

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan SC

Mr. Jerry Healy SC

Ms. Jacqueline O'Brien BL

Instructed by: John Davis

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES: Mr. Richard Law-Nesbit, SC

Mr. John O'Donnell, BL

Mr. Diarmuid Rossa Phelan, BL

Mr. Conleth Bradley, BL.

Instructed by Matthew Shaw

Chief State Solicitors Office

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

Mr. Gerry Kelly, SC

Instructed by: Eoin O'Connell

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Kelly Noone & Co.

Solicitors

OFFICIAL REPORTERS: Mary McKeon and Viola Doyle.

I N D E X

WITNESS: EXAMINATION:Q. NO:

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 7TH MARCH, 2003, AT 11AM:

MR. COUGHLAN: Mr. Ed O'Callaghan.

MR. ED O'CALLAGHAN, HAVING AFFIRMED, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. O'Callaghan, I think we have a memorandum of your intended evidence, and do you have it with you?

A. I have indeed.

Q. And what I intend doing in the first instance, Mr. O'Callaghan, is to take you through that, then we may pause to clarify one or two matters and come back to review matters at a later stage, if that's okay with you?

A. That's fine.

Q. Now, I think you have informed the Tribunal that the following statement has been prepared by you alone, and other than having them reviewed by counsel for the Department, you did not consult anyone else in formulating them. While you have reviewed the files which you deemed were most relevant to the subject matter, you have not had the opportunity to review all the files, due to time constraints. You understand that the Tribunal is anxious for statements, so you furnished this reserving the right to correct or amend when you had more time to consider the matters raised

by the Tribunal.

If we just pause there for a moment, Mr. O'Callaghan.

You can review or amend anything as you go along, even depending on any new information that has come to your attention even since the Tribunal has commenced?

A. That's fine.

Q. Now, I think you have informed the Tribunal, you have also relied on a contemporaneous short note which you retained from the period in question and which you forwarded to the Tribunal during the discovery of documents. Due to the passage of time, since these events you cannot say that your recollection of them is perfect, it may well be that your recollection of some matters is stronger than others.

Now, I think the first query raised with you, and these queries were raised with all officials, you were asked for your involvement, direct or indirect, together with your knowledge of the involvement of any other person at the early stages of the GSM competition process in the devising of evaluation criteria. And I think you have informed the Tribunal that you joined the Department of Transport, Energy and Communications in August 1993, and you were assigned to the Telecommunications and Regulatory Division. At that time, you would have been aware that the Telecommunications and Radio Development Division had been given primary responsibility for

organising the GSM licensing process. Both you and your division would have had very much a secondary role in relation to that process. Best of your knowledge, to the best of your knowledge, at no stage were you involved in devising the evaluation criteria.

You recall that staff of the Telecommunications and Radio Development Division, and Roger Pye of KPMG, were involved in devising the evaluation criteria. Is that correct?

A. That's correct.

Q. I think you informed the Tribunal that it should be noted that you were out of work on a continuous sick leave from December '94 until the end of March of 1995, recovering from the effects of an accident that was completely un and you were completely uninvolved in work in that period, is that correct?

A. That's true.

Q. Now, I think you were then asked for your involvement, direct or indirect, together with your knowledge of the involvement of any other person in the preparation of the initial draft tender documents.

And you have informed the Tribunal that you see from the file that in April, 1994, you provided some minor observations on the draft tender document prepared by the Telecommunications and Radio Development Division and KPMG.

I think you were then asked for your knowledge of, or

involvement, direct or indirect, together with your knowledge of the involvement of any other person in the retention of KPMG as consultants to the Department in relation to the initial competition design and of the advice rendered by KPMG.

And you have informed the Tribunal that you had no involvement, direct or indirect, in the retention of KPMG. You knew that they were retained for work on the tender design and, as far as you knew, they were commissioned for this work by the Telecommunications and Radio Development Division.

I think you were then asked for your knowledge, direct or indirect, or of involvement, together with your knowledge of the involvement of any person or persons in the finalisation of the evaluation criteria, and in particular, the selection of an open-ended licence fee structure, and the deletion of financial capability from the evaluation criteria.

And you have informed the Tribunal that to the best of your knowledge, you had no role in the finalisation of the evaluation criteria in general, or in the finalisation of the particular aspects cited in this question. You would have been aware that the general thinking initially was to go for a beauty contest-type selection with some element of an open-ended licence fee aspect. You did not recall being aware that financial capability was deleted from the evaluation

criteria.

Then you were asked for your details of all considerations which to your knowledge, direct or indirect, prompted or contributed to the Department moving from its initial position of favouring the publication of weightings attached to the evaluation criteria as specified in paragraph 19 of the RFT document, to its ultimate position of non-publication of the weightings attached to the relevant criteria.

And I think you were furnished with the memorandum of Mr. Jimmy McMeel.

A. I am just wondering are we following the same sequence here? You didn't

Q. Question 5.

A. Question 5 here is, "Mr. O'Callaghan's role in the establishment of the Project Group and the appointment of Departmental staff and officials."

CHAIRMAN: I think the sequence has been, Mr. O'Callaghan, that the statements have been somewhat codified by the Tribunal legal team, so probably in ease of you it's well that we get you a copy of the one that Mr. Coughlan is working from.

(Document handed to witness.)

Q. MR. COUGHLAN: You see Question 5? This is the question of publication and non-publication of the weightings. I think you have informed the Tribunal that you had you had no knowledge of these matters?

A. That's correct.

Q. Then you were asked for your knowledge of the favouring of the placing of the emphasis on the evaluation criteria on the criterion of tariffs to its ultimate position in which the first priority was given to the credibility of the business plan and the applicant's approach to market development.

And again you had no knowledge of these matters, isn't that correct?

A. That's correct.

Q. Now, I think you were asked for your role, if any, in the establishment of the Project Group, and in the appointment of Departmental and other officials to the Project Group.

And you have informed the Tribunal that the Project Team was initiated when you were on sick leave. You had no role in its establishment or in relation to any appointments to it. You do not recall ever being appointed to it, in the sense of being issued with a Letter of Appointment or otherwise being informed officially that you were a member of it. Your understanding was that your division was represented on it, and you attended some Project Team meetings in that capacity. Other meetings were attended by other personnel from your division. In fact, for a number of reasons, principally because of your accident, you were not in a position to attend most meetings of the

Project Team, and the first such meeting that you attended was the ninth meeting, which was on the 4th September of 1995.

And I think that's what the minutes also record?

A. That's correct.

Q. Now, I think you were asked for your understanding of the role of the Cabinet or Cabinet Subcommittee in the GSM process, and in particular, in the light of paragraph 2 of the Government decision of the 2nd March, 1995, namely, "A recommendation will be put by the Minister to Government in time for a final decision on the granting of a licence to be made by the 31st October, 1995."

I think you have informed the Tribunal that, as stated earlier, you were not involved in many of the proceedings relating to the GSM process. Many of these were initiated before you became involved in the process, such as those relating to the Government decision. You would have been generally aware that a Cabinet Subcommittee had some role vis-a-vis the process, but you couldn't say precisely what that role was.

That Government decision, that is the one that is referred to in the question, was taken when you were on sick leave, and so you could only have been aware of it after the event, and you don't recall if you ever were aware of it at the time. You had no role in

relation to the preparation of the Memorandum to Government on which that decision was based, or in the implementation of the decision. You cannot say when you became aware of that decision. Your general view would probably have been that a recommendation regarding the selected applicant would have been put for decision to Government. You do not know whether it was intended to go to the Cabinet Subcommittee first or not?

A. That's correct, Mr. Coughlan.

Q. I think you were then asked for your understanding of certain parts of the RFT, or RFP document, and I think in particular you were asked for your understanding of paragraphs 3, 9 and 19. And if we just deal with paragraph 3 first.

You were asked which reads: "Applicants must give full ownership details for proposed licensee, and will be expected to deal with matters referred to in the following paragraphs in their submissions."

Paragraph 9: "Applicants must demonstrate their financial capacity and technical experience and capability to implement the system as successful, and must include a business plan for at least the first five years in a complete technical proposal."

Paragraph 19: "The Minister intends to compare the applications on an equitable basis, subject to being satisfied as to the financial and technical capability

of applicants in accordance with the information required herein, and specifically with regard to the list of evaluation criteria set out below in descending order of priority."

And I don't intend reading them, the descending order of priority, the eight criteria.

And I think you have informed the Tribunal that you had no input into the formulation of this document, and you were not involved in the discussion around the finalising of it, other than whatever comments you made on an early draft in April 1994. You do not recall ever forming an interpretation of the RFP document, nor did you have any cause to do so.

Accordingly, you can only provide the Tribunal with your current understanding of what these paragraphs mean, if that is of any relevance.

As regards paragraph 3, I think your understanding, your current understanding is that each application should contain full ownership details of the proposed licensee and otherwise apply on the basis of the provision of the RFP.

As regards paragraph 9, your current understanding is that each applicant should be able to show in their application that they had sufficient funds in place and have the technical experience and ability, and submit a business plan for the project for at least the first five years.

And as regards paragraph 19, your current understanding is each application will be compared fairly with the other applications with regard to the evaluation criteria listed if the Minister is satisfied as to the financial and technical capability of the applicant.

Is that correct?

A. That's correct, Mr. Coughlan.

Q. I think you were then asked for your understanding of the purpose of the protocol adopted by the Project Group at its meeting on the 6th March, 1995, for dealing with potential bidders during the tender process, bearing in mind that all civil servants are bound by duties of confidentiality.

And you inform the Tribunal you did not attend that meeting. You were not involved in the GSM process at the time, so you were not privy to the discussions around the issues. And you don't recall being aware of it at the time. You would imagine that because of the importance attaching to the GSM process it was necessary that certain ground rules over confidential be agreed for the purpose of having a consistent approach adopted by all concerned.

I think you are now aware of what was involved. In that memorandum, it was proposed by Mr. Brennan, it was that there was to be no one-to-one meetings with applicants and matters of that nature. I don't think

you'd disagree or do you

A. Not at all. I think it's perfectly in order, and I would have agreed with it at the time if I had been asked, yes.

Q. I think you were then asked whether you discussed the protocol with the Minister or otherwise advised the Minister regarding contacts with members of the consortia and if so, the import of the advice given. And I think you have informed the Tribunal that you don't recall discussing this protocol with anyone else.

You were then asked for your role, direct or indirect, together with your knowledge of the involvement of any other person in the appointment of Andersen Consulting as consultants to the Project Group.

And you have informed the Tribunal that you had no role in the appointment. You would have been aware of the procurement process for the consultancy taking place, and that this was being handled by the Telecommunications and Radio Development Division.

So can I just pause there. You knew consultants were being retained. There was a tendering process going on, and as far as you are aware, you had no involvement in that, and Andersens emerged out of that tendering process. Would that be your understanding?

A. Exactly, Mr. Coughlan. I would have been aware of these things happening tangentially, but I had no

involvement in them.

Q. You were then asked for your precise understanding as to the services to be rendered by Andersen Consulting and the precise terms of their brief.

And you have informed the Tribunal that as you had no involvement in the Project Team at that time, or in any other aspects of the GSM competition process, you would not have had any understanding of the nature of the services being rendered by AMI or the terms of their brief.

You were then asked for the identity of all persons who you, to your knowledge, direct or indirect, had any involvement in the setting of the weightings which were attached to the evaluation criteria.

And you have informed the Tribunal that you had no involvement in devising the weightings. It is clear from the files that AMI advised on the subject. From the files it also appears to have been discussed at a number of Project Team meetings which you did not attend.

There is just a matter I'd ask you to bear in mind, it is the weightings in the evaluation model, the Andersen weightings. I think Ms. O'Keeffe said yesterday, and it may have been I think the first meeting Ms. Nic Lochlainn, I beg your pardon, said yesterday, the first am I correct in thinking the first meeting of the Project Group which you attended

was the one on the 4th September of 1995?

A. That's correct.

Q. And I think she informed the Tribunal that it may have been you who drew the group's attention to the fact that the weightings in the the Andersen weightings in the evaluation model added up to 103 as opposed to 100. Do you have any recollection of that?

A. I have no recollection of that. I am not saying it didn't happen, but I have absolutely no recollection.

Q. We may come to it in due course, but you might just bear it in mind.

Now, I think you were asked about the manner in which the weightings were devised.

And you have informed the Tribunal that you had no knowledge as to how the weightings were devised, but you assume they were devised following discussion of the relative importance of the different criteria.

I think you were asked then, the date on which and person by whom you were informed of the individual weightings.

And you have informed the Tribunal that you don't recall being specifically informed of the individual weightings, although you cannot say that you didn't come across them on the file.

A. That's correct.

Q. You were then asked the identity of all persons who, to your knowledge, direct or indirect, were informed

of, or were otherwise aware, of the weightings, and the source of their knowledge.

And you have informed the Tribunal that you assume that all those who were closely involved in the Project Team at the time were aware of the weightings, but you have no precise knowledge as to who was informed of the weightings.

You were then asked for details of all steps taken by the Project Group to protect the confidentiality of the weightings.

And you have informed the Tribunal that you have no knowledge of any steps that were taken to protect the confidentiality of the weightings.

I think you were then asked for your role in, and knowledge, direct or indirect, of the intervention of the European Commission, including the manner in which the intervention was resolved, the capping of the licence fee at $\frac{1}{2}$ 15 million, and the reweighting of the evaluation criteria in the light of the capping of the licence fee.

I think you have informed the Tribunal that you would have been generally aware of the correspondence from the EU Commission on this subject. You it would have been common knowledge in your division that the Commission would not look kindly on a straightforward option for the licence. You were aware that a group of officials went to meet Commission officials on the

subject in Brussels in June, 1995. In this, Sean McMahon would probably have kept you apprised of the documents. Other than possibly being involved in general discussions on the subject, you would not have had any role in any of the decisions made. As regards the reweighting of the evaluation criteria, you don't recall having any role in this, although you do recall being generally aware of the need for a reweighting exercise to be carried out following the capping of the licence fee.

There is, in turn, a correspondence from Eugene Dillon of the Telecommunications, Radio and Regulatory Division to the Telecommunications and Radio Development Division on the 27th July agreeing to the proposed AMI reweighting, but you don't recall being involved in this.

You were then asked for details of all information provided to applicants at any time prior to the 14th July in connection with the suspension of the evaluation process including, in particular, regarding the manner in which the Department hoped to resolve the Commission's objection to the auction element of the competition, the manner in which the Department hoped to resolve the Commission's concerns regarding the transparency of the evaluation process. The date to which it was likely the process would be deferred.

Any other matter relevant to or touching on the

evaluation process.

And you have informed the Tribunal that you had no knowledge of the information referred to here.

I think you were then asked for your understanding of the evaluation model adopted by the Project Group, and in particular:

- A. The qualitative and quantitative approaches.
- B. What these approaches entailed.
- C. The distinction between qualitative and between quantitative and qualitative approaches.

And you have informed the Tribunal, as far as you understand it, this evaluation model formed part of the proposal made by AMI when competing for the consultancy work. You had no involvement in that selection, and by the time you started attending Project Group meetings, September 1995, the model had long been adopted. You had some difficulty with the qualitative and quantitative approaches of the model, and on the distinction between the two. Your general understanding of the two approaches is, that the quantitative assessment was to be based on the measuring of hard data, such as those provided under headings such as roaming, tariffs, market development, etc., while the qualitative assessment was to be more of an all-round comparative assessment of the different applications.

I think you were then asked to provide full details of

all queries raised by the Department in the course of the Esat Digifone presentation on the 12th September, 1995, regarding the financing of the Esat Digifone consortium. Details raised by the Department in the course of the presentation addressed to the funding of Communicorp's equity participation in Esat Digifone. Details raised by the Department in the course of the presentation regarding the letter of comfort provided by Advent, dated 10th July, 1995, and appended to the Esat Digifone application. Details of all queries raised by the Department in the course of the presentation regarding the terms governing the offer of £230 million to fund Communicorp's equity participation in Esat Digifone as referred to in the letter of the 10th July, 1995, from Advent International to the Department. And details of all queries raised by the Department in the course of the presentation regarding the commitments provided by the institutional investors in the Esat Digifone bid.

And you have informed the Tribunal, regarding queries raised by the Department at the Esat Digifone presentation, you think there was some questioning of Esat's funding of its share in the consortium, but you cannot recall the precise question or questions. You do recall that after the Esat Digifone presentation, one of the Department of Finance representatives said he would see what he could find out about Advent

International. You seem to recall that someone from AMI said something similar. There may have been a general question as to whether the institutional investors were on board. The impression you were left with from the answer was that they were.

