

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, Sc

Ms. Jacqueline O'Brien, BL

Instructed by: John Davis

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES: Mr. Richard Law Nesbitt, SC

Mr. John O'Donnell, SC

Mr. Conleth Bradley, BL.

Mr. Diarmuid Rossa Phelan, BL.

Instructed by Matthew Shaw

Chief State Solicitors Office

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

Mr. Gerry Kelly, SC

Instructed by: Eoin O'Connell

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

For Michael Lowry: Kelly Noone & Co.,

Solicitors.

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxton.

I N D E X

WITNESS: EXAMINATION:Q. NO:

Jimmy McMeel

Mr. Coughlan

1 - 381

Mr. Nesbitt

382 - 428

Mr. Coughlan

429 - 433

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 8TH APRIL,  
2003 AT 11AM.

CONTINUATION OF EXAMINATION OF JIMMY McMEEL BY  
MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. McMeel, I just want to, this morning, go through some documents. Not the number of documents we have been through with other witnesses; there is no need to go through all of those with you.

But I think it's fair to say, from just looking at the Department of Finance files, you were, from an early stage, perhaps as far back as 1993, to some extent, involved in the evolving GSM2 process; isn't that correct? There are indications of you in correspondence with DTEC or with Mr. Brennan or Mr. Doyle or Mr. McKenna, I think

A. Yes.

Q. at an early stage, but when the policy was evolving?

A. Mostly in the context of the fee, I should say.

Q. In those early days, always in the context of a fee, I think?

A. Yes.

Q. And you then come to July of 1994, and there is you send a letter to Mr. Martin Brennan, and it's in Book

41, Divider Number 20. I'll tell you what I have done, just for my own ease, and perhaps it would be of assistance to you: I have just pulled some documents together into one small little book at the moment; would that be of assistance to you, if I gave that to you, rather than have to go through every

A. I think that could have been of assistance. I also have quite a few documents in a book I have compiled myself.

Q. I'll just give it to you, but you can see it's in the big divider, but I'll just

(Book handed to witness)

and I just pulled these documents out. There will be more I may wish to refer to more, and you may wish to refer to more as well; but just for the moment, it's easier.

I think you see this letter, and you are writing to the Department of Transport, Energy and Communications, and you write

"Dear Martin,

"We have been reflecting on the question of fee structure for the second mobile phone licence; in particular the proposed up-front fee of  $\frac{1}{2}$ 3,000,000.

Overall we consider that it would be preferable if there was a reversion to the original plan that the balance between the amount of up-front payment and ongoing royalty should be left entirely to the market.

While we acknowledge the EU Commission's thinking on the possible distortion effect of a large up-front fee, it appears that Italy and Greece appear to have applied an up-front fee regime without reproach from the Commission.

"There is an understandable gap between the announcement of a €3,000,000 payment in the request for tenders and the actual evaluation of the bid. It is only when the process is complete that the future royalty stream will become apparent. I fear that it is almost inevitable that, in the interim, there will be a tendency to focus on the €3,000,000 aspect rather than on the longer-term royalties. After all, for some time, this will be the only tangible figure in existence for Exchequer receipts under this heading.

Given that there have been some extravagant figures in circulation about the possible value of this licence (the CWU's document on the future of Telecom Eireann mentioned 50, approximately, to 100 million), it would be preferable to avoid at this stage claims that the Government has not made the most of a lucrative franchise.

"It is clear in the tender documentation that the totality of revenue to the Exchequer is not the sole criterion for deciding on the award of the licence.

Perhaps the Commission's fears could be allayed by phraseology in the tender documentation, or in the

subsequent "responses to questions" memorandum implying that a balanced initial fee/ongoing royalty should be aimed at, in any event, in NPV terms, the revenue from either a large once-off up-front payment or a combination of a smaller up-front amount and ongoing royalties should work out roughly the same. However, we recognise that in the event of the market growing faster than anticipated, an apparently large up-front payment might not serve the Exchequer as well as an ongoing royalty over the longer term, but this could be dealt with by appropriate trigger mechanisms which would come into play once turnover reached a certain level.

"To sum up, we feel that the market should be allowed to make its open pitch as between an up-front and royalty mix."

So I think that reflects, at that stage of the process, consideration was being given to be an up-front payment plus royalties; isn't that correct?

A. Yes. In fact, I think that was the structure that went to Government.

Q. That was, in the first instance, in the first instance, that was the structure which went to Government. And here you are just setting out your Department's views on various aspects of that to DTEC, as well; isn't that right?

A. Yes.

Q. Now, I think Mr. Brennan, in fact, then writes from the other side, and that's at the it's at Book 41, Divider 21, so it's the reply to your letter, I think, and it reads: "Dear Jimmy, "Thank you for your letter of the 11 July 1994 regarding the question of State-take from the second mobile operator.

Firstly, I wish to put the matters in perspective.

There is no crock of gold available for this licence.

Our best estimate, taking all factors into account, including the very high numbers reported in respect of Greece and Italy, is that if an up-front payment was the only ingredient, it would amount to only about  $\text{€}18$  million; it could be rounded up to  $\text{€}20$  million. (You will no doubt have noted that Telecom Eireann independently used this amount in their model.)

Bearing in mind that there could be up to six competitions running simultaneously in Europe, these figures may err on the side of optimism.

"Secondly, we are confident that what we are proposing is eminently defensible and presentable.

"Thirdly, an up-front payment in the order of  $\text{€}20$  million would represent an increase of about 50% in the capital investment required for the project.

Feeding this into the project economics would be likely to lead to significantly higher tariffs and less real competition than would otherwise be the

case. One of the key drivers of our general telecommunications policy must be high availability of services at comparatively low prices, and we are loath to put in place an arrangement that would be clearly counter to this. The other possibility would be lower profitability with commensurately lower corporation tax.

"We have spoken informally to the market quite extensively in recent months, and the feedback is that no matter how we present the options, if we leave two floating cash lines, the up-front amount will dominate.

"Another important consideration is that your Department's analysis focuses on State-take from the second operator in isolation. Naturally, one could expect the NPV to come out in the same ballpark for a variety of options in this case, and theoretically it should be a matter of indifference to the State in that event. This could be true insofar as cash flow to the State is concerned, but taking the wider effects on the project into account, it is a doubtful premise. More importantly in this context, however, is that an approach weighted towards royalty will capture the entire turnover of the mobile phone licence business, including Eircell. Bearing in mind that Eircell is a highly profitable business, it is of considerable interest to establish a direct State-take

from it. An alternative approach would saddle Eircell with an equivalent up-front payment to that offered by the market would likely be highly contentious and at the end of the day would be no more than a paper transaction, since it would impact directly on the profitability of Telecom Eireann and come out of shareholder value by one means or another.

"Finally, if our analysis is correct (and we have considerable confidence that it is), then as and if the initial payment goes above  $\text{€}10$  million, the potential royalty would tend towards derisory levels; the market would recognise this and would be even more inclined to plump for the temptation of the high up-front payment perhaps even exclusively. In summary, this Department believes there is an overwhelming case in favour of the option that we have chosen which would very much like your Department to accept this on the basis of conviction. We see no merit in this aspect being put forward to the Government as an open issue."

Again here is the debate going on between the Department of Finance and DTEC on this question of licence fee, royalty, or whether there should be any fee at all, and the questions of tariffs all being intermingled and debated?

A. All part of the debate that went on for several months and was finally resolved by the European Commission's

intervention.

Q. I think it was finally resolved in the first instance, I think, by the Government decision which, first of all, the question of royalties went out of the equation, I think, for a number of reasons?

A. Yes.

Q. I think Eircell, or Telecom Eireann or whatever they were then called, had a concern about that and had some input we had seen in correspondence. There was there were other matters being debated about royalties, but for whatever reason, the questions of royalties seems to have disappeared, and what ultimately went to Government was that the fee element in the GSM2 process would be ranked in a certain position and that subject to a minimum, I think which was around the  $\text{€}1/25$  million, which was the estimated administrative cost of running the competition, that it would be left open to the market to determine. I think that was how it went to Government eventually; isn't that correct?

A. That's how it went to Government, and then the European Union

Q. And it was that element that the European Union intervened in in respect of that, I think, and we know then how it became capped at  $\text{€}1/215$  million and  $\text{€}1/210$  million to Telecom Eireann or Eircell?

A. Yes.

Q. Could I just ask you this: You were a member of the PTGSM, as they call it, the Project Team GSM2?

A. Yes. I think the memorandum that went to Government at the end said there were representatives, incorporated representatives from the Department of Finance; I was one I was the representative from the Department of Finance.

Q. You were the representative from the Department of Finance?

A. Yes.

Q. And apart from representing, or advocating or articulating the view of the Department of Finance, which of course you were doing in respect of the fee and other matters, another issue which arose in the course of the evolution of the process was the whole question of weightings; isn't that correct? The Department of Finance had a view about that as well?

A. The Department of Finance had a view why the fee was open. After the fee issue was resolved, the Department of Finance I do not recall the Department of Finance having any particular views.

Q. On the question of weightings, although the Department I'll just come to some correspondence and a note which was to file made by you, I think, or it may have been I think you were reported to Mr. David Doyle; is that correct?

A. Yes, I reported to David Doyle, yes.

Q. And we do see a number of notes to file made by Mr. Doyle, or Mr. Doyle passing it up the line, or perhaps to his own Minister, as we go through.

A. Yes.

Q. And these would be as a result of receiving reports from you; would that be fair to say?

A. Yes, or notes to file.

Q. Or notes to file?

A. Yes, that I did about the issue.

Q. Now, I think if you go to it's in Book 41, Page 51, it's, if you go over in that small booklet there that I have given you, it's a letter dated 31st March, 1995, and I think you see it. It's from you to Martin Brennan in DTEC.

A. Yes, I have it.

Q. I think you write to him: "Dear Martin, "I refer to the meeting on the 29 March of the Project Group for the award of the second mobile telephony licence and the suggestion that a weighting formula for the selection/evaluation criteria be developed and that this formula be released to bidders and consultants. I have discussed this development with my management. The consensus here is that it would not be prudent to go down this route, for the following reasons.

"Firstly, the final decision on this matter is for Ministers as per Section 111 of the Postal and

Telecommunications Services Act 1983. In fact, in its decision of the 2nd March 1995 to proceed with the competition, the Government made it clear that your Minister was to bring a recommendation to Government before the final decision on the grant of a licence.

There is a danger that explicit attachment to a weighting formula would lessen the Government's legitimate freedom of action in relation to this matter and turn it instead into a mere rubber-stamping exercise. If, as a result of the weighting formula, the Government decided differently from the recommendation arrived at using the formula, the entire process could be vulnerable to challenge from disappointed applicants.

"Secondly, the Government's decision also made it clear that the general terms and conditions attaching to the licence would be as set out in the appendix to the aide-memoire. The aide-memoire circulated for the Cabinet Committee meeting of the 16 February outlined the selection process including the evaluation criteria, but made no reference to a weighting formula. Had it done so, the Minister for Finance would have commented. The logical outcome to the fundamental change to the selection process would be to have the entire matter revert back to Ministers for policy direction. This would delay the overall process and may also serve to break the consensus on

other aspects of the matter.

"Finally, there is an analogy between this process and public procurement, which is subject to detailed EU rules. In public procurement, the rules require the ranking of selection criteria, but there is no obligation to have a weighting matrix. This Department's experience on the public procurement side is that where weighting formulas were being applied, as in IT procurement, these have sometimes led to perverse results. It has to be remembered that, in an Irish context, the second GSM competition is a once-off exercise. There is no secure way of testing the weighting formula the first "run" will be for real." Of course that final sentence is correct. The first run would be for real. This was a once-off; there was only going to be one winner.

A. Yes.

Q. Could I just ask you there about the experience of your Department, as you have stated in that final paragraph there, on the public procurement side, and the dislike of your Department of using a weighting matrix in respect of public procurement, in that it could produce a perverse result. Can you assist the Tribunal about that at all?

A. I think you have to remember, as you used the word earlier, I was advocating a particular situation.

Q. Yes, I understand that.

A. I was probably being, you know, selective in terms of the experience of the Department. I am not sure it's fair to say the Department is opposed to using weighting formulas at all. Obviously I made some inquiries with the public procurement side at the time. They are not documented, and I don't recall the details of them, but the net outcome of the consultation that I had with the public procurement side is stated there. But I don't think it would be fair to characterise the Department as being opposed to weighting formulas. There was a particular context there, and later on, in a document of the in a note I made to file on the 10th April about the meeting on the 10th April, I said "Of course, if the weighting formula was to give an overwhelming priority to the price bid for the licence, then the Department of Finance would not object."

Q. Yes, I understand that. And just further up, you see there where you say that when the matter went to Government, it went to Government without a weighting formula. And if there had been a suggestion of a weighting formula, the Minister for Finance would have commented?

A. Yes.

Q. Can I take it that what you are talking about there is that on behalf of the Department of Finance, the Minister for Finance may well have commented to the

effect that he wanted the weighting formula to be such that it did not adversely affect the take in respect of the licence fee? Would that be

A. I don't know what would have happened. Obviously the Department of Finance would have had to reflect, you know, on the situation, if a weighting formula had been referred to in the memo that went to Government; but plainly the aide-memoire that went to Government mentioned that the selection criteria would be in descending order, which connoted, I have to admit, that connoted a numerical balanced differentiation between each selection criterion. So implicitly, there was

Q. They were in descending order of importance. I think that was clear, wasn't it, it was clear

A. That to me connoted a certain type of weighting formula; I think we were on pretty weak grounds, actually, in questioning the weighting formula. I think Mr. Brennan's reply of the 3rd May, I think, dealt very well with the points I raised, I felt.

Q. He dealt very well with those points, but the significant point that you are making in this particular correspondence, I might suggest to you is here, that whatever the views being advocated by your Department through civil servants and DTEC, that policy was determined by the Government decision of the 2nd March; isn't that correct?

A. Yes, yes, that's correct, and the Government decision of the 2nd March included paragraph 19, which was in descending order of priority, which connoted

Q. And what the Government decision of the 2nd March also decided was that this was a matter for Government, isn't that correct, that the Minister would come to Government with a recommendation? Isn't that correct?

