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I N D E X

WITNESS: EXAMINATION:Q. NO:

MARTIN BRENNAN Mr. McGonigal 1 - 379

Mr. Fanning 380 - 442

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,  
12TH FEBRUARY, 2003 AT 11AM:

CONTINUATION OF EXAMINATION OF MARTIN BRENNAN BY  
MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. Brennan, yesterday we were handed two documents at lunch time, and I indicated that I would probably come back to them today, and I want to come back to one of them simply as a tidying-up operation and also so that it is there for whatever weight it deserves or merits. And it's the document under fax cover of the 9th August of 1995 from Mr. Andersen to Fintan Towey. It concerns the semi-structured readers guide as promised, and "We use the guide as we read the applications in order to look after salient points that later on could or should be addressed during the qualitative evaluation." Do you have that document?

A. I don't believe I have. I got it yesterday, but I don't know where I put it. I have so many documents that I am losing track of them.

Q. Don't worry, I'll get you a copy.

A. I have found it.

Q. You will see from the fax cover sheet, Mr. Brennan, that that is from Mr. Andersen to Fintan Towey, and as

I have indicated, it is a semi-structured readers guide as promised. "And we use the guide as we read the applications in order to look after salient points that later on could or should be addressed during the qualitative evaluation."

And if one turns over the page, it is GSM in Ireland qualitative evaluation criteria:

"With a view to structure the qualitative evaluation, the following lists are prepared concerning the decided dimensions and indicators for the dimensions:

And the first one it deals with is

"Dimension: Market development

"indicator: Forecasted demand.

"Legenda:

"1. Demand analysis for the Irish market

"2. Business/consumer demand partition

"3. Churn rate

"4. Market share of total forecasted cellular market"

"5. Absolute market volume own network."

And then risk factors.

Can you tell me about this document as you understand it?

A. I can't give you much help in relation to it. I don't remember focusing on it myself, but it should be borne in mind that this is 9 August, I came back from annual leave I think on 18 or 19 August. And then I set about reading the applications as a layman, and I

don't remember anybody drawing this particular document to my attention at that time.

Q. No, it doesn't seem to deal with the applications as such. It seems to deal with the dimensions and the indicators which would have been the subject matter of the subcommittee meeting.

A. But it seems to be designed, though, to assist somebody in reading an application.

Q. Yeah. But you don't recollect it and you don't recollect using it?

A. I don't, no.

Q. Okay. Well, then, I'll pass from it.

Now, the next document I'll just deal with it to get it out of the way, because it's not in a particular sequence is Tab 110 of Book 42, which is the second quantitative evaluation for the Irish GSM II, and that's dated the 20/9/1995?

A. Mm-hmm.

Q. And the only two matters that I want to draw to your attention in relation to that, because it supports what you were saying to some extent, is first of all, in comparing it with the first quantitative evaluation document, they have taken out the one which we were unable to score at that time, which was the international roaming, which was dimension which was number 4 in the quantitative evaluation of the 30th August. That has been removed from this.

And the other change which I think Mr. Healy's attention which Mr. Healy drew your attention to was the changes on the last page in relation to the scoring, which came about partly as a result of the meeting after the 30th August, and in particular, the licence fee. And that resulted also the taking out of the international roaming resulted in a change of marking, although it didn't change the result?

A. Mm-hmm.

Q. Okay?

A. Yeah.

Q. I don't think anything else arises from that document.

Now, the next two documents that I want to draw your attention to are Document 109 in Book 42, and this appears to be a document from Michael Andersen to you, Fintan Towey, Billy Riordan and Maev Nic Lochlainn, with circulation to Jon Bruel and Michael Thrane, concerning the programme for the 18th and 19th. And they were to be, as we will see now in a second, subcommittee meetings on those two dates in relation to various dimensions.

And on the Tuesday, the programme was to be a sub-group meeting. First of all there was to be an introduction and status re the valuation of the dimensions; then there was to be a sub-group meeting re the market development. A sub-group meeting re tariffs after that. Then, between two and four, the

tariffs were to be continued, and the sub-group meeting then re roaming.

And on the Wednesday, between 9.30 and 11, the award of marks re the marketing aspect. 11 to 12.30, the continuation of the financial sub-group meeting and the award of marks to the financial aspect. And 2 to 4, sub-group meeting re the management dimension and the award of marks to the management aspect.

Now, the persons to whom that was sent, yourself, Fintan Towey, Billy Riordan and Maev Nic Lochlainn presumably were those persons were the project team in Dublin going across for the subcommittee meeting?

A. I believe that's correct.

Q. And I think those meetings subsequently took place on those two dates?

A. Yes.

Q. And we'll see the results of them shortly, but before that, if you go to Document 111, that is again a work programme for the next approximately ten days from Michael Andersen to yourself and Fintan Towey, and it deals first of all with the remaining award of marks to the 10 dimensions.

And we can see, going through it, that it sets out in a detailed way the work that has to be carried out.

And it says in the first part "the remaining award of marks in the 10 dimensions.

"Firstly some calculatory and graphical work needs to

be done concerning the tariff dimension. Michael Thrane has the initiative to circulate the resulting graphics and suggest an award of marks to the new indicator as well as the tariff dimension as a whole.

Deadline Monday the 25th.

"Concerning the dimension financial key figures, the existing calculatory work needs to be checked and reviewed by as well Michael Thrane, Jon Bruel, Billy Riordan, MT" I am not sure who that is "is together with Billy Riordan to suggest a revised award of marks on the basis of reviewed figures. Deadline Wednesday 27th.

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

"In addition to the reports on the tariff and the financial dimensions, the market development report is to be finished by MT, the report on roaming is to be finished by Maev Nic Lochlainn, and the report on experience is to be finished by Michael Andersen. These reports should be finally drafted no later than Wednesday the 27th."

So that sets out a significant amount of work, not only that still has to be done, but has to be done by a certain date?

A. Correct.

Q. And it also identifies the reports that had already

been concluded in the third paragraph there.

A. Yeah.

Q. "The scoring of the marketing aspect, financial aspect and other aspects.

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

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

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

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

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

A2 and A3 and A4 speak for themselves. Perhaps we should just refer to A3: "The equity of Sigma (and the ESB) to be documented by JB and FT, and the potential abuse of dominant positions or lack of competition due to the relationships between on the one hand Motorola and Sigma, on the other hand Telecom Eireann, have been identified as risks. (TI)."

Then A5: "Three years of negative solvency combined with a comparatively weak financial strength of

Communicorp Group is identified as a risk by Jon

Bruel, Billy Riordan and MT, Michael Thrane.

"In addition it might be a risk factor that A5 is to establish its own radio (backbone) network (OCF), but A5 seems to have a comparatively high degree of preparedness."

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

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

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

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

"The grand total.

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

Now, in relation to that, Mr. Brennan, clearly Thursday the 28th was being set up identified as the day on which there will be a significant meeting in relation to finalising the scoring and decisions in

relation to other aspects of the evaluation process?

A. Yeah.

Q. And the Andersen team, Michael Andersen, in sending this work programme, was identifying very clearly matters which had already been identified as risks so far as the various consortia were concerned, but as identified in particular A3 and A5?

A. Yeah.

Q. And so far as A5 was concerned, it was specific in relation to what it was saying concerning the risks which had been identified by the AMI, Jon Bruel, Michael Thrane and Billy Riordan of the Department?

A. Yeah.

Q. It was also clearly signalled that Michael Andersen wanted the Department to be in a position on the 28th to clarify or to identify its position in relation to the necessity or otherwise of scoring other aspects, risks dimensions and other dimensions such as the effect on the Irish economy?

A. Yeah.

Q. And clearly of relevance was whether or not there might be immediate unanimity at the meeting on the 28th?

A. Yeah.

Q. Now, at this time, if we turn over the page, it appears that work on supplementary analysis was being done at that time. And he deals in this memo with the

status concerning the status of that work with the supplementary analysis and identifies financial conformance check Michael Thrane has finished, the comparison of the blocking and drop-out rates, OCF has prepared the first draft version, the second draft version should be ready by the 28th.

"Consortia composition and abuse of dominant positions etc. (TI has drafted the first version and the second draft version is to be ready 28 September, and the same deadline applies for all of TI's deliveries)

"handset subsidies (TI)

"conformance with EU procurement rules (TI)

"legal aspects and matters related to the licence (TI)

"tariffs (Michael Thrane, deadline for the first draft version, 28 September)

"interconnection (Michael Thrane, deadline 28th September)

"effects on the Irish economy, Jon Bruel, deadline 28th September.

"Track recording JB deadline for the first draft 28th.

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

Now, again, clearly a significant amount of work was in the process of being done, and it was hoped that this would be finished by the 28th, and that was the programme which Andersens and the project team were setting for themselves?

A. Yeah, and I think the sort of discipline of AMI, it was more than an intention; it was a plan that they were going to deliver on.

Q. The first draft report then is dealt with, and he says "A short synopsis of the first draft report can be outlined as follows:

"1. An introduction, where the procedural aspects and the evaluation model including the criteria are presented.

"2. Key characteristics of the applications, including a short description of each applicant and the basic philosophy behind each application, such as the core strategy and some key characteristics related to each of the four aspects of the business case (marketing, technical, management and financial aspects).

"3. A comparative evaluation of the applications, structured around the four aspects and based on the dimensions. Under each dimension, also the indicators will be mentioned. Each subsection in this chapter will be structured around the dimensions and the indicators identified.

"4. Sensitivities and risks. Also the general credibility of the application will be mentioned.

"5. Summary and conclusion. In this chapter a general overview of the award of marks will be given and, as a minimum, the three best applications will be

ranked in an order of merit together with a recommendation to enter into licence negotiations with the consortium behind the best application."

Now, that speaks very much for itself but was an indication from Andersens to the Department members the way in which he saw the first draft report being compiled?

A. Yes.

Q. And as we know from the meeting of the 4th September, it was intended that the first draft report would be available on the 3rd October?

A. Yeah.

Q. Now, Mr. Andersen, in this document, had questions for the Department.

First of all, "Should the identified meeting September 28 be conducted by means of a conference call or a meeting in Copenhagen?"

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

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

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

"How do we proceed with acronyms/names concerning the

applicants? (We prefer to continue with acronyms, but at least in chapter two we need to mention the names of the consortia and the consortia members)

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

Those were all very clear questions to the Department which required answers.

A. Yes.

Q. And presumably that would have been part and parcel of the matters which were dealt with between this date and the meeting, and even on the meeting of the 28th?

A. I think that's a fair resume.

Q. But again, Mr. Brennan, this is an example of an attempt by both, initially AMI to structure and plan the future and finishing of this part of process, and showing bringing the Department along with them and giving the Department the opportunity to contribute and comment and say whatever they liked towards the process?

A. Yes.

Q. Now, if we can turn to the other book for a second, the evaluation book, just to get them out of the way.

I have already dealt with Tab 14. Tab 15 is a document of the 20/9 and seems to be an upgraded background information for the evaluation. And I think, as you indicated to us before, this seems to be a computer printout of material which had been taken

from the applicants' applications and was being revised upwards or reproduced a second time.

A. Mm-hmm, yeah.

Q. The next one is at Tab 16, which is simply the GSM evaluation, normalisation of the quantitative evaluation. And that in fact comes through from the quantitative evaluation document that we dealt with of the 20th September?

A. Yeah.

Q. The next document is a document at Tab 17, which is from Jens Dohn of AMI to Maev Nic Lochlainn, and is summary graphs from Michael Thrane in relation to business user profile and consumer user profile, which I think were part of the financial evaluation which was being carried out and appears within that.

A. Looks more like tariff evaluation.

Q. Tariff. But it's to do with the financial material?

A. Yes.

Q. Now, the next one is the second draft, Tab 18, is the second draft of the evaluation on tariffs, and it's a fax sent on the 25th September of 1995. And again we see that's dated the 25th September, 1995. It replaces the version of the 13th September of 1995, and it refers to the previous meetings held in relation to tariffs; the first appears to have been the 30th August 1995 between 14.00 and 16.00. The next one was a post evaluation, took place in AMI's

GSM room, 7th September 1995, and a continuing evaluation on meetings at AMI on the 18-19 September, which is the reference back to the work programme which we touched on this morning.

A. Yeah.

Q. And that shows us how the tariffs were scored and the work which was done by this sub-group, and the tariffs were evaluated "by means of the following indicators", and they set out the 9 indicators.

"1. The initial charge.

"2. The graph of total yearly bill related to call minutes based on consumer behaviour assumptions.

"3. Graph of total yearly bill related to call minutes based on business user behaviour assumptions.

"4. Definition of peak period.

"5. Metering and billing principles.

"6. Special tariff offers.

"7. International roaming surcharge (GSM II subscribers roaming abroad)

"8. International call surcharges (GSM II subscribers making international calls from Ireland)

"9. OECD like tariff basket."

Then it deals with the graphs of the total yearly bill. Then it deals with the OECD like tariff basket, and the resulting marks are on the following page.

And each of the consortia have been scored under the nine indicators; isn't that right?

A. Yeah.

Q. And one can see then the total evaluation of the tariffs. And A1 got a C, A2 got a D, A3 got a B, A4 got a C, A5 got a B, and A6 got an A. And one can see why, if you understand the process, why each of them got those evaluations?

A. Yes.

Q. And then underneath that, there are the comments on the marks for each indicator in relation to each of the consortia explaining, to some extent, the marking process?

A. Yeah.

Q. Isn't that right?

A. Yeah.

Q. And that goes through all of the indicators. And then at the end it identifies risks, and the only one is "Are the very low tariffs of A6 consistent with its revenues?"

A. Mm-hmm.

Q. Now, as we will see later, those were the marks which were carried through to the 28th and beyond that. But those marks, Mr. Brennan, were arrived at by this subcommittee and by the persons who attended that subcommittee?

A. I don't know definitively whether they obviously are the results of the subcommittee, but whether this document is the Andersen proposal or the Andersen

record, I don't know. But they certainly seem to be the results of the committee.

Q. Whether it's a draft or whether it's the final, it certainly, as you say, shows the result?

A. Yeah.

Q. And the work which went into arriving at those results was the work put in by AMI and the Department, both as members of the subcommittee and collectively?

A. Yeah.

Q. To make it absolutely clear, there was no outside influence in relation to those marks, the awarding of those marks?

A. Absolutely not.

Q. And no suggestion from the Minister or anyone else that particular marks should be given for particular indicators?

A. Not at all.

Q. Or overall?

A. Not at all, no.

Q. This was purely the work of the subcommittee and the process?

A. Purely the work of the people who were technically engaged in it.

And if I might come back to something I mentioned a long time ago in evidence, because it's an indication of the detail of the exercise. In the previous leaf you drew attention to graphs, and I think I said

before this enables me to make the point more pointed, if you like that in the original Andersen approach, they took points of minutes per customer as the basis of scoring, and the group decided that it would be much better to graph them through time, to see if there were periods when the relationship would change. And that just was something that emerged in the discussion in the group, and I thought it worth mentioning as an indication of the kind of detail.

Q. Is that if you just go back to it, Mr. Brennan, because I hadn't appreciated that. If you go back to Tab 17, are those the graphs that you are referring to?

A. Yes, those graphs were specifically requested of AMI by the sub-group.

Q. So again it's an indication of the relationship between the two and the way they worked and how, by sending things to the Department, there was a feedback, a positive feedback in relation to getting information which they considered necessary?

A. Yes.

Q. And which they wanted input into the process?

A. That's right, yeah.

CHAIRMAN: I take it, Mr. Brennan, that is a reminder as regards A6 topping the competition at that stage on revenues. You will recall last week none of us could remember who actually had done best in revenues.

A. I think we did conclude

CHAIRMAN: And it was A6, and that would link with the portion of the Minister's speech that I think you acknowledged, where you said although one contender had done best in revenues, it had

A. Had done best on tariffs, that it had significant

MR. MCGONIGAL: This is only dealing with the dimension on tariffs.

