

A P P E A R A N C E S

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I N D E X

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THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY,
5TH MARCH, 2004 AT 10.30AM:

CONTINUATION OF EXAMINATION OF ARVE JOHANSEN BY
MR. HEALY:

CHAIRMAN: Mr. Shaw, I don't want to take you short if
you are waiting for your counsel, but in view of the
anxiety that Mr. Johansen be let go today, I think we
better seek to make some despatch, and I think you are
well capable of holding the breach for the few minutes
until some of your counsel are here.

MR. SHAW: Will O'Donnell should be here, because my
secretary was talking to him this morning. He will be
here in a few minutes.

CHAIRMAN: I think we better proceed.

Q. MR. HEALY: Thanks, Mr. Johansen.

If we just go and look again at the period of the
3rd/4th May of 1996. Just clarify one or two matters
to begin with that I perhaps omitted to clarify
yesterday.

You mention that had you prepared the memorandum of

the 4th May in English; in other words, it wasn't translated from Danish to English from Norwegian to English; sorry.

I think the Tribunal first came across the document in the files of Mr. Arthur Moran of Messrs. Matheson Ormsby Prentice Solicitors, which would suggest that you sent it to him; is that right?

A. Yes, I actually think I gave it to him by hand.

Q. And I think yes, I am reminded by Ms. O'Brien that that was his evidence. Could I ask you for a moment to turn to I think I'll come back to that later.

Did you give it to him in Ireland, do you think?

A. Yes.

Q. At a meeting in Ireland?

A. Yeah, it was probably even we met again on the 10th or 9th or 10th May, I think, so I brought it with me.

Q. Now, could I ask you to turn for a moment to Leaf 128 of Book 49. Have you got that?

A. Yes.

Q. It's a memorandum of Mr. Owen O'Connell's of a meeting of the 3rd May 1996, I think at the Department. You were present you were present, Mr. Knut Digerud was present, Mr. O'Donoghue was present, Mr. Walsh was present, Mr. Connolly on the Esat Digifone side; and on the Department side, present were Mr. Brennan, Mr. Towey, Ms. Finn and you can see the name "Eanna"?

I think that, on the handwritten version, is in fact

Mr. Eanna O'Conghaile. You may not remember that name.

Do you remember being at that meeting, do you?

A. Yes.

Q. And do you remember why you were in Ireland for the meeting?

A. In those days, actually, I think I handled more the matters regarding to this project, because as we talked about, Knut Digerud was not any more in Telenor Invest, he was now CEO of Digifone, and the managing director taking over for Knut Digerud in Telenor Invest. He was doing other things at the time, and I was a board member on behalf of Telenor, so I actually in those days I kind of was a key person dealing with the matters.

Q. But I think Mr. Digerud made a point in his evidence, and I think he also made it in his statement, that he regarded himself as having an executive role in Esat Digifone, an operative role in getting the company up and running and so forth, and he saw anything to do with shareholders or that type of issue as a matter for the shareholders, for you, for Mr. O'Brien, to Mr. Walsh and so on; would that be your understanding of his view?

A. Yeah, I think that's a fair and correct division of our roles, actually.

Q. And this meeting appears to have been convened

sometime after the Department wrote to Mr. O'Connell,

I think, seeking to clarify the situation with regard to ownership; and ownership would be, if you like, a shareholder issue. Wouldn't that be right?

A. Yes, I don't know what led up to the meeting.

Q. I see. If you look at Mr. O'Connell's note before I go to that, I suppose you had to come over for the meeting?

A. I don't remember there were other things as well, but I was definitely at the meeting.

Q. From your point of view it seems to have been arranged at fairly short notice, in that I don't think there is any correspondence or any significant correspondence indicating any agenda for the meeting other than the ownership issue that I have mentioned.

A. No, but I think it was generally accepted that the formalisation of the licence issues were just about to get finished.

Q. That's correct.

A. And so I don't think there was anything unnatural in participating in that meeting.

Q. Oh, I am not suggesting for a moment I think it was quite natural, and only indeed only appropriate that you would be at the meeting.

Do you see Mr. O'Connell's first note, where he says

"Clear a political football"?

"Identity of each shareholder legal and beneficial

ownership.

"Esat Digifone changes relative to bid."

Do you see that?

A. Yes.

Q. "Need detailed information/quality about IIU sorry,

"Change in institutional investment replacement of
Advent and Davys by IIU.

"Need detailed information/quality about IIU.

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

Just go to the bottom two lines. "Numbers re IIU.

"Telenor 'backdrop' statement as operator as last
resort.

"Note, Arve Johansen, that's the way we see it anyway,
we'll never abandon this one.

"Not questioning statement but would be helpful per
MB." Do you see that?

A. Yes.

Q. Now, does that accord even in a general way with your
recollection of some of the things that were happening
at the meeting?

A. Yes.

Q. Certainly the Telenor backdrop statement as operator
seems to strike a chord in your own memorandum,
doesn't it, because you refer to Mr. Brennan appealing
to you off the record for Telenor to stand behind the
project; isn't that right?

A. Yeah, that would be the same.

Q. And do you see where it says "Change in institutional investment, replacement of Advent and Davys by IIU"? That again seems to find an echo in your memorandum, because you refer to the Department seeking an explanation as to why there was a change; isn't that right?

A. Yes, at least a rationale.

Q. A rationale?

A. Yes.

Q. The note that you made, you used the words, I think, to the effect that the Department wanted you to explain why you had substituted Advent, Davy Stockbrokers and other recognised named institutional investors?

A. Yeah, but I mean, that memo was not a memo meant for being scrutinised by other people; it was a memo basically for myself. It was written in a hurry; I had no chance to really weigh the words and get exactly the right, you know, nuances into it.

Q. I follow, I follow.

If you go to the next leaf for a moment, Book 49, Leaf 129, you will see that Mr. O'Connell has a sort of I think what I recall he may have described as a sort of list of jobs or a list of tasks. Again, dated the same date as that meeting. And I think it's his list of tasks to be attended to arising out of that meeting, in his own handwriting, I think.

You see the first one: "Directors certificates by 3,
auditors certificates by 3", then Number 3,
"Comparison bid versus now". Do you see that?

A. Yes.

Q. Next line, "IIU versus Davys etc." then the word
"Explanation"; do you see that?

A. Yes.

Q. So it seems that Mr. O'Connell, who has a presumably
native command of English, is using the same word as
you're using; do you see?

A. I see that.

Q. And it goes on, "Telenor 'backdrop' statement", and so
on. Now, do you see his first note, "Clear a
political football"? Do you see that?

A. Yes.

Q. That's the part of the memorandum I was drawing to
your attention yesterday, and I was suggesting to you
that that seemed to me to find an echo in your
memorandum at paragraph 6 of your memorandum, which
you'll find at Leaf 130, unless you have the
memorandum separately.

A. I have it.

Q. Paragraph 6, you say in the second subparagraph, "In
the meeting with the Department of Communications on
Friday May 3rd, it became evidently clear that IIU was
not a favourable name from an 'Irish public' point of
view." And to me that seems to suggest that there was

some public perception that was negative where IIU was concerned.

A. There was clearly anxiety on the side of the Department.

Q. Now, I want to go back again to some of the details of the memo, and to bring you right to the end of it, okay? In the first paragraph, you say that when Mr. O'Brien came to you, you said that based on the information he had from various very important sources, you needed to strengthen the Irish profile of the bid and get on board people who would take a more active role in fighting for Digifone than the neutral banks.

Now, there had been no queries about the banks at the presentation; isn't that right?

A. That's right.

Q. One way or another?

A. I don't remember that.

Q. So neither you or anybody else would have had any real anxiety about the banks?

A. No. I mean, these were blue-chip banks. Why would anyone be, you know, worried about those?

Q. And you say that I should say something else as well: These banks were all Irish banks, or Irish branches of international banks. And I hope I'm right in saying that at the presentation, Mr. O'Brien said that they would be getting lots of pension fund money

and so on from Ireland?

A. I think

Q. But in any case, you say that you accepted Denis's word for the necessity for the new move.

A. Yes.

Q. You had to accept his word for it, because it was clear to you there was no problem with the banks, from your understanding of what had been said at the presentation. You had to take his word for it based on what he had told you or based on the information he said he had?

A. And there was not a problem with the banks. It was that the banks were supporting all bidders.

Q. Yes. At this stage, of course, the bids had gone in, hadn't they?

A. Absolutely.

Q. So there was nothing more you could do about it, in one sense. Underwriting wasn't mentioned, so that wasn't used to persuade you at that point to go ahead; isn't that right?

A. That's my recollection.

Q. And I think that's why you note at that point of your memorandum that underwriting wasn't used at that stage, on the 22nd, to persuade you?

A. Yes, and this

Q. Because you feel that Mr. O'Brien, if he had used it, might have been betraying a weakness on his own side,

or he might have been too proud?

A. Exactly. And we now know that as a matter of fact, agreements were already entered into between Communicorp and IIU, maybe as early as August, so and that was based on the financial necessity for or the necessity to strengthen the financial side of Communicorp where Advent was first source, but we know also that the terms were highly unfavourable and that it was much, much better terms for Communicorp to get IIU in, and they were in fact more or less already in, from what I know now.

Q. You didn't know that at the time?

A. Nobody so that might also explain why he didn't dwell on that part of it.

Q. I suppose, in fairness to Mr. O'Brien, we should say he had done a deal in the form of what he called a handshake on the phone with Mr. Desmond, on the price, I think, in fairness to him or on the amount of shares, I beg your pardon; the same thing, I suppose but no actual agreement had been formally entered into at this point; isn't that right? We know that now, anyway?

A. I don't have the details of that.

Q. And I suppose what you're saying is that if the deal was in fact done on a handshake at that point, Mr. O'Brien didn't want to mention that because it might have raised your antennae, or affected your radar, as

it were?

A. Well, this is speculation, but that might be part of it.

Q. Do I understand you to say that at that meeting, you agreed 37.5:37.5:25, but you wouldn't budge from that?

Or was the 37.5:37.5:25 not agreed until later?

A. No, I agreed to that. That would be the only basis that we would be, you know, willing to move forward on this arrangement.

Q. Okay. Then you say that sometime later, some days later, the underwriting came into view; isn't that right?

A. Yes.

Q. And you say that you nevertheless accepted it, albeit unwillingly?

A. Yes, and I was not really involved in the arrangement letter or the agreements or anything.

Q. All right. You weren't involved in the

A. So that other parts of Telenor, the project people in the Telenor Invest, the legal department of Telenor, I know now had been in the loop and were still kind of working on it at the time it was signed. And of course, looking at it now, I can see that there were advantages for Telenor in getting also Advent out of the picture because of that 5% option, so and it would improve the financial situation of Communicorp, so I think other people in Telenor probably had

the dealing with the matter probably had a somewhat different view on this matter than I have reflected in this memo.

Q. Are you sure they knew that Advent was coming out of the picture?

A. I think that was clear to them, yes.

Q. You say that in any case, "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."

Now, I don't think that you were saying that you were bringing pressure on Mr. O'Brien to do this. You saw this as advantage, maybe, or Telenor saw it as an advantage, but do I understand you to say that the step was taken because you saw it as something that would help you in getting the licence?

A. That was what I was told: This would improve the profile of the bid and would increase our chance to win.

Q. And from an "official Irish standpoint"; that expression seems to me to mean that you were told that this is what the officials, this is what the Department would regard as the right thing to do?

A. We talked about this yesterday. I mean, I cannot really this was a perception conveyed. I mean, you know probably Denis O'Brien as well as I do; he is a gifted sales person. He can sell basically anything,

and he sold this as a big thing, a smart thing to do,
to improve the performance or the profile of the bid.

Q. So you thought it was a painful thing to do, something
you did unwillingly. You were giving away equity for
nothing; in fact, you had to buy it back subsequently,
didn't you?

A. Absolutely.

Q. And you were prepared to take that step because you
were convinced by whatever Mr. O'Brien said that it
was the right thing to do to secure the licence?

A. I mean, he was on the ground here in Ireland.

Q. Of course.

A. He knew the business communities; he was already
engaged in the telecoms sector on the fixed line. I
was not here; I could not feel this in the same way as
he could.

Q. Okay. Just go on in your memorandum now. You say
"That the agreement was never signed by Telenor,
neither as authorised Digifone signature nor as a
shareholder and 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 at Digifone was
anyway underwritten by IIU.

"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 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 even 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 evidently clear that IIU was not a favourable name from an 'Irish public' point of view. On the contrary, the Ministry basically asked for help for how to explain why we had substituted Advent, Davy Stockbrokers and the 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 it would serve as a last resort for the Digifone company for funds and operational support. My feeling was that if Telenor had owned it alone, he

had been more comfortable than with the current shareholders."

Now, it would seem to me at that particular point you were saying to yourself, "We took all these steps in September, these painful steps; it cost us equity. We had to actually pay for that equity ourselves, if you like, twice over by having to buy it back. We were told to do this from an 'official Irish standpoint'.

We were told it's what would we should do to secure the licence. We were told it was based on information from very important sources that it was necessary to strengthen the Irish profile of the bid, and then when we met the civil servants, we found out that their views seemed to be contrary altogether to what we had been told"; is that right?

A. That was clearly my perception that that was the case.

Q. That the civil servants said, "This is a problem"; would that be a fair way or that was the impression you got from them?

A. No, they never said it was a problem, but they asked, you know, about why this was the case.

Q. I think you say they had an anxiety?

A. That was my impression, yes.

Q. And they didn't seem to have any anxiety about the institutional investors that had been in before; that's what you are recording here?

A. That's clear.

Q. And the words you used are "recognised named institutional investors". Did you use that form of wording because they had used it, or something like it?

A. No, I think that's just my own wording.

Q. You felt, in fact, at that stage, if you go for a moment, if you go down to the last line: "I have now also seen the letter of the 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 of Digifone which effectively have deprived from Telenor, at the same time as the Department and our honoured partners gently ask us to underwrite the whole project."

You seem to be suggesting at that stage that this anxiety, call it what you like, had complicated the award of the licence to the point where you had some concern that you mightn't even get it at all.

A. I mean, I don't think we ever doubted that had we would get it, but dependent upon, you know, how difficult IUU would be in these dealings, and if the requirements from the Department would be that we would roll back to the original configuration, it might be complicated

Q. I don't think the Department had asked you to roll back to 40:40:20 at this stage.

A. No, but that's probably what I sensed, that this was going to be complicated.

Q. If you go on for a moment to the next document, 49, 132, which is a memorandum of Matheson Ormsby Prentice of the 8th May, 1996. At the top it says "Knut Digerud 6095000"; it might be a Dublin number. Then it says "Arve"; do you see that? Maybe that's not "Arve."

A. I doubt that is "Arve". I believe it's "Aine".

Q. And then it says "Licence likely to be ready Friday.

EU has considered Persona appeal and indicated

Department can go. What about shareholdings?

Can we unravel the IIU involvement? How we attack the arrangement agreement?"

And so on. And if you go down to the bottom of the memo, you see" Arve Johansen"; do you see that?

A. Yes.

Q. "40:40:20". Were you on the phone at that stage, do you think, or were you present at this meeting?

A. I don't think I was present. I cannot recall being on the phone either.

Q. I think Mr. Moran gave evidence that he may have had a whole series of telephone attendances at this point. Do you recall having conversations with him?

