

A P P E A R A N C E S

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I N D E X

WITNESS: EXAMINATION:Q. NO:

Ed O'Callaghan            Mr. Coughlan            1 - 358

Mr. Fitzsimons            359 - 374

Mr. McGonigal            375 - 404

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THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,

25TH MARCH, 2003 AT 11AM:

CONTINUATION OF EXAMINATION OF ED O'CALLAGHAN BY

MR. COUGHLAN:

Q. MR. COUGHLAN: I just want to deal with one thing, Mr.

O'Callaghan. I think you are slightly concerned that

there may have been some public perception that you

were in some way withholding information from the

Tribunal or not doing your best to assist the

Tribunal, and I just want to deal with that in the

first instance.

I think you had that concern because of matters which

appeared, reports of the Tribunal's last day's public

sittings, and I think what you have there has been

no question of you not coming back to us, to the

Tribunal. You don't have to be brought back. That

was one of the matters that

A. I was concerned by some of the language that was used

and

Q. You are here now to deal with documentation which the

Tribunal has had but which was not adverted to until

the matters arose in the course of the Tribunal's

looking at further documentation, and this has been shown to you, and you have come here to deal with that particular documentation today.

A. I have, of course, yes.

Q. Isn't that right?

CHAIRMAN: And I think, Mr. Coughlan, it's also the case, since Mr. McMahon was the witness, that in fact the Tribunal has been made aware that sadly, Mr. McMahon has a close relative who is very seriously ill. And obviously, in these circumstances, the appropriate procedure is to revert to the further evidence of Mr. O'Callaghan.

And thank you for coming back in that context.

A. Yes, Chairman.

Q. MR. COUGHLAN: Now, Mr. O'Callaghan, I think what we have looked at and I think you have had an opportunity of looking at it and discussing the matter with the Tribunal as well?

A. Yes, I had the opportunity of discussing it with you a few days ago.

Q. A copy of the Evaluation Report, the draft Evaluation Report for the 18th October, 1995, and on the front of it, it has its "Shadow copied to Mr. Mahon", so there must have been a photocopy made and given to you, and you seem to have received it on the 20th October, 1995; isn't that correct?

A. That's correct, Mr. Coughlan. That's my handwriting.

Q. And that perhaps fits in with your own recollection of events, as far as your recollection, from your chronology, you were in Brussels on the 18th and the 19th; isn't that correct? You came back on the evening of the 19th, I think?

A. That's correct, Mr. Coughlan, yes. Having the opportunity to read this document, it refreshes the memory greatly, and I can recall it now much more clearly, yes.

Q. And I think the 20th was a Friday?

A. That's right.

Q. And because of family circumstances, you believe that any work you did on the document would have been on the Friday and perhaps on the Monday. I think you had very young children at the time, and it's unlikely you brought it home at the weekend to work on it?

A. That's correct. My second child would have been born just that summer, so I'd have two children, aged 2 years and three months and three months. So it's unlikely I would have been in a position to have worked on this over the weekend. So when I said received on the 20/10, 20th October, my view now is that any work I did on it, I did it on that day.

Q. On the Friday?

A. On the Friday, yes.

Q. And it would also appear that you must either then have either that day, that evening or perhaps on

Monday morning, briefed Mr. McMahon before you went to the meeting of the Project Team, which was meeting at around 11:30 on Monday, 23rd; is that correct?

A. That's correct. I think it's certainly the case that I would have sat down with Sean McMahon. Whether it was Friday afternoon or Monday morning, I can't say, but we certainly would have sat down and discussed this document.

Q. And I think you made before I deal with it, if you'd just go to the back of the book, there is a copy of the Evaluation Report dated 3rd October, which is 'Shadow Text to Mr. Sean McMahon'. You can see that, I think?

A. Yeah.

Q. Or you have seen it, in any event?

A. I have seen it, yeah. I have it open now, yes.

Q. And that is the report which was available for the meeting of the 9th October?

A. That's correct.

Q. And I think we have had a look at that, and there are just a few notes made by Mr. McMahon, I think, on that report; isn't that correct?

A. That's right. That's Mr. McMahon's writing, yes.

Q. And it seems to be the the few notes that are made seems to be consistent with Mr. McMahon's recollection and perhaps your own recollection that the first time you or Mr. McMahon saw the report of the 3rd was at

the meeting of the 9th, and you were reading it as the meeting commenced or got underway?

A. That's correct.

Q. It seems to be consistent with that, doesn't it?

A. Yes. I think I have said before, that report was not circulated to us prior to the meeting of the 9th, and our first sight of it would have been at that meeting.

Q. Now, if we go to the copy of the report, shadow text to Mr. Brennan, dated 18th October, which you had a copy of, I think if you open the first page of it, and there is just this is the executive summary.

Now, I am going to go through all the notes you made, and then we'll come back and perhaps deal with them in the first instance.

A. Certainly.

Q. I think first of all, you have a question mark, an underline and a question mark over the word "differentiator"?

A. Yes. It's a new word on me, and I am trying to figure out what it means.

Q. And if you go to the final paragraph, then, in the executive summary, which reads "By means of four different scoring methods which all generate the similar result, the evaluators have therefore arrived at the conclusion to advise the Minister to enter into licence negotiations with A5. A5 has been named by the evaluators as the best application measured

against the background of the approved evaluation model, techniques and criteria. If the licence negotiations with A5 cannot be concluded successfully, then licence negotiations should continue with the other ranked applications in descending order."

And you have a line through that.

A. I do indeed, yes.

Q. Do you have any recollection as to why you have a line?

A. I have no recollection as to why I did it. It might be, and this is a bit of conjecture now, eight years later, that I was entirely convinced that there were four different scoring methods employed. I think it was only one, really, and with variants of it. Maybe that was the reason, but that's with hindsight now.

Q. Yes, of course.

I think if you then go to page 1, which is the Introduction, just a little thing here. You say "Basically" this is the third paragraph "Basically the evaluation has been performed in accordance with the method 'best application' which is dubbed "beauty contest". And you have a square box around the word "method."

A. It isn't the most elegant of English, I think, to describe it like that, and I am just boxing it like that.

Q. Yes. If you then go to page 4, I think you there have

just under 2.2, the third paragraph: "This was further strengthened by a subsequent memorandum". And you are questioning what date was this memorandum "comprising a number of tender specifications including a number of mandatory tables".

A. It might have been a prompt to insert a date, at what point that was received.

Q. Then under the heading 2.3, the 'framing of the evaluation', you underline and question-mark the word "frame", and then you have you have a correction for 'finished' where you have 'decided on'?

A. I think I am trying to improve the English.

Q. If you go to page 5. You have a question mark, and you have underlined "Served comparative purposes".

This is in relation to the Eircell business case?

A. Yes. I think my question mark is I am not too sure what that point is or what point that's being made here.

Q. Then if you go to page 6, under paragraph 2.4, "The marking and the nomination of the best application", and if we go to the second paragraph here: "The next step in the evaluation was to invite for presentation", and you have "Issue an invitation".

That's an English or a stylistic matter you are taking up; isn't that correct?

A. It is indeed.



Q. Which was executed, and you have a question mark about that. And then it continues: "This was done on an equal basis for all, such that one hour was reserved to a presentation of the business case behind the application; one hour was offered to answer questions, which was equally posed and worded to all applicants; and one hour was reserved for PTGSM to pose questions to the applicants" and you have a question mark "that were equally posed and worded"?

A. I think the question mark is intended to convey that the again, the English of that could be improved to make it clearer.

Q. We then go down to the penultimate paragraph on that page, there, and it reads: "A draft report discussed on the 9th October has, following the incorporation of comments from the PTGSM, culminated in this final report. As unanimous support was given by the PTGSM to the results of the evaluation, Andersen Management International was requested to submit this final report. It was also decided to present the qualitative and quantitative parts of the evaluation in an integrated fashion in accordance with the agreed procedures; see appendices 2 and 3."

Now, on the left you have a bracket. You have a word underlined to the left; can you make out that word?

It's hard to make it out.

A. I can't. I have been looking at this now since this

document surfaced, and I can't make it out. At a stretch, it could be "dated", but I can't see what relevance I would have in putting down the word "dated".

Q. If we go to the right, you have square brackets around "As unanimous support was given by the PTGSM to the result of the evaluation, Andersen Management International was requested to submit this final report."

And you have a line opposite those two, a vertical line opposite those two lines in the text, and you have written "Not"

A. Sorry, do you want me to read it out?

Q. Yes, please.

A. I have written "Not true for me. I think it's "REC", I think it stands for "I don't recollect the question being asked."

And that's the case. The issue of unanimous support or otherwise wasn't an issue at the meeting of the 9th, because that was the as you recall, that was a meeting that afforded us a first opportunity to look at the Andersen report. So I am just putting down a marker that

Q. You didn't give unanimous support to the results of the evaluation at the meeting of the 9th?

A. I don't think anybody did.

Q. You didn't, anyway?

A. I didn't, anyway, and I am also saying that I don't recall the question being raised. And it doesn't appear in the minutes of the meeting, I understand.

Q. And can I take it you also never remember asking that a final report, you never remember requesting Andersen Management International to submit this final report?

A. No. I mean, Andersens were contracted to do a number of things, including producing a final report. It wasn't that it dawned on us at the meeting of the 29th that they were going to be requested to do at the meeting of the 9th.

Q. I want to be clear. This is being suggested as being the final report as a result of a unanimous decision being taken at the meeting of the 9th. As far as you were concerned, there was no such unanimous decision, and there was no question of a final report coming as a result or after that meeting of the 9th?

A. No. I certainly saw this report, the one we are now examining as being another Interim Report, and that there would be at least another one to follow that.

Q. Yes. And of course, I'll come back to that in a moment.

Now, if you go to page 10, and this is under the heading of the "Key Characteristics of Applications"; you know that each application was set out, and there was one of these pie charts in the report setting out the makeups of the various participants behind the

applicants.

And then, if you go to page 10, and under the figure 5, "The participants behind A5", and it says that "A5 will operate as an Irish limited liability company which has been incorporated in Ireland under the name Esat Digifone. The participants are two operators, namely Esat, who operate in Ireland on the basis of a VAS licence; and a Norwegian carrier, Telenor.

However, Communicorp Group is a shareholding company behind Esat, and 34% of these shares are held by Advent International plc. It is the intention of the applicant to make 20% of the equity available to institutional investors during the period prior to the commercial launch, including a 5% equity stake to Advent International plc. Furthermore, the application states an intention to make 12% available for flotation within three years. It is difficult to state the exact Irish ownership share. Before the flotation, it could be as a maximum between 55% and after the flotation it could increase to a maximum of 67%. In practice, the Irish share could turn out to become significantly lower."

And you have made a note in the margin of that; isn't that correct?

A. That's right.

Q. What does your note state?

A. The note says "What about cash injection of 30 million

by Advent for equity to bring it to 37% of Communicorp?" And I think what I am noting there is that I think in the Esat Digifone application, and at the presentation, the elaboration in the presentation, the funding for Esat Digifone the Communicorp participation in the consortium was to come by way of funds from Advent and that their involvement in Advent at that point would then bring it to 47% ownership of

Q. I think that's correct.

A. of Communicorp.

Q. We heard the presentations here. They had stated that there was irrevocable commitment of  $\frac{1}{2}$ 30 million, and that that would bring the shareholding of Advent and Communicorp to 47% but with Mr. O'Brien retaining a 3-to-1 voting strength vis-a-vis Advent in Communicorp; isn't that right?

A. Yes, I recall that. I think I am just writing that note at the side.

Again, if I could just put this in context, my comments here. I am writing this, I assume, on the Friday before a Project Team meeting on the following Monday, 23rd October.

Q. To discuss the results?

A. To discuss the report as coming

Q. Sorry, we'll go back. To discuss the results; isn't that correct?

A. Well, we are discussing the report which contains the result, yes; but the other context is that the intention, as I understood it, by the Minister was to go to Government the following day. So I am as we know, I was not a participant in the evaluation work that was done in Copenhagen, and here I am I suppose I am taking the opportunity to critically assess the report, to question it, to probe it, to test it, and that marginal comment there then is reading the text under A5 there. I am writing this point to myself, yes, I recall this from the application. I recall this from the presentation.

Q. Well, I think what you are asking is a question. You wanted some discussion to take place on this; isn't that correct?

A. Yes, and maybe even the that reference I am putting there, maybe that should be incorporated in the text as a sort of a fulsome explanation of the A5 position.

Q. Now, if we go to page 12, and this is, this commences on page 11 under paragraph 3.2, and under the heading "The basic philosophy behind each application". And this is where we can hear, at the presentations, Mr. Andersen asking people what type of philosophy they have: do they intend to be cost leaders, market leaders, differentiators? And he uses different sort of underlying philosophies to be pursued by the various consortia. I think you remember that?

A. I do indeed, yes.

Q. And if you go down to that paragraph, the third-last paragraph, and this is something which I think you know, you take up again in this report when it comes to the tables. But the third-last paragraph, it's where you just have underlined the word "modest"; do you know that one?

A. We are on page 12, okay.

Q. Page 12. It reads: "Subsequently A3 ultimately aims at a mass market with an expected private consumer penetration representing above 50% of A3's subscriber base at the end of a 14-year planning period. The penetration is substantiated by an advanced segmentation based on the identification of specific Irish types of customers. Furthermore, A3 intends to play a major role among the distribution channels with the establishment of a wholly-owned service provider under the brand 'Person to Person'. A3 does not opt for a market leadership measured by a long-range market penetration ambitions, as A3 only projects to obtain a modest 45% share of the GSM market."

And you have underlined this and put an exclamation mark.

A. That's right. And I seem to recall actually making that underlining and exclamation mark. I would not have thought that a 45% share of the GSM market for a newcomer competing with the incumbent would be modest.

I can't recall what the comparative data would have been in Europe at the time, but I would have thought myself, thinking back on it, that 45% would have been a very good demand to reach against an incumbent. So I am I suppose I am putting down a marker here against that sort of qualification or the use of that adjective.

Q. Now, I think if you go over the page, then, I think you have a question mark there above "A5 with Esat as the Irish fixed" I think that's probably "fixed line provider", would it be, or it's probably just a matter of style, is it, or

A. I am not sure. The in terms at the time, in terms of the provision of full telecom services, there was only one operator, and that was Telecom Eireann. I wouldn't have described Esat Telecom at the time as being a fixed line provider in all that that term would mean. So I am raising a question about what does that mean? I am putting a question mark over it, and it's something I am going to ask at the next opportunity.

Q. And it does go on to deal with the question of A5, in general, offering market leadership. Now, that only arises from something Mr. O'Brien said at the presentation, which of course he was quite entitled to do, but certainly doesn't emerge from the bid which was submitted, which I think, again, opted for a very



good approach to market against the incumbent. I think they were talking about 48 or 49% at that time?

A. I don't recall the precise figures now. But I have a general memory that I think they went for a higher target than Persona.

