

A P P E A R A N C E S

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I N D E X

WITNESS: EXAMINATION:Q. NO:

Maev Nic Lochlainn Mr. Healy 1 - 362

THE TRIBUNAL RESUMED AS FOLLOWS ON THE 6TH OF MARCH, 2003,

AT 2 P.M.:

CONTINUATION OF EXAMINATION OF MAEV NIC LOCHLAINN BY

MR. HEALY AS FOLLOWS:

MR. HEALY: Thank you Ms. Nic Lochlainn.

Q. Was there something you wanted to clarify from yesterday, I understand?

A. Yes, there was.

Q. Yes. Let me know what it is?

A. Yes, it was just in relation to the notes you asked me to look at last night. Some of them contained rough notes of, contemporaneous rough notes that I had taken at Project Group meetings, and the one that dealt with the presentation of the evaluation model, I noticed just from my own recollection of my own notes that it seemed that I did make an intervention at that meeting in terms of, I think the qualitative evaluation, so I am just saying that since that jogged my memory, I think yesterday I said I had no role at all. I am not saying that I was making interventions throughout the meeting. I am just saying that

Q. I think I did say to you that you didn't have your notes when you prepared your answers, but from looking at your notes it was clear that you had either perhaps a somewhat more extensive role than you yourself felt looking back on it, but I am not saying that you had the same wide role maybe that Mr. Towey had or something like that?

A. Are you talking now in relation to the Project Group

meetings or the ones of the AG?

Q. I am talking about the whole process from the beginning to the end.

A. That is a very wide question, but in terms of that specific meeting, certainly it looks like I made an intervention at that point.

Q. Just referring to the document, which one is it?

A. Excuse me? Yes, it is the document behind Tab 10 in this folder.

Q. Behind Tab 10.

A. And if you go to

Q. It begins, "3.3: AMI have heard views to reconsider." Is that it?

A. Yes.

Q. Yes.

A. And in second-last page of that document there is a, at the bottom of the page there is a doodle which I could describe as a little rug.

Q. Yes.

A. And, with "feel factor" in it.

Q. Yes, I see that.

A. I feel there that I did take an intervention at that point but there was, I would still say that in general at that meeting there was extensive discussion about the quantitative indicators which I didn't contribute to at all.

Q. It was a useful note. I think what was being discussed at

the time was how the process would proceed from a quantitative to a qualitative analysis and from that on to a final result, is that it?

A. It was that that was part of the discussion, yes.

Q. Do I understand that what you are noting is a discussion in which some attempt was being made to describe how you would approach the evaluation of applications or aspects of applications in the course of the qualitative evaluation when you wouldn't be looking at how many SIM cards somebody had and therefore just a question of counting them; you might be looking at something else, some more abstract aspect of a particular application, is that right?

A. That's it, yes.

Q. And you were saying you made a note here "feel factor". Underneath that "feelings can be reflected in something which is objective", is that right?

A. Yes.

Q. Do I understand that to mean that it is a feel factor, you are looking at something, you are saying, "Is this better than that? Is A better than B? Or is A1 better than A2?"

To use the coding used in this case. And eventually it might be a question of, do you feel A1 is better than AB?"

Is that right, it might be down to that?

A. I can't recollect the discussion in the detail you are suggesting there, that obviously I can't say what you just said was a paraphrase of what was said at the time.

Q. I understand. Is that

A. It was part of the discussion I remember that that jogged is that, I think a) I think perhaps the Department of Finance people were inclined to be more comfortable with things that were quantitative and I think the view that I intervened with at that point was that there was a value in using judgements which you might not link specifically to quantitative material, I can't really go beyond that.

Q. Are you aware that in the evidence there is a record of a note of Mr. McMahon's for the meeting of the 23rd, when it seems that the whole Project Team seems to have come full circle back around to discussing this, and it was being discussed in the context of weightings being applied to indicators in the qualitative evaluation, and Mr. McMahon noted when he was asked or when he inquired, how did you arrive at a weighting for this? How did you arrive at a weighting for that? He was told, look, it is a question of feel. Is that a similar type of judgement being applied in the course of the process? Do you want to wait until we come to the 23rd?

A. It might be easier if I looked at the document you are talking about, yeah.

Q. Okay. I am going to look at some of those meetings and the notes of some of the meetings, but before that, I want to get one or two other things out of the way. Specifically with respect to the documents in the book of documents that was drawn to your attention yesterday, some of which I think you have already had an opportunity of examining,

even before yesterday. I am not going to go into every one of these documents. I have simply drawn them to your attention in case there is something in there you feel that would be of assistance to the Tribunal in trying to understand the process.

I want to ask you about one or two of them that seem to me to be relevant, and in particular, the first few documents in Leaf 1 or behind Tab 1 which relate to the document that you have identified as the briefing note to the Minister, the document you were asked to prepare, I think you say, around the 25th, in or around the 25th of October.

Now, if we could just firstly look at all of the documents behind Tab 1, and I think the sensible way is to start at the back and to go back three pages from the back of the leaf. You will come to a document entitled "Briefing Note for the Minister, Evaluation Process for the GSM Competition." Do you see that?

A. I do.

Q. And at the top left-hand corner, in a box, are the words "Aide-memoire Annex 1". Now, I think that what that document does, and we will go through the headings, it describes the evaluation methodology, then how the Project Group came together and how the process evolved or was managed from the giving of information to the applicants, to the receipt of the actual applications, to the initial examination, to the qualitative evaluations, to the presentations that you held in September, and to the

eventual AMI Evaluation Report. So that document seems, in some way, to describe the process from the very beginning which refers to the, from the very beginning in March of 1995, when the competition was announced, right up to the announcement of the winner of the competition, or thereabouts, is that right?

A. Yes.

Q. It seems some kind of narrative of the whole process. Now, if you go on, working from the back again, to the next document, I don't know why the next document is in there, I think it is just a document out of place, it is a message confirmation. I think it is just some misfiled document. The next page contains, "Briefing note for the Minister", and the box on the top left-hand corner you have "Aide-memoire Annex 2." Do you see that?

A. I do.

Q. And this briefing note refers to the announcement saying, "The winner and the five unsuccessful applicants will be informed of the result of the competition. The Minister will announce the name of the successful consortium to the media." It goes on to say that the licence negotiations will then take place. Legal issues will be dealt with. The negotiations, hopefully, will be concluded by January, '96. It describes the jobs that will be created, when the service is going to be launched, and ultimately what this is going to mean for the consumer and for the economy as a whole. It is a sort of, this is where we are going to go

from here once we get the process out of the way, isn't that right? Annex 1 describes the process up to the time you make the announcement. Annex 2 describes what is going to happen from there on, isn't that right?

A. Yes.

Q. Then if you go on another three pages, you come to a document headed again "Briefing Note for the Minister". Top left-hand corner you have the word "aide-memoire" on its own in a box. And then this document contains, I think, a form of analysis or abstract of the Evaluation Report, is that right, with the recommendation regarding the best application?

A. It is a briefing note based on paragraph 19 comparing the top two candidates in a positive light with the top one.

Q. Yes, what it does is it takes the eight criteria from paragraph 19 and describes how in relation to each of those criteria the top applicant won the competition, would that be right?

A. Yes, it is, it compares the top two with the favourable emphasis on the A5 application.

Q. The next document is headed, "Briefing Note for the Minister, Recommendation Regarding the Best Application" which is another version of the document we have just been discussing, the second or the third of the three documents we have discussed. It is the one containing the analysis of how the best application fared by reference to the eight evaluation criteria, but it has been reduced into bullet

point form. Would that be right?

A. I don't think I would agree with the word "analysis" but apart from that.

Q. Well, you tell me what word you would use.

A. It's descriptive.

Q. Descriptive?

A. Yes, it is a bullet sorry, the one on the very top is a bullet point version of the one behind it.

Q. Yes, okay. I think you were telling the Tribunal yesterday that you came to prepare this document as a result of an instruction you received from Fintan Towey, am I right in that?

A. I am. I don't have a specific recollection of that but my instructions were generally from Fintan Towey and certainly I prepared it following instructions, I presume either from Fintan or Martin, but most likely Fintan.

Q. And can you recall what your instructions were, whoever you got them from?

A. My recollection of the Terms of Reference for preparing the document was that it was a briefing note for the Minister, in other words a note which would give him a flavour of the kind of thing that had been compared and in sort of English would, it would put, in a sense it was in the context that there was a draft Evaluation Report and it was quite technical and inaccessible in its content and this was to give the Minister maybe a sense of what had happened in the Evaluation Report without having to read it.

Q. Mm-hmm.

A. But it was never intended to be a comprehensive summary of the Evaluation Report and it was quite clearly intended to be showing A5 in the most positive light that could be.

Q. I think in your statement you said that the purpose it was to produce a short, simple and positive guide to the Evaluation Report, is that right?

A. Yeah, sort of a ladybird guide.

Q. Precisely what do you mean by "positive"?

A. What do I mean by "positive"?

Q. Yes. You said, "To show A5 in the most positive light that could be"?

A. Well, my understanding was that it wasn't intended to influence anybody to make a decision. It was sort of prepared on the basis that a decision had been made. Now, that you have made the decision, you might as well present it in the best possible light if you want to talk about it to anybody, or if somebody meets you in a corridor and says such a such person won, and, you know, what were they good at or, and it would give somebody who didn't have any direct involvement in the evaluation process a kind of a working knowledge and be able to say, "Oh well, technically they were very strong" or, whatever, you know. You wouldn't feel exposed in that circumstance to be able to say something because okay, you hadn't been involved in the evaluation, but you had been given enough of an understanding to be able to say something positive. It was

drafted, I think, in that positive light, in that once you have made a decision, there is no point running over the ground, that you might have considered the ifs, buts and maybes along the way. Say, if you buy a house, you might have ifs, buts and maybes about buying the house, but once you have bought it you don't, when you are telling your friends about it, "I have bought this house", you don't go then and say "But, yes, I was wondering if it was too far away from the Dart line", or whatever. You just say, "I have got this wonderful new house", and you emphasise the positive. It was in that kind of vein that the document was prepared.

Q. Even if it was too far away from the Dart line, you didn't mention that?

A. My house is very far from the Dart line.

Q. But was that the type of instruction, that if you were going to explain that you had bought this new house or licenced this new, or proposed to licence this new applicant, you were going to mention what the positive side of the evaluation process was, or of the new applicant, without emphasising any of the down sides, if you like?

A. I mean, I have no specific recollection of a conversation where I was given instructions for this document, but I know the way I normally do business, that if I am asked to produce a summary of a document, I produce a summary of a document.

STENOGRAPHER: Could you please slow down a slight bit.

CHAIRMAN: Yes, could you do that.

Q. MR. HEALY: You were asked to produce a summary of a document?

A. If I am asked to produce a summary of a document if I am asked to produce a summary of a document, I prepare a summary review document, a comprehensive summary. If I am asked to produce a summary of a document that is proposed to be positive, I only look for the bits of the document that are positive, or I try to emphasise that.

Q. I understand.

A. So it seems, whereas I have no recollection of the instructions that were given to me, it seems clear to me looking at the document, and certainly my memory of it was that it was to give a positive flavour, and that is why it is not comprehensive, it gives a positive, a very positive flavour.

Q. Mm-hmm. If you look at the first three documents I showed you which are the two documents dealing with the description of the process, and where the process was going to go from now, and the first draft that we have of the ladybird version of the evaluation, the top left-hand corner contains the words "aide-memoire"?

A. Yes.

Q. And in respect of two of the documents, it is Annex 1 and Annex 2?

A. Yes.

Q. Was this intended ultimately to be the basis of an

aide-memoire to Government?

A. If I can describe to you how, what I think happened these documents.

Q. Well, could you just clarify one thing for me first. When I see the words "aide-memoire" I think well, in light of everything I have learned from looking at all of these documents, that is a reference to an aide-memoire i.e. a type of document prepared to enable ministers to make decisions when they are sitting as a college of ministers, as the Government, that is the sense in which it is used here?

A. The sense, the word "aide-memoire", are you asking me what the word "aide-memoire" means? The word "aide-memoire" means a document that usually goes, that goes to Cabinet, yes.

Q. Yes. And does that, therefore, signify that it was envisaged that this document or these documents were either going to go to Cabinet or were going to be intended to enable the Minister to go to Cabinet and to support whatever other propositions were being put before the Cabinet?

