communicorp/Esat on the one hand and Mr. O'Brien on the other and Telenor concerning funding.

And you say that this was dealt with by Mr. Haga.

At Query Number 15 you were asked for details of the progress which had been made in the preparation of the Esat Digifone bid as of the 16th June, 1995, including details of all aspects of the bid which had yet to be finalised. And you say that you were not involved in the bid process, but that you remember hearing that the Esat Digifone bid team were extremely concerned at the postponement of the bid. Your impression was that the bid document was almost finalised and that there was a strong level of confidence that the bid document would be ready for the 23rd June, 1995.

You were asked to indicate the precise level of licence fee which the Esat Digifone consortium intended to nominate in its application prior to the deferral of the evaluation process on the 16th June, 1995, and Telenor's knowledge, direct or indirect, of the steps taken by Communicorp to fund its

contribution to the proposed licence fee, together with the source or sources of Telenor's knowledge. And you say that you believe that no decision had been arrived at. No reference was made to you to approve the specified level of licence fee. And you say that you would have expected the level of licence fee to be left to the last minute.

Can I just pause for a moment to clarify one matter at this point. Mr. Digerud, at that time, in June of 1995, you hadn't yet been deputed to be the Chief Executive Officer of Esat Digifone; isn't that right?

A. In June, '95, no.

Q. And we'll be coming back to this later on more general terms, but at that time, you were an executive of Telenor; isn't that right?

A. Yeah, Telenor Invest.

Q. Telenor Invest. And Telenor Invest was the company investing in mobile telephony in Ireland; is that right?

A. That's right.

Q. And Telenor Invest's decision to run with the Esat Digifone consortium, to go with Mr. O'Brien's consortium, was presumably a board decision?

A. Yes.

Q. In general terms?

A. Yes.

Q. And to make that decision, the board would have had to

have some knowledge as to the approximate business plan and so forth; isn't that right?

A. Yes, that's part of the normal way of handling, that you make scenarios.

Q. Would I be right in thinking that the board would have some general idea of the sort of licence fee that would have been involved, not specifically, but a general

A. Not necessarily, because the licence fee is not necessarily that essential to the total business plan as such. There is many, many other aspects which drives a business plan.

Q. I quite understand that, but it does involve an immediate expenditure, doesn't it?

A. It does.

Q. And correct me if I'm wrong, but would I be right in thinking that the board would want a rough idea of how much money was being committed to this process, not that they would have to know whether the licence fee element was going to be 25 or 26 million or 31 or 32 million, but whether it was going to be in the 25 bracket or in the 45 bracket, if you follow me?

A. Yeah, but that is not the normal board discussions.

They are much more concerned with market situation, penetration, pricing of each individual mobile products. And with the second operator, then you have a good opportunity to judge from the business plan,

and it's the financing of the equipment and the network which drives the whole business plan.

Q. But leaving I mentioned the word "business plan" simply as one of the elements that the board might simply need to be informed of. In a general way, because Telenor Invest was embarking on this venture, would the overall cost implications of the venture not have been brought to the attention of the board?

A. It would.

Q. Would that include, to some extent, the licence fee element?

A. The licence fee was very often a plug-in figure, done in the absolute last minute.

Q. Of course, yes.

A. And that could be a discussion which could be a last-minute discussion, and it will be a last-minute discussion and that the board, and in this sense, the board probably had scenarios of the total, and then some figures might have appeared. But that is not the main issue.

Q. Yes, I think you have put it maybe better than I have put, that the board would have scenarios; that they would have an idea as to what sort of licence fee might be bid in a certain situation on the base of a certain business plan, and what licence fee might be put forward on the basis of a slightly different business plan. But would there not be any ceiling



fixed by the board as to the total amount of money

that you could spend?

A. On the total amount we would spend, but not on the licence fee.

Q. I see.

A. The peak funding would certainly be an issue for the board.

Q. You have been involved in these competitions before, have you?

A. Oh, yeah. And lost many also.

Q. And where there is an auction element, obviously you keep that information as tightly as possible until the very last minute?

A. Absolutely.

Q. Isn't that right? But I presume that the inner circle of executives dealing with the bid would have a rough ballpark figure in mind?

A. Mmm, yeah, based on experience.

Q. Yes. It's just that we found it very difficult to find out from anyone what sort of rough ballpark figure was involved.

A. I can't remember. I can't remember.

Q. But you weren't involved at that level of detail, you weren't yourself?

A. Not my own, no, because that is the bid team kept within themselves.

Q. Of course.

A. And as long as they were in the peak funding scenarios, they had the authority to do what they wanted to do.

Q. Of course, I understand that. Just that we can't find out from anybody in the bid team. Is that surprising?

A. No, not necessarily, because that is one of the topics which is the most difficult, because that's when you are taking a risk scenario.

Q. Would you be surprised, though, that you wouldn't have not you, but that a member of the bid team wouldn't have even a general impression of the sort of figure that might have been in their minds with seven days to go?

A. I would certainly think they had, but I can't recall, and I have no figures in my mind.

Q. I understand.

You were then asked about a meeting between Mr. O'Brien and Mr. Kelly on the one hand, Mr. Brennan and Mr. Towey on the other hand, on the 19th June, regarding the postponement of the competition, closing date; and you say you know nothing about that.

Following on from that meeting, there was a letter sent by Mr. O'Connell to solicitors for Advent International concerning this matter, and you say that you knew nothing about that, and you don't believe that anyone else in Telenor had any knowledge of Mr. O'Connell's letter. And again you say, as for the

information contained in the letter, you are unable to assist the Tribunal because you didn't know any of that information.

You were asked about queries raised by the Department at the oral presentation. And you say that you weren't at the oral presentation and you can't comment.

In Queries 20 and 21, you were asked for Telenor's understanding of the precise obligations and entitlements of Esat Digifone and of Communicorp on foot of the agreements of the 29th September, 1995, between Esat Digifone and IIU and between Communicorp and IIU. And also for Telenor's understanding of the precise obligations and entitlements on foot of the agreements between Communicorp and IIU and between Esat Digifone and IIU, together with the source or sources of Telenor's understanding. They seem to be fairly repetitive, these questions.

And you say that your general understanding was that IIU received a contractual entitlement to place 25% of the issued share capital of Esat Digifone and that IIU was to underwrite all of the non-Telenor capital raising obligations.

You were asked about your understanding or Telenor's understanding for which the purpose of the letter of the 29th September from IIU addressed to Mr. Martin Brennan was sent. And you say you did not know about

the sending of the letter until after it was sent.

And again I'll just pause there for a moment, but we'll be coming back to it later, but just to clarify your answer.

I see that you are saying you didn't know about the letter until after it was sent. But even though you didn't know about it until after it was sent, can you tell me whether you were aware of what prompted the sending of it, or whether you became aware after it was sent of what had prompted the sending of it; do you understand me?

A. As I have said several times, I was not in the direct loop of the discussions going on on this, because I had so many other projects which I was dealing on more directly. So when I heard about this the first time, which I think I recall in October, then it was a deed done.

Q. I quite understand that; it was a deed done. But when you heard about it, did you learn anything about why it had been done?

A. No.

Q. You were asked for your knowledge of all contacts between Esat Digifone or any member of the consortium and the Department regarding the involvement of IIU as a member of the consortium, and in particular, the Department's attitude to such membership as recorded in an attendance of Mr. Gerry Halpenny at William Fry

Solicitors dated 21st November, 1995.

And you say you know nothing about that.

You were asked for your knowledge of when Telenor became aware of CS First Boston's involvement in the funding of or the management of the funding of Communicorp. And you say that you have no recollection as to when Telenor was first informed by CSFB; you think you were aware, as CEO of Digifone in April or May of 1996, of this intention, but you cannot say if you knew about it at an earlier date.

Question 25 is again a similar query, concerning CS First Boston, and you say that you weren't you have no knowledge.

Query Number 26 is related to a query to which you have already responded, and it concerns the release of IIU from its obligations on foot of the agreements of the 29th September, 1995, to underwrite the entire of Communicorp/Esat Telecom's equity participation. And you say you weren't involved in this renegotiation but that your general impression was that there was no specific renegotiation and that the shareholders agreement negotiations over took the underwriting arrangements. And you say that you can't say with any certainty, but you assume that Telenor's assumption of an obligation to share with IIU in the underwriting of Communicorp/Esat evolved during the negotiations in relation to the shareholders agreement.

You were asked to provide details of the precise terms in which Telenor and/or IIU provided funding to Esat Telecom to finance its obligation to contribute to the licence fee of 15 million. And you say you were not directly involved.

Again there seems to be a degree of repetition in Query 28, and I think we can say that we have already dealt with that.

And likewise, Query 29.

In Query 30, you were asked to identify all documents furnished to the Department in connection with the rights and obligations of the shareholders of Esat Digifone inter se in advance of the issue of the licence to Esat Digifone on the 16th May 1996. And you say you were unable to identify what documents were furnished to the Department, and likewise, you are unable to identify what documents were furnished to the Department in connection with the project financing of the Esat Digifone in advance of the issue of the licence.

Query 31 you were asked to identify all side letters entered into between the members of the consortium or any two or more of them in September or October of 1995. And you say, based on information now available to you, you believe that in the documents of the 29th September, 1995 sorry, you say that based on information now available to you, you believe that the

documents of the 29th September, 1995, consisted of four documents in total: a letter from Professor Michael Walsh of IIU to the Department; an underwriting letter from Michael Walsh of IIU to Denis O'Brien; the arrangement agreement of the 29th September, 1995; and the side letter containing an assignment to Bottin.

You were asked for your knowledge of all side letters entered into between the members of the consortium or any two or more of them in advance of the issue of the licence on the 16th May, 1996. And you say that you were informed that a bible of documentation was prepared by William Fry, and that this should contain all relevant side letters. You say that you are not aware of any other side letters.

I think that also answers the next query.

Now, on the 14th May of 2002, you provided the Tribunal with a narrative account of the evolution of the shareholding in Esat Digifone Limited. Have you got a copy of that document?

A. I have just got it now.

Q. You say "I was not involved in the preparation of the bid for Ireland's second GSM licence. I had not seen, at the time of the bid, the so-called 'letters of financing commitment' obtained from certain institutional investors. I am unable to make any comment on them.

I am unable to recollect exactly when the proposed involvement of when IIU was first mentioned. I believe that I became aware after the 29th September, 1995, that an arrangement agreement, apparently in draft form, had been signed on behalf of IIU and on behalf of Esat Digifone. I did not know that IIU was involved since August of 1995, as Dermot Desmond has informed the Tribunal.

"This arrangement agreement of the 29th September, 1995, and the underwriting arrangements were not shown to me in advance. To the best of my knowledge, no one else in Telenor was consulted in advance about the signing of the arrangement agreement or any of the arrangement agreements. The arrangement agreements should not have been signed without Telenor's consent.

I was later informed that it was too late to do anything about this.

"I cannot remember ever being informed of or consulted about an apparent arrangement in January of 1996 between IIU and Esat Holdings that IIU was to place 12.6% of the equity in Esat Digifone with Esat Holdings. I was Chief Executive of Esat Digifone Limited when the allotment of shares were made to the shareholders on the 12th and 13th April of 1996. As a result of those allotments, I am aware that shareholding in Esat Digifone was 37.5% each for the two major shareholders and 25% for IIU as the



remaining shareholder.

"At the time, it did not occur to me that the shareholding should have been divided 40:40:20, because I was not familiar with the detail of the bid document.