Q. Yes. Now, you then the next paragraph, "The ambitions are supported by the technical plans, and the level of experience of the consortium partners is reflected in the initial setup of the organisation, including, but not limited to, the top-level management. The financial plans, however, indicate some weaknesses against the background of market leader ambitions, in particular with a degree of solvency below 0% during some of the decisive initial years."

And you have a square bracket enclosing that final sentence, and you have an asterisk?

A. I do, and that's probably in reference referring back to the statement that there is a degree of solvency below 0%, which is a negative solvency. Now, I would bring to this only a layman's understanding of accountancy, naturally enough, but I think we are all very familiar with terms of "solvent" and "negative solvency", and I would be worried about something like that, so that was something I was marking for my own use that I would raise if I got the opportunity to do so.

Q. If you then go over the page, and this is part 4, "The comparative evaluation of the applications". And it commences: "This chapter intends to provide a presentation of the results of the comparative evaluation. Each section deals with one of the identified aspects comprising an overview of the various dimensions attached to the aspect together with the assessments (marks awarded) of both the dimensions and aspect."

If you go down, then, to the third paragraph: "The results of the comparative evaluation presented in the following section follows the same logical framework as used to structure the evaluation, i.e. the aspects, dimensions, indicators and subindicators. This somewhat mechanistic approach has been necessary and adequate in order to treat the applications on an equal footing. The report therefore reflects the summarising results gained from the discussions in the ten sub-groups, one for each dimension. More elaborated minutes and documentation for the marks awarded have been circulated among the sub-group participants".

And you have a square bracket and the word "Delete".

Is that information you got at the meeting, or is it something you had before the meeting?

A. The information being the text?

Q. Well, do you see there "More elaborated minutes and

documentation for the marks awarded have been circulated among the sub-group participants"? Did you ever see such more elaborated minutes and documentation for the marks awarded?

A. I don't recall such minutes or documentation, certainly, being circulated to me. As to why I put a square bracket around it and the word "Delete", I don't know. I may have taken the view that in a final report, that it was unnecessary to say that.

Q. Well, do you know whether it's accurate or inaccurate, what's stated there?

A. I don't, no.

Sorry, I can say that I would be pretty sure I was not the recipient of more elaborated minutes and documentations for the marks awarded, that I can recall, anyway.

Q. You see, I suppose if you had been in possession of what was stated here, that would have been a holistic approach, in that the whole Project Team had sufficient information to enable them to have a round-table discussion on the matter?

A. Well, obviously, I suppose, if there was more information, then there would have been the chances are there would have been more of a discussion, yes.

Q. Now, under the heading "Marketing aspects", it reads:

"The dimensions of the marketing aspects are identified as market development, coverage, tariffs

and international roaming plans."

And you have brought an arrow up from that sentence, and you have raised the query "Were these ranked in section 19 on the basis of importance?" Do you see that?

A. I do indeed, Mr. Coughlan.

Q. And what has happened here is, am I not correct, that what Mr. Andersen did was that he broke these matters up into aspects in accordance with his own model; isn't that right? He takes marketing aspects and he takes market development, coverage, tariffs, international roaming plan. Now, market development, coverage, tariffs, and international roaming plan are all part of paragraph 19 of the RFP; isn't that right?

A. I think so, and I think that's

Q. That's the query

A. That's the reference I am making back.

Q. Yes, but in the manner whereby he treats them in his evaluation model here, you raise the query "Are these in the order of priority or the basis of importance?"

The descending order in the criteria; isn't that right?

A. Yes.

Q. And of course the way Mr. Andersen has them here, they are not; isn't that right?

A. I think that's the case. And

Q. We can see very simply, tariffs in this marketing

aspect are placed at number 3, and coverage is placed at number 2. Of course in the RFP, tariffs has a much higher ranking; isn't that right?

A. That's right.

Q. And coverage has a lower ranking?

A. Yes.

Q. So you are now raising a query here about the methodology employed; isn't that correct?

A. I am not sure if I would go as far as that, Mr.

Coughlan. I think I am simply raising the question, an issue with myself, and then to be elaborated on as

I got the opportunity. Have these been laid out in

the order which they were established under paragraph

19 of the RFP? Because obviously something struck me in reading it that they weren't in the right sync.

And maybe it was just that question about tariffs that

tariffs was considered to be such a very important

matter that here it comes in as number 3; quite

clearly it was much more important than that.

Q. But if you continue down under the table, then, you

see, you have, where there is text, you have "Clearly

A3 and A5 are the strongest applications on marketing

aspects. A5 has the more elaborate approach to market

development," and then the text continues "The

dimension with the highest priority and the highest

weight", but you have inserted here "Part of the

dimension with the highest priority and highest

weight." And then he refers to paragraph 19 of the RFP document.

Doesn't this indicate, Mr. O'Callaghan, that you were following this very closely, the methodology which was being used and how the evaluation, the comparative evaluation of the applicants was being dealt with?

A. I think what I am doing here is, if you go back up to 4.1, "Marketing Aspects", I think I have noticed that the order in which they are put there and the order in which they appear in the table is not the order in which they had been in paragraph 19, and that should be put to rights. And then I think what I am saying in that last sentence, that where I am saying "Part of", again, that's an attempted correction by me, because I am not trying to change the text here. What I see is that those words maybe have been left out of the drafting by Andersens.

Q. Well, it is somewhat significant, is it not, Mr. O'Callaghan, because what you are looking at here is something which is not, to your eye, in the descending order as indicated in the descending order of importance as indicated in paragraph 19, when you look at this; isn't that correct?

A. Yes.

Q. You can see and we don't know, but do you know whether there were any weightings attached to this particular comparative evaluation on marketing

aspects?

A. Well, the weighting question was settled, I think, or established before I took an active participation in the Project Team. My understanding was that documentation going back to May and June of that year would have established the weights to be used.

Q. We know the weights which appear in relation to the criteria from the notes to files and the circulations conducted by Ms. Nic Lochlainn and the appropriate correction in those weightings after the intervention of the EU and the capping of the licence fee at 15 million. We know of those.

A. Yes.

Q. We also know of the weightings which appear to have been discussed and agreed at meetings of the Project Group which did you not attend, in May and June, I think, of 1995, and these are the ones in the evaluation model of Mr. Andersen; isn't that correct?

A. Yes.

Q. But this is a qualitative this appears to be the result of a qualitative comparative evaluation. Now, do you know, or can you recollect any weightings being agreed by the Project Team in relation to these qualitative matters?

A. I don't recollect specific weightings being discussed or applied.

Q. Do you know if there were any weightings attached to

this particular table under the heading "Marketing Aspects" and on which there was a comparative analysis conducted and which you noted that tariffs is certainly in the wrong place in terms of a descending order of importance under paragraph 19?

A. The I can only assume that what the text says here that, "A5's most elaborate approach to market development... highest priority and the highest weight." I can only assume from that that weights were applied, but I do not know what those weights were.

Q. Did you ever inquire?

A. I don't recall that I did.

Q. Now, isn't it if you just go above to the table, do you see the B which has been given to A1 in the marketing aspects subtotal, and you have a C, a line down and a C. Now, this is your own work, I presume?

A. Yes.

Q. And doesn't it appear that you were trying to do some work or come to some understanding of what was going on here?

A. Yeah. I think I was looking at the there is a score of C, B, C, A, and that's been given an overall mark of B. And I might be suggesting that well, that could be C as well. And I don't think my thinking went much beyond that, Mr. Coughlan.

Q. Well, can I ask you this: Could you read and



understand that table at all, bearing in mind the issues you identified in relation to it, that it wasn't in the descending order as referred to in paragraph 19? Here you are you could go through and probably do an exercise in relation to many of these. You are raising the question of whether that is a C; you could perhaps raise a question in relation to A2, whether it should be a C or a D, and go right along, couldn't you?

A. I could, yes. I mean, whether I'd be right or wrong is another matter.

Q. But just on the way it's presented here, and that is without you having any understanding that there was any weightings attached to these, or whether there was an equal weighting attached or how they were applied at all?

A. Yes, I am approaching this report in a critical frame of mind. That would be my job. That's the way a civil servant works regularly. Don't take things for granted. Read them. Criticise. Bring a critical framework to bear on them, on the document, and poke, probe, ask questions, act as devil's advocate. And I think that's what I am doing here.

Q. Yes. And of course that's your role in the Project Team as well, your part of an adjudicative process. You are sitting around, you are probing, you're questioning and hoping to arrive at the correct

decision at the end of the day. That's the way the system is designed to work?

A. Yes.

Q. With the benefit of hindsight, and even looking at this table today and all that you have been through, can you still work out what this table is about?

A. Well, I don't know whether the weights sorry, I assume that the weights were applied at this point, that what we are looking at is a weighted table.

Q. Yes, okay.

A. That's an assumption, again; maybe I am wrong. And okay, the issues aren't in the descending order of importance, I agree, but I mean ultimately, there is the subtotal, the subtotal result there which I think is clear. It puts A5 as being the leader of that table, and A3 and A1 as co-equal.

Q. What did A/B mean? If you were compensating there in A5, could I just ask you that, you get two As and two Cs, that could as well be a B as an A or an A as a B?

A. Looking at it right now, yes, you could argue for a B there, two As and two Cs, and go for the middle letter.

Q. If you look at, for example, A4, that's fairly easy, weren't they; they were all Cs, so that's a C?

A. Yes.

Q. That's fairly easy to pick out.

A. Yes.

Q. If you look at A6, you get a C, a D, an A and a C, and that's a C. Is that the same as A4? You look at A2, you get a C, C, and two Ds, and that's a C. You then look at where you suggest that A1 should be a C, you get a C, a B, a C and an A. All I am asking, can you, looking at this now, be of any assistance to the Tribunal as to an understanding of this particular table?

A. It could be clearer, I think, if we knew at what point the weights were applied. If the weights were applied after they were summed in other words, if you take A6, for argument's sake, C, D, A, C, and whatever that comes up, let's say, initially, that came out as a B, and weights were applied and it turns into a C, I don't know, Mr. Coughlan. I mean, I am literally trying to think on my feet here.

Q. I am just trying to understand what members of the Project Team understood at the time. Even today you still have difficulty in understanding this particular table, I suggest.

A. I have difficulty understanding a lot of this report, yes.

Q. Now, could I suggest that what you are if you go on to the text where you insert "Part" where the text suggests "A5 has the most elaborate approach to market development, the dimension with the highest priority and the highest weight." And then "confer with

paragraph 19 of the RFP document," and you are making the point that this is only part of the dimension.

A. Yes, I think I am looking at the table right above it again, and we have four items here. We have got market development, coverage, tariffs and international roaming plan, and one of those items has been taken out, has been referred to specifically. A5 has the most elaborate approach to market development. That's one of the four. Then it says "The dimension with the highest priority." And I am reading that at least as being a typo, that what they intended to talk about was the table as a whole.

Q. What I might suggest to you, Mr. O'Callaghan, is probing. Because what this text is purporting to do is in the qualitative analysis, give some explanation of what is going on behind any evaluation that's going on, whether it be quantitative or qualitative. And if you see what you were doing here is you are probing this, and on your probe, on your probe, tariffs should be the highest, perhaps, and therefore, how does A6 and A2 get the same, when A6 gets an A and A2 gets a D?

Do you see the point on tariffs, do you see that?

A. Sorry, do you mean the overall score or the specific tariffs one?

Q. If you take it that tariffs has a higher ranking

A. That's right.

Q. and you get A6 gets an A and A2 gets a D. Let's stay away from A5 and A3 all together.

A. Okay.

Q. Just looking at this particular table and how it works, can you explain to us your understanding of how this table works? Or what explanations were you given as to how it works, in fairness to you?

A. I don't recall any specific explanations as to how this table worked. I can only assume that if A6 had a score of A, then it was considered that A6 had the best proposal on tariffs.

Q. But if you look at A2 and A6, just take those two columns. They both get a C for market development. A2 gets a C for coverage, which has quite a low ranking on the descending order of priority, isn't that correct, on the RFP document?

A. I can't recall them now, but

Q. I can tell you it does. It certainly is significantly lower than tariffs; do you understand the point I am making?

A. Oh, yes.

Q. And they both get a 2 for tariffs, and A5 gets an A. Do you see the point I am making, that if you don't understand what weightings are being if any weightings applied here or what weightings are being applied here, how can you understand what subtotals are being arrived at in relation to marketing aspects?

Do you see the point?

A. Yes. I don't know at what point the weights are applied. Are they applied at sub-dimensional level or when they are grouped together? It might make a difference.

Q. Well, I don't think, when you come to the eventual tables, that there were any weightings applied, or appearing I am not saying "applied", appearing on any tables for the subtotals. We'll see them as we go on, I think in Table 18 or something like that. But you don't remember receiving an explanation or you can't recollect receiving an explanation about this particular table?

A. I certainly can't recollect it, anyway.

Q. Very good.

Now, if you go to page 16. And it's the second-last paragraph, you can see "As also seen from figure 8, the trend line illuminates a striking similarity among the projections concerning the projected number of GSM II subscribers in the applicant's own network.

Clearly A5 has the highest long-range market penetration ambitions, whereas A3 quotes more modest projections with less than 70% of the projected subscriber base projected by A5 in year 2009. There is hardly any" and you have "difference"; do you see that here?

A. Yes.

Q. "Among applicants when the early years, for example, year 4 is taken into consideration. A3, however, compares slightly better during the early years, including year 4."

And you have on the right, you have written "So what?"

Is that correct?

A. That's right. I think that comment goes back to something I said earlier about a reference to A3's modest ambition

Q. It didn't impact on you as being a difference?

A. Well, it certainly didn't impact on me as being a modest ambition for a new entrant up against an incumbent. But I think my problem with this particular sentence is as well, I would have preferred if the comment about A3's projections, modest or otherwise, were benchmarked against a European norm, some sort of an objective benchmarking standard.

Q. Rather than relative?

A. Rather than relative to another competitor.

Q. Fair point. That's a fair point.

A. Because I can't see what that proves at all.

Q. Yes. I understand your point, that relative comparison doesn't give you a benchmark.

A. It doesn't.

Q. But against a European norm, or some other?

A. At this stage, there was quite a history in Europe of new entrants coming in to challenge the incumbent

mobile operator, and that would be available as to how they had succeeded or otherwise in the first number of years. In the Scandinavian countries, that was quite advanced at this stage, certainly in Norway and Sweden they would have two mobile operators at this point. I think I would be happier if I saw a comparison to a European benchmark here.

Q. Yes, and that is something you could have applied in your mind across all six applicants, then, rather than a relative comparison?

A. Absolutely, yes, yeah.

Q. Now, if you go to page 18, I don't know what yes, you see under the table, you see in the left-hand margin, "The marks awarded under each indicator are summarised in Table 2. The demand indicators are reflected in the first two indicators", and you have underlined "Indicators". Is that "Projections", or

A. I think I am probably crossing out "indicators", Mr. Coughlan, and suggesting that "projections" might be a better word to use to get the point across.