A. My understanding of this document is, it was prepared in the lines that I just described to you, in the sense that it wasn't influencing a decision. It seems to me that the notes that are on the second version of the document, the one which has "aide-memoire bullet point" in one corner, and what I believe to be Fintan Towey's writing on it, is

that I prepared it in the vein I described, and I discussed it with Fintan and he suggested some changes, and during that conversation it is my writing, as far as I know, on the top left of the page which says "aide-memoire", so at that point of its incarnation I am assuming there was a discussion between me and Fintan, and there was a consideration that it might at some point become an aide-memoire. However, when I actually amended the document and ended up with the document which you have at the top of these, in other words the one immediately underneath the Tab 1, it didn't actually become an aide-memoire, and as I am sure you are well aware, the aide-memoire that went to Government had an entirely different shape. What I am saying to you, I drafted the document along the lines that I have always said I drafted it, in terms of, that it had nothing to do with the decision. It is just simply a ladybird guide of the Evaluation Report for somebody who is not familiar with the detail of the evaluation.

Q. Why do you use the word "ladybird guide"?

A. I don't know, I don't know what other word to use. I don't know, you may wish to suggest another word. It is a simplistic guide.

CHAIRMAN: Tabloid rather than broad sheet.

A. Whatever.

Q. MR. HEALY: You know that last week when Mr. Lowry's counsel was here, he referred to the production of

documentation for his Minister, his client, your Minister,  
on the basis of a ladybird-type explanation?

A. I amn't

Q. Did you ever get that from the Minister himself?

A. I think I have already said that I only met the Minister in  
the lift and my discussion was usually related to the speed  
at which the lift moved from one floor to the other.

Q. Mm-hmm.

A. or didn't.

Q. Mm-hmm.

A. So, and that I wouldn't be familiar, that familiar with the  
transcripts of these proceedings.

Q. If you look at the difference between the documents that  
have aide-memoire written on them, and the final document,  
the final document seems to be a distillation of what  
contained in the earlier documents, and a reduction to  
bullet points as requested by Fintan Towey, is that right?

A. You are now talking about the one immediately behind the  
Tab 1?

Q. Yes, the final document, we will call the final document  
the one we started off with yesterday and the day before,  
whenever?

A. Yes, okay, if you are calling that the final document.

Q. Yes.

A. I would say that final document is the outcome of the  
discussion I had with Fintan and the comments he wrote on  
it, but obviously a decision had been made, at least

obviously I cannot recall this, so I am assuming that a decision was made between the second document and the document you now call the "final document", that it wasn't to become an aide-memoire, but I wouldn't agree with the proposition which I think you made, that it was, in fact, a distillation of the three documents, because I don't think the others have become an input to the top one, to what you now call the final document.

Q. Yes. It is, however, a distillation of the section of the first document or reiteration, as you put it, dealing with the Evaluation Report, alone, isn't it?

A. Its.

Q. The section that says "Recommendation regarding the best application in GSM application."

A. At the end.

Q. If you look at that section, there are two documents with that heading at the top, aren't there, there is the final version, or the final document, and there is the first draft?

A. The document we are now calling the final document and the one immediately behind it in the folder both have the same title.

Q. Yes. And isn't the final document simply a distillation in bullet point of the other with a few, a bit of tweaking here and there?

A. Yes.

Q. Right. So it was originally envisaged that the

recommendation regarding the best application in the GSM process in its undistilled form would be part of an aide-memoire backed up by Annex 1 and Annex 2, is that right?

A. No, I wouldn't agree with that. The brief, the document I don't know what I am going to call the second document, so I will just call it the second document, do you understand what I mean by the second document?

Q. Yes.

A. The second document was not drafted as an aide-memoire, it was drafted as a ladybird guide at some point.

Q. Is the word "aide-memoire" written on it?

A. The document which I call the second document was discussed, I assume from the notes, between myself and Fintan Towey, at which point somewhere in that discussion it was considered that it might be an aide-memoire, but it seemed to me that what actually followed from that discussion was that I then implemented the changes that were suggested by Fintan Towey's handwriting on the second, the document I now call the second document, but in fact I didn't make the changes into making it into an aide-memoire. So I did, in fact, put bullet points in that had been suggested, but I didn't change it into an aide-memoire because if I was changing it into an aide-memoire wouldn't necessarily, presumably, mean that I would have changed the title, at a minimum I would have changed the title, but in fact we know that another

document was produced which was called an aide-memoire and it had no resemblance at all to this document.

Q. Why would this document why would this document not do as an aide-memoire?

A. This document would not do as an aide-memoire; it is not a serious document. It is simply a document to give somebody a feel for a process. That is why I disagreed with the terminology earlier. I wouldn't agree that this is an analysis. It is simply just a sound-bite document, a ladybird guide. It is simplistic version. It is not intended to be a serious document. It is just intended to give people a flavour of what was happening.

Q. If it was the only document you had describing the process, would it be, therefore, correct to say that you wouldn't have an accurate understanding of the process?

A. I would agree that it is not an accurate description of the process, it was never meant to be an accurate description of the process.

Q. Why would the Department be involved or why would you have been instructed to produce a document that couldn't be relied on as an accurate description of the process, why would such a document ever be put together?

A. Because if I go back to my analogy about the buying of a house or a decision which is in the past, it is quite normal for civil servants to prepare documents for Ministers about situations which give the most positive flavour possible to that situation.

Q. Didn't you know, Ms. Nic Lochlainn, that you had been involved in quite a serious process in which you were, along with a number of other members of a Project Group effectively almost sitting in judgement on people who spent an awful lot of money and who had gone to an awful lot of trouble to compete for the opportunity to negotiate the second GSM licence, and this was a process which was regarded by the Department as one which is a sealed process into which there could be no taint of partiality or anything like that attaching, you were aware of all of that, weren't you?

A. I was aware I was involved in a serious process, yes.

Q. You were aware that you were involved in a process where you were sitting as an evaluator, isn't that right?

A. I was involved within the marketing evaluation of applications yes.

Q. But the whole team were evaluating, you were all going to either stand over this or walk away from it, isn't that right?

A. Yes, I would agree.

Q. And it was to be conducted in an extremely impartial way?

A. Yes, I would agree.

Q. And in a sealed way so that there could be no interference or not even the appearance of inference with the process, isn't that right?

A. That is correct.

Q. And in those circumstances, how could it be right to

produce a description of the process, or for that matter, a document which was not to contain an accurate description of the process but to put a sort of a positive spin on it, how could that be?

A. I would make a distinction about a document which was, which was intended to be used prior to a decision point or a document which was intended to be used post a decision point simply to talk about a decision which has been made in the past.

Q. But what is the difference? It was a very, very serious process. How does the fact that the process was over give you a licence to make free with the facts? In fact, isn't it more sorry

A. Sorry

Q. Yes. How does the fact that the process was over give you a licence to make free with the facts?

A. I am not quite sure I agree that it was free with the facts.

Q. How does the fact that the process was over give you a licence to produce a description which was not an accurate description and which put a positive spin on it?

MR. NESBITT: It seems to me, Mr. Chairman, this is a very unfair question given what the witness has said about the existence of this document. I think this witness should be given some credibility for the answers she has given when asked further questions and they shouldn't be ignored. It is unfair to her.

CHAIRMAN: I think it is close to the time you can I will let you proceed, Mr. Healy, but to some extent it is obviously something that I will have to decide.

Q. MR. HEALY: Once this process was over, a recommendation was going to be brought by the Minister to the Government, isn't that right?

A. Yes.

Q. And that recommendation was based on the deliberations of the Project Group, isn't that right?

A. Yes.

Q. And that that recommendation was in the form of a report, isn't that correct?

A. There was a report produced, I can't remember whether it was, there was a recommendation made separately from the report by Mr. Loughrey, I am not sure.

Q. The recommendation was in the form of a report. Isn't that a fair way of putting it?

A. I don't mean to be semantic, I am not exactly sure. It seems to me that the recommendation that was made to the Minister was made by Mr. Loughrey, but maybe that is not true.

Q. All right. Well, we have a problem there because we are not sure because we know Mr. Loughrey didn't have the report, but we will try to approach it from another point of view.

The report contained the basis upon which any recommendation was ultimately to be made, isn't that right?

A. Yes, I would agree with that.

Q. And wasn't it more important, or at least as important, after the report was completed, to be sure that no inaccurate description of the report was put into circulation?

A. I would still make a big distinction between documents which are produced prior to a decision and documents which are used post decision to describe a decision which has been made.

Q. I see. When do you think this document was produced?

A. I have no I don't know my memory in relation to this document is connected to a personal event which happened in the week, so it seems to me that I was working on this package of documents on Friday the 20th of October.

Q. Yes.

A. I can't say whether, at what point it was completed. I can just say that I was working on this package of documents at that point.

Q. Well, if you go to the very last page in the leaf, you will see that under the heading "AMI Evaluation Report" there is a reference to a draft Evaluation Report submitted by AMI and discussed at a Project Group meeting on the 9th of October. "Unanimous support was given by the Project Group to the results of the evaluation. Having incorporated comments from the Project Group in relation to the format of the report, AMI submitted a final draft Evaluation Report to the Department on the 20th of October." Do you

see that?

A. Yes.

Q. So I suppose what you are talking about there is the second version of the Evaluation Report dated the 18th of October, which in fact came into the Department on the 19th, you may not have got it until the 20th or whatever. Would that be right?

A. I am not certain which report I am talking about there, but...

Q. Well, you are certainly referring to a draft Evaluation Report discussed at a meeting on the 9th and that can only be the report dated the 3rd of October?

A. Yes, I would agree.

Q. If you are referring to a final draft Evaluation Report

A. It is suggested it would be the 18th.

Q. It says it was submitted on the 20th. That is probably just an error. It was submitted on the 19th, we think.

But the second report was dated the 18th and submitted on the 19th. So as you yourself suggested, you must have been doing this work sometime after the 19th or in or about the 20th or thereabouts?

A. Yes, I mean, if my recollection in relation to the timing of this work and the personal event I am talking about, then it would certainly mean that I was working on it on the afternoon of the 20th.

Q. Yes. And that was a Friday?

A. And that was a Friday, yes.

Q. And did you work on it during that afternoon and complete it, or do you think that you worked on it over the weekend?

A. I have just I said earlier I am not sure when I completed it, I only know that I was working on it at that point.

Q. Yes. You didn't have the final report when you were doing it anyway, isn't that right?

A. Clearly not.

Q. Yes. And we know that there was a meeting of the Project Team arranged for Monday the 23rd, isn't that right?

A. We do.

Q. So the final report still wasn't available by then and wasn't going to be available at least until some later time, isn't that right?

A. I would agree.

Q. So this report, this document being prepared by you was in fact being prepared before the process had been concluded, isn't that correct?

A. Yes, clearly.

Q. But just to be clear about what you were saying earlier and the distinction you were making between the way you could approach a description before a decision was made and after a decision was made, in fact you were approaching your work in describing this evaluation before the decision was mainly made, isn't that right?

A. Before the decision on the report was finally made, but I think it was my understanding at the time that the draft

report dated the 3rd of October had a ranking and a result, the draft report dated the 18th had a ranking and a result. At that time my position and my understanding was that there was no reserve of substance, if I can call it that, on the result, so that yes, I would have been in a position where I felt there was still work to remain to complete the text of the final report, but that work would not entail a revision of the rankings.

Q. You didn't have a final report?

A. No.

Q. The process wasn't over, was it? I think Mr. Fitzgerald was very clear about that, and Mr. Loughrey was very clear?

A. I don't think the process was over, no.

Q. And you were basing the documentation that you were putting together on a report, isn't that right?

A. On I think it must have been the report dated 18th.

Q. It doesn't say that, sure it doesn't, in the final briefing note? The final briefing note purports to be a report based on the final result of the competition, isn't that right?

A. Because I think it was anticipated that it would be used subsequent to the arrival of the final report.

Q. Yes.

A. I think, again, as I say my recall of these days is not very comprehensive, but my understanding, looking at the documents, is that there was an anticipation that there would be a result and a final report within the next few

days, and that there was an anticipation that there would be briefing material needed following that decision for whatever press meeting or whatever other meetings the Minister may have, and rather than wait until we had a final report and start preparing that sort of extensive briefing, I think I may have been asked by my superiors to prepare that briefing note in anticipation that nothing which would happen in the following day would change the result that was in the two draft reports we had already received.

Q. Can that be correct, Ms. Nic Lochlainn?

A. I am just telling you the way I saw it.

Q. But I wonder can it be correct? If you look at the briefing note which contains a lot of effectively confidential information, surely it can't be correct that that information was going to be made available to the press?

A. I didn't say necessarily that it was all going to be made available to the press. I said that it seems that I was working on a package of briefing notes which would give the Minister comfort about the process, and whether he chose to use every detail in it, again what I have said before it was to give him a flavour of what was happening, a flavour of the things that had been looked at, again in a positive light for Esat Digifone and

Q. Wasn't the purpose of it to give him sound-bite type expressions to enable him to take sound-bite type phrases

from the work you were producing, isn't that right?