You were then asked to indicate the following:

"1. Whether the Department requested the Esat Digifone consortium at any time prior to the 25th October, 1995, to provide the Department with a copy of the offer of a $\frac{1}{2}$ 30 million payment to Communicorp by Advent International referred to in the letter dated 10th July, 1995.

"2. Whether a copy of the offer was provided to the Department and if so, please indicate the date on which it was received and please furnish the Tribunal with a copy of the document.

"3. Whether any inquiries were made by the Department at any time prior to the 25th October, 1995, as to the terms governing such offer and if so, when and by whom, and kindly identify where such inquiries were recorded.

"4. If such inquiries were made, please provide details of the information provided regarding the terms of the Advent offer, and please also indicate when and by whom such information was provided, and kindly identify where such information was recorded."

And I think you have informed the Tribunal that you

have no knowledge of the matters referred to here.

You know nothing about

A. I know nothing about this, Mr. Coughlan, no.

Q. I think you were then asked for your involvement, if any, in the sub-groups which conducted the qualitative evaluation. If you had any such an involvement, the sub-group of which you were a member and details of the precise manner in which the sub-groups evaluated the entrants.

I think you have informed the Tribunal that you had no involvement whatever in the proceedings of any of the sub-groups. You recall from the Project Team meeting of the 4th September, 1995, and this is recorded in the minutes, that AMI had proposed ten sub-group meetings, of which five had already taken place. "I understood that these had taken place in Copenhagen."

And your recollection is that they involved only AMI personnel. Arrangements were made for Departmental officials to go to Copenhagen to participate in the remaining five sub-groups, but this did not involve you or, to the best of your knowledge, anyone from the Telecommunications and Radio Regulatory Division.

Now, I think you were then asked for your knowledge, direct or indirect, of the progress of the actual evaluation process, to include the source of any knowledge, and in particular, but not exclusively, in relation to the following:

- A. The outcome of the quantitative evaluation.
- B. The difficulties encountered in scoring certain indicators in the course of the quantitative evaluation.
- C. The decision that the qualitative evaluation should be decisive and should take in precedence to the quantitative evaluation.
- D. The decision not to score the "Other aspects", and in particular, the indicators of credibility and sensitivities.

I think you have informed the Tribunal that, other than seeing the quantitative evaluation of the 4th September, you do not recall seeing or being made aware of the results of the works of the sub-groups until you saw the draft final report on the 9th October. You do not recall otherwise being made aware of the progress of the evaluation between those dates.

AMI presented a report of this quantitative assessment at the Project Team meeting on the 4th September.

This showed that A3 and A5 were in the top two positions. Your recollection of the meeting was that there was very little between the two. Your understanding was that AMI carried out the quantitative evaluation, and that they may have done this on their own. You certainly do not recall being involved in the quantitative evaluation. At the meeting on the 4th September, Michael Andersen said

that the evaluation had highlighted some difficulties.

These were listed in the minute of the meeting. You cannot recall the specific decision of the nature relating to the qualitative evaluation that the quantitative evaluation should be decisive. You do not recall that a specific decision of that nature was made. You cannot recall a decision being made not to score the other aspects, and in particular, the indicators of credibility and sensitivities.

A. If I just maybe can add to that, Mr. Coughlan. With regard to the decision about the qualitative evaluation being decisive, in that it should take precedence over the quantitative evaluation. It was also my understanding that both evaluations were to be carried out, that some difficulties had been identified by AMI, and we were informed of those on the 4th September, and my general impression was that the relative importance of the quantitative evaluation was diminishing because of the difficulties in relative comparisons, but I don't think that I certainly don't recall that the quantitative measures were being thrown out at that stage.

Q. Well, all you don't, and it doesn't appear to be recorded, but you don't recollect a specific decision to that effect being taken?

A. I don't recollect any such decision.

Q. I understand the point you make about AMI identifying

difficulties on the quantitative evaluation, and I think they are recorded in the minute of the meeting of the 4th September?

A. Yes.

Q. Now, I think you have informed the Tribunal you were then asked to provide details of the supplementary analysis conducted in respect of Advent, Communicorp and Sigma as referred to in the minutes of the eleventh meeting of the Project Group on the 14th September, and the results of such analysis.

And you have informed the Tribunal you weren't involved in any such analysis.

A. That's correct, I wasn't.

Q. I think you were then asked whether you were kept informed of the trends and/or rankings emerging from the evaluation process during the course of the process and if so, the precise matters of which you were informed, by whom you were so informed, and when you were so informed. If you were so informed, the identities of all persons to whom you relayed any such information.

And I think you have informed the Tribunal that other than the quantitative evaluation which was discussed on the 4th September, you do not recall being informed of any other trends or rankings until you were informed of the ranking on the 6th October and heard the presentation of the I think you call it the

draft final report from AMI at the Project Team meeting on the 9th October. It was the first draft report?

A. It was the first draft report, correct, yeah. Having reviewed the papers since making this statement, the only other aspect that I can add to that is that there were two other Project Team meetings in September, I think on the 11th and the 17th, and I think it's possible that AMI might have informed us further about the difficulties with the relative scoring of the on the quantitative evaluation. Just to be comprehensive on a point, I think Michael Andersen would have elaborated maybe further on those.

Q. Now, I think you were then asked the date or the approximate date on which, and the person by whom you were informed of the final result of the evaluation process.

And you say that you were informed of the ranking that resulted from the evaluation process by Sean McMahon on the 6th October, 1995. Is that correct?

A. That's correct.

Q. We'll deal with it again.

A. Sure.

Q. I'll just take you through this.

A. That is correct, yes.

Q. You were then asked for the approximate date on which you were furnished with a copy of the first draft

Evaluation Report.

And you informed the Tribunal that the first draft Evaluation Report was discussed at the Project Team meeting on the 9th October, 1995. And Sean McMahon and you were probably furnished with a copy then which would have been the first time you saw it?

A. That is correct, Mr. Coughlan.

Q. Then you were asked for the identity of all persons whom access was given to the draft Evaluation Report dated 3rd October, between the 4th October and the 9th October. It appears that it arrived in the Department on the 4th, and I think it was circulated, as far as you were concerned anyway, on the 9th. That's when you first saw?

A. My first sight of that document would have been on the 9th, at the Project Team meeting of the 9th.

Q. I think you have informed the Tribunal that you didn't see the document until the 9th October?

A. That's correct.

Q. Now, I think you were asked for details of all meetings and discussions which, to your knowledge, direct or indirect, took place between officials or between officials and other persons or any other discussions regarding the content of the first draft Evaluation Report or the presentation of the material comprised in the report, or of any other aspects of the report between the 4th October, 1995, when the

report was received, and the 9th October, 1995, when the report was discussed by the Project Group for the first time.

And I think you have informed the Tribunal that you were aware that the order of merit arising from the evaluation was to be forwarded by AMI to the Department in the week ending the 6th October. On the 6th October, you inquired of Martin Brennan as to the order of merit, but he declined to tell you. You later asked Sean McMahon if he knew it, and he told you. These were the only discussions you had on this subject in that time period.

And I think that relates back to the question which we have previously discussed. And I think that may have been the issue you wished to raise with me at that time, that you were informed by Mr. McMahon on the 6th October of the order of merit. You had asked Mr. Brennan, and he had declined to give you that particular information?

A. That's correct, yes.

Q. Just in that regard, can you recollect where you asked Mr. Brennan about that?

A. I think I do. I think I met Martin at lunch in the canteen, and I have seen his transcript on that piece of the evidence and I think he mentioned the canteen as well. And the background to it was, I was conscious from the previous Project Team meeting that

the first draft report was to be furnished to the Department sometime that week so as the Project Team members would have an input into the discussion on the subject the following Monday, which would be the 9th October. So I was obviously anxious to see where we were with this. I probably would have asked Sean McMahon I have no recollection of it, but I would have asked within my own division, did we have it? So that I could review it on time for the meeting. And it must have been a case that we didn't have it. So I literally bumped into Martin Brennan in the canteen in the Department, in 44 Kildare Street, and I must have taken the opportunity to ask him. Now, I would have asked him very discreetly, of course. And my memory of that event in fact, I don't think there was anybody else at the table when I asked Martin that question, and possibly maybe nobody else in the canteen. It was, I think, 2:30, or thereabouts, and people had already gone back, and I would have been very careful to ask the question very discreetly. So Martin declined to tell me on the ground, I think he said it was, he didn't think it was proper to tell me in a public place, but as I say, I was taking advantage of a chance meeting with him. And then I subsequently went back to my own office, which we were in Ely Place, and I asked Sean McMahon sometime in the afternoon, and Sean gave me the order of the first

two. And that's how I came to the knowledge of it.

Q. Very good. Now, I think you were asked for details of your views regarding the draft Evaluation Report, together with details of your understanding of the content of the report, and in particular, the following:

A. The manner in which the issue of financial capability had been addressed, and in particular, the financial capability of Esat Digifone, Persona and Irish Mobicall.

B. The manner in which the other aspects of the consortia had been addressed, that is the indicators of credibility and sensitivities.

C. The qualifications expressed by Andersen Consulting regarding the ranking of the top three entrants.

D. The overall presentation of the material.

And I think you have informed the Tribunal that your personal reaction, which you don't think you aired at a Project Team meeting, was that regulating Esat Digifone was going to be very difficult, given your experience with regulating Esat Telecom. In general, you did not think that the report was very well written, and you refer to D below. That is on the overall presentation of the material?

A. That's right.

Q. The impression you formed from the meeting of the 9th

October was that the evaluation process was effectively over, as the majority of the members of the Project Team, but not the officials of the Telecommunications and Radio Regulatory Division, had participated in the actual evaluation through their involvement in the sub-groups. In addition, you could not see the order of merit being revisited if the Minister had already been informed of the result. Then dealing with the question of how the manner in which the issue of financial capability and the manner in which "other aspects" of the consortia had been addressed. You have informed the Tribunal, your understanding of the evaluation process, was that AMI were engaged to carry out the assessments based on the evaluation criteria already agreed. This was a highly technical exercise, in which they were aided by certain members of the Project Team with expertise in specific fields, for example, radio frequency planning, financial analysis, etc. You did not have the expertise to come to a comparable rigorous independent assessment, nor was it your understanding that you were to do so, and you did not do so. You would have expected that the financial experts on the Project Team would pick up on the questions regarding the financial capability of any of the applicants; for instance, you did not delve deeply, nor would you have expertise to do so, into the detailed financial

dimensions or other aspects of the process. However, you seem to recall at some stage at the Project Team meeting querying with Michael Andersen the low solvency assessment of Esat Digifone. Your memory of the response was that there was nothing to worry about, that it had no effect on their financial viability, or words to that effect.

You do recall this is on the question of qualifications expressed by Andersen Consulting regarding the ranking of the top three applicants you do recall some reservations being raised about the ability of some of the applicants funds to fund their participation in the Esat Telecom and Persona consortium, but you cannot now recall whether these reservations were associated with reservations about the ranking of the top three applicants.

On the question of the overall presentation of the report, I think you have informed the Tribunal, your general views were that it was not very well written. The draft Evaluation Report was essentially an order of merit from the consultants with a text which, among other things, attempted to explain the reasoning behind the order of merit. Your view was that the material was not presented in a very satisfactory way, and that the justification for the order of merit was not adequately reflected in the narrative. You would

have expressed that view, that the text was not doing justice to the order of merit, and that it needed to be significantly amended using clearer language that would adequately reflect the order of merit position. You had surmised that a major reason for the inadequacy of the text was due to the fact that the authors of the report, while they spoke and wrote excellent English, were Danish, and that the mental concepts they used when writing the report might have been formed first in Danish before translating them into English. This could have been the reason why the report was so unclear. Whatever the cause, you found great difficulty in understanding the meaning, context and implications of the use of some words, most expressions and phrasing. These sometimes seemed to be used out of context and used ambiguously. You were very unhappy with the quality of the report, which is why you sought more time to get it right.

Is that correct?

A. That's correct. Reading it again now, it sounds dreadfully critical of AMI's report, but that's the way I felt about the lack of clarity in the document.

Q. Now, I think you were asked for details of all discussions, if any, with any members of the Project Team or any Departmental officials regarding the contents of the draft report.

And you have informed the Tribunal, you would have had

discussions regarding the report with members of the Project Team at Project Team meetings on the 9th, 23rd, and 24th October. These would have concerned difficulties with the text of the report and proposed amendments to it. Outside Project Team meetings, you certainly discussed the report with Sean McMahon.

These too would have concerned difficulties with the report and need for sufficient time to consider it.

You may also have discussed difficulties you had in regulating Esat Telecom's VAS licence, "and the concern that we" meaning your division or your Department "would have difficulties in regulating Esat Digifone."

You can recall discussing the proposed amendments to the report with Martin Brennan on the 24th October, and possibly also with Fintan Towey. It is possible that you also had discussions with John McQuaid regarding the report. These would probably have concerned radio frequency matters. You don't recall discussing the report with anyone else.

I think you were then asked for details of all matters discussed and raised at the Project Group meeting on the 9th October, including, in particular, the following statement made by Mr. Martin Brennan in relation to the Minister's state of knowledge regarding the outcome of the competition.

B. The statement made by Martin Brennan regarding the

Minister's view of the draft Evaluation Report and/or the approach which should be adopted in drafting the final report.

C. The requests made by certain members of the Project Group that further time is required to consider the report.

D. The request made by Telecom Eireann members of the Project Group that it was necessary to revisit the qualitative evaluation.

E. The request made by certain members of the group that consideration should be given to the appropriateness of awarding the licence to Esat Digifone, having regard to the Department's experience of, I think that should read Esat Telecom perhaps?

A. Yes.

Q. And I think you respond as regards A, that is the statement made by Mr. Brennan regarding the Minister.

And you have informed the Tribunal, Mr. Brennan stated that the Minister already knew the winner, or words to that effect. I think that's your recollection?

A. That's my recollection, yes.

Q. B, you don't recall Mr. Brennan giving the Minister's views. He may have said something to the effect that the Minister wanted to move quickly on the announcement, but you cannot be sure. You don't recall any specific requests being made at this meeting for additional time to consider the results.

You would have assumed at the meeting of the 9th October, that there would be sufficient time available to consider the report, as you understood that the announcement of the proposed licensee had been promised, you think, for late November.

I think that is correct, in the revised timetable

on

A. Yes, that's what I was thinking of.

Q. The question of needing additional time to consider the result arose at a Project Team meeting on the 23rd October, because you were informed that the Minister wanted to go to Government the following day with the result. This issue was raised by Sean McMahon and you, and maybe others.

That is the, I take it, the issue of more time, not the issue of the Minister wishing to go to Government the following day?

A. The former, Mr. Coughlan, yes, the issue of needing more time to consider the report.

Q. You don't recall this is the question of the necessity to revisit the qualitative evaluation. And I think you have informed the Tribunal you don't recall this matter being raised at the meeting of the 9th October or the 23rd October. However, you do recall requesting additional time to consider the report because you had a) not fully read it, and b) because you had difficulty matching up the narrative

of the report with the overall scoring. I think that is what you have already informed us?

A. Yes.

Q. And then, moving on to the question of the difficulties on the regulatory side I think with Esat Telecom. I think you have informed the Tribunal, you don't recall this being raised as a major issue that could impact on the ranking at any meeting that you attended. These may well have been references made to the Department's experience with Esat Telecom, but you don't recall the proposition being put that this should be taken into account in the assessment of Esat Digifone. Your understanding was that the Department's experience with Esat Telecom regarding the regulation of its VAS licence was not going to be taken into account in the evaluation of Esat Digifone. That is, the assessments were going to be done on the basis of the evaluation criteria already adopted and that no other criteria were being added were going to be added. You do seem to recall that point being put at some stage by Martin Brennan, and you thought that there was general agreement on it.

So you believe that there may have been some general discussion on that issue, but Martin Brennan said that it wasn't a matter that would be taken into account.

Is that

A. I am not sure if that is correct either, Mr. Coughlan.

I think the Martin Brennan side would have been very conscious of the difficulties that we were experiencing with Esat Telecom, and I suppose, to air that issue at a Project Team meeting, I think he found it wise to address it. We were all very conscious of it, but just in case anybody is taking into account that we wouldn't, and of course that the competition stood on its own merits. This was another issue and it should have nothing to do with it, and my memory is there was sort of a general agreement that the Department's experience with Esat Telecom had no bearing on this competition.