Q. Fair enough.

If you then go to page 24, and above the table you can see the third paragraph: "When the evaluation and the award of marks on these ten indicators had taken place, several supplementary analyses were conducted and the results are ... conclusion to be drawn from this is the applications with time through meters



principles and special offers such as discounts are in fact unfairly disadvantaged by the harder quantitative basket comparisons. This is particularly the case of A5 and to a lesser extent A1, A3 and A6".

And you have a circle around "unfairly", and you have "delete".

A. Yes, I thought it would be strange in a report to have a sentence that

Q. Treating anyone unfairly?

A. Exactly. It wouldn't say much for the report if it was to say that more than once.

Q. Now, I can understand your reasoning, but this is coming from Mr. Andersen?

A. Yes.

Q. And he says in his text that they are unfairly disadvantaged; do you know whether that's a fact or whether it's not? I can understand that you didn't want any work that compared people that would contain any element of lack of fairness?

A. That was my concern, yes.

Q. But do you know whether did you ask or get any explanation about that?

A. I don't recall if I had the opportunity to raise that question.

Q. Right. In fact I'll come to that in a moment, because well, perhaps we'll just go through your notes on the report first.

If you go down to the final paragraph, so, on page 24:

"The difference between A3 and A5 is quite small, which has been confirmed by a supplementary analysis (see Appendix 6)." This relates to the dimensions, tariffs, I think, isn't it?

"It could be questioned whether the low tariffs proposed by A6 is consistent with, for example, its revenue projections and an IRR at an appropriate level. The answer to these questions, however, has been transferred to the risk analysis presented in chapter 4". And you have "confusing"; is that right?

A. That's right. It certainly confused me, and

Q. Did you ask for any clarification, do you remember?

A. Well, this brings us to the meeting of the 23rd. The only opportunities that were available to sit down and discuss these issues were the Project Team meeting on the 23rd. And a meeting that I recall on the 24th.

Precisely what opportunities I got to raise issues like this, at this remove, I can't say. But I did also, as I said last week or the week before, I had the opportunity for an hour on the 24th to go through some textual amendments or suggested textual amendments with Martin Brennan, and that might have been one of the issues that I might have said "Look, this needs tightening up; it's very confusing".

But specifically, I can't recall, Mr. Coughlan.

Q. Very good. Now, again, if you go to page 25, it's

just a textual matter, or is it? The third paragraph, do you see where you have "Business orientated graph presented in figure 12 outlines the same kind of general brackets", and you have "results of" question mark.

A. The sentence doesn't make any sense. I have no idea what "the same kind of general brackets" means, and I am suggesting did he intend to say "results" here?

Q. Now, again, if you go over the next page, to page 26, you can see half-way down, it just seems to be a typo, or is it? You see you have crossed out "Chapter 4" and you have put in "5". Do you see that?

A. Yes, that must be an error or a typing error. Maybe I am wrong. I haven't gone back to check on it.

Q. But that seems to be what you are

A. Yes.

Q. If you go over the page, and it commences on page 26, and it's 4.1.4, "International Roaming Plans."

"The plans for international roaming, the innovative GSM feature that may extend the service when Irish GSM customers are abroad and then foreign GSM Communicorp communicators visit Ireland, have been described in the applications in such a widely different way that it's not been possible to carry out a quantitative comparison of the applications. Admittedly the applicants face a number of imponderables prior to the closing date, and it is impossible to conclude a

substantial amount of roaming agreements without having the status as a licensee."

Understandable?

A. Yes, indeed.

Q. Now, it goes on: "The valuation of this dimension has therefore been carried out in an entirely qualitative evaluation with focus on the degree of creativity and commitments in the applications by way of the following indicators: The understanding of GSM roaming issues, the commitment of European GSM roaming, and additional roaming features."

And then there is a table. And I'll come back to the table in a moment, because we go down to the text: "A significant difference appears between the applications concerning this dimension, with A1 as the best and A2 as the least satisfactory application.

The other applications, i.e. A3, A4, A5 and A6, all have received moderate marks.

"The first indicators, the understanding of GSM roaming issues, has been scored on the basis of on what has been reflected in the various applications only. A1 shows by far the most understanding, with the considerable amount of details contained in both the technical and marketing volumes of the application. A1 therefore deserves an A. A2 and A4 show no understanding of the complexity of the negotiating process necessary to set up international

roaming, and they have therefore received Es. A5 displays a good level of understanding gained from relevant experience and allows for a time-frame for concluding roaming agreements which demonstrably turned out to be realistic. A3 also displayed good understanding but seems to rely on an extremely tight time-frame in order to include roaming agreements.

While A6 displays considerable knowledge of the technical requirements for the establishment of roaming, no mention has been made of the timetable to allow for the conclusion of roaming agreements."

Now, you have a note in the margin, and it relates to the portion of the text saying that "A3 has a good understanding but seems to rely on an extremely tight time-frame in order to conclude roaming agreements", and you have "What about arrangements with Telia?" Is that correct?

A. That's correct.

Q. Telia was part of the Unisource or the

A. Persona

Q. The Persona consortium, or a portion of that consortium?

A. Yes.

Q. And had significant probably the most significant agreements all over Europe at the time, at that time; would that be correct?

A. Well, my understanding was that Telia, while they were

part of the Persona consortium, were separately part of a European-wide consortium called Unisource, which would have involved the Dutch telco, KPN, and the Spanish one, Telefonica, and I think maybe the Swiss Telecom company as well. And I think the import of my point that I am making in the marginal comment is: Telia in itself would have been established a number of years, its mobile division, and it would have had roaming agreements with other countries. I assume that in its interconnection with the Unisource group, that it would have been able to piggyback on the roaming agreements that these individual companies would have set up separately; and I suppose I am raising the question: Well, has that been taken into account, that the multiplicity of roaming agreements that would have been available; and I suppose I am also asking the question, was I right in thinking that?

Q. Because, if you go back up to the table now, here, if you look at this text, and we understand from the text that this was purely qualitative, isn't that correct, purely qualitative?

A. Yes, that's what it says I think on the previous page, yes.

Q. And what it is based on is not, again, any benchmark, but seems to be, just reading the text, a relative assessment of the applicants; isn't that correct? It

appears to be?

A. Yes. I don't think they are alluding to any objective benchmark.

Q. No.

A. No.

Q. Now, and going to the text, you in fact raise a question mark about awarding a C to A3; and if you go down to your marginal note, they seem to be related.

Isn't that correct? You are questioning as to whether a C is appropriate or whether they should get something higher; isn't that correct?

A. Yes, looking back on it now this all happened, you'll appreciate, a long time ago.

Q. Yes, of course.

A. I think it's likely that I was that I would have read the text, made that point about Telia and the multiplicity of roaming agreements that Telia would have been privy to, and maybe looked at the table and said C, is C right there? Am I right in thinking that? Is that okay? Is there a question mark there? So I am raising it as a question, as I say, like most of what I am doing here.

Q. Now, if you turn over the page, then, under the heading of "Technical Aspects," you can see that there is a table?

A. Yes.

Q. And under the radio network architecture, network

capacity, performance guarantees, frequency

efficiency, you can see the way it's set out?

A. Yes.

Q. And then there is a subtotal given. And you have a

note on the right: "This is not the same weighting as

Table 17." Is that correct?

A. That's correct. That's what the note says.

Q. We'll come to Table 17 in due course, but just do you

have anything to

A. Since this document was brought to my attention last

week, I have looked at that a number of times. I have

looked at it by reference to Table 17, and I cannot

see I cannot see the reason why I made that

comment. I obviously had some reason for saying it.

Q. Perhaps if we just look at Table 17 so.

A. Okay.

Q. Which is on page 50. Sorry, just first of all, can I

ask you, as regards the technical aspects, do you know

what weighting

A. I beg your pardon?

Q. Looking at page 28 for the moment, and the table

"Technical Aspects", do you know what weighting, if

any weighting, was applied there?

A. Right now, I don't.

Q. Do you ever remember being told?

A. I don't recall being told.

Q. Therefore, if you go to Table 17, which is on page 50,



then. Now, you will see that on Table 17, the weights which apply to these are: Radio network architecture is 10; network capacity is 10; performance guarantees is 5; and frequency efficiency is 3.

Now, do you know why you raised the question sorry, you didn't raise the question, you made a statement, or sorry "This is not the same weighting as Table 17". Did somebody tell you something about what was happening there?

A. I suppose that's a possibility. I can't see now myself the reason why I made that comment. But just as you were speaking, I was thinking to myself, is this something that arose maybe on the 23rd, and I jotted it down? That somebody said, "Oh, by the way, there is a mistake here; this is not the same weighting as in Table 17. Something has to be corrected".

But quite honestly, that's conjecture on my part at this remove. Because I can't I can't see myself the reason why I wrote that.

Q. Well, if the weightings, or if there were no weightings in other words, if there were equal weightings it perhaps would be incorrect to translate or transfer these back on to Table 17 or bring them on to Table 17 and apply the weighting then; do you see the point, that the weightings have to be at the time that you're making the or

conducting the comparative evaluation and awarding the grades to arrive at a correct understanding; isn't that correct? In a correct ordering of the applicants?

A. Well, I have had a look at the a very quick look at the subtotal of the technical aspects on the Table 6, and I think they they are the same subtotal scores that are in Table 17 for those particular items. I could be wrong.

And that being the case, then I am even more puzzled as to why I made that comment. But I repeat that maybe it was something that was said that that was some error in that particular table about weightings and that that had to be corrected.

Q. Right. Now, I think then you continue down on that page

A. This is page 28, Mr. Coughlan?

Q. Now, if you come to the final paragraph above 4.2.1, you have there that the "Licence conditions for the finally selected applicant should be made to reflect the technical solution upon which marks were awarded".

And it's just a point you make: "This should be true for all aspects", so that in respect of all aspects, you say that there should be the licence conditions to lock the people into what is stated, what had been

A. Exactly. What I am thinking of is that applicants can make all sorts of wonderful flowery promises, and all

I am saying that make them deliver on it. Stitch them in as licence conditions. And that's not on the technical side, but on the other issues as well.

Q. Yes. If you go to page 32, I think it seems to be just under the first full paragraph, I don't think anything I can't remember reading it myself

A. This is page ... ?

Q. 32.

A. Second paragraph. The words say "Due to time element."

Q. Do you know what it means?

A. Well, I think in the context of the text just before it, "A5's solution is almost as good but seems to prefer construction of a new infrastructure rather than making use of existing facilities. This is considered slightly less favourable."

And I am adding the words "Due to the time element."

In other words, it will take longer to roll out a service if you have to construct your infrastructure rather than use existing infrastructure. So I just feel that those words are needed to spell out the implication of what's being stated.

Q. Now, if you go to page 36, I don't think you have any notes in between. And under the heading "Experience of the Applicant", it says "The dimensions experience of the applicant has been evaluated entirely on the basis of the application; consequently the award of

marks is based on information which is identified in the application. Most of the evaluation is based on qualitative information, although it has also been possible to compile some quantitative information."

And then there is a table. You can see that?

A. Yes.

Q. And you can see that under "Other cellular network occurrences", A5, A3, there is a 5; A1 there is a 1, and you have a question mark. Do you see that?

A. Yes.

Q. And then under "Other cellular experience points", A3 has a 4, and A5 has a 2.

A. Yes.

Q. Do you know what was going on there?

A. I don't know why I put the question mark on the side, because quite clearly the text immediately below it is explaining why A3 has

Q. "The widest international experience in OECD member countries, mainly due to the Unisource backer, which has a well established basis as GSM 1 in the home countries of Telia, KPN, Swiss Telecom and Telefonica".

That's the point you were making as well earlier on, not just about experience, but of the tight time-frame envisaged for them to conclude roaming agreements?

A. Yes, yeah. But as to why I ring those numbers and put a question mark to the side, I don't know, because the

text quite clearly states the text reflects the

scoring that's there.

Q. Yes.

Now, go to page 41, and this is a table which is in that portion of the report dealing with financial key figures; isn't that correct?

A. That's right.

Q. And there are various grades on the table, and under the heading "Solvency", there are grades awarded across, A1 A, A2 E, A3 B, A4 C, A5 D, and A6 C. And you have put a circle around the D there; isn't that correct?

A. That's right, I have, yeah.

Q. And then if you go down into the text, "Turning to solvency, the most significant findings are two applicants with a degree of solvency below 100% with solvency expressed as the equity in percentage of the total balance. A2 has projected a negative solvency in 11 out of the 14 years considered, whereas A5 has projected three years of negative solvency.

Invariably, A2 has been awarded an E and A5 a D. A1 has projected a solvency of above 30% during the entire period."

Now, you have there a note under A5 having a projected negative solvency for three years, you have an asterisk, and you have a question mark or a circle around the grade awarded; isn't that correct?

A. Yes, that's true, I have a circle around the grade awarded and I have underlined the text referring to negative solvency.

Again, coming back to what I said earlier, I would have very much a layman's understanding only of accountancy, but terms like "solvency" and "insolvency" I think are ones that would concern me in any business like this. So I am probably putting an asterisk on the side to ask about that.

Q. Do you remember asking about it?

A. I do, in fact. I remember asking Michael Andersen about it.

Q. Was that at the meeting of the 23rd?

A. Well, I have been thinking about that, and I think that was the only chance I had to talk to Michael Andersen, because Michael was at the meeting of I think the 9th.

Q. For a short period of time, it would appear?

A. Yes. I have read the transcript.

Q. Just looking at some of the memoranda which he gave us, he states that he arrived at the meeting of the 9th and went to the wrong room, or was directed to the wrong room or something like that, and he only spent a short time at the meeting of the 9th; would that be correct?

A. I don't recall how long he stayed. I can't recall how long the meeting went on. But he was certainly there

for the earlier part of it, anyway.

Q. What about the meeting of the 23rd; can you remember how long he was there?

A. Again, I can't first of all, I think he must have been there, because I have a very, very clear recollection of asking Michael Andersen this question concerning negative solvency. And the only chance I would have had to do it I am pretty sure I didn't ask that question on the 9th because we had only just got the report my eyes wouldn't have fallen on that particular phrase. The only other project meeting in fact that was held was on the 23rd, except for the meeting on the 24th, and I have seen the transcript of evidence by Maev Nic Lochlainn, who puts Michael Andersen there, and I think Sean McMahon puts him there as well. So I assume he was there.

I think your precise question was, do I recall how long he was there? I don't think he was there all day. I don't think he was there for the duration of the meeting. He might have been there for the morning.

Q. Do you know why he left?

A. I don't know, I don't know. That meeting I think went on until around the 7.30 mark.

Q. This was the first meeting where the full Project Team were discussing the report; isn't that correct?

A. The first meeting after the one of the 9th?

Q. Yes.

A. Yes.

Q. The first meeting where there was a full discussion in relation to matters. Your side hadn't a chance to read it?

A. Exactly.

Q. And Michael Andersen was there, you think for a short time, and left?

A. I don't recall Michael Andersen being there for the full duration. I think he left at some point.

Q. Do you remember you say you remember asking him about this question of negative solvency. Do you remember what reply you got from him?

A. The precise reply I don't recall, but it was to the effect that it was nothing to be concerned about, or it was nothing to worry about.

