

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 Fitsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Kelly Noone & Co.

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxton

I N D E X

WITNESS: EXAMINATION:Q. NO:

MARTIN BRENNAN

Mr. Healy

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THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY,

24TH JANUARY 2003, AT 11AM.:

CONTINUATION OF EXAMINATION OF MARTIN BRENNAN BY

MR. HEALY:

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

Mr. Brennan, if you go to Leaf 104, the minute of the 11th meeting of the GSM Project Group, and to the portion of the meeting that we were to the portion of the record of the meeting that we were discussing yesterday, where it's noted on the second page under "Review of Current Position" that you said "Mr.

Brennan also stated that the group agreed that no further contact between the evaluation team and the applicants was possible, although access to the Minister could not be stopped."

Could you just explain to me why the completion of the presentations should in some way have determined the ending of contact with the applicants?

A. I am not so sure that it was ending it. I mean, the possibility was left open in our discussion with the applicants that if we needed more information, we would look for it. So I mean, that possibility was always there.

Q. But were you saying there was going to be no more now?

You were making a unanimous decision that there was to be no further contact?

A. I am not so sure that those words are as strict as

that, but I don't know.

Q. I see. Can you tell me what contact there would have been up to then? I don't want to be parsing and analysing every single word in a minute of a meeting, but it says "no further contact". Does that suggest that in some way there were previous contacts?

A. I am not sure that it does, in the sense that the presentations themselves were contacts.

Q. Of course.

A. I know, for example, that after one of the presentations, we were going to Copenhagen, and the Telenor team were on the same plane, and we exchanged pleasantries with them; but we were very careful it was no more than that, you know. I am just trying to recollect, were there circumstances between the closing date and the presentations where questions might have been asked. I mean, there were certainly letters inviting them to the presentations, letters sending them questions and so on. So those were contacts, and I think what we are now saying is that phase is over; we are getting into the evaluation. Now, I don't think that that sentence, as written, ruled out the idea if somebody said, "I really need to ask consortium X, Y or Z for a particular piece of information", I don't think it would be ruled out by that sort of statement.

Q. Right. I am slightly puzzled by something Mr.

Andersen said in his January 2002 report to the Tribunal. It's in Book 39, Leaf Divider 1, Leaf A, and it's at page 38. It's the final page.

You have the document, in any case, and you have a hard copy yourself, Mr. Brennan. If you look at page 38, paragraph (iii) at the top of the page, where Mr. Andersen says "AMI understands that the Department informed orally certain applicants that they could deviate in their application from some of the tender specifications given. This, which meant that the applications proved very difficult or impossible to compare on a qualitative basis with regard to the parts of the evaluation that were to be based upon the information provided in those parts of the applications."

Can you throw any light on that?

A. That means nothing at all to me. Now, I haven't studied this document beyond seeing it in the Opening Statement, but that sentence that paragraph means nothing at all to me.

Q. By that do you mean that you don't mean that you don't understand it?

A. I understand it. I can't imagine what activity it's referring to.

Q. Well, let's be clear that we are on the same wavelength about what it means. What I understand Mr. Andersen to be saying is that it was his impression or

his understanding that the Department had given information to certain applicants orally that they could deviate from their in their applications from some of the tender specifications; that in other words, they would become non-standard, if you like.

A. I find that very strange. I'd be surprised if it happened.

Q. Was anything like that or any suggestion like that ever made to you by Mr. Andersen before?

A. No.

Q. As a reason why it might be difficult or might have been difficult to compare applications?

A. I don't recall anything like that, no.

Q. That's why I am referring that's why I am interested in the reference in that minute to the suggestion that there should be no further contact.

A. I mean, I can't ground that paragraph (iii) at all, and therefore, it couldn't have been in my mind when I said you know, the phase of having contact with applicants is over.

Q. Can you recall, did you ever have any contact with an applicant at any time during the process, whether up to the presentations or between the presentations and the closing date during which you had to resort, as it were, to the protocol, you know, of having somebody with you making a written note of it and maybe or maybe not sending a formal written communication the

following day?

A. I would assume that if I did have some contact that I would have insisted on there being a report, and I don't see any such report.

Q. Do you remember before Christmas we were discussing the contacts that you had had with the Minister?

A. I do.

Q. And at that time in any case, based on what was contained in your response to the Tribunal's questionnaire, we divided them I think into three; we weren't able to pinpoint them all by date, but we were able to describe roughly what happened. And correct me if I am wrong in summarising them as follows:

After the applications came in, you had a conversation with the Minister in which you said "Look, we have got six applications, I have had a quick look at them, they are all fairly interesting." It's like six job applications; you are going to get some that are weaker than others. Some seem weakish, some seem not.

You didn't have a better fix on them than that. You had contact with him in that you were able to tell him this was breakdown into 3:3 or 2:2:2, and there was a contact in which you were able to say that you knew who the top two were, you weren't absolutely sure, there is some suggestion that you may have mentioned ranking. You felt you didn't mention the ranking, and you felt that you were working on that you told the

Minister that you were working on separating the top two. I suppose, in fairness to you, although the note records you as having notified the Minister of the ranking, if you had a discussion with the Minister and you told him that you had identified a top two and that you were working on separating that, that meant perhaps you hadn't told him the ranking because you wouldn't know the ranking if you were separating them. Is it possible you might have had four contacts with him?

A. I really couldn't say. I mean, my recollection was you know, that this was a progressive kind of a thing and that while the first time he was seeking assurance that within the applications there was going to be someone who would be a good licensee to drive the market, that was the context of the first conversation, and after that, I recollect the kinds of contacts that we talked about. I couldn't say for sure there were three, there were four; my thinking is that there were three.

Q. There was one other one. I am not trying to catch you out or anything. But it only occurred to me there was another one because you were asked a question in another context altogether. Do you remember a discussion and I think you made this distinction yourself, by the way, in your answer do you remember a discussion about the weightings where you

are recorded as having noted that the Minister had mentioned to you that he had received approaches about the weightings but that, in fairness, I think, was prior to the applications actually having been received; do you remember that discussion or that note?

A. I don't have a clear recollection of it now.

Q. We were discussing the weightings. We were discussing to what extent information about the weightings was being relayed to the outside world, as it were, and you are noted at a meeting as having mentioned that the Minister had received representations or approaches about them?

A. Okay.

Q. In fairness to you, in your response to the Tribunal questionnaire, I think you were seeking to define the word "process", and you defined it as meaning once the applications came in?

A. Yeah, okay.

Q. I want to come to a part of Mr. Fitzgerald's statement that we discussed in part before Christmas, because I want to look at it again now, again, to try to date Mr. Fitzgerald's references to conversations he had with you and perhaps to try to date conversations you had with the Minister.

I want to draw your attention to an extract from Mr. Sean Fitzgerald's memorandum of intended evidence.

It's in Book 13 it's in Book 35, and I think there is an index at the front, and it's his response to query number 23, which is on page 15.

Have you got that?

A. Yeah.

Q. Mr. Fitzgerald was asked about contacts he had with individuals connected with the process. The question is on the overhead projector.

"Whether Mr. Fitzgerald was kept informed of the trends and/or ranking emerging from the evaluation process during the course of that process, and if so, the precise matters of which he was informed, by whom he was so informed, and when he was so informed. If Mr. Fitzgerald was so informed, the identities of all persons to whom he relayed any such information."

And Mr. Fitzgerald's response was as follows: "I was informed by the Chairman in early September, as I recollect, that the initial evaluation of the group put three bids as qualifying for a licence and the other three as subject to reservations. There was clear water between the third and the first and second, who were close. I was told that at that stage Esat Digifone were the likely front runners, but more work was needed. I said that such a result, if upheld, was going to be controversial, and the final decision of the group had better be well founded as it would be open to attack. I asked if the Minister was

aware of the situation and was told that he was and had not expressed any views.

"I then raised the question of Communicorp's financial status discussed in the next question. I discussed the situation with Mr. Loughrey but not with the Minister or anybody else."

He goes on to say "I had no involvement in the group's deliberations. It was my responsibility to ensure that they followed the preset process, which I am satisfied they did; and once I had studied the draft report, that the result was consistent with the terms of the bids made. In the event that the Secretary General or I disagreed with the finding, which was not the case, we have no right to change it. The only course open was to advise the Minister not to accept the recommendation and to terminate the process without an award. The decision as to which course to follow would be the Minister's. This situation did not arise."

I want to come to where Mr. Fitzgerald, in his memorandum of intended evidence, says that or indicates that he was informed by the Chairman in early September that the initial evaluation put three bids as qualifying and three subject to reservations. And where, in the course of a discussion, he says the question of Communicorp's financial status was discussed.

Now, he refers to the next question. The next question was the next question on the original questionnaire he was sent, but they were reconstituted to make more sense out of them. And he is not referring to the next question on the document you have, but to Question 25 in the same book at the same leaf. It's at page 16.

A. I don't have that page right now.

Q. I'll get you a copy of that.

A. I was given pages 15 and 27.

(Document handed to witness.)

Q. Question 25 is as follows: "It sought details of Mr. Fitzgerald's concerns regarding the financial capability of Esat Digifone consortium and in particular the financial capability of Communicorp, the identity of all persons with whom Mr. Fitzgerald discussed his concerns, and details of the assurances given to him regarding his concerns, i.e. the provision of cross guarantees."

Mr. Fitzgerald says: "Once the possibility of the Esat Digifone bid becoming a possible winner emerged, I was concerned that their financial capability to implement the project should be clearly established before a recommendation was made. My concern related to the Communicorp partner which was also heavily involved in developing a wire-based service in competition with Telecom Eireann. This service was

still unprofitable and was requiring ever-increasing amounts of capital, resulting in increasing investment by venture capital funds and a dilution of Mr. O'Brien's shareholding. Even though the award of a licence would result in a bankable project for establishing the mobile service, the telecom business could put a strain on Communicorp's ability to fund their large 5% stake. Mr. Brennan said the group had been aware of the financial weakness of Communicorp, and also that of some participants in other bids. They had required all bidding group members to cross-guarantee all other bid partners. This ensured that Telenor's financial strength would, if necessary, ensure the Esat Digifone group financial availability. It would not necessarily stabilise the shareholding, but neither would any other financial underpinning. I was satisfied at that stage that steps were taken, but see also my reply to the following questions, 26 to 28."

Firstly, do you remember a conversation with Mr. Fitzgerald about these matters in early September?

A. Depending on your definition, I would say early September is impossible. It must have been later in September. I wouldn't be surprised at there being a conversation, but it would have to be, I guess, in the second half of September or thereabouts for it to have this kind of content. I think.

Q. Why do you say that? Do you feel it should have been after the presentations?

A. No, I don't think we had crystallised so clearly on, I mean, a front runner by even by the end of the presentations.

Q. You did have some views, I suppose, at that point. You had a you had a quantitative evaluation result, hadn't you?

A. I'd say by that stage, we had mentally put that to one side in the sense that you know, we were aware of all its of its weaknesses, and the evaluation had developed from there.

Q. Yes. I am slightly curious, just to digress for a moment, about that. It was still being worked on at all times right up until October 2nd, I think, the quantitative evaluation?

A. I think that's probably true, but I have a sense in which the Tribunal is now trying to get me to fill the gaps caused by the fact that Michael Andersen seems not to be available, and that's putting me in a difficult situation because I don't have access to the records.

Q. Well, no, I am not. I am putting to you the proposition advanced by Mr. Andersen when he describes the quantitative evaluation as having withered on the vine, as it were. I have seen the evaluation I have seen the minutes, and I have seen all the

documents on your side, and I don't see anything to tally with that. That's what I am looking for. Is this Michael Andersen's own notion, or is there anything in the Department documents to reflect it?

That's why I am trying to pursue it.

A. To reflect the decline of a quantitative analysis?

Q. Yes.

A. I'd have to have a closer look at documents.

Q. I couldn't find anything to suggest it. In any case, we'll just go back a moment.

If you go on to Document 107, just for a minute. This is a note from the Department of Finance files dated 16th September of 1995. The content of the note is not of huge significance. It's from Jimmy McMeel, but appended to it or attached to it is a number of other documents, of which the first is a list of the consortia with their coded labels. Do you see that?

A. Yeah.

Q. And in manuscript on the right-hand side, you will see that Mr. McMeel presumably, or somebody has written opposite Irish Mobicall, which is A1, "3rd place."

Opposite Persona, which is A3, "Doing well." Opposite Esat Digifone, which is A5, "Doing well." And could I suggest that what that means is that you had a top three, of whom one was in third place, definitely; i.e. that there was a difference between A1 on the one hand and both A3 and A5 taken together.

A. Mm-hmm.

Q. Suggesting that you had a top two without knowing what the ranking was, and that you had therefore a third, but that there was a gap between the top two and the third.

If you look at the top of that document, it seems to be dated 4th September of 1995; do you see that?