Q. Tab 19 then, Mr. Brennan, is the qualitative assessment of the management aspects?

A. Yeah.

Q. And this this seems to be an AMI document?

A. No doubt at all about that.

Q. And you will see on the bottom, in fact, the legend where it comes from presumably their computer; and you will also see a date on the right-hand side, the 26th September?

A. Yeah.

Q. It may not be on yours, but it's on mine.

A. The date is on mine. There is nothing at the bottom.

Q. It might be on the second or third page, because it's on all three pages. But the management aspects seems this document seems to have been prepared before or on that date, and it was assessing "the dimension experience of the applicant on the following indicators", which places the emphasis on cellular experience have been used.

"1. Experience and preparedness of the proposed management team.

"2. Relevant experience of the applicant in the Irish market.

"3. Sufficient experience of the applicant as a GSM operator in a European market.

"4. Quantitative experience of the applicant as a cellular operator."

And they seem to have been marked, then, and the marks are shown, and again there seems to be a total: C, D, A, C, B, C?

A. Yeah.

Q. "And the four dimensions distinguished between management experience related to the proposed management team and the experience related to the backing consortia members."

A. Yeah.

Q. So that explains to some extent, I think, does it, how the marks were achieved?

A. I think it does, yeah.

Q. Then what the document does is to outline the experience and preparedness of the proposed management team in respect of each of the consortia. So that is an explanation of the marks which were given written out?

A. That's right, yeah.

Q. And if we turn to A5, which is the second-last

paragraph, it says that "A5 has described the company structure in details and has allocated the persons in the management team. The cellular experience present in the management team is well rooted through the Norwegian GSM operator experience, and a large number of the necessary constituents for success seem present. Consequently, it, A5, has been awarded the highest marks."

And we can see that if we look at Category 1 in the scoring, where A5 gets the A, which is the highest mark.

A. Yeah.

Q. The second, then, is dealing with the experience of the applicant in the Irish market, and again if we go to what it says about A5: "A5's Irish market experience is represented by Esat, who has an established base of 600 telecommunications customers.

Playing the role of an alternative telephone service provider, Esat has a documented record of market experience as a second telecommunications provider which can be effectively used establishing and operating a GSM II network."

And they seem to have got a B for that category.

A. Yeah.

Q. Then the third was the sufficient experience of the applicant as a GSM operator in a European market. And it doesn't have any comment in relation to A5, but

they get an A for that category?

A. Mm-hmm.

Q. Then the fourth is the quantitative experience of the applicants, and they get a C for that.

So again, Mr. Brennan, as an example where the AMI/Department were assessing the management aspects, they explain the criteria, they explain the marking, and they explain why they gave those markings?

A. Yes.

Q. And again it was done by AMI with the assistance of the Department and without any outside interference?

A. That's correct.

Q. And no hand, act or part was played by the Minister in relation to either of those two categories?

A. That's correct.

Q. The next document is the just to briefly skip through them, seems to be tables on the applicants, and they are from Tab 20 to 24 inclusive. And they, as I understand it, are again your computer tables in relation to the various consortia in respect of various different categories which may be related to something or other. Can you help me in relation to them?

A. Well, they are clearly, as you say, computer-generated material by the consultants. And it seems to take a wide sweep through the business case, maybe even touching on all of the indicators, I am not quite

sure, taking just as they are now.

Q. They also seems to have a date of the 26th September, and at Tab 23 is the production in relation to A5. But there seem to be 32 tables in all, with many indicators throughout each table.

A. Yeah.

Q. All of which are identified by reference to a number?

A. Yes.

Q. But they were produced at that time, I presume, for the assistance of the meetings which were to take place?

A. Given the level of detail that's in them, it's more likely that they were analysed qualitatively by AMI than I don't think it would have been possible to analyse that much data quantitatively in the course of a meeting, let's say.

Q. No, I appreciate that.

The next document, which is 25, is a section of the qualitative evaluation in relation to the dimension, marketing, but only in respect of a new indicator, number 6, which was segmentation. And as I understand that, what that means is that in respect of the dimension marketing, a new indicator, segmentation, was being scored in relation to the qualitative evaluation process, and this was that process being carried out?

A. Yeah, I think there was a reference to the

introduction of that new indicator; it was something we were looking at yesterday.

Q. Yes. And this seems to have been faxed on the 27th of September to the Department, I think, and it sets out the marketing segmentation, and then the commenting of it. And the comment is simply that "A3 has completed the most thorough analysis on differentiated market segments. A6 and A5 have good analysis, differentiating between the light/heavy business segments as well as the light/heavy consumer segments. A4 shows the general understanding of the different needs according to gender, age, occupation, etc., while A1's segments are more loosely defined. A2 differs segments only in accordance with usage patterns."

A. Could I suggest that it looks more likely to have been going from the Department to AMI. And you will recall, in discussing the work programme earlier, that Maev Nic Lochlainn was deputed to do some work in this area. So I am assuming that that's the product of her work.

Q. So this was going back towards them?

A. Yeah.

Q. But again it's an indication of the way the process was internally working, where you had identified an indicator, you identified the marks for that indicator, and then you gave an explanation as to why

you had given those marks?

A. Yes.

Q. And then in this particular case, they would have been added to the total in the dimension segment, and the results would have been added up?

A. Yeah.

Q. The next document, then, is the one which deals with the qualitative evaluation on the international roaming, which is Document 26. And again we can see from that, this again may be a document going from sorry, the first page is a fax cover from Maev from the Department to Michael Andersen you are absolutely right, Mr. Brennan, "on the international roaming and segmentation as promised" so the two documents were sent from the Department.

And she asked also that Andersen copy this to Fintan Towey, interestingly. But that's dealing with the the one I have turned to is the one dealing with the international roaming plan which was discussed at the evaluation meeting at AMI on the 20th September of 1995, and it has been evaluated by means of the following 3 indicators:

" understanding of GSM roaming issues

" credibility and commitment to European GSM roaming

" additional roaming features."

Then it sets out the scoring which was appointed to

each of the consortia, and the overall, and we can see from the screen that A1 got an A, A2 got a D, A3 got a C, A4 got a C, and A5 got a C, and A6 got a C.

Underneath is an explanation on the individual indicators, and in respect of A5, it says that "A5 displays a good understanding gained from relevant experience and allows a 4- to 8-month time-frame for roaming".

And in respect of the credibility and commitment to European GSM roaming, it's set out in the next page, and it says "A5 has, however, prioritised European countries, and having demonstrated a good understanding of the process, has good credibility to achieve roaming agreements."

And in addition to additional roaming features "A2, 3, 5 and 6 discuss only the standard GSM roaming provisions."

And again, Mr. Brennan, that is an example of the process at work from the Department to AMI and backward?

A. Yes. And it has the feel that Maev Nic Lochlainn, having participated in the meeting, was now doing the report of it, effectively.

Q. Yes.

The next document, then, at Tab 27, is the market development. And this is dated the 27th September, 1995, and replaces the earlier version, which we

discussed yesterday, of the 29th August. And it details the meetings which took place on the 6th September 1995 and the 18th September of 1995.

And it sets out the 10 indicators which were used to score the dimension of market development. And we have already touched on those the first time that we dealt with the evaluation process, and they are there on the screen.

"Short range and long range market penetration ambitions. Medium term GSM market share target. Relative consumer penetration, market research in Ireland.

"Contribution strength, segmentation, dealer commissions and handset prices, marketing budget size, communications planning, and customer care and churn".

And then the score chart is set out where it is visible for everyone to see the scorings which were awarded to the various consortia in respect of these indicators. And in respect of A5, they scored a B, a B, a B, A, A, B, A, A, A, A, A and with an A which is the highest score in that dimension.

A. Yeah.

Q. Over the page there is a comment on each of the indicators as to how the marks were arrived at, the matters that were taken into consideration in respect of the various consortia, and detailing the individual comments in relation to them?

A. Yeah.

Q. And at the bottom, at the end of the page, then, we have the risks identified, and the only one was that in respect of a comment, so far as A6 is concerned. But again, in relation to that, Mr. Brennan, as in relation to the other subcommittee discussions, AMI, the Department via the project team, arrived at the marks having done the preliminary work, having had the meetings, having had the discussions and having reviewed them, awarded these marks, and were satisfied that these were the appropriate marks for the individual consortia?

A. Yes.

Q. In relation to the indicators?

A. Yes.

Q. And the dimension. And again there was no outside interference, and there is no hint or suggestion of the Minister being involved, or how he could possibly have been involved?

A. That's correct.

Q. The next one then is at Tab 28, finance, and this is a document which is again dated the 27th September of 1995. It replaces the version of the 19th September of 1995 and results from meetings on the 6th September of 1995. A post evaluation meeting took place in the 13th September of 1995, and the second evaluation meeting took place on the 19th September 1995.

And we have already touched on and dealt with the state of play in relation to the scoring as of the 13th September, and you will recollect that at that stage we identified a number of categories which hadn't been scored and had still to be scored?

A. Mm-hmm.

Q. And between that time and this, work was done by Billy Riordan and others in the Department and Michael Thrane and Jon Bruel, primarily, in AMI?

A. Yes.

Q. And the indicators which were scored on financing were solvency, financing, profitability and efficiency.

And "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:

"Solvency: Which was solvency, equity x 100 total assets" and secondly, "financial strength of the consortia members."

Secondly, "Financing:"

The only indicators was liquidity, current assets x 100.

Profitability had two indicators, "IRR ultimo year 10 and profit/interest expenditure ratio (profit before depreciation, finance and tax)."

And "Efficiency, accumulated operating costs:

Accumulated turnover over 10 years." There were 3

indicators and they are set out there.

Then it says that "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', Section 5 and 6.

"The resulting marks are the following:"

Now, just before turning to that, that clearly is all work and speaks for itself. The project committee and AMI identified the dimensions, the indicators and the way in which they wanted this to be scored?

A. Yes.

Q. And they had some regard to the document which was produced yesterday, the quantitative and qualitative evaluation, Sections 5 and 6, and took that into consideration

A. Yes.

Q. in the discussions which they had.

And they then, on the next page, they awarded the marks which are shown in the tablet, and that shows the marks which were given to each of the consortia for the various indicators, with the total at the bottom of the page.

And A5 scored a D for solvency, a B for financial strength of consortia members, A liquidity, IRR A, profit interest expenditure B, accounting operating cost account turnover C, account operating costs/SIM

card years B, account turnover D, and evaluation on finance was a B. And A1 got an A for evaluation of finance, A2 a C, A3 B, A4 C, A5 B, and A6 C.

And those marks were all marks given by the subcommittee, and the total as shown there was something that was done by the subcommittee?

A. Yes.

Q. Again, on the face of it, no interference, no suggestion by the Minister of particular marks to be given or a particular result to be achieved?

A. Not at all, no.

Q. And it speaks for itself?

A. Yeah.

Q. They then comment on each of the subindicators. And perhaps just in relation to finance, in respect of solvency, 1.1, so far as A5 is concerned, they say that "A5 has projected three years of negative solvency, 2 years below 30% and 9 years above 30%.

In respect of 1.2, what they say which is financial strength of consortia members what they had regard to was "This subindicator compensates the applicant for big pockets among the backing companies behind the consortia."

And they then go through A1 to A4. And in respect of A5, they say "A5 is backed up by Telenor Group with an equity exceeding IRi½1 billion and Communicorp with a negative equity."

So that's pretty plain?

A. Yeah.

Q. And that was their view at that time in the finance committee as to the reason why and the way in which the marks should be given, B should be given for financial strength?

A. Yeah.

Q. And then in relation to ad 2.1, they say A5 has projected a year below 100 and 10 years above 200, and they identify a score A for that.

Ad 3.1 is, they recalculate the IIRs of A5 having 12%, and then they deal with 3.2 and 4.1 and 4.2. And they have tablets there showing how those marks were awarded and arrived at; isn't that right?

A. Yeah.

Q. I think, in relation to 4.1 and 4.2, they actually have the figures and then beside them marks which they are thinking of going to award?

A. Yeah.

Q. And again, although I repeat myself ad nauseam, but it's important; it's quite clear from reviewing all of the having regard to the meetings of the 6th, the 13th, the 19th, the way in which the finance was dealt with by the project team, that the only persons involved in this were the members of the subcommittee from both AMI and the Department?

A. That's correct.

Q. And there is clearly no outside influence or no contribution given by the Minister?

A. No.

Q. The next document is number 30. I have skipped 29 because it's not pertinent to our discussions, but in fact it is simply A4's printout of documents which we were talking about earlier. It's a table for A4.

Now, Tab 30 appears to be an extract of financial tables. And I am not sure if you can tell me anything in relation to that, but it appears to be extracts from the financial tables of the various consortia and would have been prepared either by probably by AMI, again on their computer, is that right, and seems to be material taken from the probably taken from the applications?

A. Yes.

Q. Now, those qualitative evaluation meetings all took place up to and including the 27th of the 9th, and the next significant date for which there appears to be no documentation is the meeting of the 28th?

A. Yeah.

Q. In the first instance, just in relation to that meeting, it was a meeting which I think you attended?

A. I did.

Q. And can you recollect who else would have been there from the Department?

A. Mr. Towey, certainly. I don't know about Mr. Riordan.

Q. Would Ms. Nic Lochlainn have been there? I know these people can speak for themselves.

A. Yeah. I have a feeling that she wasn't.

Q. So to the best of your recollection, were there a number of people, or

A. There were a number of AMI people. Certainly there was Mr. Towey and I. I am not sure about Mr. Riordan, but that can be established as a matter of fact.

Q. And the purpose of that meeting, as we saw from the document, inter alia, of the work programme document was to finalise the grand total to be scored at the meeting of the 28th September?

A. Yeah.

Q. And was that done?

A. That was done.

Q. And the way in which that was done, am I right in understanding that that process involved taking each of the dimensions, effectively putting them together to see what the end result of the whole process was?

A. Yes.

Q. And adding them together and coming up with the result?

A. As they were presented, they were all in letters rather than numbers, and the first amalgamation was based on the letters. Then I was concerned I mean, Andersens had at that stage thought that that gave a clear indication of the result. I was concerned that

if I couldn't see it in numbers, that I couldn't confirm that it was the result. So we talked about that for a while. And that's how the conversion from letters to numbers came about.

And actually how the table came about was, in talking around principles, I got up to either a whiteboard or a flip chart, and I started to do it as we were having the discussion. I mean, it was I said, you know, "Shouldn't we really convert this to numbers? And one way of doing it might be" and discussed that.

And there was no buy-in one way or the other, and there came a stage AMI, for some reason AMI thought the letters were the result, because Table 16, Table 17 and so on, I just wasn't happy with it. So I proposed a model for converting the letters to numbers and did it there and then.

Q. But that was something which was done at the meeting of the 28th?

A. Yes.

Q. And was, insofar as it came about, it was a contribution by you to the meeting?

A. I suppose I was leading the discussion because I wanted a hard result. And in the context of that, I was trying to think out a numerical solution; and to illustrate what I was doing, I started doing it, or to illustrate what I was thinking, I started doing it.

Q. So in a sense, what we had was the alphabetical

tables?

A. Mm-hmm.

Q. Which, so far as AMI were concerned, showed a clear result?

A. Yeah.

Q. So far as you were concerned, in a sense, you wanted to see it translated into an understandable in a way that you would understand it and possibly others would understand it, and you suggested the numerical

A. I wasn't convinced it was possible to do it at all without modelling it on numbers.

Q. But you put it up for discussion, and it was done?

A. Yeah.

Q. And that showed a result as well?

A. Yeah.

Q. Am I right in understanding that at the end of the meeting on the 28th, that you actually had a result?

A. Yeah. I am not sure what amount of residual checking still had to be done.

Q. But subject to

A. Subject to checking, we had a result, yeah.

Q. And the checking that you are speaking about is effectively looking back to see did we have the right marks and the right addition, etc. etc.