Q. That's what transpired, in any event?

A. Yes.

Q. Can you remember when that may have arisen, that discussion? Was it early on?

A. I can't. I mean, obviously as we have said earlier, my first appearance ** WAS at a Project Team meeting of the 4th September. It might have been in and around the time of the presentations. Because we'd have been obviously very conscious of the Esat Digifone personnel. I mean, that would have been in the Department, and maybe after it, possibly it was the 14th September, Martin might have raised it.

Q. You think if such a discussion took place, it was probably around the time of the presentations?

A. Yes, I wouldn't like to give the impression that there

was a discussion as to whether they were to be penalised in any way. It never arose like that. I mean, if there was a discussion, it was simply the issue being raised that we are all conscious that we have a difficulty on the regulatory side, which is my side and Sean McMahon's, with Esat Telecom, but we are all clear that that's not going to be taken into account. So that would have been the extent of the discussion, if there was one.

Q. Right. I think you were then asked for your understanding as to the status of the evaluation following the Project Group meeting on the 9th October, 1995, and in particular, the steps to be taken to progress the evaluation.

And I think you have informed the Tribunal that it was your understanding which you took from the meeting, was that the process was now all over bar the shouting. You had been informed by the Chairman of the Project Team that the evaluation was now completed, that it had involved most of the Project Team, and that the Minister had been informed of the result. The impression you got was that the remaining work was to tidy up the report and iron out any textual difficulties.

If I just pause there for a moment as regards your understanding.

A. Yes.

Q. You had received the first draft report, and it's your understanding of what transpired at the meeting of the 9th October, you were informed by Martin Brennan, using words to the effect "The Minister knows the result", or words to that effect?

A. Yes.

Q. And

A. He may have said, "The Minister is aware of the order of merit or who came first and who came second", or he might have said "the winner", I can't say.

Q. And do I take it from that, that it was your view then that once the Minister knew about matters, that there was nothing the Project Team could do about it?

A. No. Primarily my reason for saying that I now saw it as being the process effectively over, although at that meeting Michael Andersen pointed out that he had not yet produced the appendices, and that there was still some further supplementary work to be done, but I think he said that it was unlikely that that would alter the rankings. My memory of me saying it was all over bar the shouting was that most of the Project Team had been to Copenhagen in the previous few weeks, had scored the applications. The qualitative assessment had been carried out in all its dimensions. And when I queried the issue with Martin, Martin made that point very clear, "look, most of the Project Team would have been involved in this, it's been all the

aspects have now been scored and added up." So what I took from that was, okay, it was a fact that the regulatory side were not represented in Copenhagen, but the vast bulk of the Project Team were there, and the work has been carried out by the consultants hired for that job. So it would be it was that aspect more than anything else that fixed in my mind that yeah, okay, it's more or less done now.

Q. Martin Brennan told you

A. There was no demurring around the table from those who had been in Copenhagen.

Q. I understand that, but your understanding of matters was gained from what Martin Brennan told you?

A. Well, in Martin's report to the meeting, yeah, and I suppose in a sense copperfastened by a sense that the Minister had been informed of the result or who the winner was. And I would find it difficult to foresee a situation going back to the Minister saying, "Okay, we are going to reverse that" or "We got it wrong", or something. Because quite clearly the qualitative assessment had been finished at that stage, that's my view.

Q. I think you were then asked, the date on which, to your knowledge, Mr. McMahon made a handwritten note on the copy minutes dated 17th October. And these were on the minutes for the meeting of the 9th October. I think you know the particular

A. I think so, yeah.

Q. the particular document. We might just put it up.

Book 43, Tab 151. Sorry, I beg your pardon, it's not.

Sorry, I beg your pardon, it's Tab 148. It will come up on the screen.

A. Okay.

Q. We have been over this particular document a number of times, so I'll just go through it fairly quickly. You

see on the first page, it seems to be of the

minute it seems to be addressed to you,

Mr. O'Callaghan. Do you see that?

A. Yes, I do, yes.

Q. And on page 2, then, is the note.

A. Yes.

Q. You see the minute of the meeting of the 9th October,

which appears to have been prepared on the 17th

October, just looking at it?

A. That's right.

Q. And "Mr. O'Callaghan,

"It's probably too late to change this report" I

don't know whether it's report or record "but our

intervention at subsequent meetings made it clear that

"1. We did not subscribe to unanimity at this

meeting.

"2. We expected the qualitative assessment to

continue from that time.

"3. The report, while it had probably highlighted the

top two candidates had a long way to go."

Now, I think you were asked about that, the date on which, to your knowledge, Mr. McMahon made the note, confirmation that the note was addressed to you; whether to your knowledge Mr. McMahon circulated copies of the note with handwritten entries to other persons, and if so the names of such persons.

D. Whether the contents of the handwritten notes were raised at any subsequent Project Group meeting or of any members of the Project Group or were, to the knowledge of Mr. McMahon, otherwise discussed with other persons, and if so when and the name of each person present or involved. And details of the subsequent meeting referred to in the handwritten notes made by Mr. McMahon.

And I think you have informed the Tribunal that you can see from the handwritten note on a copy of the minute dated 17th October of the Project Team meeting of the 9th October on file, that it is dated 1st November. This was a week after the announcement by the Minister of the winner of the competition a week after the finalisation of the report and shortly before the commencement of discussions regarding the contents of the GSM licence with Esat Digifone. You could not envisage any circumstances which had given rise to revisiting the report at that stage. Given that the process was now completed, you probably just

filed the note and made no comment on it. As you are now being asked specific questions in relation to the document, you need to give your views on its contents.

1. You don't recall unanimity being sought, given or withheld at any Project Group meeting that you attended. The main issue that arose for you at the meeting of the 23rd October was the need for more time to consider and amend the report. At the meeting of the 9th October you would have assumed that you would have had plenty of time to do so. You recall that Sean McMahon and you said at the meeting of the 23rd October that you couldn't sign off on the report because it was inefficient and had not been fully read. This is why you sought more time to, your understanding as to why you were informed that a further week was available to consider the report.

2. It was clear to you following the Project Team meeting of the 9th October, that the evaluation had been completed and that there was no outstanding evaluation to be done.

3. You can certainly agree that it was your view that as of the 9th October, the report had a long way to go to be finalised.

Then you go on: The note states that it is addressed to you. You don't know if the note was circulated to anyone else. You don't recall the unanimity or qualitative assessment issue being raised at any

subsequent meeting you attended. You would not know if they were raised at other meetings. The quality of the report was certainly raised at subsequent meetings. You would assume that Mr. McMahon is referring to a Project Team meeting held on the 9th October held after the 9th October, that is the meetings of the 23rd and 24th October.

You were then asked for your knowledge, direct or indirect, or your involvement or the involvement of any other person in the decision made to accelerate the date on which the result of the evaluation was announced by the Minister.

You informed the Tribunal, you had no knowledge and were not involved in the decision to accelerate the date on which the result of the evaluation was to be announced by the Minister. You had, in fact, sought to have additional time made available to consider the report.

You were then asked to confirm that eight copies of the final draft report dated 18th October, 1995, were received by the Department and were designated for and then they are the names of the various people designated?

A. Yes.

Q. You have informed the Tribunal that you don't know how many copies were received or by whom or for whom they were designated.

You were then asked to provide details of your knowledge, direct or indirect, of the Departmental officials of all considerations, again by the Project Group, or by any member of the Project Group, or by any other person, whether in connection with Andersen Management or otherwise, to the qualifications placed by Andersens on the financial capability of Esat Digifone and Persona as set out in the Evaluation Report and appendices, and in particular, page 44 of the report, and appendices 9 and 10.

And you have informed the Tribunal, you would have been generally aware of these qualifications, but you do not recall being involved in any detailed consideration of them.

You were then asked for your knowledge, direct or indirect, of any discussions with Andersens concerning further inquiries or investigations or other actions which would have been required to enable Andersens to provide a report without any qualification or rider regarding the financial capability of either Esat Digifone or of Persona.

And you have informed the Tribunal that you have no knowledge of these matters.

You were asked to provide a full narrative account of any information, direct or indirect, which you may have had concerning what prompted Mr. Billy Riordan to record his concerns regarding "The ownership" of the

report on both page 6 of the final draft version of October 18th, 1995, and his various handwritten notes. And you have informed the Tribunal you have no such information.

I think you were then asked for your knowledge, direct or indirect, of your involvement or the involvement of any other person in any approach made or request made by Sean McMahon, Martin Brennan, John McQuaid, or any other member of the Project Group, to Mr. John Loughrey on or about the 23rd October, 1995, for further time in which to consider the draft Evaluation Report.

And you informed the Tribunal at the meeting on the 23rd October, Sean McMahon and you, and maybe others, said that you needed more time to consider the report.

This was in the context where the meeting had been informed that the Minister wanted to go to the Government the next day with the recommendation on the winning applicant. You think it was Martin Brennan who suggested that he, John McQuaid and Sean McMahon, should discuss the matter with the Departmental Secretary, John Loughrey. The three left the meeting, and it was your understanding that they went to meet with the Secretary.

You were then asked for your knowledge, direct or indirect, of Mr. Loughrey's response to such a request or approach, and in particular, whether it was your

understanding that further time would be available for the Project Group to finalise the evaluation, and the source of your knowledge.

And you have informed the Tribunal, when they returned the meeting was informed that the Secretary had agreed that a further week would be available to consider the report. Your recollection is that you were informed that the Secretary would clear this with the Minister. You do not recall which of the three who went to see the Secretary informed the meeting of this.

Could I just pause there for a moment,

Mr. O'Callaghan. You do have a clear recollection of being informed that there was a week available?

A. I do have a very clear recollection of that.

Q. You just don't know which of the three?

A. I don't know which of them no, I don't.

Q. Now, I think you were then asked for your knowledge, direct or indirect, or your involvement, or the involvement of any other person in the decision made by the Minister on about the 24th, 25th October, 1995, that the result of the process would be announced on the 25th October, 1995.

And you have informed the Tribunal, that you had no involvement in, and you had no prior knowledge of the decision of the Minister to announce the result of the process on the 25th October, 1995.

I think you were then asked the date on which,

circumstances in which, and persons by whom you were informed that the Minister intended to announce the result of the process on the 25th October, 1995.

And I think you have informed the Tribunal, that you were informed on the 24th October that the Minister was going to Government on the matter on the 25th October. You recall being in Sean McMahon's office around 4:30pm, or so, on the 25th October, when he took a call from someone in Esat Telecom, you think it was Jarlath Burke, who said that the radio station, 98FM, had been invited to a press conference in the Department at 5:00pm, or so. And you asked if Sean knew what it was about. Sean said he didn't, and he called the Departmental Press Officer, you think it was Joe Jennings, to find out. The Press Officer said that the press conference had been called to announce the winner of the GSM competition. "This was my first knowledge that the public announcement was going to be made that day."

I think you were then asked for details of all meetings of the Project Group or any of the members of the Project Group on the 24th and the 25th October.

The purpose of such meetings, the matters under discussion and the outcome of such meetings.

And I think you have informed the Tribunal, that the only meeting of the Project Group which you attended in that two-day period was a meeting of the Project

Team which was held on the 24th October, starting at about 5:00pm. "We had earlier been informed that the Minister intended going to Government the next day with the result." The purpose of the meeting, as you understood it, was to go through proposed amendments to the draft final report by AMI. Before the meeting, you had gone through some proposed amendments from the Telecommunications and Radio Regulatory Division with Martin Brennan. To your recollection, the matter under discussion was the text of the draft report, which you think you went through page-by-page.

Individual members of the Project Team would propose changes. These would be discussed and a decision taken on whether and how the text should be changed to take account of them. Your understanding was that Fintan Towey was to fax amendments out to AMI in Copenhagen for the changes to be made to the final report. The meeting was still underway when you had to leave it at about 7:15pm. You recall Sean McMahon telling you on the morning of the 25th October that he was on his way to a meeting with the Minister, the Secretary, Sean Fitzgerald and Martin Brennan regarding the outcome of the GSM process. You may have discussed the matter further with Sean McMahon when he returned from the meeting, but you don't recall it.

I think you were then asked for details of your

knowledge, direct or indirect, concerning any amendments to the first draft report of the 3rd October, 1995, and the second draft report of the 18th October, 1995, and including your knowledge, direct or indirect, of the contents of the documents entitled "Suggested textual amendments", which appear to have been faxed by Fintan Towey to Andersens at 10:05am on the 25th October, 1995, and faxed back by Andersens to the Department at 2:07pm on the 25th October, 1995, with its annotated comments.

And I think you have informed the Tribunal that while you do not have a precise memory of it, you would have been involved in proposing the textual amendments to the first draft report. If the second draft report was the one which was the subject of the Project Team meeting on the 23rd and 24th October, then you do not recall being involved sorry "Then I do recall being involved in proposing textual amendments to that also. I have no knowledge of the content of the other two documents."

A. Mr. Coughlan, if I can just maybe make a comment there. The Project Team meeting of the 23rd and 24th, as I say, that dealt with the second draft of the report from AMI. And it was my knowledge on the evening of the 24th that the amendments that we were all discussing, and which were discussed after I left the meeting, were being faxed out to Copenhagen that

night to AMI. But I have no knowledge that they were.

I mean, I don't know when they were sent. I am just looking at the question again and it's pretty specific as to the date on which amendments were sent. I don't know.

Q. That's because we have fax banner heads and we have the actual documents themselves. So

A. I see.

Q. Just on that question of what was happening around this time, we can go back to it in greater detail in a moment, but the Project Team had a meeting on the 23rd October?

A. Yes.

Q. It's your understanding that you were informed that that the Minister wanted to go to Government the next day, which was the 24th October?

A. If I can clarify; prior to the meeting of the 23rd, we were informed that the Minister wished to go to Government on the 24th.

Q. Who informed you of that?

A. I think it was Fintan Towey. So, in the period leading up to the 23rd, what was on our minds was the Minister wanted to go to Government on the day after that meeting, the 24th. At the meeting of the 23rd October, Sean McMahan and I would have made the point that we needed more time to consider this. So delegations went to see the Secretary, returned, and

we were informed that a further week was going to be cleared with the Minister to consider matters. So my memory, my clear memory of leaving the meeting of the 23rd October was that we have a space of time now to actually tackle this properly and go through it.

Again, what we are talking about is the report, not the result. The result is had been settled in Copenhagen. And so it was sometime in the morning of the 24th when we were expecting to have a long period of time to deal with this, that I was further informed that the Minister was definitely going to Government the following day, which was the 25th. And so the final meeting of the Project Team was held, that I was at

Q. Who do you think informed you of that?

A. That is something I can't help you, because I just simply cannot remember it. It was either Sean McMahon, who would have been my immediate superior officer, or it would have been somebody from the Telecommunications Development Division, that would have informed me. But I cannot I do not have a precise recollection of who it was.

Q. But just to be clear about this, the meeting adjourned on the 23rd. You understood that you had a week to review matters and conclude matters?

A. Yes.

Q. That was your understanding?

A. I wouldn't use the term "adjourned". The meeting concluded. That particular meeting on the 23rd concluded. And my understanding was that we had now a week to gather our thoughts on this, and particularly I think Sean and myself, because we were the ones who had sought it, and the next thing that I hear then on the 24th, which is Tuesday morning, was that, for whatever reason, that arrangement wasn't in place and the Minister was going to Government the next day, and it was in that context that the meeting was held on the 24th.

Q. There was a meeting commenced on the, at around 5 o'clock on the 24th. You left it at 7:15

A. That's correct.

Q. pm or thereabouts. The meeting was still going on when you left it?

A. Yes.

Q. And just to get the sequence of events right. You believe that you met Mr. McMahon on the morning of the 25th, and he informed you you had been summoned to a meeting in Kildare Street, is that right?

A. If I can add to that. I think I left the meeting of the 24th with the impression, I can't be certain of this, but it's an impression I have, that I left that meeting, that on the morning of the 25th, there was going to be a final wrap-up meeting of the Project Team. The material had been faxed to Copenhagen

overnight by Fintan. I think that's what he was going to do for most of the night. And that we would have had back in our hands a composite document that the Project Team would have a final glance over and say, "okay, it's that's fine." So that's my impression now, that that was in my mind. And then to come to your specific point, I do recall actually bumping into Sean on the way to work near our offices, and he told me he was off to a meeting which was going to involve Martin Brennan, Sean Fitzgerald, the Secretary, and the Minister, about the outcome of the GSM process.

