

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

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

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I N D E X

WITNESS: EXAMINATION:Q. NO:

Ed O'Callaghan

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THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,

11TH MARCH, 2003 AT 11AM.

CONTINUATION OF EXAMINATION OF ED O'CALLAGHAN BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. O'Callaghan, I've just looked through the documents in our possession, and I just wonder if you could perhaps just look at this document, if I can get you a copy of it now.

(Document handed to witness.)

I just want to ask you, is that your handwriting, Mr. O'Callaghan?

A. It seems to be, yes, yes, it is. I'd say almost definitely it's mine.

Q. We thought so, just from your chronology this is the I am not saying you didn't have any other document or documents, but this is the only one we can put our hands on at the moment. I just

A. Right.

Q. Now, what it is "Comments on AMI draft Evaluation Report", and it goes through certain textual amendments. There were further textual amendments, in fact; I can just tell you that as well, from what we

have seen. But you can see there is that received from F. Towey, 24/10/1995, following discussion of GSM Project Team of 23/10/95?

A. That's exactly what it is, Mr. Coughlan.

Q. Is that what it reads? And do you recollect receiving this? You may or may not.

A. Well, I am sure if I said I had received it, that would be the case.

Q. I suppose what I am trying to ascertain, you were informed of something on the morning of the 24th, that whether it was the Minister or the Government; you don't know who told you that the matter was to go to Government the following day, on the 25th, I think; is that correct?

A. I was informed sometime on the 24th. It may have been the morning, I couldn't be certain, and what I said on Friday was that I thought it would either have been Mr. McMahon, who would have been my superordinate officer or someone from the telecommunications division.

Q. You didn't know, but you remember being told?

A. I remember being told, yes.

Q. And you had a meeting with Mr. Brennan between 4 and 5, I think, on the 24th; isn't that right?

A. That's my recollection.

Q. Then there was a meeting; the meeting commenced at about 5 o'clock, and you left it at about 7.15?

A. That's my recollection.

Q. Would it have been at that particular meeting that you received this from Mr. Towey, do you think, or would it have been prior to that?

A. Well, you will appreciate, I've only just seen this document.

Q. I am not holding you; if you remember.

A. I will be as helpful as possible. I would imagine before that meeting.

Q. Before the meeting; very good.

A. Just as a guess. It's quite plausible that during the discussion of the 23rd, that a number of points came up.

Q. I think there is no doubt people had been working on it on the 23rd; I don't think there is any dispute about that. Now, there were, I can tell you, further textual amendments, than this, there were.

A. Yes.

Q. Now, at the meeting of the 24th, at 5 o'clock, can you remember who was there?

A. Well, my recollection was that I was there myself; that Martin Brennan was there; that Fintan Towey, because I think Fintan was the one who was going to be in a position to send us material by fax; I think Sean McMahan was there; possibly John McQuaid or somebody from his side. That's about as far as my memory would go.

Q. Very good. Now, just one final matter then, if I could just take up with you. I don't want to open there was correspondence between the Chief State Solicitor's office and the Tribunal at many stages throughout the course of the investigative phase of the Tribunal's work, dealing with matters like documents and queries being raised and matters of that nature. And there was correspondence which related to your chronology.

A. Yes.

Q. And I think the Tribunal was informed of how events unfolded. You came across the document sorry, the Tribunal had indicated that the documents they wanted, the Department were making them available. I think everybody was asked to do a search?

A. That's correct.

Q. And you came across your chronology in the course of that particular search. You brought it to the attention of a superior in the Department; would that be correct, I think?

A. I made contact with the division that was dealing with the Tribunal matters. And I mentioned it to one of them, and simply asked the question about you know, this is a private note; is it a privileged document or not? I never sought privilege on it, and I never claimed privilege on it.

Q. In fairness to everybody involved here, as a result of

the advices that the Department received, the document was made available to the Tribunal. There is no doubt about that.

A. Right, yes.

Q. But you also took advice from your own solicitor in that regard as well, didn't you, your own personal solicitor?

A. I did, just simply to ask the question I think there was some doubt at the time within the Department as to whether or not I could get separate advice from the Chief State Solicitor who, after all, was involved, so I took it on myself to seek advice of an external solicitor, and his advice was what I had subsequently got.

Q. Similar advice that you received?

A. In these matters there aren't private documents.

Q. Now, could I just ask you, it's just a final point.

A. Yes.

Q. If the chronology just related to the question of the report, and the question to get all the dates down, wouldn't it have been in those circumstances more normal for a civil servant just to place that on the file so that it would be of assistance to everybody that would be looking at it?

A. Well, as explained on Friday, my motivation in writing that note, it was first of all, as you pointed out at the very end of Friday's session, a very spontaneous

thing for me to do. I had been extremely busy on mainly on other matters in the course of that month during the process of the to-ing and fro-ing of all the documents and meetings of the GSM Project Team, and there had been a flurry of activity that I wanted to get I was starting to write a note to get these notes in my head. Where was I? When? I went to Brussels at some point: when was that? Was that before a document came in? Getting these things in sequential order myself. There wouldn't have been a need to put a such a note on the file because these would have been matters that would have been known to everybody. Everybody who attended the meetings knew what date they were on. There were going to be minutes; I know some of them came a bit later. This was for my own use, so that on one sheet of paper I had a sequence that I would be happy with and familiar with. And things changed fairly rapidly towards the end, and I wanted to ensure that I had it very clearly in my head, the sequence.

And so it was not a matter for putting something on a file. It was a personal note for my own use.

Q. Thank you very much, Mr. O'Callaghan.

A. Thank you, Mr. Coughlan.

THE WITNESS WAS EXAMINED AS FOLLOWS BY

MR. FITZSIMONS:

Q. MR. FITZSIMONS: Just a few questions, Mr.

O'Callaghan.

This document that's been produced this morning, Mr. O'Callaghan, I think it gives us a picture of the enormous amount of work that was in fact in progress in those last few rushed days; people were there were lots of very technical amendments listed here, and it gives us a flavour of what was going on at those meetings?

A. Yes.

Q. In relation to the question of discovery, was an order of the Tribunal made against you personally?

A. No, there was no order made against me, but the order was to the Department, as I understand it.

MR. COUGHLAN: No order of discovery it was complied with

A. There was a request for discovery.

Q. MR. FITZSIMONS: I appreciate that. But the document known as "the chronology", I think you have described that as a personal document as distinct from a departmental document?

A. That's correct. If it was a departmental document, it would have been put on a file.

Q. So a real legal issue would have arisen if a request for discovery had been made only for departmental documents, and indeed that may have been the issue that arose, in other words, a genuine legal issue?

A. I can't comment on legal issues.



Q. I just want to

A. I am a neophyte in that area.

Q. Now, I'll move on to another matter. Mr. Coughlan, on

Friday, in conducting an inquiry, put to you and

I'll just quote "that there was a sustained

political pressure to make things go fast", and I am

quoting Mr. Coughlan: "sustained political pressure".

Of course that was just put to you as an inquiry,

because I think you would agree with me that the facts

and the evidence certainly does not establish that in

any way, that there was sustained political pressure

to make things go fast. I think you can agree with

that?

A. I would find it difficult to make any sort of comment

on that. I am a civil servant. We stand well back

from political matters, and

Q. Of course you do, but I am sure in your experience in

the civil service you have come across situations

where Ministers with pet projects become very involved

in phoning their civil servants and putting pressure

on the Secretary over a lengthy period of time, and

that is what one might describe as sustained political

pressure and is completely different from a Minister

who happens to want to produce a quick result?

A. All I can say in response to that, I have no

experience of any sustained pressure of that sort.

Q. That's perfectly all right.

Now, if we could go to Document 42 of 117, which is the Andersen report of the 3rd October, 1995. Do you have that document there?

A. Sorry, the

Q. The Andersen report. And if you could go to page 45 of that?

A. Sorry, what's the reference on it

Q. It's 42, 117, Divider 117.

A. Yes, I have that document. What's the page number?

Q. Page 45. And if you see on page 45, we have the Section 5.3, and of course over the page we have the Section 5.4, and you will recall Mr. Coughlan, in conducting his inquiry, making points in relation to those two paragraphs?

A. I do indeed, yes.

Q. Now, again, of course, Mr. Coughlan I must emphasise was conducting an inquiry, and the way he put it, again for the purpose of conducting the inquiry, was that 5.4 changed 5.3; but I must suggest to you that in fact, that I don't think you in fact commented on it, but I must suggest to you that in fact is not the case, that 5.4 is different from 5.3. and the difference is in fact explained in the preamble to 5.4.

So there is no question of someone changing, or Mr. Brennan changing a paragraph, with all the undertones that that phrase might have. And you of course read

this document, as you told us, and saw nothing

untoward about it at the time; isn't that so?

A. This is the version of the 3rd October, is it?

Q. Yes, it is.

A. Well, this document would have been the subject of the meeting of the Project Team on the 9th, and there would have been a lot of to-ing and fro-ing on various aspects of it. Whether or not there were comments, I cannot recall any specific observations or comments being made in relation to these two tables.

Q. But the fact, the objective fact is that the tables are different, and the difference is explained in the preamble to 5.4, which Mr. Coughlan in fact read out to you, the application of numbers, arabic numerals to the letters, simple as that; that's the simple change?

A. I am not sure what the question is here.

Q. Okay. Now, let's move on to a different document.

Your chronology, that's Book 43, 137. This is the chronology, your own

A. Sorry?

Q. 43, 137.

A. Yes, Mr. Fitzsimons, I have that now.

Q. As you have told us, this was a note that you made to keep yourself informed; you were very busy over this period, and perfectly reasonable. Again Mr. Coughlan of course conducting an inquiry, whilst I hope he won't criticise me for using the term I am going to

use, but the implication of his questioning was that this document was a sort of an insurance policy for you in case people asked questions afterwards.

Now, I have to suggest to you that that is not the case, as you have told us. This was just a note, an aide-memoire, if you like, in case you had to go back to the facts of this particular matter; isn't that so?

A. Well, I'll simply repeat insofar as I can remember my answer to Mr. Coughlan, it's a note that I wrote for my own use. I would have never thought that it would have been discovered, because my understanding of the rules of discovery would have precluded a personal note; but I wrote it to create a sequence of events as I recalled them, so that I would have a) a record, and b) an aid to my memory if somebody ever asked me.

Q. If it was going to be an insurance policy you certainly would have dated it, wouldn't you?

A. Well, if I mean, again I am not entirely certain what either of you are meaning by an insurance policy. If it was if it was to be any more serious than how I have explained it, I certainly would have typed it, I would have edited it, I would have reviewed it, I would have been absolutely certain that every matter I am covering here was absolutely correct. And in that case, I probably would have filed it, and it would become a departmental record.

Q. Very, very least, you would have put a date on it so that

A. Of course.

Q. So that nobody could suggest at any later date that it was not a contemporaneous note?

A. Absolutely. As civil servants, we sign and date everything.

Q. Of course.

A. Everything of let me qualify that: everything of an official nature. Because this was a note that I saw as being a personal note, I felt I didn't have to do it to myself.

Q. Of course not.

Now, Paragraph 7 has been dwelt upon sorry, paragraph 8, the last few words: "He did no signing off on report we had no final report. No consensus asked for, no vote effectively no decision by Project Team."

I think, as you have explained, that these comments by you referred to the form and content of the report, not the result or decision represented by it?

A. Before I directly answer your question, Mr. Fitzsimons, can I just make a correction here that I thought I had made on Friday. When I said "He did", there should have been a full stop after that.

Q. That's my fault. "He did. No signing off on report. We had no final report. No consensus asked for, no

vote effectively no decision by Project Team."

Again I am just asking to you confirm your evidence that this in fact relates to the form and content of the report which wasn't signed off on, as we know but not the result?

A. Exactly. I think I made that distinction on Friday, the distinction between the report and the result.

And if you look closely at the two sentences starting from the clause "We had no final report" to "No consensus asked for, no vote effectively no decision by the Project Team", I think it relates back to the report rather than the result. And that's the point I think I was trying to make, that the work of the Project Team concluded when we did not have the final report.

Q. Now, just finally this word "Consensus" and all it imports. I take it, Mr. O'Callaghan, throughout your period in the civil service, you have been at many meetings, departmental meetings, interdepartmental meetings, meetings with foreign delegations, Commission delegations, possibly Ministerial meetings, and I think you could can you confirm that?

A. Yes, I would have had meetings of the type you have enumerated there.

Q. I take it that you can confirm every day of the week possibly hundreds of meetings are going on throughout the State in the civil service of the type I have

described?

A. Exactly, lots and lots of them.

Q. And at these meetings would be present possibly people of the same rank or of different rank, could be departmental Secretaries, Assistant Principals, Principals, Executive Officers, etc.

A. Perfectly correct, yes.

Q. And many of these meetings, I am sure not all of them, sometimes have lengthy agendas with many matters to be discussed, possibly covering a wide range of fields; isn't that so?

A. On a regular basis, yes.

Q. On a regular basis. And many of these meetings, not all of them, will be called to take decisions on many of the matters appearing on meeting agendas; isn't that so?

A. That would be so, yes.

Q. And could I suggest to you that the normal format for these meetings is that the agenda is gone through one by one and a topic is aired, discussed, views are sought, and at the end of it, who is chairing the meeting looks around and effectively says "Is everything okay?" And the decision is effectively made in that sort of consensual basis, if I could put it that way?

I'll put it another way, just so you have a contrast: that you do not have a vote on all decisions at these

meetings?

A. I agree with you; the civil service doesn't operate by taking votes. In a working group, meetings of the type that you have described, at meetings with even with the Commission in Brussels, it's done on a as you described in the first part of the question, the issues are aired, opinions are asked across a table, and views are expressed. And disagreement is recorded if there is disagreement.

No, I don't recall votes being used. It was a throwaway remark of mine in my chronology note.

Q. And at the end of a discussion on a particular decision to be made, to-ing and fro-ing, the Chairman, whoever the Chairman is, might say "We agreed on X", and there might just then be silence; and then, if there was no dissent, he would move on to the next matter. He would say "Okay, and let's move on to the next matter". Everybody doesn't have to put up their hands, like in the Politburo, and say yes?

A. Well, as I said, the civil service doesn't, in my experience, operate by voting mechanisms anyway. It could very well happen the way you described it, that there might be silence, although civil servants aren't usually that silent; we usually have something to say about everything.

Q. I am not saying you wouldn't have said something, but at the very end of a discussion, if there was no



dissent, the Chairman said, "Are we all agreed on this?" It would be taken as read that that was the decision, and you'd move on to the next decision to be taken?

A. I think you are right. If there is no dissent, then there is at least implied agreement.

Q. And I think you can confirm with me that the same process operated in the Project Group, and no person had a veto in that Project Group?

A. Of course not.

Q. And for example, if you, for example, had been, or any member had been out ill for a few meetings of the Project Group and missed various decisions, you couldn't come back in and say "I want this decision to be reviewed; I didn't agree with that", or "I don't agree with that and I want it to be looked at again". That wasn't the way it worked; isn't that right?

A. It is as you describe it. In fact I missed most of the meetings of that year because I had had an accident and I was not very mobile.

Q. So can we take it then that if, in relation to any particular decision there was silence or no formal objection, that one had a consensus at the Project Group meetings?

A. Well, I mean, there were no rules laid down that I recall about how agreement was to be achieved here or how a consensus was to be recorded. When I make a

point about no consensus asked for in that chronology, I think I am saying that at any meetings I was at, there was no formal consensus sought or received. As I would have said a number of times to Mr. Coughlan on Friday, from the 9th October onwards, I would have taken the view that the evaluation was effectively completed. There was some further work to be done, but it was hardly going to change the result.

Q. The result was made, and the only outstanding issue was the form and content of the report?

A. More or less, yes.

Q. Thank you very much, Mr. O'Callaghan.

CHAIRMAN: Mr. McGonigal?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: There are a few things, Mr.

O'Callaghan, that you can help me with.

First of all, just in relation to yourself, what department were you in prior to moving to this department in '93?

A. I would have come to the Department of Transport, Energy and Communications from the Central Statistics Office, where I had worked for a number of years.

Q. And was this the first time that you had worked in this department, the Department of Transport, Energy and Communications?

A. I had come to the Department of Transport, Energy and Communications in 1993. I am in the civil service

since 1979, if it's of any interest. I had started in the Department of Economic Planning and Development, which then was fused back into the Department of Finance, and following a career break, I was on on return I was assigned to the Central Statistics Office and in 1993, transferred to the Department of Transport, Energy and Communications.