A. No, I think that was settled there and then, that the conversion was done accurately. But what I can't I

can't now react to is whether there was still one or two items where AMI said "We better have another look at this, that or the other before we finally sign off on it". That sort of thing.

Q. But what I am trying to get at, Mr. Brennan

A. But the result stood, in the end.

Q. So far as the 28th is concerned, first of all we had a result, subject to checking, which anyone could do?

A. Yeah.

Q. And it was a result which, first of all, all you at the meeting were agreed on?

A. Yes.

Q. The result was based on the work which had been done by the subcommittee?

A. Oh absolutely, absolutely.

Q. Isn't that right?

A. Yeah.

Q. And it was a bringing together of the whole process which had taken place between the 4th August and the 28th September?

A. Yes.

Q. And as such, we can say as a fact, am I right, that on the 28th, the result which we had was a recommendation from the project team that A5, A3 and A1 were the first, second and third in descending order?

A. Only from the people present; it still had to be explained to the wider project team.

Q. Now, that was result which was arrived at by this meeting, was determined and decided by those persons at the meeting?

A. Yes.

Q. You did not go to Brussels with an instruction from the Minister to bring about a particular result?

A. To Copenhagen, not at all, no.

Q. The Minister did not have any involvement, input, or addition to the bringing about of that result?

A. No.

Q. And the Minister could not have brought about that result, because of the network and the way in which the process was put in place?

A. No.

Q. And you are absolutely certain that there was no outside influence in relation to the achieving of those marks by the various consortia in relation to the various indicators and dimensions which were chosen by AMI and the Department?

A. No, I am certain that we then had a series of dimensions, all marked, and we put them together and all marked by, as we were saying for years, different groups of people in different settings.

Q. Now, subject you have indicated that subject to checking that the things were put down correctly and that what we had in the tables was correct, once you have a result of that kind, as we had on the 28th, how

could that result have been changed to a different result?

A. I have never argued that it could be. I don't think it could have been.

Q. But isn't that the point, that once you have a result of this kind from a process put in place by the Department and AMI, that you cannot change the result unless you go back into the subcommittees and change the work which was done there, the evaluations which were done there, and everything else?

A. Yeah.

Q. So that if there was no interference of any kind by the Minister up to that point, the first thing you can say as a fact, that that result was achieved by the persons who were delegated to do it and not by any masters of those persons?

A. That's correct.

Q. So that when we see that the AMI and the project team put A5 as the number 1, A5 achieved that by reason of the application which they had put in and the work which they had done in relation to that application?

A. Yes. The whole result was achieved by a systematic and structured examination of the applications in the manner that we have gone through yesterday and today.

Q. And the reality, Mr. Brennan, insofar as you are concerned, as chairman, you would be extremely disappointed if there was any other finding of fact by

this Tribunal in relation to that process?

A. I couldn't see how it could be done, quite honestly.

Q. And when you say that, you are conscious that you are giving evidence not only as a member of the project team, but also as chairman of that team, and therefore with a responsibility and consciousness of the other members of that team?

A. Yes.

Q. The meeting on the 28th; am I right in thinking that it was only a one-day meeting?

A. Yes.

Q. So you would have gone back to Dublin probably on the 29th?

A. No, I think

Q. Or later than the 28th?

A. Fintan Towey went back to Dublin, and I went back to other business in Brussels.

Q. After I am just curious if you are able to identify when you went back to Dublin.

A. On the evening of the 29th.

Q. So that the probability is that you personally would be unlikely to have been in the Department prior to the Monday?

A. Was the 29th a Friday? Yeah

Q. I think so.

A. I mean, the evening flight from Brussels doesn't get in until 9 o'clock or something, so I certainly

wouldn't go to the Department at that stage.

Q. Just before I move on from that, not alone was the result of the process known, but it had also been established as a preparatory framework by that date, that the 3rd October it was hoped would be the first draft report, there would be a meeting of that on the 9th October, and it was hoped that the second and final draft report would be available in or about the 17th October?

A. That's clear, yeah.

Q. So that process and that plan of campaign, if you like, was in place before you even got back to Dublin, whether it be the 29th, and into your Department on the Monday morning?

A. Yes, it was always clear that the meetings would be on those dates and that the draft report would follow on the 3rd.

Q. Now, going on from that for a moment, Mr. Brennan, what I want to turn to briefly for a moment to get some assistance is, would you turn to Tab 31, which is in Book 45.

Quite clearly, after the 28th, the focus of AMI would have been in relation to preparing the report?

A. Yes.

Q. And indeed, the focus of the project team would also have been in the preparation of the report?

A. Yes.

Q. And the report would have been a report not only an indication of the result and the work that went into it, but also was to be in the form of a report that would be not only understandable but also would stand to scrutiny?

A. Oh, yes.

Q. And would justify the work that had been done and the result that had been achieved?

A. Yeah.

Q. Now, in relation to that, Tab 31 is a document which appears to have come into existence or it has a date of the 29/9/95 and appears to be the first draft attempt at putting a report together; is that right?

A. It doesn't look familiar to me, but I don't know.

Q. First of all, it's an AMI document?

A. Yes, there is no doubt about that.

Q. It does bear a date of the 29th September?

A. Yes.

Q. And appears to be setting out matters which would ultimately come to be dealt with in the continuing reports?

A. It does, yeah.

Q. But only covers the first 14 pages of it?

A. Yeah.

Q. And I don't think that there is a necessity just at the moment to go through it or read it.

The next document that I just want you to turn to is

the next tab, Number 32, and again this appears to be a draft of AMI's. And you'll see on the bottom, it seems to have a legend of 1/10/95, and one draft. And when one goes through it, again it appears to be the first attempt at the draft report which subsequently became the report of the 3rd?

A. Yeah.

Q. But what is of interest, I just draw your attention to it, is if you go to page 31 of that draft report, it sets out under paragraph 5.6, which is "The Recommendation":

"The results of the evaluation means that the evaluators have arrived at the following ranking of the 3 best applications:

1. A5
2. A3
3. A1.

"It is therefore proposed to advise the Minister to enter licence negotiations with the consortium behind the A5 application with the prior consent of the applicant, that if the negotiations is assessed by the Minister to fail or to be impossible to conclude successfully, then licence negotiations will be commenced with the next nominated candidate. If the consortium behind A5 cannot satisfactorily cover the risks identified (but not scored), then it is recommended to consider entering licence negotiations

with A3. Similarly, if the consortium behind A3 cannot satisfactorily cover the risk identified (but not scored) and abandon the strong reservations concerning the draft licence, then it is recommended to consider entering licence negotiations with A1.

"Prior to licence negotiations it is recommended to redraft the licence in order to transform the favourable offerings in the application into binding licence requirements and to cover the risks identified simultaneously."

Now, in one sense, Mr. Brennan, that speaks for itself as to what it says, but it's clearly showing, insofar as AMI were concerned and the persons who were drafting this document, that they agreed with you that as of that date, they had a recommendation which was A5, A3 and A1?

A. Yeah.

Q. Now, it's important, I think, to understand that all that appears to have been achieved, although it's a significant achievement, is the recommendation of the project team of the right of A5 to negotiate with the Minister in relation to the granting of the licence?

A. That's right.

Q. It was not awarding the licence to A5?

A. No.

Q. It was simply recommending that this is the group that they should negotiate with first?

A. Yeah.

Q. And as we'll see later, as the reports come to be developed up to the final report, they detail the reasons why they are doing that and also set out the caveats or markers which concerned the project team in relation to the financial aspects?

A. Yes.

Q. And when I say "markers", I mean markers or suggestions. They weren't conditions; they were suggestions from the project team as to matters that the Minister could have regard to in the negotiations which were to follow?

A. I would have nuanced it a bit more than "suggestions", to be honest.

Q. I think Andersens suggested "suggestions", but you considered it to be more than that?

A. I would nuance more, at least.

Q. And you wanted them in the licence as recommendations to be negotiated over?

A. Yeah.

Q. Now, the last document, at Tab which is at Tab 33, again which is dated the 2/10/95, they are the 10 categories of dimension with the marks achieved under the subindicators and the subtotals?

A. Yeah.

Q. And except in respect of one category which I'll draw your attention to in a moment, those are the marks and

subtotals which appeared in the final report of the 25th October?

A. Yeah. It looks perhaps like a document that AMI were organising in their computers so that they could lift the tables when they came to sort out the report.

Q. In fact if you read it with if you read it in conjunction with the previous document, the previous draft report, you will see where those tables were to be fitted in to the report. And they are simply separated there as they have been produced to us, but ultimately they do come together in the final report.

And except in respect of as far as I can make out, in respect of one category, the marks are as identified at the subcommittee meetings and truly recorded.

And the one category which is not is Category 8, which is the evaluation of performance guarantee. And that's on the last page, and you will see that as it's recorded there, it's A, C, A, A, A. And if you go back to Tab 12, you will see that that was this is the subcommittee meeting, or at least this is the meeting on performance guarantees, and you will see that the score was D, E, C, B, A, C; do you have that?

A. I do, yeah.

Q. And in fact, if one, as we'll see later, goes forward to the 25th October, it is the marks set out in Tab 12, which are the marks which are recorded in the

final report?

A. Yes.

Q. And this page that I am looking at at Tab 33, it's not clear to me at all how it came about, whether it was a misprint or whatever.

A. I had a discussion with Mr. Healy, I am not sure now when, either yesterday morning or last week, about the AMI model was generating something different as performance guarantee than what we had in mind. And I suspect they are the results from the AMI model and they got in here by mistake, and as soon as the mistake was spotted, they may never have come into a report that came to us, I am not sure. They are certainly based on whatever we talked about a couple of days ago.

Q. Now, what I want to turn to next, Mr. Brennan, is Document the next two documents which are in the sequence are Tab 113 and 114, which is the letters of the 29th September 1995 and the reply of the 2nd October of 1995, and there is no need at the moment to go into those. They have already been dealt with, subject to one thing, that in respect of your reply of the 2nd October, 1995, while you say that the additional material while the letter says that "The additional material received from you on Friday is enclosed herewith and may not be taken into consideration into the evaluation process".

One of the things that isn't clear in that letter is that obvious in that letter is that you didn't see the letter and weren't aware of its contents?

A. Yes.

Q. Now, the next document that I want to just try and get some understanding of is Document 115. And this appears it's just to clarify it more than anything, Mr. Brennan, because it will probably be dealt with later, but it seems to be an annex to final evaluation, and certain I am not even sure that it should be here, but can you help me in relation to that, or does it make any sense to you as it stands there?

A. I don't know where this fits into the sequence of things. It clearly is an AMI document. And it's obviously in the context of the drafting of the report, but I don't know at what stage.

Q. Well, we'll leave it, then, for the time being. And the next document then is 116, and this is I think it's Mr. McMahon's note of a meeting on the 3/10; is that right?

A. Yeah.

Q. And this appears to be apparently a meeting, an interdivisional meeting at which the division was updating itself on developments in the telecoms area.

A. Yeah.

Q. And it therefore covers a number of subjects, some of

which or at least most of which are unrelated to

the GSM?

A. Yeah.

Q. But the GSM is mentioned on the second page, and it

says that "The Minister wants to accelerate the

process, and the legalities are more complicated, and

the draft report is now imminent, and we need to

discuss and digest".

And it was agreed that one copy, "We let it stay

here", that's in Room 44, which was the GSM room, I

think?

A. Mm-hmm no, no, 44 is the building.

Q. I beg your pardon.

And "Discuss it in confidence."

A. Yeah.

Q. Now, that's dated meeting is dated the 3rd October,

and insofar as it refers to the Minister, what is I

just want to try and clarify in my own mind what your

recollection, insofar as you have one, is in relation

to that.

A. I think we discussed that at some length with Mr.

Healy. I think what I was saying was I don't have a

specific recollection about it.

Q. That's what I am interested in. I want to try

and I am not trying to tie you down or anything. I

just want to try and establish what you recollect and

what you know in relation to it. It may not have any

significance; it certainly may not have the significance which has been attributed to it up to recently. But so far as you yourself were concerned, you came back on the Friday night and wouldn't have been in the Department until the Monday?

A. Yeah.

Q. And that appears to have been the 2nd October?

A. Yeah.

Q. So the earliest that you would have been speaking to anyone would have been on that date?

A. Yeah.

Q. And in all probability, would you have been speaking to people to whom you were responsible, either Mr. Fitzgerald or others?

A. Certainly it's possible, yeah.

Q. And is the possibility or probability that you would have been conveying to them that you were close to a result or had a result?

A. Yeah, I think that's reasonable.

Q. And would you have been explaining to them that the reports, the report, the first draft report was imminent?

A. Yeah, I think yeah, it was probably common enough knowledge, because if you recall, Mr. Fitzgerald got the circulation of some of the meeting reports in any event. So I think the idea that we were expecting a first draft on the 3rd and a second draft around the

17th was probably, but not definitely, reasonably

well-known.

Q. And would you have given any indication, or had you an indication in your own mind at that stage, based on the fact that you had already identified when the final draft report was coming out, as to when you hoped to have the process concluded?

A. Yes, I'd say we had a clear enough understanding with AMI that it would be concluded in the time-frame within which it was concluded.

Q. And is that information that is that could that have formed part of the discussion that you would have had with either Mr. Fitzgerald or Mr. Loughrey?

A. It probably could, yeah.

Q. And the purpose of conveying that information was merely to inform him as to the progress and the way in which the project was progressing?

A. Yeah, it was clearly necessary to take some time to get from the result to a report that we were happy with.

Q. And other than informing him as to the information, was that information that you gave him, was that information that you were entitled to give him?

A. I can't see any reason why not at this point.

Q. And you felt, at the time that you gave it, that it was information that should be given to him?

A. Well, in the context that I was keeping Mr. Fitzgerald

in the loop, yes.

Q. But he was someone who was entitled to be kept in the loop once you had reached that stage? That's what I am trying to get at.

A. I would say yes.

Q. Now, you didn't give that information for the purposes of seeking or getting directions from anyone as to what you were to do or not to do?

A. No, I would say I was conveying information rather than looking for instructions. I can't see how it could be otherwise.

Q. But it's simply I want to be clear, Mr. Brennan, because we have a lot of information in relation to what the position was at that time.

A. Yeah.

Q. And as we have already as I have indicated a number of times, we have identified the process, the way in which the process was to continue from that date. And that was the way that you were going to progress and the way in which you did progress from the 3rd to the 9th to the 17th?

A. That's right, yeah.

Q. And at that time it was anticipated, as one reads the documents, that the 17th would be the final draft report?

A. Yeah.

Q. The fact that it didn't necessarily turn out to be

that on the 17th is a matter of the way in which the process was again seen to work, in the sense that people showed themselves as being unhappy with what was being produced and required to have it changed?

A. Yeah. It's also a fact that the 3rd October report had a lot of gaps in terms of missing appendices and so on, so we would have only seen those much later or sometime later.

Q. Now, at that stage, you have indicated to us that, although the result had been achieved as of the 28th, there was still a question mark, a slight question mark in the sense that persons had to have an opportunity of checking that things were correct; and also there may have been an input that people may have wanted to make which might have affected some of things that had been done?

A. I have a feeling and I mean, I am almost lost for memory, the duration of this now I have a feeling there was still some work to be done by AMI at the margin that they had to report back to us.

Q. So that in saying or in suggesting that there might have been a result, it at that point in time, while it turned out to be the final result, it couldn't be put in definitive terms?

A. I think it was to some degree provisional.

Q. And as such, is it the possibility or probability or can you be certain as to whether you would have put it

in terms of the actual result or simply in terms of

"We have a 1, 2, 3", or can you recollect? I know it's difficult; if you can't, you can't.

A. I don't know. We had a lot of discussion about this in my earlier evidence, and I really haven't there is nothing I can add to what I have already said. At this moment I can't recall even the precise detail of what I said.