A. If I quoted I don't have a copy of the decision here.

Q. I think you can take it that that is so.

A. And I assume, looking at the memorandum, or the aide-memoire for Government on the 26th October, you know

Q. This is 19 the one of 1995; yes?

A. That speaks of he asked the Government to note his intention to award a licence. It was if the Government disagreed with the Minister for Transport, Energy and Communications at that stage, it was open to the Government to disagree with

Q. Yes, if they had any information on which to base a disagreement. If they were privy to any information?

A. Well, they had the aide-memoire.

Q. Sorry, we'll just I'll come to that in a moment now, Mr. McMeel, but just let's be careful about this.

You have just said that it was open are you advocating a position here now, or are you stating a fact? That's what I want to be clear about.

A. I am not advocating it.

Q. The Government ministers who attended that meeting, without with the exception of the Taoiseach, the Tanaiste and the Minister for Social Welfare, I think Mr. De Rossa at the time, who had been informed of something the previous day, the Government ministers who attended that Government meeting saw an aide-memoire which was brought to Government on that morning. The process did not go through the normal decision-making process of the circulation of Cabinet papers and the preparation and circulation of a memorandum for Government. Did you know that?

A. Can I say, Mr. Coughlan, that I think everything that went to Government in this process was by way of aide-memoire. At every stage of the process, even in the previous administration, when Mr. Cowen was Minister, I think it was an aide-memoire was used.

Q. Sometimes there were memoranda went to Government, but in many instances, it went by way of aide-memoire; that is correct, that is correct. Perhaps an intriguing matter in itself, that matters went by way of aide-memoire to Government, in this process like this, the normal decision-making process of Government is by way of circulation of memoranda; isn't that correct?

A. That is correct, though sometimes I know from the Department of Finance experience, where things are

secret and so forth, budgetary areas

Q. Perfectly understandable, particularly in budgetary matters, one can perfectly understand that for secrecy purposes, they would go by way of aide-memoire, or if an emergency situation arises, something happens in an afternoon and matters have to go to Government the next day, one would perfectly understand that, yes, and particularly in relation to Department of Finance matters or budgetary matters, one can understand that, yes.

Now, I think the next document I want you to look at is Book 41, Divider 56. It's the next document in that little book I gave you. It's your note to file; do you see that? And it refers to a meeting of Project Group on the 19th April, 1995, and you have noted "The selected consultants, Andersen Management International, Denmark, who were present at the meeting, advised that in their experience, not all countries had revealed criteria weightings to applicants for new mobile telephony franchises. It would be important that any weighting formula drawn up can be defended before the European Commission. The extremes are described as a beauty contest versus an auction on one side all of the emphasis on the quality of the service delivered versus emphasis on a fee. Applicants have mentioned the weighting formulae in their questions and have to be responded to by the

28th April and also directly with MTEC."

Do you see that reference there to MTEC? That appears to be a reference to the Minister himself, rather than to the Department, doesn't it?

A. Yes, yes, that's what it says, yes.

Q. Do you have any recollection of the type of discussion that was going on at the meeting of the 19th April which conveyed to you that somebody had raised the question of weightings with the Minister?

A. No, I have no recollection at this remove.

Q. You don't have recollection at this remove, but you can confirm that you draw a distinction between DTEC and MTEC when you make a note to file by this?

A. Yes, I can confirm that I would draw a distinction, yes, yes, I can confirm.

Q. Then you say "At this stage, the response will go no further than that contained in the RFP document at paragraph 19 that is to say, the selection criteria but with no weightings. No commitment will be given that weighting will be released. DTEC are anxious to state that the question of weightings will be discussed with the consultants with a view to determining a way forward.

"D/Finance representatives asked whether the entire question of weighting could be deferred until after the application has been received. DTEC could not agree with this approach.

"The consultants appear to be sensitive to the interdepartmental politics of the issue. They say that they can come up with a formula which would generate a particular fee. (There may be room for an acceptable solution in this). However, there is an issue of trust. It would be most unsatisfactory if a particular formula was drawn up to achieve a particular fee level but in the end the market delivered a lower fee. However, thus far DTEC have consistently moved back from their initial position, which was to publish a weighting formula with all the emphasis on the tariffing criterion. I stated on behalf of the Department of Finance that the issue ultimately may have to be resolved at a political level. DTEC are most anxious that it should not go to that level at this stage."

Then there is the renewal of the licence fee, and other matters.

If we just go back to that, I really just wanted to ask you there, was that just a bit of normal jousting that was going on there, the suggestion being made by you that this might have to be resolved at political level and DTEC not being anxious that it should go to that level at this stage

A. I don't think it was jousting, because I do think David Doyle then sent a note to Minister Quinn on the issue, and I think he used the word, he had instructed

his representatives not to back off, you know.

Q. What would that indicate to you? That there was

A. That the Department of Finance was serious about this, about the fee issue.

Q. Was taking a strong position on this?

A. We were trying to protect the fee position.

Q. I think we can go to that, then. It's the next document, isn't it? And it's Book 41, Divider 57, and it's the Mr. Doyle to the Minister for Finance, isn't that correct, his note?

A. That's correct, yes.

Q. And he deals with the 1995 budgetary arithmetic, "including a minimum licence fee of 5 million, but with an expectation of a fee of 30 million to the Exchequer for the award of the licence. There are indications already from the selection process that because of the policy priorities of the Department of Transport, Energy and Communications, the Exchequer's yield from this licence may be in jeopardy.

"DTEC and their recently appointed management consultants, Andersen Management International of Denmark, are anxious to apply weightings to the criteria involved in the selection process see criteria listed at Tab A. Weightings would imply stating for instance that the tariffing regime will amount to 50% of the marks and an upfront payment for 5%. This department is opposed to the adoption of a

weighting formula, our arguments have been based on the Government decision to proceed with the competition which stated that the Minister for Transport, Energy and Communications would put a recommendation to the Government in time for a final decision on the granting of the licence to be made by the 31 October 1995. We contend that there is a danger that the adoption of a weighting formula will turn the selection process into a foregone conclusion and thereby effectively remove the final decision from Government. In addition, there is a further real danger that if a too low weighting is attached to the up-front fee element of the Department of Transport, Energy and Communications seem inclined to do, the scale of the fee will be considerably reduced. There is no obligation under EU public procurement rules to adopt or disclose any weighting formula.

"I understand that at the steering group overseeing the selection procedures, DTEC's priority, notwithstanding the Government's decision, is the selection criterion dealing with the tariffing approach proposed by the applicants. Ultimately, if the DTEC view were to prevail, it would mean a substantial reduction, 15 million has been mentioned, in the amount bid for the franchise with a corresponding negative impact on the budgetary arithmetic. For that reason, I have told this

Department's representatives on the group to insist that no weighting formula be applied or disclosed. They have backed off on this, for the present, at any rate."

And I think it's the Minister notes, is that correct, at the top there

A. Yes.

Q. Mr. Doyle's concerns and asked him to keep him informed of the documents; is that correct?

A. That's correct.

Q. Just in that regard, if you can remember the debate that was going on at this time, this note of Mr. Doyle's here seems to indicate that the main concern of DTEC was the question of tariffs, was it?

A. I think there is an element of dramatic licence, possibly, in there, but certainly they were concerned with tariffs, and properly concerned. The Department of Finance was also concerned with tariffs, but tariffs were not Number 1 in the descending order of priority.

Q. No, they weren't, no. Mr. Doyle is even making that point to the Minister for Finance, isn't he, that notwithstanding the Government priority, DTEC was still concentrating on the question of tariffs?

A. Yes, but perhaps you'd need to talk to Mr. Doyle about this. He wrote it.

Q. Can we take it that in informing the Minister, nobody

needs to be making a case to the Minister for Finance;  
what they are hoping to do was to inform the Minister  
for Finance of the true position. Isn't that correct?

A. And to get the Minister for Finance's view or support  
on it.

Q. Now, I think the next document I'd like you to look at  
is at Book 41, Divider 60. It's the next document in  
that little book I gave you, and it's your note, or  
it's a note of yours to file, is it?

A. Yes.

Q. Do you see that up in the top right-hand corner,  
"JMCM, 1, 2, 3"; could you just help us? We see that  
on a number of occasions in notes you made to file.

Is that some sort of a computer-generated

A. I expect it's the secretary to the Section at the  
time. I think she probably did the typing, and I  
expect that's her way of tracking documents; nothing  
more to it than that, Mr. Coughlan.

Q. It's just because you want to be able to identify a  
number of other documents, to confirm that they are  
your documents; where you see "J McM", and a number  
after it, they tend to be your documents. Would that  
be correct?

A. Yes, yes.

Q. And you have noted that there was a meeting of the  
Project Group on the 27th April, 1995, and that the  
key issues for the Department of Finance are outlined

below.

"Department of Finance representatives emphasised that the Exchequer had budgetary expectations of around 30 million for the second mobile telephony licence fee in 1995. That  $\text{€}30$  million was half-way between the equivalent fee (achieved in Italy  $\text{€}20$  million, for Spain  $\text{€}40\text{m}$ ) translated allowing for Irish conditions, i.e. population, GNP. Because of the level of fees achieved in other countries, there would be public criticism in Ireland if only a token fee was achieved.

"It appeared to the Department of Finance that DTEC's policy was only focused on the reduction of tariffs, which means that the fee would be commensurately small. DTEC had started out with a position of a  $\text{€}5$  million fee only. The successful bidder would have considerable freedom to construct infrastructure which would place them at the advantage for the post liberalisation telecoms environment in Ireland. This increases the attractiveness of the franchise and ought to be reflected in the level of fee.

"In response to DTEC's assertion that the whole process could be turned into an auction, the Department of Finance representatives emphasised that they were not totally driven by the fee question. For example, if a bidder offered a large fee but had wholly implausible business or technical plan, it would not win the franchise. We are sensitive to the

interest of the European Commission in the process and the need to avoid acquisitions of holding an auction.

"The Department of Finance urged DTEC to respond to the letter that had been issued to them dealing with this issue. The consultants are also to examine possible methodologies which would arrive at a fee level corresponding to the 1995 budgetary arithmetic.

"Both DTEC and their consultants emphasised that they saw no way of evaluating the bids without some system of weightings. Every other country which had licenced a second mobile operator used a weighting system.

(The consultants seem sensitive to interdepartmental policies associated with this aspect of the matter.

Their evaluation methodologies include "Quantitative" and separately "Qualitative" evaluation as well as a supplementary evaluation.)"

There is a note on liberalisation of infrastructure.

Can I take it that this is the first time that this was the meeting around the 27th April 1995 that you would have become aware that the consultants were talking about a quantitative evaluation, a qualitative evaluation, and supplementary evaluation; there would have been some discussion?

A. It would have been around that time, yes, around at that time, because you know, they had only been recruited around then. And these two approaches, which were always underneath paragraph 19, emerged

then.

Q. Yeah. Now, I think Mr. Brennan responded to the letter which you had sent to him on the 31st March, 1995, by letter dated 3rd May, 1995, and he said "I refer to your letter of the 31 March 1995 and subsequent discussion within the GSM Project Group of the question of weighting the criteria for selection of the successful GSM applicant."

I think we note, at one of the minutes of the meetings, that you had asked him to reply to your letter as well?

A. Yes.

Q. "On the basis of your letter and subsequent discussion, it would appear that your concerns were as follows:

" that the weighting of selection criteria may lead to a situation where the Government may be strait-jacketed into a rubber-stamping role, thereby diminishing its legitimate right to select the GSM licensee.

" that the budgetary requirements of the Minister for Finance in relation to the licence fee might not be fully reflected in a weighting mechanism.

"The primacy of Government in making the final decision on the second GSM operator is fully recognised. However, as mentioned in your letter of the 31 March, the Minister is obliged, on foot of the

Government decision of the 2 March 1995, to make a recommendation regarding the award of the licence.

The proposed weighting of selection criteria is simply a tool to ensure that this recommendation is made on a fair, objective and transparent basis. The only alternative is to make a recommendation based on intuitive analysis of the relative merits of the applications based on marks under each heading of the selection criteria. Such a process would, however, in my view, introduce an element of subjectivity which does not meet the emerging EU requirements of objectivity and transparency and non-discrimination.

It amounts, in any event, to an implicit weighting mechanism but also opens up the possibility of factors which are not included in the selection criteria at all being brought to bear on the final selection.

"The ultimate recommendation to Government will be supported by details of the weighting formula and the arguments in favour of the chosen formula. It will also include a short assessment of the conclusions reached on each of the applications for the GSM licence. I am satisfied that this approach fully accords with the normal practice in submitting recommendations to Government and does not exceptionally limit the Government's discretion in these circumstances, I regret that I cannot accept your contention that the use of a weighting mechanism

is a fundamental change to the selection process approved by Government. It is, rather, a logical extension of it, and this is clearly borne out by the approach to evaluation taken by the consultants who tendered for the evaluation job.

"The weighting approach is also, as you are aware, strongly favoured by the chosen consultants, Andersen Management International, in order to carry out the first stage of the evaluation, viz, the quantitative method. However, given that Andersen propose to carry out a qualitative analysis and supplementary analysis in particularly difficult areas, I am confident that this allows flexibility to ensure that a perverse result does not emerge. This matter will be discussed further at the GSM Project Group meeting on the 28 May 1995 on the basis of a presentation by Andersen Management International.

"Your second concern in relation to a weighting mechanism relates to the importance of the licence fee. You are reminded that the order of priority of the selection criteria has been settled by Government, and the fee is fourth in the order of priority. This was agreed by your Department in advance of the Government decision. It was also made clear throughout the process that the selection of the second GSM operator would not be simply an auction, but that the introduction of effective competition to

the sector and provision of a good deal for the consumer would be high priorities. This has been made clear to the market in the Minister's public statements in relation to the competition. It would not, in my view, be acceptable to move the goal posts now, when the game is on, without clarifying the position to potential applicants. It should also be noted that the European Commission has begun a process of inquiry into large GSM licence fees paid in other Member States and that we have already received informal approaches regarding the extraction of a large fee here. I am, however, satisfied that we can reach a reasonable compromise within the established and public parameters of the selection process.

