

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, BL

Mr. Conleth Bradley, BL

Mr. Diarmuid Rossa Phelan, BL

Instructed by Matthew Shaw

Chief State Solicitors Office

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

Mr. Gerry Kelly, SC

Instructed by: Eoin O'Connell

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Mr. Rossa Fanning, BL

Instructed by: Michael Kelly

Kelly Noone & Co.

FOR DERMOT DESMOND: Mr. Bill Shipsey, SC

Mr. Robert Barron, BL

Instructed by: Helen Rackard

Michael Houlihan & Co.

Solicitors

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxton

I N D E X

WITNESS: EXAMINATION:Q. NO:

MARTIN BRENNAN Mr. Healy 1 - 127

Mr. Shipsey 128 - 172

Mr. McGonigal 173 - 431

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,

11TH FEBRUARY, 2003 AT 10.30AM:

CONTINUATION OF EXAMINATION OF MR. BRENNAN BY

MR. HEALY:

Q. Mr. Brennan, we were just finishing off a few of the

documents in Book 44. And then I was going to

mention, I think I had mentioned I had dealt with

your responses to the matters that were left over

before Christmas. There is just one matter on which

you may be or in relation to which you may be able

to provide some assistance, it's in Leaf 241 in Book

44.

A. Leaf number again?

Q. 241.

This is a letter from Mr. Loughrey dated 2nd July,

1997, to the Registrar of the McCracken Tribunal.

It's a letter which is written in response to queries

from the Tribunal concerning the award of the second

GSM licence by Mr. Lowry. And you recall that that Tribunal were investigating payments from Dunnes, or Mr. Bernard Dunne in particular, to politicians, and potential connections between those payments and political favours, or the circumstances in which those payments were made where no specific connections could be made, I think.

Do you recall having any role in preparing that response?

A. Yeah, I think I said to you last week that I had moved on on promotion to another role in May of that year.

And I don't recall having been invited to look at drafts of documents back in the telecommunications area afterwards.

Q. And isn't this something you would have remembered if somebody had asked you to respond to a query from a Tribunal?

A. I think if somebody said "This is a letter we are thinking of issuing; would you have a look at it?" I would have had a look at it.

Q. I take it, to the best of your recollection, you had no role to play in it?

A. I take it that's okay, yeah.

Q. Now, in the course of your evidence since Christmas, there have been a number of occasions in which you indicated that you might be able to obtain further clarification, and some of these were drawn together

in a memorandum and brought to your attention I think last Thursday.

Now, there were a number of other matters which arose in the last few days, and if you have anything to add in relation to those, then the Tribunal would be very interested to hear from you. And I may add, in case there is any confusion about it, that if anything occurs to you at any point following your leaving the witness-box or you acquire any further information, you will no doubt bring that to the attention of the Tribunal as well; or if you want to in any way qualify anything that you have already said to the Tribunal, both from the point of view of information, new information, or from the point of view of any recollection that you may have that you didn't have in the witness-box.

A. Okay.

Q. And before I go on to these matters, do you remember there was one matter which we were discussing last week concerning the Dail proceedings of the 30th April 1996: The Minister delivered a more or less prepared speech, the bulk of which was prepared in-house in the Department and part of which had a more overtly political input from the Minister's political advisers; and in addition, that speech involved a number of contributions from the Minister which appeared to you and I think that's clear from

looking at the way the matter arose in the Dail, which appeared to have been the result of anticipation in the Department of issues that might arise and upon which it would be prudent to arm the Minister in advance. Would that be right?

A. Yes, I said I was speculating that that was the case, yeah.

Q. Looking at the Dail reports and the way in which the matter the issue arose in the Dail, that would seem to be the case; but are you aware of whether the efforts of either your the Department's legal team or the Department itself have turned up any other documents to assist in

A. I didn't actually check. I focused the things that I was asked to do, so I didn't do any checking outside of that.

Q. Well, you can understand that's a fairly important matter as well, and although your own view of it is valuable and probably almost certainly the correct view, it would be of enormous assistance if we could identify the documents or the drafts.

A. In general not in general, exclusively, I have left those kind of interactions to the legal team with the Department directly.

Q. I appreciate that, but you still may be in a better position to direct people in the appropriate corner.

A. There is one or two people back in the Department who

have all of the files and are so familiar with them now, they are more familiar with them now than I was then, you know.

Q. I see.

If we go to the some of the matters that were raised since Christmas.

And the first matter to which you were referred concerns an exchange on the 16th January, when it was suggested that difficulties may have arisen as a result of Andersen Management International having to "reverse their evaluation model into DTEC's criteria".

In other words, the fact that the selection criteria had already been decided prior to Andersen Management International coming on board may have led to a situation where AMI had to distort their evaluation model in order to fit an existing scenario. You said you'd like to have a closer look at the documentation prior to commenting on that proposition.

A. I did have a closer look at the documentation, and it's reasonably clear that my recollection is correct.

And I'll explain it in the following terms:

If you were to look at the Table 3 in the Andersen bid document, that shows aspects which are grouped in relation to a predetermined model and does not closely match the paragraph 19 set of criteria. And this also arises, I think, in Tables 16 and 17 of I think it's the 18th October version of the evaluation

report, where I think you raised this with me a long time ago, and I couldn't ground it, but I now can where Andersens talked in the draft report of four different evaluations, and we talked about three in the final report.

I think that arose because Table 16 was grouped in accordance with the Andersen model, whereas we always insisted that it had to be regrouped. Now, this was on our minds all the way through the evaluation, that the Andersen Table 3 way of setting out things in the matrix was not the way it should be matched. That's something we discussed a number of times, I think, in the Project Group.

Another clue to it is if you recall the information meetings, the first part of the second hour in the information meetings, there was a lot of focus on competitive strategy and stuff like that. That's clearly part of the Andersen model, but wasn't actually part of the evaluation criteria, except to the extent that it bore on your approach to market development.

Q. This notion of one party driving people to make that choice, market leadership, cost leadership, that aspect of it?

A. That's clearly part of the AMI view of the world.

Q. Again, that seemed to be an attempt to corral the information being made available by the applicants

into the preexisting Andersen matrix; I think that would be a fair way of putting it?

A. I would agree with that, yeah.

Q. I think the point I was trying to canvass with you was whether my impression is the correct one that notwithstanding the fact that Andersen appear to suggest in advance that they would have no difficulty in providing you with the services you required when they actually became involved in the evaluation process and they tried to apply their model to the process without taking account of the preexisting scenario, this gave rise to difficulties?

A. It certainly gave rise to difficulties for them.

Q. On the 21st January you were asked if you could make inquiries to see whether a version of the quantitative evaluation exists on file that does not contain arithmetical mistakes and which does use the proper weighting. Now, that contains two issues, really. Do you remember, we discussed firstly the question of whether the information produced in the quantitative work, if you like, if I can put it that way, and which was used in the qualitative evaluation to the extent to which it could be used was based on the application of correct weightings or not?

A. First and foremost, I didn't have a new search of the documentation for this quantitative evaluation, corrected version or whatever, because I have been in

and out through these a lot and haven't come across one and you haven't come across one. I have asked the individual in the Department dealing with the matter; he said he would actually, despite his familiarity, have difficulty in searching, so I haven't a result on that one.

So, I don't know what's behind the question. If I understood more what's behind the question.

Q. Look, it strikes me that it would be extremely strange if the quantitative information used in the qualitative model wasn't based on the correct weighting, for the following reason. I notice that in the documentation, somebody drew attention to that issue by saying "Is it the correct weighting or not"? And there were certainly changes in the weightings, and I had assumed that the correct weighting was applied ultimately in the generation of quantitative information for use in the qualitative evaluation.

If we can leave that aside. That's an assumption that I am making I am seeing if there is a basis for it. I am going further than that, then, and I am asking, are you aware of are you aware whether there is a version of the quantitative evaluation in existence which does not contain arithmetical errors? And I asked you that question because Mr. Andersen mentioned that he had problems with the quantitative evaluation arising from number-crunching errors, as he put it, I

think. And notwithstanding requests to Mr. Andersen at a time when he was in a mood or more well disposed towards cooperating with the Tribunal, he could never come up with a final and, as the Tribunal understood it, corrected version of the quantitative evaluation, and I wondered whether you were aware of one having been produced.

A. There is a few maybe a few additional comments.

It's clear in somewhere among the documents in the matrix of AMI in relation to the quantitative evaluation, that numbers that purport to total to 100 actually come out at 103. I think you are aware of that.

Q. Yes, very, very early on. I think they added a renormalisation

A. I think the renormalisation factor itself was applied possibly erroneously, because I can trace exactly where the errors were made in relation to the 100 to 103. There is a point 8 of a difference in one case and a 2.5 difference in another case, whereas they took an arithmetical approach to the redoing of it by just distributing 103 over 100; that sort of approach. But what that gave rise to in the end, I have been unable to trace.

The other thing to say and this goes on to some of the later questions is it has become clearer to me as I relearn some of this stuff that the quantitative

evaluation really only has quite a small number of the quantifiable indicators, so it clearly was just a part of the Andersen model. Take, say, in tariffs, it only deals with the OECD basket, whereas when we examine tariffs in the qualitative evaluation, we had ten or twelve or more different indicators.

So in that sense, applying the weightings to the quantitative model, and given that it withered away, which we will deal with, is not all that significant.

What's important is that the correct weightings were used in the qualitative evaluation at the end. There is no doubt about that.

Q. The next question was the decline, or the withering away, as Mr. Andersen put it, of the qualitative evaluation or the quantitative evaluation. As I understand it, the aspects of the quantitative evaluation that were identified by Mr. Andersen as troubling were: International roaming, which he had to exclude, because he felt you couldn't assess international roaming by reference to international roaming agreements if a person didn't have a GSM licence with which to trade on the international roaming agreements market, if you like?

A. Yeah.

Q. So he decided everybody should get the same for international roaming. That was a neutralised element. The licence fee was a neutralised element,

and blocking and drop-out rates I think produced responses from the various competitors which seemed to anticipate rather too accurately what would be the most attractive response to that question. Would that be a fair way of putting it?

A. I never fully got to grips with the technical side of that, to be honest.

Q. In any case, that was another it proved to be unsatisfactory and that was neutralised. I don't think there was anything else. I'll just check the evaluation report now, but what puzzled me is from the very outset Mr. Andersen knew that the payment, the licence payment, was going to be a neutral element?

A. Mm-hmm.

Q. So he was happy to proceed on the basis that he had at least one neutral element.

A. Yeah.

Q. What was wrong with having neutral elements as long as they weren't, you know, they were no more than three or slightly more, what was wrong with having those neutral elements, which had very low weightings, a lot of them? Blocking and dropout weights, international roaming. They didn't have high weightings. In terms of the weightings, it was a very small proportion of the overall weightings, so I couldn't understand why Mr. Andersen came to the conclusion and it's the words he used, "wither away"; what happened to cause

this so-called withering away?

A. I don't know why he used those words, but it seemed to me, on re-reading the documentation at the weekend, that Appendix 2 of the evaluation report, especially in 2.4, is fairly clear and is contemporaneous and that and the context which I was talking about a few moments ago, anticipating this to some degree, that the qualitative quantitative indicators were a small subset of all of the indicators, and then you waste away some of them. You are getting down a very small sort of critical mass for the evaluation.

Q. I don't have any problem with that. It seems to me that there was always going to be these problems as long as Mr. Andersen was insisting on applying his matrix to the quantitative evaluation. What I am trying to get at is the fact that and it's at least my impression that the process that was eventually conducted was not the process that was envisaged, and there were a number of hiccups along the way which resulted in a completely different process at the end of the day being used to evaluate these applications compared with that which was envisaged by Mr. Andersen in his tender document, or even in fact in his evaluation methodology, in that the three fundamental steps were never taken. The first step was to conduct a quantitative evaluation. The second step was to conduct a qualitative evaluation. And the third step

was to revisit the qualitative the quantitative evaluation armed with the information obtained on the qualitative evaluation.

Now that was the basis of the whole process. That had to go by the board, because once the quantitative evaluation had gone, then the qualitative became not the primary but the exclusive evaluation; isn't that right?

A. Yeah.

Q. It's just that if you read the report, these difficulties are not articulated.

A. I thought they were now. I have reread the report again at the weekend; I thought that it was reasonably well documented as to why it happened the way it happened. I mean at that stage, we then checked to see if it was consistent with the evaluation model, and we confirmed at paragraph so-and-so and paragraph so-and-so that it was. There was a bit of that in the report, isn't there?

Q. Surely that can't be right, Mr. Brennan. If you check the evaluation model, sure you can't conduct that simple exercise that I just described a moment ago. I don't want to get too bogged down on this, but if you look at the evaluation model, you simply cannot conduct that three-stage exercise, or you cannot confirm that that three-stage exercise was conducted, which is, I would have thought, fairly fundamental.

It seems to me that Mr. Andersen in his evaluation report was perhaps, if I can use the expression, guilty of a little special pleading in trying to suggest that this was a process which presented no real difficulties, a couple of problems resulting in the withering away, which is not explained, of the quantitative evaluation, but ultimately a report at the end of the day which was based on what the what was represented to competitors. But it seems to me that what was done at the end of the day was significantly different, without an explanation. Is that a fair impression?

A. Well, I have the opposite impression. That's all I can say.

Q. You'll agree with me, I think as you have done already, that there was no quantitative evaluation annexed to the report?

A. That's correct.

Q. It is true that if you read the report and you read the evaluation model, you'll see that the report and the evaluation model do not tally, and in one sense, you could say that that in itself is an explanation for the problem?

A. I don't understand what you are getting at.

Q. If you read the evaluation model and then you read the report, the report does not follow the evaluation model.

A. It doesn't follow it

Q. And that itself is the explanation.

A. To the extent the quantitative evaluation shows up weaknesses which we have spoken about a number of times.

Q. I think what I suggested to you when this issue was raised was that some rather extravagant claims were made for the technical quality of the process which were not justified by the significant problems that arose in the course of it and which could only be dealt with by deviating from the process as originally envisaged.

A. Well, we thought at the time that we had done a good job.

Q. The next matter that was raised with you was the question of the scoring of the other aspects. Now, I think you may have at various times suggested that some of that would be referred to by some of the other experts, including the financial experts or the financial expertise that you had involved in the Project Group, but and I think you may have answered that question in response to another query on Friday, I think

A. I think you had this in the memorandum on Thursday, and we went through it again. I think I said then that Mr. Towey may be more helpful when he comes in.

Q. All right; fine. That's in relation to the 21, 28/29

September issue?

A. Yeah.

Q. Do you remember that on the 29th January, I went through a document described as a briefing note for the Minister?

A. Mm-hmm.

Q. And I suggested to you that the information contained in the briefing note was not consistent with the information contained in the evaluation report; and I went further, I think, and suggested that it was a distortion of the evaluation report?

A. I recently have become aware that another witness has a fairly good recollection in this area and will come here, if she hasn't been here already; its Ms. Nic Lochlainn I haven't gone into detail, having been told that she has a good recollection of it and is comfortable to deal with it. I think it's around the concept that this was a work in progress that she was doing that was overtaken by events and never finalised.

Now, I only have this at hearsay from the legal team.

Q. I see. You don't want to comment on the result of the document, then?

A. Well, I mean, if it is the way she describes it, I don't think there is much to be served by that.

Q. When you say "work in progress", you mean a document that was never actually used?

A. I don't know the details. I think that's the explanation. It's something she started to do because she thought it would become necessary, and it was overtaken by events. I don't know what the chronology of it is, but

Q. We are not mixing up two documents now. We are talking about the document which described the result of the process, at the end of the process, presumably after a result had been, as you saw it, reached on the 25th October?

A. I think that's the document we are talking about. But when I heard that another witness had a good recollection and would come and deal with it, I didn't take the matter any further.

Q. Well, then, we'll leave it.

It's 43, 136. At various points in the course of the process and the period following the process, in which both in the evaluation report and then statements in the Dail, the process is described, emphasis was laid on the proposition that the weightings, in some cases, it was put as follows: The bulk of the weightings were fixed in advance of receiving any of the applications.

A. The bulk of the weightings?

Q. Yes. In the evaluation report, the way it's put is that the weightings applicable to the quantitative indicators were fixed in advance. Now, we know that

the main headline weightings of the eight listed

criteria were fixed in advance?

A. Mm-hmm.

Q. The weightings applicable to the indicators which went

to make up those eight criteria for the purposes of

the quantitative evaluation were fixed in advance?

A. Mm-hmm.

Q. But the weightings to be applied to the 56 indicators

which were used to make up the qualitative evaluation

were not fixed in advance; isn't that right?

A. I think, now, I read this some days ago, and I tried

to find it again this morning because I didn't note

down where it was, and I couldn't. But I think the

answer is that in some instances the weightings, the

subweightings were explicit where they could be and in

other cases they weren't, and that then they were done

by consensus. I think that's what's in the report.

Q. Well, when you say they were done by consensus, they

were arrived at as a result of

A. Discussion. In some cases, certainly in the technical

area, I have a recollection that they in advance broke

down some of them into specific weightings. But

again, it's just one of those cases where when Mr.