Q. I see.

A. Now, whether he said that and again I am surmising whether he said that this could be taken account of or taken care was in drawing up the licence or not, I don't know. I know he made some reference to that in the final, final report. But the answer he gave me was to the effect that this was nothing to be unduly concerned about.

Q. Do you remember

A. He may have given me a technical answer which might be an accountant's answer.



Q. Do you remember the accountants joining the discussion about this, Mr. Buggy or Mr. Riordan?

A. I don't. Now, they might have, but if they did, it hasn't stayed in my memory.

Q. Do you remember the presentation? I know you don't remember it in detail, but I think you have seen the transcripts of the presentation; isn't that correct?

A. Yes.

Q. This was the first question which Mr. Andersen raised with Esat Digifone, do you remember that, from the transcripts?

A. Precisely now, I don't. Obviously I take your word for it.

Q. And it involved Mr. Peter O'Donoghue, the financial adviser of Esat Digifone, taking over the answering of the question when Mr. O'Brien commenced answering it and giving an explanation, do you remember that?

A. Vaguely now, I remember again probably from reading the transcript, rather than memory, yeah.

Q. Now, if you go to page 44, "Sensitivities, risks and credibility factors".

And it has "A5 maybe weakest point is not related to the application as such but to the applicant behind the application, or more specifically to one of the consortia members, namely Communicorp, which has a negative equity."

And you have a line there opposite that particular,

and then it goes on: "Should the consortium meet with temporary or permanent ... situation turn out to be critical in particular concerning matters relating to solvency."

You have an asterisk opposite that; do you see that?

A. I do, again, because again it's probably related to my question on the previous page about negative solvency.

And I just I am also not sure whether there are two separate points here or just one point being made by Andersen, a question of negative solvency and a question of negative equity, or whether they are synonyms for each other.

Q. Well, the solvency as explained was that at the presentation, was that whilst the company itself would be insolvent for three years, it would have guarantees from its backers. There may be two points raised there; it may be that, and it may be the negative equity of the Communicorp side of the matters, it may be. But you can't remember any discussion about this?

A. Well, specifically on that point on negative equity, I don't. I do recall raising the question on with regard to negative solvency.

Q. Well, in fact, it's interesting, when you come down I think you told me before that when you put an asterisk like that, it's something you always want to come back to discuss?

A. Usually, yes. Well, if I really want to be sure that

I can find it, it might go to the top of the page.

These were the days before Post-It notes, which makes it much easier, but yes, I mean, an asterisk is a point that I want to come back to.

Q. Now, the next paragraph is it's just English you are concerned with, I think; isn't that correct?

A. Yes.

Q. And then in the next paragraph, you are just not clear what is being stated there; is that correct?

A. Yeah, I think the English is just that the point is not clear at all, and I am probably making a note to myself that this is something that should be improved on to get the point across.

Q. Now, going onto the next paragraph: "In addition" this is looking at the sensitivities, risks, and credibility factors and what has been identified above, as you say, of the negative solvency, and perhaps negative equity, and you have marked that for yourself.

Then going on to A3: "In addition, A3 has a similar type of problem as A5, namely the extremely small equity of Sigma Wireless. It is questionable whether Sigma Wireless can bridge the gap between the weak degree of solvency and the general liability as a comparatively big shareholding in a business that requires patient money and a high exposure".

And you have written after the sentence "In addition,

A3 has a similar type of problem as A5", and you have written "But it doesn't have negative equity". Do you see that?

A. Yes, I do. And I think what I am saying there is it's saying that there is a similarity or there is an equivalence in terms of problem here between A3 and A5 with regard to the point, I think, being this small equity issue. I am probably drawing attention to myself that one of them Andersens has pointed out that A3 has negative equity, but it hasn't pointed out that A5 has negative equity. So I have a difficulty with them saying that it's a similar type of problem.

Q. They continued and persisted. You see, this is a very significant paragraph in the whole report, Mr. O'Callaghan, because what this is this is the qualitative matters being considered and sensitivities, risks and credibility factors being assessed or addressed. And what is being done here is to point out what the weaknesses are and explain how they could be dealt with or what they are. But this particular sentence or paragraph, which seems to be incorrect, you were drawing attention to it yourself here, but they don't say negative equity.

If you go deeper into it, in the application on the presentation, first of all, Sigma only has a 26-odd percent shareholding in the particular company or the vehicle; secondly, there is an incorporated company

with a concluded Shareholders' Agreement which provided in effect for underwriting. And this particular paragraph, you are drawing attention to matters yourself here, is, I would suggest, attempting to show that there is not much difference between the problems which A5 have and the problems which A3 have.

Would you agree with that?

A. I think so, if I understood the way you have put that.

Maybe if I put it

Q. Looking at it yourself. They don't have negative equity, you are saying?

A. Exactly.

Q. And you are saying it's not similar, therefore, to A5, in terms of a problem you are identifying something?

A. What I am saying is that the text says there is a similar type of problem between the two. And I am saying that well, Andersens has already said that one of them has negative equity and it hasn't stated that the other has negative equity, so I am drawing the attention to this use of the verb "similar".

Q. If you go deeper in the analysis, if you go deeper in a qualitative analysis of these two, top two, you would see that the problems are not the same at all, if you look at things like concluded Shareholders' Agreements, underwriting provided in them, and matters of that nature.

You see, this whole report is being done in the context of you being informed that the Minister wanted to go to Government. This is all being done in the context of political pressure to conclude matters.

You are raising queries here, not just in relation to textual matters; you are raising substantive matters here, aren't you?

A. I am making a critical commentary on the report in front of me. I am raising issues, raising questions.

Q. Substantive matters?

A. Probing.

Q. Substantive matters?

A. Oh, yes, I mean

Q. In relation to this evaluation process.

A. I am raising the issues as I see them. I am probing them, asking questions, yes.

Q. Now, I just want to go to one other matter, again which is perhaps a matter for concern. If you go to the next paragraph, you yourself identify something.

And this is "Furthermore, A3 has expressed such strong reservations concerning the draft licence, which was circulated as part of the tender documents, that the Minister will finally have an unfavourable starting point."

This is if he has to enter into negotiations with A3.

And you identify, which anyone who attended the presentation would know, and you listened to the tapes

or read the transcripts of these, would know, and you say "This was cleared up at the presentations." Isn't that correct?

A. This was cleared up at the oral presentations, yes.

Q. That persists into this report?

A. That was my recollection, that

Q. Yes, you are right.

A. in the application there might have been some iffyness about some aspects of the licence, I think a draft licence might have been circulated, but the point

Q. Isn't this an attempt to paint somebody in a negative position when, as you have identified, this matter was cleared up at the oral presentations?

A. I am not making any judgements here, Mr. Coughlan, on that point.

Q. Mr. O'Callaghan, you were a member of the PTGSM. You were carrying out a critical analysis of this particular report. You were the one who identified this in the report?

A. Absolutely, yes.

Q. I take it you are not standing over the negative comment contained in that paragraph, in light of what you have identified in the margin yourself? Or are you?

A. Well, my marginal comment is I am saying this issue was cleared up at the oral presentations, and I am

quite clearly I am not at one with what's with the printed text.

Q. Very good. That continued into the final report.

A. Well, as I said before, I never read the final report.

Q. If you go to page 45, I think they are merely textual amendments there, if you see them. You have a question mark up there.

A. Yes.

Q. And which is "May not be".

A. Yes.

Q. Now, if we go to page 50, and this is Table 17, you can see there that on the weights on the side, these are now in the descending order of importance and outlined in paragraph 19 of the RFP. You see the various criteria?

A. Yes.

Q. On the left. And then there are the weights in the "Section" column, and then there are the grades or the marks, whatever you want to call them, in the remaining.

Now, first of all, you can see that you have two brackets surrounding the weights up at the top there, do you see, the 10, 10, 10, 10, 10?

A. Yes.

Q. Was there not discussion at this meeting that these weights were not the weights that appeared in Mr.

Andersen's evaluation model? You know, the ones which



the 9th June ones, where they were broken up differently to the extent that I haven't got them now in any event, whilst it's being obtained there at the moment that for market development, there was to be, in Mr. Andersen's model, a weight of 7.5, whereas you can see on this table it's 10. Do you remember any discussion about that?

A. I don't. And I think you asked me the last time I was here about a discussion on the 23rd about weights.

And

Q. The only reason I am asking now again is you have got brackets around these weights.

A. Yes. Why I drew brackets around them, I am not too sure. Looking at it now, it is possible that the first three were grouped together under some category and broken down into three 10s. And the second group of two 10s were taken together at some point...

Q. But isn't it more significant that you have them all bracketed there, how you then or how this process engaged in by Mr. Brennan but you don't remember a discussion about weightings at that meeting?

A. I don't. That's a fact. I don't.

Q. Now, just looking again at some of the matters you have marked on this particular table. You have circled the B for market development for A3; isn't that correct?

A. I did. As to why I did it, I don't know.

Q. And you have an asterisk?

A. Yes. I think we looked at one of these tables earlier under market development, and

Q. Yes, we did.

A. And

Q. If you go down to international roaming, you see you have a C, and I think on your own view of the table, you probably thought that should have been a B?

A. Well

Q. Or you wondered?

A. I wondered, at least, yeah.

Q. And you wondered about the B here, as to whether it was enough; isn't that correct?

A. In that one now, I don't know what I was wondering.

The international roaming plan one is one that I had we had alluded to that earlier. I have spoken about the connections with Telia.

Q. You see, if you then go on to page then at the bottom of that, you drew some A3, you drew four As, four Bs, and four Cs, you say, equal a B. You say, A5: seven As, two Bs, two Cs, equals a B-plus, whether that's right or wrong is probably a very crude thing, it doesn't necessarily take into account weightings, but that's just an exercise you do.

A. Yes, indeed.

Q. If you go over the page, you have this is Table 18, where the conversion has taken place to points. And

you just do a rough subtraction there, and you say 5% variation between A3 and A5. That's roughly about 4 point something, but it's neither here nor there?

A. I obviously did it in my head rather than a calculator.

Q. Then if you go to the next page, and this may be of assistance to you as to why you have circled the B in relation to market development on Table 17.

Page 52: "Both A3 and A5 are assessed favourably on marketing aspects, although some differences are clearly identifiable. A3 does not opt for market leadership". And you underline that, and you say "So what?" And it's something that you identified way back into this whole report. And isn't that why you have a B around A a circle around the B for A3 on Table 17, and aren't you at least raising the query there, should this not be higher? Because what has been given to you in the text to say that there is a difference between A5 and A3 does not impress you at all, and nor should it be, because it doesn't appear that market leadership was ever a dimension or an indicator or a subindicator?

A. Yes, my comment, when I say "So what?" about A3 not opting for market leadership, might be the source of me circling B in the table with an asterisk. It might be, but I can't specifically recall that one linked to the other.

Q. Did anybody give you any explanation for it, can you remember? Or could it be that this meeting ended on the 23rd, and you thought you had another week, and you may not have been able to raise all your issues?

A. That's a point. I have stated here before that I left the meeting on the 23rd with the clear understanding that there was another week to deal with questions, I suppose like these questions I am raising here. And there might not have been an opportunity to go through all the points that I have raised here, because quite clearly if there was to be another week, then we would be in a somewhat more relaxed mode, and things wouldn't have to be rushed.

Q. And in fairness to you, you can see some places where you think or one place where you think that somebody may have told you something and another place where you say "delete", and that may have been something. But you certainly haven't written down any answers to any questions which you posed which may be consistent with your understanding that you had another week and time to raise these queries?

A. It may. But I wouldn't adopt that sort of a style myself. Now, I wouldn't raise a question in that text, write the answer to it, if I had got an answer.

Q. Where would you put the answer if you got one?

A. I am not sure if I would put it anywhere. I would depend on the minutes of the meeting to account for

what transpired at the meeting.

Q. We have seen the minutes of the meetings. The minutes of the meetings never, never describe any discussion that takes place at the meetings. In fact, Ms. Nic Lochlainn said her style of minuting is only to record agreed decisions and never disagreements.

So are you seriously suggesting that the minutes of the meeting which we have seen, which are very short and bear and carry very little text compared to notes we have seen of various meetings, that that would have been expected to reflect any responses you had received to your queries?

A. The way which I answered your question, Mr. Coughlan, was I think I said that the way I would operate at meetings would be that I wouldn't necessarily write down clarifications or answers to issues I might have raised. I was speaking generally. I wasn't specifically talking about these meetings.

Q. Fair enough.

CHAIRMAN: It's ten to now, Mr. Coughlan. We will break until five past. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF ED O'CALLAGHAN BY

MR. COUGHLAN:

Q. MR. COUGHLAN: If I might just proceed with your text for a moment, and we'll come back to deal with matters

again, Mr. O'Callaghan, and if you go to page 16

Appendix 2, I don't think anything at all needs to be mentioned. They seem to be textual matters; isn't that correct?

A. I am just trying to find it.

Q. Sorry, it's just

A. Yes. Again, it's linguistic issues.

Q. And again, if you go to page 2 of Appendix 2, would I be correct that they all seem to be

A. I think so. I think they concern the language of the document.

Q. Again the same on page 3 of Appendix 2; you just have a few asterisks?

A. Yeah.

Q. I don't know what and then on page 4 of Appendix 2,

"A draft report discussed on the 9th October" this

is the third paragraph "...has, following the

incorporation of comments from the PTGSM culminated in

this final report. As unanimous support was given by

the PTGSM to the result of the evaluation, Andersen

Management International was requested to submit this

final report. It was also decided to present the

quantitative and the qualitative part of the

evaluation in an integrated fashion in accordance with

the agreed procedures."

Now, do you see that there "As unanimous support was given by the PTGSM to the result of the evaluation,

Andersen Management International was requested to submit this final report". And you have a little square bracket there, and you have, opposite, "No".

A. That's right, yeah.

Q. You weren't subscribing to the view that there was that

A. Absolutely. I think the point was covered this morning in the main part of the narrative.

Q. Do you see the next portion of that, because it's something I am going to come to to ask you about in light of a matter you come to in due course. "It was also decided to present the quantitative and the qualitative parts of the evaluation in an integrated fashion in accordance with the agreed procedures."

Do you remember anything about that?

A. I don't recall a discussion like that or a decision like that. And again, looking at it right now, quite a number of years down the road, I am not sure what the "integrated fashion" would mean anyway.

Q. Because the tables we have been looking at heretofore are all qualitative tables; isn't that correct?

A. That's what I understand them to be, yes.

Q. And I don't know how qualitative yes, you raise you don't remember such a decision, and again I was going to ask you if you could help us, because I don't understand what is meant by "presenting it in an integrated fashion in accordance with the agreed

procedures".

But anyway, we'll come on to deal with something. I think if you go to the next page, page 5, there is nothing; it's just a question mark which you have crossed out?

A. That's right.

Q. Page 6, a question mark; again, I don't think anything significant about that.

A. Yes

Q. Sorry, Mr. Healy now, page 8 again of the Appendix 2, it's just two question marks; I don't know what they are about. Probably nothing significant turning on those, is there?