Q. But effectively this was a new department for you?

A. This was a new department for me, yes.

Q. Involving new matters?

A. Exactly, yes.

Q. And as you have explained to the Chairman, it seems to have been an extremely busy department?

A. I can't speak for the Department at large, I can certainly speak for the area that I worked in. Sean McMahon and myself would have been assigned at around the same time to the new Telecommunications and Radio Regulatory Division, and we began I suppose what one might call a new phase of regulation of telecoms in Ireland. And it was extremely busy; we had an extremely heavy work load, and we didn't really have very many resources to do it.

Q. Then I think your time was interrupted with this unfortunate accident?

A. That's right.

Q. And when you came back from the accident, the work in relation to the licence had already commenced?

A. That work had commenced and had been going for some time. I came back to work, as I recall, on the last day of March, 1995. The Project Team had been up and running for some time, and I think the competition that resulted in the award of the consultancy contract to Andersens, that was either underway or had been completed by then.

Q. Now, as I understand it and I am not making this as a criticism as I understand it, your recollection in relation to events of around this time is not absolutely clear?

A. Around what time?

Q. Around the time of the meetings and the time of the granting of the licence, you haven't a great recollection of these events?

A. I think I have a pretty good recollection. I have a note that I wrote at the time that I am relying on for dates, and I'd be pretty sure of my dates, yeah.

Q. I am not concerned about the dates so much, Mr. O'Callaghan. One of the things that's interesting me is that at the PT GSM meetings which took place, did you make actual notes of those meetings?

A. I can't recall that I did.

Q. I was just curious as to we don't seem to have any handwritten notes of yours, and I couldn't understand whether that was because you didn't make them at the time or because they had been lost since.

A. I would imagine that I would have made notes, that I would have jotted things down. Obviously we would all arrive at meetings with a pad of paper and a pen, and it would be remarkable if I didn't jot things down.

Where they are now, I am

Q. They have just been mislaid or lost?

A. I would have no idea.

Q. Just in relation to the meetings themselves, perhaps you could just have a quick look at two of them for me. The first is the one of the 4th September, which is at Tab 95 in Book 42.

A. Sorry, Mr. McGonigal, what tab number is that again?

Q. 95, I hope.

A. 95.

Yes, Mr. McGonigal, I have that now.

Q. As I understand it, that was the first meeting of the Project Group that you attended?

A. That's perfectly correct.

Q. And apart from that being the first meeting, as far as I can make out, the only meeting you attended prior to that was a meeting in relation to GSM legal issues on the 29th August of 1995, which is the tab before that.

A. Yes, I can see I am recorded as being in attendance at that meeting in yes, the Attorney General's Office, yes.

Q. So that insofar as we can try and trace a beginning,

in a sense, for you, it appears to be somewhere around the 29th August, when you were beginning to get involved again in this process?

A. I was at the initial Project Team meeting on this, the previous year.

Q. I appreciate that.

A. In 1994. I also would have reviewed, along with Sean McMahon, I would have reviewed the six applications, and I would have read most of the material in those applications.

Q. And that was to familiarise yourself with what was going on?

A. Absolutely. I was going to be at the presentations, so it was essential to come to it with the knowledge of the applications.

Q. So if we can look then at the meeting of the 4th September, Mr. O'Callaghan, which was the meeting one of the meetings you attended. And I want to in particular to draw your attention to the last page and the future framework of the project.

A. Yes, I have that page.

Q. And you see there that the minute records that "10 sub-group meetings for the qualitative evaluations had been proposed by AMI. 5 had already taken place. AMI committed to provide the Department with documentation on these earlier sub-group meetings. Project Group members were welcome to contribute/suggest amendments

to the scoring."

Do you recollect any of this?

A. Yes, in fact

Q. So that you remember this actually taking place during the discussion at the meeting on the 4th?

A. I think Mr. Coughlan asked me on that question on Friday, and I said I remember very clearly Michael Andersen talking about 10 sub-groups, 5 of which had already taken place, which I understood were carried out by personnel from AMI, and there were to be 5 further sub-groups set up to meet in Copenhagen.

Q. And I think you will see that in the next paragraph, "Andersens outlined a timetable for the remaining 5 sessions, and personnel were nominated to attend."

A. That's right.

Q. And "Mr. Towey and Mr. Riordan are to attend the financial and performance guarantee meetings. Mr. McQuaid and Mr. Ryan are to attend the radio network, capacity of the network and the frequency efficiency sessions."

I think it is the position that in fact neither yourself nor Mr. McMahan attended any of the sub-group meetings.

A. That's perfectly correct. I think it would have been the case that Mr. McMahan and myself would have considered attending and probably would have wished to, but due to our other responsibilities, we simply

didn't have the resources to do so.

Q. But it would also appear from that memorandum that what was being aimed at was to get the appropriate people to attend the sub-group meetings?

A. Certainly from the reference to Mr. Riordan there, who was an accountant, I think at the time employed by the Department of Finance, he would have been certainly an appropriate person to cover the financial and performance guarantee issues. And as we know, Mr. McQuaid and Mr. Ryan are the two of the senior people in the technical division.

Q. And clearly what one was aiming for was to get, when they use "appropriate", the persons most directed towards the issue that might be involved in the subcommittee meeting?

A. Well, yes. I mean, by the same token, Mr. Towey would have been a general service civil servant like us, and I know Maev Nic Lochlainn was there, and she would have been she wasn't a specialist.

Q. And equally, as we later came to see, Mr. O'Callaghan, the regulatory section of the Department had a significant role to play when it came to the negotiations in relation to the licence?

A. It had, of course, yes.

Q. Because they were the appropriate people to be dealing with that?

A. Exactly.



Q. And so at these meetings, at this particular meeting where appropriate persons were being nominated or suggested, there was an opportunity for yourself or Mr. McMahon to either nominate yourself or be nominated, and for one reason or another, it was decided that other people would be more appropriate?

A. Not quite. What I said was that the issue was raised about either Sean or myself going to Copenhagen, to one of these sub-group meetings. But our own resources were so little compared to our responsibilities for the following couple of weeks on other issues, with other major issues coming up, that we weren't able to go. There was no sense that either of us were not going to be nominated to go to Copenhagen. This was just that circumstances didn't allow it.

Q. That meeting appears to have continued identifying what was going to take place at those meetings, being the scoring of the dimensions, as you can see from the next paragraph?

A. Yes.

Q. And it is clear that on the 14th September, that the group would have an initial discussion on the qualitative evaluation scoring?

A. Yes, I see that, yes.

Q. And it would also appear that as of that date, the 4th September, members of the team were already focusing

on the probability that a report should be producible,  
to use that expression, by the 3rd October?

A. Yes, I can see that there, yes.

Q. And that gives in actual fact an indication of not  
only the work that was being done, but also the way in  
which the work was to be progressed?

A. It indicates the time-tabling of it, yes.

Q. And also the involvement that people were going to  
have or not going to have, as the case may be, at that  
time?

A. Well, insofar as if you are referring back to the  
personnel that were being nominated for the  
sub-groups, yes.

Q. Going then to the 14th, which is at Tab 104, and on  
the second page of that

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

Q. you will see that there was a review this was  
also a meeting which you were at?

A. That's correct.

Q. There was a review of the current position.

A. Yes, I see that, yes.

Q. Which seems to have involved a fairly general but  
detailed discussion having regard to the various  
matters that had arisen, including the fact that the  
presentations had taken place a few days beforehand?

A. That would be the case, yes.

Q. And then, going down to the bottom of that page, you

see the paragraph "How to progress the evaluations"?

A. Yes.

Q. And that the "Assessment of the technical dimensions was complete and the T&RT Project Group members had attended all but one of the sub-groups and were happy with the conclusions: T&RT and AMI are to score the technical aspects by close of business on the 14 September."

Is it right to say that they clearly or they were identified as the appropriate people to deal with this aspect of the matter?

A. T&RT people were the technical people within the Department, so in terms of assessing the technical dimensions, there couldn't be anybody better placed to do so than the T&RT people.

Q. And I suppose in the same in that sense, you were relying on their expertise in relation to those parts those sub-group meetings that they were attending and involved in?

A. Absolutely. In many respects they were probably the only people who understood them.

Q. And is it fair to say that you and Mr. McMahon, from your position in the regulatory sections, were sort of putting your faith or relying on the work that was being done in the sub-groups by the people appointed, because they were, in the main, the correct people to be doing that work?

A. Absolutely, Mr. McGonigal. As well as that, the Department had hired AMI, at considerable expense, to carry out this work as well, and AMI would have brought to the table experts in all the fields, not just one particular one. They had a full bevy of personnel who would cover all the different dimensions and angles here.

Q. Absolutely. We have seen through the papers that there were a number of personnel from AMI involved, bringing various different types of expertise to the areas that they were involved in?

A. Absolutely. I think that was one of the purposes of hiring AMI, that they were able to bring a range of expertise to the table.

Q. So that even though you yourself weren't specifically involved in any of the sub-groups, you were happy that the people that were involved in the sub-groups were capable and able to do the job properly?

A. Well, I probably wouldn't have formed a judgement like that at the time, now, but certainly the report of the people who participated in the sub-groups, I would have no difficulty with the way they would have carried out their work.

Q. Now, going over the page, then sorry, just before we go over the page, at the bottom of the second page:

"AMI listed the next steps as

"1. Finalising qualitative scoring and award marks on

the dimensions.

"2. Perform initial scoring of the aspects and

"3. Perform supplementary analyses in

breaking/drop out.

" financial analysis concerning Sigma and Advent.

adherence to EU procurement rules.

tariffs

interconnections (since assumptions vary widely

convenient applicants)"

So clearly there was a significant amount of work to

be done which was being identified by AMI.

A. There is indeed. In fact, I am not sure at that stage

to what extent the sub-groups had completed their

work. I think the following week, I think there

were

Q. Absolutely; we see that in the next paragraph. You

will see that the "scoring of the marketing, financial

and management dimensions would take place in

Copenhagen next week. DTEC to appoint the appropriate

personnel to attend. AMI would provide the first

draft evaluation report".

Now, taking those first two lines, it's clear that a

significant amount of work was to be done in

Copenhagen in relation to a number of subcommittee

meetings, and that DTEC were going to appoint the

appropriate personnel to attend those meetings?

A. That's what it says.

Q. We know that various people did go out on the 18th and 19th of September to Copenhagen?

A. Yes, I am aware of that.

Q. At the same time, I think, you had gone to Brussels on the 18th?

A. I think I was in Brussels on the 18th, and possibly

Q. In connection with

A. In connection with an entirely different matter, but within the telecommunications field.

Q. But it was clearly visible, Mr. O'Callaghan, that at the meeting of the 14th September, the programme for the progress of this competition was being laid out, and everyone who was at that meeting was able to see the work that was to be done and when it was likely to be done?

A. That's perfectly clear, yes.

Q. And it's clear that the following week in Copenhagen, a significant amount of marking and scoring was taking place in relation to matters that had to be concluded?

A. That seems to be the case, yes.

Q. Equally, if we continue in that paragraph: "AMI would provide the first draft evaluation report on the 3rd October."

And that's reflecting back to the indication at the meeting on the 4th September that the first draft report would be available on the 3rd?

A. Yes, I recall the minutes of that meeting saying the

same, yes.

Q. And it was also being identified that the next meeting of the group wouldn't take place until the 9th October?

A. That's correct.

Q. And it was hoped although I don't think it happened, but it may have that the three DTEC divisions would supply any written comments prior to that meeting.

Now, in relation to that, the three DTEC divisions that were there speaking about, are your own division, the development division the development division, T&RT and possibly your own; I am not sure.

A. The three divisions are Telecommunications and Radio Regulatory Division, which was the division I was a member of; the Telecommunications and Radio Development Division, which was headed up by Martin Brennan; and the Telecommunications and Radio Technical Division, which was headed up by John McQuaid.

And I think there that the intention would have seemed to have been that the first draft report would be received by the 3rd October and presumably circulated, so that the three divisions would be in a position to make comments on it at the meeting arranged for the 9th; but as we know

Q. That didn't happen?

A. That didn't happen like that, yes.

Q. But equally, it was anticipated that if all that came to happen, or to pass, that the second draft report would be available on the 17th October?

A. That's what it says, that AMI would produce a second draft report by the 17th, yes.

Q. So quite clearly, Mr. O'Callaghan, the way in which the team were planning and progressing the work that they had to do was being identified and set out very clearly in these meetings that were taking place, and specifically those two, the 4th and the 14th September?

A. That's the case, yes.

Q. Now, in actual fact, as we know, when you came to the meeting on the 9th October, you had not seen the report of the 3rd October; is that right?

A. That's true, I hadn't seen it, no.

Q. So that from your point of view, going into the meeting on the 9th October, you and Mr. McMahon were, in a sense, off the field, in that an awful lot of work had taken place between the 14th and the 9th, and you hadn't seen the results of that work until you got to the meeting of the 9th?

A. That's true. I am not sure if the report was ever circulated before the 9th. I just don't know. But I take your point. Many of the others around the table would have been in Copenhagen.



Q. Absolutely. And isn't that that, in a sense, is the point, I think, Mr. O'Callaghan, as you have rightly identified; most of the other people had been involved in the work that was going on between the 14th September and the 9th October?

A. They would have been involved in, I presume, discrete parts of that, and then it was brought together.

Q. Absolutely. But so far as you and Mr. McMahon are concerned, you had not been involved in the sub-groups; you were going to the meeting of the 9th. You hadn't seen the report of the 3rd, so in a sense, you were going as much in fact essentially for information to enable you to see how things had progressed and what needed to be done over and above that?

A. Well, we went to the meeting of the 9th October to listen to a presentation on the draft report, and at that stage we would have known the order of merit in that report, and that's certainly all I knew. And as I say, I don't think the report was circulated generally, anyway before the meeting, but we would have come to the meeting knowing that there was going to be a report, expecting a presentation from Michael Andersen, who was at that meeting, I think, and probably from Martin Brennan, who was Chairman, and then we would make our contribution.

Q. But equally you would have gone to the meeting knowing

that the persons who had been attending the sub-groups and had been marking or scoring the different indicators were persons in whose persons who you had complete confidence in to do a correct job?

A. I'd have no reason not to have confidence in my colleagues that were on the Project Team.

Q. So that when you became aware of the as the meeting progressed, and it became clear to you, I think, what two things effectively became clear to you. One was the work that had been done and the scoring that had been marked?

A. I think at that meeting, I began to realise that the evaluation had proceeded further down the road than I might have thought it had. That's certainly the impression that Martin Brennan gave me.

Q. And the second thing that you became aware of was that the report as being presented was deficient in many respects?

A. Well, we must bear in mind firstly that we were presented with a report at the meeting. There was no opportunity to even scan through it beforehand. And certainly at our first reading, or whatever aspects of it we were in a position to read at the meeting, I certainly formed the impression that it wasn't very well written.

Q. And clearly, from that point of view, apart from trying to assimilate all the information which was

coming at you very quickly, one thing was probably uppermost in your thinking, and that was that the report as it stood would require significant clarification if it was to stand over the result that had been arrived at by the sub-groups?

A. I can agree with that entirely. I would have formed the impression that there was a lot of work to be done with this report to get at the line-up with the verbal report that we had got as regards the order of merit.

Q. And clearly a lot of the work, in fact nearly all of the work that took place between the 9th and the 25th was directed towards improving and changing the report to allow it to stand, effectively, on its own two feet?

A. Well, insofar as I can refer to my own contribution, that would be the case, yes.

Q. And insofar as you were aware of contribution from other parties, it would seem to be the same; you were all working towards the same goal?

A. We were all working towards the goal of producing the best possible report, certainly. There would have been, along the way, an amount of questioning, and as I say, to-ing and fro-ing, raising issues, seeking clarification, this being provided, on to the next issue.

Q. One of the things that appears to be fairly clear, Mr. O'Callaghan, that suggestions which were being made by

persons in relation to changes within the report, a large part of it, if not all of it, seems to have been written down by various persons to try and bring it all together?

A. Could you be a little more specific?

Q. I have been looking at this document that was given to us this morning, "Comments on the AMI draft Evaluation Report".

A. Yes.

Q. And as I know you haven't had an opportunity of reading it, but as one flicks through the pages, you will see there on the second page "Suggested textual amendments". It appears from this document, certainly, that persons who had concerns in relation to textual amendments or changes in the report were writing them down and sort of sending them in to allow the changes to take place either through Mr. Towey, Mr. Brennan, or directly to Mr. Andersen?

