

A P P E A R A N C E S

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I N D E X

Witness:	Examination:	Question No.:
Amund Fougner Bugge	Ms. O'Brien	1 - 147
Mr. McGonigal	148 - 172	
Mr. Fanning	173 - 187	
Mr. Fitzsimons	188 - 195	

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 12TH
FEBRUARY, 2004 AT 11AM.

MS. O'BRIEN: Mr. Bugge, please.

AMUND BUGGE, HAVING AFFIRMED, WAS EXAMINED AS FOLLOWS
BY MS. O'BRIEN:

CHAIRMAN: Good morning, Mr. Bugge. Thank you for
your attendance.

Q. MS. O'BRIEN: Mr. Bugge, you haven't appeared in the
Tribunal before, so it might assist you just to know
how I intend to approach your evidence. What I
propose doing is opening both of your memoranda of
intended evidence and reading them into the record,
and then I propose returning to discuss and explore
some of the matters referred to in your memoranda in a
little more detail, if that's agreeable to you.

A. That's fine. Do you have a copy for me as well?

Q. We can certainly organise copies to be handed up. And
if you don't mind, I am actually going to open your
most recent memorandum first. That's the memorandum
dated 9th February of 2004. You have that in the box
with you.

Now, under the heading "Introduction", you say that you have made a previous memorandum of intended evidence to the Tribunal addressing your internal memorandum of advice dated 27th October, 1995. You were conscious that, when you supplied that memorandum of intended evidence to the Tribunal, it was made in isolation from the very substantial body of documentation which you are informed is being investigated by the Tribunal and which is being adduced to indicate evidence. Accordingly your prospective information responding to the following replies is of limited and narrow nature; in particular, you have not familiarised yourself with the Tribunal books of Documents 48, 49 and 50 covering the participants and Telenor's role in the Esat Digifone project.

You also qualify your replies by stating that, although they are made to the best of your recollection and belief, you were not at the time the events took place a qualified or experienced lawyer. Although you acted under the overall supervision of Mr. Rolf Busch, the senior internal legal counsel to the Telenor Group, you did not qualify as an independent lawyer until 1997. Certainly you did not have and you do not profess to have any experience in Irish law. You did feel under-resourced in your dealings with the Irish lawyers at the time. For example, at a meeting on the 4th August, 1995, in the

offices of William Fry Solicitors, you were the sole representative of Telenor dealing with three and perhaps four lawyers from William Fry Solicitors.

In 1995 Telenor Invest was established as a vehicle for Telenor's participation in international telecommunications projects. Telenor Invest AS had to recruit a team of employees; most of these were, like you, newly qualified from business schools and universities. Practical and direct experience was limited or lacking in particular and you, and you believe most of the Telenor Invest AS executives, had little or no mobile telephony experience in Norway.

You had no experience in participating in foreign joint venture projects as a principal telecommunications partner. There was your first joint venture project in your first professional position post graduation.

Then under the heading "Initial Consideration for the Project", you have informed the Tribunal as follows:

You say you were not certain of the precise date when you initially became involved in the project. You would say that it was probably sometime in late May, 1995. You believe that your discussions were initially with Mr. Per Simonsen and later with Mr. Morton Carlsman, a finance director in the Telenor Group. You discussed the potential form of legal structure which might be used to operate the project.

Consideration was given to the following options:

Firstly, an unincorporated joint venture; secondly, incorporating a Norwegian limited company; or thirdly, incorporating an Irish limited liability company.

In retrospect, perhaps a lot of this internal Telenor discussion was more theoretical than practical. You now believe that the delivery of the bid in itself to the Irish Department of Transport, Energy and Communications, whether in the form of a limited liability company or an unincorporated joint venture, would not have resulted in any exposure to the Department. The concerns of Telenor internal's legal department focused on the liabilities and obligations as between the co-venturers in the consortium, interpartes and not to the Department.

You believe that there was a general understanding at this time that whatever about the legal position, Telenor would not compromise its international reputation by walking away from the project. A limited liability company was not seen by Telenor as a mechanism for avoiding your commitment to the project.

There was subsequent discussions in relation to what you can generally describe as "partner risk". By "partner risk", you mean any potential risks, exposures or obligations that might arise between Telenor and Communicorp. In relation to the use of a joint venture limited liability vehicle, your best

recollection is that Mr. Rolf Busch was in agreement that there was no objection to this approach.

Ultimately it was decided that an Irish limited liability company was to be used; therefore, Esat Digifone Limited was incorporated on the 23rd June, 1995.

Now, under the heading "The drafting and conclusion of the joint venture agreement", you have informed the Tribunal as follows:

Based on discussions, you believe with Mr. Sjern Malm and others, you drafted a joint venture agreement.

You did so without any Irish legal advice. Although this agreement was legally binding, it was simply outlining some of the basic terms, you believed, that the joint venture agreement was of a preliminary nature and would quickly be overtaken by a more extensive and formal shareholders agreement. You may be incorrect, but do you not remember any substantial input or proposals for amendments to the draft joint venture agreement from Communicorp or on its behalf.

Certainly there was a considerable urgency in establishing a legal base to the joint venture, because you understand that Telenor personnel were already assisting both on the technical and on the business side of the project. This involved significant cost.

You in Telenor were all conscious at the time that the

imminent bid deadline of 23rd June 1995 placed considerable pressure on everyone not only to conclude the early signing of the joint venture agreement, but for Telenor to contribute its wealth of technical expertise to the preparation of the bid.

You were then asked to comment on dealings between Telenor and Communicorp in relation to the financial guarantee, financial commitment, and in particular, in the days leading up to the submission of the bid on the 4th August, 1995, including details of discussions with Mr. Owen O'Connell and Mr. Gerry Halpenny of William Fry on that date.

And in relation to that you have informed the Tribunal as follows: Mr. Knut Haga was the person who primarily dealt with the financial guarantee aspect.

You believe that he endeavoured to obtain a stronger commitment from Advent than that set out in the letter of the 10th July, 1995, from Advent to Mr. Knut Haga.

For some reason, and you cannot remember why, Mr. Haga was not available in Dublin from the 2nd to the 4th August, 1995. Although the expression "financial guarantee" was used in the joint venture agreement of the 3rd June, 1995, Telenor was seeking an assurance of a reasonable level of third-party support for Communicorp's future financing obligations in relation to the project. You remember progressively reducing the level of requirement in respect of the assurance

to be obtained in relation to Advent's offer of funding. You recall dealing with Mr. Denis O'Brien and Mr. Peter O'Donoghue as intermediaries, but not directly with Advent. Communicorp was obliged to satisfy Telenor, by the terms of the joint venture agreement, that it had the required level of commitment of third-party support.

On the night of the 3rd, 4th August 1995, Mr. Per Simonsen and you had a difficult meeting with Mr. Owen O'Connell, Mr. Denis O'Brien, Mr. Peter O'Donoghue and Mr. Gerry Halpenny. You stated with some level of determination that Telenor had to obtain a better assurance than that provided by the letter of the 10th July 1995 from Advent. The meeting ended inconclusively in the early hours of the morning of 4th August 1995. When the meeting resumed at 10am on the morning of the 4th August 1995, you were the only Telenor representative present. You believe that there were at least three and perhaps more lawyers from William Fry Solicitors present. Eventually, and with the time limit for the lodgment of the bid approaching, a compromise was agreed in the form of a letter signed by Mr. Denis O'Brien on behalf of Communicorp addressed to you, whereby Mr. Denis O'Brien agreed to accept and conclude an offer of funding from Advent in the event that Communicorp failed to raise alternative sufficient third-party

funding in time to provide Esat Digifone Limited with funds as anticipated by the bid.

You should say that the details of the Advent offer of funding in this regard were not made available to Telenor. Your impression was that Mr. O'Brien regarded the terms offered by Advent as commercially disadvantageous, and he believed he might be able to obtain better terms elsewhere. You believed that the basis upon which Telenor agreed to the lodgment of the bid on the 4th August was that in addition to the letter of the 4th August from Communicorp to Telenor, intended that follow-up letters would be furnished by Communicorp/Advent. You also understood that William Fry Solicitors would, as requested, furnish opinion relating to the Advent offer of funding.

You were then asked to comment on dealings with Communicorp subsequent to the 4th August, 1995, in relation to the financial guarantee and financial commitment.

You informed the Tribunal that you pressed for the opinion from William Fry Solicitors which you hoped would be forthcoming. You cannot remember how many communications there were between William Fry Solicitors and yourself, but you finally received a letter on the 17th August, 1995, from Mr. Owen O'Connell. You circulated a copy of Mr. O'Connell's letter to Mr. Per Simonsen, and Mr. Knut Digerud and

possibly also to Mr. Rolf Busch. The letter argued in commercial terms why Telenor was not exposed in the event that Advent's support from Communicorp was not realised.