A. Yes, that was one way in which I described the work, yes.

Q. So he was going to be able to use these expressions hardly for the purpose of relying them to the press?

A. I am sorry, I don't understand that question in the terms, I don't understand the placing of the word "hardly".

Q. I think you mentioned this to me, I think you said this in the statement, that you thought the purpose of this was to make a document available to the Minister in sound-bite form that he could use in a number of different forums, and a moment ago I think as well you mentioned the press, and I asked you whether that could be right. I just want to be clear about that; are you suggesting that the Minister was going to make any of this information available to the press?

A. It wouldn't be my judgement as to what the Minister would or wouldn't make available to the press from this document.

I am simply saying that my memory is that the document was produced to give the Minister a flavour in a positive light of the top two, of the top two applications, and I wasn't close enough to the Minister at the time as to know as to what exactly he would do with that and whether or not he would give exact I would have been surprised if he would have quoted it directly. Generally speaking, a briefing note is used by a Minister, I would suggest that they read it before they go to an event in order to give them a feel that they know what they are talking about, because they

have such a wide range of material to cover in their day-to-day business. He was the Minister for Transport Energy and Communications at the time, so necessarily, obviously, that is why civil servants are there to produce briefing material, so that if somebody is going to an event they can refresh them. It isn't actually that they hold the document or actually quote directly from it in a lot of cases.

Q. And where did you get that understanding from?

A. The understanding that it was

Q. That you have just described?

A. That it was simply general briefing material. That is my memory of the production of the material.

Q. No, but you see, originally I think there was some suggestion, wasn't there, that this was going to form part or be related to an aide-memoire. Now you are saying that it evolved into general briefing material.

A. No, I would disagree agree with that because as I said, my memory is that I originally drafted it as a briefing note to give a flavour of the Evaluation Report and that when I discussed with it Fintan, having produced this first draft, there was a suggestion that this would become an aide-memoire but that when I look at what happened in that the document was changed but it wasn't changed into an aide-memoire, then I don't think that

Q. Hold on, and let's go a bit more slowly.

A. Sorry.

Q. You put the words "aide-memoire" in a box in the recommendation regarding the best application for the Minister. You "put Annex 1" after that aide-memoire on the evaluation process for the GSM competition, and you also put "aide-memoire Annex 2" on the document headed 'GSM Competition' advancing the process further. You put those legends on each of those documents presumably because you thought you were producing an aide-memoire package, isn't that right?

A. At the point when I wrote that in handwriting on it.

Q. Which point was that?

A. The point obviously was, it looks like it was the point of a discussion which took place between myself and Fintan Towey when I had already produced the three documents in question, but prior to the production of the document which we have previously called

Q. The final version?

A. the final document.

Q. Yes.

A. So, as I said before in that point, in its incarnation there was a consideration that it might become an aide-memoire, but I think if you look at how the document was adopted subsequently, you will see that it didn't become an aide-memoire, it remained a briefing note. In fact, it is clear from the records that an aide-memoire which was produced which had no resemblance at all to this document, and I think in fact the annex, the document

called 'Briefing Note for the Minister, Evaluation Process for the GSM Competition', if you look, I think, at the file version, the aide-memoire which was actually produced had an annex which was simply a direct quotation of paragraph 19 which I believe might have been taken out of the document called 'Briefing Note for the Minister, Evaluation Process for the GSM Competition'. So that in fact, the only element of that last briefing note which survived into the aide-memoire was the quote from paragraph 19.

Q. Well, you could have got that from anywhere I suppose?

A. Possibly, yes.

Q. Could you go to Leaf 4 for the moment, please.

A. Yes. I just have to say my copy of this is illegible.

Q. It is more or less the same as mine.

A. I don't know what yours looks like but mine is just blank.

Q. Okay. If you go to the second page. It says, "note on" in a box on the top left-hand corner.

"1. Evaluation process.

"2. Result citing paragraph 19.

"3. Appropriate extracts from Andersen report.

"4. Briefing session Monday."

Is that right?

A. That's correct.

Q. Can you does that throw any light on what the documents we have been discussing were produced for and when they were produced?

A. Well, I have already said that the light which I can cast

on the timing of the documents seems to be that I did work on them on Friday the 20th, apart from that I am not sure when they were concluded. In terms of this note, it is a to-do list for myself, and that it suggests that I had to do a briefing note on the evaluation process, a briefing note on the result citing paragraph 19, and I don't know, in some way, find or locate or copy an appropriate extract from Andersens' report, and that it is possible that those actions that I was to follow were to be done in the context of a briefing session which was expected to happen at some point on Monday.

Q. Would that be Monday the 23rd?

A. I can't be certain, but it would seem that it could be, yes.

Q. Well, we know from the Minister's diary that a briefing session was diaried for 4:30 p.m. on Monday the 23rd?

A. I didn't know that.

Q. Is that probably the briefing note to which reference is made here?

A. It seems reasonable to assume that. I am not sure if that briefing session actually happened, I wouldn't have been involved.

Q. A briefing note for the Minister is a document designed to provide the Minister with an understanding of a process and to enable him to form his own impression of it as well as enabling him to talk to other people about it, isn't that right?

A. A briefing note is designed to give the Minister an understanding of the process, yes.

Q. To give him information?

A. To give him information, yes.

Q. On the previous page, the one most of which is illegible, you see "Talk to FT", do you see that?

A. Is this the previous page that I am saying is illegible? I think I may have a copy in my own papers which is a little more legible if you allow me to find it.

CHAIRMAN: Certainly if you feel happier, yes.

A. Thank you. I have it.

Q. MR. HEALY: I think the start of it may be more or less the same as the three itemised things we saw a moment ago: evaluation process, result citing paragraph 19 and so on. Does it contain a list like that?

A. It contains, well in my version that I can read it says,

"1. Evaluation process,

"2. Justifying the decision.

"3. Where next licensing negotiations".

Q. Yes. Is that what you were asked to do to produce a document justifying the decision, do you think?

A. I think this may be another reiteration of the to-do list that I developed, yes.

Q. Is that another way of looking at it, that what you were being asked to do was to produce a document that you would justify the decision or to enable the Minister to justify the decision?

A. My memory is not that it was ever produced as a serious document which would be used, which was expected would be used by the Minister to justify the decision.

Q. But surely that can't be right, Ms. Nic Lochlainn. After what we have just seen here and having seen the document and from what you told us, it must have been used for that purpose?

A. I never I have no memory of it being produced as a serious document to influence the Minister, no memory whatsoever. And I think I have always been clear about that on every time I have been asked about this.

Q. Maybe you will clarify for me what you mean by "not a serious document"? You don't mean it you don't mean a comical document?

A. I would love to find a sense of humour somewhere here.

Q. Yes.

A. Not a serious document I suppose. The easiest for me to explain that is to go back to what I was saying previously; if it was anticipated that the document would be used post a decision, then I felt that you have more leeway in being positive and not being objective in setting out details about the decision. If you are producing a document which you are putting to the Minister for serious consideration and giving him options and pros and cons and weighing up things, then you produce a different document.

Q. I understand.

A. And I think also, many people in the civil service would

probably be very familiar with the terminology "briefing note". A briefing note is something you give the Minister so that he knows about something. It is not something you give the Minister so that he does something or she, sorry, we have female ministers, also.

Q. Right. So by not serious, you mean that while it was a document produced for the Minister and therefore intended to be used and serious in that sense, in which I would use the word as a layman, it was not serious in the sense that it was not intended to influence him in making a decision, but rather as a way of enabling him to stand over that decision at a later point, is that right, the decision having already been made on proper grounds, is that right?

A. Yes, it would have been post the decision to explain.

Q. But it would have been post the decision, although it wasn't in this case, but it would ultimately, I suppose, you hoped?

A. If he was using it post the decision, it would have been post the decision.

Q. It would have been prepared prior to the decision though, isn't that right? Maybe a small point.

A. I think the important thing would be when he had it in his hands.

Q. I didn't. Would you just go to Book 46, if you have got it. I am sure somebody will get it for you. Go to Tab 50, I think you will see the final report.

A. Yes, I have it.

Q. Go to page 48.

Now, if you look at the briefing note, it goes through the results of the evaluation process, by reference to the eight criteria in paragraph 19, the same criteria that were contained in the Government decision, isn't that right?

A. Yes.

Q. And the first item you deal with is, the first thing you say is: "Initial evaluation show that A5 and A3 stood head and shoulders above the rest. Detailed examination has shown that A5 is clearly the best application." It goes on say, "Evaluation of the top two applications in the light of paragraph 19 of the tender document.

"1. Credibility of the business plan and the Applicant's approach to market development. A5 is better because it has detailed and advanced plans," and so on. Do you see that?

A. I do.

Q. If you look at table 16, and you see the top three items, "Market development, financial key figures and experience of the applicant." They are the three elements that go to make up credibility of the business plan, and the applicant's approach to market development. If you look at the difference between, if you look at the scores of A3 and A5, you see that they have got the same score, do you see that?

A. I see that now, yes.

Q. If you go to the next one, which is quality and

availability of technical approach proposed and its compliance with the requirements set out therein, it says go to the second part: "Technical experts agree that A5 is better for a number of reasons."

If you go to the technical aspects of the evaluation, you see that A5 is better.

Go to the next one: "The approach to tariffing proposed by the applicant must be competitive." Do you see that? Both A5 and A3 offer tariffs which are highly competitive when compared to Eircell, and so on. And you refer to the differences between them.

If you look at the table, you will see that on tariffs, A3 has a B and A5 has a C, do you see that?

A. I do.

Q. If you go to the next one, paragraph 4, which relates to the Licence fee payment, that doesn't matter because they both pay the same.

The next one refers to the timetable for achieving coverage requirements and the extent to which they may be exceeded.

And it says: "Both A5 and A3 fulfill the minimum requirement of serving more than 90 percent of the population within four years." It goes on to say: "A5 is better" and it says why.

But if you look at the Evaluation Report, you see that they both get the same mark for coverage, do you see that, they both get an A?

A. In this table they get the same mark, A.

Q. Yes. The next one refers to the extent of the applicant's roaming plan. It concludes that there were difficulties in evaluating this, and says that "A5 and A3 proved to be equally satisfactory in both these respects," do you see that? And that's a clear reflection of what is in the final scoring; they both got a C, do you see that?

A. Yes.

Q. The next one is the performance guarantees. It says that A5 is better. If you look at performance guarantees, A5 is better?

A. Yes.

Q. The final one is, 'Efficiency of proposed use of spectrum resources'. It says that both A3 and A5 intend to request the same amount of frequency and says that in one respect A5 is better than A3. But if you look at frequency efficiency they both actually receive the same mark, do you see that?

A. I see that they receive the same mark in this table.

Q. So now in respect of the first item if you go back to the first item, again, 'credibility of the business plan and the applicant's approach to market development', both A5 and A3 got the same mark. The next item criterion 2, A5 got a higher mark. Go to the next one, criterion 3, A3 gets the higher mark. In relation to the licence fee payment it doesn't matter what marks they get. In relation to Item 5 they both get the same mark. In relation to Item 6 they both get the same mark. In relation to item 7, A5

is better. In relation to Item 8 they both have got the same mark. And if you go to the conclusion, it says, "Disregarding the criteria where both scored the same, A5 is superior to A3 in five out of six cases including in respect of the two most important criteria, i.e. market development/credibility of business plan and technical approach."

If you look at the eight criteria set out in paragraph 19, A3 receives the same grade as A5 in respect of five criteria. It achieves a higher grade in respect of two criteria, I beg your pardon, it receives a higher grade in respect of one criteria, and A5 receives a higher grade in respect of two criteria.

Now, I suggest to you that if you were summarising the result based on those eight criteria, that would have been the correct conclusion; that of the eight criteria, A3 and A5 had the same result in respect of five, but that in respect of 1, A3 was higher while in respect of 2, A5 was higher. I would suggest that was the correct way, the accurate way to summarise what was contained in the report with respect to those eight criteria?

A. If I may discuss, I think there are three of the criteria why you are suggesting there was a difference from what is in the briefing note to what is in the table, which would be the first criterion, the criterion on coverage and the one on frequency efficiency.

Q. The first criterion is credibility of business plan.

A. The coverage one and the frequency efficiency one, I believe those are the three where you are saying that they are the same in this table, table 16.

Q. Yes.

A. As I think we agreed earlier, I was working off the 18th of October report when I was producing this report.

Q. Mm-hmm.

A. And I had been given terms of reference to be as positive as possible. In terms then, of the for instance, the result on coverage, I didn't simply look at the table at the aggregate table at the end of the report. I instead went to the table that dealt with coverage within the report which, if I may turn you then to it, it would be the 18th of October document I am talking about, I am not sure myself which, what tab it is?