Q. I just wanted to get the sequence right.

A. Sure.

Q. I think you were then asked to provide details of all inquiries which, to your knowledge, direct or indirect, were conducted either by officials or other persons regarding the conclusion in the document "Suggested Textual Amendments" I don't think we need to proceed with this. But if because you have no knowledge of such inquiries, but the textual amendment was, "Having regard to the level of interest in the Irish competition for the GSM licence and the high profitability of mobile communications generally throughout Europe, that the project is fundamentally robust, and after licence being awarded an attractive opportunity for corporate debt financiers."

Now, first of all, did you have any involvement in that particular textual amendment?

A. I had no involvement whatsoever.

Q. And you don't know what inquiries were made for the inclusion?

A. I have no knowledge of any inquiries.

Q. In fact, do you have any knowledge of the actual textual amendment?

A. I think the only time I saw this the first time I saw this text was when I was supplied with documents from the Tribunal.

Q. Right. Now, I think you were then asked the precise date on which, and time at which a final decision was made by the Project Group regarding the result of the competition, and the name of each person that was present or was otherwise a party to such decision.

And you have informed the Tribunal, you don't recall taking part in any final formal decision process regarding the result of the competition. When you left the meeting on the 24th October of 24 October, while it was still in progress, you think you may have assumed that there was to be a further meeting of the Project Team on the 25th October to review the final report and to finalise matters. You are not aware of any such meeting taking place on the 25th October, "and if it took place I certainly was not at it." You have already explained that to us

A. In fact, maybe just to add to it, Mr. Coughlan. When I say I don't recall taking part in any final formal decision process regarding the results of the competition, what I mean is literally that, in a formal sense. You will recall I said earlier that as far as I was concerned the Project Team had concluded its qualitative assessments in Copenhagen in September, and they formed the, what I took to be the effective results of the competition in the first draft of the

Q. I understand. I am going to come back to you, because were you aware that the people involved in matters in Copenhagen the previous week were Mr. Brennan, Mr. Towey, and Andersen Management International?

A. I see now from the papers again that they had been in Copenhagen separately or after the sub-groups, I think.

Q. Did you know that?

A. Did I know at the time?

Q. Yes.

A. No, I didn't.

Q. Now, I think you were then asked, the precise date on which and time at which the Evaluation Report was approved and/or adopted by the Project Group, and the name of each person present.

And I think you have informed the Tribunal, that to

the best of your recollection you did not ever receive a copy of the final report. I think that's correct.

You never the first time you saw it was when you got it from us, perhaps?

A. Exactly.

Q. Containing the amendments agreed by the Project Group at the meeting on the 24th October. As you said earlier, you think that you assumed there was going to be a further Project Team meeting on the 25th October to consider the amended report, but such a meeting, to your knowledge, was not held, and the amended report was not circulated to you. You do not recall being at any meeting that formally approved or adopted the Evaluation Report.

I think there wasn't any such meeting. I think that's the way the evidence has run so far, at least, unless Mr. Towey can assist the Tribunal. But you certainly weren't at any meeting which considered and signed off on the final report?

A. I wasn't. I have already stated that I left the meeting on the 24th early because I had to go home, and it continued in my absence. It could have happened there, but if you say it didn't, then so be it.

Q. Now, I think you have informed the Tribunal sorry, you were then asked for your knowledge, direct or indirect, of, or your involvement or the involvement

of any other person in the discussions between Martin Brennan and John Loughrey on the 24th/25th October, whereby Mr. Brennan conveyed to Mr. Loughrey the result of the evaluation process.

And you have informed the Tribunal, that you have no knowledge of, or you had no involvement in these discussions.

I think you were then asked for your knowledge, direct or indirect, of, or your involvement or the involvement of any other person in discussions between Mr. Loughrey and the Minister on the 24th/25th October, whereby Mr. Loughrey informed the Minister of the result of the evaluation process.

I think in the light of the evidence of Mr. Loughrey, that should read the 25th October only now perhaps, but you had no knowledge of or no involvement in these discussions, is that correct?

A. Absolutely none.

Q. Then you were asked for your role or your knowledge, direct or indirect, of the role of any other person in the preparation of the following documents:

A. Mr. Loughrey's recommendation to the Minister dated 25th October, 1995.

B. The briefing note to the Minister regarding the outcome of the evaluation process.

C. The Memorandum to Government dated 26th October, 1995.

And you informed the Tribunal that as regards A, you had no role in or knowledge of the role of any other person in the preparation of this recommendation. You have no recollection of seeing it at the time. And I think you saw it for the first time in the files forwarded to you by the Tribunal lawyers in the course of this inquiry.

And as regards the briefing note which we have discussed with Ms. Nic Lochlainn yesterday, you did not see it. You had no involvement in it, and you first saw it when it was brought to your attention by the Tribunal, is that correct?

A. That's perfectly correct, Mr. Coughlan.

Q. And similarly, you had no role or involvement in the memorandum which went to Government on the 26th October, 1995?

A. That's correct, Mr. Coughlan.

Q. You were then asked to indicate whether the Department had in its possession a copy of the final draft Evaluation Report on the 25th October, 1995, when the Minister met with members of the Cabinet and following such meeting announced the result of the evaluation process. "If the Department did not have such a copy of the final Evaluation Report in its possession at that time, please indicate precisely what document or documents were in the possession of the Department." And you have informed the Tribunal that you did not

have a copy of the draft final report on the 25th

October?

A. Which is all I can say about it really, because I had no knowledge about what the Department had.

Q. Or your side of the Department?

A. Or my side of the Department.

Q. Your side of the Department didn't have it?

A. Exactly.

Q. You were then asked for your explanation of the contents of the Regulatory Division document dated 23rd October, the purpose for which the document was prepared, whether the document was circulated, and if not, why it was not circulated, and details of any action taken on foot of it.

This is Mr. McMahon's document?

A. Yes.

Q. We'll put it up. We have referred to it a number of times already.

A. Yes.

Q. It's at Book 43, Tab 133. And I'll just go through your response. It's on the screen there in front of you in any event. Can you see it there?

A. Okay, yes it's fine.

Q. And you inform the Tribunal that you assume the reference here is to the document headed "GSM views of the Regulatory Division 23 October, 1995" I think, and you are correct. And you say that Sean McMahon is

probably the best person to explain the purpose of the note, as he was the author of it. It appears to be a written record of some views of the division on the AMI draft report that was to be signed and therefore activated in some way if that report remained unchanged. You see that the note is not signed. You would assume that the conversation referred to here took place before the Project Team meeting on the 23rd October because the note says that this is to be signed if the Project Team insists on the finalisation of the existing draft. After the meeting of the 23rd October, it was your understanding "it was ours" I think that's the Regulatory Division's understanding that there was a further week for the Project Team to consider the AMI report. In other words, there was time available to amend the document. While a further week was not actually made available, there was sufficient time during the period the 23rd/24th October to substantially amend the draft report. This would seem to you to be the reason why the note was not signed. In this regard you note that the word "Existing" is underlined. And I think you draw attention to the manuscript at the end, "Existing draft"?

A. Yes.

Q. At this remove, you have only a vague memory that a conversation preceded the note, although you do not

have a specific recall of precisely what was discussed. Do you recall holding the view as to 1, that is you agree that the findings that A3 and A5 are front runners, I think is that correct?

A. That's correct, yes.

Q. And 2, you also agree that they are very close, is that correct, A3 and A5?

A. That's correct, yes.

Q. And 3, that is by reference to the report alone, you were unable to come to a conclusion as to which A3 or A5 were in fact ahead. Is that correct?

A. Yes. This comes back to my difficulty with the text as produced by AMI, that it was quite ambiguous, I thought the text, and if you were coming to the document could you might have difficulty separating them out in the narrative. Now, obviously the table was quite straightforward, the order of merit was very clear, but the narrative that was going with it certainly left ambiguities in my mind. If I hadn't known what the order of merit was, I might have difficulty in separating them from it.

Q. You go on to say, but you doubt you would have agreed to the contents of 5. 5 reads, "We feel strongly that the qualitative assessment of the top two applicants should now be revisited." And I think the reason that you say that you doubt if you would have agreed with the contents of 5, you say it's because you would have

no grounds for saying that as the qualitative assessment of the top two sorry, that it should be revised, that it was your understanding at the Project Team meeting on the 9th October that the evaluation process was now completed and the Minister had already been told the order of merit, but what you can agree with is, that you sought time to review the draft report?

A. Exactly.

Q. You say, as can be seen from the manuscript writing, the document was sent to you for filing, which you would have done. You did not circulate it. You did not do so for a number of reasons:

1. You would have no reason to do so. You were not the author of it. It would have been up to Sean McMahon to decide in circulating it, and he never asked you to circulate it, and you do not know if he circulated it himself.

2. Quite clearly the document was not signed it. Specifically notes that it is to be signed in certain circumstances. As such, you would have viewed it as a tentative note and circulation would have served no purpose.

And you have no knowledge that any action was taken on foot of the document, is that correct?

A. That's correct, Mr. Coughlan.

Q. I think you were then asked for your understanding of

the composition of the Esat Digifone consortium which won the evaluation process and the respective shareholdings of the participants.

And you informed the Tribunal, that your recollection of the composition of the Esat Digifone consortium from their application, and as stated by them at their presentation in September 1995, was that there were two partners, Esat Telecom and Telenor, each holding 50% of the company. Their stated intention was to dilute each of the shareholding to 40%, and the resulting 20% was to be placed with institutional investors. Some of these potential investors, you recall, were referred to by Esat Digifone at their presentation.

I think having reviewed the documents now, I think you can see that all of the institutional investors were stated in the bid documents and were stated by the consortium at the presentation?

A. Yes, I have read the transcripts of the tapes, yes.

Q. Now, I think you were then asked for your knowledge, direct or indirect, of, or understanding of the role of the Cabinet or the Cabinet Subcommittee in the ultimate decision as to the outcome of the evaluation process.

And you have informed the Tribunal, that you have no knowledge or understanding of the role of the Cabinet or the Cabinet Subcommittee in the decision.

I think you were then asked for details of all information, if any, provided by you to the Minister regarding the evaluation process during the course of the process, together with all communications to the Minister. This is really, did you have any contact with the Minister during the whole thing?

And I think you have informed the Tribunal that you provided no information to the Minister during the process, neither did you communicate with him or he with you on the matter.

A. That's the case.

Q. I think you were then asked for your knowledge, direct or indirect, of all dealings, meetings or communications between the Ministers or any member of any consortium or any persons associated with a consortium.

And you have no such knowledge, is that correct?

A. That's correct.

Q. I think you were then asked the date on which, the circumstances in which you first became aware of the involvement of IIU Limited or Mr. Dermot Desmond in the Esat Digifone consortium, your understanding as to the precise nature of the involvement of IIU at that time and the source of your knowledge or understanding.

And you have informed the Tribunal that for the duration of the GSM process, and for sometime later,

you don't recall that you had any knowledge of the involvement of IIU Limited or Mr. Desmond in the Esat Digifone consortium. At some point you became aware that IIU Limited was to be the vehicle by which the 20% shareholding referred to above was to be placed with institutional investors. You cannot recall how you first heard of the IIU/Dermot Desmond involvement in the consortium. You don't think you heard of it in the course of work. You may have come across it in a newspaper article some time ago.

Just to clarify for a moment there. You in fact left the particular job you had in the Regulatory Division, didn't you, I think around, was it, February?

A. Around February the following year.

Q. February of 1996?

A. Yes.

Q. And Ms. Regina Finn

A. Replaced me then, yes

CHAIRMAN: Were are you based now, Mr. O'Callaghan?

A. I am now working in the Department of Transport, Chairman.

CHAIRMAN: Thank you.

Q. MR. COUGHLAN: Now, I think you were then asked for your knowledge, direct or indirect, of a letter dated 29th September 1995 from Michael Walsh, Mr. Michael Walsh, of IIU, to Mr. Martin Brennan. I think you know what document we are talking about from

information received from the Tribunal.

A. I do indeed.

Q. And I think you have informed the Tribunal that you had never been aware of the existence of that letter until you were informed of it by the Tribunal?

A. That's correct.

Q. I think you were then asked for your knowledge, direct or indirect, or your involvement or the involvement of any other person in the decision made to return that particular letter dated 29th September to Mr. Denis O'Brien on the 2nd October, 1995.

And I think you have informed the Tribunal that other than being informed by the Tribunal lawyers at your interview with them in January 2002 that this letter was returned, you had no knowledge of or involvement in its return?

A. That's correct.

Q. I think you have informed the Tribunal that you had no knowledge regarding the involvement or interest or any potential involvement or potential interest of IIU Limited or Dermot Desmond in the Esat Digifone consortium as of the 25th October, 1995?

A. That's the case, yes.

Q. I think you were then asked for your knowledge of any dealings between Communicorp, Esat Telecom, Telenor and IIU Limited/Mr. Dermot Desmond regarding their respective liabilities to subscribe for the capital of

Esat Digifone Limited. And you have no knowledge of any of that?

A. I have no knowledge, no.

Q. I think you were then asked the date on which, and circumstances in which you first became aware that 20% shareholding in Esat Digifone Limited held by IIU was to be held beneficially for Mr. Dermot Desmond.

And you have informed the Tribunal that you think you first saw this in a newspaper article, but you don't recall the date. Is that correct?

A. That's correct.

Q. I think you were then asked for your knowledge, direct or indirect, of, or your involvement or the involvement of any other person and the steps taken by the Department in conjunction with the Department of Finance to satisfy itself of the financial capability of Esat Digifone Limited prior to the issue of the licence.

And you informed the Tribunal that you recall around the time of the presentation by the GSM applicants one of the Department of Finance representatives saying that they would see what they could find out by Advent International which I think was to be the source of the funds for the Esat Telecom shareholding in Esat Digifone. AMI may have said that they would also look into it. You do not recall any direct or indirect involvement in this and you do not know of any other

steps taken. At the time of the award of the licence you were no longer working in the area and had not been for sometime.

So you weren't involved in any of the issues that arose in April or May of 1996?

A. Absolutely.

Q. You weren't even in that section of the Department?

A. I wasn't dealing with that work at all, no.

Q. And then you were asked I don't think I need proceed with any of the questions relating to April or May, Sir.

CHAIRMAN: No, quite clearly from those responses.

Q. MR. COUGHLAN: I suppose if we go to question 71, we can skip over the

A. Yes.

Q. And it's 71B I think perhaps we'd go to. 71A relates to the European Commission matters, you had no involvement in any

A. I had no involvement in that, Mr. Coughlan.

Q. Now, 71B, you were asked for details of all the dealings which you had with the Minister in connection with the affair of Esat Telecom Limited or any associated company of Mr. Denis O'Brien.

I think you have informed the Tribunal that your responsibilities in the Telecommunications and Regulatory Division up to January/February, 1996 included the regulation of what were known as value

added service licences. Esat Telecom had such a licence and the regulation of the licence gave rise to substantial volumes of external and internal correspondence. In the main, this concerned Telecommunications and Radio Regulatory Division's view that Esat Telecom was in regular breach of its licence by operating a voice telephony service which was prohibited by the terms of the licence. "I corresponded a number of times on this subject with officials of Esat Telecom as well as having discussions with Commission officials on it." You would have prepared briefings and draft replies to correspondence for senior officials in the Department on the subject, but you had no direct contact with the Minister on the subject.

Sometime in late 1993 or early 1994, you had a meeting, along with Sean McMahon, with Mr. O'Brien concerning the effect that Sky Television's proposal for insert advertising would have on 98FM's business.

You may have briefed the Minister then on that issue.

Is that correct?

A. If I just clarify what that means. It was a time that we had responsibility for transmission and retransmission of T.V. signals and this was some change in the way in which Sky were operating was apparently going to effect radio stations, and Denis O'Brien met us about it.

Q. Now, just if I may just before lunch deal with your own note which you prepared.

A. Yes.

Q. And I think that's to be found in Book 43, 131, I think. 137, I beg your pardon.

And this was a chronology which you prepared yourself, isn't that correct?

A. I am just finding it here now. Yes, Mr. Coughlan, I have it now.

Q. You can see it's both in manuscript form and we transcribed it I think, you can see that, just for ease. And I think just reading the chronology.

