

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, SC

Instructed by: Michael Heneghan

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES:

Mr. John O'Donnell, SC

Mr. Diarmuid Rossa Phelan, BL

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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

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I N D E X

Witness: Examination: Question No.:

Arve Johansen Mr. Healy 1 - 238

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY,
4TH MARCH, 2004 AT 11AM:

MR. HEALY: Mr. Arve Johansen.

MR. McGONIGAL: There is just a matter I want to raise
this morning. We have been handed a copy letter of
the 15th October, 2002, from Kilroy's solicitors,
which appears to be relevant not only to Mr. Johansen
but also relevant to witnesses who have given evidence
before this Tribunal since the 15th October, 2002, and
relate to events in September/October, 1995.

To put it mildly, Mr. Chairman, I am disappointed that
this letter is only surfacing now, bearing in mind
some of the issues that the Tribunal have been
inquiring into, because undoubtedly, not only is this
letter relevant in the sense that it presents a
Telenor view of things at the time, but it's also
relevant and supportive of some of the matters which
witnesses have been giving evidence on on-the-blind,
and what concerns me is that there may be other
material in the archives of the Tribunal which are
equally relevant and have not yet seen the light of
day.

And I am protesting, A, in the manner in which this
letter is being presented, and I am concerned, deeply
concerned now, more so than before, of the possibility

of material being in the archives of the Tribunal
which may be relevant which may have been overlooked.

And I am not suggesting anything pejoratively in this
sense, because I do appreciate the volume of material;
but I am concerned that in actual in reality,
almost 90 percent of the matters which we have been
inquiring into are documented one way or the other,
sometimes well, sometimes badly.

And from that point of view, material may have been
missed. But I am particularly concerned about the way
in which and the manner in which and the lateness in
which this letter has been produced, and I want to
register that protest in a strong fashion, as is
necessary.

CHAIRMAN: Can you assist in that regard, Mr. Healy?

MR. HEALY: I think I can help, Sir. I hope I can
allay Mr. McGonigal's concerns.

The document to which he refers is a letter of the
15th October, 2002, from Kilroy's to the Tribunal.
Now, the existence of that document has never has
always been brought to the attention of anyone to whom
all the relevant documents were sent; and it may be
that Mr. McGonigal and I appreciate he mightn't
have had the time this morning to come to grips with
this but the statement of Mr. Arve Johansen, which
was sent with all the books and is in fact a statement
of the 26th November, 2002, contains a question,

Question 29, to which one of the responses is "Please refer to Kilroy's letter dated 15th day of October, 2002, to the Tribunal."

Now, that is the letter to which Mr. McGonigal refers. And so there can be no doubt that there is no question of trying to, and I don't think Mr. McGonigal is suggesting this, keep the letter from anybody. But it was only in going through the documents recently, and in fact it only occurred to me last night to be sure that anyone who got the statement also got a document referred to in it. And it was only then I realised that it's possible that people might not have got that document; and as it transpires, it appears that certainly Mr. McGonigal didn't. It may be that other people didn't get it either.

I suppose if there is any difficulty that arises in connection with the document, it will have to be addressed. My anxiety at this stage is to allay Mr. McGonigal's concerns that there are documents which haven't been brought to his attention. This document has clearly been brought to everyone's attention. Unfortunately, it may not have actually been put into his hand; but its existence has been brought to everyone's attention, and if a difficulty arises from the lateness, then it will simply have to be addressed administratively.

And I can well understand Mr. McGonigal's concern on

that front. As I said, I only realised it when checking over my own documents that the letter may not have gone with the full statement as an exhibit.

CHAIRMAN: And what of the general thrust of what Mr. McGonigal says, that

MR. HEALY: It is relevant yes, My Lord, it is relevant to it is relevant to one of the matters with which a number of witnesses which have been canvassed with a number of witnesses, and that is notably the circumstances in which IIU/Dermot Desmond became involved with the consortium. And I can understand Mr. McGonigal's concerns.

Now, maybe when he reads it and he hears the evidence of Mr. Simonsen, it will of Mr. Johansen, it may be that it won't present such overwhelming difficulties.

But I do understand Mr. McGonigal's position, and it is regrettable, it must be simply an administrative oversight. As I said I, only realised it or queried it when we I saw this document and wondered whether every person affected had a copy of it.

CHAIRMAN: Well, he puts the other contingency, that there may be other documents that could be

MR. HEALY: Well, yes, I simply want to allay his concerns over that. This document is in fact highlighted in the statement, of which everybody has notice. The existence of the document is clearly highlighted in the statement. It simply says, "Please

refer to Kilroy's letter". Unfortunately, as I understand it, Kilroy's letter was not appended to the statement.

So if you understand me, Sir, the existence of the letter is clearly recorded in the documents of which everybody has been put on notice. It's my impression or at least it was my impression last night; certainly I had concern that the people to whom the statements were given were not given a letter referred to in the statements. But there is no question of other documents of which the Tribunal is aware, and upon which any part of the public proceedings of the Tribunal was to be based, had not been brought to his attention, though I will say this much: that the Tribunal is always reviewing documents, and there are aspects of documents, in fact, which have been put into the public domain which may have been overlooked.

Those documents have been fully given to everybody involved with the work of the Tribunal.

And the Tribunal has also as I am reminded by Mr. Coughlan, and I should have said this put in place an arrangement with Mr. McGonigal whereby he can have access to any documents he wants in the Tribunal archive in case the Tribunal has overlooked a document which he may deem to be relevant or which he and his team may deem to be relevant.

But I do think and I hope I can allay his concerns

that this is a purely administrative error. If the consequences are that he is at a disadvantage, they will obviously they'll have to be addressed. And you may have to consider that, Sir, but I can't put the matter any further at the moment.

CHAIRMAN: Yes.

MR. McGONIGAL: Chairman, I fully appreciate and understand that there have been documents on occasion when the Tribunal, in reviewing this material, has thought it necessary, and on most of those occasions, if not all of those occasions, we have not seen it necessary to protest in any way. We have indicated our concerns through correspondence, and I maintain the position as per our correspondence.

What concerns me about this letter in particular is that if I take what Mr. Healy says, the only reason this letter has now come to light is because it was perceived as being mentioned in the statement of Mr. Johansen which he was reviewing last night. My concern is that this is a letter which was sent in in October 2002, which is clearly relevant to the issues that the Tribunal are inquiring into, and therefore it should have been, in a sense, made available to those concerned with this letter at or about that time.

It has material relevant to Mr. O'Brien, to Mr. Callaghan, to the issues of the 29th September, to matters which were put by or on behalf or concerning

Mr. Johansen's evidence, and, with respect to Mr.

Healy, he doesn't allay my concerns in relation to the administrative error. He emphasizes my concerns in relation to the loss of a to the near loss of a material document to issues of concern to this Tribunal.

Now, this supports some of what Mr. O'Brien was saying, and it also indicates an independent position so far as Telenor is concerned.

Mr. O'Brien, when he was giving evidence, was relying on his memory in many cases as to what may or may not have happened, and this letter might have been of assistance at that time. And it's issues like that,

Mr. Chairman, that do concern me deeply, bearing in mind a lot of the issues and facts which are of concern to this Tribunal.

CHAIRMAN: Well, I understand your concerns,

Mr. McGonigal, and you have put the matter fairly and reasonably. And insofar as there may have been any oversight on the administrative side, that is

something I would not wish, and regret. And I think I have already commented in recent weeks at the somewhat limited manpower resources as opposed to certain other comparable tribunals that this institution has; it's

something that I may, on foot of this, take up with somewhat more vigour with the appropriate authorities.

But I will bear in mind fully what you say. I fully

accept that procedural fairness does require that unexpected surprises should not should, if at all possible, be avoided for material witnesses such as Mr. O'Brien, and I'll certainly make it my business to do whatever is necessary to ensure that Mr. O'Brien isn't, insofar as he may have been potentially disadvantaged to a degree on this occasion, that this contingency does not occur again.

I'll have regard to what you say. You have put it reasonably, and I'll make it my business to have considerable regard to seeing that the ongoing position is safeguarded.

Thank you.

Sorry, Mr. Johansen, for keeping you there for the few minutes. Perhaps I should just say, before I hear Mr. Fitzsimons, that I am very grateful to you for making yourself available to deal with these remaining matters today, and perhaps tomorrow; and of course you are already sworn from earlier assistance to the Tribunal.

Mr. Fitzsimons?

MR. FITZSIMONS: Chairman, just a point that I wish to make. We received, yesterday evening, late yesterday evening, a list of 79 documents from the Tribunal with an indication, at least or at least we took it as an indication that Mr. Johansen would be brought through them today. Now, it may be that that is not

the position, in which case there is no problem. But I just wish to inform you, Sir, that whilst a small number of those documents had been gone through by Mr. Johansen in preparation for the giving of his evidence, the vast majority have not been gone through by him. In any event, those documents do not appear to have anything to do with him.

I just wish to make the point so that you will be aware, Sir, that he had not been able to prepare anything in connection with the vast majority of those documents on that list.

CHAIRMAN: I fully understand that, Mr. Fitzsimons. And whilst of course the questions to be asked are a matter for Mr. Healy, from such dealings as I have had with him, it is my understanding that a vastly truncated number of documents will effectively form the substance of Mr. Johansen's examination; and I readily accept, even in anticipation of Mr. Johansen's main statement of evidence, that his involvement in the actual project related to physical presentation and direct dealings in Ireland and abroad only on a limited number of occasions, and that a vast amount of the Telenor dealings were delegated by him to Mr. Johansen (sic), Mr. Simonsen and other colleagues.

ARVE JOHANSEN, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

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

If you can remember the last time you were here, what I propose to do is to go through the material you have given to the Tribunal, and then I'll deal with maybe a number of matters that need to be clarified, and then I'll look at some of the documents. And as the Sole Member said, you are not going to be troubled with a huge book of documents. Those documents, a lot of them were brought to the attention of other Telenor witnesses and are simply there in case it's necessary at any time in the course of examination to refer to something for context or background.

And if a problem arises in relation to a document, I know that you have made yourself available at short notice, and if any difficulty arises, I think there will be ample time to let you examine a document at your leisure.

CHAIRMAN: I think, when I referred to Mr. Johansen, I meant Mr. Digerud, of course, at the conclusion of my previous remarks.

Q. MR. HEALY: Do you have copies of your statement, Mr. Johansen?

A. I think most of them.

Q. Well, I have got three.

A. So which one

Q. The first one is "Narrative account of Arve Johansen, evolution, the shareholding in Esat Digifone, response to letter of the 18th February, 2002 from the

Tribunal."

You then have a long statement in response to a Tribunal questionnaire, and after that, a short statement; but the vast bulk of your evidence is contained in the long statement.

A. Okay.

Q. And that long statement includes, as part of your statement, a letter, and that's the letter that Mr. McGonigal has been referring to.

Now, you say that negotiations concerning the shareholdings in Esat Digifone were dealt with by Knut Digerud and by yourself; Mr. Thygesen had no involvement. You say it was originally intended that the cooperation between Telenor and Communicorp or any other corporate vehicle used by Denis O'Brien for the bid for the second GSM mobile telephone licence in Ireland would initially be on a 50:50 joint venture.

A joint venture agreement to this effect was signed in June of 1995. I think we all know that as the agreement I think it was signed ultimately on the 5th June, signed by one party on the 2nd. I hope my memory is correct in that.

"It was envisaged that a percentage of shareholding would be placed with financial institutions at a later date. I was not involved in the negotiations at the time. The Tribunal's letter of the 18th February, 2002 states that 'an outline agreement' was entered

into between Denis O'Brien and Dermot Desmond in early August of 1995". The first that I have heard "That is the first that I have heard of the existence of this agreement. In early October 1995, and I am not sure of the date except that it was after the 29th September, 1995, I was supplied with a copy of a document described as an arrangement agreement, signed by Michael Walsh on behalf of IIU and by Denis O'Brien on behalf of Digifone. This agreement was signed without Telenor's prior consent".

I think you are aware that that is disputed; isn't that right?

A. Mmm.

Q. I am not going to go into it in any detail, but it may only be a technical matter, in any case, because ultimately you did run with the agreement; isn't that right?

A. I think it's possible to discuss what "consent" means. But from the Telenor perspective, we were never given the last draft for approval before it was signed.

Q. I follow.

"I believe that it was later decided by Telenor that it was too late to challenge the arrangements contained in the arrangement agreement. Telenor was determined to maintain equality of shareholding with Esat/Communicorp in Esat Digifone. Under the arrangement agreement, the shareholdings between

Communicorp and Telenor were to be equal, at 37.5 percent each. I am unable to recollect any further developments in connection with the arrangement agreement.

"I am informed that an agreement was made in January 1996 as described in paragraph 3 of page 2 of the Tribunal's letter of the 18th February, 2002. This agreement was apparently made between IIU and Communicorp. I believed that it was not furnished to Telenor at the time or afterwards. I am informed that on the 12th and 13th April, 1996, shares were allotted in Esat Digifone, as a result of which the issued share capital in Esat Digifone Limited was divided as to 37.5% each between Esat Holdings and Telenor and the remaining 25% to IIU.

"In early May 1996, either the 2nd or 3rd May 1996, I was informed for the first time that there was a proposal between Denis O'Brien and IIU to allow Esat Holdings to purchase 12.5% of the issued shares in Esat Digifone from IIU. I strongly objected to this proposal, which did not proceed. I understand that the agreement apparently made in January 1996, which the Tribunal refers to in its letter, contains a figure of 12.6%, being the amount of the shareholding in Esat Digifone that IIU was proposing to sell to Communicorp. I was not aware of this proposal until I was shown the Tribunal's letter of the 18th February,

2002.

"In early May of 1996, I understand that the Department of Transport, Energy and Communications informed Mr. Digerud that the shareholding in Esat Digifone should be in line with the bid document; that is, 40:40:20. In order to achieve a 40:40:20 division of shareholding, it was necessary for Esat Holdings and for Telenor to purchase 5% of the shares in Esat Digifone from IIU. The price was IRi_ç½2.8 million, approximately, for the 5% shareholding was paid. Esat Holdings and Telenor purchased a half each. Telenor paid 1.4 million, approximately, for its 2.5%. This achieved a 40:40:20 division of shareholding."

You say "approximately 2.8". I think, so that there will be no confusion about it, it was 2.75, precisely, wasn't it, 2.75 million?

A. Yeah, I don't have the exact numbers.

Q. Just in case we are both wrong, we'll make sure that we check it before lunchtime, anyway, to be absolutely sure on the figure.

"Later in 1997 and in 1999, Telenor purchased equal tranches of shareholding with Esat Holdings, as a result of which Telenor increased its shareholding to 45% and then to 49.5% in Esat Digifone. The last 1% in Esat Digifone held by IIU was sold to a subsidiary of British Telecom in 2000."

Now, the next document is your main memorandum of

intended evidence, which I think was faxed to the Tribunal in November of 2002, and I think made available and that's the point I was making, I think, to Mr. McGonigal earlier to all the parties at that stage.

You start off with the heading "Background", and you say: "Arve Johansen was the Chief Executive of Telenor International AS in 1995 and 1996. He was the Chairman of, but he had no executive role or responsibility in Telenor Invest AS, which was the Telenor Group subsidiary involved in the Esat Digifone project. Mr. Johansen had overall responsibility for five operational and actively trading subsidiaries, including Telenor Invest AS. He had no involvement in the Esat Digifone project in the early stages, although he believes that he was briefly introduced to Denis O'Brien on one occasion in mid-1995 when Denis O'Brien was visiting Oslo in order to meet with other Telenor executives".

