

A P P E A R A N C E S

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I N D E X

WITNESS: EXAMINATION:Q. NO:

Sean Fitzgerald

Mr. McGonigal

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THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 5TH  
MARCH, 2003, AT 11AM:

CONTINUATION OF EXAMINATION OF SEAN FITZGERALD BY  
MR. MCGONIGAL AS FOLLOWS:

Q. MR. MCGONIGAL: Mr. Fitzgerald, there are just a  
couple of matters that I want to review.

In relation to learning the result of the competition  
as I understand it, it was late September, and from  
Mr. Brennan, that you became aware of the possibility  
of a result?

A. Yes, I believe that is the case.

Q. And insofar as we can understand it, that tentative  
result appears to have been arrived at on September  
28. And Mr. Brennan would have been back in the  
office after that weekend, which seems to have been  
around the 2nd/3rd of October, and I assume that you  
learnt this information from Mr. Brennan in the  
office?

A. Yes.

Q. And probably around that time?

A. I think it would have been impossible for him to give  
me such an indication prior to the meeting in  
Copenhagen at the end of September when all the bits

of the various working groups were put together into an overall provisional result.

Q. And am I right in understanding that your belief at the same time as you were learning it was that the Minister already or was becoming aware of it.

A. I asked Mr. Brennan, if I remember correctly, and he told me that the Minister was aware that he had informed him himself?

Q. Absolutely. And your further belief is that following on from that, that you probably you're belief is that you probably told Mr. Loughrey about it?

A. Mr. Loughrey returned from annual leave on the 4th October, I believe. And obviously I couldn't have told him before that, but I would be very surprised when he came back, we didn't review progress in the matter. And I would think it would be unlikely that I would have not mentioned the possible outcome with, of course, the understanding that I was pretty certain that he would not tell that to anybody else other than the Minister.

Q. I understand that. What I really want to try and understand, Mr. Fitzgerald, is this: That one of the reactions, as I understand it, which you had to learning the tentative result was based on your knowledge and dealings with Esat Telecom in the regulatory side of things, that you were concerned as to their finances?

A. That was part of my concern.

Q. And is that a concern that became apparent on being told by Mr. Brennan the tentative result?

A. It was there prior to that, but unless that consortium was a likely and that's all it was at this stage winner of the process. If they had been well down the field, I don't think it would have mattered to them actually, but if they were up at the top, it did; that was my concern.

Q. And as I understand it from your evidence, you elaborated on those concerns at that time?

A. In what way, Mr. McGonigal?

Q. In that as I understood part of your evidence, that you drew the attention of persons to your concern on the basis that they would then have regard to that in the evaluation?

A. I certainly told Mr. Brennan of my concerns.

Q. That's the point.

A. And I would expect that he would have gone back to the subsequent meetings of the Evaluation Group and say, 'We have got a problem here, let's look at it.'

Q. So can I take it from what you are saying there, Mr. Fitzgerald, that the probability is, that when Mr. Brennan informed you about the tentative result, that your response, inter alia, was to identify your financial concerns?

A. Yes.

Q. And that all took place, as you understand it, in or around early October, the 2nd/3rd October?

A. I think it would have been in that time-frame.

Q. Now, following on from that, as I understand your position, your next involvement wasn't until you got the final draft report of the 18th October?

A. Well, I don't think that was the final draft report.

It was the second one, I believe. There was a subsequent draft and then the final report.

Q. Well, we won't argue over the final draft, but you got the report on the 18th October?

A. Yes.

Q. And you read that with a critical eye?

A. Yes, I would hope I was being critical.

Q. And at the time satisfied yourself that a) as to the result, and b) as to the ability of the report to stand on its own two feet?

A. Yes, I was satisfied when I completed my examination, that that was the case.

Q. And were equally satisfied that the report had regard to the concerns which you had articulated to Mr. Brennan?

A. Yes, that was very clear from the report, that the weakness of Communicorp was a problem, but not the weakness of Esat Digifone as a whole, because of the financial strength of Telenor.

Q. But your concerns, you felt, were met by the

Evaluation Report and by the Progress Team, in laying down a strong marker that this must be kept in mind when they came to the negotiation stage?

A. That was the recommendation in the report, and I believe it was the correct process to deal with the problem.

Q. And at the same time, you also articulated a slight regret that the financial concern wasn't slightly more highlighted in the aide-memoire/memorandum to the Minister and the Government?

A. I think that was an oversight that should not have occurred. I don't believe it would change the result in terms of acceptance by the Government of the outcome of the evaluation process, but nevertheless, I think they should have been aware that there was a problem there that had to be tackled in the licence negotiations. I wouldn't put it as more than that.

Q. Now, the next involvement that you had, as I understand it, was that you became aware of the you appear to become aware of the involvement of IIU, and you are relating that to the newspaper report of November of '95?

A. Certainly I was aware that they were involved as the possible placers of the 20% investment stake sometime before we became aware that it actually had been placed and with Mr. Desmond's own company.

Q. Just as a matter of interest, and I want to ask you

this really for the purposes of ruling it out if that is the answer. Is there a possibility that you became aware of IIU as a result of the February article?

A. That, I believe, was a possibility, but I cannot remember distinctly that it was related to that particular article, or it may have been somebody mentioned it to me following that article.

Q. It's simply that in your reply at 138 on page 54 of the transcript, 192, to Ms. O'Brien, that you said that, "All I can say is that as far as I can recollect, it occurred some considerable time before we became aware that IIU had taken up a shareholding in Esat Digifone. Now, it is clear from previous hearings that there was a press report sometime back in I don't know, February I think. It might have been at that time I picked it up."

Then Ms. O'Brien says, "In fact I think the press report that dealt with the involvement of IIU as a placer of shares was dated back to the 18th of November."

And you said, "Was it? Okay. I stand corrected on that."

A. Sorry, maybe I am confusing the 18th November press report and the one in February.

Q. It's just that I wanted to see, to test, Mr. Fitzgerald, whether you are clear in your recollection or whether there is a possibility that

the February article, which was the one dealing with the 37.5, could have been brought to your attention, and it was a possibility that was the one that drew your attention to IIU?

A. I have no recollection of seeing the February article, or being aware of it, because if I had, I think there was a lot more in it that I would have been concerned with than simply identifying IIU as the body that was to place the 20% shareholding.

Q. I understand that. So the

A. Whereas the earlier article, I think in November, had no more information than that, that we weren't aware of already.

Q. So the probability is that, in fact, the only article that you saw was the one in November?

A. Insofar as my knowledge might have emanated from a press statement, that would be the case. But I can't be sure that it was from the press statement itself or some comment or conversation that followed it.

Q. I appreciate that. Am I also right in understanding that the practice in the office at that time was that newspaper cuttings of significant matters would be placed on people's desks in the morning?

A. They would be circulated sometime early in the morning, but they would deal with all media matters concerning the Department which covered transport, energy, as well as communications.

Q. I appreciate that.

A. And therefore, there could be a sizable wad of papers on some occasions.

Q. Absolutely. I understand that. And I am not trying to criticise in any way, I simply want to understand.

But what I also want to try and understand,

Mr. Fitzgerald, is that apart from yourself, who else would have been benefiting from that service?

A. It certainly would have gone down to Principal Officer level.

Q. So all of those people, whatever number that involved, would have that service available to them, where all media involvement is placed on their desks in the morning?

A. I think there were two ways of dealing with it: some people got a personal copy, and there would probably have been a circulation list of more, so the one set would have covered a number of people.

Q. In fairness, the articles that you would necessarily go to were the ones which were directly impacting on the work that you were doing at the time?

A. Well, yes. I also got copies of the three daily newspapers and the Financial Times in the morning, but quite frequently, there wasn't time to go through those if there were other more pressing matters.

Q. Absolutely. You either went to work very early, Mr. Fitzgerald, or you left very late?

A. Sometimes both.

Q. Following that, then, your next involvement, as I understand it, was after you became aware of the letter of the 17th April of 1996 from Mr. O' Sullivan from Mr. O'Connell, I beg your pardon?

A. Yes.

Q. Isn't that right?

A. I wasn't aware of the letter that came to the Department from Mr. O'Connell. I think I explained yesterday that it arose in a slightly different way; that it accompanied a letter from the Department of Enterprise and Employment in and around the same time.

Q. That's what I wanted to ask you about, Mr. Fitzgerald, because as a result of receiving that letter, what you said in your evidence at question 81, page 32, your answer was: "My problem when the Department of Enterprise and Employment wrote to us asking us if we had any views on this proposal, and we wrote back certainly saying we had, but this was an important shareholder in the consortium that won the mobile licence award with a view to issuing them with a licence. My concern was whether the restructuring, and coupled with the fundraising exercise that was going on at the time, could lead to a situation where Mr. O'Brien lost control of the company. And I think I required a good deal of extra information which was

supplied, and I am surprised it hasn't turned up somewhere in these papers, but be that as it may, the outcome was that I was satisfied that that situation would not arise, and therefore we wrote back and told the Department."

What I wanted to ask you there about, Mr. Fitzgerald, was the nature of the extra information which you sought and which you obtained, if you can recollect it?

A. It related to the shareholding structure of Communicorp, in which there were, I think, a number of different classes of shares. It also related to the amount of loan notes that Advent had in the company which were convertible in shares at their option, and it also related to the amount of funding they were seeking for to fund their participation in Esat Digifone as well as, I believe, carry on their telecommunications activities.

Q. And as I understand it, all of that information was obtained by you for the purposes of satisfying a query from the Mergers Monopolies and Takeovers Act?

A. Yes.

Q. And as a result of obtaining that information, you were in a position to satisfy yourself that the probability of Mr. O'Brien losing control of the company was unlikely based on the information which you had at that time?

A. I think it was continued, I may be mistaken on this, on he putting in additional equity into the company at the time, and of course that would have to be funded, but overall, one way or another, I was satisfied that he would still maintain a majority shareholding, got control of the company, even in a worse case situation.

Q. Now, the other matter that I want to ask you about, Mr. Fitzgerald, arises from page 25. Ms. O'Brien was asking you about the it comes just after the discussion in relation to the financial concerns, and it's at page 24/25, and I'll just read you out the bit that I want to ask you about.

You were talking about the conclusion in relation to the Progress Team's evaluation. You said, "And that was a conclusion that I think I was happy with. In relation to the Cabinet and the Government, looking back on it with hindsight, and perhaps if I had been there, I might insisted that this be highlighted in the submission to the Minister and the Government.

Question: But of course, you weren't there.

Answer: I wasn't there at this stage, and then there was a memorandum to the Government which didn't highlight it either. I regret that very much, but this was done in terrible haste, I think. Everybody was short-circuited, and it's not surprising things got overlooked which were going to be looked at in the

course of the licence negotiations. And provided it was fixed, then I think the licence would be awarded. If it was not fixed, then we would have to review the situation as to whether we could proceed or not.

Question: As you said there, things were being done in considerable haste at the time."

Then you said, "There was a good reason for that."

Now, nobody asked you what the good reason was, but I am going to ask you. What was the good reason for that?

A. For the haste?

Q. Yes.

A. It was, I think, due to the risks associated with having a long time interval between the findings of the Evaluation Group that Esat Digifone was the recommended choice, followed, of course, by the others. Before that situation arose, if anything leaked out or any speculation, it was deniable because they hadn't completed their work. Once they had completed their work, it could not be denied, and I think once you move an outcome into the political system, there is an increased risk of getting a wider audience, and that would stir up, I think, two things: Certainly there would have been lobbying from other consortia to try and get it stalled and reconsidered, and I was aware that there would probably be a pretty strong reaction from Telecom Eireann and from the

unions, and in the make-up of the Government at the time, they had a pretty ready means of access to air their views. That as a result of all of this, we could end up with a rather messy situation. So therefore, it was important to get a very quick political decision and get it announced, because that was the only way to put it beyond reach of intervention by others.

Q. Can I just try and develop that a little bit from this point of view, from the position from where you seem to be coming, Mr. Fitzgerald.

You have arrived at the result of a competition where you have a winner, and you and the persons who were involved in evaluating that competition are satisfied that the result is the right result?

A. Yes.

Q. You are equally conscious of the fact that as soon as the result becomes known, that is beyond the circle of those that were involved, different considerations will begin to apply to that result?

A. I think that is quite likely.

Q. And a number of different constituents come into being. First of all, is the disappointed competitors who have lost, who will try and lobby and delay any announcement?

A. Yes.

Q. And then over and above that, there are other

political involvements which may begin to focus?

A. That would be our belief at the time.

Q. And these were some and the third, I suppose, element is the fact which became apparent, was the actual surprise of the result?

A. Well, I think the perception out there would have been that the underdog won, if you want to put it in that term, and that would have

Q. The strong press reporting was that another consortia was probably going to win?

A. I believe that was the case, but they were wrong.

Q. So that all of those matters would have been within the consideration of when and how to announce the result?

A. Yes. I would like to add I think, that whichever consortium had been selected as the winner at that stage, there would be a need for haste to get the result confirmed politically as quickly as possible.

Q. No, I understand that.

A. Perhaps there were more additional considerations in the particular result that we had.

Q. And the reality is, as we look at it after the announcement, was that there was a huge publicity campaign and lobbying went on after it?

A. Yes.

Q. Which involved not only attacks on the civil servants and the people involved, but also on the result

itself?

A. I think a lot of people found it hard to believe. The problem then was because of the confidentiality of the process, we could not come out in public and show how the winner had a better bid than the others. That was impossible. And that was a severe handicap in dealing with the publicity that followed.

Q. And to the extent that one of the consortia lodged complaints and tried to delay the process?

A. No, I don't think that delayed the process. They lodged a complaint with the Commission. But it didn't in any way delay the process, except possibly marginally in terms of issuing the licence, because the negotiations dealing with the licence and handling this particular complaint were running in parallel at a late stage of that process.

Q. And over and above that, as I understand it, there were significant complaints from the United States in relation to this?

A. There certainly were lobbying visits by the Ambassador or the Trade Consular at the embassy.

Q. And that in itself was not only unusual, but unprecedented, I would suggest?

A. I can't say that it was unprecedented. I would think this must have been their usual method of operating when they failed to win a bid.

Q. So that in a practical sort of a way the concerns

which the Department would have had to the knowledge becoming widely known, the results of that concern were amply demonstrated once the result became known?

A. I believe that was known, and I can imagine the great confusion there would be, had the result not been announced at that stage and it was still an open issue.

Q. So that when the am I right in saying both at the time and on reflection, that you would be absolutely satisfied that the proper thing and right thing to do at the time the result was announced, was to announce it?

A. I think it was the only course open to it without running undue risks.

Q. And the undue risks were reduced by the work which had been done beforehand and the checks and balances that had been put in place?

A. I am sorry, I don't understand that question, Mr. McGonigal.

Q. The undue risks that you referred to there were substantially ruled out all together or reduced to nil by the work which had been done by the Progress Team, and the checking of the report that you yourself had involved yourself in?

A. No, they were not reduced to nil. If you are referring to the risks that were associated with the Esat Digifone consortium, they remained. The risks of

the outcome being undermined were a different matter, and the only way to avoid those or minimise them was to get political acceptance of the result and get it out into the public domain as quickly as possible.

Q. Your distinction is correct. It's the second, Mr. Fitzgerald. Thank you for that.

Now, the last matter that I just want to tease out with you, because I thought I had understood it and or the second-last matter that I just want to tease out with you, is in relation to the RPT document.

A. Yes.

Q. And I just want to go back to paragraph 9 and 19.

Paragraph 9 is, "Applicants must demonstrate their financial capacity and technical experience and capability to implement the system, if successful, and must include a business plan for at least the first five years and a complete technical proposal. All relevant assumptions made in these plans should be clearly stated. All financial analysis projections, prices, etc., in the plan should be expressed in '95 prices. Applicants are requested" and it then sets out further things that have to be done.

Now, I understand that an argument is being made that the financial demonstrating financial capacity and technical experience was a prerequisite of some kind to the competition itself?

A. Yes, to get admitted to the process of evaluation. I think the first thing the Evaluation Group did was to look at the financial capability and the technical capability and experience of the various consortia, with a view to coming to a conclusion as to whether they had met the requirements of Article 9. This was, if you like, a qualifying test and not a competitive one.

Q. I understand that, Mr. Fitzgerald. I am just trying to understand what it actually means to look at the financial capacity and technical experience and make any judgement without looking at the bid documents or the application documents?

A. Well, they had the application documents at that stage. And their judgement would have been based on the information in those documents, I assume. Because they had no other information.

Q. Well, that's really where I am coming from. You see, I would have assumed that before you could assess anyone's financial capacity or technical experience in relation to this matter, that you would effectively have to go through the application documents and make an assessment similar to the assessment that was made by the Evaluation Teams?

A. This was done by the Evaluation Team. It was not done outside of the team.

Q. Well then, we may be at cross-purposes. Am I right,

then, in assuming that the demonstration of the financial capacity and technical experience came through the subcommittees and the evaluation meetings?