A. No, I don't recall that. And I see no telephone number for me.

Q. There is no telephone number at your name. Do you see, after Knut Digerud's initials, "KD", you have:

"Minister and Department seeking the support of Telenor by way of letter of comfort." Do you see that?

A. Yes.

Q. That again is an echo of what's in your memorandum, isn't it, that the Department were looking to you to hold up the whole project, to stand behind the whole project?

A. Yes, that must be the same reference.

Q. So whereas at the beginning you had been told that the civil servants wanted to strengthen the Irish profile to make it less Norwegian, you now understood that the civil servants had the opposite view; they were completely happy with you, so happy with you that they wanted you to stand behind the whole thing?

A. Absolutely.

Q. But they weren't just happy with you, they actually wanted a letter from you; does that suggest a degree of concern on their part about the other partners in the project?

A. I mean, in reality at least, of course Telenor would not have any financial difficulties with taking the whole project from a financial point of view, and the only limit that we had seen up to now was that we absolutely should not get into a majority of this company, because it would be absolutely uneatable in the Irish context. So for me to hear that, that actually the Department would welcome such a higher stake from Telenor, to us it was the nature of it was basically positive for us.

Q. It wasn't just asking you to take a higher stake; I think they were asking you to protect the project almost, weren't they?

A. That's why, in the side letters that were prepared eventually on the 16th May, we made it absolutely

clear that this was on the basis that we would get equity.

Q. Of course; I understand that. You weren't going to protect the project just for somebody else's benefit.

A. Exactly.

Q. But the Department asking you to protect the project suggests in some way that the Department were ultimately looking to you to provide the financial muscle for the whole project, which was the opposite of what you had been told they might have wanted way back in September?

A. Yes.

Q. And in fact, if you look at this memorandum, what you are saying is "Can we unravel the IIU involvement?" Do you see that?

A. Yes.

Q. "How can we attack the arrangement agreement?" Doesn't that suggest that your solicitors were at that stage considering some way of getting IIU out of it altogether?

A. I would suppose that these were Knut Digerud questions.

Q. In the course of your discussions with Mr. O'Brien on the 22nd September, I think you say, anyway, your recollection is that Sjern Malm was with you?

A. Yes.

Q. I want to ask you about your answer to Question Number

69, it's at page 43, where you describe Mr. Per Simonsen's what Mr. Per Simonsen told you he had been told by Mr. O'Brien.

A. Sorry, which page are you on?

Q. Page 43. You say that on a date that you can't remember, but you believe sometime in September of 1995, Per Simonsen informed you that he 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. Now, when you say you think that that conversation took place sometime in September, do you recall whether it took place close to when you had the meeting with Denis O'Brien, close to the time when you had the meeting with Denis O'Brien?

A. I have no clear memory of that, but it might have been around the same time.

Q. I think you said yesterday that you saw Per after the meeting?

A. I think so, because I don't remember him being part of the meeting, but I remember we were together briefly afterwards.

Q. Is it likely, or probable, that was when you he may have told you this?

A. I don't remember.

Q. But if it was, in any case, if you think it was in September, do you know from your diary whether your paths crossed much in the rest of that there was only a week left in September then, I think; isn't that right?

A. Well, I have certainly no notes or minutes or marks in my calendar about this. I mean, this was just just historic, and we laughed a little bit about it. And while I believe that Denis might well have met the Minister in a pub, I think that's not conceivable in the Irish context, but I don't think I had any belief in that he would comment on the actual process.

Q. But did you believe I think as Mr. Simonsen felt that he was being told this by Mr. O'Brien as a way of impressing him, that Mr. O'Brien had, you know, influential or important contacts?

A. I think from what we have experienced in many on many occasions, Denis O'Brien tried to make an impression.

Q. But on this occasion, you had only met Mr. O'Brien I think on two previous on one previous occasion. You had met him in Oslo in a semi-social courtesy call, a few minutes, and you had met him at the presentation; presumably you had had some social contact with him on the night before, the day of and the night after, the night of the presentation. But

that was the extent of your contact with him, wasn't

it?

A. Yes.

Q. At that time, according to your own memorandum, in

fact, of the 4th May, you trusted what Mr. O'Brien had

told you, and you trusted him as to the necessity for

taking what was a fairly drastic step?

A. Mmm.

Q. What he told Per Simonsen, according to Per Simonsen,

is similar, isn't it, to some of the information you

had been given, in that if true, what it would suggest

is that information was available from the Minister

himself that the step that you were being asked to

take was one that would be helpful in the eyes of the

Department?

A. I mean, we never believed in it, and of course, if you

are right, it could be the case; but I never believed

that, and I think also the anger of the memo of the

4th May was that we felt that Denis had basically

bluffed the whole thing because he needed to get IIU

in for his own sake.

Q. Right. So that you are saying that the upshot of your

memorandum is that Mr. O'Brien bluffed you by telling

you that he had information from important sources

that you should take a step which otherwise you

couldn't be persuaded to take and that you

subsequently found out that none of this, none of

these steps were required for those reasons at that time?

A. On the 4th May, I was absolutely certain he didn't have any information from any source. He just produced everything to make it look better when he needed to get IIU in.

Q. The bluff worked so, in a sense, up until the 4th May, didn't it?

A. I guess you could say so.

Q. So you did think, up to then, that Mr. O'Brien had information that was valuable?

A. That he had I mean, influential business people have networks, and they play on the networks, and I thought he was probably more influential than he was.

Q. Now, Mr. O'Brien has given evidence about this Mr. Coughlan reminds me, in fact, I should have remembered it from your own response to the questionnaire, that you did see fit to mention it at the IPO, at the time of the IPO, in the course of the discussions about what representations or commitments could come from the Esat Digifone side in the context of the Esat Telecom prospectus; is that a fair way of putting it?

A. Which amendment?

Q. Well, you had a discussion there were discussions around the time of the IPO?

A. Yes.

Q. There was no IPO of Esat Digifone. It was an IPO of

Esat Telecom?

A. Yeah.

Q. But a major part of the value of Esat Telecom was Esat Digifone, so Esat Digifone nevertheless became embroiled, if you like, in the IPO; isn't that right?

A. That's right.

Q. And you had a number of concerns about statements in the prospectus that might have an impact for Esat Digifone, or for its directors; isn't that right?

A. I mean, the liability aspect of it was clearly a concern for the board of Esat Digifone.

Q. And at a meeting in IIU's offices, a number of things were discussed. We know from your previous evidence and the previous evidence of Mr. O'Brien and other witnesses that there were fairly intensive discussions about the extent to which there might have been or might have been a perception of some irregularity or impropriety in the granting of the licence or the award of the licence; isn't that right?

A. I mean, this was a long story, and we have gone over it before. I think this was triggered by the report, so to speak, by Barry Maloney, about what Denis had told Barry on a running trip. That was the main area of concern. And in the wake of that, I think the board of Digifone felt it was necessary to make disclosures, and then it was left with the lawyers of the IPO basically to find out what needed

to be done.

In the end of the day, Denis O'Brien produced an affidavit saying that he has not done anything wrong; he had maybe thought about it, but he had never done it. And after that had come up, there was kind of a questioning in the meeting, I think sometime in October, '97, whether there were any other things and I think this was brought up by the lawyer of Esat Digifone and whether there were there were any other things that could be of a similar nature.

And at this time, also this Moriarty Tribunal was established, and then I think I mentioned the donation, whether that would come into the same picture, and we started a full investigation as to whether the money had really gone into the Party, and we satisfied ourselves that it had gone into the Party. It was then the decision of the IPO lawyers and facilitators to put in a general disclaimer in the prospectus saying that there was a Tribunal established to look into certain possible payments to the Minister, and that if the Tribunal should start investigating into the award of the licence, it would have and something should happen to the licence it would have a serious effect on Esat Digifone. But it was, in my mind, a fairly general disclaimer.

Q. I fully appreciate that. And I think you have given a very good summary of it. You did think it important

enough at the time to mention it?

A. This was not my choice. I mean, this was done by professional people. We just sought that everything that could be important was, you know, known to the people involved.

Q. I don't think this remark of yours was ever recorded at that time, not in any of the notes we have seen of the various meetings; isn't that right?

A. Which remark?

Q. The remark you made concerning this, as you called it, story in the pub, story of the meeting in the pub.

A. No, that's probably right, because then I asked about this as well, that's correct, because everything should basically be put on the table. And so I asked I remember then this story and asked someone, was that anything worth mentioning? Have any of you heard about such a story? And nobody had heard about such a story.

Q. Well, I suppose the only people who had heard about it were you and Per Simonsen and, as we now know, Mr. Haga?

A. But Per Simonsen was not at this meeting in October '97.

Q. Mr. O'Brien wasn't at that meeting either; isn't that right?

A. No, he was probably not at the meeting physically.

Q. Maybe he was on the phone?

A. I think maybe he was on the phone, yes.

Q. Do you recall if he responded at the time?

A. No, he was not part of the meeting at that time, as I remember it.

Q. It doesn't appear from any of the records of those meetings that this was ever put to Mr. O'Brien at the time, like the remarks that Mr. Moloney made or put to him, do you remember that, and like the discussion about the \$50,000 donation?

A. I mean, that's probably right. And yeah, I haven't seen that it was put to him, but I mean, nobody seemed to pay any attention to it.

Q. When Mr. O'Brien came to you and asked you to make the \$50,000 to facilitate the \$50,000 payment to Fine Gael in I think late November/December it was December, I think?

A. It was the 8th December, '95.

Q. I don't want to go over all of your evidence, but I think am I right in summarising it that initially you agreed to facilitate it, and then as time wore on, you were asked to take a number of other steps which involved not just, on the face of it, paying over \$50,000 or agreeing for \$50,000 to be made available for this payment, but also becoming involved in the generation of a paper trail which suggested it was a consultancy paying the money into an offshore account, paying the money for the account of a person with a

consultancy address in London and so on. A number of steps which you say that, if you had been asked to take them at the beginning, you would not have taken.

Would that be a fair way of putting your evidence?

MR. MCGONIGAL: Mr. Chairman, a shortened version does not represent the evidence, in my respectful submission.

MR. HEALY: I am trying to shorten the time. I can read out some of the evidence.

Q. I just don't want to take up too much of your time, Mr. Johansen.

At day 116, page 19, Question 69, I was saying to you:

"Question: Was there any particular reason why this was paid by a direct payment rather than by a straightforward loan or rather than by a payment that was described in some more accurate way as a contribution to a political party?

"Answer: Yeah, I think there was also this aspect, that that way it should be more invisible in Ireland.

"Question: I am going to come back to that answer you have given me, but I want to pass on to something else for a moment, and it's related to the answer you have just given. You mentioned yesterday that people had asked you for you certainly recalled one occasion when somebody asked you for money to guarantee a licence. If you had paid that money for the purpose of having the grant of a licence guaranteed to you, it

would have been straightforward corruption, wouldn't it?

"Answer: Yes.

"Question: You refused to do it?

"Answer: Yes.

"Question: If somebody asked to you pay money if they gave you a licence, that would also be corruption, wouldn't it?

"Answer: In my mind, yes. This particular payment in this case was made in such a way as to make it invisible in Ireland. If I could use more simpler language, it was to hide it in Ireland. The way the discussion went between Denis and myself was that he had done donations in the past, and I think he has done several times, and it created a lot of fuss in the media, and he didn't want that any more. So he was a bit annoyed about this, and he wanted to keep it out of sight of the Irish press.

"Question: I can understand that if somebody made a payment like this, they might feel that if it were to become visible, it could be open to being misconstrued; isn't that a risk that might have been felt to have existed at this time in relation to this payment?

"Answer: I didn't think so.

"Question: You didn't think so?

"Answer: No. In my mind we got the licence already

in October, and we were working at full speed to establish a company, and I never thought that it could be related in any way.

"Question: I understand that that's your position.

You got the licence fair and square in the course of an independently conducted competition, as far as you were concerned.

"Answer: Absolutely.

"Question: Now here was one of the people involved in the licence asking to you make a payment to the political party to which the Minister who had granted the licence belonged, isn't that right, and he didn't want that payment to be visible in Ireland; he wanted it to be invisible in Ireland because of the fuss it would create. And could I suggest to you that the fuss it would create, if everything that you say is right, the fuss it would create is because it would be misconstrued as being connected with the licence.

"Answer: I didn't put all of that in it. I think it was generally he had also given donations to other parties, and it always created fuss, regardless of what it was.

"Question: Even so, the people involved in this payment went to considerable lengths to bury it from public view, didn't they? They put in place an arrangement whereby the money could go into an offshore account, a Channel Islands offshore account;

that's going to some lengths to bury a payment. In fact, isn't it one of the traditional ways of burying money from public view, isn't it?

"Answer: Again, I had no information, no feeling as to how things were normally done. I thought it was strange

"Question: You thought it was?

"Answer: Strange, and I also learned afterwards that political parties were not allowed to have offshore accounts, but I didn't know that at the time.

"Question: But you did think it was strange, and it was one of a number of things that you began to see were strange?

"Answer: I thought it was strange, but we had also seen that a lot of firms, a lot of private persons in Ireland both had onshore and offshore accounts. So in my mind, I said "Well, this is another one".

"Question: But having paid the money into an offshore account and having journalised it or described it as a payment for consultancy to Mr. Austin your firm was then told "We don't want any reference to David Austin in the documentation concerning this"; isn't this right?

"Answer: Yes.

"Question: So this was a further attempt to make it even more invisible, to remove Mr. Austin's name from it, Mr. Austin being the Fine Gael connection with

the payment; isn't that right?

"Answer: I was myself not aware of that, because that was handled as we talked about

"Question: I appreciate you weren't aware of it.

"Answer: I saw that afterwards.

"Question: I am not involved in trying to fix you with any personal blame, Mr. Johansen. I am talking about Telenor, you are the witness here from Telenor. If necessary we'll have to get all the other witnesses, but hopefully we won't, but the individual who dealt with that aspect of the documentation was one of the few individuals in Telenor who knew the true background to the documentation; isn't that right?

"Answer: Yes.

"Question: And he was asked to bury this payment even further?

"Answer: In a way, to put another layer of concealment over it.

"Question: And by that time you had in fact already reached the point where you were beginning to become concerned about layers of deception, and you decided that you were too far in, you had to go along with it, but you wouldn't have gone along with it from the beginning. Could I suggest to you that the reason you wouldn't have gone along with it from the beginning is because there would have been a perception that

something wrong or improper was going on; even if there wasn't, there would have been a risk of perception of something wrong going on?

"Answer: Yes, I mean, the risk that I saw was that the arrangement might open up such a possibility."

That was Day 114. On Day 115, you said sorry, that was Day 116; I beg your pardon. On day 115, you said, at page 23 page 22/23; it starts off at Question 78:

"Question: If you can throw further light on it at a later point, no doubt you'll come back to us. Now, you have made a statement; you have made a reference in your statement to receiving this invoice. You say "I received an invoice dated 14th September, enclosed with a covering letter from David Austin. The covering letter explained that this was" and you quote: "'as agreed with Denis O'Brien'. The invoice contained the payment arrangements and designated an account with Bank of Ireland in Jersey. The covering letter was not date-stamped on receipt, but I believe that I received it either on the 18th December, 1995, or the 19th December. This was the first time that I became aware that the donation was to be paid into an offshore account.