Q. It is Tab 46.

A. Yes. So if you look at Tab 46, it is page 21, would have table 3 which deals with coverage. And you will see at the bottom of that that A3 and A5 are awarded an A each. If you look at the four indicators, A5 was given an award of A in all four indicators, and A3 received an award of A and three, and received one B. So, since I had been given terms of reference to be as positive as possible, I felt it was a reasonable conclusion to draw from this table that, in fact, A5 was better than A3 on coverage, and that in fact if you turn to the page 20 prior to that, there is a paragraph which reads: "In terms of the planned roll-out,

A1 and A5 are given the highest marks due to A1 providing an early and reasonably high demographic coverage at launch. And A5 offering a remarkably higher launch coverage. A little lower, B, primarily because of the relatively low coverage at launch, 40%, which is considered somewhat questionable for customer acceptance."

Q. Would you go to page 49 of that version of the report? Do you see where the report does exactly what you were asked to do, to my mind, accurately. It says under 6.3, which is the same as the table in the final version of the report that I read out, "In order to investigate whether the conclusions of the evaluators are consolidated on the basis of paragraph 19 of the RFP document, the evaluators have carried out a separate conformance testing. The basis of the conformance test is the agreed interpretation prior to the closing date where the seven indents at paragraph 19 were operationalised into 11 dimensions." Right, so what this table does is it sets out the eight criteria in paragraph 19 it says seven, it should be eight.

A. Sorry, I didn't catch the last bit.

Q. He says seven indents.

A. Yes, it should be eight.

Q. Yes, it should be eight. He sets out the eight criteria, and he applies the results of the Evaluation Report to those eight criteria. Isn't that the exercise that you were engaged in?

A. I was asked to produce a briefing note which looked at the

top two applications and tried to be as positive as possible using the eight criteria. I used the eight criteria when I came to coverage I looked in the document of the Evaluation Report which had been produced by experts and I found a result which seemed to indicate that the A which had been granted to A5 in terms of coverage was better than the A in fact which had been granted to A3, and on the basis of that and on the basis of

Q. So you were interpreting the report, in other words?

A. I was asked to use the report to produce.

Q. But were you interpreting it? I know what you were asked to do what were you doing.

A. I was trying to find evidence in the Evaluation Report which showed A5 in a positive light and I believed that this was evidence of that nature.

Q. Yes. I suggested to Mr. Brennan, and I suppose it is only fair to suggest to you, that the briefing note contains a distortion of the part of the report which takes the results of the report and lines them up with the eight criteria in the way you were doing it. I have to suggest to you that it was distorted, perhaps for the reasons you have stated, in order to present the result in a light that was more positive even than the light of the report itself?

A. In respect of the briefing note, I would say the fact that Esat Digifone was better than the A3 application and that the briefing note says it was better, if there was any misrepresentation in the briefing note, it was simply a

misrepresentation of the gap which divided the top two applicants.

Q. And was that so that somebody could say that there was a bigger gap between the top two applicants than in fact there was?

A. If I could go back to the point that I made earlier about the distinction about a document which was used, which is intended to be used post decision at the point of being post decision, it doesn't really matter that much what the gap is since the decision has been made and announced, and that was my understanding when I prepared this document, that it would be produced at that time and used in that way.

Q. Did you discuss those principles with Mr. Towey that you would be at liberty to proceed in that way?

A. As I said before

Q. Did you discuss that with him, with Mr. Towey?

A. Which principles?

Q. The principle that once the decision was made you could approach a document in a slightly different way?

A. I have no recall of discussing that with him.

Q. Do you remember yesterday we discussed the report and the ultimate production of a final report in the Department as of the day of the announcement of the result, the 25th of October, 1995?

A. Yes.

Q. And I think you weren't in a position to say one way or the

other, correct me if I am wrong, that you had a final report but you did refer me to a facsimile cover sheet which referred to 52 pages of the report being received on the 25th?

A. Yes.

Q. And your memory is based on your view of the documents, is that right, or do you actually have a memory?

A. As I said before, I don't have a very good recall, however I know the way I do business, if I put a fax cover sheet saying that 52 pages had been received, then 52 pages had been received, that is the way I do business.

Q. So therefore, it is from the faxed document that you feel able to reach the conclusion that you got or formed the view that you got 52 pages on that day, that is the only point I am making?

A. Yes, I am quite clear that I don't have a specific recollection of what I was doing on that day.

Q. I don't expect you to have a recollection of every aspect of it. I just want to put a slightly different view of it to you. We know that on the 25th October Mr. Fintan Towey sent to Mr. Michael Andersen a set of documents containing suggested textual amendments to the draft version of the report of the 18th of October, 1995. Are you aware of that?

A. Yes, I am aware from the record that such a fax went out, yes.

Q. That fax went out, I think, sometime after 10 o'clock in

the morning, Irish time, on the 25th of October.

Mr. Andersen, it would appear, examined those suggested textual amendments and made his own handwriting, handwritten

A. Ticks.

Q. With the not ticks. In fact, I think he made his own handwritten changes here and there, scribbled things in and scribbled things out and so forth and he faxed those back by fax of the 25th of October, 1995, in which he said,

"Dear Martin and Fintan,

"Attached you will find my handwritten comments to your fax received earlier today. I suggest that we discuss them one by one over the phone ASAP."

That fax was sent by Mr. Andersen at around 2 o'clock on the 25th, that is Danish time, around 1 o'clock Irish time.

He says, "In addition changes are necessary in Appendix 2, but I assume that they will be covered by the comments on the appendices which you will forward to me later today."

So now back in Dublin you have the suggested textual amendments with further handwritten comments by Mr.

Andersen, and they have to be discussed and eventually sent back to Mr. Andersen again, isn't that right?

A. Yes, I think at about 1 o'clock Irish time that would have been the position.

Q. Pardon?

A. I think from the record, at about 1 o'clock Irish time that would have been the position.

Q. 1 o'clock Irish time, somebody had to then get on the phone with Mr. Andersen and go through the changes?

A. Yes, but it seems to me from a recollection of the record, which I don't have in front of me, that a lot of the marks that he made on that document were ticks, which would suggest if there was agreement about them, they may not need to have been discussed further.

Q. So he had to send them back and Mr. Andersen then had to incorporate the ones that he agreed with into the final report, the ones that he disagreed with, but had made changes which were agreeable to the Dublin people into the report, and then fax back a completely new version of the report, is that right?

A. I am not certain if a fax had to go from Dublin to Copenhagen. A fax came in, I gather, at 1 o'clock Irish time and a discussion, I presume, could have taken place within a few minutes of that. It is not clear to me whether Mr. Andersen had them. I mean, I wasn't involved in that process, it is quite possible that he had implemented certain changes or there was agreement about them and I don't think a further fax went from Dublin to him, but I wasn't involved in this process, so I am simply relying on the record.

Q. There are about ten pages of suggested textual amendments and there is a lot of handwriting, a lot of ticks, some crossing out and so forth?

A. I don't have the document you are looking at at the moment.

Q. In any case, I will go through those, I will give you the document in a moment. If you want to look at it, it is in Book 46, Tab 48, I am not going to put it on the overhead projector for the moment.

Those changes, as you say, could have been discussed over the phone and then Mr. Andersen could have incorporated all the changes into a new, a final version of the report and faxed it back to Dublin, isn't that right?

A. It is true, and what I also said was it was possible where he had ticked that he had already done that.

Q. Yes. I want you to look at a fax of the 26th October, 1995. I think you already have it?

A. Yes, I have it here.

Q. It is from Michael Andersen at 10:30 in the morning Danish time, to Fintan Towey and says,

"Dear Fintan,

"Attached to this fax you will find the final version with the shadow text of the Minister as agreed. Please check that you agree on the changes. I take it for granted that we implicitly agreed not to change the award of marks, e.g. in Table 1.

"Please give us instructions ASAP on how many (few) final colour printed version you need and with what shadow texts.

If I am not available, please contact Jasper Grunland

Dinesenn, who is responsible for the logistics."

That seems to be a sending back by Mr. Andersen of what he calls the final version of the report, and then he wants to

know how many copies do you need, isn't that right?

A. I would say that it is Mr. Andersen faxing the final report with the shadow text of the Minister, which is distinct from the final report, because they were able to produce different versions of the report with different peoples' names on them. So it doesn't suggest to me that he didn't already send a version of the final report the previous day. As since as I have already said, that I had a fax saying that I had received 52 pages of the final report.

My understanding is that those 52 pages were of the final report and that they were received on the 25th.

Q. I wonder if that is right? If you look at the 25th for the moment, the fax that is dated the 25th. We don't have the fax banner, but if you look at that fax.

A. My fax, yes.

Q. Yes. It says, "Michael, fax of final report." Then brackets, "(up to page 52) received. Thank you. List of names for six colour copies of the final report follow:

Martin Brennan,

Sean McMahan,

John McQuaid,

Jimmy McMeel,

Archive 1,

Archive 2."

Now, could I just suggest to you that that seems to be a response to the fax from Mr. Andersen where he says, "Please give us instructions on how many or few final

colour printed version you need and with what shadow

texts." Do you say that?

A. I see that is what he says in that fax, yes.

Q. What may have happened, and I want to put it to you, is that although your fax is physically dated the 25th and may have been actually typed on that day, do you see that? It may not have been sent until the following day in response to Mr. Michael Andersen's fax of the 26th of October, where he asked the question which you seem to have answered. Do you follow?

A. I follow what you are suggesting.

Q. And it looks as if your fax was prepared either in advance of receiving anything from Mr. Andersen or as what you were receiving from him was coming in over the fax line, because it says, "Michael, fax of the final report", then you have brackets which are blanked, do you understand?

A. Yes.

Q. And you put into those brackets, "Up to page 52". You see, I think you may have got up to page 52 at that minute, but the fax kept churning out 52, page 53, and so on, and right on up to all of the appendices up to the very end. I am suggesting that, in response that your document was sent as the full fax was coming into you on the 26th, but that for some reason the date the 25th was typed in it, but we don't have the fax banner so we don't know whether it was the 25th or the 26th. I am not suggesting anyone cut it off or anything like that, we just don't have.

A. My memory of the fax cover sheets that we produced at the time was based on a template, so I had a template ready to go for any fax, you know. I think if you shove it up there you will probably see yes, that was a fax cover sheet I used for all faxes. So when I opened that template I simply had to change the date. So it seems to be unlikely that I produced it one day in order to use it the next day.

It seems to me, as I said before, if it says the 25th of October, and is clearly an acknowledgment fax, that it was sent on the 25th of October, and that the fax that I am talking about was received on the 25th of October.

Q. Except you are giving information to Mr. Andersen that he doesn't seem to have asked for?

A. It is quite possible that I was on the phone to him, I don't know. I mean, I can't remember.

Q. Well, let's stick with the documents for the moment. On the face of the documents you are giving him information that he had asked for in his fax. It is quite specific, isn't it? That is a possibility, isn't it, that in fact your fax is wrongly dated the 25th of October?

A. It is a possibility, but the way I do business, I would find it surprising if I sent an acknowledgment fax dated the 25th and didn't send it until the 26th.

Q. I suppose it is equally true, though, that it is unlikely that Michael Andersen would ask you for something if he already had it?

A. That is also possible, yeah.

Q. In addition, if you look at all the documentation that the Tribunal has, we cannot find any report faxed on the 25th.

All we can find, judging from fax banners, is a report faxed on the 26th?

A. Again, I wasn't directly involved in the process of talking to Michael Andersen on that day, but it seems to me that, there was a considerable amount of pressure to get a document on that day. I can't see why he would have waited a day to produce a fax version.

Q. Sorry, you are speaking too fast, just the last point?

A. It just seems to me, I wasn't involved in this, so I have to put that rider on what I say. It seems to me there was considerable pressure on the 25th to produce a report, that a fax went out at 10 and Michael Andersen answered it very promptly, and had obviously done a considerable amount of consideration of it in the meantime. I see plus he had committed earlier, I can't remember, at some point, that he would produce a report by the 25th, and consultants are the kind of people that like to get their deadlines met, it is one of the things they like to pride themselves on. I can't see why if he had done all of the substantive work on these things, why he would then wait a day to send a document that was eagerly awaited on the 25th. It would really be more helpful if you discussed these matters with people who were actually receiving the documents, because I mean, I obviously don't have a clear recall.

Q. I just want to give you an opportunity of dealing with the

suggestion that I am making, that your fax is a response to Michael Andersen's fax of the 26th. And what I am suggesting supports that is the fact that there is no copy of the final report in the Department which was faxed on the 25th, and the only copy in the Department is a fax dated the 26th. Now, I go one step further, in fact, I can tell you that that copy of the report, the final version faxed on the 26th is dated the 25th on the cover sheet.

You know the front page, it says, "Final report the 25th."

Do you understand me?

A. I do understand that the final report

Q. But not actually faxed until the 26th.

A. I don't think we know that it was faxed on the 25th or the 26th.

Q. Oh, yes we do. Yes, we do.

A. I know you know that there is a fax on the record which has the 26th, but I don't know whether we know that. I think you suggested that there was no fax on the 25th. I don't think, I can't recall, and I don't think anybody knows, but it seems to me that there was an eagerly awaited fax on the 25th.