A. I think I am just recording the fact that I don't understand what they mean either.

Q. Yes. Now, will you go to Appendix 3, please, and it's page 126, Appendix 3, I think you make your next entry. And you have this asterisk at the top of the page, so that might be something you were indicating you wanted to come back to?

A. Yes, that would be, yes.

Q. And it's the final paragraph. It says that the "Results of both the quantitative and the qualitative evaluation will be contained in the draft report with appendices to be prepared by the Andersen team."

And you have "quantitative" underlined and the "draft report" underlined, and you have "Is it here"?



A. Yes, I do.

Q. Do you see that?

A. I do. I think what I am referring to there is this appendix is the appendix which details the evaluation model, and it quite likely would have been written sometime prior to this. It could be quite an old document. And that is stating, I suppose, an intention that the quantitative and the qualitative evaluation will be contained in the report. So I am now rhetorically asking myself, where is it? Is it here? And

Q. Is it here with this bundle of documents, or is it here in Ireland, or

A. Exactly, yeah. And the reason for the asterisk on the top of the page is it's a pre-Post-It-note reminder to myself that's an issue I want to ask about.

Q. I'll come back to that in a moment. I just want to, if I can, just deal with a few other pages. I don't think anything much if you go to page 1 of Appendix 5.

A. Yes.

Q. You have it relates to "the blocking and drop-out rates were found to be calculated incomparably from applicant to applicant," and you have that circled, and you have an asterisk about it. I take it you were looking for you were going to ask a question, or you asked a question?

A. I am not too sure what I meant by that. I think it's possible that the that I found that adverb, if it is an adverb, to be a bit unclear. The blocking and drop-out rates were found to be calculated incomparably from applicant to applicant. I think it's probably a linguistic question. I think, myself, that the statement seems to be unclear.

Q. I don't know if you ever got to ask questions did you ever get to ask questions about the quantitative report or the quantitative analysis which was carried out?

A. I think you asked me a question before, and I don't recall ever seeing the quantitative document.

Q. Do you ever remember asking any question about it?

A. Not at this stage. Initially, when we were informed of the results of the quantitative evaluation

Q. That's way back on the 4th September?

A. Early September, yeah.

Q. Right. If you go to page 2, then, of Appendix 5, I think that's just a textual matter?

A. That's tidying up the English, I think.

Q. Again on page 6, Appendix 5, I think the same, is it?

A. Yes, yes.

Q. And the same on page 5?

A. Yes, that's textual changes.

Q. I think the final matter, then, I just want to perhaps draw your attention to at the moment, is on page 7 of

Appendix 10.

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

Q. And I think you know this point. You have underlined

"The letter of commitment" this is the letter of commitment from Advent "does not clearly state what the price would be if the commitment should be brought into life, but according to the presentation, the price would be close to a 75% stake in Communicorp. Furthermore, according to the information given in the presentation, the control will still be in the hands of Irish investor Denis O'Brien, as his shares bear a three times higher voting power."

And you have in the margin "I thought it was 47%." Of course you were absolutely right about that, about your recollection of events. But just looking at that particular paragraph in the report, it makes no sense at all, does it, when you look at it? Because what it is stating here is Denis O'Brien would have a three times higher voting power, so that every one share of his is worth three times that of Advent's, from a voting point of view. Of course, if they went up to 75% in Communicorp and he had 25%, it doesn't remain in his hands or in Irish control.

A. Yes.

Q. And you were drawing that appears in the final report. Do you know if you ever got to discuss that even?

A. I can't recall now. I jotted it down because 47 stayed in my mind. It's a fairly basic point. I can't recall whether I had the opportunity to raise it, but it's in the final report, is it?

Q. It's in the final report, yeah.

Now, if you could go back to page 12 again on Appendix 3, this is where you ask about is the quantitative report here or

A. Sorry, Mr. Coughlan, that's on page ... ?

Q. Page 12 of Appendix 3. At the bottom of page 12 of Appendix 3.

A. Yes.

Q. And can I take it that as of the if you did this work on the 20th or going to the meeting of the 23rd, you were still of a view that there would be a quantitative report, isn't that correct, or a quantitative analysis?

A. Well, I suppose, insofar as I am raising it here to myself rhetorically, this says that there will be a quantitative report contained in the draft sorry, a quantitative evaluation will be contained in the draft report. And I am asking myself, you know, where is it? Is it here? Is it coming? Is it

Q. And the evaluation model always envisaged a quantitative report, presentations, a qualitative report, and a revisiting of the quantitative report, isn't that right, that's what you had

A. Certainly a quantitative evaluation and

Q. Quantitative evaluation, I won't use "report", yes.

A. Yes.

Q. And at the first meeting which you attended of the PTGSM on the 4th September, 1995 sorry, after your injury, I think you had been at an earlier one,

Andersens presented a quantitative evaluation; isn't that correct?

A. As I recall it, they did, yes.

Q. Now, it was never to be that the quantitative evaluation was to be the be-all and end-all of anything; it was also envisaged it would be a qualitative and that there would be analysis. Isn't that correct?

A. Yes, as I recall it, there were to be both quantitative and qualitative evaluations. And that I think it was at that meeting of the 4th September that Michael Andersen alluded to the fact that difficulties were emerging in scoring some aspects of the quantitative.

Q. That's what I just want to ask you, some aspects, and in fact what he identified, I think, was international roaming, because of the obvious reason that without a licence, you couldn't enter into international roaming agreements, and therefore you couldn't count how many international roaming agreements anyone had?

A. Yes. There was something about I think the comparison

of tariff comparisons, maybe.

Q. I am going to come to that in a moment. There was the question of blocking and drop-out rate, which was part of the performance guarantee criteria.

A. Right.

Q. And the third one was the comparison, the OECD basket, which was tariffs?

A. Yes.

Q. He identified those; isn't that correct?

A. Yes.

Q. Now, that left all of the other criteria; isn't that right?

A. I would have thought so, yes.

Q. And with the exception of the tariffs aspect, all of the other criteria were significant scoring criteria; isn't that correct?

A. Well, without looking at precisely

Q. The financial, the technical

A. Yes, they were important issues.

Q. The licence fee, of course, became neutralised

A. That's right.

Q. in effect.

And in that first quantitative evaluation which was presented, the rankings were: A3; A6; A5; A1; A4; and

A2. Isn't that correct?

A. I

Q. You can take

A. I take your word for it, of course.

Q. That's correct; those were the rankings.

Were you aware that a second quantitative analysis about which Mr. Andersen says in that first one 14 indicators were taken into account in carrying that out, and he specifies the difficulties which arose on the international roaming, blocking and drop-out rate and the tariffs. But were you aware that a second quantitative analysis was carried out on the 20th September of 1995? Were you ever made aware of that?

A. Offhand, I don't think so.

Q. Were you ever informed that in that second quantitative analysis, the rankings were: A3; A6 again, the same as the first one; A5, again the same as the first one; A4, the same as the first one sorry, A1, the same as the first one; A4, the same as the first one; and A2, the same as the first one; that those two particular quantitative analyses established the same rankings? Did you know that?

A. As I said, offhand, I don't particularly remember a second analysis being done on, as you said, on the 20th September.

Q. Were you aware that a third I don't know if anyone in the Department was aware of this; this was a table which was produced to us by Mr. Andersen but it appears that on the 2nd October, 1995, a third quantitative analysis was carried out using 13

indicators rather than 14 which had been used on the first occasion. Were you aware of that?

A. I don't think I was aware of that either.

Q. And that this produced a quantitative result at this stage of: A6 ranked number 1; A3 ranked number 2; A4 ranked number 3; A5 ranked number 4; A2 ranked number 5; and A1 ranked number 6. Were you ever aware of that?

A. I don't think so.

Q. Now, as you understood it, and as the text of this particular draft report envisaged, and the final report envisaged the inclusion of a quantitative evaluation, that nobody is suggesting that the quantitative result should supersede a qualitative.

It was to be a dual process; isn't that correct?

A. That was my understanding.

Q. But that it was envisaged to include the quantitative analysis, whichever one of those particular tables was the right one; isn't that correct?

A. That was my understanding, that it was to be included, with the exception of those aspects that were found to prove

Q. With the exception that

A. that prove difficult.

Q. That couldn't be approached, although one could raise the question, because in August, further information was obtained from applicants to enable quantitative



analysis to be done. It does raise the question as to why more information couldn't be obtained from the applicants to continue the quantitative analysis.

Understandably, international roaming could never be analysed or assessed that way.

A. Mm-hmm.

Q. But if a quantitative table was included in the report, as was envisaged and is stated in the report, one wouldn't necessarily say that that is the result.

But one would have to explain how applying a qualitative analysis brought about what was now being contended for in terms of a ranking; isn't that correct?

A. Yes, I think I anticipated that the quantitative evaluation would be brought to bear in the overall, along with the quantitative one.

Q. One would have to have text to explain it and to explain why, in the qualitative analysis, a different ranking emerged? One would have to do that?

A. Yes.

Q. And clearly, from the report and from your understanding, that's what was envisaged in the process?

A. Well, certainly I am expecting to see a quantitative evaluation.

Q. It never appears in any draft report or in the final report, never appears. Were you ever aware of that?

A. As I would have said before, I wasn't aware of what was in the final report until relatively recently, because at the time, I never saw it. And here I might have formed the impression well, if it's not here, perhaps it will come in the final report, but

Q. Were you aware of the rankings in the quantitative report? Was that in your mind?

A. I think I would have been aware of whatever report Michael Andersen gave us on the 4th September, yes.

Q. You see, and I am pursuing a line of inquiry here; it does appear to be at least unusual that what the process envisaged and what the report contends for is not carried through, insofar as that there is no quantitative evaluation contained in the report or in an appendix to the report. That appears to be unusual, doesn't it?

A. Well, as I say, I might have assumed here that it would appear in the final report; but as you say, it didn't.

Q. That's unusual?

A. As I say, I felt it surprising that it wasn't there. I was expecting it.

Q. And it brings me back to pursue this line of inquiry in relation to matters which occurred on the 9th October, 1995, when financial matters were being discussed. And it is recorded and attributed to Martin Brennan that the Minister didn't want the

report to argue against itself. Now, do you remember a discussion about quantitative issues as of the 9th October, 1995?

A. Specifically, I don't; in relation to a quantitative evaluation, I don't. I am aware of the reference that you just made because of reading the transcripts, yeah.

Q. Because in all of the quantitative analyses which were carried out, the ranking which was achieved as a result of people meeting in sub-groups took the place of the application of qualitative analysis to these quantitative evaluations; isn't that correct? That's what the report states?

A. I might have lost you there, Mr. Coughlan; perhaps could you repeat that question?

Q. What we are told is a holistic view was taken, a holistic view. The quantitative table never appears in the report. It is never brought to you on the 9th as a member of the PTGSM. It is never brought to you on the 23rd.

A. That's right.

Q. Isn't that correct?

A. That's correct.

Q. What you were brought is a report which contains qualitative tables, isn't that right? That's what you are told they are?

A. That's my understanding.

Q. And what you and Sean McMahon are informed is that these qualitative analyses occurred in sub-groups in Copenhagen; isn't that right?

A. That's correct.

Q. And what you are then presented with on the 9th and on the 23rd is a draft report with text to support these qualitative tables, but no reference is made to what is in the quantitative tables; isn't that right?

A. That would be correct, I think, yes.

Q. And at the meeting of the 9th, two things occur: Martin Brennan informs you that now, in the evaluation methodology at Appendix 2 of the report, of the final report, it is stated that the quantitative evaluation withered away. Did anyone tell you that it had withered away?

A. No, I don't recall being informed that it had withered away.

Q. At the meeting of the 9th October, you were informed of two things by Martin Brennan; isn't that correct?

One is that the qualitative evaluation had taken place in Copenhagen, and it was done; isn't that right?

A. That's the gist of what he said to me and what I took from what he said, anyway.

Q. Yes, I know you can't remember the exact words. And secondly, that the Minister knew the result?

A. Yes.

Q. Now, if we go back to page 50 this is Table Number

17, where you circle the B for market development and you point to the C for international roaming plan.

A. Yes.

Q. Here you are at least raising a query as to the appropriateness of the grades which have been awarded on these two particular dimensions; isn't that correct?

A. I think I am raising questions on them, yes. Certainly with regards to the international roaming plan, I can see I can surmise now what my question might be. With regard to the market development one that's ringed

Q. Well, doesn't that go to the text two pages later, where you raise the question "So what"?

A. Yeah, it could well be; I can't be certain. I feel I am on stronger grounds in saying that the roaming one is an issue.

Q. Because you follow that the whole way through, in fact; isn't that right?

A. Yes.

Q. You have also followed the market development through where you underlined the "Modest 45%"; isn't that correct?

A. Yes.

Q. And also, of course, it must be borne in mind that the concept of market leadership was neither an aspect, dimension, indicator or subindicator in this

evaluation process; isn't that right? And more importantly, was not one of the Government criteria?

A. Was not one of the

Q. Government's criteria in paragraph 19?

A. No, I don't recall seeing it listed as a criteria.

Q. And you are raising at least a query about it, and might I suggest that these queries you are raising on this table are not widening any perceived gap which might exist between A5 and A3 but are in fact raising queries which narrow the gap, or could narrow the gap?

A. I wouldn't have approached it that way, Mr. Coughlan.

As I said earlier, this is a document that I would have received on the 20th. I would have worked my way through it, knowing that there was going to be a meeting on the Monday, the following Monday, 23rd, and I was going through it as comprehensively as I could, to be as inquisitive, as probing, as testing as I could about it. So I am raising a query, raising hackles, putting question marks opposite things, which is all I am doing, really.

Now, sorry, I think I have lost your question at this stage

Q. But isn't it so, Mr. O'Callaghan, that what you are raising queries about, there are some textual matters, but you are into the meat of the substantive issue yourself here, and that relates to the substantive issues on qualitative evaluation. You are underlining

matters, you are bringing them forward into tables;  
you bring it forward into the this table, Table 17;  
you have them marked.

I am not suggesting for one moment that you were  
saying it has to be this; you were raising what  
appears to be a reasonable question in light of what  
you state two pages on about market leadership. You  
certainly concede that it raises a reasonable question  
about international roaming, in light of your  
assessment of the situation; isn't that correct?

A. That's right.

Q. So what I am suggesting here is that you are involved  
in a discussion of the substantive evaluation to  
decide on a ranking here. You are raising questions  
about it.

A. I am not in any way querying the result here. I am  
looking at quality issues, certainly. Some of the  
issues are linguistic, and they are important, because  
the deficiencies in the actual linguistic end of  
things are fairly sharp. But, yes, I am probing  
issues relating

Q. You are probing the result?

A. Relating to

Q. Now, what does the circle around B mean?

A. That's a very direct question eight years after the  
event. I'll try to be as helpful as I can. It may  
relate back to the point that you pointed me in the

direction of on page 52. A3 does not offer market leadership, and I am saying, so what?