McQuaid comes along, he will tell you what they did in

his area and so on. But I do know that it's

explicitly stated in the report that in some cases it

was necessary to do the weightings implicitly.

Q. Do I understand you to say that the technical people arrived at the weightings applicable to their area of expertise and the non-technical people arrived at the weightings applicable to their own areas of expertise, but that there was no cross-fertilization, as it were?

A. I think, for example and I can't really stand over this; it's kind of just the impression I have is that when it came to things like radio network architecture, that they decided "When we come to look at this, we will give so much for base stations, so much for whatever", and that they had an explicit model of that kind. And it was done by the technical people. Now

Q. There is, as far as I am aware, no documentation or no documentary set of weightings applicable to the 56 indicators that you can refer to showing

A. I know there isn't, because as I said, it was clearly done implicitly in some cases and explicitly in other cases.

Q. I think I referred you to a note of Mr. McMahon of the meeting of the 23rd October of 1995 in which he said that at that meeting it was conceded by you and by Martin Brennan that different types Michael Andersen, that different types of weightings were used, sometimes none, sometimes "feel" to arrive at the bottom line. Do you recall that discussion?

A. I can't recall that kind of detail. There certainly

was some discussion or some explanation as to the approaches taken in the various groups along the lines I have been describing already.

Q. But to the extent to which you might get the impression that all of these weightings were fixed either in advance of the competition or in advance of the treatment of the 56 indicators, that would be an incorrect impression. They were, a lot of them, developed on the hoof; isn't that right?

A. The weightings that were agreed in advance are the weightings of the criteria in paragraph 19 of the RFP.

Q. Yes, but sure in actually doing the work, however, when you break down those eight criteria into 56 indicators, that on average is seven indicators per criterion. There were more or less in some cases.

A. Yeah.

Q. Those, on average, seven indicators were at least equally as important, weren't they, as the headline criteria to which you had applied fixed weightings in advance of the receipt of applications?

A. I think what's important is that when you have, say, a weighting for technical aspects, that the technical aspects are measured within that weighting. The extent to which it needs to be or should have been explicitly broken down in advance, we didn't consider at the time collectively as a group. But I think I am aware, or I think I recall that in some of the marking

groups they did more work in that area than in others.

Q. But if you were developing the weightings as you go along and sometimes this may be inevitable, I suspect, but if you are developing them as you go along, isn't there a risk that you are developing the weightings at the same time as you are forming an impression as to what the ranking should be unconsciously, subconsciously?

A. I don't think there was there wasn't any attempt at ranking until the end of the sort of scoring process.

Q. But I think some of these weightings were evolved in Copenhagen, either on the 21st September or on the 20th September or on the 28th and 29th?

A. Yeah.

Q. You were evolving weightings at that stage within days of coming up with a first ranking, weren't you? And at a time when you had a quantitative ranking?

A. I mean, we have been over the ground of the quantitative ranking a number of times. There was an element of implicitness in the way the weightings were done. I think I have said a number of times that in all such areas, in all the ones that I was present at and I wasn't present at that many of them anyway, so you still have to wait for our witnesses we were led by the consultants' view. I think that's important, because there were independent consultants.

Q. Just one or two final matters about what happened

between November 1995 and approximately November, or thereabouts, of 1996. We have been through the various statements made by or on behalf of the Minister and by civil servants during that period.

And I think it's clear that, if you look at the controversy as it unfolded in the Dail and elsewhere, two issues were profiled perhaps more than any others.

One was the ownership issue; i.e. who owned the consortium to which the result, if you like, of the competition had been given?

A. Mm-hmm.

Q. And secondly, did the consortium have the money and did the members of the consortium have the money or the financial capability to implement the project?

And had those two issues been properly evaluated in the course of the evaluation process? Would that be fair?

A. That certainly is the ballpark that we were discussing, yeah.

Q. On the 20th November, it was raised as a discrete issue in the Dail, both those issues. On the 16th April, which was the adjournment debate which you have informed the Tribunal

A. I said I thought that was something similar.

Q. I checked the Dail reports, and you are quite correct.

The issue was one of which the Minister had notice without knowing specifically what matters were going

to be raised. He provided a response, as you say, designed to deal with the issue regardless, if you like, of what particular questions were raised. In his response he gave a description of the process and described how independent it was and professional it was. But in the course of that, in the exchanges on that day, the issue of ownership raised its head, and specifically the issue of the involvement of Mr. Dermot Desmond raised its head.

A. Mm-hmm.

Q. Information came into the Department in fairly concrete form on the 16th and 17th April concerning the involvement of Mr. Desmond; isn't that right?

A. That's right.

Q. On the 19th April, the civil servants and the Minister made statements, and the civil servants gave a press conference; isn't that right?

A. Mm-hmm.

Q. That was a relatively unprecedented step in Irish administration, wasn't it?

A. For the civil service to do so, yes.

Q. It meant that civil servants were lending their personal and professional reputations in support of a process for which the political head of their Department was responsible; isn't that right?

A. Yes.

Q. On the 30th April, the Minister made a statement in

the Dail, and although the Department, for whom the statement was prepared, and presumably the Minister, were aware of the new information concerning Mr.

Dermot Desmond, that issue was, I would suggest, at best evaded or obscured, at worst suppressed.

A. What I have said to you a number of times that we were in receipt of information which required both legal and financial analysis, and that those analyses were not complete.

Q. Well, as we know, there hadn't even been a financial analysis or even an attempt at one. That wasn't done until two days before the licence; isn't that right?

A. I am not sure I mean, that might be the recorded part of it; I am not sure what else was in it.

Q. The fact is that whether the Department were going to accept or run with the changes that had been proposed, the consortium, the ownership of which was being questioned in the Dail and in the media, was known now to be as had been rumoured; isn't that right?

A. That's right.

Q. And that fact was evaded in the statement made by civil servants, in the unprecedented statement made by civil servants, which was designed to clear up the confusion; isn't that right?

A. Yeah.

Q. Now, in November of I can't remember was it November or December December of '96; I think it

was November was the letter prepared for Mr. Dukes.

The date of it, the 6th December, I think. Again the question of ownership was, I would submit, or I would suggest to you was again, I'd suggest, calculated to obscure or at least to evade the true facts.

A. This is in the which document? The letter

Q. The letter prepared for Mr. Dukes on the 6th December, the letter to Mr. Molloy.

A. What you were suggesting, I think, the last time you opened this letter was that we deliberately didn't inform Mr. Dukes of the 25% and the modification back to 20%. I don't know, because I just don't have a recollection of what oral exchanges we had with Mr. Dukes, whether we had told him that or not.

Q. Well, Mr. Dukes, as I told you the last day, had informed the Tribunal

A. I recall that, yeah.

Q. that he had a meeting with you and Mr. Loughrey in which these matters were discussed. And he has now, in a formal statement to the Tribunal, said:

"I was elected to Dail Eireann in 1981 constituency of Kildare and represented first that constituency and subsequently the constituency of Kildare South until May 2002.

"I was appointed Minister for Transport, Energy and Communications on December 3rd, 1996, following the resignation of Michael Lowry from that position in

November of 1996 and served in that office until June of 1997.

"As incoming Minister I was conscious of the controversy raised in some quarters as regards the award of the GSM II licence. Accordingly I felt it incumbent on me to question closely the senior civil servants in my Department who had been involved in the licensing process, to seek their assurances as to the probity and integrity of the process and to seek their assurance that it had been sound and above board.

"I had heard the RTE Radio broadcast of the press conference given on the 19th April 1996 by those senior civil servants shortly before the licence was finally awarded.

"I was aware of the questions being aired in the Dail and in the media about the licensing process. I reviewed and discussed those questions with the senior civil servants in question, namely the then Secretary of the Department, John Loughrey, and Martin Brennan and Sean Fitzgerald, all of whom had been centrally involved in the process.

"I asked the then Secretary of the Department and his two senior colleagues to describe the process which had been followed by the Department for the awarding of the GSM II licence the criteria applied, the requirements to be fulfilled by the applicants, the evaluation methodology, the milestones to be observed

in the process, the involvement of the external assessors, the composition and make-up of the project subcommittee involved in the evaluation process and how the winning applicant was ultimately chosen.

"During the course of this review and discussion, my civil servants were able to satisfy me as to the integrity of the process.

"This review and discussion took the form of a series of conversations with the civil servants involved which, to the best of my recollection, took place during the course of the month of December 1996.

During that time I was occupied also with familiarising myself with a wide range of issues that fell within the Department's remit, and with preparing for and presiding at three sessions of the EU Council of Ministers in Brussels. (Ireland then held the presidency of the EU). I did not carry out a personal examination of the Department's files in relation to the award of the GSM II licence.

"I recall the general tenor of the Dail contributions of the then Deputy Robert Molloy on the matter. To the best of my recollection, most of his Dail contributions on the matter occurred during Mr. Lowry's tenure as Minister.

"I can recall thinking at the time that it was probably not surprising that the unsuccessful applicants for the licence would seek, through any

means available, including through briefing the opposition in the Dail, to cast doubt on the integrity of the award process, whether or not there was any objective foundation for such doubt.

"The Tribunal has furnished me with a copy of a letter dated 6th December 1996 which I sent to the then Deputy Robert Molloy. In that letter I gave the then Deputy Molloy information relating to the financial composition of the winning consortium, both at the time of the application and at the time of the granting of the licence. I cannot now recollect whether that letter was sent in response to a letter from the then Deputy or in response to a statement by him in the Dail or outside it.

"I did not personally draft that letter. I do not know who drafted it. As a general rule my concern would have been with the content rather than the identity of the drafter. It was not my practice as Minister to concern myself with the identity of the drafters of letters submitted to me for signature, but rather to satisfy myself that I could stand over the contents.

"I did not know then, nor to the best of my recollection, had I been advised by my civil servants that prior to May 16th, 1995 (the date on which the license was issued), the capital configuration of Esat Digifone involved the holding of shares as to 37.5%

each by Esat Telecom and Telenor, and 25% by IIU Nominees Limited. To the best of my recollection, I believed at the time of my letter to the former Deputy Molloy that the respective constituent shareholdings in the Esat consortium was 40:40:20. To the best of my recollection also, I was not aware of any suggestion that this configuration had come about at the request of either the previous Minister or of the Department in a way that would maintain the conformity of the capital configuration of the applicant consortium."

I think what I suggested to you, both last week and just now, is that the letter as drafted was calculated either to evade setting out the obligation to set out the true facts, to obscure them, or even to suppress them.

A. Are you asking for comment, obviously?

Q. Pardon?

A. You are asking for comment?

Q. Yes.

A. In the second paragraph on page 2, Mr. Dukes is saying that he gave information as to the financial composition of the winning consortium at the time of the application and at the time of the grant of the licence. That's clearly correct, because that's what it was on both of those occasions, 40:40:20.

Now he is saying in this note and I mean, that's

his recollection he is saying that he had discussions with civil servants more than once, and that to the best of his recollection he is careful to use that phrase a number of times he was not told of the 37.5:37.5:25. I obviously participated in some of those discussions. I don't have a recollection as to whether he was told or not. Mr. Loughrey, Mr. Fitzgerald will obviously be asked the same questions; we'll see what their recollections are. I can't say anything beyond that.

Q. I understood you to say to me on Friday that you believed that you hadn't informed the then Minister of the evolution of the share configuration of Esat Digifone.

A. I don't think I was as explicit at that, because I don't have that clear recollection. I have a recollection that the new Minister arrived and he had a questioning approach to the process. But I don't have a recollection of the detail with which the discussion took place. He has obviously a clear recollection of going through a lot of detail, as is obvious in the first page of his note.

Q. I think I was suggesting to you the last day that if you looked at the letter, it didn't do what I suggested to you it purported to do. It started out by saying "There appears to be considerable confusion abroad about the precise situation regarding the

ownership and investment in Esat Digifone. I hope the following information will clarify the matter for you."

And I suggested to you, I think, that this document didn't seek, nor more than did the Minister's statement in the Dail on the 30th April, nor the civil servants' press conference on the 9th April, nor the Minister's statement in the Dail on the 16th April, seek to get rid of any confusion, and that this document, like those contributions to the controversy, avoids setting out the true facts.

A. My concern I think always was and I hope I have been clear on this that we got an application based on 50/50 with 20 to be placed, which we now refer to as 40:40:20, and that we would give a licence on that basis. I don't think that after we had restored the 40:40:20 that the business of 37.5:37.5:25 was uppermost in our minds. I mean, we had restored consistency with the licence application, or at least that's the way we saw it at the time.

Q. If you go to the penultimate paragraph of the letter, it says "On the 19th April, when the Department held a press briefing, the fact that it was not in a position to give final definitive information on the placement of the 20% minority shareholding may have reduced the clarity of the exchanges."

Now, I suggest to you that whoever drafted that must

have, and could not but have had in his mind the fact that on the 19th April, the Department knew that the consortium was representing itself as being a 37.5:37.5:25 consortium and that that passage was written in such a way as to avoid or evade an obligation to set out the truth of what was happening on or about the 19th April.

A. But the truth of what was happening on or about the 19th April is that we had a proposal or a statement based on 37.5:37.5:25 which we were unhappy with

Q. Could I stop you there for a minute, Mr. Brennan. You didn't have a proposal. You had a clear

A. I corrected myself and said a statement. We had a statement that it was 37.5:37.5:25, and we were concerned that that did not line up with the application, and we had started a process to find out what we might do about that. So we didn't have a clear position.

Q. Go to the paragraph before that: "At the licensing stage, several months later" in other words, several months after the application stage "Esat Digifone was in a position to announce that it had placed the 20% with IIU Nominees Limited".

Wasn't that a roundabout way of avoiding stating what you knew to be the truth, namely, that Esat Digifone announced a 20:40:40 configuration because that's what you said would be necessary to deflect attention from

the ownership issue?

A. I think it was, after taking legal advice, what we decided was necessary to do in order to maintain consistency with the application we received.

Q. Could I suggest to you, Mr. Brennan, that if, at the time that this letter was written by Mr. Dukes on your advice, Mr. Loughrey's advice and Mr. Fitzgerald's advice, according to Mr. Dukes, at the time that letter was written, if anyone in Irish public life or in the media had been aware of the true facts, Mr. Dukes would have been hung out to dry for having once again sowed more confusion instead of seeking to clarify it.

A. I mean, what the letter is saying is that

Q. Is that correct or not? Is that a correct impression?

A. I think what Mr. Dukes is recollecting and what the letter is saying is that when we got an application, it was based on 40:40:20; when we issued the licence, it was based on 40:40:20.

Q. And if on the following day, armed with the true facts, Mr. Bobby Molloy had said, "What I had been told by Mr. Dukes is not the truth here; the truth here is that this consortium was the 37.5:37.5:25 consortium, and there was a lot of frenetic activity to bring it around to make it consistent with the application between the 19th April and the 16th May, to make it appear consistent with the application",

that Mr. Dukes would have been in a position where he'd have had to resign.

A. I wouldn't have thought so, but I can't find different ways of saying this. The consortium came in with a statement as to 37.5:37.5:25. We in the Department didn't like that because it wasn't lined up with the application, and we set about taking legal advice as to what we should do.

CHAIRMAN: Well, you did say last week, Mr. Brennan, looking back on the letter with retrospect, it was not drafted as satisfactorily as you might overall have wished.

A. Well, based on all the facts that are now out there, I said it could be drafted better. And I am fairly certain I drafted it, and it may not have been altered going up the line, but I don't know

CHAIRMAN: But it was a query and a burning issue, and it was a letter passing between two of the most senior politicians in Dail Eireann.

A. Mm-hmm.

Q. MR. HEALY: What was impelling civil servants, Mr. Brennan, to give the impression, at every stage in which they were involved in dealing with this controversy, that this application was always a 50/50 one, 20% to institutions, and that the institution that was taking them up was IIU? What impelled civil servants to say that, when they knew after the 19th it

wasn't the truth?

A. I haven't studied what went on as regards the legal advice in this area.

Q. Leave the legal advice out

A. But I am fairly certain that what went out for advice included all of the relevant extracts from the application and so on. Now, I don't have that documentation with me.

Q. What impelled civil servants to avoid telling the press or Mr. Dukes that this application was once a 25% application, 37.5:37.5? What was so wrong with that? What was the sensitivity surrounding that?

A. The sensitivity surrounding that was that it wasn't the application that was made back in June of '95.

Q. Isn't that right?

A. And we wanted something that would line up 40:40:20.

Q. Wasn't that a big problem, Mr. Brennan?

A. A big problem in what sense?

Q. That it wasn't the application that was made.

A. The application that was made, I keep saying, was 50/50 with 20 to be placed. The legal advice we took was as to whether the manner in which it was now being placed, assuming it went back to 20, was consistent with that application.

Q. So applicants for this licence were being told, "We are delighted to receive your application, but if you could change it around bit we'll give you the licence,

but if you don't we won't"? Was that the way the process was being conducted?

A. I think that's overstating it.

Q. When you became involved in this process and when civil servants became involved in it, day one, you went to the trouble to emphasise the confidentiality of the process, and the sensitivity of the information was going to become part of the currency between the civil servants involved in the Project Group; isn't that right?