"1. You learned that AMI had forwarded the first draft of final report in week ending 16" it should read "6/10/95. I asked MB who they had recommended and he refused to tell me on 6/10. The report was not concluded that week. Sean McMahon told me the order of preference later that day."

A. Can I just make a comment; that says that "the report was not circulated that week".

Q. I beg your pardon, you are quite right. "Not circulated", you are right.

"2. Did not see copy of first draft final report until 9/10/95. I raised question of what happens if there is disagreement and Martin Brennan said that most of the Project Team had been involved in the assessment which led to the ranking. MB said the

Minister already knew the winner."

Again that seems to be in conformity with what you have told us what had been said to you at the meeting.

You raised the issue but you were informed by Martin Brennan of what the position of?

A. I raised the issue as to essentially what's going to happen now? What's the role of the Project Team after this? And

Q. Then, "3. Remainder of week taken up entirely with" and we are just not quite sure

A. That's "With consultants on the strategic alliance."

That was the Telecom Eireann strategic alliance that Mr. Fitzgerald would have been talking to you about as well. We were involved in that as well because we were developing a paper on how the regulatory regime would look into the future.

Q. Then, "4. 17/10/95 informed by Fintan Towey that Minister wanted to [announce winner by end of October] Go to Government the following Tuesday with the winner. Meeting of Project Team on 23/10 at 11:30."

A. I think I had crossed out, Mr. Coughlan, the piece which said "To announce something by end October." I think it reads that

Q. Yes, we have that in square brackets.

A. That the Minister wanted to go to Government the following Tuesday and I think the following Tuesday was the 24th.

Q. But Mr. Towey informed you of this?

A. That's right.

Q. On the 17th?

A. On the 17th, as I have noted there, yes.

Q. "5. Went to Brussels 18.10 returned 19/10. Read second draft report on 20/10 but no appendix."

A. "But not the appendices." I think I recall bringing that document with me to read on the plane.

Q. Well, I think the only thing you could have had at that time, perhaps maybe, would have been the first draft, because the second draft wasn't in the Department, I think, until the 19th perhaps, so it may have been the first draft you had with you when you were on the plane?

A. Right, I

Q. I think

A. I just have a memory of bringing a document with me on the plane to read while I was travelling.

Q. "6. Informed at meeting of 23/10 that Minister wanted to go to Government 24/10 and get clearance for winner. Sean McMahan and I said that we couldn't sign off on it as the report was deficient and had not been fully read. Martin Brennan, Sean McMahan and John McQuaid met Secretary and a further week was agreed to consider report. Meeting went on until 7.30pm."

"23/10 informed that Taoiseach had requested Secretary to expedite the position with a view to clearance of

Government the following day. I went through drafting changes with MB 4-5. Meeting at 5:00pm. Left at 7.15pm drafting changes still being discussed and to be faxed to MA."

A. If I can clarify the language there a bit.

Q. Yes, please.

A. 23rd October I was informed that the Taoiseach had requested the Secretary to expedite there is a mistake there, that should be the 24/10, it doesn't make sense otherwise. My memory is that that information came to me on a Tuesday, and the 24th was a Tuesday. So that's the first thing.

The next sentence reads: "I went through drafting changes with Martin Brennan between 4 and 5 o'clock. Meeting at 5 o'clock. I left at 7.15 drafting changes still being discussed to be fax today Michael Andersen."

Q. Who informed you that the Taoiseach had requested the secretary, can you remember?

A. I can't. That's what I said earlier, it was somebody from the Development Division or Sean McMahan. They would be the two more likely sources.

Q. I see, very good. And then, "8. Minister met Sean McMahan and Martin Brennan and secretary and SF"

Sean Fitzgerald. "He was to meet Party leaders re the winner." I presume, is that a reference to the Minister or the

A. That he yes, yeah, the Minister was to meet the Party leaders re the winner. The "he" refers back to the noun of the previous sentence.

Q. "Heard at 4.45 that Minister was holding a press conference to announce winner. He did no sign off on report "

A. Can I stop you there. That actually means that he did, 4.45 the Minister was hosting a press conference to announce the winner. He did

Q. He did, full stop.

A. He did, full stop.

Q. Continue: "No signing off on report we had no final report. No consensus asked for. No vote effectively no decision by Project Team."

A. Yes, can I clarify a couple of points there as well?

Q. Yes indeed.

A. As I look at it, when I said the Minister met Sean McMahon, Martin Brennan and the Secretary and Sean Fitzgerald, and I am conscious that Sean Fitzgerald raised this in your examination of him a few days ago, I think he said that he wasn't at that meeting.

Q. Perhaps you are mistaken there. I think Mr. Fitzgerald's query was as to whether he was at the meeting with Mr. Loughrey on the 23rd when the extra time was sought?

A. Was it? I had had the impression that he specifically mentioned my name and I don't think I said that he was

at the meeting with the Secretary regarding the extra time. But I do

Q. No. And I think what Mr. Fitzgerald has given evidence to the Tribunal about the meeting on the 25th when the decision was made to effectively move it into the political domain by bringing it to the attention of the Party leaders and getting political clearance; that Mr. Fitzgerald wasn't present in the Department that morning.

A. Yes, that's the point I am making, that I have him here at that meeting, and I am conscious that he said that he wasn't at it. And not wishing to make a statement that he has obviously made very clear where he was. I think what happened there is when I met Sean McMahon on his way to that meeting, I think Sean might have anticipated that Sean Fitzgerald was going to be there and that would have stayed in my mind that this was the collection of people. I just wanted to correct that.

Q. I understand that. Yes.

A. If I can go on and maybe add a few points.

Q. Yes.

A. "The Minister is hosting a press conference to announce the winner. He did." And when I say there was no signing off on the report, that's reference to something we discussed earlier that a) I hadn't seen the final report. I wasn't present at a meeting which

there was a consensus sought or that. "Effectively no decision by the Project Team" that might seem very dramatic. That might seem that the Project Team really had no role. If I can draw a distinction, if I may, between the, what I might call the result and the report. The result of the competition was A5 was the winner followed by A3, if I am correct in getting the code right. And that, as I said earlier, that that goes back to the meeting of the 9th October. When I say "No decision by Project Team", I am talking about the signing off on the report, not on the result.

Q. You retained this document over all the years, didn't you?

A. I did indeed, yes.

Q. Where was it retained?

A. It was in a drawer at work in my personal papers, in a press.

Q. That might be a good time.

CHAIRMAN: Probably a good time for us to break until ten past two, we'll take up the balance of your evidence. Thanks, Mr. O'Callaghan.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

Q. MR. COUGHLAN: Thank you, Mr. O'Callaghan.

Now, Mr. O'Callaghan, if you could just look at your chronology again for a moment, please. If I might just go through it. You have you are quite happy

with the accuracy of matters you have recorded there, for example, apart from where 16/10/95, that I think should read 6/10, is that correct?

A. Sorry, I am looking at the manuscript.

Q. It is 6/10 in the manuscript, you are all right.

A. Yes.

Q. And at Point No. 4, that you were informed by Mr. Towey on the 17th of the 10th, 1995, that the Minister wanted to go to Government the following Tuesday. You are quite happy about that?

A. Yes, I am, yes.

Q. And then, you record you going to Brussels the next day and returning the following day?

A. Mm-hmm.

Q. And then you were informed at the meeting on the 23rd of the 10th, and you have explained that to us, you believe that may have been before the meeting of the 23rd, the Project Group meeting of the 23rd?

A. I think no, the if you go back to Point 4.

Q. Yes?

A. On the 17th of the 10th I was informed that the Minister wanted to go to Government the following Tuesday, which would have been the 24th.

Q. That's right.

A. And I think if you move on to Point 6, that that point was reiterated.

Q. I see.

A. Which is when Sean McMahon and myself would have said, 'Look, we really want more time for this.'

Q. Yes. You then, on Point No. 7 on the 23/10, "Informed that Taoiseach had requested Secretary", you don't know who said that to you, and you believe that that was on the 24th, anyway, that is a

A. I think it has to be the 24th, otherwise it doesn't make sense, and "informed" there is obviously that I was informed.

Q. Yes, of course. Then, you read, "Minister met Sean McMahon and Martin Brennan and Secretary and SF." And you have explained how Mr. Fitzgerald's name came into the note, because that is what you understood from what Mr. McMahon said to you; he was going down to a meeting?

A. Exactly.

Q. And I presume you both presumed that Mr. Fitzgerald would be at the meeting?

A. Yes, exactly.

Q. Although we know that Mr. Fitzgerald wasn't there on the morning?

A. Yes, I am glad I corrected that.

Q. And somebody had conveyed to you that he was to meet party leaders re winner?

A. I think, again, Sean McMahon is probably the source of that information to me when I met him, that there was this meeting called and he was heading down there and

that the purpose of that was, subsequently, the Minister was to meet the party leaders. You will recall the it was a coalition Government of three parties at the time.

Q. And then the note continues, "He did no signing off on report we had no final report." I think that's correct, isn't it?

A. Well, actually, "He did", there should be a fullstop there, obviously, and then, "no signing off on report. We had no final report." Yes.

Q. "No final report", "no signing off". That is a correct

A. Yes, and I've I think I have explained this morning, when I say effectively no decision by the Project Team, that I am referring to, obviously, the final report as distinct from what I would call the result, which is the

Q. I understand you to say that all right. That is what I just want to ask you about. Now, if we continue with your note.

A. Certainly.

Q. "No consensus asked for." What does that relate to?

A. I have been asking myself that question since I found this document in my private papers at work. I think it might be a reaction to a press report that was carried shortly after the announcement, which might have been a press release by the Minister or a press

release by the Department which said that there was a complete consensus.

Q. Unanimity?

A. Unanimity.

Q. Unanimity or complete consensus?

A. I think the word "consensus" must have been there, I think that might have explained why I would have used it in the note.

Q. Yes. And you are recording there that there was no consensus asked for, isn't that correct?

A. Yes, the at any meeting that I was at, and again I should have qualified that, I should say that it is quite clearly a note for my own use, it is a personal note. If it was ever meant to be an official note, I would have got the grammar correct for a start. So when I say things like, "no consensus asked for", I was not at all of the meeting on the 24th when consensus could have been asked for and could have been received.

Q. Consensus about what?

A. About anything. What I am trying to explain is that, when I say if I had written this note properly, I would have said, "no consensus asked for at any meeting that I attended." That is the only point I would make.

Q. But no consensus about what?

A. About the report.

Q. No consensus about the report, is what you are saying is recorded?

A. Yes, yes.

Q. I see. Am I correct in thinking that press reports and matters which were raised in Dail Eireann, always proceeded on the basis that the decision was unanimous and that there was unanimity in relation to them?

A. I have seen those reports, I have seen references to

Q. That is what they say, isn't that right?

A. Yes.

Q. That is the state of the position of the Department and of the Minister, as we see either in press form or, more importantly, as we see in Dail Eireann?

A. That seems to be the case, from what I have read.

Q. And you are saying, "no vote". What does that relate to?

A. I am probably putting down synonyms for consensus or unanimity or I am putting down various words.

Q. Are you suggesting or sorry, I am just trying to understand you. Are you saying that that "no vote" means that there was no vote taken on the report?

A. Exactly, Mr. Coughlan, that there was tour d'abla asking for an opinion on it.

Q. And effectively no decision by the Project Team, no decision. What decision did you understand there was to be and that did not take place?

A. I am not sure that I understood there was to be a decision. What I am writing down here is a chronology of events that happened over a short period of time, which I wanted to get a sequence right in my own head. It is a note to myself about those events and my part in them.

Q. Yes.

A. I also wanted it, because there was such a flurry of activity happening on the GSM side, as well as many other areas of my own work. I obviously felt the need to get these in order and get them in sequence. Quite honestly, I forget, quite, now, why I wrote that note.

Q. You said you wrote it for your own use; what use?

A. To put these events in an order for myself, to acquaint myself fully by writing them down in a sequence, as to which way they went.

Q. Why?

A. For clarity for myself, I suppose, initially. And, I suppose, I was creating a record, too.

Q. Yes. You were creating a record for yourself, because I suggest to you that any reasonable person reading that note would form the view that you were, to say the least, uncomfortable about what was occurring, and that you created a note for yourself and you kept it all of these years?

A. Well, quite clearly, I kept the note, yes, that is true. In fact, I found this note resurfaced for

me some time before the Tribunal was in contact with me. There was some press speculation about the timing of the announcement of the winner of the GSM II licence, and I remember reading an article - I can't precisely date it now - and thinking to myself, I did write a note, and I I jotted things down about dates and when things happened and I went searching through my papers. I had remembered I had made that note but I actually also thought I had discarded it at some point, but I hadn't. It was there among my papers.

Q. And what did you do with it when you found the note?

A. Well, then I found it, and I read through it and I left it with my papers.

Q. And who did you give those papers to?

A. Sorry, this would be a jumble of papers, of personal papers, nothing to do with the GSM or work matters.

Q. Where was this note?

A. It was in a press in my room in work.

Q. In a press in your room at work?

A. Yes.

Q. Now, when was that, when did you come across this note?

A. Some months prior to the Tribunal making contact with me, some weeks, some months.

Q. Could I ask you to be as positive as you can in your recollection about the timing of this, Mr.

O'Callaghan?

A. I am being as

Q. Was it months or weeks?

A. At a guess, two months, three months. I can't be sure. As I say, I saw an article in a newspaper. It made reference to the timing of the award of the licence and I recalled that I had actually jotted down some dates. I thought I had discarded it, because I had moved office a number of times since then, but I found I hadn't.

Q. Yes. And what did you do with the note, who did you give it to?

A. I gave it to nobody initially, then there was a discovery of documents, and I sought advice as to whether it was a discoverable document.

Q. Who did you seek that advice from?

A. I sought it from the Chief State Solicitor's Office in one instance, and also from another solicitor. And the consensus was, it is a discoverable document, 'hand it over', so I did.

Q. At what stage were you informed that the document should be handed over?

A. Could you be a bit more precise in the question, maybe?

Q. Yes.

A. Thank you.

Q. At what stage were you informed that the document

should be handed over to the Tribunal?

A. Again, I am having difficulty with the question. I went to a solicitor on my own bidding, sought advice as regards it. His advice was that it even though it was a private document, it should be discovered. Through the Department, I raised the issue as well. This went to, I understand, to the Chief State Solicitor's Office. The advice I got back was that it should, and I immediately handed it in to the Department's collection of documents that were to be discovered.

Q. I want to try and find out you say you went to your own solicitor and his own view was that it was discoverable?

A. He took a view that, in these circumstances, there aren't private papers.

Q. Yes. What I am trying to find out here is, is why this document, first of all, was disclosed to the Tribunal as in the context of forming falling into a category of being privileged. Did you ever suggest to anybody, any of your superordinates, that this document would fall into such a category of being a privileged document?

A. I might have asked the question - I think I did raise that question, was it a privileged document or not, because it was a personal document; it wasn't an official document, it was my document.

Q. Were you aware that the Tribunal had been informed that this was in a category of privileged it was retained pending consideration of that, were you informed of that?

A. I don't think I was informed in those in those terms. I think there was some time before I got a word back from the Chief State Solicitor's Office that it was a document that, as I understand it, was not considered to be a privileged document, so I had no objection initially. I just wanted to make sure that if it was privileged, then it stayed privileged, but otherwise I wanted to cooperate as fully as possible.

Q. Isn't the purpose isn't it the purpose, when a civil servant makes a note like this to himself, is that he is uncomfortable or unhappy with what is happening and that he is making a note, perhaps for his own use, to ensure that if anything ever transpires subsequently, that he is not the one that is accountable for the decision to which he has been, as we now in the Dail, described as a consensus or unanimity attachment?

A. I can go along with some of that, Mr. Coughlan. As I say, it is seven-and-a-half years ago and I am trying to I spent some time trying to figure out why I did this. I think part of the reasoning would be to have a record of a sequence of events so that if I was asked, yes, I could, it would be an aid to my memory.

Q. I understand that in terms of the chronology and the sequence of events, that is very helpful in the factual matters, but you make a record here of other matters, other than just a chronology, isn't that correct? You record that there was no note, effectively no decision by the Project Team. It takes it a little bit further, I suggest, Mr. O'Callaghan, than just a note to keep yourself informed of what was happening on a particular day?

A. Well, these would be comments I would just have jotted down.

Q. Yes?

A. I wasn't creating any particular record by saying there was no consensus, I was just recording the fact that there was no consensus, forgetting that I had left the meeting early and that there could have been consensus.