Perhaps you'd just clarify one matter for me at this stage, Mr. Johansen. When you say that you had overall responsibility for five operational and actively trading subsidiaries, did you have an executive role in relation to those, or was it a board role?

A. No, I was a non-executive Chairman in five subsidiaries, and I have no daily operational role in

any of those.

Q. You had no executive role in any company then?

A. No.

Q. "Mr. Johansen was present at the oral presentation to the Department on the 12th September, but he had no involvement in the preparation of the bid. His role at the oral presentation was limited in scope. He was present as the most senior available Telenor executive. His part of the presentation was prepared for him by the Esat Digifone bid preparation team.

Mr. Johansen had a meeting with Mr. O'Brien in Oslo on the 22nd September, 1995. He also met with Mr.

O'Brien in Geneva on the 3/4 October of 1995. Mr.

Johansen was in Ireland on only two occasions in 1995:

the first for the purposes of the oral presentation to

the Department on the 12th December, and the second

occasion was on the 19th/20th December 1995 for the

first board meeting of Esat Digifone. Mr. Johansen

did not deal with any of the operational aspects of

the Esat Digifone project. Consequently his knowledge

of detail and specifics is necessarily limited".

Now, I think we can now pass from Question 4 from

Question Number 1, sorry, Question Number 2, Question

Number 3, and Question Number 4 on to Question Number

5, most of which deal with the evolution of the

Telenor/Communicorp relationship and the preparation

for the bid and so forth.

Question Number 6, which follows on a question concerning details of the negotiation of the joint venture agreement, to which your response was that you weren't involved in the negotiation or conclusion of the agreement. But Question Number 6 queries your knowledge of the purpose for which the joint venture agreement provided for a guarantee by Esat Telecom of 5 million, and whether, and if so when, the guarantee was actually provided, and for information, any information you had as to the form of such guarantee. And your response is that although you were not involved, you assume that this was to ensure that Communicorp had adequate funds for matters such as the bid costs and related expenses.

You believed that no such guarantee was ultimately obtained, but you had no direct knowledge, and you have located no guarantee document, and you assume that no such guarantee exists.

I think we don't need to trouble you with Question Number 7. In relation to Question Number 8, you were asked for your 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 you did not see the letters from the financial institutions until some considerable time later. Can I just clarify one aspect of that

response: Do you mean until some considerable time after they had been provided, or until some other much later time?

A. Some other much later time, actually.

Q. Do you mean that well, can you tell me, did you see them during the competition process that is, up to October the 25th do you think?

A. Clearly no.

Q. Do you recall whether you saw them prior to your memorandum of the 4th May, 1996?

A. I have no recollection of seeing them. I don't think I saw them before the contest

Q. We'll go back and look at them when we look at your memorandum, because you make some reference to the banks in your memorandum.

You were asked for your involvement in or knowledge of the approaches made to persons other than J&E Davy, Advent and the banks and so on, and you say you had no knowledge.

I think we can pass on to Inquiry Number 11, where you were asked for your knowledge of Telenor's specific understanding of the requirement that the Minister be satisfied as to the financial capability of the applicant as provided by paragraph 19 of the RFP, and in particular, in light of the information memorandum issued by the Department to applicants on 28th April 1995, and specifically that portion of the memorandum

which responded in the following terms to a question posed by Esat Digifone as to how financial capability would be assessed and whether there were any specific criteria.

And your response and that section is as follows:

"Financial capability would be assessed by reference to the proposed financial structure of the company to which the licence would be awarded if successful. The financial strength of the consortium members and the robustness of the projected business plan for the second GSM operation". And so on. Unquote.

And your response is, having made inquiry, you are satisfied that no Telenor executive raised the particular question posed by Esat Digifone as to how "financial capability would be assessed". But you assume that the response given by the Department on the 28th April, 1995, clarified that in addition to the financial structure of the applicant company, the financial strength of the shareholders in that company the members of the consortium, in other words as well as the robustness of the projected business plan would also be relevant. Telenor was not involved in raising this query and was unaware of its making.

You were asked for your knowledge of details of steps taken by Telenor to satisfy itself as to the financial capability of the Esat Digifone consortium and your knowledge of Telenor's views as to the financial

strength or weakness of the consortium.

And you say that you were not involved in that process.

You were asked for details of Telenor's knowledge, direct or indirect, of all agreements concluded between Communicorp, Esat Digifone, Mr. O'Brien or any associated entity with Advent International, including in particular, firstly an agreement whereby Advent provided a facility of IRġ 3.5 million to Communicorp or RINV or any other entity associated with Mr. O'Brien; and secondly, an agreement dated 12th July between Advent International Corporation, Esat Digifone, Communicorp and Mr. O'Brien for the provision of letters of comfort by Advent International to the Department of Transport, Energy and Communications and Telenor.

And you say you have no knowledge of the first agreement, the agreement concerning the 3.5 million facility, other than a possible reference to it contained in the Tribunal's letter of the 18th February, 2002. And in relation to the second agreement, of the 12th July, you say you have never seen a copy of this agreement and you were unaware of any agreement dated 12th July, 1995, or otherwise between Advent International Corporation, Esat Digifone, Communicorp and DOB.

You say that you have been made aware in the course of

preparation of these replies that Knut Haga communicated to Mr. O'Brien the information apparently received from Ms. Helen Stroud of Baker McKenzie, that there was no agreement between Advent and Communicorp. You were asked for your knowledge of the precise terms of the "Offer" made by Advent International to Communicorp of IR ½30 million to fund Communicorp's equity participation in Esat Digifone as referred to in a letter dated 10th July, 1995, from Advent International addressed to the Department.

And you say that your only knowledge is based on the letter in question from Advent to the Department.

And you are unable to provide any responses in relation to Queries 15, 16, 17, 18, 19, which really involves contact between or dealings between Telenor and Communicorp concerning the Advent/Communicorp relationship, and you say that Mr. Knut Haga would be able to address those matters, and he has given evidence in relation to them.

Question 20, you were asked for your knowledge of 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 also Telenor's understanding as of that date of the funding available to Communicorp to finance its equity participation in Esat Digifone.

And your response is that you were not involved in the Esat Digifone project at that stage. You are not aware of any Telenor executive having formed any view other than that Telenor was at all times a party to the joint venture bid. Knut Haga and Amund Fougner Bugge wanted Denis O'Brien, on behalf of Communicorp, to accept Advent's offer if no better offer was obtainable. You were not aware of any inquiries being made to obtain any alternative sources of financial support.

Query Number 21, you were asked for your knowledge of 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 in Esat Digifone were unfavourable to Communicorp, as asserted in a letter dated 4th August from Communicorp to Telenor, together with the source or sources of Telenor's understanding.

And you say that you believe that neither you or any other Telenor executive was informed as to why the terms offered by Advent International were unfavourable to Communicorp. You assume that Communicorp and Denis O'Brien did not like the commercial aspects, for example, quoted rates of interest or fees. You believe that no explanation was given as to why the terms were considered unfavourable.

You were unable to provide any response in relation to Queries 22, 23, 24, and I'll come on to 25. You were asked for 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.

You say you were never informed of any proposed level of licence fee which the Esat Digifone consortium intended to offer. You believe that a decision would have been deferred until the last moment for security reasons. You are therefore not aware of the arrangement of any proposed licence fee as of the 16th June 1995, and you do not know of any steps taken by Communicorp to fund its contribution to the proposed licence fee.

If you pass on then to Query Number 28, you were asked about Telenor's understanding of the purpose for which oral presentations by applicants were conducted by the Department; for the names of all persons present at the oral presentation by Esat Digifone consortium on the 12th September, 1995; and for 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 that your understanding is that oral presentations are held in order that bid assessors can evaluate not just the documentation provided in the bid document, but form an impression of the applicant by meeting its personnel on a face-to-face basis.

Such oral presentations are commonplace in competitive tenders/bid processes. Telenor was represented, I think as we already know, by yourself; Mr. Thygesen, the designated CEO of Esat Digifone, in the event that the licence was awarded; Mr. Myhre, a technical expert; and Mr. Simonsen.

You are unable to say what overall impression was made because this is a matter for the assessors. Your impression was that the presentation was highly professional and was the result of considerable preparation. You recollect that there was a feeling of satisfaction on the part of the Esat Digifone team as to the performance of the Esat Digifone consortium at the presentation. You were unable to you are unable to identify any responses from the bid assessors indicating whether a positive or negative impression was made.

Question 29, you were asked for precise details of all queries raised by the Department in the course of the presentation regarding the financing of the Esat

Digifone consortium, including any queries specifically addressed to Communicorp's funding of its equity participation in Esat Digifone, and in particular, any query regarding the letter of comfort provided by Advent or the terms governing the offer of funds by Advent, and for precise details of all queries raised by the Department regarding the commitments provided by the institutional investors in the Esat Digifone bid.

You say you were present at the presentation. You refer to Messrs. Kilroy solicitors letter dated 15th October 2002, and you confirm that that letter is based on your instructions; that in other words, your answer to that query and your memorandum is as set out in the letter. Do you have a copy of the letter?

And I think I should say that the transcript, which you may have seen since, hadn't become available by that time. You were dependent on memory.

It says, "Dear Mr. Davis" sorry, it's a letter from Kilroy's, letter of the 15th October 2002, addressed to Mr. John Davis, solicitor to the Tribunal.

"Re Tribunal of Inquiry'S Evidence Act 1921 and 1979.

Our client Telenor, matter: Letter from Telenor International, Arve Johansen, to Esat Telecom dated 2nd October, 1995.

"We refer to the above matter. We have

MR. FITZSIMONS: Sorry, Chairman, if I could

interrupt, just to save time.

Mr. Healy refers to "the transcript"; he does mean to refer to the transcript of the oral presentation.

CHAIRMAN: That's how I clearly understood

MR. FITZSIMONS: Just in case, for others.

CHAIRMAN: I think that's the only sense it could make, Mr. Fitzsimons.

MR. FITZSIMONS: Thank you.

Q. MR. HEALY: You say "We refer to the above matter. We have taken the instructions of Mr. Johansen in relation to the context of the letter, the content of the letter, and the circumstances in which the letter was given to Denis O'Brien".

You know you have no doubt about the letter we are referring to here: It's your letter of the 2nd October after the visit of Mr. O'Brien to Oslo on the I think the 22nd September?

A. Yes.

Q. "Before addressing the specifics of the letter, we should point out the following:

"1. This letter related to the bid process. Although certain Telenor personnel provided specialist technical and marketing information, Telenor's role was secondary to that of Communicorp and dependent on information received from Denis O'Brien and from Communicorp.

"Telenor did not monitor or control the bid

preparation process. This was done by Denis O'Brien, Communicorp and its advisers. Telenor trusted Denis O'Brien and accepted at face value all of the explanations and advices of Denis O'Brien as its local partner. The limited resources of Telenor Invest AS and the fact that this company had been recently established, had a very small workforce, and that the personnel involved were inexperienced resulted in a situation where the initiative and momentum of the bid were retained by Communicorp.

"As the Tribunal will appreciate, Telenor was a late entrant into the process of the preparation of the bid. In contrast, Denis O'Brien had assembled a very strong bid preparation team and was familiar with the local scene and had retained high-quality advisers.

It was natural that he and his advisers would dictate the bid process.

"Compounding all the above was the fact that Mr. Johansen, as CEO of Telenor International, the parent company, of five actively trading subsidiaries, including Telenor Invest, had no executive role in Telenor Invest AS. He was not fully briefed about the bid. For example, Mr. Johansen was not in any way familiar with the invitation to tender, the content of the bid documents, or the share capital structure advised in the bid documents lodged with the Department on the 4th August. Therefore the criteria

set out in the documents would not have been known to him at the time.

"The letter was dictated and sent in haste. Due to pressure of time, it was not possible for Mr. Johansen to consider the content of the letter before it was signed and sent.

"The background to the letter of the 2nd October was as follows: There had been an oral presentation in Dublin on the 12th September, 1995, which Mr. Johansen attended. Mr. Johansen made a presentation about Telenor and its technical capabilities. Obviously he was focused on his presentation. Mr. Johansen's recollection is that following the oral presentation, and leading up to and including the meeting in Oslo on the 22nd September, 1995, he received communications from Mr. O'Brien. Mr. Johansen understood from these communications that the presentation by Esat Digifone had been regarded as highly impressive but that the financial aspects needed to be reinforced. At some stage shortly before the meeting in Oslo on the 22nd September, 1995, Mr. Johansen cannot recollect the occasion or context, some reference was made to the introduction of IIU. Not as a replacement for the named institutions, but as an additional party and also as a placer of shares.

"The meeting of the 22nd September was very difficult. Mr. Johansen was adamant in his position that despite

Denis O'Brien's demands that Telenor reduce its shareholding in Esat Digifone to 35%, he would not allow Telenor to reduce its shareholding relative to that of Communicorp. In the week following the meeting of the 22nd September, 1995, there were a few conversations between Mr. Johansen and Mr. O'Brien.

In at least one of those conversations, Mr. O'Brien hung up the telephone because of Mr. Johansen's refusal to accept a reduced shareholding in Esat Digifone for Telenor. Relations were steadily deteriorating, to the extent that Mr. Johansen was concerned about the potential collapse of the Esat Digifone consortium. Even so, Mr. Johansen held his position of the 37.5:37.5 and 25% shareholding structure in Esat Digifone. Around this time period, John Callaghan also made a telephone call to Mr. Johansen in order to persuade him to agree to Telenor reducing its shareholding from 40% to 35%, thereby allowing the additional 5% for IIU. Again Mr. Johansen rejected this request.

"Sometime on the 29th September, 1995, Mr. Johansen drafted a letter to Denis O'Brien in anticipation of a meeting with Denis O'Brien in Geneva. The purpose of the letter was to put Telenor's position very clearly to Mr. O'Brien, but at the same time, to demonstrate Telenor's full commitment to the Esat Digifone project. Mr. Johansen accepted Mr. O'Brien's

assurances that IIU would increase the Irish profile of the bid, and this was seen as advantageous.

"At the oral presentation on the 12th September 1995, and as far as Mr. Johansen can now recollect, about seven years later, the financial position of

Communicorp was referred to by the assessors and may have been responded to by Peter O'Donoghue on behalf of Esat Digifone. However, Mr. Johansen says that he is unable to recollect any specific queries or discussion of the Advent support or the support from the institutional investors during the oral presentation.

"Looking back at the letter, Mr. Johansen is unable to warrant the accuracy of paragraphs 5 and 6. He believes that these paragraphs represent understandings which he received from Denis O'Brien and not from the Department and/or the assessors.

"Following the oral presentation and probably before and during the meeting in Oslo on the 22nd September, 1995, Denis O'Brien spoke of concerns in relation to Advent's support for Communicorp and whether the letters from institutional investors were seen as strong enough by the assessment team. Mr. Johansen had complete trust in Mr. O'Brien's knowledge of the Irish situation and believed that if Mr. O'Brien felt that reinforcement of the financial position of Communicorp, and indirectly of Esat Digifone, was

necessary, and if IIU could perform this role, then this was desirable. Telenor had been disappointed that Advent would not provide a firmly expressed commitment to underwrite Communicorp's capital raising obligations. Although the letter was drafted on the 29th September, it was prepared and signed on the 2nd October. As far as Mr. Johansen can recollect, the letter was faxed to Mr. O'Brien in Dublin on the same date. Mr. Johansen was due to meet Mr. O'Brien in Geneva on the 3rd/4th October. He believes that he actually met Mr. O'Brien in the middle of that week in Geneva. Mr. Johansen's objective in sending the letter to Mr. O'Brien was to calm a difficult situation, and he was anxious to try to restore a working relationship between Telenor and Mr. O'Brien.