"Early in May, 1996 possibly as a result of discussions with Arve Johansen, I became concerned about the possibility that Denis O'Brien was cooperating with Dermot Desmond so that Denis O'Brien could obtain majority ownership and control of Esat Digifone. At some point during a meeting with officials of the Department of Transport, Energy and Communications, I mentioned in passing that the shareholding in Esat Digifone was 37.5:37.5:25. The Department of Communications pointed out to me that the proposed shareholdings should be 40:40:20 in accordance with the bid document. Following this, Dermot Desmond of IIU sold the 5%, being 2.5% equally, to Esat Holdings and Telenor for 2.8 million, approximately. The purchase of this 5% was concluded on the 16th May 1996, when the shareholders agreement was between all of the parties on the basis of a 40:40:20 relationship. I do not know how the replacement of Allied Irish Bank, Investment Bank of Ireland or other financial institutions with IIU happened. I have no knowledge of the outline agreement of August 1995. I am not aware of any

agreement of January, 1996, between IIU and Esat Holdings in relation to the placement of 12.6% of the equity in Esat Digifone with Esat Holdings, but I have a vague recollection of having been informed by Arve Johansen that some sort of draft proposal may have been shown to him in early May of 1996.

"Mr. Johansen and I dealt with shareholders issues.

Mr. Thygesen dealt with operational matters, and he was not involved in any of these issues."

If I could just start with one thing, Mr. Digerud, to see if we can deal with it before lunch in case any of my colleagues need to get any instructions in relation to it. And if I could direct your attention to page 22 of the first memorandum, the long memorandum. Have you got that?

A. Yes.

Q. And in particular, to Query 38, where you were asked for Telenor's knowledge, direct or indirect, of all meetings, discussions, dealings or contacts of whatsoever nature between Mr. Denis O'Brien or any other person on his behalf and the Minister or the Department at any time from the first involvement of Telenor in the Esat Digifone consortium to the date of issue of the licence on the 16th May, 1996.

And you say "I have no direct knowledge of any meeting between Denis O'Brien and the Minister". You go on to say, "I was informed, I cannot remember when, probably

by Per Simonsen or Knut Haga, but I cannot be sure which, of a pub meeting between Denis O'Brien and Michael Lowry."

Can you tell me what you were told about that pub meeting, either by Per Simonsen or Knut Haga?

A. I don't think I remember any wording other than that they had met. I wouldn't speculate on anything on that, unfortunately, because this was third- or maybe fourth-party information, so but to me, Denis O'Brien was a person of the character which had all sorts of contacts and was looked upon to be a person who was involved, so it was just one piece of information which I know there has been a lot of discussion around, but I have no recollection of a contact.

Q. When you say to you, Denis O'Brien was a person of the character that had all sorts of contacts, do you mean he'd be dealing with people in many, many different situations? Is that what you mean, is it?

A. That's how he came forward, that he was a hands-on man.

Q. And do I take it, therefore, that when you were told that he had met the Minister in the pub, you weren't surprised?

A. I don't know if I made any connection or any thoughts of that.

Q. But I'm just inferring from the answer you gave me a

moment ago that you felt that Mr. O'Brien was the, was a hands-on man, that was his kind of character, he had many contacts. I am inferring from that that you weren't surprised when you were told that he had met the Minister in a pub.

A. My intention of answering this one is trying to say that I cannot say that I hadn't heard about it, and the timing, I am very unsure of. Whether that has been at a later stage or at that stage, I have no recollection.

Q. I understand.

A. But I cannot say that I hadn't heard it. Because you'd probably ask me whether or not I would be very specific did I or did I not hear that.

Q. I am asking you to be specific about that. Are you being specific that you did hear it but you can't put a time or a place on it? Is that right?

A. That's right. But it could be certainly long after.

Q. Long after?

A. The timing which I now understand has come forward.

Q. Right. The timing that has come forward is that it happened sometime in the last two weeks of September?

A. So I understand.

Q. So are you saying that you didn't hear it close to that time?

A. Most likely that I heard it long after.

Q. Long after. But when you did hear it, it's not

something that surprised you?

A. No, because he had so many businesses on the radio side and on the telecoms side, so it wouldn't surprise me that they had contacts.

Q. And whether you heard it from Per Simonsen or Knut Haga, you weren't informed of this in such a way as to suggest that it hadn't happened; was that it was something that couldn't have happened?

A. I would say that this was just one pieces of information which just passed by.

MR. FANNING: I beg your pardon; I don't know if Mr. Healy is about to move on. It just seems to me the last question was somewhat ambiguous. He didn't ascertain from the witness what his understanding of what it was that happened, and perhaps that should be done before he goes any further.

MR. HEALY: I'll be coming back to it, Sir. I simply wanted to see what I could find out on the basis of the fairly balanced statement in the statement. I'll be coming back to it in a more, if I can put it, chronological context in due course when I look at maybe 10 or 15 documents.

Q. So we'll come back to it again in the context of the timing that you have mentioned that you have just learned about in the course of preparing for this process.

CHAIRMAN: The general nature of the last question and

answer, as I have noted it, is effectively you asked  
was the witness informed in an incredulous manner, and  
he responded that it was essentially just a piece of  
information that passed by. If needs be, it can be  
taken up now.

Q. MR. HEALY: Can I go back now to more general things  
to begin, with Mr. Digerud.

I think you told me a moment ago that around the time  
that Telenor became involved in the GSM2 competition  
in Ireland, you were an executive of Telenor Invest,  
which was a company that was going to get involved or  
put up the money to get involved in this business, if  
you were successful; isn't that right?

A. Yes.

Q. But I take it that the overall umbrella of Telenor was  
going to provide all the real technical input, both  
into the bid preparation and into the business; is  
that right?

A. That's right, that's my understanding.

Q. What was your background in Telenor at that time?

A. My background?

Q. In Telenor.

A. As CEO of Telenor Invest was to search for opportunity  
to invest abroad.

Q. Is your own professional formation, is it on the  
financial side or on the technical side?

A. It's certainly on the technical and operational side.

Q. Technical and on the operational side?

A. Yes. "Operational" in the sense of technical operations.

Q. I see. Does that mean that you had a technical training, or that you have a management training, or both?

A. I have primarily technical background, and has developed management skills related to that.

Q. I understand. That is not uncommon.

At this particular time, and I presume based on your experience of other competitions, you understood that Telenor were engaged in a competition to see could they win a licence?

A. Yes.

Q. In very broad general terms, is that right?

A. Yes, that's right.

Q. And I take it that you understood that winning the competition was only the first step to winning the licence, or to getting the licence?

A. Yeah, the timing between normally that you could have prepared yourself and then he does that, that the licence agreement is just a part of the competition aspects.

Q. Do I understand you to say that in some cases, if you win the competition, the licence agreement is already there, and you more or less have to accept it?

A. That's right.

Q. In this case did you understand that winning the competition would simply put you in pole position to negotiate the licence?

A. That was my understanding, that we could negotiate the content of the licence.

Q. And that winning the competition gave you the exclusive right to negotiate the licence?

A. That, I learnt after I became more involved, when I came over as a CEO.

Q. You weren't officially appointed, I think, as Chief Executive of Esat Digifone until after the competition was won; isn't that right?

A. That's right.

Q. Was that sometime in the latter part of 1995?

A. That became clear it was more in January.

Q. In January of '96?

A. Yes.

Q. And up until that time, did you have an involvement evolving from very little involvement way back in early 1995 to getting closer and closer to a fuller involvement in early '96?

A. Certainly I had to switch hats from being a Telenor representative of running after opportunities and running after operations which we had in several countries, to become dedicated as a CEO of the starting company.

Q. At the time that you became CEO, the company had, I



suppose, two main jobs: firstly, you had to complete the negotiation process?

A. Yes.

Q. You had to get the licence?

A. Yes.

Q. And secondly, you had to get up and running?

A. Yes.

Q. As a company?

A. Yes.

Q. So when you were appointed as CEO, then you were in the unusual position of having to take up where the bid people had left off, and at the same time, get the company up and running as a functioning business enterprise?

A. That's right.

Q. But prior to that, I think you did have an involvement, initially an occasional involvement as '95 wore on; in other words, as you got to the end of 1995, although you weren't formally CEO, you began to have a more intimate involvement. Would that be right?

A. Yeah, that would be right.

Q. You were not involved in the detail of bid preparation at all. I think that's clear from answers, isn't it?

A. That's clear.

Q. And from the documentation, we see very little reference to your involvement at all in the early

stages?

A. Yes.

Q. And I think you said in your narrative statement, you say you were not involved in the preparation of the bid and you had not seen, at the time of the bid, the so-called letters of the financial commitment obtained from certain institutional investors, and you are unable to comment on them. But correct me if I am wrong, at that stage you would have known that Telenor was involved with Mr. Denis O'Brien, as the two lead participants, and that you had the support of financial institutions, the support of the involvement of financial institutions in a general way; would that be right?

A. To be honest, I can't recollect that me, as CEO of Invest, was involved or should be involved in the financing of our other partner. So whatever deals he had or wanted to do was not what I was feeling having responsibility for. I was responsible for the Telenor part and that the funding of the Telenor part was coming up.

Q. I want to bring you up to a period in September of 1995 when you became involved, in September/October 1995 when you became involved, to some degree, in assisting Mr. Haga, I think it was, and Mr. Simonsen, who were reporting to you at that time, isn't that right, in dealings with queries they had concerning

Bottin International?

A. I would say in this way, because Per Simonsen was working for us seconded to the bid team. Knut Haga was seconded as a financing guy to the bid team, as such. And they had connections Knut Haga was reporting to Arve Johansen. Per Simonsen, as an employee, was reporting to me, but they were both seconded to the project.

Q. I follow. Well, I think you have already referred in your question-and-answer statement to your involvement in signing a number of letters concerning Bottin in September of 1995.

A. I signed one letter, which was Knut Haga coming to myself saying that we need to have another signature on this letter to raise the temperature or

Q. That's all I am saying. You were getting a little more involved at that stage, just a little, but at that point your involvement was as a Telenor representative, not as an executive of Digifone; isn't that right?

A. That's right.

Q. Of course, because Digifone was only a company with a small number of shares issued?

A. Mmm.

Q. Are you familiar with a memorandum I'll give the reference to it in a moment of Mr. Arve Johansen which he made on the 4th May of 1996?

A. I have been informed of the letter, or the notes, or whatever you call it.

Q. The memo.

A. At a later stage.

Q. I can refer you to it. It's in Book 49, Tab 130.

Have you got it?

A. Yeah.

Q. Now, this memorandum is dated the 4th May, 1996, and from the documents that have been made available to you, you may be aware that or you may now recall that you attended a meeting on the 3rd May, 1996, with the Department?

A. That's right.

Q. And some of the matters that became clear at that meeting appear to have been referred to by Mr.

Johansen in this memorandum. So because we are going to have to refer to the memorandum at least more than once in the course of your evidence, I am going to just go through it with you, to make sure that you are familiar with it.

A. Okay.

Q. It says "Memorandum on shareholding in Esat Digifone.

"I have below summarised a few points that has become clear to me over the last 24 hours" if I am reading too quickly, just stop me, because most people here have read this many times " I have below summarised a few points that have become clear to me over the

last 24 hours as a consequence of the information acquired regarding Communicorp's attempt to buy back 12.5% of the shares of the IIU shares.

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

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

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

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

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

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

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

"4. The agreement was never signed by Telenor, neither as authorised Digifone signature nor as a shareholder and a party to the agreement. Sometime shortly after this, the Advent commitment to invest \$30 million into Communicorp disappears, as it was essentially not necessary any more, since the

Communicorp liability to pay capital to Digifone was anyway underwritten by IIU.

"5. In hindsight it is quite clear who benefited from this arrangement.

"I have good reasons to believe that the terms put forward by Advent for investing into Communicorp did not suit Denis O'Brien. With the above arrangements that he orchestrated for all other sorts of reasons, he has actually achieved to bolster his/Communicorp's balance sheet and paid for it with Digifone shares at the cost of Telenor. He has done this in an atmosphere of trust, where Telenor has agreed to bridge-finance Communicorp while he raises funds through a private placement in the US.

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

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

"Eventually, the project coordinator from the Ministry Mr. Martin Brennan actually appealed

(off the record) to Telenor to write a letter of comfort that we would serve as a last resort for the Digifone company for funds and operational support. My feeling was that if Telenor had owned it alone, he had been more comfortable than with the current shareholders.