A. I would imagine that this document is probably the outcome of a range of suggestions from around the table, and I wouldn't be surprised if many of them came from the Regulatory Division, which were being assimilated or brought together and being collated by Mr. Towey on behalf of the Project Team. And as I noted on it "Received from F. Towey on the 24th/10", I would imagine that that was a document that was circulated prior to the meeting of the 24/10 so that

we can see the suggested changes and agree them or not, or

Q. But it would appear from that if one is to judge from that document alone; I am not suggesting one should but certainly taking it from this document, a significant amount of work being done on the 23rd was concerned with improving the report?

A. Yes, that's what we were about, I think, yes.

Q. And clearly once those changes had been typed up or whatever, it equally is clear that there was an attempt to circulate them to allow persons to see them?

A. But certainly the

Q. You were notified, anyway?

A. I certainly received it from Fintan Towey on the 24/10.

Q. I am not sure whether this document is your document, Mr. O'Callaghan, but are the ticks on the Appendix 3 yours or someone else's?

A. It's always very difficult to identify one's ticks from somebody else's ticks, but I do see a word in manuscript on the third page, second-last bullet point, the word "Irish" is written above yeah, and that is my handwriting, yes.

Q. So this may well be your document?

A. It could well be my document. As you can see, I am obviously correcting some of the changes there myself

as I go along.

Q. And I think, if you go to the second-last page, there is also handwriting there?

A. Yes, I can identify that as my handwriting as well, although I am not sure that I can read it.

Q. Well, I certainly can't, Mr. O'Callaghan.

A. At a push, I probably could.

Q. Leaving that aside, that seems to be the document which you got on the 23rd and which you worked on?

A. The 24th, I'd say.

Q. Sorry, the 24th.

A. I'd say it was a document a collated document of suggested changes which had been gathered by Fintan Towey. This is my surmising of this from the discussion that was held on the 23rd, and possibly from discussion, from comments we might have sent in previously; I can't say if it was confined only to the discussion on the 23rd. That he would then have circulated it to see if we can improve on this. Are these all right? No doubt he would have come up with some of them himself, and I assume, if I got a copy on behalf of my division, that it was circulated to the other divisions as well.

Q. Just one final question, Mr. O'Callaghan, in relation to working habits. I suppose, in a way, you and Mr. McMahan were working together, effectively, on this project?

A. Well, Mr. McMahon was the head of the division, and naturally enough he worked on it, and I did also. It was a heavy work load, and the two of us were dealing with it.

Q. No, I was just curious as a matter of whether you did your own textual changes or whether you would do your changes and then discuss them with him and you'd both shove in one document, or whether each of you did your own, or if you can, what the position was? I am just curious more than anything.

A. I think a lot of them on my behalf would have been done on my own, because I think we didn't have enough time to even confer.

Q. I think you said you were in different buildings as well?

A. Well, the Regulatory Division was in Ely Place, and the Development Division was in on Kildare Street.

So there was always going to be a difficulty of circulating things because we were physically separated.

But to answer your question: I think a lot of the time, Sean and myself would have had to work independently on this because we wouldn't have enough time to confer and agree.

Q. Clearly, Mr. O'Callaghan, between the 9th October to the 23rd October, if you had any concern about the result as opposed to the report, you had every

opportunity to raise that concern?

A. If I had a serious concern about the result, I would have raised it, yes.

Q. Absolutely. Thank you very much, Mr. O'Callaghan.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

Q. MR. NESBITT: Mr. O'Callaghan, I just want to deal with a number of issues arising. My Friends have covered much of what I might have otherwise asked you, but I just want to be certain I want to be certain that I understand exactly what you want to get across to the Chairman in relation to your involvement in the project.

And the books that I'll be asking you to look at in the course of these questions are Book 46 do you have a copy of that in front of you?

Now, it seems to me, Mr. O'Callaghan, that although we have had an extended investigation of your involvement, that things are reasonably simple from the point of view of what you did and what you learnt and what you thought, and I want to deal with the evaluation process, the quantitative evaluation and the later qualitative evaluation.

As I understand your evidence, you didn't actually deal hands-on with those evaluations; is that right?

A. That's correct. My recollection is that the quantitative evaluation was carried out by AMI, using their own personnel, as I recall, and the qualitative



evaluation was carried out by essentially by 10 sub-groups, which were comprised of AMI personnel in respect of five of them and a combination of AMI personnel and departmental in respect of the other five. But I was not party to any of the sub-group meetings and did not evaluate, therefore.

Q. There is nothing sinister in that as far as you are concerned?

A. Nothing whatsoever. It was, as I had explained earlier to Mr. McGonigal, it was simply a matter of resources. These meetings were taking place in Copenhagen, and we simply because of our other responsibilities, we didn't have the time to devote to it.

Q. Indeed. But as far as you were concerned, you had understood how the process was going to take place in relation to the qualitative evaluation and the quantitative evaluation, and you had no complaints?

A. No, I had no complaints and no difficulties with it.

Q. Very good. And I think the first time you expected to see the results of the final working of the two analyses to which you were not party was the first time you saw the draft report coming to be considered by the Project Group; is that right?

A. Well, I think, and the minutes of the meetings will bear this out, I think we expected to see the first draft report circulated in the week ending the 6th

October, if I am correct. But we didn't see that until the 9th.

Q. Well, I suppose a few days really aren't that material, are they? The report became available to you within days of the initial

A. Yeah, I am not raising a big issue. I am only I am probably recalling the questioning from Mr. McGonigal on it, that if we had had it the previous week, we could have brought more solid comments to the table on the 9th. But it's not a major point.

Q. I think everything in life, there is only so much time. And you might have liked more time, but you did get the report, and you did get the opportunity to look at it and make comments; isn't that right?

A. Absolutely, and I did, yes.

Q. Now, if I could just ask you to turn to the first copy of the report that I believe was available to you.

It's in Book 46, Divider 34, and that's the draft of the 3rd October of '95.

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

Q. Now, the page I want you to turn onto is internal pagination page 45, that Mr. McGonigal has touched upon, but I want to ask you some questions about this.

A. Yes, I have that table.

Q. Now, in relation to the heading "The results based on a regrouping of the criteria", and then the verbiage "In order to investigate whether the conclusions the

evaluators are consolidated on the basis of paragraph 19 of the RFP document, the evaluators have carried out a separate conformance testing. On the basis of the conformance test, it is agreed that the interpretation prior to closing date where the 7 indents of paragraph 19 were operationalised into 11 dimensions."

Now, as I understand it, given the role you had to play, you were not going to be able to do more than read that, and unless somebody who had been involved in the actual analysis had something to say, that was going to be the involvement you had in looking at that; is that right?

A. Yes. I would look at it, and I might have raised questions and said "Well, why is so-and-so getting this mark and not the other mark or whatever?" And a round table would have been somebody, more than one person, who would have known the answer to that.

Q. And you had that opportunity; I assume you attended a meeting at which this report was in discussion?

A. Absolutely, yes.

Q. And nobody tried to ask you to stop you asking any question you thought was relevant?

A. No, there was nobody stopping anybody from asking questions.

Q. Now, we can read what's there, and I am not going to trouble to go further, but I want you to turn the page

to page 46.

A. Yes.

Q. And you see there, paragraph 5.4, and on this occasion you see the results based on a conversion of marks to points. And I'll read the first paragraph: "Also a weighting mechanism was agreed prior to the closing date for quantitative purposes as evident from both Table 17 and 18. If the marks A, B, C, D, E are converted into 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 qualitative evaluation.

"In order to check the results, this quantification of the results has been carried out". As I understand, your role was leaving you to be able to do no more than examine this table and go through the same questioning process as you have described in relation to the other table?

A. That's right.

Q. Again, nobody tried you to stop you doing that, and you had the opportunity to make whatever queries you thought appropriate?

A. Absolutely, yes.

Q. Now, you have explained how you weren't at the Copenhagen meeting, and I understand that. When you got the next copy of the report, and this is the copy

of the report of the 18th October, which you'll find at Divider 46 of this particular book; perhaps I could ask you to again turn on this occasion it's now become page 49.

I think you again see Table 17 on page 49, and over the page, Table 18 on page 50. Again, I assume you had the opportunity to question, as you could have questioned in relation to the draft of the 3rd October, the information that was being seen there?

A. I certainly would have the opportunity to question it, and I am sure I would have raised questions, because that was the whole purpose of having a broad-based Project Team, to bring people from different disciplines to discuss things, raise questions, get satisfaction.

Q. Now, without wishing to denigrate the process, I don't think reading those tables and understanding what they meant to convey was rocket science, was it?

A. No, I think it looks fairly clear-cut the how these tables are to be interpreted.

Q. And you had faith in the people you understood to be carrying out this particular task, the Andersen people, and you knew some of your colleagues, because they had been in sub-groups, had some involvement as well?

A. Well, the Andersen team had been selected from a tender competition, and they had been selected to

carry out this work on their merit. And as I recall, they came with very strong references.

As regards my own colleagues, most of them I would have known for quite a time, and I would have no reason but to think but to have the highest regard for them.

Q. So at this stage, you have seen the two the first and second draft reports. You understand how the mechanism is working, and you are very happy with the quality of your colleagues involved, and I assume the quality of Andersens, insofar as you have seen them in operation?

A. I had no particular difficulty that I can recall with the way this was being carried out.

Q. Now, what you do say, as I understand it, if we turn on to Divider 50 of that particular book, is that in relation to the 25th October, you didn't see that copy until it was basically the circumstance was that the Minister had announced the winner; is that right?

A. I think I didn't see that copy of the report until the Tribunal provided it to me, or pointed it in my direction.

Q. Very good. Well, maybe the next question, then, you won't be able to answer; if you can't, say so. Did you go back and look at that copy of the report and compare it to the two tables, 17 and 18, that you had seen in the two earlier reports?

A. No, I didn't. Because, as I say, I only saw this final version relatively recently, and I didn't compare it with anything.

Q. You'll have to trust me, then, if you go and look at it in relation to Table 17 and Table 18, you'll be surprised to hear

A. What page would that be on?

Q. They are on page 48 and 49.

You won't be surprised to hear that nothing changes.

A. Right.

Q. Would you have expected it to change?

A. I wouldn't have expected a change. Because, as I said in my evidence last Friday, I don't recall a major dispute, or in fact any dispute about the result taking place from the time that we were presented with the first draft report, which would have been the 9th October.

Q. Now, in relation to the document that Mr. McGonigal asked you about at the end, this document called "Comments on AMI Draft Evaluation Report" and it's marked at the top it's got your handwriting on it, as I understand it. It's this document here.

A. That's correct; that's my handwriting.

Q. I think the likelihood now is, the probability is this is a document which you had, and represented an amalgamation of ideas to deal with the final form in which the report should be presented; is that right?

A. I think what it is, and I have only just seen it, I think it is a document probably produced by Fintan Towey as a collection of amendments, suggestions to improve the report which obviously had come in to him, and he had put them together, had them typed up, and was now circulating them back out to the different members of the Project Team for final views on them.

Q. So you had this, it was a document upon which you were to have final views. In fact we do know, whatever you did with it, you appeared to have been available to annotate and make notes on certain pages?

A. It's very clear that I think I can establish this is my copy that I worked on, and where I would have ticked things off, and most pages things have been ticked, it would have been my way of saying that I agreed with these changes.

Q. So indeed, can I ask you to look at the third-last page of the document. The third-last page is dealing with the concept of "Final scoring according to the evaluation criteria" is one heading, and I think you'll see underneath that the author has indicated that Table 17 would appear there. You obviously would have read this document through, I assume, and would have been happy that that was the way things should be?

A. Yes, I mean, the fact I made suggested changes in various parts of this document, right through to the



end, would suggest that I had gone through it all.

And I didn't make any I didn't make any suggested changes to that page, and so I can only assume that I had no difficulty with it.

Q. And without wishing to state the obvious, if we come down to the next subheading, "The result based on the conversion of marks to points," again, how it was done seemed to be pretty simple to understand; and again, what was to be put in after that was Table 18, and you again had no reason to be concerned or wishing to query that?

A. No, although I see there is a typo in it, in the second line, "arable" should be "arabic", I obviously didn't spot that.

No, but to answer your question, as I didn't make a change there, and I assume I read it, then I would have had no difficulty with it.

Q. It would have been a matter for the Department of Agriculture, I presume, but that aside so at this point in time, in respect of scoring, you had nothing material to add, did you?

A. No, I didn't, and I can't see how I could have been in a position to offer anything very substantive on the scoring.

Just to recap, the Department had engaged an international firm of consultants, at quite a cost, and internally within the Project Team we had experts

in specific areas on the technical side, and we had two accountants; and so the process of assessment and evaluation and scoring was carried out by people who were expert in their field. And this process was carried out and completed, as I understood it, in Copenhagen. So I was not going to get into a position where I would be making any suggestions about altering that.

Q. And just to use a phrase you have used, a neutral expression, the front runner was clear from the scoring; was that right?

A. I think the front runner was clear from the first draft report, which was received on the 9th.

Q. And can I suggest to you that nothing that you were anxious to achieve by way of without wishing to denigrate what you have said, word-smithing the report, so it was a report of quality which was deserving of people of your intellectual ability and the intellectual ability of the other people in the process. Nothing that was going to be done there was going to change the front runner?

A. No. As I said last week, I drew a distinction and I'll say it again, I was distinguishing between the result and the report, and my involvement in the matters we are talking about concerned the report and how the report was going to be written and how it was going to be a narrative that would stand up very, very

clearly against the order of merit.

Q. So can we take from that, that at this point in time, and at the time which you learnt a final form of report had come into existence you had nothing you wished to say which was intended to or was designed to unseat the person who was announced as the winner?

A. Certainly not. I had nothing like that to say.

Q. And is it fair to characterise your view of the process as, this was a process that was carried out, insofar as you could see, in a way that was professional and approached by those involved to the best of their ability?

A. I can agree with that, but it's very clear that I am also saying that I would have preferred more time at the end to for completeness' sake with the report.

Q. I think you are somebody who is proud of the quality of work you produce. You wouldn't wish to be associated with a slightly ill-worded report?

A. Absolutely. It was a concern of mine all along that the English in the report was I thought was poor, and possibly even deficient; and I think my concern at the end was primarily that, that we were now not in a position to actually shape up this report in a way that we would like it.

Q. But had you had that opportunity, nothing would have changed, other than possibly the quality of the English?

A. That's all

Q. The fluency of the presentation, nothing of substance in relation to the person who had won?

A. No, I didn't have that in my mind. What I had in my mind was the quality of the written document.

Q. I just want to ask you some general questions, and if you don't wish to answer, say so; but at any time during your involvement of the evaluation process, were you ever subjected to any influences that you considered were intended to interfere with you doing your job?

A. Absolutely not.

Q. Were you ever subjected to any influence that you believed was subverting your independence in playing the role appointed to you?

A. Absolutely not.

Q. Insofar as you had to exercise your independence or your independent will to work with the process, did you ever feel your ability to do so was being overborne by any person?

A. Never, no.

Q. In relation to the people you worked with on the Project Group, did you ever form the view any person in that group was being subjected to the type of influences I have described?

A. Absolutely not.

Q. Had you thought that for one moment, what would you

have done?

A. Oh, if I had come under any pressure whatsoever, I would have I wouldn't have been shy about coming forward with it. I would have raised it within my own within my own people, and and/or go straight to the Secretary on the subject. I'd have no doubt about that's what I would have done.

Q. I think the one thing they have learnt about the civil service in the course of this module of this Tribunal is that there exist in place checks, balances, methods of raising your hand and saying there is a problem here that needs to be addressed; is that right?

A. Absolutely. The Secretary General at the time, John Loughrey, as I am sure any Secretary General would have had the same attitude, but I know Mr. Loughrey had an open-door policy, but he wouldn't have had to have an open-door policy in something if something along the lines you have postulated here had occurred. Every civil servant would know in his heart that it does not operate to pressure, and if anything was being applied, then they would have immediately blown the whistle and gone to the authority that would be able to deal with it; in this case, the head of the Department.

Q. So when the announcement came ahead of what you thought might have been the time it would come, you didn't feel that that required you to hold up your

hand and say "Something fundamental has gone wrong here"?

A. No, absolutely not. I mean, there was nothing hidden here. For whatever reason the timing didn't suit me, that was known to everybody; that wasn't a secret.

There was a whole pile of people in the Project Team, it was known right across the table, so there was no issue there for me in holding up my hand.

Q. And for the avoidance of doubt, you have been asked this before, but I want to finish with this. The note you wrote to yourself was not intended to have that effect?