"In relation to the letter of the 29th September, 1995, from Professor Michael Walsh of IIU to Martin Brennan, Mr. Johansen did not see that letter before it was sent, but he is aware, having been informed by us, that this letter was sent to Telenor's legal department. No contribution or amendment to that letter of the 29th September was made by Telenor's legal department; neither did Mr. Johansen see nor was he aware of the arrangement agreement of the 29th September when the letter was dictated or when the letter was subsequently sent to Mr. O'Brien."

I am now going on to Query Number 30. You were asked

about the purpose of the meeting between Mr. O'Brien and yourself in Oslo on the 22nd September, 1995, and in particular, the following:

The date on which the meeting was arranged; the person by whom it was requested; the names of all persons present; details of the precise information provided by Mr. O'Brien as to the Department's assessment of the Esat Digifone application; Telenor's understanding as to the source of that information; details of the precise information provided by Mr. O'Brien as to the potential involvement of IIU; the purpose and status of IIU's involvement and the association of IIU with Dermot Desmond; whether Mr. O'Brien informed Telenor of any other facilities to be provided by IIU, and in particular, whether he disclosed to Telenor that IIU had agreed to underwrite Esat Telecom's obligations to contribute to the capital of Esat Digifone.

And the response is as follows: Firstly, you state that searches have been made of electronic diaries.

You go on to say that there is no indication as to the date on which the meeting was arranged, and there is no entry in your diary or in Per Simonsen's diary in relation to the meeting of the 22nd September 1995.

On this basis, you believe that the meeting was arranged at very short notice. You say that the meeting was requested by Mr. Denis O'Brien. You say that you are unable to recollect the detail of the

meeting. You believe that you and Sjern Malm, director of new projects, were present on behalf of Telenor, and that Denis O'Brien was unaccompanied. You have no note, record or other written information in relation to information provided by Denis O'Brien at that meeting. Therefore, you can only rely on your unaided recollection. You are unable to say, at this time, what precise information, if any, Mr. O'Brien provided in relation to the Department's assessment of the Esat Digifone application. You refer to your memo of the 4th May, 1996, and you believe that the content of that memo was based on information received from Mr. O'Brien at the time.

I'll read that memo out after we have finished these statements.

You say that you have no understanding as to the source of such information, although, from time to time, Mr. O'Brien would refer to having important and useful sources of information. You always assumed that this referred to the consultants retained by Mr. O'Brien. You are unable to provide details of the precise information provided by Denis O'Brien. You can only say that on a general basis, you were informed that IIU was a substantial financial institution; that Dermot Desmond was the leading Irish financier with substantial wealth, and that there would be advantage in the involvement of IIU which was

not involved in supporting any of the other consortia.

There was also advantage in involving IIU because they would raise the prominence of Irish capital, and this would be more attractive to the bid assessors. Your impression was that IIU was owned by Dermot Desmond and that the names IIU and Dermot Desmond were synonymous.

You again refer to your memo and you say your memo of the 4th May 1995, and you say that you believe that your recollection is correct, which is that there was no mention at this meeting of the 22nd September, 1995, of IIU's agreement to underwrite Esat Telecom's obligation to contribute to the capital of Esat Digifone. Mr. Haga, "who", I suppose that should say, was dealing with the financial issues and the intended financial support from Advent, was not at the meeting, and you had no background financial information.

Because the meeting was arranged at such short notice, there was no opportunity for a prior financial briefing.

You were then asked for details of all further contacts between Mr. O'Brien, Mr. John Callaghan or any other person whatsoever with yourself or any other Telenor official subsequent to the meeting in Oslo on the 22nd October, and prior to your letter to Mr. O'Brien of the sorry, that should be subsequent to the meeting in Oslo on the 22nd September, and prior

to your letter to Mr. O'Brien dated 2nd October.

I think there is a typographical error in the next answer, and I'll read it out as I think it should read. And if you want to correct me or anyone wants to correct me, then I'd be happy to take on board what they say.

"At some time", and I think that should read "after the 22nd September 1995 and prior to the 2nd October 1995, Mr. John Callaghan telephoned Arve Johansen with a view to persuading Arve Johansen to accept that the shareholding in Telenor should decrease relative to that of Esat Telecom/Communicorp."

Again, I think that should probably read: "with a view to persuading you to accept that the shareholding of Telenor should decrease relative to that of Esat Telecom/Communicorp."

A. I agree with both those corrections.

Q. You recollect that the telephone conversation with John Callaghan was polite. When you expressed your adamant opposition to any reduction in Telenor's shareholding relevant to that of Esat Telecom/Communicorp, Mr. Callaghan did not press the issue any further. You were aware, based on the efforts of Mr. O'Brien himself and of Mr. Callaghan, of how strongly Mr. O'Brien felt about Telenor.

Question 32, you were asked about the date on which and the 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 you do not exactly know when this happened. You are unable to identify either the date or the circumstances. You believe that it was sometime in the second two weeks of September, possibly very shortly before the meeting of the 22nd September, 1995. You believe that the purpose of the meeting of the 22nd September 1995 was for Mr. O'Brien to persuade Telenor of the advantage of the involvement of IIU, but that no mention of underwriting probably followed sorry, I beg your pardon but that the mention of underwriting probably followed at a later date.

You have recently been made aware that a draft of an underwriting letter was submitted to Telenor's legal department in late September, 1995. You did not know and you were not consulted in relation to this.

In Question 33, you were asked about the date on which and the circumstances in which Telenor had sight of or otherwise became aware of the contents of a letter dated 29th September, 1995, from Mr. Michael Walsh of IIU addressed to Mr. Martin Brennan of the Department.

You say you are unable to remember when this happened.

At the date of your letter of the 2nd October 1995, you were not aware of the Professor Michael Walsh letter to Martin Brennan of the Department or of the

signing of the arrangement agreement or any of these documents of the 29th September. Whether due to unavailability of otherwise, you were not informed of these documents on Friday, 29th September. You were out of Norway for most of October, 1995.

At Question 34, you were asked about Telenor's understanding of the purpose for which the letter of the 29th September from IIU was sent and all matters or considerations which prompted the furnishing of the letter, together with the source of your understanding.

And you say you had no such understanding. You are not aware of any Telenor executive having been informed of the purpose of the letter of the 29th September. In that regard, you note, based on information received by you during preparation for these replies, that a draft of the letter of the 29th September, was sent to Telenor's legal department, but apparently no comment or observation was made thereon by Telenor's legal department. There is no record of Telenor seeking an explanation of the purpose of the letter of the 29th September. You were informed that this is because of the absence on holidays during the relevant time of the lawyer in Telenor's internal legal department who was dealing with the Esat Digifone project. You draw the Tribunal's attention to the fact that none of these letters or the

arrangement agreement were considered or analysed on behalf of Telenor by Irish solicitors, because Telenor had not yet retained Irish solicitors until on or after the 5th October, 1995.

You were then asked about the date and circumstances in which Telenor was first informed or otherwise became aware that the Department had refused to consider the contents of the letter of the 29th September, 1995, and you say that you have no direct knowledge or information in relation to this. You can only point to the attendance notes of Matheson Ormsby Prentice, solicitors, dated 9th November, 1995, as indicative of the fact that Per Simonsen would have been aware of this information by that date.

You are certain in your recollection that you personally were unaware in advance of the intention to send the letter of the 29th September to the Department. You are not aware you were not aware of its content, and you were not shown a draft at the time. You were not aware of the subsequent rejection by the Department of the letter, and you were not involved operationally in the Esat Digifone project.

In Query 36, you were asked about the date on which and the circumstances in which Telenor first had sight of or otherwise became aware of the contents of the 2nd October letter from the Department to Mr. O'Brien. And you say that your first knowledge of the contents

of that letter was on the 24th April, 2002, as a result of information received from the Tribunal.

You were asked about your understanding of the 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 I think that because these two answers are taken together, I should read 38 as well: And you were also asked for your understanding of the precise obligations and entitlements of IIU on foot of the agreements of the 29th September between Communicorp and IIU and between Digifone and IIU.

And you say that Telenor did not have the opportunity of carrying out a proper and detailed analysis of the relevant agreements. The arrangement agreement and the relevant letters were signed before any legal analysis on behalf of Telenor was carried out. In addition, there was no opportunity to take Irish legal advice on the documents. So far as Esat Digifone was concerned, you believe that the impression Telenor would have received from the documents is that Esat Digifone was obliged to permit IIU to arrange for 25% of its equity shares to be taken by passive institutional investors. You do not know of any agreements between Communicorp and IIU. Conversely, you say that IIU was entitled to insist that Digifone

retain IIU as an arranger to find investors for 25% of the issued share capital of Esat Digifone.

You say in relation to these questions you say, sorry, in relation to Questions 20 and 21 and I wonder, is this a typographical error that you had no contemporaneous knowledge of these documents or the obligations imposed or entitlements conferred by these documents. I think in fact you are referring to the two answers you have just given.

A. I agree.

Q. You were asked about your knowledge of the circumstances in which J&E Davys and the various banks agreed to withdraw from the consortium. And you say you had no personal involvement in this; that based on inquiries made by you, you believe that no other Telenor executive had any involvement in or any knowledge of any agreement of the named broker and financial institutions to withdraw from the Esat Digifone consortium.

I think we can pass on to Query Number 45. You were asked about Telenor's knowledge regarding the ownership and financial standing, etc., of Bottin international. And you say that you were out of Norway sorry, and you also refer to a letter from Mr. Knut Digerud to Mr. Michael Walsh of IIU seeking information about Bottin. And you say that you say that you were out of Norway for most of the month of

October 1995. You were not involved in any way and you did not receive any information in relation to any of the communications by Telenor with any other parties in relation to Bottin International.

And I think you go on saying you know very little about Bottin. You knew nothing about the letter.

I'd better be clear about this, I suppose. 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.

It seems to me clear evidence of a breach of good faith with the Department."

You say that it's inappropriate for to you comment on that.

Were you aware that that appeared to be a comment in relation to Bottin, or subsequently did you become aware of that?

A. I don't think I have seen this before at the time I prepared the answers here.

Q. You don't think you had seen the letter until you came to prepare the answers to this query, is it? I'll show you the letter later on, if you like. It's a letter from Mr. Arthur Moran, I think, to Mr. Simonsen, in which he draws attention to the fact that the side letter of the 29th September I think

that's the one referring to Bottin and which conferred on Bottin rights under the arrangement agreement. In fact the whole thing was assigned to them. He suggested in his letter that that seemed to him to be clear evidence of a breach of good faith with the Department, but not to be illegal.

A. Okay, I had never been involved in any such discussion.

Q. Right.

You were asked when you first became aware of the circumstances in which Telenor you were asked for the date on which and the circumstances in which you first became aware, in which Telenor first became aware that Esat Digifone had won the licence competition.

And you say that you were in Seattle in the U.S. with Mr. Knut Digerud when the news was communicated, and you believe that you were informed by Knut Digerud, who had received a telephone call from Norway. It was the morning of the 25th October 1995; West Coast time in the USA is eight hours behind GMT, and it was late evening in Ireland.

Query Number 48, you were asked about Telenor's understanding of the composition of the Esat Digifone consortium at a number of specific dates. And I think in your answer you referred to those dates so I can go directly to the answer.

You say the composition of Esat Digifone was not yet established as of the 4th August, 1995. The composition was intended to be 40:40:20. You were not aware of this composition at the time, and you were relying on knowledge subsequently received. And the source of the knowledge is the bid documents lodged with the Department on the 4th August.

Again you say the composition of the consortium had not been established, had not yet been established as of the 25th October, 1995. The intended composition was now, as a result of the arrangement agreement of the 29th September, to be 37.5:37.5:25. And your source of information for that is the arrangement agreement itself.

You go on to say that as a result of the allotments made on the 12th and 13th April 1996, the shareholdings were allotted as to 37.5:37.5:25%. And your source of information is the actual Companies Office documentation.

You go on to say that as a result of the share transfers formalised on the 16th May 1996, the configuration of the issued share capital of Esat Digifone was 40:40:20. And you say that the stock transfer forms from IIU to Esat Telecom Holdings and to Telenor respectively and the share register of Esat Digifone are the sources of this information.

In Query Number 49, you were asked about Telenor's

understanding of the Department's knowledge of the composition of the consortium at various times, at the same dates, in fact. And you say Telenor was not privy to all communications and discussions with the Department. Communication with the Department was handled by Mr. O'Brien and by William Fry Solicitors.

In relation to matters of shareholding, it is your belief that communications with the Department in relation to the composition and capital configuration of Esat Digifone were mainly, if not entirely, dealt with by William Fry Solicitors. As such, you are unable to say what your personal understanding of the Department's knowledge of these matters was. You submit that no Telenor executive would or could have had any reliable understanding or knowledge of what the Department's actual knowledge of these matters was.

I think we don't need to trouble you with Query Number 50.

In relation to Query Number 51, you were asked about the manner in which Telenor was involved or otherwise became aware that Communicorp/Esat did not intend to fund its equity participation in Esat Digifone by drawing on financing which was to be provided by Advent International but intended to fund its participation by placement through CS First Boston.

And you say it would appear on the 19th September

1995, Knut Haga wrote a letter expressing Telenor's dissatisfaction with the Advent International letter of the 10th July, 1995. To the best of your recollection, you were informed of Communicorp/Esat Telecom's intention to fund its participation by placements through CS First Boston sometime in late April or early May of 1996.

You were then asked about Telenor's knowledge of the information furnished to the Department by or on behalf of Esat Digifone regarding ownership, and in particular, a letter of the 17th April, 1996, from Mr. Owen O'Connell addressed to Ms. Regina Finn. And you say based on a review of the documents and the advice of Telenor's Irish solicitors, the relevant time period of such inquiries or queries was April 1996.

It seems that inquiries were made of William Fry Solicitors for Esat Digifone. Based on inquiries made, you believe that a draft letter of the 17th April, 1996, from Mr. Owen O'Connell was sent to Telenor's legal department, which made no comment on the letter. You have also been informed that a draft of the letter was shown to Knut Digerud, the then Chief Executive of Esat Digifone. You believe that you were not informed of or consulted about any of these inquiries or communications in response.

In Query Number 54, you were asked about all dealings and discussions which Telenor had with Mr. Denis

O'Brien, Communicorp, Mr. Desmond, Mr. Walsh, or any servant or agent of IIU Limited or any adviser of Communicorp or IIU in relation to the issues and queries raised by the Department regarding the capital configuration of Esat Digifone and the beneficial ownership of the issued shares. You say that you believe that Telenor had no dealings or discussions with any of the named parties relating to the issues raised by the Department until shortly before the 16th May 1996. You state that it has not been possible to identify the precise date or circumstances in which Telenor received the impression from the Department that it would be appropriate to establish the shareholdings in Esat Digifone in the same proportions as stated in the bid document. You think that the issue was first raised or questions raised at the meeting with the Department on the 3rd May, 1996.