Q. Interestingly, in talking to Mr. Healy, when Mr. Healy was inquiring about these matters, you pointed to the conversation which Mark FitzGerald had and drew attention to the fact that the Minister said that there could be a third GSM licence; do you remember that?

A. I do, yeah.

Q. And your comment at that stage was that was indicative, not definitive, but indicative of the possibility that he didn't know the actual result at that time?

A. Yeah.

Q. Now, so far as the rest of that note is concerned of Mr. McMahon's in relation to the GSM, "the legalities were more complicated"; what does that mean?

A. I mean, it's Mr. McMahon's script; I don't know what he meant. But I presume it's his reaction to whether it could be accelerated or not, that we still have to do things correctly.

Q. And "draft report now imminent, we need to discuss and digest"; well, that's absolutely correct, isn't it?

A. Yeah.

Q. And "It is agreed that it would remain there." The only thing it may have been touched on, and it's not clear; it may be just simply to show that you were at the meeting.

Number 6 there, is that related to a competition directive or something, rather than

A. I think it's to do with a new directive that was being negotiated in Brussels at the time, and it may or may not be the same directive as had an impact on the statutory basis of the licence.

Q. But

A. But the fact that it's here

Q. It had nothing to do with the competition?

A. No, no. And a bit below that, "Mobile is not gone yet" suggests that there could be more than one directive under discussion; and the following reference I suspect is Mr. Temple-Layng, who was at that time in the legal service of DG IV or in the service of DG IV.

Q. Now, the next document, then, is 117, and that is the draft report of the 3rd October, and that was received at 2.30 on the 4th October?

A. Mm-hmm.

Q. And included two hard copies.

Now, this draft report was AMI's work?

A. Yes.

Q. And in the main body of it, it is setting out to a large extent well, the index tells us what it contains.

A. Mm-hmm.

Q. And what is being put into the report; isn't that right?

A. Yeah.

Q. And I won't go into it just at the moment, but there are a few things that I just want to draw your attention to.

First of all, on page 6, at the bottom of the page, beginning the bottom of the page, he refers to the problem that arose in relation to costing.

A. I am not following you for the moment.

Q. Page 6.

A. Yeah.

Q. "Later during the process it was necessary once again to make amendment" is that to something else?

A. Page 6 that I have of the draft report doesn't have it's the one that's on the screen here. Is that the one you have?

Q. No, that's not the one I have. Maybe I have got documents muddled up.

Yes, yes, I see what I have done. It's my fault at least it may be my fault it is my fault.

CHAIRMAN: It's probably as good a time as any to pause until two, Mr. McGonigal.

Thanks, Mr. Brennan.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

MR. HEALY: Before Mr. McGonigal resumes his examination, Sir, I have spoken to some of my colleagues; I haven't had a chance to speak to them all about some additional documents that have come to hand consequent on some of the questions I was asking Mr. Brennan, including specifically questions about anticipation of supplementaries in relation to Dail questions and so forth. And on the suggestion of Mr. Shaw, the Tribunal looked at some of its existing documents, including in particular transcripts of computer disks which appear to contain a lot of draft material which had not been included in earlier books, and some of that material may answer the description suggested by Mr. Brennan, i.e. that it contains drafts of anticipated answers to or drafts of answers to anticipated supplementaries.

Now, at the moment the Tribunal has put together a book of about maybe 200 or 250 pages, which we are seeking to reduce to maybe 150 pages and perhaps ultimately something that might generate 50 pages of relevant material. And what I would suggest is that that material would be made available to the various

legal teams this afternoon, before maybe 4.15 or something like that, and that if Mr. McGonigal can do so and if any of the other teams can do so, it might be appropriate to deal with some of that in cross-examination, leaving it to me at the end of the day to deal with it if I think there is anything outstanding in the final sweep-up, as you put it yourself the other day.

I am not sure it may be necessary for me to take it up directly with Mr. Brennan first, but that's something that can be decided once the other legal teams have had a chance of looking at it. But it could affect the sequence.

MR. NESBITT: Mr. Chairman, I am extremely concerned to hear at this point in time, having spent 19 days in the witness-box, that there are some additional documents that it's believed may bear on issues that Mr. Brennan should be asked questions about, and I stand up to be protective of a witness who's been in the witness-box for a very considerable period of time. And it seems to me, Mr. Chairman, that if these documents are now suddenly to become important and relevant, we should at least have the opportunity of looking at them and being able to form a view and make a submission to you as to whether or not they actually bear on anything that this Tribunal is investigating into for the purposes of fulfilling its terms of

reference.

Now, I don't make this suggestion lightly. It just seems that Mr. Brennan has been at it so long, it's difficult to understand how documents could only be coming to light at this point in time. And I didn't hear My Friend suggest that they were linked to anything that had happened in the additional examination by counsel other than himself. And I am just concerned that it may never end unless we take a position on this.

And those are my submissions, Mr. Chairman.

CHAIRMAN: Well, the sheer proliferation of documentation that was received by the Tribunal teams makes it inevitable that there will have to be some reversion or return to other documentation from time to time if the full facts pertaining to the entire GSM process are to be satisfactorily examined and reported on.

Of course I appreciate the position of Mr. Brennan.

He has had a lengthy and stressful period in the witness-box that I have no wish to see protracted by any other than the most limited possible period.

And having noted what has been said by counsel, what I feel is probably appropriate, that we seek to conclude matters as they stand on the existing evidence heard at present, and then if a certain limited extension of Mr. Brennan's testimony is necessary, I will continue

that.

But I do accept, Mr. Healy, that it should not be new and protracted exposure of Mr. Brennan to further examination by anyone.

MR. HEALY: I am

CHAIRMAN: And perhaps your view that 50 pages might be material could further be compressed.

MR. HEALY: I will endeavour I have explained, certainly I have explained to Mr. McGonigal that there may be 50 pages, not necessarily 50 pages of full typescript, but 50 pages of perhaps half or a third of the page covered in typescript.

I am anxious to indicate that a lot of this material has been re-examined by the Tribunal in light of communications from Mr. Shaw, solicitor for the State, to Mr. Davis in response to queries I raised with Mr. Brennan about where or how documentary material concerning answers to anticipated supplementary questions could be found. And it's at Mr. Shaw's suggestion in other words, on the State's suggestion that the Tribunal looked at preparatory material contained in transcripts of what was found on disks kept by civil servants that the Tribunal has now culled or has now accumulated or assembled this additional material. It's on that suggestion that

I

CHAIRMAN: Do I correctly understand quite a bit of it

to relate to the issue that arose in the latter part of last week as to who may have an input in giving Mr. Lowry additional briefing material for possible questions from the floor of the House?

MR. HEALY: I would think the vast bulk of it relates to that. In the course of that examination of additional material, the Tribunal identified one or two other documents that may be relevant to one or two other matters mentioned by Mr. Brennan in the course of his evidence. It's not a decision by the Tribunal to go off down a new road. This is a suggestion the Tribunal has taken on board from the State.

CHAIRMAN: I am obliged to Mr. Shaw for his assistance in that regard. I think I have indicated that I do not envisage any significant protraction of what certainly has been a long period for Mr. Brennan. I am also understanding that Mr. McGonigal has quite an exacting task to fulfil on behalf of his client. I think it's unrealistic to expect him to deal with these matters on the hoof, so to speak, so what I propose is that for the balance of this afternoon, we seek to get as far as possible with the conclusion of Mr. Brennan's evidence on the basis that it has been thus far led.

MR. MCGONIGAL: May it please you, Chairman.

CONTINUATION OF EXAMINATION OF MARTIN BRENNAN BY

MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. Brennan, for ease, just before lunch we were touching upon the first draft version of the report of the 3rd October of 1995. And in fact all of these documents that are relevant to the report are set out in the Evaluation Book 2, and perhaps it's easiest to deal with them from there.

A. If you are talking about the 18th October and the 25th October

Q. Sorry?

A. If you are talking about the evaluation reports of 18 and 25 October, I have a copy of each here.

Q. No, no, I hadn't got to them yet. I will be, but we'd better start with the first one, Mr. Brennan, which is the 3rd October, and that can be found at Tab 34 of Book 46.

A. Yeah, I have a copy in another book.

Q. There is a copy in the other book as well, but whichever suits you; it makes no difference to me.

But first of all, this was the this is the report which had been identified on the 4th September as being the date upon when it was agreed that it was hoped that AMI would have the report of the 3rd October. And from before lunch, in the letter of the 3rd October set out at Tab 117, we see that this report was received at 2.30 on the 4th October of 1995, and that is acknowledged by you on the letter from Mr. Andersen.

The report itself has a table of contents really which indicates the various parts of the report which are included in it, and it's in there is a section which is called "Annexes to the Evaluation" which was at Tab 35 and ultimately formed part of the full report.

Now, the copy of the report at this time, which is the 4th October, has five parts to it: an introduction; key characteristics of the applications; a comparative evaluation of the application, which is divided into the various different aspects, being the marketing aspect, the technical aspect, the management aspect and the financial aspects; and then the sensitivities, risks and credibility factors; and then the summary, concluding remarks, and the recommendation.

MR. McGONIGAL: I don't know, Mr. Chairman; I have a wish that all of these documents should form part of the record of the Tribunal, but I don't want to waste the time of the Tribunal by reading them publicly or in depth at this stage.

CHAIRMAN: I think, having regard to their having been read in the opening and having been gone through pretty fully by Mr. Healy, it's perfectly reasonable for you

MR. McGONIGAL: To take them as being read?

CHAIRMAN: to pick on whatever aspects you wish to focus attention to.

MR. MCGONIGAL: May it please you, Chairman.

Q. In the initial report, Mr. Brennan, what I suppose we should draw attention to is the financial aspects, which are dealt with at pages 34 to 39 of the report. And in effect, what is set out there, as I understand it, is what was done by the project team and AMI in relation to evaluating the dimensions, being the financial key figures and the licence and other aspects.

A. Yes, it looks like that.

Q. And it's a detailed report; it appears to be a fairly detailed report of what took place in relation to the investigation by the project team of the applications in respect of that dimension?

A. It does indeed.

Q. And there is no need to go through it at this stage, but the next matter that I want to turn to is the annexes and draw your attention to a number of matters.

First of all, in relation to the annexes which appear to be dated the 6/10/95, first of all, they are not complete, in the sense that some of the annexes hadn't been done. And we can see that at Annex Number 2, where the methodology applied has not been fully drafted.

A. Yeah.

Q. But the two that I want to deal with are first of all

Annex 4, which is the supplementary analysis on the final conformance check. And what is that?

A. Sorry, did you ask me a question?

Q. Sorry, what is that? Can you tell me that?

A. I think we discussed that yesterday, that there were the so-called mandatory tables promulgated by AMI at a relatively late stage in the competition process, and they were to facilitate examining the applications by the AMI software; but separately from that, each application had detailed business plan information.

And I have assumed that that's because they were at a fairly advanced stage of preparation before the Andersen tables went in.

So both were submitted as part of the application, and what this is, as far as I can judge, is detailed work by AMI, with or without Mr. Riordan, to see that there is consistency between the two.

Q. And I think in fact we did touch upon most of this document yesterday in one part of the discussion, and you will recollect that in going through it, it showed that A5 and A6 and A3 had conformance with the financial analysis check which was carried out at that time?

A. Yes.

Q. The second annex which is relevant and of importance is Annex 10, which is the supplementary analysis on financial risks. And this is this appears to be,

as stated there, that as stated in the main evaluation report, the two top-ranked consortia have members who presently do not have the capital required to finance the GSM II network.

"The consortia members who thus need capital for the funding of the GSM II consortium have "Secured" this capital by various instruments including the shareholders agreement and letters of commitment from investors.

"In this analysis we discuss the risks due to lack of funding. We further suggest means to close the uncertainty related to financing.

"The risk analysis does not include an assessment of A1, A2, A4 and A6. The financial strength of A1 is, in the assessment of the financial aspect awarded, the highest mark and is not seen as a risk. The financial strength of the three other consortia, A2, A4 and A6, are not taken into account in this risk analysis because the overall scoring already places them among the three lowest-ranked consortia."

So this is a supplementary analysis to be read in conjunction with the finance dimension section?

A. Yes.

Q. And is a further analysis in relation to the two consortia, A3 and A5, who had been identified as having additional risks which should be discussed and written about?

A. Yes.

Q. So far as A5 is concerned, it's dealt with at 3, and it is in the following terms: "The consortia members of A3" sorry, that should be "A5" "and their share distribution of the existing corporation Esat Digifone is as follows:

"50% Telenor Invest and 50% Communicorp Group (34% held by Advent).

"With current assets of 550 million, Telenor has the financial strength to provide the necessary financial backing of its wholly-owned subsidiary Telenor Invest.

"Communicorp is a new company which has invested heavily in telecommunications infrastructure and has a very weak balance sheet which needs capital injection before it can support the shareholders equity commitment stated in the shareholders agreement."

And it then sets out notes on the shareholders agreement dealing with, and which Mr. Healy has already gone into, the matters which were therein set out.

And it continues: "In the period after a licence award, Communicorp will have between 40 and 50% of the shares. This may be diluted to 34% at a later stage, where up to 32% of Esat Digifone's equity is made available to public or institutional investors. Even with only 34% shareholding, the financial commitment of the two original partners will be high. If IRi½52

million are used as the base case requirement, and if  
IRi½ 52 million is used as the worst-case equity  
requirement, the individual equity commitment for  
Telenor or Communicorp amounts to" and they set out  
a table indicating what it amounts to.

Then it continues: "This equity commitment cannot be  
met by Communicorp today. According to a letter of  
commitment to the Department of Transport, Energy and  
Communications dated 10th July, Advent has committed  
to fund up to 30 million in support for Communicorp's  
40% shareholding. The letter of commitment does not  
clearly state what the price would be if a commitment  
should be brought into life, but according to the  
presentation, the price would be close to 75% stake in  
Communicorp. Further, according to the information  
given in the presentation, the control will still be  
in the hands of the Irish investor, as his shares bear  
a three times higher voting power.

"The legal basis for this commitment has not been  
included as a part of the application's supporting  
material. Taking into account the very high  
proportion of Communicorp's intangible assets, the  
risk of a dispute about the share ratio between  
O'Brien and Advent seems evident.

"This may result in a situation of instability or a  
situation where the control of Communicorp is  
transferred to Advent. It could also lead to a

situation where the commitment of Advent cannot be fulfilled.

"The size of the commitment by Advent does not cover a worst-case estimate of the equity commitments of Communicorp. In a worst-case scenario, the requirement for further funding is expected to arise two to three years into the project. At this stage Advent will already have invested the committed figure, and it is judged to be very unlikely that Advent will retreat, as this could lead to a 100% loss of the invested funds. Therefore it can be concluded that the major risk is related to possible instability of Communicorp to transfer power of non-telecommunications investment. This uncertainty can be limited by an appropriate set of licence conditions. As examples, the following types of conditions are suggested. Requirements regarding the share of ownership and voting power in Communicorp, requirements regarding the equity of Communicorp."

Now, in relation to that analysis, would that analysis have been done by AMI, or by AMI and the Department together?

A. I would say AMI.

Q. And would it have been based partly on the application form application material and partly on the work carried out by AMI and the Department during the financial dimension?

A. Yeah, I would assume that it's a resume of everything that went before in the financial area, and then an AMI evaluation this is an AMI evaluation presumably taking account of all of their experience.

Q. And is recording quite plainly the concern and identifying the concern and risk factor of the fact that the equity commitment cannot be met by Communicorp as of today, based on the material which they had?

A. Yes.

Q. Isn't that right?

In relation to the last part of that annex, the two conditions. These are the two conditions which were identified as suggestions which came from AMI as to how the matter could be dealt with?