A. Well, is it dated the 4/9, or is it just recording the fact that that was the state of play on the 4/9?

Q. Sorry, it says "Meeting 4/9."

A. That's not to suggest that the document itself was dated 4/9. I just don't know. It's accompanying a memorandum dated 16/9.

Q. Yes. I suppose one could say this much: It would suggest that between the 14th and the 16th, in some way, Mr. McMeel had recorded an impression to this effect?

A. Yes.

Q. And I agree with you, it's very hard to put a date on early September, but maybe it's the it doesn't seem to be the date of the 4th is definitely early September. You might argue about whether the 16th is early September.

A. Yeah. I mean, why I quibble with it is, were the likely front runners, not were among the front runners in Question 23 suggested by the time this conversation took place that the view was clearer.

Q. It would suggest, in other words, that they were in pole position?

A. Yeah. And Mr. McMeel's note doesn't suggest that. And in my own mind, I don't think we were at the stage of having a clear front runner in early September.

Q. Can we just look at it, try to tackle it from another point of view, then, if we date it on the basis that it must have been by reference to some date when a front runner or a potential front runner, in any case, had emerged. Do you remember a discussion with him in which Esat Digifone's in which the impact of a result in favour of Esat Digifone was discussed?

A. I don't have a specific recollection of it, but I take it that it probably happened.

Q. Do you remember having a discussion with him in which he drew to your attention the fact that he had concerns about Communicorp's financial status?

A. I can't say I specifically remember it, but I wouldn't rule it out.

Q. We know that at the presentation meetings, Mr. Riordan raised issues, and you filled out for me yesterday the way the presentation meetings were approached by the evaluation group, taking first the list of questions, oral applicant-specific questions identified by Mr. Andersen and working on those and finding out whether there were any gaps or other matters that needed to be looked at. And clearly they had, I think as you said

as a result of a significant amount of discussion

am I right in that? identified other issues that

needed to be tackled?

A. It emerged in the group ,in us discussing the Andersen

draft, that there were gaps in it and that the gaps

were pencilled in, or at least in the particular case

of Esat Digifone/Communicorp, it was the fact that

they needed to be asked questions about financing was

identified, and Billy Riordan was asked to do the

probing.

Q. Do you see where Mr. Fitzgerald says that he asked if

the Minister was aware of the situation and was told

that he was and had not expressed any views?

A. Mm-hmm.

Q. Can I just take that in two stages. If Mr. Fitzgerald

is basing that on a conversation with you, can you

recall telling him that the Minister was aware, and if

so, did you tell the Minister?

A. I can't recall that level of detail of my

conversations with Mr. Fitzgerald. Mr. Fitzgerald was

my immediate boss, and we were on the same floor of

the building and so on, so I don't rule out that these

kinds of conversations took place.

Did I tell the Minister? I have already acknowledged

that I had probably three conversations with the

Minister and that this could well refer to one of

them.

Q. And do you recall whether you stated to Mr. Fitzgerald or even if you don't recall that, do you recall what views or whether the Minister expressed any views about this issue?

A. About the issue of Communicorp financing?

Q. Yeah.

A. No, I don't recall that.

Q. Do you recall bringing to the attention of the evaluation group, or even the subset of the evaluation group who were looking at the Andersen note of the oral applicant-specific questions, the fact that Mr. Fitzgerald had highlighted this as something that they might keep an eye on?

A. I am not sure that the conversation with Mr. Fitzgerald took place almost just reading it, it couldn't have taken place in early September. And it probably didn't take place before the presentations, but that's something that we'll have to leave to Mr. Fitzgerald. I don't think I don't think I could have made a statement about Esat Digifone being either a front runner or the front runner in early September.

Q. Could you have made that point to him after the presentations?

A. Not soon after the presentation.

Q. Or during?

A. It may have become clear that there were it did become clear that there were now two front runners,

but I don't think I could have made a statement as soon as that that they were the front runner.

Q. Well, again without parsing and analysing Mr. Fitzgerald's statement, I suppose it's possible that if he was told that there were a front runner, that's something that could have been relayed to him around the time of before or after the presentations?

A. Yes, I think it's reasonable.

Q. If we can just skip forward for a totally different reason to Leaf 107, and Mr. McMeel's enclosed Annex 1, as it's called. From the evidence that we discussed yesterday or we went through yesterday, we know that the A4 presentation was the last presentation, isn't that right, on the 14th?

A. I think that's correct, yeah.

Q. We know it from the minutes where the minutes on the 14th firstly discussed A4, I think, or maybe secondly discussed A4 and went on to discuss a number of general matters. And that was I think Thursday morning, the 14th. I know it was a Thursday, anyway.

A. Okay.

Q. I think, as they were three-hour meetings, it took the morning only, obviously?

A. Yeah.

Q. Now, from the list here you can see that that included a number of entities associated with Mr. A.J.F. O'Reilly, and do you remember before Christmas, I

mentioned very briefly that Mr. O'Reilly made a statement or provided the Tribunal with a memorandum of intended evidence in which he referred to a conversation with Mr. Lowry concerning that presentation. This is Book 38, Divider 8, page 4 of the memorandum of intended evidence, paragraph 14. I am going to get you a hard text copy.

A. Okay.

(Document handed to witness.)

Q. You have got a copy of it, have you?

A. Yes.

Q. At paragraph 14, Mr. O'Reilly says "I should mention that I did meet Mr. Lowry on one other occasion". He was referring to contacts he had had with Mr. Lowry.

"This meeting, which I recall was the first time I met with Mr. Lowry, took place at the opening of the Arcon mine in Galmoy on 15 September 1995. As mentioned at paragraph 3 above, I believe this to have been my first meeting with Mr. Lowry. As I recall, after the official opening ceremony, I was proceeding with a number of guests (including Mr. Lowry, whose constituency is proximate to the mine) towards the refreshments tent. My recollection is that Mr. Lowry made a comment to me along the lines of "Your fellas didn't do too well today". I told him that I did not understand what he was saying. He explained to me that he was talking about the presentations which were

being made by various applicants for the second mobile telephone licence. Independent was at the time an applicant for the second mobile telephone licence in a consortium with six other companies (including the American telephone company AT&T). Mr. Lowry explained to me that the "your fellas" which he was referring to were in fact the AT&T representatives who had made a presentation to the departmental panel in charge of selecting the successful applicant. I have recently learned that this presentation was made on the previous day, 14 September, 1995. I can therefore only presume that my recollection is not 100 percent correct and that Mr. Lowry must have said to me "Your fellas didn't do too well yesterday". The fact remains that such a statement was made to me by Mr. Lowry. I am aware that the Esat consortium was named as the successful applicant on the 25 October 1995. I wish to emphasise that on the 15 September 1995, I neither raised with Mr. Lowry the issue of the GSM licence nor approached him about it. I in fact was totally unaware that my "fellas", as he put it, had the previous day made a presentation to his Department. Further discussion with him about the matter was somewhat brief, to say the least; my personal awareness of PHL's involvement I think that's a reference to Princes Holdings Limited "in the application was very limited indeed. As I recall,

the remainder of our conversation related to the

Galmoy mine and its future."

CHAIRMAN: Well, the last paragraph is subjective and non-factual.

MR. HEALY: Yes.

Q. Now, I should say that Mr. Lowry doesn't accept that version of what transpired at Galmoy at which he at the opening of the mine except that he was present at the opening of the mine. And I think he expects that Mr. O'Reilly is saying this in some way to damage him. Assuming that what Mr. O'Reilly says is correct and that his evidence, if it's given in accordance with that memorandum, is accepted, it would mean that the Minister must have got information about how that presentation went, or must have had a conversation with somebody involved with the presentation about how it went on the Thursday afternoon or on the Friday morning?

A. Mm-hmm.

Q. In the ordinary way, if the Minister was going to open a mine, like to open Galmoy, he presumably would have received some briefing from his civil servants to arm him with the relevant information to give a good account of himself and to make an appropriate speech and so on?

A. I think that's reasonable.

Q. Would that have been done in the days before he went

down there?

A. In a case like that, yes, it would have been done presumably by the mining division of the Department.

I'd be amazed if there was any reference to my division for inputs to that speech. But I mean, if there was a speech or a brief, it should be in the Department's records.

Q. Did you yourself recall in the course of any of your discussions with the Minister ever mentioning how the applicants had performed at presentations?

A. We had this conversation before Christmas, and I said that I thought first of all the proposition that people were keeping the Minister informed on a blow-by-blow basis or a day-by-day basis as to what was going on in the presentations was preposterous because of the intensity of the work we were engaged in. I went on, and I don't recall a total recall of these things, that it couldn't have been ruled out that there could have been a chance remark from the Minister to somebody, somebody to the Minister; it could be on the side of the people making the presentation or the people receiving the presentation. I don't recall having been asked any questions or making any statements.

Could I say for sure that it didn't happen? I don't know. A Minister going down knowing that he was going to meet these people, could he have asked me? I

couldn't totally rule it out, but I'd be surprised,
and I think it's the kind of thing I might have
remembered.

Q. It would, if it had happened, it would have involved
an inquiry by the Minister about some level of detail
which would have surprised you; would that be right?

A. Yeah. I have no recollection of the Minister having
any interest in the detail of the evaluation process
at any time during it.

Q. In keeping other civil servants informed, such as Mr.
Fitzgerald or Mr. Loughrey, would you have informed
them of how the presentations were going and how, as a
result of the presentations, the final line-up was
settling down, as it were?

A. I suppose there is more of a prospect that I told Mr.
Fitzgerald than anybody else.

Q. I presume that after the presentations, you might have
been we have heard three of them; you can form some
judgements from them. If you had heard all six of
them, you might have been able to say "Well, as we
thought, it's still looking like definitely 3:3 or
2:1:3?

A. Or whatever, yes.

Q. So it's not unreasonable to assume that there could
have been an updating of Mr. Fitzgerald or Mr.
Loughrey in that level of detail?

A. I could easily have said to Mr. Fitzgerald, "The

bottom three are falling off the table". I could easily have made a remark like that, or I could have made a remark like "The bottom three didn't improve their case", or whatever. You know.

Q. At the presentations?

A. Yeah, but I am not trying to put Mr. Fitzgerald into a corner either. I am just trying to be as helpful as I can, given that, as I have said several times before, the events are seven years ago, and nobody has that kind of total recall.

Q. If I suppose you were let me put it another way:

If that evidence is accepted, if Mr. O'Reilly's evidence is accepted and his version of what happened is correct, it is clear that Mr. Lowry must have had a conversation at which that level of detail was passed to him. That's undoubtedly the case; isn't that right?

A. On the face of it, yes.

Q. Either as a result of an inquiry by him or as a result of some voluntary statement by some civil servant?

A. Yeah.

Q. Now, I suppose

A. Sorry, I would not totally rule out the idea that he may have met somebody from the other side.

Q. Somebody from the team?

A. Yeah, from the consortium, either in the Department's buildings or elsewhere. That just can't be ruled out

at this stage.

Q. I suppose it can't be ruled out, but one imagines that if a conversation like that had taken place and if the source of the information is not the Department but an applicant, then Mr. Lowry might have been the first to have said it, either to the Tribunal or to Mr. O'Reilly on the day in question?

A. I have no idea.

Q. Now, I want to ask you whether you can throw any light on a number of other significant events that occurred around this time. You have heard from the Opening Statement that apart from the meeting that I have just described, the Tribunal has been informed that the Minister met with Mr. Denis O'Brien at Hartigan's public house in Leeson Street on the 17th September. That fact is not disputed either by Mr. O'Brien or by Mr. Lowry. I think Mr. Lowry originally went to Hourican's public house but left to have a conversation with Mr. O'Brien in Hartigan's.

Mr. Lowry and Mr. O'Brien have informed the Tribunal that they discussed the match, that their discussion also included reference to auto dialers. Mr. Lowry was at that time effectively the Regulator for auto dialers; would that be right?

A. Yes, the Department was the Regulator.

Q. And that their conversation took place alone. There was nobody else present. That was on the 17th, which

would have been I think five days after the Esat presentation; is that right?

A. Okay, yeah.

Q. And I take it the first you knew about that was when you heard it in the Opening Statement?

A. Correct, no, no, sorry

Q. You heard it from the Tribunal, who brought it to your attention?

A. Yeah, I heard it from the Tribunal.

Q. On the 18th September, the day after that meeting, Mr. O'Brien went to his solicitor's office, went to Mr.

O'Connell's office. He was accompanied by Mr. Leslie

Buckley. I'll provide a reference for these documents

in a moment, but they are not very long, so...

It's Book 48, Leaf 42. I can read it out to you; it's

not a terribly lengthy document. It's Mr. O'Connell's

file note of the 18th September, 1995.

I am handing you a manuscript and a transcribed copy.