"Question: Before I go into the details of the invoice, what did you make of the fact that although had made a phone call to Jefferson Smurfit's offices

in Dublin, you received an invoice from London?

"Answer: I think those there were two elements that surprised me a little bit: One, that it was coming from Dublin, and number two, that because it was Jersey account, an offshore account. But again this really wasn't our thing. I mean, we were facilitating and we were advancing the payment and things were, you know, revealed stage wise. First we heard about the donation; secondly, that it was through an intermediate; and third, it's England, Jersey. At this point in time they were kind of also committed to we had promised to Denis, we had promised to David Austin to do it and now to back out I think would be more difficult. And again we didn't think it was our task to be the judge.

"Question: Even though you didn't think that it was your task to be the judge, if you had been told at the very beginning that this payment was going to be made to somebody with an address in London and that it was going to be put an offshore bank in Jersey, do you think you would have agreed to do it?

"Answer: I doubt it.

"Question: So you would have made a judgement at that stage?

"Answer: If everything had been clear from the beginning, from the outset, I doubt that we would have agreed to do it.

I was trying to put that into a few shorter sentences,
but I just want to ask you, when you were being asked
to do that, or

MR. MCGONIGAL: I'd be concerned on two levels, Mr.
Chairman. First of all, the majority of what Mr.
Healy read out is Mr. Healy's evidence to the
Tribunal. It does not reflect Mr. Johansen's evidence
to the Tribunal, not only in relation to the two days
which he has drawn attention to, but also to the
cross-examinations and the other witnesses who gave
evidence in relation to this issue.

Now, I can't for the life of me understand why Mr.
Healy, at this late stage of these proceedings,
bearing in mind that this material was dealt with some
considerable time ago, I think in 2001 or maybe 2002,
or whatever year it was, why he is now going back into
it unless there is a new matter; and if there is a new
matter, I am surprised that it hadn't been signalled
to anyone that there is a new matter arising out of
this.

And I do actually object to the way in which this
matter is being put, because it is Mr. Healy's narrow,
focused view on life, which has been shown to be wrong
on many previous occasions.

CHAIRMAN: Well, this is the last occasion we will be
hearing from Mr. Johansen. You'll have full
opportunity to clarify any matters you think apposite,

Mr. McGonigal, and whilst I have noted in reviewing that evidence, there were indeed a good number of matters put. Undoubtedly Mr. Johansen did give that evidence, that had he known of the full circumstances, he would have had at least misgivings about making the payment as sought. So we'll proceed.

Q. MR. HEALY: I just wanted to ask you one question that I couldn't have asked you at that time, Mr. Johansen, and it's this: Did it occur to you, at the time that you were being asked to take these steps, to reflect on the fact that Mr. Per Simonsen had told you that Mr. O'Brien had had a conversation with the Minister and that the Minister had suggested that IIU get involved?

A. Absolutely not.

Q. Okay.

Now, one two other small matters before I go to Mr. O'Brien's evidence. You may be aware that, from the evidence of Mr. Per Simonsen, he drafted a letter which was given to the relevant Norwegian, I think, Communications Ministry to be sent to Ireland, to the Irish Minister. And I think I should say. Where Mr. Lowry is concerned, that I am not referring to this matter in the context of any steps Mr. Lowry took, because he can't stop anyone writing to him. But are you familiar with the letter?

A. I saw it just a couple of days ago, yes.

Q. Were you aware of it at the time so?

A. I don't think I was aware of it.

Q. Mr. Simonsen didn't tell you he was taking that step?

A. No. I don't remember it, anyway.

Q. Do you recall the evidence that has been given and

I think we may have even referred to some of it in

some of the transcripts there that as far as you

were concerned, Mr. O'Brien handled all of the Irish

end, all of the promotion end, lobbying, PR and so

forth. This was a case of Telenor getting involved in

lobbying, even in a most general sense; would that be

right?

A. I don't agree with that description of it. As I see

this thing, it's kind of a letter of recommendation,

and I think you will see that in any kind of bid, that

you would try to get as many positive kind of

references as possible to make yourself and your

company look good, so that in my mind, it was just a

positive reference.

Q. I accept that, but this was in the middle of the

competition, wasn't it?

A. I don't recall when it was sent.

Q. It was sent, I think, sometime shortly after I

think the evidence is that it was sent I am

sorry

A. It was never sent.

MR. O'DONNELL: Mr. Simonsen wasn't able to establish

that this letter was ever sent. I understood you, Sir, to say that you were attaching little or no importance to this letter.

CHAIRMAN: I think there are a few lines in it, Mr. Healy

MR. HEALY: I think Mr. Simonsen said and I asked him about that, and I think he said that he wasn't sure.

MR. FITZSIMONS: Sorry, Chairman, I am sorry to stick you with this, but you did say, and it's on the record, that you were attaching no importance to that letter; so it's out of the picture insofar as the inquiry is concerned. That is a matter of record, Sir.

CHAIRMAN: I am not necessarily precluding Mr. Healy asking a question about it, but I think if Mr. Johansen has stated that he was unaware of it at the time, it's unnecessary to proceed further on it.

MR. FITZSIMONS: Thank you, Sir.

Q. MR. HEALY: Now, we have spent most of the time looking at your memorandum of the meeting of the 4th May, 1996, and Mr. O'Brien gave evidence of his meeting with you on that occasion. And I don't think he agrees with you as to what it was he says he came to Oslo to do. He says that he came to you to Oslo to discuss a perception of the financial weakness, the financial weakness of the consortium, and specifically

Communicorp's financial weakness.

And I want to refer you to Day 252 of his evidence, page 4, question 13. It's on the monitor.

A. Yes.

Q. "Question: 29th, yeah, all right. I want to ask about about that the idea, you say, of underwriting came from Mr. Desmond's side?

"Answer: Yes

"Question: That's how it would be done?

"Answer: Either we had to come up with a financial guarantee and what is, okay, to satisfy Telenor, and you know, we still had that outstanding issue with them, and we wanted to try to continue to try to satisfy that as per the 3rd June agreement.

"Question: The idea of an underwriting letter for the Department, where did that come from?

"Answer: Well, it was the whole reason

"Question: The need for one for the Department, the need for one for the Department.

"Answer: I want to be quite clear about this and unequivocal. We had a perception that we were weak financially, and when we went into the oral hearing, we came out of it, and that was one of the items that we discussed. Maybe we, in the eyes of the Department and the assessors, were seen as financially weak. I discussed that with Mr. O'hUiginn, I discussed it with Mr. Mara, I discussed it with Mr. Johansen, I

discussed it with Mr. Nick French, and basically I was going to these people apart from my partner and saying, "Look, this is what happened, these are the kind of issues" and all of them said, "Is there a way that you can strengthen the Communicorp side?" And basically that led me to go to or it it didn't lead me to IIU or but certainly in parallel, I started this conversation with Mr. Desmond, started these discussions on the 11th August, and that's where we ended up on the 29th, with this letter that went in to the Department.

"Question: I understand. I understand exactly what you are saying."

What Mr. O'Brien is saying there is that, I think, as far as he is concerned sorry, I should go on to the next question, or the next answer:

"Question: I understand. I understand exactly what you are saying.

"Answer: It's also a very important point here, is that Mr. Johansen acknowledges that basically it would be very it would be better if we could strengthen the financial backing of Communicorp. And this is in this book

"Question: Yes.

"Answer: on Tab 68 on the 2nd October.

"Question: That is the letter of the 2nd October?

"Answer: Yes.

"Question: I am going to come to that.

"Answer: It isn't something I was plucking out of the air. These people were saying, "Denis, strengthen things."

What Mr. O'Brien I think is saying is that he was under pressure from Telenor to strengthen Communicorp, and specifically that people like you were saying things to him, "You have to strengthen" or "Is there a way you can strengthen Communicorp?" Would you agree with that?

A. I don't agree with that coming from me, no.

Q. Because, let me just go on one, to one

A. But of course, there were discussions with other people in Telenor on the financial side of Communicorp, so so as seen when I go over the papers now, that there were, you know, debates to the very last minute on the 4th August, when the bid was lodged, about the strength of that financing commitment from Advent; so in the broad sense, he is correct, but it's not applicable to me personally.

Q. In the course of his examination on Day 252, at page 81, I think Mr. Coughlan was drawing to Mr. O'Brien's attention your memorandum, the memorandum we have been discussing this morning. If you go to the on the previous page, Mr. Coughlan has been reading out portions of the memorandum, and the first answer on page 81, "there is so many inaccuracies" I am

sorry, actually he is not reading out the memorandum;
he is reading the letter of the 10th May.

And Mr. O'Brien says: "There is so many inaccuracies
in this letter it would be helpful, if you don't mind
if, we can do it, can we break into bits?"

"Question: That is precisely what we are going to do.
I am going to pause at that part of it because we then
go into May.

"Answer: We got as far as 6, did we?"

"Question: 5.

"Answer: Okay.

"Question: Then we might go into 6. We'll just look
at it; we'll deal with paragraph 1 so.

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

That is probably right, that was the 22nd September.

"Answer: The 22nd September; that's right.

"Question: "He informed me that based on information
from various very important sources, it was necessary
to strengthen the Irish profile of the bid to 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".

Now, just reading that, it would convey to me that
what he is saying there that you had told him that you
had got information from very important sources that

it was necessary to strengthen the Irish profile and get on board somebody who would fight for the Digifone licence rather than the neutral banks. Did you say that?

"Answer: No, I didn't, no."

Now, Mr. O'Brien is refuting utterly that he came to you and said what it is you say he said to you to persuade you to take the steps you took ultimately on 29th September?

A. Okay

MR. McGONIGAL: Mr. Chairman, you should read the rest. This is more of the selective business.

CHAIRMAN: I don't think it is, Mr. McGonigal. It's terribly difficult

MR. McGONIGAL: It continues: "Did you refer to important sources?"

"Answer: No, I mean, the only people we would have had is advisers, and he would have met them infrequently, if at all, or maybe he might have met Mr. Mara, he may have met Mr. O'hUiginn, he may have met Mr. French.

"Question: But "very important sources" conveys to me an impression somebody other than your advisers, very important sources."

For goodness' sake, if we are going to have pieces of transcript read out which somebody thinks is important, then let's have them read out. This

selective business is just unhelpful to everyone.

Particularly when I understand that we now have memos made by you on foot of evidence which has been given which we have not had sight of, and we are totally in the dark as to what is now happening in this Tribunal.

CHAIRMAN: Well, Mr. McGonigal, the fact that I make memos merely indicates that I am not going to leave myself 20,000 27,000-plus pages to read without having made some attempt to digest it. And I am keeping an open mind in conclusions.

MR. MCGONIGAL: Absolutely, I fully agree with that.

But if there are relevant matters within those memos which need to be further inquired into in this Tribunal, every party to this Tribunal is entitled to be made aware of those concerns. We have not been made aware of any concerns. We have demanded again and again the nature of any allegations being made against our client or anyone else, and we have not even got a response to that correspondence.

We now understand, for the second time, that memos have been prepared whether on your own account or with your legal team, we have no idea but on foot of those memos, questions seem to be arising in relation to matters which were dealt with years ago.

And now we are, for the first time in examination, finding out about these issues, and not through any indication that there are concerns on behalf of the

Tribunal, which we are entitled to know about. I

think it's a disgrace.

CHAIRMAN: That's an absolutely unnecessary statement,

Mr. McGonigal. All that has transpired is that I have

sought to make synopses of relevant portions of

evidence. I keep an utterly open mind on what

conclusions will be drawn on them, and since this is

effectively the wrapping-up of Mr. Johansen's

evidence, it is anything but unreasonable that Mr.

Healy is seeking to put certain concluding matters.

It does not seem to me that there has been any

selective putting of the general tenor of the

transcript. But by all means, if other matters have

to be raised, they can be put to Mr. Johansen.

Proceed, Mr. Healy.

Q. MR. HEALY: Mr. Johansen, I am simply trying to put to

you what Mr. O'Brien says. I am happy to put it all

to you, if you want me to go through all of it at the

one time rather than put it to you piecemeal, but I

want to make it clear to you, I am not trying to put

it to you selectively.

I think it fair to say that Mr. O'Brien is saying that

if we can go on to the next section, he says: "Did

you refer to important sources?

"Answer: No, I mean, the only people we would have

had is advisers, and he would have met them

infrequently, if at all, or maybe he might have met

Mr. Mara, he may have met Mr. O'hUiginn, he may have met Mr. French.

"Question: But "very important sources" conveys to me an impression somebody other than your advisers, very important sources.

"Answer: Well, this is Norwegian to English, so I don't know; you would have to ask him.

"Question: Yes, 'I accepted Denis's word for the necessity for this new move'.

"Answer: Can I just come back to this thing.

"Question: Please do.

"Answer: This "much more active role in fighting for Digifone", I don't know what he means by that, and I am not sure what he means by 'neutral banks' who basically would like to keep a good relationship.

Like, none of our people who wrote letters for us, I believe, was involved in any other consortium, so he is wrong in that; that is not accurate.

"Question: Well, I think what okay, now, I want to distinguish here when you say he is wrong objectively in these matters, or are you saying that he is wrong to say that you conveyed this to him?

"Answer: He is wrong that I conveyed it to him, and also he is wrong in thinking that the neutral banks wanted to keep all good relations. It is in marked contrast to what he says in his letter of the 10th or 2nd October.

"Question: I'll come back to that, and we will deal

with that. I'll come back to that.

"Answer: I mean, he is saying here, you know, from our meeting with the Ministry, when he is talking about the basis of information from important sources; I don't know what he means by that.

"Question: Well, it certainly seems to convey 'from an important source' seems to be conveying something other than a Communicorp adviser; would you agree?

"Answer: I don't I wouldn't accept that, no, no, it is something to be directed to him, I don't know.

"Question: Now the sentence 'I accepted Denis's word for the necessity for this new move.

Note: Underwriting was never used as an explanation at that time.'

"Answer: On the 22nd September, Mr. Coughlan, underwriting was discussed. And while we were getting our bid underwritten because Telenor were still not happy."

Now, I think Mr. O'Brien seems to be, subject to what he calls "Norwegian English," challenging your statement that when Mr. O'Brien came to you on the 22nd September to a meeting, underwriting was not mentioned, was not discussed; and that in fact your account of the meeting, which is that it was based on a reference to neutral banks, is completely wrong.

A. Well, I maintain my explanation of it. But if I can draw your attention to Denis O'Brien's letter to me of the 12th May, page 2, he talks about this meeting and says, "Firstly, it was viewed that the consortium needed more firmly committed Irish investment content as the other institutional letters from IBI, AIB, Standard Life "

Q. If you can just bear with me for one moment, Mr. Johansen, and I'll put it on the screen, just in case everybody can't pull it up.

A. Okay.

Q. It's Book 50, Leaf 142.

A. Top of page 2.

Q. Yes.

A. And I started reading from the mid-section in the first paragraph: "Firstly, it was viewed that the consortium needed more firmly committed Irish investment content, as the other institutional letters from IBI, AIB, Standard Life were letters of intent and not legally binding. The other reason being that Telenor had rejected Advent's letter of financial support."