"I think it would be a very prudent thing for Telenor to do especially since we then effectively underwrite the whole project, both Communicorp and IIU, after already having paid Communicorp's price for the first underwriting, which now appears to be useless.

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

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

" IIU apparently has no (or very little at least) money and cannot afford more than 12.5%. The price agreed is a little cryptic, but it looks as though any advances IIU has to make for the disposed 12.5% before



the transaction's effective date (31st May 1996) is seen as cost. It will, if this is the case, serve as a moving target for IIU's eventual gain on the transaction, putting an immense pressure on Communicorp to delay capital calls on Digifone until the US placement is finalised. The return favour from Communicorp is to release IIU from all of its underwriting obligations in Digifone. Does Digifone have an opinion on this, and what about Telenor? This effectively gives Communicorp back its 12.5% of the shares at par (or close to), releases IIU from all of its underwriting liability (which Digifone 'paid' 25% for), and IIU ends up having delivered absolutely nothing, having done nothing but complicated the award of the licence (if we get it at all) but with (some cash? ) And 12.5% of the shares of Digifone which effectively have deprived from Telenor, at the same time as the Department, and our honoured partners, gently ask us to underwrite the whole project.

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

Just bear with me for a moment, Mr. Digerud.

If you just go for a moment now to Book 49, Tab 136.

Have you got that letter?

A. Yes.

Q. Again, this refers to a meeting at which you were present. Can you tell me, did you ever see the letter before?

A. I have seen it in the booklet now over the last few days at least.

Q. Yes, but can you recall, did you see it around the time that it was written?

A. I can't recall it.

Q. All right. We'll come back to that. Again this is part of the overall context that I just want to draw to your attention.

This is a letter from Mr. Johansen to Mr. O'Brien written some six days after the memorandum that I just read out to you a moment ago in which Mr. Johansen refers to a meeting which he attended with Rolf Busch, Arthur Moran, Leslie Buckley, Paul Connolly, Gerry Halpenny and Knut Digerud and Owen O'Connell, on the 10th May, 1996.

If you go down to the fourth paragraph. Mr. Johansen: "The bid submitted by Communicorp and Telenor was based on commitments from Allied Irish Banks and some other parties to be the institutional investors and Advent's commitment to invest \$30 million in Communicorp.

"In 1995 on an unspecified date an arrangement

agreement was negotiated and signed by you alone on behalf of the company, the effect of which was to dilute Communicorp and Telenor's interests in the company from 40% each to 37.5% each and making available to the counter party to the arrangement agreement, IIU, 25% of the company. The purpose of the arrangement agreement was to strengthen Communicorp's ability to finance its obligations in respect of the capital required by the company. The signing of the arrangement agreement was not authorised by any resolution of the joint venture partners."

Now, as I understand it, what Mr. Johansen is saying around this time is that, as far as he was concerned, a bid had been put in to apply for the licence in August of 1995, based on the involvement of Communicorp, on Mr. O'Brien's side, Telenor on your side, and a number of institutional investors, including Advent, Allied Irish Banks, and so on; isn't that right?

A. I was not aware, as I have said before, of the backing of our partner in the bid, because the bid documents never came to Oslo. It was technical information which we provided from Oslo.

Q. These are not the backing of your partner. These were people who were supporting the bid. There was yourselves and Communicorp who were the two main

people driving the bid.

A. Yes.

Q. And then you had it was based also, taking up Mr.

Johansen's words, I just want to make clear that you

understand it based on commitments from Allied

Irish Banks and some other parties to be institutional

investors. Do you understand that? And then

separately, Advent's commitment to invest 30 million

in Communicorp.

A. There should be a placing at a later stage.

Q. Now, by Mr. Johansen is, in this letter, and in the

memorandum I mentioned a moment ago, focusing on

changes that occurred which introduced a new party;

isn't that right?

A. Yeah, I wouldn't speculate on what Arve Johansen is

writing in this letter, unfortunately, because at that

time I was not involved in these discussions, and I

was entirely focusing on the development of the

company.

Q. Right. Could we go back then we may have to come

back to that later. If we just go back to when you

first became involved, I think, which was in 1995,

late 1995.

Now, could I ask you just for a moment, in light of

something that you said in your question-and-answer

statement, could I ask you for a moment to turn to

Leaf 60 of Book 48. And we'll be referring to a few

documents from Book 48, so you can stick with Book 48 for a while. Have you got it?

A. Yes.

Q. The first document that you have in front of you is a draft of a letter from Mr. Michael Walsh to the Department of Transport, Energy and Communications, dated 25th September, 1995. Do you see that?

A. Yes.

Q. That is a draft of a similar, but not quite, I think, identical letter, ultimately written on the 29th September, 1995; we'll come to that letter later, but if you go on to the next page for a moment.

The next page is a letter or a fax letter on Telenor International notepaper from Mr. Per Simonsen to Mr. Gerry Halpenny concerning the arrangement agreement?

A. I am not able to follow you.

Q. I am sorry, I beg your pardon, I've gone on to another tab; I am sorry. Tab 63, I beg your pardon.

Have you got that document?

A. Yes.

Q. As I said a moment ago, you can see it's a telefax on Telenor International note from Per Simonsen to Gerard Halpenny in William Fry Solicitors. And I am not going to refer to the letter which preceded it and which seems to have prompted it, but you can see that Mr. Simonsen is writing, saying, "Dear Gerard, referring to your draft arrangement agreement of

Thursday night, we have the following comments:" Do you see that?

A. Mmm.

Q. And there are a number of comments on that page and on the next page concerning that agreement. And I simply draw that to your attention so that you'll understand maybe you didn't when you were doing your statement that Telenor appear to have been aware of the arrangement agreement prior to the date that it was concluded; do you follow?

A. Yes, that might be so, but I am sorry, I can't comment on it because

Q. I am not asking you to. Just so that we are both ad idem about something that you seem unclear about in your statement. You seem to suggest, I think, that Telenor weren't aware of the arrangement agreement; whereas this document would seem to suggest that Telenor were aware of it in advance of the 29th September, 1995; do you see that?

A. Yeah, but that was not my knowledge.

Q. I appreciate that. Of course I understand that. Now, you know, I think, both of your own knowledge and from information that has been brought to your attention in the course of preparing for this process, that ultimately a letter was written on the 29th September, 1995, to the Department, to Mr. Brennan in the Department, referring to a role for IIU; isn't that

right?

A. Yeah, that has come to my attention.

Q. At or around that time in the week of the I suppose the 15th to the 22nd, and in the week of the 22nd to the 29th, there was a lot of activity which ultimately led to the involvement of IIU in the consortium; you are aware of that? You are aware of that now, anyway?

A. Now I am aware of it, yeah.

Q. I am just trying to find out what awareness you had, even if it was only even if it was only a remote awareness at that time of the fact that somebody new was coming aboard.

A. First of all, I have tried to think through several times what I did in that period. We had so many projects, so just thinking of the 22nd meeting with Sjern Malm, who was one of my people to be involved, and he was out of the project, he would certainly have brought me into the loop, if that was the intention, and what I understand now, Denis came on the surprise meeting and quickly arranged travel. And I was out of the country, and so I had no knowledge of that, so the first I really got was when coming home, and it was addressed to me when this letter I had to sign from Knut Haga who came to me and said, "We need your signature on the letter"; that was related to something different.

That was when I was aware, got aware of this

situation.

Q. We'll pull out one of these letters, I think. For a moment, if you go to Book 48, Tab 72, do you recognise a letter from Mr. Haga to Mr. Denis O'Brien?

A. Yes.

Q. Seeking information concerning Bottin; do you see that?

A. Yes.

Q. And then if we go on to Tab, I think it's Tab 75, you see a letter, this time signed by you, and addressed to Mr. Michael Walsh; do you see that?

A. Yes.

Q. Can I take it that at the time you must have read the letter, in any case?

A. Yeah, Knut Haga prepared the letter and I most likely read it, and he explained to me the whole situation.

And I had no detailed knowledge of it; I couldn't see any wrongdoing in sending this letter.

Q. Okay. So if we look at the first paragraph, where you say, "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 Limited. We appreciate your underwriting of the Irish side of the bid and sincerely hope that this step will remove any doubt within the Ministry about our consortium's financial capabilities and commitments in the race for the



second GSM licence."

So the introduction to the letter was quite frankly welcoming Mr. Walsh aboard, Mr. Walsh's company aboard.

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

Date of foundation.

Owners.

Board of directors.

Balance sheet as of the 30th June 1995

Annual reports for the last three years.

You ask for the information to be forwarded to Knut Haga, Per Simonsen or Arthur Moran your solicitor.

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

So at that stage you presumably were told that IIU was a new party that had come aboard?

A. That was my understanding, that they should take a role as party who should place whatever shares we decided to place.

Q. But did you understand that they had come aboard for a 25% shareholding at that time?

A. Not necessarily.

Q. You were aware from the memorandum or you are aware now from the memorandum of Mr. Johansen that I read out a moment ago, that that that Mr. Johansen at that time had to accept a dilution of Telenor Invest's interest in the consortium from 40% to 27.5%.

Wouldn't you have been made aware of that at this time, in September/October of 1995?

A. I don't think I fully understood the consequences of this, because my understanding was that Telenor should dilute at some stage from 50% down to, at the minimum of negative control; that was my set ups and my understanding. Whatever happened in between that, that was dealt with by Knut Haga and eventually Arve Johansen, and they dealt with that.

Q. I take it you must have known that what was planned or envisaged was that Telenor would dilute its holding in time, but that it would do so by disposing of its shares on the market, isn't that right, and that this would happen over a period of years?

A. Yes, to a certain price, yes.

Q. That wasn't what happened here?

A. No. That's what I understand now.

Q. But you didn't understand that at the time?

A. No.

Q. I see. Well, again, maybe you'd fill me in on this a little: What was your relationship to Mr. Johansen, you know, in terms of the relationships between executives in Telenor at the time? Was he your boss?

A. Yeah, he was the Chairman of my company, of the Invest.

Q. And you were the Chief Executive?

A. Yeah.

Q. And your company had a 40:40:20 deal with Mr. O'Brien, and that was now being changed to 37.5:37.5:25. Isn't that something that you'd expect him to have brought to your attention?

A. Yeah, that would probably be, but looking into the operation we had at the time, we were very small company which had I think 15 people, probably including secondment from international and other places, and we had operations in Russia, Hungary, Baltic states, and we were dealing with three or four different bids at the time, including Montenegro and Greece.

Q. Do you understand the expression "Having your eye on the ball", do you?

A. Yeah, but I also had people who I trusted, and if something comes up and but on this particular case,

when it was in the hands of Arve Johansen, that was good enough for me.

Q. I see.

CHAIRMAN: I think we could leave it there till ten past two, Mr. Healy.

We'll take up your further evidence, Mr. Digerud, at ten past two. Thank you very much.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF KNUT DIGERUD

BY MR. HEALY:

Q. MR. HEALY: Thank you, Mr. Digerud. Can I just ask you for a moment to turn to page 31 of your question-and-answer response.

A. You said page 31?

Q. Page 31, please, yes.

You see at Question 11 you were asked for Telenor's understanding as of the 4th August of the status of Telenor's involvement as a party to the bid, having regard to the failure of Advent International to provide a letter of comfort acceptable to Telenor.

And secondly, your understanding of the funding available to Communicorp as of the 4th August 1995 to finance its 40% equity participation in Esat Digifone.

And your response is "I do not believe that the status of Telenor's involvement as a party to the bid was ever the subject matter of discussion. I do not

believe at the time that I was copied with all the correspondence between Knut Haga and other parties."

Then you go on to say: "It is a matter of inference, but I believe that the support of Advent would have been immediately available if a favourable decision was made to award the licence to Esat Digifone." Do you mean by that that whatever difficulties there were between Communicorp and Advent about trying to tie down finance, if the licence was won, that Advent would have immediately taken the opportunity to get involved and to put up the money?