Query Number 55, you were then asked about the meeting at the Department on the 3rd May, 1996, which was attended by Mr. Digerud, by yourself, by Mr. Donoghue, Mr. Walsh, Mr. Connolly and Mr. Owen O'Connell. You were asked about the purpose of the meeting, what was discussed, what queries or issues were raised by the Department about the requirements of the Department and the requests by the Department to Telenor to underwrite the entire of the equity and operational expenses of Esat Digifone, and your understanding, or

Telenor's understanding, of the reasons for such request.

You say apart from the confidential memorandum dated 4th May, 1996, you prepared no other note or record of that meeting. No contemporaneous note was taken.

Your best recollection is as follows: It was your understanding that the meeting was to deal with outstanding issues in relation to the issue of the licence which at this late stage was overdue. You were unable to identify any matter or issues other than those referred to in your memo of the 4th May, 1996. And apart from the memo, you are unable to identify any specific queries or issues raised. You believe that one of the concerns of the Department was the financial strength of IIU, and this is why the Department sought some form of commitment or comfort from Telenor to support the project.

You were asked about when, or about Telenor's knowledge or awareness that the Department had requested that the configuration be restored to 40:40:20, and you say it has not been possible to establish the precise date and circumstances in which Telenor became aware of the Department's request or suggestion that the configuration of the issued share capital be changed to 40:40:20. The bid document envisaged that the capital configuration of the consortium would be 40:40:20. The Department

officials raised the question at the meeting on 3rd May 1996 as to why IIU had 25% when the bid referred to 20.

You were asked to you were asked about Telenor's knowledge of any contact between any person associated or connected directly or indirectly with Esat Digifone and the Department or the Minister regarding the Department's request that the issued share capital would be restored to 40:40:20. You say that from your own knowledge, you are unable to say what contacts were held other than your meeting of the 3rd May, the meeting of Knut Digerud and a now retired Telenor executive on or about the 8th May and later meetings with the Department on the 13, 15 and 16th May.

Am I right in saying that that answer is based on the documentation that the Tribunal has assembled, apart from your own memorandum?

A. I think when we prepared these answers, we still had not got all the documentation, so looking at it now, I don't think it's anything incorrect here.

Q. I don't either. I just want to clarify in my own mind.

A. I don't think we had all the documentation at the time. I think it's correct.

Q. I just want to clarify in my own mind that I think you were at the meeting of the 3rd May, and I don't think you were at any of the other meetings.

A. Oh, yeah, that's correct.

Q. You were then asked about all dealings, discussions and negotiations between Telenor, IIU and Communicorp regarding the Department's request to restore the share configuration to 40:40:20. And specifically, you were asked about the agreement of IIU to transfer 5% to yourselves and Communicorp, negotiating regarding the valuation of the 5% at 2.75 million and the manner in which the valuation of the 5% shareholding was fixed at 2.75 million. And you say, subject to the fact that you were not personally involved in dealing with the issue, you reply as follows: You believe that Telenor was responding to a concern on the part of the Department that the shareholding in Esat Digifone on the issue of the licence be consistent with the shareholding specified in the bid document lodged on the 4th August. Knut Digerud informed you that there were no negotiations in relation to the valuation of the shareholding. Dermot Desmond specified a price and stated he would only sell for that price. No valuation or method of computation of the price specified was revealed to Telenor, and you were informed by Mr. Digerud that Dermot Desmond specified this as the non-negotiable price he was demanding for the sale of the 5% shareholding in Esat Digifone. You were not involved in this process.

You were asked about the meeting of the 13th May, 1996, and I think you say that you were not at it.

A. May I make one small correction to the reply to Question Number 57? I was actually at the meeting on the 16th May, just before the licence was

Q. Of course, that's right, because you were present were you not in fact present for the press conference the following day?

A. Yes, I was at the press conference.

Q. We can pass on to Query Number 62. You were asked about the release of IIU from its obligations on foot of the agreements of the 29th September, 1995, to underwrite Communicorp and the assumption by Telenor of an obligation to share with IIU the underwriting of Communicorp's equity participation in Esat Digifone on a 2:1 ratio.

You say you were unaware of the renegotiation of the underwriting arrangement between members of the consortium. You are not aware of any meeting or discussion or negotiation. Based on your consideration of the matter and what ultimately happened in the shareholders agreement on the 16th May 1996, it appears that the shareholders agreement negotiations overtook the underwriting arrangements of the 29th September. The matter evolved in this way without any conscious decision on the part of Telenor that the underwriting arrangement should be

renegotiated. The effect of the shareholders agreement of the 16th May 1996 was that the financial obligations of IIU were fully set out in that agreement. The agreements of the 29th September were superseded. You say that Telenor did not assume any underwriting obligations or share obligations with IIU; instead, Telenor provided a bridging facility to Esat Telecom on a 2:1 ratio with IIU. Telenor's decision so to do was motivated by the fact that it was not in the commercial interest of Telenor that the Esat Digifone consortium should be inadequately capitalised. There were considerable pressures in ensuring the timely roll-out of the network and the remaining matters to be dealt with for the establishment of the GSM network and the provision of services to customers in accordance with the time schedule laid down by the Department. The licence was long awaited, and Telenor was anxious to ensure that its final issue having made such a substantial investment of time and effort.

I am not going to tax you with this, certainly not at the moment in any case, Mr. Johansen; but if you look at your response to Query Number 62.2, you say that Telenor did not assume any underwriting obligations or share underwriting obligations with IIU. You can have a look at it over lunch, but I think I am right in thinking that in one of the side letters, they did

assume such an obligation. You can check it over lunch. I think I am right in it, and there may be a degree of confusion.

A. If you refer to the 2:1 responsibility of covering Communicorp or Esat Telecom, probably at that stage, if they failed, I agree with you.

Q. Yes, you were covering them for for their portion of the 15 million. That was they'd come up with 6 million; isn't that right?

A. Yeah

Q. That was offered 4 million: 2 million between yourselves and IIU, but I think in addition to that, didn't you also provide a sort of an underwriting to the Department by way of a side letter?

A. Yes, and I would like to add that at this point in time, when the company have a licence and are ready to go, participating in the equity of the company is not seen as an obligation exactly; more a right. So it was not a difficult one for us to give.

Q. I simply want to clarify that I am right in thinking that apart from the Communicorp portion of the licence fee, you also assumed other underwriting obligations with IIU?

A. That was not an underwriting obligation as such; it was a willingness or an intent that we would step up as long as we could get equity for the capital.

Q. I follow. If Communicorp didn't have the money to

fund their portion of the equity or of the ongoing capital requirements, you would step in in return, of course, for a proportionate share of the equity?

A. And that was the particular point, because as I say, it is not seen as an obligation at this stage. It's seen as more an option.

Q. I understand. I suppose I was looking at it in the light of the fact that the arrangement agreement obligations disappeared at that stage.

A. Mmm.

Q. I think the next query, Query Number 63, there may be some confusion, because I think you have already answered that.

I think a related matter is dealt with in Query Number 67, where you were asked to identify all side letters entered into between the members of the consortium or any two of or more of them in September or October of 1995; similarly all side letters entered into in advance of the issue of the licence on the 6th May and all side letters entered into between Esat Digifone Limited or any shareholder of Esat Digifone Limited with the financial institutions which provided project financing.

And you say that in relation to the first period, September, October 1995, you are only aware of one side letter, which you subsequently became aware of either in late '95 or early 1996. This was the side

letter from IIU assigning the benefit and obligations of the arrangement agreement of the 29th September 1995 to Bottin. You are not aware of any other side letter.

That's the side letter I was referring to earlier.

A. Okay.

Q. With regard to the second date, the 16th May, you say that all side letters which were entered into between the members of the consortia were, to the best of your knowledge and recollection, dated the same date as the date of the issue of the licence, the 16th May, and your recollection is that all such side letters are contained in a bible of documentation prepared by William Fry Solicitors. And you are not aware of any other side letters.

You were asked in Query Number 69 of Telenor's about Telenor's knowledge of all meetings, discussions, dealings or contacts between Mr. Denis O'Brien or any person on his behalf and the Minister or the Department at any time from the first involvement of Telenor in the Esat Digifone consortium to the date of issue of the licence on the 16th May 1996.

And you say that you have no direct knowledge of any meetings or discussions, dealings or contacts between Mr. O'Brien or any person on his behalf with the Minister or with the Department. You go on to say

that you cannot remember the date, but you believe that it was sometime in September 1995, when Per Simonsen informed you that Per Simonsen had been told by Denis O'Brien of an encounter between Denis O'Brien and the Minister in a public house. You cannot remember exactly what you were told by Per Simonsen, but it was to the effect that Denis O'Brien had told Per Simonsen that the Minister had suggested to Denis O'Brien that the involvement of IIU would be helpful. You attached no importance to this. Sometime on or about the 23rd October 1997, at a meeting in IIU's offices, you asked, in the context of the IPO investigation and the story that Mr. O'Brien had made two payments of IR£100,000, if anyone had heard of the story of the meeting in the public house. You asked this question either towards the very end of the meeting or just after it was over. No one responded for a while, and then John Callaghan said he had heard of a meeting on a plane. The impression formed was that no one else had been told this story and that of this not taken seriously. You do not remember any note being taken of this question. You cannot say who would have heard you ask the question, and the only response you received was from John Callaghan. You were then asked for details of all meetings with a number of individuals or officials. And you say that despite inquiries, it has not been possible to

establish with certainty all meetings and discussions between Telenor, Esat or any member of the consortium or any person on their behalf with the various persons identified by the Tribunal. Communications with the Department were delegated to Denis O'Brien and William Fry Solicitors. You, therefore, are only in a position to respond to the question on your own personal behalf, and your responses are you had no meetings or discussions with Michael Lowry; you had met briefly with John Loughrey on the 16th May 1996; you were present at the oral presentation on the 12th September 1995. You cannot recollect any discussion directly with Martin Brennan unless your presentation is regarded as a discussion. You also met him at the meeting of the Department on the 3rd May. You were unable to recollect any other meetings, but you cannot exclude the possibility that there may have been such meetings. You say that you believe that Mr. Towey may have been present at the oral presentation, and you may also have met Mr. Towey in the Department on the 3rd May. You had no meetings or discussions with either Michael Andersen or any member of Andersen Management except at the oral presentation, and you are unable to say if Michael Andersen was present. You say you were unable to say if Michael Andersen was present until you were given a transcript of the oral presentation which was prepared on 18th November,

2002, and shown to you on the 20th November, 2002.

You have no recollection of any meeting or discussion with any official other than as stated above, and you had no meeting with any member of the Irish Government, and you had no meeting with any Irish public officials.

You made a you provided a supplemental memorandum of information on the 14th April, 2003, which is very short, and which is as follows

A. I am sorry, I don't have that.

Q. Sorry, I beg your pardon; I'll put it on the overhead projector.

A. Okay.

Q. It's only nine lines.

You say that it says that you have informed the Tribunal that you arrived in Dublin very shortly before the oral presentation by Esat Digifone on the 12th September, 1995, in fact the evening before.

Your presentation was prepared for you. You were given a short and fairly intensive briefing on your presentation. You were given a script or speaking note that you were to deliver.

You had no background information or detail other than the latest financial statements of Telenor in your possession which you brought with you to Dublin.

CHAIRMAN: You are on the statements now, Mr. Healy.

For the sake of five minutes, it's probably more

sensible to defer for lunch now and we'll resume at five to two.

And I suppose it would be helpful if you indicated either to Mr. Johansen or Mr. Fitzsimons the considerably more truncated number of matters

MR. HEALY: I've already done that but I'll make sure I go through that

CHAIRMAN: that may be embarked upon in the afternoon. If that suits you, we will proceed at five to two. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF ARVE JOHANSEN

BY MR. HEALY:

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

Could I just clarify for a moment the chain of command in Telenor at or around this time in 1995? I have already discussed it with Mr. Digerud, and I think already with Mr. Simonsen. You were a non-executive Chairman at that time?

A. Yes.

Q. Of Telenor?

A. International.

Q. Of Telenor International. And Telenor International were running this, the Irish end; isn't that right?

A. No, that's not correct. Telenor International was a business area of Telenor, but it was also set up as a

limited company, so it was an AS in Norwegian, which means "Limited", and I was the managing director for that entity.

Q. The managing director?

A. Yes.

Q. I am sorry

A. For Telenor International, but Telenor International had five subsidiaries, one of them being Telenor Invest, and I was a Chairman of that, a non-executive Chairman.

Q. I was confused because this morning I thought you said that your only role was a non-executive one. You had an executive role as managing director of Telenor International?

A. And another level.

Q. I quite understand that. You weren't Chairman of that company; you were just one of the directors, and there were you were effectively the Chief Executive Officer of that company, were you?

A. Yes, of Telenor International.

Q. And in your role as Chief Executive Officer of that company, you were Chairman of five subsidiaries underneath it?

A. That's correct.

Q. One of which was involved in the Irish project?

A. Correct.

Q. Now, Mr. Digerud: What was his role in relation to

you? What was his executive role in relation to you?

A. Mr. Digerud, in '95, was Chief Executive Officer or the managing director of Telenor Invest.

Q. Of which you were Chairman?

A. Correct.

Q. And Mr. Simonsen was reporting to him?

A. That's correct too.

Q. Your role in Telenor Invest, so far as the Irish project was concerned, am I right, consisted mainly of coming to Ireland at the time of the presentation, being involved in Oslo with Mr. O'Brien around the 22nd to the 29th September-3rd October, and being involved in May of 1996 when you came over to Ireland on the 3rd May, and also maybe formally, I don't know, on the 16th May; would that be right? Were they your main involvements?

A. Yes. There were a few more occasions related to board meetings in Esat Digifone, because I was elected a director, I think on the 19th or 20th December, '95.

Q. And you may have been involved in whatever board resolutions were required for the allotment of shares in April 1996?

A. Yes, that's correct.

Q. But I wonder, can you tell me in your own words at the same time, and can you explain to me what your overseeing, or your overall role was in relation to the project at its inception stage?

A. Yes. In the beginning I had absolutely no role in that. That was the setup was that I was in another building on the other side of the road; we had to walk like basically 7, 8 minutes, I guess, between the houses that I was in and where Telenor Invest were, had to cross a major road, four lanes, so there was no day-to-day contact between us. And this was one in the beginning, one of many embryo ones so to speak in Telenor Invest that could evolve into a project, and I would never be even maybe informed about it at a very early stage, so and my involvement would typically be the formal board deliberations on the project when it was presented to the board because I was a Chairman, and very little on the day-to-day basis.

Q. Okay. But at some stage, can you let me know, how did the board, or did the board get involved in instituting a relationship with Mr. O'Brien's Communicorp company?

Let me tell you where I am coming from: We know that Mr. Simonsen had meetings in Dublin, around I think 27th, 28th April end of April, in any case. He was interested in trying to get involved in the GSM project in Ireland. He had dealings with Mr. O'Brien. He thought in fact, he wrote to the banks, and he wanted to see whether the banks had customers that might be interested in getting involved with you; I don't think anything came of that. Whose decision was

it, if you know what I mean, to go after the project at that early stage, before it could amount to anything?

A. Well, that would be at that stage a kind of a decision at the management level of Telenor Invest.

Q. I see. When it came to entering into the joint venture, presumably the board had to get involved, and therefore you had to get involved to some extent?