A. Yeah.

Q. Did you understand or was there any suggestion that in the course of that process, did you understand that your role was that, effectively, of an adjudicator, almost a judge, an evaluator, an adjudicator, an independent adjudicator?

A. The team was to come up with the recommendation to the Government, to the Minister.

Q. In the ordinary way, in coming up for material for a Minister, you are of course bound to have regard to the Minister's own and the Department's political agenda; isn't that right?

A. Yeah.

Q. That's understandable. That's the normal role of a civil servant?

A. Yeah.

Q. And in presenting material, you are going to present

it in such a way that it advocates as positively as possible the Minister's agenda; isn't that right?

A. That's generally true, yeah.

Q. Both to the public, to the Dail, and to his Cabinet colleagues?

A. Mm-hmm.

Q. That's how the system works. There is nothing wrong with that. In carrying out this process, however, do you think you fully appreciated that your role was to stand is to stand off from the Minister?

A. I don't I don't know where I mean, we discussed before about whether there was a hermetically sealed process, and I said that there were parts of it where it couldn't be, by definition; that, for example, the Minister had to be briefed to interact with the Commissioner and so on.

Q. He had to be, yes.

A. Yeah.

Q. When you got to the actual nitty-gritty of the evaluation, it still wasn't hermetically sealed; isn't that right?

A. To what extent do you mean?

Q. To the extent that there were exchanges between you and the Minister or between the Minister and Mr. Fitzgerald and between you and Mr. Fitzgerald.

A. There were exchanges of a fairly general nature, I suspect, yeah.

Q. Pardon?

A. Of a fairly general nature.

Q. Well, in a number of cases they were more than general. They were specific with regard to, for instance, what we have discussed already, the form of the report.

A. Yeah.

Q. And I think I suggested to you already that when you had a discussion with the Minister in which it was suggested that the report would not undermine itself, I suggested to you that that was allowing the Minister to get too close to the activity that you were supposed to be involved in independently of the Minister.

A. I think at the stage you are talking about, and I don't know what date that took place, that the applications were evaluated and the scores were either being put together or had been put together and there was some final checking going on.

Q. Well, you had a provisional ranking at that stage?

A. Yeah, okay.

Q. But you also had problems. You either had substantive problems with the first two and possibly the first three, but you also had problems with the fact that the report didn't seem to completely support the conclusions that you had reached in the ranking; would that be a fair way of putting it?

A. Well, it was deemed there was a view within the group itself that the report was purely articulated in some respects.

Q. Well, I don't think it was quite as simple as that. There were complaints about the Danish English, but weren't there also complaints that the report didn't support the conclusions that it purported to reach?

A. There were clear feelings within the group that the first draft of the report was poorly drafted and needed a lot of work to get it to accurately reflect what had been done.

Q. When the Minister suggested that the report would not undermine itself, I think I suggested to you that that remark can only have been prompted by a discussion concerning the way the report was shaping up.

A. I am not so sure when you suggested that to me or what response I gave, to be honest.

Q. Well, I am suggesting to you now that to win that sort of engagement with the Minister was not what you'd expect if you were conducting a completely independent adjudicative process and that you may have misconceived your role in thinking that you could rearticulate the terms of the report as suggested by the Minister.

A. I think I responded to you, but I am not sure about this because I have been here a long time now, that Mr. Fitzgerald, who knew a lot more about the

financial status of Esat Telecom/Communicorp, from when it occurred to him that they were leading contenders, that he was concerned at that outcome. So I don't know what is the chain of communications, whether it was he was suggesting to the Minister, I just don't know, that if that's the result, it better be clear-cut, or something like that.

Q. The Minister himself described the process in his personal statement to the Dail as one that on the 19th December, 1996 as one that was conducted, the entire of it was conducted on an arm's-length basis and was hermetically sealed from any external interference. That's a very, very extravagant claim when we know what the facts are; isn't that right?

A. There was no interference with the evaluation of the applications and the awarding of marks.

Q. The problem that you had at the end of the process was to deal with this question of financial vulnerability or fragility; isn't that right?

A. Mm-hmm.

Q. And the solution that was arrived at was that this didn't matter, because if A5 got the licence, then they'd get the money; isn't that right?

A. That certainly is a reasonable interpretation of the bankability text that we have discussed a number of times.

Q. Isn't that a somewhat bizarre way in which to conduct

a competition, that you evaluate six applications and you arrive at what you think is a winner, but it has a problem, and you say "Well, it won't have a problem if we give it the first prize"?

A. At the time, we were still looking at an application where the weakness in Communicorp was covered by arrangements with other backers.

Q. No, you had no arrangements with the backers. You didn't.

A. Sorry

Q. Isn't that clear? Did Mr. Andersen say that you'd have to enter into arrangements if you were going to give him the licence and you'd have to incorporate those arrangements in the conditions? Isn't that right?

A. The application on its face had

Q. Isn't that correct, first? Are we right about what the report said?

A. The report said that you'll have to deal with financial weakness in the licence negotiations, absolutely.

Q. There is one final matter, just to clarify an issue that arose, of a very simple issue of fact. Do you remember I mentioned to you the fact that in November of 1995 in or around 18th November of 1995, there were press reports suggesting an involvement of Mr. Desmond, and you mentioned that you felt that the

Department had a very good press cutting service and that you might have been expected to see that or become aware of it?

Now, what I think I was suggesting to you was that those press statements indicated not that Mr. Desmond was going to be a member of the consortium but that his company was going to handle the sale of a 20% stake in Esat Digifone, although there was speculation at the time that Mr. Desmond himself might have been involved.

A. Yeah.

Q. So there was press speculation of his potential involvement from as early as November 18th, although you say you weren't aware of it?

A. No, I mean, it was I drew your attention to the fact that there was a press cutting service. I have since checked, and one of those extracts was in the bunch of extracts circulated that day.

Q. Was it?

A. It was. I can't say one way or the other whether I actually saw it, but my reaction to it, in seeing it now, is that it was presented in sort of an unremarkable way of you know, it's not Davys any more, it's IIU or Dermot Desmond or whatever.

So, you know, it's not something that would have, I think, strongly registered with somebody doing the job we were doing.

Q. At that stage you felt you were dealing with a 40:40:20 consortium?

A. Yeah. And this was after the event anyway, wasn't it?

Q. This was after the announcement of the winner of the competition, but you still felt you were dealing with a 40:40:20 consortium; isn't that right?

A. Yeah.

Q. Do you remember we discussed, I think in the first week after Christmas, the fact that in the Esat Digifone application with the letter enclosing the application, you were informed that the identity of the banks who were going to take up the 20% should not be disclosed? Do you remember that?

A. Yeah.

Q. And I think initially we were canvassing what it meant, and I think I drew to your attention the fact that it was Esat didn't want their identities disclosed; do you recall that?

A. Mm-hmm.

Q. In the course of the exchanges in the Dail on November, in November of 1995, whatever day it was, Mr. Batt O'Keefe suggested that the Minister would, in order to solve the problem of confidentiality, which he was claiming prevented him from naming the owners of the 20 percent, simply go to the people involved and ask them would they waive confidentiality.

I think I may have asked you, and if I didn't, I am

asking you now, can you recall anything being done to follow up on that?

A. I certainly didn't do anything, and I don't recall anybody else, but I wouldn't know if somebody

Q. It would certainly have got the Minister out of a hole, wouldn't it? He wouldn't have had to face these constant questions if he could say who these people were; isn't that right?

A. I suppose that's true, yeah.

Q. And yet he never suggested to you that "Look, can we find out if we can name these people, and we'll stop this once and for all"?

A. Maybe I never suggested to him either.

Q. The Tribunal has been in touch with Mr. Kyran McLaughlin of Davys, who has informed the Tribunal that no such stipulation was ever required by him in his involvement with Esat Digifone. And if you think about it for a minute, I suppose, while it might have been important in the course of the evaluation process, it can't have had much importance after the result was known, can it?

A. Possibly not; I don't know.

Q. But it was never followed up by anybody, to your knowledge?

A. I certainly have no recollection of either following it up myself or being aware that anybody else did.

Q. But of course if it had been followed up, you'd have

found that there was no institutions involved at all;

isn't that right?

A. But I mean, I have said a number of times, we were dealing with people and documents at face value.

Q. I appreciate that.

One of the institutions which apparently didn't want its name mentioned was Advent; isn't that right?

A. I think well, we took the statement as covering all four, yeah.

Q. And Advent were an actual named investor in Esat Digifone's Communicorp consortium member; isn't that right?

A. Yeah.

Q. And if you think about it for a moment, what conceivable concern would they have about having their, as they saw it, fixed 5% ownership of Esat Digifone revealed in public?

A. Looking back now, you are right in what you are saying.

Q. There is one last thing I'll remind you of, and I think it may be consistent with what you have just said to me concerning the IIU involvement. Do you remember I drew to your attention, and I am not going to trouble you with the page number, 21/11/1995 note of Mr. Gerry Halpenny in William Fry's, Book 49, Leaf 90, where he records a conversation with Mr. Richard O'Toole, Mr. Peter O'Donoghue, Mr. Knut Haga, Mr. Per

Simonsen and Mr. Arthur Moran, where he says "Position re the Department IIU not a problem for Martin Brennan in the Department", if what you are telling me about your impression when or what you believe your impression may have been when you first heard of IIU was that they had taken over from Davys?

A. That's what I am saying the press extract suggests, yeah.

Q. And is it possibly in that sense that you felt it's not a problem; after all, why would it be a problem? They were only virtually an administrator; isn't that right?

A. I think when you first opened that document with me I said I wouldn't rule out that somebody may have called me and said would it make a difference if they changed their placing agents or whatever they were.

Q. Thanks, Mr. Brennan.

CHAIRMAN: Well, there will be some questions from the other counsel, and I'd made a ruling as to the sequence of that on Friday.

I understand, Mr. Shipsey, as senior counsel for Mr. Dermot Desmond and IIU, that you had communicated to my colleagues a wish to have an opportunity to ask some questions.

MR. SHIPSEY: I do, Sir, and I have had a word

A. Could I have a comfort stop while you have having this exchange?

CHAIRMAN: By all means. Well, if you come back in ten minutes, then, Mr. Brennan, and I'll deal with Mr. Shipsey's remark.

Anyway

MR. SHIPSEY: I am sorry, Sir, I have had an opportunity to have a discussion with my colleagues. I wasn't here last Thursday when you were deciding on the order in which the respective counsel would question Mr. Brennan. Insofar as all the other parties are concerned, they all seem to be agreed that I would go, then; that's with the exception of Mr. Fitzsimons. And Mr. Fitzsimons has indicated that he will leave it to you whether I go ahead of Mr.

Fitzsimons or after Mr. Fitzsimons. But

CHAIRMAN: Well, my inclination, Mr. Shipsey, would be to take the view that since your colleagues Mr. Fitzsimons, Mr. McGonigal, Mr. Fanning are perhaps dealing with a more extended involvement in the entire set of matters under investigation, it's probably the fairest and most convenient course for you to go first.

So perhaps, we have given Mr. Brennan his break, let's say five past twelve we'll resume.

MR. SHIPSEY: I am very grateful.

THE TRIBUNAL THEN ADJOURNED FOR A BREAK AND RESUMED AS FOLLOWS:

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SHIPSEY:

Q. MR. SHIPSEY: Mr. Brennan, I appear for Mr. Dermot Desmond, and I just have hopefully a very few questions for you.

The first matter I want to address with you is the nature of the competition that you were involved with in selecting the person who would be awarded or the consortium that would be awarded the second mobile phone licence. And if I understand it correctly, the competition was designed in such a way that it was to be decided on objective criteria; would that be correct?

A. Yes. It was open to all comers and to be basically decided by reference to paragraph 19 of the original documentation.

Q. And am I correct in my understanding that the criteria that would be used were in fact all objective criteria; that there was no room or place for any subjective criteria in the evaluation process?

A. That was certainly the intention.

Q. It could never be, for example, down to a question of either your or anybody else's personal views or personal preferences; would that be fair to suggest?

A. I think it is, yeah.

Q. And I think there were also predefined selection criteria; in other words, that persons who were making application for this licence knew in advance the rules of the competition and the criteria that they would

have to meet and against which they would be judged.

Isn't that correct?

A. Yes.

Q. Mr. Brennan, in the course of the extensive examination of you by counsel for the Tribunal over the last number of weeks, there was reference made to a letter which was addressed to you from IIU signed by a Professor Michael Walsh, the managing director of IIU Limited, of the 29th September of 1995. I think you are aware of the existence of that letter, but I think, if I am correct in my recollection, you say that it is your belief that that went to Mr. I hope I have got his pronunciation right a Mr. Towey; is that correct?

A. The letter was certainly first received by Mr. Towey. And I wouldn't like to be unfair to him; he may have said to me that it bore on the finances of the consortium. I don't know exactly what he said to me.

Q. But you have no either clear or detailed recollection of having considered that letter addressed to you at the time; would that be fair?

A. What I have said here is that I was actually in Brussels on the day it was received.

Q. And I think you are also aware, as a result of documentation that you have obtained during the course of this Tribunal, that on that same date, an agreement was concluded between IIU on the one hand and Mr.

O'Brien's company on the other hand; that is, the 29th September of 1995?

A. I think that goes all the way back to the Opening Statement. It was about then, so I'll take your word for it.

Q. And if that be the case, and if you just take it for the moment that that is the date of the agreement or exchange in writing between Mr. Desmond's IIU on the one part and Mr. O'Brien on the other part, that on the very same day that agreement is reached in relation to a participation by Mr. Desmond's IIU in whatever form in the consortium, IIU write to the Department; isn't that correct?

A. Certainly IIU wrote to the Department on the 29th.

Q. And what I have to suggest to you, because there is, and has been in the course of your examination, a fair deal of suggestion that there was, in certain quarters at least, a reticence or a reluctance to mention the involvement of Mr. Desmond or Mr. Desmond's IIU, would you agree that that is fair, insofar as a number of questions that have been put to you are concerned?

A. That sounds like a reasonable interpretation, yeah.

Q. But whatever about the position of any other parties, it is at least clear that insofar as Mr. Desmond and his company is concerned, they are happy to announce to the Department, on the very day that they conclude their agreement with the other member or another

member of the consortium, to inform you in the Department of their interest and their involvement?

A. That seems to be what the letter was for, yeah.

Q. And at no time thereafter, I take it, that you are aware of, was there any attempt or effort or suggestion made by or on behalf of Mr. Desmond or Mr. Desmond's company that there should be no mention or little mention of his involvement; is that correct?

A. I don't recall there being any such indications.

Q. And in fact insofar as Mr. Desmond and Mr. Desmond's IIU are concerned, they have very little direct involvement with the Department at all during this process until towards the end of the process when, prior to the award of the licence, the Department approach the three parties, the three component parties in the consortium, to try to get more financial information about their financial ability to fund the project if the licence is awarded to them; isn't that correct?

A. Certainly that's the purpose of what was going on in May of '96.

Q. And I think we have moved on then to the early days of May, if not the end of April of 1996; isn't that correct?

A. Yeah.

Q. And would I be also correct in saying that insofar as IIU and Mr. Desmond was concerned, that IIU and Mr.

Desmond, through Mr. Michael Walsh, or Professor Michael Walsh as he is, were prepared to provide the Department with information in relation to Mr. Desmond and IIU?

A. I think in fairness I should say that there was a certain reticence to provide information until we insisted, but we did get it.

Q. And when you did insist upon it, you did get it, as you say, and you got sufficient information to satisfy yourselves in relation to the participation of Mr. Desmond or Mr. Desmond's IIU?

A. Yeah, well, I think the way I'd answer that is that the people who were directly involved in considering that issue at that time seemed to have concluded it was satisfactory.

Q. And were you involved in that process, or

A. I was involved to some degree.

Q. But there are others who are more directly involved, I think, is what you are saying; is that correct?

A. Yes. We had this last week. Mr. Donal Buggy and Mr. Loughrey in particular.

Q. Mr. Brennan, was there any distinction drawn in the Department's mind between Mr. Desmond on the one hand and IIU on the other hand, of which I think you were informed Mr. Desmond was the 100 percent beneficial owner?

A. I don't recall there being any distinction.

Q. I take it you'd agree with me that there was no sense in which anyone in the Department regarded IIU as some type of vehicle for participating in the licence process or some limited liability company behind which Mr. Desmond could hide. Would that be fair?

A. Certainly his involvement was transparent at that time.

Q. And in such a process as this, Mr. Brennan, I take it it would be usual for you to seek to establish who in fact was behind a corporate vehicle and that you would have more interest or greater interest in knowing that the persons behind the corporate vehicle had the financial capability and the willingness to support their corporate vehicle; would that be fair?

A. Well, I always have separated in my own mind the adjudication phase from the licensing phase. In the adjudication phase, work of that sort was done inquiries of that sort were made, not by me but by the sub-group who were looking after that aspect. At the licensing phase, when there was a change, if you like, then appropriate inquiries were made, in my opinion, but I was involved in them but not driving them.

Q. Yes, and just can you tell me who the persons were who were driving that aspect of it, from the Department's point of view?