You were then asked to comment in relation to consideration by Telenor of the status of the financial guarantee commitment, following receipt of the letter of the 17th August, 1995, from Mr. O'Connell.

You have informed the Tribunal that you interpreted the letter of the 17th August, 1995, from Mr. Owen O'Connell as meaning that the requested legal opinion would not be made available. You think that you continued to assume, and by that you mean Telenor continued to assume, that in the absence of any indication or notification to the contrary, that the Advent offer still remained open and capable of acceptance. From this point in time onwards, you have no recollection of having any further involvement in relation to the financial guarantee commitment from Advent. This was probably because you were actively involved in a very considerable number of other projects of the Telenor Group.

You were then asked for your knowledge of the circumstances surrounding the preparation and issue of a letter dated 15th September, 1995, signed by Mr. Knut Haga.

And you state that you have recently been informed of this letter by Telenor's Irish solicitors. You had no knowledge of the letter at the time, and you were not involved in its drafting. It may assist the Tribunal to know that you were in Tanzania on vacation for approximately 12 days in total. You returned to Oslo late on Wednesday night, 27th September, 1995. You believe that you returned to work on Thursday, 28th September, 1995.

At paragraph 7 you were asked to comment on dealings in relation to the agreements concluded with IIU Limited the 29th September, 1995. And you have informed the Tribunal that based on your recollection and based on the Telenor internal legal department documents, you believe that you had no dealings in relation to the agreements or letters dated 29th September, 1995, before that date. You may have commented on the arrangement agreement on the 29th September 1995, probably after it had been signed.

After your return from vacation, you were under immediate pressure of work in relation to a number of urgent matters unrelated to the project. Shortly after the 29th September, 1995, and you cannot remember precisely when, two matters became obvious to Telenor. Firstly, the arrangement agreement of the 29th September, 1995, had been unilaterally signed by Denis O'Brien on behalf of Esat Digifone Limited. And

secondly, the assignment of the benefit and obligations of IIU under the arrangement agreement to Bottin International Investments Limited, an unknown corporate entity, was carried out without prior notice to Telenor. These two matters resulted in an awareness of the pressing need immediately to procure Irish legal advisers; Messrs. Matheson Ormsby Prentice Solicitors in Dublin were retained shortly afterwards.

Paragraph 8, you were asked to comment on the circumstances surrounding the preparation of a memorandum by you dated 7th May, 1996, addressed to Mr. Rolf Busch and copied to Mr. Arve Johansen. And you have informed the Tribunal that you were not sure who told you, but you believe that perhaps it was Mr. Rolf Busch and perhaps also Mr. Arve Johansen, that Mr. Johansen had been in Dublin a few days earlier.

As a result of this visit, Mr. Johansen had a major concern that Mr. Denis O'Brien was attempting to gain control of Esat Digifone Limited through Communicorp.

Certainly you were aware that there was an apprehension that part of the shareholding held by IIU in Esat Digifone Limited might be secretly transferred by IIU to Mr. Denis O'Brien to Communicorp or to a nominee of Mr. Denis O'Brien or Communicorp, thereby eliminating the parity of shareholding between Communicorp and Telenor. This anxiety was eventually dealt with by a side letter dated 16th May, 1996.

You state that because of the involvement of Telenor's Irish solicitors at the time, you had very little involvement in the project in 1996. Your memorandum of the 7th May was intended to develop potential courses of action following upon the concerns expressed by Mr. Johansen.

You cannot remember any other involvement or contribution to the project except that recorded in the documents available to the Tribunal. You should mention that you attended in Dublin on the 16th May 1996 for the signing of the shareholders agreement and for the issue of the licence. Because you had not been actively involved in the project for some time, the relevant issues were primarily dealt with by Telenor's Irish solicitors, Matheson Ormsby Prentice Solicitors, and Mr. Arve Johansen, and Mr. Rolf Busch of Telenor and William Fry Solicitors acting on behalf of Communicorp, Mr. Denis O'Brien, IIU and Esat Digifone Limited.

You believe that Telenor's primary concern in the course of the meetings of the 16th May was to ensure that a side letter was obtained so that shares held by IIU did not end up being owned or otherwise controlled, legally or beneficially, by Esat Telecom or otherwise for the benefit of Mr. Denis O'Brien.

And that concludes your memorandum which is dated the 12th February, 2004, and perhaps you could just

confirm that everything that you stated in your memorandum is correct?

A. Yes, I can confirm that.

Q. Now, I can refer you then also to a short memorandum that you provided to the Tribunal at an earlier date, and it relates solely to the memo of the 27th October, 1995, which you prepared. Do you have a copy of that with you?

A. Yes.

Q. Paragraph 1 of that memorandum, you state that you were on vacation up to and including the 27th September, 1995, when you travelled back to Oslo. You returned to work on Thursday, 28th September, 1995. By early on the morning of the 29th September, 1995, the arrangement agreement was signed by Denis O'Brien on behalf of Esat Digifone. This was a *fait accompli*. Denis O'Brien was all the time far ahead of Telenor in the process. The quick signing of the arrangement agreement took you by surprise. You were not informed by a side letter assigning certain obligations to Bottin International Investments Limited until probably sometime in the following week. You were confident in your recollection that you were not told about Bottin International Investments Limited on or before the 29th September, 1995.

Paragraph 2 states that with the exception of certain inquiries from publicly available information about

International Investment and Underwriting Limited and Bottin International investments made by you, probably sometime after the 29th September, 1995, you found no information because there was no information publicly available. You depended on sources of information inside Telenor. These sources were Per Simonsen in particular, from whom most information was received, and also Knut Haga and Knut Digerud.

Paragraph 3, you have informed the Tribunal that you had not heard of the Glackin Report at the time of or of at the time or of its conclusions. You had only recently been informed about that report. You had heard references from sources within Telenor, probably Per Simonsen, to Dermot Desmond having been in some sort of difficulty with the Irish authorities, but that he had been rehabilitated; that is that the matters, whatever they were, had been resolved. You were unable to identify when you received this information, but you were quite sure it must have been after the 29th September, 1995, probably sometime in early October.

Paragraph 4, in the memorandum of the 27th, you made the following reference: "To have acted illoyally, vis-a-vis the Irish authorities once before," and you explain in your memorandum of intended evidence that this is a further reference to Mr. Desmond's position. You do not recall any more specific explanation having

been given to you in that regard.

Paragraph 5, you stated that your impression was that there was no need at such time to be concerned about Mr. Desmond's reputation. You believed that IIU and Mr. Desmond had been involved in order to increase the "Irish content" of the consortium and that this would enhance the consortium's opportunities in the bid process because you had been told from Telenor sources that these were the arguments for involving IIU and Mr. Desmond presented by Denis O'Brien.

You believed that Denis O'Brien would not have involved Mr. Desmond if that would have been a problem in relation to the Irish authorities.

Paragraph 6, you state that with respect to information about International Investment & Underwriting Limited, Dermot Desmond and Bottin International Investments Limited, you made no inquiries directly towards Denis O'Brien or the Irish authorities and received no information directly from Denis O'Brien or from the Irish authorities.

And that completes that memorandum, and again, can I just ask you to formally confirm that the contents of that memorandum are correct?

A. Yes, I can.

Q. Now, can I just ask you to let me know the date on which you first joined the Telenor legal division?

A. I believe that was on 19th January, 1995.

Q. 19th January, 1995. And I think you may not have qualified as an independent solicitor until 1997, but I think the Tribunal is of the impression that you received a practicing certificate in March of 1995; would that be correct?

A. Yes, under the supervision of Rolf Busch.

Q. Can you tell me about the legal division at the time you joined it? How many lawyers were in the division?

A. I think we were around six or seven lawyers. Most of those lawyers had not previously been able to call themselves lawyers. They were working for sort of the old State-owned telecommunications company, and mainly dealing with customer complaints, etc., and they didn't do the commercial work. So I believe Mr. Rolf Busch was actually the first lawyer; he was he attended in his position in Telenor in the summer of '94, I believe. I think he was the first really commercial lawyer, and I guess I was the second.

Q. Right. So did you report directly then to Mr. Busch?

A. Yes.

Q. Now, would I be correct in thinking that the internal legal division would have provided legal advice, assistance and support to all of the various Telenor companies?

A. Yes, that was the intention. I don't think we did at the time, but we were during the time I was in Telenor, which was until summer of '97, we sort of

collected the commercial cases from the various subsidiaries, and then we collected them from private firms around the city, around Oslo.