A. That's right.

Q. And you want to see that treated in a more positive way, as conditions as opposed to suggestions?

A. I suspect the Project Group did, rather than me personally.

Q. Sorry, I should have said the Project Group, quite right. But what you had in mind was this could first of all be met by conditions of the nature of requirements regarding the share of ownership and voting power in Communicorp, and secondly, requirements regarding the equity of Communicorp; isn't that right?

A. I mean, I am taking it you are anticipating further drafts or something, to come to that conclusion.

Q. Absolutely. Subject to this, Mr. Brennan: I think we will see that Annex 10 doesn't necessarily change very much between this report and the final report.

A. Okay.

Q. I accept that there are changes in the report and there are changes in the annex. There is absolutely no doubt. This was an ongoing process which commenced sometime prior to the 3rd October by AMI, and their first draft was produced for the Department by the 3rd October. And between that time, the 3rd October, and the 25th October, through various meetings and written communications, the report was changed till it became the final report?

A. Yeah, okay.

Q. But so far as those changes were concerned, they were changes which were identified and brought about by discussions within the project team meetings and by members of the various committees.

A. Yes.

Q. And that's how all of the changes came to be made to strengthen and make more presentable and convincing the report of the 25th?

A. Yes.

Q. There was no input, in the sense of written suggestions or otherwise, coming from the Minister to

the various members of the project team with written suggestions as to how this report should be written?

A. There certainly was no written input, but we have had a discussion about "this report doesn't undermine itself" bit.

Q. I understand that.

A. Where we are I believe the Tribunal will be reliant on the contributions of a number of witnesses. So I can't ground that firmly. But there certainly was no suggested text coming from outside the Project Group.

Q. That's the point I was trying to make, that so far as the text was concerned perhaps I didn't explain it properly; so far as the text was concerned, the textual changes which were brought about were brought about as a result of suggestions within the committee either by the Department or AMI?

A. Yes.

Q. And most of those textual changes can be identified, as far as I can make out, from the documentation, some of the documentation which has survived and which is before us?

A. Yes.

Q. And if one did a tracing exercise, and one had all the written documents relating to these things, you would actually be able to plot the changes from the 3rd to the 25th going through the various committees and written documentation generated by the various members

of the committees?

A. I expect if you could get your hands on the original copy of each member of the project team, where they had various hieroglyphics, and you could relate that to various people's notes of discussions, you could probably trace everything; but whether that's a doable task or whether all of the series exists, I don't know.

Q. But whether they exist in their totality, certainly you are satisfied, not only as a member of that team but also as chairman of the committee, that that is the way in which the textual changes came about?

A. There is no doubt about that.

Q. Now, the next document is in fact at Tab 36, is the beginning of the Appendix 2, which is the methodology and evaluation. And again, it's dated 6/10, and there is no need to delay on it.

Tab 37 is the supplementary analysis on tariffs, which again is dated the 6th October. And it became Annex 6 in the eventual report.

The next document is the supplementary analysis, again of the 6th October, on the financial effects of interconnect assumptions.

And the next document that I want to go to is going back to Tab Book 42, is the meeting of the 9th October, which is Tab 120.

Now, the first document is the meeting itself, it's

the report of the meeting on the 9th October. And as we can see there, the everyone was attending the meeting except for Ms. Maev Nic Lochlainn, and Margaret O'Keeffe was there for Nuala Free. Isn't that right?

A. Yeah. Mr. McMeel isn't there either.

Q. Yes, sorry, he isn't there either. Now, "The Chairman opened the meeting by stressing the confidentiality of the evaluation report and discussions re same. He informed the group that the Minister had been informed of the progress of the evaluation procedure and of the ranking of the top two applicants. Minister is disposed towards announcing the result of the competition quickly after the finalisation of the evaluation report."

And that, in a sense, speaks for itself. There is a matter, Mr. Brennan, which I don't know that you can assist me in relation to, but I just want to see whether you can help me.

What I want to try and identify is the position of the Minister in relation to this process. What was his legal position so far as the process was concerned; do you know?

A. Well, I suppose the Minister was the licensing authority, but the process was carried out independently of him.

Q. And as such, did he have a right, or what right did he

have to be made aware of or given knowledge of the process, the result of the process or the timing of the report? Can you tell me?

A. It's not something I have given any thought to. It's one of those difficult questions you'd need to reflect carefully on. I don't think I thought about it at the time or since.

Q. Because, I mean, a question does seem to me to arise in relation to the analysis on the Minister's position as to what his legal rights, obligations or duties were at that particular time, and whether he had a right, or what right did he have to know the result as such, and when did he have the right to know that result. Have you considered those questions?

A. I haven't, really, but I suppose if the result is clear-cut, he is entitled to know it in any event.

Q. And that would be your instinctive response?

A. Yeah.

Q. Once he is aware of the result, and once he is aware that a report is being prepared, is there an entitlement, regardless of the result, on the part of Minister to seek to have that report brought forward or speeded up?

A. You are asking me very hypothetical questions.

Q. I am asking you hypothetical questions on one level, Mr. Brennan, but they are also questions of principle; because once they have been answered, once we know the

rights and entitlements, in law or otherwise, of a particular person, then we can identify the possibility as to whether anything may or may not have been improper. But can I take it as your first answer that you really haven't considered it and you'd like time to consider it?

A. I haven't considered it. I can't see that there would be any block on the Minister expressing a view.

Q. Absolutely. I mean, that would be what I would have expected the answer to be, but it is a matter for yourself.

Now, the other question which I asked you this morning was that after you knew the result, after the result had been defined, what way, if at all, could the Minister or anyone else have changed the result?

A. I don't think the result could have been changed. The result was the clear result of a predetermined process.

Q. And when you say that you don't believe it could have been changed, can I take it that within that answer, you wouldn't have expected either the Minister, the subcommittee or the Cabinet to have changed that result?

A. Well, I'll put it like this: In legal terms, they would have to have a very transparent justification which they are prepared to articulate, but I don't think they could change it on a whim or change it for

any sort of frivolous reason, that's for sure.

Q. In the same way as I suppose the report would have to be a robust report in relation to the result which you were producing, if anyone of position, be it either the Minister, sub-cabinet or Cabinet tried to change the result, they would have to have a very, very good reason for doing so?

A. And I suspect they wouldn't do it without the full authority of the Attorney General as well.

Q. And equally without considering the subcommittee that had been appointed to analyse the applications, etc.?

A. Yeah, okay.

Q. There was then a discussion of the evaluation report at the meeting of the 9th October put forward by AMI, and it was examined in detail, and a range of suggestions in relation to the manner of presentation of the result was put forward by the group, and AMI undertook to incorporate these in the second draft.

And the agreed amendments included

" includes in the body of the main report of the proposed appendix in relation to the evaluation methodology

an expansion generally of the justification for

the award of marks to the various indicators

revision of the financial conformance appendix to

a more explanatory format

inclusion of an executive summary and an annex

explaining some of the terminology

elaboration of the reasons as to why the quantitative analysis could not be presented as an output of the evaluation process.

"AMI also indicated that the supplementary analysis in relation to interconnection and tariffs which had yet to be provided did not suggest that it would be necessary to revise the award of marks."

Now, that, in the way in which those minutes have been written, indicates that a healthy discussion took place in relation to the evaluation, the draft evaluation report which was being put forward by AMI?

A. Yeah, I believe

Q. It wasn't being accepted as it had been written, but people were making suggestions and saying that it must be changed, and areas in which it had to be changed were being identified?

A. Yes.

Q. And AMI were accepting and going to do part of that work, as I am sure some of the people from the Department were as well?

A. I don't think the Department was volunteering to do it at this particular stage. But I could be wrong.

Q. And the it was equally clear that the supplementary analysis in relation to interconnection and tariffs which had to be revised didn't suggest that it was necessary to revise the award of marks, so it appears

that some consideration was given to the results which had been produced from the meeting global results which had been produced from the meeting of the 28th?

A. I would think so, yes.

Q. "The future work programme:

"It was agreed that AMI would provide the first draft of parts of the report which had not been included in the first draft of the overall report for comment before submission of a complete second draft the following week."

And the following week would have worked out as being the week of the 17th October, in fact, which was the date originally suggested by the meeting of the 14th September?

A. Yeah.

Q. Now, in relation to that, those minutes clearly don't reflect the full discussion that had taken place?

A. No, they are very brief minutes of what was obviously a long meeting.

Q. But what we can say is that those minutes were prepared and signed off on by Margaret O'Keeffe?

A. Well, the signature is actually a signature of my secretary, and that's probably only well, she wasn't my secretary; she was one of the clerical people who attended to my secretarial needs but was also in the division. And it seems she probably typed it and was given clearance to sign because Ms.

O'Keeffe wasn't around, or something like that.

Q. Perhaps I should have put that differently. They would have been drafted by Margaret O'Keeffe?

A. Oh, yes.

Q. In the first instance?

A. Yes, no doubt about that.

Q. Or dictated, possibly?

A. Yeah.

Q. And then typed up by your secretary and signed off by her?

A. Yes.

Q. But the significance is that they were prepared by Margaret O'Keeffe, whose handwritten notes we have at the next indent, 121, which is a fuller version of the same meeting?

A. Yeah.

Q. And what this shows is a fuller expansion of what in fact we have already dealt with, that first of all, the discussion about "confidentiality, the Minister knows shape of the evaluation order of the top 2. Minister of State does not know. Quick announcement." Then it goes into the agenda which is the "draft report, the future work programme.

A. Producing draft number 2."

And the view clearly appears to have been expressed by somebody that the one which was produced was a good working draft, produced on time, and the annex should

be part of the main report. And the object, to get feedback on contents, style of report, and content accuracy.

So that's to a certain extent what people appear to have been looking for?

A. Yeah.

Q. "The initial report is identified as being too brisk and critically needs more elaboration and reasoning more significantly. There would be few lay readers, but they would be critical. Terminology needs to be explained".

That in a sense speaks for itself, but appears to be saying that or does it appear to be saying that the report should be clear, understandable, and capable of being easily read and understood by ordinary people of the public who might be reading it?

A. Yes, I think that's fair comment.

Q. Michael Andersen brought the appendix on tariffs with him to the meeting, but the description of the methodology, which is Annex 2, is still missing.

"Different groups examined dealing with commissions.

The relevance of the annex dealing with conflict was discussed. There was a full discussion needed on

Annex 10", which is the financial one.

Do you know what that was about?

A. I can't say that I do now.

Q. "The Minister doesn't want the report to undermine

itself, either a project is bankable should be

balanced arguments".

That in fact would reflect your own view, I think, Mr.

Brennan, and the view of the AMI and the project team,

that nobody would want the report to undermine itself?

A. Yeah, I think that's fair comment again.

Q. And they want it to be a report that, once read, you

could put aside and say "Job well done. Right result.

Let's move on".

A. Yeah.

Q. Isn't that right?

A. Yeah.

Q. "Bankable" isn't, is it fair to say, isn't being used

there in the sense you might use "bankable" if you

were going to put money into a bank?

A. No, I think the project is capable of attracting the

necessary equity. Equity and debt financing.

Q. What then is dealt with are changes in the first

instance suggested by Mr. Andersen in respect of

changing certain marks. And this is the kind of

tweaking that you were talking about that was left

over from the meeting of the 28th September, a

tidying-up operation?

A. Yeah. Without examining the documentation in detail,

I don't know whether some of it is correcting

inaccuracies

Q. That's what I mean

A. more so than changes arising from analysis. I don't know which or whether.

Q. What I mean is, in a sense, this is part of the process?

A. Yes.

Q. That was left over from the 28th, that we have the result, but we have to check it and see that it is accurate?

A. Yes.

Q. And then the next page is deals with various things: the supplementary analysis, the interconnection, the quantitative evaluation; and you say, or at least you discuss that you will proceed in the way Andersen suggests and will strengthen the report. The annex on methodology should cover this and become the main report.

There clearly was a view or is it right to say that there clearly was a view at this meeting that the report should be strong and clear and positive?

A. There is no doubt about that.

Q. Mr. McMahon agreed with you in relation to this and says he would look to see more of a user-friendly overview, that confidence should ooze out of the report. The document will be read by secretary and assistant. The Minister's programme manager (no technical)" presumably that's no technical expertise

A. Yeah.

Q. "Department of Finance". And he was presenting a similar view to the rest of you, that the report should stand on its own and ooze with confidence, as he says?

A. Yes.

Q. And I think it's fair to say that just reading that, that there was a degree of unhappiness, whatever level you put it at, there was a degree of unhappiness that the report was shy on being strong, positive or oozing confidence?

A. Yeah, there was wide recognition in the group that the report needed a good deal of further work.

Q. And then over the page, starting at the bottom of the page and going over the page, John McQuaid makes contributions in relation to the quantitative analysis, a report based on qualitative concluding remarks.

And a discussion then develops over Table 16, 17 and 18, to which Michael Andersen contributed. And that all speaks for itself; I think it was just more discussion on the same things. Is that right?

A. Yeah.

Q. And that continues on the next page with Mr. Riordan contributing and yourself contributing in relation to various aspects.

So, at the end of those six or seven pages, Mr.

Brennan, what they establish is a very detailed discussion in relation to all aspects and matters contained within the report which were of concern to various members of the committee?

A. That certainly is what this document is showing, yeah.

Q. And what you were all trying to do was to talk your way to the position where you would be able to get a report which you were happy with, in the sense that it reflected the work which you had done and the result which had been achieved?

A. Yes.

Q. And would be a report which, when read by those who were not part of the project team, would be understood by them as being a result which was correct and stood, on its face?

A. Yes.

Q. And it doesn't it does need to be said, I am afraid, but it is absolutely clear that so far as we have said already, that no indication, suggestion or evidence of any textual suggestions being made by the Minister to bring anything into the report?

A. Or by anybody else outside of the group.

Q. Now, the next few pages are matters also dealing with the report. And I know that Mr. Healy touched on these well, dealt with them. But the first one is at Indent 122, and I think that's a note of Mr.

McMahon's?

A. It is indeed.

Q. And he says "We have a draft report of AMI which recommends A5, A3, A1 (they are not too easy to read)

MB goes through some points.

MA page 23, 44, page 1, see changes

no changes to AMI, recommendation as a result

report reflects quantitative and qualitative

evaluation".

It's a short note from Mr. McMahon?

A. Yeah.

Q. But that's the note that he seems that seems to have survived or else was taken at that meeting; isn't that right?

A. I guess it is. Where it says in brackets "Only limited number of copies, would he have T&RR not had a chance to read in full", I think that reflects a discussion much earlier, maybe a meeting or two back, where it was agreed there would only be two copies, and they would not leave Kildare Street. And his office was not in Kildare Street.

Q. That was the meeting of the 3rd October, the interdivisional report?

A. Okay.

Q. Where the report was identified and it would remain in that building?

A. Mm-hmm.

Q. Now, 123 I think is another I am afraid I don't

know whose handwriting that is, and I can't read it;  
but perhaps you can identify it for me, just for the  
sake of the record.

A. I think I was asked previously about that, and I am  
not either able to read it or say whose handwriting it  
is.

Q. The next one at 124, 125 and 126. 124 is a note from  
Mr. Buggy and Mr. Riordan to Mr. Michael Andersen, and  
it says: "Further to our discussions this afternoon,  
as promised, we set out below our particular queries  
on the financial section of the report."

And those are things which they had identified which  
they need to be changed which they require to be  
changed. But if I can just go to 124 sorry, 125,  
that appears to be pages from somebody else on the  
committee. Do you know whose writing the first two  
pages are?

A. I don't.

Q. And are there four pages in that?

A. There are, yes.

Q. Now, what I want to draw your attention to, the second  
two pages seems to be a meeting with Mr. Buggy. Do  
you know whose handwriting this is?

A. I am afraid I don't, no.

Q. And it's notes for the meeting on the 9/10?

A. Yeah.

Q. Now, what is not clear to me and even before

discussing the contents, because it's a meeting with Mr. Buggy and because it's for the meeting of the 9/10, it's possible that sorry, it occurred to me that that may have taken place before the faxing of the note from Buggy to Michael Andersen, the typewritten version?