A. I attended several meetings in connection with it, but

Mr. Donal Buggy and Mr. Loughrey were centrally involved.

Q. And would I be better directing such questions as I have in relation to detail to those witnesses?

A. Yeah, I think there is a lot of instances in this Tribunal where the individuals will have to come along and speak for their involvement.

Q. You do know, however, that a letter in fact two letters were obtained from Farrell Grant Sparks, a firm of chartered accountants in Dublin?

A. Mm-hmm.

Q. I think there is a letter of the 7th May, a short letter of the 7th May of 1996 and a more detailed letter of the 15th May of 1996.

A. Yeah, I know there were two letters.

Q. And again, tell me if it's unfair to be asking you the question, but would I be correct in understanding at least that the reason for the further letter that is, a more detailed letter of the 15th May following upon the letter of the 7th May was because the Department wanted further information provided?

A. I think you can take it that's the case, although it's difficult to be specific without the documents, but there was a stage in which we were asked we were being asked, as we saw it, to take it on trust that Mr. Desmond had the money, and we said "Show us the colour of it". That was the way I'd sort of describe

it.

Q. And the first way in which you'd be shown the colour or the first way it was offered to you was through a person who had a professional involvement as accountant to Mr. Desmond over a period of time; is that correct?

A. Yes.

Q. And again insofar as that letter is concerned, and I am not sure the number that I have on it, Sir, is 001887; I am not sure if it would be helpful to Mr. Brennan to see such a letter, but it gives and I can hand a copy in to you, Mr. Brennan, if it would be helpful.

And insofar as that letter goes, it gives an indication of what I might describe as a net worth for Mr. Desmond of some 77 million Irish pounds; is that correct?

A. It's the wrong letter this is the 7th May letter.

I believe you intended to give me the later one.

Q. I'll give you the later one, then.

A. It certainly shows him to be the owner of those. I mean, his net worth could easily be a lot more than that, but that's the evidence

Q. At least that.

A. Yeah.

Q. And included in that listing there is two items mentioning cash at bank of $\text{€}15$ million, and a sum of

1/25 million which is described as "William Fry client account re investment in Esat Digifone Limited".

A. Yeah.

Q. And insofar as that letter is concerned, from Mr. Farrell of Farrell Grant Sparks is concerned, there is no real distinction drawn between Mr. Desmond on the one hand and IIU on the other, because the Department is being informed that Mr. Desmond/IIU have undertaken to invest and/or underwrite in equity, investment of up to 40 million in Esat Digifone Limited.

A. That's what it shows, yeah.

Q. Now, Mr. Walsh attended a meeting I think on the same day as this, the 15th May of 1996. Is that a meeting that you were present at, or would you have likely

A. If the meeting was with Mr. Buggy or Mr. Loughrey, I was likely to have been there. It was probably with Mr. Buggy and myself.

Q. You are unlikely to have been the person who was driving the discussion at that; it would probably be Mr. Loughrey or Mr. Buggy. Is that correct?

A. I think what the evidence shows is that Mr. Buggy was charged by Mr. Loughrey to come up with a paper on this issue and that I was assisting him and attending the meetings with him.

Q. And what Mr. Walsh's recollection in relation to this meeting is concerned is that the Department were anxious, in addition to having the letter from the

firm of chartered accountants, were anxious to have something in the nature of a bank guarantee or a letter of undertaking from a bank; do you recall that being discussed?

A. I don't specifically recall that, no.

Q. And insofar as amounts were being mentioned, a figure of $\text{£}17$ million was the amount which the Department initially wished to have by way of a form of bank guarantee or letter of undertaking; do you recall that?

A. I don't ever recall that.

Q. And that following discussion at this meeting, agreement was reached between Mr. Walsh and the Department that a figure of $\text{£}10$ million would suffice and that a letter should be procured from a bank in this amount?

A. I can't say that I have that degree of recall of those exchanges.

Q. Do you recall, then, receiving or seeing the letter from Anglo Irish Bank of the 15th May of 1996?

A. I probably did see it.

Q. And I wonder, do you have a copy of that letter?

If I can just give you a copy of that letter.

(Document handed to witness.)

And it's Mr. Walsh's recollection that the terms or the import of this letter was agreed in advance with the Department that when Mr. Walsh, subsequent to his

meeting in the Department, went to Anglo Irish Bank Corp. to get the letter, it was on the basis of what he understood was required by the Department.

A. The records show that there was some discussion around him keeping the money readily available and so on.

I'd expect that Mr. Buggy will have a far better recollection when it comes to this.

Q. Very good. And insofar as this letter is concerned, there is confirmation from Anglo Irish Bank that Dermot Desmond has available $\text{€}10$ million to invest in the company during 1996; of this sum, $\text{€}5$ million would be provided to the company prior to the signing of the licence. And we know in fact that that was done the following day; isn't that correct?

A. Yeah.

Q. That Mr. Desmond's IIU provided 5 million of the 15 million licence fee?

A. Mm-hmm.

Q. And I take it you also knew or could surmise that that was the $\text{€}5$ million that was sitting in the William Fry client account?

A. That sounds fair, from what you have presented me with now, but I don't have this kind of recall, to be honest.

Q. And then the letter goes further: "We undertake," and I take it you understood then and would understand now that the "We" referred to is the bank; isn't that

correct?

A. Yeah.

Q. "That the balance of $\text{€}1\frac{1}{2}$ million will be available to the company" that's Esat Digifone Limited "at any stage during 1996 to meet any obligation by Mr. Dermot Desmond, through IIU Nominees Limited, to subscribe for equity in the company."

A. That certainly is what the letter was saying, yeah.

Q. And again, insofar as we have the benefit of history, the amounts that were required to be subscribed and to be contributed to the company after the award of the licence were in fact provided in the amounts required and on time?

A. Certainly the licence fee was paid on time and so on, yeah.

Q. Thank you, Mr. Brennan.

MR. FITZSIMONS: Mr. Chairman, Mr. Healy has engaged in a most thorough and comprehensive examination of the witness for the purpose of ascertaining and testing the facts, both examination and cross-examination. Insofar as any issue arises vis-a-vis my clients on this witness, it would probably arise primarily in relation to the meeting of the 3rd May and Mr. Johansen's memo of that date. Now, Mr. Healy has put to the witness the contents of that memorandum, and having reviewed the evidence and indeed other matters which concern my clients, it

doesn't seem to me that it would assist the Tribunal if I were to attempt to go over the ground again. It seems to me that Mr. Healy has covered the ground both from the point of view of my clients and the Tribunal generally.

So, having considered, as I say, the evidence, I have taken a decision that it is not necessary for my client to engage in a cross-examination of this witness. I think to do so would be simply to go over old ground and waste the valuable time of this Tribunal. So I do not propose to cross-examine this witness. However, if any matter arises during the course of the other cross-examinations, I would wish to have leave to that concerns my clients I would wish to have leave to apply to examine the witness on that.

CHAIRMAN: That's reasonable, Mr. Fitzsimons. Very good.

Mr. McGonigal?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. Brennan, I appear for Mr. O'Brien, and I want to make clear that I want to ask you some questions in relation to the process itself. I don't want to cross-examine or to use the word "cross-examine", as it would indicate an adversarial process which we are not involved in here; and what I want to try and do is clarify some things in relation

to the process which I think require clarification.

By way of starting, I just want to ask you a few questions in relation to the documents that we have before us. As I understand it, the documents which we have before us were supplied to, by and large, to the Tribunal by the Department.

A. My understanding is that the Department has discovered onto the Tribunal all of the documentation that arises from this process from start to finish. Now, I know that at the edges, things like press cuttings that came up in recent days, there are little gaps here and there, but I wasn't involved in that interaction with the Tribunal. It's somebody else's job who is now serving the telecoms division.

Q. That's what I am slightly interested in. Prior to you giving evidence or prior to the documents being given to the Tribunal, you yourself didn't have an opportunity of going through all of those documents to identify which might be relevant or might be appropriate to the process which you had carried out?

A. I didn't either have the desire or the opportunity.

Q. Whatever about the desire, the person who was given the task, was he a person who was involved in the process?

A. No.

Q. So is it right

A. When I say no, I am not sure exactly when he came to

work in the telecoms division, but he had no involvement in the process, as far as I recall.

Q. But am I right in understanding that to the best of your knowledge, nobody who was involved in the process has actually looked at all of the documents?

A. I would hesitate to speak for anybody else, but

Q. Speaking for yourself.

A. Speaking for myself, I did not review the documents before they came to the Tribunal, and all of my dealings since have been based on documents that I got from the Tribunal or got from the same source, which I took to be in the Tribunal.

Now, I have from time to time gone back to originals of documents to clarify, say, writing or sequence or whatever, and always with the assistance of the person concerned.

Q. So it does appear that there are a substantial number of documents missing, to use a neutral word?

A. You mean where there are we had discussions about

Q. There seem to be gaps in documentation?

A. Yes.

Q. And just to be clear, is it your view that there were documents which are now missing?

A. The only thing that was missing for a long time were the tapes. And that bothered me, and they eventually turned up. But I am not aware of any document that

was created in realtime and then that wasn't furnished to the Tribunal. I wasn't involved in searching people's hard disks, floppy disks or anything like that, but my understanding is that the Department has gone out of its way to leave no gaps.

Q. I understand that, and I am not suggesting otherwise.

I just want to try and understand why some of the documents might be missing.

Leaving that for a moment, Mr. Brennan, as you said a moment ago to Mr. Shipsey, your responsibility as you saw it was primarily to the adjudication, as you called it, of the process?

A. Yes.

Q. And it was the adjudication and the reporting of that adjudication which was your main involvement in what took place?

A. Well, preparation of the competition as well.

Q. I want to focus mainly for the moment on the process itself, from the time that the applications went in.

And while this involves repetition, I think I am hoping it might be worthwhile, because what I want to try and do with you, Mr. Brennan, is to look at what actually happened as we went on a day-by-day process to arrive at the recommendation in the initial stage, and ultimately the final report, in or about the 25th/26th October.

And by way of starting, the two books that I will be

focusing on are the Department Book Documents 2, which is Book 42, and Evaluation Book 1, which is Book 45, I understand. And a lot of these documents have already been touched on, and therefore I'll go through them as quickly as I can.

But the first one is at Tab 90, which is one which has already been touched on this morning by Mr. Healy, which was a letter from Mr. Lynch to Mr. Towey, simply dealing with a query concerning Esat Digifone giving the names of the consortium and indicating that they didn't wish the names of the institutional investors to be released at any stage.

That was the time at which the applications all came in.

A. Yes.

Q. What happened to the applications after they had come in?

A. I believe that copies were given to each of the relevant people for examination. I certainly I was actually on holidays when the applications came in. As soon as I came back, I read them volume by volume, and I presume other people concentrated to a greater or lesser degree on the volumes with which they were most directly concerned, but there is some evidence that they all involved themselves wider than say Mr. McQuaid was leading the technical side, but there is some evidence, in my recollection, that he also

took an interest in other aspects of it.

Q. But just to understand that, Mr. Brennan, in relation to AMI, I take it that a full set of documents were sent to AMI?

A. Oh, absolutely, yeah.

Q. And that would have been in Copenhagen?

A. Yes.

Q. Where I think a lot of the work was ultimately carried out?

A. Yes.

Q. Now, am I right in understanding, then, from your answer that you had a feeling that everyone on the project team may have been given copies of all of the applications?

A. Quite honestly, without checking, I have forgotten the number of applications people were required to send in. I suspect it may have been two copies went to Copenhagen. I didn't have a personal copy in my office. They were all kept I think they were all kept in locked cabinets and so on, so I would go and get, if I wanted to read the any particular volume of any application, I would go and take two or three out of a locked room or a locked press, use them to the extent I needed them, and put them back.

Q. And insofar as your understanding of it is that people concentrated on those parts of the applications to which their particular section related?

A. There would have been a natural tendency to do that anyway, but that's not to say that's all they did.

Q. I appreciate that. It's not exclusive; they actually informed themselves they probably informed themselves of all of the applications so that they would be in a position to contribute to the discussions that subsequently took place?

A. That was the understanding which I was proceeding, for sure.

Q. Now, if you just go to Tab 91 of Book 42 for a second. That's a document which is entitled "Esat Digifone commitment document, draft commitments made by Esat Digifone in their application submitted on the 4th August."

That's undated, as it appears in my copy. Can you assist me as to when that might have been generated?

A. I can't assist as to either when or by whom. I mean, when I read it for the purpose of preparing for this module, what I wrote on it was "Unless this was done for everyone, it seems out of chronological order". And that's in terms of the chronology, and I don't know who it's written by.

Q. But it does appear to be a summary prepared by someone who was setting out the commitments made by Esat Digifone, as they saw it, in their application?

A. Yeah.

Q. And so far as chronology was concerned, it wouldn't

appear to naturally fit where it is in these

documents?

A. That's the impression I had just going through the documents.

Q. We'll come back to it again.

The next document is Document 92, and that is a fax cover sheet from Michael Andersen to Fintan Towey.

And it's dated the 8th August, and that is sending a memo on "Conformance with the defined minimum requirements together with a list of the labels we will use", and he seeks certain cover letters from A3 and brings up the issue of cost.

Now, attached to that fax were a number of pages, being three, and they are comparing the conformance of the applications with minimum requirements. That's something which was initially carried out by Andersens themselves?

A. Yes.

Q. And was for what purpose?

A. It seems to have been for the purpose of deciding that the applications were technically correct.

Q. And that demonstrates itself, I suppose, on page the third page, there, where it has the conformance test?

A. I think my book is out of sync with yours. I have a covering fax, but I don't have anything under it.

This is in Leaf 92, is it?

Q. It is, yeah.

MR. HEALY: Leaf 91. 91A.

A. I don't have it.

(Document handed to witness.)

Q. MR. MCGONIGAL: Do you have the attachment?

A. I do, yeah.

Q. Now the first thing that I should probably draw to your attention, Mr. Brennan, is that there does appear to be a page missing. Certainly there is one missing from my fax copy; page 5/5 seems to be missing.

A. The cover sheet talks about five pages, and what you have handed me is three pages four, including the cover sheet.

Q. It goes to 4/5, and 5/5 seems to be missing. Of course that appears to be simply the conformance of the applications with minimum requirements, which seem to have been identified by way of a table which is set out at page 3/5; is that right?

A. Yeah.

Q. And on page 2/5, it indicates certain things which have been not been fully checked. Now, those matters which were set out in the conformance test, they were were they a preliminary to being involved in the competition, so to speak?

A. Yeah, it looks like that, yeah.

Q. And is that the way you recollect it and understand it, that an applicant had to effectively conform with

these things before he was fully considered?

A. There is no doubt about that, yeah.

Q. I think in fact there was a query over one of the applications, but it was allowed through; I think that was Eurofone or something?

A. Yes.

Q. Is that right?

A. I think that's correct, yeah.

Q. I'll come back to this again, but am I right in thinking that that is the only conformance test which was performed?

A. I certainly can't recall any other one.

Q. Now, there is a note on that, also on the 8/8, on the front of the fax note from Mr. Towey, "following examination of applications decision taken that all are valid. Tender requirement is that applications should not exceed 350 pages."

So it would appear that at that stage it was being accepted that all of the applications would be considered and dealt with?

A. Yes.

Q. In relation to Mr. Andersen's towards the end of his note on the fax page, this is the first time that he raises the issue of cost?

A. Yeah.

Q. And it was to figure as a substantial issue for him from that time onwards, I think?

A. For us too.

Q. And for you. Just in relation to that, was there a budget set aside for this competition, or how was the budget fixed?

A. Consultancy in the Department is dealt with in a particular subhead called A7, and it's nearly always underprovided, and it's not specific, and there is a kind of in those days, there used to be an understanding with financial that basically if they thought a consultancy was required, you'd get the money, so that's the sense in which it was done.

So we had a tender competition. The Andersen tender came in at an indication of charging levels, and we thought we negotiated a fixed-price contract.

Q. So when the issue of cost was raised, that created a problem not only for you, but also then for you and the Department of Finance?

A. I think

Q. In the sense that

A. I think we actually had difficulty in getting the Department of Finance not to pick an even cheaper consultant.

Q. Now, the last document on that page is another fax copy from Michael Andersen to Fintan Towey, and it's dated 9th August, and that is "sending our semi-structured readers' guide as promised. We use the guide if we read the applications in order to look

after salient points that later on should be addressed during the qualitative evaluation."

What is that referring to?

A. I don't know. I was wondering whether it referred to the document you opened earlier, but I don't know whether it is that or not. Or that or a series of such.

MR. HEALY: If Mr. McGonigal wants a copy I am aware of what the document is; I am not sure it adds much, but I am happy to provide a copy. I'll arrange for one to be given to Mr. McGonigal.

MR. MCGONIGAL: Well, then, I'll move on.

Q. The next letter is a letter from you to Mr. Lynch, which is Tab 93, which is simply setting out the dealing with the question of the list of questions which had to be in by the 4th September, and identifying the presentation for the 12th September, and giving some directions as to how it was to be used.

Attached to that were the list of questions which are dated 24th August of 1995.