Q. And occasionally I take it that that service would be augmented with local solicitors or private sector solicitors?

A. Excuse me?

Q. I take it that occasionally Telenor would also retain private sector solicitors, as they did here in October of 1995?

A. Yes. They I think they engaged quite a lot of solicitors in Norway in the business they were doing, because they didn't really do the commercial handlings or the commercial lawyering themselves, historically. But then that was our task to do that, to take on that job for

Q. And I think you said that you left Telenor legal division in 1997, and from there on, I think you didn't have any involvement with Telenor; isn't that correct?

A. That's correct. It was in August '97.

Q. August of 1997. Now, could you just outline for me generally, apart from what's in your memorandum, what you saw as your role in relation to the Esat Digifone project?

A. My role was to take care of Telenor's interests and limit our obligations and clarify our rights as much

as possible in the agreements and other documents that

I was to advise on.

Q. I see. In the course of the advice you gave, who were your principal contacts on the Telenor side?

A. Well, on the legal side that was Rolf Busch. On the business side when I dealt with Telenor Invest, it was the Telenor Invest people, most central among them Per Simonsen, on this project.

Q. I see. And I think in your memorandum, you indicated that around the 3rd and 4th August, you had contact with Mr. Denis O'Brien and with Mr. Peter O'Donoghue, and was there anybody else on the Communicorp side that you had dealings with, either at that time, the 3rd or 4th August, or at any other time during your involvement with the project?

A. Well, I had contact with the lawyers in the meetings of the 3rd and 4th August, so the lawyers of William Fry. And I guess I met with a lot of Communicorp people, because I was here and I was in their offices or in the Esat Digifone offices, but I didn't deal so much with them, I guess.

Q. I see. Now, we know from your memorandum that you were here on the 3rd and 4th August, and you were also here just for the signing of the licence on the 16th May of 1996. Now, can you tell me, was there any other occasion that you were here in Dublin during the course of the project?

A. Right. I was here for a couple of days in November, '95, when I cooperated with Arthur Moran in revising the shareholders agreement. I cannot remember whether we had any meetings with the other party, Communicorp, at that time. I don't think we had.

Q. Right. In the period leading up to the 4th August, can you check from your diary the date on which you arrived in Dublin?

A. I haven't been able to find out, but it was probably on the 2nd August. It could have been the 1st, in the evening, but probably on the 2nd, and then I stayed for the 2nd, the 3rd and the 4th. And I also stayed over the weekend, but that was time off.

Q. But it was only a matter of days that you were here leading up to the 4th August?

A. Definitely.

Q. In November, then, you were here for a few days also, and you were dealing with Mr. Moran in relation to the shareholders agreement, and then coming up to the 16th May, were you here again for a short time, or was that more prolonged?

A. Yes, we actually came and left on the same day.

Q. I see. So it was a flying visit on the 16th?

A. Yes.

Q. Now, we know from the evidence that we have heard from Mr. Haga and primarily from Mr. Haga in relation to the efforts that he made regarding the provision of

the financial guarantee or financial commitment, which we know from the joint venture agreement was an obligation on Communicorp. We know that Mr. Haga was away for the month of July, I think, on his annual holidays, and that before he left, he had already been shown, I think, a draft of the kind of letter that Communicorp was proposing that Advent would provide.

He then came back on, I think, Monday the 31st July, and we know that he had dealings with Mr. Peter O'Donoghue, and as a result of those dealings, Mr. Peter O'Donoghue sent him a memorandum in which he confirmed that there was an agreement between Advent and Communicorp for the provision of $\text{€}1/230$ million to fund Communicorp's equity finance in the project, and that in consideration for that, that Advent would be entitled to 5% equity in Esat Digifone.

And we know that Mr. Haga was looking for a copy of the agreement and he was also looking for confirmation from Advent. He didn't get either a copy of the agreement, and he had been informed by Helen Stroud of Baker McKenzie that there was no agreement. And he then sent a fax to Mr. O'Brien on the 2nd August, in which he indicate this had this might jeopardise the project, and he felt that from then on, that the responsibility for progressing that matter passed to the executives and the people who were here in Dublin.

Now, can you tell me, at that time on the 2nd, 3rd,

4th August, apart from yourself and I think Mr.

Simonsen, who has confirmed that he was here in

Dublin, can you recall who else at executive level was

here on behalf of Telenor? Now, I don't mean the

technical people, I mean at executive level.

A. Actually I cannot remember specifically that somebody

else, some of the other executives on the commercial

side were here. I cannot.

Q. You can't remember. Would I be correct in thinking,

then, that your dealings with the Telenor executives

over those days were solely with Per Simonsen?

A. I cannot say that they were solely, but definitely I

dealt a lot with Per Simonsen. But I may also have

dealt with others.

Q. During those days, the 2nd, 3rd and 4th August, do you

recall having any dealings with Mr. Haga, who we know

was in Oslo at the time?

A. I don't remember having had any dealings with him, but

I may of course had over the phone.

Q. Right. Now, you have told us in your memorandum about

a fairly heated meeting that you had late in the

evening on the 3rd August, at I think which Mr.

Simonsen was also present, Mr. O'Brien, Mr.

O'Donoghue, Mr. Owen O'Connell, and you think also Mr.

Gerry Halpenny. Now, can I just refer you to a fax

that Mr. O'Donoghue sent to Mr. Prelz, I think on the

3rd August. Do you have a copy of Book 48 adjacent to

you there in the witness-box?

A. Okay, where do I go?

Q. Divider 27, if you wouldn't mind going to the document there. Have you located it?

A. 27, I have a fax of 3rd August.

Q. That's the one.

A. From Peter O'Donoghue to Massimo Prelz.

Q. That's right. You see Mr. O'Donoghue stated that "Telenor have requested us to provide them with a slightly reworded financial guarantee from yourselves." And he attached the requested wording, and then he said that it shouldn't cause them any difficulty.

And if you just go over the page, there is an enclosure with that fax, and you'll see that's a draft letter addressed to Mr. Simonsen, and it says "Dear Per,

"Advent International hereby guarantee Telenor that it will offer $\text{€}1\frac{1}{2}$ 30 million to Communicorp for the necessary equity increase in Esat Digifone Limited to establish and operate a GSM network in Ireland.

"This offer is true and valid until 60 days after the Ministry of Transport, Energy and Communications has awarded the licence to Esat Digifone Limited, Telenor AS can call this guarantee." Do you see that?

Now, do you recognise that draft? Because I think Mr. Simonsen thought that you may have drafted it or you

may have had an input into the preparation of it.

A. Yes, he might be correct in that. I remember drafting some text for a financial guarantee together with Per Simonsen when I was here. I am quite sure I didn't draft this letter, but the text in it may have been taken from the draft I made when I was here. I cannot confirm that, but it's likely.

Q. And there what you were looking for was a guarantee that it would offer the 30 million, and that the offer would be true and valid until 60 days after the Ministry of Transport had awarded the licence.

Now, we know that Advent were not prepared to sign this guarantee, and I think Mr. O'Donoghue had sent that fax at 3.45pm; that was late in the afternoon of the 3rd August, the Thursday, the day before the bid was due in. Do you recall whether at the meeting late in the evening of the 3rd August, which, as you say, didn't complete until the early hours of the 4th August, were you aware that that guarantee was not going to be forthcoming?

A. I think we were told in that meeting that by Denis O'Brien himself, I believe, possibly also Owen O'Connell that they would not be able to present such a guarantee.

Q. Did they explain to you why they couldn't get that guarantee?

A. I can't remember. Sorry.

Q. You say in your memorandum that you were not aware of the terms of the offer or whatever agreement there might have been between Advent and Mr. O'Brien. Do you recall asking for a copy of that agreement?

A. We probably did. But I cannot remember having seen any copy of the agreement.

Q. Do you recall, was there any explanation ever given to you as to why you weren't being given a copy of the agreement?

A. I can't recall.

Q. Now, in your memorandum, you indicated that that meeting adjourned somewhat inconclusively at the early hours of the morning on the 4th, that was the Friday itself, and that you then met at 10am in the morning at the offices of William Fry; and I think on this occasion, you state that you were unaccompanied. You were attending the meeting on your own?

A. That is correct.

Q. And that Mr. O'Connell was at the meeting, and Mr. Halpenny, and you think maybe one or even possibly two more solicitors from William Fry; is that correct?

A. Right, and I also believe Denis was there, at least for some of the time.

Q. Can you recall what your instructions were before you went to that meeting?

A. My instructions were to obtain a financial guarantee of as high quality as possible.

Q. You were to do the best you could?

A. Yes.

Q. Now, can I just refer you to Divider 29 in the book we are working from. You see this is another fax from Mr. O'Donoghue to Mr. Prelz, and you just see on the top right-hand side, in handwritten manuscript, it records "Faxed 9.30am".