(Document handed to witness.)

The client is described as Esat. The matter is

described as GSM. And the note is as follows: "Denis

O'Brien and Leslie Buckley" obviously referring to

the attendees.

"Dermot Desmond going ahead with financing

transaction.

"Need 'underwriting' letter for Department because

finances are seen as the weakness."

"DD wants 30% of GSM. AIB, Standard + IBI to be excluded."

Then there is a suggested breakdown, or there is a breakdown that was being canvassed which is 30% DD, 5% Advent, 32.5% Esat, 32.5% Telenor.

Now, you will have heard in the Opening Statement that there had been a meeting between Mr. O'Brien and Mr. Dermot Desmond also on the 17th and that there had been contacts prior to that, in the week prior to that, between Mr. O'Brien's side, if you like, and Mr. Desmond's side, in the form of contacts with Professor Michael Walsh, and in the period indeed from in or about the 11th August right up to this time, there had been contacts between them with a view to Mr. Desmond becoming a part of the consortium.

But do you see the reference to the Department on the third line of this attendance, where it's stated "Need 'underwriting' letter for Department because finances are seen as the weakness"?

Does that suggest that or would you agree with me that that suggests that Mr. O'Connell was given the impression that the Department saw finances as a weakness and that the way to solve it was to provide them with an "Underwriting" letter?

A. I don't know what link you are making between the first half of that question and the second half of the question. I mean, it would have been clear to the

consortium from the probing at the presentation that there was some concern about finances. I'd expect that every consortium, when they left the Department, they had a debriefing meeting, you know, "What were the weak points? How did we get on today, folks?"

And they may at that stage have concluded that finances were weak. Could this

Q. Would they be right in that first that finances were seen as a weakness?

A. Would they be right?

Q. Would they be right in saying that finances were seen as the weakness?

A. What I am saying is that they could have concluded that from the questions being asked at the presentation.

Q. Would it have been reasonable for them to have concluded that?

A. It's a value judgement. I don't know.

Q. Well, firstly, were they right?

A. Well, going back to the material we were looking at yesterday, I think it was clear it would have been clear to them, for example, that they were technically very strong. So therefore, to the extent that there was an issue arising in their minds after the presentation meeting, it was more likely to be in the financial area than in other areas, I think. But I mean, they are not really questions for me at all,

because I don't know the state of people's minds.

Q. But wasn't it the case that finance were, or was perceived by the Department, by the evaluators, as a weakness?

A. It was something to be concerned about.

Q. And that the weakness was in Communicorp?

A. In that case of that consortium, yes.

Q. Nobody was suggesting that Telenor were weak. There might have been a suggestion that you didn't have the fullest commitment, i.e., the fullest locked-in commitments from the banks, but nobody was suggesting they were weak. So it would have been a correct perception, wouldn't it?

A. I have kind of lost concentration there for a moment.

Q. I am suggesting it would have been a correct perception on the part of Mr. O'Brien and his team that the Department saw finances as the weakness in their application.

A. In the sense that the team probed the financial question, and it may have seemed to them after it that it was the most the highest exposure in their consortium. But the reason I asked you about the two halves of the question is, you seemed in the way you framed the question to be inferring that the Department may have been seeking an underwriting letter.

Q. Well, I am suggesting to you that that's what that

indicates, that the solution to this was that a letter was needed for the Department. That's what this is suggesting, I am saying to you.

A. That's what the language here is suggesting, that they thought a solution of that kind was needed. I don't think you can infer, though, that they had information from the Department that the Department saw that need.

Q. That's you have read it the same way as I read it, Mr. Brennan?

A. I am actually reading or thinking about the words you use in framing the question rather than the words that are written down here.

Q. If you look at the words that are written down here, do they not suggest I am not necessarily expecting you to agree with me. Do they not suggest that whoever wrote those words felt that this underwriting letter was needed for the Department because the Department saw finances as the weakness, and the solution was to provide an underwriting letter?

A. The only nuance between us is, I think it's their view that one thing they should now consider is sending in a further letter to the Department. Not that the Department had sought such a letter.

Q. Well, are you satisfied that you gave no impression to them that a letter to that effect or further action on their part would satisfy the concerns you had about finances?

A. I am happy to let the tapes and the transcripts of the presentation meeting speak for themselves and the people present at the meeting on my side to speak for themselves. I didn't give any indication there, and I had no contact subsequently that I was looking for that kind of a letter. And I mean, if you go forward to the letter having been sent back, I mean, that confirms that we weren't looking for a letter, in my view.

Q. I just want to refer to two other documents that have come into the Tribunal's possession concerning this matter and these events. The first one is a memorandum described as "Private and confidential memorandum of the 4th May 1996" of Mr. Arve Johansen. Book 48, page 68.

This memorandum was opened in the course of the Opening Statement. I don't want to go into all of it unless you want me to. It's a memorandum made by Mr. Arve Johansen on the 4th May of 1996 summarising his view of, I suppose, of aspects of his relationship.

It's summarising aspects of his relationship with Mr. O'Brien and the relationship within Telenor and Mr. O'Brien over the previous, I suppose, year or so. And in it he takes a negative view of aspects of the relationship.

He says "I have summarised below a few points that have become clear to me over the last 24 hours as a

consequence of the information acquired regarding Communicorp's attempt to buy back 12.5% of the IIIU shares.

"1. Denis O'Brien came personally over to see me in Oslo, probably sometime during September last year. He informed me that based on information from various very important sources, it was necessary to strengthen the Irish profile of the bid and get on board people who would take a much more active role in fighting for Digifone than the "neutral" banks who basically would like to keep a good relation to all consortia.

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

Now, the reference to September of last year is from other information available to the Tribunal, a reference to the 22nd September.

A. Okay.

Q. Which was the end of the week in which Mr. O'Brien went to see Mr. O'Connell.

The next document I want to refer you to is a letter to Mr. O'Brien from Mr. Johansen of the 2nd October of 1995, some short time after that meeting. That's Book 48, page 68.

(Document handed to witness.)

I'll just put this it's harder to put this in context; I think it's quicker if I read it.

"Dear Denis,

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

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

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

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

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

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

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

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

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

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

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

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

"Looking forward to our common success. I remain."

And the first of those two documents, Mr. Johansen refers to the meeting he had with Mr. O'Brien, in which he says Mr. O'Brien informed him that based on information from very important sources, it was necessary to strengthen the Irish profile of the bid.

And you will see that in the second document, the letter of the 2nd October, Mr. Johansen records his impression that finance on the Advent/Communicorp side was, as he saw it, perceived as a weakness.

The Tribunal has also been informed by Mr. Per Simonsen, in a memorandum of intended evidence, of his knowledge of a meeting between Mr. O'Brien and the Minister in a public house in September of 1995. Book 36, Divider 3A, page 37, Query Number 70.

The query is as follows: It's as to "Telenor's knowledge, direct or indirect, of all meetings, discussions, dealings, or contacts of whatsoever nature between Mr. Denis O'Brien or any other person on his behalf and the Minister or the Department at any time from the first involvement of Telenor in the Esat Digifone consortium to the date of issue of the licence on the 16th May, 1996."

The response is as follows: "PS has no actual knowledge, direct or indirect, of any meetings or discussions, dealings, or contacts between Denis O'Brien or any other person on his behalf with the Minister or the Department other than the oral presentation on the 12th September 1995 and the press conference on or about 26th October 1995.

"Denis O'Brien informed Per Simonsen in or about the last two weeks of September of 1995 that Denis O'Brien had happened to meet the Minister in a public house.

Per Simonsen has no knowledge as to whether a meeting actually took place. Denis O'Brien informed Per Simonsen that the Minister suggested that IIU should be involved in the consortium."

Now, all of those pieces of material are connected with the proposition being canvassed by Mr. O'Connell in his note on the 18th September of 1995. Whether they are to be accepted as evidence is another matter, but on the face of it, they are all connected with the proposition that Mr. Dermot Desmond would become associated with the consortium and that this would lead to the provision of an "Underwriting" letter for the Department to deal with what was perceived to be a financial weakness identified by the Department.

We know that at the presentation which we heard yesterday, that you pointed out to I think all the consortia, but you certainly pointed out to the Esat consortia, when you were asked by Mr. O'Brien as to what would be happening next, you indicated that you would go on with your evaluation work. The Minister had a political commitment to get everything done by a certain time, and there was a reference to any further material, and you indicated that there would be no further material accepted from the applicants unilaterally. And as we said before, it was a case of "We'll call you, don't call us". And I think Mr. O'Brien went so far as to expressly state that there would be no further material put in by his consortium; do you remember that?

A. I do, yeah.

Q. I think that you were you went to some pains to

make that clear to all the consortia?

A. Yes, I did.

Q. And as we know, there were discussions about what would or would not be accepted from the consortia, and there was certainly a discussion with Mobicall about the provision of further information and a discussion with Persona about the provision of further information. One thing is clear, that the ending of your discussion with Esat Digifone couldn't have left Esat Digifone in any doubt as to what the position was, and Mr. O'Brien couldn't have left you in any doubt as to what his view was; isn't that right?

A. Yeah.

Q. Because of the express words he used, which I think were along the lines of "We will not be sending in any further material."

A. Mmm.

Q. Can you recall whether at any time you discussed with the Minister or had any conversations with the Minister which could have left the Minister with the impression that notwithstanding the caution you had delivered at the presentations, further submissions on finance might be accepted from Esat Digifone?

A. I can't imagine that happening, or that having happened.

Q. Are you saying that it didn't happen?

A. I don't believe it happened.

Q. You didn't have any conversation with the Minister to that effect?

A. I didn't suggest to the Minister or to anybody else that additional material should come in from any consortium.

Q. Do you think that as a result of any discussion you may have had with the Minister concerning the weakness in Communicorp, that you could have left him with the impression that that was a weakness that could have been plugged, as it were, by further submissions?

A. I have no such recollection.

Q. Between the date of the presentations, which was the 12th, and a date tracking forward to a minute when you did receive a further submission from Mr. O'Brien, which was on the 29th, the only contact on which the Tribunal has any information is that contact between the Minister and Mr. O'Brien in Hartigan's; isn't that right?

A. Well, I would say, and it's probably invidious of me to speculate about conversations to which I was not a party. I would say that that alleged conversation and that alleged content, because I, on the face of it, I would have major reservations about all what was going on, the gaming outside the evaluation, but it would be invidious of me to say what my theories are.

Q. Just to clarify one matter, neither Mr. O'Brien nor Mr. Lowry denies that that conversation took place.

A. I wouldn't be surprised that the conversation took place. I would be surprised at its alleged content for different reasons, but it's not something I'd be comfortable I have formed views myself as to what was going on within the consortium based on the Opening Statement. But I think it would be invidious and dangerous of me to elaborate on them here in the witness-box.

Q. Can we just clarify one matter: At some stage it may become valuable to seek your opinions, but I am not going to ask for them now. Just to clarify what you mean by "alleged conversations."

A. What I was really meaning was the alleged content of the conversation in Hartigan's or Hourican's, whatever it took place.

Q. What do you mean by "the alleged content"?

A. It seems, on the face of the Opening Statement and some of these documents, that Denis O'Brien told other people that Michael Lowry said certain things to him.

I have reservations about whether that part of that conversation ever took place. But I feel uncomfortable developing my own hypothesis and theories on the hoof in the witness-box, but having reflected on all that I have seen in the Opening Statement, that's the kind of view I have.

Q. You are referring then to what Mr. Per Simonsen says in relation to what transpired?

MR. NESBITT: I am concerned that the witness has identified a difficulty he finds himself in. He is a thinking man, like the rest of us. He has heard the presentation of the opening, and he may have opinions that are just something that he has thought up by looking at the facts. I think, with respect to the questioning, it's unfair to go into that. He is here as a witness of fact as to what happened that he can speak of to let this Tribunal form its view as to what the truth was. To walk off the path and allow this witness or require this witness to start thinking what he would form as his opinion if he was sitting in your position is a very dangerous route to follow. It's unfair to him. It's unfair to people he may form opinions about, and it has no probative value at all, with respect.

CHAIRMAN: I think that's largely correct, Mr. Nesbitt, and you will of course in due course have the opportunity of examining Mr. Brennan to deal with any aspects that from his vantage point and the Department may appear of importance; but in general terms, I accept the tenor of that, and I suppose it arose only in the context of Mr. Brennan intimating that he did have views of his own.

MR. NESBITT: I am not being critical of Mr. Healy. Mr. Brennan set the hare running and indicated the problem. I just thought I'd stop it because it seems

to add nothing and just be speculation that really is not appropriate in this Tribunal, I respectfully submit.

CHAIRMAN: In general terms, I am with you on that, Mr. Nesbitt, and obviously the primary gravamen of what's being elicited is Mr. Brennan's own definite knowledge and recollection.