The next document, at Tab 94, is a meeting of the in the Attorney General's Office in relation to legal issues. And just in relation to that document, Mr. Brennan, is it right that those questions related more to the future dealings in relation to the licence rather than to matters pertaining at this time?

A. Yeah, it looks to me as if it was preliminary work on the licence.

Q. So that that was, in a sense, looking forward to a later stage in the process?

A. Yes.

Q. The next document in sequence that I want you to look at, Mr. Brennan, is in the other book, Book 45, and it's Document Number 1.

This document is a qualitative evaluation draft as per the 29th August, 1995, in relation to market development. Now, on the documents that we have been given, this appears to be the first qualitative evaluation document which was produced at meetings on the 29th August of 1995?

A. It looks like that, yeah.

Q. Can you just explain to me first of all, these evaluation meetings, they first of all took place in Copenhagen?

A. I wasn't present at many of them, so I think in general that a lot of them did, but I couldn't be specific.

Q. And am I right in understanding that members of the project team would have been at these evaluation meetings?

A. Yes.

Q. And in relation to market development, who would have been the most likely person to have been at it, so far

as your recollection goes?

A. I don't believe I was in Copenhagen on the 29th August, but that's something that could be checked, but I don't think I was. I think Ms. Nic Lochlainn, perhaps, but I am not sure. It would be one of the easiest things to establish is what civil servants were in Copenhagen and what dates, because they all had to put in an expenses claim.

Q. Because there are good records of

A. The financial records are always kept, yeah.

Q. Now, in relation to the evaluation document, what it actually gives us an idea of is the way in which the markings were achieved in respect of the different dimensions; isn't that right?

A. Yeah sorry, I maybe propose this may be a first cut by Andersens; I am not sure.

Q. In fact it is, and we'll see it I want to take the process as it appears to have actually happened, Mr. Brennan, because it's relevant to the issues.

It first of all tells us that in order to assess this dimension, the following indicators have been used, and they then set out ten indicators.

How would they have been arrived at? Would they have been chosen by Andersens, or would they have been chosen by agreement, or chosen by the Department?

A. I am nearly certain they were Andersens'.

Q. Sorry?

A. I am nearly certain they were Andersens'.

Q. And then the score chart which is there is the way in which the subcommittee arrived at the various scores for the various teams?

A. Yeah, I am not sure whether this is the first draft that Andersens produced to assist the discussion or whether it's the outcome of the discussion. It's just not obvious on its face which it is.

Q. I see. Well, if it's of any assistance, if you go to Document Number 3, it may be of some assistance because I think there is a similar document there, and Maev Nic Lochlainn's name appears to be on it, on the top right.

A. That's "MMA", is it? That's Michael Andersen.

Q. Is it? It looks like "MAV"

A. It's an arrow and three letters that's just a different copy from the copy I have.

Q. It is, yes, but what I am

A. That's Maev

Q. It's Document Number 3, Mr. Brennan, I was drawing your attention to, not Document Number 2.

A. Sorry, we are gone on to Leaf 4. In the book that I am using, it's Leaf 4.

Q. I am sorry. Document Number 1 and your Document Number 4 seem to be similar documents?

A. Yeah.

Q. And the second one seems to be a working document

which was prepared by Maev Nic Lochlainn?

A. Mm-hmm. Yeah.

Q. But both of those documents give us an idea of how the subcommittees worked at arriving at the criteria and the resulting marks?

A. They do indeed. Now, I am only commenting as an observer, in the sense that I wasn't directly involved in this particular case; but in terms of the one that has "Maev" written on the top of it, it's very hard for me to look and she'll have to come and speak for herself, but it could be she got a copy in advance, studied it in terms of application, then went to a meeting in Copenhagen. And now it may be difficult to know which of the markings are ones that she thought going to Copenhagen or which are the ones settled in Copenhagen. I don't think you'll ever get to the full answer to that.

Q. I am not interested in getting the full answer in relation to that, Mr. Brennan, but what I am interested in establishing clearly and beyond doubt is that there was a meeting, a discussion, a full discussion by the participants in relation to arriving at the marks which were ultimately given for each category to each application.

A. Yes.

Q. And it was done at these subcommittee meetings, primarily but not solely in Copenhagen?

A. Mm-hmm.

Q. And as a result of consultation between the members of the Department who were involved in the project and the members of the AMI who were involved on the particular field?

A. Yes.

Q. And by no one else?

A. No one else.

Q. And so going to Document Number 2, which in your book, Mr. Brennan, is the one with the arrow and the "MMA", which seems to be Michael Andersen's document.

A. Okay.

Q. And it's also dated 29th August of 1995 and is the qualitative evaluation in respect of the dimension of coverage. Now, that document tells us that there was an evaluation meeting at AMI on the 29th August between 2 and 4.30, and that the concept of coverage has been evaluated by means of four indicators. And it sets out the four indicators, being the roll-out plan, the radio-link budget assumptions, the site acquisition preparations, and the special coverage provisions.

And it then continues on that "In continuation of the evaluation, possible risk factors within the suggested approaches to the described coverage have been recorded for later evaluation.

"Each of the indicators has been considered as

composed of a number of subindicators. The proper subindicators decided during the evaluation meeting are listed in the evaluation specification overleaf.

Indicators/subindicators not included here may have been transferred to the dimension "Radio network architecture" for evaluation there.

"The evaluation has been completed and marks have been assigned according to the rules specified in the document "Quantitative and qualitative evaluation of the GSM applications, Sections 5 and 6".

And then he gives the resulting marks. Now, before I go over the page, that sets out very clearly what was taking place and what took place at the meeting on the 29th August.

A. Yes.

Q. And indicates to anyone who wants to read it or follow it what the subcommittee on coverage did, how they did it, and the marks which they awarded?

A. Yeah.

Q. And that is further detailed on the next page, which sets out the indicators, the subindicators within the indicators?

A. Mm-hmm.

Q. Isn't that right?

A. Yeah.

Q. And towards the end of that second page, they identify areas which are considered to be potential risks in

respect of a number of consortia; isn't that right?

A. Yeah.

Q. And they also tell us that the marks of each of the four indicators were decided by the use of the following information extracted from the applications, and the marks represented a relative ranking of the evaluated applications, and we turn over the page and see that tablet, if you like?

A. Mm-hmm.

Q. So it is clear from going through that document how the various marks were given to A1, A2, A3, A4, A5, and A6 in respect of the dimension coverage?

A. Yeah, that's right.

Q. And that appears to have happened on the 29th August of 1995.

Now, just before I leave that, again can you assist me as to the document which is referred to on the first page, "Quantitative and qualitative evaluation of the GSM applications sections 5 and 6," what that is referring to?

A. I can't. I am wondering is it the evaluation model, but I am not sure.

Q. Perhaps we'll find out. But it doesn't an answer doesn't come to mind?

A. No.

Q. Just in passing, I should also point out to you that it does appear that some preparatory work was done

prior to the meeting of the 29th, because the document, the third page is in fact dated 28th August, so some work seems to have been done before that meeting.

A. Yes. I actually think that in some document from AMI that was opened here that they explained that in their system, documents showed the date on which this copy was generated. So you are never going to know I think the burden of what AMI are saying is that it could be impossible to trace when stuff was generated. The date on it, if I understood something that was opened here correctly, gives that indication.

Q. Well, so far as we are concerned, Mr. Brennan, we can only rely on the dates which are on the document.

A. Okay. So then or previously, is all I'd say.

Q. The next document, Document Number 4, is a quantitative evaluation and is dated the 30th August of 1995.

A. Yeah.

Q. What can you tell me about that document?

A. It's, I would say, clearly the output of AMI proprietary software.

Q. Would there have been some input from a subcommittee?

A. I can't say; I really don't know. The fact that there are one or two annotations, and very few annotations, suggests that it was discussed somewhere.

Q. Can you just take me through this document in the

light of the discussion which there has been between quantitative and qualitative. It appears to be divided into a number of categories, I'll put it that way, and they would have been taken from the material which was sent in by the applicants?

A. Yes.

Q. And the first one there is "Quoted number of billable traffic minutes". And there seems to have been no difficulty in scoring that?

A. That seems to be the case, yeah.

Q. How do you score a thing like that as a matter of interest? Or can you tell me?

A. I have no idea. I suspect that this is the relationship between what are known by AMI as the mandatory tables and the AMI software.

Q. But that relates to Dimension 1, market development, and the only two things which they appear to have scored in that dimension is the quoted number of billable traffic minutes and the quoted number of SIM cards.

A. Yeah.

Q. Does that mean that those were the only indicators which they felt were capable of being scored in that process?

A. I think I was trying to expand this a bit this morning I think that the quantitative evaluation was based on a very limited number of the overall

number of indicators from which the qualitative evaluation was done. And that sort of became obvious to me again only as I recently started delving into it.

Q. Because if you go down through the document, the second dimension is then covered, which is "Coverage, speed and extent of demographical coverage". And it sets out a number of coverage per class IV 2W Year 1, and then scores the individuals and gives a date as to when that was done.

A. Yeah, and it was clear in the quantitative evaluation model that coverage would be only marked in respect of outdoor class IV instruments sort of coverage. But I think that the qualitative evaluation, and it's from some of the documents you opened already, took a wider sweep.

Q. Can you just demonstrate that? It might be the easiest way of dealing with it if we go back to coverage, which I think is your it's MMA's document?

A. Yeah, where coverage now has a number of dimensions and broken down into indicators in the first two pages. That's, as I say, the wider scan in the qualitative evaluation. It's clear that, as I said this morning to Mr. Healy, the quantitative evaluation was a very narrow subset, and it seems to have been driven by the Andersen proprietary approach.

Q. So that in the sense in which the quantitative evaluation appears there, on the face of it, if I understand you correctly, is a much more limited approach to the qualitative approach which allows you to take to have regard to more, many more indicators?

A. That's the point I was trying to get across earlier this morning.

Q. And that you can therefore get a more detailed evaluation of an application form if you use the qualitative approach?

A. Yes, and I think it is indicated in the evaluation report that in respect of the indicators in the quantitative, each one of them was specifically noted as having been taken account also in the qualitative evaluation.

CHAIRMAN: Mr. McGonigal, we are just about on five past one. If it's a convenient time for you, it's no harm to break until a quarter past.

Just to put one fairly crude matter of the qualitative/quantitative, Mr. Brennan, I don't think it was raised by Mr. Healy, but I recall, perhaps in one of the early meetings between the Tribunal lawyers and Andersen Management representatives, I think a crude analogy was given by one of the Andersen people to imagine an athlete jumping over a bar; and to put it in very crude terms, the quantitative will tabulate

how high he jumps and the qualitative will then address matters like technique, elegance, and all sorts of other factors as to how he does it.

A. It's not an analogy I would have chosen, but it's an interesting one.

CHAIRMAN: But it's something a quarter past.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

MR. McGONIGAL: Mr. Chairman, I am grateful to Mr.

Healy. During lunch time, he has managed to resurrect

for me and give to me the documents which were

attached to the fax sheet of the 9th August of 1995,

which we referred to earlier this morning and is at

Tab 92; and also he has given me a copy of the

quantitative and qualitative evaluation of the GSM

applications, which is a matter that I was asking

about just prior to lunch, arising out of a memo.

And there are a number of pages in relation to each of

them, and I don't intend to deal with them now because

I'd like the witness to have an opportunity to see

them. I think they may have a bearing in relation to

understanding the way the process was created and

developed. And I'll deal with them tomorrow at the

latest. I don't know that I'll reach them by this

afternoon.

CONTINUATION OF EXAMINATION OF MR. BRENNAN BY

MR. McGONIGAL:

Q. MR. MCGONIGAL: Mr. Brennan, we were dealing with the quantitative evaluation for the GSM II, which is my Document Number 4, probably your Document Number 5, and we had dealt with the billable traffic minutes and the coverage speed. I just want to turn over the page to tariffs, which is a thing we'll see later in the evaluations; but just as an indication, the tariffs there seem to have been based solely on OECD tariff baskets for GSM II Year 4 and tariff basket TACS 900; is that the position, is that the quantitative dealt with?

A. Yeah, the quantitative evaluation only deal with the OECD basket. The qualitative dealt with a wider number of indicators.

Q. As we'll see shortly a whole number of indicators?

A. Yes.

Q. And I think he were discussing this morning some of the things which were unable to be scored. And the next dimension, Dimension 4, the applicants' international roaming plan was one of them, and it sets it out there as "There is no detailed information available from the applicants on the proposed number of international roaming plans, hence this indicator is not scored individually".

Can you just explain that for me, please?

A. A roaming agreement is where there is an agreement between an operator in one country with an operator in

another country so that when you travel abroad, your calls will automatically default to that operator, and the agreement will cover the revenue flows that that call gives rise to. And in the normal course, an operator, to be successful, would have to have at least one partner in each GSM country, certainly in each of the European countries or the Member States of the European Union or whatever. Sometimes they would have more than one; sometimes they would have unlimited.

I suppose, when we were drafting the competition documentation, we thought roaming was important. But the evaluation model dealt with it on the basis of specific agreements, but it became clear that you couldn't actually have an agreement until you first had a licence, so there were no roaming agreements. There were probably some claims by different parties that because they themselves had licences in different territories, that they could roam, but that's not what we put into the quantitative evaluation.

Q. So in actual fact, the applicants hadn't got the kind of international roaming agreement that you were looking for, although some of them had other ones?

A. No, I am not saying they had other ones. I am saying they may have claimed that because they had licences in other territories, that agreements would be automatic.

Q. Yeah, I understand. And it was for that reason was it for that reason, therefore, that it wasn't possible to score international roaming under the quantitative evaluation?

A. That's right.

Q. But when we come to the international roaming under the qualitative, we'll see that it was scored under a number of other indicators?

A. Yeah.

Q. Going then to the radio network architecture, that was scored Dimension 5. That was scored simply on the number of cells?

A. Yeah.

Q. And was that done differently, then, under the qualitative?

A. I think there were several additional indicators.

Q. Similarly, then, in relation to Dimension 6, reserve capacity of the network, was scored as it is set out there in percentage years, 2, 3, 4, 5, and that was the way in which that one was scored; is that right?

A. You see, when you get into the technical area, I am only giving you my impressions of what happened, but the record shows that that's the way it was scored.

And again, I mean, I know that other things were taken into account in the qualitative, but I don't know what they were, except what the record shows.

Q. I appreciate that, but that's what I am keen that's

what I want to show trying to show, Mr. Brennan,

that this is in fact the record, isn't it

A. Oh, yes.

Q. of what happened at the quantitative evaluation as of that date, the 30th August?

A. Yes.

Q. And it speaks for itself; in a sense, whether one understands it or not is a totally different matter.

And we are probably ad idem on that.

Dimension 7 is the quality of service performance, and it speaks for itself. Again dealing with Years 2, 3,

4 and 5.

On the next page, then, you have the Dimension 8,

which is the frequency efficiency

A. Could I just stop on quality of service performance

for a moment. We had performance guarantees as the

indicator that we were looking for, and I think that

AMI's model showed quality of service performance, and

so they were out of sync one with the other. So

that's another one that withered away for that reason.

Q. So it wasn't possible to properly score it in the way in which

A. I believe what we were looking for was assurance from

the applicant that they would do what they say, and

what quality that assurance would have.

Q. Dimension 8, then, is the frequency efficiency, frequency economy figures; what is that?

A. I am not so sure I'd be technically able to explain that. But frequency is a scarce resource, and the number of times that you can recycle the same frequency in terms of the cell sizes and so on is an important driver of how many players you can have in the market at that end of spectrum and so on. But it's not something that I'd like to write a thesis on; I have only a scant knowledge on it.

Q. Then Dimension 9, then, is the experience of the applicant, number of mobile network occurrences in the OECD, the number of experienced occurrences for GSM I and GSM II as well as other cellular telephone networks. And that was scored in the way it is scored and speaks for itself, I think?

A. Yes.

Q. And some had experience and some hadn't?

A. Mm-hmm.

Q. Isn't that right?

A. Yeah.

Q. Dimension 10

A. Where that might need I mean, the record speaks for itself, but there was some qualification of the value of the kind of experience that individual members of consortia had in terms of if you only had a financial involvement but not an operator, it wouldn't score as well as if you were an actual operator. There was some element of that floating around.

Q. And that's why there is a differentiation, presumably, in the market?

A. Yeah.

Q. The next page, then, is Dimension 10, which is the licence payment, up-front licence fee payment. And everyone gets the same score, points, and simply that only deals with the licence fee payment?

A. Mm-hmm.

Q. Dimension 11, then, is the financial key figures (solvency and IRR) and the solvency of the GSM II applicant as an average over Years 2, 3, 4, 5, and the IRR after 10 years. Again, it's set out as percentages for the different consortia and marked accordingly?

A. Yeah.

Q. And then beneath that is an added thing; what is that, something for the 11th year planning period, I think it is?

A. For the 11-year planning period. It must be the IRR for the 11-year planning period. And I think that was, if I'm not greatly mistaken, to capture the degree of reinvestment at Year 10. I think that was the reason that it was picked at 11.

Q. And then on the next page, we have the

MR. HEALY: I think it's 14.

A. There is a mark on it; I can't figure out exactly what

it is.