A. Yes, it was within the process, not outside it.

Q. Not outside of it. And not preliminary to that process?

A. No. Because any examination no examination could have been done prior to the lodging of bids, because you don't really know who is going to bid and what the bid will contain.

Q. Well then, we weren't ad idem, it was my misunderstanding. But going to 19 then, just to confirm, "The Minister intends to compare the applications on an equitable basis, subject to being satisfied as to the financial and technical capability of the applicant in accordance with the information required herein, and specifically with regard to the list of evaluation criteria set out below in descending order of priority."

Now, again as I understand that, the Minister is the word "Minister" there is in its broadest terms, in the sense that he has set up this, or at least an Evaluation Project Team has been set up to investigate, examine and evaluate the application documents, and having done that, they give their recommendation which he then relies on?

A. Yes.

Q. It is not to be interpreted as suggesting that the Minister necessarily has to take a view as to the technical capability, for example, of the winning consortium independent of the Evaluation Team?

A. No, that was not the case. Perhaps if I could explain?

Q. Please.

A. The Minister is the legal authority for the granting of the licence. Under the Government decision, when they brought into the process, the Minister's authority was effectively delegating down, not to Mr. Loughrey, not to me, but to the Evaluation Group, and say, 'You are the authority for determining all of these criteria, all the admission criteria, the competitive criteria, and come up with the result.' And it was not, I think, the Minister's function personally to see whether or not the various applicants had met the criteria required or not.

Q. So that, in effect, the Minister was ring-fencing himself from the process by effectively setting up this competition process with the people involved in it, getting them to make the decision based on the information which they had or sought, and determining who was the person who should win?

A. Yes, that was exactly the process.

Q. And at the end of the day, as you have already told us, at the end of the process, the result is handed to

the Minister and, in effect, I think as you put it, there was no alternative to the result other than to abolish the process all together, it was one or the other?

A. I believe that was the case, without running the risk of litigation and possible action by the European Commission which might have resulted in the process having to be abandoned anyway and damages and all the rest of it emerging as a consequence.

Q. I appreciate that.

A. This was my view of the situation. I think once the Government had agreed on an arm's length process, that it severely circumscribed their ability to take a decision other than a yes or no one.

Q. Just one matter, one last matter, then, that I want to come back to for a second, Mr. Fitzgerald, is Ms. O'Brien asked you about the note of the 5th January of 1995, which was the late Jim Mitchell's note, and I just want to try and get a context for that in this way: That first of all, that is dated the 5th January of 1995, and is a meeting between the late Mr. Mitchell and Mr. Loughrey or Mr. Lowry. The 5th January, 1995, itself was either at the time or shortly after the Minister took office?

A. Yes, it would have been. I believe he took office only a few weeks prior to that.

Q. And would have been either about the time or shortly

after the time that the Department would have given him his global briefing in relation to all the matters which the Department were concerned with?

A. I think it would have been supplied as soon as he arrived in the office. At what stage he went through it I think I described the initial meeting we had with him. Subsequent to that, I don't believe that I had any further discussion relating to the mobile phone licence issue.

Q. Now, to put it in context, this note says at the beginning that, "Tenders to be sought by advertisements in the next week or two." Now, that clearly was erroneous?

A. I don't understand that. I don't have the benefit of the document at this stage.

Q. Sorry

A. Oh, the tenders to be sought, that was erroneous, that was not the case. Because we were far from being ready at that stage to go and seek tenders or bids.

Q. And if my recollection is right, the state of the RPT document at that stage would have been as it had been drawn up by the Fianna Fail administration?

A. Yes, but there were some changes made subsequently, but not as a result, I think, of the change of administration, but as a result of a rethinking of some of elements in it.

Q. Now, the next bit that I just want to clarify, "DOB

not favoured by the Department." Ms. O'Brien was approaching that on the basis that that was a comment from Mr. Lowry to Mr. Mitchell. In reality it until we hear from Mr. Lowry or from other people that might have been involved, it equally could have been a comment by Mr. Mitchell to Mr. Lowry?

A. It's possible either way.

Q. Because the people that would have had a view on this, would have been the Department and Mr. O'Brien?

A. Well, I don't believe that we ever conveyed to the Minister a view that Mr. O'Brien was not in good standing with the Department or in favour not favoured by the Department. That would be erroneous and wrong on our part. We treated Mr. O'Brien like anybody else, on a totally objective basis. We may have had our differences over certain issues, but that's not to say that he was treated with disfavour.

Q. So far as "Denis O'Brien FF" is concerned, that certainly, I think, wouldn't have been a Department comment?

A. No.

Q. It's only significance really, Mr. Fitzgerald, I don't know to what extent you are able to comment on this, but it seems to be, or seems in politics, it seems to be a position to be the position that an administration, when in office and having appointments to make, sometimes as its first port of call, look to

its own party members?

A. That's reasonable.

Q. I mean, it's something that the Law Library talks about all the time when vacancies for judges come up, they look in terms of politics and see which administration is in and which party does so-and-so belong to and not belong to. I am sure it's the same situation in other walks of life.

A. I think it is well-known that that would be the case.

Q. And in fact, it's not unusual, and it hasn't been in the past, when administrations have changed for personnel who were of that political persuasion to be moved out and a new political persuasion to be moved in?

A. What kind of personnel do you mean?

Q. They could be any walk of life, Mr. Fitzgerald, but in fact, I am drawing on the experience, again, in the Library, that when a Fianna Fail Government would change, that sometimes Fianna Fail barristers were moved on and the new administration barristers were moved in, that kind of situation?

A. Well, I don't think this would have happened at Departmental level, because we were all appointed independently of the political system.

Q. But the only point that I am really trying to get at is, it's not unusual to see people trying to check out what political persuasion you may or may not belong

to?

A. Well, that's a matter for politicians and the people dealing with them.

Q. As you say, it's above the civil servants?

A. I don't think it's an area that civil servants would have any views whatsoever on.

Q. Absolutely. Not only did they not have any views on it

A. And they have no influence on.

Q. but it's not something they concern themselves with?

A. No. If you are talking about appointments that are at the discretion of a Minister or Government, I think it is likely that they will look at people of their own persuasion rather than of the opposite side, although I have known cases where people would have known political views that would not be that of the current administration have been appointed because of their capabilities

Q. Absolutely, there is no doubt about that

A. So, it's not a universal practice.

Q. It's not universal, and there have been exceptions too down in the courts, but as a general rule that appears to be the political way of life.

Thanks very much Mr. Fitzgerald.

A. Thank you Mr. McGonigal.

CHAIRMAN: In fact, on that last document,

Mr. Fitzgerald, the reference to "DOB not being favoured by Department", it could be explicable by some remarks in the course of the briefing of Mr. Lowry having referred to Mr. O'Brien having played a fairly hard ball game. I think Mr. Brennan said he operated on the fringes of the law in his fixed line business, and it may have been something like that that was quite innocuous and which he should not be penalised for.

A. It's possible the Minister may have got that view from the information supplied to him about what was going on in the fixed line business involving Mr. O'Brien, but I wouldn't it wouldn't have been intended as any reflection on Mr. O'Brien being in or out of favour.

CHAIRMAN: Well, that was the construction I was putting on it too, but I think your own experience had been that you had fairly robust exchanges with him over the considerable period in fixed line matters?

A. Yes.

CHAIRMAN: But you weren't going to hold it against him, of course?

A. Well, we didn't, and when it came to the award of the licence, we didn't.

CHAIRMAN: Very good. Mr. Fanning?

MR. FANNING: Yes, I have only the briefest of questions for Mr. Fitzgerald, which I will ask him

with your permission, Chairperson?

CHAIRMAN: Of course.

MR. FANNING: Before I do that, there is a slight threshold issue that I'd rather raise with you first, Chairperson. And it's a concern that I just want to address in open hearing. It's not a submission in any particular way. And it really just goes to the issue as to what exactly the Tribunal is, in fact, investigating at present in this module, because I am here, as I understand, in the present module, to meet one case, and that's the case concerning, in broad terms, Minister Lowry's role in respect of the decision to award the second GSM licence to Esat Digifone. And I have a concern that a separate issue appears to have arisen or be capable of arising through a kind of a back door, and that's in connection with Esat's fixed line business, and Mr. Lowry's very different role as Regulator in that respect. And my concern, Chairperson, just very briefly, is to say as follows: That any Minister during that era was in an invidious position. Mr. Loughrey in his evidence described it as an almost schizophrenic role, where on the one hand Telecom Eireann, who were a State company, were competing against private enterprise, and the Minister was supposed to arbitrate between the State and private enterprise. And of course that schizophrenia had to

be cured, and it was cured by the establishment of an office of an independent regulator.

Initially the ODTR, now known as COMREG, and we all know from our general knowledge that the decisions that the independent regulator makes are very complex balancing decisions and they, even since they have been transferred to an independent regulator's office, have generated enormous controversy and high profile litigation down in the courts in the Orange case and the Broadnet case, to give but two examples. And it just seems to me, not only can the decision of the Regulator be challenged by way of judicial review, but there is a specific statutory appeal against any decision made by the Regulator that's now inserted in the amended version of Section 111 of the 1983 Act.

But that's all in a sense by-the-by.

The point I would make is, that it would seem to me, if the Tribunal was ever to investigate Minister Lowry's role in that regard, his role is, to paraphrase Mr. Loughrey, really apples and oranges when compared to his role in the very discrete process that I understand us to be investigating at present.

And a very substantial margin of appreciation I think would have to be given for the complex balancing and discretionary decisions that are now made by the Regulator and were previously made by the Minister in this regard.

So my concern at this stage, that I just want to put on the record of the Tribunal, is that I haven't received any notification of any investigation of this type. There has been no specific allegation made or suggested about the broad range of Minister Lowry's conduct in his role, and I suppose to put on the record, that Mr. Lowry's position is certainly that he behaved honestly, scrupulously and in the proper discharge of his Ministerial functions in this arena also at all times, and that he was here also, of course, reliant on the pro-competition ethic and advice of his officials. But I am really just seeking assistance from you, Chairperson, at this stage, as to the issue has certainly, and one can hardly but comment on it, generated column inches elsewhere arising out of the current module, and the assistance I am seeking is advisement as to what the current status of what the Tribunal's thinking is on this issue before I question Mr. Fitzgerald?

**MR. COUGHLAN:** If My Friend had been here on the last occasion when the matter arose through Mr. Fitzsimons, Sir, I indicated at that stage that the Tribunal would take the matter up in its normal investigative manner and ascertain what the position is, and as to whether the matter should proceed with.

Now, the normal way people deal with the Tribunal, and My Friend's solicitor has been in contact with the

Tribunal, is this type of matter is dealt with, in the first instance, through correspondence. It arose in the course of Mr. Fitzsimons' questioning of Mr. Loughrey, that is where it stands at the moment. It's a matter, I would suggest, that My Friend should not deal with it at the moment. The Tribunal will look at the matter in the normal course of its business, and it would be dealt with appropriately and in an ordered fashion.

CHAIRMAN: I think you have advised me correctly on that basis, Mr. Coughlan, which was my own mind on the matter, so you are alleviated, Mr. Fanning, from having to adjust to the symptoms of schizophrenia on the present basis. Of course the Tribunal is not precluded, because it has to inquire into whatever transpires in the context of the Terms of Reference, but as Mr. Coughlan has indicated, I certainly am not calling upon you to conduct, if you like, an examination in vacuo of possible or quia timet aspects of any conceivable controversies on fixed line matters.

MR. FANNING: I am grateful for that issue. I wouldn't like Mr. Coughlan to think I hadn't read that aspect of the transcript, but I was really seeking a far more specific assurance, and I think you have provided it to me, Mr. Chairman.

THE WITNESS WAS EXAMINED AS FOLLOWS MR. FANNING:

Q. MR. FANNING: If I could turn to Mr. Fitzgerald and ask you very briefly to confirm you will be aware that I appear on behalf of Minister Lowry.

I think, Mr, Fitzgerald, your evidence is that Minister Lowry didn't interfere with the result of the GSM licence competition in any way?

A. Mr. Fanning, I can confirm that to the best of my knowledge, he did not. He was supportive of the whole concept. He regarded it as a high priority from his point of view. If he was guilty of anything in relation to the process, it was probably one of impatience, but no more than that. At the very end he was extremely quick in securing a political acceptance by the subcommittee, Cabinet Subcommittee, and getting clearance for announcing the decision and getting it confirmed the following day by Government.

Q. So the only thing you'd criticise him of, and I don't think you are really meaning it or intending it as a criticism, is speed?

A. Pardon?

Q. I don't think you are really meaning or intending it as a criticism in the way you say it?

A. No.

Q. But the only thing that could be held against him in your view would be speed?

A. Well, he was an impatient man about most things so, this was no different from most of the other issues

that we dealt with. But that's not intended as a criticism. It simply reflects his concern to get on with business as quickly as possible. And there was a very wide range of business underway at the time, and a very great deal was achieved during the period in which he was Minister.

Q. Yes. So just to be quite clear about that matter, your evidence to the Tribunal is that impatience was a recurring characteristic of Mr. Lowry, and it wasn't at all specific to this arena?

A. No, and I would agree with that.

Q. And I think your evidence is to the same effect as that of your colleagues, Mr. Loughrey and Mr. Brennan, and that is that not only did he not interfere with the result, as far as you are concerned from your vantage point, he couldn't have interfered with the result either?

A. It would have been, I think, virtually impossible for a Minister to dictate in any way, meaningful way to the Evaluation Group to bring about a result that wasn't justified by the content of the bids submitted to them.

Q. Yes, Mr. Fitzgerald. And finally, to the limited extent of your involvement in the process as you have already outlined in your evidence, I take it that you are joining with your colleagues, Mr. Loughrey and Mr. Brennan, or your erstwhile colleagues as they may

now be, in standing over the process to the extent

that you have a vantage point?

A. Yes, I have no problem in doing that, and I would say

that that's strongly my view today.

Q. And it remains so?

A. Yes.

MR. FANNING: Thank you, thank you very much.

THE WITNESS WAS THEN EXAMINED BY MR. ROSSA-PHELAN AS

FOLLOWS:

Q. MR. ROSSA-PHELAN: Mr. Fitzgerald, just a few general

questions, but to put them in context of your own

experience, to summarise: Is it fair to say that you

have had a long service in the civil service?

A. Yes, Mr. Rossa-Phelan, I was in the civil service for

over 40 years by the time I retired.

Q. And during that time, you would have developed an

expertise in management?

A. I would hesitate to call it "expertise". I cooperated

as best I could, which is, I think, as the best you

can do in management.

Q. That's fairly humble of you, Mr. Fitzgerald. Is it

fair to say, you have had very significant experience

in dealing with projects in the course of your

service?

A. Yes, I had been involved in quite a number of projects

at various stages in my career.

Q. And you'd be intimately aware of how the interaction

of politics or the Minister with the Department

occurs?

A. Yes.

Q. And similarly, you would also be aware and familiar from your experience on the interaction of the private sector with the Department?

A. I would, yes.

Q. The basis of that then, Mr. Fitzgerald, your role, I think you have stated in the process, you were a senior official in the Department at the time, but without, as it were, a day-to-day direct involvement in the Evaluation Group itself?

A. That is correct.

Q. Then on the basis of that, Mr. Fitzgerald, at the time that the process, the award process was conducted, were you happy that there was no interference of any sort?

A. I am quite certain, to my knowledge, that there wasn't. And nobody, to my knowledge, came or made any complaint or assertion that there was any interference from the Minister or anybody else in the process.

Q. And is it likely that somebody would have come to you if there had been?

A. I would expect that they would, because it would have been a very serious matter if there had been, or else they could have gone to the Secretary, Mr. Loughrey.

Q. And if that was your view at the time, Mr. Fitzgerald,

is it still your view?

A. Yes.

Q. And at the time was it your view that there was no influence or other pressure brought to bear on the independence of the members of the Evaluation Group?

A. That is my belief.

Q. And now?

A. Yes. I have seen nothing that would suggest otherwise.

Q. And some reference has been made in the course of your evidence, and matters have been put to you about meetings and conversations that may have taken place with or by Mr. Lowry. Are you satisfied that if such events took place, they had no impact on the process itself?

A. I am satisfied that that is the case. I think from the point of view of perception, it was undesirable that such meetings took place. In some circumstances, I think may have been unavoidable. But I am satisfied that the fact that they took place, or whatever was discussed, which is also disputed, at these meetings had no bearing on how the process was conducted. There was no feedback from the Minister, no action taken on foot of those meetings.

Q. And post the competition part of the process, are you happy that the same non-interference, independence and integrity was maintained in the conduct of the licence

negotiations?