It's "Dear Massimo,

"Re: GSM bid.

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

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

If you just turn over the page, you will see a copy of the draft dated 4th August. This time the letter is addressed to Communicorp, CC Telenor AS, attention Per Simonsen.

"Dear Sirs,

"Advent International plc on behalf of its funds under management confirms that it has offered $i\frac{1}{2}$ 30 million to Communicorp Group Limited for the necessary equity increase in Communicorp Group Limited to establish and operate a GSM network in Ireland.

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

Do you see that? Now, do you think it probable that you also either prepared or assisted in the preparation of that form of words?

A. Yes, I think it's likely.

Q. And that in fact would represent the lesser assurance that you were now looking for; would you agree?

A. Yes, I believe so.

CHAIRMAN: I think you referred in your statement, I think, to your recollection that you progressively reduced the level of requirement in relation to the Advent guarantee, and this is the practical operation of that process.

A. Yes, Sir, it seems to me to be correct.

Q. MS. O'BRIEN: And I'd be correct in thinking, wouldn't I, that all you were looking for there was the same confirmation that you already had; that is, that Advent had offered $\frac{1}{2}$ 30 million, and all you were looking for in addition was that the offer was true and valid until 60 days after the Department had awarded the licence. That seems to be the position, doesn't it?

A. It does.

Q. Do you think that you probably submitted that form of words during the meeting of the night of the 3rd,

going into the 4th, morning of the 4th? Because you will see it was faxed about 30 minutes before your meeting on the morning of the 4th.

A. Most probably, yes.

Q. Now, in your memorandum, you have informed the Tribunal that at that meeting, you insisted on a letter from Mr. O'Brien confirming that he would take up the Advent offer; isn't that right?

A. Well, I think I still insisted on having something like a financial guarantee. And he probably I believe that he said to me that I couldn't have that, but what they could give, their response to my demand was the comfort letter that he signed there and then.

Q. I see. And Mr. O'Brien was at the meeting, and he signed it there and then?

A. I believe he was. Maybe not all the time, but at least for some of the time. And he even drove me to the Department afterwards.

Q. Now, do you remember whether the draft was prepared by you or was prepared by William Fry?

A. I am quite sure it was prepared by William Fry.

Q. Was it something, the wording of it, was that something that you discussed in the course of the meeting that began at 10 o'clock, or was it a form of words that they had ready to proffer to you?

A. I think they had it ready and read it out loud to me, and we may have made a couple of amendments to it, but

I cannot remember that specifically.

Q. They'd have been fairly minor amendments, wouldn't they?

A. Yes.

Q. I'll just show you the letter now. It's at Divider 30. And it says: "Dear Sirs,
"We wish to confirm that we have received an offer from Advent International Corporation Limited of funds sufficient to perform our obligations in respect of the bid. We wish, however, to seek alternative sources of funds because the terms of Advent's offer are unfavourable to us.

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

That's the letter?

A. Yes.

Q. Was this the first time that you had heard of Mr. O'Brien seeking alternative sources of funds, or did you know about that before the 4th August?

A. I can't recall clearly. I may have heard it before, but I am not clear about that.

Q. Right. Now, if you just go over the page to Divider

31, you will find Mr. O'Connell's note of the meeting.

It's a very short note. So I can only assume that Mr. O'Connell must have taken an active part in the meeting, because he has given evidence that where he is actively involved in meetings, he doesn't tend to take a very lengthy note. But if you just go over the page, you'll see that we have a typed-up version of it which may be easier for you to read, dated 4th August, 1995.

"Esat,

"GSM.

"Amund Bugge/GFH I think that's a reference to Mr. Halpenny.

"Opinion re Advent offered to be provided.

"Ask DOB for Advent offer/agreement. That is legally binding on Advent.

"Peter O'Donoghue/DOB re Advent offer.

"Made clear OO'C has not seen Advent offer."

Do you see that attendance?

A. Mmm.

Q. Now, can I ask you about this opinion on enforceability that was discussed at the meeting of the 4th August. Could you tell me, first of all, whose idea was it that such an opinion might be furnished?

A. It was either my idea or Rolf Busch's idea, I guess.

Q. It was an idea that came from the Telenor side?

A. I am quite sure, yes.

Q. Do you recall Mr. O'Connell informing you at that meeting that he hadn't seen the Advent offer?

A. I cannot recall him saying so.

Q. Was it your impression that there was going to be any difficulty in the provision of this opinion?

A. Yes. I believe Owen O'Connell told me that for them to provide a legal opinion was a very formal and time-consuming process, and so at least with regard to timing or to time, and to resources, it would take it would cost them quite a bit, but I cannot remember whether he also went into having any whether he had any problems with the content of the aspect of making a legal opinion.

Q. Right. So you can't recall whether he dealt with the difficulties that might arise regarding the content, but he did say to you that it would be costly and it would require quite a period of time to produce an opinion?

A. Yes.

Q. Was it your impression at the end of that meeting that there was going to be any difficulty, though, in the provision of this opinion?

A. It was my impression that there was a possibility that we would get the legal opinion, but it was not sure.

Q. So there was no commitment given to providing an opinion?

A. I believe there was no commitment.

Q. Now, I just want to recap: When you left that meeting, therefore, you had in your hand Mr. O'Brien's letter of the 4th August. You had mentioned that you would also like an opinion as to enforceability, but there had been no commitment to provide that opinion?

A. Yes.

Q. And we know that in any event, the bid was submitted on the 4th August?

A. Yes.

Q. Do you recall around what time that meeting ended? Was it shortly before Mr. O'Brien drove you down to lodge the bid or not?

A. Yes, I think it was like 15 or 10 minutes before 12, which was the deadline. And I remember jumping into Denis O'Brien's car and him driving very fast through the city of Dublin.

Q. To get down there in time?

A. He was obviously in a hurry.

Q. Yes, obviously. Did you have time at all to report back to anybody about the outcome of your meeting before the bid was lodged?

A. I may have spoken to Rolf Busch.

Q. But you don't recall reporting back to Mr. Simonsen, or indeed to any higher level within the Telenor executives?

A. I believe I met with Per Simonsen when we actually

delivered the bid, and I probably told him there and then what was the outcome.

Q. So insofar as you reported back, you may have contacted Mr. Busch, but you don't recall, and you probably told Mr. Simonsen there and then at the Department when you were submitting the bid?

A. That's likely, yes.

Q. Okay. Now, I think you said to me that you stayed on for the weekend in Ireland, and you then went back to Oslo after the weekend?

A. Yes, on the Sunday.

Q. Now, it appears that you may have telephoned both Mr. O'Brien and Mr. O'Connell sometime around the 11th August in relation to the opinion. Do you recall that?

A. Yes, I believe I did that a week after I had met them in Dublin, yes.

Q. And I suppose you were an efficient and a cautious lawyer, and you wanted to press them for this opinion?

A. I guess that was the intention, yes.

Q. Even though, as you said yourself, you had no commitment to provide it, but you were doing your best to jolly them along and to get the opinion if you could get it. Would that be a fair way of describing what you were doing?

A. Yes, and to make sure they didn't forget.

Q. Now, I think then, in due course, you received Mr.

O'Connell's letter of the 17th August; is that right?

A. Yes.

Q. Now, I am not going to read the entire letter, because it's been opened on a number of occasions, but I think in fairness, in memorandum, you sum up what the letter was about, which was effectively telling you that you had had your letter of the 4th August from Mr. O'Brien in which he had said he would accept Advent's offer if he couldn't fund his contribution to Esat Digifone from other sources; that you weren't going to get the opinion on enforceability of the offer; and then I think Mr. O'Connell, very eloquently, argued that you were fully protected in any event?

A. That's

Q. Wouldn't that be fair, to put it that way?

A. That's the essence of the memo, yes. Is it in here?

Q. Sorry?

A. Is the memo in the binder?

Q. Yes. His letter is at Divider 37. Unless you wish me to, I wasn't going to read it all out, because it's been read out on many occasions at the Tribunal. And in fact, I think you prepared a memo yourself on the 17th August, and I don't know if you have a small book, Book 60, with you or adjacent to the witness-box.

CHAIRMAN: Mr. Bugge, would you like to read Mr. O'Connell's letter, just to refresh your memory,

before you take up the other matter?

A. I don't think that's important.

CHAIRMAN: All right.

Q. MS. O'BRIEN: Now, if you go to the very last Divider in that small book, it's Number 10, it's in fact 10 of Part B, but if you go right to the very back of the book. And you see there is a document there headed "Office translation joint venture for GSM2 in Ireland/Esat Digifone Limited". Do you have that document?