So I think he kind of says the same things here that I am saying, except for the Advent, which he never discussed with me.

Q. So the difference between you is that he is saying you are saying that this letter supports your

contention that he discussed the banks. You say the difference between your account and his account is that you say that you did not discuss support for Communicorp at that meeting?

A. Yes.

Q. Well, in fairness to Mr. O'Brien, I am not sure that he is entirely agreeing with you in his account of what happened at that meeting. He says "Firstly, it was viewed that the consortium needed more firmly committed Irish investment content as the other institutional letters from IBI, etc., were letters of intent and not legally binding."

You had no impression at that point that the letters of intent were not legally binding, isn't that right you hadn't even seen them; wouldn't that be correct?

A. Yes, and that's why I don't recall that being the argument either. I recall the arguments being that they were you know, working for everybody, neutral.

Q. Mr. O'Brien, however, I think is saying that you were one of the people who told him to strengthen Communicorp. Do you recall a discussion where it was you were promoting the notion of the need to strengthen Communicorp, you personally?

A. No, I have no recollection of that, and I think it's unlikely, because I never dealt with this portion of matters.

Q. Well, if I could just refer you to your letter of the

15th October of 2002. Have you got a copy of that well, your solicitor's letter, sorry.

If you go to the third page, and to the third paragraph, where you say: "Following the oral presentation of the 12th September, and probably before and during the meeting in Oslo on the 22nd September, 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."

Doesn't that seem to support what Mr. O'Brien is saying in his letter of the 12th May?

A. I'm not completely happy with this paragraph, actually, to be honest.

Q. It was

A. I think so I think I would have worded it somewhat differently if I had written it now. I actually feel that or I am I feel much more certain that what I have tried to convey here is the right representation.

Q. You are aware that this letter was furnished to the Tribunal as comprising part of your statement?

A. I am not absolutely certain about that.

Q. Well, just so that you'll be in no doubt about it, and just in case I am not making a mistake, if you just go to page 18 of your statement, and if you go to Answer 29.

It says, subparagraph 1: "Mr. Johansen was present at the presentation on the 12th September, 1995. He refers to Kilroy's letter dated 15th day of October 2002 to the Tribunal. He confirms that this letter is based on his instructions." Do you see that?

A. Okay.

Q. Doesn't that seem to suggest that that letter is to be regarded as part of the your statement?

A. I remembered this was sent in in a big hurry, and I'm not completely happy with the wording in that paragraph.

Q. If the wording in that paragraph reflects what you thought at the time, and based on your recollection, isn't it consistent with what Mr. O'Brien says occurred?

A. It's much closer, anyway.

Q. It's much closer to Mr. O'Brien's letter of the 12th May, isn't it, than to your memorandum?

A. Yes.

Q. If we just go through Mr. O'Brien's letter of the 12th May, which I don't think we need to look at your letter of the 10th May, because we have already read it, and it contains a lot which is based, I think, on the 4th May and earlier history. It's at Book 50, Leaf 142.

It says: "Dear Arve,

"I refer to your letter dated Friday 10 May and your

letter dated 11 May to Michael Walsh.

"I am disturbed by the contents and inaccuracy of both these letters. Furthermore, your continuous personal comments throughout the meeting to my colleagues on Friday at the offices of Matheson Ormsby Prentice, when you also questioned the integrity of Dermot Desmond, IIU and myself was outrageous and totally unacceptable.

"Just to remind of you some things you said which were noted and minuted at the meeting.

"1. The IIU agreement prior to the awarding of the licence "was a method for Denis O'Brien to get back-door control of the business".

" the IIU agreement was entered into without the knowledge of Telenor.

" on a number of occasions you clearly cast aspersions on my character. Having repeated these aspersions, both Leslie Buckley and Paul Connolly stated that they were not prepared to accept the personal nature and basis of your allegations.

"This kind of behaviour is not acceptable to us as partners and prevents reasonable discussion and debate taking place.

"May I now remind you of the sequence of events.

"IIU conspiracy theory"

"On Friday, 22nd September, 1995, I travelled to Oslo to meet with Sjur Malm and yourself to discuss the

GSM bid and participation of IIU in the consortium.

Per Simonsen also joined us later on in the meeting.

I had received a letter dated 15 September (copy attached) from Knut Haga stating that Advent's letter of financial support was not acceptable. IIU participation for 25% of the equity in Esat Digifone was brought about for two reasons: Firstly, it was viewed that the consortium needed more firmly committed Irish investment content as the other institutional letters from IBI, AIB, Standard Life were letters of intent and not legally binding. The other reason being that Telenor had rejected Advent's letter of financial support.

"In your letter dated 3 October 1995, which I enclose, you state: 'In order to reassure the Ministry and give an even stronger signal to the Irish community in general, we are pleased with the plan to have another solid Irish underwriter'. It was also viewed that by having 62.5% Irish content, the bid would be greatly enhanced.

"Later in the same letter, you state: '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.' The Norwegian content (non-EU) was deemed to be high at 40%,

particularly since Sjern Malm and Per Simonsen told me on the 27 April 1995 that Telenor would be selling off half its interest within 12 months to Tele Danmark (from an EU member).

"At our meeting on 22 September 1995 in Oslo, I made two requests.

"1. Communicorp Group did not want to reduce its holding to 37.5 percent as we were the lead consortium member, having sent two years on the bid, thus we wanted to maintain our 40% interest and asked for Telenor to reduce to 35% with IIU at 25%. Despite reasoned and rational arguments from our side, you rejected this request.

"2. Telenor had refused to go pari passu on the bid costs which at the time were running at 1.5 to 1.6 million. I had asked you to go pari passu, and you refused, despite reasoned argument by me on behalf of Communicorp. However, your letter of the 2 October 1995 did say that 'Telenor, based on the agreement, will absorb its equitable share of these costs. If, however, you feel that Communicorp for some reason is not fully compensated, we are willing to discuss this problem in further detail.' Both myself and my colleagues did raise this matter with yourself and Knut Haga but were told that Telenor was not prepared to go pari passu. In essence Communicorp risked 1.1 million on the licence bid while Telenor were only

prepared to risk .5 million. This was not the behaviour of a partner.

"To finish on this point, I feel it incomprehensible that you are still arguing that IIU have a 20% holding and that you want Communicorp to cede 5% to IIU. You also claim that Telenor never approved IIU participation in our consortium. This is in direct contradiction to your letter of 2 October. In fact you told the meeting on Friday last, minutes of which have been passed to me, that 'I do not accept the arrangement with IIU.' All documentation between IIU and Esat Digifone was reviewed and cleared in advance of signing by Telenor executives.

"Clearly you now have arrived at a situation, despite your letter of the 2 October, that you disagree with both partners, Communicorp and IIU.

"12.5% shareholding issue.

"IIU hosted an Esat Digifone shareholders breakfast meeting on 9 February. At this meeting I formally asked both Telenor and IIU whether they would be interested in selling Communicorp 12.5%, as our investment advisers in New York, Credit Suisse First Boston, CSFB, had advised us that US investors would want us to consolidate our holding in Esat Digifone. Initially we thought that we would need 12.6% in order to consolidate our holding for accounting reasons, but subsequently we were informed by KPMG that only 50%

was required. We informed IIU of this. Subsequently Telenor wrote to us to say they were not interested in selling any shares. On the 27 February we wrote to Knut Digerud to say that we were pursuing a deal with IIU to purchase 12.5% from them.

"At all stages we were frank about our pressing need to purchase 12.5% in order to complete our US placing. Richard O'Toole, representing Communicorp, had also been open with Knut Haga during detailed shareholders agreement negotiations.

"In fact we did not ask for any changes in the shareholders agreement to reflect a 50% shareholding. We negotiated in good faith on the basis of equality, with no one partner dominating another. We wanted the shareholder agreement to reflect this basic principle and pushed for this outcome.

"Since the 27 February you knew we were going ahead with the purchase of 12.5% from IIU and with the placing in US with CSFB to finance 50% economic interest in Esat Digifone. At our meeting on 2 May I updated you on the CSFB placing and drew out a financing chart. You expressed some concern about Communicorp increasing to 50%, but I again explained the rationale for this, as we needed this economic interest to close the placing. You also told me before you left my office to go to the Canadian Ambassador's residence to sign the Nortel contract,

that 'There would not have been a licence without Denis O'Brien'.

"At 7.30pm I received a conference call from Scott Seaton, managing director, CSFB, and his colleague, who is in charge of our placing, Sean Twomey. They told me that you had contacted them to ask about the Communicorp placing and whether we needed to consolidate our 50% shareholding in Esat Digifone. They asked whether I had given you permission to talk to them directly about the placing. I told them absolutely no.

"Arve, you interfered without my permission by calling my company's investment bank, CSFB, to seek information regarding our forthcoming placement. You had absolutely no right nor did you receive any consent to do this.

"Appointment of Barry Maloney and Knut Digerud." I don't think I need to go into that.

Now, I think there was a response to this in a letter from Matheson Ormsby Prentice of the 23rd May, 1996, in which your solicitors, Messrs. Matheson Ormsby Prentice, say "Dear Mr. O'Brien," this is a letter of the 23rd May 1996

A. Do you know which tab it is?

Q. Pardon?

A. Do you know which tab it is in the

Q. Sorry, I'll let you have a copy.

(Document handed to witness.)

Q. It was handed out during Mr. Arthur Moran's evidence, but I can make other copies.

"Dear Mr. O'Brien,

"Your letter dated 12 May 1969 addressed to Mr.

Johansen of Telenor International AS has been passed

to us for reply. We do not propose at this stage to

comment on the specific contents of your letter other

than to state that our clients consider the letter to

be full of misrepresentations both in details and in

its general terms. On behalf of our client, however,

we reserve the right to produce evidence of this if

required at a later stage.

"In view of the fact that the shareholders have now

reached agreement regarding their shareholdings in

Esat Digifone Limited and that Esat Digifone has

received its licence, we have been specifically

instructed by Arve Johansen to say that it is hoped

that the parties can now look to the future and

concentrate on the substantial efforts needed to make

the Esat Digifone project a successful one."

Now, Mr. O'Brien, in his letter, is taking issue with

you in a number of respects. But one thing I think is

clear from his letter: He is saying what you had said

to him in your letter of the 10th May was at variance

with what was contained in your letter of the 2nd

October isn't that right?

A. Yes, he claims or he uses that letter at least as proof of his points.

Q. I think, in particular, he is drawing attention to the fact that in that letter of the 2nd October, you said "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 on the Irish side of the consortium capacity to raise the necessary funding".

Isn't he there referring to something which supports his view of what prompted his coming to you in September in Oslo?

A. I don't see any discrepancy between that and what was discussed at the meeting of the 22nd September.

Q. Well, lack of commitment from the institutions is something that I think would you say was discussed?

A. No, I don't feel

Q. In September of 1992 you say that Mr. O'Brien came to you and he indicated to you that the neutral banks, really, that they should be got out of the consortium and replaced with somebody else, isn't that right, who would fight harder?

A. Yeah, that was clearly a big portion of it.

Q. Now, in his letter of the 12th May, he says that the main he says that the main discussion, and this I think was consistent with his evidence as well, was on

supporting Communicorp.

A. Well, I think you will just have to accept that we had different views on many things in those days, and that's reflected in these letters.

Q. I appreciate that your memorandum of the 4th May and your letter of the 10th May reflect the evidence that you have now given concerning what happened at that meeting, and that Mr. O'Brien's letter reflects his position; but your solicitor's letter of the 15th October is more consistent with his letter than it is with your memo or your letter. Isn't that right?

A. No, we just went over that, and there are some elements of it which indicate that.

Q. And I think do I summarise your evidence that your comment is that that letter doesn't reflect what you say the true position is?

A. No, I maintain what I said today and yesterday as being the best recollection of what happened.

Q. But in fairness to Mr. O'Brien, how did that letter then come to be written, the letter of the 15th October, and how did it come to contain what it does contain?

MR. FITZSIMONS: Sorry, Sir, I want to intervene here:

Are we speaking about the paragraph in the letter dealing with Advent, not the entirety of the letter?

MR. HEALY: Yes, just the paragraph.

MR. FITZSIMONS: Mr. Healy is referring to the letter

is wrong, or etc. etc. Just

Q. MR. HEALY: I am referring to that third paragraph that I read out to you.

A. Yeah, I am I can only say that if I had worded it, it would look different.

Q. I don't think it's just a question of wording; I think it's a question of the more substantive content. How did it come to be written? Did you have a meeting with your solicitor, or did you send him a note of what you believed had occurred?

A. I think it was based on a telephone interview, but I am not absolutely certain.

Q. Thank you, Mr. Johansen.

CHAIRMAN: Mr. O'Donnell, I'll take you and not go beyond that before lunch.

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

Q. MR. O'DONNELL: Just one issue, Mr. Johansen, and that relates to the meeting of the 3rd May that you had with the Department, and I think you spoke to referred to Mr. Brennan. I think the memo sorry, it's Book 49, Tab 128.

I think at that stage, the memo of Mr. O'Connell records at the bottom of the first page, "Telenor 'backdrop' statement as operator as last resort.

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

Then "not requesting statement but would be helpful

per MB", which is Martin Brennan.

I think this was a meeting which was taking place on the 3rd May, and at that stage they had not yet obtained the Department had not yet obtained information as to the asset position and liquidity position of IIU.

A. That's correct.

Q. So they didn't at that stage know enough information about IIU to be able to work out whether they would have the money to meet the call, which of course they ultimately did learn?

A. Yes, I think they requested that information in the same meeting.

Q. And they got it. And this was simply it's clearly stated, "Not requesting statement from you" the Department weren't begging you to help they were saying it would be helpful, but they weren't worried or concerned. They just said "It would be helpful if we have this"?

A. Yes, that's clear, it was said in a very soft tone, like, "It could help".

Q. Yes, but it wasn't the end of the world if they didn't get it; put it like that?

A. That's right.

Q. Thanks very much.

CHAIRMAN: As you said to Mr. Healy, you obviously, if you were going to be committing more finance, you were

going to look for increased equity; it is a business world.

A. That's correct, Sir.

CHAIRMAN: Very good. We'll take up the further questioning by any remaining counsel, Mr. Johansen, which I think should safely ensure that you'll be able to make your flight later on; we'll abridge lunch to remove any residual risk and resume at half past one.

Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

CHAIRMAN: Thank you Mr. Johansen.

You had concluded, Mr. O'Donnell? Mr. McGonigal?

MR. MCGONIGAL: Before I start the cross-examination,

Mr. Chairman, there is a matter that, in relation to this morning, I made a remark that certain matters were a disgrace; I want to withdraw that completely and unreservedly, Mr. Chairman. I think it was made in the heat of the moment when consideration might have been given to not saying it at all, and I fully appreciate the pressure and work that you are under and have put into this, and it wasn't intended to be derogatory of you or your position or your integrity, and I think it's proper that I should say that at the outset.

CHAIRMAN: Thank you, Mr. McGonigal. I appreciate

that, and I equally appreciate this whole business is not without its pressures for any of us who are involved on a day-to-day basis.

Very good.

Q. MR. MCGONIGAL: Mr. Johansen, there are a few matters that I just want to see if you could help me with, and just in connection with that, can I start with the letter of the 15th October of 2002 from Kilroy's, solicitors. You remember that letter?