Paragraph 19 of the competition document states the following."

Then he sets out what paragraph 19 states.

He then continues: "I am sure that you will agree that an applicant who fails to score well on the requirement for "financial and technical capability", or the first two criteria specified in the bullet points, should not get the licence irrespective of the fee proposed. There is a clear trade-off between the applicant's approach to tariffing and the proposed licence fee. I propose therefore that we agree that there is a reasonable balance between the weighting of the approach to tariffs and the licence fee.

"Your detailed views on the foregoing would be appreciated."

I think that set out Mr. Brennan's views of the situation?

A. Yes.

Q. And it was a view which appeared to prevail; would that be

A. I think around that time, Mr. van Miert's letter came in, which really killed off the discussion.

Q. Well, that was probably a little bit

A. I think it's the 27th April.

Q. Yeah, the 27th April.

A. So really the discussion became pointless after that, because the immediate priority was to deal with the Commission's intervention.

Q. I think you did attend a meeting with Mr. Ungerer, didn't you?

A. I attended a meeting in DG Competition, yes, I attended that meeting.

Q. Now, just one or two things, but I may come back and just ask you about that particular letter. But I think the next document is Book 41, Divider 65, which is your note made to file. This was after the meeting of the 18th May, 1995, I think where there was a fairly lengthy presentation, is that correct, by Andersen on that day?

A. I don't recall the duration of the presentation. All

I recall is what's in this record that I made at the time.

Q. You remember they had an evaluation model of some sort, in any event, did they, which they explained or discussed?

A. Well, the term "evaluation model" crops up in the records from time to time

Q. But do you remember a document at all, or

A. I haven't come across it in our documents in the Department of Finance files, and though I did see somewhere that it was kept

Q. Kept over in 44 Kildare Street?

A. Yes, it was.

Q. But do you remember, was there a presentation? Were there slides?

A. I don't remember that level of detail at this time. It's eight years ago now.

Q. Yes, I understand that. And I think then that your note after the meeting of the 18th May, you attended the meeting, as did Mr. Riordan, I think; is that correct?

A. Yes, that's correct, yes.

Q. And you note that at 1: "Andersens (consultants) circulated their evaluation methodology document.

(Consultants emphasised the secrecy of this document, which also deals with the weightings issue. Each member of the Project Group was given his/her own

named copy which had to be returned at the end of the meeting. Department of Finance and DTEC allowed to retain one copy each on the understanding it would be kept under lock and key).

"The evaluation document deals with quantitative and qualitative evaluations. The latter acts as a check on the former and as such is at a higher level. The quantitative evaluation forms an annex to the evaluation report. The consultants' experience has been that both the quantitative and qualitative evaluations tend to produce the same leading candidates. The qualitative process narrows it down.

"Weightings for the quantitative evaluation criteria were discussed, but it was agreed that for reasons of confidentiality, no formal hard-copy record would be kept."

That's your note to file about

A. That discussion.

Q. the methodology, or the

A. Yes.

Q. Apart from that, can you be of any further assistance to the Tribunal as to your understanding of what was involved here?

A. The only thing I'd like to say is that the regardless of what this says, really, my view always was that the paragraph 19 is what had to be weighted. That's where the weightings really had to be applied,

because they were in descending order of priority, so weightings operated at that level, at the level of paragraph 19.

Q. You say that was always your view?

A. Yes.

Q. Is that something that you remember being your view eight years ago?

A. Yes, yes.

Q. I see.

A. Because of the words "descending order of priority".

We were discussing

Q. Is that the one issue that you have a clear recollection of eight years ago, although you don't have a clear recollection of any other event, as you have told us, going back eight years?

A. Oh, I have recollection of some events going back eight years, but you recall the paragraph 19, because of the descending order of priority, paragraph 19 had to be that those words, "descending order of priority", had to be respected, so the weightings applied at that level.

Q. You never made any note to file, did you, to that effect?

A. No, I did not make any note to file to that effect.

Q. You never informed any of your superiors, Mr. Furlong, Mr. Doyle or anyone up along the line, did you?

A. Well, when we were dealing with this issue about

weightings, it came up before we had quantitative or qualitative evaluation. So, you know, I assume that they understood also that weightings applied at the level of paragraph 19.

Q. Well, did you make any note to file or inform him of this?

A. I felt it wasn't necessary; that that it went without saying.

Q. Might I suggest to you that and it may be that because of current discussion which has taken place in this Tribunal, that you may be confusing what you now believe to be a situation with a memory you have of something of eight years ago?

A. No, I don't think so, because if you look at the records, we were discussing, on the 31st March, I think the letter went to Mr. Brennan, that was before we discussed earlier; that was before quantitative and qualitative evaluation had come into the discussion, because they were introduced by Mr. Andersen's team, so quite clearly, the letter of the 31st March was about evaluation of or weightings for paragraph 19.

Q. And where were they weighted?

A. Sorry?

Q. Were they weighted?

A. Paragraph 19?

Q. Yes.

A. Paragraph 19, yes.

Q. When?

A. It's there in the final report. The weightings are specified

Q. In the final report?

A. Yes.

Q. That's your recollection, they were weighted in the final report?

A. It was always my understanding that this would apply at the level of paragraph 19.

Q. In the final report?

A. No, always.

Q. Sorry, I am asking you where are they weighted and when were they weighted, is what I am asking you.

A. I always operated on the understanding that when we were discussing weightings, when we were deciding on weightings, we were deciding on the weightings of paragraph 19 of the selection criteria that had gone to Government.

Q. Sorry, I understand that, Mr. McMeel. When first of all, when were they weighted and where are they weighted?

A. I don't on our records, I don't know what on our Department of Finance records, I don't know what is shown there; but that was always my understanding, and it's based on the letters that we were on the 31st March, when we were writing to Martin Brennan, clearly it was about weighting of paragraph 19.

Q. Mr. McMeel, I understand that point. I am asking you, when were they weighted? And where are they weighted?

A. I don't know from our records. Perhaps there is something on the Department of Transport, Energy and Communications.

Q. You don't know; is that right?

A. From our records.

Q. You don't know? Do you know from something other than your records?

A. Well, I haven't

Q. When and where

A. I haven't looked at the other Department's records.

Q. I've asked you a question. Just listen to the question now, Mr. McMeel. When were they weighted? And where are they weighted? Can you tell me that?

A. I don't recall the precise details.

Q. We'll go back over it again.

When were they weighted? And where are they weighted?

A. I don't know when and where.

Q. Now, but you have recorded in a note to file here that weightings for the quantitative evaluation criteria were discussed, and it was agreed that for reasons of confidentiality, no formal hard-copy record would be kept. Is that correct?

A. That's what I have recorded to the file. I should note, in his reply of the 3rd May, Mr. Brennan does say "the proposed weighting of selection criteria is

simply a tool to ensure that this recommendation is made on a fair, objective and transparent basis."

Q. What's that about?

A. That's Mr. Brennan, a sentence in Mr. Brennan's reply of the 3rd May to me. So he was talking about weighting of selection criteria also.

Q. I asked you here a different question altogether.

Could you concentrate on the question, Mr. McMeel. I asked you you noted that "The weightings for the quantitative evaluation criteria were discussed, but it was agreed that for reasons of confidentiality, no formal hard-copy record would be kept."

Do you remember that?

A. Sorry, I beg your pardon, Mr. Coughlan, I didn't realise you asked me a question. That's what the record says.

Q. I think you also note, don't you, that "The consultants' experience has been that both the quantitative and qualitative evaluation tend to produce the same leading candidates". Isn't that right?

A. That's what I said in the record.

Q. And the "Qualitative process narrows it down." Now you have told us that you can't be of any further assistance to us, am I correct, in trying to understand that, other than what is contained in your note? Or can you?

A. No, I can't.

Q. Right. Now, I think you did make reference to this in your do you remember attending a meeting of the PTGSM on the 9th June of 1995, where there was further discussion and adoption of the evaluation model which was submitted by Andersen? You are recorded as being at the meeting, but you may or may not remember.

A. I don't remember. In fact I think most of the discussion at that meeting was probably about resolving the issue with the European Commission. You can understand that that was something

Q. You don't have a recollection, or a clear recollection?

A. No. My focus would have been on the issue with the Commission.

Q. On the EU thing; very good.

I think you have informed us that on the 16th September, 1995, you did send a memorandum up along the line in your own Department, where you I am only drawing it to your attention because something specifically turns on it. It's at Book 42, Divider 107.

You sent a memorandum to Mr. Curran, Mr. Furlong and Mr. Doyle in which you attached the weightings, but this was after the evaluation had commenced and all communications had ceased and the process was sealed, in any event, at that stage. Nothing specifically

turns on it. I just I am bringing it to your attention. Did you mention it yourself, in your own memorandum

A. Yes, because I was asked who knew the weightings.

Q. And I think at that stage, that is on the 16th, which would have been after the presentations; isn't that correct? I think the presentations ceased on the 14th September?

A. Yes.

Q. You were also informing your superiors that at that stage, that Persona and Esat Digifone were doing well, as trends were emerging, these were emerging trends, and that Irish Mobicall appeared to be in third place as trends were emerging, and that this was information you would have obtained perhaps from the consultants?

A. Yes. With the benefit of hindsight and looking at the it was from the eldest member of the consultancy team, who I think was Marius Jacobsen.

Q. Right. Now, I think, in fairness, you were not at the Project Team meeting on the 4th September, 1995, when they first received the quantitative evaluation; you weren't?

A. No, I wasn't there, no.

Q. I think you were present at the meeting on the 14th September, which was after you were present for the presentations or were you? For some of them, anyway?

A. I think I may have missed one presentation. I don't know, you listened to the transcripts, or I think I may have missed one.

Q. You did attend the Project Team meeting on the 14th, which was after the final presentation, I think; was that correct?

A. Yes.

Q. And do you have any particular recollection of the meeting at that stage, or did you have any particular involvement yourself in it?

A. No. The only thing I can remember is the information that I learned in relation to who was doing well.

Q. The emerging trend?

A. The emerging trend.

Q. And that's what you conveyed to your line superiors, effectively?

A. Yes.

Q. And can I take it that I just want to clarify certain matters that I know you have told us in general terms, and I am only asking you just to be specific here that you had no communication with MTEC, with Mr. Lowry?

A. None.

Q. And can I take it that you did not convey any information to Mr. Lowry about what happened at the presentations?

A. Absolutely not. I don't think I have ever met Mr.

Lowry.

Q. Right. And that the only information you conveyed to anybody after the presentations was this particular communication to Mr. Doyle, Mr. Furlong and Mr. Curran?

A. Yes, but that didn't arise from the presentations.

Q. Yes, I understand; but the only communication you had with anyone was with those three civil servants?

A. Yes, on foot of their requests.

Q. Yes. But that you didn't convey any information to anyone about what happened at the presentations?

A. No, none.

Q. And certainly not to Mr. Lowry?

A. And certainly not to Mr. Lowry.

Q. It's something we may come back to.

Do you see that handwriting on your note?

A. Yes.

Q. Done in fountain pen. Whose writing is that?

A. Which

Q. Do you see, you know, your note of do you see under your name, where you sign the 16/9/95; then there is script?

A. That's Mr. Bob Curran's.

Q. Is it?

A. That's Mr. Bob Curran's note.

Q. We see it in some other document as well

A. That's one of his traits.

Q. Now, I think you did not attend any of the sub-groups; isn't that correct?

A. No, I was not a participant at any of the sub-groups.

Q. I think Mr. Billy Riordan did attend some sub-groups in Copenhagen; is that correct?

A. My understanding is that he attended, yes, to but not as such, as a representative of the Minister for Finance. He was, I think, because of the absence of the specialist accountant.

Q. Yes, you said that. And I think, just looking at Mr. Riordan's memorandum of proposed evidence, I think he echoes that sort of view, that he was there because Mr. Buggy wasn't available, or

A. Yes.

Q. Is that your recollection of events?

A. That's my recollection. If Mr. Buggy had been around, Mr. Riordan would not have been there.

Q. Would not have gone?

A. No.

Q. I am just trying to understand how you and Mr. Riordan saw your position on this PTGSM.

A. Well, Mr. Riordan will have to answer for himself. In terms of my position, clearly my chief interest was the fee issue, because the Minister for Finance had to consent to the fee. Obviously I was not involved in any of the detail, but I was involved I did attend some, but not all of the

Q. You weren't at the next meeting of the PTGSM, which was the 9th October, either. It's just to try and understand, did you see yourself as just being a representative of the Department of Finance, or did you see yourself as a participant in the decision making process, or

A. What does the memorandum that went to Government in the end I think dealt with you know, described it very well, I think, as to how this thing was structured.

Q. Right.

A. I am just trying to find it.

It said "The evaluation was conducted by a Project Team led by the Department of Transport, Energy and Communications and incorporating representatives of the Department of Finance and independent advisers Andersen Management International," so we were representing the Department of Finance.

Q. Yes

A. In that part of the Project Team.

Q. It's interesting, the language used there, "led by" and "incorporating", and then by "independent advisers", which would, I suppose, lead one to the view that the independent advisers were not part of the team but were consultants to the team?

A. I think they were both.

Q. They were both; and what were the Department of Finance people?

A. We were representing the Minister for Finance, but we were, I suppose I was a representative at the overall plenary group level, but I was not involved in any of the detailed sub-groups; I did not have visibility of everything that went on.

Q. Well, can I take it that did you see yourself or did you not see yourself as being somebody who should be involved in the taking of the decision here? Or were you leaving that more

A. I consider that I was part of the decision, because I think when I said in my note to the Minister

Q. I see that

A. I said that I had been involved and that I endorsed the result. So I consider that I was part of the team.

Q. Well, were you relying on what you were being told by other people at all times?

A. Certainly the documentation was emerging, for example, the report. I don't recall any specific people coming back from sub-groups and reporting as such.