Q. I see.

A. And that it doesn't seem to me that the evidence is there that it didn't arrive on the 25th. I seem to have sent an acknowledgment saying that.

Q. You are saying that the evidence isn't there that it didn't arrive. I am only just suggesting to you that there is no

evidence that it arrived, as opposed to evidence that it did arrive?

A. The way I do business, I would suggest, and the use I made of those kind of fax templates, I would suggest that if I said I sent a fax which had the 25th on the cover, that it was, in fact, the 25th that I sent it, and plus

Q. If you got it?

A. And if the acknowledgment was an acknowledgment, as I think you are proposing that my fax actually went out on the 26th, I don't see why I would have bothered to send a fax acknowledging 52 pages of a report if, in fact, the whole report was coming in. I think I would have waited until the whole report came in on the 26th, since I don't think

Q. Well, would you? Would you? If you look at it, you see you say, "Dear Michael, fax of final report up to page 52", suggesting that, in other words, you had received 52 pages of it. And clearly you inserted that in handwriting into a typed document, giving you the opportunity to write in whatever figure was the appropriate one at the moment that you were signing or sending off the letter. And that the I am suggesting to you that the fax probably kept on coming after that day. And if you look at Michael Andersen's letter, he asks you to give him the names of the people to whom the faxes should be shadow, should be colour printed with the, you know, with the names of Martin Brennan, Sean McMahon and so on. I am suggesting that you

were anxious to get back to him as quickly as possible with that information, and you did so even before you had received all of his fax containing all of the report and the appendices. Isn't that a reasonable suggestion?

A. What I don't understand from that, I can't see, if this fax, as you suggest, did issue on the 26th, why I would have been under any pressure to give him anything because it didn't really matter to me when the hard copies for Sean McMahon, etc., arrived, so there would have been no pressure to give him that information.

Q. There would have been no pressure to?

A. There would have been no pressure on me to send that fax. I could have sent that any day asking him for the colour hard copies, I think.

Q. Assuming that you did receive a fax of 52 pages of the report on the 25th, and only 52 pages.

A. Yes.

Q. Have you any idea where that went, because nobody seems to have it? If it was so eagerly awaited, as you say, and such enormous pressure on to get it, what did you do with it and where did it go?

A. Well, I have no recall that I was dealing directly with it, but after acknowledging its receipt, but

Q. Well, you have mentioned that it was eagerly awaited and that there was

A. Yes.

Q. Hold on, and that there was enormous pressure all day to

get it, and you were conscious of the enormous pressure.

How did it disappear into thin air?

A. I suspect that when it arrived, rather than making a copy and putting it safely on the file, somebody moved with it, perhaps to, I don't know I would suggest, again, that you discuss this with the people who were more actively involved in this, more senior levels of this project, but I would think it is reasonable, since it was an important document and since it was eagerly awaited, that when it arrived, rather than making copies of it and putting it on the file, that somebody moved with it, and when somebody else had it, that they didn't hand it back, and therefore there was no original on the file.

Q. Did you were you actually are you saying now, that you are aware of pressure or are you saying that, that you are aware of pressure from evidence you have heard and from documents you have read, or are you saying that you recall that there was enormous pressure?

A. I am as I said before, when I was preparing my statements I did have some discussions with Fintan; in other words, to help each of us to jog our memories. I don't know, he was more involved in this process than I was. I had a discussion with him, where he said his clear memory was that he stayed very late the night before, that the whole intention was to produce a final report, and he stayed late the night before, that he came in early on the morning, that he worked on a document that he faxed to

Denmark by 10 o'clock Irish time, and he awaited the response, that he had a conversation with Michael Andersen and Martin Brennan, or sorry, with Michael Andersen on the phone and Martin Brennan beside him, and that he awaited the fax which resulted from that. That is my understanding of the pressure. It is not a personal memory of it. But given if, if I accept if I accept that as true, which of course I do, then it is reasonable that either Fintan or Martin grabbed the fax and went somewhere with it without making a copy of it and without putting it onto the file. I would, but again I emphasis this is not an event in which I personally took involvement, except that I seem to have sent a fax acknowledging the receipt of 52 pages, and I seem to have sent it on the 25th.

Q. Yes.

A. But again, I would emphasise that perhaps other witnesses would be more helpful.

Q. Could I just show you something, as it may be of assistance to you in relation to this matter, Ms. Nic Lochlainn. It has just been drawn to my attention. And if you could in fact, we have only one copy, so I will put it on the overhead projector and we can all look at it. If you look at the projector to your right, to your right. You see that fax there, dated the 24th, on something else all together. The date is the 24th of July, 1995. If we could just put it up a bit, please, so I can read it.

"Please provide written confirmation of your own and Billy

Riordan's agreement.

"Thanking you, Maev."

Do you see that?

A. I do.

Q. It is dated the 24th of July. If you just go to the top of that document, please, it says, "issued 25th of July." Do you see that?

A. I do.

Q. Is that your writing, is it?

A. It looks like my writing. Yes, I believe it is.

Q. Just as an example of a fax prepared on one day and not actually sent until the next day?

A. But I think you will also notice that I made a point on putting on the record that it issued on the next day.

Q. But you were under savage pressure on the 25th?

A. I can't remember what I was doing on the 25th.

Q. I think you do know. There was dreadful pressure on the 25th and 26th, wasn't there?

A. Sorry, the 25th of July?

Q. Of October?

A. Sorry, I thought you were mentioning the 25th of July. I am simply saying that the fax that you mentioned in question there isn't really an acknowledgment fax, where the one that I issued on the 25th of October would be an acknowledgment, and it would be proper and more important to get the correct date on it, the fact that the date it issued on was a separate date than the one that the

template offered.

Q. Yes, that is true, but it is true that you sometimes must have been in the habit of getting your faxes ready in advance of when you were going to send them out?

A. I am not certain.

Q. It is

A. I have no recollection of that being my practice.

Q. You did do it on that occasion?

A. Perhaps, yes.

Q. Did you or didn't you?

A. It seems like I did on that occasion, but again I would emphasise, it is not an acknowledgment fax.

Q. I suppose it just goes to show that, you know, there are occasions when even Homer nods, and when you might prepare a fax on one day and not send it out until the next day?

A. But I think as you emphasise, if it seems to be that it was important for me to acknowledge a fax, that I might have been more careful in relation to the date on that fax.

MR. MCGONIGAL: In fairness to the witness, Mr. Chairman, there is another fax which I presume Mr. Healy will now draw the witness's attention to, which is dated the 18th of October, 1995, if we are in the business of discussing practice and procedure in relation to the sending of faxes, which doesn't have any issuing date, but does have the 18th of July, and does seem to relate to a report, together with a list of colour copies.

CHAIRMAN: I will leave you to raise that, Mr. McGonigal,

in due course.

MR. McGONIGAL: Certainly, Mr. Chairman.

CHAIRMAN: I had indicated, Mr. Healy, that I proposed at a suitable stage to take a break, in ease both of the witness and of the stenographers, so...

MR. HEALY: Yes.

CHAIRMAN: Would this be approximately as you envisage matters at this stage?

MR. HEALY: Yes.

CHAIRMAN: We will confine it to 15 minutes because I am conscious Ms. Nic Lochlainn has commitments tomorrow, and we have undertaken to honour those.

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

Q. MR. HEALY: I just want to ask you one thing about the content of those documents, Ms. Nic Lochlainn. If you go to that Leaf Number 1 and go to the final page, please.

This is a document which was never moved on to a second draft. The description of the evaluation process, the final heading is:

"AMI Evaluation Report:

"Following further analysis of the risks associated with each application, the overall evaluation incorporating inputs from the sub-groups deliberations having being completed, and a final ranking of the applications proposed. A draft Evaluation Report was submitted by AMI and discussed at a project meeting of the 9th October."

And

A. Can I just say, before you said this document in fact wasn't amended, but I think, in fact, it never went anywhere. It never ended up on the file.

Q. Sorry, I can't hear you?

A. Just in terms of this document, you said it was never amended. But I think also the fact is that it never ended up on the file. It was never used, I think, because it was openly found in personal papers that I left under a desk or just to give it that status. I don't think it ever was used.

Q. I follow. But you must have given it to or shown it to Fintan Towey, is that right? You see, there must have been a decision made at some stage you were going to use it and then engines must have been reversed at a later point because you got an instruction, am I right? You prepared it, you brought it to Fintan Towey, he made some amendments, you were going to put it into bullet points. It was going to be used maybe in connection with an aide-memoire, but none of those things happened?

A. If we are talking about the last document under Tab 1, it's the one headed, "Briefing note for the Minister, evaluation process for the GSM competition," it was produced, and Fintan and I seemed to have discussed it, but as far as I know, it was never amended, and it just ended up under the desk somewhere or he suggested amendments that were never implemented. It seemed to me it was never used. I mean, I

am still not clear where the other document known as the "final document" was used, but it ended up on the file.

CHAIRMAN: Which of the various documents that you opened does this refer to, Mr. Healy?

MR. HEALY: That's Leaf Number 1, Sir. It's the last page in that Leaf Number 1. It's also, as it happens, the last page of the document described as "Aide-memoire, Annex 1. Briefing note for the Minister, evaluation process for the GSM competition."

CHAIRMAN: Thank you.

Q. MR. HEALY: You say a draft Evaluation Report is submitted by AMI and discussed at a project meeting on the 9th October. Now, you weren't at that project meeting, sure you weren't?

A. No, I wasn't.

Q. So you were, presumably, relying on the minute of the project meeting to enable you to say that, is that right?

A. Either the minute or I may have spoken to colleagues.

Q. You say, "Unanimous support was given by the Project Group to the results of the evaluation. Having incorporated comments from the Project Team in relation to the format of the report, AMI submitted a final draft." Then you are referring to the next draft, which is the draft of the 18th, isn't that right?

A. I assume I am.

Q. How do you know that unanimous support was given by the Project Group to the report of the 3rd at the meeting of

the 9th?

A. I don't know where you are getting, what you are saying to me from the text.

Q. It says, it says, "A draft Evaluation Report was submitted by AMI and discussed at a Project Group meeting on the 9th.

Unanimous support was given by the Project Group to the results of the evaluation." Do you see that?

A. Yes.

Q. You couldn't get that from the minute, could you?

A. I'd have to check the minute.

Q. Well, the minute is at Leaf 121 of Book 42. I can give you rather than you have to pull out the thing, I'll give you my two pages.

(Document handed to witness.)

A. The minute doesn't seem to say anything about unanimity.

Q. Do you know where you got that impression?

A. I have no specific recall. I assume I got it from conversations with colleagues who were at the meeting.

Q. But it certainly wasn't the result of the meeting, isn't that right?

A. Since I wasn't at the meeting, it's difficult for me to comment about the result. However, it seems clear from the minutes, that no reserve of substance was placed or at least that the minutes didn't record

Q. That's not the question I asked you, Ms. Nic Lochlainn.

Let's just be clear about this. The minute does not say that there was unanimity at the meeting?

A. The minute does not say that there was unanimity at the meeting, but that is not to say that.

Q. Insofar as your report suggests, that unanimous support was conveyed at the meeting, it's not something that's recorded in the minute of the meeting, is that right?

A. It's not something that was recorded in the minute of the meeting, but the result which was there in the version on the 3rd October was the same result, it was there in the version of the 18th and the version of the 25th and therefore I think that the end result confirmed what my position was. And other witnesses may confirm it as well.

Q. Could you go to Leaf 148 of Book 43. Maybe I might hold on to that so I can get it back. This is another copy of the minute of that meeting, do you see it?

A. Yes.

Q. Go to the second page, and there is a note by Mr. McMahon which says, "It's probably too late to change this record" or "This report", it's not clear. "But our intervention at subsequent meetings made clear that:

"1. We did not subscribe to unanimity at this meeting.

"We expected the qualitative assessment to continue from that time.

The report, while it had probably highlighted the two best applicants, had a long way to go." Do you see that?

A. I see the note you are talking about.

Q. That doesn't seem to be consistent with the suggestion that

unanimous support was given by the group for the 3rd

October evaluation, is that right?

A. That is the view suggested by the person who wrote this note, yes.

Q. Well, if that person was a member of the Project Group, and he was at the meeting, then presumably he is in a better position to know than you were?

A. So maybe you should ask people who were at the meeting.

Q. I am just trying to work out where you got your impression, and you must have got it from somebody who was in favour, but

A. From somebody who was at the meeting, I assume I got it from somebody who was at the meeting.

Q. Who gave you that particular view and that must have been would that have been Fintan Towey?

A. As I said, I have no specific recall.

Q. Would it have been Fintan Towey as a matter of probability?

A. It could have been Fintan Towey, it could have been Martin Brennan, it could have been Jimmy McMeel, it could have been anybody, I don't know. I don't recall, sorry, I don't recall.