A. Yes, I have it.

Q. Now, as I understand it, you were saying to Mr. Healy this morning, and I think it is your position, that in relation to that letter, you are now unhappy with some of its contents?

A. Yes. I feel that the third paragraph on the third page should be worded differently, if it just covered my recollection and my own things. I have a feeling it's a little bit intermixed with other Telenor activities at the time.

Q. But am I right in understanding, if I took up your evidence this morning correctly, what I understood you to be saying, really, was that you were unhappy with this letter, that you felt that it may have been rushed, and that you didn't have a chance of reviewing it?

A. Yes, I certainly feel that way.

Q. So that if you had had an opportunity either of

reviewing it or rewriting it, it would have contained

different matters within it than it now contains?

A. Well, at least some part of it I would have rewritten to reflect better my own personal recollection of things there.

Q. Now, just leave that aside for a second. In relation to the next letter I just want to ask you about is the letter of the 2nd October of 1995, which is 49/68 48/68. Do you have that?

A. I have it.

Q. Now, that again, if I understand your evidence correctly in relation to this letter, this again was, in your opinion, a hurried letter which you didn't have an opportunity of reviewing?

A. That's correct.

Q. And it may in fact have been drafted by other people?

A. It was drafted by other people.

Q. So if you were rewriting that letter or redoing that letter, you would also possibly introduce changes and word things differently?

A. Well, some of the wording I would have used, or yeah, I would have rephrased some of the wording.

Q. I just want to get these things clear in my mind, Mr. Johansen, because I understand these language problems which can arise from time to time.

Now, the other matter that I just want you to have a look at is your memo which is 49/130, of the 4th May.

Do you remember that memo?

A. I do.

Q. Now, again, in relation to that memo, I understood you to say to Mr. Healy this morning that there were inferences and matters in that letter which, if you had had an opportunity of checking, you would have phrased differently?

A. Well, this wasn't meant to be basically for someone else other than myself, and I don't think I would have taken time to go back and corrected it, because it was never meant to be an absolutely correct statement. It was a very personal thing. I did it basically for myself, and I had no papers, no references, so I just took a brain dump and put it on paper.

Q. No, I understand that, but I am just trying to ensure that I understood what you are saying correctly, which is if you had the opportunity to revisit that document and rewrite it, you would phrase it differently, and things might be in it which aren't in and things would be in it which aren't in it; is that right?

A. Some part of it I have realised are technically not absolutely correct.

Q. Okay. No, it's just I'm just interested, Mr. Johansen, because the letter of the 15th October is a letter signed by you. The memo of the 4th May is your own memo. And the sorry, I beg your pardon; I have quoted you wrong. The letter of the 12th October

of '95 is signed by you 2nd October is signed by you 2nd October, I beg your pardon, the 2nd October is signed by you. The memo is signed by you, and the letter of the 15th October is based on your instructions.

Now, three letters, but three letters which you now, in 2004, say that if you had the opportunity to review, you would not have what is in them in the way that it is in them; isn't that right?

A. I didn't follow all of your references, but we have at least covered three of them, yeah.

Q. It's only those three that I am talking about.

A. Okay. Yes, I mean, there are certain portions of the memo of the 15th October, 2002, we have covered that; it was particularly the third paragraph on page 3.

And the memo, I am not inclined to say I would have corrected, because it was just what I felt there and then when I wrote it on the 3rd May, '95. The letter of the 2nd October, '95, is not exactly my way of wording it.

Q. Could you go to page 3 of the letter of the 15th October, please. Do you have that?

A. Yes.

Q. Do you see at the top of that page, there is written "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."

Now, that is clearly an instruction by you to Mr.

Lang that the letter of the 2nd October was drafted by you.

A. I mean, this is of course a technicality, but it was drafted by people in Telenor Invest. I made some amendments to that, but it wasn't completely finished when I left.

Q. You see, what's puzzling me about that answer, Mr. Johansen, is if you go to the second paragraph, you say "Looking back" towards the end of the paragraph "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."

Here you are saying that you drafted the letter, but on looking at it, that part of it, which you may have drafted, may not be correctly phrased. Are you sure that you didn't draft this letter

A. Yes

Q. of the 2nd October?

A. I am pretty sure.

Q. Why?

A. I am pretty sure.

Q. Why?

A. I had very little time in the offices that week before Geneva as well. I was hardly present, so someone had

to draft it for me.

Q. But you see, what puzzles me again, and I just seek your clarification, is that if you are so certain now that you didn't draft it, how could you have made the mistake in the 15th October 2002, when you were talking to Mr. Lang about this letter?

A. I think this is a matter of definition. I mean, I amended some part of it, so I was of course part of the drafting, but on a very high level.

Q. You see, if you go to the letter of the 2nd October, 1995, the one that we're talking about, you see in the first paragraph, "Referred 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."

Now, it would seem to me, just reading that, that that was probably written by the person who signed the letter.

A. I am I am actually not in a position to comment exactly what amendments I might have made to it, but I definitely signed the letter; that's clear.

Q. If you go to the next paragraph: "Telenor was invited to participate on an equal-term basis as stated in our joint venture agreement, and all work was being 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."

Does that not have the ring of somebody who knew what was going on at the time and was totally involved in what was happening?

A. I think we went over yesterday, when we looked at Per Simonsen's statement, that he indicated that he drafted the first paragraphs.

Q. I know that was his evidence, and I am actually I just want to try and look at that in the context of you having told Kilroy's in October, 2002, that you drafted the letter. You see, the person who drafted this letter clearly had a detailed knowledge of everything that had taken place in the competition; isn't that right?

A. I mean, I don't think it takes a very detailed information to write that, but in that context, the person who was most into the bid documentation was obviously Per Simonsen, who was the bid manager on Telenor's side.

Q. Let's look at the next bit. "Telenor has put substantial financial and human resources, including some of our best mobile expertise, into preparing the bid as well as conducting the necessary follow-up work. Site work has been explicitly kept apart from our cooperation as stated in the said joint venture.

All other bid costs will be split on an equal basis

including a possible trade-off between advertising costs and Telenor Mobil staff costs."

Again, that seems to imply Telenor had been substantially involved in everything that was happening from the beginning of the joint venture between Telenor and Communicorp?

A. We did I mean, this is this has been covered before. Telenor's role in the project was a technical competence, mainly; but of course, we shared all the costs for all activities.

Q. I take it at some stage, Mr. Johansen, after this letter was drafted and sent, that you saw the letter?

A. Yes.

Q. And when you saw the letter and read it, did you have any difficulty with it?

A. Not that I can remember.

Q. So that when you read the letter and saw the letter, you were happy that the contents of the letter, so far as you were concerned, were true?

A. It was, I think, good enough for the time being, yes.

Q. And reflected the Telenor position at that time?

A. You know, the background was that we would try to be friendly towards Denis O'Brien, because we had these rows the week before, and meeting him face to face in Geneva in connection with the fair down there, we would try to find, you know, a basis for a working relationship again.

Q. But you are a businessman, Mr. Johansen; Mr. O'Brien is a businessman. You each were looking after your own interests. I am simply trying to confirm that so far as you were concerned, you believed this letter to represent the position of Telenor as you understood it to be in October of 2nd October, 1995. Am I not right in that?

A. Well, I think it was, you know, probably a bit friendly, to put it that way.

Q. The next paragraph: "At an early stage of our collaboration, we made concern clear regarding Communicorp's ability to fund Esat Digifone." Do you remember that?

A. Yes, I mean, that was a question mark all the time.

Q. But that seems to be saying that there was no mistake on either side, that both Telenor and Communicorp were aware at an early stage that Telenor had a concern about Communicorp's ability to finance?

A. Yes, I agree with that.

Q. Which seems to contradict to some extent your idea that Mr. O'Brien was so proud that he didn't want to mention underwriting on the 22nd September?

A. I think I tried to explain that too. This deal, or the financial side and the dealing with the Advent thing, took place without me. It happened inside, in Telenor Invest and in the legal department of Telenor, and I was not involved in it.

Q. But does that mean that you are effectively like Pontius Pilate, washing your hands of it?

A. Not at all. Telenor had a concern, but I was not personally involved.

Q. I see. But you must have been brought up to date and up to speed with what was going on?

A. Not regularly in these days.

Q. I see. Well, are you saying, then, that that is probably true but that you weren't aware of it?

A. Yeah, that's very close.

Q. Okay. Well, if that's very close, clearly as of the 2nd October, you certainly were aware of it, regardless of any meeting of the 22nd September?

A. I mean, I had to be aware what have in the letter.

Q. Yeah, but what I mean by that is, Mr. Johansen, is you as managing director of Telenor International, and as a non-executive director of Telenor Invest, knew that as of 2nd October, your people were saying that from an early stage, you were all concerned with Communicorp's ability to fund Esat Digifone, and that was the Telenor position; isn't that right?

A. Yes.

Q. And that's sort of emphasised, in a way, in the last paragraph. "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 Communicorp's and the Irish

institutions' capabilities to raise the necessary funding."

So again, there seems to be expressing a concern in relation to the ability of Communicorp and the Irish institutional capabilities to raise necessary finance; isn't that right?

A. Yes, I mean, that was clearly a concern.

Q. Absolutely. But the point, Mr. Johansen, that I want to draw out is the fact that the letter of the 2nd October, '95, is a Telenor letter. It has no it is not it cannot be associated in any way with anything that Mr. O'Brien said or didn't say. This represents totally the Telenor view, looking back over the things that had happened, and the way they perceived life as of that date; isn't that right?

A. I guess you are at least technically right.

Q. You see, again you say, in the last paragraph of the letter, second-last paragraph: "I once again want to thank you personally for the tremendous effort you and your Communicorp team put in place if Esat Digifone win the licence. I will also assure you that the whole Telenor team has enjoyed working with you all and promise support in any way we can as the race moves into the finals."

So that is a very fulsome paragraph written by you signed by you, written by Telenor's team to Communicorp, their partner?

A. That was the very friendly part, yes.

Q. And there is nothing in that letter which contradicts anything that we have learnt from a factual basis in relation to the financial capability or otherwise of Communicorp, the lack of commitment in the Irish institutional letters, and what happened between 4th August and the 2nd October. Isn't that right?

A. Yes, you are right.

Q. Now, that was the letter, in fact, which you are keen that Mr. O'Brien should get prior to him leaving Dublin to go to Geneva on the 3rd and 4th October; isn't that right?

A. Yes.

Q. And in fact, he went to Geneva on the 3rd and 4th, and I think you met him there?

A. Yes.

Q. And just bear with me now for a second, Mr. Johansen. I just want to go to Tab 77 of Book 48, if you have it there in front of you by any chance. Do you have that?

A. Yes, I believe so.

Q. And do you see that's a letter of the 12th October; it's signed by Sjern Malm. It's for Knut Digerud, and it's to Denis O'Brien. And it is: "Dear Denis, "Thank you for joining us at Telecom '95 in Geneva. As you would have noticed, there is a great deal of attention and enthusiasm at all levels in Telenor

regarding our joint GSM project in Ireland.

"We sincerely hope that the IIU underwriting will strengthen the financial credibility of the bid.

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

"Please also provide us with a written statement that there exists no other agreements between any Communicorp Group company and any IIU controlled company than the two presented to us. We believe it would be a good idea to finalise the shareholders agreement and articles of association before the decision in the Ministry has been announced. We are prepared to do this either late next week or early November. Please notify us."

I just want to draw to your attention that that was written on the 12th October. Again everything seems happy and bright, and the letter in the second paragraph refers to the underwriting. Do you see that?

A. Yes.

Q. So clearly Telenor were fully aware for some time prior to that, it would appear, about the underwriting; that IIU were coming in and that they were delighted with this, as it would strengthen the

financial credibility of the bid?

A. Yes, I don't deny that other people in Telenor were working on this aspect.

Q. I really you may be putting it in the terms in which you want us to take it; that is, that what you may or may not have known was not necessarily representative of the Telenor position. But the Telenor position can be gained through the correspondence and other documents; is that right?

A. Yes.

Q. And these letters, certainly, would tend to show that underwriting was signalled by Mr. O'Brien at an early stage, and that Telenor were aware of that?

A. That's right.

Q. Now, I want to go, Mr. Johansen, to Mr. O'Brien's letter of the 12th May, if I may, which is at Tab 49/142. Do you have that?

A. Just a second. It's in Book 50 in my set.

Q. Do you have that?

A. Yes.

Q. Now, this was a letter which was written by Mr. O'Brien on the 12th May of 1996, and written in response to your letter of the 10th May, and was written at a time when one might have anticipated that a lot of matters were fresh, not only in his mind, but also in your mind; isn't that right?

A. Yes, I can what was fresh was probably the letter

of the 10th May.

Q. You see, I want to go to the bit where he starts, at the bottom of page 1: "May I now remind you of the sequence of events.

"On Friday, 22nd September, I travelled to Oslo to meet with Sjern Malm and yourself to discuss the GSM bid and the participation of IIU in the consortium.

Per Simonsen also joined us later on in the meeting."

Now, if I can stop there, do you agree that that is the sequence of events which happened on the 22nd?

A. Yes, I think it's right that it was Sjern Malm making the arrangements and fixing it up, and that they came jointly over to my office, which was in another building. And I don't think Per was part of the meeting, and I don't recall whether he came later or not.

Q. You don't recall?

A. No.

Q. So it is possible that in fact Mr. O'Brien is correct when he says that he may have come later?

A. That might be correct, yes.

Q. Now, "I had received a letter dated 15th September, copy attached from Knut Haga, stating the Advent's letter of financial support was not acceptable."

Now, I just want you to stop there, and if you can we might be able to get a copy up to you, but if you go to Tab 61 of Book 48, it I am sorry about

this, Mr. Johansen, but it's just I just want you to have an opportunity of looking at these things. Do you have a copy of that letter?

A. There were two letters there; that was the confusion.

Q. The first one was one of the 26th September, where Mr.

O'Brien is sending a copy of this letter to Massimo

Prelz. But I really want you to look at the letter of

the 15th September, because this is the one which Mr.

O'Brien sent with his letter to you of the 12th May,

and it's said in that letter, "Dear Mr. O'Brien,

"Refer to the letter of comfort written by Advent

International Corporation in respect of the funding by

you of your proposed equity participation in Esat

Digifone Limited.

"We regret to inform you that we are not satisfied

with the above-mentioned letter. Our concern was

further strengthened by our meeting with the

Department this week. On this basis we consider the

letter as having no significant value to Telenor or

Esat Digifone.

"It is vital to our further cooperation that

Communicorp immediately can provide another letter or

agreement giving appropriate financial assurance in a

form more acceptable to Telenor.

"We look forward to your instant response."

And it's signed by Knut Haga, Assistant Director of

Telenor International.

Now, first of all, do you recollect receiving that letter with Mr. O'Brien's letter of the 12th May, where he says "Copy attached"?

A. No, I don't remember that.

Q. That letter appears to be a letter from Telenor International, was certainly signed by Knut Haga, although it's not clear who or where it was drafted in Telenor?

A. Yes.

Q. But that letter of the 15th September, do you agree with me that it represents Telenor's view shortly after they came out of the presentation on the 12th September, and as identified in that letter, particularly in the second paragraph?