A. Yes. I had not a great involvement myself, but the way it was structured I think was different. Perhaps, Mr. Chairman, I might just allude you alluded yesterday to the Project Group continuing beyond the end of the process when they announced a winner. That was not the case. I would put it, I think, that business reverted to the Department at that stage to conduct the licence negotiations. And was carried on by the Department as such, not by the Project Group which was no longer functioning. I am satisfied from looking at all the information at my disposal, that it was done properly, done honestly, and that all the conditions that were required in the bidding process were successfully transferred to the licence conditions, and the problems that had arisen in relation to financial weakness of one of the consortia members was dealt with satisfactorily. The change in the shareholdings which might affect the perception of the process, but not necessarily in any great extent, the substance of it, was rectified also. And I am satisfied at the end of the process the licence was properly awarded and the outcome of the business that followed was successful.

Q. And then finally, Mr. Fitzgerald, would it be correct to say that once the cap was put on the licence fee, that element of the competition that was set there,

that no further funds once that decision was taken,  
no further funds would directly come into the State,  
irrespective of who succeeded in the licence process?

A. That was the case. The fee from the successful bidder  
and the fee of 10 million from Eircell was the total  
amount that would have come into the Exchequer as a  
result of this process.

Q. Irrespective of who

A. Irrespective it depended on what they had bid. In  
practice all of them bid the full fee of 15 million.

Now there was a possibility that somebody could bid  
lower than that, down as far as the minimum of 5, but  
that did not occur.

Q. So whether or not Persona or Esat or any other person  
had succeeded in the competition process, the State  
would have got the same amount in fact?

A. Yes. On the way the bids were structured.

MR. ROSSA-PHELAN: Thank you, Mr. Fitzgerald.

CHAIRMAN: Thanks Mr. Rossa-Phelan. Ms. O'Brien,  
anything in conclusion?

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY

MS. O'BRIEN:

Q. MS. O'BRIEN: Yes, Sir, there is just one matter I  
want to take up with Mr. Fitzgerald, which I will do  
so briefly.

Arising in the course of his evidence yesterday, and  
in particular relating to the copy of the draft report

of the 18th September on which you made annotations, Mr. Fitzgerald, and I wonder if you have a copy of that before you? I will assist everybody with the book. It's Book 53, the small book which was distributed yesterday morning, and Divider B. And the table I want to refer you to, Mr. Fitzgerald, is the table on page 50, behind Tab B of that book.

A. If you bear with me while I get it out.

Q. Yes, of course, there is no rush.

A. Yes, I have page 50.

Q. Remember yesterday, Mr. Fitzgerald, just before lunch, we were discussing that. That was the copy of the version of the 18th September which you reviewed. And you recall that we were discussing table 17 and the various annotations that you made on it, and the exercise that you apparently undertook. And I think you indicated in evidence that you believed that you were anticipating the exercise which was, in fact, recorded in the next subsection, Section 6.4, whereby the grades were converted from A, B, C, D, E, to 1, 2, 3, 4, 5. And we just looked at it overnight, and perhaps I can assist you, Mr. Fitzgerald, as to what it appears that you may have done, and you can indicate as to whether you believe that's what you did do.

You will see on the left-hand margin of the table,

Mr. Fitzgerald, that you have listed A: 5, B: 4, C: 3,

D: 2 and E: 1?

A. Which was the weighting used to convert the grades into marks.

Q. It was the conversion used, wasn't it?

A. Yes.

Q. And in each case, what it appears you may have done, and I'll just take the first one, "Market

Development": The weighting on that was a 10. So you appear to have converted the C on a base of 10 rather than a base of 5 to a 6.

A. Yes, I am trying to remember why I did this, and I think it was probably that I was trying to test out the sensitivity of the numbers used to convert the grades into marks. And whether the 10 whether 10, 8, 6 and so forth would make an appreciable difference to the overall result.

Q. If I just take you through it. "Market Development", the base, if you like, the weight was 10. So you initially started the exercise in relation to A1, A3 and A5, although I think you dropped A1 about half-way down the page. And in the case of A1, the C became a 6. In the case of A3, the B became an 8. And in the case of A5, the A became a 10.

And you see, you applied the same operation in relation to financial key figures. The A for A1 became a 10, the B for A3 became an 8, the B for A3 became an 8 also, isn't that correct?

A. Yes.

Q. And then the same for "Experience of the applicant":

The C for A1 became a 6, the A for A3 became a 10, the

B for A5 became an 8. And then "Radio network

architecture", which was a 10, you applied the same

conversion there across?

A. Yes, that seems to be the case. Although for some

reason, I think the licence payment goes in at 11

rather than at 10.

Q. That's right.

A. It doesn't make any difference

Q. It doesn't because there were only two As at 11. You

ran into a slight problem when you came to tariffs,

because the base there, the weighting for tariffs was

18, and that wasn't divisible by 5, otherwise than by

the use of fractions, so you seem to have ignored the

fractions, but it probably didn't make any difference.

You treated a B as a 15 and a C as an 11. And at that

stage, you gave up the exercise as regards A1, which

is completely understandable.

A. Yes, that seems to be

Q. Just working down the page, "Coverage", then, at 7 you

had no problem because both A3 and A5 had full marks;

they had A. So they each became 7. "International

roaming plan" was a 6, and you treated the two Cs as

4s.

A. I seem to have become inconsistent as I went down

through.

Q. Very slightly, but the differences wouldn't have been considerable.

"Performance guarantees" were a 5, so that was easy enough. The C for A3 became a 3, and the A for A5 became a 5. And "frequency efficiency", which was a 3, they both got As. They both scored As. So you just gave them full marks of 3. You added all that up, because that's now on a base of 100, because the weightings on the left, which were the basis for your operation, added up to 100, and A3 came in at 83, and A5 came in at 87.

A. That's what's written here. This was, I think, a simple addition. For some reason that I can't recollect now, I didn't apply the weightings.

Q. Well, I think you did

A. In some ways perhaps, but

Q. I think you did apply the weightings, Mr. Fitzgerald, because if you see there on the left under the heading "Weight", you approached it in a fairly complex way, to be fair to yourself, it's a fairly complex exercise. You did in fact, from that it appears you did incorporate the weightings, because in the case of "market development", you based the marking on the weighting, the basis of the marking was on the basis that a 10 would be full marks. The same for "financial key figures", the 10 would be full marks.

So in fact, I think you did incorporate the effect of the weighting, is that correct?

A. It would seem so. I am not very happy with this particular doodling I did on this table, I must say, because my recollection of why I did it is not that good at this stage.

Q. But having done it and in fact

A. There seems to be a suggestion that yes, A5 is still ahead and A3 close behind.

Q. And your total for A3 was 83, and your total for A5 was 87, and then below that, you had "Very close".

A. Yeah.

Q. Which is roughly the same?

A. I would yes, I would I am still happy that that was the correct result.

Q. Can I just draw your attention to one thing, and you have already said that you weren't entirely happy with the exercise. But if you reversed that exercise, and you reversed from numbers to grades, so that in the case of an individual grade a 5 became an A, a 4 would become a B, wouldn't it? A 3 would become a C, a 2 would become a D, and a 1 would become an E. That would be the reverse operation, isn't that right?

A. I am not sure where this would lead me.

Q. I am just asking you, if you just come with me that distance, Mr. Fitzgerald, that's all I am asking you to agree with me. Wouldn't that be the reverse

operation to the operation you carried out?

A. I can't see any logic in a process that would convert the grades into numbers in the first place and then convert back into the grades again.

Q. If you just bear with me for a moment with that and we'll come to it. I am not trying to catch you out, Mr. Fitzgerald. I am not criticising you in any way, I am just trying to tease out what you were doing and what conclusion it led to.

What I am saying to you is, you started off by converting an A to a 5, a B to a 4, a C to a 3, a D to a 2, and an E to a 1, and that's exactly what Mr. Brennan and Mr. Andersen did on the 28th October September in Copenhagen. And all I am asking you now, that having done that exercise, if you were to perform the reverse operation, if you were to take the marks and reverse them back, as you should be able to do in any mathematical operation, you should be able to go one way and then go back the other, your 5 would become an A, isn't that right?

A. Mmm.

Q. Your 4 would become a B, your 3 would become a C, your 2 would become a D, and your 1 would become an E, isn't that right?

A. Yes.

Q. That's all I am asking you at the moment.

A. Okay.

Q. If you were to do that on the base of 100, which is what these the total amounts to, 100 would become an A, isn't that right? And 80 would become a B, a 60 would become a C, a 40 would become a D, and a 20 would become an E, isn't that right? All you are doing is multiplying them out by 20.

A. Okay, yes.

Q. So when you came here to your grand total of A3 at 83 and A5 at 87, and if you were to apply the reverse operation, aren't I right in thinking they'd have both gone back to Bs?

A. It may be, I haven't I will have to go through it, you know, step-by-step. You are inviting me to reach a conclusion that I can't see from the way you are approaching it. I think the more I think about this exercise here, I think it is probably a little bit erroneous in the way I did it, because I seem to have changed tack somewhere down the table.

Q. I think all you did was you dropped the exercise in relation to A1, and you came across a situation where you had a weighting that wasn't divisible by 5.

That's really all that you changed. Your total there, Mr. Fitzgerald, was 83 and 87.

A. Yeah.

Q. And if you applied the reverse operation to the total numbers, you'd have gone back to a B for both A3 and A5?

A. Now, when I look down the grades that are there, there is obviously a somewhat better grading for A5 than A3, which would justify the difference between a B and a B+, which is the overall conclusion in the grand total.

Q. That's on the 4%, except there isn't a B+?

A. There is a B with a little arrow pointing up, which I would take as meaning more than a plain B, that it would be nearer to an A, but not quite.

Q. It's a long way away from an A, when you take an A at 100. It's not even half-way to an A, Mr. Fitzgerald, is it?

A. Well

Q. That's why the arrow is there, I suppose, rather than a plus, isn't it?

A. If you see the other one, A4 as a B with an arrow going down, in other words, somewhat less than a full

B. That's the way I read that table.

Q. And the difference, as you saw it anyway, was so slight as for you to write down below that, "Very close". We dealt with all of that yesterday?

A. Yes, I am satisfied that the results were pretty close, but there was a consistent result through the various different ways in which this was approached which led to A5 being the leader in all of the consortia of the tests that were done.

Q. And you did record your thoughts, I think on Page 51,

that the actual narrative of the last comparison was more persuasive than the tables?

A. To my mind it was. And in particular, I think the way A5 is described as opting for market leadership, which was, I think, much closer to the kind of a concept we had in mind when we wrote the criteria in Article 19 of the RFP document.

Q. Can I just refer you, Mr. Fitzgerald, to the final section of the conclusions. It's not actually, it's 6.4: The results based on a conversion of marks to points. It just begins at the bottom of page 50, and in fact it records then on the next page the table which was Mr. Brennan's conversion of the grades to marks?

A. Yes.

Q. And if I can just refer you to the first paragraph of that, it states, "Also a weighting mechanism was agreed prior to the closing date for quantitative purposes." And of course, the weighting was purely for quantitative purposes?

A. Exactly. Where matters could be measured in numerical terms.

Q. Precisely. "As evident from both table 17 and 18. If the marks A, B, C, D and E are converted to arabic points, 5, 4, 3, 2, 1, it could be calculated which applicants come out with the highest score measured by points." And then it continues: "Although such a

calculation distorts the idea of a qualitative evaluation." You see those words there, "Although such a calculation distorts the idea of a qualitative evaluation."?

A. Yes.

Q. Now, those words, Mr. Fitzgerald, appeared in the first draft report prepared by Mr. Andersen. And I suppose you could refer to them as a note of caution in terms of looking at the table which followed?

A. Yes.

Q. And they appear also in this draft which you looked at?

A. Yes, they do.

Q. And presumably you, in your close review of it, you noted that insofar as you were examining the numerical tables, that it could distort, in Mr. Andersen's view, the idea of a qualitative evaluation?

A. The evaluation as a whole, of course, was a qualitative evaluation more so than a quantitative one, and perhaps he may have a point.

Q. I think that precisely was his point, wasn't it?

A. Yes.

Q. And I think we can take it that Mr. Andersen, who had such experience in this field and who had specialist expertise, he wouldn't have put that in unless it reflected what his view was on the methodology and on the results, isn't that correct?

A. Yes, that would be so. I would think that if you were to decide the result on the basis of table 18 on its own, that it mightn't be as well-founded as it should be.

Q. It would be quite wrong really, wouldn't it?

A. I think it was put in as a further check on the results that had been emerging from the earlier analysis.

Q. And you noted what he had to say there, that "Such a calculation distorts the idea of a qualitative evaluation."

A. Well, I concocted a table to try and avoid that, just recently, without making a numerical conversion by simply applying the weight in table, on page 50, to the gradings there, and the results of that was that A5 had considerably more A grades than A3. It had somewhat more Cs also. And I think it clearly shows up a significant, a more significant strength in A5 than you get from either table in page 50 or the one on the following page.

Q. Could we have a copy of that table that you drew up, Mr. Fitzgerald, because it might be of assistance to us. Maybe Mr. Shaw could let Mr. Davis have it?

A. I am sure I have copies of it.

Q. Could I just refer you to something else in relation to that, if you like, note of warning, which we were referring to. That note of warning, Mr. Fitzgerald,

was not in the final version of the report?

A. Well, I wasn't involved in the process from this point on, and maybe there were further discussions within the group on whether it was justified or not. If they left it out of the final report, then that must be the conclusion they came to.

Q. You weren't a party to those discussions?

A. No, I wasn't.

Q. And presumably to this day you didn't know that that note of caution had been deleted from the final report?

A. I hadn't noticed that, but when I went through this report, I hadn't underlined that as a problem in this document either.

Q. It appears in fact, from just a review, again by the Tribunal, of some of the documents that were available, is that the deletion of that note of caution from the summary and conclusions was not addressed until the very day that the result was announced, the 25th October, when Mr. Towey, at ten o'clock in the morning, appears to have sent over to Mr. Andersen a list of suggested textual amendments to the report, and to which Mr. Andersen commented at approximately lunchtime on that day. And it appears from Mr. Andersen's comments and his annotations on the draft, that Mr. Towey had faxed over to him, that he certainly wasn't giving that a tick of approval,

but it appears that subsequent to that again, sometime during the afternoon of the 25th, there were discussions between Mr. Towey and Mr. Brennan and Mr. Andersen, and presumably Mr. Towey can assist us as to what those discussions consisted of, and how it came about that that note of warning on the conversion of a qualitative table based on grades, to a quantitative table based on numbers, was deleted from the final version.

A. Well, I accept your explanation as to how it got deleted. As far as I am concerned, I am quite happy whether it's in or out, because I will accept that there was some validity in Mr. Andersen's insertion in the first place, and it wasn't necessary to my mind to take it out.

Q. It was taken out, in any event, and we can raise it with Mr. Towey.

A. One can have different views on whether it should or should not have been. I wouldn't regard it as any great consequence. I'd be quite happy to live with it as not being a serious qualification of the result.

Q. I see. Thank you Mr. Fitzgerald.

CHAIRMAN: Thanks for your assistance over the last couple of days, Mr. Fitzgerald.

THE WITNESS THEN WITHDREW

MR. HEALY: Maev Nic Lochlainn please.

MAEV NIC LOCHLAINN, HAVING BEEN SWORN, WAS EXAMINED AS

FOLLOWS BY MR. HEALY:

CHAIRMAN: Thanks very much, Ms. Nic Lochlainn.

A. My name is Maev Nic Lochlainn.

Q. MR. HEALY: Thanks, Ms. Nic Lochlainn. What I propose to do is go through a document with which I take it you are familiar, your Memorandum of Intended Evidence?

A. Yes.

Q. Then maybe to look at some of the, if you like, original documents, and also there is some additional documents which I want you to look at. Now, those additional documents have only come to my attention in the past 24 hours. The Tribunal has had them since they were originally furnished with a vast array of documentation by the Department, but their relevance has only become clear and I think surprisingly, or maybe unsurprisingly, at the same time the Department actually pulled out the same files and had a look at them. And what I propose to do, therefore, is to go through your evidence based on the material that you already had today, to go as far as we can go and then you can look at the other stuff tonight and tomorrow morning, and we'll resume tomorrow afternoon. I think you may have a difficulty thereafter, but I don't think that difficulty will trouble you

A. Friday is a problem for me.

CHAIRMAN: We will see that you are not required to

attend then.

A. If you are going to commence with my Memorandum, could I have the folder?

Q. MR. HEALY: Of course you can, yes.

(Folder handed to witness.)

Do you recognise it?

A. I do.

Q. That memorandum is based on your responses to a large number of queries which were addressed to you and to a number of other civil servants, mainly of which were more, I suppose well, many of the queries in any case didn't really concern you because you didn't deal with the matters raised in the queries, they were more relevant to the work being done by other civil servants, so I am not going to go through every query, unless you want me to. I am going to skip over a lot of them, okay?