A. Yeah, that will be the understanding of it, because when you have got the licence, then it's very often likely that you are much more appreciated coming to the bank or whoever.

Q. So you didn't see this as a big problem then?

A. No. The bid process is always difficult, but when you get the licence, then of course things looks bright.

Q. But you didn't see Advent as a problem; you felt it would be sorted out if the licence was won?

A. They were one of the biggest investors in telecoms which I knew of.

Q. I want to go back now to the letters, the Bottin letters, and related matters that we were discussing this morning, and I drew one of these letters to your attention. I drew the letter that Mr. Haga had written to your attention, and then I drew to your

attention the letter that you had signed, of the I think the 12th October, 1995, addressed to Mr. Michael Walsh, in which you indicated you urgently required certain information. Do you remember that I think you signed another letter at a on the same day, presumably, addressed to Mr. O'Brien. You'll find it at Book 48, Tab 78, in which you expressed similar sentiments.

If you look at the second paragraph, where you say "We sincerely hope that the IIU underwriting will strengthen the financial credibility of the bid.

However, we were surprised by the side letter agreement, especially clause 2, assigning the arrangement agreement to Bottin International. I have therefore asked Michael Walsh to provide detailed information on Bottin urgently."

A. Yeah.

Q. Now, you say that the background to those letters would have been explained to you by Mr. Haga or Sjern Malm, or whoever was asking you for your signature?

A. Yeah, that will be the case.

Q. Could I ask you to turn for a moment to Tab 68 of Book 48. Do you see a letter from Arve Johansen to Denis O'Brien of the 2nd October, 1995, do you see that?

A. Yes.

Q. Are you familiar with that letter?

A. I read it afterwards, certainly.

Q. When you say you read it afterwards, do you mean you read it around the time it was written but after it had been written?

A. After.

Q. Do you mean that somebody brought it to your attention?

A. As I said, I was in and out of the office all the time, so in that sense, those two, Per Simonsen and Knut Haga, were running these. And sometimes they came to me and sometimes they went to Arve Johansen.

Q. But I suppose this letter is the kind of letter that would put you in the picture as to what had happened in relation to IIU, isn't it?

A. It probably should, but I don't have any recollection of that particular letter.

Q. I appreciate, I am not expecting you to have a recollection if you were involved in other things at the time. But you were the Chief Executive, and one assumes that the Chairman wouldn't normally be involved in negotiations like Mr. Johansen was involved in with Mr. O'Brien. But if he was involved in such negotiations, surely one would have expected him to keep you up to speed?

A. I think you should be aware that we had some sort of an understanding that we were filling in of each other when we were out travelling. Mr. Johansen was very much hands on, and particularly on this project.

Q. I fully understand that if you were away, he would take up a more executive role as opposed to a pure Chairman's role; is that right? Is that what you are saying to me?

A. That's what I am saying to you. And also Mr. O'Brien always, as he would be the Chairman, he would address things to another Chairman. So that was why the connection between himself and Arve Johansen.

Q. I fully understand that. But at the same time the chief executive has to know what his company is doing, doesn't he?

A. Yes, but I didn't see anything problematic related to my role as the CEO.

Q. I am not saying there was. I am simply saying that while you mightn't remember this letter, doesn't it seem reasonable to suppose that somebody showed it to you to put you bring you into the picture, to show you what was happening when you were away? Because this is the letter that would explain to some extent what had happened in the last two weeks of September; isn't that right?

A. Yes, but I am not denying that I, in early October, became aware of what was happening.

Q. So that point, whenever you got that letter, and whatever other information you had at the time, you would have known that you now had a new partner on board IIU?



A. Yeah.

Q. And you knew that Knut Haga had written a letter to Mr. O'Brien looking for information about Bottin, and, you, yourself had signed a letter of the 10th October the 12th October seeking similar information, a letter addressed to Mr. O'Brien and another letter addressed to Mr. Walsh; isn't that right?

A. Yes.

Q. And in your letter you had, as it were, raised the temperature a little, because it was the Chief Executive or the managing director who was now writing the letter; isn't that right?

A. That was Knut Haga's intention. And I referred all back to them, to Knut Haga and Per Simonsen, because they were supposed to deal with it onwards also.

Q. You never got a response to any of those letters; isn't that right?

A. Not that I am aware of.

Q. And did it cause you any concern that you didn't know who this other third party was, and that you weren't getting any information either from the third party or from Mr. O'Brien?

A. I think because I was again out travelling, and when we were in the US, we were called up and we were told that we were the winning consortium. I think that evaporated from my brain.

Q. Who is "we"?

A. Arve Johansen and myself.

Q. But you were told "we were the winning consortium," yourselves, Communicorp and IIU/Bottin, who were they?

A. At that time, I think I got the message that we were the winning, and that was from Per Simonsen. I didn't I didn't think of whatever party that should be consisting of.

Q. I am just asking you a general question now. Isn't it right to suggest that at this time, or even at the time that you were told you had won the competition, that you didn't know who your other partner was? You couldn't find anything out about him?

A. Well, the IIU was mentioned, but we struggled with the side letter of Bottin. That's my understanding of Knut Haga's message to myself and triggered the letter, but after that, my understanding was that okay, now we have got the information being the winning team, then something extra will happen; we have to sit down and find out what do we do from now. That's a normal business way of thinking.

Q. Are you aware from the evidence and you may not be aware of that this but are you aware that Mr. Denis O'Brien said that as far as he was concerned, Mr. Dermot Desmond was on board, and it didn't matter whether he came in as Bottin or IIU, it was simply Mr. Dermot Desmond, and the vehicle wasn't important?

A. I am not aware of that.

Q. Are you now surprised, in retrospect, that somebody like Mr. O'Brien didn't write back to you and say, "Don't worry about Bottin, don't worry about IIU, it's just Mr. Dermot Desmond; it doesn't matter what vehicle he is going to use".

A. I would say, for me, as the executive of the company who was to invest in that, we were considering and discussing what would be of our role in this concept.

I would say that I was recognising this to be a local discussion. We were coming in as technical partners.

We were investing, according to shareholding. Whether or not we had 40%, 37.5%, we couldn't obtain more than 50%, and we were fully aware of that. The only concern we had was if we had less than 34% coming under negative control. That was my way of thinking.

Q. But do you understand my question, Mr. Digerud; are you now surprised, in light of what I have just told you the evidence is, that Mr. O'Brien didn't reply to you at the time you wrote that letter in 1995 and say:

"Don't worry, it's just Dermot Desmond, and the vehicle he is involved in doesn't matter"?

A. No, not necessarily IIU, but

Q. No, but are you now surprised that you weren't given that answer at that time?

A. No.

Q. You are not surprised?

A. No.

Q. Could I ask you to look at Document the documents in Tab 74 of Book 48, please. Do you see that that is an attendance note of Mr. Arthur Moran's? Mr. Simonsen has told us that it was probably his first contact with Mr. Arthur Moran, to brief him on what Telenor's business in Ireland entailed. Have you seen that document before?

A. What do you mean by "before"?

Q. Well, did you see it at the time, or would you have you mightn't have seen it

A. Not at the time, no.

Q. You mightn't have seen it on the 10th October '95, of course.

A. Part of this process, not at that time.

Q. You saw it as part of this process?

A. Yeah, coming from

Q. Do you remember being involved in any dealings with Mr. Moran around this time or being in receipt of any reports of Mr. Simonsen's dealings with him?

A. No, the only recollection I have was that we needed a local representation through a soliciting firm.

Q. Could I ask you to look at Tab 76 in Book 48. This is a letter by fax from Mr. Arthur Moran to Per Simonsen, and it seems to be based on the first meeting between Per Simonsen and Mr. Arthur Moran, but there is a reference to "Bottin" in it, and to the arrangement

agreement. Can you tell me whether you saw this document before you became aware of it in the course of this process?

A. I did not see it at that time. And I am just thinking of if Arthur Moran's handwriting was on the other one, this is not the same, is it?

Q. Maybe you could just explain what you mean.

A. That this document, is that the same handwriting as the other one?

Q. I don't think it's the same handwriting

A. This is from the same company; fine.

Q. I think, Mr. Digerud, that that document that you just referred me to, which is at Tab 73 of Book 48, appears to be related to the document that is at Tab 74, because the information seems to be the same; but I don't know whether it is I don't think it's Mr. Moran's writing. It might be Mr. Irvine's writing because he was also at the meeting, as far as I can see.

A. Okay.

Q. But in any case, you don't recall seeing the document of the 12th October, 1995, before it was brought to your attention in the course of this process?

A. No, I didn't.

Q. Now, could you go to Tab 80A of Book 48. This is a memorandum from Amund Fougner Bugge to Rolf Busch, Per Simonsen and you; do you see that?

A. Yes.

Q. Dated 27th October, 1995. Starting off by congratulating Invest and Per Simonsen on the award from the Irish authorities; do you see that?

A. Yes.

Q. Can we take it, as it's addressed to you, you would have got a separate copy of it at the time?

A. Yeah, I would probably have got a copy.

Q. Do you see that in the first under the first heading, it deals with the licence and indicates that before the licence can formally be awarded, that there would have to be a round of negotiations.

In the second heading, there is a reference to the need to organise the shareholders agreement.

Then the next heading is "Financial security for Communicorp's obligation to capitalise Esat." And the first item is "The problem."

What Mr. Bugge says is: "Communicorp has limited capital resources. At the time of the delivery of the bid, a crucial point for Invest was to make sure that Communicorp will manage its obligation to capitalise Esat. The capital need of Esat was calculated to be IR£124 million, of which the equity shall represent 58.33 million. 10 Norwegian kroner to the Irish pound. Considering that Communicorp's original owner share was 50%, the company would have to raise approximately IR£29 million. It was a presupposition

that Communicorp's ownership share should be reduced to 40% and then to approximately 34%. Communicorp's financial contribution would still be significant in relation to the company's resources."

It then goes on to refer to the offer to Communicorp from Advent International.

"Invest principally wanted a bank guarantee for Communicorp's financial obligations but had to accept security of a lower degree. Communicorp received an offer for financing from the fund Advent International plc, which owns 34% of the shares in Communicorp.

Communicorp considered the offer to be unfavourable.

The offer was not accepted by Communicorp, but

Communicorp committed itself towards Telenor to accept

it if financing on more favourable terms could not be

achieved. We do not know whether the offer from

Advent is enforced today.

"The agreement between International Investment and Underwriting and Esat" is the next heading:

"After delivery of the bid, Communicorp as has

achieved financing from International Investment &

Underwriting Limited (IIU) of altogether 25% of the

shares and the share cap at the moment. The financing

obligation is in this case not towards Communicorp but

directly towards Esat. The agreement between Esat and

IIU (the arrangement agreement) seems to give Telenor

significantly better security for the capitalising of

Esat than the above offer from Advent and is as such relatively assuring. The agreement was signed by Denis O'Brien, CEO of Communicorp and Chairman of Esat on behalf of Esat, but Invest has accepted the agreement orally. IIU guarantees in the arrangement agreement to get hold of up to four shareholders who shall subscribe for the 25%. If IIU does not manage to find such subscribers, IIU will have to purchase/subscribe for the shares itself.

"As a consequence of IIU's underwriting for 25% of the shares and the share cap at the moment, each of Invest and Communicorp have agreed to reduce its shareholding to 37.5%.

"Under the arrangement agreement IIU also guarantees for the 37.5% of the share capital which Communicorp shall raise. IIU's guarantee is limited to a total equity need in Esat of  $\frac{1}{2}$ IR58.33 million. Under the arrangement agreement, IIU issues guarantees 25% plus 37.5%, equal to 62.5% of the capital need in Esat, limited to an accumulated capital need of 36.5 million. Invest has, as mentioned above, accepted this agreement."

"Is Communicorp obliged towards Invest to ensure financing of the same quality as the financing offer from Advent represented?"

"D." That seems to be sorry to recap for a moment; that seems to be a question related to "C". Do you



understand me?