Q. MR. HEALY: Can I just clarify one aspect of it. I am certainly not going to ask you for your opinion, although I wouldn't rule out ultimately that it may become something that might be valuable. But when you refer to the alleged contents of the conversation, I just want it to be clear this is what led to your digression, if you like I want it to be clear that we were in agreement as to what you mean by "the alleged content of the conversation". Are you referring to Mr. Per Simonsen's remark when he says that he was told that Denis O'Brien sorry, he was told by Denis O'Brien that the Minister had suggested that IIU should be involved in the consortium?

A. Yeah, that's what I have in mind, yeah.

Q. I think I could say that I see where you are coming from, and if need be, we can take it up in a slightly different way, ultimately, in case it might prove a valuable avenue to explore.

Mr. Brennan, if you pass on to Leaf 106, unless there is something you want to draw to my attention in that

leaf, I don't propose to detain you to ask you any questions about it. It's an analysis by Mr. Riordan on the 15th September

A. Sorry, what number did you say?

Q. 106. It's a technical financial analysis by Mr. Billy Riordan which he sent to Mr. Bruel referring to, I think, arithmetical and technical calculatory mistakes in the mandatory tables that require correction or review in some way.

The next document, in Leaf 107, I have already drawn to your attention, and I drew it to your attention solely for the reason that I mentioned, namely the references to the way the ranking was breaking down or crystallising out at that stage, the 4th September or the 16th, we can't be sure.

A. There is an interesting little comment in paragraph 4.

Q. Of the memo, is it?

A. Of the memorandum, where it says "Regardless of who wins, Coillte, ESB, etc., will be making their sites and facilities available on a commercial basis."

That's referring back to something we discussed in the past.

Q. Yes.

Do you see the start of that memorandum, "The financial strength of each component of all of the applicant consortia is being assessed."

I suppose you could say that's consistent with

concerns that Mr. McMeel had from the very beginning and on which he received an assurance from you, do you remember, at an earlier stage, where you said "You needn't worry; one thing is for sure, we will make sure it goes to somebody who is technically competent and has the relevant financial strength or capability"?

A. Mm-hmm. That was in the context of the interdepartmental dispute about the overall approach, I think, wasn't it?

Q. Yes, the overall, and whether it would produce the candidate who had the appropriate technical and financial capability.

Just to digress for a moment on this question of sites. It's clear from the applications and from the discussion at the presentations that sites was a big issue and that if you had a bank of sites better still, if you had a bank of masts you were in a position to either get become involved in the consortium, and indeed, whichever consortium won, you were going to be in a position to market either your sites or your masts; isn't that right?

A. Yeah.

Q. And wasn't it inevitable that whoever won, they were going to have to, in some way, do a deal with one or other these entities with sites or access to sites?

A. It was probably more than one.

Q. Or with more than one, absolutely.

A. Yeah.

Q. A significant amount of attention appears to have been paid to the question of sites, and it's just something that I find curious why so much attention was paid to sites. Did you have a view on sites within the Department as being in some way a pivotal issue, bearing in mind that you must have known that ultimately the biggest source of sites was going to be semi-states?

A. Did we have views on sites? We certainly had strong views about infrastructure sharing in the interests of the environment. We didn't want mushrooms of these growing up all over the place.

Q. Of course.

A. This was more for technical people than for me. In terms of base station sites, it's not just having a site; it's high ground, because the propagation properties of radio signals are point to point. So that's why Coillte have ownerships of mountains and ESB have high masts and so on. It was obvious they were going to feature anyway.

Q. I had the impression that Mr. Andersen saw work done on sites as in some way extremely important and as signifying a very high degree of preparedness on the part of any one or other consortium, whereas my impression is that whoever won, you were going to be

going to the ESB, Coillte, Gardai, or whoever, at the end of the day?

A. You were never going to get full coverage. You'd get the towns through Garda masts. The rural areas and shadowing the main roads was going to be more difficult. So you were going to have to deal with a number of different entities; you were going to have to deal with the planning process, etc., and whether it be critical is in terms of time to launch.

Q. Was the availability of all these sites in some sense, though, somewhat neutral, in the sense that could anyone really steal them? Obviously, if you had a consortium with Coillte, ESB, RTE, and the rest of them, if you could snaffle all the sites, then you could presumably say "No one could get a site except our consortium". But wasn't the reality that sites was almost neutral, because after the competition was over, whoever won was going to be able to go to all these different entities?

A. Yeah, but there are aspects of this that I am not particularly well qualified to go into, but, for example, the ESB already had a nationwide digital communications facility with spare capacity. So it would give a certain degree of independence from Telecom Eireann, with whom you would have to do a lot of business, for traffic; and there was a significant differentiation between the interconnect rate locally

or for national transmission.

Q. That's another aspect

A. It's all bearing on the whole question of sites and other people's infrastructure.

Q. I see. I think, in any case, apart from that, we can pass on to the next document, is 108. Again, I don't think we need to detain you in relation to these now.

They will become relevant at various points in the course of your evidence and maybe the evidence of other people, but I don't need to refer to them at this stage.

A. I don't still know who prepared them or in what time-frame they were prepared. They look like they were prepared within the Department, not by the consultants.

Q. I think so, yes, they were prepared within the Department, yes. From the point of view of publicity, I should say that the Tribunal only proposes to ultimately refer to the top three. It doesn't seem appropriate to refer to the others since they didn't feature in the final line-up.

The next document is at Leaf 109. And it's from it's a fax from Michael Andersen, addressed to you, Fintan Towey, Billy Riordan, and Ms. Nic Lochlainn, with copies to Mr. Bruel and Mr. Thrane, on the 17th September 1995, referring to your proposed meeting in Copenhagen on the 18/19 September. And it

suggests arrival dates and so on.

It indicates that at that meeting, a significant amount of work was going to be done on market development, tariffs, roaming, marketing aspect, financial aspect, management dimension, and management aspect. Do I understand that you were a member of most of the sub-groups dealing with those items? I think Mr. Fintan Towey is a member of all of them, I think.

A. I don't know whether I was or not. I sat in on most of them. The financial I probably didn't sit in on, but I couldn't say that for sure, I mean. This was another case where if Andersens had records, it would help.

But even if I sat in, I don't think I was in a leadership position because of my Chairmanship of the Project Group, in the sense that different people had probed different matters in detail. I think, for example, it may have been obvious from the presentation meetings that the role of Maev Nic Lochlainn was to focus on certain aspects of applications, and she would have led for us when those came up for discussion in Copenhagen. And my recollection is that in all cases, the driver of the discussion was first based on the views of the consultants.

Q. That they were bringing something to you?

A. They were bringing an analysis and maybe suggested approach to how one might deal with this particular part of the evaluation.

Q. What the Tribunal doesn't know is what happened at this meeting, because between the 14th September, I think, and the 9th October, there are no Project Group meeting minutes.

A. Yeah, okay.

Q. And no documentation that the Tribunal can find indicating, you know, what the result of this meeting was. Can you recall, you know, how did you document you presumably did a fair bit of work, looking at the schedule.

A. Yes, I think in the main we were arriving at I don't want to say final marks, because I think there were provisional markings and indicating further analysis that we wanted Andersens to do before we could finalise our approach to marking. So I think we were gradually developing an approach to marking the various aspects, but I think in a number of cases quite provisionally.

Q. Did it generate anything for you? Did you come away with anything or was what was being done being left behind you in Copenhagen?

A. I'd say it was being left behind.

Q. Was that entirely was that a wholly ideal way to proceed, do you think? We can find nothing to

indicate what happened. We are dependent exclusively on the evaluation report at this stage. Would you have seen it as ideal to leave Copenhagen with no memorandum or note of what had been achieved, what had been done, so that you could from your side track on to the next stage and see whether what you had done and what you had envisaged would be done was in fact being done?

A. I don't know the extent to which any of us may have kept simple notes of you know, points to follow up; I just don't know that. I mean, it wouldn't be unusual for me to make some manuscript notes and then eventually throw them in the bin if they were just my sort of ramblings taken on the day. I really can't help you with this. I mean, anything that was retained is on the files.

Q. But how would these meetings which were fairly important; you were getting close to crystallising something in the nature of a provisional final result but how did you document this, or who documented it?

A. I think we were assuming I was probably assuming that the consultants were in the driving seat at this stage.

Q. Do you remember at an early stage we were looking at the results or the records of some of the earlier meetings where Mr. Andersen emphasised the importance

of the evaluation or the judgements being the judgement of the whole group, even in the areas that you might have a view in areas where you weren't an expert, although obviously you'd defer to somebody with the relevant area of expertise, but does it look here like the groups were being split up, that you were conducting a part of the analysis here; you were, in doing that, deferring substantially to the consultants, who now seemed to have taken over a large part of the project?

A. Taken over in documentary terms, but I mean, the team that we had over there, clearly the members had their different roles and would have focused on the application those parts of the applications more significantly than other people. So I mean, short of taking the whole team over and I think I said before that Mr. McMahon's side, which was Mr. McMahon, at one stage, Mr. Dillon, Mr. O' Callaghan, didn't participate in any of the sub-groups simply because they were overrun with other work. So from the Department's point of view, the three main players on the non-technical side were present at the meeting and the technical work I think had been more advanced at this stage, and there was no technical stuff on this agenda.

Q. That's right. Apart from roaming, I suppose, if you could call that technical.

A. No, I think that aspect of roaming is almost counted in numbers of agreement.

Q. Yes, agreements

A. Geographical spread and so on, which is not particularly technical. And then Billy Riordan was representing both the Department of Finance and the accounting capacity within the overall team, within the Department side of the team or the Government side of the team.

Q. The next document is one we have already referred to in passing. It's Number it's in Leaf Number 110.

And it's a version of the quantitative evaluation dated 20/9/1995. It's headed "Draft number 2".

As I mentioned to you yesterday, it seems to me that it isn't clear whether it was conducted on the basis of corrected weighting or not, because on the front page, there is a question mark and a manuscript note on the top left-hand corner, "Check weighting". Do you see that?

A. Yeah.

Q. And you still have no idea whether it was the corrected weighting or not?

A. I don't. And I am not so sure I am going to be able to find out that information.

Q. I see.

If you go to the final page, there is the result.

Before I come to the result, I just draw your

attention to one thing which may provide you with some assistance in connection with the weighting aspect.

Do you see the weights listed at 1 to 10 on the top left-hand side?

A. Yeah.

Q. I don't understand why they are all in percentages.

Maybe there is some rebalancing or some, you know, numerical analysis going on here which makes no difference; I don't know. But do you see where licence fee payment is put in at 11.7%?

A. Yeah.

Q. When it was in fact 11%.

A. Yeah.

Q. Maybe I can think about that, or somebody on your team may be able to, on what's left of the evaluation team, may have some view on it.

The weighting produced in any case a result with A3 in first position with 3.22; A6 in second position with 2.91; A5 in third position with 2.85; and A1 in fourth position with 2.77.

This was found in the departmental file, so presumably it was transmitted to the Department sometime after it was created; but once again, there seems to be no reference to it in any narrative documentation we could come across and no reference to it at a meeting.

Do you recall in any way receiving it or discussing it with anybody?

A. I can't say that I do.

Q. Do you recall having a quantitative evaluation which produced this result?

A. I am virtually certain that the quantitative evaluation was carried out almost exclusively by Andersens.

Q. But surely you would have had some interest, as the person responsible for the entire competition, wouldn't you have had an interest in any ranking, whichever side of the evaluation it came from, quantitative or qualitative, and if only to see whether it was in any way similar to the impressions you were forming yourself?

A. I'd be surprised if this wasn't presented to us in some way at a meeting, but I don't have a recollection of the detail of whatever discussion took place.

Q. The meetings in Copenhagen are were held on the 18th/19th?

A. Yeah.

Q. I am told the dates in this are wrong. And do you recall that at one point you were somewhat puzzled as to whether you had been there for the two days or the one day?

A. Yeah.

Q. Now that we know the dates are wrong, this may confirm the proposition that you were there for the two days.

In fact, the Wednesday was the 20th.

A. I see.

Q. And the Tuesday was the 19th.

Do you remember you informed the Tribunal at a private meeting that you had an appointment in Brussels, I think, around this time, according to your diary, and you were wondering whether you had been present for the two days?

A. That can be easily checked. I mean...

Q. I think if it was the 19th and the 20th, you probably were present for the two days. It was clearly a two-day conference or meeting of some importance, in any case?

A. Yes.

Q. But if you were present for the 20th, does that not suggest that you might have had an opportunity of discussing this quantitative evaluation, since, if it had been prepared on that date, it's unlikely it wouldn't have been brought to your attention?

A. Yeah, I think there is something in that

CHAIRMAN: If you are moving to another exhibit, Mr.