A. It could easily have done, yeah.

Q. Because they certainly seem to have some class of relationship. But what interested me is this: that both of those handwritten pages are have set out the financial dimension tables?

A. Yeah.

Q. And there are some changes which are identified through handwriting or otherwise. And I don't know what the explanation for them is, but what I was wondering was and I may be totally wrong, and you may not know the answer to it but I wondered whether those notes might have been the subject matter of the discussion which is referred to in the typewritten notes, and the matters which remained to be dealt with or which required to be typed out were then set out and sent across to Mr. Andersen. Do you understand what I am saying?

A. I understand the question, but I don't have an answer.

Q. It's just that they seem to I am not saying that they do, but certainly they seem they certainly seem to relate to the same section of the report?

A. They do. And I would have little doubt that their authors will surface in this inquiry. But at a guess, I mean, it's not Mr. Towey's handwriting, I know that, so could one be Mr. Riordan and one be Mr. Buggy, I just don't know.

MR. HEALY: I think I could be of assistance, if it's of any value. I am fairly certain the Tribunal wrote to Mr. Buggy and he confirmed that, as Mr. McGonigal is suggesting, the handwriting on the printed document is Mr. Buggy's; and the printed document probably, judging from the two documents, came into effect or was generated following the typed following the handwritten document.

MR. MCGONIGAL: Thanks very much.

Q. Now, moving on from that, then, the next matter which appears in that book which I'll deal with at the moment is simply a memo from Maev Nic Lochlainn to Mr. Andersen indicating a number of colour copies of a report and who they would be sent to. And that's dated the 18th October.

I don't understand the handwritten note. Can you help me in relation to that? Do you know whose it is, first of all, and then it's not up there; it's the next page, Tab 127.

A. Sorry, there isn't what I have at Tab 127

Q. You only have a single page?

A. No, I have a sorry, now I have, yes, a table of

numbers. That's Mr. Fitzgerald's handwriting.

Q. Okay, we'll deal with him. And the rest of the handwriting in that is his, I presume?

A. I think it is, yeah.

Q. Now, I just want to go to Book 3, Department documents, to deal with a short number of documents in relation to that.

A. What book number is that?

Q. It's Book Number 43.

A. Are you finished with the book we have been using?

Q. Yes.

Document 131 is simply is a note dealing with matters to be incorporated within the licence; isn't that right?

A. That's right, yeah.

Q. And that was an event for the future, down the road.

A. Yes.

Q. And in fact I think what I should be doing, Mr. Brennan, because I'll only go totally out of sequence, is go back to the Evaluation Book 2 for a second. I am sorry about this.

The tab number that I just want to draw attention to try and put it in place is Tab Number 44. That's a version that's identified as a version of the 13/10/95, and it originated as 15 pages, of which we appear to have 3, and it may not be possible for you on the basis of these three pages.

It was first of all created after the meeting of the 9th October. It seems to relate to computer work which AMI would have been responsible for and is a redrawing or redrafting of tables which were considered relevant for checking; and am I right?

A. I can't really offer you much help with that.

Q. In the same tab I think is a document which is I seem to have inserted, Mr. Brennan, into that tab number for some reason what is called an executive summary, which is a date I think of the 12/10/95. I think it may be Tab 42. Yes, it is, I am sorry, I have taken it out of do you have that?

A. I do, yeah.

Q. It's a further indication of work which resulted from the meeting of the 9th and is, in effect, the what is identified as the executive summary, together with Appendix 2, and they seem to have been made available at this time and speak for themselves?

A. I think so, yeah.

Q. The next one is again another result of a meeting, at Tab 45, which is comments on the presentation of the results by AMI of the evaluation of the GSM applications. And this is a note, I think is it from Maev Nic Lochlainn? On the top right, it seems to be Maev Nic Lochlainn.

A. I think it is, yeah.

Q. It seems to be the 12/10, and it was sent to AMI on

the 13/10?

A. Yeah.

Q. And it's her comments in relation to how matters should be changed in the report following that meeting?

A. Yeah. It looks like her resume of other people's work rather than her own original, but I am not sure.

Q. But again it's an indication of the way in which this report was changed to result in the one that finally was delivered on the 25th?

A. Yes, that's correct.

Q. And shows the people who were working on it and the way in which it was done from various different departments, different divisions of the Department?

A. That's right.

Q. The next document, then, is the report of the what is called the final draft version, which is Tab 46, of the evaluation sorry, final draft version of the evaluation of the six applications. And that is, together with Tab 47, the appendixes thereto, and that is a version of the report which incorporates all the changes.

A. All the changes up to then, yeah.

Q. It was perceived initially as being hopefully the final draft report?

A. Well, all one can say is it's called the final draft and the next one is called the final version.

Q. I appreciate that, and I think that what I am simply saying is at this stage, and based on what we already know, that it was thought, or hoped, or whatever, that this might be the final draft; but when the report when this report was seen, it was clear the changes had to be made because members of the committee wanted changes to be made?

A. There are nuances there, and I am not sure whether it was always seen that this was going to be the final report or whether this was the last draft leading to a final report.

Q. I understand, I think. But whatever it might be, I don't want to open it other than to draw your attention, for the purposes of identification as much as anything else, that the Appendix 4 and Appendix 10, which are on the financial risks and conformance, seem to be unchanged and speak for themselves in the way in which they were initially drafted?

A. I haven't checked these drafts to that extent, but I take it you have, though.

Q. Now, the next document, then, Mr. Brennan, is the 23rd October, which is Tab 132. Now, that meeting seems to have been attended by the entire team.

A. Yeah.

Q. Except by possibly Mr. Andersen, who may have been on conference phone.

A. Yeah, I think that's probable, but I am not sure.

Q. And the first item was to have the minutes of the previous meeting amended to reflect something which Mr. Riordan was bringing to the attention of the committee, that Mr. Bruel was sufficiently satisfied that the financial tables as evaluated were adequate and true, and reference to this statement had been omitted from the minutes of the previous meeting in error.

Then the next matter is the discussion of the draft report, and the meeting proceeded with a discussion of the draft AMI evaluation report. Views from regulatory, technology and Department of Finance all indicated that while there was general satisfaction with the detailed analysis and the final result, the presentation in the draft report of that analysis was not acceptable.

So clearly there was a firm view being articulated at this meeting, from those divisions of the Department, that the draft report of the 18th October wasn't acceptable and would have to be changed?

A. I would say it was still not up to the required standard, yeah.

Q. And there was a discussion then in relation to that, and a re-ordering of certain sections of the report together with some textual and typographical amendments were agreed?

A. Yeah.

Q. And is that am I right in understanding that that is what that meeting focused in on?

A. I think that that meeting was the one that gave rise to the subsequent detailed note by Mr. Towey back to AMI, which is all about the way the report was presented.

Q. And is that the one which is identified in Tab 139?

A. Yes.

Q. Now, to arrive at that

A. I have expressed doubt before as to whether there was one meeting on the 23rd or whether it was the 23rd and 24th.

Q. I appreciate that. But to understand that, how that came about, first of all there was a significant discussion at this meeting as to the whether the analysis was acceptable or not?

A. Yeah.

Q. In other words, whether the report was capable of being presented?

A. Yes, and I think it's likely that this was the first time that Mr. McMahon's side had read the report from start to finish. It's acknowledged in the documentation we had earlier that they hadn't fully examined the previous version when at the time they came to discuss it.

Q. And their particular comments are, in the first instance, seen in the next document, which reflects a

discussion between Mr. O'Callaghan and Mr. McMahon which, as I read that, didn't take place at the meeting, but took place outside of the meeting and is between themselves?

A. That's my understanding of it, yes. I first became aware of it in the context of the Tribunal; I'll put it like that.

Q. And they were recording the conversation between themselves where they were initiating a position which they would take if the meeting insisted on the report going as it was?

A. Yeah.

Q. Isn't that right?

A. That's certainly what I have said here before.

Q. And that jumps out at you from that note as well?

A. It does, yeah.

Q. And I think then Mr. McMahon's note is on the 23/10, his notes of the meeting are there, and he records the robust discussion which was had in relation to this report and its analysis?

A. Yeah.

Q. And in particular, identifies his concerns in relation to it?

A. Yeah.

Q. And it's clear from that, it has to have been I take it it was the position, Mr. Brennan, that that was quite a significant discussion at that meeting?

A. I am sure it was, yeah.

Q. And to put it at its mildest, was robust?

A. I think so.

Q. And it in fact resulted in, as we see from the note, you seem to have all gone to see the secretary at 3.30 to bring about a situation where time could be given, which wasn't subsequently needed, but time could be given to finalising and properly finalising the report; isn't that right?

A. Yes.

Q. And as Mr. McMahon says, "Agreed that report not clear enough to support decision". "QED", which is a Latin Jesuitical expression?

A. We would have used it in the Christian Brothers, too, in geometry or somewhere.

Q. I just wanted to see how many understood, Mr. Brennan.

A. I have read recently in a note from Mr. McMahon to the Tribunal, I think it's "quod erat demonstrandum".

Q. It used to be used in maths, mainly?

A. Geometry.

Q. Anyway, we are a little off target.

But in its own way, it signifies that the position which Mr. McMahon was contending for was QED'd; isn't that right?

A. Yeah.

Q. And as a result of that, as we turn over the page, we see that on their return, a further discussion,

significant discussion took place "which resulted in a final decision showed that it was not to be on Table 16 this resulting from both our meeting with the secretary and independently by the group in our absence.

"It should be Table 17 and 18."

A. Yeah.

Q. So two things there, but mainly the fact that while a number of you were off discussing matters with the Secretary, the AMI and project people were continuing with their discussions; and by the time you came back, a consensus view was arrived at that instead of relying on the then Table 16, you would rely on 17 and 18, and they're from the report of 18, draft report of 18, and they would be changed for the final report?

A. Yeah. This goes back to the question of Andersen's earlier draft talking about four methods, and we said three methods, and one was a reorganisation of the other to fit our chapter paragraph 19 model, and so on.

Q. And his final comment is "They can't agree on whether the same weights went in. It seems that MB dreamt them up"

A. "Dreamt them up" is what he is saying, during qualitative evaluation.

Q. Well, that speaks for itself too.

A. Yes.

Q. But what that signifies that signifies a number of things, really, Mr. Brennan. It first of all indicates that even at this stage of the preparation of the report, that the committee were fully focused on the work that they were doing and trying to achieve the best possible report?

A. I think that's true, yeah.

Q. And that no member of the committee could or was taken for granted, and each was prepared to put in his contribution, and that contribution was considered?

A. Yes.

Q. And when it became necessary, the report was changed, both in detail and in substance, in various sections?

A. Yes.

Q. And as a result of this meeting of the 23rd October, people went back to the drawing board to correct and bring about the changes which they wanted from the report of the 18th to improve it and strengthen it in the way in which the committee had decided it should be done.

A. Yes.

Q. And it was the committee who made those decisions and made the suggested the textual changes which were to be brought about?

A. At that point, yes. It's clear that there was some discussion then with Mr. Andersen as to the exact wording in some areas.

Q. Absolutely. And those discussions, as you have indicated, were sent across by Mr. Towey and have been identified in the first instance in Tab 139; isn't that right?

A. Yeah.

Q. And then Mr. Andersen faxed those back with his handwritten notes, and then Mr. Towey faxed them back with his comments and corrections?

A. Yeah.

Q. Isn't that right?

A. That's what the record shows, yeah.

Q. And that, in a short version, is how the draft final report of the 25th October, the final version of the report came about?

A. Yes.

Q. Isn't that right?

A. Yes.

Q. And just turning to that for a second, it's in the evaluation book, Volume 2. Now, in actual fact Mr. Healy has dealt with some of the changes, but it seemed to me, reading it, that the that changes that were significant were leaving aside sensitivities, risks and credibility factors, that chapters 6 and 7 seemed to have undergone some changes, and effectively seem to be the ones to have been redrafted, if you like to use that expression?

A. Yeah, there was a re-ordering, I think, as well.

Q. I think that chapter 6 in the report of the 18th became two chapters, chapter 6 and chapter 7?

A. Yeah, I think that's right.

Q. And even within those, significant changes were put into those

A. Yes.

Q. two chapters to effectively strengthen them and bring about the result which was considered appropriate.

A. Yeah.

Q. Now, equally, the other changes which had been identified by Mr. Towey's note can be actually traced through and it's not something I am going to do, but it can be done because it was done you can actually trace the changes from Mr. Towey's notes through the report of the 18th as it now appeared, or didn't appear, as the case may be

A. Yes, and through the conversation with Mr. Andersen.

Q. Yes. All of those

A. The evidence is that Mr. Andersen considered the amendments before he took them on board, judging by what's in evidence here.

Q. And those textual changes are there to be seen?

A. Yes.

Q. And that's the report which eventually which goes to the Minister, and the Minister then goes off to the subcommittee and then to the Cabinet?

A. I am not sure what happened at that level, now, to be honest.

Q. But what I want to get to is this, Mr. Brennan: So far as you are concerned, this was the finalisation of the report upon which your decision which reported the basis of arriving at your decision which had been arrived at on the 28th September?

A. Yes.

Q. And taking the documents, which are the Department's documents, it's abundantly clear that all of the work in relation to that process and the preparation of the report was carried out by both AMI and the committee set up by the Department?

A. Yes.

Q. And it's clear from this morning that the result was a result within the confines of that group?

A. Yes.

Q. And that the report was a report produced within the confines of that group?

A. Yes.

Q. And that the contents of that report had no input from the Minister or an outside influence?

A. That's correct.

Q. And those are all findings of fact which you would expect and anticipate that this Tribunal would come to?

A. That's an awkward word for me, not being a lawyer, but

I think that's fair.

Q. It's more than fair, Mr. Brennan; it would be right.

A. Okay.

Q. Isn't that right?

A. Yeah.

Q. Now, there are just a few other things, Mr. Brennan, that I think I just want to go through very briefly.

First of all, I know this has been mentioned already, but I just want to insofar as the RPT document was concerned, the way in which that document was drafted provided no procedure whereby an applicant could be excluded from the competition, or indeed disqualified from the competition?

A. Yeah, I think it was open to anybody to apply.

Q. It was open to anybody to apply, but at the same time, there doesn't seem this was something which Mr. Andersen touched upon in one of his reports, but it is an actual fact that there doesn't appear to have been a provision providing a methodology or procedure whereby somebody could be disqualified or somebody could be put out of the competition, rejected?

A. Except that if you got an application, and I think I used these words before, from a bank and a County Council, they would fall at the first hurdle, so to speak.

Q. That's on the conformance?

A. Because they didn't have any experience and technical

capacity whatsoever.

Q. Which what did you have in mind when you said that, Mr. Brennan?

A. Applications had to have technical and financial competence, and if you didn't if you were never in the telecommunications business at all, you'd find it very difficult to demonstrate technical competence.

Q. Are you referring to chapter 9 paragraph 9 or 19 when you say that?

A. Paragraph 9 or a chapeau of 19, yeah.

Q. That "Applicants must demonstrate their financial capacity and technical experience and capability to implement the system, if successful, and must include a business plan for at least the first five years and a complete technical proposal."

Am I not right in thinking that the only way that a person could demonstrate that is through the documents of the application itself?

A. Oh, yes.

Q. So that would of itself have involved a consideration of the application?

A. Yeah.

Q. And would not have been done prior the first thing that was done, apparently, was to see whether the applications conformed with the procedural formula, the pages 350 pages, and things like that?

A. Yeah, it was a one-phase process, let's say.

Q. But secondly, after that, the detail of the applications would then be gone into?

A. Yes.

Q. And the detail of the applications, when gone into, would be scored on the basis of what was contained in the applications?