A. Absolutely not. The note I wrote for myself was for my own use as an aid to the sequence of events that happened. As I have explained previously, there was a lot of work being done; there were a lot of areas I had to cover, and a lot was being done in a flurry of activity in a very short number of days. That was primarily the reason for creating a chronology.

Q. And very finally, and in relation to the note, there has been some suggestion that it was was it privileged? Was it issues like that? You produced the note when you realised it was relevant, and you have no objection to it having been given to the Tribunal, that it's the appropriate thing to do with it?

A. Absolutely, Mr. Nesbitt. When the there was a

minute circulated around the Department advising all personnel that documents relating to the award of the second mobile phone licence were being sought by this Tribunal, I immediately alerted somebody within the Department to say that I had a document. The only issue of privilege as far as it relates to me is I simply asked the question as to whether it was privileged or not. And I never sought privilege or claimed privilege on it, and I am very happy to hand it to the Tribunal to be of any assistance insofar as I can be.

Q. And none of your colleagues who are involved in the process attempted to influence your decision in producing that document?

A. Absolutely not.

Q. Thank you very much, Mr. O'Callaghan.

A. Thank you, Mr. Nesbitt.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY  
MR. COUGHLAN:

Q. MR. COUGHLAN: I have a number of questions.

First of all, in dealing with the last matter which was raised by Mr. Nesbitt first, Mr. O'Callaghan, you did seek advice as to whether the document was privileged or not, didn't you?

A. That was a I was seeking the factual position.

Q. You sought advice; you sought legal advice as to whether the document was privileged. Isn't that

right?

A. Well, whatever the correct term, I asked the solicitor as to whether or not in his view it was a privileged document.

Q. It wasn't factual position. You asked the Chief State Solicitors, through your superiors, and you asked your own solicitor; isn't that right?

A. Yeah. To establish the factual position.

Q. That's not a factual position, Mr. O'Callaghan. That's a legal position.

If I could just, then, if I may for a moment, the document which you saw this morning with your handwriting on it. You appear to have, from the annotation on the second-last page, at least, have read right through to the second-last page; would that be correct?

A. Well, as I said in answering Mr. Nesbitt there, as I said, comments on the second-last page, I assume I read at least that far, yes.

Q. And you don't record any you don't put a line through anything or record any disagreement, and you tick off certain matters; isn't that correct?

A. Most of the matters I am ticking off, there are one or two, there is a question mark I see on page 3.

Q. That's where, to be responded to, that's ending the sentence with the preposition, I suppose?

A. Maybe it's just the English, yeah.



Q. Is there anything else in the document which you, just quickly glancing through it, do you recall any disagreement with anything else?

A. There are no other marks I see other than, I come to, it's the second-last page.

Q. "Indicators were graded in a process of discussion and consensus", is that right, or "through consensus", "by consensus"?

A. "Indicators were graded through a process of discussion and consensus." That's what the word seemed to be.

Q. Whether it is to be "by consensus" or "through consensus", would that appear to be

A. I am not too sure.

Q. Then you see the 4, 11 and the 55 seem to refer to aspects and indicators, don't they, dimensions?

A. I have no idea what they refer to.

Q. Well, you can see underneath, aspects, evaluation criteria?

A. That could well be a separate point from

Q. The 4, 11 and 55 coincided with matters like indicators, aspects and dimensions?

A. Do they?

Q. Yes. Can we take it, therefore, that you read and worked through this document?

A. That would seem to be the case, yes.

Q. And you didn't see the final report?

A. No, I didn't.

Q. Ever? Until it was brought to your attention?

A. Until it was brought to my attention.

Q. And there is no indication of any disagreement in any of these amendments, so can we take it you agreed with these textual amendments?

A. I think it's very clear from where I was ticking things that that would be I would be noting my assent to those changes; and where I didn't attempt to change anything else, I think that can be taken that I was assenting to those as well.

Q. You were assenting to

A. It, yes.

Q. So therefore, as far as you were concerned, all the textual amendments that are noted here were ones that you agreed to or had an input into; isn't that correct?

A. That's true, which is not to say that there weren't further amendments that would have happened at the meeting of the 24th.

Q. Yes, but you left the meeting at 7.15; isn't that right?

A. That's right.

Q. You never saw the final report?

A. No, I never saw the final report.

Q. As far as you were concerned, you were working on the draft report of the 18th, and all the amendments there

were ones that you had either had a contribution to or assented to; isn't that correct?

A. That's right.

Q. And are you therefore suggesting to the Tribunal that in those circumstances, that you created a chronology merely dealing with a report to which you had participated in the meetings, had reviewed textual amendments which had been circulated by Mr. Towey, you believe before the meeting, and you are seriously suggesting to the Tribunal that your chronology, and particularly paragraph 8, merely refers to the fact that there was a report, a final report which you never saw and didn't know what other amendments had taken place, if any, and you record this chronology to say "No signing off on report. We had no final report. No consensus asked for, no vote effectively no decision by Project Team", that that merely relates to a report where there may have been a few matters of grammar you may wished to have given effect to or change to? Is that what you are saying to the Tribunal?

A. That's what I am saying, yes, it's in relation to the report. I don't have the document right in front of me right now, but I think the last clause of the previous sentence talks about the report.

Q. That's right. And in relation to the questions which were raised by Mr. Fitzsimons a few moments ago of

you, you made reference to the word "No consensus asked for" in your chronology, and you informed Mr. Fitzsimons that at any meeting that you were at, you said at any meeting you were at, that there was no consensus sought or given, at any meeting. That's what you said to Mr. Fitzsimons when he was dealing with this specific aspect of your chronology, and isn't that what it means, isn't that what you were writing about, that at the meetings that there was no consensus for, there was no note at any meeting, and effectively there was no decision by the Project Group at any meeting. Isn't that what you were really recording?

A. As I say I am at a bit of a loss because I don't have the document. What I am recording, as I said earlier and I think I would have said last week, we had no final report. "No consensus asked for, no vote effectively no decision by the Project Team."

This is in relation to the report. And I am talking about formal consensus, because I would have expected, if you recall in my evidence last Friday, that there was to be a meeting on the 25th; and what I expected was that we would have had at that meeting a final document, that's a composite document of all the suggested amendments and changes which had been discussed the previous night, and indeed, I suppose the addition of this document that has been circulated

this morning, that these would be brought together, and there would be a final meeting of the Project Team, and we would sign off on the report. And maybe a consensus asked for and given at that meeting.

Q. Might I inquire of you this way, Mr. O'Callaghan: Is the situation that you are now embarrassed because of the existence of this particular document, the chronology, and that you are giving a version of it which does not accord with the text of it?

A. That's not the case, Mr. Coughlan. And I am certainly not embarrassed by anything. I wrote that note. I had no difficulty handing it over. It is a record.

Q. Mr. O'Callaghan, you had difficulty handing it over. You sought advice as to whether privilege could be claimed on that document, and between the month of May of 2002 and September 2002, that document was retained and not given to the Tribunal during that period; isn't that right?

A. I don't know what transpired between the Department and the Chief State Solicitors Office, and the Chief State Solicitors Office and this Tribunal. All I can tell you is that when I was asked for that document, I handed it over immediately. I have no embarrassment with the document. I have no I did not retain it. I did not make it difficult for the Tribunal to have it.

Q. I am not saying you did. I'll explain to you what

happened. The Chief State Solicitors have informed

MR. NESBITT: If Mr. Coughlan is suggesting the Chief State Solicitors in some way are trying to shield this document, or hide it, he should say so and deal with it.

CHAIRMAN: I don't think he is.

MR. COUGHLAN: Certainly I am not. I am going to read out what the Chief State Solicitors have informed the Tribunal. I am saying the opposite about the Chief State Solicitors.

Now, the Chief State Solicitors informed the Tribunal

"As part of the Department's response to the Tribunal's request for discovery on the 2nd May, 2001, all divisions of the Department were asked to search for and hand over any relevant material to Mr. Hodson's division."

That was the division dealing with the collection of documents.

A. Mr. Hodson, Aidan Hodson.

Q. "2. Mr. O'Callaghan forwarded the handwritten note to the tribunal under cover of a minute dated 28th May 2001. In the minute, he asked if the Department would let him know if the document is deemed to be relevant for the purpose of discovery.

"3. On the 20th June, 2001, the Department wrote to the Chief State Solicitor seeking advice on the scope of the discovery request".

Sorry; I should perhaps commence: "The Chief State Solicitor has also informed the Tribunal that they understood that you raised the question of discoverability and privilege with Aidan Hodson of the Department of Public Enterprise as outlined below". I am dealing with that.

"He has also informed Mr. Hodson that before he responded on the 28th May 2001 to the request for material he sounded out Mr. Eamonn Molloy, Assistant Secretary, Communications Division, Department of Public Enterprise, whether his handwritten note came within the ambit of the request for discovery."

A. That's correct, yes.

Q. I have dealt with the first three bullet points, then, in your dealings with Mr. Hodson.

"4. On the 10th August the Department faxed copy of the relevant document to the office of the Chief State Solicitors Office. And on the same day a response is faxed to the Department.

"On the 15th August, 2001, a reply was issued to Mr. O'Callaghan. On the 3rd September, 2001, Mr. O'Callaghan wrote to Mr. Aidan Hodson, again indicating that in the personal complexion of the document entitled him to claim privilege, he would like to consider it as an option on grounds of principle. He sought the view of the Chief State Solicitors on this point".

And then, "on the basis of the further advice of the Office of the Chief State Solicitors, you were written to on 6th September by Mr. Hodson sorry, "on the basis of the further advice of the Chief State Solicitors office, Aidan Hodson wrote on the 6th September to the tribunal enclosing a copy of the handwritten note and Mr. O'Callaghan's cover note of the 28th May 2001.

Could I ask you, when did you go to your own solicitor?

A. I'd have to check my diary.

Q. Was it before or after you went to Mr. Hodson?

A. Offhand, I cannot say.

Q. Very good.

A. I'd have to check.

Q. Was it between the period when the first advice was received from the Chief State Solicitors Office and the second advice?

A. Could you give me the dates of the two advices?

Q. Mm-hmm. On the 15th August a reply was issued to you in the first instance. And it would appear that sometime after the 3rd September, further advice was given by the Chief State Solicitors.

A. At this remove, I can't recall that there were two separate advices given to me on this subject. The August reference, I was probably on holidays. If something came back, didn't come back from me until



September, it was probably due to the fact that I was on holidays.

For my part, all I can say is that I any reticence in holding back this document on my part, or any query about it being privileged, would relate to the fact that I had always considered it to be a personal note to myself. And also, if there is embarrassment here, it's embarrassment due to the inelegance of the English I am using and the appalling grammar. And it is quite clearly not a finished document, and if it was ever going to be seen by anybody other than myself, I would have loved a chance to tidy up the English.

Q. Does the English in it in any way affect the content in it, as you see it?

A. No, except in your question about to what does the "No consensus asked for, no vote, effective no decision", if I had written it up and edited, probably I would have made it more explicit as to what I was meaning. But the answer I have given you is the correct answer.

Q. Now, if we could go back and deal with the few matters which were raised by My Friend Mr. McGonigal and by Mr. Nesbitt.

If you go to the Book 46, Tab 34, it's the one Mr. Nesbitt has just been dealing with a moment ago.

A. What's the tab, Mr. Coughlan?

Q. Tab 34; it's the first draft Evaluation Report of the

3rd October 1995.

Now, when you spoke or when you gave your evidence on Friday, you said that when you saw this for the first time, on the 9th October of 1995, that it was clear from the tables who was running top, but not clear from the text of the report; isn't that correct?

A. Yes. What I would have said is there was quite clearly an order of merit here, a number 1 and number 2 and number 3, but then I thought that the narrative that was underpinning this was not very good, yes.

Q. Well, I think you said "not clear".

A. Not clear.

Q. Now, when I asked you about it after lunch on Friday, the table you referred to on page 45 was the table at the top of page 45 which has

1. A5,

2. A3,

3. A1.

A. I recall that because I assume you thought I was talking about a different table.

Q. It was just matters that arose this morning when Mr. Nesbitt asked you about this, he then went on to, if you go down to 5.3 and you look at the table there.

Do you see that table?

A. Yes, I do. It's Table 17.

Q. Did you ever consider that table?

A. I must have. We would have had a discussion on the

report on the meeting of the 9th. So I would imagine I did, but I don't have a specific memory of considering that table.

Q. I think you told us on Friday that when you went to the meeting on the 9th, you expected a discussion or debate about the qualitative aspects or assessment of the various applicants; isn't that correct?

A. Yes.

Q. But that you were told by Martin Brennan that you couldn't do that; that had been done. Isn't that right? That's what you told us?

A. I don't think I said that Martin Brennan said it couldn't be done. What I said was, in answer to a query of mine, something to the effect of is that the end of the process? Or what if there is disagreement? That Martin would have been pointed out if the assessment was carried out by project teams comprising of most of the people around the table, and I took it from that, that that was effectively the Project Team's qualitative evaluation.

Q. Well, we can look at the transcript of what you said on Friday, but I must suggest to you what you said on Friday is that you were told by Mr. Brennan that it had been done, and that therefore you accepted that it had been done.

A. I would have taken that impression from it. I don't think I said it I don't think I would have

attributed those precise words to him, but what I took away from the meeting is what I think you have just stated.

Q. Very good. Now, looking at that particular table, what was your assessment of it?

A. Well, I can only the Table 17?

Q. Table 17.

A. Table 17 shows that A5 is ranked as number 1, and A3 is ranked number 2, and down the line to number 6.

And marked under a number of different aspects or dimensions.

Q. That's because it has "1, 2, 3, 4, 5, 6" down at the bottom, in the rank; is that correct?

A. I can also see above 1 is B-plus, and above 2 is B, and above 4 is B-minus, for instance.

Q. Where is the plus?

A. Well, there's an arrow going upwards; I am describing it as a plus.

Q. Did Martin Brennan tell anybody at the meeting that on the previous week, when he was in Copenhagen and he was presented with this particular table by Andersens, that he looked at it and that from that table, he couldn't say who would rank first, looking at that table?

A. I certainly don't recall Martin Brennan saying that at the meeting of the 9th.

Q. Now, if you go to page 46 and look at Table Number 18.

A. Yes.

Q. You can see that there is a scoring, a conversion into points; you can see that, can't you?

A. I can, yes.

Q. And I think on Friday you told us you were unaware that that exercise was one which had been conducted by Martin Brennan in Copenhagen the previous week; isn't that right?

A. That's right.

Q. And that wasn't brought to your attention at the meeting?

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

Q. And I think when we looked at the text above it, where it talks about "Although such a calculation distorts the idea of a qualitative evaluation" do you see that?

A. I do indeed.

Q. I think you really only became aware of that in the witness-box on Friday, is that right, that particular portion of the text?

A. Yes. That statement, and I think I said it was dramatic, or sounded dramatic.

Q. You see, if I can go back now, because questions have been put to you, for the assistance of the Tribunal, because that's why everybody is here, they are supposed to be here, and that's what they are doing, assisting the Tribunal, all counsel; that am I correct

in understanding what Mr. Loughrey informed the Tribunal how this competition was to be run, that there was an Evaluation Team; is that correct?

A. I wouldn't be certain what Mr. Loughrey said to the Tribunal.

Q. But there was an Evaluation Team; isn't that correct?

A. There was a Project Team. The term "Evaluation Team" is one

Q. Well, we'll call it a Project Team, the PT GSM?

A. Yes.

Q. And that was to be assisted by consultants who were not part of the Project Team, isn't that correct, but who brought expertise and could advise; isn't that correct?

A. If Mr. Loughrey said it, then that's what he said.

Q. Did you know that?

A. Well, the precise status of the Project Team in that regard I am not sure was discussed at any meeting I was at.

Q. Right, okay. Did you know that on the 4th I think you were present at the meeting of the Project Team on the 4th September, when you were informed that Andersens had carried out five of the sub-group evaluations themselves without any member of the Project Team being present; isn't that correct?

A. I can't recall whether it was that meeting, but it was one of the meetings in September where Michael

Andersen said that there were to be ten sub-group meetings; five had already

Q. It was the 4th. Were you aware that on that same day, that there was a meeting between Michael Andersen, Martin Brennan, Fintan Towey and I think Ms. Nic Lochlainn keeping a note of the meeting, where there was a dispute on contractual matters between the Department and Andersen?

A. I was aware of a dispute with regard to the fee for AMI, but I don't recall that there was a meeting that day to discuss it. But I was aware generally about the dispute.