A. Mmm.

Q. "D. Two points of unsecurity.

"Unsecurity relates to particularly two circumstances.

"First, we have not obtained very much knowledge of the guaranteeing party, IIU. The company was incorporated in 1995, and its credibility rests completely on its owner, Dermot Desmond. He is a financier and has made his Fortune on stockbroking and has, broadly speaking, been behaving well. He is said to have acted illoyally vis-a-vis the Irish authorities once before. This supposedly happened relatively long ago, so the authorities' confidence in him is now presumed to be relatively good.

"Second, insecurity has arisen in regard to the guarantee from IIU because of the so-called side letter to the arrangement agreement. This is an amendment agreement between Esat and IIU. The side letter was signed on behalf of the Esat by Denis O'Brien. Under the side letter, IIU assigns its position under the arrangement agreement to Bottin Investments Limited. According to O'Brien, Bottin is a wholly-owned subsidiary of IIU. Bottin is, however, not registered, and it has proved difficult to find reliable information about this company.

"E. Investigation from Invest about information.

"On 6 October this year Invest sent a letter to Denis

O'Brien in which it asked for information of when Bottin was registered, the company's owners, the composition of the board, the balance of 30 June 1995 and the annual reports for the previous three years. In a letter from Invest to IIU of the 12 October, IIU was asked to present the same information. In addition Invest asked O'Brien, in a letter of 12 October, for a confirmation in writing that there are no agreements between Communicorp or O'Brien on the one hand and any company controlled by IIU or Dermot Desmond/Michael Walsh on the other.

Up until now Invest has not had an answer to any of these letters. The representatives of Invest are not convinced that they will receive any of this information before they sit down to negotiate with IIU/Bottin and Communicorp."

"Further actions.

"If the assignment of IIU's contractual position to Bottin means that Invest, in reality, has no guarantee for the 62.5% of the capital of Esat. This will constitute a clear breach of Invest's premises for entering into the arrangement agreement.

"The worst scenario is that the guarantees are now without content. In such case Invest may claim that Denis O'Brien was not entitled, on behalf of Esat, to assign Esat's contractual position (the articles of incorporation, Article 24, "Borrowing Powers").

Invest might therefore claim that Esat is not bound by the side letter.

"In addition, IIU has sent a letter to the Irish authorities in which IIU verifies the guarantees related to Esat. The transfer of the contractual position must at least constitute breach of such confirmation. According to the Irish lawyers engaged by Invest, the assignment may be considered as a breach of so-called good faith towards the authorities, but not a legal breach.

"The question is how strongly we shall react. Neither Invest nor Telenor wants to withdraw from the Ireland project now. If Invest does not receive soon acceptable answers from IIU or O'Brien seems correct at least to supplement the letters sent by Invest to IIU to O'Brien with stronger demands for information. As the licence has now been awarded to Esat, we must trust that it will show possible to obtain information from IIU and O'Brien by entering into direct negotiations with them.

"Invest is also under strong pressure from Communicorp and Denis O'Brien. He wants Invest to reduce its ownership share in Esat. Invest refuses to do so, in part to keep its influence and in part to keep its part of the potential profit related to the shares in Esat as long as possible.

"The relationship between Telenor on the one hand and

Communicorp and IIU on the other may end in a deadlock situation either because of the discussion regarding the ownership shares or because of IIU's assignment of its contractual position to Bottin.

"It is of great importance that we now also obtain full clarity with regard to all financial obligations and guarantees."

"Final negotiations of the shareholders agreement".

"Invest has asked us when the shareholders agreement should be finally negotiated. In light of the licence now having been awarded to Esat Digifone, I presume that the answer to this question must now be clear.

The agreement must be negotiated and finalised as soon as possible. The task consists of clarifying the points which remain after the negotiations in August and to adjust the agreement to a three-party agreement following IIU's entry to the consortium.

"Invest's Irish lawyers shall adjust the draft shareholders agreement to Irish law. It is also our intention that they shall join the final negotiations at the agreement.

"Practical development of the project:

"I have understood that Invest received a number of offers for deliveries of technical equipment well within the deadline on Monday 23 October. Esat's obligation to reach 80% GSM coverage in Ireland within one year, I assume the company should enter into the

necessary and relevant agreements as soon as it has

had an overview of the bids."

Can you remember receiving this document or what your reaction to it was at the time?

A. Yeah, I certainly have seen the document before, I can't recall exactly when, but my reaction would probably be the letter would express his views on the legal situation, and he actually gives also comments to what should, what should happen in the future, i.e. sit down and negotiate.

Q. Sit down and negotiate what?

A. Shareholders agreement. And that's the businessman's attitude to it. We sit down and see what situation are we in. We have won the licence; what do we do now?

Q. Were you concerned at all about his reference to the fact that there might have been a breach of good faith with the Department?

A. Yeah, but when it said also there is no legal breach, then I was probably not that concerned. But the licence had been announced, so the Department hadn't my understanding now is that they hadn't made any reference to it.

Q. Well, they didn't know, Mr. Digerud. That's the whole point. That's what Mr. Bugge is saying. The Department don't know about Bottin. That's what he is saying.

A. Bottin?

Q. Mmm. That's what he is telling you.

A. Then I misinterpreted what you are saying.

Q. Well, do you remember at the time wondering whether you should repair the breach of good faith with the Department by telling them about Bottin?

A. I was not hands-on on this subject.

Q. You went to a meeting on the 9th November, didn't you, the one you have mentioned to me already?

A. Mmm.

Q. And you were present with all of the people on the Esat Digifone side, on the one hand, and all of the Department people on the other hand; isn't that right?

A. Mmm. Yeah, that was some sort of a kick off, first meeting with the Department, as I recall.

Q. And up to that time your own lawyers in Dublin had mentioned to you that there might have been a breach of good faith, and your company in-house lawyers had also drawn this to your attention. Did you not think that you might tell the Department, "Look, there is something here we haven't told you about"?

A. No.

Q. And were you happy to let the Department

A. Sorry?

Q. Were you happy to let the Department be ignorant or to keep them ignorant about what the true position was?

A. I don't think I understood full what this actually meant in practical terms.

Q. If you go to Tab 86 of Book 49. Do you see that that is another memorandum of Mr. Arthur Moran's of the 9th November, 1995? That was the same day that you went to visit the Department. If you go down about halfway down the page, you'll see a note that begins "IIU are Department aware?" Do you see that?

A. Yes.

Q. Then underneath that "Yes 29/9/95 letter to the Department. Department replied that letter not taken into account. Copy to be supplied to us."

Now, at that meeting you were discussing the level of awareness of the Department of what was happening; isn't that right?

A. Yes, that IIU were involved.

Q. Yes, but your solicitor is discussing the and you, you're discussing the state of knowledge of the Department?

A. What's your question?

Q. Were you not concerned at that time that there was other information you had concerning Bottin of which the Department were not aware?

A. No, I don't recall. I was coming in for a day's meeting. Per Simonsen, Knut Haga was there; this was their discussions.

Q. Yes, but Mr. Digerud, you were involved in a process

involving getting a licence from the Irish Government.

A. Yes.

Q. You were involved in a process which involved good faith, didn't it weren't you?

A. Yeah, but that was not in the intention of myself that this was a breach of any contract or any wrongdoing in the sense of the documentation.

Q. But hadn't your own in-house lawyer told you that there was nothing illegal about it, but there was a breach of good faith, and hadn't Mr. Moran said the same to you?

A. But I am not a lawyer, so I couldn't

Q. Lawyers don't need to know anything about good faith.

It's businessmen need to know about good faith. Good faith is telling a man on the other side about the equation, the full facts, isn't that right.

A. That was their interpretation, wasn't it?

Q. But are you certain that at that time, in your own mind, you felt there was no need to tell the Department about Bottin?

A. Bottin was not an issue, as I can recall it, at that time.

Q. But it was the only issue that you had been involved in up to that time, in terms of the letters you signed; isn't that right?

A. I was given a letter which Knut Haga was dealing with, together with a lot of other projects coming in,



"Please can you sign this; I need another signature",  
and I signed it. I was not involved in details of  
this process. And if I don't trust my people to do  
the right thing, and I trusted the people, so I signed  
it, but the full understanding and awareness of the  
details, I didn't have.

Q. Could I ask you to go to Tab 109 of Book 49. Have you  
got that document?

A. Yes.

Q. You weren't involved in this document, as far as I can  
judge, Mr. Digerud. It's a memorandum to Mr. O'Brien  
from Mr. Owen O'Connell and Paul Connolly, but it's  
about Esat Digifone, and it's about how the  
shareholdings in Esat Digifone would be presented to  
the Department and how the Department would be  
informed or what wording would be used to inform the  
Department

CHAIRMAN: Sorry, Mr. Healy, I think the description,  
I think it was from Mr. O'Toole; it was copies to be  
sent to Mr. O'Connell and Mr. Connolly.

MR. HEALY: It was Mr. O'Toole to Mr. Denis O'Brien  
with a copy to Mr. O'Connell, of January 16th.

Q. And in the third paragraph, there is a reference to a  
line to be worked out by Owen O'Connell and Padraig  
O'hUiginn to be consistent with the bid document in  
describing the shareholdings and the identity of the  
shareholders in the Esat Digifone consortium or in the

company they were going to set up to run the GSM2 business. I just want to know, were you, as it were, brought into the loop on these discussions?

A. No, absolutely not.

Q. Were you aware at that time that there were discussions going on with a view to explaining to the Department or with a view to working out how you would explain to the Department how IIU became involved?

A. No.

Q. Now, could I ask you to go to Leaf 128, or Tab 128 of Book 49: This is a note of Mr. Owen O'Connell's of a

meeting that took place in his office on the 3rd

May sorry, a meeting which took place in the

Department on the 3rd May which was attended by you,

by Peter O'Donoghue, Mr. Johansen, Mr. Walsh, Mr.

Connolly, Mr. Brennan, Mr. Towey, Ms. Finn and the

last name is Eanna; that should be Eanna O'Conghaile.

Now, I'll try to put this meeting in context for you

in a minute, but maybe I'll just go through the note

first. What you have here is probably a printed copy

of the handwritten version of the note, which makes it

easier to read.

It goes as follows: "Clear a political football." Do

you know what that refers to?

A. No.

Q. "Identity of each shareholder legal and beneficial ownership." That seems clear, doesn't it?

A. Mm-hmm.

Q. There was a discussion about identifying each shareholder and their legal and beneficial ownership.

Underneath that, "Esat Digifone changes relative to bid." That's fairly clear, isn't it, what changes were there in Esat Digifone compared to those compared to the bid; do you see that?

A. Yes.

Q. Underneath that, "Change in institutional investment"; the institutional investment proposed originally was AIB, IBI, Standard Life and Advent. It says "Replacement of Advent and Davys by IIU". Do you see that?

A. Yes.

Q. "Need detailed information/quality/about IIU", a request for information about IIU.

"Confirmation that Telenor is the same as at bid date."

"Differences (in detail) as to expertise and asset strength between Communicorp and Esat Telecom Holdings". That is because I think there was a proposal that Communicorp's interests would be taken by Esat Telecom Holdings; do you remember that?

A. Yes.

Q. "Numbers re IIU"; I think that's a reference about information from IIU.

Underneath that, "Telenor 'backdrop' statement as

operator as last resort." Do you know what that means?

A. In hindsight, yes.

Q. When you say "in hindsight", what do you mean?

A. When I see it now.

Q. I see. Do you remember, at the time, the discussion?

A. Yes, I was in the meeting, and there was certainly some discussions going on related to the ownership, that's for sure.

Q. There seems to be an intervention by Mr. Johansen:

"That's the way we'll see it anyway 'we'll never abandon this one'.

"Not requesting statement, but would be helpful per MB".

Would you agree with me that that seems to indicate that Mr. Brennan wasn't requesting a statement to that effect, but felt it would be helpful if Telenor indicated that they were going to stand behind the whole project?