A. Well, I was not involved in writing this letter.

Q. I understand that.

A. And I didn't see it at the time. But of course, it expresses the concern about the financing.

Q. And insofar as it does express that concern, does that mirror a concern which you yourself had?

A. I would say it mirrors a Telenor concern.

Q. A Telenor I am sorry, yes, you are quite right, a Telenor concern.

Going back to Mr. O'Brien's letter, "IIU participation for 25% of the equity was brought about for two reasons. Firstly, it was viewed that the consortium needed more firmly committed Irish investment content

as the other institutional letters from IBI, AIB, Standard Life were letters of intent and not legally binding. The other reason being that Telenor had rejected Advent's letter of financial support."

Now, am I right in understanding that you are accepting that those matters may well have been discussed by Mr. O'Brien on the 22nd September?

A. Well, in that case, they were discussed with other people than me; but they might have been discussed with the other people.

Q. But I am also saying that his recollection, or at least his articulation appears to be that they may have been discussed at the 22nd as part of the conversation about IIU?

A. Well, I don't recall that.

Q. He goes on then: "In your letter dated 2nd October, which I enclose, you state 'In order to reassure the Ministry and give an even stronger signal to the Irish community in general, we are pleased with the plan to have another solid Irish underwriter. It was also viewed that by having 62.5% Irish content, the bid would be greatly enhanced."

Now, that does in fact represent Telenor's view; isn't that right?

A. Yes, I mean, that was basically the basis for accepting it.

Q. That was what was in the letter of the 2nd October,

drafted by persons who were involved and knew what they were writing about and therefore and you are not disagreeing that that was Telenor's position; isn't that right?

A. Yes.

Q. Later in the same letter you state: "But on the basis of the joint venture and draft shareholders agreement we feel obliged and accept pro rata the dilution to 37.5%, any further dilution would be in conflict with the principles of our participation and the board resolution of Telenor AS. The Norwegian content (non-EU) was deemed to be high at 40%, particularly since Sjern Malm and Per Simonsen told me on the 27 April 1995 that Telenor would be selling off half its interests within 12 months to Tele Danmark (from an EU member)."

Are you able to say anything about that?

A. No, I don't remember that at all.

Q. Now, "At our meeting on the 22 September I also made two requests.

"1. Communicorp did not want to reduce its holding to 37.5% as we were the lead consortium member, having spent two years on the bid; thus we wanted to maintain our 40% interest and asked for Telenor to reduce to 35% with IIU at 25%. Despite reasoned and rational arguments on our side, you rejected this request".

Now, clearly that was part of the discussion on the

22nd September?

A. Yes.

Q. "2. Telenor had refused to go pari passu on the bid costs which at the time were running at 1.5 to 1.6 million. I had asked you to go pari passu, and you refused, despite reasoned argument by me on behalf of Communicorp. However, your letter of the 2 October 1993 did say that 'Telenor, based on the agreement, will absorb its equitable share of these costs. If, however, you feel that Communicorp for some reason is not fully compensated, we are willing to discuss this problem in further detail.' Both myself and my colleagues did raise this matter with yourself and Knut Haga, but we were told that Telenor was not prepared to go pari passu. In essence, Communicorp risked 1.1 million on the licence bid while Telenor were only prepared to risk .5 million. That was not the behaviour of a partner."

I think that issue was also discussed on the 22nd?

A. I don't remember that, either, being part of the discussion I had with him; sorry.

Q. No, that's okay. When you say you don't remember, you are not saying it didn't happen; you are just saying you didn't recollect?

A. I was never involved in these details about funding of the bid costs and that stuff, you know, so I think it's unlikely.

Q. But certainly people that would have been involved would have been Sjern Malm and Per Simonsen?

A. Yes. And probably Knut Haga.

Q. And Knut Haga. And possibly Knut Digerud. But so far as that meeting was concerned, Sjern Malm and possibly Per Simonsen; isn't that right?

A. Yes, I am not in a position to comment on that.

Q. Yeah. "To finish on this point, I find it incomprehensible that you are still arguing that IIU have a 20% shareholding and you want Communicorp to cede 5% to IIU. You also claim that Telenor never approved IIU participation in our consortium. This is in direct contradiction of your letter of 2 October. In fact you told the meeting on Friday last, minutes of which have been passed to me not to accept the arrangement with IIU. All documentation between IIU and Esat Digifone was reviewed and cleared in advance of signing by Telenor executives."

Now, in relation to that, am I right in understanding that your position in relation to the documents that were passing to and fro between the 21st/22nd and the 29th, that you had nothing to do with?

A. That's correct.

Q. And you knew nothing about them?

A. I probably knew that something was going on, but I never saw any of the documents.

Q. You never saw the documents, but you knew that

something was happening?

A. Yeah.

Q. And you would have known that something was happening probably from someone like Per Simonsen telling you what was happening; is that right?

A. Probably.

Q. So that in a sense, while you mightn't have seen the letters, you were aware that Telenor were engaged in the construction of documents relating to IIU becoming a shareholder in the potential consortium?

A. I think I saw the documents very much later, and I then also understood that the final drafts had never been passed on to Telenor for approval, and that it was signed basically as a draft with corrections in it.

Q. Well, you weren't involved in any of that

A. No.

Q. material, and the Tribunal has in fact heard a lot of evidence in relation to those documents and who was involved with them. So I won't, at this moment, just go back into those.

But I want to go over the page now, in relation to that letter, and going to the 12.5% shareholding issue.

"IIU hosted an Esat Digifone shareholders breakfast meeting on the 9 February. At the meeting I formally asked both Telenor and IIU whether they would be

interested in selling Communicorp's 12.5%, as our investment advisers in New York, Credit Suisse First Boston had advised us that US investors would want us to consolidate our holding in Esat Digifone."

Now, do you recollect that breakfast, or were you at it?

A. I was not at it.

Q. And can you recollect who might have been at it for Telenor?

A. No.

Q. "Initially we thought we would need 12.6% in order to consolidate our holding for accounting reasons but subsequently were informed by KPMG that only 50% was required. We informed IIU of this. Subsequently Telenor wrote to us to say they were not interested in selling any shares. On the 27th February we wrote to Knut Digerud to say that we were pursuing a deal with IIU to purchase 12.5% from " Do you recollect any of that?

A. I think yes, I think we got a letter and I think it was addressed to Knut Digerud, but at this time Knut Digerud was, rather, the managing director of Esat Digifone and

CHAIRMAN: Gentlemen, I am informed that the stenographer has some temporary difficulty which may slightly curtail the actual realtime record of things, so for the sake of five minutes to make sure that we

have a record, we better just pause. Sorry about this, Mr. Johansen, we'll resume the very moment things are technologically in order again.

THE TRIBUNAL RESUMED AFTER A SHORT BREAK AS FOLLOWS:

CHAIRMAN: Sorry about that, Mr. Johansen. We are on-stream again, in any event, and we haven't lost anything; good.

Q. MR. MCGONIGAL: Mr. Johansen, we were on the letters of the 27th February, of 1996, and there are two letters of the 27th February, 1996. One is at 49/113, and that is a letter from Denis to Knut Digerud, and I'll just read it out quickly.

"I want to thank you for getting back to me so promptly on the suggestions I put to Telenor Invest through you and to IIU through Michael Walsh at our meeting on the 9th February that you might consider selling a portion of your share in Esat Digifone to Esat Telecom Holdings. I have noted your response that Telenor Invest has no interest in reducing its shareholding in Esat Digifone at this time.

"As I mentioned when I talked with you and Michael Walsh, our financial advisers CS First Boston have told me that prospective investors in Holdings would be more attracted to our current private placement offer if Holdings would consolidate its investment in Esat Digifone on the basis it would own more than 50% of the company. This has been confirmed to me even

more strongly during my current meetings with prospective investors in the course of our roadshow in the United States. I believe that such an adjustment would also be acceptable to the Department of Communications. Accordingly I will pursue the matter further with Michal Walsh of IIU and I will keep you informed should it emerge that IIU might be willing to do an acceptable deal with holdings to this effect.

"In the meantime we shall continue to work with Telenor Invest and IIU on the basis of the existing shareholding proportions."

Clearly Mr. O'Brien was signalling his position in relation to what he understood to be the requests to CS First Boston and in relation to the 50% and the 12.5% in that letter and on the same day, probably a reply, I'm not well, it isn't a reply, but anyway, on the same day there is a letter from Arve Johansen, Knut Digerud, and I think it's signed by Knut, which we don't have a reference for, but we'll give you a copy and put it on the overhead. The Tribunal has this, Chairman, but I am not sure where it is; I just know it's in its archives.

"Dear Denis,

"Reference is made to the meeting held between yourself, Knut Digerud and Michael Walsh in the IIU offices, where Telenor and IIU were asked if they could be interested in selling some of the shares in

Esat Digifone to Esat Holdings.

"From Telenor's point of view it is important that the initial partners follow the strategy outlined in the tender documents and presented to the Minister of Communications. We strongly believe that it is in all parties interests and experience as an operator Telenor maintains a substantial ownership status and that this should be utilised to the utmost during the first two/three years of operation.

"Therefore we consider it critical at this stage to keep our current shareholding.

"Yours faithfully"

and that's signed by Knut. Curiously, it has both your names on it, but I think those are the two letters and the correspondence which Mr. O'Brien is referring to in his letter of the 12th May, when he says that "Telenor wrote to us saying they were not interested in selling any shares. On the 27th February we wrote to Knut to say we were pursuing a deal with IIU to purchase 12.5%."

So, clearly, what Mr. O'Brien is recording in that paragraph is reflected in the documentation which appears to be within the Tribunal?

A. Okay.

Q. He then continues: "At all stages we were frank about our pressing need to purchase 12.5% in order to complete our US placing. Richard O'Toole,

representing Communicorp, had also been open with Knut Haga during a detailed shareholders agreement negotiations."

Now, you would know nothing about that, presumably, because it was a meeting between Richard and Knut?

A. Correct.

Q. "In fact we did not ask for any changes in the shareholders agreement to reflect a 50% shareholding.

We negotiated in good faith on the basis of equality, with no one partner dominating another. We wanted the shareholders agreement to reflect this basic principle and pushed for this outcome."

And that's a statement that he is making. Isn't that right?

A. Sure.

Q. "Since the 27 February you knew we were going ahead with the purchase of 12.5 from IIU, and with the

placing in US with CSFB to finance 50% economic interest in Esat Digifone. At our meeting on the 2

May I updated you on the CSFB placing and drew out a financing chart."

Now, do you recollect the meeting on the 2nd May?

A. Not particularly.

Q. It would appear that there was a meeting on the 2nd May, which was the day before the 3rd, at which you and Mr. O'Brien, inter alia, discussed CSFB?

A. Yeah, there were discussions about CS First B at this

point in time, and that's why the 50% issue was a hot topic, you know.

Q. I appreciate that, but can I take it, then, that you are accepting that the probability is that as a factual basis, that Mr. O'Brien is probably correct when he refers to the meeting of the 2nd May?

A. That might well be the case, yes.

Q. "You expressed at that meeting some concern about Communicorp increasing to 50% but I explained the rationale for this as we needed this economic interest to close the placing. You also told me before you left my office to go to the Canadian Ambassador's residence." Now do you remember that, going to the Canadian Ambassador's residence after a meeting with Mr. O'Brien?

A. At least I remember going to the Canadian Embassy

Q. That was in connection with closing a Nortel contract?

A. That's right.

Q. And was probably one of the reasons why you were in Dublin, not the only reason?

A. I think there were several things happening in these days, but it was, of course, interesting to be part of one of the bigger you know, markings or celebrations of one of the bigger events.

Q. But again, as a factual as an item of fact, it would appear that Mr. O'Brien is correct there talking about the Ambassador's residence and the Nortel

contract?

A. That's correct.

Q. And he seems to have a recollection that you said that there would not have been a licence without Denis O'Brien. I am sure that's true?

A. I might have said something like that to the Ambassador or something, you know.

Q. "At 7.30pm I received a conference call from Scott Seaton, managing director of CSFB, and his colleague who was in charge of our placing, Sean Twomey. They told me that you had contacted them to ask about Communicorp placing and whether we needed to consolidate our 50% shareholding in Esat Digifone. They asked whether I had given you permission to talk to them directly about placing. I told them absolutely no."

Now, did you contact CSF Boston?

A. Yes.

Q. And did you do so without the permission of Denis?

A. Yes. I didn't think I had to ask anyone to do that.

Q. He clearly took a different view, and he expressed this view in correspondence.

Now, just in relation to that part of the letter which I have now read, Mr. Johansen, it does appear that most of what Mr. O'Brien has said in that letter is correct, in your opinion?

A. Yeah, that's correct, because this was the attempts

made to establish Communicorp as a 50% owner.

Q. So that insofar as Mr. O'Brien is concerned, as of the 1th May, when he sent that letter to you, you now, on reflection, looking at it, see that it is correct in what he says, and therefore at that time would represent the position of both the the true position of both of you as of that date; isn't that right?

A. Yes, these issues I don't think we have ever disagreed on.

Q. Now, it was probably just a technical letter, but Mr. Healy referred this morning to the reply of the 23rd May, where Matheson Ormsby Prentice wrote in the paragraph "Our client" you see it there on the screen "Your letter dated 12 May" going to the second paragraph "I do not propose at this stage to comment on the specific contents of your letter other than to state that our clients consider the letter to be full of misrepresentations both in its details and its general terms. We ask our client to reserve the right to produce evidence of this if required at a later stage."

Well, now that you and I have looked at this letter of the 12th May, and particularly the first couple of pages, it's clear that the letter, far from being misrepresentative, is in fact correct in the main; isn't that right?

A. Well, we have gone through quite a few points that are definitely okay, but I am still not agreeing to everything that's in the letter.

Q. But the other thing is this, Mr. Johansen: that there is no evidence, documentary or otherwise, that I can just put my hand on that would suggest that anything in the letter is not correct, isn't that right, whatever might be your understanding, there doesn't seem to be any evidence of such?

A. I have a different view on quite a few points, I would say.

Q. I see. Now, the other matter that I just want to talk to you a little bit about is your memo of the 3rd May, if I may 4th May that's at 49/130. Now, I just in relation to this memo, I am just trying to put it in context. It's clear from Mr. O'Brien's letter of the 12th May that there was a meeting on the 2nd May between himself and yourself, during part of which there was a discussion in relation to CSF Boston, inter alia; isn't that right?

A. Yes.

Q. Following that, then, there was the meeting on the 3rd May in the solicitor's offices with Martin Brennan and others, where Mr. Healy took you through the document where it talked about a political football and things of that nature.

A. I think

Q. Isn't that right?

A. I think the main meeting was at the Department.

Q. It may have been at the Department; I apologise. You may well be right. I just don't have that document in front of me at the moment. I'll get it now; I know you are right about that.

Yes, that was a meeting where "Clear a political football.

Identity of each shareholder legal and beneficial ownership Esat Digifone changes relative to the bid." Isn't that right?

A. Yes.

Q. Now, clearly during the course of that meeting, whatever was discussed, there was no discussion about CSF Boston and/or the 1.5% and/or the 50% which had been discussed the day before?