Q. Did Mr. Riordan give his papers to you, can you remember?

A. No

Q. I only say that because Mr. Riordan seems to be of the view that you know the way Mr. Riordan and Mr. Buggy saw themselves, as being accountants seconded to civil servant departments, or civil service

departments, and not necessarily as civil servants

themselves, if you understand the distinction.

A. Yes.

Q. And I just get the impression I could be wrong just looking at his memorandum of proposed evidence,

that he was he felt that maybe he didn't that

you were the civil servant on the Project Team and

that he was an accountant seconded?

A. Well, he is correct there. I was a civil servant.

Q. That would be the way, and that he would have given

his working papers to you, or his

A. No

Q. You don't have a recollection of that?

A. I don't have a recollection of that. Some of

the most of the papers are on the files that he

kept himself, you know, and I don't recall Mr. Riordan

having any great concerns other than in relation to

this issue of ownership of the report, which was

raised

Q. It's something you have dealt with?

A. Yes, but I don't recall him having any particular

concerns. And knowing his character, if he had

concerns, he would have raised them.

Q. Now, you didn't or you were not at the meeting of

the 9th October of 1995?

A. No, I wasn't.

Q. And can we take it that do you know if you received

the first draft evaluation report?

A. I don't recall. I really don't recall at this remove.

Q. Right. Now, you did attend the second meeting; that was the one on the 23rd, I think?

A. Yes, I am recorded as having been there, yes.

Q. Do you have any recollection of the meeting, really?

A. No. I don't it's certainly not the most difficult my job involved me attending meetings in that Department for six years, and I certainly don't recall it as being one of the more difficult meetings from my perspective. That's perhaps because from my perspective, it wasn't really any difficulties.

Q. Do you remember whether you attended a long meeting, or would you have stayed for the whole meeting, or

A. I don't really recall at this remove. As I said, I have attended so many meetings in that Department, some of them are much more vivid because I was much closer to the centre of things and may have been defending a particular position, but that was not one that I recall particularly.

Q. And do you recall the meeting not being interrupted, but do you remember the three Principal Officers, Mr. Brennan, Mr. McMahon, and Mr. McQuaid, leaving the meeting or being absent from the meeting for any period?

A. I don't recall. I have attended so many meetings over the years, my six years dealing with that Department,

but this is not one that

Q. And in fact, I think you informed us on Friday, when you were asked about the precise date and the time at which a final decision was made in this particular Project Group, and you said that this was a matter which should be referred to the Department?

A. Yes.

Q. And that you don't know when the decision was made or by whom the decision was made; is that correct? You can't remember?

A. The decision had been emerging from the work of the sub-groups, really. So when you combine the output of the sub-groups, the marks that they had got for each selection criterion, then effectively a decision emerged from that.

Q. But do you remember you don't remember it; is that correct? Would that be fair to say?

A. I don't remember one particular instance where somebody said you know, "Now we have a decision".

Q. Or an agreement?

A. I don't particularly remember that moment in time when people but I didn't have any problem with the decision that emerged from the sub-groups or the work that was done.

Q. Can I take it you had very little knowledge about what had transpired?

A. At the sub-groups?

Q. Yes. None would be

A. None, because I was not there, obviously.

Q. And you were just accepting what you were being told and accepting the report as it was being presented to you?

A. Yes, yes.

Q. You were unquestioning of it, would be a fair way of putting it, would it?

A. I accepted it in good faith, as I tend to avoid second-guessing if at all possible.

Q. And you didn't see yourself as being somebody who was part of the jury, effectively, charged with making this decision so, did you?

A. I was part of the group, because I have said to my Minister that I was a party to

Q. I understand that, but

A. But I wasn't party to sub-groups.

Q. But you weren't party to any discussion about what had transpired?

A. I don't recall discussion about what had happened at the sub-groups, to be frank, I don't recall the discussion.

Q. And do you remember any debate or discussion going on about weightings and how they had been arrived at, what had transpired in Copenhagen, or anything like that? No?

A. At this remove, I don't remember. If I had had a

particular difficulty with any of this, I'd remember,

but I don't

Q. Do you remember any discussion about tables in the report, and which one reflected a result and which one didn't?

A. I recall something about that, because I was extremely keen that the matter be presented in terms of paragraph 19, which were I think the final two tables.

And in fact I think there is others, because I have come across a note on this in Billy Riordan's files which refers to the primacy of Table 17 and 18, and certainly

Q. That's on Mr. Riordan's file?

A. Yes. It's headed "Comments on AMI Draft Evaluation Report". It goes on to say "The GSM Project Group had a detailed discussion of draft evaluation report at its meeting on 23 October. In general terms the following changes were considered necessary.

" a revised approach to the presentation of the final selection of the winner, and in particular assertion of the primary roles of Table 17 and 18."

And I recall that was something that I was concerned about, that we respect paragraph 19, which had been part of an aide-memoire that had gone to Government, and that that really was the only legitimate presentation of the result.

Q. Would it be fair to say that around this time, that you were perhaps more heavily involved in the strategic partner or the strategic alliance for Telecom Eireann?

A. Yes, it would be fair to say. That took a lot more of my time. As I think I explained in my statement, that there were bigger issues

Q. I am not being critical, but would it be also fair to say that perhaps you weren't paying or you couldn't pay as much attention to this particular process as you could to the strategic alliance?

A. I felt, in terms of allocating my time, I paid the attention that you know, that I could, that it warranted.

Q. Well, you didn't attend the meeting of the 9th October?

A. No.

Q. Which was the first occasion on which the matter arose. Do you know how you attended on the 23rd?

A. Can you repeat? How I attended?

Q. Yeah.

A. I don't understand "how".

Q. Sorry, perhaps how did you come to attend the meeting of the 23rd?

A. Obviously I decided to prioritise that meeting over whatever else I had on.

Q. Was that because if you go to Divider 43 sorry,

I beg your pardon, Book 43, Divider 135, it's the note do you see that, "Minister from J McMeel"? Do you know that note?

A. Yes.

Q. And this is a note which you wrote on the 24th October to the Minister?

A. Yes.

Q. And you say that "David Doyle mentioned to you last week that the result of this was imminent. MTEC had intended to bring the matter to Government today but will not now do so. The reason is that the Project Team (of which I am a member) has not finalised its work with respect to the consultants's report."

Do you remember sending that to the Minister?

A. Absolutely, yes, I sent that.

Q. And do you remember being involved that the Minister, Mr. Lowry, intended to bring that matter to Government on the 24th?

A. I have only

Q. Somebody must have told you that.

A. I have only that record. We'll go back to the record that I sent to the Minister at the end, where I think I referred to something I got from Mr. Brennan. I said "It is understood that Ministers are meeting at 4pm today". That was the 25th October.

Q. That was the next day?

A. I put an asterisk, "Per M. Brennan, DTEC".

Q. I understand that, but you can see that you sent the other note or memorandum to the Minister the previous day, the 24th?

A. Yes.

Q. There was to be a Cabinet meeting on the 24th. Let me just explain to you that we know from Mr. O'Callaghan, who was a member of the he was an official in DTEC, on the regulatory side that he had been informed by Mr. Towey, perhaps around the 17th of the month, that the Minister intended going to Cabinet on this Tuesday, the 24th.

A. Yes.

Q. This was before the scheduled meeting on the 23rd?

A. Yes.

Q. Now, it looks as if somebody must have told you, first of all, you had been telling you had perhaps told David Doyle that something was imminent; that appears from the

A. Or David Doyle told me.

Q. Or David Doyle told that you something was imminent?

A. Yes.

Q. And then you have that Mr. Lowry intended to bring the matter to Government today but would not now do so.

Somebody must have told you that Minister Lowry intended bring the matter to Government on the 24th; can you remember who?

A. No, I can't remember. Obviously I had contact with

somebody who was able to tell me that the Minister would not be bringing the matter to Government.

Q. It would have to be somebody in DTEC?

A. Obviously, yes, yes.

Q. The reason I ask you this is because the one witness in the witness-box from DTEC who perhaps you'd expect to have known that the Minister intended bringing this to Government on the 24th was the Secretary of the Department.

A. Yes.

Q. And Mr. Loughrey had no such knowledge, and in fact, when he read this particular note here, seemed quite surprised. So can I take it that it wasn't from Mr. Loughrey you would have received the information that Mr. Lowry was

A. I had rare contacts with Mr. Loughrey.

Q. So it must have been somebody Mr. Brennan, Mr. Towey, somebody along those lines, would you think?

A. I would expect it was somebody who was connected with the Secretariat, with the central core of running the process.

Q. This would be on the development side of the DTEC, yeah.

Because the next day you write a note to the Minister, and as you correctly pointed out, it is understood, and you point out that, and you said, this is Mr. Martin Brennan has told you this?

A. Yes.

Q. That the Ministers are meeting at 4 o'clock. This was the Taoiseach, Tanaiste, Minister de Rossa, and I think your Minister, I think, were meeting at that time?

A. Yes.

Q. And you inform him that the Project Team, which included the Danish consultant Andersen Management International, who drew up the report, "will be recommending to MTEC that he open licence negotiations with the top-rated applicant, which is the Esat Digifone consortium."

"I was a member of the team and endorsed the recommendation."

You added that by hand. Why was that?

A. I don't remember why. Perhaps it was at the instigation of Mr. Doyle, who

Q. Then you go on with the marks achieved were and the composition of the various consortia are attached.

"All six applicants bid 15 million to the selection methodology was based on the evaluation criteria in descending order of priority disclosed to the applicants". Then you set it out.

"These criteria were part of the aide-memoire approved by the Cabinet subcommittee."

A. Sorry, Mr. Coughlan, if you come back to my earlier point, there I am saying all along, and I was

emphasising by underlining, that the thing was decided in accordance with paragraph 19, the descending order of priority of the selection criteria. You know, it was always clear in my mind that this thing was decided strictly in accordance with paragraph 19.

Q. And you sent that off to your Minister?

A. Yes.

Q. And we know about the meeting of the Ministers. You weren't present?

A. Obviously not, no.

Q. Now, you see there in your note, you say "It is understood that the Ministers are meeting". That's information you obtained, I think, from Martin Brennan; isn't that right? That the Ministers were meeting. You were not aware that your Minister was attending a meeting that day, were you?

A. I wouldn't normally be party or privy to my Minister's diary, no. That clearly came from Martin Brennan.

Q. Again, without in any way taking away from your role or involvement in this particular Project Team, I think it was, you would agree, perhaps, fairly limited in terms of you were relying on information and documents which were furnished to you, and you accepted them at face value. Would that be a fair way of describing

A. I was not involved at first hand in the evaluation.

Q. That would be a fair way of describing your

involvement in the matter?

A. Yes.

Q. And again, I am not in any way taking away you had other serious duties as well

A. And I didn't have the skills in a lot of the areas to

Q. But there were just a few matters which I might ask you to turn to. First of all, can I take it that you had you understood, as we know, the protocol, as any civil servant needed to understand the protocol, about not meeting with consortia members?

A. Yes.

Q. And I think you know from evidence that was given here that Mr. Loughrey informed the Minister of this as well and the Minister seemed to accept it?

A. I also reminded my Minister when we got representations from second- and third-placed candidates, that he couldn't meet them, for example.

Q. And it hardly needs to be stated, and it was stated, and civil servants understood this very clearly?

A. Yes.

Q. And that this was serious business, and there was a lot at stake here?

A. Yes.

Q. In terms of a business opportunity, but also a scarce national resource being allocated or being licensed?

A. Yes.

Q. Can I take it that you had no knowledge of perhaps

I should come back to one thing first.

Can I take it that did you ever see Commissioner van Miert's response to Minister Lowry's letter at the time?

A. Without checking the records, Commissioner van Miert's response was that the response of July?

Q. Yes.

A. Was it copied to the Department of Finance? I don't have the full records from the Department of Finance here.

Q. We are unsure of that particular thing. But you don't remember seeing it at the time, do you?

A. I don't remember seeing it, but if it's not on the records, then

Q. What I want to ask you is this: Would you have given it to anybody outside appropriate official people?

A. No, I would not, and

Q. Or photocopied it or given it to

A. No, and I wouldn't know anybody to give it to, to be frank. I don't know the people in the telecommunications business, apart from Telecom Eireann.

Q. Now, if I might then move on; can I take it or did you have any knowledge that Minister Lowry had a meeting with Mr. Tony Doyle of the Persona consortium around the 16th August of 1995 in the Killiney Castle

Hotel?

A. No such knowledge. None.

Q. Did you have did you know that Minister Lowry had met with Mr. Denis O'Brien at the All Ireland football final on the 17th September 1995, and subsequently spoke to him privately in Hartigan's public house that evening?

A. No, I did not, no.

Q. Can I take it that or did you know that when Mr. Denis O'Brien asserted at the presentation made by his consortium that there was an irrevocable commitment to fat in respect of pledged monies by Advent, you remember that particular

A. I am aware of that issue, yeah.

Q. And when asked by Mr. McMahon if there was an agreement to that effect, and he answered, yes, that no such agreement did in fact exist; did you know that at the time?

A. I wasn't aware of any agreements or that level.

Q. Had you any knowledge of Mr. Dermot Desmond's involvement in matters at the time of the announcement?

A. No, I had no knowledge of Mr. Desmond's involvement.

Q. And can I take it that it was your understanding that at the time of the evaluation which was being conducted that is, the reading of the applications, the presentation, considering them and arriving at a

recommendation that the Esat Digifone consortium comprised of Telenor, Communicorp/Mr. O'Brien, and named institutional investors?

A. That was my understanding.

Q. That was your understanding?

A. Yes.

Q. I think that's clear from documents in the Department as well; isn't that correct?

A. Yes.

Q. That was the clear understanding of

A. That was my understanding.

Q. And I will just refer to that particular document, just in case there is any doubt. I'll tell My Friends about it anyway later, but in an assessment which was being carried out, perhaps by you or somebody in the Department of Finance, on the various consortia applied, there is a note to that effect, isn't it, that this consortium is made up of Telenor, Communicorp, 20% to institutional investors, and it names them; isn't that right?

A. Yes, I think that was our understanding of that consortium.

Q. Now, were you out of the picture, then, after the Government decision of the 26th?

A. Yes, I was out of the picture. I did participate in the press conference, whenever that happened.

Q. Yes, that's the press conference on the 19th April.

Isn't that correct?