Q. And were you aware that there was a view expressed or recorded regarding that meeting about the quality of the work that Andersens were providing to the Project Team at that time?

A. I don't think I ever saw a report of that meeting.

Q. Ms. Nic Lochlainn has informed the Tribunal that as a member of the Project Team, although she was involved in a sub-group which dealt with market development and for some reason, roaming, but that's what she was involved in, that she always felt that she was entitled to say anything about any other matter being evaluated by another Project Team, although she'd want to have knowledge to express an opinion about the particular work carried out by that sub-group. Would that be your understanding of how the Project Team was

to work, is that you were entitled to express an opinion and question work done by a sub-group?

A. I don't recall any specific ground rules that would have either allowed or disallowed it. In many respects, the Project Team operated in an informal way. And I think if anybody had a specific query that they wanted to raise, that it would be entertained; or if somebody had a particular aspect that they needed to be explained further, I think that would have been entertained. But that's all I can say on this.

Q. I drew your attention to handwritten notes made by Mr. McMahon at the meeting of the 23rd October

A. Yes, that's right.

Q. where he is recording matters about weightings. Michael Andersen said different weightings could have been used, and as regards matters being scored on the qualitative evaluation, Martin Brennan is recorded as saying it was a question of feel, or words to that effect, and you could have had different outcomes or different views about it. That it was subjective, this qualitative evaluation?

A. Mmm.

Q. Do you remember that discussion?

A. I remember you asking me that question on Friday, and I think my answer was that I didn't recall the discussion.

Q. Was it ever said to you that this process was to be



one where groups of people were to go off and that they would conduct their analyses, form a judgement on the qualitative aspects of matters, and come back, and that nobody could discuss those subjective judgements?

A. I hadn't realised that the matters would have been processed through sub-groups of the type that were itemised by Michael Andersen at the meeting of the 4th September until that time. I hadn't known that it was going to be processed in Copenhagen, yes.

Q. Because as matters evolved, according to your chronology, as and from the 9th October, Mr. Brennan having refused to give you information on the 6th October, but as and from the 9th October, the work of this Project Team was not complete; isn't that correct?

A. Oh it wasn't complete, no.

Q. And according to the Secretary of the Department, he did not know that there was a result, a result of the Project Team, until the 25th October of 1995, although about a day or two previously he had an inclination that there was an emerging trend. That's according to the Secretary of the Department?

A. Yes.

Q. So can we take it there was no result until the Secretary was informed? The Secretary is right about that?

A. All I can tell you, Mr. Coughlan, is my recall of

events. My recall is that on the 9th October, Michael Andersen and Martin Brennan gave us the outcome of the sub-group meetings in Copenhagen and the result, as it was then. As I said last week, Martin Brennan informed the meeting that the Minister already knew the winner, or words to that effect.

Now, what I took from that meeting was that although there was some appendices to be written up, Michael Andersen, I recall him saying that, that the result was I think he used the term "all over bar the shouting". That's what I took from it.

Q. That's what you took from the meeting?

A. Yes.

Q. And you were given no opportunity to discuss or get involved in the qualitative assessment which had been the subjective judgement, not saying that it wasn't a well-founded or well-held judgement, but the subjective judgement of small groups of people in relation to certain matters; isn't that correct?

A. Well, as I explained this morning, neither Sean McMahon nor myself were in a position to partake in that assessment.

Q. I understand that. But you were members of the Project Team?

A. Yes.

Q. And effectively, from that time, you understood that you were cut out from discussing the qualitative

assessment; isn't that correct?

A. I didn't I don't think I used the term like being "cut out". It's possibly the case that Sean McMahon and myself were at a disadvantage in that we were not we had not participated in the qualitative assessment.

Q. But wasn't it from that very moment, wasn't it from that very moment that people from the Regulatory Division, and perhaps Mr. McMahon, starts raising questions that we see all the signs then of a political involvement to move this matter along fast, and that is recorded both in your own chronology and in the note of the minute of the 9th October, the Minister knows. Isn't that right? Doesn't want the report to argue against itself. What about bankability? And the Secretary knows nothing about this.

MR. NESBITT: Mr. Chairman, I have had to get to my feet before for these types of questions. This witness has given his evidence to fact. I, with respect, suggest this current question is trespassing on what the Tribunal has to do. This witness has been very fair about what he is in a position to say in relation to evidence, and I'd invite the Tribunal to consider this sort of questioning doing no more than asking the witness to tell the Tribunal its job, having looked at the evidence in the round.

CHAIRMAN: Mr. Nesbitt, I am satisfied that Mr.

O'Callaghan was as much a member of the Project Team

seeking to make a just evaluation as anybody else, and

I think the line of questioning is proper.

MR. MCGONIGAL: Just one thing, Mr. Chairman: Perhaps

Mr. Coughlan would remember that Mr. Fitzgerald's

evidence was that he thought he told the Secretary of

the result shortly around the 4th October. The fact

that Mr. Loughrey doesn't remember that, although I

don't think it was specifically put to him, should not

be just air-brushed out. It's dangerous to air-brush

things out.

MR. COUGHLAN: I won't air-brush anything out. I

think what Mr. Fitzgerald said that he told Mr.

Loughrey, he thinks he told Mr. Loughrey, of the

emerging trend. Not of a result.

A. Mmm.

Q. Now, you see, Mr. O'Callaghan, what the Tribunal is

inquiring into here is that you have a situation as of

the 9th October where it is recorded, and you remember

being told that the Minister knows about this.

A. Yes.

Q. The process wasn't over. You hadn't even received the

report. The PT GSM hadn't even met until the 9th;

isn't that correct?

A. That's correct.

Q. And the Secretary doesn't know about it?

A. If he says so, I mean, obviously.

Q. And there was no result declared by the PT GSM, or recommendation, as of the 9th; isn't that correct?

A. There wasn't, no. The process was not concluded.

Q. But it is recorded in the minutes that the Minister wants certain things to happen?

A. If I could see the minutes, maybe, just to refresh my memory. Thank you.

Q. Yes. It's Book 42, page 120. Tab 120, I beg your pardon.

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

Q. You can see the minute?

A. Yes.

Q. The Opening: "The Chairman opened the meeting by stressing the confidentiality of the Evaluation Report and the discussion re same. He also informed the group that the Minister had been informed of the progress of the evaluation procedure and the ranking of the two top applicants. The Minister is disposed towards announcing the result of the completion quickly after the finalisation of the Evaluation Report." And then there is discussion of the Evaluation Report. Do you see that?

A. I do indeed.

Q. And the "future working programme". If you go to the Tab 121, these are the notes of the Ms. Margaret O'Keeffe.

Then obviously her note about confidentiality.

"Minister knows.

Shape of evaluation and order of top two.

Minister of State does not know.

Quick announcement."

Then there is the agenda.

"Draft report

future work programme: A producing draft number two.

"Good working draft produced on time.

Annex should be part of the main report.

Object is to get feet back on content, style of  
report, content accuracy.

"Report too brisk. Critically needs more elaboration  
and reasoning more significantly. Few lay readers but  
they will be critical terminology needs to be  
explained.

"MA brought appendix on supply of tariffs and  
interconnections.

Description of methodology still missing.

"Different groups examined dealing with commissions  
etc.

Relevance of annex dealing with conflict.

Full discussion needed on annex 10.

Minister does not want the report to undermine itself  
e.g. either a project is bankable.

Should be balanced arguments."

So, you can see a situation there where it would

appear from the note that the Minister was up to speed even with the concept of the financial difficulties or frailties of the top two rankings; do you see that?

A. Yes, I see the reference to the project, either a project is bankable.

Q. Do you see that?

A. Yes, I do.

Q. So it wasn't, it would appear from the note, just that the Minister might have known about the critical path or even emerging trends, although, according to Mr. Loughrey, according to Mr. Loughrey, that is, it would have been improper for anyone to have had any contact or influence on the Project Team at this stage, as far as he understood the process, because he himself would not have dreamed to make such a contribution. That's what his evidence was.

Now, what did you understand was to happen from here on in? The Minister knew. Martin Brennan told you you couldn't review the qualitative matters; isn't that right?

A. I don't think I said that Martin Brennan said we couldn't review the qualitative matters. What I took from the meeting was that what Martin Brennan did say when I questioned the when I raised the question on the subject, he said that effectively most of the Project Team has been involved in this assessment, and this is the result of the qualitative assessment.

And that is a fact. Most of the people around the table that day had been participating in one or other or more than one of the sub-groups. What I took from that meeting that day was that there is a sense here where this is all over bar the shouting, yes.

Q. That was your the sense you got from it?

A. Indeed. And you asked me, how did I foresee the Project Team working, going forward then? Well, I would have seen it that its job was to deal with amendments that we might suggest and amend the report to the extent that we are happy with it.

Q. Doesn't it appear that when the regulatory side started asking questions, matters moved fast? Doesn't it seem that that is what happened? Mr. McMahon started raising questions. On the 17th, you are informed by Fintan Towey the Minister wants to go to Government; isn't that right?

A. That's correct.

Q. And at the meeting of the 23rd, the view was the Minister wanted to go to the Cabinet the next day, to Government the next day?

A. I think that's the matter that I would have been informed about on the 17th, that there was to be a Project Team meeting on the 23rd with a view to the Minister going to Government the next day, yes.

Q. And on the 23rd, that evening, you thought that you had a week?



A. Yes, that's right. I left the meeting thinking there was another week to this.

Q. On the 24th, you are informed that you don't have a week?

A. That's correct.

Q. And you were annoyed about that?

A. I was, yes, yeah.

Q. Did you go to the Secretary, Mr. Loughrey, and say "This is wrong; we don't have a report"?

A. No, I didn't go to the Secretary, no. As you will recall, there was a delegation that went to the Secretary the previous day about the need for more time, and my recollection is that it was as a result of that meeting that the Secretary said that he would arrange another week.

Q. But isn't that a clear example, on the 24th, that you were being subjected to pressure, Mr. O'Callaghan? You have to get this done for tomorrow because you were informed, you can't remember by who, that the Minister or the Taoiseach or the Government, or whatever words are used, but you are put under pressure to produce something for the next day; isn't that right?

A. The reality that a civil servant faces when a Minister says he wants something by the next day is that you knuckle down and start doing it.

Q. I understand that entirely. But isn't that the

pressure? Isn't that the pressure, because the

Minister wants it?

A. Well, we are agents of the Minister. We operate under the aegis of the Minister.

Q. I understand that, in the normal role of a civil servant. In this particular project, or Project Team, you were supposed to be conducting an evaluation process at arm's length. Obviously the Minister didn't have to accept your recommendation at the end of the day if he had good reason for not accepting it?

A. Absolutely.

Q. Or the Government may not have accepted it if they had good reason, but this wasn't ordinary civil service work you were doing in the normal course of doing the Minister's bidding. You were part of an evaluation process, supposed to be sealed, conducting your work, bringing it to a conclusion in the time-frame which you were allowed to do it in, which you were well within, and here you have a situation where there are questions being raised from the regulatory side, and matters move very fast at the instigation of the political side; isn't that right?

A. Well, all I can say in answer to that, Mr. Coughlan, is that my recollection of that day, the 24th, is that somebody informed me that notwithstanding the previous day's arrangements, that this was going to Government the following day. I didn't draw any conclusions from

that information.

Q. Did you know how the qualitative assessments had been conducted? Did anyone explain to you?

A. I don't recall any detail of that as to how it was carried out.

Q. Did anybody tell you whether any weightings had been arrived at or whether they hadn't been arrived at? Or what was involved in the qualitative evaluation? Did anyone explain that to you?

A. I don't recall the minutiae of the way in which the evaluation was carried out was referred to in detail.

Q. Even in general, was it explained to you? Was it explained to you that there were or there weren't weightings? Was it explained to you how the people arrived at their decisions?

A. Well I think the quite clearly there were weightings involved. How people arrived at the decision, my general understanding was that people brought to the table particular expertise, people would have read the assessments rather people would have read the applications, rather, and on the basis of that would have come to some sort of a tentative conclusion; this I presume would have been tested against other people. But at this stage, I am just speculating. I either don't recall that detail being discussed or it wasn't discussed in detail.

Q. And were you aware that when the matter went to the

leaders of the three political parties in coalition in Government on the 25th, and it went to the Government on the 26th, that no member of the Government that is, the three leaders of the political party and the other members of the Government; we don't know about Mr. Lowry but that no other member of the Government was informed of the what was described by Mr. Fitzgerald as "the health warning"; that is, the financial frailty of Communicorp and the steps that needed to be taken in licence negotiations, that no member of the Government was informed of that; are you aware of that?

A. I am aware of it now, but at the time, I wasn't aware of it.

Q. You were not?

A. No.

MR. COUGHLAN: Perhaps, Sir, it's a quarter past one; there are a few matters more I wish to take up with Mr. O'Callaghan.

CHAIRMAN: Well, if it's within fifteen minutes, unless it's your strong preference, Mr. Coughlan.

MR. COUGHLAN: It's twenty past one.

CHAIRMAN: Well, it's a long shift for the witness.

It may be as well that he will have the opportunity to have lunch.

We will resume again at twenty-five past two. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH.

Q. MR. COUGHLAN: Just a few others matters, just to finish off, Mr. O'Callaghan.

Did you ever, apart from this particular chronology, ever create such a document to keep in your personal files in respect of any other aspect of work?

A. I don't recall that I did, Mr. Coughlan.

Q. And apart from the occasion when you brought it to the attention I think of, was it Mr. McNally and Mr. Hodson, when the matter arose in the context of the Tribunal, had you ever shown it to anybody from the time Mr. Molloy, I think from the time that you created the document up to that time?

A. No, I hadn't. And I didn't show it to Mr. Molloy or Mr. Hodson either. I spoke to them on the phone about it.

Q. And I think, therefore, we can see in the correspondence that we received from the Chief State Solicitors Office, it was, I think, sometime in August, that the document itself would have gone over to them, I think therefore, the type of advice which was sought was on the blind, if I could put it that way, in the initial phases from the Chief State Solicitors Office?

A. I'll take your word for that. All I wanted to I suppose say in relation to that is I certainly did not

hinder the

Q. I am not

A. Just in case there is

Q. I am not suggesting that for a moment, Mr.

O'Callaghan. I am not suggesting you were trying to

hinder the Tribunal at all. That wasn't the line of

questioning I inquired at all. It was that it showed

a sensitivity or a concern about matters. That's all

I asked you about.

A. No, I accept that, Mr. Coughlan.

Q. Thank you very much, Mr. O'Callaghan.

CHAIRMAN: I am not going to, Mr. O'Callaghan, go over

any of these detailed matters again. Could I just ask

you in conclusion, on the totality of your evidence,

it would be fair to say that your involvement in the

whole assessment process was a little bit fractured

through circumstances; first of all, you had the

months when you were out due to recovering from your

accident until the early days of September; isn't that

right?

A. That's right.

CHAIRMAN: And then during the period of the final

weeks until the last couple of days themselves, you

had had to give priority to other duties that were

your main commitment?

A. I was probably trying to give work give time to the

other work as well as this, but I had a mixed bag of

work at the time, yes.

CHAIRMAN: And this was to a large degree why you did not seek to become involved in the sub-groups?

A. Yes. I was unable to go to Copenhagen because of the other work commitments, and I knew I had a visit to Brussels coming up which I had to cover.

CHAIRMAN: When you had actively become involved in the process in September of 1995, I think you have stated that you read the various documentation applications carefully.

A. I did indeed.

CHAIRMAN: And you participated in the six presentations during that month.

A. I did.

CHAIRMAN: And I think we heard you, in the course of one of the three tapes that were played in the course of the hearings at the invitation of Mr. Brennan, asking a number of questions, perhaps in the regulatory side, and if memory serves me right, in relation to Mobicall.

A. I recall one question I raised in relation to the licensing arrangements and whether there was some caveats that one of the participants had, one of the consortia had made about how they would view the forthcoming licence that would govern the service.

CHAIRMAN: As matters approached the finale, so to speak, I think you have both stated in evidence and

you have written that you found matters were very close indeed between the top two front runners.

A. Yes, I always thought they were, yes.

CHAIRMAN: And whilst we have heard today of matters that will need to be considered in relation to speed, to the language used in the final report, and to the actual nature of the procedures deployed, would I be right in saying that in the ultimate, you took the view that having decided not to become involved in the various sub-groups, that between the combined endeavours of a number of your Project Group colleagues and the personnel in Andersen Management International, that over the course of the various qualitative and quantitative inquiries, that an outcome had been reached that even if you had some concerns about it, you were prepared to buy into?