A. Yes.

Q. Underneath that, then, "Project finance POD", probably indicating that Mr. O'Donoghue mentioned it was going to be bank 60/equity 40.

Then "ABN and AIB appointed co-providers." That would refer to the loan finance.

"i½25 million bridging committed.

"Thought to presentation. More the better provided

agreed in advance".

That seems to be a reference to how you'd present the consortium and what it planned to do at the time of the award of the licence; isn't that right?

A. It looks like that.

Q. Underneath that, "Better than 50% chance that Commission will send us Persona complaint; Department would already have replied and would like us to coordinate the response".

That's a reference to the Persona complaint to the Commission. Seems clear enough.

Underneath that, "When Telenor and Esat began to talk?"

In other words, a question, when did they begin to when were they introduced to one another and when did they begin to come together as a consortium?

A. Mm-hmm.

Q. Now, maybe I could refresh your memory about what might have happened at that meeting, if I ask you to turn to, once again, to Tab 130 of Book 49.

If you go to paragraph 6 of Mr. Johansen's memorandum, which was made the day afterwards, do you see the second paragraph, where he says: "In the meeting with the Department of Communications, Friday May 3rd, it came evidently clear that IIU was not a favourable name from a 'Irish public' point of view". Does that help you in explaining in any way some of the things

that were said or that happened at the meeting?

A. I cannot recall that that was really an issue at the meeting.

Q. That was really what?

A. Not an issue at the meeting. I can't recall that.

Q. Mr. Johansen seems to have thought this was an important issue, doesn't he, judging from his memorandum?

A. Yeah, it seems like that.

Q. And isn't it likely that Mr. Johansen's reference to that language being used at the meeting is a reference, perhaps, to the words "Clear a political football" in the memorandum in the attendance of Mr. O'Connell? Isn't that right?

A. I don't think I can comment on that.

Q. You can't remember?

A. No. And it's Owen O'Connell's way of explaining it

Q. That's Owen O'Connell's way of explaining it, and I have given you Mr. Johansen's way of what I think he is explaining and what I think is the same thing.

A. My focus was somewhat different.

Q. I see. In what way?

A. That was I was operational in Digifone to get the network out and get the licence.

Q. I see.

If you go on to the next line of Mr. Johansen's note:

"On the contrary, the Ministry basically asked for

help for how to explain why we had substituted Advent, Davy Stockbrokers and the other recognised, named institutional investors in the bid". Do you remember that?

A. I can't recall the details of this by reading this. I think this should be addressed to Arve Johansen.

Q. Okay. Well, maybe I'll just refer to you a letter that you signed around the same time that may help to stimulate your memory.

Could you go for a moment well, I won't ask you to go, because you'll have to juggle too many books; I'll just get the letter of the 1st May, 1996, Tab 203 of Book 44 on the overhead projector, and you can say where you are in our book so that you can look at both things at the one time.

Now, that's a letter to Mr. Owen O'Connell from Mr. Martin Brennan, in which he refers to Mr. O'Connell's letter of the 17th April 1996 concerning the restructuring of certain ownership interests in Esat Digifone. I think you are getting a copy which might help you. A hard-text copy.

A. Okay.

Q. If you read that letter, it says "In accordance with the requirements of the GSM competition documentation, Esat provided ownership details which indicated that at licence award the ownership would be as follows:

Communicorp Group Limited 40%, Telenor Invest AS 40%,

institutional investors 20%. The application also provided details of the ownership of the operational partners and identified the probable institutional investors and the broker who would be responsible for placement of equity with institutional investors. In the case of Communicorp, it was indicated that it was 66% owned by an Irish investor (Mr. Denis O'Brien) and 34% by Advent International.

"In view of the information contained in your letter of the 17 April, 1996, it would be appreciated if the following could be clarified:

" the nature of any differences between Communicorp Limited and Esat Telecommunications Holdings Limited in relation in particular to expertise or asset strength and

" full details of the ownership and categories of all shares of Esat Telecommunications Holdings Limited including in particular by persons other than the owners of Communicorp.

"It is essential that the Department can identify precisely any changes in the effective ownership (both direct and indirect) of Esat Digifone since the time of submission of the application.

"Finally, it would be appreciated if you could confirm that full certification of the following matters will be provided before the award of the licence:

"1. The precise equity ownership of Esat Digifone,



including the identity of all institutional investors.

" the identity and financial commitments of providers of debt financing.

"It is essential that these matters be cleared up before the issue of the licence. We also need to discuss the public presentation of these matters."

CHAIRMAN: The date of that letter?

MR. HEALY: That's dated the 1st May, I think, of 1996, Tab 203, Sir, of Book 44.

Q. I don't know if you can remember that letter, Mr. Digerud.

A. I remember that there were discussions from the Department.

Q. I think that that letter led to the meeting that we were discussing a moment ago.

A. Mmm.

Q. And it was a problem?

A. Mmm.

Q. You were focusing on operational matters, but unless you could get this out of the way, there wouldn't be any operational matters for a while?

A. That's true.

Q. Now, it seems that

MR. FITZSIMONS: Sorry, Chairman, Mr. Healy has just made a statement which has gone on the record without the witness being requested to deal with it. Now, I appreciate Mr. Healy is doing his best to conduct an

examination according to a train of thought, but it's

Mr. Digerud who is giving evidence, not Mr. Healy.

CHAIRMAN: I am not going to base a finding on the last question, Mr. Fitzsimons.

MR. FITZSIMONS: Thank you very much, Mr. Chairman.

CHAIRMAN: You may be reassured.

Q. MR. HEALY: Now, if you go to if you look at, or if you recall for a moment what I drew to your attention in Mr. Johansen's memorandum, when he said that the Ministry basically asked for help for how to explain why we had substituted Advent, Davys Stockbrokers and the other recognised named institutional investors in the bid. That seems to be related to what's contained in the letter I have just read out to you; isn't that right?

A. Yes, and it was dealt with by Owen O'Connell.

That's

Q. Well, in part it was, Mr. Digerud, but a letter was written which you signed. If you look at it, it's at Tab 214, of Book 44.

A. Book 44. Did you say Book 44?

Q. Yes.

That letter is, if you look at the second page, signed by you, and it's addressed to Mr. Brennan. And it seems to be the response information that Mr. Brennan was looking for both on the 1st May, in writing to Mr. O'Connell, and at the meeting of the 3rd May.

A. Mm-hmm.

Q. Now, for a moment, I want you to look at another draft of that letter prepared by Mr. O'Connell around the same time, and you will find it at Tab 135A of Book 49. I think Mr. Lang is helpfully giving you a hard copy so you don't have to juggle all the books in your hand at the one time.

A. Okay.

Q. Now, this is similar to the last letter to which I drew your attention, to the letter which you actually signed and which actually went out.

And it says, "Dear Mr. Brennan,

"I refer to our recent meeting and now enclose the following:" And there is a list of documents which were enclosed. Do you see that?

A. Yes.

Q. And it's the same list of documents. But then if you go on to the next page of the draft letter, it goes on at the list of documents, and then it says "During our meeting you asked for an explanation for the involvement of International Investment & Underwriting Limited (IIU) in this transaction, having regard to the prior involvement of Davy Stockbrokers and certain of their clients.

"As you know, the bid was made jointly by Telenor and Communicorp, who were accordingly responsible for its financing. However, the bid also indicated an

intention to place 32% of the company with private and institutional investors (as to 20% immediately and 12% in the short to medium term). At that time, Davys and their clients had given conditional letters of intent with regard to funding 20% of the equity element of the investment, but there was no legally binding commitment by them.

"Throughout the period prior to and after submission of its bid, Esat Digifone behaved consistently on the assumption that it would be awarded the licence, planning and spending accordingly. It was thought desirable to secure the proposed 20% non-Telenor/Communicorp funding, and in addition, Communicorp wished to improve its financing arrangements for its share of the cost of the licence fee and subsequent construction and launch costs associated with a successful bid.

"Following a review of the possibilities available in the financial market, IIU indicated a willingness to arrange funding commitments; in exchange it wished to have the placing of shares and sought in addition a pre-placing of part of 12% of Esat Digifone (which as indicated above and in the bid) was to be placed over time. All in all, Esat Digifone and Communicorp felt this to be a very advantageous offer.

"As you know, the bid merely provided that institutional investors (which IIU is) would be

approached to take up the non-Telenor/Communicorp shares, and references to other investors (AIB, IBI, Advent and Standard Life) were given on an indicative/intent basis. Accordingly, we believe that the investment structure is fully in accordance with the bid.

"IIU has agreed initially to take up loan stock in lieu of shares in respect of the "Pre-placing" element of its commitment, which will result in the shareholding structure certified in the attached letter from Mr. Blank of Esat Digifone Limited. In this regard, I should make it clear that the shareholdings and the 40:40:20 ratio certified in that letter (and also referred to in Mr. Connolly's letter) relate to the situation which will prevail upon and immediately prior to the grant of the licence. Their delivery today should accordingly be regard as being in anticipation of the issue of the relevant shares.

"I hope that all of the enclosed documents are clear and helpful, but if you have any queries thereon, please let me know."

Now, was that letter ever brought to your attention?

A. I would guess it was, but in which form and with which draft. This is certainly Owen O'Connell's work, and he was the only one who can have written such a document.

Q. Why do you say that?

A. Because I am not qualified to write such a letter.

Q. When you say "qualified", do you mean you are not a lawyer? Do you mean you are not qualified because you don't have the facts, or because you didn't have the legal skill?

A. Both. I didn't have the history behind it, and there is references here to history.

Q. Yes

A. Which I was not a part that directly part of.

Q. Is it the case, then, that at this point, all of what's contained in this letter and having been discussed at that meeting a moment ago would have been above your head? I don't mean you that couldn't understand it, but that you couldn't understand it because you didn't have the facts?

A. I could understand the rationale why the Department needed to go back to the bid. How it worked out from there was Owen O'Connell, who took complete control of the situation, and he was the corporate lawyer, and I had to trust him.

Q. Okay. So the fact that the letter in that draft form didn't go out and that a different form without that explanation went out was nothing to do with you, you are saying. Purely Mr. O'Connell?

A. That was purely Owen O'Connell's. I might have been given a copy and I might have given a copy to Peter O'Donoghue, who was also a person which I trusted in

the company who could deal with certain things like

this.

Q. I see. At that time we know from Mr. Johansen's memo

that he was forming a very different view of the

history; isn't that right?

A. I wouldn't speculate on that.

Q. Well, the memorandum I brought to your attention at

the beginning of your evidence gives a completely

different, how shall I put it, perspective on the

history of the evolution of the ownership of the

shares in the company, doesn't it?

A. It could be. Then I have to really look into

Q. Did you have any discussions with Mr. Johansen after

the meeting of the 3rd about what had happened at the

meeting?

A. No. If I am correct and Arve Johansen went back to

Oslo and that what I read out of his is a

frustrating letter coming out of these meetings, so I

didn't have any interaction with Mr. Johansen related

to this document.

Q. Would you go to and hopefully this is the one of

the last documents I'll refer you to, Mr. Digerud.

Could you go to Book 50, Tab 143 please.

Have you got that document, Mr. Digerud?

A. Yes.

Q. It's a typed minute of Mr. O'Connell's of a meeting

held at the Department on the 13th May, 1996, attended

by you and Mr. O'Connell on the one hand, and by Mr. Brennan and Mr. Towey on the other. So we have the two principal people in the Department running the process, and we had the Chief Executive and the corporate solicitor of the successful applicant on the other hand?

A. Yes.

Q. Have you read this attendance in preparation for this process?

A. Yes, I read it together with all the other documents. I don't have the details, but I am aware of the minutes.

Q. This is a very carefully drafted attendance, isn't it, which describes, in Mr. O'Connell's words, some of the issues that were being discussed at that meeting. I'm not going to go through them all in detail if you can and I am not offering you a bargain if you can tell me, Mr. Digerud, whether all of the references in that document to what I call "shareholder issues" were things that you fully understood or not?