A. Yes.

Q. There would not be a process whereby you read the applications and said "XYZ Limited knows nothing about telecoms, therefore he cannot be further considered"; what you might have said would be that "XYZ doesn't score well on this particular section"?

A. Yeah, okay.

Q. Is that right?

A. I think that's fair comment, yeah.

Q. You see, I want to be clear about this, Mr. Brennan, because it seems to me, reading 9 and 19, that they are insofar as they are capable of being divided or should be divided, they are part of the process of evaluation which takes place.

A. Yeah.

Q. And that to determine whether there was financial capacity or technical experience or the capability to implement the system, if successful; so that you could start off by knowing nothing about telecommunications, but having prepared yourself for the competition, you could quite easily demonstrate the ability to

implement the system if successful, and equally demonstrate the financial capacity and technical experience within the parameters which were being set down within that?

A. I am actually having difficulty following your line at this time.

Q. I have no line. I am just trying to interpret what I think is the written word, Mr. Brennan.

A. Yeah, okay. But at some length, and I was losing concentration, I think, in the middle of it.

Q. I'll try and shorten it. What I am actually saying is, Mr. Brennan, is that if I had put in an application form, even though I might know nothing I am disappointed that Mr. Nesbitt should laugh at that remark, but anyway and I might know nothing about telecommunications, so long as I was able to demonstrate an ability, a technical ability, a technical experience, a financial capacity and the capability of implementing the system, I could only do that by reference to the application itself?

A. Yes, okay, yes.

Q. And that the only time that was judged or was going to be judged was when I had passed what has been called the threshold conformance test; in other words, is my application form in accordance with the method requested?

A. Yeah, okay.

Q. And that you, i.e. the project team, would evaluate my application form and determine whether or not I was entitled to various marks which might or might not place me first or last?

A. I mean, I would see it that way, but I appreciate, from being here for so many days, the Tribunal takes a different or the legal team for the Tribunal takes a different view.

Q. But what actually started this, and what was interestingly a more interesting question in some respects, Mr. Brennan, because it may have relevance, the RFP document itself had no procedure to enable a rejection once the conformance test had been passed.

A. Yeah, okay, yeah.

Q. And there doesn't seem to me to be any procedure or method whereby an applicant could be disqualified?

A. I follow what you are saying, yeah.

Q. The other matter that I wanted to just touch on is an answer which you gave to Mr. Healy in respect of a conversation, an alleged conversation which took place on the 17th September in Hartigan's between the Minister and Mr. O'Brien. And regardless of the various parties' evidence on that, and we have their various statements, what I am interested in is you indicated that you had an opinion as to, on a certain position in relation to that alleged conversation?

A. I did.

Q. And Mr. Healy said he might ask you about the opinion.

Since he hasn't, we might as well ask you, Mr.

Brennan.

MR. HEALY: I decided, in light of something that Mr.

Nesbitt said, that I wouldn't ask the witness for his

opinion until such time as perhaps other people

involved in that conversation firstly, the

conversation between Mr. Simonsen and I think his

colleagues; and secondly, Mr. Lowry and Mr. O'Brien.

It was on that basis that I decided, after what Mr.

Nesbitt had submitted to you, Sir, that I should wait,

and I think that seems only appropriate.

CHAIRMAN: Well, it may be something that will be

reverted to in the course of that Telenor evidence,

but I am disposed to allow Mr. McGonigal to put his

question at this stage. It has already been touched

upon, and it's been noted, and

MR. MCGONIGAL: It may not carry much weight, Mr.

Chairman. It's simply that we have left nothing

else has been left out, so we might as well

A. I declined to volunteer my opinion previously because

I think it's maybe I just spoke too quickly at the

time. It's you know

Q. If you prefer not to, Mr. Brennan, I am not going to

push you.

A. I would prefer not to volunteer in detail, because at

the end of day it's my opinion, and it has no

evidential value whatsoever, or evidentiary value, or whatever the appropriate word.

Q. Okay.

The other detail that I wanted to just clarify and I don't know if you can help me in relation to this, Mr. Brennan you will recollect that Mr. Coughlan told us during the opening that the inquiry had carried out some class of preliminary investigations/inquiry in July of '99 in relation to this matter; do you remember that?

A. I don't recall that from the Opening Statement.

Q. Well, he did tell us that, that some class of an inquiry was entered into by the Tribunal at that time, and they took a particular view which Mr. Coughlan articulated in his opening. But what I am just curious to know is this: Can you assist me as to what documentation or whether the Department's documentation had been given to the Tribunal at that time?

A. I can't assist you in detail. I suspect it wasn't, but I am sure the Tribunal knows. I mean, I was here with the Tribunal in private session over an extended period, but I don't have the dates in mind any more.

I probably never had the dates in my head. And I have a feeling it wasn't but there weren't documentations at that stage, but I don't know.

MR. HEALY: If I could be of assistance. The Tribunal

did meet with Mr. Brennan, Mr. Loughrey and Mr. Towey and subsequently received a document containing an overview of the process.

CHAIRMAN: And that was

MR. HEALY: None of the documentation, not a scintilla of the documentation has been produced here. But we did receive the formal documents, I think, but in terms of the documents that have been opened here, we had none of those documents. And I hasten to add, they weren't sought either.

CHAIRMAN: Yes.

MR. MCGONIGAL: Mr. Chairman, there may be other questions which I will want to direct to this witness in relation to the licensing matters as pertained between October and the granting of the licence. And to try and shorten matters, the view that I have taken is that since Mr. Brennan has identified Mr. McMahan as the person who would seem to have the major contribution, that it would be more appropriate to deal with that section with Mr. McMahan and try and deal with things in that way. It may be that I may have to ask for a recall of Mr. Brennan, but I would hope I won't have to; but if you would allow, that's the position I'd like to take in relation to that.

CHAIRMAN: Well, on the basis that in fairness, Mr. McGonigal, if something further transpires, that the testimony of Mr. Brennan is particularly material to

the actual granting of the licence, although his evidence on many occasions has been to the effect that he occupied a somewhat more subsidiary role for that portion of the process, if that were to transpire, I would see that you would not be shut out. But is there anything you particularly want to put?

MR. COUGHLAN: It may be of assistance, and we could facilitate My Friend in this regard, if he was prepared to furnish us with a statement of his position in relation to that matter, something that we could give to Mr. Brennan and ask for Mr. Brennan to comment and perhaps shorten matters that way.

But I just offer that as a suggestion to My Friend. I know Telenor have assisted in that regard. There is no obligation, of course, to My Friend, but that might be of some assistance in shortening matters.

MR. McGONIGAL: I'll note Mr. Coughlan's offer, and it's appreciated and accepted in the spirit in which it's asked for.

CHAIRMAN: Good.

Q. MR. McGONIGAL: I don't think there is anything else at the moment, Mr. Brennan, that I want to discuss with you. Thanks very much.

CHAIRMAN: Well, Mr. Brennan, are you feeling the pace to any particularly great extent? You have basically three more encounters. You have Mr. Fanning on behalf of Mr. Lowry; you have Mr. Nesbitt, presumably, from

your own legal team; and then you have such remaining matters and perhaps some allusion to the extra material referred to this afternoon from Mr. Healy, so plainly we are going into tomorrow. Do you want to perhaps take some fifteen minutes of the next examination before we call it a day?

A. I am in your hands, Chairman

MR. FANNING: I don't know if I'll be much longer than 20 or 25 minutes in total, Chairman. I am in your hands as to whether it's appropriate I begin now. It might be desirable that I went all at once, but I don't think I'll be much longer than that. But as you know, barristers' estimates are always unreliable as to how long they will be.

CHAIRMAN: We have lost a particular amount of time, Mr. Fanning. Unless Mr. Brennan is really distressed, and I don't think he is, I think perhaps we should proceed until ten past four. If you have to go into tomorrow, I understand that position.

MR. FANNING: Much obliged to you, Chairman.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FANNING:

Q. MR. FANNING: Mr. Brennan, sorry to be addressing you at such a late stage in the afternoon. You will be aware that I think you know that I appear for Mr. Lowry, and I think it's inevitable at this stage that diminishing marginal returns set in, when you are asked to reconsider the same ground that has already

been gone over in greater detail by some of my colleagues. But there are some points that I do want to put to you that I seem to be of the view of that they are of perhaps particular relevance to Mr. Lowry.

If I can begin with a particular point that I want to raise, Mr. Brennan, that arises right at the outset of your evidence that you initially gave to Mr. Healy on Day 163, which is Tuesday the 17th December 2002.

And Mr. Healy, I think at the beginning of that morning, Mr. Brennan, raised an issue as to the appropriate basis on which he should examine you and the appropriate basis on which you should consider your evidence. And he raised this concept of 20/20 hindsight, and it's at page 26 to page 27 of the transcript of that day.

And he asked you and invited you to look at the events for the remainder of your evidence with the benefit of 20/20 hindsight. And your answer to that invitation was that you understood what he was saying, but that you weren't sure whether it was reasonable or not to do so.

I am just wondering, could you perhaps hum a few bars to me as to why you felt it was perhaps not reasonable to look at matters with 20/20 hindsight in this forum?

A. Well, I think I have consistently said at various times throughout my evidence that we were dealing with material and people at face value, making appropriate

judgements and decisions as we went along, based on the information we had, and I believe, where necessary, with an appropriate degree of what's I think known as due diligence, checking what needed to be checked in our opinion at the time.

And I suppose, to revisit that seven years later, with additional information and armed with a lot of media speculation, innuendo, etc., is bound to lead to some kind of distortion of what we believed we were doing at that time.

Q. It almost falls into the trap I am in complete agreement with your view, Mr. Brennan; it almost falls into the trap that Mr. McGonigal had in fact outlined, the very same morning, of assessing the assessors.

And I think that was a warning he gave in his reply to the Opening Statement just before you began to give evidence.

Now, Mr. Healy, however, in the course of his examination, has proceeded on the basis and I don't think he was corrected by the Sole Member at any stage that it was appropriate that we look at matters with the benefit of 20/20 hindsight. And whilst I don't accept that that's an appropriate test at all to be applied, either in questioning or in adjudication, I'd like to follow through its logic for a moment and deal with an answer that you gave some ten minutes later to Mr. Healy, on the very first morning of your

evidence. And that's in the transcript, Day 163, at the bottom of page 28.

And you were discussing the change in departmental policy in the issue of deregulation of telecommunications generally, and you said "I believe it was June of '93, the relevant Minister came back from a consul having, in the words used at the time, saved Ireland from the liberalisation of the telecoms sector till the year 2003. Now we set about changing that agenda, and we assembled" and you went on then.

So, using Mr. Healy's concept of 20/20 hindsight, what would you say now about a Minister who returned back from a European meeting in 1993 proclaiming a tremendous victory for the nation, that deregulation of the telecoms industry had been staved off for a decade?

A. I try

Q. Using 20 /20 hindsight?

A. I try not to offer my opinions about the decisions of people democratically elected. What I will say is that the Department set about changing the agenda; the Department came up with a written-down document. I understand that that document has recently or is about to be put into evidence in the Tribunal, simply because it exists, because it's a document that was never published.

Q. As a current senior civil servant, I know I am putting you in a difficult position, but I put it to you that using Mr. Healy's 20/20 hindsight, it's hard to conclude that the view of the Minister was anything other than extraordinary folly. I think it's hard to conclude that the view of that Minister coming back would, if it was carried forward, have cost Ireland a huge economic advantage, would have cost the country perhaps hundreds of millions of euro?

A. Let's be clear that the Minister at that time was advised by the civil servants who were dealing with those matters at that time.

Q. Exactly.

A. And that the whole team changed.

Q. Yes. I think the Sole Member some days later referred to this previous approach almost as a King Canute kind of policy, in denial, if you like, of the sweeping changes that were to happen in the 1990s?

A. In any event, we took the view that technology would mean that the sector had been to be liberalised.

Q. You see, the only point I am really trying to draw out of this is not really to blacken the name of any other Ministers. What I am trying to do, Mr. Brennan, is to contrast the culpable inertia of a previous regime with what I see as the in fact commendable alacrity of Mr. Lowry when he took office, because it seems to me that the only evidence that's been tendered in respect

of Mr. Lowry's actions is to the effect that he had an overriding interest in speed

A. I am sorry, I can't give you that one, in the sense that the change of policy took place before Mr. Lowry came onto the scene.

Q. Right.

A. But Mr. Lowry fully accepted the new policy.

Q. Right. I think you gave that evidence to Mr. Healy, that the Department became pro-competition, and I think you accepted that Mr. Lowry, to the extent he had personal opinions over and above the advice tendered to him by his civil servants, was also pro-competition in his outlook?

A. Absolutely, yes.

Q. Now, I'll turn then to the very issue of your view of Minister Lowry in general. I think you have said in your evidence already that you were quite clear in your view that he had no preferred outcome as to the result of the competition, in your observation of him?

A. Yeah.

Q. And you have accepted a few moments ago that he was generally pro-competition?

A. Yes.

Q. Would it be fair of me to say that he was a Minister who was perhaps more interested in execution of decisions rather than the detail behind them?

A. I actually think that's a good summary, yeah.

Q. He was a doer?

A. I could certainly give examples outside of this field where there is plenty of evidence for that, but it's not of interest to the Tribunal.

Q. I think the issue of the 15 million cap that was eventually placed, that caused a delay, has already been canvassed extensively with you, and I don't need to go through the minutiae again; but am I correct in saying firstly that the delay caused by this issue was a source of irritation to Mr. Lowry?

A. Yes.

Q. Am I correct then also, in moving to a second critical time period in or around the 25th October 1995, that Mr. Lowry was anxious that an announcement would be made quickly at that stage?

A. Well, I have said in evidence a number of times that I passed on advice I got from the consultants that the quicker the announcement was made once it was clear, the better all around, and I believe Mr. Loughrey accepted that advice. I presume Mr. Loughrey passed it on to Mr. Lowry, if I didn't myself, and I think I have said before, the Tribunal will just have to hear from those witnesses. But I accept what you saying.

Q. But in interpreting Mr. Lowry's conduct in executing so quickly on the 25th October, it would have to be said he seemed to have an interest in moving quickly himself?

A. I think that was that is true.

Q. And again, going towards the middle of May 1996, when the issue became the actual formal grant of the licence to the successful consortium, Mr. Lowry I think again was seen to have an interest in moving the process speedily?

A. I actually think sometimes with a process like that you almost have to fix an end date, especially in a bureaucracy, to get a result.

Q. So I am just suggesting to you for the moment that really, the characteristic that hangs over Mr. Lowry most obviously in this process is, on my view of matters and on one view of matters, a commendable characteristic, and that's an interest and an anxiety at all stages that the process would move expeditiously?

A. There certainly was evidence, when he needed to be involved, like settling with the Commission, he wanted it done quickly, yes.

Q. Now, Mr. McGonigal has traversed the next area in some detail, but I do want to cover it briefly with you. I want to ask you questions in connection with your perspective of the role of Minister Lowry in the process, and I think those questions can be broken up, firstly pre announcement, pre 25th October '95, and then post announcement.

I think it's the case you were of the view, Mr.

Brennan, that Mr. Lowry could have in no way interfered with the determination of the Project Group?

A. Yes, I think that's evident from what we've been doing all day with Mr. McGonigal, that it was a process where all the different groups did all the different markings, and they were all pulled together in the end.

Q. I think you are of the view, Mr. Brennan, that Mr. Lowry was effectively reliant on the project team, and reliant on you as the chairman of that team, to produce a result on the 25th October, and he would have been quite unable to move without you?

A. Yes.

Q. And I think you made the point in your direct evidence that the Minister didn't actually have the final report when he made the announcement on the 25th October?

A. I am fairly certain the Minister didn't have the final report, but it now appears to me that a copy of the final report was in the Department.

Q. Yes, well, again I think this area has already been adequately canvassed. The only point I'd suggest is that in the sense that it's been suggested that Minister Lowry didn't even have a copy of the report, that only detracts from the credibility of any suggestion further that he could have possibly

interfered with it, doesn't it?