Q. And it relates also back, doesn't it, to the page where you underline the question "modest"; isn't that correct?

A. It could very well do that, yes.

Q. Now, what are you circling it for, and what query are you raising about it? Could you tell me?

A. Well, at this juncture I can only be I'll try my best. I might be raising it to ask somebody would they explain why there was a B there.

Q. What explanation did you get?

A. I don't recall that I even got the opportunity to ask the question.

Q. But that's another issue, is it? Maybe you didn't ask the question.

A. I don't know if I did or not. All I can answer you here is that, yes, here I am on probably on Friday, doing a critique of this report, and I am making these points myself, and there is the meeting to come up on Monday.

To the extent I was in a position to ask any or all of these questions, right now, I cannot be certain. I am certain that I raised an issue with Michael Andersen about negative solvency, because that stayed in my memory very, very clearly, and it's one in fact I I was able to recall somewhat that it was in my



statement of intended evidence and what I recalled

Michael Andersen's response was.

Q. International roaming? I'll come back to the B again;

I'll keep coming back to the B, because I am going to

bring you back to the text. I am going to bring you

back to the text now.

A. Mr. Coughlan, I can only remember what I can

remember.

Q. Oh, yes, but what I am very conscious of here, Mr.

O'Callaghan, is this: There are portions of this text

which are written in a manner to support tables, and

market leadership is a portion of the text which you

immediately underline, you immediately underline.

That's what they are distinguishing them on, and you

immediately underline it and say "So what?" And you

go back and you have a mark around the award of a B

grade there.

Now, first of all, isn't it so let's get the facts

clear on this isn't it so that market leadership

had nothing to do with the criteria of the Government?

A. I don't recall that it had, but I don't have it in

front of me, but

Q. And what's more disquieting now, at this stage of the

inquiry, is this, Mr. O'Callaghan: that Mr. Sean

Fitzgerald, the Assistant Secretary of this

Department, has given evidence to this Tribunal that

when he read this particular report, he couldn't see

clarity in the tables; and he noted on a copy he had over this portion of text, this portion, "A last comparison with best applications", he noted "This makes matter clearer".

Now, and he specifically referred to the concept of market leadership. So the Tribunal needs to understand what the Department's thinking was at that time, when this report was being evaluated when this process was going on and when the evaluation was taking place.

Now, you accept and you know that market leadership was not one of the Government criteria?

A. Yes.

Q. It has been included in this text to support a table, a qualitative table; isn't that right?

A. It seems to be, yes.

Q. You have no time for that as a concept, because you say, "So what?" Isn't that right?

A. I don't see the relevance of it. Because either I cannot bring it back to the list of criteria, or I am thinking of the reference to the modest 45% penetration.

Q. So what explanation, therefore, could have been given to you on the dimension of market development if that market leadership concept was taken out of it? What explanation was given to you that this involved a distinction between A5 and A3 on the question of

market development?

A. Well, as I said earlier, Mr. Coughlan, I don't recall that a response was given to me. I don't recall that I had any opportunity to raise that particular one.

Q. Let's go to international roaming. You are clearly querying the C there, aren't you?

A. I am raising a question on the C, I think, yes, because I think we dealt with the point earlier. I had explained how I saw things.

Q. What explanation was given to you about that?

A. Again, I don't recall that one either, Mr. Coughlan, whether there was an opportunity to deal with that as a particular issue, whether I raised it and what response I got.

Q. Now, it would appear, Mr. O'Callaghan, would it not, that as of the 23rd October, you were not just engaged in an amendment to a report in the context of linguistic amendments?

A. This goes much further than linguistic analysis. And when I would have been talking about that subject the last time I was here, of course I didn't have this document in front of me.

Q. I understand that.

A. And my ordinary memory, if I can put it like that, of the events of those times, that the strong point that stayed with me was that this report was so badly written that I remember having great difficulty with

the text. Naturally enough, once I got sight of this document, it was very much a refresher to my memory.

Yes, these matters are more than just linguistic, yes.

Q. And going into this meeting, you used the expression a few moments ago that you were not questioning a result. There was no result until this meeting was over, if ever there was one.

A. Well, to recap: What I took from the meeting of the 9th October, in response to a query from me, Martin Brennan said that the qualitative analysis had been completed in Copenhagen and that this was carried out by most of the people around the table, I think most of the Project Team. And from that, I took the view that that process carried out in that way accorded to the methodology had been laid down by Andersens, had been carried out, and that was the result.

Q. What had been carried out was a qualitative assessment in Copenhagen; isn't that right? That's what you were told?

A. Yes.

Q. The methodology, as you understood it, involved both a quantitative and a qualitative; isn't that right?

A. That's true, yes.

Q. You noted, when they put it into this report, which seems extraordinary, but they put it into this report and took it out in the final report, that unanimity was subscribed at the meeting on the 9th October. You

did not you did not subscribe to, I'll use the exact words of the report, if I may page 6 of the evaluation process of the report do you see this?

A. Yes, do I.

Q. "As unanimous support was given by the PTGSM to the results of the evaluation." You took that out, didn't you? And Appendix 2, or sorry, page 4

A. Sorry, can I just correct it there. I didn't take anything out. I put square brackets around it as a pointer, I think, to myself that it should be taken out.

Q. You obviously told somebody that you didn't; isn't that right?

A. No, I am making a note it's not true for me I don't recall recollect, I think, the question being asked, and I don't think the question was asked at all.

Q. Go to page then it becomes a little bit more worrying, doesn't it? If the question wasn't asked, and it's included in a report, what is going on in this report at all? It is a total distortion of what happened at the meeting, if that is so, a total distortion?

A. What I am saying is that unanimity was not asked for, and I think the question wasn't even discussed.

Q. Go to page 4 of Appendix 2.

A. Yes.

Q. Do you see what you have there. Again, it's being restated: "As unanimous support was given by the PTGSM to the result of evaluation, Andersen Management International was requested to submit this final report." Again you say "No".

A. That's true; I don't recall it happening.

Q. Do you remember bringing this to anyone's attention, saying "What is going on here is a distortion of what happened"?

A. Sorry

Q. And I use the term "distortion"; a distortion of what was happening. Did you bring that to anyone's attention?

A. Did I bring to anyone's attention that this was a distortion?

Q. That what was being stated in this report, which was being prepared to allow a recommendation be made to the Government?

A. Well, having made my notations here, I would have discussed it with Sean McMahon, who was my immediate superordinate officer, and that would probably be on the Monday morning, probably before the meeting which I think was going to start at about 11:30.

Q. Is that what gave rise to the note, Mr. McMahon's note?

A. I was thinking about that once I got sight of this document. And I think that's possibly the case, but

then Sean would be the best person to answer that question. But it could very well be that in discussing this report, that Sean wrote his note. But as I say, Sean McMahon is the best person to answer that question.

Q. He believes it was done before the meeting, he believes it was probably done before the meeting.

A. Does he? Right.

Q. And in all aspects of that note, I think you agreed that you agree that the finding was that A5 and A3 were front runners; isn't that right? That was your view of it?

A. That's right.

Q. You agree that A3 and A5 are close?

A. That's right.

Q. "By reference to the report alone, we are unable to come to the conclusion as to which, A3 or A5, is in fact ahead."

A. I think that refers to the point that I might have made a few points that reading the narrative of this document alone, leaving the tables to one side, but reading the narrative, it is not convincing

Q. And indeed, reading the tables on the questions you raise, at all, it is not convincing at all?

A. I didn't say that.

Q. It's the content. It's the content of this whole report that's not convincing at all, not the language?

A. The there are two aspects here. One is a question of language, which is a very serious question, and I don't think it should be diminished. And then from my perspective, there is the other issues that I raise.

And I am raising those ad seriatim, as I was going through the document, as I would have discussed them, as I said, with Sean McMahon on the Monday, and with a view to airing them, insofar as we could, at the meeting later on that day, on the 23rd.

Q. But in the text alone, where you raise queries about substantive matters, that is the suggestion in the text that A3 has a similar type problem to A5, you raise the query about but it doesn't have negative equity; isn't that right?

A. Yes.

Q. The reservations which are stated in the text relating to A3's approach to the licence, isn't that right, you say this was cleared up at the presentation?

A. That's my recollection, that issue was dealt with at the

Q. They are all content matters, aren't they?

A. Contents, yes, of the report, yes.

Q. And this particular analysis, queries being raised by you and by Mr. McMahon was all done against a background of receiving the report on the 20th October; isn't that right?

A. That's right. That was my first that's the first



time I saw it.

Q. Having been informed the Minister wanted to go to Government the following Tuesday?

A. As I recall it, I was informed on the 17th, I think, that the Minister wanted to go to Government on the 24th. Now, the report I think was coming in on the 18th. However, I had to be in Brussels on the 18th and 19th, and so Friday the 20th was the earliest I saw this. And I think I marked on the front that I received it on the 20th. And the Project Team meeting is on the 23rd, the following Monday, yes.

Q. And at the meeting on the 23rd, before Mr. McMahon went to see Mr. John Loughrey to look for time, what was being contended for was that all of the work had been done; there was nothing more to do, isn't that right, as regards completing the evaluation. Isn't that right?

A. When you say it was being contended

Q. Was it not being contended by Mr. Martin Brennan?

A. I think the view was that the process was reaching the end. That the

Q. Sure, how could it have been reaching the end? This was only the first round-table discussion, isn't that right?

A. I am saying that because what we had been informed was that the Minister wanted to go to Government the following day. I think the I think what I remember

best of that meeting at that juncture was the points made by Sean McMahon and myself, that possibly because of these issues that I had jotted down, and no doubt for other ones that Sean had either jotted down or kept in his mind, that we needed more time.

Q. That's what I wanted to come to. All of that was being done against the background of a political desire to conclude matters; isn't that right? A Ministerial desire to conclude matters?

A. I was informed that the Minister wanted to go to Government on the 24th. That's all I know.

Q. You see, Mr. O'Callaghan, looking at the work, obviously you analysed this particular report reasonably closely; and looking at the work you did on it, the only conclusion which could be drawn was that you were engaged in an assessment of the evaluation of the applicants to be nominated in an order whereby the Government might enter into negotiations with them as of the 23rd October, 1995?

A. I think I was querying matters and I was testing things. I was raising issues. I was probing. I was looking for answers, yes.

Q. And can I also suggest to you that you thought, when you left the meeting on the 23rd, that you had more time?

A. Yes, I did. I am also conscious, though, that Sean McMahon, for instance, thinks that the meeting on the

23rd went on longer than I did.

Q. I understand that.

A. I have a memory of two meetings, one on the 23rd and one on the 24th.

Q. The 24th was a meeting whereby you were informed that the Minister was going the next day.

A. My recollection was that on probably on the morning of the 24th, that notwithstanding the arrangement for the week, that the Minister was going to Government the next day.

Q. And there was no meeting of the PTGSM to discuss matters other than textual amendments on the 24th, was there? There is no minute of it, anyway.

A. Well, I certainly met Martin Brennan between 4 and 5 that day to discuss some textual issues. And they could very well have been this could very well have been a text I brought with me when I sat down with Martin Brennan. I probably wouldn't have time to sit down and draft amendments. And we worked through certainly worked through a lot of issues. Then there was a meeting at 5 o'clock.

Now, whether it was a meeting of the Project Team, formally or otherwise, I don't know; but certainly my recollection is that some members of the Project Team were there. And that was to deal with the text we had and deal with proposed changes to it.

Q. I'll ask you again have you got Table 17 in front

of you?

A. Yes.

Q. Mr. Brennan has told us that when he saw this table, or perhaps it was Table 16, which was Mr. Andersen's table before he regrouped it into this table, that when he saw this in Copenhagen, he couldn't see a result at all. That's the evidence he has given.

A. Has he? Okay.

Q. Looking at the at this report, you made a note on the morning of the meeting, perhaps, or Mr. McMahon made the note, which you subscribed, that you thought A3 and A5 were the front runners; isn't that right?

A. That's right, yes.

Q. You agree they were very close; is that correct?

A. That's correct.

Q. But by reference to the report, you were unable to come to the conclusion as to which, A3 or A5, is in fact ahead; isn't that correct?

A. That's correct. And in that, I think I would have been primarily thinking of the text and which how the issue is being argued by Andersens.

Q. What was said to you which enabled you to be of a sorry, maybe nothing was said to you, and maybe you weren't of a different view but was anything said to you in relation to that table or any of the text whereby you came to a view as opposed to being told something by Martin Brennan, that you came to a

view which, A3 or A5, was in fact ahead?

A. Well, I was taking it that the position since the 9th October was that A5 was ahead. There was A5, A3, A1, if I am not mistaken.

Q. Mm-hmm.

A. That was the outcome of the majority of the Project Team. That, as far as I understood it that process was conducted according to the evaluation rules, the methodology that was laid down in the evaluation model.

Q. That's what you were told?

A. Yes, and I would assume that it wouldn't have been any other way. There wasn't a second qualitative analysis carried out, to my knowledge, according to those rules. That was it. That was the one.

And I certainly wasn't engaged in a parallel exercise according to that methodology. And what I was doing here was I was critically assessing this report when I got it. That's my job. And I am raising issues, I am poking and probing and querying and looking for justification, and I am acting the devil's advocate.

But I am not carrying out a parallel quantitative

Q. What were you told? You were a member of the PTGSM; what were you told, if anything, looking at the table and looking at the report, what were you told that enabled you, if you did come to such a view, as to who was in fact ahead? Was it something you were told by

Martin Brennan?

A. Well, in the course of that meeting on the 23rd, there obviously were a lot of issues I had raised that we have gone through here, and I would have done my level best to air those at that meeting because I wanted to naturally enough, I wanted to satisfy myself as to those points. And I am sure a number of those were cleared up and were clarified, but I cannot put my finger on those right now and say which ones they were. I think

Q. Of course you were never given the final report or had an opportunity to see a final report; isn't that correct?

A. That's true. I didn't see the final report. And that was a difficulty with it at the time, that the final report didn't come to us. It certainly didn't come to Sean and myself.

Q. Well, if we can be just clear about a number of things. After the 4th October after the 4th September, you were never shown another quantitative evaluation, were you?

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

Q. Nobody ever discussed with you about the expression used, "withering away", in the final report. I think the expression that would be correctly used was abandoning the quantitative evaluation; were you ever told anything about that?

A. I don't recall either of these two terms being used.

Q. It was your appreciation of the evaluation model that both were to be used, but it was always understood that there would be inadequacies in relation to the quantitative evaluation; isn't that correct?

A. That's the case, Mr. Coughlan, yes.

Q. And that was never brought back to any plenary meeting of the PTGSM to consider the quantitative evaluation in the context of the qualitative evaluation, was it?

A. It wasn't.

Q. The evaluation model was not followed; isn't that correct?

A. I don't know, at this remove. And I don't have the model in front of me to compare with what was done.

Q. And no explanation appears in the report or anywhere else to explain why the rankings of the quantitative evaluation should not stand, and that could be correct?

A. Mm-hmm.

Q. And why the qualitative evaluation, having considered the quantitative evaluation, came up with a ranking; that is not done, is it?