A. Because I didn't have the history of how and what happened. To be honest with you, I was sitting behind and trying to understand what was going on, but I couldn't influence any of this because this was in the hands of Owen O'Connell.

Q. If you look at page 4 for a moment, I am just going to



refer you to one passage. The last paragraph: "MB indicated that there had been discussions within the Department as to whether shareholders should participate in the press conference, and if so, to what extent and in what way. At this point KD made a strong point to the effect that Digifone saw itself as an entity independent of its shareholders, that it had premises, employees, funds and a viable business in its own right, and that there were issues likely to be raised at a press conference which would not necessarily be a matter for the company, but rather matters for its shareholders. FT conceded this as a 'fair point' and acknowledged that company would be at liberty during a press conference to refer questions concerning its ownership to its shareholders."

Do you recall that exchange?

A. Yes, and that was my intention or my objectives all the time, that I was trying to take responsibility for the development of the company, and shareholders issues should be addressed to the shareholders. And Owen O'Connell, because the background he seemed to have, was the one who was driving this, so he is doing the job for everyone.

Q. In light of some of the evidence you have given here today, if I were to go through that document in detail with you, I think I'm right in saying that mostly you'd be saying "I don't understand what was going

on", or "I wasn't fully up to speed on the details of what was going on."

A. I think I understood what was going on, but I didn't want to interfere, because that was not necessarily my task, as I felt it, because otherwise I would devote myself into shareholders issue, or I was concentrating on the other issues at the same time which happened in the company.

Q. I understand. At the end of that meeting, if you look at the memorandum and the last page, you see that Mr. Brennan stressed that there was a need to have a number of definite, clear, and acceptable statements for us at the press conference. And he outlined three of those obvious questions.

One was, "This the same consortium as that which applied?" Did you understand that, and the issue that was being addressed in the words used to describe that question?

A. That's why I probably stated as I did, that that should be addressed to the shareholders rather than the company.

Q. "Can the Denis O'Brien side of the consortium stand up?" (Adding that either Denis O'Brien or KD should answer this question)."

Now, did you have any view as to whether you should answer that question or whether Mr. O'Brien should answer that?

A. I should certainly leave that to Denis O'Brien.

Q. And did you know why that question was arising at that time?

A. No.

Q. You did know, presumably from your Telenor fellow Telenor executives, that Mr. O'Brien was having difficulty getting his money in place just at that time?

A. Yeah, but with the underwriting of IIU, as I saw it, they would have, even if they probably didn't have cash available immediately, they my understanding was that they were having the ability to raise the money.

Q. I appreciate that. But didn't Telenor have to loan them some money to enable them to pay their 15 million, or their part of the 15 million for the licence?

A. That was a short-term agreement which I understood, yes.

Q. I appreciate that. But at that particular moment, Mr. O'Brien didn't actually have the money himself; isn't that right?

A. No, and that time, then, we had a notice that he was raising funds.

Q. Is it your evidence that overall, you were responsible for bringing the company to the point where it could start operating on the 17th May, if you like, the day

after the licence was granted?

A. Not necessarily starting as such

Q. I know you didn't have a telephone system at that stage, but

A. The process of such a company was that you have to work damn hard to get all the suppliers in and get all the planning systems up and running, everything. That was the operational part of it. This was the financing part and the shareholders issues.

Q. If we look at some of the material that I have drawn to your attention, we see that Mr. Johansen became involved, intimately involved in shareholder issues around the 22nd September; isn't that right?

A. That's what I understand, yes.

Q. And then he seems to have become very involved again around the beginning of May; isn't that right?

A. Yes.

Q. Am I right in thinking that you would have regarded him as the man who'd have his finger on the pulse of the shareholder issues?

A. Yes.

Q. And that while you might be at meetings with him from time to time, you weren't necessarily how shall I put it in language that I think you'd understand you weren't necessarily in intimate contact daily as to what his thinking was?

A. No.

Q. Do you remember the last time that you gave evidence, we were discussing a \$50,000 contribution to Fine Gael by Esat Digifone which Telenor were going to facilitate?

A. Yes.

Q. Aren't I right in thinking that Mr. Johansen asked you to start the process of looking after that payment?

Isn't that right?

A. Yeah, it was an agreement made between Arve Johansen and Denis O'Brien that we should facilitate on behalf of Esat Digifone such a contribution.

Q. And there were a few documents involved, and they were given to you, and I think you eventually gave them to Per Simonsen or to somebody to give them to him?

A. I think that's the right yeah, I remember that.

Q. And I think you knew at that time that very few people, apart from yourself and Mr. Johansen, were aware of what the true nature of this transaction was; isn't that right?

A. Yeah, my memory is that that contribution to political parties was a very normal, natural thing here in Ireland. In our country, the parties are getting funds from Government, additional to probably gifts.

Q. I appreciate that, but the fact that the Telenor payment was not for consultancy but was a political payment was only known to a few people in Telenor, and you were one of the them; isn't that right?

A. Yeah, why should it be addressed to anyone else?

Q. I am just saying you were the Chief Executive of Telenor Invest at the time. You were the Chief Executive designate of Esat Digifone at the time.

A. Not

Q. This was December of '95?

A. December, yeah. I was not designated Chief Executive of Digifone; did you say that?

Q. Designate. You were about to be?

A. I didn't know that at that time.

Q. Didn't you?

A. Oh no, no, no. No, that happened in January.

Q. I see. But was there some special reason why Mr. Johansen would have told you all about those things?

A. Of the donation, or what?

Q. Yes, and not brought you into the loop in relation to all the details of the shareholder issues?

A. No, that was a funding problem, and my company, Invest, was the funding company, so he gave me and we discussed it, and it was where should the money come from if it didn't come from Invest? And he was the Chairman of Invest. So it's very natural way of doing the transaction.

Q. I agree, it seems to be very natural. I am just wondering why you didn't seem to have the same degree of close contact in relation to some of the other matters, like the important shareholder issues he was

dealing with?

A. I had so many other projects. I was flying in and out in Russia, down to Greece, and we were bidding for Holland, Belgium. We were more or less at the same time were winning in Montenegro, so lots of projects.

Q. Thanks very much.

CHAIRMAN: In ease of the witness, we'll see how much progress we can make today.

Mr. Nesbitt?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

Q. MR. NESBITT: I wonder, could you help me with some general background information in relation to the projects you have just been speaking about.

As I understand your evidence, in relation to coming in Ireland to see if you could firstly win the competition to be allowed negotiate the licence, there was the necessity to put together a bid which would be put before the competition and then see what came about. That's the first thing?

A. Mmm.

Q. Is that the usual way it was when you'd enter into a territory to try and win the right to provide a mobile phone licence?

A. It varies. There are some times that the licence the content of the licence is actually a part of the bidding process.

Q. Very good. So insofar as you became involved at the

stage that the right to negotiate had been won and were now negotiating the terms of the licence, that wasn't that strange in the normal business sense; you had to convince the person who had the licence to give that the people who were bidding the licence were appropriate people to have the licence?

A. Yeah, but the details was probably not prepared. That was my understanding, that the details, at that time, was not fully prepared, and that it was a lack of preparation by the Department at that time.

Q. When the competition began, there was an indication of the type of licence that might be awarded, but it was very clear that when the winner of the competition went in to negotiate the terms of the licence, there was a lot of negotiation to be done?

A. Yes, that was the case.

Q. Now, you have had a lot of experience in doing this at the stage you joined the process that we're talking about here; is that right?

A. I wouldn't say that, because the two operations we had was in Hungary and in Russia, so they are doing a little different there.

Q. But I mean, in business terms, it's not particularly difficult to understand what's to be done. You have to convince the licence-granting authority that you are a suitable person to get the licence?

A. Yes. That's in relation to the bid itself.



Q. Indeed. I assume that the licence authority is going to be asking whatever questions come into its head to make sure that the person they are giving the licence to will be compliant and can fulfil the licence conditions?

A. Yes. You would expect that.

Q. And it must have been blindingly obvious to everybody one of the questions that they'd be asking is "Who exactly are we giving the licence to"?

A. Oh, that was

Q. So nobody ever had a doubt that if they'd be asked that question, they'd have to give an answer?

A. Yes.

Q. So that wasn't anything out of the usual for you. That was something you'd expect to have to deal with?

A. No, but we were in partnership in all the others together with several partners, not only one.

Q. Fine. I just want to leave that thought. To get this licence, as far as you were concerned, from your experience, you would be asked questions to find out who was the person we are giving the licence to?

A. Yeah.

Q. Could we just leave that thought on one side and come back to the beginning of the process?

A. Okay.

Q. Now, to get into the competition at all, you had to

find somebody to be your partner. You weren't making a bid on your own account?

A. No, we would always go in with the partnership.

Q. Indeed. And why was that?

A. This was quite an early phase of the development of the mobile system, in '95. I think the first licence was addressed in '93, and then what was normally that it was given to the incumbent company, and then addressing the second licence would be on a competitive basis.

Q. Indeed.

A. Winning a licence without the local partner, I don't know of any places which that happened.

Q. Indeed. Now, just coming back to what was going to happen in Ireland. As I understand it, Ireland was considered quite a small territory to the bidding for a licence; is that right?

A. Not necessarily, because but we, at that time, when addressing the opportunity, we were not concentrating on that. So when we became aware that there still was an opportunity, because we had a few feel just a few search I would say, but unsuccessful, so we dropped it.

Q. Perhaps I'll come back to the question I am asking.

In relation to finding a partner, are you aware exactly the circumstances that led to Mr. O'Brien's enterprise being the partner that you found to make a

bid in Ireland?

A. We were told afterwards how it all appeared, but I remember well when they came to Norway.

Q. And did you find them an impressive team to deal with?

A. Very much, very impressive.

Q. And did they seem to have technical knowledge of the Irish telephone business?

A. Yes, we got the full understanding that they were the second operator on the fixed-line services.

Q. Very good. And did you find them, from your technical understanding of the transaction, somebody that would be useful to do business with?

A. Yeah, I would doubt that we could find any better partner.

Q. So as far as you were concerned, we had Mr. O'Brien's enterprise, the enterprise which he was involved, offering good technical know-how and knowledge of the conditions in Ireland that you'd have to deal with?

A. Yes.

Q. And as I understand it, you'd considered that you had world-class qualifications in that respect?

A. Yeah, we had one of the best successful stories related to our own country and a couple of others.

Q. Now, in those circumstances, I think at that point in time, other than introducing some additional financing to allow any successful bid take place, you had the essential building blocks of a good bid team?

A. Technically, definitely.

Q. And would third parties looking into that combination of people have been of the same view?

A. I would guess so.

Q. Now, in relation to the decision to bring more money in than the money you had or the money that Mr. O'Brien's enterprise had, are you aware of why that decision might have taken place?

A. Sorry, I didn't catch that question.

Q. I am concerned about the funding. We have two people in your bid team: We have yourselves and we have Mr. O'Brien's enterprise. You both appear to come with expertise, knowledge in the field, and the ability to make a good presentation and have an aspiration of winning. And the question I am asking is, in relation to some other level of involvement, the level we see or seem to see is financing, somebody bringing in some additional money?

A. Mmm.

Q. And can you explain to the Chairman of this investigation why it was necessary or might be necessary to bring in some additional funding from the outside?

A. Yeah, as I said, I was not aware, fully aware of the situation at that time. But it became apparent, over time, that the funding structure behind the partner was not as we expected. And of course you need to

convince any authority that you are able to stand up to the commitment in your bid. So I can understand that.

Q. Now, in relation to the issue of funding, I mean, as I understand it, your enterprise considered it well able to fund whatever was required to roll out a successful bid into the Irish market?

A. Absolutely.

Q. And as I understand what you're saying now, you would be looking at and paying attention to your co-partner and seeing what their capability would be?

A. Yeah, to a certain extent, but also when after the competition is on, then of course having the ability to win the licence and winning the licence, then the funding, what our experience at that time was that that wouldn't become a necessary issue any more.