Healy, two o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF MARTIN BRENNAN BY

MR. HEALY:

Q. MR. HEALY: The next document I want to refer you to is in Leaf 111. It's a fax to you and to Fintan Towey

from Michael Andersen dated 21 September, 1995; in other words, immediately after your meeting of the previous day, of the previous two days.

Now, the first section is headed "The remaining award of marks to the 10 dimensions.

"Some calculatory and graphic work needs to be done concerning the tariff dimension. MT" Mr.

Thrane "has the initiative to circulate the resulting graphics and suggest an award of marks to the new indicator as well as to the tariff dimension as a whole. Deadline: Monday the 25th.

"Concerning the dimension financial key figures, the existing calculatory work needs to be checked and reviewed by, as well, Michael Thrane, Mr." is that "Jan Bruel", I think?

A. I suspect so, yeah.

Q. "And Billy Riordan. MT is together with Billy Riordan to suggest a revised award of marks on the basis of reviewed figures, deadline: Wednesday the 27th September.

"The reports on the radio network architecture, capacity of the network, performance guarantees, frequency efficiency, and coverage have been concluded.

"In addition to the reports on the tariff and financial dimensions, the market development report is to be finished by Michael Thrane, the report on

roaming is to be finished by Maev Nic Lochlainn, and the report on experience is to be finished by Michael Andersen. These reports should be finally drafted no later than Wednesday the 27th. "

Under the next heading: "B. Scoring of the marketing aspect, financial aspect, and other aspects:

"It is suggested that the award of marks to the remaining aspects is decided at a meeting Thursday the 28th. The meeting may either be a conference call or a meeting in Copenhagen.

"The scoring of the financial aspect will be self-explanatory, whereas we need to consult each other concerning the scoring of the marketing aspect.

"Concerning the award of marks to the other aspects, we suggest you proceed as follows:

"1. We need to make some risk investigations, of which the following are proposed.

"A1: No major risks are identified yet except for the Detacon issue and the potential conflicts in decision making among three operators."

I won't concern myself with 2.

"A3. The equity of Sigma (and ESB) to be documented by John Bruel and Fintan Towey and the potential abuse of dominant positions or lack of competition due to the relationships between on the one hand Motorola and Sigma, and on the other hand Telecom Eireann, have been identified as risks.

A4 I think we'll pass over on to A5.

"Three years of negative solvency combined with a comparatively weak financial strength of Communicorp group is identified as a risk. (Jon Bruel, Billy Riordan, Michael Thrane.) In addition, it might be a risk factor that A5 is to establish its own radio (backbone) network (OCF), but A5 seems to have a comparatively high degree of preparedness."

And I won't deal with A6.

"Other risks might be identified and dealt with later in the process.

"If there is a clear understanding between the Department and AMI of the classification of the two best applications, it is suggested not to score "Other Aspects," the risk dimensions and other dimensions such as the effect on the Irish economy. In this case, the risk factor will be addressed verbally in the report.

"If there is no immediate unanimity, it is suggested to score the other aspects and the dimensions under this heading.

"A decision has to be taken at the meeting of the 28 September. "

"C. The grand total:

"The grand total is to be scored at the meeting of 28 September.

Next heading "D. Supplementary analyses.

"The following status can be outlined concerning the status of the work with the supplementary analyses:"

And there is a list of supplementary analyses that he identifies, and he seems to identify each one with a particular individual.

"These and other supplementary analyses should as far as possible be annexed to the first draft report."

Heading E: "The first draft report", and he sets out a short synopsis of what, in outline, the report should contain.

Under heading F, "Questions for the Department:

"AMI has the following questions to the Department:

"1. Should the identified meeting September 28 be conducted by means of a conference call or a meeting in Copenhagen?

"2. Does the Department wish to score 'other aspects'?

"3. Given the time-frame and the fact that we are not yet ready to begin the drafting of the report, will it be acceptable for the Department that AMI produces a non-edited report to be received by the Department by fax late October 3rd?

"4. How do we integrate the quantitative evaluation in the report? (We prefer to leave this question unanswered until we have the final results.)

"5. How do we proceed with acronyms/names concerning the applicants? (We prefer to continue with acronym,

but at least in chapter two we need to mention the names of the consortia and the consortia members.)

"We look forward to receiving the answers and will proceed as stipulated in this memorandum."

Now, presumably this memorandum reflects in some way the results of the work that had been carried out on the 19th and 20th in Copenhagen?

A. It certainly looks like a stock-taking exercise after that event.

Q. Can you remember these issues coming up for discussion at the meeting in Copenhagen?

A. In general terms, yes, I think.

Q. The memorandum in subheading F lists a number of questions which Andersens wanted answered by the Department to enable them to proceed to the next stage. Can you recall dealing with those questions in the Department? In other words, amongst the evaluators in the Department?

A. I don't have a recall, but I suspect they were at least discussed between Mr. Towey and I. I don't have any I haven't seen any document where there was a written response. It's possible that there was telephone contact, maybe even continuous telephone contact, between Mr. Towey and the consultants over this period.

Q. This was, as you say, a sort of a stock-taking analysis of where you were at and where you needed to

go and what you needed to do to get to the next phase;

isn't that right?

A. Yes, from the point of view of the consultants. Bear in mind it was written by them.

Q. Yes, but as we discussed this morning, these seem to be the only milestones we have in documenting the progress of the evaluation from the 14th September up until the 9th October.

A. Okay.

Q. And what I am trying to query with you is whether you can recall, in the absence of any documentation which, like you, I can't find, indicating that the evaluators as a whole addressed these aspects or these questions?

A. I don't know that.

Q. You think that it was either yourself and Fintan Towey discussed them or that Fintan Towey, in the course of continuing contact with the evaluators, reached some conclusions on them?

A. I think ,as a minimum, Fintan Towey and I probably discussed them. What I don't recall is the extent to which there was need for or actual contact between us or either of us and the other heads of division, let's say, Mr. McQuaid, Mr. McMahan. I just don't recall that.

Q. If you go to the second heading, "Scoring of the marketing aspects, financial aspect, and other aspects." This is B on page 1.

It says: "The scoring of the financial aspect will be self-explanatory, whereas we need to consult each other concerning the scoring of the marketing aspect."

What do you understand that distinction to mean?

A. I am not sure that I understand the distinction now, even, looking back at it. Certainly the financial aspect I would take to mean the business cases.

Q. I see. I took it to mean something like the financial key figures like IIR, solvency

A. Which amounts to much the same thing.

Q. financial strength in the consortium. The type of stuff that Mr. Billy Riordan and Mr. Michael Thrane and Mr. Buggy was involved.

A. I am not sure Mr. Buggy was around that period; I think he may have been on holiday at that particular time.

Q. At that particular time. It's clear from documents that we'll come to that he was involved to some degree in that work.

A. I think Mr. Towey was involved in the detail of that work. You can find that out from him in due course.

Q. He then lists a number of what he calls "risk investigations" and suggests that other risks might be identified and dealt with later in the process. And he includes the three I highlighted, or at least I highlighted three to which reference has already been made, in connection with the Mobicall, the Persona,

and the Esat Digifone applications.

He goes on to say: "If there is a clear understanding between the Department and AMI of the classification of the two best applications, it is suggested not to score "Other aspects", the risk dimensions, and other dimensions such as the effect on the Irish economy.

In this case, the risk factor will be addressed verbally in the report."

Can you explain to me what exactly he means by "If there is a clear understanding between the Department and AMI of the classification of the two best applications, it is suggested not to score the other aspects"?

A. I think, and this is something that either side of us can verify from documentation, that in the evaluation model which was settled before the closing date, that there was always an element of an optional nature to that part of the evaluation, that it was something to be done if necessary. Now, that's something that can be checked by reading the model, but that's in my head.

Q. I see. I appreciate that what you are suggesting is that it was always envisaged that they mightn't be scored, but what is the connection between the statement that "If there is a clear understanding between the Department and AMI of the classification of the two best applications, it is suggested not to

score 'other aspects'"? What's the link between those two things? It was always envisaged that they wouldn't be scored, and now the reasoning being put forward is that there is a link between I presume he means ranking as opposed to classification, is it?

A. I am not saying that was always envisaged, that we scored it. I think I am saying the opposite. I think it was always envisaged that

Q. I beg your pardon, it was always envisaged that it would be optional that it would be scored?

A. That's my recollection. And I think what we are seeing here is if there was a clear winner emerging, that you could consider them without scoring them, which is what happened, actually.

Q. We are going to come to something that we mentioned before in relation to this aspect of the evaluation, but do you recall, without referring to the actual evaluation report, that it contains a proposition to the effect that because we have a ranking of the top three or the top two, and because the other we don't need to score the other aspects because the other aspects would produce the same ranking; do you recall a passage to that effect?

A. There is a passage in the report, and that as far as I recollect, that came about as a result of a discussion.

Q. Yes, but do you remember the question I put to you

then, and I think the Tribunal have put it to Mr.

Andersen in a private meeting: How could you know whether something ought not to be scored on the basis that it wouldn't affect the ranking because the ranking generated by the stuff that wasn't being scored was the same as the ranking you had? It's like you'd be going around in circles, wouldn't you?

A. I am not so sure I understand the point you are making, but it seems to me that at the end of the evaluation exercise, there was a clear result, and then there was a discussion about other aspects; and the burden of the discussion was that there are financial weaknesses in both, which would be have the same effect in how you would deal with them.

Q. But how could you know that unless you scored them? That's the point, the difficulty I have.

A. As I was trying to say this morning, in all of this, we had engaged expensive consultants with lots of experience, and they were guiding us as to what was appropriate to do.

Q. But wasn't this a fairly critical thing for you, in that it was one of the twin pillars of the whole application was financial capability and technical capability, if you were going to score anything, and you made it clear from the very outset, I think, it's made clear that these were things that would be

scored, and then when you get to the completion of the evaluation, in some way you decide that you don't need to score?

A. Sorry, you are saying it was clear from the beginning these were things that had to be scored. I think I am saying the reverse: that in the evaluation model that was settled in advance, it was seen as these were things that might eventually be needed to separate two candidates who were or any number of candidates who weren't already satisfactorily separated.

Q. Right. I am just checking something in the evaluation model, if you'd just bear with me for a minute.

CHAIRMAN: In effect, you are saying the other aspects were only to become crucial if it appeared there was an absolutely photo finish over the preexisting material?

A. Yes, if there were still doubts as to whether there was a clear winner.

CHAIRMAN: Yes.

Q. MR. HEALY: I am looking at the evaluation model; it's contained in Appendix 3 to the final report, which is contained in Book 46, Divider 51.

That page contains a heading did I refer you to page 12 of Appendix 3? Appendix 3 deals with the evaluation model, and I am curious that I don't have a recollection like you do, that the evaluation model envisaged that the scoring of these other aspects

would be optional. Maybe I am wrong. But if you look at the evaluation model, which I think has been in the same form throughout, if you look at page 12, there is a "Guide to the award of marks" and a list of aspects and dimensions, marketing aspects; do you see them?

Subtotal, and then technical aspects, subtotal; then financial aspects, subtotal; management aspects, subtotal; other aspects, subtotal. Then there is one heading which doesn't have any reference to subtotals, and that's "Risks (effects on the Irish economy)".

Now, maybe that is the one that wasn't going to be scored, but it looks that this guide to the award of marks that "other aspects" was going to be scored, doesn't it?

A. I don't know why that's in my mind, and I think if I had time to go through the documentation I might be able to reference it later on.

Q. Could you be confusing it with the notion that you weren't going to score effects on the Irish economy?

Because am I not right in thinking that there was a discussion that this information was being sought from the applicants for information purposes only, as it were, and you were evaluating it not as a scoring criterion but as a way of assessing the impact of any particular application on the Irish economy?

A. If that were the case, it shouldn't be in the table.

I have a feeling there is more to what I am saying

than is obvious in this page, but I don't think I am going to find it on the hoof either.

Q. From my examination of it and from the examination carried out by other members of the Tribunal team, we could find no reference to it. The only reference to the issue arising is the one that we find in this memorandum of the 21st September, which suggests that you would not score other aspects if there was a clear understanding of the ranking of 1 and 2.

And as I say, that's a proposition that I seems to me not to follow. How can you decide not to score "Other aspects" of an evaluation just because you have people ranked 1 and 2? It doesn't seem to make sense. You have to complete the evaluation or you don't. You won't know what the 1 and 2 is until you have completed the evaluation. If you don't score other aspects, you haven't completed the evaluation; isn't that right?

A. As I said, this requires more detailed study by me before I can buy into anything.

Q. If you look at the next sentence, it says "If there is no immediate unanimity, it is suggested to score the other aspects and the dimensions under this heading.

A decision has to be taken at the meeting of the 28th September."

From the documentation, I can find no suggestion that the Department side of the evaluation ever considered

this. If you and Fintan Towey considered it, well, that's fine, but there doesn't seem to have been any Project Group meeting to ascertain what the consensus of the Project Group was on this issue.