Q. As a matter of probability, who is most likely to have been having regard to who gave you the instruction to do the work?

A. Having regard to the way I worked within that division and the close relationships I had with Martin Brennan, Fintan Towey, Margaret O'Keefe, Nuala Free, and the close

proximity in working relationships during this project with people in the Department of Finance, in the Planning Unit, I really can't say who it was, because we were working very closely together, all members of the Project Group. It could have been anybody.

Q. Is that your answer?

A. Yes, I am sorry I can't be more specific in my recall, but that's as best as I can provide it.

Q. Was it Mr. McMahan?

A. I cannot recall.

Q. Could it have been Mr. McMahan?

A. It could have been anybody on the Project Group who was at the meeting.

Q. I think you went to a meeting in Copenhagen, am I right, on the 21st September, on the 20th September, I am sorry?

A. I was in in September, I'll take the date from you. I am not sure what the date was, but I think it was that week in September, I understand.

Q. I want you to go to do you have Book 42?

A. I don't think so, no.

Q. If you go to Leaf 111, please.

A. Yes, I see it.

Q. This is a memorandum from Mr. Andersen to Martin Brennan and Fintan Towey of the 21st September, and it seems to be based on what had happened in Copenhagen, and suggested what might be done in the following ten days, and also left a number of questions to be dealt with by the Department.

If you look at the second page, the first page, sorry, you have a heading, "The remaining award of marks to the tender mentioned", then another heading, "The scoring of the marketing aspect, financial aspect and other aspects." If you go on to the next page, there is a paragraph which begins, "Other risks might be identified and dealt with later in the process." Do you see that?

A. I do.

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

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

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

Did you ever remember having that fax drawn to your attention?

A. No.

Q. And am I right in thinking that there was no meeting of the Project Group to deal with that or the issues raised in that fax?

A. I recollect no meeting with the Project Group to deal with this fax.

Q. And there was, in fact, no Project Group meeting, so far as minutes go, between the date of that fax and the meeting in Copenhagen on the 28th or 29th September, isn't that right?

A. That seems to be the case, yes.

Q. Could you go to Leaf 5 of the documents that we gave you a book of today, please. I just want to try to understand what this document is about. It's headed "Jimmy McMeel", do you see that?

A. I do.

Q. Underneath that I think it says "Thoughts". Is that your handwriting?

A. It is my handwriting.

Q. On the right-hand side "Margaret", is that correct?

A. I think that's an abbreviation for Margaret, yes.

Q. "Are we happy with the quantitative appendix?" Is that what that says?

A. That's what that says.

Q. Underneath that, "Are we happy with the qualitative grades?"

A. Yes, that's what that says.

Q. Underneath that, "Do they agree with our record of the meeting?"

A. That's what that says.

Q. What do you think that memorandum was about?

A. I don't recall what it's about, but looking at it, it suggests to me that it may have been notes I wrote down either during a conversation with Jimmy McMeel on the phone

or after a conversation with Jimmy McMeel on the phone.

That's just a guess, I have no specific recall.

Q. It seems that this must have taken place sometime after the 9th October, and I'll tell you why I think that, if you like, unless you can put some date on it. I am just giving you my view.

A. Maybe.

Q. I think it's after that date because it says "Annex 9, 10." Do you see that at the bottom?

A. Yeah.

Q. And the report came in on the 4th I think, the report of the 3rd, the first version of the draft Evaluation Report, and therefore, presumably, you had it either sometime after that or sometime after the meeting at which it was first discussed on the 9th. And I am just wondering was there some discussion at that stage of producing a quantitative report and putting it into the Evaluation Report because that was what was envisaged by the evaluation model, but was not, in fact, ever done, and I wondered whether this indicated there had been some discussion about it?

A. I can't recall I mean, I was puzzled when I looked at these documents last night, because it seemed I looked back at the three evaluation reports that are on the file, and I couldn't see any quantitative appendix in any of them, so I can't understand

Q. Maybe I can just help you. The evaluation model suggests that there would be a quantitative report, and that it

would be contained in an appendix.

A. Yes, I take it that it does if you say so.

Q. Maybe some of the other witnesses can tell us whether there was a discussion about it.

Can you go on to the next document in Leaf Number 6, which is, I think, your handwritten notes to enable you to either approve or possibly draft, I could be wrong, the minutes of the meeting of the 14th September?

A. Yes.

Q. Those minutes are, as far as I can see, prepared by Nuala Free, they are in Leaf 104 of Book 42.

A. I have it. Sorry, I have it.

Q. Oh, you have it. That minute of the 11th meeting of the GSM Project Group dealt with two things. Firstly, it dealt with a short discussion of the presentation, the last presentation that had taken place that morning, that was A4, the A4 presentation, do you see that?

A. I do, yes.

Q. And then it went on to discuss the current overall position, and what steps would be taken thereafter with a view to progressing the evaluation process.

A. Yes.

Q. If you go to the next document in Book 42, that's in Leaf 105,

A. I don't know if I have that document.

Q. Sorry.

A. 105?

Q. Yes.

A. Yeah.

Q. This is a handwritten note of Mr. McMahon of the same meeting. And do you see where he says half-way down the first page, "Agreed process is still intact and not compromised." I think in fact it says, "All agreed process is still intact and not compromised."

A. Yes.

Q. If you go to your own note, do you see where you say the third line, "Risk to the process?" And then you have circled, "Fine". Do you see that?

A. Yes.

Q. Can you throw any light on what you meant by that, "risks to the process"?

A. I don't have any recall of what I meant by it. It seems we were both at the same meeting and both taking notes, that one can infer that the comment made by the other person, "all agreed process is still intact and fine", that the process was fine, is that there was some discussion of whether the process could have been compromised, had been compromised or was still a valid and a process with integrity, and that the conclusion at the meetings was it's fine, and the other person seems to have stated that everybody agreed to that position.

Q. I am just trying to identify what risk or what or what had prompted you to ask anyone to question the process?

A. I have no recollection. It may just have been an

extra I have no idea. A lot of the discussions were initiated by the consultants so far as they felt it was a good thing to do at that point. I have no recollection, I am sorry.

Q. The next item in your note is, "No contact with Evaluation Team.

Cannot stop access to Minister."

Do you know what that's about?

A. I assume it's a reiteration of the protocol which was adopted at a much earlier meeting of the Project Group, where there were clear lines set down about, under what circumstances people on the Evaluation Team could meet with potential applicants, and it was reaffirming that rule, and somebody at the meeting obviously made the point that while the protocol was there, that it might not be

Q. It's just a strange thing to see there, isn't it, a reference to the Project Team not being able to stop access or anybody not being able to stop access to the Minister?

A. I don't know if it's strange. I suppose it's civil servants don't control a Minister.

Q. Of course, but why is there any mention to it why is there any reference to it unless somebody had drawn up the possibility that there had been some attempt to gain access to the Minister, or that there had, in fact, been access to the Minister?

A. I don't necessarily agree that there may have been any of those instances prior to those comments being discussed at

a group. It may simply have been somebody stating a position, reminding the group that this was the position, and also recognising, as I just said, that civil servants are not in a position to stop a Minister from doing what he or she wanted to do.

Q. Do you read it as meaning that you couldn't stop the Minister having access to members of the team, or do you read it as you couldn't stop other people having access to the Minister?

A. I would read it as saying that you cannot stop people from applicants or people involved with applications accessing the Minister, because that's how I'd read it.

Q. I presume you knew from reports from Mr. Brennan to the Project Group meetings, that the Minister had been in contact with him?

A. I think I would have been aware of that, yes.

Q. Do you know if the Minister had been in contact with Mr. Towey?

A. I think I didn't know at the time, as far as I know, but I think I have seen from his intended evidence that he had been in contact with the or either he had

Q. I meant at the time?

A. Did I know at the time?

Q. Yes.

A. I have no recollection, but I don't think so. I may have. I have no recollection. I suppose I could say my

recollection is I did hear Martin Brennan saying that he had spoken to the Minister. I don't have a recollection that, a specific recollection that I heard Fintan Towey saying that.

Q. If you go to Leaf 95 of Book 42, please.

A. Yes, I have it.

Q. That's a note by Ms. Nuala Free, or a minute of the meeting of that day in which

CHAIRMAN: It's 4th September, I suppose, for the record.

Q. MR. HEALY: Yes, 4th September, yes. The ninth meeting of the Project Group. It was the last meeting before the presentations began. You have a note of the same meeting in Leaf 8 of the latest book, your handwritten note. I am not asking you to go through it. I have tried to go through it myself, but it's perhaps a slightly more extensive note. But do you recall that on that day you were present at another meeting with Mr. Andersen, attended by Mr. Brennan and Mr. Towey, in which a number of contractual matters were discussed?

A. I recall that, yes.

Q. But in addition to contractual matters, a number of other points were made including, in particular, a point about the fact that the qualitative evaluation had already begun without any input from the Department side. Now, that document is contained in Book 52, Tab 21, I think. I can give you a copy to speed it up.

(Document handed to witness.)

A. Yes, I have it.

Q. If you go to the second page of that document.

A. Yes.

Q. There had been a row about the agreement.

Mr. Andersen was looking for more money to do work which he claimed was outside the terms of the evaluation process.

Do you remember that?

A. The first disagreement or this one?

Q. This disagreement. There were, perhaps, more than one disagreement.

A. I wasn't really involved with the first time when there was some discussion

Q. At this point you are recording a disagreement in which Mr. Andersen is saying, "there is a ceiling on what I agreed to do, and I am being asked to do things that are outside that ceiling." And I think the gist of Mr. Brennan's response was, "Look, you are supposed to be experienced in this business, you should have known what it was you signed up for, you should have known at that stage what it was that was inside or outside the agreement. You are making a farce of the agreement", and eventually some sort of deal was hammered out?

A. Yes.

Q. But in the middle of that meeting, or perhaps to some extent as part of it, there was a discussion about the process, and the fact that aspects of the process were not being performed by Andersen as Mr. Brennan would have

wished. Do you recall criticisms of the process, or criticisms of Andersen's role?

A. Being made at that meeting?

Q. Yes. Well, you certainly noted them, in any case.

A. Are you talking about the last paragraph in that page where there is Indents 1 to 6?

Q. Yes.

A. The convention I used there in that meeting report does not necessarily say that those points were discussed at the meeting. I may have added that so that the people reading that meeting report would know that I saw that as the case.

It's not necessarily true that those things were said at the meeting.

Q. Well, if you saw it as the case, was this your own view or was it the views of Mr. Brennan and Mr. Towey?

A. Well, since I produced this report, I would say it was my own view.

Q. Not Mr. Brennan's or Mr. Towey's view?

A. I don't know whether they agreed, but since I produced the report, it's my view. If I could put the meeting in context slightly?

Q. Yes.

A. It's true, clearly, that there were contractual discussions between the Department and Andersens which opened I think very late in August, and this was probably, there were two contractual meetings, one on 9th September, and I think one a week later. And I suppose at the time both Andersens and

the Department were, in effect, posturing to maximise the negotiating position, and Andersens had sent a fax saying that they were, I think at some point they had suggested themselves in a fax that they were doing certain things or things for instance, one of the things they mentioned, I know certainly, was instead of producing colour drafts, they were going to produce black and white drafts, and this was an indication of how they were putting less resources into the plans. I don't have that list to hand, but I know a lot of things that were mentioned in that list were minor things or didn't, I would say, have a serious impact on the evaluation. And if you look at the kind of work Andersens are undertaking at the time these contractual discussions were going on, they were certainly producing significant terms in written questions to applicants, they were involved in sub-groups with the technical side in that week, I think also perhaps on performance guarantees, but the record would confirm that, and they were involved in intensive preparations for the presentations in the following week, and indeed, Jon Bruel, who I think was the second most senior person in Andersens involved in the project, in one conversation I had with him in that week I noted, in fact, that he had no knowledge at all of the contractual dispute in question. So I think that while this record at the time shows that I was trying to clarify, trying to clarify to our extent how real or unreal the change in Andersens working practices were. When the issue

was resolved, there was, in fact, no serious impact on the quality of the evaluation work being undertaken by the consultants. I think this was also demonstrated by the fact that these contractual meetings took place at night after extensive work had been done during the day and during normal working hours and beyond the evaluation process itself, and that in fact while Jimmy McMeel became familiar with the fact that this was going on, because he had to, because we were looking for extra budget, I don't think that other members of the group I am not sure, I have no recall who else was aware of them, but I certainly don't think that the atmosphere of the group gave it any consideration or that anybody else in the group turned around and said "How come Andersens had become very poor consultants, having been very expert consultants last week?" That was not the case. The case was expert advice continued to be provided, while on the sidelines contractual discussions took place where people took postures and finally resorted to agreement to extra budget.