A. In the meeting with the Department?

Q. Yes.

A. Not that I can recall, and I don't think it was.

Q. So that is it a fair comment to say that whatever was upsetting you that may have led to the creation of this memo on the 4th was something that came out of the meeting on the 3rd?

A. Yes.

Q. And the reality is that if one looks at the memo, the only thing that came out of the meeting on the 3rd which hadn't been in the arena before was the comments

in relation to by the Department in relation to

IIU's involvement?

A. Yes, because I started to see the IIU involvement as an instrument for Denis O'Brien to take control of Esat Digifone.

Q. But that wasn't forgive me if I suggest this to you, Mr. Johansen, but as I understand it, the concern that was coming through one of the concerns that was coming through of the 3rd May was the IIU involvement and the concern, the potential concerns that the Department may have articulated that IIU were not favourable in the light of the Irish authorities that was part of that meeting; isn't that right?

A. Yeah, I think you have to see the context. I went into that meeting and thought we had a very strong card in our hand, you know, IIU, and came out of the meeting with a completely different view.

Q. I understand that, and that's what was annoying you?

A. Yes.

Q. And that's why the memo of the 4th came into existence?

A. Yes.

Q. It had nothing to do with the 25%, it had nothing to do with the 12.5%; it was a perception that had been created at the meeting in relation to by the Department?

A. Yes, but also triggered by the other side that we have

just covered, that it seemed to be an opening for

Denis to seek control in the company.

Q. But you see, viewing it from my side, if I may for a moment, it's abundantly clear from all that we have gone through, you and I, that in relation to all of the issues that Mr. O'Brien was discussing those issues with you or your personnel in Telenor at all stages throughout this?

A. Once again, please.

Q. It's clear from all the documentation that you and I have gone through, and all of the materials that we have referred to, it's abundantly clear from those documents that far from being no conversation, there was communication between Mr. O'Brien and you or members of Telenor in relation to every aspect of what he was doing?

A. That's correct.

Q. Just in relation to the memo of the 4th for a second, is it right to say that you yourself were the only person that had an input into this?

A. Yes, that's correct.

Q. Is it possible that someone else in Telenor may have had an input?

A. No.

Q. So it was purely your own dictation?

A. Actually, I wrote it myself on my own PC at home that Saturday.

Q. You see, what's puzzling me about this memo, Mr. Johansen, is that while you say that you may have written it for yourself, one of the first things that you did with it was to give it to MOP, your solicitors?

A. That's correct.

Q. And at the time that you gave it to them, you also gave them two documents of the 10th do you remember that? If you go to 49/133. Do you have that?

A. Yes.

Q. And do you see the two memos do you see the first page is an Esat Digifone fax sheet from you to Arthur Moran of MOPs, and with "Very Private and Confidential". "Attachment 1 and 2." And in that, "1. You enclose a memo/proposal from NOB/IIU yesterday"

"2. Memo from IIU DOB from last autumn". Is that what it says?

A. Yes.

Q. "From last autumn? (Not dated)."

Beyond that, then, are two memos. The first one is the NOB/IIU one, which is dated the 9th May of 1996, which you had which you must have got the day before, and the second is then "Key points re IIU Nominees holdings in Esat Digifone (Digifone)"; do you see that?

A. Yes.

Q. Now, just in relation to the second of those two memos, when you say "from last autumn" on the fax page, what did you mean by that?

A. No, I don't have a clear recollection of that. I mean, I was uncertain, definitely, as to when the memo was from, which date it was from, and I think I was worried or concerned that it might have been some arrangement that was discussed between IIU and Denis O'Brien as early as before the start of 1996.

Q. Well, I suppose the real question I am curious about is when did you get it?

A. I think I got it maybe the day before or so.

Q. You see, if you look at it, there is a handwritten thing at the end of it; do you see that? On the first page?

A. Okay.

Q. Do you see that?

A. Yes.

Q. And that apparently I think we have established in evidence, and I am subject to correction was done by Knut Digerud, but I am subject to correction on that, but I think the evidence may be that he wrote that.

A. It doesn't appear to be to be Knut Digerud's handwriting.

Q. It may not be, I just "KD" beside it, but I may be mistaken. This document, whenever it came into the

possession of Telenor, is relating to the 12.5 percent

and the IIU business?

A. What was alarming here is it actually says 12.6%.

Q. What puzzles me, Mr. Johansen, is the necessity for

the memo without the letter of the 10th. Why didn't

you write the letter of the 10th the week before if

there were such concerns on your part?

A. I think this proposal came to us on the 9th, and I

think it was in response to that.

Q. Anyway, am I right, is it fair to say that you don't

have a clear recollection?

A. No, I think I think we wrote I mean, it was

basically Rolf Busch; he was the main author of the

letter of the 10th May. And this was, as I can recall

it, quite logical replies to what had just happened.

Q. You see, the 12.5%, the IIU issue, had in fact clearly

been started, if we go to the 12th May, Mr. O'Brien's

letter from in or around the 9th February of '95 or

'96.

A. Yes, but

Q. So that there was

A. But all those attempts had been rejected by Telenor,

and it was just letters indicating an intent.

Q. Absolutely. No, I understand

A. Now we talk about an agreement or a contract to

effectuate it.

Q. I am not questioning, Mr. Johansen, Telenor's position

in relation to the 12.5%. What I am simply trying to establish, through the records that really establish themselves, that the 12.5% had been the sort of issue of IUU, or at least Communicorp, trying to buy more shares began on the 9th February, '96, if we look at some of the documentation. That's the only point I am trying to establish. I think you probably agree with me. That's the only point I'm trying to establish is this issue first commenced in around February of 1996.

A. But it didn't make things any better.

Q. No, it didn't make things any better, it didn't make things any better; it was simply things that had to be discussed. Isn't that right?

A. We never really thought we were discussing it, because it was not acceptable to Telenor.

Q. Now, one of the matters that I am just curious about, and I want to give you an opportunity of commenting, Mr. Johansen, is in relation to your own involvement and the view of your own personnel in relation to your involvement. And each of them at various stages have given evidence in relation to it, but I am only going to draw your attention to one of them at this stage, and that's to Mr. Digerud's Day 267, Question 132, and answer, page 70.

You see, you have painted an interesting picture, Mr. Johansen, as I perceive it, I don't know the way everyone else perceives it. You seem to be saying

that your involvement of this was limited to three things, almost: The 22nd September, that period; May '96; and the early meeting which you may have had with Mr. O'Brien in April of '95, I think it was. And you seem to be suggesting that apart from that, your involvement was minor, if you had any involvement at all.

A. The things changed during 1996, because some date in February that I don't exactly remember, Knut Digerud took over as CEO of Esat Digifone, and he was no longer in Telenor Invest. And that's when you see the shift, so from that day onwards, and since he was also elected a board member of Digifone in December of '95, more and more issues were being handled by me, I would say, from March/April and onwards.

Q. Yeah, you see, what Mr. Digerud said at that page that has now been drawn to your attention I'll try and quote all of what I think may be relevant is that Question 132, he says, the question is:

"

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

him to keep you up to speed?

"

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

"

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

"

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

I think that's all that may be relevant to that part of the transcript. What I really just want to draw to your attention is that Mr. Digerud's view of your involvement was very much hands-on, and particularly on this project.

A. Not from the beginning.

Q. You see, I find it curious, I have to say, Mr. Johansen, and perhaps forgive me for saying it, but I do find it curious that as managing director of Telenor International, that you would, for instance,

sign a blank sheet of paper, which had to carry a letter at a later stage, without you seeing the letter before it went out.

A. Well, I didn't see the final draft.

Q. Also, I am a bit surprised to hear you suggesting that you went into the presentation and read out a script which, if we are to believe what you say, you knew nothing about.

A. I had got the script, I think, faxed over before I left, so I did read it on the plane.

Q. But I mean, you read it, presumably, on the basis that you were satisfied that everything that was in it was true?

A. Yes.

Q. And you also were in a position, I take it, that if a question had arisen, you were satisfied that if a question arose arising from anything that you said, that you would be able to answer it in fact and in truth?

A. Absolutely.

Q. So that at that stage, whenever you went into the presentation, you must have been so familiar with everything that had taken place beforehand that you would not be disadvantaged if any question was asked of you?

A. As I remember the setup, it was a common Q and A session after all presentations. So and you will

see, from who answered which questions, that I never really engaged in answering such questions anyway.

But I had also probably a copy of the executive summary, and what I said was not detailed at all, and it reflected fairly objectively what was in the executive summary.

Q. You see, the other thing that is making me curious is there was a board decision in relation to what Telenor International wanted to do in relation to this project.

A. That's correct.

Q. And that board decision bound the employees of Telenor International and Telenor Invest?

A. In what way do you mean?

Q. In relation to the way in which they were able to allow Telenor to get involved in the project.

A. Yes, the way the typically resolutions work are that you get some authority to go ahead, to proceed up to a certain level of exposure.

Q. But the person who carried the responsibility, if you like, or carried the authority between the board and the employees, was you?

A. I mean, I was the Chairman of Telenor Invest, and in that board meeting, it was clearly me.

Q. And you were therefore the person who took the final decisions in relation to anything that was relevant?

A. Well, it was an escalation system as well, so it was

later presented to the Telenor International board,

where I was not a board member.

Q. But, you see, what's curious is that before the bid documents went in, there was this issue in relation to the guarantee.

A. Yes.

Q. And the guarantee was not forthcoming?

A. Well, the people working on that were working on it to the very last minute?

Q. Absolutely. But the decision to go ahead with the bid and to lodge the documents on behalf of Telenor had to be taken, not simply by the employees, but also by the Chairman/managing director?

A. Well, I think they had an authority to deliver

Q. They had your authority?

A. Based on the previous resolutions, and I cannot recall being contacted in connection with the submission of the tender.

Q. I suggest you were probably contacted, Mr. Johansen; that you knew what was happening at that time. That was a board meeting in the middle of the night at least that was a meeting in the middle of the night when these decisions were taken?

A. The board meeting was much earlier.

Q. Not the board meeting. The meeting trying to resolve the guarantee?

A. I was not aware of that.

Q. You weren't aware of it?

A. No.

Q. I see.

Now, the last thing I just want to ask you about is, I just want to touch on the 22nd September. As I understand it, we're now in a position where you accept the possibility that Mr. Simonsen may have come into the meeting late?

A. At least I remember being together with him afterwards.

Q. Now, do you accept also the possibility that Mr. O'Brien may have said at that meeting, when Mr. Simonsen was there, that three things: First of all, there was a discussion about IIU, which we know?

A. Definitely.

Q. Secondly, he suggests and articulates that he may at some stage, in the course of the meeting, beginning, middle or end, said something about the fixed-line business; is that possible?

A. In the meeting of the 22nd in Oslo?

Q. Yes.

A. I don't recall that.

Q. So it is possible, but you don't recollect it?

A. He never discussed the fixed-line business with me.

Q. Well, he says three things he says of that meeting, he says that he mentioned fixed-line business, and he mentioned in that connection the fact that he had met

the Minister in a pub.

A. He didn't discuss that with me.

Q. Well, he says it was at that meeting when both you and Mr. Simonsen were there.

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

Q. Well, that's his recollection.

Now, you have no recollection of Mr. Simonsen you have a recollection of Mr. Simonsen may have been there?

A. In the meeting, but I don't think this was a topic in that meeting at all.

Q. Well, you see, Mr. Simonsen has had difficulty in identifying any other stage when that when a conversation took place with him. He says he wasn't at the meeting.

A. It doesn't I don't think that's correct. I don't think this was a topic for the meeting I participated in.

Q. There does seem to be three different recollections in relation to this, Mr. Johansen. You can't help me in relation to it?

A. No, I don't think the last one is correct, anyway. It was not a topic of the meeting with Denis O'Brien that I participated in.

Q. Thanks, Mr. Johansen.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FANNING:

Q. MR. FANNING: Mr. Johansen, I appear for Mr. Lowry,

the former Minister.

Are you aware can I just ask you at the outset that in fact no aspect of the relationships between Telenor, Communicorp and IIU have anything to do with this Tribunal save to the extent that they implicate Mr. Lowry?

A. Yes, I have a big problem seeing the relevance, yes.

Q. Okay. And in particular, the sub-plot that we have spent two days on dealing largely with the vicissitudes in the relationship between the Telenor side and the Communicorp side of the consortium is in itself of no concern to the Tribunal unless Mr. Lowry is implicated in some way?

A. Yes, that's exactly the way I see it. These are internal matters in a joint venture situation, and a lot of peculiar things happen and is a power game in many ways, but I don't see the relevance to the Tribunal.

Q. Now, to just clarify the position, I think it's the case that you never met Mr. Lowry, in fact, good, bad or indifferent, at any time?

A. No. I met him only at the 16th May, in the press conference, when

Q. Yes, in 1996?

A. 1996.

Q. But you never met him at all in 1995?

A. Not at all.

Q. Now, to return to the last topic that Mr. McGonigal was exploring with you. Your recollection is that Mr. Simonsen said what, exactly, to you?

A. In relation to the ... ?

Q. In relation to the last topic that Mr. McGonigal was exploring.

A. No, he just told me that he had been that Denis, in some time in September, had told him that he had met Mr. Lowry in a pub and that they had, you know, exchanged some views, apparently, on the bidding process; and that in that context, according then to Mr. O'Brien, it had been seen as a positive thing or a helpful thing, or whatever, if IIU was part of the consortium.

Q. You said in your written statement, Mr. Johansen, that you attached no importance to this. And I think you said in your evidence this morning that "We laughed a little bit". That's a reference to some discussion you would have had with Mr. Simonsen, I take it?

A. Yeah, that's correct.

Q. Why did you attach no importance to it, and why did you the two of you laugh a little bit?

A. No, I mean, I have met quite a few Ministers in my time myself, and they were always very cordial and polite and friendly, and they would wish you the best of good luck, but they would never engage in discussions about real matters.

Q. I think you said in your evidence this morning, and I hope I heard you correctly, that it was not inconceivable in the Irish context that Mr. O'Brien and Mr. Lowry had in fact met in the pub?

A. That's what I thought, yes.

Q. What did you mean by "not inconceivable in the Irish context"?

A. We don't really have that pub culture in Norway.

Q. I see. But from what you know in Ireland, you don't find it odd at all that two people would meet in a pub?

A. Exactly.

Q. But what was inconceivable to you, I think, Mr. Johansen, and this is why neither you nor Mr. Simonsen, to the extent Mr. O'Brien said this to you, which is clearly denied, neither you nor he attached any significance to it. In fact, you thought it was a laughable matter?

A. Yes.

Q. And in fact it was your view at all stages that it was inconceivable that the Minister had ever suggested such a thing?

A. Yes.

Q. And now, in hindsight, in full possession of the facts, are you satisfied that it was the combined initiative of Mr. O'Brien and Mr. Desmond that led to the emergence of the latter into the consortium?

A. Yes.

Q. Can I just ask you in a more general way, and I don't want to dwell on it for any length, how many other competitions of this type did Telenor participate in as a bid partner in Europe?

A. We had, you know, even though we liked to of course appear to be very broadly positioned, at the time, we didn't have too many operations at the time. We had one operation in Hungary and one operation in St. Petersburg in Russia, and we were participating in other bid competitions in several countries. We had, at the peak, I think in the year 2000, we were involved in 16 mobile companies.