A. There is no record of such a meeting; I am not disputing that.

Q. It seems that at this time that the process was being driven forward, perhaps conscious of the time element very much by you and Fintan Towey, was it?

A. I suspect it was actually being driven forward by Mr. Andersen.

Q. Yes, but he did request at least a decision on this issue, which seemed to intimate that you would have to get or take the views of the Project Group on your side and that in the absence of unanimity, is what he referred to, you'd have to go and score the other aspects. Can you recall what answer you brought to him for the meeting of the 28th September?

A. I can recall that the matter was discussed at the meeting of the 28th September. But I can't recall right now.

Q. Well, he didn't score the other aspects. But was that his own decision, or was it did you bring to him any decision of the project team yes or no?

A. I don't think the project team met. What I don't know is whether there was consultation between some members of the project team.

Q. If the process was being driven, as you say, by Michael Andersen at this point, does it seem then that judging from the fact that this fairly crucial meeting which was held in Copenhagen involved yourself, Mr. Towey, I think Mr. Riordan, Ms. Nic Lochlainn, and Andersen; the next meeting, the 28th, I think, involved just yourself, Mr. Towey, Mr. Andersen, Mr. Bruel; would that be right?

A. I have forgotten who was there.

Q. Again a small group?

A. Yes.

Q. And these this small group, or this group which was evolving, seemed to have been the group which was driving towards the ultimate conclusion of the evaluation process?

A. Yes.

Q. And that the rest of the group seemed to have been left behind to some extent?

A. "Left behind" is a bit strong, in the sense that there was a meeting in the early days of October where they were taken through the state of the evaluation and so on. I don't at this moment recall in what level of detail, but there certainly was discussion at that meeting.

Q. We discussed I think before Christmas to some extent some of the tensions that were beginning to surface in the meetings in October. Could that be due to some

degree to the fact that the group had become split and you, Mr. Towey, to some degree, maybe Mr. Riordan and Andersen were driving the project ahead without sufficient reference to the other people who weren't being kept up to speed, on the overall picture?

A. I think, and I have repeated this a number of times, it was partly because Mr. McMahon's side didn't participate in any of the sub-groups or any of the marking, so they were further behind the game than anybody else. They were also undoubtedly more negative, more negatively inclined towards the emerging winner, I believe, and I have said this before, in the opening days, for unrelated reasons, because they were dealing with them on a day-to-day basis, and I can't see how considerations like that could have been validly taken into account in the evaluation.

Q. I mean, you are entitled to that view. I think Mr. O'Brien had a different view himself. He wanted his track record taken into account, didn't he? If you look at his presentations, isn't that... I think he devoted a significant amount of time to his reputation in Esat Telecom?

A. I mean, whatever judgement one might make of that, he did start to excite the telecommunications market, and he started the first move towards competition, and competition was part of the bible to which the

Department was operating at that stage. I mean, Mr. McMahon was the guardian of licences and what was allowed under licences, so he had the luxury of being able to take a different view, and he was taking it based on different information.

Q. I suppose at this time, though, when you look at what it was you were deciding not to score, you were deciding not to score sensitivities, risks and creditability factors, and as I understand it, neither the Department nor Andersen can tell the Tribunal what the effect would have been if you had scored those.

Mr. Andersen says the effect would have been the same.

You say the effect would have been the same, on the basis of what Mr. Andersen told you?

A. And the contemporaneous records say that the effect would have been the same.

Q. Yes, but surely you can understand my question. Without scoring them or evaluating them in some way, how can you say the effect would have been the same?

A. I think what happened was that Andersens gave us a presentation as to where they saw these things making a difference or where where they saw the impact of those things, and that we agreed that the outcome was that they weren't going to make any difference based on that presentation.

Q. Without scoring them?

A. That's what he have always said, yeah.

Q. What presentation was that? Was that 28th September?

A. Yes.

Q. But the rest of the project team weren't involved that these factors were not going to be scored, then, or at least they weren't involved in the decision not to score them?

A. Then you lead on to a question of what exactly transpired at the meeting of the Project Group on the 2nd or 3rd October? And I believe that you will eventually see most of the people who attended there, and you'll have to form your own impression of what the outcome was.

Q. I think you mean the 9th October.

A. I am not sure of the date.

Q. Meeting of the 9th October to consider the report of the 3rd October.

A. Okay.

Q. Just to come back to this one last point on this note, on this fax from Mr. Andersen, if you look at the questions to the Department, one of the questions he asks, the fourth bullet point is "How do we integrate the quantitative evaluation into the report?" And it says "We prefer to leave the question unanswered until we have the final results". That would seem to suggest, as I was indicating I think Friday, and yesterday as well, that the quantitative evaluation was still alive and that Mr. Andersen at this point

envisaged that it would remain alive right up until the evaluation report.

A. Yeah, I think the question that was in place at that point was whether a quantitative evaluation will be printed in the report or whether it would be dealt with in a more descriptive fashion.

Q. Yes, as a matter of interest, the report clearly says that it will have a quantitative evaluation report annexed to it, but it's not there.

A. Yeah, I spotted that.

Q. Is that because there was a discussion to the effect, "Look, this could cause confusion; the quantitative report might produce a different result"? I am not criticising that. If you look at them, they produce with the exception I think of A6, they produce the same top three people in a different order, but they produce all of the quantitative reports produce the same top 3: A1, A3, and A5. I think A3 was ahead in two of them. A1 was never in top position. A5 was in second position and dropped down to fourth, and A6 dropped up to top position in one of them.

Was there ever a perception that this could cause confusion or might get tongues wagging, perhaps, unjustifiably?

A. No, I think there was a loss of confidence, if you like, in the quality of the quantitative report because, as we discussed before, of incomparability of

data, data weaknesses, and as Michael Andersen said in his document prepared for you, the loss of too many of the indicators. So there wasn't a sufficient confidence level in the quality of it, I am fairly sure, for it to be published in the report in that manner.

Q. But there is no note of any meeting at which the Project Group resolved that "Look, this evaluation, while it might in its individual elements be of value, we are not going to proceed with it any more". I think I am right in that.

A. I don't recall seeing any such

Q. It was certainly alive right up to the 2nd October.

Was there a degree of coyness about producing it because it would be at variance with the final evaluation report result?

A. I think if there were a problem of that kind, it could have been dealt with by descriptive explanation in the report, so that wouldn't be of concern to me. I think we are more concerned at the quality and reliability of it, because of the data problems of which you are well aware have been discussed before, which Michael Andersen has dealt with in documents for you, and so on.

Q. He has endeavoured to deal with them. It doesn't seem terribly convincing, I'd have to say.

A. I haven't read that report except for what I have seen

on the screen here.

Q. Next document in Leaf 112 is a letter to Mr. Billy Riordan from Jon Bruel of the 26th September.

It says: "Dear Billy

"Please find the attached spreadsheets on A1 through to A6.

"I have checked the figures and feel rather confident that the figures are correct. A new table, Table 32, has been added. This shows the IRR sensitivity based on the cash flow sensitivity figures given by the applicants. Please note that I have adjusted the terminal value included under Year 10 in Item 132, 133, and 134, by the infrastructure price adjustment value mentioned in Column 2. This adjustment does not give an entirely correct assessment of the terminal value, but it represents a qualified guess."

"With respect to Advent, Sigma, and Communicorp, I would like to share your conclusions in respect to the investigations you have conducted. We also need to discuss how to include them in our risk analysis.

From the papers on Sigma which you had obtained from the Registrar's office, I had understood that they have registered some mortgages; please notify me if this observation should be taken into account when analysing the risks and the financial strength of Sigma."

Now, the Tribunal has not been able to find a response

to that letter. Can you recall 6 (Mark letter) any discussion in Copenhagen on the 28th on that issue, or at any other time?

A. I can't recall that, no.

Q. Go on to Leaf 113. This is a letter of the 29th September, 1995, to the Department of Transport, Energy and Communications from IIU for the attention of Martin Brennan, Telecommunications Radio Development Division, re Esat Digifone Limited, South Block, Malt House, Grand Canal Quay, Dublin 2. It's from Professor Michael Walsh, managing director of IIU, which was Mr. Dermot Desmond's company.

He says:

"Dear Sirs,

"We refer to the recent oral presentation made by the consortium to the Department in relation to their proposal for the second GSM cellular mobile telephone licence. During the course of the presentation there was a detailed discussion in relation to the availability of equity finance, to the consortium, from Communicorp and a number of institutions.

"We confirm we have arranged underwriting on behalf of the consortium for all the equity (i.e. circa 60%) not intended to be subscribed for by Telenor. In aggregate, the consortium now has available equity finance in excess of $i\frac{1}{2}$ million.

"We do not foresee any additional need for equity;

however, we are confident that if such equity is required, we will not have a difficulty in arranging it.

"Yours faithfully, Professor Michael Walsh."

A. Before you go on to a question about that, there is a piece of information I should share with you. Since the first time we have talked about this, I have said with considerable confidence that I dealt with it over the phone, and that was something you had difficulty accepting, I gathered from your reactions. Now, I stumbled on information over Christmas, when I was studying this matter, to the effect that when Mr. Towey and I left Copenhagen

Q. By the way, I don't think I ever had difficulty with you handling it over the phone. I might have queried how you dealt with it.

A. What I want to say is when Mr. Towey and I left Copenhagen on the 28th September, he came back to Dublin and I went to Brussels. So I spent all of the 29th in Brussels, which is a clear indication that I dealt with this matter by phone. And I have always said I didn't see the letter, and I am not confirming that that's the case.

Q. I think I was always aware of that, Mr. Brennan, that you were out of the country and that it was by telephone that you were alerted to this.

A. I didn't I mean, when I was here before Christmas,

there was some incredulity about the manner in which this could have been on the same floor as I was in and that I hadn't seen it, and that caused me to interrogate my own certainty.

Q. Oh, I think I remember that. I understand that point, yes; I must have forgotten that I knew that you were that I had been told that you were away.

I think we mentioned before that this is a letter addressed to you and I think summarising your earlier evidence; the first you heard of it was when you got a telephone call from Mr. Towey?

A. Mm-hmm.

Q. Am I not correct in thinking that Mr. Towey, when he contacted you about this, said "I have got a letter here. You are not going to like to hear of what has happened, or whatever; you are not going to like to hear that we got a letter like this". Do you recall a conversation like that?

A. I think it's more in the nature of "You are better not knowing what it contains".

Q. I see. Are you sure it wasn't something along the lines of "You don't want to know about this type of letter"? Perhaps the same thing, I suppose.

A. Well, my recollection of it is more in the context of "You are better off not knowing".

Q. This, in any case, as I am sure you'll agree, is the letter that was contemplated in the conversation

between Mr. O'Brien and Mr. O'Connell on the 18th September in Mr. O'Connell's office in William Fry?

A. Undoubtedly.

Q. When they said "We need an 'underwriting' letter for the Department". And I think, as may have been made clear in the Opening Statement but will in any case be made clear, the letter went through a number of drafts before it was ultimately produced in this form.

Now, the letter involved a contact being made with the Department by somebody who had not figured on the application of Esat Digifone up to then; isn't that right?

A. Mm-hmm.

Q. And were you surprised that somebody like that would be writing directly to you with reference to somebody else involved in a confidential process?

A. It's only arising from the Opening Statement and from discussion here that I became, in a detailed way, conscious of the significance of this letter. What happened at the time, as I have said, is that Mr. Towey telephoned me in Brussels, told me a letter had arrived, recommended it be sent back. And I don't remember giving the matter any further consideration than that, and I don't remember knowing of the contents of the letter.

Q. I think I asked you before about that, and you took Mr. Towey's judgement that it was better that you

wouldn't know the contents of it?

A. I think Mr. Towey was concerned and he can speak for himself in due course that this letter ran the risk of being in breach if it had come directly from the consortium, it would have run the risk of being in breach of the competition rules in any event

Q. But didn't you think it had clearly come from the consortium? You must have thought that ,because you sent it back to them.

A. I think you'll have to ask Mr. Towey about that in due course.

Q. Well, you signed the letter.

A. I signed the letter sending it back, yes, and I believe that if I had seen this letter at the time I was signing the letter sending it back, I would have asked that obvious question: Why is it not going back to sender? But I would urge that you keep that question for Mr. Towey, because I don't know the answer.

Q. No, but I am suggesting that the Department perhaps through an understandable oversight, because it's not something that would occur to you right away; you take a document at face value that the Department saw this as having come from Mr. O'Brien and simply sent it back to him, so that I am suggesting that the Department must have treated it as effectively a

breach of the procedures that had been put in place and had been agreed to and had been accepted at the presentation.

A. I think, Mr. Healy, that ultimately you will find Mr. Towey as an entirely credible witness, and he dealt for the most part with this, and I really would prefer that you wait and ask him, because I don't know the answers to these questions.