Q. Could I suggest to you, Mr. O'Callaghan, that you would not have recorded what was, in effect, a concern, if you were aware that there had been any consensus?

A. I wasn't aware that there was any consensus, I was not aware.

Q. And if you hadn't been at the meeting, there could have been no consensus, isn't that correct?

A. Could you repeat that question again, please?

Q. If you hadn't been at the meeting - as you said, you

left early - there couldn't have been consensus,

because you weren't there? It is a simple fact?

A. Well, that is perfectly true, yes.

Q. What I am suggesting to you, Mr. O'Callaghan, is that

this concern goes beyond merely the question of the

report, that you were concerned you were noting

here your concerns about the whole whatever is

happening here, you may not be absolutely certain, but

you are concerned about something that is happening

here and you are recording it for your own use?

A. Yeah, there were two concerns I had. One was related

to the fact that I was assured that another week would

be available to consider the finalisation of the

report. That was one issue. The other issue was, I

left the meeting of the 24th with the impression that

there was to be a final, final meeting on the morning

of the 25th once we had the documentation, the revised

documentation back from Copenhagen.

Q. I will come back to it again, because I want to now

move back in time and look at the evolution of events

from the time you first participated at a Project

Group meeting on the 4th of September of 1995, and I

want to bring you then through you were at the

presentation, isn't that correct?

A. That's correct.

Q. You would have participated, perhaps, in discussions

immediately after presentations; they are not

necessarily a formal decision-making part of the whole process, there might have been a chat. In fact, I think you have informed us, in the course of your evidence, that you can remember somebody from the financial side, they would have a look into Advent to see what their position was?

A. That's correct.

Q. And I think you think that somebody from AMI may also have expressed a similar type of view, that they would look into Advent. We can see from the documentation that that particular exercise was conducted, there were inquiries made by people on the financial side, and I think by people in Andersen Management International having a look at Advent, because in the bid document and in presentation, you had been informed that Advent were the ones who were supplying the funds to enable Communicorp or the Esat Telecom side to fund their equity participation in Esat Digifone, isn't that correct?

A. That is what we were told, yes.

Q. That is what you were told. Now, I think you were also told and you have seen the transcripts of the presentation you were told of the four financial institutions, Advent being one of them, taking up 5%, and the other three, and you were told, and you have seen the letters, whilst they weren't letters that actually committed the extent that the money was

placed, you were informed, both by Mr. Arve Johansen and I think by other people, that this is where this is what we are doing here, it is going to be Telenor 40%, Communicorp 40% and these four institutions are going to be 20%. That is what we are asking you to evaluate for the purpose of awarding the licence to us ultimately. That is what you were asked to evaluate, isn't that right?

A. Certainly that is the position that was given to us.

Q. That was given to you?

A. Yes.

Q. You knew nothing about the Minister meeting any applicants?

A. Knew nothing about it, no.

Q. You knew nothing about the proposal that IIU were underwriting any aspect of the operation, isn't that right?

A. I knew nothing about that as well.

Q. Nothing at all. You knew nothing about the fact that agreement has been entered into between Esat Digifone, Mr. Denis O'Brien, IIU/Mr. Dermot Desmond, about Mr. Desmond or IIU coming in at 25% shareholding, and you didn't evaluate any of that, isn't that correct?

A. I had no knowledge of it and I didn't evaluate it, that's true.

Q. Now, I think, if we just, then, pause for a moment there, and go back to the 4th of September of 1995.

That was the first Project Group meeting that you attended, isn't that correct?

A. That's correct.

Q. It is in Book 42, Tab 95.

(Document handed to witness.)

Now, I think this was, this was the I beg your pardon.

A. This is the minutes of the

Q. The ninth meeting of the GSM project?

A. The 4th of September.

Q. The 4th of September. Now, you can see that this is the first meeting where Andersen's presentation on the quantitative evaluation of the six applications

A. Yes.

Q. That's the purpose. Now, this is something that the Tribunal has been trying to find out. There is reference here to an initial draft report of the quantitative evaluation; did you ever see such a report? Nobody else seems to have been able to help the Tribunal, that they actually had a quantitative draft report, and certainly not in any Departmental files. We have seen actual sheets of paper, but no actual quantitative draft report. Did you ever remember such a report?

A. I don't remember a report. I do remember sheets of paper being passed around at that meeting.

Q. All right. I think it was your understanding, from

the quantitative report, that the rankings were A3, A5, A1, but that there was work to be done on the qualitative side, isn't that right?

A. That's right, yes.

Q. And that this process, whatever difficulty you had about the concepts of quantitative and qualitative

A. Yes.

Q. that this process was to be one where there was to be a quantitative assessment, there were to be presentations, there was to be a call assessment and a revisiting of the quantitative matters in light of the qualitative assessment, isn't that

A. That was my understanding of the process, yes.

Q. That was your understanding of the process. Now, I appreciate that at this meeting, and we have been through this minute a number on a number of occasions, that at this particular meeting, Andersens entered certain caveats or reservations about some of the work in relation to the quantitative matters, isn't that right?

A. That's right.

Q. Now, you don't have any recollection of Ms. Nic Lochlainn said yesterday that it was probably at this meeting, she thought it was you, now it may not necessarily have been you, that you or somebody spotted that in the Andersen evaluation model, when you totted up the weightings on the indicators, that

they came to 103. Do you ever remember

A. I don't recall it and I don't think it was me.

Q. I see. But I think you did say in your evidence already this morning, that you do seem to recollect from this meeting that Andersen informed you that certain of the qualitative work had been done but this had been done by Andersen alone?

A. If that is in relation to the meeting of the 4th?

Q. Yes?

A. Yes. Yes, Michael Andersen mentioned that there was to be ten sub-groups, and five had already been concluded. I think that was at that meeting.

Q. And that was to be done by Andersen?

A. That was my understanding, that it was done by Andersen personnel.

Q. Yes. Now, there was then a discussion about the presentations and how you might approach the matter, isn't that correct, I think?

A. Yes, the presentations were

Q. The format?

A. The presentations were coming up the following week.

Q. The format of the presentations?

A. Yes.

Q. Then there was a future framework of the Project Group discussed, isn't that correct?

A. That's correct.

Q. Now, you attended the presentations, of course, and I

think you may have been present on the 14th of September?

A. I think I am recorded at a meeting of the Project Team on the 14th, yes.

Q. On the 14th of September. There was a meeting, the tenth meeting, which was on the 11th of September, 1995. That was discussing the forthcoming presentations. I don't think anything particularly turns on it?

A. Can we just have a reference for that, please?

Q. Yes, it is Tab 99?

A. 99, okay. Yes, I have that now.

Q. And I suppose the only you were at the meeting.

Now, if you go to the last paragraph, then it says,

"As a general rule, it was decided that applicants

would be given a last opportunity to provide

clarification orally at these meetings; further

contact would be avoided. If it became apparent that

clarification was essential after the meetings,

contact would be initiated in writing by the

Department. The applicants were to be informed in

this regard." You remember that?

A. Yes. That happened at the beginning of each meeting and Mr. Brennan told them.

Q. Now, on the 14th, then, the eleventh meeting of the Project Group, you were present at that, and

A. Again, sorry, could I have a reference?

Q. Yes, you can, indeed. It is Tab 104 of Book 42.

A. Yes, Mr. Coughlan, I have that.

Q. Yes. And you can see the opening and the first portion of the minute is taken up with consideration of A4's presentation; obviously that had taken place that day. We needn't concern ourselves with that.

Then it went over the page to the review of the current position, and the group agreed that the presentations had served as a useful exercise. Then there are fairly there are a number of bullet points or indents.

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

Do you remember that particular discussion taking place at the meeting?

A. Not precisely, but it doesn't surprise me that Mr. Brennan would have said that, although I certainly, I don't recall any reference to access to the Minister being mentioned. I think other than that he is just reiterating the point that had been spelt out very clearly to each of the participants.

Q. Well, it is a matter we took up with Ms. Nic Lochlainn yesterday, and I think it is also recorded in notes by Mr. McMahon - we needn't go into them - where both of them record that they have some sort of discussion

around they both have a note in similar terms,
"process not compromised," or words to that effect.

They use do you remember any discussion taking
place at the meeting about

A. I don't.

Q. about whether there had been some compromise of the
process?

A. I never heard that at any meeting, those words being
used.

Q. I see. Now, under the headings, "How to progress the
evaluation," AMI listed the next steps as:

"1. Finalise the qualitative scoring and award marks
on
the dimensions.

"2. Perform initial scoring of the aspects.

"3. Perform supplementary analyses in blocking
dropout.

"4. Financial analysis concerning Sigma Advent.

"5. Adherence to EU procurement rules.

"Tariffs.

"Interconnection (since assumptions very widely
between applicants) the scoring of the marketing
financial and management dimensions would take place
in Copenhagen next week; DTEC to appoint appropriate
personnel to attend. AMI would provide the first
draft Evaluation Report on the 3rd October. This
would be discussed by the group on Monday, 9th

October. The three DTEC divisions would supply any written comments prior to that meeting." Then other issues. It is a legal matter?

A. Yes.

Q. You can see there that the scoring of certain things was to take place in Copenhagen?

A. Yes.

Q. And DTEC were to appoint the appropriate personnel to attend. Do you remember being involved in the appointment of anybody?

A. No, I wasn't, but I do recall I think Sean McMahon and myself might have had a discussion on to about going there, and I think our workload was such that I think the conclusion was that we just didn't, simply, have the resources.

Q. Yes. There was no decision taken at this particular meeting that any result would be arrived at merely by work being carried out by sub-groups, isn't that right? It was a matter for the Project Team to arrive at a result?

A. Well, certainly, this report doesn't

Q. There is no decision recorded of that?

A. No.

Q. And I haven't heard any witness from the Department - Mr. Brennan, Ms. Nic Lochlainn, who were members of the Project Group - suggest that any such decision was ever taken, so it seems to be correct that it is not

recorded, so there was no question of the decision being taken prior to anything happening or as a result, merely, of what the sub-groups did; it was a matter for the Project Team to make a decision?

A. Yes, that would be the case, yes.

Q. Now, there was no other meeting of the Project Team between that date and the meeting on the 9th of October of 1995; I think that is what the record shows?

A. That is my understanding, yes.

Q. If you go to Tab 111.

A. Yes, I have that.

Q. You can see that. This is a fax or a memorandum from Andersens to Mr. Brennan and Mr. Towey?

A. Yes.

Q. You can see that. They are dealing with the remaining award of marks to the ten dimensions. Then they deal, under "B", scoring of the marketing aspects, financial aspects and other aspects. You can see that?

A. Yes.

Q. I am not asking you to I take it you never saw this particular memorandum before matters came to your attention through the Tribunal; you may not have even paid particular attention to it at that time?

A. I don't think I saw it before it was provided by the Tribunal.

Q. By the Tribunal?

A. Yes.

Q. Yes.

A. But I probably would have read most things provided by the Tribunal, so I do recall having seen it, yes.

Q. Now, if you go to the second page, and you can see that under, you know, A2, A3, A4, A5, A6, I just want to come down to, "Other risks might be identified and dealt with later in the process", if you come under that, "If there is a clear understanding between the Department and AMI of the classifications of the two best applications, it is suggested not to score 'other aspects', the risk dimensions and other dimensions, such as the effect on the Irish economy. In this case, the risk factor will be addressed verbally in the report.

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

Were you ever consulted as to whether there should be no scoring, or scoring, of the risk factors or sorry, I beg your pardon, of the other aspects as mentioned there by Mr. Andersen?

A. No, I wasn't, and I don't even entirely understand that paragraph, because I can't see how any factor could be addressed verbally in a report, if it was a written report.

Q. So you were I presume that means narrative, but you

weren't consulted about this, anyway?

A. No, I wasn't.

Q. And, to the best of your knowledge, your division wasn't consulted?

A. To the best of my knowledge, yes.

Q. Now, you have told us that you spoke to Mr. Brennan and Mr. McMahon on the 6th of October, you have already told us about that?

A. Yes.

Q. And then you attended the meeting on the 9th of October of 1995?

A. That's correct.

Q. When you were going to the meeting, what was your understanding of what you had to do? You hadn't seen the report?

A. No, I hadn't seen the report.

Q. There had been no decision taken by the Project Team about anything, as far as you were concerned, isn't that right?

A. That's right, there was no decision made by the Project Team meeting in collectively, yes.

Q. So can I take it, when you went to that meeting, it was your understanding that you would first of all, you would have to receive information about various matters, you would go somewhere to assimilate the information, and, if necessary, debate and discuss it and understand it and then arrive at a view and put

your view into the melting pot of the Project Team?

A. That was generally my what was in my mind, I think, going to that meeting. As you have just said, I was aware of the ranking

Q. Yes?

A. of the first two, and I think we were only talking to the first two at that stage, anyway.

Q. Yes?

A. I expected that Michael Andersen would give a resume, an overview of the report, and that we would that, in turn, we would make our contributions to that, ask questions, seek clarification, or whatever.

Q. And, whether at that meeting or at a subsequent meeting, arrive at a decision?

A. Well, as I said earlier, I would have expected that the process would have resulted in a final document that the entire Project Team collectively would have received, and that was the final document, and saying, "Yes, now we all sign off on that".

Q. And "we agree, we agree", isn't that right?

A. Well, I am not sure if it was ever that there had to be unanimity or there had to be consensus.

Q. I am not suggesting that. But can I just, for clarification, you were never asked for your agreement, isn't that right? Mr. Brennan, at the meeting of the 9th of October, told you that it effectively was a fait accompli as regards the

evaluation, isn't that right?

A. Well, he didn't use those words, in fairness.

Q. Yes?

A. He informed the meeting of the results of the sub the sub-groups that met in Copenhagen and how these were pulled together, and this resulted in an order of merit. It was probably Martin Brennan and Michael Andersen chipping in there. He did make the point that the majority of the Project Team had been involved in that process.

Q. But you weren't asked for your agreement?

A. I wasn't asked for my agreement, no.

Q. Now, can I take it that before you went to the meeting, you must have had some discussion with Mr. McMahon as well?

A. I suppose we must have had, because we worked in a different building and we would have walked down together, and I am sure we would have, but, quite frankly, I can't recall what was the content of that discussion.

Q. Well, can you remember whether it was Mr. McMahon's view, as of that time, that the qualitative assessment analysis or assessment would continue from that time?

A. I don't recall him saying that. I know we discussed the document this morning where there was reference to revisiting the qualitative assessment, but I don't recall him saying that.

Q. No, that is the document of the 23rd?

A. Yes.

Q. What we looked at was his note on the minute of the meeting of the 9th of October where he said that, "We" meaning your division did not subscribe to unanimity in relation to matters at this meeting?

A. That's right.

Q. And you didn't?

A. The meeting of the?

Q. The 9th of October. You didn't subscribe to it?

A. I would have to see that document again, just to be clear.

Q. Yes, indeed.

A. so that we are ad idem on this.

Q. Yes. I think it is page or Tab 148 of Book 43.

CHAIRMAN: It is on the screen now, perhaps it might be just as easy, Mr. O'Callaghan. I sometimes find it easier on screen than with than with a vast amount of documentation in a confined space.

Q. MR. COUGHLAN: You can see that the second page of it, you know, it is a handwritten note?

A. It is 14

Q. 148.

A. I just want to see what goes before it. Yes.

Q. The second page?

A. Yes, I have it. Yes, I have it now.

Q. "It is probably too late to change this record, but

our intervention at subsequent meetings made it clear that;

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

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

"3. The report, while it had probably highlighted the best two candidates, had a long way to go."

A. Yes, I see that now.

Q. I beg your pardon, I will read the first paragraph, "It is probably too late to change this report, but our intervention at subsequent meetings made clear..."

Now, I think you do remember receiving that particular note from Mr. McMahon, do you?

A. I do, indeed, yes.

Q. And you just filed it away, I think. It was addressed to you?

A. Well, I received it sometime after the 1st of November.

Q. You did, it was after the announcement?

A. Yes.

Q. Isn't that correct?

A. Yes.

Q. The minute had been created, I think, on the 17th of October, or is

A. That is the date on the report of the meeting

Q. Yes.

A. of the meeting of the 9th.

Q. I take it you don't disagree with what Mr. McMahon says there, do you, or

A. No, I don't disagree at all. Well, we I made reference to this this morning, where I didn't agree with Point No. 2, I think.