A. Yes.

Q. That's the civil servants press conference?

A. Yes.

Q. How did you come to participate in that? Were you asked to?

A. Yes, I was asked to participate.

Q. By whom?

A. I am sure I was asked by the Department of Transport, Energy and Communications.

Q. But you can't remember who asked you?

A. No, I can't remember who.

Q. And can you remember when you were asked?

A. I was sure it was around the time of the press conference.

Q. And I think in fact, just looking through the Department's the Department of Finance files over the weekend and then going back to DTEC's files, you seem to have been sent over a list of proposed questions, or questions to anticipate being asked at the press conference; do you remember that?

A. Yes, I have seen something like that. Such things are not unusual.

Q. No, I can understand that. But it's the type of questions that were being anticipated which the Tribunal is extremely interested in, because first of all, could I ask you just to look at the document.

CHAIRMAN: Just while Mr. Coughlan is coming to that, Mr. McMeel, could I ask you about any possible knowledge you might have had of an article by Mr. McManus of the Irish Times in February of 1996? This is in the context of that financial reporter having reported on the likely involvement of Mr. Desmond and IUU, and I wonder we heard evidence as to a system of filing regular press reports to interested persons of a certain level in DTEC. I just wondered, in your own primary Financial Department in Merrion Square, did that by any chance come to your attention, or was it discussed with anyone in DTEC?

A. No, I don't recall any discussion. But may I say, in relation to the press coverage I think Mr. McGonigal pointed it out here one day because the press coverage at the time of the announcement of the result had been, let's say, inaccurate in terms, I suppose I didn't attribute much, given that there was a history of inaccuracy in the reporting of or let's say inaccurate speculation as to the likely winner at the time of the you know, and Mr. McGonigal I think drew attention to that here one day. Because I suppose I was not paying as much attention to the newspapers

CHAIRMAN: You have no recollection of that process arising as a possibly different scenario of the winning team?

A. I have no recollection of that, Chairman.

Q. MR. COUGHLAN: Could I just ask you look at this document, it's just three pages, please.

(Documents handed to witness.)

Can I ask, was this generated in the Department of Finance? Or was it generated in DTEC? I can tell you this now, just to help you: It is on the DTEC files now, but you see there is some handwritten notes down along it?

A. That's my writing.

Q. Sorry, that's what I just want to clarify. Because what's on the DTEC file has no writing on it.

A. That's my writing.

Q. Right. So that is your writing. Did that come across from DTEC?

A. Yes, that came across from DTEC. We didn't generate that.

Q. And the notes that you are making there, are they just your own notes being jotted down, or was somebody telling you something?

A. No, they would be my own notes.

Q. You were just making a few?

A. Yes.

Q. And you seem to peter out, anyway, after a while; would that be right?

A. That's true. Very early on.

Q. Because I just want to look now, this press

conference was on the 19th April 1996, and you were asked to go to it; would it have been the day before, or

A. I don't recall exactly when. I don't think there was much notice of it. I don't recall exactly when.

Q. Would it have been 24 hours? Would it have been that morning?

A. I don't recall. I don't recall.

Q. Just looking at the questions that and these were possible questions which DTEC were identifying in relation to the process, now and you say "How many times did Denis O'Brien meet a) the Minister b) the secretary c) senior officials before the award of the licence?"

"Was Padraig O'hUiginn at any of these meetings?"

"Were any other board members from Esat at these meetings?"

"Did any of the semi-state bodies involved in the consortia lobby the Department?"

"Have you leaned on any semi-state to back off?"

You have responded "no", there. You knew nothing at all about any dealings which DTEC was having with the ESB at that time, of course; isn't that correct?

A. No, no.

Q. Interesting use of language by DTEC: "Have you leaned on any semi-state to back off?"

Then the next question:

"How can the Department issue a licence when Esat are flaunting the law with these auto-dialers?"

"Surely Esat's financial standing was dependent on their own corporate business plan predicated on these auto-dialers?"

"Did the unilateral action taken by the Department instructing Telecom Eireann to calm down on the auto-dialer arise from a desire to maximise the price of Telecom Eireann?"

Could I take it these were issues you wouldn't have known anything about?

A. Absolutely, no.

Q. "What involvement had the Minister in the whole process?"

"Did any other Minister make any lobby or representation to the Department's team or officials?"

"Did the IDA lobby on behalf of America, US multinationals and others who would be existing or potentially important investors in Ireland?"

CHAIRMAN: I think it was those three you have put what presumably reflected your state of knowledge, "none"?

A. Yes, "none", and "none".

Q. MR. COUGHLAN: Can I take it this was pure speculation by you? You had no knowledge, you didn't know who the Minister had met or what his involvement was?

A. I may have been writing in terms of my own Minister,

you know, and I think you know

Q. Fair enough

A. I would have been because our Minister was the subject of lobbying and of representations quite late in the process, quite close to the announcement by

Q. I am going to come to those in a moment; the letter from Persona, you are talking about. Is that correct?

A. Yes, and a request for a meeting.

Q. And Mr. Whiteside requested a meeting, and how they were dealt with, and I want to deal with that in the context of rushing of matters when there was perceived danger of the process being in some way interfered with or could have been potentially got at.

Then, "Why did the Department spurn 'the pot of gold' up then more than 100 million which could have been bid for the licence?"

Then you have written "legal advice". That all related to I presume the Commission's

A. And that was resolved.

Q. Whatever the view might have been taken at the Commission you couldn't risk the potential of legal involvement.

A. No.

Q. I understand that.

The next one: "Why not admit that this is just a mere skin-deep beauty contest, and at best, it was a flip of the coin between the leading contenders?"

"Has the Department warned Esat that its licence was at risk if it pursued an aggressive stance on auto-dialers?"

"If the Department's advice was always for the lowest possible entry fee, who decided to seek a larger cheque which was subsequently struck down by the Commission?"

"Is it true, as reported in the papers, that the Secretary met with SBC?"

Who is SBC?

A. I think that's possibly Southern Bell.

Q. Probably, yes, one of those.

"Why did the Secretary give an undertaking for feedback which was subsequently countermanded by Martin Brennan?"

Do you know what that's about at all?

A. There was a process of feedback.

Q. Yeah, that came in May. I'll come to that.

"All the consortia made it quite clear that they are waiving any confidential clauses; why not publish the final report on that basis?"

An interesting one, because this is something the Department could only have known about within a day or so prior to you being informed of the press conference.

"Given Dermot Desmond's chequered history in the telecommunications area, surely the Department would

have reservations about this investment?"

Now, the Department weren't disclosing this to anyone either, of course.

"Has the Minister, Secretary any official had contact with Dermot Desmond on this matter?"

"What sort of process is this that you don't know who the identity of some elements of the consortia?"

"When did DG IV first initiate action against Belgian/Italy?"

"Who nobbled DG IV to reduce the price?"

"How much does the Department think/believe we could have received for the licence on an auction basis?"

"How would this have affected Eircell?"

"Surely the Department had nobody to blame but itself, having sat on the fence when genuine feedback should have been given long ago?"

"What sort of process would allow Esat, a company of at best very thin resources" and interesting the language used "and very shallow pockets to perhaps carry out perhaps one of the most important developments in the history of Irish infrastructure?"

"The Department obviously lives in an ivory tower when so many job important jobs and other benefits were associated with some of the other bids.

"How much contact/pressure came from a) Telecom, b) Alfie Kane, c) Department of Finance to bid up the entry fee?"

"Strength to be used in the press statement, the only process that has the full stamp of approval from the Competition Commissioner, Karel van Miert.

"Further questions which could be thought about:

" questions planted by, say, Persona in general and Tony Boyle of Sigma in particular

" questions suggested by John Riordan and the Irish Independent in general

" any possible wild-card entries.

"NB: We are very familiar with concepts and process.

Let's not assume others are. Statement should revisit essential elements of the competition, notably the criteria for completeness and journalistic ease of reference."

Now, did you have any meeting with your colleagues from the Department of Transport, Energy and Communications before the press conference whereat you discussed any of these proposed questions?

A. I would be surprised if there wasn't some sort of a meeting before the press conference, but I cannot recall the discussion of these potential questions.

Q. I take it that the very reference to Mr. Dermot Desmond must have given you some cause for surprise, at least? You knew nothing about his involvement; isn't that correct?

A. I knew nothing about his involvement. But I don't I don't recall my state of mind at that time

in relation to that matter, but I don't recall being surprised or not being surprised.

Q. Well, I suppose, when you thought that the consortium was as you have stated it to be, I take it at this stage, as of the 19th April, the Department of Finance had not been notified by DTEC of information they had received from Mr. Owen O'Connell, solicitor to Esat Digifone, on the 17th April of 1995?

A. I think the first information we got was a fax of various documents.

Q. I'll come to that. I have identified, there is a fax and a bundle of documents dated 13th May of 1995, which came across, is faxed over to you in the Department?

A. You will appreciate, Mr. Coughlan, that my focus for this press conference was very much to do with the fee issue.

Q. Sorry?

A. You will appreciate that my focus for the purposes of the press conference was very much to do with the fee issue, because that's

Q. The licence fee?

A. Yes, because that's where the Department of Finance had a role.

Q. That's as far as you were protecting that side of things, that was your interest?

A. Yes.

Q. And you had no particular interest in other matters;

that was a matter for DTEC?

A. No, no, none.

CHAIRMAN: Two o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF JIMMY MCMEEL BY

MR. COUGHLAN:

MR. COUGHLAN: Now, Mr. McMeel, I think we have

identified in the Department of Finance files the

documents you say that you were sent over on the 13th

May, 1996.

A. Okay.

Q. I think I pulled them out, and they are all documents

we have seen already there.

A. Yes.

Q. But you received a fax, I think, from Mr. Fintan Towey

on the 23th May 1996, and it sent over 13 pages. The

fax didn't have any comment on it, or there was no

request or information sent or anything?

A. No.

Q. Did you know what it was about, even, or

A. Obviously from reading it I knew it was about the

assessment, about the involvement of IIU and the

assessment of IIU and the shareholder of IIU.

Q. And that's what you understood it to be, and that's

all?

A. That's all.

Q. And you had no involvement in it?

A. No involvement.

Q. The Department of Finance had no involvement in it?

A. No involvement.

Q. Were not asked to become involved in it?

A. No, we were not asked.

Q. And what assessment do you say is involved in it?

A. Sorry, there is no assessment. It's about the material that they were using to assess IIU.

Q. Who told you?

A. Nobody told me that, but it's obvious from the

Q. Well, let's just look at what they received. You received a letter dated 13th you received a fax cover sheet; is that right?

A. Yes.

Q. With nothing on it?

A. No

Q. Other than to you and from Martin Brennan?

A. With nothing on it, yes.

Q. You received this letter dated 13th May from Mr. Knut Digerud on behalf of Esat Digifone setting out various documents; isn't that right?

A. Yes.

Q. We have been through these before.

A. Yes.

Q. And then there is the documents. There is the letter

from Telenor, 13th May, 1996; isn't that right?

A. Yes.

Q. You received the Arthur Andersen letter to Mr. Owen O'Connell; this is about Esat Digifone. Isn't that right?

A. Yes.

Q. Dated 8th May, 1996, from Oslo?

A. Yes.

Q. You received the IIU letter dated 7th May, saying that IIU is 100 percent beneficially owned by Dermot Desmond; isn't that right?

A. Yes.

Q. You received the letter dated 7th May from Farrell Grant Sparks saying that they act as financial adviser and auditor to Dermot Desmond and confirm that Dermot Desmond is beneficial owner of 100 percent of International Investment Underwriting. "We undertake that Dermot Desmond of IIU has undertaken to invest and/or underwrite an equity investment of up to 1/240 million"?

A. Yes.

Q. You received a letter from Communicorp Group Limited signed by Mr. Paul Connolly; isn't that right?

A. That was in the bundle of documents.

Q. Just see what else you received then. You received a document which was attached to Mr. Connolly's, which had the shareholding, is that right, Communicorp Group

Limited? It's just the next document.

A. Yes.

Q. And then you received a letter from Communicorp Group dated 9th May, 1996; is that right?

A. That's correct.

Q. About the funding, the company appointed CS First Boston as exclusive agent for the purpose of private placement. And then you received a letter dated 2nd May, 1996, addressed to Mr. Brennan, from ABN-AMRO, and that dealt with the question of bridging finance in the first instance; isn't that right?

A. Yes.

Q. And those are the documents you received?

A. Yes.

Q. And that's all you received?

A. Yes.

Q. And what did you do with these?

A. I filed them.

Q. And that's all you did?

A. That's all.

Q. Now, and apart from that communication, which was just a number of documents which were sent to you which were also sent to the Department representing the position of the consortium, I understand it; isn't that correct?

A. Yes. I am not clear what you said there, apart from that

Q. Apart from these documents, the only other communication you had was a communication about to whom the fee was to be made payable and the banking arrangements

A. Yes, yes, which I referred to on Friday.

Q. Those are the only two communications you had in May, to the best of your knowledge?

A. To the best of my knowledge, yes.

Q. Now, apart from being informed that from Messrs. Farrell Grant Sparks that Mr. Desmond/IIU had

undertaken to invest or underwrite an equity investment of up to  $\frac{1}{2}$ 40 million in Esat Digifone and

being informed that they were in a position to take up the investment or the underwriting commitment

A. Yes.

Q. Can I take it that the Department of Finance were never informed that IIU and Mr. Dermot Desmond were taking up the interest in Esat Digifone that they took up?

A. The only information we had was what was faxed to us.

Q. You weren't told anything about Mr. Desmond personally or IIU taking up personally the investment in Esat Digifone?

A. I don't recall being told anything else other than what was in the faxes.

Q. Now, I think you may have participated in a number of meetings with disappointed applicants, isn't that

correct, in May?

A. Yes.

Q. It was around the same time as the run-up to sign off the licence?

A. Yes.

Q. And just looking at the Department's your departmental files, the Department of Finance files, just again over the weekend and yesterday, just looking at there are various reports on meetings with the various disappointed applicants, and they all appear to have been prepared by Mr. Towey; does that seem correct?