Q. You have, I think, mentioned time and again that in conducting this process, firstly you were working in realtime, you were dealing with time pressures, and you were also having to work in the real world?

A. Mm-hmm.

Q. You had a philosophy, I suppose, in your Department about how you approached these things. You felt your philosophy was the more preferable one, I won't say more advanced, compared to the philosophy of people who were interested in promoting the continuance of the monopoly of Telecom Eireann?

A. We had more than a philosophy. We had a written-down policy document running to 50 pages which was considered over a considerable length of time.

Q. And nevertheless, you'd had to make a number of compromises along the way?

A. Mm-hmm.

Q. Originally you'd have preferred a competition that didn't involve an auction payment; you'd have

preferred a competition that involved disclosing all of the weightings to the applicants, but you had to make compromises to drive the process on; if you were ever going to get the telecommunications market liberalised, you'd have to get a new operator in in competition with Eircell, and that entailed compromises, and that all meant being in the real world and making decisions which, if you were to have persisted with a fixed and strict dogmatic theological view of the competition ethos, you'd have never gone along with.

I just find it strange that you have presented with a letter here from one of the contestants

A. I am sorry, the letter is not from one of the contestants. And I said before Christmas the letter had plausible deniability. If we were to say they were in breach of the competition rules, therefore they were expelled, we couldn't have done so on the basis of this letter because it didn't come from the consortium.

Q. I appreciate that. You have said that to me, Mr. Brennan, but I don't think that's consistent with the fact that you sent it back to Mr. O'Brien.

A. I signed a letter sending it back to Mr. O'Brien. I signed letters a lot. I believe that in this case I signed a letter without giving consideration to where the letter had come from and without seeing the letter

I was returning.

Q. Could I suggest therefore, Mr. Brennan, that the notion of plausible deniability was not in your head at the time?

A. No, that's something I said here in reaction to seeing the letter for the first time.

Q. I appreciate that. So that wasn't as far as you were concerned, and I am suggesting the frame of mind in which you were operating and which Mr. Towey must have been operating was that this was a letter from Mr. O'Brien's consortium and you were going to send it back to him, in fact addressed directly to Mr. O'Brien himself, and what I am suggesting to you is that living in the real world, weren't you even curious to know what was going on here?

A. I have said repeatedly that I am fairly certain I never saw this letter at the time, that I took Mr. Towey's advice that the right thing to do was to send it back, and that I signed the letter sending it back.

I am further saying now that if I had got a folder with this letter on it along with the letter I was sending back, I would undoubtedly have raised the question, "Why are we sending it back to somebody who didn't send it in?"

CHAIRMAN: On the face of matters, it does seem, be it your decision or Mr. Towey's, that you were deeming the letter as binding Mr. O'Brien, that you weren't

regarding it as coming from a complete stranger.

A. Well, I am still saying I didn't actually see the letter, so I don't know how I would have reacted to it if I did.

Q. MR. HEALY: But you were told "We have got a letter"

you must have been told "We have got a letter from Mr. O'Brien; you don't want you are better off not knowing what's in it. We are going to send it back to him". So far as you were concerned, Mr. O'Brien's team you have not got a different view, having seen the document, and I can quite understand the point you are making, but I am trying to get into your frame of mind at the time. Inasmuch as the letter went back to Mr. O'Brien's side, what had to be operating on your mind and Mr. Towey's mind was "This is a document from Mr. O'Brien's side; we'll send it back to him", because, as you say in your letter sending it back, "The Department has already made it clear that applicants shall not be permitted to provide any further material to supplement their applications except where expressly requested to do so.

Accordingly, the additional material received from you on Friday last is enclosed herewith. It shall not be taken into consideration in the evaluation process."

I am not criticising either you or Mr. Towey for failing to alert yourself to the fact that the letter had come from Professor Walsh. What I am saying is

that the frame of mind in which you were operating is that it had come from Mr. O'Brien and you were sending it back to him. That was the frame of mind in which you were operating there and then, judging from the letter you wrote he wrote, you signed, whatever.

A. What I am trying to get across is I hope and expect that Mr. Towey will be able to answer these questions better, because he was handling the matter. He clearly gave me a letter to sign, and I signed the letter without looking at the attachment, because I am sure that the attachment wasn't present when I signed the letter, because if it was, I would have asked that obvious question, because that's the way my mind works. I am if somebody may say I am overmeticulous.

Q. I fully accept, Mr. Brennan, if you had seen it, your mind would have worked in the way you have now described. I am trying to talk to you about the way your mind actually worked, which was that judging from the letter you signed, both you and Fintan Towey were under the impression or were operating as if this document had come from Mr. O'Brien, and you were sending it back to him on that basis. That is the way your mind was operating then, for the reasons that you have described, that you hadn't read the letter, but that is the way your mind was operating, to judge from the letter that was sent back.

A. Yeah, that's plausible, yeah.

Q. Now, what that nevertheless meant, am I not right in thinking that Mr. O'Brien's outfit had, in perhaps a very small way, but they nevertheless had broken the rules? I am not saying they had broken the rules to the extent they should be put out of the competition or anything like that; they had broken the rules by sending you in further material when you didn't want it?

A. I think we would have broken our own rules if we had accepted the material; that's the first point. And the second point is, irrespective of what you think was in my mind, the facts show that this was a letter from somebody who was not to our knowledge part of a consortium. And therefore, for us to make any use of it in a negative way against a consortium would have been equally inappropriate.

Q. As I understand it, the original of Mr. O'Brien's letter sorry, the original of Mr. Walsh's letter was not kept on the Department file, and neither was a copy. Therefore, anybody examining the Department file without having seen a copy or the original of that letter could only have come to the conclusion that the letter was Mr. O'Brien's letter; isn't that right?

A. Yes, I think.

Q. Nobody else in the Project Group was informed of this;

isn't that right?

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

Q. I think I understood from what you told me the last time we discussed this that Mr. Towey was the only person who knew the content of the letter. You were the only person who knew the fact of it along with Mr. Towey?

A. It's possible that the fact of it was mentioned at the group, possible, but I can't say definitely.

Q. It's not recorded, again, at any Project Group meeting, although it might seem to be something fairly important, since you did mention perhaps even less important procedural failures on other occasions. If it wasn't mentioned, it means the group weren't alerted to the fact that, contrary to what had been stated at the presentation, Mr. O'Brien's side had tried to introduce new material?

A. I don't recall in detail what happened. I mean, I am speculating to some degree that there is a good chance that the fact that some material came in from two consortia was reported to the group, even if it's not on the record, and that the content of this material was certainly not disclosed to the group.

CHAIRMAN: You are referring to the spreadsheet issue that arose on the 24-hour basis is the other situation, are you?

A. No, no. Around the same time, following the

presentations, another consortium sent in material, but it was published material which was already in the public domain, and rather than send it back, we just decided to ignore it.

Q. MR. HEALY: I think, Mr. Brennan, that other Project Group members in their statements have asserted that or in their memoranda of intended evidence that they knew nothing about the letter.

A. Okay. I can accept that.

Q. Just look at if we just could look at the letter for a moment, just to clarify one or two things about the letter. It refers to the presentation, and then it says "During the course of the presentation, there was a detailed discussion in relation to the availability of equity finance to the consortium from Communicorp and a number of institutions."

Now, there was a discussion at the presentation in relation to the availability of equity finance to the consortium from Communicorp and a number of institutions, but I think the main question concerning the availability of equity finance related to Communicorp's obligation to contribute; would that be right?

A. I think that's right, yeah.

Q. It goes on to say "We confirm that we have arranged underwriting on behalf of the consortium for all of the equity (i.e. circa 60%) not intended to be

subscribed for by Telenor. In aggregate, the consortium now has available equity finance in excess of i;½58 million."

This was now suggesting that Standard Life, Advent, Allied Irish Banks, and IBI were in some sense having to be underwritten to make their contributions to the proposed vehicle Esat Digifone; isn't that right?

A. I didn't write this letter.

Q. I know, but isn't that what it means?

A. It's not necessarily meaning that underwriting those parties, they are underwriting the financial requirements.

Q. Yes, but it was those parties who were making the who were making the contribution according to the

A. According to the bid documents.

Q. And in the presentation, could you have been left with anything but that impression?

A. Those parties certainly had given commitments to the consortium. But, I mean, as I say, I didn't write this letter. This letter is not referring to underwriting parties. It's talking about underwriting equity.

Q. But it says "What is being underwritten is the 60% not intended to be subscribed for by Telenor", and we knew what that 60% was.

A. Yes.

Q. It was 40% Communicorp and 20% four institutions, the financial institutions.

A. Yes.

Q. And doesn't that seem like a strange thing to be telling somebody, that these institutions were having to be underwritten to make their contributions to the consortium, that in some way there was some doubt about their capacity to make these contributions?

A. I think this goes back to a discussion we had before, where, if you go into the detail of the Esat Digifone application as distinct from the executive summary, what you are looking at was 20% to be placed with financial institutions, and as evidence of good faith, this was being supported by commitment letters short of guarantees from four particular institutions, but it wasn't by any means confined to those four. And what we now seem to be seeing

Q. Sorry, it wasn't confined to those four?

A. No, it was to be placed with institutions

Q. But I thought you were given specific percentages, in fact specific sums of money in each case amounting precisely to 20%.

A. There is no doubt about that. What the application disclosed was 20% to be placed with Irish institutions and with evidence of four institutions who were each prepared to take 5%, to commit to 5% of that, but I never understood that they were the only four that

the whole operation of placing was confined to those particular four institutions. That's not my reading of the application. And what we are now seeing is the 20% that was to be placed with institutions is now being underwritten, but it's the equity that's being underwritten, not the institutions, in my interpretation of the plain words of this letter, based on that background.

Q. I see. You thought there would be other institutions involved?

A. I didn't think that the four that were named were exclusive at that time.

Q. I see. But you did understand that it was going to be other institutions, major financial institutions who were going to be involved?

A. I think, yes, that's correct.

Q. Not money lenders and in back streets. It was going to be serious people who were going to be judged and evaluated without the need for any due diligence other than a check with Standard & Poors or something like that. The emphasis was on financial institutions.

A. Mm-hmm.

Q. Major financial institutions whose solidity couldn't possibly be doubted?

A. I don't know the exact words, but I certainly have in mind "will be placed with Irish institutions". If the word "financial" was in there, I am quite prepared to

take that subject to checking. I am still saying you are saying here is a letter underwriting those institutions, and I am saying my interpretation of it is underwriting that equity requirement. Plus the further equity requirement of Communicorp.

Q. I wonder, is that right, Mr. Brennan? If you listened to the presentation over the last few days, didn't Mr. O'Brien make it clear not only that he had these four institutions, Irish institutions, definitely on board, signifying not only their commitment but their Irish the Irish element of their commitment, and didn't he go further and say that the Irish ones, which was IBI, AIB, and Standard Life Ireland, that they were forming a voting block to maintain, if you like, a block of Irish equity, Irish financial institutional equity in the proposed vehicle, Esat Digifone? Did he not say that?

A. He certainly said in the presentation that he would expect that the Irish investors, Irish institutional investors would form a voting block. He definitely said that.

Q. Am I not right in thinking he went far beyond saying "I expect it"? Did he not present it to you as a fait accompli, as something that would undoubtedly prove attractive to you as evidence of the commitment of these people, that it wasn't just a letter of commitment; they had actually banded together in some

way to form a voting block? To form a voting block requires a degree of co-operation between people; wouldn't you agree with that?

A. It clearly does, yeah.

Q. I'd suggest to you that reading this letter, you'd have to wonder what was going on with this application; were the finances of this application now being changed in some way?

A. There is no doubt that if you read the letter at the time, that that would have occurred to you.

Q. And that you'd begin to wonder whether what you'd been told at the presentation was quite accurate?

CHAIRMAN: Unless it's crucial, Mr. Nesbitt

MR. NESBITT: I am not going to interrupt the witness, Mr. Chairman, but I think if he is having things put to him at the presentation, we do have a transcript, and it's possible to put the exact wording to the witness.

CHAIRMAN: There is that element, Mr. Nesbitt, but also, if one absolutely puts everything, it makes the questions an awful lot tougher. I mean, to some extent you must have some faith that your colleague is not wilfully misleading or cherry-picking.

MR. NESBITT: Mr. Brennan has been here for some time. I am trying to help him as well. It's important we should spend a little bit of time doing it that way.

Q. MR. HEALY: I think what I was saying to you was that

following on from my previous question, that you'd have to wonder whether what you had been told at the application was quite accurate in a general way. Let's deal with that in a general way to begin with, because this was undoubtedly, am I not right in thinking, putting the application on a new basis? You had never heard of IJU up until now, and you had never heard up until now that 60% of the equity was in some way requiring underwriting?