Q. No, I think we are dealing with different matters. I think we are dealing with Mr. McMahon's further note, the one on the 23rd of October, you know the one to be signed in the event that is forced through, I think it is a yes, well, Point 2, anyway?

A. Point 2, I thought I had made a point that

Q. I know you said from your point of view, from what Martin Brennan said at the meeting, and secondly, that the Minister had been informed of the outcome, effectively, or words to that effect, that you couldn't see how matters could be revisited in those circumstances?

A. Because, primarily, the qualitative assessment had been completed.

Q. You were told that?

A. Yes, okay, I was told, I was told that.

Q. You were told that?

A. I was told that, and that is what I took from the meeting.

Q. Yes. Now, at the meeting of the 9th of October of 1995, you had made available to you for the first

time, I think you said, the draft, the first draft

Evaluation Report, dated the 3rd of October, 1995,

isn't that correct?

A. That's correct.

Q. And I understand that, first of all, there was

there were certain difficulties in the group on the

concepts of quantitative and qualitative assessment, I

think that is fair to say, isn't that correct?

A. I think there might have been a little bit of

confusion with about the two concepts.

Q. I think that is fair to say. Now, can I take it you

didn't have the report before you went into the

meeting?

A. No, I certainly didn't have it before we went into the

meeting.

Q. Did Mr. McMahon have it before he went into the

meeting or did he get it at the meeting?

A. I don't know, I don't know. I can't say for certain.

Q. Right.

A. I suspect he didn't have it, but I could be wrong.

Q. We can check that with him, in any event. You didn't

have it, anyway, before you went into the meeting?

A. I didn't have it, no.

Q. And I think you have made certain references to it in

your own evidence this morning. It is not a report

that reads very easily, is it?

A. No, it certainly isn't. I had very great difficulty

with that first draft. I think it improved

afterwards.

Q. Even in its final state, and I think over any involvement you had with the Tribunal and even with your own lawyers involved, there have been it is still not the easiest report in the world to read, I think everyone would agree?

A. It is very difficult, very difficult to get at the meaning.

Q. And can I take it, in fairness to you, you didn't have time to read this report and digest it at this meeting?

A. No, it would have been impossible. Even if it was properly written it would have been impossible.

Q. And can I take it that any understandings that you gleaned, whilst you might have looked through the report and had certain matters brought to your attention, that it was effectively information which was given to you or explanations of the report given to you by either Mr. Brennan, by Mr. Martin Brennan

A. And I am sure also by Mr. Andersen.

Q. And, sorry, Mr. Brennan and Mr. Andersen?

A. Who was present at the meeting.

Q. And Mr. Andersen was present at the meeting. Now, in fairness to you, I think you found the text or the narrative portions of the report difficult to digest, and you felt that the it was your understanding,

again not having fully digested the report, that they didn't clearly identify or distinguish the order of merit. That was your that was the feeling you left the meeting with, is that right?

A. My difficulty, I think at that time, and subsequently, was that the order of merit was one thing, but the narrative was meant to explain, give a background, a lead-up to and why this sort of merit is in the way it is.

Q. Yes.

A. I found that the narrative was not doing justice to that. It was difficult in parts, it was ambiguous. Expressions were, I felt, were being used incorrectly, and it left one, I felt, with a left one in an ambiguous frame of mind as to the outcome.

Q. Yes. That is a fair point. Now, you did make reference to a table, or tables, giving you the impression or the view that matters seemed clear, I think in your evidence this morning, isn't that in relation to the report? The table in the report?

A. I am not sure if we dealt with tables this morning, did we?

Q. I think you just mentioned that this morning. We didn't deal with them but and again, I can see, and I want to ask you just to clarify, because I am going to bring a number of the tables to your attention, just for the moment, and just why you left the meeting

with that particular view. If you go to

A. Sorry, I it would be helpful for me if you could refresh me as to what my particular view was on tables.

Q. I think what you said this morning was, in relation to the report, that you felt that the tables appeared clear but that the narrative, as you have just said yourself, left certain ambiguities?

A. Yes. Primarily, what I mean by the table is the order of merit, the order finalising.

Q. Sorry, I beg your pardon, where it is actually stated in the in the thing, if we take

A. A5, A3.

Q. 1. A5.

2. A3.

3. A1.

It is that particular table?

A. Yes, that is the only basic slip-over table I am talking about.

Q. That is you saw that in the report but you couldn't see anything in the report which justified that to your satisfaction, would that be a fair way of putting it?

A. In the round, if you take the entire narrative, and I think I always had difficulty in saying, yeah, yeah, that explains the

Q. That, I understand. That clarifies that. Now, when

you say that others had the same difficulty, can you remember how many others at the meeting had a similar difficulty?

A. Well, just, primarily, Sean McMahon.

Q. Yes.

A. Beyond that, I am not too sure. There may have been there may have been somebody else.

Q. Right.

A. But I cannot be certain.

Q. Yes. Now, if you go to I just want to ask you about something. It is a different type of table, so I just wanted to ask you about it. If you go to page 46 behind Tab 117, this is the first draft version of the Evaluation Report dated the 3rd of October, 1995?

A. Which book is it in?

Q. It is in Book 42. I beg your pardon. It is behind Tab 117.

A. Sorry, Mr. Coughlan, what page number?

Q. Page 46.

A. 46. Yes, I have that now.

Q. Can you see that? I can see the point you are making at the top of the page there, you see that there, "From this, we have concluded that the three best applications" sorry, yes. "We included" I can't read it "the three best applications" sorry, it is up there. "The three best applications are the following:

1. A5.
2. A3.
3. A1."

That was the table you were referring to this morning?

A. That is the bottom line table.

Q. With the indicated rankings, yes. And if you go on

then, just, and you can see that you see that

the results, based on a conversion of marks to points,

and it reads, "Also a weighting mechanism was agreed

prior to the closing date for quantitative purposes,

as evident from both table 17 and table 18. If the

marks (A, B, C, D, E) are converted to arabic points

(5, 4, 3, 2, 1) it could be calculated which

applicants come out with the highest score measured by

points, although such a calculation distorts the idea

of a qualitative evaluation."

Then you see there is a table underneath it, and you

have got A1, A2, A3, A4, A5, A6 across. You have got

grades and then you have scoring points down at the

end. You see A5 comes out with 442; A3 at 410; and A1

at 362. I think you can see that there the

conversion of matters. And that was in the,

obviously in the draft report which you received?

A. Yes.

Q. This is that is how it arrived there?

A. Yes, it was covered there.

Q. Do you remember any discussion about that particular

matter of aspects?

A. I don't, I don't recall a great deal of specifics from that meeting.

Q. Yes. Very good. Do you remember any discussion at all about the conversion of points or weightings or of

A. No. I think the point was made that if the if these were put numerically, it might make it easier to compare them.

Q. I see.

A. I think that was a general point that was made.

Q. Was that made at the meeting of the 9th?

A. I think it might have been.

Q. Yes. Was there any decision taken that this should be done?

A. I don't recall a decision.

Q. Were you particularly conscious or aware of that portion of the report just above the table, and it says, "Also a weighting mechanism was agreed prior to the closing date for quantitative purposes, as evident from both table 17 and 18." And then it says, when the marks are converted to arabic numbers, it could be calculated which applicants comes out with the highest score, measured by points, although such a calculation distorts the idea of a qualitative evaluation.

Do you remember any discussion about that?

A. I don't, but it is a fairly dramatic statement. I

don't recall.

Q. You don't recall?

A. No.

Q. You don't recall the actual statement itself?

A. I recall neither the statement or the discussion about it.

Q. Or the discussion about it?

A. That's correct.

Q. Do you remember any discussion about that particular sentence or portion of a sentence at any subsequent meeting of the GSM Project Team, that is on the 23rd of October? Do you remember any discussion about that?

A. No, I don't, Mr. Coughlan. No, I don't think so.

Q. Right. And do you remember any discussion about it on in any of the textual amendment sessions session sessions, I should say, you attended on the 24th of October, namely the meeting you had with Mr. Martin Brennan between 4:00 and 5:00 on that day, and the meeting which commenced on at 5 o'clock on that day, which you left at 7:15. Do you remember any discussion about that?

A. I don't. I simply recall that the most of the amendments that I would have brought from my division to Martin Brennan at 4 o'clock, were in the narrative, I think

Q. Yes?

A. rather than numerical tables, and I don't recall.

Q. When you are saying "the narrative", it was to tidy up language?

A. Yes, yes, to tidy up language. It is coming back to my point that the narrative was not was not asserting, I think, properly, what these tables were showing.

Q. Were your narrative amendments accepted?

A. I think, by and large, they were. There was, I do recall, after that meeting, when I went to Martin Brennan on it, I went to some of ours when the meeting started at 5 o'clock or thereabouts, I simply recall we I seem to recall we went through the document page-by-page and people were asked for their comments on aspects of it, and a person would make a comment and say, you know, "How rephrasing it like this, can we cover this point?" This was tossed around and accepted or modified.

Q. Well, just coming back to that portion of 5.5 of the draft report of the 3rd of October, 1995, at page 46.

And you can see there that although such a calculation distorts the idea of a qualitative evaluation

A. This is 5.4, is it?

Q. I beg your pardon, 5.4?

A. Thanks.

Q. I think, as you have said yourself, it is a fairly dramatic statement?

A. It is. I again, I am at a loss to understand it,
but again, it could be a language thing.

Q. Well, you see, were you aware that at the meeting in
Copenhagen the previous week which was attended by
Mr. Brennan and Mr. Towey, that the table which was
produced by Mr. Andersen was in the form of if you
go over or if you go back a page, and you see that
table under the heading "5.3"?

A. Yes.

Q. That's the table which Mr. Andersen produced?

A. Okay.

Q. Do you see that?

A. Yes, I do.

Q. Did anybody tell you that Mr. Brennan had brought
about a change to produce the table which is under the
heading "5.4"?

A. I don't recall so.

Q. And to your recollection, was, therefore, a decision
taken by the Project Team, when you were present, to
bring about such a conversion or change?

A. Again, I don't think so.

Q. Now, your own chronology records that you were
informed by Mr. Fintan Towey on the 17th of October
that the Minister wanted to go to Government the
following Tuesday, that would be the 24th?

A. That's correct.

Q. Were you aware that another report was coming in?

A. Yes, I think I think if you go back to one of the one of the September meetings, or maybe it was a meeting of the 3rd of October, that there was to be a second draft report coming on the 17th or 18th.

Q. Yes, yes. And I know you had to go to Brussels on official business, and when you came back, can you say when you might have first seen the second draft report?

A. Well, until you pointed out to me this morning that I couldn't have brought it with me on the on the plane to Brussels, then the earliest I could have seen it, if it is the case, is the 20th, because I went to Brussels on the

Q. On the 18th, and you came back on the 19th?

A. Back on the 19th. The plane got in late.

Q. You wouldn't be in

A. Ten o'clock in the evening, back to work on the following morning, that is the 20th.

Q. That is the earliest you could have seen it?

A. That's the earliest I could have seen it.

Q. Do you remember having it before the meeting of the 23rd?

A. I do. I did read it and I think I recorded that, that I read it, as much as I could of it, on the 20th, which is the Friday, that day.

Q. Yes?

A. And I suppose some of it before the meeting began on

the 23rd, which I think started at 11:00 or 11:30, but I hadn't read all of it. Sorry, if you just bear with me for a moment, I just have to get the other book.

Q. Do you remember the report, that is the first draft report? You never saw the final report?

A. No.

Q. The first draft report and the second draft report, addressing the issue of the financial weakness of the Esat Digifone consortium, and in particular, of the Communicorp portion of that particular consortium?

A. Right. Now, I can't recall to what extent that was covered in either of those reports. I mean, it was a subject that was discussed around the table certainly.

Q. Yes.

A. And it

Q. Maybe you can help us, if you can remember what sort of discussion took place about it?

A. I think it was I remember at one stage it was alluded to by Michael Andersen, that this was a weakness in the Esat Digifone application. And I now know, having had a flick through the papers, it is what he called the "weakness of the applicant behind the applicant" was the term he used.

Q. That's right.

A. I can't recall any precise discussion in detail about it, other than we were all conscious that there was a weakness there, and that there was a similar weakness

in the Persona application, I think.

Q. What was the discussion about? Well, we will first of all take the weakness in the Communicorp position, what was the discussion about?

A. Well, as I say, I can't remember the discussion as a, as a debate, but I think the issue was adverted to, and I think everybody recognised that there was an issue there, but I other than that, I don't recall an extensive discussion on the subject.

Q. I am trying to, we are trying to understand this, because in the bid documentation that went in, and am I correct in understanding that the, what was evaluated and what the evaluators knew was, that Communicorp coming up to this licence being signed off, had informed you that they would have a 40% shareholding in Esat Digifone, isn't that correct?

A. Well, are you referring to the discussions about the licence or

Q. No, no, I am talking about in the bid documentation. They said to you, "look, we are going to have 40% in Esat Digifone, Telenor are going to have 40% in Esat Digifone, and these financial institutions are going to have 20%." That is what they told you.

A. That's right.

Q. That was your understanding in the concept, and what you evaluated as you saw it in terms of the people who were going to make up the consortium, would that be

correct to say?

A. Exactly, yes.

Q. On the other hand, you had to look at the financial capability of the consortium, isn't that right?

A. That's correct.

Q. That was the thing you had to look at. And what they told you there was this, that I think there was no doubt that Telenor had the wherewithal to hold their end up financially, it almost didn't warrant investigation?

A. Yes.

Q. All right, there was a quick look, I think, or a document submitted of Telenor's standing with Standard and Poor and Moody's, or something like that.

Financial institutions were all clued up institutions, other than there wasn't much known about Advent, isn't that right?

A. Advent seemed to have somewhat of an unknown factor, yes.

Q. And that related but Advent were presented to you in fulfilling two roles, isn't that right? They would take up 5% of the institutional shareholding, but also that they were going to provide the money to enable the Communicorp side to fund their equity participation in Esat Digifone, isn't that right?

A. That is my recollection.

Q. Isn't that what you evaluated?

A. Yes.

Q. And in fact, I think the documents show it, and you seem to remember it yourself, as you said in evidence, that somebody on the financing side said "We will have a look or check out Advent", and you think somebody from Andersens said the same, and the documents show somebody did have a look.

So the final report, and can I take it since you have seen the final report and you know that there is, you were asked about a piece about corporate debt financing in the questions this morning, that portion going into the final report, you knew nothing about that going into the final report, did you?

A. No, I didn't.

Q. Right. But what was the final report or sorry what the evaluators, might I suggest, would have been considering is this; 'We have been told this, we have been told at the presentation that notwithstanding the 30 million coming from Advent, that Mr. O'Brien's side would still control his vehicle because he had a 3-to-1 voting capacity'

A. That's right I remember him saying that.

Q. voting capacity over Advent in the company. You were told all of that, isn't that right?

A. Yes.

Q. And nevertheless, one could see or identify in those circumstances that, 'Look, they do have a weakness

because they are dependant on getting their money from somebody. They have told us that they have an agreement to that effect, that the terms of that are that notwithstanding the amount of money coming in, Mr. O'Brien's side will still have a 3-to-1 voting control of his own vehicle.' Isn't that right?

A. That is what we were told, yes.

Q. And what you were told was that these were matters on the financial concerns of Communicorp which could be tied down in the licence, isn't that right?

A. That is what appears in the, I think in the final report.

Q. Because otherwise if you were talking about something else, it would have meant that, and maybe you had, but did you ever hear anybody say that they rejected entirely what they had been told about Advent, that they rejected entirely the letter that had been submitted by Advent, and they rejected entirely what Mr. O'Brien told the presentation, that this money was there and how it would all be sorted out in terms of the voting arrangements? Nobody ever rejected that, did they?

A. I think it was all believed, yes. Certainly it came across in the presentation as being something that was believable.

Q. Would I be correct in thinking that therefore if you were talking about tying matters down in the licence

negotiations, what must have been in the minds of the people involved in the evaluation process or in the preparation of the report, was to tie that sort of thing down in the licence negotiations to ensure that effectively a venture capital company didn't get control of one of the people behind the licence, a main person behind the licence?

A. And I think that's what was recommended in the heel of the hunt by AMI.

Q. Yes. Now, just on the meeting of the 23rd of October, and I think you have explained and we have been through the meeting of the 9th of October and what you had been informed by Mr. Brennan and your understanding of the report, we have been through that, but do you remember Mr. McMahon raising issues about qualitative matters at the meeting of the 23rd of October?