A. That would be the case, Chairman, indeed.

CHAIRMAN: That you felt that you were given an opportunity to query or demur in relation to the actual decision, and you did not see grounds that induced you to go quite so far as querying the actual result?

A. I had no grounds for querying the result.

CHAIRMAN: Did you yourself proceed with any degree of evaluation of some of the main criteria? Obviously there was the matrix that Andersens had decided, but perhaps some very obviously come to mind, such as the



business plan, the tariffing repercussions of the various applicants and the experience of the promoters in each of the consortia; did you apply much in the way of independent consideration to these matters yourself?

A. No, Chairman, I didn't do a sort of a corresponding analysis on those terms. I would have read all the applications, of course.

CHAIRMAN: Yes. But you didn't perhaps form even an independent or subjective view as to perhaps one or two things that might have just tilted matters in favour of Esat; your essential mental operation was to evaluate what had been done by your colleagues?

A. Essentially, yes. I mean, I would say that in relation to having read the six applications, that it was clear to me that the Esat Digifone and the Persona applications were the strongest, I think.

CHAIRMAN: Very good. Thank you for your assistance and cooperation over the last couple of days, Mr. O'Callaghan.

Mr. Healy?

MR. HEALY: Mr. McMahon, please.

SEAN MCMAHON, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

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

At the time of the events that the Tribunal is inquiring into, you were working in the division of

the Department of Transport, Energy and Communications responsible for the functions which were subsequently taken over by the Regulator, among other things; is that right?

A. Yes, that's correct.

Q. What was your rank at that time?

A. Principal Officer.

Q. And what's your rank now?

A. Principal Officer. I should be more explicit about that. I am an examiner of titles in the Land Registry, which is equivalent to Principal Officer.

Q. I see. You don't work in the Department of Transport, Energy and Communications any more; you are now working in the Land Registry, which is, I suppose, a drift into a new division, or a new Department?

A. A new Department, yes.

Q. You should have a copy, Mr. McMahon, of a document prepared from information you supplied and entitled "Memorandum of intended evidence of Mr. Sean McMahon"?

A. Yes, I do.

Q. It's in Book 33. Do you have Book 33?

A. I actually have a copy of the statement.

Q. You've taken your own memorandum out, yes.

You have been here during some of the evidence, and I suppose you know that what I envisage doing is going through that memorandum of intended evidence and then maybe looking at things in more detail, looking at

individual documents, and then maybe looking at the thing in the round at the very end.

A. Okay.

Q. In the course of the evidence given by, I suppose, mainly Mr. Brennan, a number of milestones along the way, and indeed not just milestones, but a number of indicators of detailed stages in the process were dealt with and clarified in the course of his evidence, which means it won't be necessary to go into everything that was raised with you in the course of your response to the questionnaire sent to you by the Tribunal, because you have indicated that you knew nothing or had no involvement in parts of the early preliminary work, in 1994

A. Yes, okay.

Q. and part of 1995; is that right?

A. Yes. The only thing, if I can, Mr. Healy, before you begin, I have noticed that it has become customary to read the preamble out to the people. And the only point I would draw your attention to is that the preamble, which is on the top

Q. I am going to read

A. You are going to read it anyway.

Q. You say that "This response arises from the Tribunal's letter dated 3rd October, 2002, wherein officials were requested to review statements already submitted, and in particular the supplemental statements. In

responding, I have again relied mainly on present-day memory, and where necessary, I have consulted the file copies and copies of my own notes available to me."

A. That's correct. The reason I brought it up in anticipation, actually, was that the original preamble which I had written and which accompanied the documents I sent, I think in the first draft read "I have replied to the questions which reference to the numbers in the schedule addressed to me. I have relied mainly on present-day memory. Where necessary I have consulted the file copies and copies of my own notes available to me. I have not consulted on any matter with colleagues save where indicated. If, as a result, there is anything at variance with my previous statements with the facts as recorded or with the recollection of others, I'd be happy to try and reconcile it."

And I suppose the thing to say is, having sat through the evidence and read the transcripts on many occasions, a great deal comes back to you which wasn't available to me at the time at which I wrote this.

Q. Yes. And I'd hope that you'll be able to use all of the things that have come back to you in the course of the evidence you are going to give here today. And I'd like you to approach that in two different ways: Firstly, if you want to say anything of our initiative, please do so. Secondly, in the course of

going through this, if there is anything which isn't as clear as you think and if in light of new information or new things that have come into your mind you think could make the position clearer, or if you have any new information resulting from your listening to what came up here, then please add it.

And obviously there may be occasions when I will feel it necessary to ask you to clarify one or two things, and you may be able to do so based on things you have heard here or things that have occurred to you while listening to the evidence. Is that fair enough?

A. Yes, that's very fair.

Q. I am not going to go into the first page because it's about the period during which the process was being designed in '94 and maybe very early in '95.

A. Okay.

Q. This was the period in which I think mainly Mr. Brennan was dealing with KPMG and Mr. Pye while he tried to design or put together an application which would ultimately form the basis of tenders to be put in by intending applicants?

A. The only thing would I say about that, again in clarification, is that an earlier exercise which we had conducted within the Department was aimed at trying to establish a strategic long-term view for the telecommunications sector. And Mr. Pye had been involved, I note at least from the records, and I must

therefore have known the man or had met him. And it's probable, indeed, that I saw several of the documents at the very early stage of this, but that certainly wasn't my memory at the time that I wrote my answers to your questions.

Q. If you go to Question 5, you were asked about details of all considerations which to your knowledge, direct or indirect, prompted or contributed to the Department's movement 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 as recorded in a memorandum of Mr. Jimmy McMeel dated 19th April 1995 in a note to the Minister from Mr. David Doyle.

You say "I cannot now recall what were the considerations behind a decision not to publish."

Secondly, with regard to the Department's movement from its initial position of favouring 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 applicants' approach to market development, as also recorded in the memorandum of Mr. McMeel and the note to the Minister.

You say "Again, I cannot now recall, but it may have

been that we concluded that low tariffs were too easy to propose and too difficult to assess other than as part of a sound business plan. Views from Andersens, the Department of Finance, and Brussels DG IV were I think an important influence on our approach."

Could I take it that you see no reason to demur from or add anything to what we got from Mr. Brennan, who I think gave us the widest account of departmental thinking on this issue of the priorities according to the different criteria in the early stages of the design of the competition?

A. I would certainly be inclined to trust Mr. Brennan's recollection and his judgement of that. I have gone back over the files insofar as I can, and I am still in the position where I don't remember very well what caused us not to publish weightings. It seems to me that I couldn't find a decision to publish them in the first place followed by any decision not to publish. It seems to have evolved that we didn't.

Q. I think Mr. Brennan if you look at the documents outlined in the course or referred to in the course of Mr. Brennan's evidence, the Department initially were of the view that they saw no reason not to publish anything, but Finance were the ones who did not wish to publish weightings for fear that that might influence the view a person might take with regard to what was then the open-ended licence

payment; and Finance were anxious to maximise that payment, and by putting a weighting on it, you would downgrade the criterion by reference to higher-placed criteria, and therefore people might be tempted to moderate, if you like, the amount of money they were going to bid?

A. I must say that from a reading of it, I formed the impression that is, within the last few weeks that that debate was about having weightings in the first place rather than a decision to publish them.

Q. I think it was about both having weightings and publishing them once you had them. Once you decided to have them if you were going to have them if you were going to retain any flexibility, the finance view was if you published well then whatever flexibility you retained was gone, because the people would know precisely how much priority you were recording into something?

A. For what it's worth, it may have been a compromise. My own view at the time would have been, if I used the same rationale that I would today, that there was no reason why we shouldn't publish, and that you should be as open as possible.

Q. I think, in fairness to Mr. Brennan, I think I gathered from his evidence that was a reflection of departmental thinking as well, but there were political compromises, I'll put it this way,



interdepartmental compromises to be achieved if the process was to be moved forward. That's how I understood his evidence, and I didn't see him as being antipathetic to publication.

A. No, I wouldn't have thought so.

Q. Query Number 6, details of all Mr. McMahon's dealings with Mr. Michael Lowry on his appointment as Minister in relation to the GSM licensing process.

And you say "I cannot recall any detailed discussions of the GSM licensing process with Minister Lowry, but my notes indicate a general briefing session with him in February of 1995. My notes indicate that a Cabinet Subcommittee had met by this time and agreed the terms of the competition."

Do I take it that that indicates you met him at that time?

A. I would certainly have met him within a few days of his appointment.

Q. And was it was that the type of briefing session, then, that you are referring to, one where the Minister was brought up to speed in general on how the Department saw things?

A. Yes, correct. I remember other meetings, I think, about parliamentary questions, and there would have been times when quite a number of parliamentary questions were down for answer.

Q. We'll be coming to some of those later.

A. And that sort of thing, yes.

Q. Question 7, you were asked for your knowledge, direct or indirect, of, or of the involvement of any other person in the finalisation of the evaluation criteria and in particular, a) the selection of an open-ended licence fee structure.

And you say "I can recall discussing this at GSM Project Team meetings. As far as I can now recall, we discussed the potential fee revenue in terms of the value of the licence per head of population in comparison with other European countries where licences had been issued. I can recall the pros and cons of extracting such a market rent being discussed, but no where and when. I am well aware that there were diverging views about this in the industry. Esat were particularly keen, and said so in public, that there should not be an auction. The fee was eventually capped when legal advice was obtained cautioning that the EU Commission would succeed against us on the basis that an auction was not in the best interests of competition. My involvement in this was limited to making known my view at project and other meetings, i.e. that the Commission had not established their position in law and that we were being too communautaire in conceding the matter so easily".

B. The deletion of financial capability from the

evaluation criteria.

And you say, "I do not recall how this came about."

Next you were asked for the details of your role, if any, in the establishment of the Project Group and in the appointment of departmental and other officials to the group.

You say "I believe that Mr. Brennan and I would have agreed that he and John McQuaid of the Telecoms and Radio Technical Divisions would lead" sorry, "that he, I, and John McQuaid of the Telecoms and Radio Technical Division would lead, and nominated our respective assistants and delegates to the group."

Question 9, 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 would be put by the Minister to Government in time for a final decision on the granting of the licence to be made by 31 October, 1995."

And your answer is: "I cannot recall any dealings with the Cabinet Subcommittee. I had no dealings with them, and I do not recall that we had any dealings with them as a group. My understanding of the paragraph in parentheses is that having been informed of our choice and recommendations in the matter, the Minister would bring them to the Cabinet for its

approval prior to announcing a winner. The words 'in time for a final decision on the granting of the licence to be made by the 31 October, 1995' were optimistic. We had not taken account of the time needed to write the licence."

I think, in fairness, what was envisaged by that time scale was the conduct of the competition. I don't think the granting of the licence, from everything I have heard in evidence over the past few weeks, was contemplated as having been completed within that period.

A. You may be right. It's hard to say. It's just if one reads the decisions, I think the award of a licence springs to mind.

Q. Well, you are absolutely right about the wording of the passage that you were asked to respond to. It says "For a final decision on the granting of the licence," granting of the licence means presumably the formal granting of the licence, but in fact, having seen the documents, we can see that what was envisaged was that the competition process should have been concluded by that date, leaving the licence then to be I think the idea was the licence would be ready by Christmas, I think, which may also have been optimistic.

Query Number 10, you were asked for your understanding of the RFT document issued by the Department in March,

and in particular paragraphs 3, 9 and 19. And we have heard them so many times I am not going to read them out now.

And your response is as follows: "I understood paragraph 3 of the RFP to mean that applicants would disclose all material facts regarding who was to own what within whatever body was in turn ultimately to own and operate the GSM licence.

"I understood paragraph 9 of the RFP to mean that the applicants would have to show that they had, or would have, the money, resources, to implement all elements/items of the capital expenditure as they fell due and that they would equally have the necessary technical resources in place both for execution and operation of the project. The business plan was meant to show their strategy for market penetration so as to ensure quality of service on the one hand and financial viability on the other. I understood paragraph 19 of the RFP to mean that we, i.e. the Project Team acting in the Minister's name, would assess the applications in a fair manner in accordance with the descending order of criteria as set out in the bullet points".

And that's a reference by you to the eight particularised criteria.

A. Mmm.

Q. Then you were asked for your understanding of the

purpose of the protocol adopted by the Project Group at its meeting of the 6th March, 1995, for dealings with potential bidders during the tender process, bearing in mind that all civil servants were bound by duties of confidentiality.

And you say "My understanding of the protocol for dealing with bidders during the process was that we all felt the need to avoid charges later that there had been any advantage for one bidder over another due, for example, to exchanges of information in a partial manner."

Maybe if I could just amplify that for a minute. I take it that what you are referring to is the possibility that one bidder might, in a conversation with a member of the Project Team, acquire some additional information either about how the Project Team viewed the criteria or how they viewed the information which had come in from that particular applicant?

A. Mm-hmm. Yes, and not just in conversations, but equally so in terms of correspondence between us and the applicants. And I felt that we did quite a good job in laying down the groundwork there for the avoidance of that sort of thing, such that if there was some application that was defective in some way, that we would not inquire outside the terms of our ground rules in such a way as to confer any advantage

on that body, or that we would not equally divulge any information to that body in the way in which we had answered the question, which would endow them with an advantage.

Q. And I take it that your understanding of the purpose of the protocol and the value of such a protocol extends also to not just actually giving information, but even giving the appearance of giving information?

A. Yes, that's fair comment.

Q. So that there should be no advantage conferred, nor any perception of the conferring or endowing of any particular applicant with an advantage?

A. Correct.

Q. I don't think that there is anything in Questions 12 to 14 that I think, mainly, you don't appear to have any real concrete information to offer on any of those issues. You will have plenty of time to look over those and see if I am right in those.

On to Question 15; you were asked for the identity of all persons who, to your knowledge, direct or indirect, had had involvement in the setting of the weightings which were attached to the evaluation criteria.

And you say: "As far as I am aware, the only persons involved with the setting of the weightings were those on the project management team and Andersens".

You were asked about the manner in which the

weightings were devised.

And you say "I believe by group discussion and consultation. However, I recall that when Andersens came in, we changed the weightings following their advice. There was also the issue then relevant of whether and at what level the bid amount should be capped. My recollection is that the decision to cap the amount resulted in a re-ordering and re-weighting of the criteria. This may or may not be the same issue that Andersens recommended changing."

Next you were asked for the date on which and the person by whom you were informed of the individual weightings.

And you say: "I believe this was an iterative process. I think it was something we signed off on, possibly on advice from Andersens. I do not recall the date or the circumstances.

Then you were asked for the identity of all persons who to your knowledge, direct or indirect, were informed of or otherwise aware of the weightings and source of their knowledge.

You say "Again I think this was internal to the Project Management Group and Andersens.

You were asked for details of by the project to protect the confidential at weightings.

You say "I believe that everyone on the team and within Andersens would have appreciated the necessity



for absolute confidentiality on this as in other aspects of competition. I am not aware of any breach. We made it a rule to keep material relating to the competition under lock and key. Similarly we did not discuss business outside the group. Within my own Regulatory Division, neither I nor Mr. O'Callaghan reported on any aspect of the competition business to superiors until I believe my meeting with the Secretary after the draft final report was received in October.

Question 20, you were asked for details of your role in and your 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  $\text{€}15$  million, and the reweighting of the evaluation criteria in the light of the capping of the licence fee.

And you say: "This consultation/correspondence was conducted exclusively by Mr. Brennan or under his authority. I believe we learned of the Commission's concern from Mr. Brennan directly or from papers he may have submitted to us. I found myself opposed to capping the licence. I felt it was an unwarranted intrusion by the Commission. I felt that the Commission would be acting in excess of its authority if it were to impose a cap in any way. I appreciated the arguments for and against, and I could have been

persuaded of the need for an upper limit on the economic grounds, but I felt it was for us to decide in the light of whatever advice we could get. Mr. Brennan ultimately reported that the Commission would accept a cap of 15 million. When legal advice was eventually obtained via the AG's office that there could be grounds for the Commission to take infringement proceedings against us, I reluctantly accepted the position. This matter was reported to superiors and to the Minister and was, I believe, in the public domain. "

I don't think questions

A. I don't think I have anything to add to that other than on a review of the files, there was quite an amount of work went into that, and mostly on Mr. Brennan's side, and I suppose I am generally more sympathetic to what they had to do. It was probably easy enough for me to sit on the regulatory side of the table there and you know, protest about the Commission, but I do appreciate the difficulty he was under at the time.