Q. If you were successful and your idea was going to be rolled out, funding would be a reasonably straightforward event?

A. Yeah, much easier at that phase if we were successful in rolling out the network. If you are quick in rolling out your network, you will attract subscribers, and you have qualifications in your network. That was my concentration in what I did.

Q. Indeed. As far as you were concerned, the business plan you had was going to be a very essential part of showing you would be successful; you had to show what

coverage you were going to achieve, how quickly you'd achieve it, what subscribers you'd win, how quickly cash would come in, and what sort of equity finance you needed to make the difference between getting operating profits to pay for your enterprise; is that right?

A. Yeah, but primarily the market penetration and the market share you will obtain and the pricing structure you would have. The investment part related to the network is very much a combination of seeing how the market develops versus how much you invest.

Q. Just coming back to this particular competition, and I'm just looking for the competition documents. I am not sure if you ever saw them. There was a document that described what information had to be given to be judged. I don't know if you ever saw that document.

A. No, I never saw that, and that was one of the things which I understood that was really deeply a secret issue. There were protected rooms. I just heard about it, and it was only those who were in the bidding team that were allowed to see any documents in the consortium.

MR. NESBITT: Perhaps this witness could be given a copy. It's in Book 41, Divider 46.

Q. Now, this is a short document, and I just want to bring you through some of it. It's a document that contains 24 paragraphs, but I am going to just bring

you through some parts of it and ask you to comment on it.

Firstly, it's headed "A competition for a licence to provide a digital mobile cellular communications GSM in Ireland" and one sees "Minister for Transport, Energy and Commerce is inviting applications for a single licence". So that was something everybody knew about. That was one licence on offer at that point in time.

I think if you look at paragraph 2, you see the licence was going to be issued under a particular provision of the Postal and Telecommunications Services Act of 1983.

And then the third paragraph says: "Applicants must give full ownership details for proposed licensee and will be expected to deal with matters referred to in the following paragraphs in their submissions."

If I could just stop you there. As I understand that paragraph, I'd ask you to comment on it. Your own comments is that you are firstly being asked to indicate who would be the person to whom the licence will be given. The licensee.

A. Mmm.

Q. Not very surprising request, is it?

A. No.

Q. This is what you had identified as being something that would have dealt with before you'd be granted the

licence. So you were going to have to tell the authorities in Ireland who the proposed licensee would be?

A. Mmm.

Q. Nobody

MR. FITZSIMONS: Sorry, Chairman, I wonder could the witness be asked has he ever read this document?

A. I never read this document, and it would certainly not have been on my files. I would have been addressed with certain elements of this as a part of the documentation we would put in for the Board.

Q. MR. NESBITT: I don't want to take you short, and I'll give you as much time to read the documentation I think you and I are coming from the same place. I think you should have the opportunity to read this document, given the questions you have had put to you by the Tribunal team.

And Mr. Chairman, if he needs time to read it, I think we should stop and let him read it.

CHAIRMAN: Well, if you'd like to read through it there, Mr. Digerud, it's probably the case, as Mr. Nesbitt says, that as one of the Tribunal questions did to some half dozen or so paragraphs, you may be broadly familiar; but take your time and read through it a little if you care to.

A. Yeah, I can certainly do that, but I need to comment that these documents would be a part of the bid team's



documentation, and when we would have addressed that into my company, and to my board, as I said, we would have got extracts as a part of the bidding documentation and primarily related to the business plan as such.

But certainly that it was one licence, and as you said, it's normal that you address the ownership structure.

Q. MR. NESBITT: You see, perhaps I could indicate why I want to tease this out with you to see if we can short-circuit this. The whole thrust of the questioning put to you this morning and this afternoon, as far as I can see, is to suggest there was something untoward about the way in which the ownership of the licence was being dealt with.

A. Mmm.

Q. And as I understand your evidence, you don't think that at all. You knew that the ownership of the licensee had to be made absolutely clear before the licence could be granted.

A. Yeah, but what happened through the course of the autumn of '95, from being a 50:50% ownership structure, having the possibility to place 20% or whatever at the later stage, that was certainly the change which appeared, and I was not aware or a part of that change. That was kept initially in Ireland.

Q. That's what I was concerned about, because if we bring

you through some of the bid documentation, what you are going to find is, from the very beginning, it was a joint venture of 50:50 with a clear, unequivocal statement that 20% would be placed elsewhere. So it's not quite what you thought, and maybe that wasn't made clear to you by the Tribunal questioning, that from the day the bid went in, everybody knew 20% would be placed elsewhere.

A. That was not my clear understanding. It would be what we had in I had in my mind, that it could be anything down to, how much would it be I was dealing with down to negative control, 34%; that was my Telenor Invest attitude.

Q. Yes, so this is partly when, looking at the interplay of the partners, you would see there would be people wanting to get a bigger slice of the action if they could, if it was going to be successful, and maybe there could be commercial reasons for changing the arrangements between the parties.

But the point I want to make to you is that the bid that went in here, in this situation, made it clear it was a 50:50 partnership with a reducing back to 40:40:20%?

A. Yeah, I could understand from the Department's point of view.

Q. Yes, and that's what was said to the Department, and that's what happened in relation to the licensing

arrangement that was put in place?

A. Yes.

Q. And at all times that you were dealing with the issue, the Department are asking, "Who is the licensee", and making certain it was a 40:40:20 licensee; isn't that right?

A. Mmm.

Q. As far as you were concerned, you made sure that that answer was given?

A. Yeah, back in before the licence award of the 16th May, I was aware that it needed to come back to the original 40:40:20, that's for sure. That was a learning process in May.

Q. Now, I don't know, in the context of this particular licence competition, if you have heard the phrase "deep pockets". It's been mentioned by a number of witnesses. It was mentioned by the Tribunal at an early stage, and in particular, it was mentioned to Mr. Brennan, one of the Project Team the leader of the Project Team, effectively and as I understand the evidence given about that, it was to say if you had a bid consortium that had one very substantial member with a lot of money, that would be viewed as giving a lot of comfort in relation to the financial capability of that bid in rolling out its proposal.

Have you heard that?

A. Yes, I think I have heard that, and certainly Telenor

had the ability to be such a partner with the big pockets, but that was not the intention. I mean, it was not what we intended to do.

Q. If you had a joint venture, or whatever, you'd like everybody to play their part; but the reality was you were not going to be party to a presentation that would fail for want of financing?

A. No.

Q. Now, again, can we ask you just to deal with your experience in the field of providing telecommunications by mobile phone. Would that be unusual in relation to groupings of people seeking to obtain the right to have a licence somewhere?

A. No. I think it will be quite normal that the local partner, because the local partner will probably be a company with not that big experience, because the other alternative would be the incumbent itself, and Telenor was an incumbent company themselves.

Q. Now, in relation to the communication concerning IIU and the involvement in IIU in being part of the funding arrangements, as I understand your evidence, you appreciate that at one point the third-party funding was coming from a group of banks in Ireland under the auspices of Davys; and then towards the end of the competition process, before the winner was announced and before the negotiation of the licence terms started, there was a change in that, and IIU

became involved?

A. Mmm.

Q. Now, again, I understand your evidence to be that you didn't, at the time the competition process was coming to an end, take or have the opportunity to consider exactly on what terms the Davys and the banks were making offers of finance; is that right?

A. My understanding was that the Communicorp and Telenor was the 50:50 partner, initially, who should deal with the funding.

Q. And you didn't see any of the details of the terms and conditions upon which the banks would be making funding available to Mr. O'Brien's enterprises?

A. No, I didn't see anything on that.

Q. Now, in your experience as somebody who had been obtaining licences and operating these businesses on the world market before this, would you have expected that sort of funding to be subject to very stringent conditions, credit committees demanding certain preconditions and milestones to be met in relation to funding?

A. Can you repeat that, please.

Q. I am just concerned about the nature of the funding that has been made available, and again I am asking, from your experience of being in this business, if banks are lending money to an enterprise that is going to supply mobile telephony, would they have conditions

on their lending, would they be concerned to have some control over how the money might be used and what would have to be done by the person using the money?

A. Oh, yeah, absolutely.

Q. And the phrase "Credit Committee", you'd be used to dealing with banks' credit committees?

A. Mmm.

Q. And I presume in any venture capital enterprise where there is a lot of money being put in and there is a risk attaching to the business, you'd always try and get the least amount of conditions from your banks?

A. Mmm, but they would not give you out anything before the licence had been awarded.

Q. Indeed. So there is a tension: They are not going to lend you any money until you know you are going to get the licence?

A. Exactly.

Q. And when they do lend you money, they are going to attach a lot of conditions?

A. Yes.

Q. So is it reasonable to say, in business terms, the most attractive sort of lender is one lender, so you only have to deal with one person?

A. If you find partners who are willing, or having the funds available, that of course is the best partner.

Q. So if IIU come on side and say "We'll be a single lender in this enterprise", would you see that as

being preferable to a consortium of banks attempting to lend you money?

A. I am not a financier, to be honest. But you have to deal with someone who could help you out. But are you talking about share capital, or are you talking about debt capital?

Q. I'll break the question up. As I understand it, there is two types of capital going in here: one is your equity investment, and the other will be finance to allow the day-to-day running of the company to take place; is that right?

A. Not necessarily either debt or its share capital equity, not necessarily of the running, whether or not the running of the operation versus the investment.

Q. Right, so the type of capital that you are going to have invested is going to have ramifications for the terms and conditions under which it's made available; is that right?

A. Yeah, you have to have an understanding that the money available for peak funding is what we are looking for, whether you got it from the owners or you get it from somewhere else; but those somewhere else would not give you that before you have the licence.

Q. Well, I think maybe we'll just deal with that point. So nobody was going to lend money until they saw you had the licence and they knew what the terms of the licence were?

A. Yes.

Q. So again from your experience, nobody in this transaction could have been making any decision about the quality of funding until they knew the licence terms that were to be granted?

A. You could have made the terms of reference, to see what they do give you. They could certainly have done that.

Q. So, in relation to the granting of this licence, you could not be certain of funding being in place until the terms of the licence had been finalised?

A. No.

Q. And in relation to dealing with the Department, the experience you had, and the questions being raised by the Department as to who was the licence being given to. On your side, I presume you were asking, well, what were the terms of the licence?

A. Yeah, the terms of the licence, when we started to deal with ABN-AMRO and AIB, was certainly a part of it.

Q. And what part was that?

A. I can't remember. They needed a full copy of the licence, a signed licence.

Q. And did you ever have a copy of the full licence for them?

A. Yeah, after the 16th May.

Q. Very good. So that was the earliest upon which you



knew that their commitment was going to be delivered?

A. Yes.

Q. And would the Department have understood that?

A. I guess so.

Q. So, again, from the Department's side, it was clear that there would be no money available until the terms of the licence had been agreed?

A. Yeah. And the same for us. I mean, if the terms of the licence were not acceptable to any of the parties, then you had to pull out.

Q. Indeed. So there was uncertainty as to whether or not the licence would be ever granted until the terms of the licence had been agreed and those financing a transaction could see the term?

A. Yeah, I would say so.

Q. So in relation to the identity of the person to whom the licence was being given, all the time the Department had the desire to know the answer to that question and you had the desire to tell them?

A. Yeah, the Department, I would guess, would know that much, that when a licence is given, then the opportunity to raise funds would be there.

Q. Very good.

MR. NESBITT: Just, I think, Mr. Chairman, I want to move to a different topic, that requires me to open a number of documents that would take some time. So with your permission

CHAIRMAN: I was going to explore, in case of the witness, in case questioning was short, that we might sit on for perhaps some 20 minutes to half an hour to facilitate his departure today, but we have assigned two days. It may well be that other counsel have matters to raise, so I think it's not feasible to seek to conclude the evidence today.

In these circumstances, we'll take matters up, Mr. Digerud, I can assure you that your evidence will conclude tomorrow, and we'll sit at 11 o'clock for the remaining portion of it.

Thank you.

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