Q. 16?

A. 16.

Q. And would you, in your senior executive and overall capacities in the Telenor Group, have had some kind of supervisory role in many of them some kind of oversight, if not day-to-day involvement?

A. Yes, I mean, we of course, I need to depend on other people on the day-to-day

Q. Of course.

A. supervision, but I was a responsible person inside of Telenor for all these ventures.

Q. What I am really just curious is whether you can offer us a very brief comparative perspective of how you viewed the integrity of the Irish bid process as it

was organised by the Department, vis-a-vis those organised in other countries.

A. Well, I didn't see too much of it, but what I saw was, I thought, very professional.

Q. And that's a relative comment compared to the processes organised in other countries?

A. It was absolutely as good as I have seen in other places.

Q. As good as you have seen?

A. Yeah, it was I mean, it was absolutely adequate, as I could see it.

Q. How many different examples are you making that comparison from?

A. Well, at the time, we didn't have too many, but still now

Q. In hindsight, how many are you referring to?

A. Still, now that we have seen, like, 10 or 15 of them. This was as good as anyone.

Q. The civil servants who have given evidence here have largely expressed the view that it was a sealed process and that it was designed to be free from political interference, and they expressed the view that it had succeeded in those objectives. From your perspective, do you agree with both of those views?

A. Yes.

Q. Thank you.

MR. FITZSIMONS: Just a few brief questions.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Mr. Johansen, Mr. McGonigal, speaking

of the presentation and the document that you were

handed to read out at it, put it to you that you read

it on the basis that you were satisfied that what was

in it was true. And you agreed with that proposition.

Now, I just want to make sure that you understood what

was being put to you there. Because you have already

told us that you had nothing to do with the financial

aspects of the bid in terms of its preparation up to

that point of time, but in agreeing with

Mr. McGonigal, you have indicated to the Chairman that

you effectively checked the content of this document

and satisfied yourself, as a matter of fact, that

everything that was in it was absolutely true. Now,

is that the position, or

A. No, that would be the wrong impression. What I meant

to say is that I was of course dependent upon what I

was given, and I thought that was a fair

representation at the time. And the only thing I had

to help me with I had never went through the real

documentation, but the only thing I had to help me

with was the speaking notes and the executive summary.

Q. Had you any reason to doubt, in terms of trusting the

people you were dealing with, had you any reason to

doubt any piece of the information that you were

given?

A. No. That's exactly the point. I had no reasons not to trust that I was given the right information.

Q. And did you trust totally the people you were dealing with at that time to keep you right?

A. Yes, I thought so.

Q. Now, just moving on to another matter.

What would have happened if, before the actual issue of the licence, IIU had transferred shares in the Esat Digifone to Denis O'Brien to give Denis O'Brien a shareholding that exceeded your shareholding, Telenor's shareholding; what would have happened?

A. Telenor would not any longer have supported the project.

Q. Telenor would have walked away?

A. Yes.

Q. And Mr. McGonigal, in his questions to you, has gone through various documents to show that this idea of Denis O'Brien's company getting a majority via a transfer of shares from IIU had been in the air, but can you confirm that it was only two days before the 4th May, that is to say on the 2nd May, as you record at paragraph 7 of your memo of the 4th May, that you were told for the very first time that there had been an actual agreement for such a transfer?

A. Yes, that's what I believe, and that's why I was so angry on the 4th May.

Q. And you refer to the letter giving you that

information at paragraph 7 and in the final paragraph of your memo of the 4th May. And this was dramatic news for you?

A. Yes.

Q. I think you have told us earlier that you had dealt with the prior suggestions of such an event on the basis that Telenor was effectively confident that such a thing would not happen?

A. Yes.

Q. And then, at the end of the day, thankfully, IIU had the good sense not to force the issue.

A. Correct.

Q. Thankfully from everyone's point of view, as it turned out.

Now, again, just this could be a language issue.

Mr. Healy, in his questioning of you in relation to the substitution of IIU for the previous possible investors, I think he made a comment to the effect that my note may be wrong, but you trusted Denis O'Brien to take the drastic step; in other words, this change of personnel was a drastic step. Now, "drastic" means a very important step, and I just want to ask you, with all you know now, and indeed what you knew then, did you consider the replacement of IIU as a firm underwriter, investor, whatever role they were deemed to have had, with a series of institutions that had given letters of support that qualified themselves

out of existence, did you consider that to be a very serious change or not?

A. No. That was not the meaning from my side. I don't consider it that serious at all. I tried to explain how I saw it yesterday. It was another participant and a placer of shares, and there was an open issue as to who the final partners would end up being. So I didn't think this was dramatic in any way.

Q. Right. Just moving on to another matter, the meeting of the 22nd September in Oslo. I think, as you said, Denis O'Brien produced everything to make it look better to get IIU in. The great salesman. He was doing his best to persuade you to get IIU in, and of course he was perfectly entitled to do that. And the word "bluff" has been used in that context.

Now, there is no doubt that the argument in relation to improvement in financing, I think, was aired with you. Do you accept that that was the case?

A. Yes. I accept that strengthening, you know, the bid, especially the Irish content of the bid, was definitely a part of it. And Communicorp's ability was of course a question mark all the time.

Q. Yes, so well, now, "strengthening the Irish content of the bid", we know that was said, but we also know that there was no basis for this, in terms of it being a requirement of anybody; isn't that so?

A. Yes.

Q. So this was Denis O'Brien bluffing, or going over the top, in terms of facts, to sell this proposal to you?

A. Yes.

Q. Now, in the same context, Mr. Healy, in his questioning, sought to bring in I hope I am not misrepresenting him, and he can correct me if I am wrong the conversation with Per Simonsen and what was said by Mr. O'Brien to Per Simonsen, though of course Mr. O'Brien denies that that was said.

Now, I think you have confirmed there was no mention of the pub meeting in that on the 22nd September?

A. Yes.

Q. As far as you can recollect?

A. Yes.

Q. Certainly not between Mr. O'Brien and yourself?

A. Exactly.

Q. So that was not part of the bluff on that day?

A. No.

Q. Did it occur to you, assuming the conversation took place and as I say, Per Simonsen has said that it did that Mr. O'Brien, in relation to Per Simonsen, might have been engaging in the same sort of exercise with him: going beyond the truth, to tell him this yarn in the hope that this information would be brought back and might help to persuade Telenor to accept IUU, who Mr. O'Brien clearly desperately wanted to be involved, because, 1) they provided better

financing, and 2) there may have been an understanding that IIU would give Mr. O'Brien control of Esat Digifone in due course?

A. I believe so.

Q. This would have been very Machiavellian, but Mr. O'Brien wouldn't be above being Machiavellian; would you agree with that?

A. I would.

Q. Just one final matter. Again, your memo of the 4th May and you have agreed, I think, with Mr. Healy, that there appeared at the meeting of the 3rd May to be anxiety on the part of the civil servants in relation to the IIU issue.

Now, I am not sure whether it's the same in Norway, but in Ireland, civil servants, one of their cardinal duties is to protect their Minister at all times in any difficulty that the Minister gets in or may get into; the civil servants must be there to try to find a way out and must anticipate problems where problems appear on the horizon.

Now, were you aware at the time that just shortly before this meeting of the 3rd May, on both the 16th April and the 30th April, there had been two very acrimonious debates in the Irish parliament in which various suggestions and allegations and innuendoes had been thrown around the place directed at the Minister, forming an attack on the Minister arising from the

possible role of IIU and the possible shareholding

that IIU might have in this venture?

A. No, I was not aware of that.

Q. And you are aware the Minister didn't in fact deal

with those matters in those Dail those

parliamentary debates?

A. No, I wouldn't know that.

Q. So the civil servants, his civil servants certainly

had a problem that they had to find some way of

resolving and would have been very anxious about this

entire situation on three days after the second of

those debates, when this meeting of the 3rd May took

place; isn't that so? Were those debates in fact

mentioned at that meeting, can you recall?

A. I cannot recall that.

Q. Were you aware of them at all?

A. I doubt that.

Q. Okay. Thank you very much, Mr. Johansen.

MR. MCGONIGAL: Just a couple of matters, Mr.

Chairman. One, I completely omitted to put a factual

matter to Mr. Johansen, which I would like to put.

And the second thing is, just to draw to the attention

of the Tribunal, I suppose, through Mr. Johansen, lest

there be any problem about it at a later stage, a

letter of the 1st March of 1996 from MOP to Per

Simonsen in relation which involves a discussion in

relation to the 12.5%; but because it's MOP to Per

Simonsen, it's not necessary to put it to Mr.

Johansen, but my solicitor reminded me that it was there, and

CHAIRMAN: Well, insofar as it's something that I logically may have to consider in the sequence of the overall dealings, it's right that you perhaps remind me of it now.

MR. McGONIGAL: It just fits into the sequence and is probably relevant. But so far as the factual matter is concerned, it simply relates to the letter of the 15th October, in relation to the allegation that Mr. O'Brien had put down the phone, and it's in relation to that, I just wanted specifically to put to Mr. Johansen that Mr. O'Brien has never in his life put down the phone on any person, let alone Mr. Johansen.

A. Well, I am I know one.

Q. Sorry?

A. Then I know one.

Q. No, no, never, Mr. Johansen.

CHAIRMAN: And just for reference, what was that letter again? We needn't have it opened now.

MR. McGONIGAL: 15th October. And the other letter is the 1st March, 1996.

CHAIRMAN: Yes. Very good.

Right, anything in conclusion, then, Mr. Healy?

MR. HEALY: Yes.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY MR.

HEALY:

Q. MR. HEALY: Something arising out of some of the questions Mr. Fitzsimons put to you, just to clarify one matter.

The conversation you had with Per Simonsen, all you know about that is that it happened sometime towards the end of September; is that right?

A. Once again, please.

Q. The conversation you had with Mr. Simonsen where he said to you that he had a conversation with Mr. O'Brien in which Mr. O'Brien mentioned the encounter in the public house?

A. Yes.

Q. That occurred the end of September?

A. Yes, sometime in the late part of September, I would say.

Q. Did it occur after you had the meeting with Mr. O'Brien?

A. It's not unlikely that it had happened before.

Q. I see. It could have happened before the meeting?

A. It could have happened before the meeting.

Q. You say that you didn't attach any importance to it?

A. Correct.

Q. I think the way Mr. Fitzsimons put it was it wasn't part of the bluff that worked, if you like?

A. I would say so, yes.

Q. So the rest of what Mr. O'Brien says to you, said to

you on that occasion was persuasive, but you are saying that wasn't?

A. Yes.

Q. Just one other thing. Perhaps two other things.

In your memorandum, you say that Mr. O'Brien came to you personally, and he informed you that "Based on information from various important sources, it was necessary to strengthen the Irish profile and to 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 new move. Note: Underwriting was never mentioned."

Then you go on to say "IIU should apparently be the ideal choice for this function, the only string attached being that they had demanded a 30% equity participation 'for the job'". What was the job?

A. For taking up that role in the project.

Q. What was the role?

A. A partner in the project. But also a placer of shares.

Q. You understood at that stage that they were a placer?

A. Yes. I did not completely rule out that they might keep part of the shares for themselves. But they would still be a placer, and they had the right to place to up to four other parties.

Q. Yes, but I think the they wanted a 30% equity participation this was a price, if you like, for the job that they were going to do; isn't that right?

Or am I misreading what you are saying?

"They had demanded a 30% equity participation for the job."

A. And you have then to put in context, when I wrote this on the 4th May, I knew that the underwriting was the job.

Q. I see. It doesn't seem to follow, though, does it? I am not trying to parse and analyse a personal note to the extent that I am going to hold you to every word, but if you look at your first paragraph, you actually underline the portion that says "Note: Underwriting was never used as an explanation."

So underwriting was not part of the persuasion used to get you to agree. And then you are told, you say, "IIU should apparently be the ideal choice". And that whole paragraph, I think, the next paragraph I hope I am right in this doesn't deal with underwriting at all. You don't mention underwriting until the next paragraph. You seem to be suggesting in this second paragraph, correct me if I am wrong, that what IIU wanted was 30% for whatever job they were going to do, fighting harder for the consortium?

A. Yes, and I believe that I, at that point, had understood that the real job was underwriting, and

that was why they demanded higher equity.

Q. I see. But when you agreed to give the 25% at that meeting, you didn't know anything about underwriting?

A. I mean, that's my recollection of it, that it was

Q. Can you see my problem?

A. not the major part of it anyway.

Q. Can you see my problem? I can understand when you were writing the memorandum, underwriting was in your mind, because you knew it had happened at that stage; but the way you describe it is that underwriting hadn't been mentioned. And as I understood from your evidence this morning, on the 22nd, you agreed the 25%. So what was being delivered for the 25% on the 22nd, can you remember?

A. It was the improvement of the profile of the bid; that was what delivered the way I saw it, that was the only thing. But of course, we have discussed today that other portions of Telenor had a different view, and there were advantages to Telenor in the arrangement

Q. Yes, but you were the person giving the say-so on this occasion; there is no doubt about that, is there?

A. No, I was the person who said, "Okay, if it's so much better, we can do it; let's go ahead on the basis of equal participation".

Q. At the conclusion of the arrangements of that week, what did you understand the position where the

application and the ownership proposals were concerned was?

A. Are you at the 22nd?

Q. No, at the end of the week, the 29th. Presumably you knew about underwriting and everything at that stage?

A. I was not then participating in any of the undertakings around establishing all this, and my picture was that this was something that would be further discussed and that we would talk about it more and how it should be dealt with, and even on the 2nd October, when I wrote the letter, and even when I met Denis O'Brien in Geneva on the 3rd and 4th October, I was not aware that it had been signed and that a letter had gone in.

Q. I appreciate that. But what did you think the consortium was at that point?

A. The consortium?

Q. Yes.

A. That was 50:50 Telenor and Communicorp.

Q. Well, why were you agreeing 37.5:37.5:25?

A. As a future composition.

Q. Of course. But the proposed ownership for the consortium in the future, then, was 37.5:37.5:25?

A. That's correct.

Q. Did you ever discuss the memorandum, even after you drafted it, with anyone in Telenor?

A. I cannot recall that I ever did that.

Q. You must have discussed it with Mr. Busch, to some extent?

A. I don't recall.

Q. Well, sorry, not the document itself, but the ideas contained in it?

A. I don't remember it, anyway.

Q. I see.

Thanks very much.

CHAIRMAN: Well, you will at least catch your flight,

Mr. Johansen, and it remains only to thank you for your attendance and for your cooperation attending, and courtesy throughout two fairly strenuous days.

I think, Mr. Healy, in the context of both availability of witnesses for next week and of other work that the Tribunal has to undertake, that sittings are deferred until the following week. And the exact starting date will be confirmed in the usual basis.

MR. HEALY: I think provisionally it's the 18th.

CHAIRMAN: Provisionally the 18th, then, and I think

it's probably fair to say that save for Mr. Lowry at the conclusion of this phase, whose evidence may perhaps be marginally longer than some of Mr.

Fanning's examination may have suggested, that most of the other witnesses will be of a very considerable brevity; and I am making no prejudgements on anything in that regard.

Very good. Adjourned until that date. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE 18TH MARCH, 2004

AT 11AM.