Q. MR. McGONIGAL: It may have been changed.

The next page, then, is the results of the quantitative evaluation, and that is simply a document which draws together all the other pages and sets out the resulting marks; isn't that right?

A. Yeah.

Q. And it includes those, for example, the number of roaming agreements where everyone gets the same, and the licence fee agreements and everything is included?

A. Yeah.

Q. So that one can see straightaway that everything was included in the final overall assessment?

A. Mm-hmm.

Q. The next page deals with the weights, and can you just explain that to me?

A. I think, and I think we discussed this a little bit this morning, while the original weightings for the criteria in paragraph 19 were the ones that were settled in the Project Group, they clearly had to be taken into account also in doing the quantitative evaluation, even though the quantitative evaluation had only a limited view of the applications. So looking at it coldly now, it's going to be difficult to draw the link; but, for example and I don't know why licence fee payment is at 14 there, because it shouldn't be but if you take, say, 11A and 11B

represent 15%, you'd have to join it up with some other one, because it bears on the business case, so that two 3.75s at the top would go with that.

Now, I can't carry out this analysis up here, but there is a relationship between those weightings and the weightings in paragraph 19. And that's where you recall a discussion with Mr. Healy about 103 versus 100 and whether it was renormalised and whether there is a corrected version and all the rest of it. That's what that discussion bears on.

Q. Just one thing in relation to the licence fee payment.

You are unsure as to whether it's 14, I think, at that stage, that was what it was at on the 30th, and it was subsequently dealt with and referred to in the meeting of the 4th September, where it was pointed out that it should be changed. But we'll see that very shortly.

A. Okay.

Q. And then below that, below the weighting, they set out scores and the result of the scores and the highest applicant scoring, and that was A3; isn't that right?

A. Yeah.

Q. The next document is Document Number 5, is also dated the 30th August of 1995. And can you help me in relation to what this is supposed to be? Background information for the evaluation, and then it talks about market aspects, and it seems to have different

A. What it seems to be is information generated by feeding information in the applications into the AMI software, and seeks to extract information to be taken into account in devising scores later. That's what it looks like on its face.

Q. So it might become clear, Mr. Brennan, after you have had an opportunity of reading the two documents which we were given during lunch, but just looking at it, first of all it's dated 30th August of '95, background information for the evaluation, and it's referred to as Version 2, which seems to suggest that there may have been a Version 1?

A. It does indeed, yeah.

Q. Which was updated beyond this date, or before this date. Now, you think that the material would have been fed into the AMI computer from information given in the applicants' application documents?

A. I think that's the only way it could be done.

Q. And clearly it seems to cover all of the matters which one might have anticipated would have been covered in such a document; isn't that right?

A. It looks like that, without going through it line by line.

Q. Just going through it very quickly, but going through it, it deals with market aspects, and the number of GSM II subscribers, and then the total cellular market size, then the churn in applicants' network, the busy

hour traffic in milli-ears or something

A. Milli-earlings I think is the term.

Q. Billable call minutes per SIM per year; total traffic

minutes per SIM per year; total traffic minutes,

tariff basket. Then it deals with the technical

aspects as a category or a dimension, and it does

class IV population coverage, locking rate, dropout

rate, accumulated number of MSCs; what are MSCs?

A. It's either it's some kind of station, microwave,

maybe, microwave cells of some kind. And the next one

is base station cells of some kind.

Q. Okay. Accumulated number of base station cells.

Accumulated number of BTSs, antennae sites in use,

cells in use, network capacity in earling, required

capacity in earling, reserved capacity in percent,

peak mean ratio, GSM channels in use, frequency

economy. Then it does financial aspects section,

which includes total turnover, total operating costs,

the net profit, the accumulated net profit, the total

investment, the accumulated total investments, the

total assets, the equity, the operating costs per SIM

card, total investments per SIM card, net profit per

SIM card, solvency, degree of self-financing, the IRR,

the O&I cash flow exposure, bonus to distribution

channel, marketing costs, and finally, GSM II's GSM

market share. And they were all detailed indicators

of matters which were considered relevant in the

assessment of either the quantitative or qualitative evaluation for the purpose of arriving at the correct marks to be given to each applicant?

A. I would say in the qualitative evaluation. The quantitative evaluation was a small subset of these, as we discussed earlier.

Q. So that document appears to cover more than the quantitative would cover?

A. Absolutely, yes.

Q. And therefore is focused solely on the qualitative evaluation but would have been used towards it?

A. Well, I think yeah, I think it was used towards the qualitative evaluation, but at some stage a check was carried out to see that all the ones in the quantitative evaluation were included there and were taken into account there.

Q. The next document, Mr. Brennan, is Document Number 6, which is the qualitative evaluation of the applications for the dimension international roaming plan. Again this document is dated the 31st August of 1995, and it refers to an evaluation meeting at AMI, 31 August at 10 o'clock. And the concept of international roaming plan has to be evaluated by means of the following 5 indicators:

First of all, the number of countries at launch; the number of networks at launch; the expressed knowledge about roaming; the commitment to increase the roaming

possibilities after launch; roaming to non-GSM networks; the extent of the roaming services, and risks.

And then below that is a table which shows the observations for each indicator mentioned, and the table is as shown on the screen, which is an international roaming plan with the six applicants to the right, then the seven indicators listed on the left-hand side, and the information on each indicator to each applicant is then set out; isn't that right?

A. Yeah.

Q. And on the next page, then, is the scoring which was decided, and that's in the alphabetical scoring?

A. Yeah.

Q. And one can see from that the scoring that was achieved by each consortium at that time; isn't that right?

A. Yeah, although the version I have, I don't understand the manuscript notes.

Q. There seem to have been some changes by whoever had control of this document?

A. Yeah.

Q. But just looking at that from the point of view of the scoring at that time, the 31st August, you have A for A1 with a D B underneath, I think it is; A2 has an E, A3 started with an E and has a C with something else written, A4 has a C, A5 has a C and A6 has a C.

But that again, Mr. Brennan, is a document which records what happened at the 31st August at 10 o'clock in relation to the evaluation concerning the international roaming plan?

A. Yeah.

Q. And is that something, as you look back on it now, is that a meeting that you were at, can you say, or

A. I would say probably not, but I am not at all sure. I would have thought I was only in Copenhagen twice, but I could be wrong. As I said earlier, if it's of interest to find out who was in Copenhagen at what time, of the Department staff, that should be in the records of the Department.

Q. Now, the next document, Document Number 7, is the quality evaluation of the application for the dimension coverage. And when I draw your attention to this, on the left-hand side you will see that it is dated 31 August 1995, and it replaces the version of the 29th August; and you will recollect that the 29th August '95 was at Document Number 2. And this followed the evaluation on the 29th August between 2 and 4.30.

And without going through it, since we have already gone through the first one, the scoring is changed for A3. If one compares documents, 2 to 7 is changed from B to A in the evaluation coverage. And that arises from a change on special coverage, which they

originally got a B on, and they were moved up to A.

And all the others appear to be the same. But that is an example of the project team's process working?

A. I think that's where AMI came with their assessment of how to deal with this part of it, and following discussion, consensus is emerging around a result for that stage. Why I emphasise for that stage, I don't know what the documents show about what happened later in relation to these.

Q. And the second page of that tab number, then, details the indicators. And at the bottom of the page, it indicates the potential risks which the committee had identified in respect of a number of consortia. And it also tells us that the marks of each of the four indicators were decided by use of the following information extracted from the applications; the marks represent a relative ranking of the evaluated applications.

And over the page is a document setting out that detailed information between A1 to A6, taking the different specifications regarding roll-out and marking them within that.

A. Yes.

Q. And it seems to me to be a very detailed and exact process.

A. Yes.

Q. And again, just for clarification, one will see that

if you go to Category Number 4, and in particular 4, 4, A3, which at Document Number 2 had no okay, on Document Number 7 got an okay, which presumably got it the increased amount of marks which it subsequently obtained?

A. I expect so, yeah.

Q. Now, the next document, Mr. Brennan, that I want to turn to is going back to Book 42, is the report of the meeting of the 4th September of 1995, which is at Tab 95 of Book 42. And that, in the first instance, sets out the attendance at the meeting. And it appears to me, correct me if I am wrong, that everyone other than Ms. O'Keeffe and Mr. McMeel appear to have been at that meeting?

A. Yeah, and to explain the business of Ms. O'Keeffe, Ms. O'Keeffe and Ms. Free were job-sharing, so you never find the two of them at the same meeting.

Q. In fact Ms. Free was doing the minutes, and sometimes Mrs. O'Keeffe was doing the minutes?

A. Yeah.

Q. And therefore Mr. McMeel appears to be the only one who is missing?

A. Yeah, it looks like that, yeah.

Q. And at that meeting from AMI were Mr. Andersen, Mr. Jacobsen and Mr. Vinter?

A. Yeah.

Q. And in opening that meeting, you outlined what the

agenda was going to be. First of all, the Andersen presentation of the quantitative evaluation of the six applications; secondly, the discussion of the forthcoming presentation; and thirdly, the future framework for the project.

And in dealing with the quantitative evaluation, what is noted in the minute is that "Prior to presenting the initial draft, report of the quantitative evaluation, Mr. Andersen first acknowledged certain shortcomings in the results gleaned so far from the quantitative scoring. The quantitative evaluation had highlighted some incomparable elements, i.e. some applicants had not calculated OECD baskets to their best advantage the IRR had not been calculated in accordance with tender specification in some cases for certain cases, not enough information on roaming was supplied to score the application certain of the indicators proved highly time-sensitive; e.g. if scored in Year 4 they showed one ranking, Year 15 giving a completely different view.

"The highly sensitive nature of the quantitative scoring document was noted. Copies are to be retained securely by Mr. McMahon, Mr. McQuaid, Ms. Nic Lochlainn, Mr. Riordan, and the remaining copies were returned to AMI."

Now, before turning the page, Mr. Andersen was clearly signalling at that stage that there were problems in relation to the quantitative evaluation, and he sets them out.

A. Yes.

Q. Is that what's going on there?

A. Yeah, I mean, we have discussed before how detailed or not were these reports, and most of them are not terribly detailed, but that certainly is what the report is saying.

Q. And it was also appreciated, as is seen in the last paragraph, by the project team that the sensitive nature of that document was noted, and only certain people were given copies of it?

A. Yeah.

Q. Is that because they would have been most concerned with it?

A. What it looks like is one for the technical side of the Department, one for the regulatory side, one for my side and one for the Department of Finance.

Q. It just might be useful there, Mr. Brennan, if you clarify for me the difference of the four sections and the strengths that they bring to a project of this kind.

A. Well, the technical division was under Mr. McQuaid, and he was a relatively recent recruit to the Department at that stage, having taken early

retirement out of Telecom Eireann at the time. And they would have brought all of the technical experience, he, with Messrs. Ryan and John his name will come back to me in a moment there were three of them, and they brought the technical expertise of the Department.

Now, to what extent did they consult other people, because the technical area was a big area, I don't know whether they, within the three of them, had all the skills needed or whether they had to consult other engineers.

John Breen is the other guy.

Mr. Riordan was clearly looking after financial matters, as we know. Mr. McMahon was head of the regulatory side of the Department, which was, I suppose, the licensing authority, and the type approval authority and so on. And then my division was known then as telecoms development, which was, I suppose, policy development.

Q. Okay. Going over the page, then, the meeting then seems to have gone on to discuss each dimension of the scoring document in turn, and the consensus was that the quantitative analysis was not sufficient on its own and that it would be returned to after both the presentations and the qualitative assessment. So there seems, at that stage, to have been a healthy discussion in relation to the quantitative document

and the value that it gave or created?

A. It looks like that, yeah.

Q. "And it was also agreed that the figures used by the applicants could not be taken at face value and needed to be scrutinised, responsibility for such a scrutiny has not yet been decided."

What did that relate to or refer to?

A. I think that there were different parts of it to be scrutinised by different people. I'd be fairly confident, for example, because the record shows it afterwards, that when it came to financial matters, there seems to have evolved within the financial sub-group a division of duties between, say, Billy Riordan and whoever it was, Michael not Michael Thrane, I have forgotten which one, Jon Bruel on the AMI side.

I don't know, again, on the technical side who would have taken what responsibility. You know, clearly some issues the consultants are better qualified for; other issues the home team would have been better qualified for.

Q. "The need to reflect a change in the weighting for the licence fee was highlighted. AMI committed to correct the model in this respect."

That seems to relate, may relate back to the 14% that you mentioned a moment ago in the quantitative document?

A. It's clear to me that there were two different areas of error in AMI documentation in relation to the quantitative, both of which amounted to 3 points. At one time there was the 14, and the licence wasn't reduced to 11; but in another table, it's clear that numbers which purport to total 100 actually total 103. So I am not sure at this stage whether we are talking about one or both of these.

Q. The next sentence, "Mr. Andersen concluded that the scoring at this stage was relatively close and that no conclusions could yet be drawn."

In understanding that, can you assist me as to what that refers to?

A. I don't know. It could be the quantitative evaluation, but I am inclined to think that he was the one person who had knowledge of so much of the qualitative scoring as had been done and that he may have been covering both, but I don't know.

Q. Well, that was one of the points I just wanted to see if it did relate to; the fact that a number of dimensions had been scored already at this stage.

A. And that Mr. Andersen or, sorry, AMI, I am not personally identifying one person AMI were the only ones I think at that stage who had access to all of the story so far. I mean, I didn't have access, say, to or Maev Nic Lochlainn wouldn't have access to what John McQuaid was doing, and so on.

Q. Absolutely; I understand that, and that that was the position at that time.

Now, the forthcoming presentations, then, go briefly through that. "A set of general questions for discussion at the presentations as drawn up by Andersens was examined. Gaps in the questions were identified and new wording agreed. Questions are to be sent to the applicants on the 5th September.

"It was agreed that issues such as the costs of security interception, etc., could be discussed with the eventual winner of the GSM II licence and would only be briefly flagged at these presentations.

"Andersens are to draft specific questions for each applicant. The Department of Transport, Energy and Communications and the Department of Finance evaluators will also prepare applicant-specific questions as appropriate. Questions during the presentation should be asked in order, i.e. general strategy, marketing, technical, management, financial, and then other. At the Monday morning preparatory meeting, Andersens will provide an outline of the underlying philosophies and weak points of each application.

"It was agreed that the sweeping of the conference room for potential bugging devices before each presentation was desirable. To assist the evaluation team, it was decided that it would be preferable to

tape each presentation with the consent of all the applicants. The provision of such facilities to be organised by T & R (development)".

A. I think I emphasised before that the actual sweeping for bugging was both before and during the meetings.

Q. But apart from that, Mr. Brennan, that clearly sets out that the strategy in relation to the presentations, of identifying the gaps in the applications and setting out the questions and then dealing with the philosophies and weak points on the Monday morning preparatory meeting, was all planned by this committee at this time?

A. Yes.

Q. In furtherance of arriving at the right result?

A. Correct.

Q. And "Each applicant would be asked to provide a hard copy of any slides or any visual material used. A time limit of 3 hours for each presentation would be absolute."

"The future framework of the project'.

"Ten sub-group meetings for the qualitative evaluations had been proposed by AMI. Five had already taken place. AMI committed to provide the Department with documentation on these earlier sub-group meetings. Project Group members were welcome to contribute/suggest its amendments to the scoring."

Now, in that paragraph, it is acknowledging and recording that not only had the five evaluation meetings taken place, but that following receipt of documentation, any member of the Project Group was entitled to contribute or suggest amendments to any of the scoring in any of those five evaluations?

A. Yes.

Q. "Andersens outlined a timetable for the remaining five sessions, and personnel were nominated to attend. Mr. Towey and Mr. Riordan are to attend the financial and performance guarantee meetings. Mr. McQuaid and Mr. Ryan are to attend the radio network, capacity of the network, and the frequency efficiency sessions."

So again we see there an attempt to organise and plan in advance what was to take place, and certain people would attend the meetings and act for the project team on them.

A. Yes.

Q. So far as Mr. McMahon was concerned, he doesn't appear to have been involved in any of the sub-group meetings as such, but he was at this meeting and therefore had the opportunity to seek such representation if he wanted it?

A. Yes. I don't believe he attended at any of the sub-group meetings. I think he acknowledges that himself.

Q. He does. But in saying that, he would have got the

documentation like everyone would have got it, and would have had an opportunity of commenting on it and making suggestions in relation to the scoring, should he have so wished?

A. Yeah, I am assuming that that's the case, yeah. And a lot of that commenting on the thing was done in open session.

Q. Sorry?

A. Some of the drawing of comments on the evaluations was done during the Project Group. It may be that some of it was done in writing as well, but I can recall some of it being done orally.

Q. I appreciate that.

"Andersens stated that the qualitative scoring of dimensions would take place in the sub-groups. Scoring of aspects would take place after the presentations. Mr. Brennan, however, specifically requested an opportunity to revisit the qualitative evaluation of dimensions after the presentations. The group would have an initial discussion on the qualitative evaluation scoring on the afternoon of 14 September. Gaps would be highlighted and the extent of the need for supplementary analyses were assessed." Again, what was being attempted there was to set the programme for the future, and you were ensuring, trying to ensure that no opportunity would be denied to any member of the group the chance to comment on

any aspect of the subcommittee meetings, be it either dimensions or aspects?