A. I have to confess I have not looked at those reports.

Q. Right. But in your files, apart from the various reports, there was included a document, it appeared a number of times, but the document is entitled I'll just ask you to look at it "Summary of opening remarks by M. Brennan delivered equally to unsuccessful applicants."

It looks as if it was something that was prepared over in DTEC, and that was a general thing read out or made available to everybody before you got into specifics; does that seem right?

A. Certainly it was not prepared in the Department of Finance. Whether he actually read that out to each of the applicant consortia, I don't know. I don't remember.

Q. You can see there that it's kind of a similar type of approach as in the presentations, you know, where Mr. Brennan in fact he was fairly meticulous in giving the same speech before each presentation, you know, telling people what it entailed and what they could do and what type of questions they'd be asked and who'd be taking each portion of the meeting. But you see here the points that are made is "One hour would be available, it being a matter for the applicant to choose how to use it.

" the focus of the disclosure would be on the weaker points of the application. Silence on any particular point should be taken to mean average or better compared with the others not in the absolute sense.

" it was not intended to discuss the competition process before receipt of applications in August. The evaluation was comparative, but the Project Team was not prepared to discuss it in a comparative way. However, a statement that the application was weak on something meant comparatively weak.

" the Minister was not giving reasons for his decision but voluntary sharing with individual applicants some of the views taken on their applications. This was being done as such information had been requested on the basis that

it would assist applicants in future competitions.

" any obligations which might be on the Minister to give reasons would be to give reasons for awarding the licence to the winner. The Minister had stated the reason to be that it was the best application. The Esat application was exceptionally strong on technical and market development aspects."

It's the next one that's a matter of interest, because do you remember reading this: "The Minister's statement to Dail Eireann of 2-3 weeks previously (copies made available) encapsulated previous speeches/statements and was a comprehensive and open statement on the process."

Now, included in your documents is the speech the Minister gave to Dail Eireann on the 30th April of 1996, which seemed to be coincide with the time-frame that we have here.

A. Yes.

Q. Now, the points go on: "The speech dealt with the confidentiality agreements. The EU Treaty recognised business confidentiality, and the draft licensing directive contained a specific obligation to respect it."

And the points go on down.

Your Department had no involvement in the preparation of the speech for the Minister on the 30th, the

Minister for Transport, Energy and Communications on the 30th April of 1996?

A. None that I am aware of.

Q. And as far as you are aware, or you did not know that the Minister himself, with a political adviser and the Secretary and Mr. Martin Brennan, were involved in the preparation of the speech?

A. No, I was not aware. It's a separate department, so I would not have been aware of that.

Q. And that in the course of the preparation of that speech, it was decided, for reasons which we have dealt with with Mr. Loughrey, not to make any disclosure to Dail Eireann of this emergence of Dermot Desmond. You were not aware of any of that at this time?

A. I was not aware of any of that, because that's a separate department; their responsibility, not ours.

Q. So can I take it that then you therefore, again, accepted at face value the statement made here, "The Minister's statement to Dail Eireann of 2-3 weeks previously encapsulated previous speeches/statements and was a comprehensive and open statement on the process"? You accepted that reflected

A. It was Mr. Brennan, his opening remarks, so I accepted it as Mr. Brennan's position.

Q. If I might now come to I don't know if anything turns on this, but it's just a document which you had

some involvement in, Mr. McMeel. It's a meeting with DG IV on the 2nd May of 1996 related to the Persona complaint.

A. Yes.

I have to explain. I was primarily in Brussels for a meeting to do with the Ireland's derogation from liberalisation of telecommunications. I was not primarily there for that meeting. I sat in on the meeting, but I wasn't there

Q. All I ask, you made a note

A. Yeah, I made a note.

Q. I just want to ask you about it. It's a meeting with DG IV, Mr. Ungerer?

A. Mmm.

Q. "In the GSM2 business he gave Austin copy of Persona's complaint. (A not very convincing case at that)". Is that your own view?

A. Yes.

Q. "DG IV have no precedent to go on, and they are surprised by the complaint." I take it that's something you heard from Mr. Ungerer, is it?

A. Yes.

Q. "They suggested a political intervention with van Miert. During the meeting, we became aware that the Minister for Transport, Energy and Communications is seeking a meeting with van Miert next week when he is in Brussels for an Energy Council. Ungerer warned

that as the complaint had come via the Secretariat General, it would be circulated to a number of DGs. He mentioned "DG XV public procurement. I'll ask Deirdre O'Neill to have a look at the complaint to see if there is a procurement angle. My read is that DG IV are unlikely to give Persona much comfort. To concede to some of Persona's points would be at odds with what the Commission said to Belgium. It would also embarrass van Miert, who blessed the final Irish arrangements."

Then you go onto the derogations; isn't that correct?

A. Yes.

Q. That's your note of a meeting, I am just trying to understand it, where the recipient of the complaint, i.e. DG IV sorry, it arrived through the Secretariat General in the first instance?

A. Yes.

Q. But the recipient of the complaints or those who were charged with considering the complaint, are making a suggestion to the Irish side leave aside altogether the merits or demerits of the complaint making a suggestion that there be a political intervention with Commissioner van Miert; is that correct?

A. That's my what record says, yes.

Q. Are you aware whether or not I can tell you Mr. Lowry did meet Mr. Van Miert, but you are not aware of that?

A. I didn't follow this up.

Q. You didn't follow that up.

There is a document it's really just to ask you if you can help us with what's written on it. It's a memorandum on the GSM competition from Mr. John Loughrey to Mr. Sean Fitzgerald on the 26th October, 1995. We see that in the DTEC documents and

A. Oh, right.

Q. Do you know the particular document, do you? Mr.

Loughrey's document. "In putting the final touches together for yesterday's decision on the award of the second GSM licence. I mentioned to you how the Department could, with every justification, take pride in the way that the GSM competition was handled from the start to finish.

"Of all the commentaries in today's papers the statement in the editorial of The Irish Times saying 'In many ways the selection of the successful tenderer, Esat Digifone, has been a model for exercise of this kind.'" And it continues. We have been through this document.

Is that Mr. Curran's

A. No, that's Mr. Furlong's

Q. That's Mr. Furlong's

A. noting alongside, yes. You don't have the full copy. I can't read

Q. No, I don't have a full copy. You think it's Mr.

Furlong's? I'm just trying to figure out what it says.

A. It's Mr. Furlong's copy of it. The photocopy is so imperfect, I can't make it out either. I could make it out from the original.

Q. We'll have to get hold of the original, yeah. We'll get the original. There is no point in speculating about it.

A. I think it's just I don't think it's, I don't think there's anything significant in it.

Q. Not as congratulatory probably, would be a fair way of putting it?

A. It's congratulatory, yeah.

Q. Now, you have told us in your evidence that around the time that the matter went to Government, or went to the Ministers in the first instance, that there had been a representation made from Persona, I think; isn't that correct?

A. Yes, Persona had

Q. And I think there is Mr. Denis Whiteside from Irish Mobicall; that was correct?

A. There was a request for a meeting by Irish Mobicall and representations on the 11th October from

Q. We have pulled out the documents relating to those.

A. Okay.

Q. And if we could just first of all take them in time sequence, I suppose. The Persona one is dated 10th

October, I think; isn't that right?

A. Yes, but it's received in the Minister's office on the 11th October and would have come to me some days after that.

Q. Right. So have you got it there?

A. I have a copy of the letter in my own papers.

Q. I think the letter is addressed to the Minister for Finance. It's on Persona notepaper, and it's dated 10th October, 1995. And you are correct, it seems to have been received in the offices on the 11th; is that right?

A. Yes.

Q. "Dear Minister,  
"You will recall that we wrote to you on March 3rd this year providing you with an information briefing pack about the launch of our consortium, Persona."

I think we have seen that. That was a fairly general sort of blurb about Persona; would that be a fair way of putting it?

A. Yes.

Q. "We have been working on this project now for three years, and because of confidentiality of the competition process, this is the first time we have had the opportunity to give you a detailed briefing document about our business strategy. We are confident our proposal will maximise benefit to the customer, the State and the business throughout the

country.

"The key points in our business strategy which are outlined in the documents enclosed.

" significant price reductions for the customer on both handsets and call charges.

" guaranteed exciting business opportunities for independent service providers and retailers.

" readiness to implement immediately before our consortium has committed

hundreds of man-hours for the preparation over the last three years. Experience of operating GSM mobile systems in 14 out of 57 countries with live systems today.

"Furthermore, all partners involved in Persona are and have proven their long-term commitment to the Irish economy. Motorola is one of the largest industrial employers in Ireland with 1,500 employed in Swords, and it is set to double that number over the next two years. Motorola is also a large employer in the south with 200 employed in Cork, all highly trained graduates in the company's world-wide GSM software centre.

Unisource Mobile has committed that it will operate its European customer call centre in Ireland employing 250 people. Participation of ESB in Persona presents an ideal opportunity to capitalise on its engineering expertise and to maximise the return on existing

assets and infrastructure to the benefit of the customer, the environment and the Irish economy.

"Finally, Sigma Wireless, an indigenous Irish manufacturer, employees 160 people in Finglas exclusively in mobile communications and exports to over 40 countries worldwide.

"Please do not hesitate to get in touch with me if I can provide you with any more information, and thank you for taking time to read this letter.

"Yours sincerely, Tony Boyle, Chairman."

I think that was the letter that was received?

A. Yes.

Q. And it was responded to by the Office of the Minister for Finance dated 23rd October 1995.

"Dear Mr. Boyle,

"I have been asked by the Minister for Finance, Mr. Ruairi Quinn TD, to acknowledge receipt of your letter of the 10 October 1995 concerning the application by Persona Digital Telephony Limited for the second mobile telephone licence.

"The contents of your letter and the enclosure have been noted."

That was how it was dealt with?

A. Just one further point. In my note to the private secretary to the Minister, I said "Reply submitted opposite for urgent issue", double-underlined "urgent". It was because I knew the announcement of

the result was coming up, and I wanted it out before

the result was

Q. Right. I think the other matter you refer to then is

the 18th October; is that right? "Mr. Doyle to see

Minister's office, Ms. Celine Power. Subject: Request

Letter attached for Minister to meet Denis Whiteside

from Irish Mobicall" who was an applicant consortium

for the second mobile phone licence. I think your

advice is that "the Minister should not meet with Mr.

Whiteside. Mr. Whiteside is CEO of Irish Mobicall. I

am informed that MTEC has not met with CEOs of

applicant consortia."

That's what you were informed; you were informed that

the Minister for Transport, Energy and Communications

had not met CEOs. Isn't that right?

A. That's what I said, I was informed.

Q. I take it that was by officials in DTEC?

A. I assume it was on foot of some kind of contact or

Q. "This was in line with the recommendation of the

Project Team, on the advice of the consultants, to

help ensure process transparency and equality of

treatment to all applicants. As DTEC is the lead

Department in this process, it would be inappropriate

for the Minister of Finance to agree to this meeting.

"All the consortia, including Irish Mobicall (with Mr.

Whiteside as lead) made 3 hours presentation to the

project team. I was present on behalf of the

Department."

That's dated. Those were the two matters you drew attention to in your reported representation?

A. Yes.

Q. They were dealt with appropriately?

A. Yes.

Q. And there was no question of the Minister for Finance, first of all, being inappropriately persuaded about anything on what we have here, is there?

A. No, there was no question.

Q. And there is no suggestion or advice that the Minister for Finance was going to do or say anything to the Minister for Transport, Energy and Communications, is there?

A. No, no. Certainly wasn't coming from me.

Q. I just want to be clear about this, because I have been trying to get it clear in my mind, because many civil servants have come in here to this Tribunal and have said things like, once, you know, you had a result, you couldn't leave it to the political process, or words to that effect; that matters had to move fast for fear that if it went through even the normal decision-making process of circulating memoranda, that there could have been a lobbying of members of the Government. Now, I just want to get a number of things clear in my own mind, if I can.

This was a Government decision to launch this

particular project, wasn't it?

A. Yes.

Q. The 2nd March. And it was a Government decision that the decision was to be one for Government at the end of the day; isn't that right?

A. Yes.

Q. And whatever view, and I am not suggesting that you for a moment would harbour such a view, whatever view any civil servant might have about Government ministers or Government or how they might be lobbied, under our constitutional system of things, it's the Government which decides that which it decides to decide; isn't that right?

A. Yes, but you will recall yesterday, Mr. Coughlan, I said that and I think the Chairman took this up that if the Government acted differently from the result arrived at following the process

Q. If they behaved in a capricious manner, or

A. Arbitrarily

Q. Yes, arbitrarily, yes, of course, but Government behaving properly, like, that is the constitutional order of things which we live under; isn't that right?

A. Yes.

Q. And to enable a Government to carry out its functions, it has to be appropriately informed. It doesn't necessarily have to be overinformed about everything, but it has to be appropriately informed; isn't that

correct?

A. Mmm, yes. But as I pointed out this morning, in respect of finance bill matters and budget matters, matters are brought there isn't the

Q. I understand, and there are good reasons for that, in fact going back to a Tribunal of Inquiry many years ago in the House of Commons, precisely over budgetary matters. But there are good reasons why budgetary matters the way they come to Government; isn't that right?

A. Yes. Some of them applied here also, though. It was a secret; it was a very closely held secret issue.

Q. Of course, about confidential information.

A. Yes.

Q. But to enable the Government to arrive at an informed decision about something, it is only appropriate that they be given sufficient information to enable them to do that; isn't that correct?

A. You are asking me

Q. I am asking, is that correct? Would you agree?

A. Yes, well, I consider that the aide-memoire that went forward at the end was sufficient information.

Q. You think that was sufficient information?

A. Yes, yes.

Q. I see. Were you aware that the report that is, the final report was not present or available when the Government decision was made? Were you aware of that?