A. Underlying all this line of questioning is that I saw this letter.

Q. No, no; I am not asking you whether you saw it; I am asking you about the content of it. We are making a judgement, admittedly, on other people, but I am asking but it isn't that what the letter entailed. It put in question, it raised an issue about the finances of Esat Digifone which might have put you on guard if you had read it. It might have made you ask yourself, what is going on here?

A. It might have

MR. McGONIGAL: Mr. Chairman, with respect to this witness, it's not clear to me, in the light of evidence that he has already given, first of all, how he can answer a question like that, since he says himself that he wasn't aware of the letter at the time that he was carrying out the process. And secondly, that he has only recently become aware of that letter.

It's also not clear to me how these questions again are relevant to the Terms of Reference which in some time we'll be looking into.

CHAIRMAN: Mr. Healy, proceed. I regard this as an extremely important portion of the Tribunal, utterly pertinent to the Terms of Reference.

Q. MR. HEALY: I am asking you to look at this letter on the basis that it was addressed to you as a member of the evaluation team. If the evaluation team had had an opportunity of looking at this letter, aren't I right in thinking that one of the reasonable conclusions to which they would have had to come was ignoring the letter as a submission? Do you understand me?

A. Yeah.

Q. They'd have had to come to the conclusion that there is something going on here in relation to the finances of this consortium that are going to require deeper scrutiny?

A. If the people who had carried out the financial analysis were aware of this letter, they would have had to form a judgement about it. I don't think I can go any further than that in answering you.

Q. Well, can I just push you this little bit further, then. They would have had to say to themselves, "We need to get to the bottom of this, in light of what we have been told, because we may now we may be

looking at an application different to what is out

there in the real world"?

A. Well, the first question I think they would have had

to look at and I am a bit of a novice in high

finance the first question is, were they satisfied

after the presentation that the consortium they were

dealing with was strong enough to get the licence?

And they seemed to have concluded that the answer to

that question was yes. Then they would have to say,

if it's changed to this extent and this is very

speculative, trying to read other people's minds if

this change was in it, does that make the situation

better or worse? They would certainly have had to

form judgements of that kind. Beyond that, I just

don't know.

Q. Do I understand you to say that by this date, by the

29th, they had satisfied themselves, or did I

misunderstand your answer as to the financial

strengths of the Esat Digifone consortium?

A. I am not saying it quite as firmly as that. I am

saying they must have formed a judgement after the

presentations about the consortium. If they got this

letter, they would have had to see did that change it

in any way. Inevitably the Tribunal, seeing those

witnesses in due course, can put the same

questions inevitably I am not trying to say what

you can or can't do, the same questions will

inevitably be put to them, and we'll see what answers you get.

CHAIRMAN: But, Mr. Brennan, I think you recall my question to you before Christmas when you agreed with me that there was a possible difference between fresh information and substituted information, perhaps in a very extreme situation such as substituting one international telecom partner for another, but you'd have had to know about it.

A. Yeah.

CHAIRMAN: What I am putting to you, and accepting your evidence you had been in Brussels at the time, that as Chairman, taking up resumed meetings when you returned, it did mean that the members of the project team had none of them other than Mr. Towey, according to your own evidence, been made aware that there was some purported substitution of the financing element.

A. Yes.

CHAIRMAN: Plainly this was less than ideal as Chairman, was it not?

A. I think, looking back now from a point of view of suspicion and forensic search, that's reasonable. The judgement made at the time was that we had a clear understanding with the consortia we didn't want additional material, and additional material troubled us, so we sent it back.

Q. MR. HEALY: Did you alert Mr. Fitzgerald what I

mean, really, is people outside of the evaluation team to whom you were reporting progress did you alert him or Mr. Loughrey to the fact that one of the consortia had sought to introduce new material after the presentations?

A. I don't believe that I did.

Q. If one of the consortia had said to you, for instance, if you had been told in a letter by one of the consortia that the representations that had been made concerning, we'll say, finance, or even ownership, at the presentations were now no longer valid, you'd have had to consider that, wouldn't you?

A. Yes.

Q. Take the example that the Sole Member has mentioned: If you had been told that Telenor have pulled out of this consortium, or in any of the other cases, Detacon have pulled out of the Mobicall consortium, you'd have had to consider that, wouldn't you?

A. Yes.

Q. If you had been told that Telenor have pulled out of the Esat Digifone consortium and some other telephone company had come in, you couldn't have gone on with the evaluation because you had never evaluated the other company; isn't that right?

A. That's right.

Q. If you had been told that Advent were no longer part of the Communicorp/Esat Digifone picture, you'd have

had to take a very serious view of how this consortium should now be evaluated, wouldn't you?

A. Yes, I think so.

Q. At this time, Advent were in fact out of Communicorp and being pushed out of the Esat Digifone consortium and were being replaced by Mr. Dermot Desmond, who, by the 29th September, had become a member of the consortium with 25% of the shares?

A. You are aware of that now. I wasn't aware of it then.

Q. I appreciate that. I am not asking you I am asking you about these questions strictly speaking on this, if you like, as-if basis. If you had been told that, and I am accepting that you had not been told that, if you had been told that, you'd be interested to take a view on it? Let's put it as neutrally as that.

A. I think I probably would, yeah.

Q. And you'd have certainly had to have very serious discussions with members of the consortium?

A. Mm-hmm.

Q. But would you agree with me that the letter of the 29th September, whatever it purports to tell you, does not tell you that Mr. Dermot Desmond's consortium has 25% of Esat Digifone at that stage?

A. It does not tell me that, no.

Q. And bearing in mind that that is in fact what had happened, wouldn't you agree that it's rather strange that you wouldn't have been told that in a letter like

this?

A. That seems odd, yeah. But bear in mind we are still talking about a consortium that still had the two predominant members.

Q. Well, it didn't at this point.

A. It still had Communicorp and Telenor.

Q. 37.5, 37.5, 25?

A. Yeah, that's knowledge you unearthed.

Q. Pardon?

A. That's knowledge that you unearthed.

Q. Yes, yes. Well, I am trying to stick with what the fact was at this time, at this point. What I am suggesting is that that letter, so far as it alerted you to the involvement of IIU, didn't alert you to those facts; and in fact, if you look at it, interestingly, it refers to circa 60%, whereas that was obviously intended to reflect what the true facts were: namely that 62.5% of the company was no longer owned by Telenor. And that is something that I suppose you would have wanted to know?

A. Would have wanted to know

Q. Who owned who is now the 37.5% or how did Telenor now come to own 37.5%, since we were told at the presentations that they owned 50% coming down to 40?

A. Yeah, I mean, clearly it would have been better if we had all of the correct facts. No question about that.

Q. I am not I am simply trying to ascertain what your view might have been if you had been told the precise percentage.

Now, of course, in being told that the circa 60% of the consortium that was not held by Telenor was now going to be underwritten by IIU, what you were being told was that IIU were going to underwrite, and if necessary, place that 60, circa 60% somewhere else altogether. You mightn't know who'd be taking it up.

Mr. O'Brien might leave the following day, go bankrupt, or whatever.

A. Mmm.

Q. In light of what you had said to Mr. O'Brien and his consortium, and in light of his clear statement to you that you wouldn't be getting any further material from him, he was taking a bit of a risk, wasn't he, in sending in or having this letter sent in to you on the 29th September?

A. I think

Q. I am only asking for your opinion now on this.

A. I think he was taking a risk, which probably explains why the letter came from a third party and not from the consortium.

Q. Are you suggesting that he was setting up a situation of plausible deniability?

A. I used those words before Christmas.

Q. Yes.

A. And I observed that if the chairman of the consortium, on receiving back the letter, shared the information with his consortium partners, they must have been mightily confused at this stage.

Q. Yes, we may have to come to that. You certainly received no rejoinders; isn't that right?

A. Yes.

Q. The next leaf contains information involving the drafting of the final report, which I am not going to deal with at this moment; I'll be coming back to it at a later point, when we look at the final report in more detail.

The next document is a note of Mr. McMahon's of 3rd October of 1995. It's from his own green notebook, and it deals with a number of matters on the regulatory side. And on the second page, I think Item Number 4, Item 4 refers to GSM. If you look at the front of the document, it shows that he is noting a meeting of the three divisions of the Department, therefore, I suppose, dealing with items of interest to each of the separate divisions?

A. Mm-hmm.

Q. Am I right in that, T&RT, T&RR and T&RD?

A. Yes. The most relevant question in my mind is whether Mr. Fitzgerald was present. I think he probably was. In the sense that we occasionally had interdivisional meetings under his chairmanship, and we occasionally

had them when he wasn't present because we believed that they added value. So there is a good chance there was a meeting under his chairmanship, but it's not by any means certain.

Q. We might be able to take it up with him, and he might be able to throw more light on it.

If you go to the fourth item, in any case, you see that under the heading "GSM", Mr. McMahon notes three bullet points.

"Minister wants to accelerate process.

legalities more complicated

draft report now imminent

we need to discuss and digest.

"Agreed 1 copy we let it stay here 44" is that

"Kildare Street"?

A. It is, yeah.

Q. "And discuss it in confidence."

Do you remember being at a meeting around this time with Mr. McMahon and the other division heads?

A. I probably was, but I don't see so far any reference to me in the notes. I am just looking to see if there is reference to me, because it's very unusual oh, yes, I was there; I can see it at point 6.

Q. Yes, "MB".

A. Yeah.

Q. Can you recall what your contribution was to this discussion, and in particular whether you contributed

the comment that the Minister wants to accelerate the process, or something to that effect?

A. I don't recall that, no.

Q. Do you recall whether, at that time, or at any time in October or in late September, the Minister intimated to you that he wanted the process accelerated?

A. No, I don't.

Q. Obviously somebody must have spoken to the Minister to convey that message to the team?

A. Yes.

Q. It could have been Mr. Fitzgerald, if he was there?

A. It could have been Mr. McMahon.

Q. Directly himself. I think my recollection is that he has said that it wasn't a result of any contact he had with the Minister that he made that note, but as a result of what somebody else said. I'll have to be absolutely sure about that.

A. What I notice is he attributes a lot of the stuff that's said at the meeting. He doesn't attribute that.

Q. He doesn't, that's correct.

The next document is a letter from Mr. Andersen on the 3rd October enclosing hard copies of the draft evaluation report acknowledged or noted as having been received by you on the 4th, I think. Is that right?

A. Yeah, that's my handwriting.

Q. I am not going to go through that draft of the

evaluation report, though I may refer to parts of it at a later point. We'll just pass on from it for the moment.

The next document is simply a diary example of I think one of the meetings described by Mr. Lowry as a courtesy meeting held in the Department with Mr. Gary Tookey, of I think Motorola, on the 6th October?

A. Yeah.

Q. And I think in an answer to Dail statements, you refer to some of these courtesy meetings. There were a number of them held in the Department, is that right, with a number of different representatives of different consortia?

A. I think there were, but I think this may be over a very extended period.

Q. Over an extended period, yes.

A. I mean, I have no way of knowing, for example, whether that had anything to do with GSM or what its purpose.

Q. It says "Courtesy call".

Again, the next document is not one we need dwell on, though we may have to refer to it. It's a letter from Maev Nic Lochlainn to Ms. Patricia Caffrey in the Comptroller and Auditor General's office.

"Enclosing attached material on Government decision aide-memoire as promised. You will understand that this document is highly confidential; please ensure that it is held under lock and key".

And it's a summary, summaries of the various applicants, and I think is something that may have been envisaged as likely to be sent to the Government at the end of the day once the result was finally known. That's my interpretation of what was going on.

A. Well, I am a bit curious as to what role the C and AG's people were playing at that point.

Q. Maybe he had a good safe or something.

A. I have no idea.

Q. I am not going to dwell on it for the moment; we can pass on from it. I don't want to go on to this meeting.

MR. HEALY: The next meeting now, Sir, I think that I am passing on to, dealing with the reports, and the digest should be of the reports of Monday 9th October.

I think it would be a completely new area involving far too much documentation that we can manage at this time.

CHAIRMAN: We'll make up the time next week. I think it's probably preferable, after quite a long day, quite a good lot of material covered, to defer until eleven o'clock on Tuesday morning.

Thank you very much, Mr. Brennan.

MR. HEALY: Perhaps just one thing, just to enable Mr. Brennan to anticipate to some degree what we'll be looking at.

Q. We'll be looking at evaluation, or evolution of

aspects of the evaluation model, and in particular the treatment of other aspects which we discussed earlier, and the financial portions of the evaluation, and the final conclusions that were ultimately reached, and the drafting changes that were made in the period from in or about the 9th October up to the 25th October when the report was finalised and the recommendation given to the Minister. That's what we are going to be going on to, if it's of assistance to you.

A. Okay.

CHAIRMAN: Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 28TH
JANUARY 2003, AT 11AM.