Q. Is it true that, as you say at sub-note 3, that "Sub-groups of the qualitative evaluation had already taken place, although the AMI tender says that the evaluation would proceed as follows: Quantitative evaluation presentations, qualitative presentation."

A. I think that when I wrote that, I wasn't writing it in the sense that I knew that it had happened. It was something that Andersens had said at that point, that it had

happened. But I think the earlier sub-groups that took place were technical ones, so I think certainly, and my knowledge of this would only be from the file, it would seem that the technical people were happy they had attended the sub-groups they needed to attend. So perhaps you could confirm that with other witnesses, but since I don't know for a fact whether that's true, it was certainly something Andersens said, but then subsequently on other records it seems that the technical people were happy

Q. What are you saying? I want to be careful about this. Hold on, I want to understand it. Are you saying that the meetings I understand, and this seems to be reflected in the note of, the minute of the main meeting as well, and I think Mr. Brennan was also under this impression, that meetings had taken place?

A. That's what Michael Andersen said, I think. Either I am not sure if he said it at that meeting or he said it in a fax, but I think I had the knowledge from Michael Andersen. I can't be sure whether it was because I had it from a fax.

Q. It must be the case that they had taken place. It must be the case that they had taken place without the Department being involved, and it must be the case that there was criticism, because if you go on to the next point, Point 4, you say, "Very poor notes of the sub-group meetings which AMI had conducted without DTEC participation were handed to MNL for distribution to the Project Group." Do you see that?

A. I do see that.

Q. Doesn't that suggest that you were recording what were a fact, or what was a fact, that there was dissatisfaction with the way things were proceeding?

A. I was recording that there was dissatisfaction at that point. And at that point, to be clear about our negotiating position, it was important for me to emphasise what the position was at that point. But I am saying that subsequent to that, the technical people, and I think it was, I can't be sure, subsequent to that, I don't think anybody

Q. There is no discussion like this at the meeting of the Project Group on that day?

A. No.

Q. Did the Project Group really understand what it was they were supposed to be doing? Did they have the same understanding that you had, that there was to be a quantitative, a presentation and a quality evaluation, and that the evaluations were to take place with all of the members of the group present or involved in some way? Did they all have that clear understanding or were you all operating on different understandings?

A. I think the understanding that the quantitative would take place followed by the presentations and the qualitative was discussed at a Project Group, so I am assuming that people who were at that Project Group would have understood that. I am not sure if they understood everybody at the Project

Group would have to be at every sub-group which took place to do evaluation.

Q. Only every sub-group of which they were a member, obviously?

A. Yes.

Q. But isn't that the complaint that is being recorded here, that sub-groups had taken place without people being involved? Did everybody understand that they were to be all involved in their own respective sub-groups, or is it only you, Martin Brennan, and Fintan Towey who understood this, and Mr. Andersen?

A. I think there were enough discussions about work programmes at the various Project Groups that took place, where it was clear that sub-groups were happening and that if people felt that they wanted to attend or needed to attend because they were a matter for their expertise, then people were open to do so.

Q. Was it as casual as that?

A. No, but there are records showing that, giving dates and times for when sub-groups were happening, what topic was to be discussed and

Q. But was it as casual as you are suggesting, that you could attend if you felt like it and you needn't if you didn't feel like it?

A. I don't suggest that it was casual. I am saying

Q. Or do you want to rephrase it?

A. I am saying there was information given out about work

programmes at the Project Groups, people were in attendance at Project Groups, and I think people were clear enough, individuals were clear enough about which groups they wanted to attend, and I don't think there was any absence of technical people feeling that there were technical sub-groups that they arranged, they made suitable arrangements with the consultants to attend the appropriate ones. Similarly, the financial people did the same.

Similarly, there were some points at meetings where records showed it was to be decided who would attend these sub-groups. What I am saying, if other people at those meetings were aware those sub-groups were coming up and felt they wanted to attend, I think they could have discussed it Martin Brennan or Fintan Towey.

Q. Do I understand you to say that technical people organised their sub-groups, financial people organised their sub-groups, if anybody outside of those areas of expertise wanted to attend them, you feel they could have done so if they wanted to, which is not a point I was making, but a separate point, am I right? I just want to be clear about this. Maybe let me ask you this question: At the meeting of the 4th September, did all of the people on the technical side understand that you and Martin Brennan and Fintan Towey had a complaint or a criticism about the fact that qualitative evaluations had taken place without their being involved?

A. I have no specific recall that they

Q. It's not mentioned in the report in clear terms. Wouldn't it be only right that those criticisms should have been brought to the attention of the whole Project Team so there could be no risk of this happening again, and so that everybody would be on the same wavelength as to what they had to do and what it was Andersens had to do to comply with the originally envisaged process?

A. I don't know if it would have benefited the process to bring the contractual negotiations into the main forum of the Project Group.

Q. I agree with that, but I am not talking about the contractual aspect of it, but the fact that as part of the contractual aspect, it seems that there were other matters concerning the substance of the work that were ventilated in the contractual discussions, but not brought to the attention of the whole group in the Project Group meetings?

A. If this note which I made at the time is correct, or I think that week, it says that sub-group meetings had taken place and notes had been handed to me for distribution, in which case if I distributed those sub-group notes, then people would have been aware that those sub-groups had taken place. So if they felt unhappy with that, then they could have taken issue with it at that point, but I don't recollect that people at the Project Groups did.

Q. When you were handing out those notes, did you say "These are very poor quality. You realise that these sub-groups were held without any of us being involved. We are going

to have to make the best we can with it and make sure it doesn't happen again", or did you just hand them out without saying anything to anybody?

A. I have no recall, but I suspect I simply circulated them.

Q. The latter. You just handed them out?

A. I have no recall of making the kind of comments you suggest there.

Q. And I suppose if you had made comments like that, they would have been recorded in the notes of the meeting, would they?

A. I am not certain if they would have.

Q. What?

A. I am not certain if they would have.

Q. Would that type of comment not have been recorded, would it?

A. There were a lot of comments at a lot of these meetings which weren't recorded, because they were very long meetings and it would have been unreasonable to have a minute of that length. I think for me the main focus of the issues you discuss here is that they were contractual negotiations, but the intention was to keep the process moving forward in as speedy a manner as possible, and to bring the contractual process or posturing which was taking place as part of the process into the main group wouldn't assist the process.

Q. I wasn't talking about the contractual aspect. I was talking about the substantive aspect, not the contractual

aspect. I quite agree with what you are saying about that, it seems perfectly sensible, you don't bring contractual rows into the substantive work, but the contractual row did contain material relating to the substantive work, and all I am asking you is, if those, as I see it, relevant matters had been brought up at the substantive project meeting, would it have been recorded? And I think what you are saying is, it mightn't have been because that type of thing wasn't?

A. It didn't arise so I can't speculate what would have happened, I don't know, I am sorry.

Q. Which is it? Are you saying it didn't arise or you don't know?

A. Am I saying what didn't arise?

Q. The substantive complaints you had, did they arise at the substantive project meeting on that day?

A. I have no recollection of particularly what happened in relation to this at that meeting. The note on Indent 4 on the page seems to suggest that I circulated notes of sub-group meetings, and I have no recollection that I made comments on them, and I don't think the minutes reflect that I made comments on them.

Q. And if you had made a comment, you say you think the minutes wouldn't have recorded a comment like that?

A. To be honest, that's speculation, so I can't really say what might or might not have happened.

Q. You can't say, I see.

Now, I wanted to look at one last thing. If you look at, I think it's Leaf it's one of the items I drew to your attention yesterday, and I asked you about the weightings.

If you go to Tab 2 of the most recent book that you were given, and to the third-last page.

A. Yes.

Q. See it says, "Evaluation model major sections only"

A. "Changes."

Q. That is "Changes", is it?

A. Yes.

Q. Is that an abbreviation for changes, is it?

A. That would be my abbreviation for changes, yes.

Q. All right. Then it says, "7 and a half weighting." Do you see that?

A. Yes.

Q. Now, in the evaluation model, which was ultimately used in the final days of the Evaluation Report, and as far as we can judge, in most of the process, there was no 7 and a half weighting, isn't that right?

A. In terms of the qualitative?

Q. Well, I don't know. Maybe there was in the qualitative.

If you look at the list of weightings applied to the final result of the evaluation, there is no 7 and a half.

A. I'd have to look at the specific table you are talking about.

Q. If you look at any table, I can assure you there is no 7 and a half?

A. I have to take it on trust from you, since I am not looking at it at present.

Q. Initially there were weightings in halves and so forth, three-quarters, and what I want to try and understand is, when were the weightings changed? Now

A. Do you mean in terms of the weighting changed when the Commission issue was resolved?

Q. Yes, there were two changes to the weightings. Firstly we know that the weightings were changed, and consequent upon the intervention of the EU, when the licence payment was capped at 15 million, and therefore, the importance of that criterion was downgraded.

A. Yes.

Q. The weighting was downgraded from 14 to 11, and the spare three points was added on to tariffs to make that 18.

Adding three to 15, isn't that right?

A. That's correct, yes.

Q. In trying to understand this, I have got a book here which mainly abstracts documents from the books we already have.

I am trying to make it easier for you.

A. Thank you, I have that here. It's the initial documents, yeah.

Q. If you look at the first leaf in that book.

A. Yes.

Q. It contains documents from Book 46, Leaf 35, which is in fact the report?

A. The Evaluation Report?

Q. Yes. It's the first document.

A. It's the 3rd October, is it?

Q. Of the 3rd October, correct. If you go on to what is page 11 of Annex 3, do you see that? It's the second page.

A. Yes.

Q. And what you have is a list of all the indicators grouped on the left-hand side with the weights to be attached to them on the right-hand side. Do you see that?

A. I do.

Q. And these are the indicators which you can group together in such a way as to correspond with the eight criterion in paragraph 19?

A. Yes.

Q. And the first of these is, "market penetration", score, 3.75. That's market penetration score 1. "Market penetration" score 2, 3.75, making a total for market penetration of 7.25. Do you see that?

A. I do.

Q. 7.5. Underneath that "Speed and extent of demographical coverage." That's 7.5. "Competitiveness of OECD like GSM II basket." I think that's "tariffs", that's 15. Do you see that?

A. Yes.

Q. "Number of international roaming agreements", 6. "Number of cells", 6. "Reserved capacity", 10. "Blocking rate", 2.5. "Dropout rate", 2.5. If you put those two together you get blocking and dropout rate at 5. Underneath that,

"Frequency economy", 3. Underneath that, "Number of network occurrences in the mobile field", 10. Underneath that, "Up-front licence fee payment from the applicant", 14. Underneath that, "Solvency", 7.5. Underneath that "IRR" 7.5.

If you add all of those up they come to 103.

A. Yes.

Q. And do you remember we discussed yesterday how you applied how Andersens suggested applying a renormalisation factor to them to ultimately get a result based on a 100%?

A. I know you said that. I wouldn't be confident to say we discussed it because it was I wasn't familiar that Andersens had done that.

Q. I see. Were you not aware that it became necessary at some point, or it was decided at some point to change the weightings?

A. To change the weightings?

Q. Yes.

A. In terms of the changes we discussed before, yes. In terms of my recollection is that at some point in the process, and I am not exactly sure when, Ed O'Callaghan noticed that this table came to 103, well this table was there obviously in previous documents in the evaluation model. I am not certain when he discovered that or when he brought it to the attention of the group, but I mean, perhaps you should check with him, maybe I am wronging him, but I think it was

he who noticed that it was adding up to 103, and I suspect, actually, because you had asked me to look at weighting, I looked at some of the documents last night where it mentioned weightings. It seemed to me that at the beginning of August, our section recirculated the evaluation model so that people would use it when they were reading applications. And there was a meeting on the 4th September, which I think I have the rough notes to in the blue folder you gave me yesterday. And I think so maybe I'll just find that. Yeah, it's in the blue folder under Tab 8. Those are my rough notes of, at least I surmise from the contents of them, comparing them to Project Group minutes, formal minutes, that these are my contemporaneous notes of the Project Group which took place on the 4th September, and in the morning.

And at the very back page of that tab, you will see the very last thing I wrote in the notes is "Adv." Which I think might have been "advised" "...first draft of quantitative presentation", or I don't know what the last word is. "Quantitative "

Q. "First draft of quantitative here."

A. Maybe, I don't know. It doesn't look like a "here" to me actually, from my writing actually. Then it says, "Will be amended", and then it looks like a 1 and 2, and under 1, "Written response from applicants", and under 2, "New weightings." Again, what we were just saying about weighting, I think perhaps having recirculated the

evaluation model at the beginning of August, at some point, I think probably after the receipt of applications for evaluators, that Ed O'Callaghan at that point then noticed the 103 issue, raised it at this meeting, and that's why they were there talking about new weightings. And also I think I am sure I probably specifically mentioned this to the Tribunal in one of my statements, I can't remember which one. On the 6th October I sent a fax to Andersens where I raised the issue of this table I think in their evaluation model in the annex to the October 3rd report, and simply asked the question, I can't remember the words I used, but something like "What's happening here?" Or it mentioned, I think, I might have been copying them with the original evaluation.