You start off by saying, "The following narrative has been prepared in the context of the request received from the Tribunal lawyers on the 28th March and the 28th June, 2002. Given the volume of questions, the level of detail sought and the length of time available to prepare a response, I have had to rely for a large part on my long-distance memory in presenting the attached. The time-frame did not allow for a comprehensive review of the files, but I have endeavoured to undertake a brief review of relevant

papers locatable on the files in order to help jog my memory. I have also had some discussions with Fintan Towey for the same purpose.

"In particular, given the complex nature of many of the questions posed, I believe it is quite possible that my memory has failed me in some respects and that contemporaneous records may exist which I did not manage to access in the time given and which may give a more accurate account of events than the account as per my recollections as set out here. The strength of my memory backing answers to the Tribunal's questions varies with the question, and I will be happy to specify how sure I am of any particular answer should you ask me. It is also quite possible that other persons' accounts of events may prove more accurate than my recollection of the same events as set out here.

"I am aware that the Tribunal lawyers are eager to review this response as soon as possible.

Consequently not signing the above I submit this narrative as my best attempt at the present moment."

Now, as I go through the narrative, I want you to, if possible, tell me how sure you are of any particular answer without my asking you how sure you are, because I may not know which answers and I should be probing for your degree of certitude, do you understand me? So don't be waiting for me to prompt you to tell me

that you are not so sure of a particular answer or that you are very sure of another answer, do you understand?

A. You won't be prompting me in that. I won't say anything

Q. Pardon?

A. Do you want me I don't understand you. Do you want me to prompt you or

Q. Yes, I want you to prompt me.

A. In what way do you want me to prompt you?

Q. I want you to tell me you are not sure of a particular answer, or you are not so sure of it, but if you are very sure of another answer I want you to tell me.

A. Okay, if I come ...

Q. The first question you were asked was the date on which, the circumstances in which and the person by whom Ms. Nic Lochlainn was first approached to assist Mr. Fintan Towey/Mr. Martin Brennan in the second GSM licensing process?"

And your answer is: "I was first approached by Brendan Touhy, then Assistant Secretary with responsibility for personnel in the Department of Transport, Energy and Communications, to become involved in the GSM competition process and Mr. Tuohy told me I was being transferred to the Telecommunications Development Division, and that a large part of my role there would be to assist in the

process of selecting the second GSM licence. I have no specific memory as to what date that conversation took place, but seem to have a general memory that it took place sometime in the late summer of 1994."

Now, then you were asked a whole load of questions about the evolution of process, to which I don't think you have been able to provide any really satisfactory answers, on the basis that you had little or no involvement in the early evolution of the process.

Would that be right?

A. Yeah.

Q. You go on to page 5 of your memorandum, question 11.

You were asked for details of all of your dealings with Mr. Michael Lowry on his appointment as Minister in relation to the GSM licensing process.

And you say: "I had no dealings of any substance with Mr. Michael Lowry, as then Minister, in relation to the GSM licensing process. The extent of my direct contact with the then Minister during my time in the Communications Development Division was limited to the times when I occasionally bumped into him and exchanged pleasantries with him in the lift in the Department's building at 44 Kildare Street. I have a vague memory of one occasion when I spoke to him on the phone, when he was trying to get through to someone else in the division. I do not have any recollection of the date or even of the approximate

date. I seem to recall on that occasion Mr. Lowry had been trying to get through to Mr. Brennan, who was out of the office, and the call came through to the open office area of the Communications Development Division, and I took a message (that he had called) from Mr. Lowry."

If you then go on to page 17 and query number 16. You were asked for your understanding of the requests for tenders document issued by the Department in March of 1995, and in particular, paragraphs 3, 9, and 19. And those paragraphs are set out. I won't go through them in detail.

Paragraph 3 is the paragraph that deals with ownership details for the proposed licensee. Paragraph 9 requires applicants to demonstrate their financial capacity and technical experience and capability to implement the system. And paragraph 19 sets out that "the Minister intends to compare the applications on an equitable basis, subject to being satisfied as to the financial and technical capability of the applicant in accordance with the information required herein, and specifically with regard to the list of evaluation criteria set out below in descending order of priority."

And there is a list then of eight criteria.

And your response is: "I was not involved in the preparation of the text of the tender document. Given

my role as administrative officer and secretary to the GSM Project Group at the time, I did not look behind the text of paragraphs 3, 9 and 19. I took the meaning of those paragraphs to be the textual meaning, which appeared to be unambiguous and sufficient for my role."

If I could just stop you there for a minute. I don't want to deal with paragraphs 3, 9 and 19 in any detail at the moment. But just to clarify one aspect of your role. You describe your role as an administrative officer. That was your rank in the civil service at the time, is that right?

A. Yes.

Q. And you say that you were secretary to the group?

A. Yes.

Q. Was that your formal is that what you were formally asked to do when you joined the group, to become secretary?

A. I can't remember what I was formally asked to do, but I can't remember if anybody stood up and said 'Maev is the secretary to the group', but I do remember clearly that I was a minute taker from the first meeting I attended. And it was my understanding that I was responsible for circulation of documents and that since there wasn't a warrant given to me, but it was certainly my understanding that I was the secretary.

Q. You did have a slightly wider role as well in relation to the activities of the group, in that you were part of the Evaluating Team as well as merely being, maybe I shouldn't say "merely", as well as being secretary and responsible for documentation. Would that be right?

A. When it came to the evaluation, I was involved in the marketing side, yes.

Q. I just want to clarify that your role wasn't limited to a role a role with responsibility for documentation and minute taking. Did you actually have a full evaluative role as a full member of the Project Team?

A. I took on some of the evaluation work in the summer, but I am not certain if there was ever a formal decision that my role would change from that of being one of a secretary to one of an evaluator. I don't think there was ever a formal decision to change that.

Q. I am not suggesting that there was ever a formal change, no more than I am suggesting indeed you were no more suggesting that you were ever formally appointed as secretary. You were asked to join the group presumably because of your rank, your experience and your expertise, and you played a role in the group initially. You certainly had a role with responsibility for the taking of minutes, but thereafter, did you have a role, am I not right in

thinking, from your own documentation, as a member of the evaluative team?

A. I did have that role, yes.

Q. And at question 17 you were asked for your details of your involvement in and/or your knowledge, direct or indirect, of the process which led to the revision of the tender documents resulting in the elevation in the status of requirements of financial capability and technical capability, and your understanding of the impact of the revision on the overall competition design.

And your response is: "In this question I understand the phrase 'Revision of the overall competition design' to suggest that the question refers to considerations which took place prior to the announcement of the GSM competition. I was not involved in any considerations regarding competition design at that stage, nor was I involved in the process which led to the revision of the tender documents."

And you were asked for your role in the establishment of the Project Group and the appointment of Departmental and other officials to the Project Group.

You said: "I had not role in the establishment of the Project Group nor in the appointment of persons to that group. I may have suggested at some point during the year 1995, that Nuala Free or Margaret O'Keeffe,

(both job-sharing Executive Officers in the Telecommunications Development Division) also attend meetings of the GSM Project Group, if such meetings were to occur in their week of attendance. However, it would not have been my role to formally appoint persons to the group. I may have discussed the possibility of attendance by Ms. O'Keeffe and Ms. Free with Mr. Fintan Towey, and perhaps also with Mr. Martin Brennan, and a decision was subsequently taken that they would attend."

For what purpose do you recall suggesting that they would attend the meetings of the group?

A. I am not absolutely certain of why I suggested they attend. I think I was manager to both of these job-sharing EOs at the time, and I think possibly I was influenced by a concern that they would have wider responsibilities, and that I thought that attending those meetings would give them a wider experience than they were getting otherwise.

Q. Did they become involved in minute taking at the

A. They did, yes.

Q. So that did that free you up, maybe, for other more substantive work in the group?

A. Well, as I recollect, I still took contemporaneous notes myself even when they were taking them, so in that sense, it wouldn't have freed me up at the meetings.

Q. I see. But was it did they become responsible for actually generating the formal minutes of meetings, or some of the meetings?

A. They became responsible for generating the first draft of the formal minutes.

Q. I see.

A. But just to clarify there, I think there would have been amendments to those drafts. I don't think they were responsible for producing that draft that would be circulated prior to approval.

Q. You mean that they might have produced a first draft, that draft would have gone to you and then you, having approved of that draft, would have circulated it for approval. Is that what you mean?

A. No, that's not what I mean. I think certainly if they were producing a first draft, that would have been approved by me in the first instance, but I believe that all the minutes were approved by Martin Brennan before they were circulated outside the division.

Q. So I think you deal with that to some extent later on in your response to the questionnaire, but maybe I'll just clarify it now, if I can now.

You are saying a minute would be produced, a draft would be produced. It would be approved by Mr. Brennan, whether it was produced by you, or by Ms. Margaret O'Keeffe, or by Ms. Nuala Free, and then after it had been approved by Martin Brennan, it would

then be circulated to other members of the group?

A. I think my recollection of that, after approval by Mr. Brennan, that the minutes were circulated in draft format so that people at the meetings would have had an opportunity to look at that draft and to agree or disagree or add. And that following that process, which I think on those kind of comments would have come in on the phone, and then, if necessary, those additions would have been made. I can't remember specifics, I can just remember having dealings with people on the Project Group in that kind of a vein. And so the draft minutes would then have been amended and circulated, so that when the minutes were formally finally circulated, they would have included comments from people, if necessary, from others.

Q. You didn't have a system of bringing the minutes of one meeting to the next meeting and having them read out and approved?

A. No, that wasn't done at the meetings, but I think that was circumvented by this process where people had an opportunity to comment. I think also, just to add to that, it seems clear that there was at least one opportunity where people did say that they wanted to correct the minutes at a subsequent meeting, so I think it is quite clear that the atmosphere or the way that business was done, was that it is open for people

to change the minutes, if they wanted to.

Q. I follow. What was the purpose of keeping the minutes, do you recall?

A. I'd say that the main purpose of keeping the minutes was to record agreements which were reached in the group, and to establish details about work programmes.

Q. Or presumably to record disagreements?

A. I think that the minutes were normally used to record agreement.

Q. Was disagreement not recorded then?

A. There were times when disagreement was recorded.

Q. But in general, is it the position that you didn't record disagreement, only agreements?

A. I would say in general, that the intention was to produce a record of agreement so that that was what people knew that they would work forward with, and where a minute sorry, where a meeting closed and there was still a substantial issue where there was disagreement, I think that went into the minutes I think certainly in, I can't remember which date, but the long meeting about the stuff in Europe and all that, there was certainly work in progress at the end of that meeting, and that was minuted. But I think as a general rule, we didn't spend time producing minutes recording disagreements if the meeting subsequently came to an agreement or if there was subsequently an expectation that there would be an agreement, the

agreement was then what was recorded. Again, I could emphasise that people were open to, in the informal process we had prior, relating to the circulation of the minutes, they were open to make comments, and the result was clear, they were open to make comments at subsequent meetings, so if they felt that disagreement should have been recorded, it would have been recorded.

Q. Right, I'll look at some of the minutes in detail later, but you probably notice that some of the minutes are dated much, much later than the meetings that they purport to record?

A. Yes.

Q. Can you just explain to me, if you took the notes of a meeting for the purpose of generating a minute, when would you go about converting those notes into a formal minute that would be dated and so forth, printed?

A. I don't think there was any formal deadline within the group, or imposed by my own manager, in which sense there was a meeting on Monday this week and that the minutes had to be produced by Monday the following week. And I have a very strong recollection that all of the months throughout this process were very busy months for various reasons because we were producing information memoranda, documents were circulated to very large numbers of people, and there were issues in

relation to getting all the documents to the similar types of people at the same time or roughly the same time. So that there were periods, weeks which would have been busier and not so busy and necessarily then, in some instances if you were expecting another meeting of the Project Group to come up quickly, you might prioritise the minutes. If you were expecting it not to happen for another two months you might not prioritise them. In that case, there were obviously times when the minutes were produced later than at other times.

Q. You can have a look at them yourself, but when we come to look at them you will see there are gaps in some of them, and we may need to explore the gaps between the date of the meetings and the date of the minutes.

A. Well, I don't know which specific ones you are talking about, but that would be my general memory, that sometimes we were very busy and other times we would have been able to prioritise minutes.

Q. You were asked, in query number 19, for your understanding of the purpose for which the Project Group was established, including the function of the individual members and their intended input into the evaluation process and the ultimate outcome of the process.

You say, "My understanding at the time of the purpose for which the Project Group was established was that

it was established to run the GSM competition process.

The Department of Finance official attended primarily in order to protect the interests of the Minister for Finance; the accountant from the Department of Finance, and the accountant from the Planning unit of the then Department of Transport, Energy and Communications attended, primarily in order that their financial expertise could be used to address any issues arising which would benefit from such expertise, and to consider the financial elements of the tenders; persons from the Telecommunications Technical Division attended primarily in order that their technical expertise could be used to address any issues arising which would benefit from such expertise, and to consider the technical elements of the tenders; persons from the Telecommunications Regulatory Division attended primarily in order that they could ensure that the competition was run in conformity with the evolving regulatory environment, and that their regulatory expertise could be used to address any issues arising which would benefit from such expertise, and to consider the tenders from a regulatory perspective.

"Andersen (AMI) was recruited by the Department following tender because of their particular mix of expertise, (e.g. they had an engineer on their team as well as a person or persons with financial expertise)

as well as because of their expertise in advising on competitions of the kind being undertaken by the Department. AMI was recruited to advise the Department during the GSM competition process. Consequently their role on the Project Group was distinct from others roles, in that they often took an initial step (e.g. produced an initial draft evaluation model), presented this to the group, and may subsequently have modified their proposals following discussion and agreement by the group. They had, therefore, a more pro-active role than other members of the group. In particular, they had a role in advising how to go about different aspects of the evaluation. (For instance, their proposal to establish subgroups came from them) and they had a key role in terms of the evaluation.

"The Telecommunications Development Division was a division with overall responsibility for managing the project, and this meant that the role of persons from that division was also somewhat distinct. The Project Group was chaired by Mr. Brennan (Principal Officer and Head of the Telecommunications Development Division), and Mr. Towey, (Assistant Principal Officer in that division), was a member. The intention was that the Telecommunications Development Division aimed to maintain an over-arching perspective on the process in its entirety, aimed to ensure that the process was

fair and equitable, aimed to ensure insofar as possible that progress was made and deadlines met. Furthermore, persons from the Telecommunications Development Division attended so that the over-arching perspective I have described above, and their expertise in terms of understanding the dynamics of the sector, could be used primarily in order to address any issues arising which would benefit from such expertise and from such an over-arching perspective and to consider the tenders in light of that expertise and over-arching perspective. The presence of Mr. Brennan and Mr. Towey at the group fulfilled these broader roles. As administrative officer and secretary to the group, I was not expected to have the same broad role and over-arching perspective as Messrs. Brennan and Towey. My role at the group related substantially to the responsibilities of the Telecommunications Development Division in managing the mechanics of the process, i.e. it was largely relating to keeping the cogs of the process rolling, for instance, providing minutes and circulating documents as soon as they became available. However, in terms of contributing to the substantive matter at hand, partially because I had a postgraduate diploma in business studies with a focus on marketing, I also became involved in the evaluation of marketing elements of the tenders and I attended

evaluation sub-groups on those elements.

"My understanding of the individual members' input into the evaluation process was that individuals were intended primarily to focus in particular on their own area of expertise, with a general sense that individuals would also maintain an overview. This was reflected in the fact that certain individual members participate in certain sub-groups, (i.e. Telecommunications Technical Division, persons attended technical evaluation sub-groups, the accountant attended financial evaluation sub-groups, I attended marketing sub-groups, etc.) My understanding of individual members' input into the ultimate outcome of the process would be that they would have a role in agreeing the final result of the evaluation."

Question number 20, you were asked for "details of protocol established for the preparation, circulation and adoption of minutes of meetings of the Project Group, and in particular, whether the formal minutes were prepared solely by the official who attended the meeting and kept a contemporaneous note, or whether you, or to your knowledge, direct or indirect, any other member of the Project Group or any other person had any input into the formal minutes, and if so, the extent of such input?"

And you said: "I acted as secretary to the group from early March 1995, (i.e. from the second Project Group

meeting). The procedures used were as follows:

"Rough contemporaneous notes of discussions at Project Group meetings were taken by me at the Project Group meetings which I attended. After each meeting, a first draft of the minutes was prepared by me and submitted to Mr. Brennan for his approval. This gave Mr. Brennan an opportunity to amend the draft minutes in order to ensure it accorded with his memory of the meeting. A draft of the formal minutes, as approved by Mr. Brennan, was then circulated to Project Group members. This also allowed those members an opportunity to provide comment and propose textual changes to the draft minutes, if they wished, in order to ensure the minutes accorded with their memory of the meeting. When I was satisfied that attendees were happy with the draft minutes, the minutes were then signed, circulated in final format and filed.