A. I had no recollection of that, actually.

Q. I appreciate that, and I think you have said that in your statement; but I presume you must have been involved.

A. I don't think we have any records of dealing with it before it was kind of a further advanced stage.

Q. But the board at some stage must have approved it in any case?

A. Yes, and that was before submitting the bid.

Q. Yes. And you don't recall if you were involved at that point?

A. At that point I was involved.

Q. Yes, well, I see. That's what I was saying; you presumably must have been involved in presenting it to the board, and as a director, and approving it?

A. In the first instance, yes, that was presented by Mr. Knut Digerud, but I was definitely part of that board meeting.

Q. Now, from other witnesses, we have learnt that there

was a lot of contact between I think Mr. Haga, and to some degree Mr. Simonsen, with the Communicorp side on this question of the guarantee. But it doesn't ever seem to have got as far as troubling either you or Mr. Digerud; am I right in that?

A. I cannot answer for Mr. Digerud, but for my own sake, I was never involved in that.

Q. The first major involvement you had was to come to the presentation to show the face of Telenor; is that right?

A. Correct.

Q. At the presentation you gave a speech or you made a contribution?

A. Correct.

Q. You have seen the transcripts of the presentation?

A. Yes, I have seen it now, relatively lately.

Q. And I think well, it would have been available to you some considerable time ago; maybe you have only seen it now, but your contribution, which you may have thought at one stage was technical, in fact was much more sort of a macro contribution, wasn't it?

A. Yes, I have to admit that my memory of what I had presented was not absolutely correct, because I thought I had presented Telenor more in the broad sense and the capabilities of Telenor. It appears that I presented the general venture in a much broader sense.

Q. Yes. And we might just put that on the overhead projector, the relevant part of the transcript.

Just while we are waiting for the transcript to go up, was the 12th September, the day of the presentation, the first day that you met Mr. O'Brien personally? It may have been the night before, of course.

A. No, I met him

Q. When he came to Oslo?

A. When he came to Oslo in the early days, so he was brought over and said just hello. So

Q. What we would call a courtesy call?

A. Exactly. I think it was Sjern Malm introduced him to me, saying, you know, "Do you want to say hello to Mr. O'Brien? He is here, and this is the company we are intending to cooperate with in Ireland"; something like that.

Q. I am just going to put on the overhead projector your portion of the transcript. I think you may have your own personal copy as well. Just very quickly it's not very long just very quickly go through it.

You said, "Ladies and gentlemen, Esat Digifone has the right partnership in place to succeed. I will explain this to you this afternoon by highlighting five points. Esat Digifone is an Irish company. We have sufficient financial capacity to meet and even exceed the funding requirements. The partners have complementary skills and experiences, and we have a

very high level of commitment, and we have the freedom to choose the best quality infrastructure.

"Esat Digifone is an Irish company. It's evidenced first of all by the Communicorp Group holding 40 percent as we get going, and we have institutional investors holding 20 percent, and they are: The Allied Irish Bank, the Investment Bank of Ireland, Standard Life Ireland and Advent International. In addition, we have Telenor, through its subsidiary Telenor Invest, and Telenor is the major telecommunications operating company in Norway, having last year an operating revenue of 1.8 billion and a profit of $\text{€}190$ million.

"We already have the funding in place. The total funding requirements seen from the business plan is $\text{€}134$ million. We base the capitalisation on 40 percent equity and 60 percent debt, and therefore we are certain we can achieve that in the project in Ireland on GSM.

"The available funding exceeds those requirements considerably. Telenor has a firm commitment. It's even already approved by the board of directors at the top level of the corporation, $\text{€}30$ million, and even that would not be a hard limit, even, if you think later we would benefit from having more equity. The Communicorp Group has committed $\text{€}30$ million and the institutions have committed $\text{€}11$ million, meaning that

we have available €1.1 million in equity, and we have the banks like NatWest markets and ABN-AMRO, who has submitted 90 million, meaning that we have available funds of 161 million, which is 37 million above the current requirements of the business plan.

"So what are the advantages of a Communicorp/Telenor operating partnership? Communicorp and Telenor really have complementary skills. Communicorp, through its subsidiary Esat Telecom, has a proven ability to compete effectively in the telecoms market of Ireland.

Telenor, on the other hand, has an experience in a broad range of telecommunications services, but we are world leader in mobiles. Telenor Mobil alone has 750,000 subscribers currently, based on a population of 4.2 million, and in Norway more than one in five has a mobile phone. Together we can make this same thing happen in Ireland.

"Communicorp has the experience of starting up businesses in Ireland, and we have in Telenor the experience of starting up a lot of operating companies abroad, mostly on the mobile market. Together, that should guarantee for successful start-up of a GSM operation also in Ireland.

"Communicorp is an entrepreneurial company and Telenor, on the other hand, is a success telecoms operating company, and it means we have the experience to work in joint ventures. In fact all of our

operations abroad are joint ventures. We have experience in working in joint ventures with many partners and with as few as two.

"And there is absolutely no doubt that what you need in a good partnership is the partners that can bring to the table the necessary skills and experiences to make it a success; that you don't need more partners than that.

"And what we have already achieved with Esat Digifone is a better operating corporation in this project than what would ever be possible in a multi-operating joint venture. And I am talking from experience, because I have eight partners in a Hungarian Panan GSM operations.

"Communicorp has an Irish marketing flair and a market understanding, whereas Telenor is a European leader in the development of mobile communications; have been very active in the specifications and development work in the international organisations of ITU and ETSEE.

Together this is the partnership that is needed to make this a successful start-up. Communicorp and Telenor are both uniquely committed to this.

Telecommunications services is the core business for both.

"This licence is the most important project for both of us and we both share the long term exclusive commitments to the telecommunications business. We

are free to choose the best supplier. There are quite a few companies today that are capable of manufacturing cellular equipment, many of them present in Ireland. Throughout all our operations we apply equipment from all. We follow the EU procurement procedures for public procurements, and one of the criteria we will use for selection is the quality and the services offered, the price offered, and not the least important the delivery times.

"This is the only way we can avoid a conflict of interest and secure a successful launch and operation of service.

"To conclude, I believe we have shown that you Esat Digifone has the right ownership structure in place and the right operating partnership to succeed.

"The next critical factor is market development approach, and I will leave that to Barry Maloney."

Now, I think in your statement you have referred to how you came to make that presentation; isn't that right?

A. Yes. I had a very short time for preparations. I basically came over in the afternoon of the day before, the 11th, which I think was a Monday, and I was given copies of the slides and bullet points on manuscript to talk from, so I was trying to practice for myself on the plane over, and the only part of the bid I had ever seen I think must have been probably

the executive summary. And I remember now that I was a bit surprised that this was my part of the presentation. But everything was kind of set up for the various persons on the team to present each part of it and, okay, I accepted having this part.

And it came in I came into the room where our guys were, which were the location of the bid team, and they had been practicing for a long time already.

They were very nervous about me coming in so late, and I did a couple of rehearsals that night, the 11th, and maybe had a short rerun the next morning before I went in.

Q. Can you remember, did you have a full script, or were these your own words, based on bullet points, or were they based on some notes you had?

Do you understand me?

A. Yes, I tend to believe I had more or less a full script.

Q. Was that full script your own work, or had it been scripted for you?

A. No, it had been scripted for me. I had no time for doing that myself.

Q. Now, you are aware that the Tribunal wrote to, I think I think it was Messrs. Fry's for Mr. O'Brien, and also wrote to, I think, Esat Digifone trying to find that script, and a document was produced which doesn't seem to you to be the script; isn't that right?

A. Well, I have at least not yet seen the script that seems to fit with my presentation.

Q. Well, I think the document that was produced doesn't bear any real relationship to that; isn't that right?

A. Well, I haven't seen that document either, but I understand that's the case.

Q. I see. That document was in fact sent to Telenor solicitors, Kilroy's, last May. Presumably they satisfied themselves, having spoken to you or somebody in Telenor, that that wasn't the script that was used?

A. Okay.

Q. During the rest of the time you were in the presentation room, I think, judging from your response to the queries, you remembered, without the aid of the transcript, some of the questions that were asked; isn't that right? I'll give you an example: You remembered that Mr. O'Donoghue answered one of the questions about finances, and in particular, finances of the project?

A. Yeah, I remember vaguely that there had been questions directed towards Communicorp about financing and things, and that they had been replied to, at least partly, by Peter O'Donoghue. I think in such an occasion, this is very serious things, and you are very happy when you are finished your part, and you relax a little bit, so I didn't have a very clear picture of what happened afterwards. But that was

basically what I remember, yes.

Q. Okay. You described the consortium, and you described how the consortium intended to operate in terms in ownership terms, as involving yourselves and Communicorp, and ultimately involving or, if you like, ultimately being based on yourselves, Communicorp and the institutions that you mentioned, the financial institutions?

A. Yes, correct.

Q. I don't think correct me if your memory is otherwise that there were any questions about those institutions at the presentation.

A. I don't think there were.

Q. And you had described their commitment in quite strong terms at the time, judging from the transcript we have seen.

A. Yes, I have to agree with that, looking at the transcript. I believe, you know, if you look at the viewers, or the slides that were used, as well I think I have them here most or the beginning of this speech was probably through the slide called "Esat Digifone will be an Irish company," referring to

Q. This is Book 51 and we'll put it on the overhead projector.

Yes, go ahead, Mr. Johansen.

A. And in the executive summary, it states very clearly:

"Currently 50% of the shares are held by Communicorp and the other 50% by Telenor. On award of the licence, 20% of the equity of the company, 10% each from Communicorp and Telenor, will be made available to third-party investors."

So this was kind of the context. And even if you read what I said, it says: "It's evidenced first of all by Communicorp Group holding 40 percent as we get going". Because the correct situation on the 12th September was that actually Communicorp and Telenor held 50% each.

Q. Yes. And that's consistent, I think. You had letters from these institutions. Now, they were not members of your consortium, in the sense that they hadn't actually signed up to your consortium definitively at that stage. They had given you very strong support I think that was how Mr. O'Connell described them at one point and they had indicated that they were committed to getting involved subject to certain requirements being satisfied; would that be a fair way of putting it?

A. Yes, there were letters of at least interest and support and intent, and in my mind, that was quite clear that an institution would be quite eager to participate on the equity side once the licence was issued. So I don't think it was any big surprise there.

Q. You yourself hadn't read those documents at that time?

A. That's correct.

Q. And you were reading what somebody else gave you?

A. Yes.

Q. And do I understand your evidence to be that you were given what you read by the Communicorp side, the people on the Communicorp side who were, if you like, managing the bid?

A. That's correct. I mean, everything on the bidding process was conducted and directed here in Ireland by very professional people, actually, that were on the team.

Q. And the competition for the licence was based on what's called the best application approach, how good your application looked; isn't that right? You weren't going to get it because you were Telenor; Mr. O'Brien wasn't going to get it because he was Communicorp. You weren't going to be refused, either, because of who you were. It was a combination of what your company was and what you said you were about in your application; would that be right?

A. I think they were there were quite strict criteria set out that they used for the assessment, and that would probably make the final ranking of the bidders. The oral presentation I think is just to get kind of a feel for also who the persons are and try to make an impression.

Q. Well, as you say, the idea of to make an impression, to put your best foot forward do you understand that expression?

A. Yes, absolutely. I mean, it's really trying to look extremely good.

Q. Now, just so you know what I'm trying to find out hopefully you will have some evidence to be of assistance on it is I want to try to move on from here ultimately to the involvement you had in IIU coming on board and ultimately in those institutions going out; do you understand me?

A. Yes.

Q. So what I'll really be focusing on is the September 22nd-29th September; the documentation that came into existence at that time; and then the fact that in May of 1996, perhaps with the benefit of hindsight you were able to look back on that, and you formed a certain view of it. Do you understand me?

A. Yes.

Q. So then after the presentation, do you recall if you stayed in Ireland that night?

A. I stayed in Ireland that night, but I left early the next morning.

Q. I think Mr. O'Brien told us I hope I am right in this that there was a bit of a celebration dinner afterwards?

A. He was right.

Q. I take it you enjoyed yourself?

A. It was great fun.

Q. And do I take that apart from the fact that after any obviously fairly onerous activity like that, you are going to let your hair down and whatever, there was

A. Not me.

Q. I take your point. But in fairness to Mr. O'Brien and the other people who were part of your team, apart altogether from the fact that there is obviously a sort of stress relief, you want to relax, do I take it that there was that you were having such a dinner because there was a general air of satisfaction?

A. Correct.

Q. Can you recall, was there any post mortem do you know what that expression means? afterwards?

A. No, at least I cannot recall being part of any such thing, because I left early.

Q. Well, I mean before you left.

A. I think we just had some discussion during that afternoon and evening amongst ourselves, just you know, sharing views and impressions.

Q. When you say "amongst yourselves", do you mean yourself, Mr. O'Brien, Mr. Simonsen, Mr. O'Donoghue, the people who were at the presentation?

A. Exactly, exactly.

Q. Mr. O'Donoghue in fact I think wasn't there. He gave evidence that he didn't stay on; maybe he had a drink

afterwards, I don't know, but he didn't stay on for the night, anyway.

A. Okay, I cannot remember that.

Q. Do you remember any discussion which formalised, if you like, the taking of any steps or the need to take any steps following the presentation?

A. No, but I remember that there was some discussion about the answers given on Communicorp's strength and financial capacity. And I have to say, in the meeting, I got a bit lost there, because it was a bit detailed, and I hadn't been involved in it before, so I didn't exactly know what they were talking about; but I think they felt that some of the answers given had been a bit soft.

Q. A bit?

A. Soft.

Q. Soft?

A. Mmm.

Q. Does your memory is your memory any more precise than that?

A. No.

Q. Was there any degree of dissatisfaction?

A. No, but maybe a bit of concern on that point.

Q. I see. But in any case, you didn't offer any opinion about it, because you say it was to some extent rather technical, from your point of view?

A. I didn't feel in a position to comment on that.

Q. So you left Ireland without getting involved and commenting on it?

A. Correct.

Q. Can you recall any contacts between yourself and Mr. O'Brien between that date, the time you left Ireland, which would have been the 13th wouldn't that be right?

A. Yes.

Q. And which was a Wednesday and the 22nd, which was the following Friday, is that right Friday week, sorry?

A. I don't think there was.

Q. Right. And had you had any contact in the meantime with the executives on the Telenor side who were running the operations in Ireland: Mr. Simonsen, even if he wasn't here all the time; Mr. Digerud; maybe Sjern Malm, if he was involved; and Mr. Haga?

A. At least I got a message or a signal from them that Mr. O'Brien wanted to see me on the 22nd, and that came a day or so before, and that was from one of these persons.

Q. All right. I think what you said in your you say a day earlier before Mr. O'Brien came you got a signal to meet him. Did you know at that stage what the meeting was to be about?

A. Not really. I might have got a vague indication, but nothing, you know, concise.

Q. I think I am right in saying that in your statement, and maybe in one of the letters we'll come to them in more detail later you said it was organised at short notice? Is that right?

A. Correct.

Q. And that the notice was so short, and presumably not just the notice of the fact of the meeting, but the notice of the content or agenda, was so short that you had no briefing or preparation for it?