A. Yes.

Q. If you go to the third page that's a series of translations of internal legal division documents which was provided by Telenor. Now, do you have the third page? If you go about halfway down the page, you see Number 37; do you see that?

A. Yes.

Q. "Number 27, telefax 17 August 1995 (front page) from Amund Fougner Bugge

"To: Per Simonsen and Knut Digerud, Telenor Invest:

"Date, time: 17 August 1995, 13 hundred hours.

"Subject: Ireland.

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

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

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

A. I remember that was in handwriting on the front page.

Q. Yes. And that was your immediate reaction on receipt of the letter of the 17th?

A. Yes, it seems so.

Q. And I think you probably did have certainly some discussions with Mr. Busch, because if you go to Divider 6 in Part B it's just four dividers back from the one you are working on this memo seems to represent the kind of considered views of the legal division. It's dated the 23rd August. It's from you to Knut Digerud, Per Simonsen, it's re shareholders agreement, Ireland.

"Based on discussions between myself and Rolf Busch, legal department proposes the following total solution for the Ireland project:

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

And I suppose that's your progressive dilution of the

demands you were seeking in terms of the financial guarantee, because initially, having sought confirmation that the offer would remain open for 60 days, you were not prepared to settle for 30 days?

A. Right. It seems so.

Q. Yes. Then you go on to discuss various amendments that might be made to the shareholders agreement. Is that correct?

A. Yes.

Q. Now, I think from your memorandum you say that after that point, that you had no further contact in relation to the financial guarantee or financial commitment; is that correct?

A. I am not sure whether I had no contact. I may have been involved in internal discussions in Telenor, but I don't believe I had any contact with the other side, and I guess I was on my engagement with Telenor was limited.

Q. At that stage I suppose you felt you had done the best you could; you had progressed it as far as you could?

A. That's about it, yes.

Q. Now, you were asked in your memorandum also about a letter of the 15th September. Do you know the letter that I am referring to?

A. Yes, I have seen it.

Q. And I think you say in your memorandum that you had no involvement whatsoever in the drafting of the letter,

and I don't think you knew anything about it. Would that be correct?

A. That's correct.

Q. Can I just ask you if you can assist me at all if you go to the same book we are working from, Book 60, and it's Divider A2, is the document I want to refer you to.

Now, this is a draft letter; do you see that?

A. Yes.

Q. And a typed draft. The source of the typed draft appears to have been Mr. Owen O'Connell of William Fry, who forwarded it by fax to Mr. O'Brien in Dublin on the 21st September. Now, you see there are handwritten annotations on that letter. Some of those are in English and some of them appear to be in Norwegian. Do you see that?

A. Yes, I see.

Q. All I want to ask you is and this is a copy of the draft that's within the legal division files. Can you assist the Tribunal at all as to whose handwriting that might be?

A. Yes, I am quite confident it's Mr. Pal Espen, Pal V. Espen's handwriting.

Q. Was Mr. Espen a lawyer within the legal division?

A. Yeah. He actually began or attended his job in August, '95. He was had about two years' experience as a lawyer when he started. He is now the

legal director. He took over this project for me when

I was away in Tanzania.

Q. I see. And you are quite certain that's Mr. Espen's writing?

A. Yes.

Q. When you returned from Tanzania, I think it wasn't until the 28th September; is that right?

A. That's correct.

Q. Did you know anything about the letter of the 15th September?

A. I didn't know anything when I came back, but of course I was informed after having come back, but it took a while for me I had been climbing Kilimanjaro and off on safari, and my interest was somewhere else.

Q. That's perfectly understandable. What were you told about the letter of the 15th September? We may as well put it on the overhead projector.

A. I cannot remember specifically what I was told about it. I mean, I can read from it what it says, and also with Mr. Espen's comments on it, but I am not sure whether or I can't recall specifically any oral information I was given.

Q. Who would have briefed you when you returned after the 28th on what had happened in your absence?

A. Probably Mr. Espen himself.

Q. Mr. Espen himself?

A. Mmm.

Q. Okay.

A. I know he was busy in a lot of other joint venture projects at that time, and he had a hard start, he had his third child three weeks before it, so he was kind of deep into

Q. He started in August; is that right?

A. Yes.

Q. But he had had two years' practical experience before he started?

A. Yes.

Q. Right. Okay. Mr. Espen was fresh to the project, then, in September, presumably?

A. Excuse me?

Q. This was the first time, in September, that he had any involvement in the project, when you went on holidays; would that be correct?

A. I believe so, yes.

Q. Now, in your memorandum, you stated that you came back on the 28th, to work, the morning of the 28th, which was

A. I believe so, yes.

Q. which was the Thursday morning, I think.

Now, can I just refer you, in Book 60, to Divider 11.

That's in the "A" portion of the book it's the front portion of the book.

You see here there is a fax from Mr. Simonsen to

Mr. I think it's to William Fry Solicitors, and it

relates to the draft arrangement agreement that was received on the Thursday night. Do you see that?

A. Yes, I see it.

Q. And I think Mr. Simonsen had been making comments on the various clauses in the arrangement agreement. And the actual arrangement agreement itself, in draft form, is in the earlier, the previous divider, Divider

10. Do you see that?

A. Yes, I do.

Q. And that was dated the 28th September, 1995, and the time on it is 3.42 p.m.. Do you see that, just at the top left, it's typed, 3.42 p.m.?

A. Right, yes.

Q. Do you recall at all did Mr. Simonsen discuss that draft arrangement agreement with you on the Thursday?

Do you have any recollection of that?

A. I have a recollection of being presented with the arrangement agreement, either just before it was signed or just after it was signed. And I remember sitting down trying to understand it, and I found it pretty hard, and I may have course I may have been in contact with Per Simonsen on the 28th with regard to this agreement, but I am not sure whether I was able to give him a lot of input.

Q. Would Mr. Espen also have been in a position to assist Mr. Simonsen in relation to it?

A. Well, if I was there, I believe Mr. Espen did not

assist, but Mr. Espen had assisted up until I came back. And as I assume I came back on the 28th, I would believe that Mr. Espen did not assist at that time, and I had taken over, but I was sort of in on my heels and a bit slow in motion.

Q. Yes, but earlier in the week, when you were still away, Mr. Espen would have been there and he could have been consulted about it; isn't that right?

A. Yes, and I believe he was.

Q. You believe he was?

A. Mm-hmm.

Q. Now, if I could just refer you to your memorandum of the 27th October. That's in the bigger book, Book 48, and it's the very last Divider in the book, Divider 80B.

Now, it's headed "Memo". Place and date: Oslo, 27 October 1995.

From: Amund Fougner Bugge, Telenor's legal department.

To: Rolf Busch, Per Simonsen and Knut Digerud.

Subject: Status Ireland.

"The Ireland project as per 27 October 1995.

"My heartfelt congratulations to Invest and Per Simonsen on the award from the Irish authorities.

"I have felt a need to go through the latest development in the case on the legal side and have summed up the situation as follows:

"1: The licence.

"The bid for the GSM2 licence was delivered on 4 August 1995 in the name of the newly incorporated company Esat Digifone Limited (Esat). At that time Telenor Invest and Communicorp Group Limited each held 50% of the shares in Esat.

"On 25 October 1995 the Irish authorities announced that the licence would be awarded to Esat. Before the licence formally can be awarded the authorities will complete a round of negotiations with Esat to clarify the conditions related to the licence in detail.

"2. The shareholders agreement.

"The shareholders agreement was almost finished before delivery of the bid, but disagreement on two or three issues prevented a signature. The agreement has not been negotiated since, and the relationship between the parties is formally governed by the joint venture agreement between Communicorp Group Limited (Communicorp) and Telenor Invest (Invest) of 3 June 1995 with the modifications described below.

"3. Financial security for Communicorp's obligation to capitalise Esat.

"A) the problem.

"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 is calculated to be a total of IRi½124 million, of which the equity share shall represent IRi½58.33 million (the Irish pound is approximately Norwegian kroner 10). Considering that Communicorp's original owner share was 50%, the company would have to raise approximately IRi½29 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.

"B) the offer to Communicorp from Advent International plc.

"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 ("Advent") 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 be achieved. We do not know whether the offer from Advent is in force today."

Just to pause there for a moment, that would fairly sum up what your understanding was regarding the financial commitment or financial guarantee that was available to Telenor as of the 4th August, 1995, when

the bid was submitted?

A. Yes, I do.

Q. "C) The agreement between International Investment & Underwriting Limited and Esat.

"After delivery of the bid, Communicorp has achieved financing from International Investment and Underwriting Limited (IIU) of altogether 25% of the shares and the share capital. 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 20%. 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 capital, each of the Invest and Communicorp have agreed to reduce its shareholding to 37.5%.