"When, later in 1995 Ms. Free and Ms. O'Keeffe started to attend the GSM Project Group meetings, I continued to make rough contemporaneous notes of discussions at those meetings and Ms. Free or Ms. O'Keeffe, (whichever of them was in attendance at a given meeting) also took contemporaneous notes. The procedure described above was then amended, as the first draft, the minutes were then prepared by either Ms. Free or Ms. O'Keeffe, and approved by myself if I had been in attendance at the relevant meeting, before

being submitted to Mr. Brennan for his approval.

Subsequent steps in the procedure described remained unchanged."

I think if you go to page 14 and questions 25 and 26, are the next relevant part.

Question 25, you were asked the identity of all persons who, to your knowledge, direct or indirect, had any involvement in the setting of the weightings which were attached to the evaluation criteria. And you were also asked for your knowledge, direct or indirect, of the manner in which the weightings were devised.

Your response is: "The draft Evaluation Report circulated by AMI at the Project Group meeting on the 18 May 1995 included a proposal for what weighting would be attached to each of the different evaluation criteria. The draft evaluation model identified a number of indicators to be measured, linked each indicator to one of the evaluation criteria, proposed weightings for each indicator, and provided a table of some kind, which showed which weighting was to be attached to each indicator. Consequently one could have derived an understanding from the document what overall weighting was proposed to be attached to each evaluation criterion.

"I have no specific memory as to the manner in which the initial weightings proposed by AMI for

indicators/criteria were devised, how the discussion on weighting within the Project Group evolved, or as to whether or not the weightings as agreed by the group on the 18th May 1995 accorded with those in the draft evaluation model initially presented by AMI at that meeting.

"I believe it is reasonable to infer that persons who attended the meeting of the 18th of May, 1995, (as per record) may have an involvement in influencing the weightings. I had no particular role myself in terms of being involved in or influencing the decision on the setting of the weightings. I was in attendance at the meeting, but my key role was to take notes rather than to influence debate."

The date you were asked in query number 27, is the date on which and the person by whom you were informed of the individual weightings.

You say, "Having briefly reviewed the minutes on file, it now seems to me that I must have first become aware of the individual weightings as agreed by the group at some point during the meeting held on the 18th May, 1995, when agreement was reached by the group, and a note of that agreement was made in order to be able to provide a written record subsequently."

Now, I am just going to flag something about weightings at this point, because I may want you to look at it in the context of the documents that you

are going to be asked to look at this evening and tomorrow morning.

If you look at those documents, you will find that they contain, in fact, a very, obviously, credible account of your notes taken during your entire involvement in the process, but you do appear to refer to the weightings at some point, and just so that you will understand what I am, as it were, driving at, I want to remind you, if you aren't already aware, that at one point the weightings seem to have been organised in such a way that when you added them all up they came to more than a 100%, if you like. Do you remember that?

A. I do.

Q. And this didn't cause a problem. You could still apply the weightings in this way, but you simply introduced a renormalisation factor to get back to a hundred. This was the device that Mr. Andersen used for processing the results. Subsequently it would appear that the weightings were changed, so that you did have to go through this process of applying a renormalisation factor. And if you look at your notes, you will see that you drew some attention to that. You might just have a look at it?

A. These are going to be in the notes.

Q. In your own notes, yes.

In the next question, I don't think, unless you want

me to, I need to read it out.

Question number 28, you were asked for your knowledge of the persons who were informed of the weightings.

And in the next question you were asked about the steps taken to protect the confidentiality of the weightings. And I think your answers are based on your review of the minutes of the Project Group meetings, and we have all that information already, so unless you want to draw my attention to anything, I think we can pass on.

A. No.

Q. Query number 30 requested details of your involvement, together with your knowledge, direct or indirect, of the involvement of any person in the drafting of the information memorandum issued to entrants on the 28th April, 1995, and in particular, the portion of the memorandum which responded in the following terms to a question posed by Esat Digifone as to how financial capability would be assessed, and whether there were any specific criteria.

And the response given was: "Financial capability will be assessed by reference to the proposed financial structure of the company to which the licence would be awarded, if successful, the financial strength of consortia members and the robustness of the projected business plan for the second GSM operation. Further details of criteria, which will be

considered in the assessment of financial capability, will be elaborated in the supplementary memorandum to be issued by the Department, giving guidelines for submission of applicants.'

"Please also provide full details of criteria intended to be elaborated on as indicated in the information memorandum, together with the date on which and the manner in which such criteria were elaborated."

In other words, what the question asks is: Was there any follow-up to the proposition that there would be an elaboration in a supplemental memorandum giving guidelines for the submission of applications on the question of financial capability.

And you were also asked for your knowledge, direct or indirect, of the consideration given by the group to the draft response to the Esat Digifone query prepared by Andersen Management on the 25th April, which was in slightly different terms.

Your response is as follows: "My role in the drafting of the information memorandum is primarily a coordinating role in that different divisions or interests within the Project Group provided text in response to different queries, and I collated these and re-edited as necessary following discussions at the Project Group or textual amendments proposed by various parties. As far as I seem to have gathered from a brief review of the file, the record shows that

the information memorandum was discussed at Project Group meetings on the 29th March, the 10th April and the 27th April, 1995. Consequently, I believe that persons in attendance at those meetings would all have been in a position to influence the drafting of the memorandum.

"I have no particular memory at the moment of writing as to which person or persons were involved in the drafting of that portion of the memorandum, which responded to the question posed by Esat Digifone to which questions 30 and 31 refer. Having briefly referred to the file, however, I note that AMI wrote to the Department on the 25th April, 1995, with an outline draft text for use in developing a response to the Esat Digifone question, including a statement by AMI that the Department could 'pick and choose from the following comments'. I also note that a handwritten note is located in the same part of the file, with no heading, but with a draft of the text which you state finally appeared in the final information memorandum. I am not certain, and I have not worked closely with Mr. Towey for some time, but in so far as I seem to recollect Mr. Towey's handwriting, I believe that it is possible that the handwriting on that note and consisting of that draft may be his.

"I seem to have no particular memory at the moment of

writing as to which person or persons were involved in the consideration of a draft response or in the drafting of that portion of the memorandum, which responded to the question posed by Esat Digifone to which questions 30 and 31 refer, nor can I comment on why any one formulation would have been preferred over another.

"I was not myself involved in drafting text or in devising responses to the questions posed by applicants, as such roles fell to more senior members of the group. Consequently, insofar as I seem to recollect at the moment of writing, I have no specific memory of details of the criteria intended to be elaborated on, nor of the date on which, nor the manner in which such elaboration was intended to take place."

CHAIRMAN: Well, you were just about to move on to the European dealings giving rise to the cap, and its probably as good a time as any for us to adjourn for lunch, if it suits you, Ms. Nic Lochlainn? We will resume at a quarter past two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF MS. NIC LOCHLAINN BY

MR. HEALY:

Q. MR. HEALY: The next query, Miss Nic Lochlainn, is query 32, and it deals with your knowledge of the

intervention of the EU and the Department's dealings with the EU which ultimately led to the capping of the license fee at 15 million.

And I think what you say is that you had no really substantive role in the consideration of or in the resolution of those issues, and that at the time of writing you had no specific memory of any dealings you had with any Commission official, then Minister or any person on behalf of the Minister, or any member of the Government, and so forth in relation to these matters.

Though you do say you do seem to have a memory of speaking on the phone to a Mr. Denis McFadden in the AG's office but you have no specific memory of the content of the conversation?

A. Yes.

Q. I think I can help you, because I have the advantage of having had a look at your up-to-date documents, they seem to contain notes, perhaps notes that you took of meetings involving other people, or perhaps notes of meetings at which you were an active participant, dealing with some of these issues including, I think, dealings with the Attorney General's Office, but would that have been the extent of your involvement?

A. I don't have those notes with me, obviously.

Q. Well, you can have a look at them tonight. If there is anything from those notes that suggest to you that

you had a greater involvement than you have already indicated in this questionnaire, maybe you can tell me about it tomorrow?

A. Fine.

Q. We then go on to page 23 at query number 35, requests details of your understanding of the evaluation model adopted by the Project Group and in particular A) the qualitative and quantitative approaches, B) what these approaches entailed, C) the distinction between the quantitative and qualitative approaches.

And you say: "As Administrative Officer and Secretary to the Project Group, I was not expected to have the same broad role and over-arching perspective on the evaluation as others in the group, and, as a consequence, I only had a very general understanding at the time, as my expectation was that my role in evaluating related primarily to the limited area of the marketing elements.

"Consequentially, my general understanding of the evaluation model was that it was complex and that it was described in the document approved by the Project Group in advance of the receipt of the tenders. The quantitative evaluation related to the awarding of particular scores in respect of evidence submitted by applicants on particular indicators, using the scoring system which had been set down in advance in the evaluation model document. It was my understanding

that the quantitative evaluation would be undertaken largely by the consultants themselves, and that the individuals from the group would work with the consultants in completing the quantitative evaluation.

It was my understanding that the qualitative evaluation was to consider and to compare the applications in broader terms, using the general guidelines as to how to approach the qualitative evaluation, which had been set down in the evaluation model adopted by the group.

"My understanding as to the main distinction between the quantitative and qualitative approach was that the quantitative approach was more rigid and tied to very particular indicators, and the qualitative approach was more holistic and allowed supplementary indicators to be used and supplementary analyses to be undertaken, if a judgement was to be made that this was necessary."

Just to be clear about one aspect of this answer. You say that as Administrative Officer and secretary to the Project Group, you were not expected to have the same broad role and over-arching perspective on the evaluation as others in the group, and as a consequence you had only a very general understanding at the time as your role in evaluating related primarily to the limited area of the marketing elements. I take it that you are not suggesting that

that in some way permitted you to approach the job of evaluating the marketing elements without a complete and in-depth understanding of the difference between the quantitative and the qualitative approaches to evaluation?

A. I don't know if a complete and in-depth understanding of it would be very much different to what I have described here.

Q. Well, that is just what I am wondering. You say you had only a very general understanding; maybe you want to qualify that. I mean, did you have a clear understanding or not as to what it was you were expected to in forming a judgement in part of your work in evaluating the marketing elements, both in the quantitative and qualitative portions of the evaluation?

A. As I recollect, I would say that my understanding is what I described in the following.

Q. Pardon?

A. As I recollect.

Q. Yes.

A. My understanding would be as I have described it in the following paragraphs.

Q. But I am just concerned that you seem to qualify it in some way suggesting that you, your understanding was only very general and that this was because your role, as you saw it, was a limited role. I would just be

anxious to know whether you regarded yourself as having an obligation to have the same understanding as everybody else who had a job of evaluating?

A. I suppose the distinction I might have been making would be that I didn't expect that I would have had the same level of understanding of it as, say, the Chairperson to the group, in that, as I said, I was involved in evaluating in limited areas and I wasn't involved in pulling together.

Q. We may come back to it in relation to some more specific items and perhaps in the context of some of your own documents, you might give some further thought to what I am saying. It occurs to me that everybody on the Project Group who had an evaluation role surely must have been expected to have the same understanding of how that role was to be performed and I am sure you can see why I would think that, because otherwise you couldn't be sure that everybody was bringing the same judgement or same type of judgement, if you like, in technical terms to the job that they were being asked to do. Do you follow?

A. You want to come back to that?

Q. You were asked for your information on the date on which and the manner which the Project Group determined that each entrant should be admitted to the evaluation process, and details of the criteria applied.

And your response is: "I have no specific memory of a determination being made by the Project Group that each entrant should be admitted to the evaluation process, nor of any criteria applied in making any such determination. I had no role in relation to this."

Because some controversy has arisen about this, I just want to be clear that you understand the question. I fully understand your answer as far as it goes, that you had no memory of any such determination and you had no role in making any such determination. At one point in the course of the process, Mr. Andersen did conduct an exercise which involved checking every application to see was it the right length, the right size, did it have too many pages in it, did it have the correct mandatory tables, did the applicant promise to cover whatever it was, the requisite percentage of the population and the requisite geographical area within the requisite period of time, and so on. And having done that, Mr. Andersen decided that all of the applications, with the exception of one, fully complied with the conformance requirements needed to be admitted to the competition, one was in some minor way outside of them and they decided to admit that as well.

Do you remember that process being carried out or something like that?

A. I don't actually remember it, but having reviewed the files, I think I saw something in relation to it, yes.

Q. Yes.

A. And I think I do remember a discussion about the number of pages in relation to one applicant.

Q. Yes. Apart from that, you are not aware of there being any other threshold evaluation process having been conducted?

A. No.

Q. Yes. The next question you were asked was about the tapes, but since these questionnaires were provided the tapes have been located so I think we can pass on from that.

And again, there are a number of matters then in which you had no real involvement, including details of queries raised by the Department in the course of the Esat Digifone presentation. So if you go on to query number 40, on page 27, you were asked details of each and every aspect of the Project Group's initial views of the applications arising from the quantitative evaluation which were confirmed by the presentations as recorded in the minutes of the 11th meeting of the Project Group on the 14th of September.

And you say: "I have no specific memory as to the precise detail of the initial 'views' to which this question refers. I seem to have a vague and general memory that this phrase may have reflected a general

view expressed that on a first and preliminary review of the tenders, certain application has been regarded as stronger applications, and that certain application has been regarded as weaker applications, and that these initial and preliminary views of applications were subsequently supported by the general impression received at the various oral presentations. "

You were then asked for your knowledge of the composition of each of the 56 sub-groups which met to conduct the qualitative evaluation of indicators, including the date on which and place at which each of the sub-groups met and the duration and manner of their deliberations.

And you say: "Any sub-group which I attended took place in Copenhagen, during a trip lasting two or three days which I made there together with Martin Brennan, Fintan Towey and Billy Riordan. I have no specific memory of the date on which, or dates on which those sub-groups took place. The minutes of the meeting dated the 14th of September, 1995, show that the scoring of marketing, financial and management dimensions was to take place in Copenhagen 'in the next week'. I infer from that statement that it is very likely that the sub-groups, which I attended in Copenhagen, took place at some point within the working week beginning Monday the 18th of September, 1995, and ending Friday the 22nd of September, 1995."

I think you are right in that there was in fact a meeting in Copenhagen in that week, I think it was held on the 19th and 20th of September, and at that, or at that time there is a record of Martin Brennan and Fintan Towey and Billy Riordan having gone to Copenhagen and if you went with them, it must have been on those days, would that be right?

A. Yes.

Q. You say: "My involvement at the time related only to sub-groups dealing with marketing or roaming. On the first day in the AMI offices, I recall being at a meeting with Fintan Towey, Martin Brennan and Michael Andersen, and I have a vague and general memory that there was at least one other person from AMI also in attendance. As I only dealt with sub-groups on marketing and roaming, it seems possible to me that that meeting was a sub-group meeting on marketing followed by a sub-group meeting on roaming. At some point during the discussions in that group it was decided that more detailed work on elements related to roaming needed to be completed, and I was asked to do this. I undertook some more detailed work on the roaming elements of the tenders, while further sub-groups took place without my attendance. I have a vague and general memory that at least one of the sub-group meetings which took place in Copenhagen, in the time while I was working on other details, related

to financial matters. Once certain additional work had been completed by myself and by a junior member of the AMI staff, a further sub-group meeting on roaming took place on the second day. Fintan Towey and I were in attendance, as was at least one person from the AMI staff. That sub-group meeting then reviewed the work which had been undertaken independently by members of the sub-group and confirmed the grades to be awarded in that part of the qualitative evaluation."

Then you were asked for your knowledge of the difficulties encountered by the Project Group in scoring certain indicators in the course of the qualitative evaluation as recorded in the minutes of the meeting of the Project Group of the 4th of September, 1995.

If I said qualitative, as I think the transcript shows I should have quantitative.

You say: "I have no specific memory as to the precise details of the difficulties encountered in scoring certain indicators in the course of the quantitative evaluation, as noted in the minutes of the 4th of September, 1995. In respect of the roaming indicator, I noted from the file that the evaluation model intended to score applicants on the number of roaming agreements planned by the applicant by year 2 after licence award. It was noted at some point that, in the absence of a GSM license, it was not possible for

applicants to complete a roaming agreement with existing GSM operators, and that this fact seemed to have influenced applicants in relation to the amount of detail they presented in tenders regarding roaming agreements. Consequentially, the scoring of that indicator in the quantitative evaluation seemed to have less meaning than had been expected by the evaluation model. The minutes of the meeting of the 4th of September, 1995, gives some details of incomparable elements in the quantitative evaluation which seemed to have been highlighted by Michael Andersen at that meeting."

The next query is a related query, and the next number of queries are related both to one another and to the query we have just dealt with.

43 asks for your information concerning the decision that the qualitative evaluation should be decisive and should take precedence to the quantitative evaluation. Your knowledge or your involvement in the decision that the qualitative evaluation, as I have said before, should be decisive and should take precedence over the quantitative, including details of all matters which prompted or contributed to that decision.