A. Yeah, that's my recollection, I was kind of given it first-hand by Denis in that meeting.

Q. Now, I think you have no contemporaneous note of the meeting; isn't that right?

A. Correct.

Q. A letter was written on the following day, and then that's the I beg your pardon; a letter was written on the 29th, or drafted on the 29th, and signed by you on the 2nd; is that right?

A. Yes.

Q. At this point what I want to do is I just want to go through that letter and how it came into being, and I want to go to your memorandum of the 4th May then.

Now, the letter you'll find in Book I think it's

48, 68, I think. This is a letter on Telenor

International notepaper of the 2nd October, 1995,

addressed to Denis O'Brien, Chairman, Esat Telecom, 8

Upper Mount Street, Dublin 2, Ireland.

"Dear Denis,

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

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

"Telenor has put substantial financial and human resources, including some of our best mobile expertise in preparing the bid as well as conducting the necessary follow-up work. Site work has explicitly been kept apart from our cooperation as stated in the said joint venture agreement. All other bid costs were to be split on an equal basis (including a possible trade-off between advertising costs and Telenor Mobil staff costs).

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

we decided to submit the bid, due to the time constraints.

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

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

"Apparently, this requires us to accept a dilution of about 5% in total. For Telenor, it is definitely very hard to give up ownership stake at all on the basis of supporting Communicorp's and the Irish institutions capabilities to raise the necessary funding. But on the basis of the joint venture and draft shareholders agreement, we feel obliged and accept a pro rata dilution to 37.5%. Any further dilution would be in conflict with the principles of our participation and the board resolution of Telenor AS.

"Having said this, we still believe in the compatibility of our partnership. We sincerely appreciate the efforts you have put in both on actual ground work on sites, distributors and bid work as well as your tremendous efforts in PR and lobbying.

However, we believe Telenor's substantial efforts, mobile operating experience and reputation is equally vital both for winning the license and establishing the network within the promised time-frame.

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

"I once again want to thank you personally for the tremendous effort you and your Communicorp team put in place to help Esat Digifone win the license. I will also assure you that the whole Telenor team has enjoyed working with you all and promise support in any way we can as the race moves into the finals.

"Looking forward to our common success. I remain

"Yours sincerely

"Arve Johansen".

Now, you have given the Tribunal certain information about this letter and how you came to write it. The Tribunal has also heard from Mr. Simonsen about the letter. Are you aware of his evidence?

A. Yes.

Q. And he says that he had a role in drafting the letter.

I think certainly you haven't mentioned that, and I think you say that you believe that some of the passages in the letter may have come from contact with Mr. Denis O'Brien; is that right?

A. Well, some part of it was definitely aiming at being helpful to Denis O'Brien, and especially the part, I guess, on the Advent relationship, which was very sensitive for Denis O'Brien since he had Advent also as a shareholder on the Communicorp level.

Q. Can we just go to the portion of your statement which refers to the Telenor letter of the or to the Kilroy's letter of the 15th October, 2002 that's paragraph Question 8.29(sic) on page 17. And the answer is on page 18. Sorry the transcript says "Question 8.29"; I should have said "Question A29", or Question 29 and answer 29, sorry.

There are differences, Mr. Johansen, between some of the accounts you have given of this letter, and I want to go through them to give you an opportunity of dealing with them.

A. Sorry, can you please give me the exact reference once again, because

Q. I beg your pardon. If you go to page 18 of your long statement.

A. Yes.

Q. Do you see A29, which is the answer to Question 29? Do you see that?

A. Yes.

Q. The second part says "Please refer to Kilroy's letter of the 15th October, 2002". Do you have a copy of the letter?

A. Yes.

Q. On the second page of that letter, in the second paragraph, you say: "The background to the letter of the 2nd October was as follows: There had been an oral presentation in Dublin on the 12th September which Mr. Johansen attended. Mr. Johansen made a presentation about Telenor and its technical capabilities. Obviously he was focused on his presentation."

Now, we know that that recollection is well, it's not completely inaccurate, but it's not wholly accurate either. You did say that you were technically an important company and that you had technical skills and your technical skills complemented Communicorp's and Mr. O'Brien's entrepreneurial skills; is that right?

A. Yes.

Q. But you went further than that; you presented an overview of the entire consortium, ownership proposals and the project and the finance; is that right?

A. That's correct.

Q. You say your recollection that following the oral presentation and leading up to and including the

meeting in Oslo on the 22nd September, you received communications from Mr. O'Brien. You understood from these communications that the financial aspects needed to be I beg your pardon, that you "understood from these communications that the presentation by Esat Digifone had been regarded as highly impressive but that the financial aspects needed to be reinforced.

At some time shortly before the meeting in Oslo on the 22nd September, 1995, you cannot recollect the occasion or context, some reference was made to an introduction of IIU not as a replacement for the named institutions but as an additional party and also as a placer of shares."

Now, can you tell me, are you saying still that is your recollection, or

A. No, well, I just said that, I don't recall having received very much information in that period. And I still don't really remember getting very much before the 22nd. But it some might have been given to me in connection with the signal that a meeting was expected or wanted, and that I was given some kind of brief as to what was to be expected, but I doubt actually that it was coming from Mr. O'Brien himself.

Q. Did you say you thought, or you doubt?

A. I cannot remember that I got it from Mr. O'Brien himself.

Q. But did you say you doubted whether you got the

information from Mr. O'Brien?

A. Yes, I don't think I had any I cannot recall that I had any direct communication with Mr. O'Brien in the period.

Q. Right. You say you received communications from him that the presentation or you understood from those communications that you received from Mr. O'Brien that the presentation had been regarded as highly impressive but that the financial aspects needed to be reinforced.

Does that expression, that you "understood from these communications that the presentation by Esat Digifone had been regarded as highly impressive", suggest that it had been regarded as highly impressive by some other people, by the assessors, maybe?

A. I think this was a general feeling. You know, we talked about the feeling after the presentations were made, and of course, in such a situation, I think it's quite normal that you would use any possible people you have who could possibly have heard something about how well it had gone, etc., to form an opinion; and I think this was based on the collective information and feedback that it was possible to get.

Q. I'm just interested in the fact that you say it's quite normal that you could use any possible people you have who could possibly have heard something about how well it had gone. Are you suggesting again that

you would use any means you had to try to divine or work out or find out how the assessors had regarded your presentation? Is that it?

A. I don't know any direct contact with the assessors.

Q. You don't know of any?

A. I don't know any, and I doubt that there was anyway.

But anyway, there is always feelings about how well a thing has gone around, so and you know, that we had certain or Denis O'Brien had hired certain consultants to work for him to also help on the you know, lobbying, talking positively for the consortium, etc., etc., and to the extent that it was possible to get an opinion from people, I guess, that would be collected.

Q. But what do you mean by "lobbying"? Who would they be lobbying?

A. I don't think I can explain it any better than anyone else here, but I think it's a quite common phrase for being a promoter and a spokesman for your venture.

Q. But I think we know that there were no none of those consultants were at the presentation; isn't that right?

A. That's right.

Q. So if the consultants were to form some impression of how you had got on, or how the assessors viewed your presentation, they'd have to get it from the assessors or from someone who got it from the assessors,

wouldn't they?

A. Not necessarily.

Q. I see. Where could they get it, do you think?

A. I don't know. But I mean, there are always people having opinions on what had happened. Maybe they don't even have it from a real source or anything, but the opinions are formed.

Q. But did you understand from your communications that what was being conveyed to you was opinions about how the presentation had been received?

A. I would guess that was what we would try to find out, yes.

Q. That in other words, you don't know how those opinions were formed or who formed them, but that the opinions that were being conveyed to you were opinions as to how the assessors viewed your presentation and what its weaknesses or strengths were?

A. To some extent, yes.

Q. If I just go on again with this letter.

"The meeting on the 22nd September was very difficult. Mr. Johansen was adamant in his position that despite Denis O'Brien's demands that Telenor reduce its sharing in Esat Digifone to 35%, he would not allow Telenor to reduce its shareholding relative to that of Communicorp. In the week following the meeting of the 22nd September 1995, there were a few conversations between Mr. Johansen and Mr. O'Brien.

In at least one of these conversations, Mr. O'Brien hung up the telephone because of Mr. Johansen's refusal to accept a reduced shareholding in Esat Digifone for Telenor. Relations were steadily deteriorating to the extent that Mr. Johansen was concerned about the potential collapse of the Esat Digifone consortium. Even so, Mr. Johansen held to his position of the 37.5:37.5:25 shareholding structure in Esat Digifone. Around this time period, John Callaghan also made a telephone call to Mr. Johansen in order to persuade him to agree to Telenor reducing its shareholding from 40% to 35, thereby allowing the additional 5% for IIU. Again Mr. Johansen rejected this request."

Could I take it that without going into the detail for the moment, what that paragraph suggests is that there was some fairly tough talking during that week, if I could put it that way?

A. Yes, that's correct.

Q. I am not suggesting there is anything wrong with that it's not unusual in partnerships but clearly where you reached the point where you were putting the phone down on one another, it must have been fairly tense in your relationship?

A. Yes, I mean, up to then it had been very amicable.

Q. Sometime on the 29th September, 1995, Mr. Johansen drafted a letter to Denis O'Brien in anticipation of a

meeting with Denis O'Brien in Geneva. The purpose of the letter was to put Telenor's position very clearly to Mr. O'Brien, but at the same time, to demonstrate Telenor's full commitment to the Esat Digifone project. Mr. Johansen accepted Mr. O'Brien's assurances that IIU would increase the Irish profile of the bid, and this was seen as advantageous."

In the letter, you I think, whatever about the way in which it was drafted or who assisted in drafting it or who contributed to it we'll come to that in a moment the letter seems to put down a marker for your position and at the same time, I suppose you were extending the hand of friendship again; isn't that right?

A. That's exactly right. I was going to meet Denis O'Brien again in person in the trade show in Geneva, and I wanted to get this over with and move on, basically.

Q. "At the oral presentation on the 12th September, and as far as Mr. Johansen can now recollect, about seven years later, the financial position of Communicorp was referred to by the assessors and may have been responded to by Peter O'Donoghue on behalf of Esat Digifone. However, Mr. Johansen says that he is unable to recollect any specific queries or discussion of Advent's support or the support from the institutional investors during the oral presentation.

Looking back at the letter, Mr. Johansen is unable to warrant the accuracy of paragraphs 5 and 6. He believes that these paragraphs represent understandings which he received from Denis O'Brien and not from the Department and/or the assessors."

Now, I think that's referring to paragraphs 5 and 6 on the first page of the letter, and if you could turn to the letter for a moment. Just to clarify that

A. Yes, I think

Q. We are both talking about the same thing?

A. Yes.

Q. I see paragraph 5 as the one that goes: "It was quite clear from our meeting with the Ministry..." And paragraph 6 is the one that begins: "In order to reassure the Ministry..."

Are those the two that you are talking about, do you think?

A. Yes.

Q. Now, paragraph 5 says that "It was quite clear from our meeting with the Ministry that both the lack of commitment from the institutions, as well as the uncertainty in the Advent/Communicorp relationship, created a lack of confidence in the Irish side of the consortium's capacity to raise the necessary funding."

Now, I don't know if you have read the entire transcript, but I don't think there is any query concerning the commitment from the institutions.

A. No, I mean, the questions were related to, of course, how much Advent had actually committed and stuff like that.

Q. Yes.

A. But not really uncertainty about Advent.

Q. I don't think were there questions about the uncertainty in the Advent relationship? There may have been a question, but there was a very definitive answer?

A. I must admit I haven't gone over the transcripts in that great detail.

Q. All right.

A. So and this was a part of the discussion in the thing where I got a bit lost.

Q. Your recollection, and also both of the presentation and of the transcript, I think, is correct, at least to my way of thinking, where the transcript is concerned, anyway. There were questions on the transcript about how much Advent was committing.

A. Exactly.

Q. And the answers to that were that they were committing irrevocably quite a lot of money; 30 million. And then there was a question about whether this would have any impact on Communicorp, and there was an answer to the effect that there was a voting ratio in favour of Mr. O'Brien. Do you remember anything like

that?

A. I have seen it in the transcript, but I don't remember it from the time because I was lost there.

Q. All right, but you remember it from seeing the transcript.

A. Yeah.

Q. And there was a question at the end of the meeting, which you may not recall, as to whether it was an agreement in place, and the answer was that there was an agreement?

A. Okay.

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

Now, Mr. Coughlan reminds me that I think earlier you mentioned that you were conscious of a certain sensitivity concerning the Advent/Communicorp relationship.

A. Yes.

Q. Can you recall being conscious of that at the time?

A. Well, at this time I of course realised that to make room for IIU, Denis O'Brien would have to remove Advent.

Q. Or take the hit himself, I suppose?

A. Or?

Q. Or take the loss of the shares himself?

A. Yeah, that was another side of it. It was also a 5% thing there with Advent which would be a bit disadvantageous.

Q. Did you get that impression from what Mr. O'Brien told you at the meeting, or was it from something else you got that impression?

A. You see, this is where I am a bit, you know, uncertain as to how this wording came about, because I had very little time in Norway that week, and I already on Saturday I actually left for Geneva, and this was gone out of the office on Monday after I left. My recollection as to how it came about is that it was basically drafted by people inside Telenor Invest, and I believe most of it by Per Simonsen, and that I amended just a few things. I left it slightly open before I left, I believe now that I actually signed the blank sheet of paper as page number 2, that was meant to fit with the final wording that was sent out of the office when I was already in Geneva. So I had no clear picture as to where that drafting came from, but it was it was at least to a large extent composed by someone else. And I have seen other letters now, later, from Telenor Invest at about the same time period relating with the Advent issues, and I see some of the language is very similar.

Q. Mr. Simonsen certainly says he believes that he drafted, I think, those two paragraphs, for

instance just to be clear about that.

CHAIRMAN: Which two, Mr. Healy?

MR. HEALY: The two I have just referred to, beginning

"It was quite clear" and "In order to reassure the Ministry".

I hear some murmurs behind me, but I just want to be clear about that. It may be only down as far as "In order".

I think what Mr. Simonsen said at Book 265, page 43,

line 15 of the transcript, Mr. Johansen says Mr.

Simonsen says, "Well, I am not really able to point

out which exact phrase I drafted or not, but in

general I would say I drafted the first part of the

letter, or the first part of the letter is as I

drafted it, and when it's discussing the equity

participation, etc., that's not my wording."

Then he says "Then towards the end, maybe the last

phrase or something is what I put in. So in general,

I drafted the first part and maybe the very last.

"Question: Maybe you can just help me. When you say

'first part'

"Answer: At least down to the first five down

to "in order". Then after that, there has been made

changes in my initial wording.

"Question: Yes and maybe yours again at the end; is

that right?

"Answer: Yes.

"Question: Where would that be?"

Then Mr. Simonsen, quotes, "I once again want to thank you personally".

So then if you go on a little bit further, Mr.

Johansen, you'll see that Mr. Simonsen says, at

Question 53,

"Question: And apart from you, who else was contributing to the letter?"

"Answer: I don't know.

"Question: Pardon?"

"Answer: I don't know. It could have been Mr.

Johansen himself, or it could have been somebody else.

I don't know.

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

"Answer: That's correct.

"Question: Would that have been Sjern Malm or Mr. Johansen, if not Mr. Johansen himself?"

"Answer: Probably, yes."

Does that help you?

A. A little bit; not too much. My recollection is that the whole letter was drafted for me. It might well be that Per Simonsen was the main author of the sections that he indicates, but there is definitely someone else then helping out on the other things. I don't

recall doing other things than a few polishing amendments to it. So there could have been some other people inside Telenor Invest who actually drafted the other paragraphs.