Q. I follow.

A. The original weights as agreed by the group. And their most recent documents, and asked them to explain, and I can't, or I don't know if I asked them to explain or that fax issued, and I am sure you have it among your records.

Q. You may be able to throw a lot more light on this than anyone else. What I am going to do now is, I am not going to make you go through all of this now, there is not much point. I get the point that you are making. I want to put a further, if you like, point to you and ask you to look at it in this context:

If you look at the weightings that I have just drawn your attention to, as set out in the evaluation model, and as I

said, they come to 103. And they seem to be the weightings for the quantitative evaluation.

A. Yes.

Q. Now, those weightings for the dimension market development come to 32 and a half in total.

A. Yes.

Q. The figure for market development is 7.5. The figure for financial key figures is 15, and the figure for experience of the applicant is 10.

A. Yes, that added to 32.5.

Q. Doesn't it?

A. Yes.

Q. At some point in the process, either as part of the quantitative evaluation or not, I don't know, those weightings were changed, and this renormalisation factor was taken out of the whole process, and instead of having a weighting of 7.5 for market penetration or market development, whichever way you want to look at it, you ended up with a weighting of 10 for that. Instead of having a weighting of 15 for financial key figures, you ended up with a weighting of 10. And the weighting for the experience of the applicant was left the same, at 10. But don't you see that the weighting of "market development" initially was 50 percent of the weighting for "experience", do you understand that? Sorry, was 50 percent of the weighting for "financial key figures": 7.5 and 15?

A. According to this, this was 7.5 at one of the points, yeah.

Q. At whatever time this was. Now

A. Can I just say in relation to this phrase

"renormalisation". It was surprising to me when you used it yesterday.

Q. Was it?

A. And I have no recollection that Andersens ever told us they were doing anything apart from, I thought they were applying a model which used 100, and therefore there was no need for any kind of funny little calculations to get back to and the records we had on our files added to 100, so when I raised this with him I was assuming it was a typo they were talking about. Plus, I should have emphasised, I suppose, that the document we are looking at and the figures that were there was simply a paper description of weightings which would be used, and really the issue is what weightings they applied in the spreadsheets they used, and I am not sure I don't know or I don't think I did know then or yeah, I don't think I did know when, why would I? what they put into the spreadsheets, but they were at the Project Groups which led to the clear decision about weightings, which were 30, 20, you probably know better than me at this stage. So, when I sent that fax, I was sending it on the understanding of this was a typo.

Q. I don't want to keep you here very long. I am conscious that you need to get away. I am I just want to draw one thing to your attention.

If you go to the third leaf in the group of additional

documents I have just given you.

A. Yes.

Q. I'll refer to the document numbers. In Book 42, Leaf 88, there is a document showing a note from you to Mr. Towey with regard to the revised weightings consequent on the EU intervention, you see that?

A. Yes.

Q. And Mr. Towey has signed at the bottom that he is in agreement with the proposal, all right?

A. Yes.

Q. I presume you sent a document like that to everybody?

A. That I asked for everybody's I think they sent written confirmation, I think.

Q. I am just giving the example of Mr. Towey's. Okay?

A. I don't think I I think I told people on the phone "This is what we are doing, do you agree?" And they sent a written confirmation that they did.

Q. All right. There are another ten or eleven documents which I have taken out of the vast bundles of material made available by the Department and which haven't been put into the books because they are not of huge significance. And what they all show is that you went to considerable trouble to document the changes in the weightings. Would that be right?

A. That's correct, yes.

Q. And there is a lot of documentation dealing with it.

A. Yes.

Q. Now, the next document in the next leaf is a note to the file which records that the revised weightings were agreed by the members of the Project Group, and that document is in Book 42, Leaf 87, and that document, which is a note to the file, is in fact the culmination of all your work, your written work ensuring the revised weightings were agreed all round, okay?

A. Yes.

Q. Now, I want to you skip over the next document and go to the document in the first crimson leaf, if I can put it that way.

A. Yes.

Q. It's in Book 46, Leaf 35. And it's the first, or October 3rd version of the report.

A. Yes.

Q. And if you go to the annexes, Annex 3 is the one that deals with the evaluation model, and on page 11, you'll find that page to which I referred to earlier, which shows that at that stage Andersens were still using a weighting, as far as we can see, on the quantitative evaluation whereby these figures of 7.5 were attributed to the marketing element?

A. Well, I suppose I believe the distinction can be drawn that they had an annex in the report which still referred to the which had these figures in it. That's not quite the same thing as to say that those were the figures that they had input into the spreadsheets. I don't know. I didn't know then, and I don't know now. I am just saying it's a

distinction.

Q. I am not asking you for an answer now. I am asking you to try and understand the question because you simply know something about it and you might ultimately try to find out for the Tribunal a little more about it. I am simply drawing all the documents to your attention.

You can see here that this earlier weighting, in any case, is referred to even as of October the 3rd.

A. I agree, yes.

Q. The next document is from Book 42, Leaf 121. It's a verbatim note of the 9th October meeting. And it says, "Table 17 different from agreed weighting." Do you see that?

A. I do see that, yes.

Q. Now, somebody obviously made a point about the weightings at this meeting. I think I know who it is, and I'll come on to the next document.

In fact, if you go to the second next document. There is no tab numbers. It's just behind the second orange tab.

A. The very last one or is it the Evaluation Report 18th October?

Q. October 18th, 1995, final draft version of Evaluation Report, with notes by Mr. Billy Riordan.

A. Yes, I have Billy Riordan's notes, okay.

Q. Have you got that?

A. Yeah, I have one with scribbles, so I am assuming yeah, I have it here.

Q. If you go to the third page of that, and do you see table 18?

A. Yes.

Q. Now, I think that was table 17 in the 9th no, it wasn't, I am sorry, it's still table 18. You see table 18?

A. Mmm, I do.

Q. And you see where Mr. Riordan has put next to "market development, financial key figures and experience of the applicant" some manuscript numbers. Do you see that?

A. I do, yeah.

Q. 7.5, 15 and 10.

A. Yes.

Q. Which are the figures that I extracted from the earlier weightings?

A. Yes, leading to 32.5.

Q. Leading to 32.5, yes. And if you go to the page before that, again in Mr. Riordan's writing, you see firstly, in a box, referring to the weight of 30 for those three elements, he has written, "Not agreed by Project Group."

Do you see that?

A. I do, yeah.

Q. And then on the right-hand side he has, "No reason why 10 should be split in this way." "Why the 10 should be split in this way." Do you see that?

A. I see that, yeah.

Q. Now, the reason I am asking you to see what you can find out about this, is that it suggests that right up to the

18th October, which was only a week before the Evaluation Report result was communicated to the Minister, there seems to have been some confusion concerning what were appropriate weightings to be applied, and Mr. Riordan certainly seems to have thought that the weightings to be applied were the 7.5, 15 and 10. And what I am trying to find out is, why was there no why was there no documentation of any change in the weightings such as you engaged in, or you generated, if you like, in relation to the change in the weightings consequent on the new intervention, do you understand me, in this case? Or I think this could also be a perfectly valid explanation, or was there a confusion between one set of weightings to be applied to the quantitative evaluation, and another set to be applied to the qualitative? Do you follow?

A. I do, yeah. I'd have to reflect a bit, because there is a lot of material here.

Q. Well I don't think it's fair to expect you to come up with an answer to this now. This problem has only really

A. Certainly there was no process the fax which I sent on the 6th October highlighting that there was the 103 issue on the table in the report, I think as I recall that, it was I was thinking it was a typo and that it wasn't a serious issue that the wrong weightings were being used and as I recall, the next Evaluation Report came in I can't be sure, but it seems to have changed. I don't think I certainly don't remember any formal process in between the

two, and I thought that the change which led to 100 being at the bottom would have been a typo correction

Q. It's very it's not a complex mathematical process, where they add up to 103 at the end. You simply take each individual weighting, divide it by 103 and multiply by 100 and you get the result in percentage terms, do you understand me, and you'd still get 100 at the end of the page in percentage terms, do you follow?

A. I can see that that exercise can be done but when you used the phrase renormalisation yesterday, I wasn't aware I have no recollection

CHAIRMAN: It's a needlessly grammatical phrase for a rudimentary mathematical exercise.

A. I mean, obviously, I wasn't doing any detailed work on the quantitative model, but it's just something that was new to me because I wasn't aware that that kind of

Q. MR. HEALY: That's what Mr. Andersen called it anyway.

A. Well, yes, his English is wonderful.

Q. I am sure you will agree that it's important to try to understand why there were still there was still confusion concerning the weightings right up to this date and it's important for the Tribunal to understand whether there was a change in the weightings for the qualitative evaluation from 7.5, 15 and 10, to 10, 10, 10 or whether, it strikes me this could be an explanation, whether there was a different set of weightings for the qualitative as opposed to the quantitative?

A. I would agree that it seems clear it's not simply a typo correction and I have to reflect and I agree it's

Q. That's reasonable. What the Tribunal also needs to understand is this: when were the weightings for the qualitative evaluation, if that be the case, and if they were different, ultimately fixed? Do you understand?

A. I do, yeah.

Q. And you are in the witness box now and I am addressing this to you, but it is of course being addressed in a way as well to other members of the Department and to the State legal team, but you seem to have had some you seem to have alerted yourself to this in some way in our own notes, as did Mr. Billy Riordan.

Thanks, Ms. Nic Lochlainn.

CHAIRMAN: Mr. Fitzsimons?

MR. FITZSIMONS: I have no questions for this witness.

CHAIRMAN: Mr. McGonigal?

MR. MCGONIGAL: There were a number of documents that I wanted to take this witness through, Mr. Chairman, in relation to the handwritten notes.

CHAIRMAN: I suppose we better face it, Mr. McGonigal, we have indicated that she is relieved from attendance tomorrow because of another commitment, and Mr. Healy has alluded to a possibility that along with other Project Team colleagues, she may have to revert to certain of the matters that he put, so I won't deprive you if you felt it necessary of putting it on a subsequent occasion but if you

felt you could do so within, let us say a twenty minute time-frame now, we should proceed.

MR. McGONIGAL: If it isn't inconvenient, I'd prefer to leave it, and the reason I would prefer to adopt that is for two reasons. One, because I want to go through the notes which Mr. Healy hasn't gone through, to show the work that was done and to find out what was actually taking place at those meetings and it will take a bit of time. And it will be tedious, but secondly, I also want to try and understand some of what Mr. Healy has just gone through, because I think some issues may arise out of that as well.

CHAIRMAN: Yes

MR. McGONIGAL: I don't want to cause unnecessary delay to the Tribunal and that's why I am putting it in this way.

MR. HEALY: Sir, if neat answers can be obtained to the questions I have raised, it may even shorten any further examination Mr. McGonigal has, because if these questions can be answered satisfactorily, presumably Mr. McGonigal will cease to have any interest in

CHAIRMAN: I think probably it's not prudent to proceed at this stage, and I think there should be some effort made by informal discussion between the respective legal teams to see if there can be some reduction of the number of matters that need to be inquired into regarding these further developments on the weightings and in these circumstances, Mr. Nesbitt, I am not sure whether you want to take up any

matters with the witness now.

MR. NESBITT: Not at this time, I'd rather hear what Mr. McGonigal is going to do but in relation to taking things further, it is the position of our team, we're here to help and we will deal with any issue the Tribunal raises with us directly.

CHAIRMAN: Apart from the weightings aspects, did you want to your examine your witness on any other general matters?

MR. NESBITT: There is a couple of general questions I'd prefer to leave till after Mr. McGonigal has made his mind up if he is going to say something, with your permission.

CHAIRMAN: As I understand it, these various matters have been raised at the conclusion of quite a long session of evidence by Mr. Healy. I think it's reasonable, as Mr. McGonigal indicated, that he ought to have a time to consider them further. I have indicated that I think it's desirable that the various legal teams do cooperate to see if we can codify or reduce the amount that may be in issue, and in these circumstances, it's probably preferable to leave open the possibility, Ms. Nic Lochlainn, not tomorrow or next week, but at some stage when these matters have been inquired into, it might be necessary to ask you to briefly assist us again. Obviously Mr. Riordan and Mr. Towey and other persons will be significant players in the context of dealing with weightings and will probably be giving fairly substantial evidence in this regard in any event, but I think it's desirable then that we conclude

today. Another witness, I think, has been requested to attend tomorrow and we'll take up that gentleman's evidence at eleven o'clock. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
FRIDAY, 7TH MARCH, 2003 AT 11AM.