You were also asked for details of your knowledge of a number of other decisions which appear to have been taken in the course of the process. These refer to

query number 46. Firstly, the decision not to score the "other aspects" of the evaluation model, that is the indicators of sensitivities and credibility. And I think that should include risks as well. B) the decision to confine the consideration of the indicators to comment within the body of the Evaluation Report. I think that should refer to the decision to confine the consideration of the indicators of sensitivity and credibility to comment within the body of the Evaluation Report.

You were asked at query number 47 for details your involvement, direct or indirect, in the decision not to score "other aspects", including details of all matters which prompted or contributed to that decision, whether directly or indirectly. And lastly, details of any dealings or meetings you had which to your knowledge anybody else had with Andersen Consulting regarding those decisions.

Then you answer all of these queries together.

You say, "As secretary to the group, I was not expected to have a broad role or over-arching perspective, and I have no specific memory at the moment that I had any role at the time in the evolution of the decision to which your query 43 refers."

That is the fact that the qualitative evaluation should take precedence.

"As far as I seem to recollect at the moment of writing, a number of difficulties were encountered with the quantitative evaluation. And so the focus of the evaluation became the qualitative evaluation, where there was flexibility to use supplementary indicators and to complement supplementary analyses, if this was deemed necessary in order to make a fair comparison. As my own role was peripheral in this matter, I have no specific memory as to the detail of dealings, discussions or meetings undertaken by others with AMI regarding this decision.

"I had no role at the time of the evolution of the decisions to which question 46 refers." This is the other aspects. "And consequentially, I have no specific memory as to the detail of dealings, discussions or meetings undertaken with others with AMI regarding these decisions."

Now, I just want to clarify the answers you are providing to those queries, firstly by trying to group the queries again. Firstly I think you understand, I take it, that the evaluation model envisaged that there would be firstly a quantitative evaluation, and that would generate a report and a ranking, and that then you would go on from there to conduct a qualitative evaluation which would also, presumably, generate some information, perhaps a ranking, is that right?

A. Yes.

Q. If you look at the evaluation model, the evaluation model envisaged that after the qualitative report, after the qualitative report had been looked at, you would go back and look at quantitative report again?

A. I can't remember that.

Q. Okay. That's what it says anyway, and there is no doubt in that. That couldn't be done. And that couldn't be done because a view was taken that the information produced in the quantitative analysis wasn't, so we are told, readily comparable, didn't provide for a reliable comparison between the various applications.

And for this reason, it was decided that the role of the quantitative evaluation would be down graded and that the qualitative evaluation would effectively become the only real evaluation in the whole process, using information where necessary, or where available, generated in the course of the quantitative evaluation. Do you understand?

A. Yes.

Q. Do I understand you to say that you had no role at all in any decision to that effect?

A. That's as far as I recollect, yes, it was discussed at a Project Group.

Q. It was discussed?

A. I am not sure actually that the decision not to use it

was discussed at the Project Group, I know that the fact that the quantitative model was coming up with odd results was discussed at a Project Group.

Q. Mm-hmm.

A. But I can't remember whether the decision not to use it then was taken at that meeting or at any other point.

Q. That is what I am trying to get at because I understood from your answer that there doesn't seem to have been any decision, at least any decision in which you participated, and as far as I can see, no overall, no decision of the overall group that the evaluation model would be departed from. There may have been a determination on the part of Andersen that this is the only way to do it, and Mr. Brennan may have gone along with that?

A. Possibly.

Q. Does that look like what happened?

A. My recollection is that there was a clear recommendation from Andersens that there was a problem with the quantitative part of the evaluation. I can't recollect when a decision was made or who made it.

Q. I am not criticising that. I am really trying to draw on what you stated here to suggest that while you had a role and other people may have had a role, they had been given a role in the Project Group, a number of major decisions seemed to have been taken by a much

smaller group of people who were, as it were, driving the project, would that be right?

A. Well, since I am not certain when the decision was taken about the quantitative bit, I can't say.

Q. But you weren't involved in it, were you?

A. No, I don't recall that I was involved.

Q. Yes. So it was taken without your involvement, and it doesn't appear to have been taken at a Project Group meeting. I am not criticising anyone for that, all I am saying is that the Project Group doesn't seem to have operated on the basis that every member of the group took part in every decision, but rather there seems to have been a steering group, if you like, perhaps of Mr. Brennan and Mr. Towey, and Andersen, maybe. Would I be right in thinking that that was a possibility?

A. The phrase "steering group" would suggest something quite formal. I don't think there was something quite that formal.

Q. I am not suggesting something quite that formal, but that was how it actually operated?

A. I am comfortable that the discussion that took place about the quantitative evaluation at the group, which was a reasonably large group, gave everyone who was there, at least in my recollection, a clear understanding that there was a problem with that part of the evaluation and that, in fact, that the general

understanding was, that to proceed to keep giving that a level of weight in the process, would in fact have been unfair. I think that was the recommendation from Andersens. I think that was discussed at length. If that was the agreement or the understanding within the larger group, which didn't actually crystallise into a decision which then said therefore we are not going to use it, since the agreement or the understanding in the larger group was that that part of the evaluation didn't really, wasn't a fair part, I think it would be reasonable then for a smaller group or for somebody to take well, the general understanding on this issue of substance has been accepted in the group and therefore a decision following that general understanding can be taken by a smaller set of people.

Q. Were you ever given a copy of the quantitative evaluation, so far it is a went? Now, there is some quantitative evaluatory material in your, if you were, loose files, but you can correct me if I am wrong, but I don't think there is any copy of the quantitative evaluation containing a ranking?

A. In my loose papers?

Q. Yes.

A. Well, again I haven't gone through those papers you are talking about yet. Just because a document may or may not be in them doesn't mean that I did or did not receive them because that was a very loose set of

documents that was somewhere under a desk or something, so I am sorry, I forget your question.

Q. I am just trying to, I am just trying to find out did you ever get a copy of the quantitative evaluation?

Did anyone say, "Here you are, Ms. Nic Lochlainn, here is the quantitative evaluation, this is as far as we got with it and it shows the following ranking.?"

A. I have no specific recollection. I have looked at the files and I know there is a document, sort of a five or six A4 pages with the results of number crunching on them. I think it does result in a ranking at the end. Now, I don't have a specific recollection on when I got it, but I am assuming on the file it is highly likely that I did have in my hand at some point because a lot of the thing that ended up on that file would have come through me.

Q. Was there any quantitative evaluation of any of the marketing aspects?

A. I would have to look at the papers. I don't have that kind of recollection.

Q. My impression is that there was. You can check it yourself.

A. I think - well, yes, since all of the, since the evaluation model initially had indicators on all the different bits, then necessarily some of them would have related to marketing.

Q. Do you remember having those available to you in the

course of your work or is there any way of finding out?

A. I think that the loose papers to which we are referring contain notes that I was taking at the time. That was the qualitative evaluation of marketing. I think by looking through them I should be able to establish whether or not I was using information which was quantitative in some degree or another. I am not sure if I can then establish whether that information was actually out of the quantitative model or not.

Q. If you look at the minute, there doesn't seem to have been any attempt made to document the arrival of the various versions of the quantitative report the way that the arrival of the various versions of the qualitative report was documented. Do you understand me?

A. I understand that. Again, I don't have the minutes in front of me, but my recollection is that when the quantitative bits were being presented by Andersens, they were being presented with reservations.

Q. Yes.

A. So, therefore, the group was hearing that this is something that Andersens have produced, but aren't very happy with it, and therefore the group took that at face value. These are the experts, they are saying it is a bit of a dodgy piece of material, it is not very satisfactory. So consequentially, I think, there

wasn't any big effort made to note when we got different bits of it. In effect, Andersens, the consultants themselves had downgraded it.

Q. But they kept producing it is the thing; even after telling the Project Group it was to be downgraded, they kept producing new versions of it right up to the time that you were in were you aware that when you were in Copenhagen they were still producing versions, and right up to the 3rd of October they were still producing versions of it, were you aware of that?

A. I am not sure of what I was aware of at the time.

Q. I don't think

A. I was aware that there were somebody in the background doing number crunching, yes.

Q. Yes.

A. It is possible that the number crunching they were doing was deemed to be more relevant to other parts of the evaluation that I nothing to do with, so I wouldn't have known. I think for instance, there is later material which I have answered in relation to Billy Riordan on spreadsheets, so it may be that the number crunching you are talking about is related to those spreadsheets; and they may have been deemed to have been important to those people.

Q. I appreciate that. I am referring to the actual generation of a completed quantitative evaluation; they seem to have been produced right up, as far as I

can recall, up to the 3rd of October, long after the decision was taken that it was not quite as reliable as it should have been?

A. I have no recollection.

Q. You refer to it in query number 49 were you were asked for your understanding of precise data comprised in the tables of the quantitative evaluation dated the 10th of September, the status of the ranking resulting from the evaluation and the manner in which the qualitative evaluation was applied to the data comprised in the tables to arrive at the final ranking in the Evaluation Report.

And you say: "From a brief review of the files, I have been able to locate one version of tables related to the quantitative evaluation (spreadsheet named QUANTITA.xls dated 30th August, 1995) which are marked on the Department's file as having been received in the Department as part of a group of documents received from AMI on the 4th of September, 1995, and the 5th of September, 1995, with the result at the end showing the highest weighted score of 3.48 and A3 as the highest scoring applicant.

"The version of the quantitative tables provided to me by the Tribunal in the folder marked "Documents extracted from DTEC files, Book 1" is a version with the spreadsheet named QUANTIA.xls, and dated the 20th of September, 1995, and with the result at the end

showing a highest weighted score of 3.22, and A3 as the highest scoring applicant.

"Following a brief review of the file, I have been unable to locate a version of the tables dated the 10th of September, 1995, to which you refer. However, given the issues which, in accordance with the minutes, had been raised at the meeting of the 4th of September, 1995, regarding the incomparable nature of certain elements in the quantitative evaluation, I recollect that the view in September, 1995, was that the data comprised in the tables output of the quantitative evaluation was not a fair or reasonable basis upon which to make a comparison of applications, and that any ranking resulting from such tables would not represent a fair or reasonable basis for a decision as to which applicant was the best applicant. Because of that view, the final ranking in the Evaluation Report was a ranking derived from the marking resulting from the qualitative evaluation as distinct from the marking resulting from the quantitative evaluation."

Well, there you deal with some of the points we mentioned a moment ago, but do you notice that notwithstanding that the matter was raised at the meeting of the 4th of September, there was still a quantitative evaluation generating a ranking right up to the 20th September? Do you see that?

A. Yes.

Q. Which would seem to suggest that there wasn't total confidence in what was suggested or may have been even agreed on the 4th of September, would I be right in that?

A. It seems that the consultants were still producing these reports.

Q. Yes.

A. That is what it seems to me.

Q. Now, just

A. But again, sorry, in that if there were inputs going from the quantitative into the qualitative evaluation, then I don't know how those tables hung together, whether you needed to update them all at the same time or if you updated one, it ran through the effect. So if there was an output coming from the quantitative model and being used in the qualitative evaluation, obviously since the qualitative evaluation was still continuing at the 20th of September, it would be reasonable and accurate for you to update the quantitative model, even if there had been a decision previously that the quantitative model was an unreasonable basis on which to progress

Q. Right.

A. in itself.

Q. I don't think it was ever suggested, as you may be appearing to, as you seem to me to be suggesting,

maybe you are not, that the applicant would be chosen as a result of the quantitative evaluation. If you look at the last few lines of your answer to query number 49, you suggest that, but I think you might want to qualify that?

A. Sorry, I am not sure what you think I suggest.

Q. You are suggesting that a ranking resulting from the quantitative tables would not represent a fair or reasonable basis for a decision as to which applicant was the best applicant. I don't think that was ever envisaged, was it?

A. No, the evaluation model had both the quantitative and the qualitative, yes.

Q. Yes. And the idea was that, as I said earlier, the qualitative was going to enable you to look back at the quantitative again, isn't that it?

A. I think that was the way it was mentioned, yes.

Q. If you go to page 34, query number 55.

You were asked for your knowledge, direct or indirect, of the purpose for which narrative summaries of the applications of the six competition entrants were prepared in September, 1995.

You say: "I have no specific memory as to the purpose for which narrative summaries of the six competition entrants were prepared in September, 1995. However, I seem to have a vague and general memory that this narrative may have been intended to assist Project

Group members in terms of the aspiration that they would aim to maintain an overview, as well as focusing primarily on their own area of expertise, and that it may have also been intended as a quick guide reference for Project Group members, where they wished to briefly remind themselves, in a general sense, of the overall shape of any given application."

I don't want to get out these documents at the moment because if we get out too many documents in the course of going through this memorandum, you will be juggling too many books in front of you at the one time. But at some point it would appear that a set of narrative summaries in this form was sent to a Ms. Cafferty, I think, in the Comptroller and Auditor Generals Office on the 6th October, I think it was, of 1995. Do you remember ever sending summaries like this to the C and AG's office?

A. I would have to see the papers you are talking about.

I know from recent stuff I have read that something went to the AG's or the C and AG's from me, but I have no recollection of what it was, I would have to see the papers.

Q. Well, I am sure that

A. I mean I have no recollection of that until I saw it coming up

Q. I am sure Mr. Shaw will ensure that you have an opportunity to look at the letter to Ms. Cafferty and

maybe we can look at it when you have that opportunity.

If you now go on to page 38, query number 60, you were asked for details of all of your discussions, if any, with any member of the Project Group or any Departmental official regarding the contents of the draft or final reports.

You say: "As the record shows, I was not in attendance at the meeting of the Project Group on the 9th of October, 1995, when the Draft Evaluation Report was discussed by the group. As the record also shows, I was in attendance at the meeting of the Project Group on the 23rd of October, 1995, when the Draft Evaluation Report was discussed by the group. I took no substantive part in the discussions that took place on the 23rd of October, 1995. The discussion at that meeting dwelt for some time on concerns about the manner of presentation in the report. I have no specific memory that anyone present objected to the substance of the report, or the result proposed.

"I seem to recall that Sean McMahon and Ed O'Callaghan were in favour of taking more time to improve on the presentation of the report, while others at the meeting were in favour of concluding the process quickly, given that there were no difficulties of substance with the result. I have no specific memory that anyone present proposed at any point that the

ranking of the applicants in the report be revisited."

If you go to query number 66, you were asked for your knowledge on page 41 you were asked for your knowledge, direct or indirect, of the decision made to accelerate the date on which the result of the evaluation was to be announced by the Minister.

And you say: "I had no role at the time in the decision to which query 66 refers, and I have no specific memory as to which persons were involved in the evolution of that decision, and I was and am unaware of any such decision being taken."

You were asked for your recollection of any approach made or request made by Mr. Martin Brennan, Mr. Sean McMahan, Mr. John McQuaid or by any other member of the Project Group to Mr. John Loughrey on or about the 23rd of October, 1995, in further time to which to consider the draft Evaluation Report.

You say: "I have no specific memory of any person making any approach to Mr. John Loughrey on or about the 23rd of October, 1995, requesting further time to consider the draft Evaluation Report. I seem to recollect that the recommendation made to Mr. John Loughrey was made on the understanding that the group was in agreement in making its recommendation regarding the result of the competition."

Now, if you look at queries 66 and 67 maybe I should go to query 68 as well. You were asked for

your knowledge, "direct or indirect, of Mr. Loughrey's response to such a request or approach, and in particular, whether it was Ms. Nic Lochlainn's understanding that further time would be available for the Project Group to finalise the evaluation."

You say: "As I was not aware of any approach having been made to John Loughrey, I have no memory of any response of John Loughrey to any such approach. And my recollection of my understanding at the time seems to be that further time was not requested and consequently was not made available."

In query number 67 what you were asked about was an approach made to Mr. Loughrey on the 23rd of October for further time to consider the final draft evaluation report which was the version dated the 18th of October of 1995.

And you say that you have no specific memory of any person making an approach to Mr. Loughrey, isn't that right?

A. That's right, yeah.

Q. And you say you have no memory of any response by Mr. Loughrey, and you don't have any recall at all of any time being requested, and consequently of any time being made available, isn't that right?

A. Yes.

Q. If you look at your answer to query number 67 for a

minute, maybe just if you would just explain something to me.

You say: "I have no specific memory of any person making any approach to Mr. John Loughrey on or about the 23rd of October requesting further time to consider the draft evaluation report. I seem to recollect that the recommendation made to Mr. Loughrey was made on the understanding that the group was in agreement in making its recommendation regarding the result of the competition."

There seems to me to be a contradiction in terms there. Maybe there is some error in the approach you took to answering the question? Maybe you thought you were answering do you see my point there?

A. No, I don't see the area of thinking that is there.

Q. Pardon?

A. I don't know what you are trying to say.

Q. How can you say that you have no specific memory and at the same time say that you seem to recollect that the recommendation made to Mr. Loughrey was made on the understanding that the group was in agreement in making its recommendation regarding the result of the competition?