Q. The passage in your letter, in your solicitor's letter of the 15th October, 2002, in which you say that you believe that have you got that letter? Page 3, second paragraph "You are unable to warrant the accuracy of paragraphs 5 and 6"; you can't say if they are correct.

A. Which paragraph?

Q. It's the second the last two sentences in the second paragraph on page 3. "Looking back at the letter, Mr. Johansen is unable to warrant the accuracy of paragraphs 5 and 6. He believes that these paragraphs represent understandings which he received from Denis O'Brien and not from the Department and/or the assessors."

Do you see that?

A. I have it.

Q. So do I understand that what you are saying is that it was something Mr. O'Brien said to you, or some understanding you had of what Mr. O'Brien was saying, that accounted for those paragraphs?

A. He never referred to the Department, as such, or the assessors, but he told me that his understanding of where we were standing was that we were you know,

weak in these areas.

Q. But the actual wording, "It is clear from our meeting with the Minister", was that your wording "with the Ministry"; I beg your pardon "It is clear from our meeting with the Ministry"?

A. No, I believe that was something that was given to me in the draft I was reviewing.

Q. And if it was given to you, it must have been given to you then as a result of something that if it was given to you, it was given to you by Per Simonsen, presumably; but did he get the information for that from you?

A. No, I don't think I ever really composed such a statement myself.

Q. In your solicitor's letter of the 15th October, you do clearly say that the paragraphs represent understandings that you received from Mr. O'Brien; do you see that?

A. Yes.

Q. You made that statement a little closer to the time that these events took place than this time, today?

A. It was definitely the impression that Mr. O'Brien gave me at that meeting of the 22nd.

Q. The letter of the 15th October 2002 goes on: "Following the oral presentation on the 12th and probably before and during the meeting in Oslo, Denis O'Brien spoke of concerns in relation to Advent's

support for Communicorp and whether the letters from the institutional investors were seen as strong enough by the assessment team. Mr. Johansen had complete trust in Mr. O'Brien's knowledge of the Irish situation and believed that if Mr. O'Brien felt that reinforcement of the financial position of Communicorp, and indirectly of Esat Digifone, was necessary and if IIU could perform this role, then this was desirable. Telenor had been disappointed that Advent could not provide a firmly expressed commitment to underwrite Communicorp's capital raising obligations."

Now, I want to go to your other memorandum in which you refer to that meeting, and also to your other evidence in relation to that meeting. Could I ask you to turn firstly to page 19 of your statement and to Question 30, and the answer to Question 30.

Question 30 is about the meetings. We don't need to go over the question again. You say that you believe that the meeting was arranged at short notice, and you say that it was requested by Mr. O'Brien. And you believe that yourself and Sjurn Malm were present at the meeting. Do you recall if you were the only people present during the entire meeting?

A. The persons named here, you mean?

Q. I am sorry, I didn't pick that up.

A. What was your question? Sorry.

Q. The persons named here are Sjern Malm and yourself, on the Telenor side, and Mr. O'Brien. Was there anybody else? In particular, was there anyone else on the Telenor side at the meeting, at any point during the meeting?

A. No, I don't remember clearly anyone else.

Q. Can you remember if Mr. Simonsen was ever present at the meeting, even for a short while?

A. No, I don't remember.

Q. Because I think Mr. O'Brien felt that he came into the meeting

A. Okay.

Q. at one point. Can you recall that?

A. I remember I saw Per after the meeting; I don't recall that he was part of the meeting.

Q. I see. Do you remember how long the meeting took?

A. I'd say approximately one hour.

Q. An hour. Now, you say you have no note or record or other written information in relation to information provided by Denis O'Brien at the meeting; therefore you can only rely on your unaided recollection. You are unable to say at this time, at the time of the statement, what precise information, if any, Mr. O'Brien provided in relation to the Department assessment of the Esat Digifone application, and you refer to your memo. And you believe that the content of the memo was based on the information received from

Denis O'Brien at that time.

Now, can we just go to the memo now. The memo is Book 49, Leaf 130.

Am I right in saying that when Mr. O'Brien came to you in September of 1995, he came to you to try to persuade you to cut back or to dilute your shareholding by 5%, to your own disadvantage and to the advantage of Communicorp? Is that right?

A. That's right.

Q. And at the time that you wrote this memo or prepared this memo in May of 1996, there had been a history of some similar efforts to persuade you or otherwise cause your shareholding to be diluted; would that be right?

A. Yes, there were these attempts in the May days, or maybe even before, of '96 to purchase more shares from IIU.

Q. In your memorandum you say: "Re memo on shareholding in Esat Digifone."

Before I do that, before I read it, can I ask you:

For whom did you prepare the memorandum?

A. I believe mainly for myself. I was, you know, very upset. I was angry. I was very emotional, and I thought we had been, you know, heavily disadvantaged in this setup, and that it seemed to me like it was an instrument to gain control over the company, and I wanted to basically get it down as you know, I now

understand how everything is, and I wanted to document it for my own sake more than anything.

Q. Would it be right that it was an attempt to get your thoughts straight on it?

A. Yes, I think so.

Q. If I am having difficulty hearing you, Mr. Johansen, I think it's because there is a lot of noise in the from the machinery. You can't do anything about it.

A. Okay.

Q. The technician will try to or the engineer will try to do something, but ...

To recap, I think you were in an emotional state, you say, upset that the fact that you thought you'd be heavily disadvantaged and you were going to try to get your thoughts straight.

A. Correct.

CHAIRMAN: And you drafted it straight away in English, did you, Mr. Johansen? This isn't a translation; you actually did it in English.

A. I wrote it in English.

Q. MR. HEALY: You say, "I have below summarised a few points that has become clear to me over the last 24 hours as a consequence of the information acquired regarding Communicorp's attempt to buy back 12.5% of the IIU shares.

"1. Denis O'Brien came personally over to see me in Oslo, probably sometime during September last year.

He informed me that, based on information from various very important sources, it was necessary to strengthen the Irish profile of the bid and get on board people who would take a much more active role in fighting for Digifone than the 'neutral' banks who basically would like to keep a good relation to all consortia.

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

"2. IIU should apparently be the ideal choice for this function; the only string attached being that they had demanded 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. It was also said that too high Telenor ownership stake could be seen as aggressive and could be inhibiting the award of the licence.

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

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

"The agreement was drafted by Fry's/OO'C and signed in a hurry (basically in draft form) by Denis O'Brien alone on behalf of Communicorp and Digifone (even though we in the joint venture agreement had 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 US \$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 arrangement, 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 even has agreed to bridge finance Communicorp while he raises funds through a private placement in the US.

"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 evident clear that IIU was not a favourable name from the 'Irish public' point of view. On the contrary, the Ministry basically asked for help 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, we 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.

"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 with 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 (31 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 in Digifone until the US placement is finalised.

"The return favour from Communicorp is to release IIU

from all 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 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 in 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 racialistic enough to see that this cannot take place unless Telenor continues to support the project. This fact, the time limit and the cooperative spirit shown (by disclosing the letter) may signal a hope for a sensible solution to this mess."

Now, you wrote that memo on the 4th, and you sent a related letter which I am going to refer to later, but I think it might be no harm if I read it out now on the 10th May; isn't that right?

A. Correct.

Q. That's it's at Book 49, 136. And this was a more formal document, but containing some similar content.

A. Was it 136?

Q. 136, correct.

It's dated 10th May, and it was written following and with reference to a meeting you had had that day, which you attended with Rolf Busch and Arthur Moran and which was attended by Mr. Leslie Buckley, Mr. Paul Connolly, Mr. Gerry Halpenny, Mr. Knut Digerud and Mr. Owen O'Connell as well. And it was a somewhat and by Mr. O'Brien. And it was apparently a somewhat heated meeting. Do you remember the meeting?

A. Yes.

Q. Right. You say, "I refer to the meeting held today at which I attended together with" all the individuals I have just mentioned.

"I would like to clarify our position following that meeting. The joint venture entered into between Communicorp and Telenor last year in order to bid for and be awarded the licence for the second GSM network in Ireland was originally based on a 50:50 participation of Communicorp and Telenor. It was subsequently agreed that 20% would be made available to institutional investors, probably at a premium, and that accordingly, Communicorp and Telenor would each hold 40%. It has subsequently been stressed by Telenor on several occasions that the equal participation of Communicorp and Telenor is a basic condition for Telenor's involvement in the company. "At today's meeting, Communicorp's representatives

confirmed that Communicorp would adhere to such a participation principle with respect to the control of the company but that their presently contemplated financing arrangement necessitated a deviation from that principle with respect to the two parties economic interest in the company.

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

"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 interest in the company from 40% each to 37.5% each and making available to the counter-party to the arrangement agreement, International Investment & Underwriting Limited, 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 we understand that Communicorp has established a further form of financing for its participation in the company which it is suggested is conditional upon

Communicorp obtaining 50% of the shares of the company, leaving Telenor with 27.5% and the financing company (IIU) with 1275%. This arrangement is conditional upon Telenor's consent to the increase in Communicorp's ownership of the company from 37.5 to 50%.

"As thoroughly explained to your representatives during today's meeting, Telenor cannot accept that Communicorp increases its shareholding from 37.5% to 50% without Telenor having the opportunity, equally and on the same terms and conditions, to increase to a 50% ownership and to maintain equal participation in the company with Communicorp. Telenor considers that this proposed arrangement as a whole jeopardises fundamentally the basis for the joint venture between Communicorp and Telenor.

"At today's meeting, Communicorp's representatives stated, however, that other sources of financing could be available to Communicorp on the basis of 37.5 ownership and without the requirement to breach the equal participation.

"Telenor would be willing to discuss a bridging arrangement giving Communicorp some time to put together financing of a 37.5% shareholding. As I hope you will understand, such a bridging arrangement would necessitate firm commitments in relation to the equal participation principle between Communicorp and

Telenor and appropriate undertakings in that regard.

"If it would be convenient to you I can make myself available in Dublin during the weekend of May 11/12 in order to discuss the above arrangement but I would need to hear from you before 10am tomorrow, as I shall otherwise depart to Oslo."

That's signed "Arve Johansen" and copied to Dermot Desmond. Do you see that?

A. Yes.

Q. Now, did you write that letter as well?

A. I mean, I was participating, I think, but I guess most of it was worded by Rolf Busch.

Q. By Rolf Busch?

A. Yeah, because we were together here that weekend, and I think you can see from some of the language that it was a lawyer's language.

Q. Yes, it's very careful. And it seems to be based on the letter to a significant degree on the memorandum that I read out a moment ago; is that right?

A. Once again, please?

Q. It's based, to a degree, a significant degree, on the memo that I read out a moment ago, the 4th May, 1996, memo?

A. Well, I would say this one is as much a reflection of what had happened after that, actually.

Q. I see.

A. Where there was this attempt to, from Esat Telecom, it was called now, the former Communicorp, to buy the 12.5%.

Q. The background description in that letter is similar to the background as described in the memo of the 4th May?

A. I think that is because the basic problem was the same. It was dealing with the attempts from Communicorp, as we saw them, to take control over the company.

Q. And in drafting that letter, do you know whether Mr. Busch had any communication with anybody other than you or any assistance from anybody other than you?

A. No, I don't think so. We were sitting in the Jurys Hotel writing it.

Q. On the next day and this is in a letter which is contained on the next page of Book 49, or the next leaf, which is Leaf 137 you wrote a letter to IIU addressed to for the attention of Michael Walsh; do you see that?

A. Yes.

Q. And that's related to the previous letter, isn't it?

A. Yes. This was, I think, to make it absolutely clear that Telenor's participation in this company was based on equal participation with Communicorp; nothing else.

Q. I am not going to go into it in detail, because I think at this point a compromise proposal was being

put forward, isn't that right, to resolve all the share troubles of various kinds, whereby you were going to go back to 40:40:20 anyway; isn't that correct?

A. I think that came out shortly afterwards, yes.

Q. I'm not interested in all the detail of that, but I just want to draw to your attention one part of the agreement which may be relevant in some way to what was happening in September, or may give us a bit of a perspective of it.

It starts off,

"Dear Michael,

"I refer to your letter of 11 May 1996 where you enclose your letter to Communicorp of 1 May 1996 outlining the terms and conditions subject to which IIU would be willing to sell 12.5 percent of its shareholding in Esat Digifone to Communicorp, bringing them to 50 percent, and ask Telenor to confirm that it would continue to support the Digifone project in such a case, and

"2. Enclose two draft share transfer agreements subject to which IIU would transfer 2.5 percent of its shares in Digifone each to Communicorp and to Telenor.

"First we will comment on the arrangement outlined in your letter of 1 May and then comment on the draft share transfer agreements."

It's the next three paragraphs I want to draw to your

attention.

"Communicorp and Telenor last year entered into a joint venture agreement to bid for the second GSM licence in Ireland. Telenor believed that a joint venture agreement between Communicorp and Telenor would be a strong contender for the second GSM licence in Ireland, Telenor being an experienced and successful mobile operator, and having sufficient financial strength to commit to such a project, and Communicorp representing first of all the Irish participation in the project.

"Although Telenor would have preferred to have a majority participating interest, Telenor accepted that the joint venture with Communicorp was established on a 50:50 basis. This was accepted despite the fact that Communicorp did not have the financial strength to carry half of the financial commitment that was necessary to support the joint venture if it was awarded the licence.

"As a consequence of Communicorp's lack of financial strength, Communicorp subsequently has invited institutional investors to participate in the project, necessitating a dilution of the existing shareholders.

Communicorp has strongly argued that Telenor, under the circumstances, must accept a dilution of its participation, despite the fact that the dilution was caused by Communicorp's lack of financial strength.

Telenor has opposed to the reduction of its participation interest below that of Communicorp. On two occasions, therefore, Communicorp's and Telenor's participating interest in Digifone has thus been reduced, first to 40 percent and then to 37.5 percent."

Then the letter goes on.

Now, I am going to come back to the meeting. Before I do so, it's important to say that Mr. O'Brien

responded to your letter and disputed it. I know you then responded disputing his rejection of the contents

of your letter, but and I'll make sure that that's

read out later on. But if we can now go back to your

memorandum of the 4th May, which is in Leaf 130.

Referring to the meeting in September, you say that

Denis O'Brien came personally to see you, and he

informed you that "Based on information from various

very important sources, it was necessary to strengthen

the Irish profile of the bid and get on board people

who would take a much more active role in fighting for

Digifone than the 'neutral' banks, who basically would

like to keep a good relation to all consortia.

"I accepted Denis's word for the necessity of this

move. Note: Underwriting was never used as an

explanation."

Now, does that paragraph suggest that does that

paragraph contain what you believe to be a fair record

of what happened in the meeting?

A. Yes. The only thing that is a bit worried a little bit about is this bit about underwriting, because that was clearly part of the arrangement, but as I remember it, it wasn't mentioned. And I was thinking about why, and I think it could have to do with the fact that Denis O'Brien was, you know, very proud person, Communicorp was, in his mind and setting, you know, equal partner with Telenor. Telenor didn't have any problem with financing, of course, and he had maybe some difficulty mentioning weaknesses like this to me, so maybe that's why it wasn't mentioned. But I cannot recollect it being mentioned.

Q. Okay. You are saying that he may have had a sensitivity mentioning his own or admitting a financial weakness of his own company?