A. I certainly don't recall it in this document, the version 2, and I am not sure if I read through the final document.

Q. Or at any meeting you were at?

A. Or at any meeting.

Q. But what we do see retained in the report are matters in the text which suggest that A3 has a similar type problem to A5 in the context of financial matters; isn't that correct?

A. Yes.

Q. You drew attention to it sorry, you spotted this particular matter yourself?

A. Yes, I did.

Q. It was not you may not have had an opportunity to discuss it because you might have thought you had more time, but certainly your view about that was not carried into the final report; isn't that right?

A. I am at a disadvantage because I haven't read the final report, Mr. Coughlan.

Q. I can tell you it wasn't. And similarly, that portion of text again, which you identified as having been cleared up at the presentation, namely the question of A3's reluctance to accept conditions or the terms of the licence as has been indicated in the proposed draft licence; that is carried through in to the final text as well, although you have pointed out that you didn't subscribe to that because it had been cleared up. Isn't that right?

A. That's right. But again, I cannot be certain that I had the opportunity to raise that as an issue.

Q. At the meeting of the 23rd, what was Michael Andersen doing?



A. Well, I assume he was in attendance, because we were discussing the second draft of his report. He would have been the author of it. And I assume he was there to answer questions, deal with queries, explain matters.

Q. Was he keeping a note, do you remember?

A. I can't rightly say. I cannot recall.

Q. Were any amendments discussed when he was there?

A. I can't recall that amendments, per se, were put to him, but I am sure issues pertaining to the report were raised, possibly clarification sought. I refer to the one that I mentioned earlier myself. But whether he was keeping notes or not, I cannot say.

Q. And you can't assist the Tribunal as to when he left?

A. I can't be precise about it. I do have a feeling that he did not stay all day. This meeting started, I think, at 11:30.

Q. Was he there for lunch?

A. I can't even remember the lunch arrangements now, whether we had lunch. I can visualise the room we were in. It's the main conference room in 44 Kildare, Street and there would be scope for caterers bringing in food and that. If I was pushed to it, I'd say he might have stayed for lunch and left in the early afternoon or mid-afternoon.

Q. Was that

A. That's a hunch. That's not

Q. Was he there when Mr. McMahon went with Mr. Loughrey?

A. I cannot say, Mr. Coughlan.

Q. Was he there when Mr. McMahon came back?

A. Similarly, I cannot say.

Q. Did anyone say to him, looking at the text of this particular report, "This is not a final report"?

A. Well, at some point in the proceedings, either Sean McMahon or myself, maybe both of us in a different way, had said that we saw that the report was never really up to scratch. That it was badly written.

Q. It was more than badly written; it wasn't even contending for propositions, or it wasn't even adequately explaining for propositions that were contended for in tables?

A. I don't think anybody said it the way you have just put it now. But I was saying that the word "deficient" might have been used, because I think I used that word in my chronology note about one of us, either Sean or myself, saying that we felt that the report was deficient.

Q. Might I suggest that what was going on here, whether you realised it or not, Mr. O'Callaghan, is you were you were revisiting the qualitative aspects by the notes you were making, the queries you raised, or the queries you intended raising.

A. I think I was certainly dealing with qualitative issues, yes.

Q. Thanks.

A. Thank you, Mr. Coughlan.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Just a few questions, Mr. O'Callaghan.

Since you were here last, Mr. McMahon has given evidence, and he is perfectly satisfied that there was a result to the competition. And in fact, he goes further and was quite adamant on this, that there was "clear water", using his term, between A3 and A5; in other words, he was quite satisfied that A5 was the clear winner of this competition on the basis of the scoring methods, to use the most general term possible, used.

Now, can we take it I know we covered this the last day, that you are satisfied that there was a result to this competition; that A5 was the winner?

A. Well, as I said the last day, I took it from the meeting of the 9th October that the evaluation the qualitative evaluation had been completed and the ranking was the one that had been presented that day.

Q. Now, on the figures that were used, I am not going to go into the details of them, consideration of their adequacy, etc., to others; but A5 defeated, for want of a better word, A3 by 5%.

Now, I just want you to apply common sense to such a percentage. Could I suggest to you that in any

competition, under any circumstances, any party who wins by 5% is a clear winner of that competition?

A. Are you referring to the 5% that I have noted on

Q. No, nothing. Just in the abstract, that a 5% a party who defeats another party by 5% on the basis of a marking system carried out, isn't that party a clear winner of that competition?

A. I'd like to be as helpful as possible, but I am loath to give a value judgement on a question like that. I mean, one could argue that winning by one mark is a win. A win is a win is a win. At what point you sort of draw a line, what one person might say could be at variance with a reasonable person.

Q. One thing I think you could give a value judgement on has been suggested to Mr. McMahon in the course of the Tribunal's justifiable inquiry, that the fact that A5 won by 5% somehow or another means that they didn't win. That's a nonsense, isn't it, to make such a suggestion? Just a nonsense?

A. If you ask me to agree to the proposition that if somebody won by 5%, that they didn't win

Q. That they didn't win.

A. Well, at the risk of tripping myself up in double negatives, which always confuse me, a win by 5% is a win.

Q. Thank you.

Now, just to move on to another matter. We have gone

over the notes you made on this document today, and it's perfectly clear from those notes that you were carrying out your duties as the Regulator, making notes like anyone would, going along in a conscientious manner; isn't that correct?

A. Absolutely. This would be a typical way of proceeding by civil servants. You get a report; our training always is to question everything. Take no assumptions. Probe, act as devil's advocate. Seek out justification, and in that way you through checks and balances, you test the result as well.

Q. And these are all notes made by yourself for your own benefit and purposes and for your own information?

A. Well, no, these are notes made by me as a civil servant.

Q. Absolutely, for the file, yes, absolutely. I am not suggesting otherwise.

A. Right, and they would be for probably with the meeting of the 23rd in mind.

Q. To assist you in doing your job?

A. Exactly. Because I was expecting that we would go through this document page by page, and having made the notation, it made it easier for me to raise a question, raise a query, make a point.

Q. And if you had read that document again and again before the meeting of the 23rd, you might have made more notes?

A. I am sure, if I had more time, I would have made a lot more, certainly on the English.

Q. Now, it was suggested to you this morning a different formula was used this afternoon, that you were under political pressure at the time when you were making these notes.

Now, I think we have been over this ground to a certain extent before. Have you ever been influenced, in doing your job correctly, by political pressure?

A. No, I don't think I was ever influenced by political pressure.

Q. Were any of these notes influenced by political pressure?

A. Not at all. Time pressure is one thing. Political pressure is an entirely different thing.

Q. Of course. And doing this task of reading this report and making notes and doing your duties, were you under political pressure at that time, to use the term that was used?

A. Not at all, I don't think I was ever under political pressure in my life.

Q. So none of this material is a result of political pressure?

A. Certainly not.

Q. Now, we have engaged today, and indeed on other days, in a very detailed and lengthy investigation of weightings, of formulation, of tables, of reports

etc., etc., etc. Now, this exercise is of course relevant if somehow or another these tables, weightings, documents, reports, were manipulated deliberately as a result of influence. Now, did you come across any deliberate manipulation of any of these reports or parts of reports or exercises involved in preparing the reports in any way?

A. No, I never did, Mr. Fitzsimons.

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

A. Thank you, Mr. Fitzsimons.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Mr. O'Callaghan, just a couple of matters that I want to try and clear up and understand. You told us at the beginning of your evidence this morning that when you read the report of the 18th, you read it on the basis that you were doing a sort of devil's advocate in the sense of questioning it, probing it and testing it?

A. Yes, I read the report on the 20th. The report is dated the 18th yes, but I didn't see it until the 20th, yes.

Q. Am I right in understanding that when you read it, it was with the intention, as you told us, with the intention of questioning it, probing it and testing it?

A. Yes. It was indeed.

Q. And the purpose of that was to be critical in your

reading of it to see

A. I brought a critical disposition to the report, and that's as I explained earlier to Mr. Fitzsimons, that's my task.

Q. Because I suppose, inter alia, you would anticipate and expect the report to be able to stand on its own two feet when it was finished?

A. Absolutely, yes.

Q. And that was part of the consensus which was arrived at at the meeting of the 9th October, when a report was first produced?

A. I don't recall consensus being adopted on the 9th.

Q. No, consensus in relation to the fact that the report should stand on its own two feet?

A. I have seen that in the transcript of this proceedings. I don't particularly recall that myself being said but I have no doubt I have no reason to doubt it.

Q. But certainly you were of that view, that the report should be capable of standing on its own two feet?

A. Yeah, it should be a robust report. It should be in a position to justify the result. It should be well articulated, and there should be no doubts for equivocation or ambiguity.

Q. Am I also right in thinking, Mr. O'Callaghan, that the report of the 18th was in fact the first report that you had an opportunity of reading fully?



A. Not so. The report dated the 3rd, which we would which was the subject of the Project Team meeting of the 9th, now, we didn't have the report before the meeting, but we would have it from the 9th onwards.

Q. I know you had it from the 9th onwards, but just looking at the papers, it occurred to me, and I may be wrong, that you didn't have the opportunity of reading the report of the 3rd after the meeting of the 9th; but I may be wrong about that.

A. I think you might be correct. As I think of it now, I recorded in my chronology note that I spent the rest of that week dealing with the consultants that were employed in the Telecom Eireann's strategic alliance; and in the documents that were forwarded to me is a copy of the report of the 3rd with some commentary by myself, or some notation that I can recognise my own handwriting on it.

But there are very few comments on it, and I think what happened was: I was busy all that week, the week after the 9th. I couldn't devote time to examining the report in detail. I knew, of course, that a second report was coming, so I probably said to myself, rather than waste time on the first draft, let's wait until the second draft comes, and that will be further advanced; there will be some changes there that I'll pick up on, rather than spending time on the

initial one.

Q. That seemed to be the impression which I got from reading the papers, that in fact the other members of the PTGSM, since the 14th September, had been contributing in different degrees to the subcommittee meetings in Copenhagen in the initial stages, and then Mr. Brennan and Mr. Towey continued at least Mr. Brennan and Mr. Towey continued that process during the week of the 20th, 24th, 25th, 26th September. The report of the 3rd comes to the PTGSM on the 9th October. But certainly, for yourself and Mr. McMahon, it was the first time that you had an opportunity of seeing all of the work that had been done between the 14th and the 9th?

A. Well, certainly given my other work commitments, and for the reasons I have already given, I think I awaited the report of the 18th to analyse the document first.

Q. Absolutely. Am I also right in understanding, Mr. O'Callaghan, that you didn't get sight of the individual reports of the subcommittee groups?

A. I don't think I did.

Q. So that not only did Regulatory not partake in those subcommittee groups, but you also didn't get an opportunity of reading the written results of those groups?

A. I don't think I read the written results of those

groups at that time, anyway.

Q. It's absolutely clear, I think, that a lot of the work in relation to the grading was done at the subcommittee groups?

A. That's my understanding, yes.

Q. And that was done by those persons who were present, presumably, discussing and evaluating the information that was available to them?

A. I assume so. I wasn't there, so I can't really answer that question.

Q. Having regard to that fact, it would have been very difficult for the Regulatory section of the Department to fully partake, if at all, in a plenary session which discussed the subcommittee groups; would you agree with that?

A. Well, if we were to read the any reports from sub-groups, I think we would be in a position.

Q. I mean, clearly, if you were to discuss it in a plenary session, you would have to familiarise yourself with a lot of which had taken place at the meeting itself?

A. That's perfectly true, yes.

Q. And possibly an issue might arise as to whether that would be appropriate or not; but leaving that aside, the reality of life is that so far as Regulatory were concerned, neither yourself nor Mr. McMahon were, for one reason or another, in a position to take part in

those committee meetings?

A. That's perfectly true, yes.

Q. Equally, it would appear and I am putting this to you at the moment; I should probably more appropriately put it to Mr. McMahon it would appear that the facilities or the availability of Mr. Dillon was not considered, and he wasn't deputised to go to any of those subcommittee meetings?

A. I don't recall that we discussed the matter of sending or suggesting that Eugene Dillon might go as a substitute.

Q. It does seem clear, Mr. O'Callaghan, going back to the meeting of the 14th September, the PTGSM, that it was anticipated that on the 9th October, the matter that would be discussed would be the draft Evaluation Report of the 3rd October.

A. Sorry, Mr. McGonigal, I'll have to ask you to repeat that question.

Q. It does appear clear from the meeting of the 14th September

CHAIRMAN: Sorry, you'd like to take a five-minute break, Mr. O'Callaghan?

A. Yes, please.

CHAIRMAN: Mr. Nesbitt if you felt you were likely to be an amount of time that would take us beyond 4 o'clock

MR. NESBITT: I'm sure I won't be that long, depending

on how long My Friend takes.

CHAIRMAN: Maybe you can discuss it and come to an arrangement.

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

MR. McGONIGAL: That helped to shorten the matter, Mr. Chairman; thank you for the break.

Q. Mr. O'Callaghan, just to go back to the question I was trying to ask you before the break, just in relation to the meeting of the 14th September, it does appear that the agreement which was reached by the PTGSM was that on the 9th October, they hoped and intended to be discussing the report, the draft report of the 3rd October, together with the changes that were recommended between the 3rd and the 9th?

A. That's right. I recall that being said at the meeting of the 14th September.

Q. Now, in relation to the changes which you made to the report of the 18th, in a general way, as I understand your evidence, and I am putting it on a general basis, you had an opportunity on both the 23rd and for some time on the 24th to discuss and bring some of these changes to the attention of either Martin Brennan or the PTGSM generally?

A. That's the case, yes.

Q. And your position is, as I understand it, that you are unsure as to which ones or whether you brought the

attention of all of them to the attention of the

committee and/or Martin Brennan?

A. That's the case. I can't say how far out on this report we had got before matters ended.

Q. And clearly, in relation to some of them, if you had brought them to the attention of the committee and/or Martin Brennan, they would then have been discussed, debated, and either accepted or rejected?

A. That was the tenor of the meeting of the 23rd, as I recall it, that drafting session.

Q. And as I understand your present position, you have no recollection at this time as to what actually happened, no clear recollection?

A. As to what happened where?

Q. At those meetings, at those discussions.

A. Well, I have could you be precise about the question, maybe?

Q. I had understood, Mr. O'Callaghan, from your discussions with Mr. Coughlan, that you were unsure and unclear whether you had managed to raise certain of the matters at the meeting of the PTGSM on the 23rd or with Mr. Brennan on the 24th.

A. That is the case. I can certainly recall one of them, because it has stayed in my memory; I didn't need this to recall it. And that was the one about the negative solvency.

Q. So the reality is that the actual position is that you

could have raised some of them, you could have raised

all of them, or you may have raised none of them?

A. I think the reality is that I probably raised some of them at least.

Q. And at this stage you are unsure which ones?

A. At this stage I am unsure, yes.

Q. But whichever ones you raised, the probability is that they would have been discussed and considered and either rejected or accepted?

A. That was the way the meeting was moving, certainly, on the 24th.

MR. MCGONIGAL: It's unnecessary, I think, Mr.