A. I said I had no memory that anybody asked John Loughrey for extra time.

Q. Yes.

A. I said that I recollect, the second sentence relates

to something different. It relates to, I seem to  
recollect that the recommendation that was made to  
John Loughrey which is the recommendation that Esat  
Digifone is the winner and that everybody is in  
agreement with it. I am saying that my recollection  
that that recommendation was made following unanimity  
within the group.

Q. What recall do you have of that recommendation being  
made to Mr. Loughrey? Were you present?

A. No, I wouldn't have been present.

Q. How do you know about it so?

A. I would have known about it because I was working in a  
section which was very busy with the GSM process and  
consequently when we came to the end of it and the  
process moved from being a process within the group  
and was moved to another stage, I would have been  
aware of it. It was the end point of the process.

Q. Maybe if we take it step-by-step. You have a  
recollection that a recommendation was made to Mr.  
Loughrey on the understanding that the group was in  
agreement in making the recommendation regarding the  
result of the competition; that's the first thing.

You have a recollection of a recommendation being  
made, although you weren't physically there making it?

A. For instance, I would have reviewed the files for some  
of this and there is a page which says, which is Mr.  
Loughrey's note to the Minister.

Q. Yes?

A. So

Q. But you weren't involved in making it?

A. No, no.

Q. Yes. Apart from that, you have no recollection of any person making an approach to Mr. Loughrey to look for extra time, and even more importantly, you have no recollection of anyone getting any extra time, isn't that right?

A. No. I know from having read other people's statements that other people have these recollections. My only recollection of anything that might vaguely relate to this on the 23rd, is that there was a pause in the Project Group, that is all I remember, that the Project Group broke at some point.

Q. Yes.

A. But that's I don't remember what happened when it broke, I just remembered that it broke and then that it reopened.

Q. You don't recall, therefore, what the purpose of the Project Group was?

A. Of course not.

Q. And you have no knowledge of anybody coming back to the Project Group saying 'can we have extra time now to consider this'?

A. No, I don't remember that. But since my memory is very vague in this area anyway, all I remember is that

there was a Project Group; that it broke and that it reopened, so I mean, it isn't obviously I don't remember.

Q. I suppose if somebody had got extra time from Mr. Loughrey?

A. I might have remembered it, but I don't.

Q. and came back to the Project Group. It is one of the things they would have been told, "look, we have another week to get this sorted out"?

A. It is possible I would have remembered it, I don't know, I don't remember it, so that is all I can tell you, I don't remember it. It seems to me I think I have said somewhere, that there it was clear to me that people were in agreement about the result but some people wanted to have more time to look at the way the result was being presented or how the report was drafted, etc., and I think there was a certain frustration within the group with that since some people felt we have a result, we are not disagreeing with the result, and if we spend some more time dotting the Is and crossing the Ts, you know, it is not going to change the result. I think there was some frustration with that given that context. It is possible that if somebody did come back to say now that we have extra time to dot the Is and cross the Ts, I think I would have remembered it, but I can't say I simply can't remember. All I remember is that

the meeting broke and that it reopened.

Q. How long did it go on for after it reopened?

A. I don't know. It was a long meeting, I don't know.

Q. Was that the end of it that day, as far as you were concerned?

A. From what I I don't have I did the minutes for the meeting on the 23rd of October and I circulated them as being a meeting of the 23rd of October. It seems to me that an agreement at that meeting was that there would be delegated authority from the group to another group which might meet, I don't know, on that day or on another day, so from my understanding the Project Group meeting was only on the 23rd of October, even if a separate group of people might have met on a subsequent date.

Q. We will be looking at those minutes in more detail but they are dated the 12th of December, isn't that right?

A. I don't have them in front of me but I know they certainly weren't dated near the date it was, there was a long gap

Q. Yes, did you want to add something to that?

A. I was just saying that even if there had been a long gap, I don't think if the kind of records I normally would keep if the meeting was a two-day meeting, I would have put the meeting was a two-day, you know, the meeting always as far as I know, my minutes usually opened saying this is the date the

meeting happened on and these are the people in attendance. Therefore, if I was to taking notes in order to make formal minutes subsequently, even if it was six weeks subsequent or eight weeks subsequent, I think that my informal notes would have said the meeting of the 23rd and 24th, rather than saying that. In other words I don't think I would have been inaccurate as to the dates of the meeting regardless of the time gap.

Q. I think your notes of that meeting don't refer to any break in the meeting, isn't that right?

A. I don't have them, I have no idea.

Q. Well, they don't. Was there some reason why you wouldn't have recorded something like that?

A. No reason. I mean my rough notes were for me, they were so I don't know, I mean I can't say that I took down everything that anybody ever said at a meeting, so there would have been

Q. Well, we will come to it when we come to look at them in more detail.

If you look at query number 71 on page 42, you were asked for details of your knowledge, direct or indirect, or the knowledge of the officials or your knowledge direct or indirect, of the officials concerning any amendments to the first draft report 3rd of October, 1995 and the second draft report, 18th of October, 1995, including your knowledge, direct or

indirect, of the contents of the document entitled "Suggested Textual Amendments" which appears to have been faxed by Mr. Fintan Towey to Andersens at 10:05 a.m. on the 25th of October, 1995, and faxed back by Mr. Andersen to the Department at 2:07 p.m. on the 25th of October, 1995, with his annotated comments.

Your response is: "AMI produced the first draft of the evaluation report dated the 3rd October, 1995, as a working draft. It seems to me that the most substantial amendment to the report dated 3rd October, 1995, arose out of the discussion on the 9th October, 1995. I was not in attendance at that meeting.

"The record shows that other amendments implemented included:

"(i) Editorial/grammatical style amendments proposed by

Departmental officials in order to improve the basic readability of the report, as AMI consultants were not

native English speakers and were open to receiving editorial from persons in Ireland who were.

(ii) 'Proof reading' style amendments, where, for instance, I crosschecked the weightings used in the

original evaluation model and in the draft report and

queried with AMI as appropriate (See fax dated

the

6th October, 1995, from me to AMI.)

"AMI produced the second draft dated the 18th October, 1995, and named it a 'final' draft. The draft was discussed at the meeting dated 23rd October, 1995.

There was a robust debate at that meeting as to the presentation of the evaluation report. At the end of that meeting, it was agreed that amendments to certain sections remained to be agreed on the Irish side and that Martin Brennan was then to be deputed to conclude discussions with AMI about the text of the final draft of the report.

"There was unanimous agreement that Esat Digifone won.

I have a clear recollection of that. No one has ever suggested to me that the outcome was anything other than the above. When I wrote up and circulated the minutes of the meeting no one raised any query as to their accuracy.

"Following the close of the meeting on the 23rd October, 1995, as I recollect, I was not involved in further discussions or in the drafting of the document drafted 'Suggested Textual Amendments'. It is my understanding that the document entitled 'Suggested Textual Amendments' represented the final position of the Irish side regarding the text of the report."

If you go to query number 76, then, you were asked for details of all meetings of the Project Group or any of

the members of the Project Group on the 24th/25th of October; the subject of such meetings; the matters under discussion and the outcome of such meetings.

You say: "The record shows that the Project Group met on the 23rd of October, 1995, and discussed the draft evaluation report. As far as I seem to recollect, at the moment of writing, the discussions of the Project Group meeting which discussed the evaluation report at some length centred on the style of presentation of material in that report and not on the markings rankings or the result. The outcome of the Project Group meeting on the 23rd of October, 1995 was that there was an agreement on the ranging and result, in that as the record shows, (see paragraph future work plan in minutes of meeting dated the 23rd of October, 1995) amendments to certain sections remained to be finally agreed and that these were to be agreed with the Irish members of the group on the following day and that Martin Brennan was then to be deputed to come to final agreement with AMI with respect to the final text of the report. I have no memory of further Project Group meetings or of meetings of members of the Project Group on the 24th or 25th of October, 1995, but it is quite possible that such meetings took place but that I was not in attendance and consequently that I have no specific memory of them at the moment of writing."

Go to query number 78. You were asked the precise date on which and time at which a final decision was made by the Project Group regarding the result of the competition and the name of each person who was present or was otherwise a party to such decision.

And you say: "As far as I seem to recollect at the moment of writing, a final decision regarding these matters was made by the group on the 23rd October, 1995. The record shows that Martin Brennan, Fintan Towey, Maev Ni Lochlainn, Margaret O'Keeffe, Sean McMahan, Ed O'Callaghan, Donal Buggy, Jimmy McMeel, Billy Riordan, Aidan Ryan, John McQuaid and Michael Andersen were in attendance on that day. I have no memory as to which other persons were otherwise party to such decision."

I don't think Michael Andersen was in attendance personally, was he? Are you basing this on having checked the record, do you think?

A. I would say I am, yeah.

Q. Yes. I think he may have been in attendance by phone or by fax, but not physically in attendance?

A. On the 23rd?

Q. Yes.

A. Well

Q. You may be right?

A. If the minutes state he was there, he was there I would say.

Q. Yes.

A. If the minutes state that he was there, I don't think it would be that he was on the phone, I think he would have been physically there.

Q. All right. I am not going to ask you to turn up the note now, but I will just have a quick look at it.

The minute says he was there, but I think it does suggest that he is there either by phone or by fax?

A. The minute suggests that?

Q. Well, that is what it says, it looks like by fax?

A. No, I think what that, I think that's it might be my handwriting, I haven't got it in front of my. If it says "fax", that simply means that when I was circulating the minute.

Q. You sent it to him by fax?

A. Because everybody else was in Ireland and would have got it the next day.

Q. I understand. So he may have physically been in attendance on that day?

A. If I said he was in attendance, he was in attendance.

MR. ROSSA PHELAN: Mr. Chairman, just to interject.

It has been raised a couple of times by Mr. Healy, as he is only opening the matter is going to come back to these documents in more detail. Of course, I understand this approach. The witness has raised on three occasions a concern that she have sight of the documents to which Mr. Healy is referring. And

consequently, if Mr. Healy wishes to draw a specific attention to the witness to these documents, I think it might be fairer on her in the light of her concern that she has expressed.

CHAIRMAN: Mr. Rossa Phelan, I will see that that

MR. ROSSA PHELAN: In order to the Comptroller and Auditor General, and the minutes of the meeting of the 23rd.

Q. MR. HEALY: I am not trying to catch you out at all.

I just think it would be faster Mr. Shaw knows presumably what document I am talking about, we all know the documents at this stage, Ms. Nic Lochlainn, except you. You can accept everyone here is familiar with them. If Mr. Shaw can't find them for you I will, you can be sure of that.

You have just clarified something that nobody else has been able to clarify, and up to now on a number of occasions where references were made to Mr. Andersen in the minutes accompanied by a handwritten note "by fax". I think Mr. Brennan thought that that meant that Mr. Andersen was in attendance by phone.

A. How could Mr. Andersen be in presence by fax?

CHAIRMAN: A point, a fair point.

Q. MR. HEALY: I quite understand that, but Mr. Brennan thought that Mr. Andersen was present by phone.

A. I don't remember any meeting where Mr. Andersen was

present by phone, except if you could say that the discussion on the textual amendment was a meeting, but other than that where somebody is in the minutes as being in attendance they were physically there; they may not be physically there for all of the day, but they were certainly physically there. And on my recollection, it is that Michael Andersen travelled to Dublin for those meetings and there is no reason why there is no other reason for him to be in Dublin. Why would he have left the meeting room?

Q. Yes, if he was in Dublin on the 23rd, and the report was, I think, ultimately concluded on the 5th, isn't that right? To you recall his deciding to leave Dublin on the 23rd?

A. I have no recall of his travel arrangements. It is quite clear that he was in Copenhagen on the 25th, since he was on the phone from Copenhagen, and it is quite clear to me that he was in Dublin on the 23rd.

I have no idea what he did in the meantime. It seems, I think, that as the meeting is likely to have gone late on the Monday, it is quite possible that he travelled on the Tuesday, but I have no idea.

Q. Yes. So there was an awful lot of rushing around the place on the 23rd, 24th and 25th. Mr. Andersen was here on the 23rd and perhaps on the 24th, and the whole thing was, you are aware of this, that the whole report seems to have been put together over the fax on

the 25th?

A. I am aware that there were faxes passing hands on the 25th.

Q. You are aware there was never a full report on the 25th?

A. No, I am not aware of that.

Q. Yeah. You think there was?

A. There is a fax on the file which says from me to somebody in Andersen Management which says that "I have received 52 pages of the final report", and I understand that to mean the 52 pages to refer to the main body of the report which is 52 pages in length, I think, and there is no way that I would have put that on the file or sent such a fax if I had not, in fact, at that point received the 52 pages.

Q. Of course, but it does contain a lot of appendices, doesn't it?

A. It has appendices. I am not certain when the appendices arrived.

Q. The appendices are as long as the report, aren't they?

A. I am not familiar with the length of the appendices.

Q. They are close to it. You didn't have any appendices so you didn't have a full report?

A. I am not certain what the position was in relation to the appendices.

Q. Did you have a full report including the appendices or not?

A. I am only certain that because the record shows that I sent a fax saying that there were 52 pages, that that would suggest that we had 52 pages. I have no idea whether or not we had other elements of the report, I have no recall.

Q. Yes. You have no record of having the rest of the report in any case?

A. That's not to say that

Q. I see

A. I have no recall and there is no record, that is not to say that other parts of the report did arrive on that day, I have no recall.

Q. I see. There is no other you didn't give the Secretary your 52 pages?

A. The Secretary General.

Q. He never saw the report on the 25th?

A. I wouldn't normally, in the course of events at that time I wouldn't have had that many dealings with John Loughrey, I have no recall of handing him anything.

Q. I see. So there was no way you were handing him your 52 pages? You were giving that to somebody else, is that right?

A. I don't know what happened the 52 pages after it arrived. I am simply saying that it, because I put a fax saying that it arrived, it did arrive. I think maybe it would be easier if you ask questions of people who actually dealt with the final report when

it arrived.

Q. Mr. Loughrey has told the Tribunal he didn't read it anyway, he didn't have it on the 25th, you didn't have it. All you had was the first 52 pages?

A. All I am certain that was in the Department is the 52 pages. I have no recall as to what else was or wasn't in the Department. It is quite possible that other elements of that report arrived on a separate fax which wasn't

Q. But you are speculating there. You haven't seen any documents that suggest that, am I right in that?

A. There is nothing on the record.

Q. Yes. You were the person responsible for the management of the documents, isn't that right?

A. Yes.

Q. Yes. So if the report came in to you, what responsibilities did you have in relation to how you dealt with it?

A. Given that so much of the process was, not just in that week but throughout the year, was a sort of a high pressure process where people wanted access to documents very fast, quite often the first thing that happened when a document arrived was that it was copied and circulated.

Q. Yes. And who would you have circulated that to?

A. And subsequently put on the file, that the first priority was often circulate and the second priority

was to file.

Q. Were you aware on the 25th, when that document came in, that the Minister was going to make an announcement

A. I have no idea.

Q. of the result of the competition?

A. I don't know.

Q. Well, when you say "circulated", who would you have circulated it to?

A. The final report?

Q. Well, let's be careful about our language here; the first 52 pages of the final report?

A. Sorry, I can't remember what your question was.

Q. Who would you have circulated it to?

A. I don't remember who I circulated it to. I think the record shows that Martin Brennan and Fintan Towey were in discussions with Michael Andersen about this document earlier that day so I suspect if I was the person who picked it off the fax machine, it was probably to one of them that I handed it.

Q. You couldn't just give it to anyone, it was still a confidential document, wasn't it?

A. Well, I wouldn't really describe Martin Brennan or Fintan Towey as just anyone.

Q. Yes. So far as the record goes, you didn't look for the rest of the document that day; do you know from your own recollection whether you were either given

instructions to or whether you yourself looked for the rest of the document on your own initiative?

A. I have no recollection.

Q. Mm-hmm. If you go on to page 48 and query number 82, you were asked for the details of your role in or your knowledge, direct or indirect, of the role or the role of any other person in the preparation of the following documents:

"(a) Mr. Loughrey's recommendation to the Minister dated 25th October, 1995.

(b) The briefing note to the Minister regarding the outcome of the evaluation process.

(c) The Memorandum to Government dated the 26th October, 1995."

In response to query A, you say: "I have no memory at the moment of writing that I had any role at the time in the preparation of the document to which Indent A refers and have no memory as to the role of any other person in its preparation.

"I prepared the initial draft of the document to which Indent B refers. I have no memory as to whether any other person or persons contributed in the drafting of the document or made any amendments to my initial draft. I believe I was asked to prepare a simplified document, which presented elements of differentiation

between the top two candidates in a 'sound-bite' type of style. The intention was not to provide a comprehensive summary of every relevant part of the evaluation report where the two applicants were mentioned or compared, but rather to provide 'sound-bites' which could be used if the then Minister so wished in any forum, where he might have had a need to talk about the result of the competition and why one candidate was being ranked above another. I have been unable, following a brief review of the file, to locate a copy of the document to which Indent C refers, and consequently, am not in a position to comment at the present moment."