"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 IRİ½58.33 million. Under the arrangement agreement, IIU thus guarantees for 25% plus 37.5%, equal to 62.5% of the capital need in Esat, limited to an accumulated capital need of IRİ½36.5 million. Invest has, as mentioned above, accepted this agreement."

Now, can I just pause there for a moment, and just there you have stated that as mentioned above, Telenor, or Invest had accepted this agreement. And in the first paragraph of that section, you have indicated that Invest had accepted the agreement orally. Can you just explain to me what you were referring there, the oral acceptance?

A. I believe I was referring to information from Per Simonsen because I hadn't been involved in this process myself, but I was presented with the agreement, and it was definitely only signed by Denis O'Brien. And but according to the joint venture agreement, I believe we were supposed to sign, to countersign all agreements. It hadn't been countersigned by Telenor, but I believe Per Simonsen told me that they had kind of orally had accepted it.

Q. So Mr. Simonsen had told you that they had accepted it orally?

A. I think he did, yes.

Q. Now, the next heading in your memorandum reads as

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

And at B), you state "Two points of uncertainty.

"Uncertainty 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."

That's the first weakness that you identified. Can I just pause there for a moment. You stated there in your own memorandum that Mr. Desmond "is said to have acted illoyally vis-a-vis the Irish authorities once before." Now, could you tell me who was the source of your statement in that memorandum?

A. I believe my source was Per Simonsen, and so I had my information internally in Telenor. I believe I don't know if we met or if we spoke on the phone, but I believe that was my sole source for it.

Q. Do you recall at all in what respect Mr. Simonsen told

you that Mr. Desmond had acted illoyally vis-a-vis the Irish authorities?

A. No, I can't recall any more details of the information he gave me, and he may not even have given me more detailed information. I mean, on the other side, the involvement of IIU was presented to Telenor by Denis O'Brien and Communicorp as being the solution to a need for Digifone to have a clear Irish content, and so IIU was presented to be to increase the consortium's opportunities to obtain the licence, and if that was the true opinion of the legal of the Irish authorities, there was no need for Telenor to worry about IIU and Dermot Desmond.

Q. So you believe that IIU and Mr. Desmond were presented by Mr. O'Brien as having attributes that would strengthen the chance of Esat Digifone in securing the licence?

A. Yes, I am quite sure that was how it was presented by Denis O'Brien to Arve Johansen in a meeting in Oslo on the 22nd September.

Q. In terms of the manner of the behaviour that was illoyal, do you recall at all when you were given any information, as to even in the broadest terms, what kind of conduct Mr. Simonsen was referring to?

A. No, I am sorry, I don't recall that. And I was also informed that this was not like one or two years ago, but to me I had the impression it was longer ago,

quite a few years ago, so it was sort of really in the past.

Q. I see. Do you remember at all whether you asked Mr. Simonsen or whether he told you what his source of information was?

A. I cannot remember, but I believe Per Simonsen had quite a lot of contact with the Irish representatives of Communicorp, including Denis O'Brien.

Q. You say in your memo that "It is now presumed that Mr. Desmond's relationship with the authorities was relatively good". Was that your presumption or was it somebody else's presumption?

A. I believe that was a reference to what Per Simonsen had told me.

Q. So you believe that Mr. Simonsen told you that it was now presumed that his reputation was relatively good?

A. Yes, I believe so.

Q. Now you say, "Second, insecurity has arisen with regard to the guarantee from IIU because of a 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 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 proven difficult to find

reliable information about this company."

Just to pause there as well, you say in that portion of your memo that according to Mr. O'Brien, Bottin was a wholly-owned subsidiary of IIU. I take it you weren't in contact with Mr. O'Brien regarding Bottin, were you?

A. No, I am quite sure I wasn't.

Q. So again it would have been Mr. Per Simonsen, would it, that you were relying on for that information?

A. Yes, most probably and definitely some Telenor source.

Q. What other Telenor source could you have other than Mr. Simonsen?

A. The other executives of Telenor Invest, which were then Knut Digerud and Knut Haga, and possibly Arve Johansen.

Q. Right.

A. And Sjern Malm as well.

Q. Right. Now at (E), you deal with investigation from Invest about information.

"On the 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 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."

We have seen those letters, so I don't need to open them to you again, I take it, and you would have been aware of the information that was being in those letters?

A. Yes, I am quite sure I had copies of the letters.

Q. Now, you indicate in your memo that up to then Invest had not had an answer to any of these letters and that the Invest representatives were not convinced that they would receive any of the information before negotiating.

Do you recall why they were convinced that they wouldn't get this information because it was relatively straightforward financial information that you were asking in relation to Bottin?

A. It states that they were not convinced that they would receive the information. And I guess that's their I mean, they this was what I was told by them, of course. And they probably built that belief on their experience with the contact and the sort of

availability of information they had from the

Communicorp side.

Q. Did you get the impression that they felt that there was a reluctance to provide them with this information?

A. It could be, yes.

Q. Now you go on at (F) to deal with "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 the so-called good faith towards "duty of good faith", I presume you intended to refer

to "towards the authorities, but not a legal

breach."

Just to pause there for a moment, you referred to the letter sent by IIU to the Irish authorities verifying the guarantees relating to Esat, and we know that's a letter of the 29th September of 1995, and again I don't propose opening unless you wish me to, but can I take it from what's in your memorandum that as of this date, the 27th October of 1995, you weren't aware that that letter had been returned on the 2nd October?

A. No, I am quite sure I was told that quite recently by Telenor's Irish lawyers.

Q. I see. You say "The question is how strongly we shall react. Neither Invest nor Telenor wants to withdraw from the Ireland project now. If Invest does not soon receive acceptable answers from IIU or O'Brien, it seems correct at least to supplement the letters sent by Invest to IIU and 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 large 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 of shares or because of IIU's assignment of its contractual position to Bottin."

Can I just pause there for a moment. In that section you had recommended that Telenor should make stronger demands for the information that it had sought regarding Bottin; isn't that correct?

A. Yes, it's correct.

Q. Do you recall whether any such demands were ever made?

Because after the 12th October, and maybe one reference in an attendance in November, we don't see any further demands, whether orally or in writing, from Telenor for this information.

A. I cannot recall any further demands made by Telenor in this respect.

Q. Do you know why there were no further demands made?

A. I cannot give you a clear answer to that, but definitely the focus shifted from being on the financial aspects towards being on the joint venture, the build-up that we were going to do together and on the more positive aspects.

Q. I see.

A. So, I guess Telenor Invest was or we were a bit reluctant to press too hard on difficult issues.

Q. Why were you reluctant to press too hard on the difficult issues?

A. Well, because we were going to live with these people for years and build up a mobile network, and to get that in place, we need to have a dialogue with them, not only confrontation. We had been in quite strong confrontation for a while.

Q. Yes, that's fair enough.

"4, final negotiations to 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 of the agreement."

Then your final heading is "Practical development of the project." You say "I have understood that Invest received a number of offers for delivery of technical equipment" that relates to a technical matter.

You close it: "Best regards on behalf of Telenor's

legal department.

Amund Fougner Bugge."

Now, I just want to refer to a matter that you adverted to a moment ago and that you actually referred to in some detail in your short memorandum, if you have it there.

A. What do you refer to as the "short memorandum"?

Q. The one-page memorandum, the earlier one.

A. Right.

Q. And I just want to refer you to paragraph 5. You stated that your impression that was there was no need at such time to be concerned about Mr. Desmond's reputation. You say that you believed that IIU and Mr. Desmond had been involved in order to increase the Irish content of the consortium, and that this would enhance the consortium's opportunities in the bid process because you had been told from Telenor sources that these were the arguments for involving IIU and Mr. Desmond presented by Denis O'Brien. Do you see that?

A. Yes, I do.

Q. And I think you mentioned that in the course of our discussion in relation to your memorandum, the 27th October. Do I take it that the sources that you refer to there were Mr. Simonsen primarily?

A. The sources could be Mr. Simonsen. But they could also be Mr. Arve Johansen himself, who had been in the

meeting with Denis O'Brien.

Q. So it could be Mr. Arve Johansen?

A. Could be, yes.

Q. Did Mr. Simonsen ever mention to you anything more about Mr. O'Brien or sorry, Mr. Desmond and IIU in terms of enhancing the prospects for the consortium in the competition?

A. I'm not sure what he may specifically have told me, but there was an impression in Telenor that the financial strength of the consortium was increased by the involvement of IIU. So it could also then improve our well, if it improved our financial position, that could also improve the possibility to obtain the licence.

Q. You met Mr. Arthur Moran, didn't you, of Matheson Ormsby Prentice, when you were here for a short time, I think in November?