Q. Your view seems to me to be an understandable one, Mr. McMahan, and I certainly could see how many people could share your view, but I think you do point out at the end legal advice was obtained. I think infringement proceedings might be taken, and I suppose the point you had to decide, was I prepared to take

the gamble or not?

A. Yeah.

Q. You may have been right.

A. Well, I certainly went along with the decision, whatever it was.

Q. I don't think there is anything in 21 that you can help us on.

If you go to Question 22. You were 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 the quantitative and qualitative approaches.

And the answer is: "When the evaluation model was first proposed by AMI, it was discussed at a Project Team meeting. It was proposed that various criteria would be quantified, insofar as they could be, and compared on as close a basis as possible. This would entail some mathematical treatment of the various data. I was generally impressed with the efficacy of the methodology, and I was satisfied that it would produce a true and fair ranking of the bids. That was to be the quantitative assessment. I felt confident that AMI would be competent to execute this aspect. "There was also to be the qualitative assessment, and I formed the impression then that this meant that

insofar as the bids were not susceptible to close quantitative analysis, we were to review our results and qualify them as necessary to the light of the best qualitative information available to us. I felt then, and throughout the process that followed, that this would entail a close examination of all the 'judgmental' aspects of the various bids, including the reputations and strengths of the various consortia and their constituent members, their technical, business and financial track records.

It is important to note that my understanding of these aspects, or at least the relationship of one to the other may not have been correct, when the sub-group went to Copenhagen, I understood it was to assist and observe AMI's treatment of the quantitative assessment. I expected this to produce a draft initial ranking. I then expected a round table of the qualitative assessment" sorry, "I then expected a round table on the qualitative assessment. It emerged on the return of the Project Team from Copenhagen that they regarded the qualitative assessment as having been done. I recall considerable discussion of this. I also recall reading the evaluation model again. From all of this I formed the view that the other members of the team could legitimately take the view that they had rolled up certain qualitative aspects of the individual criteria and the various dimensions

thereof. While this certainly took account of some of the matters I expected to be a subject of a qualitative assessment, it did not meet my expectations on other matters.

I understood from my colleagues that they and AMI regarded the matter as res judicata, and I acknowledged that to some extent I might have misunderstood the purpose of the qualitative assessment.

A. Can I stop you there, Mr. Healy, for a moment? I might be able to throw some more light on all of that.

Q. Yes.

A. At the time, I believe that broadly represented my feelings about it. When you leave a process like that and carry on to something else and then further to something else again, you tend to take with you those memories of it which are, I suppose, uppermost in your mind, and over time to the exclusion of other aspects of it.

And it would certainly have been my overriding memory of that particular part of the process that, yes, I felt that more treatment needed to be given to the qualitative assessment on the return from Copenhagen of the Project Team members and AMI. As I go back over the documents very carefully, it's quite clear to me now that to some extent I was correct, but that to some extent also, I would have been more aware at that

time that there was a strong qualitative aspect. And I wish I hadn't used that word, because it's used in another context here, but there was a strong qualitative element to the quantitative assessment as well, and the matter was clear to us from the beginning, and that indeed AMI had shown us that that was the way they intended to do it; and insofar as that was done in Copenhagen, it had been done in accordance with the plan.

To put what I have written here in context, it is still correct, inasmuch as when these people returned from Copenhagen, I still felt that there was a lot to be done in terms of qualitative assessment; that what had been done was correct and good, but there was some way to go, and perhaps I have used those words. And that the document exemplified this. So maybe if you want to carry on with the rest

Q. I'll come back to this at a later point, but just while you are at it, so that maybe you can be mulling it, perhaps, overnight.

Firstly, just to clarify one matter: You say that you undertook from the beginning that the quantitative would involve some qualitative. Maybe you meant it the other way round, that the qualitative would involve some quantitative material?

A. That too, but rather than go around in circles

Q. You mean both?

A. I mean both, yes, in that the quantitative assessment would be done using the same dimensions as AMI chose to call them, and that having counted such numbers that were countable in respect of it, that then people would revisit it from the point of view of credibility, and score that insofar as they could as well.

Q. But

A. Which they did.

Q. Can we see whether we are ad idem on it? I think I now understand the point you are making. As I understand it, and I'll go to the detail of the qualitative rather I'll go to the detail of the evaluation model tomorrow, but as I understand the evaluation model, and I think this is what you are saying, the evaluation model envisaged a quantitative evaluation plugging a number-crunching piece of software in and feeding in the numbers.

A. Yes.

Q. It then involved a qualitative assessment of various criteria which could perhaps or which were going to be approached from a purely qualitative point of view, and then subsequently it meant going back to the quantitative with the information you had obtained or the views you had formed in the course of the qualitative. That's what the evaluation model says.

A. There was that, yes.

Q. For reasons which we'll go into detail later. The process seems to have been derailed in some way, and it became a much more it became in fact an exclusively qualitative process, but one in which a lot of use was made out of number-crunching data gleaned from the quantitative process.

Now, the extent to which it became an exclusively qualitative process has only really become clear to me in the last few weeks. I don't know what your view is

A. I won't comment on this until you have showed it to me, but...

Q. Maybe you'll just think about it tomorrow. That's the impression I am forming, and you can correct me if I am wrong.

A. Yes.

Q. I don't think we need to trouble with you Query Number 23. Quickly deal with Query Number 24.

"Please provide full details of the following:

"1. Details of all queries raised by the Department in the course of Esat Digifone presentation on the 12th September regarding the financing of the Esat Digifone consortium.

"2. Details of all queries raised by the Department in the course of the presentation addressed to the funding of Communicorp's equity participation.

"3. Details of all queries raised by the Department



in the course of presentation in relation to the letter of comfort provided by Advent dated 10 July.

"4. Details of all queries regarding the terms governing the offer of 30 million Irish punts to fund Communicorp's equity participation in Esat as referred to in the letter of the 10th July 1995 from Advent.

"5. Details of all queries raised regarding the commitments provided by the institutional investors in the Esat Digifone bid."

Now, your response is "Generally my recall is the same as set out in the departmental and in my own notes".

And you go on to say that you have no recall of some matters or some questions and so on. But I think we can now say that all of this has been overtaken, because we have actually got the tape and the transcript. And we can look at the tape and the transcript, so I don't propose to go into those answers that you have put here in any detail at all, and I'd prefer to wait until we look at the tape I beg your pardon; the transcript of the tape.

A. Okay.

Q. You are happy with that?

A. Yes, that's fine.

Q. Next query, Query 25, is as follows: "Please indicate the following:

"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 the 30 million facility to Communicorp by Advent International referred to in the letter dated 10th July."

I think this now is post availability of the tape query; do you follow me? This query was raised after the tapes became available.

A. After the tapes became available, right.

Q. I think so. That's my impression.

A. Mmm. And the answer I gave was I am unaware of any such request, is it?

Q. I see, sorry.

Mr. Coughlan corrects me. These were raised I think in the case of some questionnaires, there are queries which are pre and some post discovery of the tapes. These apparently are pre discovery of the tapes. So to some extent, it may be useful to you to look at the presentations again.

A. Okay.

Q. The first query is whether the Department requested Esat Digifone consortium at any time prior to the 25th October to provide the Department with a copy of the offer of a IRi;½30 million facility to Communicorp by Advent International referred to in the letter of the 10th July.

And your answer is you are not aware of any such question.

Second, whether a copy of 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.

Again your answer is you are unaware of the provision of any such copy.

"3. Whether any queries 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".

And you say you are unaware of any such inquiry.

"4. If such inquiries were made, please provide details of 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".

You say you were unaware of any such inquiries.

Query 26, you are asked for details of your involvement, if any, in the sub-groups which conducted the qualitative evaluation; if you had any such involvement if you had any such involvements, the sub-groups of which you were a member and details of the precise manner in which the sub-groups evaluated the entrants.

And you say "My recollection now is that I would have participated only in the main group discussions of the

group when this matter was addressed. I did not attend the sub-group meeting at Copenhagen as stated in 20 above. I was surprised to find that the qualitative assessments had been discussed at all in Copenhagen. I expected them to be the subject of a plenary group meeting in their own right following the completion of the quantitative assessment. To the extent that there had been any qualitative assessment done as part of the quantitative assessment, I expected that there would follow a more in-depth assessment of the kind referred to in 20 above.

Query 27, you were asked for your knowledge, direct or indirect, of the progress of the actual evaluation process, to include the source of such knowledge and in particular, but not exclusively, in relation to the following:

"A. The outcome of the quantitative evaluation".

And your response is "I believe that the actual quantitative assessment was conducted mainly by AMI staff in Denmark over the period following the clarification of bids up to the time of the sub-group's visit to Copenhagen, and that the final number-crunching was done at Copenhagen in the presence of the sub-group.

"I formed this impression from communication with sub-group members, probably Mr. Brennan or Mr. Towey, following their return. It was discussed at the next

Project Team meeting" sorry, "It was then discussed at the next Project Team meeting.

"B. The difficulties encountered in scoring certain indicators in the course of the quantitative evaluation".

And you say "I believe that any difficulties experienced by AMI or by the sub-group in Copenhagen did not become known to me until the Project Team meeting immediately following it."

C. You were asked about the decision that the qualitative evaluation should be decisive and should take precedence to the quantitative evaluation.

You say "I am unsure as to what this decision is about. I have no recollection of it".

D

A. Can I stop you, Mr. Healy?

Q. Yes.

A. Even today, as I look at that Question C, I am not exactly sure what it means. "The decision that the qualitative evaluation should be decisive", okay, is self-explanatory, and "should take in precedence"

Q. I think that means "take precedence".

A. "Take precedence over"?

Q. Yes.

A. Right, if that would make sense, indeed, but I don't remember such a decision, and

Q. Well, we'll come to it when we look at the notes of

the meetings.

A. Right.

Q. "D. The decision not to score the 'other aspects', and in particular the indicators of risks credibility and sensitivities.

And the answer is: "I know nothing of this decision."

Do you know what is being referred to in that query?

A. I certainly didn't when you put the questions to me.

I could hazard a guess at what you are referring to now.

Q. Yes. I think what it refers to is, just so you can, if necessary, check it up for yourself, is a memorandum from Mr. Andersen following a meeting in Copenhagen on the 19th and 20th, I think, and I think you'll find it in Book 42, Leaf 111. I am not going to ask you to look at it now. So that you won't have to be juggling various books, we'll deal with it when we come to look at the documents tomorrow.

Query Number 28 requests you to provide details of the supplementary analysis conducted in respect of Advent, Communicorp and Sigma, as referred to in the minutes of the 11th meeting of the GSM Project Group on the 14th September 1995, and the results of such analysis.

And you say "I have no present recall of this analysis. It was most likely executed by AMI".

A. I think again you are probably referring to that same document which suggested that supplementary analysis

would be done or would have to be done. And I know that now. I certainly didn't when I answered it

Q. There is a reference in the report to supplementary analysis.

A. Yes, indeed, there are.

Q. But the actual analysis, as opposed to the portion of the report which refers to the analysis, doesn't appear to have come to hand. In other words, the analysis is referred to or reflected in Appendix 10 of the report, Appendices 9 and 10, I think, or thereabouts. But the Tribunal has been unable to unearth them. They must be somewhere, or they may be somewhere still, the actual exchange of memoranda or any other working papers which ultimately generated the contents of the appendix. Do you follow me?

A. Oh, I see what you are getting at.

Q. Query Number 29 is whether you were kept informed of the trends and/or ranking emerging from the evaluation process during the course of that process, and if so, the precise matters of which you were informed, by whom you were so informed, and when you were so informed.

If you were so informed, you were asked the identities of all persons to whom you relayed any such information.

And you say "I do not recollect any detailed suggestion of the quantitative assessment by AMI or"

"either by AMI or the project sub-group. In the event, I believe that that sub-group was constituted just in time to go to Copenhagen. I believe we did hold an overview of the bids following presentations in which front runners began to emerge, but I do not recall the Project Team doing any of the computation or comparison such as to produce a definitive ranking prior to the Copenhagen trip.

There may be some confusion there about the question that's being asked, but again it's something we'll come back to.

Question Number 30, you were 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 "I believe it was by Mr. Brennan, or possibly Mr. Towey, on their return from Copenhagen."

Next you were asked for details of the date on which you were furnished with a copy of the first draft evaluation report.

And you say "From a perusal of the files and my notes, this would have been on or about the 9th October 1995".

Query Number 32 seeks details of the identity of all persons to whom access was given to the draft evaluation report dated the 3rd October 1995 between the 4th October 1995, when the draft report was



received by the Department, and the 9th October 1995, when the report was discussed at a meeting of the GSM Project Group.

And your response is: "I believe there were only four hard copies, all to be kept securely. The Regulatory Division had one. Only myself and Mr. O'Callaghan had access to it immediately. I am unaware of the position in other divisions".

You were asked for details of all meetings and discussions which, to the knowledge, direct or indirect, of officials took place between officials or between officials and other persons or any of the discussions regarding the content of the first draft evaluation report, of the presentation of the material comprised in the report or any other aspect 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 your answer is: "The only discussions I can recall are those of the Project Group itself. It is most likely that I would also have discussed it from a divisional point of view with Mr. O'Callaghan."

You were asked for details of your views regarding the draft evaluation report, together with details of your understanding of the contents of the report, "and in particular the following", and a number of listed

items are set out. But I think you have some preliminary remarks which I'll come to first. You say "I had some considerable difficulty from a reading of the draft report in coming to the conclusions contained in it. I am not saying the conclusions were wrong. I was withholding my judgement until the report had been presented in a more end date form. This stemmed partly from the fact that it did not take account of a qualitative assessment in the sense that I had understood that term, but rather of a separate qualitative assessment of certain quantitative parameters. Allowing for any possible misconception on my part, I had further difficulty in reconciling the firmness of the findings with the content of the argument. The assessments were very close in certain areas. I formed the impression that the report as it stood was insufficiently clear and required improvement, and would be unable to serve the purpose for which it was intended, i.e. to support such an important decision".

Then you deal with the itemised matters.

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

And your answer is: "I do not recall in any detail my impressions of the treatment of Irish Mobicall. I do

remember having concerns about Esat Digifone and Persona which I felt had been glossed over, and having concerns about the closeness in marking of Esat Digifone and Persona. I felt that this could have been better dealt with in the report and recommendations".

B. The manner in which the "other aspects" of the consortia had been addressed, i.e. the indicators of the credibility and sensitivity.

And your answer is: "My recollection today is that credibility and sensitivities had been dealt with, quite properly, on a 'micro' level, i.e. in relation to the probability/plausibility attaching to the values of the particular proposals or claims. The report did not engage in the kind of separate global qualitative assessment which I felt would be necessary. I had not expected it to; I felt that this was a matter for a plenary session of the Project Team. However, the report had reached a conclusion and was clearly regarded as a draft of the final report by the project sub-group returning from Copenhagen".

You were asked about the qualifications expressed by Andersen Consulting regarding the ranking of the top three entrants, and you say "I believe I was unaware of any reservations expressed by AMI beyond those appearing in the text of the report. Insofar as those

qualifications went, I believe I agreed with them".

You were asked about the overall presentation and material, and your response is "As stated above, I felt that the overall presentation of the material was inadequate to support the findings. I made those views clear to all concerned. I felt that to some extent at least, this was due to an overly technical approach by the Danish-speaking specialists in AMI".

Question 35, you were asked for details of all your discussions, if any, with any member of the Project Group or any departmental official regarding the contents of the draft report.

And you say: "I believe I would have discussed the draft with Mr. O'Callaghan of my own division in the first instance and subsequently with Mr. Brennan and/or Mr. Towey. It would have been discussed at the next Project Team meeting following its receipt by us.

Note that I cannot recall whether the draft report was brought back from Copenhagen or if it became available shortly thereafter. My main recollection is that I made my views as set out above clear. I believe that Mr. O'Callaghan agreed with me. I believe that at the Project Team meeting immediately following receipt of the draft report, I again expressed the view that the decision should not be finalised until we revisited the qualitative aspect of the bids, and that in any event, the report was not sufficiently well drafted to

support its findings or to be easily readable".

Query 36, you were asked for details of all matters discussed and raised at the Project Group meeting on the 9th October, and including in particular the following:

"A. The statements made by Mr. Martin Brennan in relation to the Minister's state of knowledge regarding the outcome of the competition.

"B. Statements made by Mr. Brennan regarding the Minister's views of the draft evaluation report and/or the approach which he adopted in drafting the final report.

"C. The request made by certain members of the Project Group that further time was required to consider the results.