Some difficulty arose about precisely how this document came into existence and I am not going to deal with it now, but I just want to make sure we are absolutely clear about what document we are referring to.

If you do you have a copy of Book 43 there?

A. I presume I do.

CHAIRMAN: Take your time, Ms. Nic Lochlainn.

A. What indent?

Q. MR. HEALY: If you go to leaf number 136.

A. Yes, I have it.

Q. Now, is that the document that are we ad idem, that that is the document we are talking about, the briefing note to the Minister?

A. That's the document we are talking about.

Q. Okay, all right. We'll come back to the detail of it later.

If you go to query number 89 for a moment. It says:

"Please indicate whether the Department had in its possession a copy of the final draft evaluation report as of the 25th of October, 1985, when the Minister met with members of the Cabinet and following such meeting announced the result of the evaluation process if the Department did not have a copy of the final evaluation report in its possession at that time, please indicate precisely what document or documents were in the possession of the Department."

You say: "I do not know exactly when the Minister met with members of the Cabinet as described in question 89. The record shows that I sent Michael Andersen a fax on the 25th of October, 1995 confirming that a fax of the final report up to page 52 had been received in the Department and asking for six colour copies to be produced and forwarded to the Department monogrammed to Martin Brennan, Sean McMahan, John McQuaid, Jimmy McMeel, (archive 1 and archive 2). Given the number of pages (52), I believe this meant that a fax of the main body of the evaluation report dated the 25th of October, 1995 had been received at that point. I have no recollection of the time of day at which the fax was received. However, the record shows that AMI sent

the Department a fax regarding the proposed amendments at approximately 14:00 hours Danish time, 13:00 hours Irish time on the 25th of October and that a subsequent telephone discussion of this fax was proposed. This would suggest that the fax of the 52 pages of the finalised evaluation report, which I acknowledged, was received at some point subsequent to that phone discussion on the 25th of October. In or around this time I was asked to produce a briefing note which would give a short, simple, and positive guide to the contents of the evaluation report. This is the document numbered 136 in Book 43 forwarded to me by Mr. Shaw."

That is the document, again the same document.

"As I recollect, the document was intended as a quick scan document which would be used or which could be used to give a flavour of the evaluation to the Minister to assist him when briefing the press or others about the competition result. The document was not intended to be used as a basis for decision. I am not certain if the Minister ever received the document or if it was used at all."

If you go back to query number 82 for a moment.

CHAIRMAN: Just take your time. You have a bit of a virus playing up, please just slow down and suit yourself. I know it is not the easiest.

Q. MR. HEALY: Do you see in query number 82 where you

say, "I prepared the initial draft of the report to which Indent B refers".

A. Yes.

Q. And that being the same document as the one referred to in query number 49, where you say you were asked to produce a briefing note for the Minister. Perhaps would you just clarify that for me?

A. 89?

Q. Well, clarify both. You say that you produced the initial draft. I understand from query number 89 that you produced the document, not just the initial draft?

A. I think I produced the initial draft and in documents that I reviewed last week it seems that I produced the initial draft, discussed it with Fintan Towey and then produced a draft following his comments.

Q. I see.

A. Which I think is the document numbered 136.

Q. I see. When you say you looked at other documents, when did you look at other documents?

A. I looked at them last week. I just, somebody mentioned that there were some of my rough working papers.

Q. Yes?

A. I went through them and discovered this document in the middle of them, the document with what I believe are Fintan Towey's comments.

Q. Right.

A. There was at least two iterations of the document: the first one that I produced, which has been discovered and which has Fintan Towey's comments on it.

Q. So, what

A. And the second version which is the one which you have here numbered 136 and which is the result if you look, if you compare the two, obviously what Fintan Towey suggested was done to the document and it is then the document that you have numbered 136.

Q. I see. Let me just get this clear in my head. 136 is the final version?

A. Yes, yes.

Q. There are two other iterations, you say?

A. No, I think there was one.

Q. One other?

A. I think I produced an initial draft. Fintan Towey commented on it. I produced a draft following his comments which is the document numbered 136.

Q. When do you say you looked at those? Last week, is it?

A. I looked at the rough working papers last week and discovered these papers with the notes on them, because prior to that I had only, I wasn't sure if other people had commented.

Q. Will you just to go back to that document for a moment, Ms. Nic Lochlainn and we will just, in fairness to you, we will look at it in detail later

on, but you were asked to produce a briefing note for the purpose for which you have described, to enable the Minister to get an overall impression of the process and the result. Would that be right?

A. Yes, that would be fair, yes.

Q. And you don't know if that was ever used?

A. No, I have no knowledge.

Q. Yes. Now, having prepared it, you simply gave it to Fintan Towey or Martin Brennan, or whoever else was I think it was Mr. Towey you said was approving or reviewing the work that you produced, is that right?

A. Yes.

Q. Yes. So I presume when you finished, you gave it to him?

A. I could have, I don't know, the only thing I am certain of is that it ended up on the file.

Q. Yes. Well, you weren't dealing with the Minister yourself directly?

A. No.

Q. So if you were producing a briefing note for the Minister and it was being reviewed by another more senior colleague, you, presumably, when you finished it, gave it to that more senior colleague, and it is a matter for him to do whatever he deems appropriate with it?

A. I presume that since he made comments on it, I was likely to have handed him the version which, that

included the suggestions he had made, the version

Q. Yes?

A. This version.

Q. Yes. Now, to move on to page number 52, query number

90 you were asked the date on which, and the

circumstances in which you first became aware of the

involvement of IIU Limited or Mr. Dermot Desmond in

the Esat Digifone consortium. You were asked for your

understanding as to the precise nature of the

involvement of IIU at that time and the source of such

knowledge or understanding.

Your answer is: "I had no role at the time in the

consideration of the financial elements of the tenders

nor in the consideration of any information being

provided regarding the composition of individual

consortia, other than to have a general awareness of

who the main consortium members were, and in

particular, those members who had telecommunications

expertise. Consequently, I have no specific memory as

to the details requested in query number 90."

You were then asked for your knowledge of a letter of

the 29th of September, 1995, from Michael Walsh of IIU

addressed to Mr. Fintan Towey. I think that's

incorrect, it should have been, it should state

"addressed to Mr. Martin Brennan".

You were then asked for your knowledge, direct or

indirect, of, or your involvement or the involvement

of any other person in the decision made to return the letter of the 29th of September to Mr. Denis O'Brien on the 2nd of October without retaining a copy of the letter on the Departmental files.

And you say: "I propose to deal with questions 91 and 92 together. A letter was received by the Department subsequent to the tender closing date and relating in some way to the Esat Digifone application. I had no role in dealing with that letter and I was aware that it had been decided to return it without keeping a copy on the file as it was not deemed fair for applicants to submit additional information after the closing date other than information specifically requested by the Department for its own clarification. I have no memory that I was involved in the decision to return that letter, nor do I have a specific memory as to which person or persons were involved in that decision, although I have a vague and general knowledge that Fintan Towey and Martin Brennan may have been involved."

CHAIRMAN: Does that vague memory, Ms. Nic Lochlainn, mean that there may have been some mention either at Project Group meetings or even an informal discussion within the Department, that something had been received but sent back from those two senior colleagues?

A. No, I think the vague and general memory was I have a

memory of Fintan Towey with a letter but I am not sure whether Martin Brennan, I am not sure of Martin Brennan's involvement; that was what is vague and general about it

CHAIRMAN: Oh, yes.

A. Not in terms of it was discussed at another forum where a load of other people discussed it.

CHAIRMAN: Yes, but there was some mention.

A. Yes, I remember that the letter existed. I don't remember what happened it.

CHAIRMAN: There was some mention at the time.

A. My understanding, I suppose, of the working relationships was that if Fintan Towey was making that kind of decision he would have discussed it with Martin.

CHAIRMAN: Yes.

Q. MR. HEALY: I don't think there is any other aspect of your response to the questionnaire, Ms. Nic Lochlainn, that we need to deal with at this stage, at least we need to read through, so if we just go back to the very beginning for a moment, there are one or two things I want to clarify.

Firstly, you were, as we have already mentioned, working as a member of the group in the limited way I think we agreed you were working this morning, as an evaluative member of the group, but also as the minute taker and as the person responsible for document

handling, is that right?

A. Yes.

Q. How did you see the group, as a whole, working in terms of the decision that had to be reached? Did you see it as a decision of the group or as a decision that was going to be taken by some people with the assistance of or contributions from individual members of the Project Team, depending on their individual expertise?

A. I am not sure if I thought about it in those terms.

Q. Do you mean that you saw it as a group that was providing, perhaps, expertise in the form of your expertise in marketing, but not a group which was going to reach decision in which you were going to have a real concrete part or role; would that be right?

A. I am not sure what my understanding was of it. I think, in fact, that as we discussed this morning, that I did have two distinct roles. I think that the second one evolved in some way that may not have been anticipated at the beginning. So if, say, at the beginning I was a secretary to the group and it was clear that my role was in relation to mechanics, in that sense I don't think I would have felt I was contributing in any way to the overall decision.

Q. Yes.

A. And I wouldn't then have thought you know, that

would have been my understanding subsequently when I became involved in the marketing evaluation, I am not sure whether I sat down and re-thought how I should or shouldn't fit into the Project Group.

Q. Did you ever feel at any stage that well, I should just rephrase that did you ever feel at any time after you acquired this role as an evaluator, if you like, using your own expertise, that you would have been in a position to say at a group meeting, "I don't agree with the result. There is something wrong here, not in my own area of expertise, but I am not happy with the overall result"?

A. I think that would be open to me, yes.

Q. You think could you have done that and would you have felt confident in doing it?

A. Yes.

Q. Notwithstanding at that stage that you were much more junior in rank than the other members?

A. Yes.

Q. And in describing the expertise that the various individual members brought to the group, you distinguished between the people with technical expertise, such as Mr. McQuaid, is that right?

A. Yes.

Q. And on the one hand, people with financial expertise such as Mr. Riordan, I think ultimately Mr. Buggy, people with regulatory expertise and people with

expertise from the development division such as Mr.

Towey and Mr. Brennan. But did you understand that each one of those individuals would also have a right to express an opinion about an area in which they didn't have any particular expertise?

A. I think anybody would have been entitled to express an opinion.

Q. Yes.

A. Obviously if the group was considering such an opinion being expressed by anybody, they would have taken into consideration if this, if the person making or expressing the opinion had any expertise in the area.

Q. Yes.

A. So for instance, if I were to stand up, like I have just said, that I felt I could say things, but if I stood up and said that I think there is a problem with the technical evaluation, I think I would have been laughed out of court.

Q. Yes. What do you mean by saying that Mr. Brennan and Mr. Towey had an over-arching role or over-arching perspective?

A. It was partly because our section of the Department was responsible for running the process.

Q. Mm-hmm?

A. Somebody had to be responsible for running the process, and it was our section, so where other people were involved, because they were providing particular

expertise, I believe the people that Mr. Towey and Mr. Brennan were involved, in terms of the fact that they were familiar with the telecom sector at the time, but also in terms of just having a coordinating role and having somebody in the middle who was seeing what was happening, and not necessarily involved in the detail of everything that was happening, but certainly I think my understanding of Mr. Brennan's role would have been very much in that overview, over-arching, maintaining that over-arching perspective.

Q. So it is not having a role in poking their noises into everyone else's individual area of expertise but driving the process forward in the sense of the mechanics of it, getting to the deadlines, making sure that the meetings with people were conducted properly, putting in place confidentiality protocol, ensuring it was enforced and all that kind of stuff?

A. All that kind of stuff.

Q. You described the groups that you took part in in Copenhagen as involving yourself, the other members, the other Irish members of your particular sub-group, which I think would have been Mr. Towey and Mr. Brennan, is that right, marketing sub-group?

A. Yes, certainly I remember Martin and Fintan were both at the marketing sub-group as well.

Q. And perhaps a member of AMI?

A. Michael Andersen and perhaps a junior member as well.

Q. And were discussions, did they take part as a were

they discussions that you took part in as a group,

everybody present together, in other words?What?

A. What do you mean?

Q. They are described as sub-groups. Did every member of

the sub-group take part in discussions at the same

time, or were you writing to one another, were you in

different offices doing work and did you then come

together and exchange notes or how did you do your

work? How did you actually make your judgement?

A. How did the sub-group proceed?

Q. Yes.

A. I think in general that the sub-group generally

proceeded in that I think I have noticed recently that

Andersen produced a first draft cut of what they

thought would be the outcome of the sub-group, and

then anybody who was there was free to discuss that

and agree or disagree, and following that discussion,

if there was a need to change the grades that had

initially been awarded on a preliminary basis by

Andersen, that was done in such a way that there was a

consensus at the end of the meeting or at the end of

the sub-group as to what the indicators were and what

the grades being awarded were.

Q. Do you remember dividing up the criteria into

indicators, or being involved in that?

A. In terms of the evaluation model that Andersens produced?

Q. Yes?

A. Or the initial one that they produced in the summer?

Q. Yes, and you went from that to produce the indicators for the qualitative evaluation weren't produced until after you got going?

A. Yes, I think, again this is from a brief review of the rough notes, it seems that Andersens did produce an initial set of indicators for marketing, and I think I reviewed them prior to going to Copenhagen and had ideas that there should some of them, I am not certain, I suggested additional ones, but I am not sure whether I agreed with all the ones they had, I am not certain, so there were a number of indicators.

Q. Did you eventually come up with an agreed set between yourselves and the Andersen side?

A. I think that would have happened at the meeting.

Q. How did you apply a weighting to those?

A. In terms of within, if you had ten indicators how they were weighted?

Q. When I say "how did you apply it?", I mean how did you come up with the weighting? It is easy to know how you applied it, if you gave something a score of 5 it had a weighting of 5, then it got a score of 25 marks. How did you arrive at a decision as to what weighting should be applied to a particular indicator?

A. Just to be clear, you are saying that in terms, I am assuming that there were about 10 sub-indicators on marketing. You are asking me did Indicator 1 have a weighting of 5 or a weighting of 10, is that what you are asking me?

Q. Yes, did it?

A. As I understand it in the sub-group I was involved in, all of the indicators had equal weighting.

Q. So it didn't matter so?

A. Exactly.

Q. Were you involved in a decision to that effect?

A. I don't believe so. I think it was a working assumption.

Q. Pardon?

A. I think it might have been a working assumption. I don't think there is any suggestion that they should be weighted, therefore obviously you could say there was a weighting of one on each, but it was irrelevant.

Q. Yes. I appreciate that Andersen produced an evaluation model which was a written document, and I think he also made a sort of presentation in Dublin to the Project Team indicating how the evaluation process was going to proceed, distinguishing between the quantitative and qualitative evaluation and the ultimate roundup where you apply the wisdom of the qualitative to the quantitative. Am I right in thinking he made a presentation like that?

A. He brought a draft document to Dublin. He certainly made a presentation, or he and members of his team did at a Project Group.

Q. Was, therefore, any discussion in Dublin, either one that Mr. Andersen was present or one that was exclusive to the members of the Department in which the RFP was discussed and what it meant?

A. I have no recollection of any such discussion.

Q. So there was no discussion of what paragraph 3 meant, the one dealing with ownership; paragraph 9, the one which mentions demonstrated financial and technical capability or paragraph 19, there was no debate as to how

A. There may have been, but I don't have any recollection of it.

Q. Well, you weren't present at it?

A. I certainly have no recollection of it.

Q. And there is certainly no minute, no note of it in your minutes, isn't that right? You did refer to, I think, you do minute the evaluation model being explained and presented, isn't that right?

A. Yes.

Q. So if you minuted that you would probably have minuted a meeting at which the overall framework of the evaluation and in terms of the RFP would have been discussed?

A. I presume I would have if it had happened.

MR. HEALY: I think, Sir, as I am going to go onto the documents both some of the old ones but mainly the new ones, it would be preferable that we adjourn. It occurs to me that the number of documents is slightly less than we had envisaged and we could, subject to what My Friends say, start even an hour earlier than after lunch. We might be able to start at noon.

CHAIRMAN: I think I am aware of some other non-hearing work that I think it is probably desirable to attend to, I think if we did start at two sharp and structure the day with perhaps a twenty minute break we should be reasonably certain of honouring our commitment to Ms. Nic Lochlainn to have her free of the hearing by Friday. Very good. And I think, Mr. Healy, either you or somebody else from the legal team will informally give some liaison to see that some circumscribing of the overall documentation is made available so that you don't have to look at aspects of the documents that you won't be asked about.

Very good. Well then, we will take it up at two o'clock tomorrow. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
THURSDAY, 6TH MARCH, 2003 AT 2PM.