A. That's certainly what the text is saying.

Q. Now, the next sentence, Mr. Brennan, "A date of the 3rd October for the delivery of a draft qualitative report was suggested by Andersens."

This was the 4th September, and we are here setting a date for the first draft qualitative report, which would be available on the 3rd October.

A. Yeah.

Q. That was being done prior to any recommendation having been reached?

A. Yes, clearly.

Q. And equally, prior to any discussion that may have taken place with the Minister?

A. Yeah.

Q. So that on the 4th September, looking in advance, it was Andersen and the project team's intention that a draft report would be available on the 3rd October?

A. Well, it was in this text, Andersen's volunteered intention.

Q. Yeah. And then the next sentence is "A discussion on the question of the backbone network, as proposed by many of the applicants, also took place. It was concluded that very little could be done until a successful applicant had been chosen."

What does that relate to?

A. The backbone network is the means of trunking calls within the country, and there were various options available to applicants. They could have their own fibre-optic network. They could, what they call near-end hand over to telecom, you know, go to the nearest telecom exchange, from where the call is picked up. Or they could piggyback on such other infrastructure as existed; for example, I think both the ESB and perhaps the Aviation Authority had microwave networks covering various parts of the country. Or they could build a microwave network.

Q. I think we'll see it further discussed at a later stage.

The next document, 96, is a handwritten document, and I can't recollect whose this is; can you assist me?

A. I may have suggested in the past that it might be Maev Nic Lochlainn's handwriting, but I really don't know.

Q. Whose?

A. Maev Nic Lochlainn, but I wouldn't be at all sure of that. It's not my handwriting, it's not Mr. Towey's handwriting. That's all I could be sure of.

Q. It's one it certainly appears to be one of the members of the project team who was at the meeting on the 4th September?

A. Yeah.

Q. It's a document which relates to that date.

A. It could be whoever was doing secretary to the meeting

as well.

Q. It appears to be fairly detailed or reasonably detailed notes of various matters which were discussed, and perhaps it would be more suitable to take it up with the person who wrote it. But one can see briefly, running through it, that different categories of subjects were discussed.

I think the first page is dealing with the quantitative report and the discussion over the shortcomings, inter alia, that were being identified in relation to the quantitative evaluation.

The second page, I am not 100% sure what that deals with, but it's certainly going into the some of the consortia and seems to be dealing with technical matters.

The third page, number 3, seems to be dealing with roaming and the difficulties of evaluating it, and reflects the discussion that appears to have taken place on that.

Next page, number 4, category 4 seems to be something capacity, and again is a discussion by various different people on that issue.

5 seems to be specific questions re blocking and a discussion in relation to matters affecting that.

6 is "all have firm frequency economy" or something. Dimension 8", and reflects a discussion which seems to have taken place on that, both

generally and in relation to some of the consortia.

7 seems to be something to do with finance, and insofar as material, seems to have included a discussion on A2/A5 with the cryptic comment "book bankrupt" according to this, but it relates to discussion relating to finance at that stage.

8 then, in principle deals with general matters relating to the "figures must be checked, and leave out till later to sort out who would do what." Then "public share offerings and issues on the IRR." But what it does show, without knowing in detail what is there, is that there seems to have been a healthy discussion in relation to a number of matters at that meeting covering all subjects?

A. Yes.

Q. The next document is simply a letter from Mr. Lynch of Esat Digifone enclosing their answers to the questions which had been asked, and we needn't go into that.

And then Document Number 98 is a letter from you to Mr. Lynch setting up the presentation for Tuesday 12th September. And that speaks for itself.

The next document that I want to go to is 100, before touching 99, because it comes first in time, and that appears to be an Andersen Management document relating to selected oral applicant specific questions posed during the presentation meetings of the 11th to the 14th. And that was a document prepared by them

setting out the questions which they felt might be relevant to the various issues to the various consortia that they felt should be asked; isn't that right?

A. Yeah.

Q. And A5 are dealt with on page 4 of that, and there is no need to deal with it in detail, other than to point out that there were questions in relation to the business case, marketing aspects, technical aspects and financial aspects.

Going back then to the Document 99, that's the meeting of the project team on the 11th September, and just briefly go through that.

You outline the agenda for the meeting, which was discussed at strategy plan for the presentations:

"Despite the fact that taping of the presentations had been agreed, it was decided that written minutes would also be taken, as it would be impossible for any one person to take the minutes. It was agreed that Ms. Nic Lochlainn and Ms. O'Keeffe would record a general resume and that the GSM Project Group members with technical and financial expertise would record the information that pertained to them.

"Mr. Andersen advised that opening questions to each applicant should be easy so as to give presenters a chance to warm up, and that they should also be informed that they may have time to confer on

questions if the need arose.

"Mr. Towey sought clarification on whether the prices and tariffs quoted in the tenders would be binding in a contract. It was decided that this was the case.

"T&RT had a set of technical questions that they wished to pose to each applicant. Of particular importance was the question on the applicant's backbone network. It was decided to ask the applicants questions on the mandatory tables and their business plans as there appeared to be many discrepancies between these two."

Now, again, Mr. Brennan, that sets an outline for what was hoped would happen, and did in fact happen at the various presentations over the next couple of days?

A. And I think it became obvious in earlier evidence that while the report records what it records, that the Andersen draft of questions to be asked was discussed and questions added and some apportionment of questions to different players at the meetings and so on.

Q. Absolutely. There was contribution by everyone?

A. I can't say everyone, but there was an open discussion.

Q. Maybe I can put that slightly differently: There was an opportunity for everyone to contribute, and no one was denied, and those who wanted to did contribute?

A. That's my view, yeah.

Q. Again I think it's important to point out or to refer to the fact that I think everybody appears to have attended that meeting on the 11th September, so everyone had an opportunity of contributing?

A. Yeah.

Q. Now, just the last paragraph of that, then: "As a general rule, it was decided that applicants would be given a last opportunity to provide clarification orally at these meetings. Further contact would be avoided. If it became apparent that clarification was essential after the meeting, contact would be initiated in writing by the Department. The applicants were to be informed in this regard."

And that, in a sense, speaks for itself. The only comment that one might make in relation to it, or raise it, is that in fact, rightly or wrongly or was there any discussion about it as to whether, if an applicant had a change which he felt should be notified to the project team, no provision seems to have been made for that possibility?

A. No. It was unilateral; the initiative was left with us.

Q. Was there any discussion on it?

A. I really don't know.

Q. You can't recollect. But as a result of the discussion that did take place, the view was taken, rightly or wrongly, that that is the way it should be

done?

A. Yes.

Q. And that was subsequently, as we know, adhered to?

A. Mm-hmm.

Q. Now, the next document that I want to go to is in fact

in the other book, Book 45, and is Document Number 8.

And this is a document from Michael Thrane of AMI to

Fintan Towey, dated 11th September 1995, and it is for

the attention of the GSM evaluation group and is a

financial conformance check.

Can you assist me in relation to this at all, Mr.

Brennan? It seems to be it says in the

introduction that "In addition to the mandatory

financial tables, some of the applicants describe

their business plans in different tables.

Unfortunately there are examples of lack of

conformance in applications between the different

financial statements.

"The purpose of this supplementary analysis is to give

a quick overview of conformance between mandatory

tables and voluntary financial figures from each

applicant."

It then sets out the conduct of the analysis and that

the analysis "Has concentrated on some financial total

figures where comparison has been made between the

mandatory and the voluntary tables."

Then it deals with the highlighted figures, total

turnover, total operating costs, net profit, accumulated profit, total investments, accumulated investments, net fixed assets, total assets, equity, the relation between the profit and loss account and the equity, operating and investment cash flow, net cash flow, IRR and solvency.

"Comparison is not possible for all figures on all applicants." Then he gives an example of A4 has stated a balance sheet in the voluntary table. And it then deals with the findings in relation to the consortia, and it has conformance for both A5 and A6 and comments in relation to most of the others.

Can you assist me in relation to that?

A. It's clear that what we now refer to as the AMI mandatory tables were put into play relatively late in the time-frame of the making of applications, and I am fairly certain that each of the applicants had done a lot of work on their applications by that time, and they had developed business plans and their own presentation of their case. And that Andersens must have seen, or AMI I should say, must have seen that there was a critical need to see that the two were giving you comparable information.

And it suggests, this document suggests that that's what they were reporting on. I presume they were reporting to the financial sub-group.

Q. Well, I am just wondering, it seems to have been for

the GSM evaluation group. That may have been for the subcommittee, or it may have been for the group in advance of the presentation meetings?

A. Yeah, I don't know. I mean, the fact that it's addressed to Mr. Towey is simply because he was the conduit, but it happens to be the case he was also the representative of my division and the financial evaluation.

Q. But whatever it is, it shows work being done in relation to the financial side of the thing in quite a detailed fashion?

A. It does indeed.

Q. The next thing that happened, Mr. Brennan, were the meetings took place on the 12th September and the 14th. And they are Documents 102, 103 and 104. The notes on them and I don't intend to go through them; I just draw your attention to them in date sequence.

The next document that I want to touch on is the evaluation book, Document 9, maybe 10 in yours, which is the qualitative evaluation on the dimension tariffs. Do you have that?

A. I do, yeah.

Q. Now, that may well be somebody's working document, I am not sure. But as it first appears, it has a date of the 13th September '95, and replaces a version of 12th September '95, and the qualitative evaluation of

the applicants' applications refers to an evaluation meeting at AMI on the 30th August '95 at 2 to 4, and furthermore a post evaluation took place in AMI's GSM room, 7th September 1995 at 15.30 to 16.30.

So that seems to be a reasonable record of what may have taken place in relation to the subcommittee meetings concerning the dimension tariffs.

A. As of that stage

Q. As we can see from

A. I think there was some additional work done on tariffs after that.

Q. Now, tariffs seem to have been evaluated on the indicators which were set out, which were ten in all, and included the initial charge, the fixed monthly subscription, the call charges per minute, the definition of peak period, metering and billing principles, packages for identified segments, special tariff offers, international roaming surcharge (GSM II subscribers roaming abroad), international call surcharges (GSM II subscribers making international calls from Ireland), and OECD like tariff basket.

"The evaluation has been completed and marks have been assigned according to the rules specified in the document 'Quantitative and qualitative evaluation of the GSM application Section 5 and 6'".

And we now have that document, and we'll refer back to it tomorrow.

"The resulting marks are as follows." They then give the tables of marks, some of which have been crossed out and some of which have been one line has been crossed out altogether and other ones seem to have been changed, so it may well be a working document; I'm not too sure. But certainly it reflects it seems to reflect work that was done at one of the meetings, both by Andersens and by the person who was working on this particular draft of it?

A. Yes.

Q. Isn't that right?

A. Yeah.

Q. And reflects comments which have been made against the marks for all of the applicants, which are set out in the ten indicators under the word "Comments"; do you see that?

A. Yeah.

Q. Now, the next document is Document Number 10, it may be 11 in yours, is the qualitative evaluation of the dimension finance. And that is dated the 13th September '95 and refers to an evaluation meeting on the 6th September at between 10 and 2. "Furthermore a post evaluation took place in AMI's GSM room on the 13th September.

"The concept of finance has been evaluated by means of the following indicators", and it then sets out in typed form four and someone has written in a fifth,

which is "Efficiency", and ends up being solvency, financing, profitability, sensitivity and efficiency.

"Each of the indicators has been considered as composed of a number of subindicators. During the evaluation meeting it was decided to evaluate on the basis of the following subindicators."

It then breaks them down, and to the right is added the efficiency. And at that stage, insofar as one can glean from that, marks were given for some of the subjects. "Bank commitments" seem to have been crossed out. A new word seems to have been put in for "market strength of backers" and "shareholders commitments" have question marks, so it wasn't fully scored at that time?

A. Mm-hmm, yeah, that's what it looks like, yeah.

Q. Now, if you go to the comments per the subindicator, you will see at "ad 1.2" it says "This subindicator compensates the applicant for "big pockets" among the backing companies. A minimum strength of 200 million Irish pounds of equity has been set as the target. The calculation of the backing equity is based on the companies' percentage of interest in the joint venture. As the only one A2 does not have the minimum strength."

Next to that seems to be "Next to" I am afraid I just can't read that.

A. No, nor I.

Q. Mr. Brennan, I don't know if you can

A. I can't really, no.

Q. but can you just explain that to me, insofar as you can, that quotation?

A. I am afraid I can't, in the sense that I wasn't deeply involved in the financial evaluation.

Q. But it does seem to be where "big pockets" is first mentioned?

A. In the evaluation, yes.

Q. And has the figure of a minimum strength of 200 million?

A. Yeah.

Q. And that seems to have some significance?

A. It does indeed.

Q. Clearly there was still scoring to be done on that financial dimension, because 2.3 wasn't scored at all and 2.2 seems to have been crossed out; whether completely or not, I don't know.

A. I don't think any of the markings at this stage were being finalised to that extent, because they were obviously coming ahead with the presentations.

Q. Now, the next document I think in fact should be read in conjunction with the document that I have just opened to you. This is a summary report of the sub-group evaluation of financial aspects of GSM.

Mr. Towey, Department of Transport, Energy and

Communications, and Mr. Riordan, with Mr. Andersen and

Mr. Thrane, initiated the process of evaluation of financial aspects of GSM applications on the 6th September of 1995.

If you see, Mr. Brennan, on the document at 10 which I have just opened to you, that there was a meeting on the 6th September recorded as between 10 and 2?

A. Yeah.

Q. It was agreed that the financial evaluation would be based on the tables which applicants were obliged to include in their applications. However, given that some significant errors had already been highlighted in the tables, it was agreed that it would be necessary to ensure that the tables for application were internally accurate and in accordance with the standard accounting practice and the tables were consistent with the more extensive business plans provided in the financial volumes of applications.

"AMI had already carried out some work to ensure that the tables were internally accurate. It was agreed that Mr. B. Riordan would liaise with Mr. Thrane on checking the consistency of the mandatory tables with the business plans.

"It was also agreed that the figures as provided would be taken at face value. The question of credibility would be considered at a later point. The evaluation

would comprise two elements:

identification of indicators against which

applications could be compared and

the scoring of applications on a scale of A to E.

"The outcome on a provisional basis of these two steps

to the extent possible with the information that was

readily available was as follows:"

And on the next page, it's set out a table which shows

which of the indicators it was possible to give a mark

to at that time.

A. Yeah.

Q. And which of the indicators were not given any mark.

For example, under "Solvency", while marks were given

for equity and total liabilities, no marking was done

for financial strength of the partners.

A. Yeah.

Q. Equally under "Financing," under "Shareholders

commitment" and "liquidity", no marks were given, but

marks were given for "Bank commitment."

A. Yeah.

Q. For "Profitability," the "IRR", there were marks

given, and "interest cover" there were no marks given

and again "Sensitivity, table calculations" marks

given, and "Max. exposure against the IRR" there were

marks given.

So as of that time, which is the 13th September, some

marking had been done in relation to the financial

dimension, but it appears to have been far from complete?

A. Correct.

Q. Mr. Towey and Mr. Riordan pointed out that it would be necessary to reflect more fully on the overall adequacy of this evaluation approach, and in particular on whether the chosen indicators were the most appropriate and sufficiently extensive to rank applications. AMI accepted that the evaluation would be an iterative process."

That in itself speaks for itself, but it indicates some concerns which both Mr. Towey and Mr. Riordan had in consideration of this section?

A. Yeah.

Q. And it's clear from those documents is it not clear from those documents, Mr. Brennan, that considerable thought and work was being put into the financial side dimension of things?

A. There is no doubt about that.

Q. But as of that date, which was the 13th September, clearly it had not been finalised?

A. It couldn't be.

Q. The next document, which should also be read with these documents, is a summary report of the sub-group evaluation of performance guarantees, and again that's at Tab 12; it may be 13 for you.

"Mr. Towey, Department of Transport, Energy and

Communications, Mr. Riordan, Department of Finance, together with Mr. Jacobsen and Mr. Feddersen, AMI, initiated the qualitative evaluation of performance guarantee aspects of GSM applications on the 6th September.

"The GSM tender documentation, information memorandum and drafts licence were reviewed in order to seek a common understanding of what was intended by a performance guarantee. It was agreed that a performance guarantee was not a commitment to achieve a declared objective, but rather a provision that would afford comfort to the licensee that a declared commitment would be achieved. The applications could in general terms be ranked into three categories in relation to the aspect, as follows:

those that had undertaken to provide a performance bond

those which had recognised the concept and made some proposal to ensure that performance objective would be achieved and

those who had, generally speaking, failed to deal with the concept."

Provisional scoring was agreed. A1 got a D, A2 got an A, A3 got a C, A4 got a B, A5 got an A, and A6 got a C. And Mr. Towey indicated that these scores would be reviewed after further reflection on the matter.

So that, in a sense, speaks very much for itself as to

what was done, how it was done and why it was done in relation to the marking of performance guarantees?