A. I don't. What I do recall Mr. McMahon raising is the, this point I have made several times, that the he might have used the word that the report was "deficient", I think I used that in my chronology. I can't be certain that that was the word. It was a word to that extent, of that type.

Q. Perhaps for your assistance and it may, it may jog your memory, or it may not, if you go to Tab 134 on Book 43. And you will see the first two, if you can see the first three pages there

A. Yes.

Q. are in typed script form, and what they are is, that they are in typed script. They are a typed script form of Mr. McMahon's manuscript notes which are just behind, these are his notes, the 23rd/10/95 at the same time.

A. I have manuscript notes, but

Q. You don't have the typed notes?

A. I don't see the typed notes.

Q. Very good, I will give you a set of these.

(Document handed to witness.)

A. Thank you.

Q. You see the note is, "Martin Brennan notes that we have only just seen final draft report.

"That Minister wants a result today.

"That he hasn't been promised one."

M Andersen" can you remember was Mr. Andersen present at the meeting?

A. I was looking at the transcript of Ms. Nic Lochlainn's examination, and I hadn't thought that he was here, but he is on the list of attendees in the

Q. She was fairly adamant about it in her evidence yesterday?

A. I noted that.

Q. I am just trying to

A. My only reason for thinking that maybe he wasn't there was that I mightn't have been as explicit as I was

about criticising his use of English if he was there.

Q. I can understand that. You can see here Mr. McMahon's note has, "M Andersen admits that award of marks could be different."

A. I see that, yes.

Q. Well, if Mr. McMahon's note is correct, it looks as if there was a discussion taking place about the award of marks as of the 23rd. Would you agree?

A. If there was, I don't recall it.

Q. You don't recall it?

A. If there was I don't recall it, Mr. Coughlan.

Q. You don't. Okay. "Discussion quite clear that people here are still at odds about quantitative V qualitative evaluation, weighting, rank, grading points, etc.."

Do you remember such a discussion?

A. There was a general discussion which preceded the decision to go and see the Secretary, which I thought was a little bit confused. I have a general memory of it being a confused discussion, where he had a reference made to a qualitative evaluation and maybe being corrected by somebody saying that it was a quantitative evaluation, and elements like that.

Q. Yes, I see your point, yes. So you can remember confusion about quantitative and qualitative evaluations at that stage amongst members of the Project Team?

A. I think there was some, I am not putting a weight on it as to how much there was. What I do recall, it was a discussion of that nature that lead to a decision 'let's go and talk to John Loughrey and see if we can negotiate more time to consider it more evenly'.

Q. Would I not be correct in thinking that it appears to have been Mr. McMahon's view that you were still engaged or involved in a discussion of the qualitative evaluation, and that what was being suggested by Mr. Brennan and his side of the house, was that there had been work done, that this was done by the sub-groups, and that there may have been a view on the regulatory side that all the regulatory side knew about was what they understood to be quantitative evaluations? Was that type of debate going on on the 23rd?

A. I can't recall it as precisely as that, and if, you know, if you are saying the regulatory side, which included me, I think I had understood at that stage that the qualitative assessment had been concluded.

Q. No, you were told by Mr. McMahon on the 9th of February, sorry, on the 9th of October, isn't that right?

A. By Mr. Brennan.

Q. Sorry, I beg your pardon. You were told by Mr. Brennan that it was concluded, that is what you were told?

A. Yes, and I took it that it was. He was the Chairman

Q. You took it that it was?

A. Yes, I did.

Q. Although you had not been asked for any view or agreement in relation to it?

A. That's right.

Q. Isn't that right?

A. That's correct.

Q. Now, if we continue the text. "Me" which seems to be a reference to Mr. McMahon himself. "Me and T&RR can't justify the conclusions by reference to the draft we have seen." That is the last one, that must be the 3rd of October. "It is too close and report is not clear enough." Then going into 4.1: "More text needed to explain basis of Table 1.

agreed.

"I made point that bottom lines of tables doesn't explain the weighting, etc.."

Do you remember a discussion about weightings?

A. I don't.

Q. "3.2. I raised the EU procurement point.

Much discussion about Appendix 11.

I am not happy that we are using this in a relevant way.

Much discussion about my point as to how to explain result in?" Then there it is not clear.

"Agreed that text will have to explain it.

Note that it was conceded by Martin Brennan and Michael Andersen that different type of weightings were used, sometimes none, sometimes 'feel' to arrive at bottom line."

Do you remember that discussion?

A. I don't, Mr. Coughlan. I don't recall it.

Q. Very good.

"Much discussion about bottom line of summary, four different methods
my point.

"We didn't use four different methods, only one. The grading (that is AMI in Copenhagen) simply regrouped.

"Me, Martin Brennan, Sean Fitzgerald, John McQuaid went to see Secretary at 3:30.

"Agreed that report not clear enough to support decision.

"QED."

Then over, "Reasons:

1. Unclear.
2. End voice telephony.
3. Enforcement of.

"On our return agreed:

Final decision should not be on table 16.

"This resulting from both our meet with Sec, and independently by group in our absence."

Do you remember any discussion about table 16?

A. I am afraid I don't.

Q. Very good. "It should be table 17 + 18.

They can't agree on whether same weights went in.

It seems that Martin Brennan dreamt them up during qualitative evaluation."

Now, do you remember anything arising on this whole question of weightings, because it is a matter which is causing some confusion for the Tribunal, and at present

Ms. Nic Lochlainn is going to review the situation, because she had been engaged in certain correspondence with

Mr. Andersen about how weightings were used, and this particular note again here of Mr. McMahon seems to be raising the same issue.

Do you remember any discussion about weightings?

A. I am afraid I don't. If there was, I can't recall it now.

Q. Very good. Now, can I take it that you don't disagree with Mr. McMahon? And let me just explain to you again,

Mr. Fitzgerald reviewed the draft Evaluation Report of this period as well.

A. Mm-hmm.

Q. And he noted on it "close" or "very close". Were you what was your view as of that time about it?

A. That the, sorry, as to who were close?

Q. The first two.

A. The first two. Well, going back to the quantitative evaluation, they were very close, and I thought they were very close all the way through.

Q. In all you heard?

A. Yes.

Q. Okay. Now, can I take it, then, that that meeting of the 23rd, as you say, ended and you considered that you had the three people that left the meeting and came back, and you can't remember who told you, but you have a clear recollection of being told 'We have another week. The Secretary is going to clear it with the Minister', or words to that effect?

A. Yes, absolutely, that is my solid clear recollection, that it might be one of the reasons why I can't recall some of the points that Sean McMahon would have noted because I saw the situation now as, we now have seven days to do this thing coherently, consistently, get the language right, go through everything that we had question-marks over.

Q. And when you received the communication from Mr. Towey on the 24th, that the Minister wanted to go to Government the next day.

A. Yes.

Q. I am not going to ask you whether you were surprised or not, you were told this, and when a civil servant is told the Minister wants to go to Government, his

job is to do the necessary work?

A. Exactly, exactly. It is a fait accompli, the decision has been made.

Q. It is going to Government, you must do the job?

A. Yes, we now make best use of the available time.

Q. Yes. And now, what were you asked for? Were you asked for your textual amendments?

A. Well

Q. First of all maybe we should take this in two parts.

You were told about this by Mr. Towey on the morning of the 24th, is that correct?

A. I can't be certain, as I said, whether it was Mr. Towey or

Q. I beg your pardon. Sorry, I beg your pardon. You can't be certain as to who informed you?

A. No.

Q. But was that on the morning of the 24th?

A. I imagine it was on the morning of the 24th.

Q. Did you then work on the report for the rest of the day?

A. I think that is exactly what I would have done.

Q. You started reading it?

A. Yes. There probably would have been an arrangement, well there must have been an arrangement made for the Project Team to meet at 5 o'clock. At some point that must have been conveyed to us. I would have arranged, probably with Sean McMahon, we probably went through

the text. I can't be certain. I certainly did. And I had an amount of proposed amendments ready, and I met Sean, Martin Brennan at about

Q. You met Mr. Brennan at 4 o'clock?

A. Yes.

Q. And you had your list of amendments?

A. Yes.

Q. And you were happy with the list that you had prepared? You were happy with it?

A. Well, yeah, in a sense that it was done much faster than I thought I, that I thought I thought I would have had a great deal more time to actually do it.

Q. I understand that. But you were happy with your work?

A. Yes, I was indeed.

Q. And you had your list of textual amendments?

A. Yes.

Q. Did you have those before you when you attended the meeting with Mr. Brennan at 4 o'clock?

A. Yes, I had them with me and I discussed them with him. We tried to clear through those before the meeting started.

Q. Right. And you reached the working arrangement, as I think you said your amendments were accepted, they might have been tweaked, but they were accepted?

A. Now, that is not to say that I had, I can't be certain that I had gone through the entire document, that they would have constituted all the proposed amendments

that we would have made if we had more time. We certainly, that is the point that we had reached at 4 o'clock.

Q. Yes. And what other amendments did you envisage?

When you went to that meeting, can I just ask you your frame of mind? You went to that meeting, you had your list of amendments, you said you worked through it, you were happy. Were there other amendments in the report which you wanted to make or which you did not bring with you or which you were told by Mr. Brennan would not be considered?

A. I can't remember that anyone said that they would not be considered. I think it is highly likely that when the meeting started at 5 o'clock that other points would have struck us as we were discoursing around the table.

Q. So you took your list and they were accepted?

A. As I recall, yes.

Q. What happened around the table that, that whereby you had any disagreement about what was happening on the textual amendments?

A. I can't recall that I had disagreement, as I recall it, and it was a meeting I attended for about two and a quarter hours, or so. I think Mr. Brennan again chaired it. We went through the document page-by-page. He probably would have adverted to amendments that he and I had agreed the hour

previously, but the technical people were there and other people were there.

Q. Yes, I understand that. But I take it, you took your list, you worked you went through them with Martin Brennan, there was no fundamental disagreement, if I could put it that way?

A. No.

Q. Right.

A. Not that I recall.

Q. The meeting started at 5 o'clock. The group present at the meeting went through the text line-by-line?

A. Yes.

Q. Any of your amendments which you had brought to Martin Brennan's attention were incorporated in the proposed textual amendments?

A. I don't recall any disagreement with them.

Q. You don't recall any disagreement. And the technical people were there. And I take it, in fairness, you would be entitled to defer to the technical people on technical matters?

A. Absolutely in the same way I would defer to Donal Buggy, let's say, on the financial analysis matters.

Q. Yes, I understand that. So in your own area, at least, you had no disagreement at the meeting which commenced at

5 o'clock and which you left at 7:15?

A. I don't recall a disagreement.

Q. Now, I know you expected the meeting to reconvene the next morning?

A. That's what was in my mind, I think, and I think

Q. I understand that. But as far as poor old Mr. Towey was concerned, he was the one that was going to have to work overnight anyway?

A. Yes.

Q. As far as you were concerned you had completed your particular task?

A. Yes, not quite. I mean, I had to leave at a quarter past 7 for domestic reasons. The work had not concluded. We had not gone through all the documents.

Q. I appreciate the work had not concluded, I understand that. Your textual amendments had concluded, am I correct?

A. No, this is the point I am coming to, Mr. Coughlan. I had, during the day I had worked on a number of textual amendments.

Q. Yes.

A. At 4 o'clock I think Martin suggested that I discuss it with him to speed things up.

Q. Yes.

A. Whatever I had done by then I discussed with Martin Brennan between 4 and 5 o'clock.

Q. Yes.

A. The meeting commenced at 5 o'clock. I think we started on page one, and I think it would be natural

that other issues would cross one's mind as we were going along. It reached a certain point where I had to depart, which means that there would have been other pages that I wouldn't have had a second chance to have another look at and I might have had more to say on it.

Q. Well, could you give us a tone? We are going to look for the documents of your list of textual amendments now. Could you give us just a tone of the type of amendment you sought in the Evaluation Report?

A. I can't, I can't recall at this juncture. These would have been, as I say, textual amendments to the narrative as I understand it.

Q. What area?

A. I am sorry, I can't recall.

Q. You can't recall. It wasn't in the financial area, was it?

A. I doubt it very much. I certainly would have deferred to people like Donal Buggy on that.

Q. It wasn't in the technical area?

A. It certainly wouldn't have been in the technical area.

Q. Can you limit it to or try and identify for the Tribunal which area?

A. It might have been in the general area of sharpening up the English, aligning the ambiguities, maybe correcting the wrong analogies being used, which I thought there were a number there which would have

given a wrong impression, or left one with an ambiguous understanding of the conclusion. I think it is more likely that it was in that area rather than anything specific or technical or financial.

Q. Right. Well, not being disrespectful in any way, Mr. O'Callaghan, but might I suggest that they were not we will look at them, we will look for them and look at them, but they weren't major matters in the report?

A. Well, I don't know. We don't have them in front of us, so I don't know how we can say they are major or minor.

Q. You have described the type of changes, you have described the type of changes, I am asking you was there a significant amendment to the report that you can remember that you proposed that was not accepted or anything like that?

A. As I said earlier, I don't recall any suggestion that I had not being accepted.

Q. You don't recall any suggestion you made not being accepted?

A. No. I could be wrong, it is seven and a half years ago. I don't mind whether they are called major or minor. I have no view on that.

Q. You see, Mr. O'Callaghan, I suppose what the Tribunal has to look at and consider in the light of the chronology which you prepared some short time later,

if all your textual amendments had been accepted, why you would create such a document if it was just merely because there hadn't been a meeting to sign off on the report. Do you understand the point?

A. Well, I understand the point, but I mean

Q. And what I must suggest to you, is that this document was created because you at that time had a far more serious concern about what was going on, and that you created this document for your own use, if necessary, at a future stage?

A. The only serious concern I had at the time, Mr. Coughlan, and I am not sure if I would use the word "serious" in it, was that I discovered on the 25th that there was not to be a follow-up meeting, and this was following on from the discovery that there was not to be a week to deal with this report and finalise it. And I think I was more than miffed, if I can put it like that. I don't recall a serious concern that

Q. Well, might I draw some matters to your attention. You see, your chronology starts on the 6th of October of 1995, that is my understanding?

A. They are.

Q. And first of all, you don't receive information from Mr. Brennan when you ask him

A. That's correct.

Q. in circumstances you considered discreet?

A. I wouldn't have raised the question otherwise.

Q. You attend a meeting on the 9th of October of 1995, you are informed by the Chairman of the group that the qualitative assessment has been carried out, isn't that right, and you are not asked for your agreement?

A. That's correct.

Q. You are also told at that meeting, the first time you see the report, that the Minister knows the outcome, isn't that right, or words to that effect?

A. That's correct.

Q. You were informed on the 17th of October, before the second report comes in, that the Minister wants to go to Government the following Tuesday, isn't that right?

A. That's correct.

Q. And you are told on the 23rd that you have a week to complete the work, isn't that right?

A. That's correct.

Q. Sorry, and then you are told on the 24th that the Minister wants to go to Government the following day, isn't that right?

A. That's correct.

Q. Doesn't that whole period, I suggest to you, Mr. O'Callaghan, show or depict a situation of sustained political pressure to get this thing moved very fast, and that that is the type of thing that you are recording in your chronology?

A. I don't know if you want me to speculate, I certainly wouldn't like to speculate here, but what I am

recording in my chronology is a series of events, trying to get the timing ready for myself. I was seriously preoccupied with other work.

Q. I understand that.

A. The GSM business wasn't even central to the amount of work I was doing at the time. And there was such a flurry of activity concentrated in a few days, I wanted to get the sequence right, jotted it down.

Quite clearly it was done in a hurry because I even got dates wrong and there is no proper grammar.

Q. I understand that.

A. But that was the basis for it.

Q. It was a spontaneous act by you, though, to do this?

A. It was very spontaneous.

MR. COUGHLAN: I just have one matter to go, and perhaps we will go to Tuesday to get the, to see if we can get the notes prepared or carried to the meeting.

CHAIRMAN: Yes. It seems likely that we will conclude your evidence on Tuesday.

MR. COUGHLAN: We will, Sir.

CHAIRMAN: Very good. If 11 o'clock is suitable to you, Mr. O'Callaghan, we will take up the remainder?

A. Yes, Chairman.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, THE 11TH OF MARCH, 2003, AT 11 A.M..