"D. The request made by certain 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 Esat Telecom.

Your response is as follows: "I am uncertain as to what was the status of any draft report available to us at this point. I do not think it was the final draft; however, there was a recommendation which, as

it stood, was for A5, A3, and A1, in that order. I believe that it was at this meeting that Mr. Brennan told us that the Minister was aware of the outcome of the evaluation at that point. I remain unaware of how or when this knowledge was imparted to him. I believe Mr. Brennan said that the Minister wanted a speedy announcement following finalisation of the report".

That's in relation to B.

In relation to C and D, you say "It was certainly the case that some members of the team had not had a chance to digest the full report, but I believe I made the point that in my view, the qualitative evaluation was not complete. While some group members felt otherwise, it was clear to me there was not a consensus as to what was being intended by a qualitative evaluation. I believe that others present felt as I did, and there was a strong, albeit possibly minority view, that we should spend whatever time was necessary to get it right."

In relation to E, you say "I do not recall any detail of a discussion about Esat Digifone's appropriateness, although I do recall this being raised at some stage following the arrival of the first draft report. I may well have raised the matter myself as being the case as I was in the position of de facto Regulator and well aware of Esat Telecom's attitude to regulatory authority. In any such intervention, I

would have been careful to note that we were dealing with a distinct legal entity in Esat Digifone, however."

Query 37, you were asked for your understanding as to the status of the evaluation following the Project Group meeting of the 9th October 1996, and in particular the steps to be taken in progressing the evaluation.

A. It's 1995; sorry.

Q. Sorry, I beg your pardon, 1995. And in particular the steps taken in progressing the evaluation.

You say "I think AMI were to take note of comments and to do a second draft."

You were asked for the date on which you made the handwritten notes on the copy minutes dated 7th October dated 17th October, sorry of the meeting of the 9th October.

And you say "I believe that the note shows that these comments were made on the 1st November, 1995."

You were asked for confirmation that the notes were addressed to Mr. Ed O'Callaghan, and you say they were addressed to Mr. O'Callaghan.

You were asked whether you circulated a copy of the notes with the handwritten entries to other persons, and if so, the names of each person to whom you were circulated.

You say "It is most unlikely, given the confidential

nature of all our deliberations, that I circulated this note to anyone other than Mr. O'Callaghan. It is likely that in reviewing the official note of the meeting held on 9th October, these always arrived sometime after the meeting, that he decided to write my views as formed at subsequent meetings into the division's own records."

You were asked whether the contents of the handwritten notes were raised at any subsequent meeting of the Project Group or at any or of any members of the Project Group or were otherwise discussed with any other person, and if so, when, and the name of each person present.

You say "While the sentiments and the subject matter of the comments were well aired at subsequent meetings, I believe that the note itself was not brought to the attention of anyone but Mr. O'Callaghan.

You were asked for details of the subsequent meetings referred to in the notes, the date of each such meeting, the persons present, the matters under discussion, the outcome, and whether any note, attendance or minute of any such meeting was kept, and if so, by whom.

You say "There may have been only one such Project Group meeting, i.e. on the 23rd October. That meeting resolved itself into morning and afternoon sessions,



and I believe there was a meeting with the Secretary and the principal project team members in between. I do not know if these meetings are fully documented. My own notes of the morning meeting of the 23rd October highlight the lack of consensus about the qualitative assessment and the continuing lack of clarity in what was now being termed a final report. Mr. Brennan also reported that the Minister had asked for a final conclusion on that day but had not been promised one. It emerged that the qualitative assessment, such as it was, had not been documented so as to show how it had affected the result."

I don't think Query 39 need concern us.

Query 40 simply asks you to confirm that you received a copy of the report of the 18th October 1995, which was the second version of the report.

Query Number 41 is as follows: "Please provide details of your knowledge, direct or indirect, of all consideration given by the Project Group or by any member of the Project Group or by any person, whether in conjunction with Andersen Management or otherwise, to the qualification placed by Andersen 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".

A. Is that the same matter to which you referred to a

while ago, Mr. Healy?

Q. I think it is, yeah. What I was asking you about a while ago was whether you are aware of any documentation which ultimately resulted in the generation

A. Yes, travaux preparatoires, whatever.

Q. The Project Group was well aware of the difficulties, you say. The general view was as set out in the report was that it was something which, at least in Digifone's case, could be cured; for example, as suggested on page 56, Annex 10. Events moved rapidly from there, and do I not recall any further consideration of this by the Project Group. It was, however, a matter of continuing concern to me as the drafting of the licence proceeded. I must stress that following the announcement of the winner, follow-up in the financing and other areas was shared to an increasingly lesser extent with my own Regulatory Division. I cannot recall any further treatment of the matter in which I was involved".

Query 42 seeks details of your knowledge, direct or indirect, of any discussions with Andersen Consulting concerning further inquiries or investigations or other actions which would have been required to enable Andersens to provide a report with any qualifications or rider regarding the financial capability of either Esat Digifone or of Persona.

You say: "See your answer to Number 41". You were not a party to any such discussions, and you were unaware of what transpired.

Query Number 43, you were 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, and including your knowledge, direct or indirect, of the contents of the document entitled "Suggested textual amendments", which appears to have been faxed by Mr. Fintan Towey to Andersens at 10.05am on the 25th October 1995 and faxed back by Mr. Andersen to the Department at 2.07pm on 25th October 1995 with his annotated comments.

You say "I recall that following our first discussions of the report, there was agreement that the report needed redrafting in some areas. I believe that I was anxious that differences between the leading contenders be clarified. I have dealt in detail with this in response to Query Number 34.

You say "During the afternoon of the 23rd October, following morning and afternoon sessions of the Project Group, I believe that the Development Division sent a list of suggestions for textual amendments to AMI". You say "I do not recall any knowledge of the document said to have been faxed to AMI on the 25th October.

You were asked to provide a full narrative account of any information, direct or indirect, which the officials 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 the 18th October 1995 and in his various handwritten notes.

You say "I do not recall and I am not aware of whatever he wrote at the time. The notes on the copy report from files furnished by the Tribunal to me are unfortunately illegible."

Query 45, you were asked for details of all inquiries, which to the knowledge, direct or indirect, of officials were conducted either by officials or by any other person regarding the conclusion in the document "Suggested textual amendments" as follows:

"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 a licence has been awarded an attractive opportunity for corporate debt financiers, together with the precise results of such inquiries, if any".

You say "It is not clear whether the question is intended to address a conclusion in the report or an actual document with that title. Assuming it is the

latter, it may be the document referred to in Question 43, and I do not recall ever seeing it".

Query Number 46 requests details of your recollection of any approach made or request made by you, Mr. Martin Brennan, Mr. John McQuaid, or any other member of the Project Group to Mr. John Loughrey or on about the 23rd October 1995 for further time in which to consider the draft evaluation report.

And you say "I believe the decision to ask for a meeting with the Secretary, Mr. Loughrey, was made by myself, Mr. Brennan and Mr. McQuaid following discussion during the morning of the 23rd October.

That discussion centred on my dissatisfaction with the report as it stood. We met the Secretary at 3.30pm. According to a contemporaneous note I made, Mr. Fitzgerald was at the meeting".

Query 47 requests details of your recollection of Mr. Loughrey's response to such request.

And you say "I believe that it was agreed that the report was unsatisfactory and would require clarification. I understood as a result of this meeting that whatever time was necessary for this would be available. Although I cannot recall exactly how much, I believe I formed the view that a week would be sufficient."

You were asked for your knowledge, direct or indirect, of your involvement or the involvement of any other

person in the decision made on or about the 24th/25th October 1995 that the result of the process would be announced on the 25th October 1995.

And you say "I have no knowledge whatever of this decision."

You were asked for the date on which you were informed that the Minister intended to announce the result of the process on the 25th.

You say "I do not recall exactly, but I feel it most likely that somebody in the Minister's office called me or someone on my staff to say that a press conference was being held and that an announcement was imminent, i.e. at that very time. There may in fact have been an earlier inquiry from outside the office as to what was going on, prompting a query from me to the Minister's office or the press office.

You were asked for details of all meetings of the Project Group or any of the members of the Project Group on the 24th/25th October.

And you say you do not recall any meetings of the Project Team on those dates.

You were asked for details of your knowledge of or your involvement in discussions between Mr. Brennan, Mr. Loughrey on the 24th/25th whereby Mr. Brennan conveyed to Mr. Loughrey the result of the evaluation process.

And you say "I do not recall any involvement with this

meeting."

A. Can I stop you there for a moment, Mr. Healy?

Q. Yes.

A. Listening to Mr. O'Callaghan's evidence and reviewing some of the transcripts, and looking again at the copy of my own notes which you have given back to me, it is entirely possible that there was a meeting of some sort on the 24th in which I was involved. I seem to have taken no note of it; I have absolutely no memory of it. But it may have been that I went to see the Minister together with Mr. Brennan and Mr. Loughrey, maybe even Mr. Fitzgerald; I don't know. I think what's jogging my memory here is something Mr. O'Callaghan said, I think that he in coming down from Ely Place to 44 Kildare Street, that he met me, or some words to that effect, and that we were going to see the Minister.

Now, I may be completely confused about this, and I am simply not sure, but there is something in the back of my memory about meeting the Minister there. And what prompts me to say that is something that I had written on a blank page of my notes, I think on the day following the meeting of the 23rd, in which there were three or four other points raised with the Minister apart altogether from the GSM business. And I think, just going from a view of that page that I have in my mind, one of them related to the enforcement of the

value-added service licences and something similar to that. There were I think three or four bullet points on the top of the page.

Now, I make this point simply to show that it is possible that there was a meeting of some sort on the 24th and that I was involved. I believe Mr. O'Callaghan was at a meeting with Mr. Brennan that day, but I believe that was a separate meeting. I just don't know.

Q. Well, what you might do is, as soon as we adjourn, you might point out the portion of your notes

A. Yes, I can do that.

Q. that you had in mind, and we can discuss it tomorrow.

But just while you are on that point: If you in fact were going to the Minister with Mr. Loughrey, or rather you were going to Mr. Loughrey with Mr. Brennan for the purpose of conveying to him the result, I suppose you wouldn't have had to have been informed, as you say you were, as a result of a telephone call to your office or a telephone call by your office to somebody else, of the fact that the Minister was going to announce it on that day?

A. That's correct.

Q. But maybe we'll look at it tomorrow, and you might try and resolve any apparent conflict.

A. In essence, whatever transpired on that day, the 24th,



the fact that there was a press conference on the 25th was exactly as I describe it, was news to me.

Q. Which it wouldn't have been if you had been to the Minister the day before?

A. Yes.

Q. You were asked for the precise date on which and the time at which a final decision was made by the Project Group regarding the result of the competition and the name of each person who was present or was otherwise a party to such decision.

And you say "I believe that the Project Team meeting on the 23rd continued while myself, Mr. Brennan and Mr. McQuaid met the Secretary. The Project Team meeting resumed in full session when we returned to it. The meeting continued into the evening. It was agreed that subject to certain amendments, the final report would indicate a clear winner, being Esat Digifone. There was a lengthy discussion of the qualitative assessments that had been done, and it was agreed that further analysis would not alter the result. The changes to the report were to be communicated to AMI in Copenhagen, and a final draft report was to be furnished by them. I cannot remember who was at the final session of that meeting, but I believe it was close to a full complement of the Project Team."

Can I just clarify one aspect of attendance at that

meeting of the 23rd. I think Mr. O'Callaghan felt that Mr. Andersen was at it. I think your notes indicate that Mr. Andersen was at it. Ms. Nic Lochlainn's minute, according to Ms. Nic Lochlainn, indicates that he was at it. Mr. Brennan and I, when we were discussing it, formed the impression that he may have been present by phone, but I think that was because we both misinterpreted a handwritten note by Ms. Nic Lochlainn to the effect that the notes were faxed to Mr. Andersen, do you follow, as opposed to couriered or handed out or whatever, or sent to him by some internal mail process which may have operated within the Department.

But I just want to be clear about Mr. Andersen's attendance. Do you recall if he was still in attendance when you came back with Mr. Brennan and Mr. McQuaid from your meeting with Mr. Loughrey?

A. I am afraid I don't recall. There is two ways I can look at this. I can try and recollect if he was there. And the answer is no, I don't recall him being there. I think he may have been there for the first half of the meeting. What I remember about that second half of the meeting, the one that went on into the evening, is that Ed O'Callaghan had to go around seven o'clock or some such. We continued on with drafting and suggested amendments which were, as I understood it, being faxed in real time or

Q. I think you might be mixing up two meetings. There has been considerable confusion about these which is only, I think, resolving itself in the last week or so.

There was a meeting on the 23rd, that is the minuted meeting of the Project Group. That is the meeting of which you have a very full note, including a note recording the breaking up of the meeting, in the sense that part of the membership went over to meet the Minister to meet Mr. Loughrey. You came back, and you had achieved something, in that there was to be a postponement of any early announcement, and you were to get more time in which to finalise the report. Is that right? You have recorded all that?

A. Yes, I have, but my feeling is also that that meeting, having come back from the Secretary's office, that we did continue in session into that evening, and that we continued with the business of amending the final report. It was also the case that I understood at that time that we did have some more time to review it. In other words, that whatever amendments we were tabling that night would go to Denmark, would be incorporated in a further draft final report, which would then be on the table for discussion on the following Tuesday, the 24th.

Q. I follow. On the following Tuesday

A. The 24th. The 23rd was a Monday.

Q. You mean the following day, then?

A. On the following day, yeah.

Q. I just want to get the logistics of that right, that you do work on the 23rd. You had sent the results of that work to AMI. They would fax back a report incorporating that work?

A. Yes.

Q. That you would reconvene and discuss that?

A. Yes.

Q. Now, was it envisaged that Andersen would be at that reconvened meeting, or that it would only be the Irish, the Department side of the Project Group?

A. That I cannot say, unfortunately. I really don't recall.

Q. I think, rather than confuse ourselves by looking at it now, when we come to the documents, that might be the time to try to get all those

A. Right. My notes are usually a good indicator of who was present.

Q. They are, yes. It's just that the meeting split up?

A. Yes, it did, that's right.

Q. And he may not have been present when you went back.

Query Number 53, you were asked for the precise date on which and the time at which the Evaluation Report was approached and/or adopted by the Project Group and the name of each person present or who was otherwise a party to such an approval or adoption.

You say "In the event, I believe there was no meeting at which the final draft report was tabled and signed off. The approval, subject to amendment, of the draft tabled on the 23rd October was, as far as I can recall, the final meeting of the Project Group for the purpose of deciding a winner".

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. John Loughrey and the Minister on the 24th/25th October 1995 whereby Mr. Loughrey informed the Minister of the result of the evaluation process.

You say "I am not aware of any involvement in any such meeting or discussion". And you might have a similar qualification to that answer.

You were asked for your role in or your knowledge, direct or indirect, of the role of any other person in the preparation of a number of documents. Mr. Loughrey's recommendation to the Minister dated 25th October.

You say "I understand that that question is intended to address Mr. Loughrey's recommendation, not mine."

Do I take it you didn't know anything about that?

A. That's correct.

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

You say, "I do not recall any involvement in the

preparation of this document".

"C. The memorandum to Government dated 25th October 1995". You say "I do not recall any involvement with the preparation of this document".

You were asked to indicate "whether the Department had in its possession a copy of the final draft evaluation report as of 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 a copy of the final Evaluation Report in its possession at that time, please indicate precisely what document or documents were in possession of the Department".

You say "I am unable to help in this regard. I believe I was not involved in putting the matter to the Minister or to Government."

The question is slightly different. I think the question is whether you are aware as to whether there was a final hard text copy of the report in the possession of the Department on the 25th.

A. There seems to be a transposition of the questions and answers there somewhere.

Q. I think there probably is, yes. Maybe if

A. Because they arrived in two lots, you may remember.

But to answer the question, insofar as I can, "Please indicate whether the Department had in its possession a copy of the final draft evaluation as of the 25th

October 1995", the answer to that would have to be no,

I think we did not.

Q. The next question is for an explanation of contents of  
the

CHAIRMAN: We are just into a fairly long question,

Mr. Healy. It's just about four, and particularly

because we have hit a bit of bona fide uncertainty as

to the course of meetings, it's probably a good point

in ease of you, Mr. McMahon, maybe just to take up

your own recollections of the precise course of these

meetings. And if it's convenient to you, we will

resume your evidence at eleven o'clock tomorrow

morning.

Thanks very much.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

WEDNESDAY, 12TH MARCH, 2003 AT 11AM.