A. Yes, I did.

Q. And we know that Mr. Simonsen instructed Mr. Moran on the 10th October?

A. Yes, I believe so.

Q. Of 1995. And you have had referred to that in your memorandum. And Mr. Moran took a very careful note of what Mr. Simonsen told him?

A. Right.

Q. I don't know if you have seen that note, have you?

A. No, I don't think I have seen it.

Q. I don't think I need to open it to you, but it appears from Mr. Moran's note and it appears from his memorandum of intended evidence that Mr. Simonsen may have told him that IIU had political contacts. Do you recall either Mr. Simonsen or anybody else saying that to you?

A. No, I can't recall.

Q. Did Mr. Simonsen ever mention to you anything about a conversation that he had with Mr. O'Brien about a contact that Mr. O'Brien had with Mr. Michael Lowry in a public house?

A. No. I only heard about that meeting quite recently.

Q. Okay. Now, the final matter I want to refer you to is your memorandum of I think the 9th May of 1996. And it's in

A. It's the 7th May.

Q. 7th May. And it's in Book 60; it's at Divider B1. Do you have it there?

A. I have Divider 60.

Q. It's at B1. It's the second section of the book at Divider 1.

A. Yes, I have it.

Q. And this is your memorandum.

Place and date: Oslo, 7 May 1996.

From: Amund Fougner Bugge, Telenor's legal department.

To: Rolf Busch.

Copy: Arve Johansen.

Subject: Problems in Ireland appointment of lawyers.

"1. Overview.

"Esat Digifone, the Irish company of which Telenor Invest, based on the oral agreement, owns 37.5% has up and until today has not yet received the GSM2 licence.

"Telenor Invest (hereinafter "Telenor") now experiences problems both in relation to our Irish partner, Communicorp Group/Esat Telecom Holdings, and the company's majority owner and CEO, Denis O'Brien (hereinafter Communicorp or O'Brien) and in regard to the Irish authorities represented by the Department of Transport, Energy and Communications (hereinafter the Irish authorities).

"2. The situation with Communicorp.

"Arve Johansen was in Dublin two days last week, (Week 18) and had discussions inter alia with Communicorp and the Irish authorities. Johansen's impression is that Communicorp, against our will, tries to gain control of the jointly owned company. As early as during the initial discussions last spring/summer, O'Brien expressed a desire to be the majority owner of the joint company. Telenor resisted this. The result was that the parties set up a 50/50 joint venture in June last year and that the presuppositions described in the draft shareholders agreement enclosed with the

bid in the beginning of August were that Communicorp and Telenor both should reduce their holding to 40% to make space for institutional/financial investors with 20%."

Just to pause there, that was what was intended in the bid, wasn't it, that it be 40% Telenor, 40% Communicorp and 20% institutional/financial investors?

A. Yes, it was.

Q. "O'Brien has also later expressed a desire to increase his ownership share and that Telenor at the same time must reduce its ownership share to below 40%. Telenor has resisted this but has agreed that both Communicorp and Telenor should own 37.5% and that institutional investors should have the remaining 25%. The latest draft shareholders agreement which has been presented draws up such distribution of shares. The institutional investors are represented by International Investment and Underwriting Limited (IIU), but O'Brien and IIU has up until now not been willing to state who stands behind IIU."

In brackets, it then states: "Please note, this was in 1996 (included by you 1 August 2002)". That's just your comment?

A. I believe it is. Yeah, it is, this comment was made in August, 2002.

Q. I see. "Johansen has had the impression that there is an understanding between IIU and Communicorp that

Communicorp or O'Brien shall take over whole or part of the 25% held by IIU. The latest information Johansen has had from O'Brien is that he is now trying to buy half of IIU's shareholding, that means 12.5% of the shares in Digifone.

"It is also a problem in relation to Communicorp/O'Brien that it has generally shown very difficult to have their signatures on agreements. The shareholders agreement is still not signed. Up until now O'Brien has only signed the joint venture agreement, which in principle ceased to exist when Digifone was incorporated and the bridge financing agreement. I will, however, have to investigate this further.

"3. The relationship to the Irish authorities.

"O'Brien and the Irish authorities have given contradictory information about the latter's view on Telenor assisting Communicorp in the financing of Digifone. Telenor has offered to give such assistance. O'Brien has claimed the Irish authorities are against this, and therefore Communicorp must obtain financing from a third party. In Johansen's meeting with the Irish authorities last week, the authorities expressed the opposite position. That they preferred that Telenor took upon itself to assist Communicorp in the financing. Johansen's impression is that Communicorp/O'Brien tries to limit Telenor's

influence in Digifone by giving incorrect information about the position of the Irish authorities. The lack of completion of the financing package for Communicorp and Digifone seems to be one of the reasons that Digifone has not yet received the licence."

And I don't think we have any particular interest in the balance of your memorandum, but can I just ask you in relation to that section, the relationship to the Irish authorities, could you tell me who was the source of the information in that paragraph that Mr. O'Brien has claimed the Irish authorities are against this, and therefore Communicorp must obtain financing from a third party?

A. I am quite sure my source was Rolf Busch, and possibly also Mr. Johansen himself.

Q. So Mr. Johansen may have spoken to you directly, or to you and Mr. Busch, or indeed to Mr. Busch, following his return from Dublin, having attended a meeting in the Department on the 3rd May?

A. I am quite sure Mr. Johansen spoke to Rolf Busch when he returned. He may also have spoken with me directly, but you cannot I recall I believe I had a meeting with Rolf Busch about this, but I am not sure whether I spoke directly with Mr. Johansen.

Q. But Mr. Johansen would be the ultimate source of the information that you have recorded in that paragraph?

A. Yes.

Q. Thank you very much.

CHAIRMAN: I'll just see, Mr. Bugge, if some other lawyers have some questions to ask you.

Nothing to raise, Mr. O'Donnell?

MR. O'DONNELL: No questions.

CHAIRMAN: Mr. McGonigal?

MR. MCGONIGAL: Yes, Sir, just a couple of matters.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. Bugge, if you could confirm I won't be very long.

If you go to Book 60, I just want you to confirm something for me. And if you go to Tab 1A, or go to Tab 1. Sorry, Tab 1A.

You see there a document which is the Deed of Covenant between Esat Digifone and IIU.

A. Yes, I see it.

Q. And that's the 21st September, '95. That, I take it, would have been dealt with by Mr. Espen in Telenor?

A. Yes, to the extent it was dealt with in Telenor's legal department, I believe that was Mr. Espen.

Q. And the same with the next document, which is the letter which Ms. O'Brien has already dealt with, but if you go to Tab 3, again there is another Deed of Covenant, which is dated 22nd September, and again, is that Mr. Espen's writing on the front?

A. I believe it is, yes.

Q. And if you just quickly flick through that document,

you will see other annotations and scribbles and comments. And are they all Mr. Espen's, to the best of your knowledge?

A. It seems so, yes.

Q. Going on then to tab 4, you'll see there fax from Mr. Espen to Mr. Simonsen, and appended, or at least on the next page, there is a draft letter of the 24th September with some handwriting on it. And I think is that Mr. Espen, the pro rata

A. It could be; I am not sure.

Q. And then Tab 5 is a letter of the draft letter of the 25th September, which turned into the 29th. These would have been received that would have been received by Mr. Espen again, presumably?

A. Yes, if it was received

Q. During that period?

A. in the legal department, I assume it was received Mr. Espen.

Q. And again Tab 6, another draft letter which may have been sent to Telenor, again with hieroglyphics on it: Would they be Mr. Espen's, to the best of your belief?

A. It's hard for me to say, but it's definitely not my handwriting. It could be Espon's, it could be Rolf Busch.

Q. The next one is Number 9, Tab 9. Again it's a copy of the Deed of Covenant, which is a draft of the 26th September, and again there are some markings on that

which may well be Telenor which are Telenor's, I think, and they would be Mr. Espen's, as far as I can make out. The best one to go to is page 4.

A. Most of them are Mr. Espen's, I believe.

Q. Sorry?

A. Most of them are Mr. Espen's. I actually can recognise my handwriting in one place, but this is probably from my this is just translations; I probably read it at some later stage and had a need to translate some of the words, so some of the there are a couple of examples that I have made, also some handwritten notes on it, but they don't have the role as being amendments. They have more the role of being, as I say, translations.

Q. No, I am just curious. Anyway, you think both of your handwritings are on that document?

A. It seems so, yes.

Q. The next one is the last one which Ms. O'Brien dealt with, which is the 28th. Are those your handwriting, or is that both your handwriting, or

A. The first one on page 2, that's not my handwriting.

Q. Could to be Mr. Espen's?

A. The second one of "the holder?" is my handwriting.

Then on the next page again, probably Mr. Paul Espen's handwriting.