A. I wouldn't have made that connection, but it seems okay.

Q. Now, your personal view, I think you have given evidence to this effect, was that the deliberative process had been ended by the stage that the announcement was made and a decision had been clearly reached?

A. Yes.

Q. And I think you were of the view, and I have the reference in the transcript if there is any doubt, that the decision was a unanimous view?

A. Yes.

Q. And I think Mr. Lowry, who was the Minister at the time, was given a briefing document which was the subject of some considerable discussion already in your evidence; we don't know the precise parentage of this document, and we don't know the date of its genesis, but there is a briefing document that was discussed with you already in your evidence that appears to have been tendered to Minister Lowry that contains the statement I don't think I need put it any lower than that that the decision of the Project Group to recommend A5 as the winning consortium was a unanimous one; am I correct in all of that?

A. The Minister was certainly told that the decision was

a unanimous one. As to the status of a briefing document, I'd need to know which one you were talking about, because we have come back to the question of one briefing document where I don't have the primary evidence, and we were suggesting, I think it was yesterday, that it was unfinished work that ended up on the file. But that's evidence to be given by another witness.

Q. Yes, potentially, but just to be clear about matters, I am running this line of questioning off the transcripts. It's the briefing document referred to on page 175 of your evidence, page 43, and it's a briefing document that says right at the beginning, "Detailed examination has shown that A5 is clearly the best allocation". And it goes on in a number of respects to say A5 is better because it and so on and so forth.

I don't think it's necessary that I read it out again. But what struck me about that briefing document, Mr. Brennan, is it was the sort of document that and perhaps you can offer me some assistance in this respect that would typically be prepared by civil servants for a Minister that had very little detailed or technical knowledge. If you follow me, it's almost written in a type of baby talk, isn't it?" A5 is better because", with three buzz words then. "And A3 is worse because"?

A. Yeah.

Q. And it contrasts, under a number of technical headings, A5 and A3, and it explains in very simple terms, to an outsider to the process, why A5 was the stronger application; isn't that correct?

A. The document you are referring to does. But I am still hesitant about the status of that document, whether it's the one we talked about that I said yesterday I knew more about now than I knew last week or the week before. I think that's the document you are talking about.

Q. I can read out the full text.

A. I don't think that's necessary, so long as you understand that it's a certain document which I think you are talking about yes, I think

MR. NESBITT: Perhaps the questioner could identify the document, Mr. Chairman. It may be important, it may not.

CHAIRMAN: Well, this presumably is the document that it's now being indicated that Ms. Nic Lochlainn may have had

A. That's what I am driving at.

MR. HEALY: I think, for the assistance of Mr. Fanning, if Mr. Fanning can confirm, as he seems to be confirming, that Mr. Lowry got the document. It seems to be confirming it's of assistance.

MR. FANNING: I am not in a position to confirm

anything of the sort at the moment, Chairman. All I am seeking to do, in fact, is to ask this witness, who is an extremely experienced civil servant, if in his view it's the type of document that is prepared for civil servants who have been a party to a detailed technical process to explain to a Minister who's been much of an outsider to that process what the issues are. And I'll be suggesting to the witness and I'll suggest it to him now, really, Chairman, without unless there is any objection, that that's exactly the type of document

CHAIRMAN: Well, Mr. Brennan appears to have concurred with that suggestion, subject to his reservation about the precise genesis of the document.

A. Just for clarity, I would say that is the kind of document that civil servants would often prepare for Ministers; but in this particular case, I believe that another witness will give evidence in the future that that particular document didn't go anywhere, in fact, and was work in progress, not completed. But that's not my evidence. That's something I am aware of or have become aware of very recently.

Q. MR. FANNING: But the point is, to the extent that the document was generated on the civil service side of the equation, it appears to have been clearly written for a Minister who knew very little about the technical matters that the project team were concerned

with; would you agree with that?

A. I think that's fair comment, yes. I actually don't think that the Minister at any time got a deep understanding of the process, before, during or after. He understood, when we were launching, what we were launching, because there was a lot of political content in the original shape of the competition.

Q. It's almost the type of document, Mr. Brennan, isn't it, that you'd see on a programme like Yes, Minister. It's almost the type of document that would be given by civil servants to a Minister who they believed really was not only familiar with the process, but probably wouldn't even understand it in any significant level of detail?

A. I wouldn't like to discuss the operations of the Irish civil service in Yes, Minister terms or to paint Mr. Lowry as akin to any particular character in that series.

Q. Or yourself, indeed, presumably. Your evidence, anyway, Mr. Brennan, is that, if I have you right, you don't believe then that Minister Lowry interfered with the adjudicative process at all in any respect?

A. Correct.

Q. You don't in fact believe that it was possible that Minister Lowry could have interfered with the adjudicative process in any respect?

A. Correct.

Q. And as somebody who is now an assistant secretary of a government department, an extremely experienced civil servant, I take it that you'd accept that the work you did, that you are now here giving evidence about, was perhaps one of the most significant, if not the most significant, responsibilities you have been entrusted with in your professional career?

A. I think that's true, yeah.

Q. And you are effectively and I don't mean to lead the situation any more than it already is, but you are effectively, following on what Mr. McGonigal has suggested to you, staking your professional reputation on a finding that there was no interference in the process and that you are here in quite clear terms standing over the work of the Project Group that you chaired; isn't that all correct?

A. Yes, that's correct.

Q. Now, if I can turn, Mr. Brennan, then to certain issues that arise post announcement in respect of what I might call the IIU issue. The Minister announced on the 25th October 1995 that Esat had won the competition, and negotiations with them would be entered into. I think that's correct?

A. Yes.

Q. And as these negotiations went on into 1996, it became apparent, to paint very broad-brush strokes over much

more detailed issues that have arisen, that IIU would in fact be replacing Advent and the intending placing with Davys?

A. Yes.

Q. Now, I think, in fairness, it's been suggested in evidence that the first indication of the involvement of IIU from the perspective of the Department may have come with the Michael Walsh letter, if I can call it that, of the 29th September 1995.

A. Yes.

Q. And I think your position on that is that Mr. Towey quite correctly returned the letter and didn't refer it on, with the exception of your good self, to any of the other members of the project team?

A. That's correct.

Q. And therefore, the letter of Mr. Walsh didn't form any part of the deliberation of the Project Group?

A. That's correct.

Q. In any event, Mr. Brennan, as I understand matters, your evidence of your understanding of the consortium was that the consortium was a 50/50 split between Telenor and Esat, and that whilst 20% of a minority interest would be placed at a later date, your understanding of the ownership of the consortium was as a 50/50 split?

A. Yes, it was a 50/50 split with 20% to be placed.

Q. And accordingly, I think it's fair to say that the 20

percent that was intended or alluded to or referred to in the bid or tender documentation didn't really have any significant or decisive effect over and above another bankable 20% of funding on the outcome of the competition, in the sense that there were no technical issues that were covered by that 20% ?

A. They certainly weren't bringing technical competence to the consortium, but I think their availability as financial backers, as a funding mechanism and so on, was important.

Q. But I think you have given evidence already to the extent that the majority of the applications contained indications of probable changes of minority interests; isn't that so?

A. That is certainly true, although the Tribunal team have differentiated between

Q. They have, but I am asking, do you?

A. We took the view in the Department that they each of them, bar one, gave indications of future changes of ownership in fairly specific terms.

Q. And how significant then, ultimately, did you view the substitution of a different source for the 20% to be?

A. I have said a number of times that the change that came about in April of '96 became the subject of what I believe was appropriate financial evaluation and a degree of legal analysis as to its compatibility with the licence and so on; that those analyses took place,

so therefore it wasn't a matter that we took lightly.

We did deal with it.

Q. But you were satisfied ultimately that the change didn't have any legal effect that should fundamentally change the attitude of the Department in concluding negotiations with the Esat consortium. I think that has to be the case by virtue of the fact that the licence was ultimately awarded to them?

A. I believe that was the outcome of all of the consideration that was given.

Q. What I'd just like to explore for a moment, I think all that has been heard previously is what the alternative option for the Department was.

The alternative option, which has been indirectly canvassed in the sense that there is a criticism of the option followed, must have been to refuse to conclude a deal with the Esat consortium; that would have been the only other option at that stage, wouldn't it?

A. Yes, the clear rationale of the consultants' report is that if negotiations with the consortium placed in the first place didn't succeed, then you should proceed to negotiations with the next placed consortium.

Q. And I'd suggest to you that that would have led to very probable litigation?

A. Yes, I think that's probably fair comment.

Q. And wouldn't the Minister in that situation and

it's his interests that I am standing up representing  
have been ridiculed for having announced that one  
consortium would have won a competition, and wouldn't  
the Minister have been ridiculed for allowing the  
matter to slip through his hands? Wouldn't any  
Minister, in those circumstances, Minister Lowry or  
any Minister, have a legitimate interest in concluding  
the deal with the consortium that had won, even if you  
were incorrect and I am not suggesting for a moment  
that you are incorrect in deciding that the proper  
scrutiny had been applied to IIU?

A. I actually don't think that ridicule alone would be a  
sufficient basis for not making a correct decision.

Q. Oh, it wouldn't, it wouldn't. I am suggesting that  
you did make a correct decision, and I'll be asking  
for a finding to that effect. But I am just  
hypothesising that even if the decision was incorrect,  
insofar as the terms of reference here are implicated  
particularly towards Minister Lowry, there would have  
to be a particular animus on the part of Minister  
Lowry in taking the decision he took; and my  
suggestion is that any Minister would have a  
legitimate interest in concluding the licence  
agreement and issuing the licence to the consortium  
that had been, in a very public way, deemed  
successful, and that there is nothing underhand or  
sinister about that, and the point only arises in the

alternative if you are wrong, and I don't believe you are.

A. I would accept in general terms what you are saying.

CHAIRMAN: I think it's two separate questions, Mr. Fanning. It's obvious that the Minister would have an interest, but I don't think that necessarily and I am not saying that in any pejorative sense precludes anything having to be

MR. FANNING: The point is, Mr. Chairman, that Minister Lowry would have taken his lines from the civil service on the first issue. And this is the next point I want to put to the witness, but I am suggesting, over and above that, even if they were wrong, there would have been a normal inclination on the part of any Minister, and not in any way an underhand or sinister inclination on the part of this Minister, to conclude a deal with the party that had originally been announced. There's nothing odd about that, in my respectful submission.

Q. MR. FANNING: So the question I have for you, then, ultimately, Mr. Brennan, is what was the level of involvement of Minister Lowry then in the ultimate determination of the decision to issue the licence in May 1996 to the Esat consortium?

A. I don't think I am the most qualified person to answer that question. I think it is in the main for Mr. Loughrey.

Q. Yes, okay. Well, if I can refer you now very briefly

and I am coming towards the end, Chairman to an objection that I made to a question from Mr. Healy some days ago, and it's in Day 175 of the transcript, and I think you will have been present on the day.

And you may in fact recall that I objected to the terms of the question, and in fairness, the objection was not sustained or accepted by the Chairman; but what I am concerned about is that having read the question again, Mr. Healy in fact offers five propositions before asking you a question. And your answer is yeah, and you appear to accept it. And I just want to clarify what part of Mr. Healy's question you are actually saying yes to when it has five propositions before an actual question has been asked.

And I'll read the paragraph out to you again, if I may.

Mr. Healy says it's at page 56, for My Friends, on the transcript of Day 175 Mr. Healy says "I am not suggesting that you or any civil servants were involved in deliberately massaging a process in favour of A3 or A5; what I am suggesting is, if you look at this document, notwithstanding the pressures under which, and perhaps because of the pressures under which it was being put together, that the Minister was being provided with a version of the process and a version of the report which he wanted. He wanted a

quick result, and he wanted a result where financial issues could be disposed of by the bankable proposition, and he wanted that result, if you like, on the 24th, today, and he wanted to be able to bring that result to his colleagues in such a way that it had left no doubt but that the recommendation was so clear-cut it had to be accepted, because I'll just ask you ponder one other thing about it".

Then he asks you a question. "If you look at that document, do you notice it makes no reference at all to the fact there was a weakness in relation to the most important criteria, financial capability in the case of A3 and A5, and that's not mentioned at all, although the evaluators went to trouble to deal with it in the final draft of the report."

And your answer is "Yeah, I mean, at some stage it should be possible to identify who wrote this and under what terms of reference, if you like."

Now, I take it that you are only answering yes to the last question?

A. Yes.

Q. And you are not fact answering yes to the initial suggestion in Mr. Healy's question that the Minister had a preferred outcome?

A. Not at all.

Q. And to the extent that Mr. Healy, or indeed anybody else, has put to you in the course of your lengthy

examination the notion that the Minister had a

preferred outcome, you are not accepting that?

A. Not at all, no.

Q. In summary, Mr. Brennan, you are of the view, I take

it, that the process was set up with a clear intention

that it would produce a fire-proofed and

unchallengeable result; isn't that correct?

A. Yes, that's correct.

Q. Because you knew that the Commission would scrutinise

the granting of the licence?

A. I don't think the Commission was going to scrutinise

the competition. They were going to scrutinise the

basis on which it was set up.

Q. They were certainly going to scrutinise the process,

because they had an involvement at an early stage in

respect of how the process was going to be set up,

vis-a-vis the auction element; isn't that correct?

A. In fairness, I have said elsewhere in evidence,

probably in December, that before the concept of an

almost fixed fee came into being, it was probably less

clear-cut as to how a political decision would have

been made if there was a very large cheque and low

competence and very high competence and small cheque,

or other variations.

Q. Yeah. But we do know, as a matter of historical fact,

that the Commission did scrutinise a complaint made by

the Persona consortium?

A. They scrutinised the complaint, not the process.

Q. Yes, but in any event, the point I am putting to you is that you were quite certain at the very outset that it was important to have a robust process that would be capable of withstanding legal challenge?

A. Absolutely, yes.

Q. And at all stages, in your view and we needn't talk now about the processes and the thinking that led to the initial engagement of Mr. Pye from KPMG and the subsequent engagement of AMI but at all stages in the recruitment of international consultants and the adoption of protocols amongst the project team that you have spoken about at some detail in your evidence of the civil servants involved in the process, you are satisfied that the project team acted appropriately in putting together a process that could withstand challenge?

A. I am indeed.

Q. And as far as you are concerned, in the ultimate analysis, there was no interference with the process, and the conclusion of the Project Group was in fact achieved in the manner intended; isn't that so?

A. Yes.

Q. So from your perspective, whilst obviously as an intelligent and senior civil servant, you understand what's going on here, but you don't actually accept the validity, in your own mind, of the extent of the

investigation that is currently being undertaken?

MR. COUGHLAN: That is a most improper question for any barrister to ask.

CHAIRMAN: I think that's probably putting Mr. Brennan in a difficult position, Mr. Rossa. And I have given you a fair bit of latitude already with your combinations of submissions and questions, and I don't think that's an appropriate question.

MR. FANNING: I'll certainly withdraw it, Chairman.

CHAIRMAN: Do proceed.

MR. FANNING: With respect, I think that the process is so inherently pejorative of my client

CHAIRMAN: You can make submissions about that in due course, Mr. Fanning, but please get on with direct and pertinent questions to this witness.

Q. MR. FANNING: Are you satisfied then and I'll conclude on this, Mr. Brennan that the process was concluded in the manner intended?

A. Yes.

Q. And you don't feel that you, as chairman of the project team, should have blame or culpability or adverse findings of any sort made against you at the conclusion of this process?

A. That's the outcome I would most expect and welcome, yes.

MR. FANNING: Thank you, Chairman.

CHAIRMAN: Thanks. What I hope will be your last lap

tomorrow. Eleven o'clock.

Thanks, Mr. Brennan.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

THURSDAY, 13TH FEBRUARY, 2003 AT 11AM.