A. What did the aide-memoire to Government say? I thought

Q. I am asking you a question first, Mr. McMeel.

A. Was I aware?

Q. Were you aware that the final report had not arrived before the Government decision?

A. I can't recall whether I was aware or not, at this remove.

Q. Were you aware that the recommendation as encapsulated in the final report, or even that which was under consideration in the previous draft report which was available for the meeting of the 23rd, contained what has been described by Mr. Sean Fitzgerald, the Assistant Secretary in DTEC, as having a health warning around Esat Digifone and Persona, although the health warning in relation to Esat Digifone he has conceded was perhaps, when one looked at the facts in closer detail, perhaps a little bit more significant; were you aware that the report contained that health warning?

A. I was aware that the financial position of Esat Digifone and Persona was outlined in the report. I was also aware that they got B, that is to say the second-highest mark, for financial strength of consortia members. They could have got three marks lower than that, but they got B, the second highest, both of them.

Q. I am asking you, are you aware?

A. Yes, I am aware.

Q. And are you aware that the Minister for Finance was not informed of this particular health warning?

A. I didn't I didn't inform the Minister for Finance because they had got a B. It didn't warrant being informed because it was a B for financial strength of consortium members.

Q. So you disagree fundamentally with Mr. Sean Fitzgerald, that is as a matter of regret that it didn't go to the Government with the health warning?

A. I believe that I don't regret the information that I gave to the Minister for Finance.

Q. I am asking you, was the information you gave do you regret the information you didn't give him?

A. I am sorry?

Q. Do you regret the information you didn't give him?

A. No, I have no regrets about that.

Q. You have no regrets. And so, therefore, can I take it that you have no regrets that when these Ministers the Taoiseach, the Tanaiste, Minister de Rossa and the Minister for Finance were informed of something by Mr. Lowry, that you have no regrets as to what they were not informed of; in other words, the health warning?

A. As I said to you just a few minutes ago, the winning consortium and the second-placed consortium had both

got a B for financial strength of consortium members.

Therefore I felt there was not sufficient to it's

not as if they had got an E. They had got a B.

Q. That's not the point

A. So there was not matters of sufficient gravity to draw attention to.

Q. So are you telling us now that you took a conscious decision not to so not to inform the Minister?

A. I didn't take a conscious decision, but if there had been something that merited me that would have merited a decision, I might have taken one. But I didn't take any decision, I don't recall taking a decision, but nothing popped out of the report that warranted me

Q. It pops out all over the report the warning the warning, the conditionality pops out all over the report, Mr. McMeel. Every civil servant who has looked at it has conceded that; every civil servant has conceded that it was a matter that had to be addressed either prior to or in licence negotiations.

Every civil servant has conceded that. Nothing popped out to you? Is that what you are saying?

A. I agree with you in the last point that the matter was to be dealt with in the licence negotiations, but what popped out at me was that under the indicator financial strength of consortium members, both Esat Digifone and Persona had got a B, which was the

second-highest mark available to them.

Q. It wasn't Esat Digifone

A. Or, sorry the consortium.

Q. It wasn't the Esat Digifone consortium that the concern was about. The concern was about Communicorp, in that consortium. That's what was in the report.

Do you remember that?

A. I remember that, yes.

Q. And you did not consider it appropriate to bring that to the attention of the Minister for Finance?

A. No, I didn't consider it because they had got a B, because the consortium had got a B for financial strength of consortia members.

Q. Sorry, it's in the report, isn't it clearly in the report, the concerns expressed about Communicorp in the narrative?

A. Yes, and were to be dealt with in the licence negotiations.

Q. In the narrative?

A. Yes.

Q. And you considered that that was not appropriate to be brought to the attention of the Minister for Finance; is that correct?

A. I didn't draw to his attention, so therefore I didn't think it merited drawing to his attention.

Q. You didn't think it merited bringing it to the attention of any of your superiors in the Department

of Finance, either?

A. I don't recall that it did.

Q. Isn't the reality of the situation here, Mr. McMeel and again, this is not a criticism that you were extremely busy in relation to other matters; that you relied entirely on what you were being told by people in the Project Team, and you accepted everything you were told at face value? Would that be a fair way of putting it?

A. I accepted everything that emerged from the detailed work of the sub-groups at face value. I had no reason to go second-guessing them, and I am not a second-guesser by disposition.

Q. Were you aware that the quantitative evaluation was not in the report?

A. Well, the quantitative evaluation was subsumed into the overall holistic evaluation, and it's dealt with in the appendices. It says I think it's page bear with me one minute page 4, page 5 sorry, page 6 of the Appendix 2.

It says it listed all of the indicators for the quantitative evaluation, and it says "As illuminated above, all the indicators defined for quantification have been taken into consideration and in compliance with the evaluation memorandum all the eligible indicators have been taken into consideration in the holistic evaluation".

Q. Did you check the evaluation memorandum to check those particular points in Appendix 2?

A. I don't recall whether I checked the evaluation memorandum, but I took that at face value.

Q. It might be no harm to look at it now, because, you know, it's quite questionable as to what's contained in Appendix 2, as to whether it is in conformity with any evaluation models or what transpired in the course of the evaluation process. But I'll leave that aside for the moment.

The report states, the report states that the quantitative evaluation will be contained as an annex to the report, doesn't it?

A. That was what was intended, yes, and my own record of a meeting somewhere says that also.

Q. It's not in it. It's not even it's not in any of the drafts; it's not in the final. Were you aware of that?

A. I was aware that there were problems with the quantitative evaluation, that it couldn't address my information was that it could not address all the selection criteria in paragraph 19.

And recently, just in preparing myself for coming here, I checked, and I think 40%, in terms of weighting of the selection criteria in paragraph 19, were not addressed by the quantitative evaluation, because of some problems

Q. What was that 40%, could you tell me?

A. The 40%, I think I marked them somewhere the tariffs, the licence payment, the international roaming plan and the quality of service performance.

They amounted to 40% of the

Q. How much did the licence payment amount to?

A. It amounted to 11%.

Q. That was the same with everybody, wasn't it?

A. That was the same

Q. It was neutral; isn't that right?

A. It was.

Q. That doesn't exist in it at all. You see, there is a kind of a mantra, and I had to put it now, a kind of a mantra being uttered here, you know, in respect of this evaluation report, that this was lost and that was lost. What was lost in the quantitative evaluation? Do you know?

A. Well, I think there was a problem, particularly

Q. Do you know?

A. I do know what was lost.

Q. What was lost?

A. In one case what was lost, there was a difficulty in comparing the information on tariffs because some people had given I am only recalling at the time, or my understanding some people had given information on tariffs in unit form and some had given it in per-second form, and there was a problem of

things being incomparable.

Going on this, if you look, for example, at the financial key figures criterion, there are only two indicators, solvency and IRR, prescribed in the quantitative evaluation for that criterion. Surely you are not saying to me, Mr. Coughlan, that that it would have been adequate to do a financial evaluation solely on solvency and IRR, when in the overall holistic evaluation there were eight different indicators used for the financial evaluation?

Q. I understand that. I never suggested that there shouldn't be a qualitative evaluation. What I am concerned here about is how the methodology was completely departed from. The quantitative evaluation, which gave a ranking nobody said was to be conclusive, but gave a ranking on two or perhaps three occasions, was either disregarded, abandoned, and what has emerged now seems to be some type of a hybrid of an evaluation process; not the one that was envisaged, quantitative, with all its failings, a qualitative come and visit the quantitative with the qualitative and carry out your adjustment there, and then address sensitivities, if necessary. That didn't happen. Something else happened. And we are trying to find out what did happen here.

A. Mr. Coughlan, one thing I need to make clear here. I would certainly not have been happy with any form of

evaluation that failed to address the criteria in paragraph 19. And if, as I understood at the time, the quantitative evaluation could not address the selection criteria which had been in an aide-memoire that went to Government, I certainly couldn't go back to my Minister at the end, as I was able to do, and say "This thing was decided in accordance with a decision you were party to; this thing was decided in accordance with paragraph 19", if in fact we used some method that didn't address all those selection criteria. I would not have been happy to do that.

Q. I understand that, and I understand that you were relying on information you were receiving, and you were accepting it at face value; I accept all that, Mr. McMeel. But you see, there is a big problem here, and nobody seems to be facing up to it, nobody seems to be facing up to it at all, that what was envisaged in the whole evaluation methodology was departed from.

A. I don't accept that, because as I read out, the quantitative evaluation was subsumed into the qualitative evaluation. And if you look at things, say, take the two financial ones, solvency and IRR, they are there sorry, as the overall holistic evaluation.

Q. Of course they'd have to be brought into the qualitative, but there was nobody took down the quantitative results and revisited them with the

qualitative, which you yourself had described, had described, am I not correct, the latter, that being the qualitative, acts as a check on the former, and as such, is at a higher level; it's the check on it.

You see, that's not what happened here. And this is the matter that's very, very confusing and worrying for the Tribunal, let me hasten to add, because there has been no proper explanation Mr. Andersen hasn't come there has been no proper explanation given as to what happened to this quantitative analysis. Where did it go? Where is the decision made to abandon it? And then what happens is some people, a small number of people go to Copenhagen at the end of September, pull together, they tell us, the results of the sub-groups, and they come back to a meeting, which you weren't at

A. Yeah.

Q. on the 9th. And Mr. Andersen does not have Appendix 2 with him at that time, and there has been no decision made by him. He has already indicated, "What are we going to do about the quantitative? How are we going to integrate it?"

That Appendix 2 emerged after the meeting of the 9th; did you know that?

A. I don't recall when it emerged. But I am not aware that anybody has dissented from anything in Appendix 2. Any member of the Project Group has dissented from

anything here.

Q. Mr. McMeel, I am not concerned whether they are dissenting or consenting at the moment. We are carrying out an inquiry as to what happened here and as to why the evaluation methodology was departed from. That's what we are carrying out the inquiry about. And the role of the Minister as and from this period of early October, of which you had no knowledge of, the Minister for Transport, Energy and Communications, having an involvement in the process.

A. I do think, Mr. Coughlan, you should bear in mind the precedence of paragraph 19 in all of this, that if certainly I won't go over what I said previously, but that if a particular part of the evaluation of the methodology couldn't address paragraph 19, which after all had been approved by Government, that would have created a difficulty.

Q. How could it not address paragraph 19?

A. As we saw, certainly of these, my information was that at least four of the criteria were not addressed by the quantitative evaluation.

Q. They were addressed all right; they were addressed.

And the adverse aspects of them were pointed out to the group. But they were addressed. They were addressed.

A. Well, my understanding was that, for example, the tariffs issue, there was a problem, that it couldn't

be done, and therefore that was 18% of the selection criteria.

Q. You had no knowledge, had you, that the Minister for Transport, Energy and Communications was aware of the shape of the evaluation and the rankings as of early October of 1995, had you?

A. I had no knowledge of what was going on between

Q. Between him and his civil servants?

A. I was not at that interface.

Q. Whether he was massaging matters or not, you were unaware?

A. I have never met Mr. Lowry, I was not involved in the interface with Mr. Lowry, I was not present.

Q. Now, it's just in your documents, I'd just like to refer to one other group of documents which might be of interest, particularly in light of the evidence which was given by Mr. McCrea on Friday, about a conversation that he had with Mr. Martin Brennan after the presentations.

Again, were you aware that the Minister's programme manager was having discussions with members of the Project Team about the process?

A. Certainly not.

Q. And it related, I think, to information he received about a particular consortium which hadn't done well anyway at the presentations, and Mr. McCrea has told us that that consortium was the one which involved

Bord na Mona?

A. Yes.

Q. I am just going through Department of Finance documents again last night. There are a couple of matters, I think, which relate to Bord na Mona, and it's first of all I think it commences with a

letter from Mr. Lowry to Mr. Brendan Halligan,

Chairman of Bord na Mona, on the 25th May 1995; do you remember that sequence of documents?

A. I recall seeing that letter.

Q. It's just a few documents that I just

(Documents handed to witness)

Now, in general, I think the background to this is, as regards semi-State companies being members of consortia, the attitude perhaps of DTEC and of your own Department was, in terms of their involvement, if they used their assets for the purpose of being members of consortia, like their land holdings, or matters of that nature, that there wasn't a difficulty; that there was a problem in terms of equity participation; was that the sort of general nature?

A. Did that problem extend to the ESB, which is financially quite a healthy organisation?

Q. It doesn't appear to I think, as far as I can see, a letter was written to CIE sorry, yes, CIE, RTE and Bord na Mona, I think. I don't believe one was

written to the ESB.

A. I was at pains, actually, I recall, and I see it on the files, I was at pains to ensure that I personally wasn't involved in any of the evaluation of by the Department of Finance in whether State companies should get involved because I had a conflict, I felt.

Q. Yes, but you can see here, this is a letter which has been sent to Mr. Halligan by Mr. Lowry, and he refers to the Bord na Mona's interest in becoming involved in the consortium to bid for the second GSM licence.

This is in fairly broad terms.

"Bord na Mona's involvement in any such consortium must be on the basis that it does not in any way expose the core business of Bord na Mona. Any assets provided by Bord na Mona to a consortium should be on the contractual basis only. Bord na Mona are not in any financial position to take an equity stake in a consortium, and it would not be my intention to approve any such arrangement which the board might propose.

Yours sincerely,

Michael Lowry."

Am I correct in thinking there would have been a budgetary concern that if one of these companies had to borrow money for the purpose of participating in equity, it would be part of the

A. We were putting equity into Bord na Mona at that time,

because Bord na Mona was basically in a very unhealthy financial position, was being kept going by the ESB, in effect, through the price for turf; it's one of the things Mr. Quinn did when he became Minister, was to sort out the finances of Bord na Mona by an injection of equity. So obviously we wouldn't have been

Q. Now, I think Mr. Halligan responds to the Minister on the 8th June, "Thank you for your letter of the 25th May regarding our interest in becoming involved in the consortium to bid in the competition for the GSM licence. I am grateful for your approval of our involvement in the consortium.

"We accept fully the condition you lay down that there would be no exposure to the core business; nor would there be any cash outlay funded from borrowings (in this context I would like to request that at this stage we would not be precluded entirely from an idea of equity stake in the venture).