A. Yes. But you can also see from this memo that I had a relatively patchy understanding of the financing and the Advent thing, etc.

Q. A relatively?

A. A relatively patchy understanding.

And I mean, I think it was basically coming from the fact that I never had been into those documents. I just picked up points here and there, and I just wrote it, you know, in a hurry, dumped my brain, so it's probably not exactly right in all regards, you know.

Q. In every detail?

A. No, I don't think it's completely right, but it was kind of what I remembered there and then when I wrote it quickly.

Q. But if you think that underwriting wasn't mentioned, and funding, that the reason for it was Mr. O'Brien's sensitivity to admitting or conceding there was a weakness, the letter does seem to concede that there was a perception of a weakness, isn't that right, on Mr. O'Brien's side by the assessors?

A. I mean, I think that was clear to everybody, that Communicorp, without funding, didn't have the funds available.

Q. That's as may be, but at the presentation, it was made clear that Communicorp had the funding that it had it from Advent. And there were questions about how much it had, but those questions seemed to have been satisfactorily answered. But the letter of the 2nd October seemed to suggest in some way that there was a weakness on the Denis O'Brien/Communicorp side; isn't that right?

A. I think you can see from the correspondence between Communicorp and other sides of Telenor, like Knut Haga, that there was considerable emphasis on that Advent support, whether it was strong enough or not. So I have seen afterwards that there was clearly concern on Telenor's side about the Advent commitment.

Q. But when Mr. O'Brien came to you, you're saying that

he didn't mention that as the problem, as he saw it.

The problem was, we have these neutral banks?

A. Better Irish profile, and that was something we heard consistently, you know, that Telenor, you have to step back; you are not even an EU member

Q. When you say "consistently", you hadn't had that many dealings with Mr. O'Brien; let me be clear about that.

A. No, but that my people the people involved in the bid had a lot of dealings with Mr. O'Brien, and it was one of the themes of the whole bid, that it should be Irish and not foreign.

Q. You say that Mr. O'Brien told you that, based on information from various very important sources, it was necessary to strengthen the Irish profile. And this is back again to something that was in part reflected in the letter of the 15th October and the statement contained in that letter. What does what do you understand the expression "various very important sources" to mean?

A. I mean, again, this was based on this opinion that we talked about earlier; you get as much feedback as you can from every source you have. And I have no idea why and how these opinions are formed, but they are formed.

Q. You have said, I think, in your response to the questionnaire, that Mr. O'Brien from time to time would refer to having important and useful sources of

information, and you always assumed that this referred to the consultants. Do you remember that answer you gave?

A. Yes.

Q. If we just take that answer bit by bit. First you say that Mr. O'Brien, from time to time, would refer to having important and useful sources of information. How many times, can you recall, before this meeting do you think he said anything like that, or referred to anything like that? Aren't I right that it could only have been once?

A. Yes. I don't again, maybe I don't have that so directly from him; but when we discussed amongst ourselves and with the people on the bid team, etc., Denis would always have, you know, various strong views on how things should be done to do it in the best way, and he meant that he had kind of the feeling for what would be very good approach in all the areas, and he he tried to, I think, be perceived, from the Telenor people, as a very influential person.

Q. In any case, does that not mean that he was endeavouring to indicate that influential, i.e. "influential" in an official sense, or he had influence with officials? Is that what you are saying?

A. No, I don't think it's possible for me to explain it any better. He never referred to any concrete

channels.

Q. The words you used in your memorandum on the 4th May were "various very important sources"; do you see that? I'm not I don't want to make any comment on your command of the English language, but you seem to and I think I am right in saying that you have a good command of the English language.

A. Well, I don't know how it comes across, but I feel, myself, that I have a reasonable command, anyway.

Q. Yes. And you certainly know that to describe something as very important is ascribing some more than ordinary significance to it; wouldn't that be right?

A. Well, it's again based on what the the feeling I got from talking to Denis and how he kind of gave me a feeling that he had good information.

Q. And that that good information came from a particular type of source?

A. Nothing specific again. He was vague on this, but gave me a feeling of that he had good information.

Q. All right. I want to be fair to Mr. O'Brien, but I also want to just get clear about the language you used. A source, or a source of information, is not, am I right in thinking, the way you would describe an adviser or a consultant?

A. I mean, I don't think I would distinguish between that so clearly.

Q. The consultants he had were Mr. O'hUiginn and Mr. Mara, isn't that right, amongst others?

A. Yeah, I don't even know who they were exactly, but I remember the name Mr. Mara.

Q. But he didn't mention any of them to you at that time, or he didn't mention any of his advisers?

A. No, he didn't mention.

Q. You see, on the face of it, what this could suggest is that Mr. O'Brien had access to information from the consortium I beg your pardon, from the assessors, or access to information from an official source.

A. That would be incorrect.

Q. Could it suggest that he had access to somebody, or information from somebody who that person had access to an official source?

A. Not to my knowledge.

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

Do you see the way the words "Official Irish

standpoint" are in quotation marks?

A. Yes.

Q. What did you mean by that, and what were you seeking to convey in that sentence?

A. I believe that I don't differentiate again very much, you know, between "official Irish", "public Irish". I used the term "public Irish" also here in another paragraph, also in quotation marks. It was kind of a general Irish, as I see it, you know, being an Irish company, which was very good, and the image basically from how it would look in the Irish context.

Q. But I think you can distinguish between an official and a purely, you know, purely public relations context, can't you?

A. I don't think I would be very specific on that, actually.

Q. When you put those words in quotation marks, were you quoting anything that Denis may have said to you?

A. No.

Q. Denis O'Brien, that is.

A. No. That was my own way of putting the Irish perception.

Q. I suppose you could have used the words "Irish standpoint"?

A. I used that, actually, under Point Number 6; when I used the "favourable name from an 'Irish public' point of view."

Q. Yes.

A. I think I mean the same thing.

Q. I think you are referring to the meeting of May 3rd at that point, isn't that right, where you had a discussion with Mr. Brennan?

A. Yes.

Q. And there may have been more there may have been some discussions concerning the involvement of IIU and how this could have been a political football; is that right?

A. Sorry, once again

Q. Am I can you recall that?

A. What was that?

Q. Can you recall that at the meeting can you recall a note, I won't take you to it now, but can you recall a note of a meeting of the 3rd May, 1996, Mr.

O'Connell's note, where he refers to you being present at a meeting at which, amongst other things, there is a reference to IIU and then a reference to it being or apparently it being a reference to the fact that that might have been a political football. Are you familiar with that document?

A. Well, I briefly saw it yesterday, yes.

Q. I won't ask you to comment on it now.

But you are distinguishing here between an Irish public point of view, in paragraph 6, do you see that, and an official Irish standpoint in paragraph 3. They

seem to be different, don't they?

A. I don't think I had any significance in those two different wordings.

Q. As far as you were concerned, Mr. O'Brien was coming to you to get you to agree to do something that was going to improve the bid; isn't that right?

A. On the 22nd of September, yes.

Q. That if you did this, the bid would be better than it had been when you put it in?

A. Yes.

Q. And I want to draw to your attention a passage in the transcript of the presentation in which there is a reference to putting in further material. I just want to ask you whether you are familiar with it or whether it means anything to you.

This is Book 51, but I think have you got a separate copy of the transcript of the presentation?

A. Yes.

Q. I'll put it on the overhead projector.

If you go to page 114, it's the second-last page of the actual transcript itself. Have you got it?

A. Yes.

Q. The bottom of the page, Mr. Brennan is speaking, and he says: "Thank you very much. I have consulted with my colleagues. The time is more than up, but they have no critical questions that crucially need to be addressed now. We had, I believe, quite a good

exchange. Thank you for coming along. As I said at the beginning, any future communications should be at our initiative rather than yours, in the sense that if we need further information, we'll ask for it in writing, and that's the way we'd like to leave it.

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

So..."

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

"Mr. O'Brien: Okay. All right. Thank you."

Now, firstly, can you remember anything like that being said at the presentation, or can you remember having an impression after the presentation that that was it?

A. Not clearly, and not particularly, but I guess it's quite standard, anyway.

Q. You mean from the other presentations you had been at, that you recall that it was normal that you couldn't add anything after your presentation?

A. At least we did normally kind of in an ordered or in a managed process we did that.

Q. The purpose of the meeting on the 22nd September was definitely to do something else, wasn't that right, to put in some more information, something which would make the bid better?

A. That was never discussed with me, actually.

Q. But I think you said in your memorandum, if you look at paragraph 1, the second sentence, "He" meaning Mr. O'Brien "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."

Do you see that?

A. Yes, I see that.

Q. Does that not suggest that you understood at that time that what was being done was being done in order to improve the bid?

A. You know, the number one, I had never read the RFT, and I was not aware of how restricted any changes in ownership would be; so when I discussed with Denis O'Brien the IIU participation, I didn't see that at the time as inhibited in any way. The composition of the company was intended to be like that after the award of the licence, and I would say that normally there is some changes happening in consortia anyways,

and sometimes you notify people and get an approval for it, or whatever, but it's not uncommon that changes happens.

Q. I'm just sorry

A. And from my perspective, this participation from these institutions were kind of a contemplated composition of the company, not yet being in place. If IIU was to substitute one or more of them, it was not clear exactly to me which role IIU was going to have, whether it would participate themselves or whether they would basically substitute Davy Stockbrokers and could still place it with four institutional investors. So it wasn't really absolutely clear that it would be, in the end of the day, a very different company. It could actually, in theory, be exactly the same; but the benefit was that IIU was only engaged in this consortium. They were not on the list in the other consortiums, and I think most of the banks and institutions were, you know, named several times.

Q. Yeah, I think Mr. O'Brien disputes that, but I mean, you may be right.

Could I just clarify two matters.

Did I understand you to say a moment ago that you weren't clear, or that you weren't agreeing with me that that memorandum was based on your understanding that the bid was going to be changed or that new information was going to be given to improve the bid?

A. I mean, I don't think I am surprised that that happened, because after all, that was the message, that the bid should be strengthened; but it was never discussed with me in any way how that should be done, and

Q. Maybe I am not understanding something you are saying to me, Mr. Johansen, but as I read your memorandum, you're saying that Mr. O'Brien came to you and asked you to take what was for you a very painful step in order to strengthen the Irish profile of the bid, and you wrote a letter saying, in order to reassure the Ministry and give an even stronger signal to the Irish community, and that in writing that, you were recognising that the approach by Mr. O'Brien to you was for the purpose of getting you to agree to something that would improve the bid. Am I right in that?

A. Yes, you are right.

Q. And I think you said that your experience of other competitions was that, firstly, you had an experience that these instructions or directions were given that there should be no more information or no more changes; but I think you also said that you were familiar with further information being given if approval was given for it. Is that right?

A. That's quite common, yes.

Q. And by that do I take it that you envisage that

information would be given, and that if that information or if the giving of that information was approved, that it would form part of the bid?

A. I guess that's up to the assessors whether they'll accept such information or not, but in many cases, that would happen.

Q. But in this case, what you were being asked to do at this time was not merely to make a purely cosmetic change to the bid, because whatever understanding you may have had of the role of IIU, the impact of IIU becoming involved was that you were going to lose 2.5%; isn't that right?

A. That's right.

Q. So it was significant not just in the sense of, as you hoped, reassuring the Ministry, but also significant in that it was going to involve some pain, I think would be a fair way of putting it, for Telenor; is that right?

A. That's right, but on the other side, we had already also contemplated that we would or would sometime go further down, to 34%.

Q. That's true.

A. So in a way it was not that dramatic to us, but it happened faster.

Q. In fact, that never happened; isn't that right? You just kept getting larger and sold it?

A. In reality, that never happened.

Q. But I think you are now aware that that change was communicated to the Department in a letter of the 29th September?

A. Yes, I have seen that letter.

Q. And I think you are also now aware that, if you like, the content of that letter was rejected; is that right?

A. I have seen it afterwards, but I doubt that I saw it at the time.

Q. Yes, if you had seen it at the time, if you had seen it on the 2nd October when you wrote your letter, it might have been a somewhat painful thing to have done, isn't that right, to have taken a 2.5% drop for

A. Yes, I think I mean, I would have had some questions to ask to Mr. O'Brien.

Q. Do I understand your evidence to be that you had assumed, therefore, that there had been approval for this new information?

A. Once again, please.

Q. Do I understand your evidence to be that immediately after this step was taken, you assumed that sending in this information had the approval of the Department, of the assessors, if you like?

MR. FITZSIMONS: Sorry, the witness has not said that he knew that the information was sent in. I think that question, with the greatest respect to Mr. Healy, is unfair, the last question that he has just put.

It's assuming that the witness has said something that he has not said. I'd prefer it to be rephrased.

MR. HEALY: I'll rephrase it.

CHAIRMAN: All right. Well we are pretty near the end. Even if we are having a longer day tomorrow, I don't want and Mr. Johansen has travelled and over two hours is stressful enough.

MR. HEALY: I am sorry it has gone so slowly, but I am conscious of the fact that we don't have an interpreter in the case of Mr. Johansen, and I want to be clear that I am not either misunderstanding him or he misunderstanding me.

MR. FITZSIMONS: No, it's not a question of misunderstanding. It's a question of putting something to the witness that the witness did not say. There is no question of misunderstanding.

CHAIRMAN: Mr. Fitzsimons

MR. HEALY: I am going to clarify it. I don't think any problem will arise.

Q. What I'm saying to you is based on my a construction I am putting on a passage in one of your letters; maybe you can just tell me whether you agree with me or not. It's a letter of the 2nd October, 1995. It's the letter at Book 48, 68. If you go to paragraph I think it's paragraph 6, "In order to reassure the Ministry..." Am I not right and correct me if I am wrong in thinking that that means

that you assume that there was going to be a communication to the Ministry?

A. I mean, in some way or another, I think it definitely would have to be some information about it, if it would help.

Q. I am not suggesting that you were aware of the content of the letter of the 29th or even the fact that there had been a letter on the 29th. But am I right in thinking that you assume that there would be a communication of what you believed had occurred, not necessarily what was actually communicated, but of what you believed had occurred in your dealings with Mr. O'Brien to the Ministry?

A. I believe that I think the problem here was that on the 2nd October, I didn't know that the arrangement agreement was signed even, and far from knowing that some communication had been sent to the Department.

So I guess that in some form or fashion, the information should be passed over, but at least, I think I had expected maybe to that we in Telenor should be held more kind of informed about the process and know what should happen.

Q. I appreciate that, and I think there may have been some confusion; I am not suggesting that you were aware of the fact of a letter going on the 29th. And do I take it that you weren't aware of the fact of a letter going, and you weren't aware of the content of

the letter of the 29th on that day?

A. That's correct.

Q. We'll try and finish it in the morning, then, Mr.

Johansen. If you want to start early.

CHAIRMAN: I think we should start at half past ten,

then, in the morning. We will resume it then with a

view to finishing it tomorrow, Mr. Johansen.

MR. FITZSIMONS: Chairman, the witness is quite happy

to stay till five o'clock today and be questioned.

CHAIRMAN: I think it's probably preferable, Mr.

Fitzsimons, that we try and extend tomorrow's day. I

think the intimations appear to be that we should be

contrive to dispose of his testimony tomorrow once

we make a prompt half-ten resumption.

Very good. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

FRIDAY, 5TH MARCH, 2004 AT 10.30AM.