A. It does indeed.

Q. And that was as of the 13th September.

Now, the next document that I want to go to is the meeting of the 14th September, which is in Book 42, Document 104.

This, Mr. Brennan, is a meeting of Thursday 14th September of 1995, and again it sets out the attendance, and it appears that everyone was at that Ms. O'Keeffe wasn't at it, but she was doubling with Ms. Free. But apart from that, everyone else was at the meeting?

A. Yeah.

Q. So there was a full attendance, and this meeting was held after the presentations and probably after the last presentation; is that right?

A. Yes.

Q. And you suggested that in view of the intensity of the week's schedule, no conclusion should yet be drawn by the group. And the proposed agenda of the discussion of the morning's presentation by A4, the review of the current position, and decide how to progress the evaluations further.

"Mr. Andersen spoke about the success of the presentations generally. He felt that because AMI were well prepared from the earlier quantitative

assessment, they had attained the required information from all of the applicants. The presentations had served to highlight considerable variation between the applicants."

"The A4 presentation was good. But AMI felt that the lack of familiarity with the Irish scene was poor. It was generally evident that

A4 spent too much time on matters that were not relevant to the tender requirements.

was unfamiliar with ETSI standards."

I assume that the reason why A4 is mentioned at all is because they were the ones who had just

A. I suspect that at the end of each of the previous presentations, that we had a similar chat, but this one we probably just broke for lunch and said we'd come back to it. That's the sense I have of it.

Q. Do you think, then, Mr. Brennan, just as a matter of interest, clarification, that there might have been a meeting after each presentation where the team discussed the presentation that had just been given?

A. There is no record, as far as I know, but I suspect that before we left the room we probably had a chat of at least you know, Andersens' impression

Q. So get an overall general quick view as to what people were thinking?

A. "What do you make of that kind of discussion?" A bit like an interview board interviewing people for a job;

when a candidate would go out, you might have a general sort of impression of the discussion.

Q. Review of the current position: "The group agreed that the presentations had served as a useful exercise the ability of each applicant to work as a team had been highlighted.

"All applicants had been treated equally.

"The presentations had served to consolidate the initial views on the applications arising from the quantitative assessment

the importance of both a foreign applicant having a good knowledge of the Irish scene and an Irish applicant having an understanding of the global picture was noted.

some companies showed that they could take a pro-active role in developing the market where required".

And does that reflect the discussion as you recollect it in relation to the matters which were talked about?

A. I am not so sure it's all-embracing.

Q. I am not suggesting it is complete at all. Just taking it as it is, the matters which are there were certainly covered, weren't they?

A. I would think so, yeah.

Q. You also stated, and 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."

Now, you have already been asked about that by Mr. Healy. And I just want to try and get it clear in my own mind, what did you understand yourself, looking back on it I know it's difficult what is that supposed to mean?

A. At this stage I don't even recollect what I told Mr. Healy about it. I don't know. I mean, if you look at the transcript to see what I said before

Q. It certainly seems on the face of it to be a concern on your part to try and ensure that confidentiality in the process should be protected.

A. Yeah.

Q. And while you were saying that to all of the persons there whom you had a direct contact with, access to the Minister could not be stopped; and was that referring to the team members or to

A. I don't believe it was referring to team members, no.

Q. "AMI said that while the applications would be scored, greater resources would from now on be expended on the leading applications. Two distinct groups had emerged those with a good score to date and whose ranking was such that further intensive evaluation was deemed unnecessary."

And is that a reflection of what you recollect being said or happening?

A. Yeah, I believe that AMI were of that view at that

time, yeah.

Q. And it was appreciated by the team that there were two distinct categories emerging, based on the information which was being given?

A. Yes.

Q. And it was of benefit to concentrate on the leading applications while not totally ignoring the other ones?

A. Yeah.

Q. There was then a discussion in relation to how to progress the evaluations, and the assessment of the technical dimensions was complete.

"T&RT Project Group members had attended all but one of the sub-groups and were happy with the conclusions. T&RT/AMI are to score the technical aspects by close of business on 14 September."

That's that day. So that as of that date, the technical dimensions and the scoring would have been completed by whatever subcommittee was involved to the satisfaction, presumably, of everyone on the project team?

A. It looks like that, yeah. And all the relevant people were at this meeting as well.

Q. So far as the technical dimensions are concerned, I suppose because it's an expert area, that reliance would have been to a large extent placed on the T&RT team?

A. No doubt about that.

Q. Because they were the specialists?

A. Mmm.

Q. So that whatever they said would be given primary consideration?

A. Absolutely.

Q. And it would be difficult to argue against you unless you had a very good argument; isn't that right?

A. Yeah.

Q. "AIM listed the next steps as

"A, to finalise the qualitative scoring and award marks on the dimension.

"2. Perform the initial scoring of the aspects and

"3. Perform supplementary analyses in blocking/drop out

financial analysis concerning Sigma/Advent

adherence to EU procurement rules

tariffs

interconnection".

So as far as AMI were concerned, they were all matters

which still had to be dealt with and would be dealt with?

A. Yeah.

Q. "The scoring of the marketing, financial and management dimensions would take place in Copenhagen next week."

And that was Thursday, the 14th September. So the

earliest would have been Monday, the 18th September, that the scoring would have taken place in relation to those dimensions, and I think it did in fact take place on the Monday or the Tuesday?

A. Yes.

Q. "DTEC was to appoint the appropriate personnel to attend." That's to attend those subcommittee meetings in Copenhagen.

A. Yes.

Q. "AMI would provide the first draft evaluation report on the 3rd October. This would be discussed by the group on Monday 9th October. The three DTEC divisions would supply any written comments prior to that meeting. Following that, AMI would produce a second draft report by 17th October."

A. Yeah.

Q. So as of this date, Mr. Brennan, the 14th September, AMI were setting out what they hoped would become a reality, which was that on the 3rd October, reiterating what they had said before, there would be the first draft report, there would be a discussion of that on the 9th October, and a further draft report was earmarked for the 17th October, which would reflect all that had happened before in relation to the meeting on the 9th, etc.

A. Yes.

Q. And it goes without saying that that was being fixed

before there was any discussion with Mr. Lowry in or

about the 1st or 2nd October?

A. This was what was going on within the group and being driven by AMI.

Q. But the importance of it really, in this sense, Mr.

Brennan, is this: The plan was that far ahead as of

this moment in time?

A. Oh yes.

Q. That AMI/the project team had determined that the

goals which they were setting themselves were the 3rd,

the 9th and the 17th?

A. I think it was more based on AMI's ability to deliver than the project team setting dates.

Q. Absolutely. But those were the ones that they were hoping to keep to?

A. Yes.

Q. And in fact did keep to?

A. Yes.

Q. And that was without any outside interference?

A. Yes.

Q. "Other issues.

"Mr. Towey reported that the draft licence was being examined by the AG's office. The licence itself would include conditions from the winning application. AMI would be involved in any negotiation with the successful applicant."

And that again speaks for itself and is dealing with a

matter to be dealt with in the future?

A. Yeah.

Q. "Mr. Riordan is to do some work on the financial indicators and is to forward material to AMI, who would amend their spreadsheets accordingly."

So again, following on from the documents which we discussed, as of the 10th and the 11th of September, between Mr. Riordan and Mr. Towey, here again is Mr. Towey indicating that there is still work to be done on the financial indicators, and he would forward it to enable spreadsheets to be amended as soon as it was capable of being

A. Sorry; Mr. Riordan, not Mr. Towey.

Q. I beg your pardon; Mr. Riordan.

The next document is just a short document of the 14/9. I don't know if you know whose document that is.

A. It looks like Mr. McMahon's handwriting, I suspect, it's out of his books.

Q. It's a post hoc evaluation note, I presume. "All members of the group present. Michael Andersen

"1. Capital funding of some applicants

"2. EC procurement

to be assessed.

"MB short listing? can we do it now?

"MA. Okay. 2 groups, A1, A3, A5

"A2, A6 not waste too much resources.

"A4.

"MB, will probably still look at A2 and A6 but not

A" it's crossed out "some of second group is"

is his final note. "All agreed, process is still

intact and not compromised.

Underneath that "A3", it just has a list of things,

and then to the right-hand side, "Start-up date, work

due, handouts," something, something "equity"

something "experience" something I don't understand

the next bit.

But clearly that is a reflection of some of the

matters we have already referred to in the official

minute of the meeting?

A. Yeah.

Q. And next steps, "Finalise scoring in dimensions

tech dimensions complete

scoring of the aspects next week

week starting" I am not quite sure what that

is.

Underneath that is "3rd October for the first draft

9th October meet to consider 11 o'clock.

"What's the end result? A report and recommending

a recommendation only

"2, do we deal with goodies?"

To a large extent it speaks for itself, Mr. Brennan,

but insofar as it requires questions, it's probably

better to direct them at Mr. McMahon?

A. I think when he talks about "Do a deal with goodies?"

Some of the applications had kind of gratuitous material of we will set up a call centre in Limerick or a customer care centre in Galway or whatever. We had a conscious decision that they were not part of the evaluation.

Q. The next document that I want to go to is 107 106, I beg your pardon; it may be 107 in yours which is a note from Billy Riordan to Jon Bruel of AMI dated 15th September, "Financial tables".

And he sets out in that document that "He has examined the mandatory tables, and I think they have resolved all the differences. I have set out below some amendments which need to be made to all the tables followed by specific corrections required to individual bidders' documentation."

And he then sets out the amendments required to all the tables. He says, "As a general observation I think we could take two minor amendments to the structure of each set of tables in order to ensure that they are visibly consistent and the proposed changes are as follows:" And he then sets out two changes.

The next page he deals with bidder specific corrections in respect of A1, A2, A3, A4 and A5. And in respect of A5, he says that the "Application compensates for the structural amendments above, and

this is documented on the actual table provided by the candidate, who I believe it might be worth a small time to amend the tables to be sure that we are comparing all tables consistently".

And that clearly indicates that Mr. Riordan had done a significant amount of work to get the tables to be a) accurate and b) to work consistently and together where possible; isn't that right?

A. It certainly suggests that.

Q. To allow a fairer evaluation to take place in relation to this aspect of the dimensions, which was finance?

A. Yes.

Q. The last two paragraphs, concluding remarks: "I believe that the level and extent of errors in the table should result in our considering including a financial competency criteria in our evaluation of the bidders credibility. Some of the mistakes discovered are far from understandable.

"Finally I believe that it is crucial that the tables are amended to take account of the above errors and anything else in order to ensure that they are consistent. I also believe that it is necessary to have this done before the finance sub-group is in a position to complete the qualitative evaluation.

Please advise if this will not be possible before Tuesday or Wednesday of next week."

So again, in a sense, Mr. Brennan, that speaks for

itself. First of all, the finance group had not completed its marking in the qualitative assessment. Secondly, it was hoped to do so probably the Tuesday or the Wednesday of the following week?

A. That's right.

Q. And it should be done in the light of the corrected errors and the new tables which were being presented by Mr. Riordan?

A. Yes.

Q. The next document, at 107, Mr. Brennan, I just draw to your attention more because it's there. It's not clear to me what it relates to. Perhaps you can be of some assistance.

It's a document which was copied to Mr. Doyle, Mr. Furlong and Mr. Curran and Mr. McMeel, and they all signed off on it. It's to do with the second mobile phone licence.

A. Just to explain, you said "copied to". That's a document going up through the hierarchy. Mr. Doyle was Mr. McMeel's boss, and he was ticking it off and sending it to his boss, and so on.

Q. And that actually is a good example of the way in which documents are transferred from one section to another?

A. At least in the Department of Finance, Mr. Coughlan I think is saying to an extent in our Department as well. It used to be the practice that files in

Government departments had a left-hand side and a right-hand side, and things like this tended to appear in the left-hand side to explain what was going on in the right-hand side; but gradually that division got blurred.

Q. But it also has the effect of, A, helping to track a document; and B, helping to see who might have seen it?

A. Yes.

Q. Because usually when a document goes up the line or down the line, you put your name to it with the date, so there can be no room for error as to whether you saw it, when you saw it; isn't that right?

A. That certainly was the standard practice of the civil service when I joined. The practice has changed and diluted over the years. And the degree of when I joined the civil service, you were told sign everything you do and take full credit for it and make sure that it's marked to the appropriate person and so on. I'd say somebody coming in now wouldn't get such clear instructions, so I don't know.

Q. But not only getting full credit, it also was a protection?

A. Oh, absolutely, yeah.

Q. But more importantly, and much more interestingly, this is the kind of thing that one quite often saw in the preparation of aide-memoires, memoranda for

Government, Ministers' speeches; that it would start with person A and travel up the ladder, each contributing a change, which was sometimes initialled but was identifiable from the writing, and each was sometimes copied, so that there were many copies on the file of the one speech but different corrections on it?

A. Yes, but technology has tended to erode traceability in the sense

Q. That means that it simply goes through the computer?

A. Nowadays I'd be more likely to get a draft from somebody on computer, and I'd amend it myself, or do some amendments from manuscript, or get my secretary to amend it and pass it on to the next person. So it's not as traceable now as it would have been previously.

Q. But as of '95?

A. As of '95, I'd say a lot of it was beginning to be done electronically. And maybe more so in Transport, Energy and Communications, as it was then, because of sort of a technological outlook in the Department.

Q. Because it's interesting that in these memoranda and aide-memoires and those kinds of things which have been produced, a lot of them don't have that, or we don't seem to have been given copies, whether they exist or not I don't know, they don't seem to have been sort of the first draft and the final draft?

A. Another interesting clue is that this document is clearly in an old-fashioned typeface as distinct from in a modern computer typeface which, you know, just shows and you'll find a lot of documents that were opened here in relation to Department of Finance are that way, whereas most of the ones from my Department are recognisably computer typeface.

Now, whether that has any relevance or not, I don't know; I am just trying to help you answer the question.

Q. Yes. Well, I am sure it does.

Anyway, Mr. Kelly draws my attention to paragraph 4 of that document just for a moment, where there is a section saying "The financial strength of each component of all the applicants' consortia has been assessed. Two of the consortia have SSBs on board.

In one case the ESB. In another RTE and BM.

Regardless of who wins, Coillte, ESB, etc. will be making their sites and facilities available on a commercial basis. One consortium mentioned the Gardai also. The impact on the Exchequer is a quantitative evaluation criterion and only in respect of licence fee. The incorrect impact of, say, dividends flowing from the ESB is not a selection criterion, and if we were to introduce it now, we would run the risk of again falling foul of the European Commission. The bottom line is that commercially, the licence is a

certain winner, but not in the short term, due to the

heavy start-up and investment."

That's a memorandum I think prepared by Mr. McMeel?

A. It's a note for Mr. McMeel reporting to his superiors in the Department sorry, his superordinates.

Q. And what would that have been? I mean, that's dealing with matters relating to the telephone licence and is dated the 16th, when he wrote it, the 16th September?

A. Yeah. I mean, you'll have to ask him eventually, but it seems to be an updating of his bosses.

Q. Okay. I'll ask him.

Just one thing, in relation to the ESB and Coillte and those, the position would appear to be that regardless of which consortium won, it was understood that the probability was that ESB would have to or would be giving certain of its sites, if required, to enable masts or whatever to be erected, to the winning consortia?

A. It was certainly our Department's view that anybody who had relevant assets, and especially if they were State companies, should be seeking to achieve revenue on them. And the ESB in particular, apart from having high sites, had a fairly robust microwave radio network which had loads of spare capacity, by the way.

Q. Would that have been known to the ESB at the time?

A. It had to be known ESB were by then trying to stake out a role for themselves in the communications world

generally, and not just in mobile communications.

Q. No, I can understand that, Mr. Brennan, but it occurs to me

A. Would they have known it was our view? I think they would.

Q. It just occurs to me that ESB as a consortia and ESB as an entity which was subsequently going to give sites to the winning consortia, in a sense, created a conflict of interest for the ESB; and I don't know whether that was touched or considered at any stage.

A. I don't believe it was considered at that stage, anyway. I don't believe it was considered at all.

Q. That's okay. I am just curious.

The next document that I just want to turn to is 108, and I am not quite sure why this document is here or what it is, Mr. Brennan, and I don't know if you can help me. And it may be that it's totally out of sync and in fact it should have been dealt with much earlier, but it seems to have, on the right-hand side, a meeting of the 4th September of '95.

A. Sorry, we are out of sync again.

Q. It's probably it's 108 with me.

A. That's not what I have in 108. Could you describe the document a bit better?

Q. I seem to have three pages which have been purloined from some other section.

MR. MCGONIGAL: You'll have to leave this with me, Mr.

Chairman.

CHAIRMAN: Mr. McGonigal, it's probably as good a time to adjourn as any.

It appears we are reluctant to let go of you, Mr.

Brennan, but matters are coming towards a close.

Tomorrow, Mr. Coughlan, what time should I say in the morning?

MR. COUGHLAN: Eleven o'clock, I think.

CHAIRMAN: I think, in the context of

MR. COUGHLAN: Mr. Brennan is still in the witness box.

CHAIRMAN: I think we'll make it eleven. Very good.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

WEDNESDAY, 12TH FEBRUARY, 2003 AT 11AM.