"If we were to submit a proposal to you later which included an equity stake, it would be on the basis of obtaining the equity in return for services and facilities. Any proposals for additional future equity would be on the basis of a share call option to be funded from future flows of cash from the business itself.

"I am not at this stage seeking your approval for a specific proposal, something I will do only when and

if I have a fully documented and supported case to make. What I am seeking is to be allowed to keep our options open on the question of equity until such time as we are in a position to make a full submission to you."

He asked would you like to discuss it.

Then Mr. Lowry responds, "Dear Chairman, I wish to acknowledge receipt of your letter of the 8th June in response to my letter on the 25th May 1996."

Then up on the top there is "Mr. Brown, we need to consider this". Is that DTEC writing?

A. That's DTEC.

Q. And underneath as well, is that DTEC? "Mr. Geoghegan" or "Mr. Coughlan"?

A. Yes, it is, "Mr. Coughlan" I think.

Q. "Mr. Coughlan, I understand from the financial controller of Bord na Mona that its prospects of this coming to anything are not great. We need nevertheless to consider it a refusal. My view is no equity stake."

That's somebody in DTEC, is it?

A. That's John Brown. He was the Principal Officer in charge of that side.

Q. And it's received by Michael Lowry, then, on the 19th June.

Now, then there is something "secretary, Department for our attention" I don't know oh, this is to

RTE, I think, is it?

A. Yes.

Q. The next document is the RTE, is an RTE document. I don't know if there is any particular need to refer to it at the moment.

But the next document then is from David Doyle to Cabrini Keegan?

A. Yes. And you will notice that he sent it to her. Cabrini Keegan reported to me, but he sent it to her rather than to me because he was aware that I could have a conflict, so...

Q. It's the comments on the bottom; who are they from?

A. I don't know whose writing that is. Possibly it's Cabrini Keegan's, but I don't know

Q. It says "DTEC have looked upon this in a very negative way. Minister has gone back to Bord na Mona stating that he is not in agreement with Bord na Mona getting involved as an equity partner but is not opposed to Bord na Mona deriving benefits from leasing, letting, etc. DTEC's view is that nothing will come of the bid. Will send on copies of correspondence."

Now, you hadn't seen that, of course?

A. No, I hadn't seen that. In fact this is the first time I have seen that.

Q. Sorry, the only reason I pulled it out was in the context of the evidence of Mr. McCrea on Friday morning, when he said he had been in discussion with

Martin Brennan. It hasn't meant anything until we were looking through Department of Finance files again and saw this particular reference that DTEC were of the view that nothing would come of the bid.

A. I hadn't seen it on Department of Finance files. It must have been some other file

Q. It's a matter for DTEC, obviously?

A. Yes.

Q. Their attitude to bids. Even in advance of receiving them.

Thanks very much, Mr. McMeel.

A. Thank you, Mr. Coughlan.

MR. FITZSIMONS: I have no questions.

MR. McGONIGAL: No questions, Chairman.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

Q. MR. NESBITT: Now, Mr. McMeel, I just wanted to deal with two issues that have arisen in the course of your examination so I can be certain that the evidence you are in a position to give has been put before the Tribunal.

The issue of the nature of the process that was undergone following the publication of the competition document has been a matter of questioning, and as I discern from the questions, there appears to be two essential issues being put to you, and I'd like to try and tease out the two issues.

And the first appears to be the suggestion that the

competition process that we see in the competition document has been in some way subverted by the Project Group. Now, is that an inference that you took from the questioning?

A. Yes, that's an inference I took from the questioning, but one I disagree with.

Q. And in respect of the essential elements of the suggestion, perhaps I could deal with the question of the issue of weightings. Now, as I understand it, essentially you say, once we learnt there were criteria that were to be considered in a descending priority of importance

A. Yes.

Q. you said that of itself meant anybody reading it knew that the elements that would go to make up the answer, when any application was looked at, were going to be considered on a weighted basis?

A. Yes, they were going to be distinguished one from the other on a numerical basis.

Q. Indeed. So if you were looking at the top criteria and you were able to form a view as to what a particular application should be considered as presenting under that criteria, that was going to be worth more to them than what would be available when you looked at a competition application and were then considering what it had to offer in relation to the bottom criteria?

A. Yes, we had made that promise to the applicants that we would look at it in that way.

Q. Now, as I understand it, in relation to the nature of the licence fee, there was a spectrum of opinion which ran from the Department of Finance at one end, wishing to get as much as they could, and the Department of Communications at the other end, having a view that perhaps looking for as large a fee as was available was in fact counterproductive to what was intended and what was being sought in licensing a second operator?

A. Yes, yes.

Q. And I think you accept that those two elements were both debatable; you were at one end of the spectrum, and the Department of Telecommunications at the other end?

A. Yes, yes, but we did acknowledge that, privately, we acknowledged that the issue of tariffs, there was a case to it.

Q. And you don't find, and Mr. Brennan appears to be offered up, certainly in the questions put to you, as somebody who would have been very much of a firm view that if we wanted to get an appropriate GSM second operator, that keeping a low tariff was going keeping a low fee was going to be better than getting as much as you could out of the process?

A. Yes, that was his view.

Q. And am I well, did you consider his approach to be

a rational approach?

A. Yes, we considered the approach to be rational. There was merit in his approach, and we acknowledged it.

David Doyle, in a note to the Minister, acknowledged that the argument in regard to a low fee generating lower tariffs had a lot of merit and would have to be seriously considered.

Q. So in the context of a rational outcome to that debate, you had no difficulty with the rationality of the final outcome that was reached between your end of the spectrum and Mr. Brennan's end of the spectrum?

A. No, we had no difficulty with it. We thought it was a balanced, fair outcome which met a number of objectives, including safeguarding the budget arithmetic.

Q. Now, as I understand it, in relation to making your case in this debate, should it be as much as we can get or should it be a lesser figure for the Brennan reasoning, you realised that where the criteria of licence fee stood would be important to how well you might do in the debate as to whether it should be a high fee or a low fee; is that right?

A. Yes, I understood that, yes.

Q. And would I be right in thinking that when one sees your notes to Mr. Brennan, where you are suggesting that the question of weighting might be a difficulty, that was because you were trying to support and make

your case to keep a high licence fee?

A. Yes, and as I acknowledged later on in a note, that if the weighting for the fee was sufficiently high, we wouldn't have a problem.

Q. Precisely. So you'd be winning the argument?

A. Yes.

Q. So that piece of exchange we see in the correspondence has nothing to do with your belief that weighting wasn't part of the process?

A. No.

Q. But more an intelligent way of arguing your corner?

A. Yes, I was being an advocate for a cause and being as reasonable and unreasonable as advocates are in arguing a cause.

Q. Most people want to win when they are arguing. Now, have you had the opportunity of considering the Cabinet decision, what the Cabinet decision actually said prior to the process being published?

A. I don't have a copy of the Cabinet decision.

Q. That's what I thought.

Now, I am in trouble, Mr. Chairman, because I am not sure where exactly I am going to find it. I know what book I have it in. 41 I'll read it out, Mr.

Chairman; it's very short. This is the decision of the Government on the 7th February of 1995, and they said there would be a Cabinet Committee. I don't know where it's going to be found in the books; I am afraid

I am working off my own book. Sorry it's

Department documents, Book 41, sorry, Divider 42.

Now, at this point in time, the decision in relation to or this document, it says "The Government decided on the 7th February 1995 that a Cabinet Committee consisting of the Taoiseach, Tanaiste, Minister for Finance, Social Welfare, Transport, Energy and Communications, and Enterprise & Employment should review the proposed financial terms, tendering procedures, and proposed advertisements for the digital mobile cellular communications GSM licence.

"The Cabinet Committee met on the 16 February 1995", and the fourth indent down reads: "Agreed to proceed with the proposed GSM tender competition as outlined in the Minister for Transport, Energy and Communications' aide-memoire for the Cabinet Committee"?

A. Yes.

Q. Now, do you have the aide-memoire available to you? I think it may be the document before it, Divider 41.

A. I have an aide-memoire of no, I don't have the full

Q. It's Divider 41 in

A. This book.

Q. Department documents, Volume 1.

A. I have it now, yes.

Q. Now, this is a lengthy document. But the bit I want

to draw your attention to is the selection process, which is internal pagination at the top of the documents, it's 000273?

A. Yes, I have it.

Q. And the selection process, the portion of the document concerning that reads as follows: "Consultants will be engaged to assist in the process of final selection and will also be on board to assist in the final stages of preparation of the Department's information memorandum mentioned in paragraph 10. The selection of the successful tender will be determined by reference to the following:

" the quality and credibility of the business plans of applicants with particular emphasis on a progressive approach to market development, a commitment to high quality nation-wide service and an innovative approach to tariffs with a view to reducing costs to consumers.

" the proposed fees for the licence."

Then it continues: "The highest bidder will not necessarily be successful, and this is clearly stated and emphasised in the tender documentation. The documentation indicates 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 therein, and

specifically with regard to the list of evaluation criteria set out below in descending order of priority."

Then you see eight bullet points that are the criteria. I won't read them out.

A. Yes.

Q. Now, in relation to that verbiage, you see the use of the word "Quality" on two separate occasions?

A. Yes.

Q. "The quality and credibility the business plans of the applicants", and secondly, "A commitment to a high quality nationwide service."

A. Yes.

Q. Now, in relation to the competition process and the part you had to play on the Project Team, was there any ever a dispute among any of the members, any members of the Project Team, that there would need to be a quality evaluation for the purposes of understanding how any applicants would rank in the competition process?

A. I don't recall any such dispute.

Q. And in relation to the question of marking in a quantitative way, the Project Team had that, too, in front of them as a route to arriving at the final answer; is that right?

A. Yes, you mean the selection criteria?

Q. Yes.

A. Yes. In fact Mr. Towey, I think, reminded people at some stage in August of 1995 that the thing was ultimately to be decided in accordance with the selection criteria. I have it here somewhere.

It's in a note to the Evaluation Group of the 10th August 1995. And he said "In the course of this" and he specifically mentioned the various people involved in the sub-groups "In the course of this examination, it should be borne in mind that the ultimate objective is to rank applications according to the following selection criteria." And then he listed the selection criteria.

Q. So and maybe I have misunderstood the thrust of the concern that the Tribunal have with this particular process, but insofar as you are concerned, I assume you looked at the competition document before deciding how matters would progress?

A. Yes.

Q. And you were able to see what was said in paragraph 19, which I think you think was a seminal part of the requirement of the process?

A. Yes.

Q. And I think it didn't choose to mention the question of quantitative analysis or qualitative analysis?

A. No.

Q. It just simply said you have got to compare?

A. And we didn't that's what we told the applicants.

Paragraph 19 was what was decided by Government, and that's the ultimate basis.

Q. And the only other matter that was of concern then was to follow the selection criteria as best you could?

A. Yes.

Q. And to do things equitably?

A. Yes, yes.

Q. And when trying to attribute weight to the information imparted in an application, you had two things: You had the written application information, and you had the second thing, which was a presentation, the oral presentation?

A. Yes, yes.

Q. And then you had your analytical capabilities with the assistance of Andersen?

A. Yes.

Q. And in relation to approaching the quantitative evaluation, am I right in understanding that you did it by or that process was effected by attempting to add up, in numerical terms, the information given, and then

A. For the subset of indicators, which was only a subset, I think it was only 14 out of a total of 60 indicators.

Q. Indeed. And in relation to qualitative, you said the same concept, you had indicators which led to dimensions which hung under the criteria?

A. Which ultimately had to be traced back to the criteria.

Q. And the way you actually knew what anything was worth, in neutral terms, was by understanding what you were going to score any indicator?

A. Yes.

Q. How you'd score an indicator. And when we get to the indicators used in the qualitative evaluation, for example well, I won't give an example; it's not necessary what was your understanding as to how those indicators would be matched one against the other when one was looking at a dimension? Would they all be given the same weight, or would some be considered more valuable than others?

A. I think some would have to be considered more valuable than others. It's referred to in the report in respect of one of the dimensions.

Q. It is indeed.

A. Where there was

Q. And that was, as I understand it, understood by the people who were involved in the process?

A. Yes.

Q. And were you happy with that?

A. I was happy. I was happy that the process was done in good faith. I was not involved in any of that detailed evaluation myself, but I was happy that this was done in good faith by competent people.

Q. But you understood broadly how it was being approached, although you weren't hands-on?

A. I understood, yes, that the thing was being elaborated on by means of indicators.

Q. Indeed. Insofar as you were involved in the process and learnt that a winner had been selected, do you have any difficulties with the process that you were involved in and the view you had formed that that was an appropriate winner?

A. No, I have no problems whatsoever with the process or with the outcome of the process. I specifically said to the Minister that I endorse it, and I still do.

Q. Were you ever at any time put under any pressure to do other than make up your own mind as part of the process team?

A. There is only that issue that I documented where Mr. McMahan called me in relation to a point it's in my statement. That's the only matter that comes to mind where I felt an extraneous process or an extraneous issue was being introduced. But I dealt with it in my statement.

Q. You did indeed. And that didn't impact on your approach to things?

A. No, absolutely not. I was very conscious that we stick to the selection criteria.

Q. And were you ever aware of any outside influence on the process that you could determine or recognise

which you felt was attempting to, or would have the effect of leading the process into error?

A. No, I was not aware. And in that, I join with all the other people who have given evidence under oath. I was not aware of any influence that was brought to bear on this process to try to influence it in any way.

Q. Thank you.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Where are you working now?

A. I work in the Irish Representation to the EU.

Q. Is Mr. Fintan Towey a colleague of yours there at the moment?

A. Mr. Towey, yes, he is a colleague.

Q. Have you discussed this matter with him?

A. No.

Q. You haven't? You haven't discussed it once with him?

A. We have obviously, the fact that we are both before the Tribunal, we have it's a small office; we bump into each other.

Q. Thanks.

CHAIRMAN: Thanks for your assistance, Mr. McMeel.

Very good. Is it feasible to commence?

MR. COUGHLAN: No, Sir. Mr. Riordan tomorrow.

CHAIRMAN: We will take him up at eleven o'clock.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

WEDNESDAY, 9TH APRIL, 2003 AT 11AM.