Q. A combination, really?

A. Yes.

Q. But in reality it would appear that Mr. Espen was the person dealing with the Telenor matters relating to IIIU, certainly during this period, when you were in Tanzania?

A. It seems to, yes.

Q. The other matter that I just wanted to ask you about was in relation to the letters of the 15th September and the 19th September. First of all, again, these were matters which took place when you were abroad in Tanzania?

A. Yes, at least I wasn't involved.

Q. So that if there was anyone in the legal department involved, it would have been Mr. Espen again?

A. I believe so, yes.

Q. Probably. Now, if you just if we could put up the letter of the 15th September for a second, please.

A. Under what tab was that?

Q. I just wanted to show you that. That's the 15th September, and if we could go to the signature.

That's Mr. Haga's signature. We know that. Now, I am showing you that, Mr. Bugge, because that letter does not correspond to the draft letter which was agreed and arose out of a series of documents from the 19th to the 21st September. You know those documents?

A. I have heard about them later on, yes.

Q. If we could put up the 19th September, please.

MR. FITZSIMONS: I wonder, could Mr. McGonigal give

the references to these letters, for the record, to enable tracing subsequently.

MR. McGONIGAL: I will get them, and I will certainly facilitate them in every way that I can, but they are just escaping me at the moment. But I think Ms. McMenamain will Moriarty; I beg your pardon will produce them with her usual diligence.

That's the one of the 19th September. I am merely showing you these, Mr. Bugge, for the confirmation that in effect, whoever was dealing with these, first of all, it wasn't you, and it was probably Mr. Espen who would have been dealing with it in Telenor so far as the legal department is concerned, if there was an input from the legal department?

A. If there was an input, it wasn't from me, it was from Mr. Paul Espen. But I actually can't recall having seen any of these letters.

Q. No, that's okay.

Now, the last thing I wanted to ask you about, Mr. Bugge, is a matter which you may be able to assist me on and you may not, and if you're not, please feel free to say so.

I want to try and ask you just a question in relation to political donations in Norwegian law. Is that a subject that you are familiar with?

A. Political donations?

Q. In Norwegian law.

A. I am not very familiar with that question, no.

Q. I see.

A. It's not something that I am working with.

Q. Well, then, maybe I'll try and deal with it another way. You would prefer if I didn't ask you questions on that, then, at the moment?

A. Well, I have no sort of competence to answer it, I believe.

Q. Okay. Well, then, I'll deal with it in another way, through the Tribunal, in writing probably.

Thank you very much, Mr. Bugge.

CHAIRMAN: Mr. Fanning?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FANNING:

Q. MR. FANNING: Very briefly, Mr. Bugge, if I understand the position correctly, you are a fully qualified lawyer since 1995, but in 1997, you then became qualified to deal with cases in a further way on your own, is that so, to practice on your own?

A. Well, I graduated in I believe it was January '95.

I was qualified to as a lawyer to assist under Rolf Busch's name and responsibility from 1995, April '95, I believe. And then I had my own licence, as we say, to do my business on my own, if I wanted, from '97.

Q. And in any event, you left the employment of Telenor in 1997?

A. Yes, I did.

Q. And are you currently working as a commercial lawyer?

A. Yes, I am, but when I left, I went to a District Court as a Deputy Judge in August '97.

Q. Right, and are you currently working in the judicial sphere, or

A. No, I am working as a commercial lawyer in a firm in Oslo.

Q. Very good. And I suppose, then, as a practicing lawyer in a neighbouring jurisdiction, you must have a natural degree of curiosity about the process we are engaged in here?

A. Yes, that's it's interesting, of course.

Q. And I suppose it would be only natural that you must have an element of surprise in your reaction to find yourself here giving evidence so many years later.

A. Excuse me?

Q. There must be an element of surprise in your feelings and reaction to the fact that you are here giving evidence so many years later about these events?

A. Well, kind of.

Q. But you are here nonetheless today because of course the Tribunal contacted you and requested your attendance on the basis that your evidence might well be in a position to assist the Tribunal with its inquiries?

A. Yes, I believe that's why.

Q. And as a lawyer, then, a practicing lawyer, Mr. Bugge, I am sure it's been explained to you at some stage,

either by Telenor's lawyers or I am sure by the Tribunal, that the Tribunal is investigating the behaviour in the Ministerial office of Mr. Lowry?

A. Right, I have been informed of that.

Q. You have been informed of that. And I think you were asked just one question today in relation to Mr.

Lowry, and you confirmed to Ms. O'Brien that you knew absolutely nothing at relevant times, until very recent times, about a conversation in a pub?

A. Excuse me?

Q. I think the only question you were asked about Mr.

Lowry today was a question by Ms. O'Brien as to whether you knew anything about a conversation in a pub?

A. Yes, and I knew nothing about it.

Q. That's right. I don't think you were asked any other questions about Mr. Lowry or his behaviour in Ministerial office today?

A. No, I don't think so.

Q. And had you been asked or if I was now to ask you, would you be in a position to assist the Tribunal?

A. Excuse me, can you repeat?

Q. If I was to now ask you whether you were in a position to assist the Tribunal with regard to Mr. Lowry's conduct in Ministerial office, would you have any relevant information for me?

A. I don't think I have, sorry.

Q. Thank you.

CHAIRMAN: Mr. Fitzsimons?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Just a couple of questions,

Mr. Bugge.

You have been referred to drafts of a Deed of Covenant and also of the arrangement agreement; copies of these documents are at Book 60A, Dividers 9 and 10. And the final paragraph in each of these agreements states, and I quote: "This agreement shall be governed by and construed in accordance with the laws of Ireland."

Now, can you tell me whether or not Mr. Paul Espen had any Irish legal qualification?

A. He definitely hadn't.

Q. And in the course of your illustrious legal career, have you acquired any such qualification?

A. No, of course not.

Q. Now, if I could refer you to your memo of the 7th May 1996. That's at Book 60, B1. Do you have that document?

A. Yes, I have.

Q. And if you could please go to the final page of it, that's paragraph 5, there you say: "Telenor legal department must now consider", and at paragraph 2, "To demand that Digifone changes to an independent counsel. Also for Digifone other Dublin firms as well as London firms will be the alternatives;

"3. To go to Dublin ourselves to make sure that the appointment of lawyers takes place in a reassuring and satisfactory way."

Why did you wish that Digifone should change its lawyers?

A. I believe we we believed that Digifone should change lawyers to have a different law firm than the other parties involved, who were also using William Fry's office.

Q. And why was that?

A. Because of conflict of interest.

Q. And what was the conflict of interest

A. Excuse me?

Q. that you perceived to exist at that time?

A. Well, there were three parties, three different parties using one and the same law firm, and we didn't think that was appropriate.

Q. Thank you.

CHAIRMAN: Ms. O'Brien I think referred to the situation when you decided to put in the bid even though you had elements of being dissatisfied with the financial guarantee that had been provided for in the agreement. I think you referred to this in your evidence?

A. Excuse me, I didn't get the question.

CHAIRMAN: I think when the bid went in and Mr. O'Brien drove you down to submit the documents with

him, in effect, at that time you were not entirely happy with the Advent situation.

A. That's correct.

CHAIRMAN: But you said in your longer memorandum that from the point of view of reputation of Telenor Internationally, you would not have wished to be seen pulling out of an agreement?

A. Right, but that was I guess that was more I guess that's a different issue, at least for me. Telenor wasn't didn't incorporate a limited company to really limit, or to run away from obligations in Ireland.

CHAIRMAN: Yes, I take that point. But there was also the commercial decision which I think one of last week's Norwegian witnesses referred to, that if you lost the competition, or if you pulled out of the competition, the money would be spent anyway.

A. Yes.

CHAIRMAN: So commercially, it made sense to stay in.

A. Yes, yes.

CHAIRMAN: Lastly, and I'm not again going to ask you for expert evidence on any unusual branch of law: From your experience of law in Norway, had you much familiarity with the idea of side letters in the course of legal agreements?

A. No, I didn't have a lot of experience with side letters. I think it was the first time I was

presented with something like that. We don't have anything under Norwegian law which we call "side letter" or any similar expression. We would probably call it an amendment to the agreement or something.

CHAIRMAN: Yes. Very good.

There is nothing you wish to raise in conclusion,

Ms. O'Brien?

Thank you very much for your attendance, Mr. Bugge.

That then

MS. O'BRIEN: Mr. Bugge's evidence has been completed more speedily than anticipated, Sir, but there will be another witness tomorrow.

CHAIRMAN: Tomorrow at 11 o'clock. Thank you very much.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
FRIDAY, 13TH FEBRUARY, 2004 AT 11AM.