Chairman, at this stage to take him through the actual final report to introduce the changes, because I understand that we will be doing that at a later stage with another witness.

CHAIRMAN: I am certainly not going to hold it against you if you don't traverse any or all matters; that seems sensible.

MR. MCGONIGAL: May it please you.

Thanks, Mr. O'Callaghan.

CHAIRMAN: Mr. Nesbitt.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

Q. MR. NESBITT: Mr. O'Callaghan, you were in the regulatory side of telecommunications for some years; isn't that right?

A. I was indeed, yes.

Q. So would I be correct in assuming that in relation to technical matters, how mobile telephony worked, you'd be reasonably well informed?

A. Well, not on the strict technical manner. I wasn't a technical person.

Q. But you'd understand that if you were going to have a cell phone system, you have got to have cells with masts, and they communicate with the next-door cell, and you'd be able to make the thing work if you'd enough cells to carry the number of calls that were being carried across the network?

A. Certainly I would have had an appreciation of the need for that degree of telecom infrastructure to be in place before a mobile operator could go into business.

Q. So when you were looking at any of the applications that were being brought forward, you would have had some understanding of the basics of the radio network architecture and what was going to be required to give the level of coverage that would be necessary?

A. I am not as sure if I would be that au fait with levels of coverage and transmission power that would be needed, but I certainly would have an appreciation of the infrastructural needs.

Q. Well, for example, if somebody just taking a model for putting mobile phones across Texas, which is a reasonably flat state in parts, that wouldn't necessarily suit the topography for Ireland; you'd



have to sit down and see what you need in Ireland?

A. Absolutely.

Q. You'd have understood that level of

A. My appreciation of the technical aspects would have taken into account the fact that valleys and planes and hills would have needed a specific, a technical architecture to be put in place.

Q. So the design and the construction of the radio network would have been important in terms of achieving appropriate coverage, capacity and quality of signal?

A. I think it would be essential. Without it, without a high quality those aspects, you wouldn't have a good you would not be able to produce a good service.

Q. So if I could ask you to look at Book 41, Divider 46.

A. Yes, Mr. Nesbitt.

Q. And what I am concerned about is Clause 19 that we have spoken about. This is where there is a statement in the competition "that the Minister intends to compare the applications on an equitable basis subject to being satisfied as to the financial and technical capabilities of the applicant. In accordance with the information required herein and specifically with reference to the list of evaluation criteria set out below in descending order of priority".

And you have "Credibility of business plan and the

applicant's approach to market development". And then you have "Quality and viability of technical approach proposed and its compliance with the requirements set out herein."

Now, I want to suggest to you that in relation to the second bullet point I have just read, "Quality and viability of technical approach proposed and its compliance with the requirements set out herein", that's a criteria that would have been concerned to see that there was going to be an appropriate architecture to ensure terms of appropriate coverage, capacity and quality, among other things.

A. Yes, I would think so. It is important, as we said earlier, that a proper account is taken of the terrain of the territory over which the signal is to be carried. And Ireland is quite although a small country, has diverse topographical features, and in its own way is, in some parts, I understand, quite complicated to construct the appropriate infrastructure to carry a signal.

Q. Well, taking that as your understanding, I have to suggest to you that when Mr. Coughlan wished you to agree that Table 1 on page 14 of the report of the 18th chose to present the evaluation criteria in an inappropriate order, he is simply mistaken.

I'll bring you through why I say that. If you look at Table 1 on page 14, we see market development. I

think we all agree that market development is the first of the criteria we see on the list in Clause 19.

It's divider

A. This is on page 14.

Q. Page 14 of the report of the 18th.

A. Yes.

Q. If you look at cross-reference it to Divider 46, we

see in Clause 19, the first criteria, the end says

"Market Development", so we see Number 1 on Table 1 is in the right place.

A. Yes.

Q. And then we come down to coverage, and you and I have

agreed that coverage would be included in the

technical approach in compliance with the requirement

set out herein; so that appears to put coverage in the

right order?

A. Yes.

Q. We then come down to the next one, which is third

bullet point, the tariffing. Then we have tariffs in

the right place?

A. Tariffing is the third one there, yes.

Q. Then we come down to the next one, which in fact it's

a bit further down, three down, third-last bullet

point, "Extent of applicant's international roaming

plan." And so that appears to be in the right place

too?

A. In the right place in the sense that

Q. In the sense that those are going down in descending order of importance of criteria being looked at.

Because what Mr. Coughlan asked you to agree with, and

I think we are now agreeing that that's an

inappropriate thesis on his part, to suggest that the

criteria as laid out in Table 1 at page 14, which we

spent some considerable time on today, they haven't

been laid out in an inappropriate order. They are in

the correct order; is that right?

A. Yes, well, the way you brought me through it now, yes,

they would seem to match. Sorry, the way you have

brought me through it, they would seem to match up in

that record. I myself was only raising it as a

rhetorical question, when I put my marginal comment

there. I was saying "Were these ranked on the basis

of importance?"

Q. Well, I think he was concerned to have you agree that

they were inappropriately ranked; but I think we can

now see that to be a mistaken approach, as far as you

are concerned, anyway.

In relation to what you were doing, as I understand

it, what you wish the Tribunal to take from your

evidence is that when you received the written

reports, you attempted to critically assess them?

A. That's what I was doing. I was carrying out a

critical assessment of what I had received.

Q. And in relation to the issue of marking and giving

letters and trying to understand who had won, you hadn't been party to the Copenhagen visit, and you hadn't for reasons you have explained, and neither had Mr. McMahon, formed any of the sub-groups that were going to be doing the needful in relation to deciding who had scored what; is that right?

A. That's quite right, Mr. Nesbitt.

Q. So in your critical-assessment mode, the information that you were looking at when you saw the drafts were basically Tables 17 and 18; is that right? Those are page 50 and 51 of the document of the 18th, just to let you refresh your memory.

A. As the culmination of the process, yes, the Tables 17 and 18 are the bottom line, I suppose.

Q. Now, I am not going to bring you through those again; we went through them in your last evidence. But what I do want to ask you is this: In relation to any of the meetings you attended for the purposes of looking at the Evaluation Report, did anybody try and stop you asking questions?

A. No, I don't recall that anybody did try to stop me.

Q. Did anybody look worried or try and divert any attention that you might have been paying to any part of the report that you were raising at the meeting you were at?

A. I don't recall anything like that happening.

Q. Was there any sense from anybody that you recall being

there, or any of the interplays that you recall, that somebody was trying to hide something, or somebody was trying to affect a result in a way that you didn't agree with?

A. No. I never got that impression. As I said, I would have aired these issues, insofar as I could have in the time available, and I didn't pick up any vibe like that from anybody.

Q. I think Mr. McMahon has and will probably go down in history now described the report as not being an interocular report, which means it didn't hit you between the eyes. I think you subscribe to that concept as well?

A. Yes.

Q. Is that really what you were about? You were saying "Look, I can see it's A5, A3, A1, but I want the report to be saying that with a louder voice"?

A. I suppose that's partly what I am doing, that in the overall, the document is not hitting you between the eyes. It's not clear-cut. It is not unambiguously justifying the result. But I am also taking it on a page-by-page basis. I am looking at things without any overall plot or plan in my mind. I am just simply going through it ad seriatim, and where somebody strikes me that I don't see the meaning of it, I put down a marker. If it's something that seems ambiguous to me, or something that I want to query about it,

maybe a mark here, maybe a mark there, have you taken into account this aspect? I am noting these down as they strike me.

Q. Insofar as you, in your busy schedule, had time to deal with the issues you had to deal with, read the report and attend at the meetings which lasted some time, you were given every opportunity to say whatever you wanted, and people listened to what you had to say?

A. I was given, yes, every opportunity to say what I wanted with the proviso that I think, when I left the meeting of the 24th at about 7.15 or so, I don't think I had gone through I had completed what I had to say.

Q. All right, but in relation to your need to leave the meeting, that was a domestic issue; it wasn't something that was pre-planned, or anybody could rely upon you were going to have to leave that meeting, so they could arrange some strategy to disadvantage you?

A. No, it arose for a domestic reason.

Q. Indeed. And these things happen, so if there is a great plan out there to massage this report, the fact you were going to be leaving the meeting was not a thing known to anybody in advance?

A. It wouldn't have been known to anybody. And in fact, it's highly likely because I recall Sean McMahon was there, remained on in the meeting when I had to

leave it it's highly likely that I would have left

this document with Sean.

Q. Precisely. You would have shared your resources; you would have talked to each other?

A. Well, if I was going home, I wasn't going to carry this home with me if I hadn't concluded what I was going to inquire about. I would have said, "Sean, there is the report, they are my comments on it if you want to continue raising the points." And I assume he would have.

Q. When it was decided that the Minister was going to go with what I understand you to accept to be the winner, you were told about that; there was no hiding that behind your back or trying to let it happen before you found out about it. They were straightforward about that?

A. Oh, yeah. I was informed in a very matter-of-fact way, on the Tuesday, that the Minister wanted to go to Government the following day on the matter.

Q. So far as you are concerned, you are an astute civil servant, you have been dealing with matters of this level for some time, is it fair to say that you certainly were not left with any impression that there was an attempt to massage the process that you were part of by your colleagues or anybody acting with them?

A. No. I never saw any evidence that anything was being



massaged here.

Q. Thank you very much.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Just one or two matters, because I am

just concerned as to whether, in some questions put by

My Friend Mr. Nesbitt, whether this is the

Department's view and whether there is confusion

arising here altogether.

When I took you if you go to page 14 this is the

table which is under the heading "Marketing Aspects".

A. Yes, Mr. Coughlan.

Q. You see there, "The dimensions of the marketing

aspects are identified as market development,

coverage, tariffs, and international roaming plans."

This is nothing to do with the technical aspects.

Isn't that correct? Because if one goes to the text

on page and if you go through the on page 48

sorry, page 50, Table 17. You see the ranking there.

This is the RFP, page 17, or indeed it can be

sorry, page 5, Table 17 or Table 18, you see the

ranking of coverage from the RFP. Nothing at all to

do there with the technical aspects. It

relates its ranking is way down low; do you see

that?

A. On Table 17?

Q. Yes.

A. Yes.

Q. Now, so isn't it true that the evidence you gave when we discussed this this morning is the correct evidence?

A. I have

Q. Isn't your note there correct? Weren't these ranked, in paragraph 19, on the basis of importance? Isn't that the note

A. That's the note I am making.

Q. And coverage is never ranked higher than tariffs in the RFP, isn't that right, in the order of importance?

Go to the table

MR. NESBITT: Mr. Chairman, I'd invite Mr. Coughlan to indicate where, in the list of criteria in the competition document, coverage is not ranked as I have indicated.

MR. COUGHLAN: I'd like the witness to deal with the evidence he gave this morning, which he seemed to have no difficulty with.

CHAIRMAN: Well, we'll finalise the evidence. If we have to debate it later, we will.

Q. MR. COUGHLAN: I'll be going to Book 55 in a minute, the evaluation model, as well 54, to assist you.

See, what you were saying this morning is, and the question you raised at the time, are these out of sync in terms of the descending order of importance?

What has been suggested to you is that they are in

sync, and that I misunderstood the situation. I didn't misunderstand any situation. You raised the question, and I asked you, and when you look at the RFP, you see that they are out of sync in descending order; tariffs ranks higher than coverage. Isn't that right?

Go to Table 17; it shows it clearly. But I'll go to the evaluation model in due course as well. Page 50. Do you see it? "Dimensions. Market development 10, financial key figures 10, experience of applicant 10, radio network architecture 10, network capacity 10, tariffs 18, licence payment 11, coverage 7."

Do you see it?

A. Yes.

Q. It's quite clear.

A. Yes.

Q. Now, it's less than half the weighting for tariffs.

There is no doubt about that, is there?

A. That's right, yes.

Q. And that's precisely the point you picked up at the time, and that's precisely the point you gave your evidence about this morning, and that's precisely the point that you brought to bear on the final table; isn't that right?

A. I am not sure where I brought it to bear on the final table, Mr. Coughlan.

Q. It's the point you picked up at the time, it's the

point you gave evidence about this morning, and that's

correct, isn't it, it ranks lower than tariffs?

A. Certainly

Q. On the RFP?

A. Yes.

Q. Are you on page 14? Do you see the table, "Marketing Aspects"?

A. Yes.

Q. "Market development, coverage, tariffs, international roaming". Tariffs rank higher in the RFP than coverage; isn't that right? You see it on Table

A. Well, I am looking at the RFP. Tariffing is the third bullet, but I am searching for where coverage is.

Q. It's the next evaluation criteria below "licence fee", the fifth.

I'll tell you, in the evaluation model, it is the dimension relating to "Timetable for achieving minimum coverage requirements and the extent to which they may be exceeded". Do you have that?

A. Yes, I am looking at paragraph 19, I think, yes.

Q. And do you have "Timetable for achieving minimum coverage requirements and the extent to which they may be exceeded"?

A. Yes.

Q. And that's below

A. That's below tariffing.

Q. It's below tariffs?

A. It is, yeah.

Q. And the dimension in the evaluation model is coverage, which is the dimension which is used here in the marketing aspect; do you see that? So you were correct in what you were saying this morning.

A. Yes.

Q. Right. Now, I'll just leave that aside for a moment.

Do you remember your chronology?

A. Yes, I do, Mr. Coughlan.

Q. And paragraph 2 of your chronology. I'll just read it to you: "Did not see copy of the first draft final report until 9/10/95. I raised a question of what happens if there is disagreement, and MB said that most of the Project Team had been involved in the assessment which led to the ranking. MB said the Minister knew the winner."

A. Yes.

Q. Isn't that a clear note of an indication that disagreement was not welcome from you?

A. I think I might have had assumed before that meeting that the qualitative process, the qualitative evaluation process was to continue after the 9th, and that's probably the cause of me raising the question with Martin Brennan: What if there is disagreement?

Q. You were being shut out, Mr. O'Callaghan; you were being shut out. Isn't that the clear conclusion one would draw from that?

A. Well, what I was going to say was that I posed a rhetorical question to Martin Brennan: "What if there is disagreement on this?" Because, as I said, I think I assumed that the qualitative process was to continue after the 9th.

And from Martin's response, I took it, and I think I was quite clear in it, that that process was finished.

And he was Chairman of the group; I think I assumed that well, he has been here longer than me, he is Chairman of the group, and that's it. So that's what I took from that meeting.

Q. But you couldn't have accepted that because of the note of the 23rd, before you went into the meeting, whereby you were of the view that the report didn't distinguish between the first

A. That's the narrative of the report which was to justify and explain the result.

Q. Very good.

CHAIRMAN: Very good. Thanks for coming back to give further evidence, Mr. O'Callaghan.

That concludes today's hearing. Are we in a position to take up a fresh witness at eleven o'clock tomorrow?

MR. COUGHLAN: Yes, Sir.

CHAIRMAN: Very good. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
WEDNESDAY, 26TH MARCH, 2003 AT 11AM.